

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F701683

JONATHAN NATHAN, EMPLOYEE

CLAIMANT

MAVERICK FRAMING, INC., EMPLOYER

RESPONDENT

**AMERICAN HOME ASSURANCE COMPANY
c/o AIG CLAIM SERVICES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED MARCH 14, 2008

This matter comes before the Commission on the respondents' Motion to Dismiss. Claimant has failed to respond to the Motion and failed to appear at the hearing held on January 23, 2008.

PROCEDURAL HISTORY

The claimant filed a Form AR-C with the Commission on February 16, 2007, which indicated a date of injury of January 30, 2007. Respondents filed a Form 1 on February 27, 2007, and a Form AR-2 on March 22, 2007, indicating the claim was not compensable. By letter dated April 25, 2007, the claimant's attorney, Steven McNeely, requested a hearing on the claim. The file was assigned to an Administrative Law Judge and Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed to the parties on April 27, 2007. By letter dated May 1, 2007, claimant's attorney advised that the current issues had been resolved and by letter dated May 4, 2007, the Administrative Law Judge returned the file to the Commission's general files. Respondents filed an amended Form AR-2 on May 3, 2007, indicating that the claim had been accepted as compensable.

By letter dated May 17, 2007, claimant's attorney requested a change of physician for the claimant and on June 19, 2007, the claimant was granted a change of physician from Dr. Kravets to Dr. Pledger.

By letter dated July 5, 2007, claimant's attorney requested a hearing on the issue of additional benefits. The file was reassigned to the Administrative Law Judge and Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed again to the parties on July 12, 2007. The claimant filed a response to the Prehearing Questionnaire on August 2, 2007, and respondents filed a response to the Prehearing Questionnaire on August 22, 2007. A prehearing telephone conference was held on October 9, 2007, and the case was scheduled for hearing for November 20, 2007. On October 31, 2007, the claimant's attorney filed a Motion to Withdraw as Counsel for the claimant. Respondents filed a Motion to Compel Discovery On November 5, 2007. By letter dated November 7, 2007, the hearing was cancelled and the claimant was advised of Mr. McNeely's Motion to Withdraw as Counsel and respondents' Motion to Compel Discovery. The claimant was given twenty (20) days to respond to both motions. No response was received from the claimant and an Order relieving Mr. McNeely as attorney of record for the claimant was entered on December 6, 2007. An Order to Compel Discovery was also entered on December 6, 2007, giving claimant until December 17, 2007, to comply with the Order to Compel. The claimant did not comply and respondents filed a Motion to Dismiss and Request for a Finding of Contempt on December 19, 2007. The claimant was advised of respondents' Motion to Dismiss and Request for a

Finding of Contempt by letter dated December 20, 2007, sent via certified mail and first-class mail to the claimant's last known address. The claimant was warned therein that failure to respond may result in a dismissal of his claim. No response thereto has been received from the claimant.

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 January 23, 2008. The Notice provided that "Failure to appear will result in dismissal of this claim." The claimant failed to appear at the hearing scheduled on January 23, 2008. The claimant has filed no request for hearing within the last six (6) months.

DISCUSSION

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.

In the instant case, the respondents seek a dismissal with prejudice for claimant's failure to comply with an Order of the Commission and a general failure to cooperate with discovery or prosecute his claim. The respondents further assert that information was discovered during the discovery process that the claimant's application for short term disability benefits with AFLAC allegedly identifies the location of claimant's injury and may constitute relevant evidence to establish that the claimant may have actually injured himself away from work. The evidence

establishes that claimant has not signed and returned a release to obtain AFLAC's records as requested by the respondents and ordered by this Administrative Law Judge. The evidence further establishes that claimant has failed to respond or make an appearance at both phone conferences and the hearing set on the Motion to Compel. He has failed to keep in contact with the Commission despite the fact that phone numbers provided to the Commission have been disconnected and some mail has been returned. Based on the substantial weight of the evidence, I find that claimant has impeded discovery, failed to abide by an Order, and failed to prosecute his claim. Loosey v. Osmose Wood, 23 Ark. App. 137, 744 S.W.2d 402 (1988); Johnson v. Triple T Foods, 55 Ark. App. 83, 929 S.W.2d 730 (1996). I further find that claimant has had sufficient notice of these proceedings and opportunity to be heard but has failed to respond, appear, or otherwise be heard. A.C.A. §11-9-707.

Because the respondents have requested that this claim be dismissed, and because the claimant has failed to cooperate with discovery, failed to abide by an Order, and failed to timely prosecute this claim, I find that pursuant to Commission Rule 13 and Ark. Code Ann. § 11-9-702(a)(4) and other appropriate authority, this claim should be, and hereby is, dismissed with prejudice.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge