

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E814356

FREDERICK L. WILLIAMS,  
EMPLOYEE

CLAIMANT

HEALTHCARE SERVICES GROUP, INC.,  
EMPLOYER

RESPONDENT NO. 1

ZURICH INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT NO. 2

DEATH & PERMANENT TOTAL  
DISABILITY TRUST FUND

RESPONDENT NO. 3

ORDER FILED AUGUST 1, 2006

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

Claimant appears pro se.

Respondents 1 and 2 represented by the HONORABLE LEE J.  
MULDROW, Attorney at Law, Little Rock, Arkansas.

Respondent No. 3 represented by the HONORABLE JUDY W. RUDD,  
Attorney at Law, Little Rock, Arkansas.

ORDER

This matter is currently before the Full Workers' Compensation Commission on the Claimant's Request For Additional Discovery On Appeal and Respondents' Motion to Exclude Claimant's Additional Evidence On Appeal. After considering the claimant's motion, the respondents' motion and response, and all other matters properly before the Commission, we find that the claimant's motion should be denied and respondents' motion to exclude should be granted.

This case has a long history including the most recent hearing after remand from the Arkansas Court of Appeals. This hearing dealt with whether claimant was permanently and totally disabled. The claimant is pro se. He seeks on appeal to introduce new evidence not submitted below and to seek discovery of additional evidence on appeal to support his claim of permanent and total disability. Respondents object to the new discovery request and seeks to preclude submission of evidence not submitted below.

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).

Discovery must be completed before the hearing held by the administrative law judge. With the length of the history of this case, these documents have existed previously. The documents that are already submitted in previous hearings can be and will be reviewed on appeal, but new documents not submitted before will not be reviewed. Claimant's request for discovery of new evidence must be denied. The administrative law judge issued a Prehearing Order directing the parties to submit their documents and exhibits before the hearing. That order was dated February 3, 2006 and the hearing was scheduled for March 1, 2006. Claimant submitted his response February 9, 2006 consisting of 42 pages. Respondents also submitted their response consisting of 158 pages. The administrative law judge asked

claimant at the hearing about submission of evidence and it should have been introduced.

Therefore, after consideration of the claimant's motion, respondents' response thereto, and respondents' motion to exclude and all other matters properly before the Commission, we deny the claimant's motion for discovery and grant respondent's motion to exclude evidence on appeal not submitted before now.

\_\_\_\_\_IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

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KAREN H. MCKINNEY, Commissioner