

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 95-CC-01213 COA**

**WEYERHAEUSER COMPANY**

**APPELLANT**

v.

**QUINTON MOORE**

**APPELLEE**

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

DATE OF JUDGMENT:	10/30/95
TRIAL JUDGE:	HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED:	NESHOPA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	H. SCOT SPRAGINS
ATTORNEY FOR APPELLEE:	MICHAEL H. STEELE
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
TRIAL COURT DISPOSITION:	COURT AFFIRMED THE FINDINGS OF THE COMMISSION
DISPOSITION:	AFFIRMED - 2/24/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	4/7/98

BEFORE THOMAS, P.J., HERRING, AND HINKEBEIN, JJ.

THOMAS, P.J., FOR THE COURT:

The Circuit Court of Neshoba County affirmed the order of the Mississippi Workers' Compensation Commission awarding Quinton Moore benefits as a result of an injury at the Philadelphia Weyerhaeuser Timber Company facility. Weyerhaeuser appeals raising the following issues as error:

**I. WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE FINDINGS BY THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION THAT THE APPELLEE, QUINTON MOORE, SUSTAINED A WORK-RELATED INJURY WHICH AROSE OUT OF AND IN THE COURSE OF EMPLOYMENT RESULTING IN AN AWARD OF TEMPORARY PARTIAL DISABILITY BENEFITS.**

**II. WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE FINDING BY THE**

**MISSISSIPPI WORKERS' COMPENSATION COMMISSION THAT THE APPELLEE, QUINTON MOORE, SUFFERED A LOSS OF WAGE-EARNING CAPACITY, WHICH ENTITLED HIM TO PERMANENT PARTIAL DISABILITY BENEFITS.**

Finding no error, we affirm.

**FACTS**

On September 12, 1990, while working as a dryer tender for Weyerhaeuser, Moore bumped his left shoulder on a piece of metal inside one of the dryers. There was no immediate sign of injury; Moore reported the injury to his supervisor, but did not miss work or seek medical treatment at the time.

On February 4, 1991, Moore visited Dr. James R. Green, a board certified orthopedic surgeon in Meridian, and told the doctor that he had been experiencing pain in his shoulder. Green continued to treat Moore until August 1991 when the doctor determined that arthroscopic surgery was necessary. Surgery was performed on September 6, 1991. Moore was released to return to work on February 17, 1992, with no restrictions. Dr. Green assigned a five percent disability rating to Moore.

Following his release by Dr. Green, Moore saw Dr. Felix H. Savoie on March 3, 1992 and reported that he had been injured at work. Dr. Savoie concluded that another surgery should be performed on the left shoulder and recommended that Moore be first examined by a neurosurgeon for his neck complaints. Moore was subsequently examined on March 25, 1992 by Dr. Glenn Warren, a board certified neurosurgeon in Jackson, who determined that Moore had a cervical disk which needed surgical intervention. This procedure was performed on April 3, 1993.

After release by Dr. Warren, Moore underwent a second arthroscopic procedure on his shoulder. Dr. Savoie rated Moore as five to twenty percent impaired as to the left upper extremity based on the problems within the joint. On August 11, 1993, Moore was released to return to work by Dr. Savoie with no restrictions.

Moore was later evaluated by Dr. Earnest Lowe, a board certified neurosurgeon in Oxford, at the request of the employer. Dr. Lowe did not think that the injury described by Moore as occurring in September 1990 caused the shoulder problems for which he was treated by Drs. Green and Savoie. Dr. John G. Gassaway, a board certified orthopedic surgeon in West Point, examined Moore on September 15, 1993 and found Moore to have a permanent impairment of five percent to the body as a whole because of loss of range of motion and strength and sensory changes. Dr. Gassaway thought that the competent cause of Moore's problems was the original injury when he struck his shoulder against the steel structure.

David Stewart, a vocational rehabilitation consultant in Tupelo, performed a vocational assessment of Moore. Stewart reviewed the medical records and depositions of Moore's doctors. Stewart thought that because the doctors had returned Moore to work without restrictions that Moore could do his old job at Weyerhaeuser and thus had not sustained any loss of wage earning capacity. Stewart stated

that he thought the limitations advised by the doctors would impair Moore in a vocational sense, and he estimated that Moore would have a fifteen percent vocational impairment.

