

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F505421

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| ANNETTE HUNTER, EMPLOYEE | CLAIMANT |
| REGIONS FINANCIAL CORP., EMPLOYER | RESPONDENT NO. 1 |
| AMERICAN HOME ASSURANCE CO. C/O AIG CLAIM SERVICE, CARRIER/TPA | RESPONDENT NO. 1 |
| SECOND INJURY FUND | RESPONDENT NO. 2 |

OPINION AND ORDER FILED MAY 13, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on May 5, 2008 in Little Rock, Pulaski County, Arkansas.

Claimant appeared *pro se*.

Respondents No. 1 represented by Honorable Betty Hardy, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Mr. David Simmons, Attorney at Law, Little Rock, Arkansas, appearance waived.

STATEMENT OF THE CASE

A hearing was conducted on May 5, 2008 to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. § 11-9-702 and Commission Rule 099.13.

The claim concerns an alleged accident and injury on April 4, 2005. Respondents have controverted the claim in its entirety, maintaining that the alleged injury did not arise out of and in the course of claimant's employment.

This claim has a lengthy and unusual procedural history. A summary of the procedural history is warranted. On or about May 24, 2006, the claimant filed a Commission Form AR-C, alleging an accident and injury occurring on April 4, 2005.

The claimant retained the services of Attorney Philip M. Wilson. On January 4, 2007, respondents filed a Motion to Dismiss for want of prosecution, at which time it requested a hearing on the Motion. The claim was then assigned to Administrative Law Judge Richard Calaway. A hearing was scheduled on January 30, 2007. The sole issue presented for determination concerned respondents' Motion to Dismiss. The Administrative Law Judge filed an Opinion and Order on February 9, 2007. The Statement of the Case reflected that the employer's first report of injury indicated that the claimant notified the employer April 22, 2005 that she alleged injuries to her wrists, arms, and neck. The within insurance carrier controverted the claim, maintaining that the claimant had open claims for the same injuries with a prior carrier for injuries occurring on April 2, 2003 and April 15, 2004. The Opinion and Order further recited that although the claimant and her attorney failed to appear at the hearing, a letter dated January 29, 2007 directed to the office of the Clerk of the Commission requested a hearing and further asked that the claim be combined with another claim file, alleging an injury while working for the same employer. The letter was not forwarded to the Administrative Law Judge prior to the January 30, 2007 hearing. Accordingly, the Administrative Law Judge denied respondents' motion and scheduled the claim for a prehearing telephone conference on March 20, 2007. At the request of respondents, the prehearing conference was rescheduled for March 19, 2007. A Prehearing Conference Order was filed on March 19, 2007, at which time it was determined that additional discovery was required; that the claimant may wish to file an additional claim before

proceeding; and by agreement of the parties, the claim was returned to the Commission's general files.

On June 21, 2007, respondents filed a Renewed Motion to Dismiss, at which time the claim was reassigned to the Administrative Law Judge. The Administrative Law Judge wrote a letter on July 2, 2007 advising that there was no pending claim for benefits for any prior claim and requesting that the claimant promptly advise concerning respondents' pending Motion to Dismiss. On July 5, 2007, the Administrative Law Judge scheduled a telephone conference for August 29, 2007. On August 30, 2007, a Prehearing Conference Order was filed ordering the claimant to promptly respond to discovery previously propounded by respondents. In addition, the parties were directed to complete discovery and file responses to prehearing questionnaires. The claim was again returned to general files. Respondents submitted responses to prehearing questionnaire on August 31, 2007. The claimant failed and/or refused to submit appropriate responses. No further action was taken until on or about March 11, 2008, at which time respondents filed a Second Renewed Motion to Dismiss the claim for want of prosecution. The claim was then reassigned a third time to the Administrative Law Judge to consider the motion. On March 13, 2008, claimant's attorney was granted twenty days to respond to the pending motion. No response was received. On April 7, 2008, a hearing was scheduled for May 5, 2008. The subject of the hearing was respondents' motion to dismiss the claim. On January 29, 2007 (sic), claimant's attorney wrote a letter addressed to the office of Richard Calaway, which is set out in part below:

Dear Ms. Jackson:

My client has not returned any of my phone calls. I am not going to appear at the May 5, 2008 hearing. I would request to allow to withdraw as attorney of record.

The claim was then transferred to this Administrative Law Judge. By letter dated April 22, 2008, the claimant was advised that a hearing notice was sent April 7, 2008 to the parties. In addition, a copy of Mr. Wilson's aforementioned response received on April 17, 2008 was provided to the claimant. She was advised that her failure to appear would result in the dismissal of her claim.

The claimant appeared at the May 5, 2008 hearing. Respondents appeared by and through it's attorney, Betty Hardy.

The following issues were presented for determination at the May 5, 2008 hearing:

1. Whether claimant's attorney should be permitted to withdraw as attorney of record.
2. Whether the claim should be dismissed for want of prosecution.

Rather than conduct a further analysis in the record in this cause, suffice it to say that the claimant objected to the dismissal of her claim, and further objected to allowing Mr. Wilson to withdraw as attorney of record. She pointed out that Mr. Wilson had agreed to represent her interests beginning May 2006, and that it would not benefit her to find another attorney at this late date. She further stated that she had attempted to communicate with Mr. Wilson's office, but that her only communications were with office and clerical help and that Mr. Wilson had failed and/or refused to return her calls. Respondents' attorney acknowledged that initial

discovery, specifically a discovery deposition, had been taken on September 30, 2007 after which respondents joined the Second Injury Fund simply to protect its interests. Respondents further indicated that no additional discovery was necessary for respondents and that it was prepared to defend the claim.

After full consideration of the facts, issues, and the law, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. Claimant's attorney has failed to comply with AWCC Advisory 2003-2, and has failed to show good cause to be relieved as attorney of record.
3. Respondents' Motion to Dismiss for want of prosecution is not supported by the facts peculiar to this claim.
4. All additional issues must be specifically reserved.

DISCUSSION

Rather than conduct a further analysis of the record in this cause, suffice it to say that the claimant strenuously objects to the dismissal of her claim and requests a hearing on compensability as well as entitlement to associated benefits. It appears that this claim has been delayed, in part, due to both clerical errors by this Commission as well as temporary staffing deficiencies at the office of claimant's attorney. Claimant's appearance at the May 5, 2008 was communicated to the office of claimant's attorney. Counsel for both attorneys have been advised that

another prehearing telephone conference will be promptly scheduled at which time a hearing would be scheduled on the merits. Subsequent to the hearing, the parties advised that both would be available for a comprehensive prehearing telephone conference on June 2, 2008. Claimant's attorney is to consult with his client prior to said date in order to formulate meaningful stipulations, narrow the issues, as well as state specific contentions. Claimant's attorney is to submit prehearing information filings forthwith in order to avoid further delays in the adjudication process.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge