

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607414

EUGENE SEITZ

CLAIMANT

UNION FURNITURE MANUFACTURING

RESPONDENT

CONTINENTAL CASUALTY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED **JUNE 4, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant pro se.

Respondents represented by FRANK NEWELL, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on June 3, 2008, in Fort Smith, Arkansas. A copy of the Respondents' Motion was made Commission's Exhibit No. 1 to the hearing.

Notice of the Motion and the scheduled hearing was provided the claimant by certified mail return receipt requested, as required by the Act. This correspondence was returned by the U. S. Post Office as unclaimed and unforwardable. A copy of the notice with this information indicated thereon, was made Commission's Exhibit No. 2 to the hearing. A packet of documents was tendered by the respondents and was admitted as Respondents' Exhibit No. 1 to the hearing.

In order to insure completeness of the record, the remaining entire file of this Commission was admitted as Commission's Exhibit No. 3. This exhibit was incorporated by reference in the transcript of the current proceeding.

## DISCUSSION

\_\_\_\_\_The claimant initially filed an AR-C with this Commission on July 10, 2006. As a result, file F607414 was opened. At some point in time, another file was opened by this Commission based upon a filing by the respondent of an alleged gradual onset injury that was initially reported on May 15, 2006. This file appears to have been assigned file number F609456. The respondents requested that these files be consolidated. These two files were consolidated by the Commission under the claim number F607414.

It appears that the respondents controverted these claims in their entirety and have paid no benefits. Thus, this case would involve a claim for initial benefits. On September 21, 2007, the claimant filed with this Commission a handwritten statement requesting a hearing on his entitlement to workers' compensation benefits. Curiously, he mentions that he had made a previous request in February of 2007, but had received no response. However, this matter was not assigned to the judicial division for the requested hearing. Rather, the case was assigned to the legal advisor division for a legal advisor conference. Although the claimant agreed to a legal advisor conference and mediation, the respondents declined to participate in such a proceeding. The claim was ultimately assigned to me on November 5, 2007.

On November 6, 2007, the claimant was sent a pro se prehearing questionnaire for completion and return. He was further advised that this matter would be set for a prehearing conference upon receipt of the completed prehearing questionnaire.

On November 26, 2007, the claimant returned the completed prehearing questionnaire. On that same date, notice was sent to the parties that set the matter for a prehearing conference on December 17, 2007. At the prehearing

conference, the claimant advised that he wished to obtain legal counsel and he was given thirty days to do so.

On January 17, 2008, Mr. Eddie Walker contacted the Commission by phone and advised that he had undertaken representation of the claimant. This was subsequently confirmed by letter, dated January 17, 2008, which was received by this Commission on January 18, 2008. Attached to this letter was another prehearing questionnaire that had been completed by Mr. Walker on behalf of the claimant.

As the second prehearing questionnaire by Mr. Walker did not change and of the stipulations or issues, no new prehearing conference was held. A prehearing order was issued on January 28, 2008. This prehearing order set the matter for full hearing on the issues of compensability and the claimant's entitlement to benefits from March 11, 2008. The hearing was subsequently reset, at the respondent's request, for April 8, 2008.

By agreement between counsel, the claimant's discovery deposition was scheduled for February 5, 2008. The claimant failed to appear at the scheduled deposition. As a result of this failure to appear, the scheduled hearing was cancelled and the parties were notified that the matter would not be reset for hearing, until after the claimant had submitted to the requested deposition. The claim was returned to general files.

On April 17, 2008, the claimant's attorney, Mr. Eddie Walker, filed a Motion requesting to be relieved as the claimant's counsel of record. In this Motion, Mr. Walker recited that he had been unable to contact his client, that his client had not advised him of any change in his address or otherwise contacted him since shortly after he had been retained in this case. By Order

dated April 21, 2008, Mr. Walker was relieved as the claimant's attorney of record.

On April 21, 2008, the respondents filed a Motion to Dismiss this claim for lack of diligent prosecution. Notice of this action, together with the notice of a hearing on this Motion was provided the claimant in the manner required by the Act (i.e. certified mail to the claimant's last known address). This notice was returned by the U. S. Post Office as unclaimed and unable to forward. No contact, whatsoever, has been made with this Commission by the claimant, since his failure to appear at his deposition.

Clearly, the claimant's failure to appear at his scheduled deposition, his failure to maintain contact with his attorney, and his failure to in any way contact this Commission is evidence of a lack of diligent prosecution of this claim. This lack of diligent prosecution constitutes a sufficient basis for a dismissal without prejudice. However, I would note that due to the date of the claimant's alleged compensable injury, such a dismissal may in fact, be a dismissal with prejudice, in that the statute of limitation provided by Ark. Code Ann. §11-9-702(a) may have run on the refiling of this claim.

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The claimant has failed to prosecute his claim in a diligent manner. Such conduct on the part of the claimant constitutes sufficient grounds to grant the respondents' Motion to Dismiss.

ORDER

Based upon my foregoing findings and conclusions, 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 time allotted by law.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE