

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F700893

RANDY A. PARKINS, EMPLOYEE	CLAIMANT
VIRCO MANUFACTURING CORP., EMPLOYER	RESPONDENT
ST. PAUL TRAVELERS, CARRIER	RESPONDENT

OPINION FILED FEBRUARY 1, 2008

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on January 30, 2008, in Little Rock, Pulaski County, Arkansas.

Claimant did not appear at the hearing.

The respondents were represented by THE HONORABLE Michael Harry, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 30, 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 January 30, 2008 hearing, and the exhibits contained therein.

DISCUSSION

The claimant contends he sustained a compensable hernia injury on January 16, 2007, while working for the respondent-employer.

The respondents filed a Motion to Dismiss on November 1, 2007, with certificate of service to the claimant. In support of its Motion, the respondents essentially state, in pertinent

part, the following:

1. The incident in question occurred on or about January 16, 2007, and claimant filed the present claim for initial benefits by filing the Form AR-C with the Arkansas Workers' Compensation Commission.

2. The claimant filed the instant claim alleging that he sustained a compensable hernia injury while employed by the respondent/employer on or about January 16, 2007.

3. Respondents denied and controverted claimant's claim for benefits.

4. On or about May 24, 2007, respondents forwarded Interrogatories and medical authorizations to claimant; however, claimant failed to respond within the time period as requested.

5. Indeed, claimant has failed to respond to respondents' May 24, 2007 Interrogatories and comply with discovery as of the date of this filing.

6. Moreover, on April 30, 2007, claimant requested a hearing before an Administrative Law Judge and filed his Prehearing Questionnaire.

7. In light of claimant's hearing request, this matter was assigned to Administrative Law Judge Chandra Hicks, who requested that the parties attend a prehearing conference on July 23, 2007.

8. Despite Judge Hicks' request, claimant failed to appear at the July 23, 2007 prehearing conference.

9. Following claimant's absence at the July 23, 2007

prehearing conference, Judge Hicks rescheduled the conference for August 6, 2007.

10. Despite Judge Hicks' efforts to advance this claim, claimant failed yet again to appear at the August 6, 2007 prehearing conference.

11. Since filing his Prehearing Questionnaire on April 30, 2007, claimant has taken no action whatsoever to pursue this claim. Therefore, respondents respectfully request that this matter be dismissed without prejudice. Specifically, no hearing has been requested in well over six (6) months with respect to this claim. Accordingly, this claim should be dismissed pursuant to Ark. Code Ann. §11-9-702(a)(4) and Rule 099.13 of the Arkansas Workers' Compensation Commission.

12. In light of the Arkansas Court of Appeals' decision in Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), respondents respectfully request that a hearing be held on the dismissal proceedings.

13. Further, respondents respectfully request that the entire Commission file be designated as part of the record to be relied upon at the hearing and to be made a part of the appellate process in the event an appeal is necessary.

14. Finally, respondents submit an accompanying Brief in support of their Motion further outlining the basis for their position as to why the underlying claim should be dismissed without prejudice.

On November 9, 2007, the Commission sent a Notice to the claimant of the pending Motion and of a deadline for filing a response to this Notice. To date, there has been no response from the claimant to this Notice.

Therefore, on January 2, 2008, the Commission sent a Hearing Notice by certified mail to the respondent and the claimant advising that the matter had been set for a hearing on the respondents' Motion to Dismiss for January 30, 2008, at 9:00 a.m., in Little Rock, Arkansas.

A hearing was in fact held on January 30, 2008, on the respondents' Motion to Dismiss. The respondents appeared at the hearing through its attorney. However, the claimant failed to appear at said hearing.

A review of the evidence establishes that 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.

Therefore, after consideration of the evidence presented, I find the respondents' Motion to Dismiss Without Prejudice to be well taken. Pursuant to the provisions of Ark. Code Ann. §11-9-702 and Commission's Rule 099.13, this claim for initial benefits 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 has had ample opportunity to pursue this case but no action has been taken by the claimant in furtherance of his claim. The claimant has failed to respond to written notices and failed to appear at the scheduled hearing.
3. That the respondents' Motion to Dismiss should be granted without prejudice pursuant to Commission's Rule 099.13 and Ark. Code Ann. §11-9-702.

ORDER

Based upon my foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim in its entirety. As a result, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Rule 099.13 and Ark. Code Ann. §11-9-702 to the refiling within the applicable time period.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

