

**IN THE COURT OF APPEALS 11/14/95**  
**OF THE**  
**STATE OF MISSISSIPPI**  
**NO. 95-CC-00061 COA**

**LUCY WILLIAMS**

**APPELLANT**

**v.**

**GOLDEN GULF COAST PACKING COMPANY, INC. AND UNITED STATES FIDELITY  
& GUARANTY 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. JAMES E. THOMAS

COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

JAMES K. WETZEL

ATTORNEY FOR APPELLEES:

RONALD T. RUSSELL

NATURE OF THE CASE: CIVIL-WORKMAN'S COMPENSATION CLAIM

TRIAL COURT DISPOSITION: ORDER DENYING BENEFITS AFFIRMED

BEFORE FRAISER, C.J., COLEMAN AND SOUTHWICK, JJ.

FRAISER, C.J., FOR THE COURT:

Lucy Williams (Williams) sought workers' compensation benefits alleging she received a compensable injury while on the job. The Workers' Compensation Commission found that claimant had failed to establish the requisite connection between her employment and her injury. Consistent therewith, the Commission denied benefits. The Harrison County Circuit Court affirmed the Commission's decision. Williams presents four issues on appeal:

I. The Circuit Court of Harrison County and the Mississippi Workers' Compensation Commission erred as a matter of law and fact in finding that the Claimant has failed to adequately prove her entitlement to benefits under the terms of the Mississippi Workers' Compensation Act as well as finding that the Claimant failed to meet her burden of proof that an untoward event occurred in the course and scope of her employment in the calendar year 1990.

II. The Circuit Court of Harrison County and the Mississippi Workers' Compensation Commission erred as a matter of law in finding that the Claimant had not made reasonable efforts to find work following her release from Dr. Harry A. Danielson in order to demonstrate disability to be entitled to permanent/partial and/or permanent total disability benefits when said issues were not properly before the Commission.

III. The Circuit Court of Harrison County and the Mississippi Workers' Compensation Commission erred as a matter of law in making decisions regarding Claimant's entitlement to permanent partial disability benefits when said claims were not properly before the Commission.

IV. The Circuit Court of Harrison County and the Mississippi Workers' Compensation Commission erred as a matter of law in denying Claimant's claim for medical and temporary total benefits.

Our resolution of the first issue of compensable injury, renders the other three issues moot. By virtue of the familiar substantial evidence rule limiting our scope of appellate review, we affirm.

## FACTS

Williams filed her petition to controvert on October 30, 1991, claiming that she injured her back while employed at Golden Gulf Coast Packing (employer) as a belt worker. Her petition listed the date and month of the injury as "unknown". However, at the hearing Williams testified the accidental injury occurred in February of 1990, while she was helping a co-worker carry a case of empty boxes. Williams related the co-worker dropped her end of the case thereby placing on her the weight of the load; that she immediately experienced severe lower back pain; that she took three weeks off work and remained bedridden during the remainder of February; and that on the day of her injury she notified her immediate supervisor about her back pain. Williams did not go to a doctor or seek medical attention until September 1991, some seventeen months after the incident. In October 1991,

Williams underwent lumbar surgery.

In September, 1991, Williams informed Kathy Brooks, her employer's bookkeeper/insurance clerk that she had injured her back. Brooks testified that Williams' daughter called asking for workers' compensation claim forms. Brooks told her that Williams needed to personally request the forms and give the company necessary filing information. Williams then called Brooks and said her doctor opined that her back pain resulted from standing long hours. Brooks specifically asked Williams if she had received any injury from falling, twisting, pulling or picking things up, and Williams answered "no" to everything. Brooks testified that Williams was not employed by the plant during February 1990, because she and several of her co-workers had been laid off during the slow shrimp season.

Diane Cooks, Williams' co-worker who allegedly dropped her end of the case, causing Williams' injury testified that she had never dropped her end of the case, but had only wiggled it slightly in a joking manner. Cooks stated that Williams did not mention her back pain on the day the boxes were moved. She testified that Williams had been complaining about her back before the box incident.

When Williams sought medical attention in 1991, she failed to indicate anywhere on the patient history form that she had suffered any type of work related lifting injury. Instead, she listed her problem as standing too long.

I.

Whether the evidence supported the Commission's finding that Williams failed to meet her burden of proving that her injury arose out of or in the course of her employment at Golden Gulf Coast Packing Company, Inc.

On January 7, 1993, the Administrative Law Judge signed an order dismissing Williams' claim. He made the following relevant finding:

1. The Claimant has failed to adequately prove entitlement to benefits under the terms and provisions of the Mississippi Workers' Compensation Act. She has failed in her burden of proving that an untoward event occurred and her injury arose out of and in the course and scope of her employment in 1990.

In his written opinion, the Administrative Law Judge stated:

Claimant did not seek medical attention until September of 1991, well over a year after the date of the alleged injury. During that interim she conceded that she worked regular hours, with the maximum being 90 hours worked in one week [Claimant's deposition at pp. 42, 43]. When Claimant finally sought medical attention in late 1991, it was from Dr. Phillip Lance Barnes. Dr. Barnes' records [MWCC Exhibit 10 EC] reflect that he first saw Claimant on September 10, 1991, at which time she gave a history of low back pain for two and one-half months. Claimant's history further indicated that she worked twelve to twenty hour days at a local seafood factory. Contrary to her testimony, she did not

mention the box incident.

Dr. Barnes ultimately referred Claimant to Dr. Harry Danielson. . . . In his deposition, Dr. Danielson testified that he first saw Claimant on October 10, 1991. She did report the box injury at that time. However, the Patient History Form and the Patient Information Form [Exhibits 1 and 2 to Dr. Danielson's deposition] completed by Claimant at Dr. Danielson's request on September 28, 1991, make no reference what soever to the box incident.

....

While Dr. Danielson initially linked Claimant's [injured] disk [sic] to the box incident, he conceded that such opinion was based solely on the Claimant's history. Further, Dr. Danielson conceded that it was extremely unlikely that the [injured]disk [sic] he found dated back to February of 1990. [Dr. Danielson's deposition at p. 18]. Noting Claimant's history of initially improving after the box incident, combined with Claimant's capability of working twelve to twenty hours a day after the alleged box incident, Dr. Danielson conceded that the surgery was probably necessitated by some subsequent incident occurring after the box incident which constituted a new aggravation or exacerbation. [Dr. Danielson's deposition pp. 20,21]. Claimant admitted that she had no other alleged work injuries other than an inconsequential bump on the head. [Claimant's deposition at p. 86].

On the basis of the evidence presented, this Administrative Judge cannot find this claim compensable. Claimants bear the general burden of proof of establishing every essential element of the claim, and it is not sufficient to leave the matter to surmise, conjecture, or speculation. *Narkeeta, Inc. v. McCoy*, 153 So. 2d 798, 800 (Miss. 1963); *Flinkote Company v. Jackson*, 192 So. 2d 395, 397 (Miss. 1966); *Fought v. Stuart Irby*, 523 So. 2d 314, 317 (Miss. 1988); *V. Dunn, Mississippi Workers' [sic] Compensation*, § 265 (3d ed. 1982).

The claimant, as a general proposition, has the burden of proof. He must meet this burden by showing an accidental injury arising out of and in the course of his employment and a causal connection between the injury and the claimed disability. *Narkeeta*, 153 So. 2d at 800.

Appellate review of compensation claims is a narrow one. It is well settled that "[t]he Commission is the ultimate fact finder." *Hardin's Bakeries v. Dependent of Harrell*, 566 So. 2d 1261, 1264 (Miss. 1990). "Accordingly, the Commission may accept or reject an administrative judge's findings." *Id.* In the case *sub judice*, the Mississippi Workers' Compensation Commission affirmed the order of the administrative law judge after thoroughly studying the record and the applicable law. Our standard of review is set forth in *Delta CMI v. Speck*:

Under settled precedent, courts may not hear evidence in compensation cases. Rather, their scope of review is limited to a determination of whether or not the decision of the commission is supported by the substantial evidence. If so, the decision of the commission should be upheld. The circuit courts act as intermediate courts of appeal. The Supreme

Court, as the circuit courts, acts as a court of review and is prohibited from hearing evidence or otherwise evaluating evidence and determining facts. "[W]hile appeals to the Supreme Court are technically from the decision of the Circuit Court, the decision of the commission is that which is actually under review for all practical purposes."

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."

586 So. 2d 768, 772-73 (Miss. 1991)(citations omitted).

"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) (citations omitted). Therefore, we must examine the record and be satisfied that substantial evidence existed upon which the Commission could base its decision.

Throughout her testimony, Williams contradicted her deposition and earlier testimony. She continually became confused about the date of the alleged injury, the way she was carrying the box, and exactly when she notified her supervisors of her injury. Her testimony essentially boiled down to her being injured sometime in February 1990 after catching a case full of empty shrimp boxes that her co-worker dropped. She testified that she took the next three weeks off work, but that her co-workers continued working during that time. Williams stated she immediately began complaining about the pain in her back and that she notified her immediate supervisor the very day of the incident. She claims that she waited to go to the doctor until September 1991 because she had no money or insurance.

