

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F700132**

**NETTIE LOCKE, EMPLOYEE**

**CLAIMANT**

**SIMMONS FIRST NATIONAL CORPORATION,  
EMPLOYER**

**RESPONDENT**

**CONTINENTAL WESTERN INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION AND ORDER OF DISMISSAL FILED FEBRUARY 11, 2008**

This matter comes before the Commission on the respondents' request for dismissal. The claimant sustained a compensable injury on November 24, 2006. The respondents accepted the claim as compensable and paid benefits.

By letter received June 7, 2007, the claimant requested a hearing for additional benefits. Respondents returned a Legal Advisor Preliminary Notice indicating that the amount in dispute was more than \$2,500, that they were not willing to mediate and were not willing to participate in a Legal Advisor Conference.

The file was assigned to an Administrative Law Judge and on July 2, 2007, Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed to the parties. The claimant failed to file a response to the Prehearing Questionnaire and by letter dated August 15, 2007, from the Administrative Law Judge's office, the file was returned to the Commission's general files.

By letter dated November 16, 2007, the respondents requested that the case be dismissed. The file was reassigned to the Administrative Law Judge and the claimant was advised of respondents' request for dismissal by letter dated November 28, 2007, sent via certified mail and first-class mail. The claimant was warned therein that failure to respond may result in a dismissal of her claim. The letter was received by the claimant as evidenced by the certified mail return receipt signed by the claimant dated December 3, 2007. No response thereto has been

received from the claimant. A Notice of Hearing on respondents' request for dismissal was sent to the parties via certified mail and first-class mail scheduling the matter for hearing on January 23, 2008. The Notice provided that "Failure to appear will result in dismissal of this claim." The Notice was received by the claimant as evidenced by the certified mail return receipt signed by the claimant dated December 31, 2007. The claimant failed to appear at the hearing scheduled on January 23, 2008.

Commission Rule 13 provides in relevant part as follows:

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.

A dismissal without prejudice granted under Rule 13 is not a final order, is not appealable, and does not act as a statutory bar of a claim. *Sexton v. Atlas Carriers, Inc.*, A.W.C.C. E510879 (Oct. 13, 2003). It does not act as a denial of compensation, and the claimant may refile the claim once a justiciable issue has arisen. *Gore v. National Pizza Company*, A.W.C.C. E404917 (Feb. 7, 1997).

Because the respondents have requested that this claim be dismissed, and because the claimant has failed to prosecute this claim, I find that pursuant to Commission Rule 13 and Ark. Code Ann. § 11-9-702(a)(4), this claim should be, and hereby is, dismissed without prejudice.

**IT IS SO ORDERED.**

---

**BARBARA WEBB**  
Administrative Law Judge