

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ANGELA WRIGHT

APPELLANT

V.

CASE NO. 2017-WC-00644-COA

**MINACT LOGISTICAL SERVICES, LLC
AND COMPANION PROPERTY AND
CASUALTY INSURANCE COMPANY**

APPELLEE

BRIEF OF APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Mississippi Court of Appeals may evaluate possible disqualification or recusal.

1. The law firm of Markow Walker, P.A., P.O. Box 13669, Jackson, Mississippi 39236, Attorneys of Record for Appellees;
2. Ms. Angela Wright, P.O. Box 5802, Pearl, MS 39208, *Pro se Appellant*,
3. Honorable Melba Dixon, Administrative Law Judge of the Mississippi Workers' Compensation Commission;
4. Mr. Kenny Rotenberry, Safety Manager, Minact Logistical Services, 300 Nissan Drive, Canton, Mississippi 39046.
5. Ms. Sandra Corley, Claims Examiner Supervisor, Enstar, P.O. Box 100165, Columbia, SC 29202; and
6. Chairman Mark Formby, Commissioner Beth Aldridge, and Commissioner Thomas Webb of the Mississippi Workers' Compensation Commission.

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE ISSUE	iv
STATEMENT OF FACTS	iv
SUMMARY OF THE ARGUMENT	1
ARGUMENT	1
A. Standard of Review	1
B. Claimant Has the Burden to Prove Every Element of Her Claim	2
CONCLUSION	5
CERTIFICATE OF SERVICE	7

TABLE OF AUTHORITIES

<i>Miss Code Ann. § 71-3-53</i>	1, 2, 4
<i>Miss Code Ann. § 71-3-29</i>	3
<i>MWCC Procedural Rule 15</i>	3
<i>Fought v. Stuart C. Irby Company</i> , 523 So.2d 314 (Miss. 1988)	2
<i>Martinez v. Swift Transportation</i> , 962 So. 2d 746 (Miss. Ct. App. 2007)	2
<i>Prentice v. Schindler Elevator Company</i> , 14 So. 3d 59 (Miss. Ct. App. 2008)	2
<i>Smith v. Jackson Construction Company</i> , 607 So.2d 1119 (Miss. 1992)	2
<i>South Central Bell Telephone Company v. Aden</i> , 474 So.2d 584 (Miss. 1985)	2
<i>Spann v. Wal-Mart Stores</i> , 700 So.2d 308 (Miss. 1997)	2
<i>Weatherspoon v. Croft Metals, Inc.</i> , 853 So.2d 776 (Miss. 2003)	2
<i>Westmoreland v. Landmark Furniture, Inc.</i> , 752 So.2d 444 (Miss. Ct. App. 1999)	1

STATEMENT OF THE ISSUE

Whether the Mississippi Workers' Compensation Commission erred in determining Claimant failed to demonstrate any grounds that would justify reopening her claim pursuant to *Mississippi Code Ann.* § 71-3-53, as claimant failed to present any evidence to establish "a change in condition" or "a mistake in determination of fact" as grounds for this matter to be reopened after she settled her claim.

STATEMENT OF FACTS

The Claimant, Angela Wright, sustained an admittedly compensable injury to her body as a whole while in the course and scope of her job duties as a technician/picker on or about July 9, 2012. Claimant alleges she slipped off a crate on which she was sitting in the back of a moving van, causing injury to her low back, bilateral lower extremities, neck, bilateral upper extremities, shoulder, and knee. From a physical standpoint, claimant was evaluated by Dr. Rahul Vohra on January 11, 2013, who placed claimant at maximum medical improvement, noted significant symptom magnification, and released claimant to full duty work with no restrictions and no need for further medical treatment. Thereafter, claimant underwent two (2) Court ordered examinations performed by Dr. Philip Blount on September 17, 2013, and November 14, 2014. Dr. Blount was of the opinion claimant was at maximum medical improvement, was able to return to full duty work, and assigned a 2% permanent partial impairment rating to the body as a whole.

Claimant has also alleged a psychological overlay injury to have occurred as a result of this work injury. The employer and carrier steadfastly dispute the compensability of any psychological claim, based largely upon the opinions of neuropsychiatrist Dr. Mark Webb from March 3, 2015, and his subsequent deposition testimony, along with the fact that claimant's allegations of a psychological claim did not arise for over two years post-incident. In lieu of trying the underlying case at a hearing on the merits, the parties entered into a mutually amicable compromise settlement agreement concluding all aspects of the claim, with

a portion of claimant's allegations being admitted and other portions remaining in dispute.

