

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F301506

DAVID RIDDLE, EMPLOYEE	CLAIMANT
MAVERICK TRANSPORTATION, INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL FIRE INSURANCE CO., CARRIER	RESPONDENT

ORDER FILED MARCH 2, 2005

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

Claimant, Mr. David Riddle, appears pro se.

Respondent represented by HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

ORDER

Presently before the Commission is Respondent's Motion to Exclude Evidence from Submission. After consideration of the Respondent's motion, Claimant's Notice of Appeal with the attached "new evidence", and all other matters properly before the Commission, we find that the respondent's motion should be granted.

The Administrative Law Judge issued an opinion on January 4, 2005, wherein she found that the claimant failed to prove entitlement to benefits. Subsequent to the opinion, the claimant filed a notice of appeal and attached a medical report from his treating physician, Dr. Richard Eckert which is dated January 18, 2005. Ark. Code Ann. § 11-9-705(c)(1) (Repl. 2002) 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). The claimant submitted medical records from Dr. Eckert at the hearing which espoused the same opinion as expressed in the January 18, 2005, medical report. Moreover, the January 18, 2005, report clearly indicates that the claimant's condition is the same as it was the last time Dr. Eckert examined the claimant in May of 2004, before the claimant's workers' compensation hearing. Accordingly, we find that the claimant has failed to establish that this medical record is relevant to his claim on appeal or that it would change the results of the case. We further find that the claimant has failed to show due diligence in obtaining this opinion from Dr. Eckert, as Dr. Eckert is his treating physician and the claimant could have obtain a report from Dr. Eckert expressing his opinion prior to the hearing. Therefore, we find that the respondent's motion should be, and hereby is

granted. The January 18, 2005, medical report of Dr. Eckert will not be admitted into evidence.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.