

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F707006

KEVIN MICHAEL MYERS, EMPLOYEE	CLAIMANT
CRAIGHEAD FARMERS COOPERATIVE, EMPLOYER	RESPONDENT
AG-COMP SIF CLAIMS, INSURANCE CARRIER/TPA	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2

OPINION AND ORDER FILED SEPTEMBER 15, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on September 12, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant appeared *pro se*.

Laura Beth York appeared on behalf of the Wren Law Firm, Attorneys-at-Law, Little Rock, Arkansas.

Respondents #1 represented by Mr. Guy Alton Wade, Friday Eldredge & Clark, Attorneys-at-Law, Little Rock, Arkansas.

Respondent #2 did not appear.

STATEMENT OF THE CASE

A hearing was conducted September 12, 2008, to determine whether this claim should be dismissed for want of prosecution pursuant to Ark. Code Ann. §11-9-702 and Commission Rule 099.13.

The immediate claim concerns an accident and injury occurring on or about May 15, 2007. As will be reflected further below, respondents have accepted this claim as compensable and have paid appropriate benefits, to date, while, at the same time, requesting that the claim be dismissed for lack of prosecution.

A procedural history of the claim is warranted. On July 27, 2007, Attorney

M. Keith Wren filed a Notice of Representation for the claimant. On August 10, 2007, respondents' attorney filed a Notice of Representation and sent claimant's attorney a copy of the Notice. On January 8, 2008, Attorney Daniel E. Wren filed a Motion for Substitution of counsel for the claimant. On January 16, 2008, an Order was filed by the Full Commission substituting Daniel E. Wren and the Wren Law Firm as attorney for the respondents. Because of the clerical error, the Full Commission entered a *nunc pro tunc* order on January 22, 2008, substituting Daniel Wren as attorney for the claimant rather than respondent. No further action was taken by either party until respondents filed a Motion to Dismiss for lack of prosecution by letter dated July 14, 2008, and received on July 17, 2008. The claim was then assigned to Adjudication to consider respondents' Motion. On July 21, 2008, a letter was sent to claimant's attorney granting the claimant twenty (20) days to respond to respondents' Motion. No response was received. Accordingly, a Notice of Hearing was sent on August 11, 2008, scheduling the claim for a hearing on September 12, 2008. The subject of the hearing was limited to respondents' Motion to Dismiss the claim. Contemporaneous with the notice, an August 11, 2008, letter was sent from claimant's attorney to the Commission's Clerk advising that the Wren Law Firm no longer represented the claimant and would not retaining a lien in the claim. By letter dated August 12, 2008, the Second Injury Fund waived its right to attend the hearing and stated that it would abide by the decision of the Commission concerning respondents' Motion. On August 14, 2008, claimant's

attorneys were advised that they had failed to comply with AWCC Advisory 2003-2. The parties were advised that the Motion to Dismiss hearing remained as scheduled.

The claimant appeared at the September 12, 2008, hearing. Laura Beth York appeared for the Wren Law Firm. Although the subject of the hearing concerned respondents' Motion to Dismiss, the claimant acknowledged that he had not had any recent communications with the Wren Law Firm and did not object to their withdrawal as his attorney.

Concerning respondents' Motion to Dismiss, the claimant explained that he was unclear as to the purpose of the hearing while pointing out that respondents had shown good faith in meeting its obligations under our workers' compensation laws by continuing to pay the claimant's reasonably necessary medical and related treatment. At the time of the within hearing, the claimant continued to be employed by the employer herein. He stated that respondents had always paid for his follow-up medical treatment. He further pointed out that he had just received a phone call from the claims adjustor, Tammy Hester, advising that she had recently received an impairment rating from claimant's treating physician and encouraging the claimant to appear at the Motion to Dismiss hearing.

Respondents' attorney renewed respondents' Motion to Dismiss the claim while pointing out that respondents' Motion was, in part, based upon the claimant's attorney failing and/or refusing to answer interrogatories previously submitted.

Respondents' attorney acknowledged that respondents continued to pay all related medical treatment.

The sole issue presented for determination is whether the within claim should be dismissed for lack of prosecution.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On May 15, 2007, the claimant sustained a compensable injury arising out of and during the course of his employment with Craighead Farmers Cooperative.
3. Respondents have paid, and continue to pay, all related medical treatment as the result of claimant's May 15, 2007, injury.
4. A dismissal of this claim pursuant to A.C.A. §11-9-702 and Commission Rule 099.13 is not appropriate in the instant claim.
5. All additional issues are, by necessity, reserved.

DISCUSSION

A hearing was scheduled at respondents' request pursuant to the decision in *Dillard vs. Benton County Sheriff's Office*, 87 Ark. App. 379, ___ S.W.3d ___ (2004).

Rather than conduct a further analysis of the record in this cause, suffice it to say that the reason, in part for the confusion in this claim concerns substitution of legal counsel, as well as the failure of the parties to communicate with each other

concerning the claim for additional benefits and/or lack thereof. The record reflects that the claimant did not request additional benefits because respondents provided, and continued to provide reasonably necessary medical treatment and there were apparently no benefits in dispute. In fact, the record reflects that the claimant had continued to obtain reasonably necessary medical treatment on a regular basis, including treatment immediately prior to the within hearing without controversion. I find that respondents' payment of continued medical treatment to be inconsistent with a request that a claim be dismissed for want of prosecution.

After full consideration of the facts, issues, and the law, it is hereby determined that respondents' Motion should be, and it is, hereby denied.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge