

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 02-127948

Employee: Ralph Booker
Employer: Cash America International
Insurer: St. Paul Fire & Marine Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: September 23, 2002

Place and County of Accident: Independence, Jackson County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated March 4, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Paula McKeon, issued March 4, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 11th day of May 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

Attest: John J. Hickey, Member

Secretary

DISSENTING OPINION

I must respectfully dissent from the decision of the majority to affirm the default award denying compensation in this matter.

The award of the administrative law judge was issued in contravention of the Division of Workers' Compensation (Division) regulation governing the issuance of default awards. 8 CSR 50-2010(12) provides, in relevant part:

A Claim for Compensation may be dismissed or a default award issued, upon proper notice by the division.

...

(B) A default award may be entered against an *employer/insurer*, upon proper notice, for failure to appear or defend the claim.

...

(Emphasis added).

The above-cited regulation sets forth the circumstances under which the Division may enter a default award in a workers' compensation case. The regulation states that the Division may enter a default award against an employer/insurer. There is no provision in the regulation for the entry of a default award against an employee. The regulation clearly contemplates that the Division dismiss a claim in the event an employee fails to prosecute the claim and that the Division issue a default award in the event an employer/insurer fails to defend the claim. The regulation is consistent with the legislative expression that dismissal is the proper mechanism for disposing of claims that are not being prosecuted. See section 287.655 RSMo (2000). Because the award denying compensation is not authorized by the Division's regulations, the award should be set aside as void.

There is a further reason the award should not stand. There is a judicial preference that Workers' Compensation claims be decided on the merits. "Cases should be heard and decided on their merits." *Abrams v. Ohio Pacific Express*, 819 S.W.2d 338, 341 (Mo. banc 1991). Employee's counsel alleges that the claim is meritorious and that employee is now ready and willing to proceed with the prosecution of this claim. I would allow him to do so.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

John J. Hickey, Member