When Moore sought to return to work at Weyerhaeuser, he was not rehired because he tested positive for marijuana on the physical examination. Moore tried to finish concrete and was unable to do the work because he could not use his arm to pull the concrete down. He tried to mow yards but this made his shoulder and neck hurt. Moore stated that he could not do any of the other jobs he had previously done.

Moore has a third grade education, no vocational training, cannot read or write and had worked at a service station, digging holes as a plumber's assistant, and pulling lumber off a green chain at a sawmill before working at Weyerhaeuser.

## DISCUSSION

The standard of review used by this Court when considering an appeal from a decision of the Workers' Compensation Commission is well settled. The findings and orders of the Workers' Compensation Commission are binding on all appellate courts so long as the decisions are supported by substantial evidence. *Vance v. Twin River Homes, Inc.*, 641 So. 2d 1176, 1180 (Miss. 1994); *South Miss. Elec. Power Ass'n. v. Graham*, 587 So. 2d 291, 294 (Miss. 1991); *Fought v. Stuart C. Irby Co.*, 523 So. 2d 314, 317 (Miss. 1988). This Court applies a general deferential standard of review to the findings of the Commission. *Walker Mfg. Co. v. Cantrell*, 577 So. 2d 1243, 1245 (Miss. 1991). An appellate court is bound even though the evidence would convince that court otherwise if it were the ultimate fact finder. *Barnes v. Jones Lumber Co.*, 637 So. 2d 867, 869 (Miss. 1994). 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).

The issues raised by the employer are whether there was substantial evidence to support the finding of a job-related injury and that Moore suffered a loss of wage earning capacity entitling him to total disability benefits.

It is well settled under Mississippi Workers' Compensation law that the claimant has the burden of proving by a fair preponderance of the evidence that he sustained an accidental injury arising out of and in the course and scope of his employment, and that the injury caused the disability for which he is claiming benefits. *Miss. Code Ann. § 71-3-3(b) (Rev. 1995)*; *Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9, 13 (Miss. 1994).

The question of whether Moore sustained a work-related injury is more than amply supported by the evidence. Each of the treating physicians, Dr. Green, Dr. Warren and Dr. Savoie, found a connection between the pathologies and the injury on the job. Although many of the medical expenses were initially paid through Weyerhaeuser's group health insurance plan and Moore was often less than clear

about when the injury occurred in his discussions with the doctors, this does not take away from the fact that the employer was notified of the injury and that no other explanation was offered to explain Moore's medical problems.

Weyerhaeuser's argument that Moore sustained no loss of wage earning capacity is more problematic. The Mississippi Supreme Court has 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 v. Hercules, Inc.*, 600 So. 2d 179, 183 (Miss. 1992).** In the present case, the employer refused to rehire based on Moore's failing a drug screening test. Moore contends that this was a pretext since he had previously been arrested and fined for marijuana use while he was employed at Weyerhaeuser without any disciplinary action being taken. While Moore was sent back to work without specific restrictions by his doctors, there was testimony that Moore was weakened and impaired as the result of his injury and subsequent surgeries.

Moore testified as to his attempts to return to work doing work as a concrete finisher and mowing lawns. There was also testimony from David Stewart, a vocational expert, that Moore had a fifteen percent loss of wage or vocational capacity based on the impairments the physicians testified that Moore had.

"This Court will reverse an order of the Workers' Compensation Commission only where such order is clearly erroneous and contrary to the overwhelming weight of the evidence." ***Mitchell Buick, Pontiac & Equip. Co. v. Cash*, 592 So. 2d 978, 980 (Miss. 1991).** We do not find that the order of the Commission was clearly erroneous or against the overwhelming weight of the evidence and therefore we affirm.

**THE JUDGMENT OF THE CIRCUIT COURT OF NESHOPA COUNTY IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. COSTS OF APPEAL ARE ASSESSED TO THE APPELLANT.**

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