

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F412584**

JAMES D. SOWERS, EMPLOYEE

CLAIMANT

IC CORPORATION,  
SELF-INSURED EMPLOYER

RESPONDENT

**OPINION FILED FEBRUARY 1, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on January 30, 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 January 30, 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 January 30, 2008 hearing, and the exhibits contained therein. The Commission's file has been blue-backed, and is hereby incorporated herein by reference, as it has been made a Commission's Exhibit.

**DISCUSSION**

The claimant contends he sustained a compensable injury to his right shoulder on October 15, 2004, while working for the respondent-employer. On December 9, 2004, the claimant filed a Form AR-C alleging an injury to his right shoulder.

On November 29, 2007, the respondent filed a Motion to Dismiss with the Commission for lack of prosecution, with a certificate of service to the claimant.

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

1. On November 3, (13) 2005, the respondent filed a Motion to Dismiss for Want of Prosecution. The claimant retained C. Michael White, Attorney at Law, and filed a response to the Motion to Dismiss. The Motion to Dismiss was thereafter held in abeyance.

2. On October 8, 2007, the Commission entered an Order granting Mr. White's Motion to Withdraw as counsel for the claimant.

3. The claimant has not taken any steps to pursue his claim since the Order was entered by the Commission on October 8, 2007.

On December 7, 2007, 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 January 2, 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 for January 30, 2008, at 10:00 a.m., in Little Rock, Arkansas. To date, there has been no response from the claimant.

A hearing was in fact held on January 30, 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.

Therefore, after consideration of the evidence presented, I find the respondent's Motion to be well taken. Pursuant to the 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. 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.
3. That the respondent's Motion to Dismiss should be granted without prejudice pursuant to Commission's Rule 099.13.

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**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, I have no alternative but to dismiss this claim in its entirety. As a result, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Rule 099.13.

**IT IS SO ORDERED.**

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CHANDRA HICKS  
Administrative Law Judge