

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F708747

HEATH MILLER, EMPLOYEE

CLAIMANT

**RAYTHEON AIRCRAFT SERVICES, INC.,
EMPLOYER**

RESPONDENT

**LIBERTY INSURANCE CORPORATION,
INSURANCE CARRIER**

RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED MAY 19, 2008

This matter comes before the Commission on the respondents' Motion to Dismiss.

The claimant filed a form AR-C with the Commission dated August 20, 2007, alleging an injury in June or July of 2005 to his right ankle and low back. Respondents filed a Form 1 with the Commission dated August 31, 2007, and filed a Form AR-2 with Commission on September 11, 2007, controverting the claim in its entirety based on the statute of limitations. The claimant was advised by letters from the Commission dated September 11, 2007, and September 13, 2007, that respondents were denying his claim.

Respondents filed a Motion to Dismiss on March 17, 2008. The file was assigned to an Administrative Law Judge and the claimant was advised of respondents' Motion to Dismiss by letter dated March 19, 2008, sent via certified mail and first-class mail. The claimant was warned therein that failure to respond may result in a dismissal of his claim. The letter was received by the claimant as evidenced by the certified mail return receipt signed by the claimant dated April 1, 2008. The claimant contacted this office on April 2, 2008, and advised that he did not wish to pursue his claim. A Notice of Hearing on respondents' Motion to Dismiss was sent to the parties via certified mail and first-class mail scheduling the matter for hearing on May 1, 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 April 24, 2008. The claimant failed to appear at the hearing scheduled on May 1, 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