

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607330

CLARENCE D. RUFFINS, EMPLOYEE

CLAIMANT

IC CORPORATION,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED APRIL 29, 2008

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on April 28, 2008, in Little Rock, Pulaski County, Arkansas.

Claimant did not appear at the hearing.

The respondent was represented by THE HONORABLE John Davis, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 28, 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 April 28, 2008 hearing, and the exhibits contained therein. The remainder of the Commission's file has been blue-backed, and is hereby incorporated herein by reference, as it has been marked Commission's Exhibit No. 1.

DISCUSSION

The claimant contends he sustained a compensable injury to his lower back on June 14, 2006, while working for the respondent-employer. On July 5, 2006, the claimant filed a Form AR-C alleging an injury to his lower back while operating a

forklift. He specifically alleged to have pulled a muscle in his lower back as a result of hitting a pothole.

The respondent denied any compensable injury and controverted the claim in its entirety.

After filing this claim, the claimant has taken no action to prosecute the matter, nor has a hearing been requested. Therefore, on February 29, 2008, the respondent filed a Motion to Dismiss with the Commission, with a certificate of service to the claimant, which was dated February 28, 2008.

In support of its Motion, the respondent essentially alleged, in pertinent part, the following:

1. On or about July 27, 2006, the claimant filed a Form C alleging an injury to his low back on or about June 14, 2006.
2. The claimant has not requested a hearing or otherwise taken steps to prosecute his claim.

Wherefore, pursuant to Commission Rule 099.13, Ark. Code Ann. §11-9-702(a)(4), Ark. Code Ann. § 11-9-702(d), the respondent requests that the claim be dismissed without prejudice.

On March 5, 2008, 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 March 24, 2008, the Commission sent a second Notice by certified mail to the respondent and the claimant

advising that the matter had been set for a hearing on the respondent's Motion to Dismiss. This hearing was set for April 28, 2008, at 9:30 a.m., in Little Rock, Arkansas. To date, there has been no response from the claimant.

A hearing was in fact held on April 28, 2008, on the respondent's Motion to Dismiss. The respondent appeared at the hearing through its attorney. However, the claimant failed to appear at said hearing.

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.

After consideration of the evidence presented, I find the respondent's Motion to be well taken. Therefore, pursuant to Arkansas Code Ann. § 11-9-702(a)(4), 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. An initial claim for benefits was filed by the claimant on July, 5, 2006, which was promptly controverted in its entirety by the respondent.
3. No request for a hearing has been made by the claimant since the filing of his claim.
4. 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.

5. That the respondent's Motion to Dismiss should be granted without prejudice pursuant to Arkansas Code Ann. § 11-9-702(a)(4) and Commission's Rule 099.13.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim in its entirety. This dismissal is without prejudice to the refiling of this claim within the applicable time period set forth in Arkansas Code Ann. § 11-9-702(a).

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge