

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401780

TERRY TACKETT, EMPLOYEE	CLAIMANT
TRANE COMPANY, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE CO., CARRIER	RESPONDENT

ORDER FILED DECEMBER 9, 2004

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

Claimant represented by HONORABLE EDDIE H. WALKER, JR., Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE JEFFREY D. RICKARD, Attorney at Law, Fort Smith, Arkansas.

ORDER

Presently before the Commission is claimant's motion to Supplement the Record. After careful consideration of claimant's motion, respondents' response thereto, and all other matters properly before the Commission, we find that the claimant's motion must be denied.

Claimant seeks to supplement the record with the April 21, 2004, report of Dr. Greg T. Jones, and the August 28, 2003, Progress Note of Dr. Jones. Claimant contends that these two documents were inadvertently omitted from the transcript of Dr. Jones's Deposition. Claimant further contends that Dr. Jones discussed these documents in his deposition and both parties were aware of the existence

of the documents therefore they should be admitted into evidence as claimant's exhibits.

In Haygood v. Belcher, 5 Ark. App. 127, 633 S.W.2d 391 (1982) the Arkansas Court of Appeals set forth the requisites for the Full Commission to allow 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. First, it is noted that the records claimant seeks to introduce are not newly discovered documents. These documents were in existence at the time of Dr. Jones's deposition. Dr. Jones discussed these documents, as well as, many other of his medical records concerning the claimant during his deposition. Moreover, a review of Dr. Jones's deposition which was properly admitted into evidence reveals that while the attorneys questioned Dr. Jones about many of his medical records, neither attorney moved to introduce any of the medical records as exhibits to the deposition. Second, since the records were in existence, and in the possession of both parties at the time of the hearing, either party could have introduced the particular medical records into evidence at the hearing. The claimant chose not to do so. However, now that the claimant has

received an unfavorable ruling from the Administrative Law Judge, it appears that the claimant has reconsidered the evidence deemed necessary to prove her case and now wants to introduce new evidence on appeal. Accordingly, we cannot find that the claimant acted diligently in submitting these documents as evidence. Finally, the claimant has failed to show how this evidence will change the results on appeal as the documents are cumulative to Dr. Jones's deposition testimony.

Therefore, we find that the claimant has failed to satisfy the requirements set forth in Haygood v. Belcher. Furthermore, she has failed to show that the documents she now seeks to introduce into evidence were mistakenly omitted from the record. Accordingly, we find that the claimant's Motion to Supplement the Record must be and hereby is denied.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.