

IN THE COURT OF APPEALS 4/22/97

OF THE

STATE OF MISSISSIPPI

NO. 94-CC-00731 COA

SHIRLEY L. PARKES

APPELLANT

v.

CITY OF JACKSON

APPELLEE

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

TRIAL JUDGE: HON. JAMES E. GRAVES, JR.

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

SAMUEL L. BEGLEY

ATTORNEY FOR APPELLEE:

JANE E. TUCKER

NATURE OF THE CASE: WORKERS' COMPENSATION

TRIAL COURT DISPOSITION: AFFIRMED ORDER OF WORKERS' COMPENSATION
COMMISSION DENYING CLAIM FOR INJURY

EN BANC

McMILLIN, P.J., FOR THE COURT:

This case involves a workers' compensation claim asserted by Shirley L. Parkes against her former employer, the City of Jackson. The Administrative Law Judge originally determined that Parkes had sustained a compensable work-related injury; however, the full Commission denied benefits. The Circuit Court of Hinds County affirmed the Commission's determination, and Parkes now brings the matter to this Court. We affirm the judgment of the circuit court denying benefits to Parkes.

I.

Facts

Parkes was employed by the City of Jackson as a deputy clerk in its city court operation. Her duties included clerical processing of traffic tickets. During the course of her work, she discovered an apparent discrepancy in the way one ticket had been dismissed and brought the matter to the attention of the appropriate judge. An investigation revealed that the judge's initials approving dismissal of the ticket had been forged by another employee in the clerk's office. As a result of the investigation, the employee was fired and ultimately faced criminal charges.

Parkes claims that after this incident, the dismissed employee's fellow workers began to be rude to her (Parkes) and to ostracize her at work. According to Parkes, when she was in the area of these co-workers, they slammed doors and file drawers, played radios excessively loud, and refused to acknowledge her when she greeted them. She also testified to receiving telephone calls at work and at home where the caller would hang up when she answered. Parkes took a week's vacation to try to let the situation resolve itself, but when she returned she found that the same pattern of conduct by fellow employees continued. She also found her locked desk had been broken into. As a result of the emotional distress this situation was causing her, Parkes took additional time off work on the advice of her doctor and was hospitalized for a time due to her mental condition. Parkes claims that, some time later, on the morning she was scheduled to return to work, she received a threatening phone call from an unidentified man, warning her not to return. This upset her to the extent that she was unable to return as scheduled, and, in fact, she never did return to work. Instead, she filed a claim with the Workers' Compensation Commission that commenced this proceeding.

II.

Discussion

The role of this Court in reviewing a determination of the Workers' Compensation Commission is limited. The Commission is the fact-finder, and its findings are entitled to great deference on appeal. *Smith v. Jackson Constr. Co.*, 607 So. 2d 1119, 1123-24 (Miss. 1992). If there is substantial evidence in support of the findings of the Commission, and, if the Commission has not misapplied the law, our duty is to affirm. *Id.*

There is substantial evidence in the record to support the conclusion of the Commission that "the claimant failed to carry her burden of proof . . ." The record is essentially devoid of proof of an untoward event or unusual occurrence at work that caused Parkes's emotional problems beyond the alleged rude behavior of Parkes's fellow employees.

Parkes claims emotional injuries unaccompanied by any physical trauma. Her burden, therefore, is higher than a physically-injured claimant, and she must establish her claim by clear and convincing evidence. *Bates v. Countrybrook Living Center*, 609 So. 2d 1247, 1249 (Miss. 1992). She must further show that these emotional injuries arose out of something beyond "the ordinary incidents of employment." *Id.* at 1248.

Fought v. Stuart C. Irby Co., 523 So. 2d 314 (Miss. 1988), dealt with a claim involving mental injuries arising out of treatment at work that Fought considered harassment and intimidation. The supreme court affirmed a denial of compensation and stated that "the 'harassments' or stresses to which Fought was subjected may reasonably have been regarded [as] nothing more than the ordinary incidents of employment, and not untoward events or unusual occurrences." *Id.* at 318.

Much of the evidence relied upon by Parkes to support her claim involved alleged incidents that occurred while she was away from the workplace. This included hang-up phone calls at home and the threatening phone call made to her at home on a day when she was intending to return to work. Even if these incidents were directly traceable to conflicts between co-workers, this evidence was not probative of a workplace injury. This leaves nothing much beyond the rude treatment by fellow employees while at work to support Parkes's claim.

