IN THE COURT OF APPEALS 12/12/95

OF THE

STATE OF MISSISSIPPI

NO. 95-CC-00315 COA

LOUIE E. HYDRICK

APPELLANT

v.

HARRISON COUNTY SHERIFF'S DEPARTMENT AND SOUTH MISSISSIPPI WORKERS' COMPENSATION FUND

APPELLEES

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JERRY O. TERRY

COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

KENNETH R. WATKINS

ATTORNEYS FOR APPELLEES:

WILLIAM D. BLAKESLEE, RICHARD W. SLIMAN

NATURE OF THE CASE: WORKMAN'S COMPENSATION

TRIAL COURT DISPOSITION: AFFIRMED DECISION OF WORKERS COMPENSATION COMMISSION

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

PER CURIAM:

Louie E. Hydrick was injured in the scope of his employment with the Harrison County Sheriff's Department. Hydrick disputes the full commission's determination, upheld by the circuit court that the claimant suffered only a 60% industrial loss to both legs. Hydrick appeals to this Court claiming that the circuit court erred in not finding that Hydrick was entitled to permanent disability.

Our Supreme Court has held that when there is a finding of permanent partial disability the burden is on the claimant to make a prima facie showing that he has sought out, but has been unable to find work in the same or other employment. *Jordan v. Hercules*, 600 So. 2d 179, 183 (Miss. 1992). Once the employer refuses to reinstate the claimant after the claimant has reached maximum medical recovery, then it is prima facie that the claimant has met the burden of proving total disability. The employer is then shouldered with the burden of showing partial disability or that the employee has suffered no loss of wage earning capacity. *Id.* In this case the lower court, in affirming the decision of the Commission, found that the employer had put on sufficient proof that Hydrick was capable of performing the duties of a dental technician, thereby proving that Hydrick had not suffered loss of wage earning capacity.

On appeal, this Court will reverse the Commission's decision only if the decision is not supported by substantial evidence and is manifestly erroneous. *Georgia Pacific Corp. v. Gregory*, 589 So. 2d 1250, 1253 (Miss. 1991). After a careful review of the record we believe that the Commission's decision is supported by ample evidence in the record.

For the above reasons we affirm the decision of the lower court.

THE JUDGMENT OF THE CIRCUIT COURT OF HARRISON COUNTY DENYING PERMANENT DISABILITY BENEFITS 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. THOMAS, P.J., NOT PARTICIPATING.