

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404577

JOHN J. MANER

CLAIMANT

**WAL-MART STORES, INC.
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED MARCH 20, 2008

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant failed to appear.

Respondents represented by the HONORABLE SUSAN M. FOWLER, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was held on February 29, 2008, to determine whether the above referenced claim should be dismissed for lack of prosecution. Although notified by certified mail, the claimant failed to appear.

The hearing was scheduled on respondents' Motion to Dismiss for Lack of Prosecution filed December 10, 2007, pursuant to Rule 13 of the Commission. The claimant filed a response to the motion to dismiss, advising he did not wish to pursue his claim. A certificate of service was sent to the claimant and the Return Receipt revealed the claimant signed for the Notice, as did the claimant's attorney.

After review of the documentary exhibits filed by the respondents, I find the claimant has not been diligent in pursuing his claim and has decided to forego his claim, and, therefore, the respondents' motion is granted.

STATEMENT OF THE CASE

The claimant sustained a compensable rib fracture on May 3, 2004 and respondents paid appropriate benefits. About one year later the claimant filed a claim alleging that he developed a lung disease related to the rib fracture. That claim was denied. The matter was set for a hearing on the merits; however, the claimant cancelled the hearing. The claimant has advised he does not wish to pursue the claim.

The respondents filed a motion to dismiss on December 10, 2007. The Commission sent a letter on December 17, 2007, asking for the claimant's position on the dismissal motion. The claimant's attorney advised the claimant did not object to a dismissal without prejudice. The hearing notice was mailed on January 31, 2008, in accordance with *Dillard v. Benton County Sheriff's Office*, 87 Ark App. 379, 192 S.W.3d 287 (2004).

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has had ample opportunity to pursue his case but has notified the Commission he does not want to pursue his claim. The claimant has not requested a hearing within the last six months.

There are two provisions for dismissal of claims:

Ark. Code Ann. §11-9-702(a)(4):
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.

Rule 13:
The Commission may, in its discretion, postpone or recess

hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event neither party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order.

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. (Effective March 1, 1982)

After review, I make the following findings of fact:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant has not requested a hearing within the last six months pursuant to Ark. Code Ann. §11-9-702.
3. The claimant failed to appear at the dismissal hearing pursuant to Rule 099.13, as well as notifying the Commission he did not wish to pursue his claim.

At the request of the respondents, this case is dismissed without prejudice for failure to prosecute pursuant to Rule 099.13.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**