

IN THE COURT OF APPEALS 12/17/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CC-01217 COA

RALPH RUSSELL

APPELLANT

v.

BRADLEY PACKAGING PRODUCTS AND USF&G COMPANY

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

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

TRIAL JUDGE: HON. HONORABLE ROBERT WALTER BAILEY

COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

SCOTT A. C. JOHNSON

ATTORNEY FOR APPELLEE:

DAVID LINDER

NATURE OF THE CASE: WORKERS' COMPENSATION

TRIAL COURT DISPOSITION: RUSSELL APPEALS THE DECISIONS OF THE
COMMISSION AND THE CIRCUIT COURT CONTENDING THAT THEY WERE NOT
SUPPORTED BY SUBSTANTIAL EVIDENCE

BEFORE McMILLIN, P.J., KING AND PAYNE, JJ.

PER CURIAM:

Ralph Russell a former employee of Bradley Packaging Products alleges that he slipped, fell, and injured himself while employed at Bradley's Warrenton County, North Carolina plant. Russell filed a workers' compensation claim seeking, *inter alia*, permanent disability benefits. The commission found that Russell was injured in the course of his employment; that the accident aggravated a pre-existing degenerative disc disease in his back, which caused temporary total occupational disability; that he was not permanently occupationally disabled but had not made reasonable efforts to secure employment since leaving Bradley in December 1990; and that he had failed to prove his claim of permanent disability. Thus, it concluded he was not entitled to permanent disability benefits. We affirm.

SCOPE OF REVIEW

The standard by which we review workers' compensation issues can be found in *Walker Mfg. Co. v. Cantrell*, 577 So. 2d 1243, 1246-47 (Miss. 1991):

Our statutory law addresses the matter of judicial review in the Circuit Court. Mississippi Code Annotated § 71-3-51 (1972) reads:

The circuit court shall review all questions of law and fact. If no prejudicial error be found, the matter shall be affirmed and remanded to the commission for enforcement. If prejudicial error be found, the same shall be reversed and the circuit court shall enter such judgment or award as the commission should have entered.

We have repeatedly read this statute to establish the Circuit Court's function as that of an intermediate court of appeals. More to the point, we have held repeatedly that the Circuit Courts must defer in their review to the findings of the Commission.

In a very real sense, all of this is nothing other than a worker's compensation variant on accepted limitations upon the scope of judicial review of administrative agency decisions, i.e., that the courts may interfere only where the agency action is seen arbitrary or capricious. Arbitrariness and caprice are in substantial part of function of the presence *vel non* of credible evidence supporting the agency decision. Where we find such evidence, we have no more authority to interfere with the decisions of the Commission than we do in a case of any other administrative body.

We find that there is credible evidence contained in the record to support the commission's findings of fact and law, which are outlined in the attached order. We do not find the commission's decision

either arbitrary or capricious and affirm the attached order.

**THE JUDGMENT OF THE CIRCUIT COURT OF LAUDERDALE COUNTY IS
AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

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