

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E104546

CECIL DIXON,  
EMPLOYEE

CLAIMANT

P. A. MANAGEMENT,  
EMPLOYER

RESPONDENT

TRAVELERS INSURANCE CO.,  
INSURANCE CARRIER

RESPONDENT

ORDER FILED JANUARY 9, 2004

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

Claimant represented by HONORABLE DALE GRADY, Attorney at  
Law, Bryant, Arkansas.

Respondents represented by HONORABLE PHILLIP CUFFMAN,  
Attorney at Law, Little Rock, Arkansas.

ORDER

This case comes on review before the Full Commission on  
claimant's motion to supplement the record on appeal.

The Administrative Law Judge filed an opinion on  
October 27, 2003. The respondents filed their notice of  
appeal on November 26, 2003. Claimant filed his notice of  
cross-appeal on December 2, 2003. This is the same date of  
his motion to supplement the record. There has been no  
response from the respondents. Briefs have not yet been  
filed.

Claimant requests that the record be supplemented with  
a determination by the Social Security Administration that

he is disabled. 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 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). Claimant does not assert nor could we find that this order from the Social Security Administration would change the result. Claimant was found to be disabled by the Administrative Law Judge.

Here, we find that the results of a Social Security Disability determination would not change or justify a different result. The Administrative Law Judge found that claimant was permanently and totally disabled. Be that as it may, the Commission is not bound by a disability determination made by the Social Security Administration. Flinn v. Central Maloney Full Workers' Compensation Commission, Opinion filed July 30, 1996 (W.C.C. File E215967).

Therefore, upon consideration of claimant's request and all matters properly before the Commission, we find that this motion to supplement should, and hereby is, denied.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

\_\_\_\_\_ I must respectfully dissent from the order of the majority denying claimant's motion to supplement the record on appeal. The Administrative Law Judge found that the compensable injury rendered claimant permanently and totally disabled. Claimant seeks to introduce a determination by the Social Security Administration that he is entitled to benefits for disability. I would grant claimant's motion.

First, the document is relevant and not cumulative. A determination that claimant is totally disabled and entitled to Social Security disability benefits is not binding on the Commission, but can be accorded such weight as may be warranted under the circumstances.

Second, claimant is obviously not offering the document in an effort to change the finding of permanent total disability by the Administrative Law Judge. The result he seeks to affect or change is a possible decision by a majority of the Full Commission that he is neither permanently totally disabled nor entitled to any additional benefits for permanent disability.

Finally, claimant acted diligently in filing the motion. It appears that claimant did not receive the Social Security determination until after the Administrative Law Judge filed the opinion. There was no need whatsoever to present the document to the Commission before knowing whether respondent would appeal the opinion of the Administrative Law Judge. Without such an appeal, the finding of permanent total disability would become final and the document would be immaterial. Once claimant realized respondent had filed an appeal, he sought to introduce the documentary evidence.

In my opinion, the claimant's motion to supplement the record should be granted. Accordingly, I must respectfully dissent.

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SHELBY W. TURNER, Commissioner