

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609778

ELIGHA THOMAS, EMPLOYEE	CLAIMANT
EMERY HUGHES CORPORATION, EMPLOYER	RESPONDENT #1
AG-COMP, CARRIER	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2

OPINION FILED AUGUST 8, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on June 27, 2008 at Little Rock Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents #1 represented by the HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by the HONORABLE DAVID SIMMONS, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's right to reopen his case after his claim was dismissed with prejudice.

At issue is the effect of the doctrine of res judicata and Ark. Code. Ann. §11-9-711.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code. Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The claimant contends his case should be reopened.

Respondent #1 contends this claim is barred as no appeal was taken from the Order of Dismissal after a hearing was held on November 15, 2007, granting the respondent's Motion to

Dismiss this claim.

The Second Injury Fund was joined on December 20, 2007 after the claim was dismissed on November 26, 2007. The Fund joins in the respondents' contention that this claim is barred however, in the alternative, if the claim is still active, the Fund should be dismissed because they were improperly joined to a non-existent case in 2007 and they cannot be rejoined as a party after December 31, 2007.

The following witnesses testified at the hearing: the claimant and Keith Bryant, a friend.

The following were submitted without objection and comprise the evidence of record: the documentary evidence found in the November 15, 2007 and June 27, 2008 hearing transcripts.

The claimant filed an AR-C on September 5, 2006 alleging a June 6, 2006 back injury. Initially the claimant was represented by counsel but his attorney filed a motion to withdraw and an Order was entered April 16, 2007 by the Full Commission granting that Motion.

On August 21, 2007 the respondents filed a Motion to Dismiss this claim for failure to prosecute. The Commission sent the claimant a letter by certified mail establishing a deadline of September 17, 2007 to respond to the Motion. The claimant filed an Objection on September 14, 2007 and the case was set for a prehearing conference.

A prehearing notice was sent to both parties. The respondents filed a prehearing questionnaire and participated in the telephone conference, however, the claimant did not. The respondents renewed their Motion to Dismiss.

A hearing notice was sent to the claimant on November 2, 2007 by certified mail, setting this claim for a dismissal hearing on November 15, 2007. The claimant did not appear and an Order was entered on November 26, 2007 granting the respondents' Motion pursuant to Commission Rule 13.

On November 29, 2007 the claimant called the Commission, indicating he had not received a hearing notice. The claimant filed a prehearing questionnaire on November 30, 2007, which was treated as a Motion to Vacate the Order of Dismissal.

The respondents objected to the claimant's Motion and the claimant was informed that his request was denied on January 4, 2008. No appeal was taken by the claimant.

On March 18, 2008 the claimant filed a letter requesting a hearing on his claim. A hearing was conducted on June 27, 2008.

The claimant testified he did not appear at the first dismissal hearing because (1) he was moving (2) he had personal problems (3) he had no transportation (4) he had no cell phone to call and reschedule the hearing (5) he was working too much and didn't have time (6) he was intimidated by his employer (7) he was too young to understand.

The claimant then testified that because he was not working he had to move in with different family members and friends. The Commission's file shows three changes of address for the claimant. The claimant's family and friends forwarded mail to him when he moved.

FINDINGS AND CONCLUSIONS

This claim is governed by Rule 13 and Ark. Code Ann. §11-9-711, and the doctrine of res judicata.

Res judicata applies where there has been a final adjudication on the merits of the issue by a court of competent jurisdiction on all matters litigated and those matters necessarily within the issue which might have been litigated. Perry v. Leisure Lodge, 19 Ark. App. 143, 718 S.W.2d 114 (1986). Appeals from final orders must be filed with the Commission within thirty days of receipt.

Because the claimant did not appeal the November 26, 2007 Order and the denial to vacate the Order in a timely fashion, this claim is now barred by the doctrine of res judicata.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on June 6, 2006. The claimant filed an AR-C on September 5, 2006.
2. This claim was dismissed with prejudice on November 26, 2007. The claimant's request to vacate the order was denied on January 4, 2008. No appeal was taken from these decisions.
3. The claimant filed a hearing request on March 18, 2008, about 4 months after the dismissal hearing and order.
4. The Order of Dismissal became final thirty days after receipt. The Order was sent to the claimant by certified mail to the claimant's last known address.
5. This claim is barred by the doctrine of res judicata, Ark. Code Ann. §11-9-711 and Rule 13.

The claimant's request to reopen this case is hereby denied.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge