

IN THE COURT OF APPEALS 5/16/95
OF THE
STATE OF MISSISSIPPI
NO. 94-CC-00119 COA

STACIA L. HAJJ APPELLANT

v.

PICADILLY CAFETERIA AND OLD REPUBLIC APPELLEES
INSURANCE COMPANY

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

TRIAL JUDGE: HON. ROBERT LEWIS GIBBS

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY(S) FOR APPELLANT(S): GEORGE T. HOLMES

ATTORNEY(S) FOR APPELLEE(S): ROBERT P. THOMPSON

NATURE OF THE CASE: CIVIL: WORKERS' COMPENSATION

TRIAL COURT DISPOSITION: CIRCUIT COURT AFFIRMED DECISION OF MISSISSIPPI
WORKERS' COMPENSATION COMMISSION WHICH HELD THAT HAJJ REACHED
MAXIMUM MEDICAL IMPROVEMENT AS OF NOVEMBER 20, 1991

BEFORE THOMAS, P.J., MCMILLIN AND SOUTHWICK, JJ.

THOMAS, P.J., FOR THE COURT:

Stacia L. Hajj filed a workers' compensation claim for a slip and fall injury which occurred while working for Picadilly Cafeteria in Jackson, Mississippi. The Hinds County Circuit Court affirmed the

full Mississippi Workers' Compensation Commission's order which held that Hajj reached maximum medical improvement on November 20, 1991. Feeling aggrieved, Hajj appeals to this Court and asserts the following errors:

I. WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE WORKERS' COMPENSATION COMMISSION'S FINDING THAT CLAIMANT REACHED MAXIMUM MEDICAL IMPROVEMENT AS OF NOVEMBER 20, 1991.

II. WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE COMMISSION'S DENIAL OF CLAIMANT'S MOTION TO INTRODUCE ADDITIONAL EVIDENCE.

Finding no error, and substantial evidence for the findings of the commission, we affirm.

STATEMENT OF THE CASE

The testimony before the administrative law judge was that on May 12, 1991, Hajj slipped at work due to water located on the tile floor but continued working that day. On May 14, 1991, Hajj went to the emergency room and was given some medication. Hajj returned to work the following Thursday.

Hajj saw her family doctor who stated that Hajj had no injury. Hajj called Baptist Hospital who referred her to Dr. John P. Gorecki, who prescribed physical therapy. Hajj explained that Dr. Gorecki also stated that her injury would heal in about six to eight weeks. But, Hajj explained that Dr. Gorecki stated that if the injury did not heal, then Hajj would need "nerve block work" on her back. Picadilly then had Hajj see Dr. W.T. McCraney, Jr., an orthopedic surgeon, who also stated that her injury would heal in about six to eight weeks. Hajj started physical therapy twice a week in September 1991. Hajj was terminated from Picadilly on May 18, 1991, due to "cash shortages" and Hajj's improper handling of food. Hajj claimed she was terminated due to her injury.

In August 1991, Hajj began working as a hostess at Fernando's Restaurant but did not perform any lifting or carrying tasks. Hajj worked at Fernando's for approximately two months and then started as a part-time cashier at J Riggins. Ann Hajj, Stacia's mother, testified that Stacia is not as active since the accident. Everette Jay Flagg, II, Manager of Picadilly Cafeteria, testified that Hajj could not give customers the correct amount of change and she dropped some food on the floor but served it to a customer anyway. Thus, Hajj was terminated.

Dr. W.T. McCraney, Jr. explained that Hajj gave a history of previous neck and back injuries and that her injury in May 1991, was a cervical and lumbar strain. The range of motion of her neck, upper back and lower back were excellent. No neurological deficiencies were present and Hajj had normal reflexes in upper and lower extremities. There was no nerve root irritation or any permanent damage. Dr. McCraney stated that Hajj was completely healed on November 20, 1991, and would not have any permanent impairment. Dr. McCraney testified that Hajj had reached maximum medical recovery on November 20, 1991.

The administrative judge held that Hajj sustained a compensable injury and her average weekly wage

was \$250. The judge further found that Hajj was temporarily totally disabled from May 12, 1991, to November 20, 1991, and awarded benefits of \$166.67 for those dates. The judge held that there was no evidence that Hajj suffered a permanent medical impairment and awarded all medical services and supplies required by her injury.

Subsequently, Hajj petitioned for review before the full Mississippi Workers' Compensation Commission. Picadilly also petitioned and requested that the commission overturn the judge's finding that Picadilly be required to pay all medical services and supplies required for Hajj's injury. The commission adopted the findings of the administrative law judge but clarified the administrative judge's order by finding that Picadilly and its' carrier were obligated to provide medical benefits to Hajj up to November 20, 1991. The commission noted that Hajj reached maximum medical improvement on November 20, 1991, and held that Picadilly and the carrier need not provide for medical services beyond that date. The commission refused to consider additional evidence submitted by Hajj.

Hajj appealed to the Circuit Court of Hinds County which held that there was ample evidence to support the commission's finding. The circuit court noted that Hajj assigned as error the commission's refusal to consider the additional evidence but failed to cite any case authority for the point and did not mention it in her brief to the circuit court. Subsequently, Hajj appealed to this Court.

LAW

I. WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE WORKERS' COMPENSATION COMMISSION'S FINDING THAT CLAIMANT REACHED MAXIMUM MEDICAL IMPROVEMENT AS OF NOVEMBER 20, 1991.

Hajj asserts that the circuit court's order is clearly erroneous because it ignored Hajj's evidence that she had not reached maximum medical improvement by November 20, 1991. In support of her argument, Hajj cites *Penrod Drilling Co. v. Ethridge*, 487 So. 2d 1330, 1333 (Miss. 1986), for the proposition that her evidence and testimony was undisputed and unless contradicted by "positive testimony or circumstances," must be taken as true.

This Court has stated numerous times the standard of review on appeal and will not reverse the commission's order unless it is clearly erroneous and contrary to the overwhelming weight of the evidence. If the commission's findings are supported by substantial evidence, all appellate courts are bound by the commissions' findings, even if the evidence would persuade this Court to find otherwise, if it were the fact finder. *Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9, 12 (Miss. 1994); *Fought v. Stuart C. Irby Co.*, 523 So. 2d 314, 317 (Miss. 1988).

Hajj argues that the circuit court, in affirming the commission's order, disregarded the testimony of Dr. Gorecki, herself, and Hajj's mother and "selectively interpreted the inferior" testimony of Dr. McCraney. Hajj cites *Gray v. Poloron Products*, 347 So. 2d 363 (Miss. 1977), for the proposition that the circuit court should not have selectively chosen the testimony of certain physicians while ignoring others. Instead, Hajj argues, the circuit court should have considered all the testimony as a whole. A review of the circuit court's order demonstrates that the circuit court did not selectively

choose to consider the testimony of certain physicians, rather, it considered all the testimony in reaching a decision.

Hajj cites *Morris v. Lansdell's Frame Co.*, 547 So. 2d 782 (Miss. 1989), for the proposition that her testimony regarding continued pain must be taken as true unless contradicted by positive testimony or circumstances. *Morris* is distinguishable from the case at bar because in that case, there was testimony from a psychiatrist that the claimant developed anxiety neurosis due to his compensable accident. *Id.* at 784. Here, there is no medical testimony, except for Hajj's complaint of pain, indicating any type of injury or diagnosis. In fact, all of the medical testimony demonstrates that Hajj has reached maximum medical recovery and should not be suffering from any type of pain or injury. Finally, the *Morris* Court noted that it was:

seriously concerned that there is a great potential for abuse in claims which are based predominantly upon pain reported by the patient, particularly in circumstances where the patient's testimony or statement to the physician is the sole evidence of its continued presence. In these cases it would be prudent to obtain additional medical evidence to either support or dispute the claim.

Id. at 785-86.

Here, there appears to be the exact situation that concerned the *Morris* Court: Hajj's testimony is the sole evidence of her alleged pain and there is an absence of any medical testimony to support Hajj's claim. *Rivers Constr. Co. v. Dubose*, 241 Miss. 527, 130 So. 2d 865 (Miss. 1961), is dispositive of this issue. Dubose, the claimant, received a compensable injury which resulted in a hernia. *Id.* at 538. Dubose claimed that the hernia also caused further injury to the nerve.

The *Dubose* Court held that it was:

evident from the testimony that the pain to the nerve is a part of the hernia injury, and has not spread to other parts of the body, so as to cause a multiple injury. It is obvious that every specific or listed injury at the same time will incur some injury and pain to a nerve within the area of the specific injury; therefore unless the testimony is sufficient to establish that the injury spreads to other parts of the body, the mere fact that there is prolonged and severe pain experienced in the area of the specific injury, the evidence of pain alone will not be sufficient to establish additional or multiple injury.

Dubose, 241 Miss. at 538.

The commission was the ultimate finder of fact, and its order reflected a resolution of conflicting testimony. We are not at liberty to disturb the same.

II. WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE COMMISSION'S DENIAL OF CLAIMANT'S MOTION TO INTRODUCE ADDITIONAL EVIDENCE.

Hajj claims that the commission should have allowed her to introduce evidence of additional doctor's visits. Hajj cites *Smith v. Container Gen. Corp.*, 559 So. 2d 1019 (Miss. 1990) for the proposition that justice requires the commission to allow the additional evidence because it took a year and a half for the case to be heard. In *Smith*, the court held that the commission should have allowed the claimant to provide additional evidence because the claimant's wage earning capacity was inadvertently omitted. *Id.* at 1024.

In the case at bar, Hajj had ample opportunity to present medical testimony before the administrative judge and failed to do so. There was no showing of an inadvertent omission of any testimony. Hajj admitted the testimony and records of the doctors at the time of the hearing which was approximately seven months after her accident. In sum, the commission has the discretion to reopen a case and will not be reversed unless there is an abuse of discretion. *Smith v. Container Gen. Corp.*, 559 So. 2d 1019, 1023 (Miss. 1990).

THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY IS AFFIRMED. APPELLANT IS TAXED WITH COSTS OF APPEAL.

FRAISER, C.J., BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, MCMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.