IN THE COURT OF APPEALS 04/23/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CC-00637 COA

JUDY MONROE

APPELLANT

v.

BROADWATER BEACH HOTEL AND GRANITE STATE INSURANCE COMPANY

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. KOSTA N. VLAHOS

COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT (2D DIST.)

ATTORNEY FOR APPELLANT:

JAMES K. WETZEL

ATTORNEY FOR APPELLEE:

WILLIAM DUKE BLAKESLEE

NATURE OF THE CASE: WORKERS' COMPENSATION

TRIAL COURT DISPOSITION: ORDER OF MWCC AFFIRMED

BEFORE BRIDGES, P.J., BARBER, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Judy Monroe appeals affirmance of an order of the Mississippi Workers' Compensation Commission. Specifically, she contends that the findings of the commission are not supported by the substantial evidence as they relate to the date of her maximum medical improvement, the absence of an award

for permanent total disability benefits, and the compensability of a back condition. We affirm.

STATEMENT OF FACTS

The relevant facts are amply set out in the supreme court's consideration of this case four years ago in *Monroe v. Broadwater Beach Hotel*, 593 So. 2d 26 (Miss. 1992). Accordingly, we dispense with a factual recitation other than to incorporate them where relevant into our discussion of the issues.

DISCUSSION

Monroe suffered a knee injury at her employment in 1984 and later developed problems in her back. She was subsequently injured in an automobile accident that was not connected with her employment. Monroe appealed from the order of the Workers' Compensation Commission that granted her some but not all the relief she was seeking. In 1992, the supreme court held that the administrative judge had erred in making findings on all issues. The administrative judge had stated that the hearing would be limited to certain narrow questions. Thus the claimant did not have a reason to put on all evidence concerning her claim. The court reversed and remanded for further proceedings.

We now have the case after further proceedings in the commission, resulting in a decision that was then affirmed by the circuit court. The commission found that Monroe had suffered a compensable injury while cleaning a pool at the Broadwater Beach Hotel on July 25, 1984, and that all medical treatment arising from that accident should be paid. Monroe was found to be entitled to temporary total disability benefits as a result of the knee injury to be paid for the period of July 25, 1984 to February 24, 1986. Permanent partial disability benefits were ordered to be paid for the statutory maximum period of 175 weeks for a 100% disability to her knee.

Monroe disputes that her back condition was unrelated to her employment and solely the result of the automobile accident. She also argues that maximum medical recovery did not occur on February 24, 1986 as found by the commission, but on April 23, 1992. A consequence of this earlier date is that Monroe did not receive temporary total disability benefits for the intervening period, 1986-1992. Finally, Monroe complains that the maximum of 175 weeks for benefits resulting from the 100% loss of a scheduled member -- her right, lower extremity -- should instead have been 450 weeks applicable to permanent loss of wage-earning capacity.

As to all issues in this case, we are guided by the supreme court's instruction that findings of the Mississippi Workers' Compensation Commission are entitled to great deference and are not subject to reversal unless there is an absence of substantial evidence to support them. *Vance v. Twin River Homes, Inc.*, 641 So. 2d 1176, 1180 (Miss. 1994) (citations omitted); *Barnes v. Jones Lumber Co.*, 637 So. 2d 867, 869 (Miss. 1994) (citations omitted).

1. Timing Maximum Medical Improvement

After providing a significant amount of treatment, including repeated surgeries to Monroe's right knee, her primary orthopedist concluded that maximum medical improvement ("MMI") was reached on February 24, 1986, and she was discharged from his care. However, Monroe was also seen by two other orthopedists, and their treatment included surgery off and on until February 7, 1990.

Monroe quotes the testimony of one of these doctors as support for the conclusion that, as of that doctor's deposition, she had not reached MMI. In addition, Monroe cites the commission's finding that she had "not worked or been able to work since . . . the time of her industrial injury" as the equivalent of a finding that she had not reached MMI even at the time of the commission's order.

Our review of the record, however, demonstrates that there is substantial evidence to support the commission's finding that MMI had been reached on February 25, 1986. The deposition testimony of the doctor cited by Monroe is ambiguous at best, and a permissible interpretation by the commission was that the doctor was not testifying that MMI had not been reached. As to the continued care by the other later orthopedist, his testimony concerning MMI appears to relate solely to Monroe's back condition arising from an automobile accident. We are left, then, with reconciling the findings of Monroe's primary orthopedist with the occurrence of knee surgeries following his assigned date of MMI.

