

**IN THE COURT OF APPEALS 09/17/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CC-00476 COA**

**JACKSON INDUSTRIAL UNIFORM SERVICE COMPANY, INC. AND MISSISSIPPI  
MANUFACTURERS' ASSOCIATION WORKERS' COMPENSATION GROUP AND  
ADJUSTCO, INC.**

**APPELLANTS**

**v.**

**MARASCALCO DISTRIBUTING COMPANY, INC. AND MISSISSIPPI UNITED  
BUSINESS ASSOCIATION SELF-INSURED GROUP AND WARREN CHRISTOPHER  
CLARK**

**APPELLEES**

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

TRIAL JUDGE: HON. JOSEPH H. LOPER, JR.

COURT FROM WHICH APPEALED: CIRCUIT COURT OF GRENADA COUNTY

ATTORNEY FOR APPELLANTS:

M. CHRISTINE CROCKETT, J. RANDALL PATTERSON, AND KEITH R. RAULSTON

ATTORNEY FOR APPELLEES:

RICHARD C. COKER, PATRICK S. WOOTEN, AND A. E. (GENE) HARLOW, SR.

NATURE OF THE CASE: WORKERS' COMPENSATION

TRIAL COURT DISPOSITION: REVERSED THE DECISION OF THE COMMISSION

BEFORE BRIDGES, P.J., BARBER, AND MCMILLIN, JJ.

BARBER, J., FOR THE COURT:

Warren C. Clark filed petitions with the Mississippi Workers' Compensation Commission (commission) to controvert the denial of coverage by two of his former employers, Jackson Industrial Uniform Service Company, Inc. (Jackson Industrial) and Marascalco Distributing Company, Inc. (Marascalco). Because of common questions of law and fact these petitions were consolidated by the commission's administrative law judge. The administrative law judge determined that Clark had, in fact, incurred two separate work-related injuries. He ordered that those benefits arising out of the prior injury at Jackson Industrial be paid by that employer, and that the indicated surgery and temporary total disability benefits arising out of the subsequent aggravating injury at Marascalco be paid by that employer. Marascalco petitioned the commission for review. On petition for review to the full commission, the commission adopted the administrative law judge's findings and affirmed his order. The commission's order was appealed to the Circuit Court of Grenada County, which resulted in the reversal of the commission's order. The circuit court held that Clark's injuries arose solely out of his employment with Jackson Industrial. The appeal to this Court from the Circuit Court of Grenada County has been taken by Jackson Industrial and its workers' compensation insurance carrier. Opposing Jackson Industrial are the claimant, Clark, Marascalco, and its self-insurance carrier.

#### FACTS

Charles Clark worked as a delivery truck driver for Jackson Industrial from July 1987 to May 1992. Clark's responsibilities included the delivery and pickup of textile items and uniforms from customers of his employer. Clark's job required him to lift 100-pound bags of clothes on a daily basis and work approximately sixty hours per week. On January 13, 1992, Clark was making a delivery to the University of Mississippi Physical Plant in Oxford. While climbing the steps to get into his truck, Clark's feet slipped from under him causing him to fall backward, landing on his back with his head hanging out the door of the delivery truck. Clark testified that the fall immediately caused a sharp pain in his back and that he lay on the floor of the delivery truck for fifteen minutes after the fall, being unable to get up. Eventually Clark was able to get into the driver's seat of his truck and complete his delivery schedule. Upon completion of his route, Jackson Industrial ordered Clark to report to the emergency room at Grenada Lake Medical Center, where he was hospitalized for approximately one week.

Clark's physicians diagnosed him as having a herniated disc in his back and that the injury could be treated by either steroid blockage or surgery although only surgery could actually cure the injury. Clark opted for the more conservative treatment, steroid blockage, which was administered in March of 1992. After the steroid treatment, Clark reported that most of his pain had dissipated and that he was moving easier. At Clark's request, his surgeon issued a medical release in April of 1992 allowing Clark to return to Jackson Industrial where he continued to work until May of 1992.

In May of 1992 Clark left his job at Jackson Industrial and took a position as a delivery truck driver for Marascalco, which involved very little heavy lifting and a shorter work week. On August 9, 1992,

Clark awoke early in the morning with extreme pain in his back and numbness in his right leg. This was after having worked for Marascalco the previous day during which time he engaged in heavy lifting. Clark sought medical treatment for his pain and was informed by his surgeon, Dr. Rodney G. Olinger, that surgery would be required in order to correct the herniated disc. This was the same disc that had been injured in January of 1992 during Clark's employment with Jackson Industrial. Clark filed a petition to controvert against Jackson Industrial in September of 1992 after his former employer refused to pay for the surgery. Additionally, in March of 1993 Clark filed a petition to controvert his claim against Marascalco for surgical payments. Clark has yet to undergo the surgery, although Dr. Olinger has indicated that he will do everything possible to obtain neurosurgical treatment for Clark, either in Memphis or Jackson. Although Clark continued to work at Marascalco for two months after the August incident, he was only able to perform very light work, and was relieved from his duties as a delivery truck driver. Clark left Marascalco in October of 1992 and has not been employed since that time.

