

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F709051

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| TERESA HUCHINGSON, EMPLOYEE | CLAIMANT |
| DASSAULT FALCON JET CORPORATION, EMPLOYER | RESPONDENT |
| AIG CLAIMS SERVICE, INC., INSURANCE CARRIER/TPA | RESPONDENT #1 |
| SECOND INJURY FUND | RESPONDENT #2 |

OPINION AND ORDER FILED JUNE 30, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on June 26, 2008, at Little Rock, Pulaski County, Arkansas.

Claimant, *pro se*, failed to appear.

Respondents represented by Ms. Melissa Wood; Worley, Wood and Parrish, P.A., Attorneys-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on June 26, 2008, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702(a)(4) and/or Commission Rule 099.13.

This claim concerns an alleged gradual onset injury occurring on or before December 7, 2005. Respondents have controverted the claim in its entirety, maintaining that the claimant did not sustain a work-related injury related to her employment with Dassault Falcon Jet Corporation.

A procedural history of the claim is warranted. The claimant, by and through her former attorney, Robert T. James, by letter dated October 30, 2007, requested a hearing which was filed on November 2, 2007. The claim was then assigned to an Administrative Law Judge. A prehearing questionnaire was sent to both parties on

November 5, 2007. The parties were given twenty (20) days in which to submit prehearing information filings. The claimant submitted timely responses, a copy of which was sent to the adjuster for the respondent-insurance carrier. On December 5, 2007, the Administrative Law Judge filed an Order extending respondents' response time to December 20, 2007. Respondents were cautioned that failure to respond prior to said date might preclude respondents from offering any evidence to establish any defense at a hearing in this case. Thereafter, respondents retained the services of its current attorney. Prehearing information filings were submitted by respondents on December 21, 2007. Upon receipt, the Administrative Law Judge immediately scheduled a prehearing conference for January 15, 2008. A Prehearing Order was filed on January 15, 2008. At the prehearing conference, the parties agreed that the employment relationship existed on December 7, 2005, and that the applicable compensation rates were \$466.00 per week for temporary total disability and \$350.00 per week for permanent partial disability in the event the claim was found compensable. At the conclusion of the prehearing conference, it was determined that a hearing was premature. The case was returned to the Commission's open general files pending completion of all discovery. Thereafter, the Second Injury Fund was joined as a party/respondent. On February 22, 2008, claimant's attorney requested that he be permitted to withdraw as attorney for the claimant. Following notice to the claimant, the Full Commission entered an Order filed March 11, 2008, permitting claimant's attorney to withdraw as attorney-of-record.

Contemporaneous with the request by claimant's attorney to withdraw,

respondents filed numerous pleadings with the Administrative Law Judge asserting various defenses, including, but not limited to a statute of limitations defense, as well as asserting that should the claimant pursue a workers' compensation claim, it would be requesting entitlement to an offset for any medicals or short term disability benefits paid by other providers pursuant to Ark. Code Ann. §11-9-411. It must be noted that all correspondence submitted by respondents to the Administrative Law Judge was in turn forwarded to the Clerk of the Commission for filing.

By letter dated May 27, 2008, and received on May 28, 2008, the claimant advised the Administrative Law Judge that she wished to withdraw her workers' compensation claim. Based upon the claimant's correspondence to the Administrative Law Judge, respondents requested that an Order of Dismissal be entered. The claim was then reassigned to the Administrative Law Judge for appropriate action. A hearing Order was filed June 5, 2008, scheduling the claim for a hearing. The sole issue to be presented for determination concerned respondents' Motion to Dismiss. Notice of the hearing was sent both Certified Mail, as well as First-Class Mail. The claimant failed to appear at the hearing. Respondents, by and through its attorney, again moved that the claim be dismissed for want of prosecution. Respondents introduced documentary evidence in support of its Motion.

From a review of the record as a whole, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The claimant has filed a claim for a gradual onset injury manifesting itself on or before December 7, 2005.
3. Respondents have controverted this claim in its entirety.
4. The claimant has failed to prosecute her claim.
5. This claim should be dismissed for want of prosecution.

DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the procedural history in this claim, and the documentary evidence reflects that the claimant has failed and/or refused to prosecute her claim. The claimant has been advised that her failure to respond to prior notices, as well as to appear at the scheduled hearing would result in the dismissal of her claim. A hearing was scheduled at respondents' request pursuant to *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, ___ S.W.3d ___ (2004).

After a full consideration of the facts, issues, and the law, and with notice of the hearing having been sent to the claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed pursuant to Commission Rule 099.13.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge