

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503671

SHEILA SWINDLE,
EMPLOYEE

CLAIMANT

LIBERTY BANK OF ARKANSAS,
EMPLOYER

RESPONDENT

ROYAL & SUN ALLIANCE INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 20, 2006

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

Claimant appears pro se.

Respondents represented by the HONORABLE ANDREW IVEY,
Attorney at Law, Little Rock, Arkansas.

ORDER

Presently before the Commission is respondents' Motion to Strike Portions of Claimant's Brief, claimant's Motion to Submit Additional Evidence on Appeal and claimant's Motion to Strike Portions of Respondents' Brief. After consideration of all the motions and various responses thereto and all other matters properly before the Commission, we find that the Motions must all be denied.

In an opinion filed August 8, 2006, the Administrative Law Judge found that the claimant proved she sustained a compensable injury, and thus entitled to temporary total disability benefits and reasonable medical treatment.

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).

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.

Claimant actually introduced evidence at the hearing and respondent did also. The claimant should have made certain these documents were introduced.

We find that the claimant has failed to prove the elements necessary to allow the introduction of additional evidence in this claim. Further, claimant was not diligent in presenting this evidence to the Commission. All of the records claimant wishes to introduce are dated well before the hearing.

All parties have responded to the various motions to strike portions of each parties' briefs.

The Commission can review arguments in briefs but will not consider evidence not admitted. The Commission will give proper weight to evidence actually admitted at the hearing and will not consider evidence not admitted.

Accordingly, we find that all of the Motions should be, and hereby are, denied.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner