

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F710508

KIRK RAY, EMPLOYEE

CLAIMANT

**WAL-MART ASSOCIATES, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

**CLAIMS MANAGEMENT, INC. (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED JUNE 26, 2008

This matter comes before the Commission on the respondents' Motion to Dismiss. The claimant filed a Form AR-C with the Commission on October 5, 2007, which indicated a date of injury of May 30, 2007. Respondents filed a Form 1 on October 12, 2007, and a Form AR-2 on November 14, 2007, indicating the claim had been controverted. By letter dated November 14, 2007, from the Commission, the claimant was advised that the respondents were denying his claim.

On April 28, 2008, respondents filed a Motion to Dismiss asserting that more than six (6) months have elapsed since the filing of the Form AR-C and that the claimant has failed to request a hearing.

The claimant was advised of respondents' Motion to Dismiss by letter dated May 5, 2008, sent via certified mail and first-class mail to the claimant's last known addresses. 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 June 25, 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 June 25, 2008. The claimant has filed no request for hearing within the last six (6) months.

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.

A dismissal without prejudice granted under Rule 13 is not a final order, is not appealable, and does not act as a statutory bar of a claim. *Sexton v. Atlas Carriers, Inc.*, A.W.C.C. E510879 (Oct. 13, 2003). It does not act as a denial of compensation, and the claimant may refile the claim once a justiciable issue has arisen. *Gore v. National Pizza Company*, A.W.C.C. E404917 (Feb. 7, 1997).

Because the respondents have requested that this claim be dismissed, and because the claimant has failed to prosecute this claim, I find that pursuant to Commission Rule 13 and Ark. Code Ann. § 11-9-702(a)(4), this claim should be, and hereby is, dismissed without prejudice.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge