

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310786

ALMA JEAN MACK, EMPLOYEE	CLAIMANT
AREA AGENCY ON AGING, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

ORDER FILED SEPTEMBER 16, 2004

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

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

Respondent represented by HON. CURTIS L. NEBBEN, Attorney at Law, Fayetteville, Arkansas.

ORDER

The claimant appeals an Order filed on May 27, 2004, by the Administrative Law Judge dismissing this claim pursuant to Ark. Code Ann. § 11-9-702(a)(4). After considering this matter, we find that the Administrative Law Judge's order is affirmed.

The claimant sustained an admittedly compensable injury on April 24, 2002, to her right shoulder. The claimant lost no time from work and all medical treatment has been paid to or on her behalf. On or about October 15, 2003, the claimant filed a Form AR-C with the Commission but did not specify which benefits she was claiming. On March 19, 2004, Jill Johnson, the claims specialist for the TPA, requested an order of dismissal due to lack of

prosecution. By letter dated March 25, 2004, the Clerk of the Commission wrote counsel for the claimant stating that an order of dismissal had been requested and that the Commission was treating that as a request for dismissal pursuant to both Rule 13 and Ark. Code Ann. § 11-9-702(a)(4). Claimant's counsel was given thirty days from the date of the letter to state whether or not the case should be dismissed for want of prosecution. The letter also stated that if the Commission did not hear from the claimant within thirty days, the case would be referred for entry of an appropriate dismissal order. Neither the claimant nor the claimant's counsel responded to this letter. Ultimately an Order of Dismissal Without Prejudice was entered by Chief Administrative Law Judge David Greenbaum on May 27, 2004. The Administrative Law Judge's order cites Ark. Code Ann. § 11-9-702(a)(4) as the bases for dismissing the claim. However, since the claimant has already received medical benefits, hers is a claim for additional benefits. Ark. Code Ann. 11-9-702(d) provides:

If, within six (6) months after the filing of a claim for additional compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, if necessary, be dismissed without prejudice to the refiling of the claim within the

limitation period specified in
subsection (b) of this section.

The Commission finds that pursuant to the parties' pleadings on appeal, the Commission has heard the claimant on this matter. The Commission finds that respondents' motion to dismiss was heard on the record, that the claimant was made aware of the motion to dismiss for lack of prosecution, yet still did not act to set this claim for a hearing. The claimant had an opportunity and a right to be heard. The claimant did not exercise her right to be heard until she filed this appeal before the Commission. The Commission considered the respective positions of the party on its de novo review of the matter. The claimant has failed to show why this claim should not be dismissed for lack of prosecution. Accordingly, the claimant's appeal of the dismissal without prejudice is hereby affirmed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.