

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F507016

VICTORIA MULINA, EMPLOYEE	CLAIMANT
DAIRY QUEEN, EMPLOYER,	RESPONDENTS #1
GALLAGHER BASSETT, TPA	RESPONDENTS #1
SECOND INJURY FUND	RESPONDENT #2

OPINION FILED JULY 7, 2008

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on July 7, 2008, in Little Rock, Pulaski County, Arkansas.

The claimant pro se, failed to appear at said hearing.

Respondents #1 were represented by The Honorable, William Frye Attorney at Law, North Little, Arkansas.

Respondent #2 was represented by the Honorable David Pake. Mr. Pake waived participation in the hearing.

STATEMENT OF THE CASE

A hearing was held on July 7, 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 July 7, 2008 hearing, and the exhibits contained therein. The remainder of the Commission's file has been blue-backed, and is hereby incorporated herein by reference, as it has been marked Commission's Exhibit No. 2.

DISCUSSION

The claimant asserted that she sustained a compensable injury to her lower extremity in the form of a fracture to the left hip, while working for the respondent-employer on June 26, 2005. In a letter to the Commission dated July 21, 2005, the claimant requested a hearing on her claim before an Administrative Law Judge. Respondents #1 controverted the claim in its entirety.

On December 5, 2005, the Commission mailed Prehearing Notices and Questionnaires to the parties. On December 1, 2005, the claimant filed a Response to the Prehearing Questionnaire, and on January 17, 2006, respondents #1 filed a Response to the Prehearing Questionnaire.

The matter was set for a Prehearing Teleconference, which was scheduled for February 14, 2006. This teleconference was in fact held on this claim, wherein the matter was set for hearing, which was to be held on April 17, 2006, at 9:00 a.m., in Searcy, Arkansas.

A hearing was in fact held on said date. In an Opinion dated July 14, 2006, the Administrative Law Judge found, in pertinent part, that on June 26, 2005, the claimant suffered a compensable injury to her hip arising out of, and in the course of her employment, for which she was entitled to benefits, including reasonably necessary medical and related expenses, such as the expenses of the surgery performed that day. The Administrative Law Judge also ordered that the claimant be

examined by Dr. Blickenstaff, at the expense of the respondents (#1), in order to assist the Commission in assessing her current condition and any permanent impairment she may have sustained as a result of her compensable injury. The Administrative Law Judge also granted the claimant temporary total disability compensation from the date of her injury until November 14, 2005.

On August 8, 2006, respondents #1 filed a Notice of Appeal to the Full Commission. In an Opinion dated April 17, 2007, the Full Commission affirmed and adopted the Opinion of the Administrative Law Judge. No further appeals were filed.

On September 13, 2006, the claimant's attorney filed a Motion to be relieved as counsel of record as per the request of the claimant. The claimant's attorney also advised that he was retaining a lien. Per an Order dated October 13, 2006, the Full Commission granted the claimant's attorney Motion to Withdraw as attorney of record.

In a letter dated May 4, 2007, the Second Injury Fund acknowledged that it had been joined as a party in this matter.

However, on April 2, 2007, in a letter to the Commission, the claimant's attorney re-entered his appearance as representative for the claimant in this matter. In a letter to the Commission dated February 15, 2008, the claimant's attorney filed a Request/Motion to Withdraw as Counsel. In an Order dated March 4, 2008, the Full Commission granted the claimant's attorney motion wherein it entered an Order relieving him as attorney of

record.

Since this time there has been no further action by the claimant to prosecute the matter, nor has a hearing been requested. Therefore, in a letter dated May 1, 2008, respondents #1 essentially requested that the case be dismissed for want of prosecution. A copy of the same was mailed to the claimant.

On May 15, 2008, the Commission sent a Notice to the claimant advising 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.

Therefore, on June 16, 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' #1 request for dismissal of the claim. The hearing was set for July 7, 2008, at 10:00 a.m., in Little Rock, Arkansas. To date, there has been no response from the claimant.

A hearing was in fact held on July 7, 2008, on respondents' #1 request for dismissal of the claim for want of prosecution. Respondents #1 appeared at the hearing through its attorney. However, the claimant failed to appear at said hearing. Just prior to the hearing, respondent #2 was notified of said hearing. However, respondent #2 waived participation in the hearing by way of Attorney Christy King.

At the time of the hearing, respondents #1 acknowledged that it had paid benefits per the award of the Administrative Law

Judge, along with a 6% impairment rating and appropriate attorney's fees.

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 failed to appear at the scheduled hearing.

After consideration of the evidence presented, I find respondents' #1 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 left hip on June 26, 2005, for which benefits were awarded. After this award, no further action has been taken by the claimant to pursue a claim for additional benefits.
3. 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. The claimant has failed to respond to written notices and failed to appear at the scheduled hearing.
4. That respondents' #1 Motion to Dismiss should be granted without prejudice pursuant to 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 pursuant to Commission's Rule 099.13.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge