

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705690

VIRGILIO OCHOA,
EMPLOYEE

CLAIMANT

TYSON FOODS, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

TYNET CORPORATION,
TPA

RESPONDENT

OPINION FILED MAY 7, 2009

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

Claimant represented by the HONORABLE RONALD M. MCCANN,
Attorney at Law, Fayetteville, Arkansas.

Respondent represented by the HONORABLE E. DIANE GRAHAM,
Attorney at Law, Fort Smith, Arkansas.

OPINION AND ORDER

This matter comes on before the Full Commission on
Claimant's Motion to Remand and File Additional Evidence and
First Amendment to Motion to Remand and File Additional
Evidence. After considering the claimant's motions, the
respondent's responses thereto, and all other matters
properly before the Commission, we find that the claimant's
motions should be denied.

In an Opinion filed January 30, 2009, the Administrative Law Judge found that the claimant was not entitled to additional benefits.

In February, 2009, claimant was seen by Carolyn Nutter P.A. Northwest Family Care, who ordered an MRI Scan which was performed in Northwest Health Center on March 3, 2009; based on the results of the scan, claimant was referred to Dr. Luke Knox, and was seen by Dr. Knox's physician assistant on March 23, 2009.

Claimant's attorney now seeks to remand the matter back to the Administrative Law Judge and to file the records of Carolyn Nutter and Dr. Knox as additional evidence.

Respondent has filed a response to the claimant's original motion, objecting to the claimant's motion.

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).

We find that the claimant was not diligent in collecting this evidence prior to the hearing on November 17, 2008. Accordingly, the claimant's motions should be denied.

Therefore, after having considered the claimant's motions, the respondent's response thereto, and all other matters properly before the Commission, we deny the claimant's Motion to Remand and File Additional Evidence.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.