

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F102602

MARK BENZ, EMPLOYEE	CLAIMANT
DEMPSEY FILM GROUP, INC., EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, CARRIER/TPA	RESPONDENT

ORDER FILED AUGUST 10, 2004

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

Claimant represented by HONORABLE SILAS H. BREWER, JR., Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter is currently before the Full Workers' Compensation Commission on the claimant's motion to remand to consider additional medical evidence. After considering the claimant's motion, the respondent's response thereto and all other matters properly before the Commission, we find that the claimant's motion should be denied.

In his motion, the claimant seeks to introduce into the record medical studies that were done in May of 2004. The claimant stated that this evidence develops a full and complete medical record in the case. The respondents filed a response to the claimant's motion stating that the evidence was not timely and that it was not relevant to the issues.

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).

The issues presented at the January 12, 2004, hearing were whether or not the claimant was entitled to additional temporary total disability benefits and benefits under Ark. Code Ann. § 11-9-505(a). Additional medical treatment was not an issue at the hearing. Therefore, the records the claimant is seeking to introduce are immaterial

and not needed to decide the issues on appeal. At the hearing, the record reflects that the claimant's counsel attempted to add the issue of additional medical treatment, but the Administrative Law Judge did not allow the issue.

Accordingly, we find that the claimant's motion should be and hereby is denied.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.