

IN THE COURT OF APPEALS 2/27/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CC-00514 COA

KENNETH S. HALL

APPELLANT

v.

**B E & K CONSTRUCTION COMPANY AND LUMBERMENS MUTUAL CASUALTY
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. KOSTA N. VLAHOS

COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

H. ALEX BRINKLEY

ATTORNEY FOR APPELLEES:

WALTER J. EADES

NATURE OF THE CASE: CIVIL - WORKERS' COMPENSATION

TRIAL COURT DISPOSITION: AFFIRMED COMMISSION'S DECISION

BEFORE BRIDGES, P.J., KING, AND PAYNE, JJ.

KING, J., FOR THE COURT:

This cause is before this Court on an appeal by Kenneth S. Hall of an order of the administrative law judge of the Mississippi Workers' Compensation Commission, who found that Hall had sustained a

compensable injury on April 8, 1991, and reached maximum medical recovery from his injury on December 4, 1991, without any permanent disability. The administrative law judge also found that the employer and carrier were not responsible for the medical treatment rendered by Dr. David Jarrot after December 4, 1991. The Mississippi Workers' Compensation Commission affirmed the administrative law judge's order and the Circuit Court of Harrison County affirmed the decision of the Mississippi Worker's Compensation Commission. Finding no error, we affirm.

I.

B E & K Construction Company hired Hall as a pipe fitter in October of 1990. As a pipe fitter, Hall constantly climbed ladders in order to hang pipes, weighing approximately 140 pounds, overhead. Hall's job as a pipe fitter also required substantial amounts of stooping, bending, and standing. According to Hall, while walking through the plant on April 8, 1991, he stepped on a grate which was covering a small drainage ditch, and the grate gave way. Hall fell into the ditch mainly with his left leg, skinned his leg, and twisted his back.

Hall was treated at the first aid station at the plant and sent home. The next day, the company's doctor, Dr. Ed Cooper, sent Hall to see Dr. Richard Peden. Dr. Peden took x-rays and recommended physical therapy. Dr. J.D. Hull, Dr. Peden's partner, saw Hall the following week and ran an MRI on him. Dr. Hull sent Hall back to physical therapy and recommended that Hall see Dr. Richard Buckley, a neurosurgeon. Dr. Buckley ran a CAT scan on Hall and ran x-rays. Dr. Buckley also sent him to physical therapy.

According to Hall, he stayed on the job for approximately one month after the accident, working light duty, sitting in the office all day, doing very little if anything. However, Hall was unable to continue working because it involved driving about 200 miles round-trip during the day.

After continuing to experience pain, one of Hall's friends recommended that Hall visit Dr. David Jarrott, a neurosurgeon in New Orleans. Thereafter, Hall called the insurance carrier for approval to see Dr. Jarrott. Dr. Jarrott was disapproved. Dr. Richard Robichaux, an orthopaedic surgeon in Baton Rouge, Louisiana, was recommended, and Hall received the carrier's permission to visit Dr. Robichaux. Dr. Robichaux gave Hall three nerve blocks on three occasions. After the third nerve block, Dr. Robichaux recommended that Hall see Dr. Robert Hanchey.

Dr. Robert Hanchey, a neurosurgeon, testified that he first saw Hall on October 7, 1991. At that time, Hall complained of lower back pain and pain in both legs, particularly on the left side. Dr. Hanchey testified that the MRI scan showed evidence of degenerative disc disease and mild to moderate bulging. Dr. Hanchey performed a myelogram and a post-myelogram CT scan on October 11, 1991, which showed a bulging disc at multiple levels. Dr. Hanchey testified that he saw Hall again on October 21, 1991. On December 4, 1991, Dr. Hanchey released Hall as having reached maximum medical recovery.

After Dr. Hanchey released Hall, Hall went to the Union Hall and signed up for work, but was told that there was no work available. Thereafter, Hall signed up for unemployment. Hall worked two days with his son, Kenneth Hall, Jr., who owns Hall's Plumbing & Heating in Bogalusa. On the second day of work, Hall experienced a muscle spasm in his back, while hooking up a kitchen sink. Kenneth Hall, Jr. took Hall home. Hall remained bedridden for four days.

On January 23, 1992, Hall went to see Dr. Jarrott. Dr. Jarrott did another MRI on Hall and recommended surgery. On March 18, 1992, Dr. Jarrott diagnosed Hall as having lumbar spondylosis or disc disease with chronic extrusion of the L4-5 disc. On March 25, 1992, Dr. Jarrott diagnosed Hall as having symptoms of nerve irritation from compression affecting the nerve. Dr. Jarrott performed two surgeries on Hall. Dr. Jarrott testified that at the time of the hearing, Hall was totally disabled.

The administrative law judge found that Hall had sustained a compensable injury on April 8, 1991, and reached maximum medical recovery from his injury on December 4, 1991, without any permanent disability. The administrative law judge also found that the employer and carrier were not responsible for the medical treatment rendered by Dr. David Jarrot, which Hall received after he reached maximum medical recovery on December 4, 1991. The employer and carrier were ordered to pay Hall total disability from April 8, 1991, until December 4, 1991, with credit for wages earned by Hall and benefits paid to Hall by the employer and carrier. They also had to provide Hall reasonable and necessary medical services and supplies required by the nature of the injury in accordance with the administrative judge's findings. Hall's claim for permanent disability benefits was denied and dismissed with prejudice. The Mississippi Workers' Compensation Commission affirmed the administrative law judge's order. The Circuit Court of Harrison County affirmed the decision of the Mississippi Worker's Compensation Commission.

