IN THE COURT OF APPEALS 10/31/95

OF THE

STATE OF MISSISSIPPI

NO. 95-CC-00037 COA

THOMAS L. ODOM

APPELLANT

v.

BUSH CONSTRUCTION COMPANY

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

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

TRIAL JUDGE: HON. R.I. PRICHARD, III

COURT FROM WHICH APPEALED: PEARL RIVER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PERRE M. CABELL

ATTORNEY FOR APPELLEE:

WALTER J. EADES

NATURE OF THE CASE: CIVIL: WORKERS' COMPENSATION

TRIAL COURT DISPOSITION: AFFIRMED COMMISSION'S RULING

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

BRIDGES, P.J., FOR THE COURT:

Thomas L. Odom filed a worker's compensation claim for an injury which occurred during his

employment at Bush Construction Co. After a hearing, the administrative law judge found that Odom had sustained a compensable injury on May 13, 1992, and reached maximum medical recovery from his injury and could resume employment on November 23, 1992, with no permanent disability benefits. The judge also found that further treatment was not necessitated by Odom's compensable accident. The Mississippi Workers' Compensation Commission affirmed the administrative law judge's order. Odom appealed to the Circuit Court of Pearl River County which affirmed the decision of the Mississippi Worker's Compensation Commission.

Aggrieved, Odom appeals to this Court and asserts the following errors:

> I. WHETHER THE OVERWHELMING WEIGHT OF THE EVIDENCE ESTABLISHED THAT ODOM SUFFERED NO PERMANENT DISABILITY AND DID NOT NEED FURTHER MEDICAL TREATMENT AS A RESULT OF HIS INJURY.
>
> II. WHETHER THE COMMISSION ERRED IN ARBITRARILY CONSIDERING ONLY ISOLATED PASSAGES OF THE EVIDENCE AND NOT THE RECORD AS A WHOLE.

FACTS

Bush Construction hired Odom as a gravel pit operator in July of 1991. Odom had a variety of duties which included running a dredge pump, welding, and working on a pipeline. On the day of the injury, Odom injured his lower back while he and his supervisor were working on a pipeline. According to Odom's testimony, he had been working on the pipeline all day and he injured his back while attempting to roll over a scrap metal box to cut a padeye for the pipeline. Although he was in pain, Odom worked until the end of his shift. That evening, he contacted Bush Construction's superintendent to request medical treatment. The supervisor instructed Odom to go to the nearest emergency room.

The next day Odom went to the emergency room of the Bogalusa Community Hospital where he was examined by Dr. Gilbert Caillouet. Dr. Caillouet prescribed physical therapy for two weeks. Dr. Caillouet also referred Odom to Dr. Evan Howell, a neurologist who practiced out of Covington, Louisiana. Dr. Howell in turn referred Odom back to Dr. Caillouet for two more weeks of physical therapy. Odom then returned to Dr. Howell who prescribed a work-hardening program. The next day, Odom attended the program, but had to stop because he began to experience intense pain. Odom then went to his family physician who referred Odom to a neurosurgeon, Dr. Miranne. Dr. Miranne testified that he examined Odom a total of five times. During the course of Odom's treatment, Odom was asked to undergo a myelogram and post myelogram CT scan. The results of the tests revealed that there was a bulging of the L4-5 and L5-S1 discs which were characteristic of degenerative changes. The tests also showed that there was no nerve compression or involvement. In explaining the degenerative changes, Dr. Miranne stated that the changes were a result of the aging process. Dr. Miranne stated that when he first examined Odom on August 22, 1992, the results of the

neurological exam were normal. In an effort to verify the results, Dr. Miranne repeated the tests which revealed the same results.

According to Dr. Miranne, Odom reached maximum medical improvement on November 23, 1992, having suffered no permanent impairment as a result of the May 13, 1992, injury. Odom continued to complain of difficulty in movement, but Dr. Miranne believed that the real reason for the pain was prostate cancer. Dr. Miranne also stated that there was no need for Odom to be examined by an orthopedic surgeon.

Odom continued to complain of pain and discomfort. In March of 1993, Bush Construction authorized Odom to see an orthopedic surgeon, Dr. Krieger. At this point, Odom did not go to see Dr. Krieger, but at the request of his attorney opted to see another orthopedic surgeon, Dr. Manale. After examining Odom, Dr. Manale testified that Odom was the victim of a degenerative disc disease and was a possible candidate for surgery. Dr. Manale recommended that Odom have a discogram. Otherwise, Dr. Manale predicted Odom would be 20 to 30 percent physically impaired, and would have to avoid lifting objects that weighed more than 20 pounds. Dr. Manale also testified that Odom's condition was a preexisting condition which preceded the injury at Bush Construction. After his visit to Dr. Manale, Odom visited Dr. Krieger, the orthopedic surgeon recommended by his employer. Dr. Krieger reviewed the medical records relating to the injury and came to the conclusion that Odom had a degenerative disc disease of the lower back which had been aggravated by bending and lifting. Furthermore, Krieger testified that Odom had recovered without any neurological damage to his lower back. In addition, Dr. Krieger stated that Odom had reached maximum medical improvement by the time he had examined Odom, and that Odom was fully capable of returning to work.

