

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-CC-00914 COA**

**GEORGIA-PACIFIC CORPORATION**

**APPELLANT**

**v.**

**JACKLYN M. CAIN**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,  
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	07/15/96
TRIAL JUDGE:	HON. FORREST A. JOHNSON, JR.
COURT FROM WHICH APPEALED:	AMITE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	TIMOTHY W. LINDSAY
ATTORNEY FOR APPELLEE:	WILLIAM S. GUY
NATURE OF THE CASE:	CIVIL - WORKER'S COMPENSATION
TRIAL COURT DISPOSITION:	REVERSED COMMISSION'S FINDINGS FOR APPELLEE
DISPOSITION:	REVERSED - 10/21/97
MOTION FOR REHEARING FILED:	November 5, 1997
CERTIORARI FILED:	
MANDATE ISSUED:	3/30/98

BEFORE BRIDGES, C.J., HERRING, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

**PROCEDURAL HISTORY**

The administrative law judge denied compensable benefits to the claimant, Jacklyn M. Cain, other than temporary total disability and medical expenses incurred as a result of her on the job injuries. The Mississippi Workers' Compensation Commission (Commission) affirmed the decision of the administrative law judge through its order, dated August 12, 1992. Feeling aggrieved, the claimant lodged her petition for review before the Circuit Court of Amite County. Finding that substantial evidence did not exist to warrant the findings of the administrative law judge and the Commission, the circuit court reversed. Georgia Pacific now appeals the circuit court's decision. We find that substantial evidence existed to support the previous findings of the administrative law judge and the Commission and that their decisions were not arbitrary or capricious. We therefore reverse the findings of the circuit court and reinstate the Commission's order.

## FACTS

Jacklyn Cain slipped on transmission fluid that had spilled on the floor of the work place, striking her back and head against the floor. This accident occurred on May 13, 1988. Subsequently to this, Cain was taken to the hospital in Liberty, Mississippi, then she was sent to Southwest Mississippi Regional Medical Center for further testing.

The employer provided medical treatment and temporary total disability benefits until December 27, 1988. On that date, the claimant was released to return to work without restriction by Dr. Lawrence Mahalak, a neurologist.

The claimant did return to work and continued working until April 26, 1989, the date she was terminated from her employment with Georgia Pacific. After receiving a series of reprimands, the first of which was documented in April of 1983 by her supervisor, Cain was terminated for habitual tardiness. Following this termination, Cain became severely depressed and was subsequently admitted into St. Dominic's Hospital in Jackson, Mississippi.

In her Petition to Controvert, the claimant contended that her injury on May 13, 1988, caused or contributed to her severe depression on April 26, 1989. Because the salient issue concerns psychological damage, one pertaining to the mental function, a review of both lay and medical testimony is necessary to clarify the circumstances surrounding this case.

Several of the claimant's co-employees testified at the hearing. William Handy, called by the claimant, testified that the claimant's personality and behavior were unchanged after she returned to work after the accident. He also testified that she performed her work at the level she had before the accident. Two other co-workers, Roy Weathersby and Jimmy Brown, testified. Weathersby testified that the claimant was not so "full of fun" after the accident. Jimmy Brown testified that the claimant failed to speak to everyone as she had before, but he did state under cross-examination that he thought there was no problem with her work performance after her return to work.

The real controversy in this case centers on conflicting medical testimony. Drs. Charlton Stanley and William Gillespie found that the April, 1989, termination was related to the May, 1988 injury. Drs. Lawrence Mahalak and Robert Ritter found that the May, 1988, injury did not contribute to the April, 1989 event.

A review of claimant's past medical records is pertinent to this litigation. In 1985, Dr. Alva Dillon diagnosed the claimant as having severe duodenal ulcer disease and anxiety. His medical evaluation states that the claimant suffered from chronic peptic ulcer disease and has been seen off and on in the past for the same problem. He also stated that she had a large pyloric channel ulcer with bleeding seen previously and had similar symptoms at the time of his report in August of 1985. Dr. Dillon saw this patient a month later. The claimant's chief complaint was abdominal pain. More precisely in 1985 Dillon reported as follows:

**HISTORY OF THE PRESENT ILLNESS:** This is a 36 year old lady with active peptic ulcer disease for the last 3 to 4 years. It has been worse over the past several weeks. The pain comes and goes. She also stated that she had recently stopped smoking, though this is doubtful. The pain now has returned, more severe over the past several weeks, and she is admitted for further

evaluation and diagnosis.

Again, on October 16, 1985, Dillon stated in yet another medical description of his patient a final diagnosis which indicated that Cain suffers from a pyloric channel ulcer, with refractory abdominal pain and anxiety depression.

On May 13, 1988, the date of her fall, we find that after her treatment at the Liberty, Mississippi hospital, Cain went to Southwest Mississippi Regional Medical Center in McComb for further examination. Dr. Dillon examined her and diagnosed Cain as having sustained head trauma and a shoulder injury. The CT scan of Cain showed no evidence of a subdural hematoma. Dillon referred Cain to Dr. Mahalak, a neurologist practicing in Jackson, Mississippi.

Mahalak testified that he first saw claimant on July 5, 1988. He diagnosed Cain as having headaches of an undetermined etiology. An EEG and brain scan produced normal test results. Based upon his experience and testing, he concluded that after his follow up examination of the claimant, there was no real organic basis for Cain's complaints.

Dr. Mahalak did not see Cain again until December 27, 1988. On that date, he released her to return to work and concluded that she had reached maximum medical recovery. Mahalak further noted that the claimant suffered from no permanent disability, then referred her to Dr. Stanley, a psychologist.

The testimony from Dr. Mahalak's deposition is beneficial here.

Q. It is my understanding that it is your opinion that the treatment which you have provided Ms. Cain was related to the industrial injury of May 13, 1988 insofar as it concerns your treatment from July 5, 1988 through December 27, 1988, is that correct?

A. Yes, this is true.

Q. And any treatment you furnished after that date, in your opinion, was not related to the industrial [injury] of May 13?

A. Looking back over this, I don't see how I could relate it.

Mahalak again saw Cain on April 27, 1989. Cain had been fired the day before and relayed this fact and the fact that she wanted to end her life and the lives of several others in management at Georgia Pacific. Believing the threats to be real, Mahalak had Cain admitted to St. Dominic's Hospital for psychiatric treatment and observation.

Cain's attending physician at St. Dominic's was Dr. Gillespie. From his initial consultation with the claimant on April 27, 1989, he surmised that Cain was withdrawn, sullen and depressed, and suffered from depressive neurosis and tension vascular headaches. Cain remained interned in the hospital for a period of seventy days. Thereafter, she was released, but Dr. Gillespie noted that she was not to immediately return to work due to her depression. On October 17, 1989, Dr. Gillespie released her from his care but testified that at that time, Cain was not to work under heavy stress or pressure. Dr.

Gillespie did indicate that Cain's mental condition did *not* become disabling until she was fired from her employment on April 26, 1989.

Dr. Charles Stanley, a forensic psychologist, evaluated Cain in August 1988. He interpreted her condition as one indicating major depression. He also stated that she suffered from mild brain damage due to her accident. From his conversation with the claimant, the doctor's interpretation was that she was not malingering, but he did state that one might think from the vocabulary she used that she was a chronic complainer. In a similar vein, based upon reasonable psychological certainty, Dr. Stanley noted that the claimant was leading a rather ordinary life, with normal problems, like everyone else prior to the accident. Likewise, it was his opinion that she suffered a concussion in that accident and was suffering from the after effects at the time of the deposition.

Finally, Dr. Robert Ritter examined Cain on June 25, 1990. Along with his personal observation of the claimant, Dr. Ritter was furnished with depositions of different doctors and also depositions from some lay individuals. Dr. Ritter had Dr. Billy Fox do a psychological evaluation on the claimant. From this evaluation, Fox concluded that the claimant suffered from a somatization disorder and paranoid personality disorder. Dr. Ritter also recalled the claimant had an IQ of 85. He diagnosed Cain as having dysthymic depression, a condition caused from her being terminated from her job, rather than a condition caused by industrial injury.

Q. Dr. Ritter, in your opinion was the hospitalization at St. Dominic Hospital from April 1989 through July 1989 proximately caused or contributed to by the industrial injury of which she gave you a history?

A. I'm of the opinion there was no connection.

Q. Now, I'm sure in reviewing the depositions you noted where Dr. Stanley was of the opinion that she had an organic brain syndrome; is that correct?

A. I believe Dr. Stanley was of the opinion she had a post-concussion syndrome, which is a type of an organic brain syndrome.

Q. Do you have an opinion as to whether she suffers from such a condition?

A. I'm of the opinion that this lady never had a concussion.

Dr. Ritter further asserts that it is his opinion that Ms. Cain does not suffer from any permanent physical or mental impairment as a result of the industrial injury of May 13, 1988. Drs. Ritter and Mahalek, two of the three physicians who testified, indicated that they could not find any organic or physical basis for the claimant's headaches and other complaints. Ritter also points out that an MRI is much more reliable in detecting brain damage than psychological testing. Only Dr. Stanley, who is not a physician, testified that there may be an organic basis for Cain's complaint. More precisely, Dr. Stanley stated that Cain's mental problems were the result of two traumatic events: (1) the work related injury and (2) her termination by Georgia Pacific.