II.

I. WHETHER THE CLAIMANT HAS SUFFERED A PERMANENT DISABILITY WHICH HAS RESULTED IN A LOSS OF WAGE EARNING CAPACITY?

II. WHETHER DR. JARROTT'S SERVICES RELATED TO CLAIMANT'S INJURY OF APRIL 8, 1991?

III. WHETHER THE EMPLOYER AND CARRIER SHOULD APPROVE AND AUTHORIZE THE TREATMENT OF CLAIMANT BY DR. JARROTT?

By these issues, Hall contends that because the Mississippi Workers' Compensation Commission's decision was contrary to the overwhelming weight of the evidence and was not supported by substantial evidence, the circuit court erred in affirming its decision. Hall argues that he has suffered a permanent disability, which has resulted in a loss of wage earning capacity, and that services rendered by Dr. Jarrott after December 4, 1991, related to his April 8, 1991, injury received on the job. Hall explains that the employer and carrier have a statutory duty to furnish all medical treatment as the nature of his injury and the process of recovery may require.

In the instant case, there is conflicting medical testimony as to whether Hall could have returned to work on December 4, 1992, and whether additional medical treatment, relative to the April 8, 1991, injury was necessary. The record shows that the administrative law judge, as affirmed by the commission and the circuit court, found in favor of the testimony of Dr. Hanchey and Dr. Buckley, both of whom stated that in their opinion, Hall had no basis for permanent impairment and could return to work without restrictions or limitations. Dr. Hanchey and Dr. Buckley reached their conclusions based upon a series of examinations and a battery of diagnostic studies. Moreover, after Dr. Hanchey released Hall, Hall went to Union Hall and signed up for work, but was told that there

was no work available. Thereafter, Hall signed up for unemployment and admitted on his unemployment application that he was able to work. Later, Hall went to work with his son, Kenneth Hall, Jr.

On January 23, 1992, Hall went to see Dr. Jarrot. Dr. Jarrott did another MRI on Hall and recommended surgery. Two surgeries were completed. In Dr. Jarrott's opinion, Hall's problems were caused by the April 8, 1991, job injury. Dr. Jarrott also found that Hall was totally disabled. It is important to note, however, that Hall failed to inform Dr. Jarrott that he hurt his back while working with his son and was bedridden for four days.

After reviewing the evidence and assessing the credibility of the witnesses, the administrative law judge found that Hall sustained a compensable injury on April 8, 1991, and reached maximum medical recovery from his injury on December 4, 1991, without any permanent disability. The administrative law judge also found that the employer and carrier were not responsible for the services rendered by Dr. Jarrot, after December 4, 1991. The administrative law judge found from Dr. Jarrott's testimony that the injury Hall received while working with his son could have provoked Hall's symptoms and could have produced a new injury, which was consistent with the testimony of Dr. Buckley and Dr. Hanchey that prior to that time Hall was fit for duty. Based on the medical testimony that the conditions for which Dr. Jarrott treated Hall were not related to the April 8, 1991, injury, the administrative law judge found that it was not necessary to determine whether the incident Hall experienced while working on the kitchen sink was an independent intervening injury. Therefore, Hall's claim for permanent disability benefits was denied. This decision was affirmed by the Mississippi Workers' Compensation Commission and the Circuit Court of Harrison County.

"In determining whether or not there is 'clear evidence' of a causal connection, the Workmen's Compensation Commission has the discretion to determine the probative value of expert medical testimony." *Estate of Babb v. GTE Sylvania, Inc.* 417 So. 2d 545, 549-50 (Miss. 1982). The commission's findings cannot be disturbed where two or more qualified medical experts reach different conclusions, because the commission may choose to reject or accept the testimony of medical experts. *Miller Transp. Ltd. v. Reeves*, 195 So. 2d 95, 100 (Miss. 1967). Where, as here, there is conflicting expert medical testimony, we will affirm the commission's findings, regardless of whether the verdict is in the favor of the claimant or the employer. *Reichhold Chem. Inc. v. Sprankle*, 503 So. 2d 799, 801 (Miss. 1987) (citing *Kersh v. Greenville Sheet Metal Works*, 192 So. 2d 266, 268 (Miss. 1966)).

In the instant case, the Commission chose to accept the testimony of Dr. Hanchey and Dr. Buckley over the testimony of Dr. Jarrott. Moreover, Hall's actions after Dr. Hanchey released him corroborate Dr. Hanchey's finding that Hall was fit to return to work. Because the commission's order was not clearly erroneous or against the overwhelming weight of the evidence, we are not at liberty to disturb its findings on these points. *See Fought v. Stuart C. Irby Co.*, 523 So. 2d 314, 317 (Miss. 1988).

For the foregoing reasons, the judgment of the trial court is affirmed.

**THE JUDGMENT OF THE CIRCUIT COURT OF HARRISON COUNTY IS AFFIRMED.
APPELLANT IS TAXED WITH COSTS OF THIS APPEAL.**

BRIDGES, P.JJ., BARBER, COLEMAN, DIAZ, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.

FRAISER, C.J., CONCURS WITH RESULT ONLY.

THOMAS, P.J., NOT PARTICIPATING.