

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605913

DANNY E. RAY, **EMPLOYEE**

CLAIMANT

WHEELING MACHINE PRODUCTS, **EMPLOYER**

RESPONDENT

ZURICH AMERICAN INSURANCE CO., **CARRIER**

RESPONDENT

OPINION FILED FEBRUARY 25, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on February 20, 2008, at Little Rock, Arkansas.

Claimant failed to appear at the hearing.

Respondents represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine whether or not this claim 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).

After review of the Commission's file, I find the Motion should be granted.

STATEMENT OF THE CASE

The claimant filed an AR-C on May 31, 2006 alleging a lung infection on April 20, 2006. A review of the Commission's file shows the carrier denied the claim with an AR-2 filed on August 24, 2006 due to the claimant's preexisting emphysema, There was no further activity in the file until the respondents filed a Motion to Dismiss this claim on January 8, 2007.

Furthermore, the respondents advise that the claimant did not respond to discovery (Interrogatories and medical authorization).

On January 8, 2007 the respondents filed a Motion to Dismiss, but the claimant objected and

an Order was entered February 9, 2007, denying the Motion.

A prehearing conference was held with the parties and an Order was entered on March 14, 2007, compelling the claimant to respond to Discovery requests.

The claimant spoke with an attorney in May 2007, but Ken Olsen declined to represent the claimant. The respondents renewed their Motion to Dismiss on July 31, 2007, but the claimant requested more time to review the medical records. On December 14, 2007 an Order was entered, compelling the claimant to respond to Discovery requests. To date there has been no reply.

A hearing notice was sent to the claimant by certified mail on January 31, 2008 setting this case for a Dismissal hearing.

FINDINGS AND CONCLUSIONS

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.

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 refileing 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 failed to appear at the initial hearing pursuant to Rule 13.

I find the claimant has had adequate time to pursue this claim and respond to the Notices.

At the request of the respondents, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Rule 13 of the Arkansas Workers' Compensation Commission.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge