

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F513238

HARDY HOOFMAN, EMPLOYEE	CLAIMANT
DELK CONSTRUCTION COMPANY, EMPLOYER	RESPONDENT
CNA, CARRIER	RESPONDENT

**ORDER FILED DECEMBER 12, 2006**

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

Claimant represented by HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

ORDER

Presently before the Commission is claimant's Motion for Introduction of Additional Evidence and/or Remand to the Administrative Law Judge for Reconsideration Upon Additional Evidence. After consideration of claimant's motion and brief in support thereof, respondents' response thereto and all other matters properly before the Commission, we find that the claimant's Motion must be denied.

In an opinion filed November 7, 2006, the Administrative Law Judge found that the claimant failed to prove by a preponderance of the evidence that he sustained a compensable injury that is causally related to his employment and that is established by medical evidence supported by objective findings. In reaching this finding the Administrative Law Judge acknowledged the objective medical findings of degenerative changes, but found that the claimant failed to establish a causal connection between these findings and his alleged work related accident.

Subsequent to the hearing, the claimant sought medical treatment from Dr. Richard Jordan and ultimately underwent surgery in September of 2006. Through his present motion the claimant seeks the introduction of Dr. Jordan's medical records on appeal or on remand to the Administrative Law Judge for reconsideration of her findings. In Haygood v. Belcher, 5 Ark. App. 127, 633 S.W.2d 391 (1982) the Arkansas Court of Appeals set forth the prerequisites for remand by the Full Commission on proffer to present newly discovered

evidence: (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. Arguably, the records claimant now seeks to introduce were not available prior to the hearing on compensability; however, the claimant has failed to show that Dr. Jordan's medical records are relevant to the issue of compensability. At best, Dr. Jordan's medical records establish the existence of degenerative changes in the claimant's lumbar spine, a finding that has already been established, thus rendering these medical records cumulative. The Administrative Law Judge found that the claimant failed to establish by a preponderance of the credible evidence that his present condition is causally connected to his employment. A review of the additional evidence claimant seeks to introduce on appeal or on remand to the Administrative Law Judge fails to show that it will change this result. Therefore, we find that the claimant's Motion for Introduction of Additional Evidence and/or Remand

Hoofman - F513238

-4-

to the Administrative Law Judge for Reconsideration Upon  
Additional Evidence must be, and hereby is denied.

IT IS SO ORDERED.

---

OLAN W. REEVES, Chairman

---

KAREN H. McKINNEY, Commissioner

Commissioner Turner dissents.