

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G900188

CLAYTON McWILLIAMS, CLAIMANT
EMPLOYEE

ARKANSAS STATE POLICE, RESPONDENT
EMPLOYER

PUBLIC EMPLOYEE CLAIMS DIVISION, RESPONDENT NO. 1
INSURANCE CARRIER/TPA

DEATH & PERMANENT TOTAL RESPONDENT NO. 2
DISABILITY TRUST FUND

OPINION FILED SEPTEMBER 20, 2023

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

Claimant represented by the HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondents No. 1 represented by the HONORABLE CHARLES H. McLEMORE, JR., Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

ORDER

This matter comes before the Full Commission on the Respondent's Motion to Introduce Newly Discovered Evidence. The Respondent seeks to supplement the record with vocational rehabilitation reports from Systemedic and TEEM Academy. After considering the Respondent's motion, the Claimant's response thereto, and all other matters properly before the Commission, we find that the Respondent's motion should be granted.

Ark. Code Ann. § 11-9-705(c)(1) provides that all evidence must be submitted at the initial hearing on the claim. In order to submit new evidence, the movant must show that the new evidence is relevant; that is not cumulative; that it would change the result of the case; and that the movant was diligent in presenting the evidence to the Commission. *Fred's Stores of Tennessee, Inc. v. Melvin Ely*, 2012 Ark. App. 238.

In the present case, the Respondent argues that the evidence is relevant as it speaks to the Claimant's willingness to return to work. A claimant's lack of interest in pursuing employment with his employer, and negative attitude in looking for work are impediments to the Commission's ability to assess wage loss disability. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (Ark. App. 2005). Therefore, the evidence is relevant to the issue at hand.

This evidence is not cumulative as it may present new insight on the Claimant's attitudes towards working that differ from those opined on previously.

Additionally, the evidence may change the result of the case. As stated above, a claimant's lack of interest in pursuing employment with his employer, and negative attitude in looking for work are impediments to the Commission's ability to assess wage loss disability. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (Ark. App. 2005). A claimant's

lack of interest, however, is not a complete bar. *Drake v. Sheridan Sch. Dist.*, 2013 Ark. App. 150, 2013 Ark. App. LEXIS 154. This evidence may change the case at hand, as the ALJ opined directly on Claimant's willingness to re-enter the workforce after a traumatic brain injury.

The Respondent was diligent in presenting the evidence to the Commission. The additional evidence was not available to the Respondent at the time of the hearing with the ALJ. The Respondent then filed the motion at hand in an attempt to rectify this issue.

Therefore, after considering the Respondent's motion, the Claimant's responses thereto, and all other matters properly before the Commission, we grant the Respondent's motion to Introduce Newly Discovered Evidence and will assess the proper weight of such evidence during review of the substantive issues of the case.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

MICHAEL R. MAYTON, Commissioner