

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605888

LEO HOWELL, EMPLOYEE	CLAIMANT
CONTINENTAL EXPRESS, INC., EMPLOYER	RESPONDENT NO. 1
GIBRALTAR NATIONAL INS. CO, CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

ORDER FILED JULY 28, 2008

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

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

Respondent No. 1 represented by HONORABLE JARROD PARRISH, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE DAVID PAKE, Attorney at Law, Little Rock, Arkansas.

ORDER

Presently before the Commission is claimant's Motion to Remand to the Administrative Law Judge to vest jurisdiction in the Administrative Law Judge to rule on claimant's Motion to Set Aside and Vacate the Order of Dismissal filed April 22, 2008. After consideration of claimant's motion, respondent no. 1 and respondent no. 2's responses, and all other matters properly before the

Commission, we find that claimant's motion should be and hereby is denied.

Respondent no. 1 filed a motion below seeking the dismissal of the claim for claimant's failure to prosecute. Claimant did not respond to said motion. A hearing on the motion was held on April 3, 2008. Neither the claimant nor his attorney appeared at the hearing. A written order was entered on April 22, 2008, dismissing the claim without prejudice to the refiling. Although the dismissal was issued without prejudice, the Second Injury Fund contends that through the Order of Dismissal it has been released as a party and a refiling cannot be made against the Fund pursuant to A.C.A. § 11-9-525(e) (Repl. 2002). If the Order of Dismissal is vacated and set aside, the Fund's argument is defeated. This is not to contend that we agree with the Fund's argument. We have not researched this argument and do not know if it has merit. Nevertheless, we find that the claimant's motion must be denied. The claimant has not asserted good cause for remand. The Order was without prejudice and he has the right to refile his claim with the

Commission. Therefore, we find that the claimant's Motion to Remand should be and hereby is denied.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.