

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409072

KELLY L. HOLDER,
EMPLOYEE

CLAIMANT

AMBASSADOR PERSONNEL OF
ARKANSAS, EMPLOYER

RESPONDENT

GALLAGHER BASSETT,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED NOVEMBER 20, 2006

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

Claimant appears pro se.

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

ORDER

This matter is currently before the Full Workers' Compensation Commission on claimant's motion to submit additional evidence. After considering the claimant's motion, the response by respondents, and all other matters properly before the Commission, we find that claimant's motion should be denied.

In an opinion filed June 8, 2006, an Administrative Law Judge found that the claimant failed to prove the elements

necessary for an injury. On July 7, 2006, claimant filed a Notice of Appeal with the Full Commission.

The claimant has now filed a request to introduce additional evidence on appeal. Respondents filed a response to the claimant's motion to introduce additional evidence.

The claimant asks that we consider on appeal an incident report that was available at the time of the hearing before the Administrative Law Judge.

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 new evidence may be relevant, however, the claimant was not diligent in presenting the evidence to the Commission since it was available before the hearing. The claimant has failed to show that the new evidence is not cumulative or that it would change the result of the case.

Therefore, after considering the claimant's motion, the respondents' response thereto, and all other matters properly before the Commission, we deny the claimant's request to reconsider claimant's motion to introduce additional evidence on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner