

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 2000-WC-00468-COA**

**MICHAEL BELCHER**

**APPELLANT**

**v.**

**CHOCTAW MAID FARMS, INC.**

**APPELLEE**

DATE OF TRIAL COURT JUDGMENT: 03/14/2000  
TRIAL JUDGE: HON. V. R. COTTEN  
COURT FROM WHICH APPEALED: LEAKE COUNTY CIRCUIT COURT  
ATTORNEY FOR APPELLANT: MICHAEL H. STEELE  
ATTORNEY FOR APPELLEE: JOSHUA J. WIENER  
NATURE OF THE CASE: CIVIL - WORKERS' COMPENSATION  
TRIAL COURT DISPOSITION: AFFIRMED  
DISPOSITION: AFFIRMED - 05/08/2001  
MOTION FOR REHEARING FILED:  
CERTIORARI FILED:  
MANDATE ISSUED: 5/29/2001

BEFORE SOUTHWICK, P.J., MYERS, AND CHANDLER, JJ.

SOUTHWICK, P.J., FOR THE COURT:

¶1. Michael Belcher was awarded workers' compensation benefits for a 5% permanent impairment to his right leg. He appeals arguing that different evidence of a higher disability should have been accepted. We find substantial evidence to support the 5% award and affirm.

**FACTS**

¶2. In January 1998, twenty-five tubes of chicken weighing seventy pounds each fell onto Belcher while he worked as a maintenance worker at a Choctaw Maid Farms facility. He was first examined by his family's physician, Dr. Edward Bryant. Due to the nature of the injury, Dr. Bryant referred Belcher to Dr. William Geissler at the University Medical Center in Jackson.

¶3. Dr. Geissler, an orthopaedic specialist, performed surgery on Belcher's leg. After surgery, Belcher attended physical therapy sessions until released to return to work in May 1998. He was limited to light duty work, restricting his ability to climb and any limiting activities that could stress the leg. Dr. Geissler found that Belcher had reached his maximum medical improvement on June 18, 1998, assigning a 5% medical disability rating with no permanent work restrictions.

¶4. Since Belcher's return, he has been promoted twice. Although he is now a maintenance supervisor, he must sometimes perform some maintenance tasks himself. He has not missed any work since returning. In

December of 1998, Belcher went to Dr. Bryant complaining of pain. Dr. Bryant had not seen Belcher since the initial injury. While at the doctor's office, Belcher requested that Dr. Bryant assign a disability rating. After examining Belcher, Dr. Bryant assigned a 12% disability rating. Neither doctor placed any restrictions on Belcher's return to full employment.

¶5. Choctaw Maid Farms accepted this injury as being compensable. It has paid all necessary medical bills and the amount of permanent partial disability benefits equal to the 5% disability rating. Belcher filed a petition to controvert the disability rating. The administrative law judge found that Belcher had sustained a 5% permanent industrial disability. Both the Workers' Compensation Commission and the Leake County Circuit Court agreed.

## DISCUSSION

¶6. We review the decision of the Workers' Compensation Commission, not that of either the administrative judge or of the circuit court. We determine whether the Commission was arbitrary or capricious in its actions or did not have substantial evidence to support the result. *Sibley v. Unifirst Bank*, 699 So.2d 1214, 1217 (Miss. 1997). Belcher's complaint is that the Commission failed to consider his testimony and the 12% disability rating assigned by Dr. Bryant. As Belcher has a permanent limp and continues to be in pain, he argues that the 5% rating does not properly reflect the extent of his injury.

¶7. The Commission affirmed the administrative judge's acceptance of Dr. Geissler's 5% disability rating. This doctor was the treating physician from surgery until Belcher was released to return to work at maximum medical recovery. The Commission also relied on the fact that Belcher had successfully returned to work without any adverse side effects from the injury.

¶8. The evidence supports the findings of the Workers' Compensation Commission. There was some evidence offered by Belcher of a greater disability. The Commission determined that the employer's evidence was more persuasive. There was no error.

**¶9. THE JUDGMENT OF THE LEAKE COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**McMILLIN, C.J., KING, P.J., PAYNE, BRIDGES, THOMAS, LEE, IRVING, MYERS  
AND CHANDLER, JJ., CONCUR. PAYNE, J., CONCURS WITH SEPARATE WRITTEN  
OPINION, JOINED BY LEE, IRVING AND CHANDLER, JJ.**

PAYNE, J., CONCURRING:

¶10. Because of our very limited standard of review in regard to factual findings of the Workers' Compensation Commission, I am compelled to concur in the majority opinion which grants no additional relief to the worker. I would note that we here seem to ignore the fact of continued pain as an element of disability. Our Court does look to this factor in determining whether earning capacity has been diminished, as well as recognizes that pain is a crucial factor to be considered when evaluating medical disability. *See McGowan v. Orleans Furniture, Inc.*, 586 So. 2d 163, 167 (Miss. 1991) and *Cooper Lighting Hid v. Brisco*, 749 So. 2d 199 (¶7) (Miss. Ct. App. 1999). Just because a person is able to grit his teeth and continue on the job, albeit experiencing pain from his injury, does not negate the fact that his employer is responsible for the effects of the injury from his employment. I would urge the Commission to remember that there is more to an injury than just a percentage number assigned by a doctor. Disability should be

determined by a totality of the circumstances.

**LEE, IRVING, AND CHANDLER, JJ., JOIN THIS SEPARATE OPINION.**