

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CC-00967 COA**

JOSEPH REEVES

APPELLANT

v.

**CAE PLASTICS, INC. AND MISSISSIPPI
MANUFACTURES ASSOCIATION WORKERS'
COMPENSATION GROUP**

APPELLEES

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

DATE OF JUDGMENT:	8-19-96
TRIAL JUDGE:	HON. KOSTA N. VLAHOS
COURT FROM WHICH APPEALED:	HARRISON COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	JAMES K. WETZEL MARIANO J. BARVIE
ATTORNEYS FOR APPELLEES:	WILLIAM D. BLAKESLEE JAMES C. SMALLWOOD III
NATURE OF THE CASE:	CIVIL - WORKER'S COMPENSATION
TRIAL COURT DISPOSITION:	COMMISSION DENIED BENEFITS BECAUSE CLAIMANTS'S FALL WAS DUE IN WHOLE TO HIS INTOXICATION
DISPOSITION:	AFFIRMED - 11/18/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	12/9/97

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

BRIDGES, C.J., FOR THE COURT:

This is a workers' compensation case. Joseph Reeves allegedly fell at his place of employment, CAE Plastics, and injured his neck. The administrative law judge held that Reeves was intoxicated at the time of his fall and therefore not entitled to benefits. Additionally, the administrative law judge held that Reeves suffered a pre-existing back injury that contributed to sixty percent of Reeves's impairment. The Workers' Compensation Commission affirmed, as did the Harrison County Circuit

Court. Reeves appeals the decision of the circuit court and presents the following issues:

I. THE ADMINISTRATIVE LAW JUDGE AND THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION ERRED AS A MATTER OF LAW AND FACT IN HOLDING THAT THE PROXIMATE CAUSE OF JOE REEVES'S INDUSTRIAL INJURY ON SEPTEMBER 25, 1993 WAS THE CLAIMANT'S INTOXICATION.

II. THE ADMINISTRATIVE LAW JUDGE AND THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION ERRED AS A MATTER OF LAW AND FACT IN HOLDING THAT THE CLAIMANT HAD AN OCCUPATIONAL DISABLING PREEXISTING MEDICAL CONDITION WHICH WAS THE CAUSE OF APPROXIMATELY 60% OF THE CLAIMANT'S RESULTING INDUSTRIAL DISABILITY AND LOSS OF WAGE EARNING CAPACITY FOLLOWING HIS REACHING MAXIMUM MEDICAL IMPROVEMENT ON MARCH 24, 1994.

The employer presents one issue on cross-appeal:

I. THE DECISION OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION, AS AFFIRMED BY THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI IS ERRONEOUS IN FAILING TO FIND THAT ANY DISABILITY OF REEVES REGARDING PROBLEMS WITH HIS NECK IS ATTRIBUTABLE TO NON-INDUSTRIAL CAUSES.

Finding no error with the judgment below, we affirm.

FACTS

Reeves was employed as a materials handler at CAE Plastics on the Mississippi gulf coast. He worked the night shift from 6:00 p.m. to 6:00 a.m. On the morning of September 25, 1993, Reeves got off work and joined some friends. They all drank a few beers, and then Reeves went to sleep. Reeves testified that he fell asleep on his friend's couch and was awakened around 6:00 p.m. when he was supposed to be at work to start his shift. Reeves drove to his brother-in-law's house and showered but testified that he did not have time to brush his teeth and may have had beer on his breath. His brother-in-law drove him to work. According to Reeves's brother-in-law, Reeves was drunk when he arrived at his house to take a shower, when he went to work, and when he later picked Reeves up at work. When Reeves arrived late for work, he checked in with his supervisors and was told to go ahead and punch in and start work. A co-worker testified that Reeves was staggering and was very unstable. The same co-worker saw Reeves lose his balance and almost fall into a large box. Another co-employee stated that he knew that Reeves had been drinking.

At some point, a female co-worker noticed that Reeves had some blood on his chin and inquired if Reeves was alright. Reeves claimed that he fell after he slipped on some oil. According to Reeves, he went to check on some machines, slipped on a patch of oil, and fell forward, cutting his chin. When he tried to stand up, Reeves claimed he fell backwards and hurt his neck and shoulder. There was never any testimony of any oil stains on Reeves or his clothes. When Reeves went to get a band-aid for his chin, his supervisors accused him of drinking and told him to clock out. Reeves called his brother-in-law to pick him up.

After returning to his brother-in-law's house, instead of seeking any treatment for his fall, Reeves and his nephew drove down to the beach. They picked up some beer and sat on the beach drinking. Reeves's story at this point is contradictory and confusing. He testified that at some point he needed to use the restroom and walked to a gas station. After being refused the use of the facilities at the gas station, Reeves claims that he walked to the Waffle House and used their facilities. It was at the Waffle House that Reeves claims he was overcome by pain and called an ambulance. However, Reeves later admitted that he had been at a nearby bar and lounge. The ambulance driver testified that the call he received to pick up Reeves reported an assault. Reeves denies that he was ever in a fight; he claims that the pain he suffered was from his fall at work.

Reeves was transported to Memorial Hospital where it was noted on his chart that he smelled of alcohol. Reeves told the triage nurse that he had pain in his right shoulder, but he did not know how the injury occurred. A few days later he underwent surgery for a herniated disk at the C6-7 level. His treating physician, Dr. Danielson, gave Reeves a maximum medical improvement date of March 10, 1994. Reeves had a nine percent anatomical impairment rating to the body as a whole and was restricted to light work duty. Dr. Danielson stated that the cause of his injury was his fall at work. It was revealed at trial that Reeves suffered a back injury when he fell out of a tree three years prior to his current injury. Reeves was employed as a tree surgeon at the time. Although Reeves denied having a past medical history involving his neck, in 1990 and 1991 he underwent several tests on his neck and back including myelograms and CT scans. Dr. Danielson diagnosed Reeves with a ruptured cervical disk on several occasions from September 1990 to September 1992. When Reeves was discharged by Dr. Danielson in 1992, he was assigned a 10-15% anatomical impairment to the body as a whole. Dr. Danielson restricted Reeves to lifting a maximum of twenty pounds and limited any frequent bending, stooping, lifting, or squatting.

As a result of that previous injury, Reeves received a twenty-five thousand dollar settlement, medical payments, and did not work again for three years. Nonetheless, Reeves lied on his CAE Plastics application, stating that he had worked as a self-employed painter for the previous three years. Additionally, Reeves lied on his application about his educational background and testified that he would lie again to get a job. However, when the administrative law judge asked Reeves if he would lie to get Workers' Compensation Benefits, Reeves replied that he would not.

ON DIRECT APPEAL:

I. THE ADMINISTRATIVE LAW JUDGE AND THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION ERRED AS A MATTER OF LAW AND FACT IN HOLDING THAT THE PROXIMATE CAUSE OF JOE REEVES'S INDUSTRIAL INJURY ON SEPTEMBER 25, 1993 WAS THE CLAIMANT'S INTOXICATION.

Appellate review of compensation claims is a narrow one. 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). "Accordingly, the commission may accept or reject an administrative judge's findings." *Id.* In the case *sub judice*, the Commission accepted and adopted the findings of the administrative law judge after thoroughly studying the record and applicable law. 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. The circuit courts act as intermediate courts of appeal. The Supreme Court, as the circuit courts, acts as a court of review and is prohibited from hearing evidence or otherwise evaluating evidence and determining facts; . . . "[W]hile appeals to the Supreme Court are technically from the decision of the Circuit Court, the decision of the commission is that which is actually under review for all practical purposes."

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) (citations omitted).

In the present case, the Commission affirmed the judgment of the administrative law judge. In his opinion, the administrative law judge stated that he had serious doubts concerning Reeves's credibility and his version of what caused his fall at work. Moreover, the administrative law judge stated that the credible testimony established that Reeves was intoxicated when he went to work, and that the proximate cause of his fall was his intoxication. The Commission affirmed. "[T]he Commission is the judge of the credibility of the witnesses. Where, in such circumstances, the Commission with reason finds claimant's testimony untrustworthy or incredible, the Commission has authority to reject it." *White v. Superior Products, Inc.*, 515 So. 2d 924, 927 (Miss. 1987). Reeves's testimony was deemed not credible because of his contradictory testimony, truths that came out on his cross-examination, and his statement that he lied on his job application and would do it again. The evidence supporting his intoxication at the time of his fall is credible and substantial. We are unable to say that the Commission's order is clearly erroneous or contrary to the overwhelming weight of the evidence.

II. THE ADMINISTRATIVE LAW JUDGE AND THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION ERRED AS A MATTER OF LAW AND FACT IN HOLDING THAT THE CLAIMANT HAD AN OCCUPATIONAL DISABLING PREEXISTING MEDICAL CONDITION WHICH WAS THE CAUSE OF APPROXIMATELY 60% OF THE CLAIMANT'S RESULTING INDUSTRIAL DISABILITY AND LOSS OF WAGE EARNING CAPACITY FOLLOWING HIS REACHING MAXIMUM MEDICAL IMPROVEMENT ON MARCH 24, 1994.

The administrative law judge opined that Reeves had an occupationally disabling preexisting medical

condition that contributed to approximately sixty percent of his disability and loss of wage earning capacity. However, this was not made a finding of fact. A finding was made that Reeves's intoxication caused his fall, and he was therefore precluded from claiming any benefits. In light of Reeves's ineligibility to collect benefits, the question of his preexisting condition is moot.

ON CROSS APPEAL:

I. THE DECISION OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION, AS AFFIRMED BY THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI, IS ERRONEOUS IN FAILING TO FIND THAT ANY DISABILITY OF REEVES REGARDING PROBLEMS WITH HIS NECK IS ATTRIBUTABLE TO NON-INDUSTRIAL CAUSES.

The employer claims that the Commission erred in finding that Reeves fell at work. Instead, the employer claims that Reeves was injured during a late night brawl or assault. However, there is no concrete evidence that Reeves was in a fight or the victim of an assault. The Commission affirmed the administrative law judge's opinion that "the proof is insufficient to establish an independent, intervening cause of any disability of the claimant." The employer has failed to prove that the Commission was clearly erroneous or that its decision was not supported by substantial evidence. This issue has no merit.

THE JUDGMENT OF THE HARRISON COUNTY CIRCUIT COURT IS AFFIRMED ON DIRECT AND CROSS APPEALS. COSTS OF THIS APPEAL TAXED TO APPELLANT.

McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.