

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 MARCH 24, 2006

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

Claimant presented *pro se*.

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

ORDER

This matter is currently before the Full
Workers' Compensation Commission on the claimant's request
to introduce new evidence on appeal. After considering the
claimant's motion, the respondent's response thereto, and
all other matters properly before the Commission, we find
that the claimant's motion should be denied.

In an opinion filed June 30, 2005, an
Administrative Law Judge found that the claimant failed to
prove by a preponderance of the evidence that he was
entitled to additional TTD, PPD, or additional medical. On
July 29, 2005, the claimant filed a Notice of Appeal with
the Commission.

The claimant initially filed a Motion to Submit New Evidence on February 6, 2006. On February 21, 2006, the claimant withdrew his Motion to Submit New Evidence. Claimant filed the present Motion to Submit New Evidence on February 23, 2006.

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 CT scan is cumulative of other diagnostic studies already in the record in that it shows nothing

more than "degenerative disc disease." Additionally, the CT scan was only necessary because claimant was "horsing around" on December 26, 2005. Claimant proffers evidence of a scuffle with a law enforcement officer which occurred on December 26, 2005 as an explanation for why the CT scan was necessary. However, none of these tests and none of the records dealing with claimant's run-ins with the police have any causal relationship to anything that happened while he was employed by the respondent employer.

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

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

KAREN H. MCKINNEY, Commissioner