

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303479

NATHANIEL BOLDEN, EMPLOYEE	CLAIMANT
INTERNATIONAL PAPER COMPANY, A SELF-INSURED EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, TPA	RESPONDENT

ORDER FILED JANUARY 9, 2004

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

Claimant presented *pro se*.

Respondent represented by HONORABLE MICHAEL DENNIS, Attorney at Law, Pine Bluff, Arkansas.

ORDER

This matter is currently before the Full Workers' Compensation Commission on the claimant's request to introduce additional evidence on appeal. 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 an opinion filed November 5, 2003, an Administrative Law Judge found that the claimant failed to prove by a preponderance of the evidence that he sustained a compensable injury in the form of carpal tunnel syndrome. Specifically, the Administrative Law Judge found that the claimant failed to meet the major cause requirement. On

December 3, 2003, the claimant filed a Notice of Appeal with the Commission and the Motion that is currently before us. In the claimant's motion, he requests that he be allowed to get Dr. Lytle's deposition as well as introduce into evidence that he pulled wood from 1990 to 2001. The claimant maintains that this evidence should be considered in our review of the merits of the case.

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).

We find that the claimant has failed to prove that he has been diligent in obtaining the deposition of Dr. Lytle. When the claimant introduced his evidence at the hearing, he introduced into the record a list of seventeen (17) questions dated July 18, 2003. There is no evidence that Dr. Lytle answered these questions, nor is there any evidence that the claimant submitted these questions to Dr. Lytle. We can only presume from the claimant's comments that Dr. Lytle refused to answer these questions. At this time, the claimant wants to obtain the deposition of Dr. Lytle. The hearing in this matter was held on October 3, 2003. The claimant's questions were dated July 18, 2003. The claimant had adequate time to request that Dr. Lytle's deposition be taken. Under Rule 16, the Commission allows for the taking of depositions by any party after the claim has been controverted. Rule 20 provides that the expense or costs of reporting and transcribing deposition are to be borne by the respondents. Had the claimant wanted to take the deposition of Dr. Lytle, he could have made such a request and the respondents would have been responsible for paying for the deposition.

Therefore, after considering the claimant's motion, the respondent's response thereto, and all other matters properly before the Commission, we deny the claimant's motion to submit additional evidence on appeal.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.