

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309931

TONY R. LONG, EMPLOYEE	CLAIMANT
WAL-MART STORES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER/TPA	RESPONDENT
SECOND INJURY FUND	RESPONDENT

OPINION FILED OCTOBER 7, 2005

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

Claimant represented by the HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents No. 1 represented by the HONORABLE CURTIS NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Respondent No. 2 represented by the HONORABLE JUDY RUDD, Attorney at Law, Little Rock, Arkansas.

ORDER

This case comes on for review by the Full Commission on claimant's Motion to File Additional Evidence. After our consideration of claimant's motion, and Respondent No. 1's response thereto, we find that claimant's motion should be denied.

Claimant asserts that this "new evidence" (depositions) he has recently obtained in the case of Eileen Harrison v.

Eldon Coffman, et al., LR-C-98-716 speak directly to his claims in this case. These depositions taken in 1999 and 2000 concern Ms. Harrison's termination as an employee of this Commission. None of the present Commissioners were Commissioners at the time of the taking of the depositions. The current Administrative Law Judge was not an Administrative Law Judge in 1999 or 2000. The date of injury of the claimant had not even occurred when these depositions were taken.

Ark. Code Ann. § 11-9-705(c)(1)(A) provides, "All oral evidence or documentary evidence shall be presented to the designated representative of the commission at the initial hearing on a controverted claim, which evidence shall be stenographically recorded." In order to submit new evidence, a moving party must show that the evidence is relevant; that it is not cumulative; that it would change the result of the case; and that the movant was diligent in presenting the evidence. Mason v. Lauck, 232 Ark. 891, 340 S.W.2d 575 (1980); Haygood v. Belcher, 5 Ark. App. 127, 633 S.W.2d 391 (1982).

In the present matter, the claimant has not presented any new "evidence" which is relevant, not cumulative, or

would change the result of the case. The claimant has additionally not been diligent in presenting new evidence to the Commission. The Full Commission therefore denies the claimant's request for submission of this "new" evidence. These depositions were taken in 1999 and 2000, and claimant could certainly have obtained them before now if he had been diligent. These depositions are not relevant to any issue in this case. Claimant's attorney is not mentioned nor discussed in any of those depositions nor is his client, Tony Long.

The Commission finds that these depositions would not change the result in this case, i.e., whether the claimant sustained a compensable injury.

Accordingly, we find claimant's Motion to Submit Additional Evidence should be and hereby is, denied.

_IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner