

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F713371

EZEKIEL J. MORGAN

CLAIMANT

ARKANSAS ALUMINUM ALLOYS, INC.

RESPONDENT EMPLOYER

WAUSAU

RESPONDENT CARRIER

ORDER AND OPINION FILED OCTOBER 1, 2008

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant failed to appear.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was held on September 12, 2008, to determine whether the above referenced claim should be dismissed for lack of prosecution. Although notice was sent by certified mail and regular mail, both were returned unclaimed. The claimant's attorney, Philip Wilson, notified the Commission he had lost all contact with his client. Neither the claimant nor Mr. Wilson appeared.

The hearing was scheduled on respondents' Motion to Dismiss for Lack of Prosecution filed August 7, 2008, pursuant to Rule 13 of the Commission.

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

STATEMENT OF THE CASE

The claim was initiated by the filing of a Form AR-C with the Commission relating

to a December 3, 2007, foot injury. The claim was accepted and medical was paid. The claimant returned to work and was later terminated for unrelated reasons.

The respondents filed a motion to dismiss on August 7, 2008. The Commission sent a letter on August 11, 2008, asking for the claimant's position on the Dismissal Motion. The hearing notice was mailed on August 26, 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. 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 after notice was sent to his last known address.

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**