

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F206804

LONNIE GOLDSTEN,
EMPLOYEE

CLAIMANT

CANNON EXPRESS,
SELF-INSURED EMPLOYER

RESPONDENT

ORDER FILED DECEMBER 2, 2003

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

Claimant appeared PRO SE.

Respondent represented by HONORABLE CONSTANCE CLARK,
Attorney at Law, Fayetteville, Arkansas.

ORDER

This is a motion by the Claimant, acting pro se, to introduce new evidence, namely an emergency room report, to support his claim that he suffered a compensable work-related injury. The motion is strenuously objected to by the Respondent. Following a de novo review of the record and the pleadings, we hold that the Claimant's request should be denied.

The Claimant has asserted that he suffered a compensable injury to his neck, wrist and/or shoulder while in the course and scope of employment on March 13, 2002. A hearing before the Administrative Law Judge was held on the matter on June 30, 2003. In his opinion, dated September 23, 2003, the judge denied the Claimant's claim, holding

that the Claimant had failed to prove a compensable injury as defined by Ark. Code Ann. § 11-9-102. Specifically, the judge found that the Claimant had failed to proffer any evidence that could be deemed "objective findings" necessary to support a claim for a compensable injury. Ark. Code Ann. § 11-9-102(4)(D).

The Claimant filed a motion on October 17, 2003, requesting the Commission allow him to submit an emergency room report dated March 17, 2002, which the Claimant believes will enable him to meet the "objective findings" standard under the statute. With the medical report is a letter, dated October 14, 2003, from the hospital, stating that the Claimant had requested on June 23, 2003, one week prior to the hearing, that his medical record be sent to Jill Johnson of Risk Management Resources, the third-party administrator for the Respondent's insurance carrier. In the letter, patient advocate Charlotte Moore stated that the Claimant said that the record was not received.

The Respondent objects to the introduction of this evidence. The Respondent asserts that the introduction of this evidence after the Administrative Law Judge had filed his opinion would be prejudicial and that it would not

afford the Respondent the opportunity to cross-examine the author of the report.

Ark. Code Ann. § 11-9-705(c)(1) (Repl. 2002) provides that all evidence must be submitted at the initial hearing on the claim, and that the Commission has the discretion to accept or reject any additional evidence. However, when additional evidence is submitted after the initial hearing, a four-part test governs its admissibility. Haygood v. Belcher, 5 Ark. App. 127, 633 S.W.2d 391 (1982). That test sets out the prerequisites for the Full Commission to admit newly discovered evidence: (1) the newly discovered evidence must be relevant; (2) it must not be cumulative; (3) it must change the result; and (4) the party seeking to introduce the evidence must be diligent. The Commission has broad discretion with reference to the admission of evidence. Id.; see also, W.W.C. Bingo v. Zwierzynski, 53 Ark. App. 288, 921 S.W.2d 954 (1996).

In Hildred Hayes v. Carroll County Judge, Full Workers' Compensation Commission Opinion, May 9, 2002 (Claim No. F109482), the Full Commission denied a claimant's motion to introduce new evidence that smoke inhalation was related to his heart problems, which the Administrative Law Judge ruled was not compensable. In denying the motion, the Commission

stated that "[o]nce a decision has been rendered against a party, that party cannot come back and attempt to prove its case on appeal with additional evidence, particularly where, as here, the party was not diligent in procuring or presenting the additional evidence." Id. (Emphasis added.) Diligence on behalf of the parties is essential to the Commission's adjudicative functions.

In the present case, we find that the Claimant was not diligent in his attempt to have the medical report available for the hearing. It cannot be said that this report was "newly" discovered evidence. The Claimant was well aware of its existence at the time of the hearing; he simply was not diligent in ensuring that he would be able to produce it. The record shows that the Claimant did not have other records he needed for his case at the time of the hearing, so that the hearing had to be recessed so that they could be faxed to the Commission offices. In short, the Claimant was underprepared to present his case with the necessary evidence as required by the statute. The fact that the Claimant requested his emergency room records more than a year after his visit but merely a week prior to his hearing attests to his lack of diligence.

Accordingly, we deny the Claimant's motion to submit his additional evidence.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.