

IN THE COURT OF APPEALS 12/29/95

OF THE

STATE OF MISSISSIPPI

NO. 95-CC-00148 COA

**MISSISSIPPI STATE UNIVERSITY AND UNITED STATES FIDELITY AND GUARANTY
COMPANY**

APPELLANTS

v.

DEBRA B. BUFORD

APPELLEE

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

TRIAL JUDGE: HON. LEE. J. HOWARD

COURT FROM WHICH APPEALED: OKTIBBEHA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANTS:

MARK G. WILLIAMSON

ATTORNEY FOR APPELLEE:

JAMES E. BROWN

NATURE OF THE CASE: WORKER'S COMPENSATION: PETITION TO REOPEN CLAIM

TRIAL COURT DISPOSITION: REVERSED COMMISSION'S ORDER DENYING THE
PETITION TO REOPEN CLAIM

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

KING, J., FOR THE COURT:

The sole issue to be decided on this appeal is whether the Circuit Court of Oktibbeha County, Mississippi erred when it reversed an Order of the Mississippi Worker's Compensation Commission, which denied the employee's petition to reopen claim pursuant to section 71-3-53 of the Mississippi Code. We answer in the affirmative and therefore, reverse the circuit court's judgment and order reinstatement of the commission's Order.

FACTS

On December 19, 1988, the commission approved Buford's petition to settle and compromise any and all claims for disability and compensation against the employer, Mississippi State University and its worker's compensation insurance carrier, United States Fidelity and Guaranty Company. Thereafter, on October 8, 1990, Buford filed a petition requesting that the claim be reopened because there had been a mistake in a determination of fact.

On May 16, 1991, a hearing was held on the employee's petition to reopen, and on May 21, 1992, the administrative law judge (ALJ) entered an order denying the petition to reopen. Buford appealed the ALJ's order to the full commission. The full commission affirmed the ALJ's order, and Buford appealed to the Circuit Court of Oktibbeha County, Mississippi. The circuit court determined that there had been a mistake in a determination of fact and a change in condition which warranted reopening of the claim and therefore, reversed the commission's order. The employer and carrier now appeal the circuit court's judgment.

ANALYSIS OF THE ISSUES AND LAW

The appellant has framed the issues to be decided on appeal as (1) whether there has been a change in conditions since the commission approved the settlement of the claim and (2) whether the commission made a mistake in a determination of fact at the time the initial settlement was approved. Because this appeal concerns a circuit court's reversal of an order of the Mississippi Worker's Compensation Commission, we appropriately frame the issue to be decided as whether the circuit court erred in reversing the commission's order.

In the case sub judice, the commission affirmed the ALJ's order denying Buford's petition to reopen the claim. Upon review by this Court, the commission's "findings and decisions are subject to normal deferential standards, notwithstanding the AJ's actions." *Cooper v. Marathon Freight Lines, Inc.*, 635 So. 2d 855, 860 (Miss. 1994) (citations omitted). Absent an error of law, and if the decision of the commission is based upon substantial evidence, the decision will be affirmed on appeal. *Natchez Equip. Co. v. Gibbs*, 623 So. 2d 270, 273-74 (Miss. 1993) (citing *Metal Trims Indus. Inc. v. Stovall*, 562 So. 2d 1293, 1296-97 (Miss. 1990)). By the same token, when the decision of the commission is before the circuit court on intermediate appeal, that circuit court may not tamper with the findings of fact, where the findings are supported by a sufficient weight of the evidence. *Gibbs*, 623 So. 2d at 724; *see also Morris v. Lansdell's Frame Co.*, 547 So. 2d 782, 784 (Miss. 1989) (stating that the circuit court cannot pass upon the weight of the evidence where sufficient as a matter of law or act as an original fact finding tribunal). In essence, a court cannot substitute its judgment for that of the commission if the commission's findings are supported by substantial evidence. *Presto Mfg. Co. v. Teat*, 241 So. 2d 661, 662 (Miss. 1970).

In the instant case, the circuit court partook of forbidden fruit when it ignored the deferential standard of review and substituted its judgment for that of the commission.

The circuit court's reversal of the commission's order was predicated upon the assumption that the commission was bound to follow the holding in *Metal Trims Industries, Inc. v. Stovall*, 562 So. 2d 1293, 1297 (Miss. 1990). Despite factual similarity, *Stovall* and the instant case are distinguishable. Unlike the claimant's attorney in *Stovall*, Buford's attorney was candid in dealing with the commission. Moreover, in *Stovall*, the claimant's changed condition resulted from the suffering of an additional back injury shortly after the claimant had reached maximum medical recovery. In the instant case, no subsequent back injury precipitated a change in condition. The same factual distinctions appear in the ALJ's order, which contained detailed findings of fact and law. These factual distinctions apparently, controlled the commission's disposition of Buford's petition to reopen. Because substantial credible evidence supported the commission's decision, the circuit court erred when it reversed the commission. Therefore, we reverse the circuit court and order reinstatement of the commission's Order.

THE JUDGMENT OF THE CIRCUIT COURT OF OKTIBBEHA COUNTY IS REVERSED AND THE ORDER OF THE WORKERS' COMPENSATION COMMISSION DENYING THE PETITION TO REOPEN IS REINSTATED. COSTS ARE TAXED TO APPELLEE.

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