

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305048

ERNEST O. WILLIAMS, EMPLOYEE	CLAIMANT
GATLING COOLING & HEATING, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. CO., CARRIER	RESPONDENT

ORDER FILED NOVEMBER 9, 2005

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

Claimant not represented by counsel but appears pro se.

Respondent represented by HONORABLE CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

ORDER

Presently before the Commission is respondents' Objection to Claimant's Reply. After consideration of respondents' Motion and all other matters properly before the Commission, we find that the respondents' motion should be granted in part. Specifically, we find that the attachments to the claimant's brief should not be made a part of the record and will not be considered on appeal.

Claimant appealed the Administrative Law Judge's Opinion filed June 30, 2005. The clerk of the commission established a briefing schedule. On September 30, 2005, the

last day on which to file his reply brief, the claimant filed a hand written document with the Commission entitled "Claimant's Response Brief." This brief appears to establish the chronology of the claimant's medical treatment. Attached to this brief are a Medical Outpatient Discharge Instructions sheet dated December 9, 2003, a December 16, 2003, letter signed by Dr. John Wilson, and a January 21, 2004, letter signed by Dr. John Wilson. While the December 9, 2003, Medical Outpatient Discharge Instruction sheet was introduced as an exhibit at the hearing, the remaining two letters from Dr. Wilson were not. In Haygood v. Belcher, 5 Ark. App. 127, 633 S.W.2d 391 (1982) the Arkansas Court of Appeals set forth the prerequisites for the introduction of newly discovered evidence on appeal: (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. As the Wilson medical records were in existence prior to the hearing, we find that the claimant was not diligent in submitting these records for consideration.

Moreover, there is no explanation as to how or why these records are relevant or that consideration of these letters would change the results of this claim on appeal.

Accordingly, we find that these two medical records must be, and hereby are, excluded from the record and the official transcript on appeal.

Respondents' motion also requests that the Commission decline to consider the claimant's reply brief. As no cause is established for this request, and as the reply brief does not impermissibly argue facts from the documents excluded from evidence, we find that this portion of the respondents' motion must be denied.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

_____ I concur with the portion of the majority's Order denying the portion of the respondents' motion requesting that the Commission decline to consider the claimant's reply brief. I must respectfully dissent without opinion to the portion of the majority's Order to exclude the attached medical records from the record and the official transcript on appeal.

SHELBY W. TURNER, Commissioner