

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F707178

SHERRY A. SMITH, EMPLOYEE

CLAIMANT

CITY OF NORTH LITTLE ROCK, EMPLOYER

RESPONDENT

**ARKANSAS MUNICIPAL LEAGUE
WORKERS' COMPENSATION TRUST,
INSURANCE CARRIER**

RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED MAY 16, 2008

This matter comes before the Commission on the respondents' Motion to Dismiss. The claimant filed a Form AR-C with the Commission on July 17, 2007, alleging an injury on July 12, 2007, to the right side of her neck, shoulder and upper arm area. The claimant also filed a request for hearing on July 17, 2007. By letter dated July 23, 2007, the respondent carrier advised that they had determined the claim not to be a compensable workers' compensation claim and by letter dated July 25, 2007, from the Commission, the claimant was advised that the carrier was denying her claim. The file was assigned to the Legal Advisor Division for a Legal Advisor conference. A Legal Advisor conference was held on September 26, 2007, but no specific issues were resolved. The file was then assigned to this Administrative Law Judge on October 2, 2007, and on October 3, 2007, Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed to the parties. The claimant failed to file a response to the Prehearing Questionnaire and by letter dated November 26, 2007, the file was returned to the Commission's general files. The claimant filed a response to the Prehearing Questionnaire on November 27, 2007, and the file was reassigned to this Administrative Law Judge on November 29, 2007. The respondents filed a response to the Prehearing Questionnaire on December 7, 2007, and the matter was scheduled for a prehearing telephone conference on January 22, 2008. The conference was held and by Prehearing

Order of that date, a hearing was scheduled for February 28, 2008. The claimant's copy of the Prehearing Order was mailed to her by certified mail but was returned to the Commission "unclaimed." The Prehearing Order was mailed again to the claimant by first-class mail and was not returned to the Commission. The claimant failed to appear at the hearing scheduled on February 28, 2008. At the hearing, the respondents moved to have the claim dismissed without prejudice. By letter dated April 18, 2008, sent by certified mail and first-class mail from this Administrative Law Judge, the claimant was advised that respondents had made a motion to have the claim dismissed and the claimant was given until May 1, 2008, to respond to the motion. The copy of the letter sent by certified mail to the claimant was returned "unclaimed," however, the copy sent by first-class mail was not returned to the Commission. As of the date of this Opinion, no response has been received from the claimant.

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 appear and prosecute this claim, I find that pursuant to Commission Rule 13, this claim should be, and hereby is, dismissed without prejudice. I further find that respondents' request for costs is denied at this

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time subject to the right of respondents to renew their request for costs upon the re-filing and/or request for reopening of this claim by the claimant.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge