

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305697 (11/04/02)

SHARIE D. JONES, EMPLOYEE

CLAIMANT

POLYONE CORPORATION, EMPLOYER

RESPONDENT

LIBERTY MUTUAL FIRE INS. CO., CARRIER

RESPONDENT

OPINION FILED MAY 27, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on May 23, 2008, at Forrest City, St. Francis County, Arkansas.

Claimant pro se.

Respondents represented by the HONORABLE ERIC NEWKIRK, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim on the Motion to Dismiss for Want of Prosecution filed herein by respondents. On March 18, 2008, a pre-hearing conference was conducted in claim, from which a Pre-hearing Order of the same date was filed. Notice of the scheduled pre-hearing conference was provided to all appropriated parties. At the time of the March 18, 2008, pre-hearing conference a May 23, 2008, hearing was scheduled on the Motion to Dismiss. The March 18, 2008, Pre-hearing Order and Hearing Notice was forwarded to the parties by certified mail - return receipt requested.

The March 18, 2008, Pre-hearing Order and Hearing Notice is herein designated a part of the record as Commission Exhibit #1. The Motion to Dismiss, Brief in Support of the Motion to

Dismiss; copies of certified mail-return receipt, correspondence and other document comprise the record in this claim.

DISCUSSION

It is undisputed that the claimant sustained compensable injuries to her upper extremities, wrists, hands and elbows, the product of gradual onset on November 4, 2002. Medical and indemnity benefits were paid by respondent relative to the afore through March 3, 2004.

Respondents maintain that between March 3, 2004, and March 1, 2006, no additional benefits were paid in the claim.

On January 20, 2007, a Form AR-C was submitted by the claimant seeking additional workers' compensation benefits in connection with the November 4, 2002, injuries. Respondents took the position that the statute of limitations had run in connection with the underlying claim. Respondents relayed the afore contention/position in a February 16, 2007, response to the February 5, 2007, inquiry of Carl Bayne, the Director, Operation/Compliance of the Arkansas Workers' Compensation Commission.

Subsequent to the submission of Form AR-C and respondents' response to same, the parties reached a tentative settlement agreement, which resulted in the filing of a Joint Petition and the scheduling of a hearing on the Joint Petition before the Arkansas Workers' Compensation Commission on June 22, 2006, in Forrest City, Arkansas. Prior to the scheduled Joint Petition Hearing, claimant, through her attorney, canceled the hearing. Thereafter the claim was returned to the general files section of the Arkansas Workers' Compensation Commission.

On February 19, 2008, respondents filed the present Motion to Dismiss for want of prosecution. In addition to the respondents' forwarding a copy of the Motion to Dismiss to the

claimant on February 12, 2008, as reflected in the Certificate of Service, notice of the filing was forwarded to the claimant by the Commission via certified mail-return receipt requested, along with notice of a March 18, 2008, pre-hearing teleconference.

The March 18, 2008, Pre-hearing Order and Hearing Notice was received by all parties, as evidenced by the certified mail -return receipts contained in the record. Claimant failed to appear for the scheduled May 23, 2008, hearing.

A review of the evidence in the record fails to reflect the presence of any affirmative efforts or actions on the part of the claimant to pursue or advance her claim for additional workers compensation benefits in connection with the November 4, 2002, compensable injuries subsequent to the withdrawal of the June 2006, proposed Joint Petition.

Ark. Code Ann. §11-9-702 (d), provides, in pertinent part:

If, within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a) (1)-(3) of this section.

With the filing of the Form AR-C, which was received by the Arkansas Workers' Compensation Commission Operations/Compliance Division on February 1, 2007, claimant requested a hearing with same. According the afore provision is inapplicable to the present claim. Rule 099.13 of the Commission provides, in pertinent part:

Upon meritorious application to 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, there is no evidence in the record to reflect that the claimant has taken any

affirmative effort to pursue her claim for additional workers' compensation benefits in connection with the November 4, 2002, compensable gradual onset injuries, since withdrawing the proposed Joint Petition Settlement in June 2006. Accordingly, the evidence preponderates the motion to dismiss filed herein by respondents should and herein is granted, and the claim of the claimant is herein dismissed for want of prosecution pursuant to Rule 099.13 of the Commission.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE