

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CC-00907 COA**

**MONTE GLOVE COMPANY AND THE
TRAVELERS INSURANCE COMPANY**

APPELLANTS

v.

THELMA M. TAYLOR

APPELLEE

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

DATE OF JUDGMENT:	05/01/96
TRIAL JUDGE:	HON. LEE J. HOWARD
COURT FROM WHICH APPEALED:	CLAY COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANTS:	MICHAEL D. TAPSCOTT
ATTORNEY FOR APPELLEE:	W. HOWARD GUNN
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
TRIAL COURT DISPOSITION:	REVERSED THE WORKERS' COMPENSATION COMMISSION AND REMANDED FOR FURTHER HEARINGS.
DISPOSITION:	REVERSED AND RENDERED - 12/02/97
MOTION FOR REHEARING FILED:	12/12/97
CERTIORARI FILED:	2/9/98
MANDATE ISSUED:	4/23/98

BEFORE BRIDGES, C.J., DIAZ, AND COLEMAN, JJ.

DIAZ, J., FOR THE COURT:

Thelma Taylor injured her neck, back, hand, and arm on August 14, 1989, during the course and in the scope of her employment by Monte Glove Company (Monte). The Mississippi Workers' Compensation Commission found that Taylor had sustained a temporary total disability until September 25, 1989. The Commission also found that Taylor had suffered no permanent disability and that Monte and its workers' compensation carrier, Travelers Insurance Company (Travelers), were not responsible for medical services after September 25, 1989. Taylor appealed this decision to the Circuit Court of Clay County who reversed the Commission's decision and remanded it for further hearings. Monte and Travelers now appeal. They present three issues to this Court:

I. WHETHER SUBSTANTIAL EVIDENCE SUPPORTS THE COMMISSION'S FINDING THAT TAYLOR SUFFERED NO DISABILITY AFTER HER LAST EXAMINATION BY DR. POWELL;

II. WHETHER THE COMMISSION WAS REQUIRED TO APPLY THE APPORTIONMENT STATUTE WHERE TAYLOR HAD COMPLETELY RECOVERED FROM THE WORK-RELATED ACCIDENT; AND

III. WHETHER DR. McFADDEN'S TREATMENT WAS REASONABLE AND NECESSARY.

FACTS

Taylor worked for Monte sewing the thumbs on gloves. On August 14, 1989, Taylor fell backward onto the floor from her chair as she attempted to put a box of gloves on a conveyor belt. Taylor alleges in her petition to controvert that she injured her neck, back, hand, and arm. She sought treatment from Dr. Roland Powell on August 16, 1989, and was diagnosed as suffering from a lower lumbar strain. Dr. Powell treated Taylor five more times until the final treatment on September 25, 1989. Taylor complained of, and was treated for, pain in her lower back and legs. On Taylor's last visit to Dr. Powell, she said her pain was dissipating. Taylor failed to appear the next week for her follow-up appointment. Taylor was later treated by Dr. Powell again, but the later visits were due to illnesses other than the back or leg pain.

Dr. Powell testified that he had treated Taylor for pain in her left shoulder, arm, and wrist for years prior to her work-related injury. Powell recalled visits beginning on November 4, 1985, until July 18, 1989, when Taylor was treated for carpal tunnel syndrome, tendinitis, or arthritis in her left wrist, bursitis in her left shoulder, and degenerative disk disease of the cervical spine. Dr. Powell continued saying that Taylor also complained of a swollen left wrist during these examinations, just as she did at her hearing before the administrative judge.

A few weeks after her last visit to Dr. Powell, Taylor began seeing Dr. McFadden who practices pain medicine in Tupelo. Dr. McFadden first treated Taylor on October 26, 1989, and continued to see her until April 25, 1991. He diagnosed Taylor with a lumbar disk injury and lower back pain. Taylor also made the same complaints to Dr. McFadden about her neck, arm, leg, and lower back as she had made previously to Dr. Powell. Dr. McFadden testified that Taylor had reached maximum medical recovery as of her last visit and determined that she had a ten percent permanent partial impairment to the body as a whole.

The administrative judge concluded that Taylor's testimony concerning the work-related injury lacked credibility and that Dr. McFadden's testimony lacked probative value because he obtained an inaccurate and incomplete medical history from Taylor. The judge then concluded that absent credible testimony to support Taylor's contention that she was still disabled after her last visit to Dr. Powell, she was entitled to temporary total disability benefits, but not any permanent disability benefits. The full Commission affirmed the judge's ruling, and Taylor appealed to the Circuit Court of Clay County. The circuit court reversed the Commission, finding that the Commission erred in holding that Dr. McFadden's testimony was not credible. We now reverse the circuit court's holding.

ISSUES

I. WAS THERE SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S FINDING THAT TAYLOR SUFFERED NO DISABILITY AFTER HER LAST EXAMINATION BY DR. POWELL?

Taylor argues that there was no substantial evidence to support the finding that she did not suffer any disability after her last visit to Dr. Powell. The administrative judge as well as the full Commission found that there was substantial evidence to support its finding, but the circuit court reversed.

The standard of review for a court reviewing the Commission's findings is that of substantial evidence. "Upon review, this Court is bound by those findings and orders of the Workers' Compensation Commission which are supported by substantial evidence." *Delaughter v. South Cent. Tractor Parts*, 642 So. 2d 375, 377 (Miss. 1994). This is so even if we would have found otherwise were we the finder of fact. *Fought v. Stuart C. Irby*, 523 So. 2d 314, 317 (Miss. 1988). An appellate court is limited in its review and must defer to the Commission's findings unless it is clear that the Commission has committed prejudicial error. *Delaughter*, 642 So. 2d at 378.

In the case at bar, the Commission held that Dr. McFadden's testimony was non-probative. Dr. McFadden did not obtain a full medical history from Taylor to determine whether her complaints were caused by or pre-dated the injury. The Commission has the authority to assess the probative value of medical testimony. *Miller Transporters, Ltd. v. Reeves*, 195 So. 2d 95, 100 (Miss. 1967). The Commission, in this instance, found that Dr. McFadden had performed an inadequate examination since he failed to obtain a complete medical history. Once the Commission found that the evidence lacked probative value, then Taylor was left with no evidence as to her medical condition except that of Dr. Powell who stated that Taylor did not have a permanent disability. Although Taylor testified to her medical condition, she may not overcome the lack of medical evidence by her testimony alone. *Davis v. Scotch Plywood Co. of Miss.*, 505 So. 2d 1192, 1196 (Miss. 1987).

In the case before us there was substantial evidence to support the Commission's finding. Taylor had no credible medical testimony as to her claimed permanent disability, and therefore the Commission was correct in denying her permanent disability benefits. The circuit court improperly reversed the Commission's finding, and we now reverse the circuit court.

II. WAS THE COMMISSION REQUIRED TO APPLY THE APPORTIONMENT STATUTE WHERE TAYLOR HAD COMPLETELY RECOVERED FROM THE WORK- RELATED ACCIDENT?

Because we hold, as did the Commission, that Taylor had fully recovered from her work-related injury, there is nothing to be apportioned. Taylor's medical expenses were paid for by Travelers until September 25, 1989, the date on which she is considered fully recovered. Therefore, apportionment

does not apply in this case.

III. WAS DR. McFADDEN'S TREATMENT REASONABLE AND NECESSARY?

We find that Taylor did not suffer any disability after September 25, 1989. Therefore, coverage of Taylor's treatment by Dr. McFadden was properly denied. Although the treatment may have been reasonable and necessary for Taylor's pre-existing condition, it was not reasonable and necessary for the work-related injury. Therefore, we reverse.

THE JUDGMENT OF THE CLAY COUNTY CIRCUIT COURT IS REVERSED AND RENDERED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.

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