

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CC-01064 COA**

SHARRON A. CORNELISON

APPELLANT

v.

SEASON ALL INDUSTRIES

APPELLEE

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

DATE OF JUDGMENT:	8/23/95
TRIAL JUDGE:	HON. ROBERT L. GOZA
COURT FROM WHICH APPEALED:	RANKIN COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	CHARLIE BAGLAN LAWRENCE J. HAKIM
ATTORNEY FOR APPELLEE:	LELAND S. SMITH III
NATURE OF THE CASE:	CIVIL - WORKER'S COMPENSATION
TRIAL COURT DISPOSITION:	AFFIRMED THE ORDER OF THE WORKERS' COMPENSATION COMMISSION
DISPOSITION:	AFFIRMED - 11/4/97
MOTION FOR REHEARING FILED:	11/14/97
CERTIORARI FILED:	2/23/98
MANDATE ISSUED:	4/23/98

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

HERRING, J., FOR THE COURT:

The Mississippi Workers' Compensation Commission, by order dated August 11, 1995, awarded the claimant and Appellant, Sharron A. Cornelison, temporary total disability payments from February 27, 1992, until July 8, 1992, as a result of an injury to Cornelison's left wrist which occurred at work on February 27, 1992. In making this ruling, the Commission affirmed a previous order of its administrative law judge. Cornelison disagreed with the decision of the Commission and appealed to the Circuit Court of Rankin County, Mississippi. Thereafter, on August 16, 1996, the circuit court issued its opinion and order affirming the decision of the Workers' Compensation Commission. Cornelison now appeals the decision of the Commission to this Court and essentially alleges that the Commission committed manifest error in denying, *inter alia*, that (1) she suffered permanent impairment and loss of wage earning capacity when she was injured and (2) that her date of maximum medical improvement did not occur until January 28, 1993. After reviewing the record and applicable law, we are unable to find reversible error. Thus, we affirm.

I. THE FACTS

On February 27, 1992, Sharron Cornelison injured her left wrist during the course and scope of her employment with Season All Industries, Inc. Cornelison, who was forty-two years old at the time of the accident, had a high school education with no further formal training. She engaged in a variety of occupations over the years but never specialized in any area. The injury occurred as Cornelison was picking up some material weighing approximately twenty-five pounds. She testified that she felt a "pop" in her wrist as she was lifting the material. Immediately after the incident, Cornelison notified her superiors of her injury, and she was taken to the emergency room of a local hospital for treatment. At the emergency room, Cornelison was treated by Dr. Bailey who performed x-rays of Cornelison and placed her wrist in a splint. He then referred her to Dr. David Gandy, an orthopedic surgeon, who saw Cornelison on two or three occasions. After these visits, Gandy informed Cornelison that he could not help her further and referred her to Dr. Chris Ethridge, another orthopedic surgeon.

Dr. Ethridge first saw Cornelison on March 26, 1992, and last saw her on May 4, 1992. He initially determined that Cornelison was suffering from a wrist sprain that compounded a pre-existing condition known as Madelung's Deformity. Madelung's Deformity can either be congenital or caused by injury and occurs when the normal growth of one of the two major bones in the wrist is arrested for some reason, resulting in an abnormally short length of the bone in relation to the other major wrist bone. This condition results in a twisting of the wrist, which is prominent and easily recognizable. In this case, Cornelison's deformity was probably caused by a wrist fracture which occurred when she was five years old. However, Cornelison testified that prior to her injury at work, she was not aware that she suffered from the Madelung's Deformity. She also stated that while her distal ulna had been prominent through the years, it had never caused her any pain or functional problems. She testified that she had never been impaired in the use of her wrist prior to the accident at work.

Dr. Ethridge noted that the bruises and complaints of pain by Cornelison differed from visit to visit and that he could find no anatomical reason for this to be so. Eventually, Ethridge examined Cornelison's wrist under anesthesia and was unable to reproduce the popping noises which she complained of. He also performed an arthrogram, a test that consists of injecting dye into the wrist, which resulted in some spillage in the various wrist compartments. Dr. Ethridge later testified that this spillage was consistent with Cornelison's pre-existing Madelung's Deformity. In his report dated May 4, 1992, Dr. Ethridge stated that "[m]y personal opinion is that this is very suspicious for a self-inflicted wound or a gross malingering." He then released Cornelison with no restrictions, but did refer her to Dr. F.H. Savoie, another orthopedic surgeon, if she felt that she needed further treatment.

Cornelison did seek Dr. Savoie's assistance, beginning on May 12, 1992. Dr. Savoie stated that he immediately noticed the Madelung's Deformity and that he ordered x-rays of the wrist. He then placed Cornelison in a cast to prevent any possible ligament damage and also to deny her access to her wrist in an effort to determine if she was intentionally causing the bruises. Dr. Savoie testified that he was aware of Dr. Ethridge's opinion that the Appellant may have been intentionally causing the unexplained bruises to her wrist and forearm, but that he gave Cornelison the benefit of the doubt in regard to the bruises. After subjecting Cornelison to a grip study to determine if she was being totally cooperative with him, Dr. Savoie concluded that the Appellant was not being compliant with

his attempts to determine the extent of her injuries. He finally agreed with Dr. Ethridge's opinion that Cornelison was malingering and was inflicting the bruises upon herself. Dr. Savoie based his opinion upon the following facts: (1) when Cornelison was placed in a cast, no new bruising of her wrist and forearm occurred, (2) when the cast was removed an unexplained contusion reappeared, (3) the grip test revealed that Cornelison was not being cooperative, and (4) Cornelison's complaints of pain and bruising changed from visit to visit, with no corresponding anatomical explanation. Dr. Savoie released Cornelison on July 8, 1992, with no restrictions. He did not refer her to any other physicians, stated that she had reached maximum medical improvement and was not suffering from any impairment as a result of her employment. Dr. Savoie did say that she should have her deformity treated.

Cornelison's attorney encouraged her to see Dr. Alan Freeland, another orthopedic surgeon, for follow-up treatment. Dr. Freeland first saw Cornelison on August 13, 1992, at which time he felt that she had a dorsal ulnar dislocation and an ulnar carpal transposition at the radiocarpal joint, both of longstanding duration. At that time, Dr. Freeland informed Cornelison that, in his opinion, the injury was ninety percent pre-existing and ten percent work-related.

After further consultation, Cornelison accepted Dr. Freeland's advice and agreed to surgery to correct her wrist problems. This surgery was performed on October 5, 1992, and it was apparently successful, since Cornelison stated that her problems had been alleviated. After a period of rehabilitation, the Appellant was released from Dr. Freeland's care, and he stated that Cornelison reached maximum medical improvement on January 28, 1993. He also stated that she suffered from a forty percent permanent partial impairment, of which either four percent or ten percent was work-related. His opinion as to the exact percentage of permanent impairment incurred during the course of Cornelison's employment is uncertain because Dr. Freeland gave two different percentages during his deposition. He further concluded that Cornelison's work-related injury aggravated her pre-existing condition (Madelung's Deformity) and that the aggravation of her pre-existing condition resulted in the need for surgery on October 5, 1992. When asked about the mysterious bruises on Cornelison's wrist and forearm, Dr. Freeland stated that they could have been caused by an internal condition known as ecchymosis and not by external causes. He also agreed with Drs. Savoie and Ethridge that the Appellant's Madelung's Deformity was not caused by the work-related injury.

In May, 1993, Cornelison attempted to return to work at Season All Industries, Inc., but she was informed that she had been terminated in March of that same year. She testified that Season All offered her another job in its small parts assembly division in June, 1994, but that Dr. Freeland did not approve of this kind of work because of her impairment.

At the hearing conducted by the administrative law judge, Cornelison presented evidence showing that she was injured on the job, that she had never been impaired by Madelung's Deformity prior to the accident, and that no jobs were available to her in her impaired condition. She supplemented her testimony with that of her husband, Ron Cornelison, and JoAnn Sprayberry, the personnel director at Season All. The bulk of Season All's witnesses were personnel from six of the fifty-four places of business where Cornelison claimed to have sought employment subsequent to her termination. All six of these witnesses testified that they had no record of Cornelison seeking employment from their respective businesses. Season All then presented Fred Phillips, a private investigator, who videotaped Cornelison hanging clothes on a clothesline with no apparent limitations. The depositions of Drs.

Ethridge, Savoie, and Freeland, as well as an affidavit of Dr. Gandy were also made a part of the record.

As stated above, the administrative law judge and the Commission held that Cornelison did suffer a work related injury but suffered no permanent partial impairment. They both ruled that the Appellant reached maximum medical recovery on July 8, 1992. In her written opinion, the administrative law judge listed the following as reasons for her decision: (1) Dr. Gandy found no acute deformity, (2) Cornelison's work-related sprain resolved itself, but she continued to complain of disabling pain that could not be supported by objective findings, (3) the areas of pain differed from visit to visit, (4) Cornelison exhibited bruising on different parts of her wrist with no anatomical explanation, (5) the only objective symptoms exhibited by Cornelison were those related to her pre-existing Madelung's Deformity, and (6) Drs. Savoie and Ethridge both agreed that the bruises on Cornelison's wrist and forearm were self-inflicted and that the appellant was malingering. The administrative law judge went on to rule that the preponderance of the evidence favored the testimony of Drs. Savoie and Ethridge as opposed to the testimony of Dr. Freeland. The Commission agreed with its administrative law judge and both ruled that Dr. Freeland's "services and supplies were not necessitated by the work-related injury."

II. THE ISSUES

In her brief, Cornelison raises the following issues:

- A. THE FULL COMMISSION COMMITTED MANIFEST AND REVERSIBLE ERROR AS A MATTER OF LAW AND FACT.
- B. CORNELISON REACHED MAXIMUM MEDICAL IMPROVEMENT ON JANUARY 28, 1993, NOT JULY 8, 1992.
- C. CORNELISON SUSTAINED A DEGREE OF PERMANENT IMPAIRMENT AS A RESULT OF HER WORK RELATED INJURY.
- D. CORNELISON HAS SUFFERED A LOSS OF WAGE EARNING CAPACITY AS A RESULT OF HER WORK RELATED INJURY.
- E. THE COMMISSION ERRED AS A MATTER OF LAW AND FACT WHEN THEY EXCLUDED THE SERVICES AND SUPPLIES OF CORNELISON'S PHYSICIAN, DR. ALLEN FREELAND.
- F. PENALTIES AND INTEREST SHOULD HAVE BEEN AWARDED.

III. ANALYSIS

Although Cornelison assigned several issues for our consideration on appeal, we need only discuss one in order to dispose of this case. That issue is the first one assigned by the appellant. All of the other assignments of error are interrelated and need no separate discussion.

DID THE FULL COMMISSION COMMIT MANIFEST AND REVERSIBLE ERROR AS A MATTER OF LAW AND FACT?

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 Commission's findings 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 espoused in Section 71-3-51 of the Mississippi Code of 1972 (Rev. 1995) addresses the matter of judicial review of the circuit court in workers' compensation cases. 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 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, this 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 supported by substantial evidence. We agree. The circuit court's sole function in relation to the facts of a case is to determine if the agency's decision is based on substantial evidence. This is so even if the court would have ruled differently if the case were originally heard before it rather than the administrative law judge or the Commission. An appellate court should not "reweigh" the facts or substitute its own judgment for that of the administrative agency. *Sprouse v. Mississippi Emp. 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).

All of the issues before us turn primarily on the deposition testimony of three physicians: Drs. Ethridge, Savoie, and Freeland. Both Drs. Ethridge and Savoie testified that Cornelison had reached maximum medical recovery by the time she left their care and that she did not suffer from any

permanent impairment. On the other hand, Dr. Freeland testified that Cornelison did not reach maximum medical recovery until January 27, 1993, and that the work-related injury necessitated the wrist surgery. Faced with the conflict in testimony, the Commission chose to accept the diagnosis of Drs. Ethridge and Savoie as to Cornelison's true condition. The Mississippi Supreme Court has held that "[w]hether and when a claimant has reached maximum medical recovery are questions which are to be determined by the Commission based on testimony from both lay and medical witnesses." *McGowan v. Orleans Furniture, Inc.*, 586 So. 2d 163, 168 (Miss. 1991) (citation omitted). So long as the Commission's decision is not arbitrary and capricious and is supported by substantial evidence, an appellate court should not overturn its decision. *Walker Mfg. Co. v. Cantrell*, 577 So. 2d 1243, 1246-47 (Miss. 1991).

We hold that the circuit court did not abuse its discretion in affirming the decision of Workers' Compensation Commission. As stated above, the circuit court is not to supplant its interpretation of the facts and judgment on the credibility of experts for that of the Commission. In this case, the circuit court properly followed this longstanding standard of review. We further find that the record contains substantial evidence to support the decision of the Commission. All of the issues argued by Cornelison on appeal depend upon the testimony of Dr. Freeland. Because the Commission chose to accept the testimony of Drs. Savoie and Ethridge over that of Dr. Freeland, we hold that none of the issues assigned on appeal have merit.

We do find it necessary, however, to comment separately on two of Cornelison's issues. First, Cornelison claims that the trial court erred in finding that she was not permanently partially disabled. In support of this proposition, the Appellant cites *Jordan v. Hercules*, 600 So. 2d 179, 183 (Miss. 1992), where the court held:

When the claimant having reached maximum medical recovery reports back to his employer for work, and the employer refuses to reinstate or rehire him, then it is prima facie that the Claimant has met his burden of showing total disability. The burden then shifts to the employer to prove a partial disability or that the employee has suffered no loss of wage earning capacity.

Jordan, 600 So. 2d at 183. Thus, Cornelison contends that the fact that Season All terminated her employment is prima facie evidence that she is permanently disabled. She also cited fifty-four instances of unsuccessful job searches to support her claim of disability. However, the circuit court correctly observed that Cornelison's claim that she was unable to get a job was disputed by substantial evidence. Several witnesses representing businesses where the Appellant claimed to have sought employment had no record of Cornelison seeking such employment. Moreover, the Commission, based upon the opinions of Drs. Savoie and Ethridge, ruled that the preponderance of the evidence established that Cornelison suffered no work-related permanent impairment or loss of wage earning capacity. Therefore, we find that substantial evidence supports the circuit court's ruling on this issue. It is noteworthy that Season All in fact did offer Cornelison an assembly line job, which Dr. Ethridge and Dr. Savoie both stated that she could perform, since they both released her without restrictions.

Finally, Cornelison asserts that the Commission erred in failing to compensate her for the costs which she incurred as a result of the medical treatment she received from Dr. Freeland. In support of this argument the Appellant cites General Rule 9 of the Mississippi Workers' Compensation Commission,

which allows a claimant to see a physician of her own choosing. Season All argues that General Rule 9 requires that claimants who utilize physicians supplied by their employer must seek the Commission's approval before seeing another physician of their own choosing. In this case, no such approval was given. Moreover, the Commission held that the preponderance of the evidence supported the view that Dr. Freeland's services were not in response to a work-related injury. We find that substantial evidence supports this conclusion. Therefore, we affirm the decision of the Rankin County Circuit Court on this issue.

THE JUDGMENT OF THE CIRCUIT COURT OF RANKIN COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

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