

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F105790

TERESA BROWN,  
EMPLOYEE

CLAIMANT

CITY OF FORT SMITH,  
EMPLOYER

RESPONDENT

CROCKET ADJUSTMENT,  
INSURANCE CARRIER

RESPONDENT

ORDER FILED AUGUST 21, 2003

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

Claimant represented by HONORABLE BRENT STERLING, Attorney  
at Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE DOUGLAS CARSON,  
Attorney at Law, Fort Smith, Arkansas.

ORDER

In the above-styled matter, the claimant moves the Full  
Commission to remand to the Administrative Law Judge for the  
purpose of taking "newly discovered medical evidence." The  
Full Commission denies the motion.

The parties stipulated that the respondents accepted an  
injury to the claimant's low back, and that medical expenses  
had been paid through February 11, 2002. A pre-hearing  
order was filed with the Commission on November 26, 2002.  
The claimant contended, among other things, that she was  
entitled to additional medical treatment by and at the

request of Dr. Michael Wolfe. The respondents controverted the claim for additional medical treatment.

A hearing before the Commission was held on February 18, 2003. The parties agreed that the Administrative Law Judge (ALJ) would leave open the record after the hearing for subsequent inclusion of a report from Dr. Karl N. Detwiler. The ALJ also indicated that the record would remain open in order for the respondents to introduce additional evidence from Dr. Alberty or Dr. Detwiler. After the hearing, the claimant submitted into the record a report from Dr. Detwiler. The respondents did not submit any additional evidence.

The ALJ filed an opinion on April 25, 2003. The ALJ found that the claimant failed to prove she was entitled to additional medical treatment. The claimant's attorney wrote to the ALJ on May 12, 2003, requesting to submit "additional evidence." This additional evidence consisted of a post-hearing letter from Dr. Wolfe in response to Dr. Detwiler's report. After the ALJ indicated to the claimant that the record was closed, the claimant filed a MOTION FOR REMAND FOR THE PURPOSE OF TAKING NEWLY DISCOVERED ADDITIONAL MEDICAL EVIDENCE. The respondents object to the motion.

Ark. Code Ann. § 11-9-705(c) (1) provides that all evidence must be submitted at the initial hearing on the claim. In order to submit new evidence, the moving party must show that the new evidence is relevant; that it is not cumulative; that it would change the result of the case; and that the moving party was diligent in presenting the evidence to the Commission. Mason v. Lauck, 232 Ark. 891, 340 S.W.2d 575 (1960); Haygood v. Belcher, 5 Ark. App. 127, 633 S.W.2d 391 (1982). Ark. Code Ann. § 11-9-705(c) (i) provides that further hearings for the purpose of introducing evidence will be granted only at the discretion of the hearing officer or Commission.

After reviewing the claimant's motion, his accompanying brief, and the respondents' response, the Full Commission denies the motion. The claimant seeks to introduce into evidence an opinion authored by Dr. Wolfe on April 21, 2003. We first find that the moving party was not diligent in presenting this evidence. The record already includes medical reports written by Dr. Wolfe from September 24, 2001 through January 6, 2003. At the February 18, 2003 hearing before the Commission, the claimant did not indicate a need to submit any new reports from Dr. Wolfe. Rather, the parties agreed to leave open the record for additional

evidence from either Dr. Alberty or Dr. Detwiler. The claimant did not request to leave the record open for a possible "rebuttal" opinion from Dr. Wolfe. In addition, even if the claimant had been diligent in presenting "new evidence" from Dr. Wolfe, the claimant has not shown that Dr. Wolfe's April 21, 2003 letter is not cumulative. Finally, whether the Full Commission after our *de novo* review affirms or reverses the ALJ's April 25, 2003 opinion, the claimant has failed to show that the new evidence would change the result of the case.

The Full Commission denies the claimant's motion. We direct the Clerk of the Commission to return this matter to our submission docket.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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JOE E. YATES, Commissioner

Commissioner Turner dissents without opinion.