

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F012906

DEANGELINE HOOKER, EMPLOYEE	CLAIMANT
E. C. ROWLETT CONSTRUCTION CO., EMPLOYER	RESPONDENT NO. 1
CNA INSURANCE COMPANY, CARRIER	RESPONDENT NO. 1
CNA SUBROGATION/RECOVERY UNIT	RESPONDENT NO. 2
SECOND INJURY FUND	RESPONDENT NO. 3

OPINION FILED FEBRUARY 8, 2005

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

Claimant represented by HONORABLE DONALD PULLEN, Attorney at Law, Hot Springs, Arkansas.

Respondent No. 1 represented by HONORABLE FRANK NEWELL, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE MICHAEL J. EMERSON and HONORABLE WHITNEY L. MOORE, Attorneys at Law, Little Rock, Arkansas.

Respondent No. 3 represented by HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on February 10, 2004 denying her motion seeking a nonsuit or dismissal of her claim without prejudice under A.R.C.P. 41. After reviewing the

opinion and applicable law, we are reluctant to apply A.R.C.P. 41 in this case and find that the file should be returned to general files.

Claimant filed a motion requesting a nonsuit/dismissal without prejudice pursuant to A.R.C.P. 41. Claimant has not yet had a hearing on the merits of her claim for benefits. In the order denying claimant's motion, the Administrative Law Judge found that he does not have the statutory authority to order a non-suit or dismissal pursuant to A.R.C.P. 41.

All of the respondents are in agreement that this case should be dismissed and some have indicated that this case could be dismissed pursuant to Rule 13 or Ark. Code Ann. § 11-9-702. We find that neither Rule 13 nor § 702 apply here because claimant has not failed to prosecute her claim. Both of these authorities require "lack of prosecution" as a prerequisite, which is not evident here. Claimant requested a hearing and was pursuing such until her attorney filed the aforementioned motion to dismiss. It appears that claimant's intent is to withdraw that request for a hearing. We are reluctant, however, to apply A.R.C.P. 41 to this case and find that claimant's motion to dismiss should be denied.

We find, therefore, that this case should be

returned to general files until and unless claimant requests a hearing on the merits of her claim. Accordingly, we direct the Clerk of the Commission to return this file to general files.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner