

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410216

JESSICA R. MARSHALL, EMPLOYEE	CLAIMANT
JIM DANDY STORE, EMPLOYER	RESPONDENT
ARK. HOSPITALITY WCT/ CROCKETT ADJUSTMENT, CARRIER/TPA	RESPONDENT

**OPINION FILED AUGUST 26, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on August 25, 2008, in Little Rock, Pulaski County, Arkansas.

The claimant, who is pro se, failed to appear at the hearing.

The respondent was represented by the Honorable Gail Matthews, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on August 25, 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 August 25, 2008 hearing, and the exhibits contained therein. The remainder of the Commission's file has been blue-backed, and marked as Commission Exhibit #1, as it is herein incorporated by reference.

**DISCUSSION**

On October 4, 2004, the claimant filed a Form AR-C, with the Commission alleging a back injury as a result of a fall, while working for the respondent on July 8, 2004. The respondent controverted the claim in its entirety.

A prehearing telephone conference was held in this case on February 28, 2005. A Prehearing Order was filed on this same date. The matter was set for a hearing on May 24, 2005, in Searcy, Arkansas. The issues to be litigated were limited to, "compensability, associated benefits, and the liability for a \$40.00 appearance fee for deposition wherein the claimant did not appear."

In a letter dated March 15, 2005, the Commission rescheduled the hearing for June 28, 2005, in Searcy Arkansas. This hearing was in fact held on said date. The Administrative Law Judge subsequently filed an Opinion in this matter on September 27, 2005. Specifically, the Commission found, in pertinent part:

4. The claimant has established by a preponderance of the evidence that she sustained a compensable back on July 8, 2004.
5. The claimant proved by a preponderance of the credible evidence that all of the medical treatment documented in the medical record from the hearing is reasonably necessary for, and causally related to, diagnosing the extent of and/or treating Ms. Marshall's July 8, 2004 work-related back injury.
6. The claimant proved by a preponderance of the credible evidence that she is entitled to a period of temporary total disability compensation from August 13, 2004 through October 20, 2004.
7. Neither the claimant or the claimant's attorney is responsible to reimburse the respondent for the \$40.00 court reporter (sic) appearance fee for a deposition for which Ms. Marshall failed to appear due to lack of notice.

The respondent appealed to the Full Commission from said Opinion. In an Opinion dated February 22, 2006, the Full

Commission, affirmed and adopted the Administrative Law Judge's decision. No further appeals were filed in this matter. The respondent paid medical and indemnity in accordance with the aforementioned Findings of Fact as affirmed and adopted by the Full Commission.

In a letter dated August 7, 2006, the claimant's attorney wrote to the Commission advising that he no longer represented the claimant. An Order was entered by the Full Commission on August 23, 2006, relieving the claimant's attorney as counsel of record. The Full Commission mailed copies of this Order to the claimant, her prior counsel, and the respondent.

Subsequent to the claimant's attorney being relieved as counsel, the claimant has failed to obtain new counsel or otherwise further prosecute any potential claim for additional benefits.

As a result, on July 2, 2008, the respondent filed with the Commission, a Motion to Dismiss this case for failure to prosecute. The respondent also forwarded a copy of the same to the claimant via regular mail.

A Notice dated July 9, 2008, was mailed by the Commission to the claimant advising her of the Motion to Dismiss, and a deadline of July 30, 2008, for filing a response. To date, there has been no response from the claimant to this notice.

The Commission sent a Notice of Hearing, to the claimant and

the respondent via certified mail on August 5, 2008. Specifically, the parties were advised that a hearing on the respondent's Motion to Dismiss had been set for August 25, 2008, in Little Rock, Arkansas, at two o'clock.

To date, there has been no reply from the claimant to the Notices or the Motion to Dismiss. However, on August 13, 2008, the Commission's August 5, 2008 notice to the claimant was returned to the Commission on August 13, 2008. It was marked, "Returned to Sender, Not Deliverable as Addressed, Unable to Forward."

A hearing was in fact, held on August 25, 2008, on the respondent's Motion to Dismiss. The claimant failed to appear at the hearing. The respondent appeared through its attorney.

A review of the evidence shows the claimant has had ample opportunity to pursue this case but has failed to respond to written notices and did not appear at the hearing.

After consideration of the evidence presented, I find that the respondent's Motion to be well taken. Therefore, pursuant to 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. The claimant sustained a compensable injury to her back on July 8, 2004, for which benefits were awarded after a hearing on the merits before an Administrative Law Judge. After this award, the

respondent appealed to the Full Commission. The Full Commission affirmed and adopted the Administrative Law Judge's decision.

3. The respondent paid benefits pursuant to this decision, as no further appeal was taken from this matter.
4. The claimant has had ample opportunity to pursue this claim for additional benefits, but no action has been taken by the claimant in furtherance of her claim.
5. The claimant has failed to respond to written notices and failed to appear at the scheduled hearing.
6. Pursuant to Commission's Rule 099.13, the respondent is entitled to dismissal of this claim in its entirety, but without prejudice to the refiling of the claim within the applicable time allowed by law.

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**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 pursuant to Commission's Rule 099.13, to the refiling of this claim within the applicable time period.

**IT IS SO ORDERED.**

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CHANDRA HICKS  
Administrative Law Judge