

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705990

JASON T. WILKERSON, EMPLOYEE	CLAIMANT
TOWNSENDS OF ARKANSAS, INC.,	RESPONDENT
HELMSMAN MANAGEMENT, TPA	RESPONDENT

OPINION FILED MAY 8, 2008

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on May 7, 2008, in Batesville, Independence County, Arkansas.

Claimant did not appear at the hearing.

The respondents were represented by THE HONORABLE Mark Mayfield, Attorney at Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 7, 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 May 7, 2008 hearing, and the exhibits contained therein. The entire 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 left eye on January 3, 2007, while working for the respondent-employer. On June 15, 2007, the claimant filed a Form

AR-C alleging an injury to his left eye. He specifically alleged an injury to his left eye as a result of pink salt having gotten in his eye. The respondents controverted the claim in its entirety.

In a letter dated July 3, 2007, the claimant's former attorney requested a hearing in the matter before an Administrative Law Judge. On July 11, 2007, the Commission mailed Prehearing Notices and Questionnaires to the parties. On August 2, 2007, the claimant filed a Response to the Prehearing Questionnaire, and on August 22, 2007, the respondents filed a Response to the Prehearing Questionnaire.

On August 24, 2007, the Commission sent a Prehearing Conference Notice setting the matter for a Prehearing Teleconference, which was scheduled for October 29, 2007. Prior to this conference, in a letter dated October 15, 2007 to the Commission, the claimant's attorney requested to be relieved as counsel of record.

The Commission entered an Order on October 24, 2007, relieving the claimant's attorney as attorney of record. On October 24, 2007, the Commission returned the case to the Commission's general files in an attempt to give the claimant an opportunity to obtain other counsel.

Since this time, the claimant has taken no action to prosecute the matter, nor has a hearing been requested. Therefore, on February 4, 2008, the respondents requested that

the case be dismissed for want of prosecution. A copy of the same was mailed to the claimant.

On February 12, 2008, the Commission sent a Notice to the claimant of the pending Motion and of a deadline for filing a response to this Motion. 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 respondents and the claimant advising that the matter had been set for a hearing on the respondents' request for dismissal of the claim for want of prosecution. The hearing was set for May 7, 2008, at 11:00 a.m., in Batesville, Arkansas. To date, there has been no response from the claimant.

A hearing was in fact held on May 7, 2008, on the respondents' request for dismissal of the claim for want of prosecution. The respondents 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 respondents' Motion to be well taken. Therefore, pursuant to Commission's Rule 099.13, this claim 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. A claim for benefits was filed by the claimant on June, 15, 2007.
3. 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.
4. That the respondents' Motion to Dismiss should be granted without prejudice pursuant to 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 refileing of this claim within the applicable time period.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

