

**IN THE COURT OF APPEALS 10/31/95**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CC-00132 COA**

**MICKEY GATES**

**APPELLANT**

**v.**

**LIFE STYLE FURNITURE MANUFACTURING AND COMMERCIAL UNION  
INSURANCE 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. HENRY LAFAYETTE LACKEY

COURT FROM WHICH APPEALED: CHICKASAW COUNTY CIRCUIT

ATTORNEY FOR APPELLANT:

W. HOWARD GUNN

ATTORNEYS FOR APPELLEES:

ROBERT K. UPCHURCH AND MICHAEL D. TAPSCOTT

NATURE OF THE CASE: WORKER'S COMPENSATION

TRIAL COURT DISPOSITION: AFFIRMED ORDER OF THE WORKER'S COMPENSATION  
COMMISSION

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

KING, J., FOR THE COURT:

Mickey Gates appeals an Order of the Circuit Court of Chickasaw County affirming an order of the Mississippi Worker's Compensation Commission. The following assignments of error are asserted by Gates on appeal:

I. The administrative law judge abused her discretion in denying the appellant's request to re-open the record for the purpose of introducing additional medical evidence.

II. The administrative law judge erred in finding that appellant's impairment ceased on July 25, 1991.

III. The decision of the administrative law judge was not supported by substantial evidence.

IV. The administrative law judge erred in finding that the treatment rendered by Dr. McFadden and Dr. Brown was noncompensable.

## FACTS AND PROCEDURAL HISTORY

On May 6, 1991, Gates sustained a back injury in the course and scope of his employment with Life Style Furniture Manufacturing Company. As a result of the injury, Gates was disabled and unable to work for approximately eleven weeks. During Gates' period of disability, medical and temporary total disability benefits were provided by Commercial Union Insurance, Life Style's worker's compensation insurance carrier.

On August 9, 1991, Gates filed a Petition to Controvert, which was later amended on October 22, 1991. According to the Amended Petition to Controvert, the duration of temporary total disability and the degree of permanent physical impairment and loss of wage-earning capacity were disputed issues. Hearing on the disputed issues was held before the administrative law judge on November 22, 1991.

During the hearing, the parties requested that the record remain open for the purpose of introducing additional depositions and medical testimony, and the administrative law judge agreed to allow the record to remain open for a period of sixty days.

On August 24, 1992, the administrative law judge (ALJ) issued its order and findings of fact. Thereafter, Gates moved to re-open the record for the purpose of introducing additional medical testimony, and the motion was denied. Aggrieved by the adverse findings of the ALJ, Gates filed a Petition for Review before the full Mississippi Worker's Compensation Commission. Subsequent to hearing on March 22, 1993, the Commission entered an order affirming the ALJ's findings and order. Gates appealed the Commission's order to the Circuit Court of Chickasaw County. The Circuit Court

of Chickasaw County affirmed the Commission's order.

## ANALYSIS OF THE ISSUES AND LAW

### I.

Gates argues that the administrative law judge abused her discretion by denying his request to re-open the record so that the deposition of Dr. Frenz could be introduced. We disagree.

As a general rule, the right to re-open proceedings to take further evidence in workmen's compensation hearings is within the sound discretion of the hearing officer. *Wells-Lamont Corp. v. Watkins*, 247 Miss. 379, 388, 151 So. 2d 600, 603 (1963) (citations omitted). In the instant case, the record remained opened for a period of sixty days so that additional medical testimony could be introduced. In addition, subsequent to the sixty day period, approximately seven months elapsed prior to entry of the ALJ's order. Thus, approximately nine months were available to the parties for supplementation of the record. Since Gates was dilatory in not supplementing the record within the nine month period, we find that the ALJ properly denied Gates' request to re-open the record.

### II.

In assignments II and III above, Gates argues that the ALJ erred in finding that his impairment ended on July 25, 1991, and that the ALJ's decision is not supported by substantial credible evidence because the testimony of Dr. McFadden and Dr. Brown clearly indicated that he had not reached maximum medical recovery on July 25, 1991. The appellant acknowledges that this Court applies the substantial evidence standard in reviewing the Commission's findings regarding the existence and duration of disability. *See Oswalt v. Abernathy & Clark*, 625 So. 2d 770, 772-73 (Miss. 1993). However, the appellant's argument urges us to ignore the standard and determine where the preponderance of the evidence lies. We assume that the Commission, as the trier of fact, has already determined which evidence is credible and has weight. Therefore, we will not determine where the preponderance of conflicting evidence lies. *Clark*, 625 So. 2d at 772. Thus, if there is a quantum of credible evidence supporting the Commission's findings, we will not reverse. *Metal Trims Industries Inc. v. Stovall*, 562 So. 2d 1293, 1297 (Miss. 1990).

The ALJ found that Gates was temporarily and totally disabled from May 7, 1991 until July 24, 1991 due to a back sprain. This finding is consistent with Dr. Doorly's testimony that Gates was released to return to work on July 24, 1991 without any permanent partial impairment. Thus, we find that the Commission's order is supported by substantial credible evidence, and the lower court properly affirmed the Commission's findings.

### III.

Finally, Gates argues that the ALJ erred in finding that the treatment accorded him by Dr. McFadden and Dr. Brown was noncompensable. The ALJ determined that the treatments were noncompensable because they were unrelated to the May 6, 1991, injury. The Commission accepted the ALJ's findings and affirmed the ALJ's order. Again, if there is a quantum of evidence supporting the Commission's decision, we will not reverse.

Since Gates had reached maximum medical recovery at the time services were provided by Dr. McFadden and Dr. Brown, we find that there is substantial credible evidence supporting the Commission's finding that the treatments were unrelated to the injury of May 6, 1991 and therefore, noncompensable. Therefore, this assignment of error by Gates lacks merit.

In conclusion, we find that the Commission's decision was supported by substantial credible evidence, and the lower court properly affirmed the Commission's order.

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

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**