

5/20/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 96-CC-00013 COA

ANDER NORMAN

APPELLANT

v.

MASONITE CORPORATION

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. BILLY JOE LANDRUM

COURT FROM WHICH APPEALED: JONES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

ANITA MATHEWS STAMPS

ATTORNEY FOR APPELLEE:

THOMAS A. WEBB

NATURE OF THE CASE: WORKERS COMPENSATION

TRIAL COURT DISPOSITION: AFFIRMED COMMISSIONS DENIAL OF BENEFITS

MANDATE ISSUED: 6/10/97

BEFORE McMILLIN, P.J., DIAZ AND SOUTHWICK, JJ.

PER CURIAM:

Ander Lee Norman appeals from the decision of the Circuit Court of Jones County affirming the order of the Mississippi Workers Compensation Commission denying Norman compensation benefits. The administrative law judge had also ruled in favor of Norman's employer.

The primary issue brought before the Commission was whether there was a causal connection between Norman's employment and his bilateral Meniere's disease. Norman alleged that he suffered a loss of hearing in both ears and suffered slurred speech as a result of exposure to chemicals and noise during the course and scope of his employment at Masonite Corporation. He amended his petition to allege that his problem is bilateral Meniere's disease.

Appellate review of compensation claims is narrowly restricted. 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). 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. . . .

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."

Delta CMI v. Speck, 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). To determine if the Workers' Compensation Commission erred, we must examine the record and be satisfied that substantial evidence existed upon which the commission could base its decision. On appeal, Norman raises the issue that the finding of the Workers' Compensation Commission is manifestly wrong and is not supported by substantial evidence.

At the hearing on August 13, 1993, Norman introduced on his behalf the deposition of Dr. Lawrence Gale Gardner, Jr. The employer introduced the depositions of Dr. James R. House, III, Dr. J. Robert Coltharp and Dr. Michael Brooks. Dr. Gardner testified that Meniere's disease is basically of unknown etiology but expressed the opinion that Norman's bilateral Meniere's disease was caused by his exposure to chemicals and noise at Masonite. He testified that "I am strongly suspicious and it's my opinion that his problem probably arose there through either noise or chemical exposure or a combination thereof, until some more likely cause comes to my attention."

All three other doctors agreed that the etiology of this disease is unknown and is poorly understood by the medical profession. They found no connection between the exposure to noise and chemicals and Norman's Meniere's disease. In her order the administrative law judge stated that she found the

opinions of Drs. House, Coltharp and Brooks to be more persuasive than the testimony and opinions of Dr. Gardner.

Norman cites to *Georgia-Pacific Corp. v. Gregory*, 589 So. 2d 1250 (Miss. 1991) as supporting his position that there is a causal connection between Meniere's disease and the long term exposure to loud noise and chemicals. However, in that case, "[n]either the diagnosis of Meniere's syndrome, nor precipitation thereof by job related conditions, was controverted by any direct medical evidence put on by [the employer]." *Id.* at 1254. As found by the administrative law judge the present case is clearly distinguishable from *Gregory*.

In the current case, the Mississippi Workers' Compensation Commission properly affirmed the order of the administrative law judge after thoroughly studying the record and the applicable law. Under our standard of review this Court is compelled to affirm the decision of the lower court.

THE JUDGMENT OF THE CIRCUIT COURT OF JONES COUNTY IS AFFIRMED. THE APPELLANT IS TAXED WITH THE COSTS OF APPEAL.

BRIDGES, C.J., AND McMILLIN, P.J., COLEMAN, DIAZ, HERRING, KING, AND SOUTHWICK, JJ., CONCUR.

THOMAS, P.J., AND HINKEBEIN AND PAYNE, JJ., NOT PARTICIPATING.