The administrative law judge and the full Mississippi Workers' Compensation Commission found that Odom sustained a compensable injury on May 13, 1992, and reached maximum medical improvement and could resume employment on November 23, 1992, with no permanent physical impairment. The commission also found that Odom had reached maximum medical improvement prior to being examined by Dr. Manale and therefore the treatment recommended by Dr. Manale was not "reasonable and necessary" within the meaning of the Workers' Compensation Act.

LAW

I. WHETHER THE OVERWHELMING WEIGHT OF THE EVIDENCE ESTABLISHED THAT ODOM SUFFERED NO PERMANENT DISABILITY AND DID NOT NEED FURTHER MEDICAL TREATMENT AS A RESULT OF HIS INJURY.

In his first three assignments of error, Odom argues that the circuit court erred in affirming the decision of the Workers' Compensation Commission because the commission's decision was contrary to the overwhelming weight of the evidence and was not supported by substantial evidence. The thrust of Odom's argument is that the circuit court erroneously put more emphasis on the testimony

of Dr. Miranne and Dr. Krieger than the testimony of Dr. Manale. Odom claims that the testimony of Dr. Miranne is irrelevant because Dr. Miranne is a neurosurgeon and Odom never claimed to have a neurological problem, but an orthopedic one. According to Odom, Dr. Krieger's testimony which supported the opinion of Dr. Miranne is unimportant because he only examined Odom one time and did not have recent diagnostic studies to review during his examination.

Odom claims that the most important medical testimony consisted of the testimony of Dr. Manale, who testified that Odom had suffered a permanent aggravation of a preexisting degenerative disc disease, and that Odom had not reached maximum medical recovery. Dr. Manale also stated Odom should not return to his former job and that Odom suffered a 20 to 30 percent impairment to the body as a whole. Dr. Manale further opined that Odom was "theoretically a candidate" for surgery and recommended that Odom have a discogram. In sum, Odom contends that he made a prima facie case of proximate causation and inability to work through his testimony, the testimony of Dr. Manale and through consideration of the evidence as a whole. We must disagree.

The Mississippi Supreme Court has repeatedly stated that on review, an appellate court will give great deference to factual findings made by the commission. All appellate courts are bound by factual findings made by the commission even if the evidence on the record would lead this Court to a different conclusion. *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). Moreover, the court has also said, "In determining whether or not there is "clear evidence" of causal connection, the Workmen's Compensation Commission has the discretion to determine the probative value of expert medical testimony. *Babb's Estate v. GTE Sylvania, Inc.* 417 So. 2d 545, 550 (Miss. 1982). Furthermore, whenever there is conflicting expert medical testimony, this Court will affirm the findings of the commission regardless of whether the verdict is in favor of the claimant or the employer. *Reichhold Chemical, Inc. v. Sprankle*, 503 So. 2d 799, 801 (Miss. 1987) (citing *Kersh v. Greenville Sheet Metal Works*, 192 So. 2d 266, 268 (Miss. 1966)). The commission's findings cannot be disturbed where two or more qualified medical experts reach different conclusions, because the commission may choose to reject or accept the testimony of medical experts. *Miller Transp., Ltd. v. Reeves*, 195 So. 2d 95, 100 (Miss. 1967).

In the case before us, there is conflicting medical testimony as to whether or not Odom could return to work on November 23, 1992, and whether or not additional medical treatment was necessary. The record shows that the commission found in favor of the testimony of Dr. Miranne and Dr. Krieger, both of whom stated that in their opinion Odom had no basis for permanent impairment and could return to work without restrictions or limitations. In addition, both Dr. Miranne and Dr. Krieger testified that, in their opinion, Odom did not need further medical treatment. The commission chose to accept the testimony of Dr. Miranne and Dr. Krieger over the testimony of Dr. Manale. Accordingly, the commission's order was not clearly erroneous or against the overwhelming weight of the evidence. We are therefore not at liberty to disturb the commission's findings on these points.

For the foregoing reasons this Court finds that Odom's first three assignments of error are without merit.

II. WHETHER THE COMMISSION ERRED IN ARBITRARILY CONSIDERING ONLY ISOLATED PASSAGES OF THE EVIDENCE AND NOT THE RECORD AS A

WHOLE.

In discussing this assignment of error, Odom fails to cite authority in support of his argument. Our Supreme Court has consistently held that failure to cite authority in support of an assignment of error precludes this Court from considering the issue on appeal. *Grey v. Grey*, 638 So. 2d 488, 491 (Miss. 1994) (citing *Matter of Estate of Mason*, 616 So. 2d 322, 327 (Miss. 1993); *R..C. Petroleum, Inc. v. Hernandez*, 555 So. 2d 1017, 1023 (Miss. 1990); *Kelly v. State*, 553 So. 2d 517, 521 (Miss. 1989)).

THE JUDGMENT OF THE CIRCUIT COURT OF PEARL RIVER COUNTY IS AFFIRMED. APPELLANT IS TAXED WITH COSTS OF THIS APPEAL.

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