

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G305023

JOHN W. BOGGS,
EMPLOYEE

CLAIMANT

ARKANSAS DEPARTMENT OF
TRANSPORTATION, EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 13, 2022

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

Claimant represented by the HONORABLE EDDIE H. WALKER, JR.,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE CHARLES H. McLEMORE,
JR., Attorney at Law, Little Rock, Arkansas.

ORDER

An administrative law judge filed an opinion on December 17, 2021 and found that the claimant proved he was entitled to stem cell injections recommended by Dr. Tomecek. The respondents filed a timely notice of appeal to the Full Commission. The respondents have now filed two separate motions for introduction of "newly-discovered evidence." The Full Commission grants the respondents' motions.

The respondents seek to introduce into the record reports from Dr. Tomecek dated March 3, 2022 and April 13, 2022. Dr. Tomecek stated in part on March 3, 2022, "I told him today that I no longer believe that stem cell injections will be effective for him." Dr. Tomecek stated in part on April

13, 2022, “He is very interested in stem cell injections and think they would definitely benefit his problem.”

A motion to present new evidence should be granted where the movant was diligent, where the new evidence is relevant, is not cumulative, and would change the result. *Hargis Transport v. Chesser*, 87 Ark. App. 301, 190 S.W.3d 309 (2004), citing *Mason v. Lauck*, 232 Ark. 891, 340 S.W.2d 575 (1960).

In the present matter, the Full Commission finds that the respondents were diligent in presenting the newly-discovered evidence. In addition, we find that the new evidence is relevant, not cumulative, and would change the result of the case. Dr. Tomecek appears to be unsure and inconsistent with regard to whether the claimant will benefit from stem cell injections.

Therefore, the Full Commission grants the respondents’ motions to introduce newly-discovered evidence. We remand to the administrative law judge for additional proceedings on the issue the parties agreed to litigate, “1. Claimant’s entitlement to stem cell injections by Dr. Tomecek.” The Full Commission directs the administrative law judge to leave the record open for a reasonable time in order for the claimant to submit additional evidence in accordance with *Hargis Transport, supra*.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

M. SCOTT WILLHITE, Commissioner