Williams' co-worker, Diane Cooks, contradicted Williams. Cooks testified they were carrying the case of empty boxes by the flaps, and that she never dropped her end, but only wiggled it a little in jest. Cooks testified that the box was not that heavy; she could usually manage it by herself. When asked if Williams began to complain about her back, Cooks stated that she did, but that she had been complaining about her back pain for some time before the box incident. Williams' supervisor, Shirley Hawthorne, testified that Williams never notified her about any back injury, but she was aware of Williams kidney problems, as well as a fall Williams had taken at a nightclub. Hawthorne's testimony is as follows:

Q. Did she [Williams] ever specifically in February of that year [1990] report to you that she had injured her back while lifting a box with Diane Cooks?

A. February? No, not February.

Q. Did she at any other time during 1990 report to you that she'd hurt her back on the job?

A. I remember she left one time on the job early, but I don't know what caused -- all I know she was sick.

....

Q. All right. Did she ever tell you anything about her kidneys or any other problems?

A. Yeah, she told me about her kidneys.

....

Q. Did you ever hear her, or was it ever discussed in your presence and in her presence of what any other incidents or accidents where she had any type of fall anywhere else?

A. No. I just heard her and the girl talking one time--

....

A. --about a fall she had.

....

A. A girl named Deborah Handshaw. They went out together one night, and she fell down some stairs coming out of a club or something.

Q. Do you remember them saying what club it was?

A. It was Upstairs Downstairs.

Q. Do you remember what was said specifically at that time?

A. No. Because they all--we was all laughing about it, you know. They just had a good time, and they was coming down the stairs, and she busted her behind. That was it.

Q. Was Lucy there at the time the conversation was going on?

A. Yeah, she was there. They came to work that Saturday morning.

Williams' personnel records at the time of the alleged injury were placed in evidence by the employer. The records reflect that neither Williams nor any of her co-workers were even employed by the plant in February of 1990 because it was the slowest time for the shrimping industry. This evidence is supported by records from the Mississippi Employment Security Commission which reflect that Williams was receiving unemployment benefits through the quarter ending March 31, 1990.

What is most troubling about Williams' alleged accident and resulting injury is that she did not seek medical assistance for more than a year and a half after the box incident occurred. She claims the accident occurred in February of 1990, yet she did not solicit physician services until September 1991. When Williams visited her first specialist, Dr. Lance Barnes, she did not tell him about the box incident, nor did she indicate she that she had a work related injury. In fact, Williams complained to Barnes that she had been suffering back pain for two and one half months. After referral, Dr. Harry Danielson became her treating physician. While Williams did mention the box incident to him, she did not make any reference to it on her patient history or patient information forms. Dr. Danielson stated that Williams' current back troubles most likely did not date back to the box incident, but were more appropriately associated with some subsequent event.

In *Penrod Drilling Co. v. Etheridge*, 487 So. 2d 1330, 1332 (Miss. 1986), the court reminded us of the essential components of a compensation case:

1. The claimant generally bears the burden of proof to show an injury arising out of employment, and a causal connection between the injury and the claimed disability;
2. The Commission is the trier of facts, judges the credibility of witnesses, and facts supported by substantial evidence should be affirmed by the circuit court;
3. Unless prejudicial error is found, or the verdict is against the overwhelming weight of the evidence, the Commission's order should be affirmed.

*Id.* at 1332 (citation omitted). The Mississippi Supreme Court also stated:

Claimant contends that the decision of the Commission is contrary to the overwhelming weight of the evidence and is not based on substantial evidence. We are of the opinion that this was a typical case for the triers of fact. Claimant was contradicted by numerous witnesses. The Commission was justified in finding the claimant did not receive an injury on the job. *We are of the opinion that the testimony of the contradicting witnesses was substantial evidence sufficient to justify the Commission in declining to accept the uncorroborated testimony of the claimant, and the fact that some of the contradictory testimony was negative in character does not of itself require the triers of fact to reject it.*

*Id.* (citation omitted). In this case, Williams' testimony was uncorroborated and contradicted by co-workers. After careful review of the record, which includes Williams' uncorroborated testimony, lack of medical and other evidence supporting her claim of work related injury, the contradictory evidence of co-workers, the records of Mississippi Employment Commission refuting employment on the alleged injury date, we are unable to say the Commission's decision denying benefits is not supported by substantial evidence. We therefore affirm.

**THE JUDGMENT OF THE CIRCUIT COURT OF HARRISON COUNTY AFFIRMING THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION'S DENIAL OF BENEFITS TO CLAIMANT IS AFFIRMED. COSTS ARE TAXED TO APPELLANT.**

**BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR. THOMAS, P. J., NOT PARTICIPATING.**