

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-CC-00679 COA**

**LA-Z-BOY SOUTH**

**APPELLANT**

**v.**

**BILLY EARL WILLIAMS**

**APPELLEE**

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

DATE OF JUDGMENT:	05/24/96
TRIAL JUDGE:	HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED:	NEWTON COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	SILAS W. MCCHAREN AMY S. HUDSON
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: MICHAEL M. WILLIAMS
NATURE OF THE CASE:	CIVIL - WORKER'S COMPENSATION
TRIAL COURT DISPOSITION:	AFFIRMED COMMISSION'S FINDING OF PERMANENT DISABILITY
DISPOSITION:	AFFIRMED - 11/18/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/9/97

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

BRIDGES, C.J., FOR THE COURT:

Billy Earl Williams (Williams) was injured on the job during his employment with La-Z-Boy South (employer) on March 30, 1992. Williams filed his petition to controvert on October 18, 1993. The employer admitted the alleged injury and paid Williams temporary total disability benefits. While admitting to temporary total disability, the employer denied that Williams was permanently disabled as a result of his injuries. The administrative law judge found that Williams had suffered a compensable injury on March 30, 1992, and that the employer had assumed responsibility for the injury and paid medical and disability benefits for a period of time. Additionally, the administrative law judge determined that Williams had suffered one hundred (100%) percent loss of wage earning

capacity and ordered permanent total disability benefits. The Workers' Compensation Commission (Commission) affirmed the administrative law judge's order, and the circuit court affirmed the commission. Aggrieved, La-Z-Boy appeals arguing that the circuit court's order was not based upon substantial evidence, is contrary to the overwhelming weight of the evidence, and should be reversed. We find that substantial evidence existed to support the previous findings, and that the Commission's decision was not arbitrary or capricious. We therefore affirm the circuit court's decision.

## **FACTS**

Williams was a forty-eight-year-old employee at La-Z-Boy South when he suffered an injury on March 30, 1992, where a fifteen-foot stack of sofa cushions fell and struck him on the back and left leg. He was treated that day by his family physician, and returned to work the next day. Williams worked until April 17, 1992, but was unable to meet production requirements as a result of severe back and leg pain. Prior to the accident, Williams stated that he had always met or exceeded production requirements. Williams testified that although he generally made \$60-\$70 a day as an upholsterer, the last day he worked for the employer, he only made \$16 because he could not pull the fabric over the frame of the furniture.

Besides treatment on the day of the injury, Williams also received treatment on several other occasions by Dr. Billy Shows. Dr. Shows testified that it was his opinion that Williams genuinely experienced pain, but did not know if there were any objective medical findings of back injury. He prescribed pain medication and muscle relaxers for Williams throughout the course of treatment, and referred him to several other doctors. Orthopedic surgeons, Dr. David Pomierski and Dr. Donald Cook, assessed a 10% permanent impairment to Williams's left leg attributable to the work-connected injury. Dr. Cook diagnosed Williams's back pain as a soft tissue injury or a discogenic disorder, and he assessed a 11% permanent impairment to the body as a whole attributable to Williams's back condition. Dr. Lucien Hodges, a neurosurgeon, diagnosed Williams's back pain as a low back strain with no permanent impairment or restrictions. Orthopedic surgeon, Dr. William Hand, initially diagnosed Williams with a herniated disc at L4-5. He concluded that Williams could have returned to work after the first week in November 1992 with no restrictions, and that he should have reached maximum medical improvement a week or two after he saw Dr. John Neill, a neurosurgeon. All doctors stated that Williams was cooperative, and that he gave full effort or that they had no reason to doubt the sincerity of his complaints of back pain.

Williams testified that he first attempted to return to work for the employer in April 1993 after his orthopedic surgeon, Dr. Pomierski, released him. He testified that he was unable to work more than an hour and a half on three separate occasions. Williams stated that his back pain and numbness in his left leg prevented him from bending repetitively, standing in one place for very long, pulling material over upholstery frames, or lifting heavy weights such as chairs, bolts of material or seat cushions. After each of these attempts to return to work, Williams testified that he experienced severe back pain for two to three days.

Williams testified that his employer terminated his employment on August 10, 1993, after he called them about a prescription that had not been paid. Williams testified that he was never told why he had been terminated. Furthermore, Williams stated that he was not terminated for failure to notify the employer that he would be absent from work because he stayed in close contact with the personnel

department since he picked up his workers' compensation check at the employer's plant every week.

Williams testified that he attempted to look for other work around November 1993, and had made numerous attempts to secure employment. Williams could not read or write and needed assistance to complete the job applications. Williams did secure employment with D&S Custom Upholstery in February 1994, but was unable to work more than a couple of hours because he was unable to pull the material. Williams registered with the Mississippi Employment Security Commission four or five times, applied for all jobs that he could perform, but the commission had not referred him to a job. He also went to several other employers who told him they would contact him if a job became available.

The parties stipulated that if called to testify, Jack Ford, Williams's neighbor, would testify that Williams had been active at home after work and never complained of pain before the injury, but that he had been sedentary and complained of pain since the injury. Williams testified that he cannot sleep because of back pain, and that he must alternate sitting and standing in order to prevent his left foot and leg from becoming numb. He stated that he no longer hunts, fishes, plays softball, mows his yard, cooks, or performs his own mechanic work because of back pain. He testified that he takes Darvocet and Tylenol as pain medication.

The administrative law judge considered the objective medical testimony, Williams's credibility, the absence of any proof that Williams suffered a pre-existing condition or an independent, intervening cause of injury, and Williams's attempts to return to work. The administrative law judge determined that by a preponderance of the evidence, Williams had a permanent medical impairment to his back attributable to the work-related injury on March 30, 1992. The order required the employer to pay permanent total disability benefits of \$198.13 per week for 450 weeks beginning March 30, 1992, with proper credit for compensation already paid by the employer, and to pay all medical services and supplies resulting from the injury. La-Z-Boy filed a petition for review before the Full Commission. On July 26, 1995, the Commission affirmed the judge's findings. La-Z-Boy appealed to the Newton County Circuit Court, and on May 24, 1996, the court affirmed the Commission's decision. La-Z-Boy now appeals the circuit court's order.

## **ARGUMENT AND DISCUSSION OF LAW**

### **I. WHETHER THE COMMISSION'S AWARD OF PERMANENT DISABILITY BENEFITS WAS BASED UPON SUBSTANTIAL EVIDENCE.**

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 this 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)). As stated 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 only where a Commission order is clearly erroneous and contrary to the weight of the credible evidence. ***Id.*; see also *Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9, 12 (Miss. 1994)**. We are not permitted to re-weigh the evidence to determine where, in our opinion, the preponderance of the evidence lies. ***Lanterman v. Roadway Exp., Inc.*, 608 So. 2d 1340, 1345 (Miss. 1992)**. Moreover, "[t]his Court will overturn a Commission 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)** (where 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).

Upon review of the record, we believe that substantial evidence existed upon which the Commission awarded Williams permanent total disability benefits. The administrative law judge properly narrowed the issue to a determination of the extent of Williams's disability or loss of wage earning capacity due to his work injury. The judge considered testimony and evidence by both parties, including Williams's education, work experience, and medical opinions by the treating and examining doctors. We believe that the judge, the Commission, and the circuit court properly determined that Williams suffered permanent total disability as a result of the injury he sustained on March 30, 1992. The Commission is the ultimate finder of fact and has the discretion to weigh all the evidence presented. The Commission exercised this discretion in its order based on what we believe to be substantial evidence, and the circuit court appropriately affirmed. This Court is also obligated to affirm.

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

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