

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F900391

ROSELIE GINGRAS,
EMPLOYEE

CLAIMANT

LIBERTY BANK,
EMPLOYER

RESPONDENT

CNA INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

ORDER FILED JANUARY 19, 2010

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

Claimant represented by the HONORABLE JASON HATFIELD,
Attorney at Law, Fayetteville, Arkansas.

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

ORDER

This matter is presently before the Full Commission on
the claimant's Motion to Remand to the Administrative Law
Judge for Consideration of New Evidence. After
consideration of claimant's motion, respondents' response
thereto, and all other matters properly before the
Commission, we find that claimant's motion must be, and
hereby is, denied, in part and granted in part. The motion
to remand to the administrative law judge is hereby denied;

however, the proffered exhibits to the motion, numbers 1, 1A, and 1B, shall be and are hereby admitted into evidence, as a part of the record in this matter.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

At the hearing before the Administrative Law Judge, claimant asserted that she was attacked in her home by a man, later identified through a DNA match in a Texas robbery case as Gary Huddleston, for the purpose of robbing the bank at which she was employed. Claimant now seeks to remand this claim to the Administrative Law Judge for the admission of additional evidence consisting of an Affidavit of Detective David Williams with attachments consisting of documents recently provided to the Fayetteville Police Department by a Texas prosecutor. I agree that this claim should not be remanded to the Administrative Law Judge;

however, I must disagree with the admission of the affidavit and its attachments on appeal.

Arkansas Code Annotated § 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 newly discovered evidence is (1) relevant; (2) is not cumulative; (3) will change the result; and that (4) the party seeking to introduce the evidence was diligent. 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 our decision will not be reversed 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); Litnthicum 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).

I find that the new evidence claimant seeks to introduce is not relevant and would not change the results of the claim. Even assuming that the claimant was diligent

in presenting this new evidence and in assuming that the evidence is not cumulative of the evidence presented at the hearing, I find that the admission of the affidavit with its attachments will not change the results of this claim. Claimant contends that this new evidence proves that Gary Huddleston was present in her home in order to rob the respondent employer and thus would change the results of this claim. I cannot reach this conclusion. The affidavit does not prove that Gary Huddleston was ever in the claimant's house, or that the person in the claimant's house had any intention of carrying out a robbery of the respondent employer at that particular time. Claimant asserts in her motion that Gary Huddleston was arrested and convicted of a crime in Texas where he and a partner kidnaped a bank employee and her husband for the purpose of gaining entry into the bank. The fact that Gary Huddleston carried out a kidnaping with the intent to rob a bank in Texas does not prove that he was in the claimant's house on April 9, 2009, with the same intent. In Texas, Gary Huddleston had an accomplice, and there is no evidence of an accomplice in the present claim. Furthermore, at no time did the perpetrator in the present case ever state or reveal

an intent to rob the respondent employer when he was in the claimant's house or while she was running away from him. Moreover, there is no evidence that the claimant was actually performing employment services of evading a bank robbery when she ran from the intruder. Any conclusion that the existence of surveillance of all the bank branches of the respondent employer and an attack of the claimant in her home are related to an attempted bank robbery is mere conjecture and speculation on this evidence alone. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991); Dena Constr. Co., et al v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979); Arkansas Methodist Hosp. v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

Therefore, while I agree that this case should not be remanded to the Administrative Law Judge, I must dissent from the majority's admission of additional evidence on appeal.

KAREN H. MCKINNEY, Commissioner