There is substantial evidence in the record to allow the commission to reach the conclusion that the surgeries were attributable to Monroe's automobile accident and not her work injury. Monroe testified that she further injured her knee in the automobile accident. The primary orthopedist testified that the removal of Monroe's knee cap was necessitated by her injuries in the automobile accident. The only other orthopedist to treat Monroe who had knowledge of her automobile accident concluded that the accident was the *coup de grace* for Monroe's knee. Monroe's other physicians did not know about this history. Accordingly, the commission was entitled to give more credence to the opinions of the fully informed orthopedists. Its finding of maximum medical improvement was supported by substantial evidence. *See Jordan v. Hercules, Inc.*, 600 So. 2d 179, 182 (Miss. 1992).

2. Availability of Permanent Total Disability Benefits

Monroe argues that since the commission concluded that she had lost 100% of the use of her right lower extremity, she is entitled to recover permanent total disability benefits as opposed to the permanent partial disability benefits awarded. "Permanent total" benefits afford the claimant with 450 weeks of disability payments and represent compensation for a complete inability to work. Miss. Code Ann. § 71-3-17(a) (1972). "Permanent partial" benefits, on the other hand, provide 175 weeks of disability benefits, based on a total disability to the right lower extremity that does not leave a claimant without an ability to work. *Id.* § 71-3-17(c)(2). Monroe cites *Smith v. Jackson Construction Co.*, 607 So. 2d 1119 (Miss. 1992), in support of her position.

Jackson Construction established a framework for deciding when a total disability to a scheduled member translates into a complete inability to work that should be compensated with permanent total disability benefits. A worker who suffers a total disability to a scheduled member is not limited to the scheduled member benefits *if* as a result of that disability, the worker is permanently and totally industrially disabled. *Jackson Constr. Co.*, 607 So. 2d at 1127-28. This did not undermine the normal rule: if the total loss of use of a scheduled member does not render the worker unable to work, then permanent partial disability benefits are the extent of compensation.

Jackson Construction was not a case in which the total disability attributed to the scheduled member was the result of a mixture of work-related and non-work-related accidents. Consistent with the statutory scheme and *Jackson Construction*, a claimant is not entitled to permanent total disability benefits, unless she has proved that she is completely unable to work and that the inability is a

consequence of a compensable injury.

A claimant has the burden of proving a causal relationship between her work injury and a degree of vocational disability. *Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9, 12 (Miss. 1994) (citations omitted). Monroe has failed to meet this burden to support a finding of permanent total disability benefits relating to her knee injury. While she testified to an inability to work, she did not relate that disability to her knee injury alone. In fact, the medical evidence is contrary to that position. Her physicians spoke of a combination of factors—the work injury, prior knee surgery, and the subsequent automobile accident—as creating Monroe's disability. One doctor spoke of the car accident as the *coup de grace*, ending most functional use of the knee. Others reported that, until the car accident, the knee was progressing well. Thus there was no medical testimony that she suffered a 100% disability because of her knee condition, much less that the knee condition was solely caused by her work injury. *Walker Mfg. Co. v. Cantrell*, 577 So. 2d 1243, 1248 (Miss. 1991) (citations omitted).

On this proof, the commission's decision to deny permanent total disability benefits is supported by the substantial evidence.

3. Compensability of Back Condition

Monroe's orthopedists who had been given her medical history including her automobile accident were unanimous that her back condition was solely attributable to that accident. Moreover, complaints of back problems did not arise until after the automobile accident. Lastly, the physicians' interpretation of the diagnostic imaging in this case strongly supports the conclusion that Monroe's back problems are unrelated to her employment at the Broadwater Beach Hotel. *Cawthon v. Alcan Aluminum Corp.*, 599 So. 2d 925, 928 (Miss. 1991).

Accordingly, we find the commission's conclusion regarding Monroe's back injury to be supported by substantial evidence.

THE JUDGMENT OF THE CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT OF HARRISON COUNTY IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

FRAISER, C.J., AND BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, AND PAYNE, JJ., CONCUR.

THOMAS, P.J., NOT PARTICIPATING.