

**IN THE COURT OF APPEALS 9/3/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CC-00917 COA**

**DELOIS WALKER**

**APPELLANT**

**v.**

**BRENTWOOD ORIGINALS AND MISSISSIPPI MANUFACTURERS 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

TRIAL JUDGE: HON. ANDREW CLEVELAND BAKER

COURT FROM WHICH APPEALED: DESOTO COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

STEPHEN L. HENNING

ATTORNEY FOR APPELLEES:

KEITH R. RAULSTON

NATURE OF THE CASE: WORKERS' COMPENSATION

TRIAL COURT DISPOSITION: AFFIRMED COMMISSION'S FINDINGS AND ORDER

BEFORE THOMAS, P.J., KING, AND SOUTHWICK, JJ.

KING, J., FOR THE COURT:

The Circuit Court of DeSoto County affirmed a finding by the Mississippi Workers' Commission that Walker's illness was not workrelated, and Walker appealed requesting review of the following issues:

I. WERE THE COMMISSION'S FINDINGS OF FACT AND ORDER SUPPORTED BY SUBSTANTIAL EVIDENCE?

II. DID THE ALJ ERR IN ADMITTING MEDICAL EVIDENCE?

III. DID THE COMMISSION PROPERLY EXCLUDE EVIDENCE UPON REVIEW OF THE ALJ'S FINDINGS AND ORDER?

We find no error and affirm the circuit court's judgment.

## **FACTS**

On or about January 5, 1993, the employer and carrier filed notice with the Mississippi Workers' Compensation Commission that it was controverting Walker's right to compensation for injuries allegedly sustained on July 20, 1992. Thereafter, Walker filed a petition to controvert and responded to the employer and carrier's notice that the right to compensation was being controverted.

A hearing was held, and on November 24, 1993, the ALJ determined that the pain in Walkers' right hand, wrist, and arm pain was not workrelated, but the result of a psychological disorder.

## **ANALYSIS OF THE ISSUES AND DISCUSSION OF LAW**

I.

WERE THE COMMISSION'S FINDINGS OF FACT AND ORDER SUPPORTED BY SUBSTANTIAL EVIDENCE?

Walker contends that the circuit court erred in affirming the commission's findings of fact because the testimony of several lay witnesses and the medical evidence established that she had sustained a workrelated injury. Whether an employee has sustained a workrelated injury is a question of fact. *Delta Drilling Co. v. Cannette*, 489 So. 2d 1378, 1379 (Miss. 1986). The commission is the trier of facts as well as the judge of the credibility of the witnesses. *Miller Transporters, Inc. v. Guthrie*, 554 So. 2d 917, 917 (Miss. 1989). Our scope of review on appeal is limited to a determination of whether the commission's findings of fact and order are supported by substantial evidence. *Marshall Durbin Co. v. Warren*, 633 So. 2d 1006, 1009 (Miss. 1994).

The ALJ determined that Walker's injury was not workrelated. There is substantial evidence in the record supporting this finding. Medical evidence indicated that Walker had experienced similar symptoms at least three years prior to becoming employed with Brentwood Originals, and the symptoms were associated with Walker's hypertensive condition. In addition, there was an abundance of medical testimony indicating that the origins of Walker's condition was psychological. Therefore, the circuit court was correct in affirming the commissions findings of fact and order.

There is no merit to this assignment of error.

## II.

### DID THE ALJ ERR IN ADMITTING THE DEPOSITION OF DR. RICHARDSON?

Walker contends that the ALJ erred in admitting Dr. Richardson's deposition because defense counsel had not timely supplemented discovery by providing him with a copy of Dr. Richardson's report prior to the deposition. In support of the contention, Walker cites *Georgia-Pacific Corp. v. McLaurin*, 370 So. 2d 1359 (Miss. 1979). *Georgia-Pacific* is distinguishable from the present case.

In *Georgia-Pacific*, the claimant was allowed to introduce into evidence, over the objection of the employer, certain unsworn reports of the claimant's doctor when the doctor was not present or available for cross-examination. The supreme court reversed stating:

The admission of the "reports" under the circumstances here, the doctor not being available for cross-examination, falls short of the standards set up by Rule 8 of the Workmen's Compensation Commission, which requires that evidence considered must not only be relevant, but "competent."

*Georgia-Pacific*, 370 So. 2d at 1361.

Unlike the medical reports introduced in *Georgia-Pacific*, Dr. Richardson's deposition was sworn, and counsel for Walker was afforded an opportunity to cross-examine Dr. Richardson. In addition, as a remedial measure, counsel for the employer's carrier and the ALJ offered counsel for Walker an additional opportunity to cross-examine Dr. Richardson. Unfortunately, Walker's counsel failed to take advantage of the opportunity, and we are not at liberty to find the evidence incompetent. Therefore, Dr. Richardson's deposition was properly admitted into evidence.

## III.

### DID THE COMMISSION ERR IN REFUSING TO ADMIT ADDITIONAL MEDICAL EVIDENCE?

On November 5, 1993, after the hearing before the ALJ, Walker consulted Dr. Howser, a neurosurgeon who referred her to Dr. Knight, an orthopaedic surgeon. Walker's initial appointment

with Dr. Knight was scheduled for December 2, 1993, but the ALJ's order denying compensation was entered on November 24, 1993.

Despite the ALJ's order, Walker kept the appointment with Dr. Knight. Dr. Knight diagnosed Walker with tendinitis impingement syndrome and performed arthroscopic surgery on Walker's right shoulder two months later.

On December 2, 1993, Walker's counsel filed a petition requesting review of the ALJ's decision. Thereafter, on March 16, 1994, Walker's counsel moved to introduce the medical records and affidavits of Dr. Howser and Dr. Knight. On April 5, 1994, after a hearing, the commission affirmed the ALJ's findings of fact and order and denied Walker's motion to introduce the new medical evidence.

On appeal to this Court, Walker argues that the commission erred when it denied the motion to introduce new medical evidence because the motion was filed more than five days prior to the hearing and because the evidence was relevant. The admission of additional evidence is within the commission's discretion. *Weyerhaeuser Co. v. Ratliff*, 197 So. 2d 231, 234 (Miss. 1967). The record does not indicate that the commission abused this discretion; therefore, we are unable to find that the commission erred in excluding the evidence. This assignment of error lacks merit.

In conclusion, we find no merit in Walker's appeal and therefore, affirm the circuit court's judgment.

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

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ,  
McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**