

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FORT LAUDERDALE DISTRICT

Nazir Mohammed,

Employee/Claimant,

OJCC Case No.: 11-007247IF

vs.

Accident date: 3/26/2011

Integrated Regional Laboratory and
Broadspire, a Crawford Company - Tampa

Judge: Iliana Forte

Employer/Carrier.

_____/

Paul R. Buechele, Esquire, Attorney for the Claimant
Andrew R. Borah, Esquire, Attorney for the Employer/Carrier

**FINAL EVIDENTIARY ORDER GRANTING
MOTION TO DISMISS FOR LACK OF PROSECUTION**

This matter came before me, the undersigned Judge of Compensation Claims, on August 3, 2015 on the E/C's motion to dismiss for lack of prosecution filed May 15, 2015. The Claimant did not file a written response but objects to the motion.

AFTER DUE CONSIDERATION given to all of the evidence and argument of counsel, I make the following findings of ultimate fact and conclusions of law.

1. Claimant's counsel acknowledged that the last record activity in this case occurred on 8/12/2013 when this tribunal entered an Order Closing File.

2. Claimant's counsel admits that there has been no record activity since the Order closing file, although he maintains that non-record activity has taken place with the E/C.

3. Claimant reserved jurisdiction on attorney's fees and costs on petition for benefits previously filed on 1/21/2013 and 2/13/2013.

4. It is the E/C's position that no non-record activity has taken place in this case, and regardless of same, the law requires for record activity to take place in order to avoid dismissal.

5. Recent case law has instructed that dismissal for lack of prosecution pursuant to F.S. 440.25(4)(i) is not necessarily discretionary and it is the Claimant's burden to establish "good cause" for why there has been no record activity in the past 12 months. *Limith v. Lenox on the Lake*, 163 So.3d 615 (Fla. 1st DCA 2015).

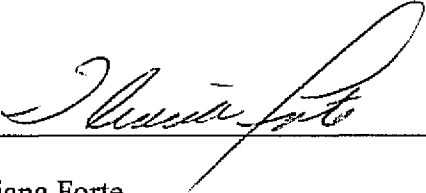
6. I reject Claimant's argument that non-record activity is sufficient to defeat the E/C's motion.

6. I find that more than 12 months have passed since the last record activity in this case, and that Claimant has not presented good cause why a dismissal for lack of prosecution should not lie.

WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED that:

1. All pending claims for fees and costs as of the filing of the E/C's motion are dismissed for lack of prosecution without prejudice.

DONE AND ORDERED in Chambers, on August 3, 2015, at Ft. Lauderdale, Broward County, Florida.



Iliana Forte
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Ft. Lauderdale District Office
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above Order was entered by the Judge of Compensation Claims and a copy was served by electronic transmission on this 3rd day of August, 2015 to the parties counsel or by mail if parties are unrepresented.



Secretary to the Judge of Compensation Claims

COPIES FURNISHED:

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