

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CC-00852 COA**

SILVER OAKS, INC., MISSISSIPPI **APPELLANT**
MANUFACTURERS' ASSOCIATION WORKERS'
COMPENSATION GROUP AND ADJUSTCO, INC.

v.

JAMES MICHAEL LEWIS **APPELLEE**

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

DATE OF JUDGMENT:	07/01/96
TRIAL JUDGE:	HON. WILLIAM R. LAMB
COURT FROM WHICH APPEALED:	UNION COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	KEITH R. RAULSTON M. CHRISTINE CROCKETT
ATTORNEY FOR APPELLEE:	K. HAYES CALLICUTT
NATURE OF THE CASE:	CIVIL - WORKER'S COMPENSATION
TRIAL COURT DISPOSITION:	FINDING OF AMOUNT OF AVERAGE WEEKLY WAGE AFFIRMED; FINDING OF MAXIMUM MEDICAL RECOVERY ON MARCH 30, 1994 REVERSED
DISPOSITION:	REVERSED - 11/4/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/25/97

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

HERRING, J., FOR THE COURT:

This appeal involves a claim for workers' compensation benefits as a result of an accident suffered during the scope of his employment by the Appellee, James Michael Lewis, on March 12, 1993. The Workers' Compensation Commission ruled that the injury suffered by Lewis was compensable but that he reached maximum medical recovery on March 30, 1994. The Circuit Court of Union County, Mississippi, reversed and ordered that Lewis be provided workers' compensation benefits for temporary total disability until such time as Lewis reached maximum medical recovery. Silver Oaks, Inc. was the former employer of the Appellee. It now appeals the decision of the Circuit Court of Union County to this Court. For the reasons stated in this opinion, we reverse the decision of the

circuit court and reinstate the decision of the Workers' Compensation Commission.

I. THE FACTS

James Michael Lewis was injured during the scope of his employment with Silver Oaks, Inc., a Mississippi corporation, on Friday, March 12, 1993. While he was delivering a shipment of leather fabrics to West Point, Mississippi during a snow storm, he slipped on the ice that had formed on his delivery vehicle's footrest when getting out of the vehicle. As Lewis fell to the ground, he twisted his ankle and suffered what was diagnosed the next day to be a bad sprain. The Appellee's supervisor at Silver Oaks was his brother, Jimmy Lewis, and the Appellee reported the injury to him on that same day. Dr. Glenn Bennett, the emergency room physician at Baptist Memorial Hospital in New Albany, Mississippi, was the first physician to treat James Michael Lewis, and this treatment occurred two days after the injury on March 14, 1993. Lewis had attempted to treat himself by putting ice on his injured foot, without success. As stated above, Dr. Bennett found no fractures of the foot or ankle but determined that the Appellee had a bad sprain. Lewis was given a brace for his ankle and medication for pain. He was then referred to Dr. Barbara Goodman, who advised Lewis to take six weeks off from work in order to allow his ankle to heal. Against Dr. Goodman's advice, he returned to work on May 27, 1993. However, he was terminated later that day by Larry Fruge, the President of Silver Oaks, who testified that he observed Lewis urinating off of a loading dock behind the Silver Oaks plant building. Fruge also stated that he was not aware of the Appellee's workers' compensation claim until after he had terminated Lewis. Lewis testified that he unsuccessfully sought other employment after being terminated and continued to suffer from severe pain.

At the hearing before the administrative law judge, the depositions of three physicians, Dr. Fred Sage, Dr. Stephen Shirley, and Dr. Peter Carnesale, were admitted into evidence. Dr. Sage saw Lewis on August 13, 1993. He testified that in his opinion, Lewis suffered from a condition known as Reflex Sympathetic Dystrophy (RSD). He further stated that Lewis had not yet reached maximum medical recovery and was in need of further treatment. Dr. Shirley, a partner of Dr. Goodman and a general practitioner, first saw Lewis on January 18, 1994. He agreed with Dr. Sage and stated that he felt that Lewis was still unable to work but could improve with further treatment. Under cross-examination, both Sage and Shirley admitted that their diagnoses were based largely upon the Appellee's statements that he was in great pain. In other words, their diagnoses were based largely upon subjective findings. The main *objective* findings leading to the conclusion that Lewis was suffering from RSD were minor discoloration of the right foot and temperature variances between the Appellee's injured foot and his uninjured foot.

James Michael Lewis was examined on March 30, 1994, by Dr. Carnesale, a general orthopedic surgeon and one of Dr. Sage's medical partners at the Campbell Clinic in Memphis, Tennessee, who determined that Lewis was not suffering from RSD and had in fact reached maximum medical recovery at some time prior to March 30, 1994. Dr. Carnesale reviewed the Appellee's medical records, took x-rays of his foot and ankle, and performed a physical examination of Lewis. Dr. Carnesale found no objective symptoms relating to RSD. In his medical report, he stated that "[t]he patient restricts motion about the foot and ankle such that he will dorsiflex about 10°, plantarflex approximately 30°, invert 30% normal, and evert 30% normal. Interestingly, this gentleman will come to a full squat with the foot flat on the floor indicating that he has greater dorsiflexion than he is willing to demonstrate for me." Dr. Carnesale pointed out in his report that the Appellee's injured

foot was neither swollen, discolored, nor of a different temperature than his other foot.

In her written decision, the administrative law judge stated that "Dr. Shirley, family practitioner in New Albany, was still seeing Lewis and prescribing various medications for him, but Dr. Shirley based his opinions regarding Lewis's chronic pain on Lewis's subjective complaints of pain which were not supported by Dr. Carnesale's more specialized, objective findings." The administrative law judge went on to hold that "Dr. Shirley's opinion that Lewis is occupationally disabled because of a chronic pain situation with his foot is not compelling in light of Dr. Carnesale's findings." Based on these and other findings, the administrative law judge ruled that Lewis reached maximum medical recovery on March 30, 1994.

The Workers' Compensation Commission affirmed the decision of the administrative law judge, but the circuit court judge of Union County reversed the ruling of the Commission. The circuit court held that the findings of the administrative law judge and of the Commission were "contrary to the facts, contrary to the law, and contrary to the overwhelming weight of the evidence," and explained that their findings were based solely on the testimony of Dr. Carnesale, while all of the other physicians who treated Lewis believed that he continued to suffer from RSD. The circuit court further stated that "[t]his Court fails to see any higher degree of competency of Dr. Carnesdale [sic] than that of Dr. Fred Sage, especially when dealing with RSD, which according to all testimony is a neurological disorder rather than an orthopedic condition." The circuit court then ruled that Lewis was entitled to receive benefits for temporary total disability and medical services and supplies until he reached maximum medical recovery. Silver Oaks now appeals to this Court.

II. THE ISSUE

Silver Oaks cites one issue for consideration by this Court as follows:

WHETHER THE CIRCUIT COURT ERRED IN FAILING TO AFFIRM THE DECISION OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION, WHICH WAS SUPPORTED BY CREDIBLE EVIDENCE, AND WHETHER THE CIRCUIT COURT ERRED IN SUBSTITUTING ITS OPINION OF THE FACTS FOR THE WELL SUPPORTED FACTUAL FINDING OF THE COMMISSION.

III. ANALYSIS

It is well settled in Mississippi that in workers' compensation cases the Workers' Compensation Commission is the ultimate finder of fact, and its findings are subject to normal deferential standards of review. *Natchez Equip. Co., Inc. v. Gibbs*, 623 So. 2d 270, 273 (Miss. 1993). The findings of the Workers' Compensation Commission will only be reversed by an appellate court where such findings are clearly erroneous and contrary to the overwhelming weight of the evidence. *Ray v. Mississippi State Bd. of Health*, 598 So. 2d 760, 764 (Miss. 1992). "If the findings are supported by substantial evidence, then they are beyond the power of this Court to disturb." *Id.*

Statutory law as shown in section 71-3-51 of the Mississippi Code of 1972 (Rev. 1995) addresses the matter of judicial review of the findings of the Commission by the circuit court. Section 71-3-51 states:

The circuit court shall review all questions of law and fact. If no prejudicial error be found, the matter shall be affirmed and remanded to the commission for enforcement. If prejudicial error be found, the same shall be reversed and the circuit court shall enter such judgment or award as the commission should have entered.

Additionally, in *Walker Mfg. Co. v. Cantrell*, 577 So. 2d 1243, 1247 (Miss. 1991), the Mississippi Supreme Court stated:

We have repeatedly read this statute to establish the Circuit Court's function as that of an intermediate court of appeals. More to the point, we have held repeatedly that the Circuit Courts must defer in their review to the findings of the Commission.

In a very real sense, all of this is nothing other than a workers' compensation variant on accepted limitations upon the scope of judicial review of administrative agency decisions, i.e., that the courts may interfere only where the agency action is seen as arbitrary or capricious. Arbitrariness and caprice are in substantial part a function of the presence *vel non* of credible evidence supporting the agency decision. Where we find such evidence, we have no more authority to interfere with the decisions of the Commission than we do in a case of any other administrative body.

(citations omitted). In keeping with this standard, an appellate court will reverse the decision and findings of the Commission only where the rulings of the Commission are not supported by substantial evidence.

In the case *sub judice*, the circuit court ruled that the decisions of the administrative law judge and the Commission were against the overwhelming weight of the evidence. We disagree. As stated above, a circuit court's review of an agency's decision is limited by the aforementioned standard of review. The circuit court does not sit as an additional fact finder. Its sole function in relation to the facts of a case is to determine whether the Commission's decision is based on substantial evidence. This is so even if the circuit court would have ruled differently if it had heard the case originally. In other words, an appellate court should not "reweigh" the facts or substitute its own judgment for that of the administrative agency. *Sprouse v. Mississippi Employment Sec. Comm'n*, 639 So. 2d 901, 902 (Miss. 1994). *See also Mississippi Public Serv. Comm'n v. Merchants Truck Line, Inc.*, 598 So. 2d 778, 782 (Miss. 1992).

The issue before us turns on the deposition testimony of three physicians: Dr. Sage, Dr. Shirley, and Dr. Carnesale. Both Drs. Sage and Shirley testified that Lewis was still in need of medical care and had not reached maximum medical recovery. On the other hand, Dr. Carnesale testified that Lewis had reached maximum medical recovery when he saw him on March 30, 1994. Faced with the conflict in testimony, the administrative law judge and the Commission chose to accept Dr. Carnesale's diagnosis as the most appropriate. The circuit court found this ruling to be against the overwhelming weight of the evidence because it did not "see any higher degree of competency of Dr. Carnesdale [sic] than that of Dr. Fred Sage, especially when dealing with RSD, which according to all testimony is a neurological disorder rather than an orthopedic condition."

We hold that the circuit court abused its discretion in supplanting its interpretation of the facts and judgment on the credibility of experts for that of the Workers' Compensation Commission. We

further find that the record contains substantial evidence to support the decision of the Commission. Thus, we reverse the decision of the circuit court and reinstate the ruling of the Workers' Compensation Commission in the case *sub judice*.

THE JUDGMENT OF THE CIRCUIT COURT OF UNION COUNTY IS REVERSED AND THE RULING OF THE WORKERS' COMPENSATION COMMISSION IS REINSTATED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLEE.

BRIDGES, C.J., THOMAS, P.J., COLEMAN, DIAZ, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. McMILLIN, P.J., NOT PARTICIPATING.