

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F704016

CHRISTINA L. WILLIAMS, EMPLOYEE	CLAIMANT
TEC, THE EMPLOYMENT CO. , EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE CO, CARRIER	RESPONDENT

OPINION FILED MARCH 26,2008

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on March 26, 2008, in Russellville, Pope County, Arkansas.

The claimant, pro se, did not appear at the hearing.

The respondents were represented by The Honorable James A. Arnold II, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF CASE

A hearing was held on March 26, 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 March 26, 2008 hearing, and the exhibits contained therein. The Commission's letters of February 7, 2008 and March 5, 2008, and the unclaimed receipt from the certified letter sent to the claimant were marked as Commission's Exhibit 1. The claimant's attorney's Motion to Dismiss and accompanying letter and the Commission's letter and Order of October 1, 2008 were marked as Commission's Exhibit No. 2. The remainder of the Commission's file has been blue-backed, and is hereby incorporated herein by reference, as

it has been marked as Commission's Exhibit 3. The respondents' Motion to Dismiss for Want of Prosecution and accompanying letter, and its letter of March 3, 2008, have all been marked as Respondents' Exhibit 1.

DISCUSSION

On April 23, 2007, a Workers' Compensation First Report of Injury or Illness was filed with the Commission, wherein the claimant alleged a specific incident injury to the back on April 10, 2007, as a result of slipping and falling down a set of 3-4 stairs. However, this form demonstrates that the claimant did not notify the administrator of her injury until April 12, 2007.

The respondents filed a Form AR-2 controverting the claim in its entirety on April 24, 2007. Specifically, the respondents controverted the claim on the grounds that the claimant was not acting within the course and scope of her employment at the time of her injury.

The claimant's attorney filed a Form AR-C with the Commission on May 9, 2007, alleging a compensable injury to her back on April 10, 2007, while working for the respondent-employer. In this form, the claimant specifically stated, "While on the clock and returning to my assigned job duties from a paid break, I slipped and fell down stairs injuring my back." The claimant requested initial benefits in the form of temporary total disability, medical expenses, and attorney's fees.

The claimant also filed a letter with the Commission May 9,

2007, wherein she requested a hearing on her claim.

Prehearing Notices and Questionnaires were mailed to the parties on June 7, 2007.

On June 25, 2007, the respondents filed a Preliminary Notice with the Commission advising that the amount in dispute was more than \$2,500.00. The respondents further advised that they were unwilling to mediate the matter, because mediation was unlikely to resolve the dispute.

In a letter dated July 10, 2007, the Commission notified the claimant of its failure to file a timely Response to the Prehearing Questionnaire. The claimant was given a July 23, 2007 deadline for filing a response in this matter.

The claimant filed a Preliminary Notice and Response to the Prehearing Questionnaire with the Commission on July 20, 2007, and on July 30, 2007, the respondents filed its Response to the Prehearing Questionnaire with the Commission. Therefore, the Commission set the matter for a prehearing conference, which was to be held on September 10, 2007, at 1:30 p.m.

At the time of the prehearing teleconference, the claimant's attorney requested that the prehearing conference be cancelled, due to the claimant's failure to respond to his attempted contacts and failure to appear at the scheduled deposition. Also, during this telephone conversation, the claimant's attorney expressed his desire to withdraw as counsel. Therefore, he was given seven (7) days to file said Motion with the Commission.

On September 17, 2007 the claimant's attorney, filed a Motion to Withdraw as Counsel of record with a certificate of service to the Commission, the claimant and respondents' attorney. In his motion, the claimant's counsel noted that without explanation the claimant had failed to appear for a deposition on August 8, 2007, and in addition, had failed to maintain any contact with her attorney since that date.

On October 1, 2007, the claimant's attorney advised the Commission of its readiness to deliver to the claimant a full and complete copy of her file. Therefore, on that same date, the Commission entered an Order relieving the claimant's attorney as counsel of record. The claimant and the respondents' attorney were sent copies of this order via certified mail. Subsequent to the claimant's attorney being relieved as counsel, the claimant has failed to obtain new counsel or otherwise prosecute her claim.

Thereafter, no activity was had on the claim, until February 4, 2008, at which point, the respondents filed with the Commission a Motion to Dismiss for Lack of Prosecution, with a certificate of service to the claimant.

In support of its Motion, the respondents alleged, the following:

1. The claimant has taken no action to pursue the claim since filing a Response to Prehearing Questionnaire by letter dated July 20, 2007.

2. The claimant failed to appear for her deposition scheduled on August 8, 2007.

3. By letter dated September 17, 2007, the claimant's attorney, filed a Motion to Withdraw as counsel of record for the claimant.

4. By letter dated October 1, 2007, an Order allowing the claimant's attorney to withdraw as attorney of record for the claimant was forwarded to all parties.

5. More than six months has now elapsed without any action by the claimant to pursue her claim. The respondents submit that it is appropriate for the claim to be dismissed for lack of prosecution pursuant to Rule 099.13 of the Arkansas Rules of Workers' Compensation Commission.

On February 7, 2008, the Commission sent a Notice to the claimant of the pending Motion and of a deadline of February 28, 2008, for filing a response to this Notice. To date, there has been no response from the claimant to this Notice.

On March 3, 2008, the respondents requested a hearing on its Motion to Dismiss.

Therefore, on March 5, 2008, the Commission sent a Notice of Hearing by certified mail to the claimant and the respondents advising that the matter had been set for a hearing on the respondents' Motion to Dismiss, for March 26, 2008, at 10:00 a.m., in Russellville, Arkansas. The Commission's Notice of Hearing dated March 5, 2008, which was sent to the claimant, was

returned to the Commission as unclaimed. On March 24, 2008, the Commission mailed this same notice by regular mail to the claimant. To date, there has been no response from the claimant.

A hearing was in fact held on March 26, 2008, on the respondents' Motion to Dismiss. The respondents appeared at the hearing through its attorney. However, the claimant failed to appear at said hearing.

Based on my review of the evidence, it demonstrates that 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 respondents' 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 her claim. The claimant has failed to respond to written notices and failed to appear at the scheduled hearing.
3. 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. As a result, this case is hereby dismissed without prejudice for failure to prosecute pursuant to Rule 099.13.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge