

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501764

PAULA J. ARD, EMPLOYEE	CLAIMANT
ST. VINCENT HEALTH SYSTEM, EMPLOYER	RESPONDENT
ALTERNATIVE INSURANCE MANAGEMENT, CARRIER	RESPONDENT

**ORDER FILED MARCH 14, 2007**

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

Claimant represented by HONORABLE STEVEN R. McNEELY,  
Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE WALTER A. MURRAY,  
Attorney at Law, Little Rock, Arkansas.

ORDER

This claim is presently before the Commission on respondents' appeal of the April 13, 2006, Default Judgment and respondents' appeal of the October 17, 2006, Order of the Administrative Law Judge ordering respondents to pay court reporter expenses. After consideration of all the matters properly before the Commission, we find that the April 13, 2006, Default Judgment must be and hereby is, vacated and set aside, and that this claim must be remanded to the Administrative Law Judge for a new hearing. Since the only relief sought by respondents in its appeal of the October 17, 2006, Order to pay court reporter expense is the issuance a corrected and recertified record of the initial

hearing, this issue has been rendered moot by our vacating and setting aside the Default Judgment and remand for a new hearing.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I must respectfully concur in part and dissent in part from the Majority opinion. Specifically, I concur with the order that the case be remanded and finding that the finding that the request for recertification of the record is moot. However, I must respectfully dissent to the extent that the order does not provide limiting language with regard to the actions to be taken in the hearing on remand.

The Majority now remands the case back to an Administrative Law Judge for a new hearing. However, they include no limiting language in reference to what should be considered in the new hearing. While I support a decision to

remand the decision to the Administrative Law Judge, I find that remand should be limited to prevent the respondents from introducing any additional evidence. Instead, I find the only purpose for the remand should be to allow the Administrative Law Judge an opportunity to introduce the evidence previously offered by the claimant (I note this would not include new testimony by the claimant or any other witness), thus affording the Administrative Law Judge the opportunity to render a decision based on evidence properly introduced into the record.

In making this finding, I note that there is insufficient evidence to show that the respondents had good cause for failing to participate in the initial hearing. The respondents admit that they received notice in advance of the hearing and they admit that they were unable to attend. While the respondents assert that they would usually receive a call regarding the hearing, I know of no requirement requiring the Commission to notify the respondents in such a manner. Additionally, when considered in light of their own admission that they received notification of the hearing in a timely manner and that they failed to request a continuance, I find that they should not be afforded a

second opportunity to present evidence in the event of a remand. As such, I would have explicitly indicated that the respondents not be given a "second bite at the apple"; particularly given the fact that the claimant acted properly and tried to introduce the necessary evidence at the time of the first hearing only to be told that his actions were unnecessary.

For the aforementioned reasons, I respectfully concur in part and dissent in part.

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PHILIP A. HOOD, Commissioner