

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610948

MONICA MORA, EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, EMPLOYER

RESPONDENT

CLAIMS MANAGEMENT, INC., CARRIER

RESPONDENT

OPINION FILED FEBRUARY 5, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on February 1, 2008 at Little Rock, Arkansas.

Claimant, represented by the HONORABLE MICHAEL W. BOYD, Attorney at Law, Pine Bluff, Arkansas was excused from this hearing.

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

ISSUES

A hearing was conducted to determine whether or not this claim 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).

After review of the Commission's file, I find the Motion should be granted.

STATEMENT OF THE CASE

The claimant filed a letter on October 30, 2006 alleging a face and right eye injury on October 1, 2006. A review of the Commission's file shows the claim was denied and

this case was set for a hearing in March 2007 and reset for April 27, 2007. The hearing was cancelled at the claimant's request. There has been no activity in the file since April, 2007.

_____ On December 6, 2007 the respondents filed a Motion to Dismiss this claim for lack of prosecution with a certificate of service to Claimant's attorney. Mr. Boyd responded that he had no objection to the dismissal of this case.

FINDINGS AND CONCLUSIONS

A review of the evidence shows the claimant has no objection to the dismissal of this claim.

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 is aware of this hearing but has no objection to the dismissal of this claim.

At the request of the respondents, this case is hereby dismissed without prejudice for failure to prosecute pursuant to §11-9-702(a)(4) of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge