

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-CC-00725 COA**

**HENRY LEE CATCHINGS**

**APPELLANT**

**v.**

**SANDERSON FARMS, INC.**

**APPELLEE**

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

DATE OF JUDGMENT:	6/5/96
TRIAL JUDGE:	HON. LAMAR PICKARD
COURT FROM WHICH APPEALED:	COPIAH COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	PRO SE
ATTORNEY FOR APPELLEE:	ROBERT D. GHOLSON
NATURE OF THE CASE:	CIVIL - WORKER'S COMPENSATION
TRIAL COURT DISPOSITION:	COMPENSATION DENIED
DISPOSITION:	AFFIRMED - 10/7/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	10/28/97

BEFORE BRIDGES, C.J., HERRING, AND PAYNE, JJ.

PAYNE, J., FOR THE COURT:

**PROCEDURAL HISTORY**

The employer/carrier commenced this action by filing its employer's notice of controversion on September 1, 1993. The administrative law judge held that the claimant failed to prove that an accident occurred. The Mississippi Worker's Compensation Commission (Commission) affirmed the administrative law judge's order and the circuit court affirmed the Commission. Feeling aggrieved, Catchings now appeals the circuit court's affirmance of the Commission. We find that substantial evidence existed to support the previous findings and that the Commission's decision was not arbitrary or capricious. We therefore affirm the Commission's decision and the circuit court's affirmance.

**FACTS**

The claimant is a twenty-five-year-old male with a high school education. He claims that during the late hours of July 30, 1993, or early July 31, 1993, he injured his back when boxes of chicken weighing around forty pounds struck him on his back. He reported this injury to his supervisor, Dwight Robinson. The claimant stated that he continued to work for a brief period of time but later stopped his work because his back locked up.

Subsequent to the occurrence of July 30, 1993, or early July 31, 1993, the claimant admitted himself at Hardy Wilson Memorial Hospital in Hazlehurst, Mississippi. The claimant testified that the day after reporting this incident to his employer, he was instructed to see Dr. Fred McDonald, a practitioner in Hazlehurst. The claimant further testified that Dr. McDonald recommended he undergo physical therapy, but that his employer denied the accident occurred.

The claimant also indicated through his testimony that he sought medical treatment from Dr. Carl Hunt, a chiropractor, in August of 1994. Dr. Hunt's records indicate that he initially saw the claimant on April 21, 1994.

Dr. Hunt had x-rays taken of claimant's back. This revealed rotational misalignments at the L1, L3, L4, L5 and left ilium spinal segments. Following the examination, Dr. Hunt diagnosed the claimant as having a post-traumatic strain subluxation injury to the lumbar spine with radiculitis. Dr. Hunt discharged the claimant from his care on July 22, 1994.

After receiving all the evidence, the administrative law judge entered an order denying the claimant redress. Specifically the administrative law judge found that no on the job accident occurred.

## ARGUMENT AND DISCUSSION OF THE LAW

### I. STANDARD OF REVIEW

The standard of review utilized by this Court when considering an appeal of a decision of the Worker's Compensation Commission is well settled. The Mississippi Supreme Court has stated that "[t]he findings and order of the Workers' Compensation Commission are binding on the Court so long as they are 'supported by substantial evidence.'" *Vance v. Twin River Homes, Inc.*, 641 So. 2d 1176, 1180 (Miss. 1994) (quoting *Mitchell Buick v. Cash*, 592 So. 2d 978, 980 (Miss. 1991)). An appellate court is bound even though the evidence would convince that court otherwise if it were instead the ultimate fact finder. *Barnes v. Jones Lumber Co.*, 637 So. 2d 867, 869 (Miss. 1994). This Court will reverse only where a commission order is clearly erroneous and contrary to the weight of the credible evidence. *Vance*, 641 So. 2d at 1180; *see also Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9, 12 (Miss. 1994). "This Court will overturn a [C]ommission decision only for an error of law . . . or an unsupported finding of fact." *Georgia Pacific Corp. v. Taplin*, 586 So. 2d 823, 826 (Miss. 1991) (citations omitted). Therefore, this Court will not overturn a commission decision unless it finds that the commission's decision was arbitrary and capricious. *Id.*; *see also Walker Mfg. Co. v. Cantrell*, 577 So. 2d 1243, 1247 (Miss. 1991) (stating that where court finds credible evidence supporting a commission decision, it cannot interfere with that decision any more than with a case from any other administrative body.) We believe that the administrative law judge and the full commission correctly applied the law. We do not believe that the judge or the full commission abused

their discretion in the fact finding process. Thus, we uphold their decisions.

## II. ANALYSIS OF THE ISSUE PRESENTED

### I. WHETHER THE CLAIMANT PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT HE WAS INJURED WHILE IN THE COURSE AND SCOPE OF EMPLOYMENT.

The salient issue presented is whether the claimant was injured while at work. It is well settled under Mississippi Workers' Compensation law that the claimant has the burden of proving by a fair preponderance of the evidence that he sustained an accidental injury arising out of and in the course and scope of his employment, and that the injury caused the disability for which he is claiming benefits. Miss. Code Ann. § 71-3-3(b) (Rev. 1995); *Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9, 13 (Miss. 1994); *Hardin's Bakeries v. Dependent of Darrell*, 566 So. 2d 1261, 1264 (Miss. 1990). See V. Dunn, *Mississippi Worker's Compensation*, § 265 at 322-23 (3d ed. 1982).

Several witnesses were called in the course of the hearing. In support of his claim, the claimant solicited testimony from Timothy Jackson. Though called as a witness by the claimant, Jackson's testimony gives little or no supporting proof in behalf of the claimant. While Jackson was unable to state with certainty as to whether the boxes hit the claimant, he was certain that immediately after the incident claimant did not complain of any problem or at any time state that he (claimant) was hit by the boxes.

In a similar vein, a second witness, Mavin Henderson, stated that she saw several chicken boxes hit the floor, but that none hit the claimant. Furthermore, she stated that the claimant did not complain of being injured from the incident.

In addition to the lay testimony, testimony from Dr. Hunt failed to add to the claimant's case. While Dr. Hunt's records indicate his treating the claimant for traumatic injury, coupled with the claimant having reported that his problems stemmed from the accident, the gap of time between the date of the alleged accident and the date of the physician's *initial* visit with the claimant span a period of nine months, as the alleged injury occurred on the night of July 30-31, 1993, and the claimant's initial visit with Dr. Hunt occurred on April 21, 1994.

As the law stands today, this Court will reverse an order of the Workers' Compensation Commission only where such an order is clearly erroneous and contrary to the overwhelming weight of evidence. *Myles v. Rockwell Int'l*, 445 So. 2d 528, 536 (Miss. 1983). With the law having been observed in resolving this issue raised by the claimant, we will not go behind the fact finding body, "even though that evidence would not convince us were we the fact finders." *South Central Bell Co. v. Aden*, 474 So. 2d. 584, 589-90 (Miss. 1985).

Concerning the issue of whether the claimant was injured while during the scope of his employment, we can not find that the administrative law judge misapplied the law, or that he acted in an arbitrary capacity. When viewed in its entirety, the evidence fails to establish that the claimant sustained an injury on the job.

## III. CONCLUSION

Substantial evidence does not support the findings that the claimant was injured on the job. Therefore, the findings of the administrative law judge and the Commission will be upheld.

**THE JUDGMENT OF THE COPIAH COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS ARE TAXED TO THE APPELLANT.**

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