

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F106816

LUCIANA FRAZIER, EMPLOYEE	CLAIMANT
DEPARTMENT OF CORRECTION, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, INSURANCE CARRIER	RESPONDENT

ORDER FILED APRIL 21, 2005

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

Claimant represented *Pro Se*.

Respondent represented by HONORABLE RICHARD S. SMITH,
Attorney at Law, Little Rock, Arkansas.

ORDER

The above-styled case is before the Full Commission pursuant to a mandate from the Arkansas Court of Appeals. The claimant has moved to supplement the record, and the Court of Appeals has remanded to the Commission "to settle the record within thirty days (April 22, 2005)."

The parties stipulated that the employment relationship existed on September 24, 2000.

The record contains a "Pre-Hearing Trial Questionnaire" apparently prepared by the claimant on March 17, 2004. An administrative law judge wrote to the respondents' attorney,

copied to the claimant, on March 23, 2004:

Please find enclosed a copy of the claimant's letter of March 16, 2004, which I am treating as a discovery request for:

- 1) Movement Logs
(9-25-00/2nd shift/Barracks 4 & 5)
- 2) Phone Records
(Sept. 28 - Oct. 5, 2000)
- 3) Employment Records
(date of hire?)

If we can stipulate to some of this information, it may not be necessary to subpoena so many witnesses.

We'll discuss the need for subpoenas and witnesses at the upcoming prehearing conference, (notice enclosed).

A pre-hearing conference was held on April 13, 2004, and a pre-hearing order was filed on April 14, 2004. The claimant contended, among other things, that she sustained "a closed head injury on September 24, 2000 when an inmate threw an object at her." The claimant contended that she had suffered a nervous breakdown and had been diagnosed with depression and psychosis. The claimant contended that she was treating with Dr. Ella Williams for "Schizoaffective disorder, bipolar type." The respondents contended that the claimant could not prove she sustained "a work-related injury verified by objective medical findings."

The parties agreed to litigate the following issues:
"Compensability (physical injury/mental illness) and medical expenses."

A hearing was held on May 21, 2004. The administrative law judge noted that the *pro se* claimant was assisted by her mother, Marsha Frazier. The following discussion took place at hearing:

MS. LUCIANA FRAZIER: We haven't seen everything we asked for. We subpoenaed more stuff than they gave us, but they didn't give us everything we subpoenaed like my movement logs. I documented that the inmates, the things that was going on that happened to me, I documented that in my movement logs in that particular area, and it's not in my subpoena records.

JUDGE HOGAN: Mr. Smith, were you able to find those records?

MR. SMITH: No, Your Honor, I don't believe she subpoenaed any records, but in response to her letter I conveyed that to the Department personnel office and they sent me everything they could find. I followed up with them by phone. I talked to Lieutenant Sumners yesterday, and I think that's all - I mean, I don't know personally what these records look like, but I believe they sent - I believe there are movement logs in there. They did not keep - according to what my understanding is, they do not keep a log of incoming telephone calls that shows who they are from, or the time, or anything. So the daily

movement status for the 25th and 24th is in here. The daily attendance roster is in here. I believe these are the items she requested, Your Honor.

MS. MARSHA FRAZIER: I don't have the status for the 24th. I just have the 25th.

MR. SMITH: Are you talking about a movement status?

MS. MARSHA FRAZIER: Yes, what you ...

MR. SMITH: It's the second page, here. This is what is dated Daily Movement Status, 9/24.

MS. MARSHA FRAZIER: Well, there was just one thing.

MR. SMITH: Yes. Well, this is what ...

JUDGE HOGAN: That's all the information you were provided?

MR. SMITH: Correct, Your Honor. And I agree that I only got this to her yesterday. I have no objection to her putting this in if she wants to. I'm not sure - I mean, I don't know - I have a problem with relevance, but in terms of timeliness, I make no objection to it because I just got it to her yesterday.

The administrative law judge found, among other things, that the claimant "failed to prove by a preponderance of the credible evidence that she sustained a compensable head injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily

harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102." The claimant appealed to the Full Commission, which affirmed and adopted the administrative law judge's decision. The claimant appealed to the Arkansas Court of Appeals.

The claimant has moved the Court of Appeals to supplement the record. The claimant has attached to her motion a number of documents representing Daily Movement Status, Daily Attendance Roster, and Barracks/Tower Officers Report. In her "Motions to Supplement" filed with the Court, the claimant correctly writes, "the respondents had no objections to these documents being added." The Court has remanded the case to the Full Commission to "settle the record," and the Court provides no further explanation.

Rule 6 of the Rules of Appellate Procedure - Civil (2004) addresses the Record on appeal. Rule 6 reads:

(e) *Correction or modification of the record.* If any difference arises as to whether the record truly discloses what occurred in the circuit court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If any material to either party is omitted from the record by error or accident or is misstated therein, the parties by

stipulation, or the circuit court, either before or after the record is transmitted to the appellate court, or the appellate court on proper suggestion, or on its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary, that a supplemental record be certified and transmitted. All other questions as to form and content of the record shall be presented to the appellate court.

The purpose in settling the record, under Ark. R. App. P. 6(e) is to ensure that the record "truly discloses what occurred in the trial court." Tackett v. First Sav. of Ark., 306 Ark. 15, 810 S.W.2d 927 (1991).

In the present matter, the respondents do not argue that the documents attached by the claimant are not the exhibits referred to by the claimant at hearing. The respondents instead contend that the exhibits were not timely proffered and are not relevant. Pursuant to the Court's remand to settle the record, however, the Commission is not directed to conduct an evidentiary adjudication pursuant to Ark. Code Ann. §11-9-705. We again note counsel for the respondents' statement at hearing, "I have no objection to her putting this in if she wants to." The claimant's mother had stated, "I just wanted to make note of this paper that we received yesterday, something what they

called a daily attendance roster[.]” There seems to be no argument that the attached exhibits were discussed at hearing, and that the claimant intended to submit these exhibits into the record and thought she had submitted the evidence, but that the exhibits were not placed into the record. The Full Commission agrees with the claimant’s assertion that the documents attached to the claimant’s motion should have been included in the record.

Based on the remand from the Court of Appeals in the present matter, the Full Commission finds that the exhibits attached to the claimant’s “Motions to Supplement” shall be included in the record, pursuant to Rule 6(e) of the Rules of Appellate Procedure - Civil (2004).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.