Incivility among fellow workers may be unfortunate, but, standing alone, cannot be said to be an industrial accident under the established precedent by which this Court is bound. Conceding for the sake of argument that mistreatment or harassment by fellow employees could rise to a level that would warrant a finding of an untoward event, we observe that there can be no bright line to determine when that threshold is crossed. That judgment would rest, in the first instance, with the Commission. The Commission seems to have concluded that the line had not been crossed in this case, and we are unconvinced that this was manifestly wrong. There is, thus, no basis to disturb the Commission's finding that Parkes failed to establish the compensable nature of her emotional difficulties by clear and convincing evidence. *See Bates v. Countrybrook Living Center*, 609 So. 2d 1247, 1249 (Miss. 1992).

Parkes has an added problem. Two of her co-workers whom Parkes alleged to be among those harassing her at work testified that no such incidents even occurred. It is entirely possible that the Commission simply chose to believe the testimony of these witnesses over Parkes. This Court is in no position to say, as a matter of law, that Parkes's testimony was so compelling that the Commission was bound to accept it as true in the face of affirmative evidence to the contrary. The fact that Parkes undoubtedly suffered severe emotional distress, as evidenced by her medical proof, does not necessarily make credible her version of the factual events causing this distress.

III.

Public Policy Aspects of Commission's Ruling

As an alternate ground for denying compensation, the Commission held that Parkes's injury, even if proved, was not compensable on considerations of public policy. This finding was prompted by proof that Parkes's permanent disability consisted of a bizarre phobia that had expanded her inability to continue working with her fellow employees to a psychological inability to work with anyone of the same race as these employees. Because Parkes's claim has failed at a much more fundamental level,

this Court declines to address the public policy issue.

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

**THOMAS, P.J., KING AND SOUTHWICK, JJ., CONCUR. BRIDGES, C.J., DISSENTS
WITH SEPARATE WRITTEN OPINION JOINED BY COLEMAN, DIAZ, AND PAYNE, JJ.
HERRING AND HINKEBEIN, JJ., NOT PARTICIPATING.**

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BRIDGES, C.J., DISSENTING:

I respectfully dissent from the majority's decision. I agree with the majority's statement of our standard when reviewing the findings of the Commission. I do not agree, however, that the Commission's decision should be affirmed. The commission chose not to believe the testimony of Parkes or her psychiatrist although their testimony was corroborated. In finding that Parkes had not met the burden of proof required by her, the commission failed to realize that the testimony presented by Parkes on her own behalf was in fact corroborated by various lay witnesses who testified that Parkes was greatly traumatized by the events which took place in her office. There was no medical

testimony presented on behalf of the employer to the contrary.

The testimony of Dr. Galvez established a causal connection between Parkes' work environment and her mental condition. Furthermore, Dr. Galvez testified that Parkes was unable to return to work at her former job or any other job. The testimony presented by Dr. Galvez, Parkes, and other lay witnesses, made out a prima facie case of disability. After the prima facie case of disability is made out by the claimant, the burden of proof shifts to the employer. *Hedge v. Leggett & Platt, Inc.* 641 So. 2d 9, 11 (Miss. 1994) (citations omitted).

Here, the City of Jackson failed to submit any of its own medical evidence, nor did the city request that Parkes submit to an independent medical examination. The only medical testimony before the court was the testimony of Dr. Galvez who testified that Parkes had reached maximum medical improvement, and that she was unable to work because of her mental condition. Here, Parkes did make out a prima facie case of disability, and the employer failed to rebut Parkes' evidence. The majority has not addressed this fact.

Accordingly, it is the opinion of this writer that Parkes should be compensated in the way of temporary total disability for her adjustment disorder and her depression attributable to her employment situation. I further believe that Parkes is due compensation from the date of her injury, March 19, until June 7, 1990, the date of her maximum medical improvement. I do not feel that Parkes should be given permanent partial disability and medical fees. This is due in large part to the fact that Parkes was offered and refused alternative employment in a different department.

COLEMAN, DIAZ, AND PAYNE, JJ., JOIN THIS SEPARATE WRITTEN OPINION .