

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310477

ROSEMARY P. CARR, EMPLOYEE	CLAIMANT
CENTRIA, INC., EMPLOYER	RESPONDENT
GALLAGHER BASSETT SERVICES, CARRIER	RESPONDENT

ORDER FILED MARCH 20, 2008

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

Claimant is not represented by counsel, but appears *pro se*.

Respondent represented by HONORABLE WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

ORDER

This matter comes on for review before the Full Commission on the claimant's appeal of the September 19, 2007, Order. A Prehearing Telephone Conference was held on September 18, 2007 (the order states the Prehearing Telephone Conference was held on February 18, 2007, but this is incorrect as all records reflect the conference having been held on September 18, 2007.) At the Prehearing, the claimant was represented by Ms. Shelia Campbell. In a handwritten letter to the Commission, the claimant filed a *pro se* notice of appeal which was filed on October 30, 2007. On November 14, 2007, Ms. Campbell filed a Motion to

Withdraw as Counsel stating that a conflict of interest had arisen between Ms. Carr and Ms. Campbell. Ms. Carr advised the Commission in a letter filed November 30, 2007, that she had no objections to the Motion being granted. In an Order dated December 11, 2007, Ms. Campbell's Motion to Withdraw was granted.

Pursuant to Ark. Code Ann. §11-9-711(a)(1) (Repl. 2002), the opinion of the Administrative Law Judge becomes final unless the claimant files an appeal in writing within 30 days from the receipt of the opinion. The procedural requirements set forth in the statute are mandatory or jurisdictional and require strict compliance. Lloyd v. Potlatch Corporation, 19 Ark. App. 335, 721 S.W.2d 670 (1986); Cooper Industrial Products v. Meadows, 5 Ark. App. 205, 634 S.W.2d 400 (1982). Therefore, the opinion of the Administrative Law Judge becomes final and the Full Commission cannot review it if the petition for review is not received within 30 days, as set forth in the statute. Smith v. Servomation, 8 Ark. App. 274, 651 S.W.2d 118 (1983). Moreover, the rule of unavoidable casualty does not apply to the failure to file a notice of appeal in a timely

manner. Williams v. Luft Construction Co., 31 Ark. App. 198, 790 S.W.2d 921 (1990). Burris v. Burris, 278 Ark. 106, 643 S.W.2d 570 (1982).

Since the claimant's notice of appeal was not filed within thirty days of receipt, it was untimely filed. Accordingly, the claimant's appeal must be, and hereby is, dismissed.

The record reflects that the claimant's attorney received the Prehearing Order on September 21, 2007. While there is no record of the claimant having received the Order, the claimant was bound by the actions of her then attorney Ms. Shelia Campbell. Since the Claimant's notice of appeal was not filed within thirty days of receipt, it was untimely filed. Accordingly, the claimant's appeal must be, and hereby is, dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's Order dismissing the claimant's appeal of an Administrative Law Judge's Pre Hearing Order that dismissed the instant claim with prejudice. I find that the majority's Order not only fails to address the procedural irregularity of a claim being dismissed with prejudice in a Pre Hearing Order, but also fails to address the substantive issue, which is that the dismissal with prejudice contained in the Pre Hearing Order is in error and should be vacated.

An order of the Commission is reviewable only at the point that it awards or denies compensation. Interlocutory decisions and decisions on incidental matters are not reviewable for lack of finality. TEC v. Faulkner, 38 Ark. App. 13, 827 S.W.2d 661 (1992). Although a dismissal with prejudice would ordinarily be considered a final order, and subject to the strict procedural requirements outlined in the majority's Order, the Full Commission has previously determined that a Pre-Hearing Order is not a final, appealable order. Barbosa v. Curt Bean Lumber Company, Full

Commission Opinion filed September 3, 2003 (F004211).

Therefore, I find that the majority's determination that the claimant's appeal of the Pre Hearing Order must be dismissed as "un-timely" is clearly in error.

Furthermore, I find that the dismissal with prejudice contained in the Pre Hearing Order must be vacated. While the Commission does have the authority to dismiss a claim with prejudice without violating the claimant's due process right, Loosey v. Osmose Wood Preserving Co., 23 Ark. App. 137, 744 S.W.2d 402 (1988), the Commission has previously held that, with respect to dismissals under Commission Rule 13, it prefers dismissals without prejudice. See, Richard Bice v. Bromley Auto Parts, Full Commission Opinion filed August 7, 1997 (E600073); Terry Holman v. Form-All, Full Commission Opinion filed April 17, 1997 (E214277); Terri Francis v. EOA Washington County Headstart, Full Commission Opinion filed November 18, 1996 (E217992); Laura Hutcheson v. North Arkansas Poultry, Full Commission Opinion filed October 23, 1991 (D902143); and James Woods v. Arkansas Waste Disposal, Full Commission Opinion filed May 2, 1990 (D015483). The Arkansas Supreme

Court has also consistently indicated a preference for dismissal without prejudice. See, Professional Adjustment Bureau v. Strong, 275 Ark. 249, 629 S.W.2d 284 (1982); Cory v. Mark Twain Life Insurance Company, 286 Ark. 20, 688 S.W.2d 934 (1985).

Here, as the Administrative Law Judge cited no authority for a dismissal with prejudice, under AWCC Rule 13, or otherwise, I find that the dismissal with prejudice contained in the Pre Hearing Order is invalid, and must be vacated. The majority's Order, by failing to address the procedural irregularity and substantive error of the Administrative Law Judge's Pre Hearing Order, effectively dismisses the claim with prejudice, which, as stated above, is violative of precedent and clearly in error.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner