

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G309210

JAMES MCCLAIN, EMPLOYEE

CLAIMANT

F N A HOLDING COMPANY, EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT
INSURANCE CARRIER, TPA

RESPONDENT

OPINION FILED FEBRUARY 4 , 2016

Hearing before ADMINISTRATIVE LAW JUDGE AMY GRIMES, in Springdale, Washington County, Arkansas.

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by TERRY LUCY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

The case, at bar, came before the Commission for a hearing on a Motion to Compel on January 28, 2016. All parties were present for the hearing on the motion. The claimant's attorney filed the Motion to Compel on October 27, 2015. Subsequent to the filing of the motion, and after several conference calls were conducted, the matter was removed from the docket. This matter has been set for full hearings and hearings on the Motion to Compel several times. Each time, in the past, the respondents agreed to provide the claimant's requested information or agreed to comply with discovery. They have not, at the time of the current hearing on the Motion to Compel, followed up on prior agreements. The respondents have failed to pay medical and temporary total benefits and at one point, the claimant requested penalties be imposed. The respondents are now represented by Terry Lucy. Prior to the appearance of Mr. Lucy for the respondent, no answers, objections, or extensions were made.

On January 28, 2016, I opened court at the appointed time. Mr. Hatfield made arguments on his motion. He noted that it was the claimant's contention that all objections had been waived. He

noted that the Arkansas Court of Appeals had affirmed the Commission's dismissal with prejudice when a claimant failed to answer interrogatories. Mr. Hatfield further stated that he and Mr. Lucy had come to some agreement on the matter. He stated that the respondents agreed to pay all the claimant's out of pocket expenses from 2013, which include a wheelchair(with modifications), lift, mileage, and out of pockets. The agreement included the respondents immediately bringing all temporary total disability current and paying a self imposed 20 percent penalty. The respondents also agreed to bring all attorney fees current and make all home modifications. Mr. Hatfield further stated that the claimant's knee replacement surgery had also been approved and was scheduled. The final issue is the procurement of a handicapped van for the claimant. Mr. Hatfield advised that the parties had agreed to work on finding the claimant the appropriate van. The respondent's attorney agreed with Mr. Hatfield on the points of agreement. He added that there had been some work done on finding local vendors for the handicapped van and attempts were being made to provide a suitable vehicle. The parties made a joint request that the Motion to Dismiss hearing be continued for 30 days to allow the respondents to complete the terms of the above agreement including the procurement of a handicapped van.

DISCUSSION

Having heard the statements of both parties and having reviewed the points of agreements outlined by the claimant's attorney, clearly this matter must be resolved. The claimant, as well as the Commission, has too long relied on the word of the respondent and prior counsel to provide promised benefits to the claimant. Those promises have not been fulfilled. However, based on the word of the respondent's new counsel and the agreement of the parties, it is appropriate that this matter be continued.

ORDER

This matter will be continued at the joint request of the parties for thirty days on the condition that the respondents follow through with the agreed upon items listed and on the condition that an appropriate handicapped van be procured. Should any of the terms of this agreement not be met and if discovery is not completed, the Motion to Compel and all associated issues will be litigated as well as any issues ripe for determination at a full hearing before the Commission.

IT IS SO ORDERED.

AMY GRIMES
ADMINISTRATIVE LAW JUDGE