## ISSUES

I. WHETHER THE CIRCUIT COURT OF GRENADA COUNTY ERRED IN FAILING TO AFFIRM THE DECISION OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION.

II. WHETHER THE FACTUAL FINDINGS OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION ARE SUPPORTED BY SUBSTANTIAL CREDIBLE EVIDENCE.

## STANDARD OF REVIEW

The standard of review utilized by this Court when considering an appeal of a decision of the Workers' Compensation Commission is well settled. "[W]hile appeals to the [s]upreme [c]ourt are technically from the decision of the [c]ircuit [c]ourt, the decision of the [c]ommission is that which is actually under review for all practical purposes." *Delta CMI v. Speck*, 586 So. 2d 768, 773 (Miss. 1991) (quoting Vardaman S. Dunn, Mississippi Workers' Compensation § 286, at n.39 (3d ed. 1982)). The Mississippi Supreme Court has held that appellate court review of decisions of the Workers' Compensation Commission is of limited scope, "as it considers only whether there is substantial evidence to support the findings of the Workers' Compensation Commission." *Ray v. Mississippi State Bd. of Health*, 598 So. 2d 760, 764 (Miss. 1992). Furthermore, "[t]he findings of the [c]ommission will be reversed by an appellate court only if the findings are clearly erroneous and contrary to the overwhelming weight of the evidence." *Ray*, 598 So. 2d at 764. Most importantly, "[i]f the findings are supported by substantial evidence, then they are beyond the power of this Court to disturb." *Id.* Of key importance in reviewing a decision of the commission is that this Court does not sit as a trier of fact. *South Cent. Bell Tel. Co. v. Aden*, 474 So. 2d 584, 589 (Miss. 1985). Our supreme court has been very precise in defining the scope of appellate review of a commission decision, stating:

When we review the facts on appeal, it is not with an eye toward determining how we would resolve the factual issues were we the triers of the fact; rather, our function is to determine whether there is substantial credible evidence which would support the factual determination made by the [c]ommission. If there be such substantial credible evidence, we are without authority to disturb that which the [c]ommission has found, even though that evidence would not be sufficient to convince us were we the fact finders.

*Aden*, 474 So. 2d at 589-90.

## ANALYSIS

This Court's standard of review of the commission's findings of fact questions whether the conclusions of the commission are supported by "substantial credible evidence which would support the factual determination made by the Commission." *Hardin's Bakery v. Taylor*, 631 So. 2d 201, 204 (Miss. 1994). The fact that this Court might differ as to what conclusions to draw from the facts presented is not sufficient grounds for reversal of the commission. *Barnes v. Jones Lumber Co.*, 637 So. 2d 867, 869 (Miss. 1994). The administrative law judge, whose findings were affirmed and adopted by the commission, found that Clark had recovered from the herniated disc by April 13, 1992 and was able to return to work. These conclusions were based on Dr. Olinger's testimony as to a reasonable degree of medical certainty. Additionally, the testimony of Dr. Olinger and Clark provided sufficient proof that Clark was able to return to work after the steroid treatment and that he was able to perform his job relatively without pain, until the heavy lifting of August 8, 1992. Clearly his work at Marascalco involved substantially lighter lifting than that at Jackson Industrial, but as Dr. Olinger testified, the heavy lifting on August 8, 1992 "aggravated the underlying disc problem." Dr. Olinger also stated that after the August incident he found "neurological deficits" in Clark's back which were not present after the January injury. Nevertheless, Dr. Olinger's diagnostic findings after the August injury were essentially the same as those after the earlier injury in January. It is clear, therefore, that substantial credible evidence was presented to allow the commission to conclude that the heavy lifting on August 8, 1992 exacerbated the pre-existing lower back injury and led to Clark's need for surgery. Although this Court might have reached a different conclusion if it was the trier of fact, it is without power to reverse the commission unless the commission's decision is clearly erroneous and contrary to the overwhelming weight of the evidence. *Hardin's Bakery v. Taylor*, 631 So. 2d 201, 204 (Miss. 1994) (citing *Ray v. Mississippi State Bd. of Health*, 598 So. 2d 760, 764 (Miss. 1992)). Accordingly, since the commission based its findings on substantial credible evidence and therefore properly exercised its discretion as fact finder, we cannot say that the commission's decision was clearly erroneous.

## CONCLUSION

We believe that the commission properly affirmed the administrative law judge's determination that the August 8, 1992 heavy lifting was performed by Clark in the course of his employment with Marascalco, aggravating his pre-existing lower back injury. Substantial credible evidence existed upon which the commission could reach its findings of fact. Accordingly, this Court must reverse the order of the circuit court and affirm the commission's order allocating the costs of Clark's injuries between Jackson Industrial and Marascalco.

**THE JUDGMENT OF THE CIRCUIT COURT OF GRENADA COUNTY IS REVERSED, AND THE ORDER OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION IS REINSTATED AND AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED EQUALLY BETWEEN THE APPELLANT/EMPLOYER AND THE APPELLEE/EMPLOYER AND THEIR CARRIERS.**

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