

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F104516

WILBUR HUDSON,
EMPLOYEE

CLAIMANT

CROSS COUNTY,
EMPLOYER

RESPONDENT

RISK MANAGEMENT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JULY 22, 2005

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

Claimant represented by the HONORABLE H. OSCAR HIRBY,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GAIL O. MATTHEWS,
Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER

The claimant in the above-styled matter appeals an administrative law judge's dismissal without prejudice. The respondents move to dismiss the claimant's appeal. The Full Commission grants the respondents' motion.

The Commission's file indicates that the claimant reported he sustained an injury on March 16, 2001. The respondents began paying compensation to the claimant on April 23, 2001. The file contains a Form AR-C, Claim For Compensation, dated and signed by the claimant on July 17,

2003. The claimant checked the box beside "Permanent Total Disability" under the claim information section for "initial" benefits. The claimant also claimed entitlement to "additional benefits" of "Additional Permanent Partial," "Additional Medical Expenses," "Rehabilitation," and "medication."

In a letter dated March 14, 2005, the respondents requested that the matter be dismissed for failure to prosecute. The claimant did not reply to the respondents' letter or to subsequent correspondence sent by the Clerk of the Commission. An administrative law judge filed the following Order Of Dismissal on April 28, 2005:

A claim was filed on behalf of the above-styled employee and a hearing has not been requested within six (6) months after the filing of that claim.

Pursuant to the notice previously sent to the claimant and/or claimant's attorney, as required by Arkansas Code Annotated §11-9-702(a)(4), the claim is hereby dismissed without prejudice.

This Order shall not be construed to affect the timely payment of any benefit currently accepted and being paid to the employee by the employer or respondent/carrier as a result of his or her job related injury, nor shall it, in any way, prejudice the filing of claims for additional benefits within the statutory time limits imposed by Arkansas law.

The claimant appeals the order of dismissal, and the respondents move to dismiss the claimant's appeal.

II. ADJUDICATION

Ark. Code Ann. §11-9-702(a) provides:

(4) If, within six (6) months after the filing of a claim for compensation, no bona fide request for a hearing has been made with respect to the claim, the claim may, upon motion and after hearing, be dismissed without prejudice to the refiling of the claim within limitation periods specified in subdivisions (a)(1)-(3) of this section.

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.

Since the claimant in the instant matter began receiving compensation in April 2001, the claimant's claim for compensation filed on July 17, 2003 can only be construed as a claim for "additional benefits." See, Dillard v. Benton County Sheriff's Office, CA 04-025 (Ark. App. 9-22-04). The administrative law judge's order of dismissal incorrectly cited Ark. Code Ann. §11-9-702(a)(4), the statutory section dealing with "initial," not

"additional" benefits. Nevertheless, the Full Commission notes that the claimant does not state on appeal that the administrative law judge cited the incorrect statute. More importantly, the Full Commission notes that the claimant did not request a hearing within six months after filing his claim for additional compensation. A hearing was not required before dismissing the claim without prejudice. See, Ark. Code Ann. §11-9-702(d), *supra*.

The Full Commission therefore grants the respondents' motion to dismiss the claimant's appeal. If the claimant contends that he is entitled to additional benefits, the claimant can simply request a hearing before an administrative law judge pursuant to Arkansas law, including all relevant provisions of Ark. Code Ann. §11-9-702.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner