

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F703932

BRADLEY MARKMAN, EMPLOYEE	CLAIMANT
RONNIE DOWDY, INC.,	RESPONDENTS NO. 1
LINCOLN GENERAL INSURANCE COMPANY, CARRIER	RESPONDENTS NO. 1
GALLAGHER BASSETT SERVICES, INC., TPA	RESPONDENTS NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED JUNE 3, 2008

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on June 2, 2008, in Little Rock, Pulaski County, Arkansas.

The claimant, pro se, did not appear at the hearing.

Respondents no. 1 were represented by THE HONORABLE Michael Harry, Attorney at Law, Little Rock, Arkansas.

Respondent no. 2 is represented by THE HONORABLE David Pake, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived participation in the hearing.

STATEMENT OF THE CASE

A hearing was held on June 2, 2008, to determine whether the above-referenced matter should be dismissed for failure to prosecute pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004).

The record consists of the transcript of the June 2, 2008 hearing, and the exhibits contained therein, as respondents no. 1. requested that the entire Commission's file be designated as part of the record. This request was granted.

DISCUSSION

The claimant contends he sustained a compensable back injury while working for the respondent-employer. On August 13, 2007, the claimant filed a Form AR-C with the Commission alleging an injury to his back on April 9, 2007, while bending over to pull a pin on a fifth wheel. The claim was accepted as compensable. Related medical expenses and some temporary total disability compensation were paid until some time in early July 2007. Subsequent benefits were controverted.

On September 11, 2007, the Commission mailed Prehearing Notices and Questionnaires to the parties. On October 2, 2007, the claimant filed a Response to the Prehearing Questionnaire. On October 9, 2007, the Commission notified the parties that the Second Injury Fund had been joined as a party/respondent. On October 2, 2007, the Fund filed a Response to the Prehearing Questionnaire, and on October 24, 2007, respondents no. 1 filed a Response to the Prehearing Questionnaire.

On October 26, 2007, the Commission sent a Prehearing Conference Notice setting the matter for a Prehearing Teleconference, which was scheduled for November 26, 2007. At the time of the Prehearing Teleconference, the claimant's attorney advised that he had been unable locate his client. Therefore, the file was returned to the Commission's general files.

In a letter dated February 25, 2008, the claimant's attorney

filed a Motion to Withdraw with the Commission, asking to be relieved as counsel of record in this matter for the claimant. In an Order dated March 10, 2008, the Full Commission entered an Order relieving the claimant's attorney as counsel of record for the claimant.

At best, since November of 2007, the claimant has taken no action to prosecute the matter, nor has a hearing been requested. Therefore, on February 26, 2008, respondents no. 1 filed a Motion to Dismiss Without Prejudice and Brief in Support thereof. A copy of the same was mailed to the claimant with Certificate of Service to the claimant.

On March 24, 2008, the Commission sent a Notice to the claimant by way of certified and regular mail of the pending Motion and of a deadline for filing a response to this Motion. To date, there has been no response from the claimant to this Notice. In fact, this Notice was returned to the Commission on April 1, 2008, stamped as, "Returned to Sender 'Refused' Unable to Forward."

Therefore, on May 7, 2008, the Commission sent a second Notice by certified mail to the respondents and the claimant advising that the matter had been set for a hearing on respondents' no. 1 Motion to Dismiss. The Notice stated that the hearing was set for June 2, 2008, at 11:00 a.m., in Little Rock, Arkansas. To date, there has been no response from the claimant.

A hearing was in fact held on June 2, 2008, on respondents

no. 1's Motion to Dismiss. Respondents no. 1 appeared at the hearing through their attorney. However, the claimant failed to appear at said hearing.

A review of the evidence demonstrates that the claimant has had ample opportunity to pursue this case but has failed to respond to written notices and failed to appear at the scheduled hearing.

After consideration of the evidence presented, I find respondents no. 1's Motion to be well taken. Therefore, pursuant to the provisions of Ark. Code Ann. §11-9-702, and Commission's Rule 099.13, this claim should be dismissed without prejudice to the refiling within the applicable time period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. A claim for benefits was filed by the claimant on August 13, 2007.
3. The claimant has had ample opportunity to pursue this case but no action has been taken by the claimant in furtherance of his claim. The claimant has failed to respond to written notices and failed to appear at the scheduled hearing.
4. That respondents no. 1's Motion to Dismiss should be granted without prejudice pursuant to Ark. Code Ann. §11-9-702, and Commission's Rule 099.13.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim in its entirety. This dismissal is without prejudice to the refiling of

this claim within the applicable time period.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge