

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CC-01070 COA**

FAYE D. HEAD

APPELLANT

v.

**PACKARD ELECTRIC DIVISION, GENERAL
MOTORS CORPORATION**

APPELLEE

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

DATE OF JUDGMENT:	8/28/96
TRIAL JUDGE:	HON. WILLIAM F. COLEMAN
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ROBERT G. GERMANY
ATTORNEYS FOR APPELLEE:	ANDREW D. SWEAT RACHAEL HETHERINGTON LENOIR
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
TRIAL COURT DISPOSITION:	AFFIRMED THE DECISION OF THE WORKERS' COMPENSATION COMMISSION
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE THOMAS, P.J., HERRING, AND HINKEBEIN, JJ.

HINKEBEIN, J., FOR THE COURT:

In early 1988 Faye D. Head, an employee of Packard Electric Division, General Motors Corporation, injured her shoulder in an industrial accident. Despite testimony offered by numerous doctors to the contrary, an administrative law judge subsequently found that the trauma associated with Head's injury had resulted in continuing anxiety and depression. More specifically, the administrative law judge found a causal connection between her physical and mental ailments and ordered that Packard pay all medical expenses incurred in connection with the latter. However, the full Workers' Compensation Commission thereafter reversed this order, finding substantial credible evidence to the contrary in the opinions of Head's physicians. Head now appeals from the Hinds County Circuit

Court's subsequent affirmance of the Full Commission's order on the following grounds:

I. THE FULL COMMISSION ERRED IN ORDERING A MEDICAL EXAMINATION BY DR. MARK WEBB AND IN DENYING CLAIMANT THE RIGHT TO REOPEN THE DEPOSITION OF DR. TIMOTHY SUMMERS.

II. THE FULL COMMISSION ERRED IN REVERSING THE DECISION OF THE ADMINISTRATIVE LAW JUDGE AND IN HOLDING THAT CLAIMANT WAS NOT ENTITLED TO ADDITIONAL BENEFITS AND MEDICAL TREATMENT BY DR. SUMMERS.

III. THE DENIAL OF ADDITIONAL BENEFITS AND MEDICAL TREATMENT BY DR. SUMMERS BY THE FULL COMMISSION IS MANIFESTLY WRONG AND NOT SUPPORTED BY THE EVIDENCE.

Holding these assignments of error to be without merit, we affirm the judgment of the circuit court.

FACTS

Although Head strained her shoulder during January of 1988, she did not seek treatment until April of that year when she consulted neurologist Dr. Richard W. Naef. Due to observed tenderness, Dr. Naef initially recommended several weeks of recuperation. But in early May, after noting her satisfactory progress, he released Head to return to work and discharged her from his care. Unexpectedly, Head returned to Naef's office just days later with complaints of being reassigned to a new position within Packard's plant. Naef determined that while Head suffered from anxiety caused by the job change, the condition shared no relationship with her mending shoulder injury. He nonetheless suggested that she take an additional few weeks if necessary and thereafter return for a follow-up evaluation. From there the situation only deteriorated since Head has yet to return either to Dr. Naef's office or to work.

Over the next few years Head saw a stream of physicians, mostly neurologists and neurosurgeons, with each encounter ending similarly. In every instance Head's reported physical pain was largely unsubstantiated by objective evidence. She repeatedly expressed an utter lack of desire to return to Packard, with the most obvious indicators being statements to that effect in combination with late-night alcoholic binges despite doctors' orders to the contrary. And most importantly, all but one of these examiners concluded that the mental disorders tormenting Head, if any, were unconnected to her professed physical pain and claimed inability to work.

On February 7, 1994, after Head's benefits were at last terminated, her claim was heard by an administrative law judge. This administrative law judge found that Head had reached maximum medical recovery from her physical injury nearly four years earlier. However, because he concluded that she continued to suffer from a related and disabling psychological disorder, the administrative law judge ordered that Packard pay temporary total disability benefits dating back to the time of the injury until she reached maximum medical recovery from her psychological disorder as well. The administrative law judge's order relied heavily on the opinions of Dr. Timothy Summers, Head's psychiatrist of nearly five years and the only physician to link the shoulder injury with Head's claimed

mental illness. The administrative law judge cited Dr. Summers' unique expertise in the field of psychiatry as the basis for this weighted consideration and directed that all charges incurred by Head while in his care be paid by Packard.

Upon Packard's subsequent appeal and accompanying motion for independent medical examination, the full Commission found that "an accurate and timely appraisal of [Head's] condition was necessary to determine the nature and extent of her disability" and ordered her to submit to a second psychiatric evaluation. When the forthcoming, and undeniably qualified, report again denied any relationship between Packard and Head's psychological difficulties, Dr. Summers' evaluation lost much of its significance. As a result, the full Commission reversed with regard to the alleged causal connection and related expenses. After an affirmance by the circuit court, we are presented with these issues yet again.

ANALYSIS

I. THE FULL COMMISSION ERRED IN ORDERING A MEDICAL EXAMINATION BY DR. MARK WEBB AND IN DENYING CLAIMANT THE RIGHT TO REOPEN THE DEPOSITION OF DR. TIMOTHY SUMMERS.

Head begins by questioning the above-mentioned independent psychiatric examination conducted by Dr. Mark Webb. She directs our attention to certain procedural rules requiring first that parties file a pretrial statement setting forth the identity of all witnesses and also that each case be handled in one hearing. She argues, without additional supporting authority, that "the letter and intent" of these rules was violated by the Commission's order that she submit to examination by a physician of Packard's choosing. Head then continues, claiming in the alternative that she should have at least been allowed to rebut Dr. Webb's subsequently reported findings by reopening the deposition of Dr. Timothy Summers, the physician upon which the administrative law judge's initial determination of psychological disorder was based. In response, Packard characterizes the Commission's interlocutory order as a "proper and lawful exercise of its administrative function" while citing both statutory and case law directly addressing these issues. Because these authorities easily overcome Head's unsupported contentions, we agree with Packard.

Section 71-3-37 of the Mississippi Code Annotated (Rev. 1995) provides the authority by which the Commission granted Packard's request:

The Commission (a) may upon its own initiative *at any time* in a case in which payments are being made without an award, and (b) shall in any case where right to compensation is controverted or where payments of compensation have been stopped or suspended, upon receipt of notice . . . from the employer that the right to compensation is controverted or that payments of compensation have been stopped or suspended, make such investigation, *cause such medical examination to be made*, hold such hearings, and take such further action as it considers will properly protect the rights of all parties.

The Mississippi Supreme Court recognized this authority in *Everett v. Lovitt*, **192 So. 2d 422 (Miss. 1966)**, wherein it reversed the lower court's order prohibiting the Commission from requiring a claimant to undergo a psychiatric examination similar to that undergone by Head. *Everett*, **192 So. 2d at 431**. In *Everett*, the employer and carrier moved for an independent examination of the claimant

during the administrative hearing. After the Commission granted the motion, the claimant obtained a writ of prohibition from the circuit court. The supreme court reversed the prohibition order on the ground that the Commission had acted well within its statutory power. Notably, the court rejected the claimant's argument, which Head replicates here, that the psychiatrist was suggested by the employer and carrier vitiated the authority of the Commission. *Id.*

In rejecting this argument, the supreme court concluded that "[t]he only redress available to the employer and carrier [in workers' compensation cases] . . . is to have the claimant examined by competent physicians to determine whether disability is compensable, and, if so, the extent of such disability." *Id.* at 430. Any other result, would "permit . . . claimants to search at will until they finally found some medical testimony which was in support of their theory. In such cases the employer and carrier have to accept it regardless of their rights under the act." *Id.*

The Mississippi Supreme Court has also previously considered Head's claim that the Commission should have concluded her case in one hearing. In *Roberts v. Junior Food Mart*, 308 So. 2d 232 (Miss. 1975), the Commission required the claimant to submit to a medical examination after it made an award in his favor. The court upheld the Commission's order, noting that § 71-3-37 does not limit the time for an independent medical examination. *Id.* at 235.

Because Head fails to provide this Court with substantial argument as to why we should hold contrary to these authorities, we do not give the issues presented further consideration. The Commission properly exercised its broad powers in ordering Head to submit to an independent psychiatric examination; therefore, this facet of Head's contention is without merit.

Such is also the case with regard to Head's argument that the Commission erred in refusing to permit her to reopen the deposition of Dr. Summers so that he might address Dr. Webb's opinions. The record reveals that Head never requested by motion or other pleading that she be allowed to do such. It follows, therefore, that the Commission did not take the action to which Head assigns error on appeal. Because the issue is now waived, this assignment of error is without merit.

II. THE FULL COMMISSION ERRED IN REVERSING THE DECISION OF THE ADMINISTRATIVE LAW JUDGE AND IN HOLDING THAT CLAIMANT WAS NOT ENTITLED TO ADDITIONAL BENEFITS AND MEDICAL TREATMENT BY DR. SUMMERS.

In her second assignment of error, Head first argues that the Full Commission incorrectly employed a "clear and convincing evidence" standard with respect to the origin of her mental injury. She then complains that this error was compounded by the Commission's reliance on the allegedly improper admission of Dr. Webb's testimony in combination with "the other medical providers, none of whom were qualified to give opinions in the field of psychiatry. . . ." However, once again, we agree with Packard since the employer responds to these unsupported allegations with on-point case law suggesting otherwise.

Under Mississippi workers' compensation law, a claim for mental injury must have an organic physical basis. *V. Dunn, Mississippi Worker's Compensation, § 114 (3d ed. 1982)* (citing *Bates v. Merchants Co.*, 249 Miss. 174, 161 So. 2d 652 (Miss. 1964)). In other words, such a neurosis must be the direct and immediate consequence of a prior work-related, physical injury. *Id.* And, contrary

to Head's argument before this court, that causal connection must be shown by "clear evidence." *Myles v. Rockwell Int'l*, 445 So. 2d 528, 537 (Miss. 1983). That facet of Head's claim is clearly without merit and requires no further elaboration. In addition, because we have already resolved Head's allegations of impropriety as they relate to Dr. Webb's examination and resulting reports, we also decline her invitation to discuss these issues further. This assignment of error is therefore without merit.

III. THE DENIAL OF ADDITIONAL BENEFITS AND MEDICAL TREATMENT BY DR. SUMMERS BY THE FULL COMMISSION IS MANIFESTLY WRONG AND NOT SUPPORTED BY THE EVIDENCE.

With her final assignment of error Head attacks the Commission's denial of benefits for the treatment of her psychological disorder directly. Essentially, she contends that the opinions of her psychiatrist should have carried more weight with the Commission than the combined testimony of the above-mentioned Dr. Webb and four additional physicians who either treated or examined her during the course of her illness. Head states that at least with regard to her claimed mental disorders, Dr. Summers' opinion should be valued above those of the other physicians due to his particular expertise in the field of psychiatry as well as his expanded opportunities to evaluate her condition over the course of five years of treatment. In response, Packard reproduces the testimony of the others, wherein each clearly and unequivocally rejects any suggestion that Head's mental illness might be in any way work-related. We agree with Packard that this testimony qualifies as the substantial credible evidence required for affirmance.

As Packard correctly notes, it is well settled that the Commission is the ultimate fact finder in worker's compensation cases and accordingly may accept or reject an administrative judge's findings. *Hardin's Bakeries v. Dependants of Harrell*, 566 So. 2d 1261, 1264 (Miss. 1990). This Court, however, absent an error of law, is limited in its review and must defer to the decision of the Commission unless it is manifestly wrong and not supported by substantial evidence. *Lanternman v. Roadway Express Inc.*, 608 So. 2d 1340, 1345 (Miss. 1992). Therefore, "fact-findings supported by substantial evidence must remain undisturbed 'even though that evidence would not convince us' were this Court the fact-finder." *Hardin's*, 566 So. 2d at 1264 (Miss. 1990) (quoting *Olen Burrage Trucking Co., v. Chandler*, 475 So.2d 437, 439 (Miss. 1990)).

In support of her request that this Court reverse the Commission's determination, Head offers only a quotation from *Riverside of Marks v. Russell*, 324 So. 2d 759 (Miss. 1975), which reads in relevant part:

[T]he rule is not inflexible so as to prevent the Court from checking any fundamentally erroneous exercise of administrative power either as to the findings of fact or the application of the act. The ultimate goal on review is "to ascertain whether or not the beneficent purpose of the Workmen's Compensation Law has been carried out."

Russell, 324 So. 2d at 762. (citations omitted). While this statement provides an accurate depiction of the general scheme, it merely reaffirms our authority to reverse where we see fit. As with her previous allegations, Head provides neither authority or support for her claim that the case sub judice calls for such. Nevertheless, we feel compelled to provide a brief discussion regarding the evidence offered by Packard before the Commission.

While Dr. Summers' opinions, especially when considered in the context of his particular familiarity with Head's mental condition and expertise in the field, might otherwise thrust Head beyond the required "clear and convincing evidence" touchstone, under the present circumstances we are unable to characterize the Commission's determination as manifest error. Five physicians, including one specializing in the field of psychiatry, agreed that any psychological problems suffered by Head were in no way related to her shoulder injury. In fact, their combined testimony strongly suggests another explanation for Head's difficulties -- her undisputed chronic abuse of alcohol in combination with an expressed distaste for working. It is not the function of this Court to second-guess the Commission's decision, only to ensure that substantial credible evidence is incorporated therein. Because such is the case here, this assignment of error is also without merit.

THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

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