

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F010134

ERMA J. WYNN, EMPLOYEE	CLAIMANT
FAIRFIELD COMMUNITIES, INC., EMPLOYER	RESPONDENT
ZURICH AMERICAN INS. CO., CARRIER	RESPONDENT

ORDER FILED OCTOBER 31, 2005

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

Claimant, ERMA J. WYNN, appears pro se.

Respondent represented by HONORABLE MICHAEL R. MAYTON, Attorney at Law, Little Rock, Arkansas.

ORDER

_____This matter is currently before the Full Workers' Compensation Commission on the Respondents' Motion To Exclude Evidence From Submission Not in the Record, and the Claimant's Motion To Include Evidence in the Record. After considering the respondents' motion, the claimant's response thereto, the claimant's motion and the respondents' responses thereto, and all other matters properly before the Commission, we find that the Respondents' Motion To Exclude Evidence From Submission Not in the Record should be granted. We also find that the Claimant's Motion To Include Evidence in the Record should be denied.

A hearing was held on this matter on May 9, 2005. At the time of the hearing, the claimant was *pro se*. At the hearing, the claimant failed to offer any medical evidence to support her contentions. The claimant was advised by the Administrative Law Judge of her right to counsel and the requirements for submission of evidence at the hearing. This is reflected in the Prehearing Order. In an opinion dated June 29, 2005, the Administrative Law Judge found that the claimant failed to prove by a preponderance of the evidence that she was entitled to additional medical treatment.

On July 14, 2005, the claimant filed a Notice of Appeal with the Commission. In a letter date August 12, 2005, the Clerk of the Commission sent notices of the Briefing Schedule to both the claimant and respondent. The claimant's brief was to be due September 2, 2005.

On September 2, 2005, the claimant filed her brief and sought to attach additional evidence not previously submitted at the hearing. The attachments included medical reports dated January 31, 2000, through June 10, 2003; and a letter dated April 23, 2004, from the claimant to her former attorney, the respondents, and Dr. Thomas Frazier.

On September 9, 2005, the respondents' filed a motion to exclude this evidence from the record. In a response, the claimant filed a motion on September 14, 2005, to include the evidence in the record. On September 21, 2005, the respondents filed a response to the claimant's motion.

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 Commission has broad discretion with reference to admission of evidence, and the Supreme Court will not reverse that decision absent a showing of abuse of that discretion. Clark v. Peabody Testing Service, 265 Ark. 489, 579 S.W.2d 360 (1979); W.W.C. Bingo v. Zwierzynski, 53 Ark. App. 288, 921 S.W.2d 954 (1996); Linthicum v. Mar-Bax Shirt Co. 23 Ark. App. 26, 741 S.W.2d

275 (1987); Southwest Pipe and Supply v. Hoover, 13 Ark. App. 144, 680 S.W.2d 723 (1984).

The claimant seeks to submit medical records in order to prove her claim for additional medical treatment. These reports and records were not introduced at the hearing. While the claimant was pro se at the hearing, this does not relieve the claimant of the burden of presenting evidence at the hearing to prove her claim. Accordingly, we find that the claimant has not shown due diligence in having these records at the hearing since they were available at the time of the hearing. They are not newly discovered nor was the claimant diligent in presenting the evidence to the Commission.

Therefore, we find that the claimant's motion should be and hereby is denied; and the respondents' motion should be and hereby is granted.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner