

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TRASHON J. THOMPSON,

FILED

Claimant,

OCT 05 2018

File No. 5058227

vs.

WORKERS COMPENSATION

ARBITRATION

MAINLINER CONSTRUCTION, LLC,

DECISION

Employer,
Defendant.

Head Note Nos.: 1400, 1803

Claimant filed a petition in arbitration. He alleged he sustained a work related injury on December 2, 2016 while he was repairing a roof for Mainliner Construction, LLC. Claimant's attorney of record is Teresa L. Vercande. At the time, Ms. Vercande's office was listed as:

Nazette, Marner, Nathanson & Shea, L.L.P.
615 2nd St. SW
Cedar Rapids, IA 52404

The petition was filed on February 6, 2017.

Ms. Vercande filed an affidavit of mailing original notice and petition on February 6, 2017. She signed in the presence of a notary public in and for the State of Iowa the following:

STATE OF IOWA)
)SS:
COUNTY OF LINN)

I, Traci L. Vercande, Attorney for Nazette, Marner, Nathanson & Shea, being duly sworn upon my oath, do depose and state that I did mail a copy of the attached Original Notice and Petition and Patient's Waiver to the Employer, Mainliner Construction, LLC, self-insured, to its principal place of business, 344 9th St., Marion, IA 52302, by depositing copies of said document with the U.S. Post Office for delivery by Certified Mail, Return Receipt Requested, said instrument being mailed on February 2, 2017.

Defendant did not answer the petition. Nor did anyone answer on behalf of defendant.

On May 8, 2018, an order to schedule trial was filed by another Deputy Workers' Compensation Commissioner. The order provided:

An original notice and petition was filed on February 6, 2017. Claimant's counsel filed an affidavit of service upon defendants, asserting that the petition was mailed via certified mail to defendant employer on February 2, 2017. To date, defendant has not appeared or answered. This case cannot remain in abeyance indefinitely.

Agency rule 876 IAC 4.19(3)(a) provides that the parties shall schedule a trial date within 120 days of the filing of the petition. It is appropriate that default be pursued against the employer and/or that an arbitration hearing be scheduled.

Agency rule 876 IAC 4.19(3)(a) provides that the agency may schedule a trial date without prior notice to the parties, if the parties do not schedule a hearing within 120 days of the filing of the petition.

THEREFORE, IT IS ORDERED:

Claimant is given 28 days from entry of this order to pursue default judgment against the employer or to seek to schedule an arbitration hearing with this agency.

If default is not taken, nor a hearing requested to be scheduled, within the above 28-day period, the agency will schedule a hearing date without the input or consultation of the parties.

If defendant employer wishes to participate in this case, it should act with haste to place an appearance, answer, or other pleading on file with this agency and shall participate in the scheduling of a hearing date and time.

Signed and filed this 8th day of May, 2018.

Copies of the order to schedule trial were sent by email message to Ms. Vercande at: traci.vercande@nazettelaw.com and by regular and certified mail to Mainliner Construction, LLC at 344 9th St., Marion, IA 52302. The copies sent to Mainliner Construction, LLC were returned from the U.S. Postal Service, "Return to Sender Not Deliverable as Addressed Unable to Forward."

On June 7, 2018, a deputy workers' compensation commissioner issued an order for hearing. The order provided:

On May 8, 2018, the undersigned issued an order to show cause. The parties did not respond to the order to show cause in a timely manner.

Pursuant to the terms of the show cause order, if the parties did not react to the show cause order, "the agency will schedule a hearing date without the input or consultation of the parties."

The parties obviously did not show cause in this instance. The case has been on file since February 6, 2017. Pursuant to 876 IAC 4.19(3)(a), the case should have been tried within 12 months of its filing. Therefore, a prompt hearing is appropriate.

THEREFORE, IT IS ORDERED:

This case is scheduled for a three-hour arbitration hearing to occur on October 5, 2018, at 8:30 a.m., in Des Moines, Iowa.

Each party is given one and one-half hours to present its case, including any cross-examination of opposing witnesses.

All expert deadlines and all discovery deadlines are now closed.

The parties shall exchange a complete witness and exhibit list, as well as all intended exhibits, at least 30 days before the scheduled hearing or risk exclusion of evidence not identified therein if the failure to disclose is demonstrated to be prejudicial to the non-offending party.

Defendant is ordered to provide a court reporter for the arbitration hearing with the cost of that court reporter to be assessed as a cost in the arbitration decision.

If defendant fails to appear or participate, claimant may elect to secure a court reporter for the hearing or may elect to waive the right to a court reporter and elect to have the proceedings recorded digitally.

Signed and filed this _____ 7th _____ day of June, 2018.

A copy of the order for hearing was sent by e-mail to claimant's counsel. The e-mail came back as "undeliverable." An order was mailed to the attorney by U.S. mail. It was returned to Iowa Workforce Development with a handwritten note, "Return to Sender – no longer at this address."

A certified copy of the order was forwarded to Mainliner Construction, LLC. It was returned to Iowa Workforce Development from the U.S. Postal Service with the notation, "Return to Sender, Unclaimed, Unable to Forward."

The date and time for the hearing occurred on Friday, October 5, 2018 at 8:30 a.m. No one appeared at 150 Des Moines Street, the office of the Iowa Division of Workers' Compensation.

Upon checking the Iowa Judicial Branch, the Iowa Supreme Court has the following listing for a Teresa Lynn Vercande:

Business Information
Firm Name: Vercande Law, PLLC
Position in Firm: Owner/Attorney
Phone: 319-640-5552
Address 1: Vercande Law, PLLC
Address 2: 700 11th Street
Address 3: PO Box 431
Country: United States
City: Marion
State/Province: Iowa
Zip/Postal Code: 52302

However this office has received no change of address or firm change for Ms. Vercande. A telephone call to the Nazette Law Firm was made by a staff member at the Iowa Division of Workers' Compensation. A person at the Nazette Law Firm thought Ms. Vercande had closed her law office in Marion, Iowa and had moved to Minnesota, but there was no other information to provide.

Since no one appeared at the arbitration hearing, claimant was unable to prove by a preponderance of the evidence that he sustained a work related injury on December 2, 2016 that arose out of and in the course of his employment.

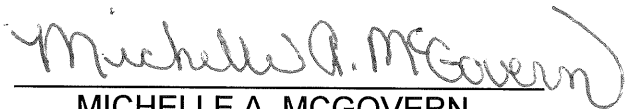
Claimant takes nothing from these proceedings.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing from these proceedings.

Signed and filed this 5th day of October, 2018.


MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Teresa Vercande
Attorney at Law
PO Box 431
Marion, IA 52302

Trashon Thompson
1460 – 8th St.
Marion, IA 52302
REGULAR AND CERTIFIED MAIL

Mainliner Construction, LLC
344 – 9th ST.
Marion, IA 52302

MAM/srs

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.