## ARGUMENT AND DISCUSSION OF THE LAW

### I. STANDARD OF REVIEW

The standard of review utilized by this Court when considering an appeal of a decision of the Workers' Compensation Commission is well settled. The Mississippi Supreme Court has stated that "[t]he findings and order of the Workers' Compensation Commission are binding on the Court so long as they are 'supported by substantial evidence.'" *Vance v. Twin River Homes, Inc.*, 641 So. 2d 1176, 1180 (Miss. 1994) (quoting *Fought v. Stuart C. Irby, Co.*, 523 So. 2d 314, 317 (Miss. 1988)). An appellate court is bound even though the evidence would convince that court otherwise if it were instead the ultimate fact finder. *Barnes v. Jones Lumber Co.*, 637 So. 2d 867, 869 (Miss. 1994). This Court will reverse only where a Commission order is clearly erroneous and contrary to the weight of the credible evidence. *Vance*, 641 So. 2d at 1180. *See also Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9, 12 (Miss. 1994). "This Court will overturn a [C]ommission decision only for an error of law . . . or an unsupportable finding of fact." *Georgia Pacific Corp. v. Taplin*, 586 So. 2d 823, 826 (Miss. 1991) (citations omitted). Therefore, this Court will not overturn a Commission decision unless it finds that the commission's decision was arbitrary and capricious. *Id.* *See also Walker Mfg. Co. v. Cantrell*, 577 So. 2d 1243, 1247 (Miss. 1991) (stating that where the court finds credible evidence supporting a commission decision, it cannot interfere with that decision any more than with a case from any other administrative body).

Under this standard, this Court must determine whether there was substantial evidence connecting Cain's injury of May 13, 1988 with subsequent psychological problems she experienced, or proof that the employer successfully overcame any evidence that Cain did suffer psychologically from the injury sustained while working on the job.

We believe the administrative law judge and the full Commission correctly applied the law in finding that no connection existed between the injury and Cain's psychological questions. We do not believe that the administrative law judge or the full Commission abused their discretion in the fact finding process. Thus, we uphold the decision of the Commission and reverse the judgment of the circuit court.

## II. ANALYSIS OF THE ISSUE PRESENTED

### 1. WHETHER THE CIRCUIT COURT OF AMITE COUNTY ERRED IN REVERSING THE ORDER OF THE ADMINISTRATIVE LAW JUDGE AND MISSISSIPPI WORKERS' COMPENSATION COMMISSION.

Mississippi statutory law states that in worker's compensation matters, an injury means "accidental injury or accidental death arising out of and in the course of employment without regard to fault which results from an untoward event or events, if contributed to or aggravated or accelerated by the employment in a significant manner." Miss. Code Ann. § 71-3-3 (b) (Rev. 1995). The Mississippi Supreme Court has held that the claimant has the burden of proving by a "fair preponderance of the evidence" the following elements: " (1) an accidental injury, (2) arising out of and in the course of employment, and (3) a causal connection between the injury and the death or claimed disability." *Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9, 13 (Miss. 1994) (citations omitted). The court stated further that "once the claimant makes out a prima facie case of disability, the burden shifts to the employer." *Id.* (citations omitted).

The medical records, testimony, and evidence revealed that the claimant was treated for anxiety depression well before the occupational accident in May of 1988. Dr. Mahalak testified that he could not relate any subsequent psychological treatment to the May 13, 1988, injury and had released the claimant on December 27, 1988, unconditionally and without any restrictions as a result of the injury occurring on May 13, 1988. Further, Dr. Ritter expressed the opinion that there was no causal connection between the accident of May, 1988, and the claimant's release from work April 26, 1989. The claimant simply failed to sufficiently prove that any subsequent psychological problems, and specifically, her psychiatric treatment at St. Dominic's beginning April 27, 1989, were causally connected to the accident of May 13, 1988. The weight of the evidence shows that Cain's disabling mental condition was caused by the termination of her employment rather than her industrial injury of May 13, 1988. This Court will reverse only where a Commission order is clearly erroneous and contrary to the weight of the credible evidence. *Vance*, 641 So. 2d at 1180. *See also Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9, 12 (Miss. 1994). The circuit court was in error for overruling the Commission.

### III. CONCLUSION

The Commission's order is supported by substantial evidence, thus the circuit court is bound by the order. The Commission is the finder of fact, and our hands are bound by the substantial evidence rule. In Cain's case, the Circuit Court of Amite County failed to apply the appropriate evidential standard and reversed the Commission's order. After reviewing the record, we are satisfied that the Commission's order was undergirded by substantial evidence, and the circuit court erred in reversing.

**THE JUDGMENT OF THE CIRCUIT COURT OF AMITE COUNTY IS REVERSED AND THE ORDER OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION IS REINSTATED. ALL COST OF THIS APPEAL ARE TAXED TO THE APPELLEE.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, AND SOUTHWICK, JJ., CONCUR.**