

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E815277

LONG LE, EMPLOYEE

CLAIMANT

SIMMONS FOODS, INC.,  
A SELF INSURED EMPLOYER

RESPONDENT

ORDER FILED DECEMBER 3, 2003

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

Claimant represented by HONORABLE GARY W. UDOUJ, Attorney at Law, Fort Smith, Arkansas.

Respondent represented by HONORABLE J. RODNEY MILLS, Attorney at Law, Fort Smith, Arkansas.

ORDER

This matter is presently before the Full Commission is the claimant's motion to supplement the record on appeal. After considering the claimant's motion, the respondent's response thereto, and all other matters properly before the Commission, we hereby deny the claimant's motion.

In an opinion dated March 1, 2002, an Administrative Law Judge found that:

The claimant is entitled to additional permanent partial impairment for his loss of strength in his left upper extremity in the amount of 20 percent which should be added to the 19 percent impairment which the respondents have previously accepted and paid.

The claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury. Dr. Buie has clearly set forth that this claimant would benefit from additional medical treatment for his compensable injury and that diagnosis and treatment for his

possible RSD could possibly prevent increasing problems for this claimant as a result of his compensable injury. Therefore, the respondents should pay for additional medical treatment for this claimant's compensable injury.

There is inadequate information in this record to establish whether this claimant has reflex sympathetic dystrophy and without further medical testing and information no finding will be made as to the compensability of RSD for this claimant.

In an Order dated January 28, 2003, the Full Commission remanded this case to the Administrative Law Judge to make additional findings. Specifically, the Full Commission remanded the issue of additional medical treatment, including which physician should provide the treatment, whether the reasonably necessary treatment would include visits already made to Dr. Buie and Dr. Hoang, and whether the respondents should be liable for treatment provided by these unauthorized physicians prior to the hearing. Further, the Full Commission remanded, to the Administrative Law Judge, the issue of whether the claimant had reflex sympathetic dystrophy. The Administrative Law Judge was to clarify her findings regarding the award of an additional 20% impairment rating. The Administrative Law Judge was also ordered to reach the issue of whether or not the claimant has a compensable RSD condition that might make him eligible for wage loss disability benefits.

In his motion to supplement the record on appeal, the claimant stated that there was no hearing on remand although the claimant's counsel filed a pleading which included the claimant's prehearing questionnaire on remand. The claimant also attached several medical records for consideration.

On August 8, 2003, the Administrative Law Judge filed an opinion pursuant to the Full Commission's remand for clarification. There was never a hearing or a prehearing set for this case on remand. The claimant requests that the Commission include his prehearing questionnaire on remand along with some medical exhibits that were not part of the original record in this case. The respondents have objected to the inclusion of this evidence in the record.

Ark. Code Ann. §11-9-705(c) (1) (Repl. 2002) provides that all evidence must be submitted at the initial hearing on the claim. In order to submit new evidence, the claimant 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 claimant 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).

The Commission has broad discretion with reference to admission of evidence, and the Supreme Court will not

reverse that decision absent a showing of abuse of that discretion. Clark v. Peabody Testing Service, 265 Ark. 489, 579 S.W.2d 360 (1979); W.W.C. Bingo v. Zwierzynski, 53 Ark. App. 288, 921 S.W.2d 954 (1996); Linthicum v. Mar-Bax Shirt Co., 23 Ark. App. 26, 741 S.W.2d 275 (1987); Southwest Pipe and Supply v. Hoover, 13 Ark. App. 144, 680 S.W.2d 723 (1984).

After review the evidence, we find that this evidence the claimant is seeking to submit into the record is cumulative. If this case had not been remanded to the Administrative Law Judge for more adequate findings, this evidence would not have even come into question. This case was remanded for the Administrative Law Judge to make more adequate findings. Not in order for the Administrative Law Judge to have a new hearing on this case. Therefore, the evidence that was already in the record is what the Administrative Law Judge should have considered. Therefore, we hereby deny the claimant's motion.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

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KAREN H. MCKINNEY, Commissioner