

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F600317

JOSHUA K. HURT, EMPLOYEE	CLAIMANT
PREMIERE TEMPS, d/b/a WISE STAFFING, EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION AND ORDER FILED JANUARY 4, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on December 28, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Jim R. Burton, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Michael N. Harry, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on December 28, 2007, 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.

This claim concerns an alleged accident and injury occurring on or about December 27, 2005. Respondents have controverted the claim in its entirety. Although respondents apparently acknowledge that an incident occurred on December 27, 2005, at which time the claimant sustained some lacerations to his upper extremity and for which respondents paid for initial medical treatment, respondents have since controverted the claim.

A procedural history of the claim is warranted. The claimant filed a Commission Form AR-C dated January 8, 2006, which was received on January 18,

2006. Again, respondents apparently paid for the initial medical treatment after which it offered the claimant some modified work at full-pay which the claimant apparently refused. Thereafter, respondents controverted the claim in its entirety. On March 6, 2006, respondents propounded various interrogatories to the claimant which the claimant failed and/or refused to answer. The claimant took no further action after filing his claim for benefits. On November 16, 2007, respondents filed a Motion to Dismiss the claim without prejudice, together with a brief in support of its Motion to Dismiss. By letter dated November 21, 2007, the claimant was granted twenty (20) days to respond to the Motion to Dismiss and/or request a hearing with this Commission. No response was received. Accordingly, pursuant to respondents' request, a hearing was scheduled on December 28, 2007. The subject of the hearing was limited to respondents' Motion to Dismiss the claim. Again, the claimant failed to appear at the hearing. Claimant's attorney-of-record, Mr. Jim R. Burton, did appear at the hearing. He stated that despite numerous attempts to contact Mr. Hurt to have him answer discovery requests, the claimant had failed and/or refused to answer, and that he had received no further communications from the claimant. Respondents offered documentary evidence in support of its Motion, and renewed its request that the claim be dismissed without prejudice.

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 benefits alleging a December 27, 2005, injury.
3. Respondents have controverted this claim in its entirety.
4. The claimant has failed to prosecute his claim.
5. This claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4).

DISCUSSION

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

After full consideration of the facts, issues, and the law, and with notice of the hearing being sent to the claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed without prejudice.

This Order shall not be construed to affect the refiling of this claim if filed within the statutory time limits imposed by Arkansas Law.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge