

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605403

MACK WILLIAMS, EMPLOYEE

CLAIMANT

**HELENA / WEST HELENA SCHOOL DISTRICT,
EMPLOYER**

RESPONDENT

**ARKANSAS SCHOOL BOARDS ASSOC. WCT/
RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER**

RESPONDENT

OPINION AND ORDER OF DISMISSAL FILED AUGUST 1, 2008

This matter comes before the Commission on the respondents' Motion to Dismiss.

The claimant sustained a compensable knee injury on May 10, 2006. The respondents accepted the claim and paid benefits.

The claimant filed a form AR-C with the Commission on August 1, 2006, for additional benefits.

On December 1, 2006, the claimant filed request for hearing, along with a response to the Prehearing Questionnaire. The file was assigned to an Administrative Law Judge and on December 12, 2006, Prehearing Questionnaire Notices and Prehearing Questionnaires were mailed to the parties. The respondents filed a response to the Prehearing Questionnaire on January 24, 2007. A prehearing telephone conference was scheduled for March 13, 2007. On March 13, 2007, claimant's attorney called the Judge's office and by letter dated March 13, 2007, advised that the issues had been resolved and requested the file be returned to the Commission's general files. The prehearing telephone conference was cancelled and the file returned to the Commission's general files on March 20, 2007.

On May 20, 2008, respondents filed a Motion to Dismiss for failure to prosecute. The file was reassigned to this Administrative Law Judge and the

claimant was advised of respondents' Motion to Dismiss by letter dated May 28, 2008, sent via certified mail and first-class mail. The claimant was warned therein that failure to respond may result in a dismissal of his claim. The letter was received by the claimant's attorney as evidenced by the certified mail return receipt dated May 30, 2008. No response thereto has been received from the claimant. A Notice of Hearing on respondents' Motion to Dismiss was sent to the parties via certified mail and first-class mail scheduling the matter for hearing on July 30, 2008. The Notice provided that "Failure to appear will result in dismissal of this claim." The Notice was received by the claimant's attorney as evidenced by the certified mail return receipt dated July 2, 2008.

By letter dated July 7, 2008, the claimant's attorney advised:

There are no issues currently pending in the above styled case. The claimant does not object to the motion to dismiss. He realizes that his case remains open for one year from the date of last payment to request additional benefits. Under these circumstances I would request that Mr. Williams and I be excused from the hearing in the above styled case.

By letter dated July 14, 2008, this Administrative Law Judge excused the claimant and his attorney from attendance at the hearing scheduled on July 30, 2008.

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 prosecute this claim, I find that pursuant to Commission Rule 13 and Ark. Code Ann. § 11-9-702(a)(4), this claim should be, and hereby is, dismissed without prejudice.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge