

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705822

**RICKEY L. LONG,
EMPLOYEE**

CLAIMANT

**CORNHUSKER MOTOR LINES, INC.,
EMPLOYER**

RESPONDENT

**NATIONAL INTERSTATE INS. CO.,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION AND ORDER FILED JANUARY 31, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on January 25, 2008 at Jonesboro, Craighead County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by the Honorable Melissa Wood with Worley, Wood & Parrish P. A., Attorneys at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on January 25, 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.

This claim concerns an alleged accident and injury on May 11, 2007. 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, specifically contending that the medical documentation did not support a compensable injury.

A procedural history of the claim is warranted. The Claimant filed a Commission Form AR-C dated May 24, 2007, which was received by the

Commission on June 11, 2007, at which time he alleged an injury on May 11, 2007. The claim was for temporary total disability and medical expenses. By letter dated July 5, 2007, Respondents, by and through its attorney, advised that the medical documentation did not support a compensable injury. The Claimant was notified of Respondents' position. No further action was requested by the Claimant. On December 12, 2007, Respondents filed a Motion to Dismiss For Failure To Prosecute, which was served on the Claimant. By letter dated December 17, 2007, the Claimant was advised by this Commission that the Motion had been filed. The Claimant was granted twenty (20) days to respond in writing. No response was received. Accordingly, at Respondents' request, a hearing was scheduled on the Motion. The Notice of the scheduled hearing was sent January 8, 2008, scheduling the claim for a hearing on January 25, 2008. The subject of the hearing was Respondents' Motion to Dismiss.

The Claimant appeared at the January 25, 2008 hearing. When questioned concerning his failure to respond to prior notices of the pending Motion to Dismiss, the Claimant stated that he had no objection to the dismissal. The Claimant did express genuine concern and frustration over Respondents' course of conduct following notification of the work-related incident and alleged injury. The Claimant candidly conceded that he did not have the necessary evidence to prove his claim. Again, the Claimant did not object to the dismissal so long as it was without prejudice. Respondents introduced documentary evidence in support of its Motion.

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 filed a claim for benefits alleging a May 11, 2007 injury.
3. The Claimant has failed to prosecute his claim.
4. Respondents have controverted this claim in its entirety.
5. This claim should be dismissed pursuant to Ark. Code Ann. § 11-9-702(a)(4).

DISCUSSION

For a claimant to establish a compensable injury as the result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A.C.A. § 11-9-102(4)(A)(i)(Repl. 2005) must be established:

1. Proof by a preponderance of the evidence of an injury arising out of and in the course of employment;
2. Proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death.
3. Medical evidence supported by objective finds, as defined in A.C.A. § 11-9-102(16), establishing the injury, and
4. Proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

If the Claimant fails to establish by a preponderance of the evidence any of the requirements set out above for establishing the compensability of the alleged injury, he fails to establish the compensability of the claim, and compensation must be denied. Mikel v. Engineered Speciality Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Rather than conduct a further analysis of the record in this cause, suffice it to say that the procedural history in this claim and the documentary evidence introduced reflects that the Claimant has failed and/or refused to prosecute his claim. The Claimant has been advised that his failure to respond to prior notices as well as 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, with notice of the hearing having been received by the Claimant, without objection thereto, it is hereby determined that this claim should be, and it is, hereby dismissed without prejudice pursuant to Ark. Code Ann. § 11-9-702(a)(4).

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

IT IS SO ORDERED.

DAVID GREENBAUM
ADMINISTRATIVE LAW JUDGE