

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214350

TIM BATES, EMPLOYEE	CLAIMANT
STAFFMARK LLC MIDWEST, EMPLOYER	RESPONDENT
ATLANTIC MUTUAL INSURANCE CO., CARRIER	RESPONDENT

ORDER FILED SEPTEMBER 30, 2004

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE JAY N. TOLLEY, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE CURTIS NEBBEN, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter is currently before the Full Workers' Compensation Commission on the claimant's motion to dismiss appeal. After considering the claimant's motion, and all other matters properly before the Commission, we find that the motion should be granted.

In an opinion dated July 19, 2004, the Administrative Law Judge found that the claimant failed to prove by a preponderance of the evidence that he was entitled to additional medical treatment subsequent to September 16, 2003, for his compensable injury. In a letter dated July 23, 2004, the claimant's attorney, Jay Tolley, filed a notice of appeal with the Commission.

On August 13, 2004, the Clerk of the Commission sent a letter that stated that the claimant's brief was filed by fax on August 2, 2004, and that the respondent's brief would be due August 27, 2004, and that the claimant's reply brief would be due September 3, 2004. On August 27, 2004, counsel for the respondents requested a one-week extension and this extension was granted by the Clerk of the Commission.

In a letter dated August 30, 2004, and received on August 31, 2004, addressed to Administrative Law Judge Danielson, counsel Tolley stated:

We have dismissed this appeal and now wish to have this case proceed again on the March 5, 2004, report that you wouldn't let into evidence. Everything else is the same other than the March 5th report.

...If Mr. Nebben wants to change his mind and now allow us to have the medical testimony then he can let you know. If not, I guess we will go ahead and have a pre-trial, answer interrogatories, and anything else that the respondent wants to dictate as far as defense in this case.

I can certainly understand why the Commission would not allow the March 5, 2004 report into evidence even though it met the test of Hagan v. Belcher [sic]. I am now indicating that we are going to have very little in regard to testimony other than as set forth by the enclosed additional exhibit.

We acknowledge that the previous decision of July 19, 2004 is the law of the case.

In a letter dated the same date and filed with the Commission on August 31, 2004, counsel Tolley addressed a letter to the Clerk of the Commission stating that he was filing a Motion to Dismiss the Appeal. The respondents have filed no response to this. However, they did file their brief as required on September 2, 2004.

After considering this matter, we find that the motion to dismiss filed by the claimant on August 31, 2004, should be granted.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner