

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F909937

WILLIS WALKER, EMPLOYEE	CLAIMANT
MCMURRAY TIMBER, INC., EMPLOYER	RESPONDENT
AMERISAFE RISK SERVICES, INC., CARRIER/TPA	RESPONDENT

OPINION FILED DECEMBER 2, 2010

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

The unrepresented claimant did not appear.

Respondents represented by the HONORABLE MICHAEL RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed August 20, 2010.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Claimant failed to appear at the initial hearing and pursuant to Commission Rule 99.13 this claim shall be dismissed without prejudice.
- 3) Respondents have incurred considerable expense due to claimant's failure to appear at the initial

hearing including, but not limited to, court reporter fees.

- 4) In the event claimant wishes to pursue his claim in the future, he must first reimburse respondents in the amount of \$650.00 for costs associated with his failure to appear.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion.

This case was not properly dismissed under Rule 099.13.

Rule 099.13 states:

The Commission may, in its discretion, postpone or recess hearings at the instance of either party or on its own motion. No case set for hearing shall be postponed except by approval of the Commission or Administrative Law Judge.

In the event ***neither*** party appears at the initial hearing, the case may be dismissed by the Commission or Administrative Law Judge, and such dismissal order will become final unless an appeal is timely taken therefrom or a proper motion to reopen is filed with the Commission within thirty (30) days from receipt of the order. [Emphasis added]

Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution.

Here, the respondent showed up. Therefore, the case cannot properly be dismissed, either from the bench or from the Administrative Law Judge's August 20, 2010 Order. The Rule says ***neither***. When the claimant did not show up at the appointed time, the respondent's option was to make a Motion to Dismiss for Want of Prosecution. The respondent did not do so. A Motion to Dismiss for Want of Prosecution requires that the claimant be

given notice of the Motion. Here, the claimant was not given notice. Simply put, under Rule 099.13 this case cannot be dismissed in the fashion the Administrative Law Judge has attempted and the majority has allowed.

And as for the imposition of costs, this, like the dismissal, must be reversed. The claimant alleges that he had car trouble. This is good cause shown pursuant to Ark. Code Ann. §11-9-717. Furthermore, the effect of the imposition of costs is that the claimant most likely will not be able to pursue his claim, which is not a characteristic of a dismissal without prejudice. At this point, to proceed, the claimant has the option of either paying \$650 to proceed at the Commission or paying the costs associated with an appeal to the Arkansas Court of Appeals.

I find the dismissal and imposition of costs are clearly in error. For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner