

6/17/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 95-CC-01153 COA

STACY RENEE NAIL APPELLANT

v.

VARSITY UNIFORMS AND MICHIGAN

MUTUAL 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. C. E. MORGAN III

COURT FROM WHICH APPEALED: ATTALA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: C. ADEN MCDANIEL

ATTORNEY FOR APPELLEE: JOSEPH T. WILKINS

NATURE OF THE CASE: WORKER'S COMPENSATION

TRIAL COURT DISPOSITION: CIRCUIT COURT AFFIRMED MWCC'S FINDING OF 25% PERMANENT PARTIAL DISABILITY AND DENIAL OF PAYMENT FOR TREATMENT AT A FLORIDA PSYCHIATRIC HOSPITAL

MANDATE ISSUED: 7/8/97

BEFORE BRIDGES, C.J., COLEMAN, AND SOUTHWICK, JJ.

BRIDGES, C.J., FOR THE COURT:

Stacy Renee Nail (Nail) suffered an admittedly compensable injury on the job during her employment with Varsity Uniforms (employer/carrier) on March 9, 1992. The Administrative Law Judge (ALJ) granted Nail a 25% permanent partial impairment rating, but refused to require the employer/carrier to pay Nail's bill at a Florida psychiatric hospital. The Mississippi Worker's Compensation Commission (MWCC) affirmed the ALJ's findings. Nail appealed and the employer/carrier cross-appealed to the Attala County Circuit Court, which affirmed the decision of the MWCC. On appeal

to this Court, Nail presents the following issues:

I. WHETHER OR NOT THE TWENTY-FIVE PERCENT (25%) PERMANENT PARTIAL DISABILITY TO THE RIGHT ARM OF CLAIMANT SHOULD BE UPHELD.

II. WHETHER OR NOT THE COMMISSION ERRED IN DENYING PAYMENT OF MEDICAL EXPENSES TO DR. PATRICK MCLAIN AND THE CORAL RIDGE PSYCHIATRIC HOSPITAL.

The employer/carrier presents the following issues on cross-appeal:

I. THE CIRCUIT COURT ARBITRARILY AFFIRMED AN ORDER OF THE FULL COMMISSION AWARDING A TWENTY-FIVE PERCENT (25%) PARTIAL PERMANENT DISABILITY TO THE CLAIMANT BASED ON AN INJURY TO HER SHOULDER.

II. THE ORDER OF THE CIRCUIT COURT AFFIRMING THE FULL COMMISSION'S FINDING THAT THE SERVICES BY DR. MCLAIN AND THE CORAL RIDGE PSYCHIATRIC HOSPITAL WERE NOT NECESSARY FOR HER RECOVERY SHOULD BE UPHELD AS IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

III. THE CLAIMANT FAILED TO UTILIZE COMMISSION PROCEDURES IN SEEKING TREATMENT IN FLORIDA AND IS NOW ESTOPPED FROM SEEKING REIMBURSEMENT.

FACTS

Nail worked on an embroidery machine at Varsity Uniforms. While replacing a spool of thread, her hair got caught in the machine and her head was continually yanked down toward the machine. The hair on the right side of her head was torn out, and she suffered pain in her head, face and neck. Additionally, Nail complained of pain in her shoulder as a result of pushing against the machine to keep her head from striking it. At the time of the accident, a supervisor took Nail to the emergency room in Kosciusko. Nail was not seen at the emergency room, but was instead taken to her physician's office across the street from the hospital. Dr. Gary Holdiness treated Nail and released her to her mother's care.

Nail continued to see Dr. Holdiness and was referred to a local dentist, Dr. Myers, and a TMJ (temporomandibular joint disorder) specialist in Jackson, Dr. Paul Riley, because she was experiencing pain in her jaw. Additionally, she saw Dr. William Knight, a physical medicine and rehabilitation specialist in Jackson for muscle pain. Orthopaedic surgeon, Dr. Felix Savoie of Jackson, treated Nail for muscle pain in conjunction with physical therapist Celia Robson of Starkville. Dr. Savoie did not perform surgery, but treated Nail until September 1993, when he released her to return to work with no impairment. In February, 1994, Nail returned to Dr. Savoie at the request of her attorney to obtain an impairment rating. Dr. Savoie stated in his deposition that he used the AMA guidelines in reaching a thirteen percent (13%) impairment rating. However, 12% of the rating was due to crepitation, which Dr. Savoie stated is only noise made by bones rubbing together, and only 1% of the impairment rating was due to loss of motion.

Dr. Riley treated Nail for TMJ, providing various mouth pieces. Additionally, Dr. George May, oral

surgeon, performed surgery on Nail for her TMJ. Dr. Riley gave Nail a three percent (3%) impairment rating for the TMJ, but stated that he put no restrictions on Nail returning to work.

It is unclear why, but Nail also saw Dr. Patrick McLain, an addictionologist in Jackson. McLain diagnosed Nail with anorexia nervosa, secondary to TMJ. Anorexia is an eating disorder in which people refuse to eat and literally starve themselves because they want to lose weight and be extraordinarily thin. While Nail had lost approximately twenty pounds after the accident, she testified that she did not want to lose weight; she did not want to lose weight to be thin, and she wanted to eat, but had difficulty eating because of pain in her jaw. Dr. McLain, however, told Nail that if she did not go to the Coral Ridge psychiatric hospital in Florida to receive treatment, she would die. The Coral Ridge facility is not equipped for eating disorder patients, but is an alcohol and drug treatment center. Nail testified that she received a plane ticket to Florida in the mail but does not know who sent it to her.

Judy Hury Morgan (Morgan) is a certified rehabilitation counselor. She testified that she was asked to review Nail's medical records, talk with her doctors, look at job sites, and determine what positions would be appropriate for her. Nail returned to work at Varsity in July 1993. Morgan stated that she put a star for success on Nail's file because she was doing so well, and all the doctors agreed that everything looked good. Nail's boss at Varsity, Mr. Burnham was pleased with Nail's progress.

In July, however, Morgan reported that she learned of bills received by the carrier from Dr. McLain. Morgan stated that when she learned he was an addictionologist, she assumed that Nail's reason for seeing him was not work-related. However, when she realized that Dr. McLain wanted Nail to enter the psychiatric hospital in Florida, Morgan spoke to him to determine where closer to home Nail could receive whatever treatment he thought she needed. Morgan believed that Nail's problem was physical, not psychological, and Morgan was frustrated that Dr. McLain insisted on Nail's departure without any medical evaluation. Morgan told Dr. McLain that this treatment was not authorized on several occasions.

Dr. Wood C. Hiatt, a physician with a specialty in psychiatry, saw Nail on two different occasions in February 1994. He stated in his deposition that while Nail may have had a very mild case of depression, most of her discomfort was related to frustration with the worker's compensation process. According to Dr. Hiatt, Nail had no reason to see an addictionologist. Nail's problem was physical, not psychological. Dr. Hiatt stated that Nail did not have anorexia, nor did she need to be treated at a psychiatric hospital, especially one so far away from her small child and other family. Nail could and should have been treated in Jackson. She could have availed herself of any of the numerous specialists in Jackson to help her with the pain in her jaw.

After returning to work at Varsity, Nail continued to make the same, if not more, that she made prior to the accident. Nail eventually left Varsity and worked for Bluff Springs Printers. Nail left Bluff Springs due to certain working conditions unrelated to her injuries, and is now working as a secretary.

I. WHETHER OR NOT THE TWENTY-FIVE PERCENT (25%) PERMANENT PARTIAL DISABILITY TO THE RIGHT ARM OF CLAIMANT SHOULD BE UPHELD.

I. THE CIRCUIT COURT ARBITRARILY AFFIRMED AN ORDER OF THE FULL

COMMISSION AWARDING A TWENTY-FIVE PERCENT (25%) PARTIAL PERMANENT DISABILITY TO THE CLAIMANT BASED ON AN INJURY TO HER SHOULDER.

We will address the appeal and the cross-appeal issues together. The ALJ found that Nail suffered a twenty-five (25%) partial permanent occupational loss to her right arm. The ALJ cites Dr. Savoie's thirteen percent (13%) medical impairment rating, and also notes the lingering physical problems associated with her shoulder injury. Nail testified that she can no longer do any heavy lifting due to her shoulder injury, in addition to certain household chores:

A. Right. I don't lift anything above my head. Anything that's heavy I don't lift it above my head.

Q. Are there things around home that you can't do that you used to do before this injury?

A. Yeah, there is. The biggest problem I have -- mopping is one of the biggest problems that I have with the constant pushing. . . .I don't push against anything.

Nail testified that she could no longer change the oil in her car, an activity that she used to do regularly. She also could not hold her little girl anymore due to the injury.

The standard of review for appellate review of compensation claims is narrow at best. It is well settled that "[t]he Commission is the ultimate fact-finder." *Hardin's Bakeries v. Dependent of Harrell*, 566 So. 2d 1261, 1264 (Miss. 1990). "Accordingly, the Commission may accept or reject an administrative judge's findings." *Id.* In the case *sub judice*, the Commission affirmed the ALJ's finding of a twenty-five percent (25%) occupational loss due to Nail's shoulder injury. Our standard of review is set forth in *Delta CMI v. Speck*:

Under settled precedent, courts may not hear evidence in compensation cases. Rather, their scope of review is limited to a determination of whether or not the decision of the commission is supported by the substantial evidence. If so, the decision of the commission should be upheld. The circuit courts act as intermediate courts of appeal. The Supreme Court, as the circuit courts, acts as a court of review and is prohibited from hearing evidence or otherwise evaluating evidence and determining facts; . . . "[W]hile appeals to the Supreme Court are technically from the decision of the Circuit Court, the decision of the commission is that which is actually under review for all practical purposes."

As stated, the substantial evidence rule serves as the basis for appellate review of the commission's order. Indeed, the substantial evidence rule in workers' compensation cases is well established in our law. Substantial evidence, though not easily defined, means something more than a "mere scintilla" of evidence, and that it does not rise to the level of "a preponderance of the evidence." It may be said that it "means such relevant evidence as reasonable minds might accept as adequate to support a conclusion. Substantial evidence means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred."

Delta CMI v. Speck, 586 So. 2d 768, 772-73 (Miss. 1991) (citations omitted). "This Court will reverse an order of the Workers' Compensation Commission only where such order is clearly erroneous and contrary to the overwhelming weight of the evidence." *Mitchell Buick, Pontiac & Equip. Co. v. Cash*, 592 So. 2d 978, 980 (Miss. 1991) (citations omitted). In light of Nail's

demonstrated loss of complete use of her right arm, and the impairment stated by her doctor, we are unable to say that the Commission's order is against the overwhelming weight of the evidence.

II. WHETHER OR NOT THE COMMISSION ERRED IN DENYING PAYMENT OF MEDICAL EXPENSES TO DR. PATRICK MCLAIN AND THE CORAL RIDGE PSYCHIATRIC HOSPITAL.

We will address both parties' contentions here. The Commission affirmed the following finding of the ALJ:

The services rendered by both Dr. McLain and the Coral Ridge Psychiatric Hospital were not required by the nature of Nail's injury and the process of her recovery. The employer and carrier provided her with various specialists and have at all times exhibited cooperation in finding appropriate treatment for her problems. Neither Dr. Riley's notes nor his deposition mentions a referral to Dr. McLain. The carrier, through Judy Hury Morgan, notified Dr. McLain that his treatment was unauthorized. The whole Coral Ridge Psychiatric Hospital scenario--the videotape at Dr. McLain's, the round-trip plane ticket, and so forth--is most peculiar. There is no reason in the world for Nail to have gone farther than Jackson, Mississippi, approximately ninety miles from her home, for treatment, and the employer and carrier are not responsible for any of Dr. McLain's or the hospital's charges.

We review the Commission's decision denying payment to Dr. McLain and the Coral Ridge Hospital under the same standard as stated above. It is evident from the record that Nail did not need psychiatric help. What is not as clear, but certainly suspected, is that Dr. McLain somehow bamboozled Nail into treatment at an expensive, private facility hundreds of miles from her home. Nail's ailments were physical and could and should have been treated in her home state. We cannot say that the Commission's finding on this issue was erroneous or contrary to the overwhelming weight of the evidence. This issue is meritless.

III. THE CLAIMANT FAILED TO UTILIZE COMMISSION PROCEDURES IN SEEKING TREATMENT IN FLORIDA AND IS NOW ESTOPPED FROM SEEKING REIMBURSEMENT.

The employer/carrier also contends that Nail is estopped from seeking reimbursement for failure to follow MWCC procedures. We need not discuss this issue as it has been found that Nail was not entitled to the psychiatric treatment.

THE JUDGMENT OF THE ATTALA COUNTY CIRCUIT COURT AFFIRMING THE DECISION OF THE MISSISSIPPI WORKER'S COMPENSATION COMMISSION IS AFFIRMED. COSTS OF THIS APPEAL TAXED TO APPELLANT.

McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.

