

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F703452 (05/01/06)**

<b>DARRELL G. ROGERS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>AMERICAN RAILCAR INDUSTRIES, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>ZURICH AMERICAN INS. CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED FEBRUARY 20, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 15, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant pro se.

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

**STATEMENT OF THE CASE**

A hearing was conducted in the above style claim on the motion to dismiss filed by respondents. On January 22, 2008, a pre-hearing conference was conducted on the motion, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

In addition to the Pre-hearing Order, comprising this record is the Motion to Dismiss Without Prejudice filed by respondents and supporting Brief, as well as the notice of motion and the scheduling of the January 22, 2008, pre-hearing conference.

**DISCUSSION**

On or about April 3, 2007, claimant, through his attorney, filed a claim for workers'

compensation benefits growing out of his employment with respondent-employer. Claimant asserted an occupational strain to his lower back which resulted in disc injury and a need for surgery. Respondents denied the compensability of the claimant's claim as not being within the course and scope of employment, the failure to identify as specific incident, and the fact that claimant filed a claim against the health insurance carrier and that FMLA and Short Term Disability benefits were granted.

Following discovery claimant's attorney filed a Motion to Dismiss as Counsel for the claimant with the Commission. On May 23, 2007, the Full Commission entered an Order granting the afore motion.

On December 6, 2007, attorney for respondents filed a Motion to Dismiss Without Prejudice and Supporting Brief. Thereafter the file was assigned to an Administrative Law Judge. On January 2, 2008, notice of the afore filing was forwarded to the claimant by certified mail return receipt requested. The afore notice directed the claimant to submit responsive filings to both the Motion to Dismiss and Pre-hearing Questionnaire no later than January 17, 2008. Claimant failed to respond within the allotted time frame. Accordingly during the scheduled January 22, 2008, pre-hearing teleconference the claimant was not available. The claimant later contacted the Commission to relay that he would not contest the Motion to Dismiss and would not be in attendance at any scheduled hearing on the Motion.

A January 22, 2008, Pre-hearing Order and Hearing Notice was filed pursuant to the pre-hearing teleconference. The hearing on the Motion to Dismiss was scheduled for February 15, 2008, at 9:30 a.m. in Jonesboro, Arkansas. At the designed time the docket was sounded and the claimant failed to appear.

Ark. Code Ann. §11-9-702 (a) (4) provides, in pertinent part:

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 refiling of the claim. . . .

Rule 099.13 of the Commission provides:

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.

The evidence in the record reflects that following the filing of the April 3, 2007, Form AR-C and preliminary discovery the claimant filed to pursue the claim for workers' compensation benefits. Indeed, the credible evidence reflects that the claimant has abandoned the present claim. Respondents have denied the claim in its entirety and have not paid any workers' compensation to or on behalf of the claim relative to the present claim.

IT IS HEREBY ORDERED, DECREED, AND ADJUDICATED that the claim filed herein by Claimant Darrell G. Rogers should be and herein is dismissed pursuant to Ark. Code Ann. §11-9-702 (a)(4) and Rule 099.13 of the Commission, without prejudice.

**IT IS SO ORDERED.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**