

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504176 (04/01/05)

ROBERT JONES, EMPLOYEE

CLAIMANT

LEXICON, INC., EMPLOYER

RESPONDENT

LIBERTY MUTUAL INSURANCE CO., CARRIER

RESPONDENT

OPINION FILED JUNE 2, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on May 30, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE R. THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim on respondents' Motion for Reconsideration and Renewal of Motion to Dismiss with Prejudice. On April 8, 2008, a pre-hearing conference was conducted on the Motions, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties as well as the issue to be addressed during the course of the scheduled hearing. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The Motion to Dismiss With Prejudice, Brief in Support of the Motion, as well as the Motion For Reconsideration and Renewal of Motion to Dismiss With Prejudice; along with the

hearing transcript generated at the time of the prior January 5, 2007, hearing on the Motion to Dismiss comprise the record in this claim. Finally, without objection, the entire file of the Commission is incorporated by reference in this record.

DISCUSSION

Robert Jones, the claimant, sustained a compensable injury on April 1, 2005, for which respondents paid appropriate corresponding workers' compensation benefits. On April 26, 2005, a Form AR-C date April 6, 2005, was received by the Arkansas Workers' Compensation Commission on behalf of the claimant. The Form AR-C was filed by the claimant's attorney, and asserted injuries to the claimant's left ankle, left knee and whole left side as a result of an accident on "4/22/05" at "Nucor/Blytheville, AR".

Respondent-employer filed a Form 1A-1 on or about May 4, 2005, acknowledging the reporting of an injury to the claimant's left ankle growing out of an accident on April 1, 2005, as a result of broken stairs during a shutdown at a Blytheville facility. Further, on May 5, 2005, respondent completed a Form AR-2, wherein it acknowledged the April 1, 2005, accident involving the claimant, however, noted that there was "no supporting documentation that the claimant has objective medical findings to yield further medical treatment" or entitlement to "temporary total disability benefits", and that an investigation was pending. Thereafter, claimant, through his attorney in a July 5, 2005, correspondence to the Clerk of the Commission requested "that this matter be set for an expedited hearing at the soonest possible date" on the issue of additional medical treatment.

In accordance with the above, in correspondence of July 20, 2005, pre-hearing questionnaires were forwarded to the parties, and an August 23, 2005, pre-hearing conference

was scheduled. In an August 5, 2005, Preliminary Notice, claimant responded that he was willing to mediate his claim. In their August 23, 2005, Preliminary Notice respondents relayed that they were not agreeable to mediation. Both parties submitted responses to the pre-hearing questionnaires and on September 6, 2005, a pre-hearing conference , which had previously been rescheduled from the August 23, 2005, date, was conducted. Although both parties had submitted responsive filings to the pre-hearing questionnaires, discovery was on-going. As a consequence of the afore the file was returned to the Commissions' general files pending a further hearing request. The afore was confirmed in a September 7, 2005, correspondence from the Administrative Law Judge to the parties.

On October 31, 2006, respondents filed Motion to Dismiss Without Prejudice along with a Brief in Support of the Motion. In a November 6, 2006, correspondence, which was sent by certified mail - return receipt requested, claimant, through his attorney, was notified of the Motion to Dismiss and directed to submit a responsive filing no later than December 1, 2006. In the event of compliance with the afore, a pre-hearing conference was scheduled for December 5, 2006. Claimant, through his attorney, submitted an objection to the dismissal, and the December 5, 2006, pre-hearing conference was conducted. The afore resulted in a Pre-hearing Order and Hearing Notice scheduling a January 5, 2007, hearing in Jonesboro, Arkansas, on the Motion to Dismiss For Want of Prosecution.

At the time of the January 5, 2007, scheduled hearing claimant appeared with his attorney and argued that he desired to pursue his claimant for workers' compensation benefits growing out of the April 1, 2005, accident. At the time of the hearing claimant provided a current address and telephone as well as assurance that he would remain in regular contact with his attorney. On

January 8, 2007, a Order was filed denying the Motion to Dismiss For Want of Prosecution.

On February 20, 2007, a pre-hearing teleconference was conducted in the claim, and a May 4, 2007, Jonesboro hearing scheduled on the issues of additional medical benefits, temporary total disability benefits, and controverted attorney fees. On March 7, 2007, claimant filed a Motion For Change of Physician in the claim. As a consequence of the afore, on March 15, 2007, file was transferred to the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission.

On April 25, 2007, pursuant to an inquiry from the claimant's attorney regarding the lack of a Change of Physician Order, the May 4, 2007, scheduled hearing was continued pending the claimant having been seen pursuant to a Change of Physician Order. The parties were directed to notify the Administrative Law Judge once the afore had been accomplished.

On May 7, 2007, a Change of Physician Order was entered by the Medical Cost Containment Department of the Arkansas Workers' Compensation designating Dr. Gregory Ricca, a Jonesboro neurosurgeon, as the claimant's treating physician relative to the April 1, 2005, compensable injury. A July 16, 2007, appointment was scheduled for the claimant with Dr. Ricca by the Medical Cost Containment Department of the Commission.

Prior to the July 16, 2007, appointment with Dr. Ricca, the parties reached a proposed settlement in the claim. On August 13, 2007, a Joint Petition was filed with the Arkansas Workers' Compensation Commission along with a hearing request on same. On August 20, 2007, a Joint Petition Notice of Hearing was forwarded to the parties scheduling a September 5, 2007, Jonesboro hearing. which was later rescheduled for September 21, 2007.

The claimant failed to appear for the scheduled September 21, 2007, 9:00 a.m. Jonesboro

Joint Petition hearing. In a September 24, 2007, correspondence, the parties were permitted to submit the Joint Petition on Interrogatories in light of the claimant's Alabama employment. The parties were directed to submit original executed documents within thirty (30) days. The documents were not forthcoming and the file was returned to the Commission's general files.

Respondents later withdrew the proposed offer and filed the present cause. On April 8, 2008, a pre-hearing conference was conducted on the motion, and a May 30, 2008, hearing scheduled in the claim. The evidence discloses that the claimant has failed to maintain regular contact with his attorney. Further, efforts by the claimant's attorney to reach him through the contact telephone numbers of relative and acquaintances have proved unsuccessful. Claimant did not appear for the scheduled hearing.

The evidence preponderates that the claimant has abandoned any claim for additional workers' compensation benefits growing out of the April 1, 2005, compensable injury. Further, it may be logically imputed that the claimant, by virtue of the prior scheduled hearing on Motion to Dismiss for Want of Prosecution, is fully cognizant of the consequences of his failure to pursue the present claim. It is clear that the claimant did in fact request a hearing within six (6) months of the April 26, 2005, filing of the Form AR-C relative to the April 1, 2005, compensable injury. According, the provisions of Ark. Code Ann. §11-9-702 (a) (4) are inapplicable in the instant claim.

Rule 099.13 of the Commission provides, in pertinent part:

Upon meritorious application of the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an Order dismissing the claim for want of prosecution.

As noted above, the evidence preponderates that in the instant claim, the claimant has abandoned his claim for additional workers' compensation growing out of the April 1, 2005, compensable injury. In accordance with the court's ruling in *Loosey v. Osmore Wood Preserving Co.*, 23 Ark. App. 137, 744 S.W.2d 402 (1988), I find that the present dismissal warrants the extraordinary measure of a dismissal with prejudice. According, the motion of respondents, as filed herein is granted, and the present claim is herein dismissed for want of prosecution with prejudice.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE