

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D405044

SAMUEL WILSON, EMPLOYEE	CLAIMANT
INTERNATIONAL PAPER COMPANY, EMPLOYER	RESPONDENT
SEDWICK CLAIMS MANAGEMENT, CARRIER	RESPONDENT

ORDER FILED NOVEMBER 2, 2004

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

Claimant represented by HONORABLE STEVEN R. McNEELY,
Attorney at Law, Little Rock, Arkansas.

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

ORDER

Presently before the Commission is claimant's Motion to Remand for Introduction of New Evidence or Alternatively Because of Change of Physical Condition. After consideration of claimant's motion, respondent's response thereto, and all other matters properly before the Commission, we find that claimant's motion must be denied.

This matter is on appeal to the Full Commission from an opinion filed July 30, 2004, wherein the Administrative Law Judge found that the claimant failed to prove by a preponderance of the evidence that the respondents are liable for modifications made to the claimant's home. Claimant has moved to remand this matter to the Administrative Law Judge for the introduction of new

evidence. Claimant has attached medical reports from Dr. David Mosley dated September 7, 2004, August 23, 2004, and September 15, 2004. During his office visit on August 23, 2004, Dr. Mosley noted complaints of pain in the claimant's right ankle and foot for several months without a history of a recent injury. In the September 7, 2004, office visit, Dr. Mosley noted that the claimant was having increased pain in his lower back. Dr. Mosley's narrative report dated September 15, 2004, states that the claimant's "symptoms have worsened making his ambulation quite difficult."

Haygood v. Belcher, 5 Ark. App. 127, 633 S.W.2d 391 (1982) sets forth the prerequisites for remand by the Full Commission on proffer to present 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. While Dr. Mosley noted that the claimant's condition has made his ambulation quite difficult, we cannot find new evidence submitted by the claimant meets the prerequisites for admission. The issue at the hearing was whether the respondents were liable to the

claimant for the modifications the claimant made to his home. We cannot find that the claimant has established in any manner that the new evidence presented would change the results of the initial hearing. Claimant has failed to show how the new evidence is in any way probative of the issue regarding the respondent's obligations at the time the claimant made the home modifications. Moreover, we find that the claimant has failed to show a change in his physical condition in that he alleged that he had a difficult time ambulating at the time of the hearing. Dr. Mosley's September 15, 2004, correspondence merely corroborates the claimant's position taken at the hearing.

Accordingly, for those reasons set forth herein, we find that the claimant's motion must be denied.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.