

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

MARCELINA S. JIMENEZ,)
)
 Claimant,) **IC 2007-005874**
 v.)
)
 CONAGRA FOODS, INC.,) **FINDINGS OF FACT,**
) **CONCLUSION OF LAW,**
 Employer,) **AND RECOMMENDATION**
 Self- Insured,)
 Defendant.) FILED DECEMBER 30 2009
 _____)

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Twin Falls on December 3, 2009. Claimant, *pro se*, did not appear. Eric S. Bailey represented Defendant. Upon Claimant’s failure to attend the hearing and Defendant’s oral motion to dismiss, the Referee allowed Claimant, by order, 14 days to show cause for her failure to appear. Claimant did not respond. The case came under advisement on December 21, 2009. It is now ready for decision.

After examining the record, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

FINDINGS OF FACT

1. Claimant filed a complaint on January 24, 2008.
2. Claimant did not initially prosecute her claim. A Notice of Intent to Dismiss issued September 25, 2008. Claimant responded adequately, her claim was retained, and a hearing date and prehearing conference were set.

3. Claimant did not appear by telephone for the prehearing conference. The hearing was vacated. A second Notice of Intent to Dismiss issued.

4. Claimant appeared for the hearing as originally set. She alleged she was unaware it had been vacated.

5. The matter was retained. Eventually a hearing was again scheduled.

6. Claimant did not appear for this hearing. She has not contacted the Commission as ordered to show cause for her failure to appear.

DISCUSSION AND FURTHER FINDINGS OF FACT

7. A claimant carries the burden of proving her claim. *See, Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995).

8. Claimant has failed to prosecute her claim and has failed to show cause why.

CONCLUSION OF LAW

Claimant's claim should be dismissed with prejudice for failure to prosecute her claim and attend the scheduled hearing.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusion of Law as its own and issue an appropriate final order.

DATED this 22ND day of December, 2009.

INDUSTRIAL COMMISSION

/S/ _____
Douglas A. Donohue, Referee

ATTEST:

/S/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 30TH day of DECEMBER, 2009, a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

Marcelina S. Jimenez
P.O. Box 2972
Twin Falls, ID 83303

Eric S. Bailey
P.O. Box 1007
Boise, ID 83701

db

/S/ _____