Claimant was represented in this matter before the Mississippi Workers' Compensation Commission by the Honorable Dexter Woodberry. The appropriate compromise settlement documents were prepared, signed by all parties (including the Appellant), submitted to the Administrative Law Judge presiding over this case, and approved via *Order Approving Compromise Settlement and Dismissing Claim With Prejudice* dated October 21, 2016. Some four months later, on February 22, 2017, Appellant submitted a two page letter to the Full Commission, essentially asking for this claim to be re-opened. The Full Commission took the February 22, 2017, letter as a *Motion to Re-open*. After taking the matter under advisement, the Full Commission generated an *Order* dated April 13, 2017, declining Appellant's request for her claim to be re-opened. From this April 13, 2017, Full Commission *Order* denying Appellant's request to have her settled workers' compensation claim re-opened, claimant appeals.

SUMMARY OF THE ARGUMENT

The Full Commission's refusal to re-open claimant's settled workers' compensation claim pursuant to the fact that claimant failed to demonstrate any grounds that would justify reopening the claim pursuant to *Mississippi Code Ann.* § 71-3-53, as no evidence was presented to establish a change in condition or mistake in determination of fact, is supported by Mississippi law and should be affirmed.

ARGUMENT

A. Standard of Review

The standard of review for the appeal of a claim from the Mississippi Workers' Compensation Commission is well established by Mississippi case law. On appeal, the scope of review is limited to a determination of whether the decision of the Commission was supported by substantial evidence. *Westmoreland v. Landmark Furniture, Inc.*, 752 So.2d 444, 447 (Miss. Ct. App. 1999). In fact,

a decision of the Commission can only be reversed if it is not supported by substantial evidence, is arbitrary or capricious, or is based on an erroneous application of the law. *Weatherspoon v. Croft Metals, Inc.*, 853 So.2d 776, 778 (Miss. 2003)(citing *Smith v. Jackson Constr. Co.*, 607 So.2d 1119, 1124 (Miss. 1992)). The Mississippi Supreme Court has held that if the Commission's decision and findings of fact are supported by substantial evidence, then the same is binding, "even if we as fact finder would have been convinced otherwise." *Spann v. Wal-Mart Stores*, 700 So.2d 308, 311 (Miss. 1997)(citing *Fought v. Stuart C. Irby Co.*, 523 So.2d 314, 317 (Miss. 1988) (Emphasis added)). See also *Martinez v. Swift Transp.*, 962 So. 2d 746, 750 (¶16) (Miss. Ct. App. 2007) (holding the Court was bound to accept the MWCC's findings if supported by substantial evidence, even if the evidence "would not be sufficient to convince us were we the fact finders"). The appellate court may "not review the facts on appeal to determine how [it] would resolve the factual issues if [it] were the triers of fact; rather, [the Court's] function is to determine whether the factual determination made by the Commission is supported by substantial credible evidence." *Prentice v. Schindler Elevator Co.*, 14 So. 3d 59 (Miss. Ct. App. 2008)(citing *S. Cent. Bell Tel. Co. v. Aden*, 474 So.2d 584, 589 (Miss. 1985)).

B. Claimant Has the Burden to Prove Every Element of Her Claim

Claimant has the burden to show "a change in condition" or a "mistake in determination of fact" pursuant to *Mississippi Code Ann.* § 71-3-53, in order to support a timely request that the Full Commission re-open a previously settled workers' compensation claim.

Claimant has made many allegations in conjunction with her July 9, 2012, date of alleged injury. Through investigation and competent medical evidence/testimony, many of claimant's claims were found without merit. However, prior to proceeding to a hearing on the merits in this matter and receiving a final adjudication from the Administrative Law Judge, the parties felt as though the most efficient and mutually

amicable resolution was to settle this workers' compensation claim on a partially admitted and partially disputed basis. Claimant's allegations of physical injury were accepted by this employer and carrier and treated as compensable, though the Court ordered Independent Medical Examiner (Dr. Philip Blount) ultimately stated, "She in my opinion does not have a diagnosable etiology with respect to her neuromusculoskeletal system... With respect to her work ability, I would have no work restrictions for her based on her neuromusculoskeletal issues." Claimant also alleged a psychological claim in the form of post-traumatic stress disorder (PTSD) arose from this July 9, 2012, date of injury. Claimant's claims did not surface for over two years post-injury, and there was conflicting medical opinions as to both diagnosis and causation.

The Administrative Law Judge urged the parties to participate in mediation. The parties did so, and with the aide of a neutral mediator, a global settlement was reached to conclude any and all aspects of this workers' compensation claim, whether admitted or denied, on a full and final basis. Settlement documentation was prepared and executed by all parties, including the claimant. The settlement was presented to the Administrative Law Judge for approval in accordance with MWCC Procedural Rule 15, which states, in part, "a settlement agreement or lump-sum payment application approved by an Administrative Judge is to have the same force and effect as one approved by the Commission." With respect to a settlement approved by the Commission, *Mississippi Code Ann.*, § 71-3-29, states in pertinent part "lump sum settlement payment shall be governed by rules of the Commission, and shall not be made except when determined to be in the best interest of the injured worker or his dependents, the Commission having final authority in such questions."

Claimant was represented by competent legal counsel. Through the aide of a neutral mediator, a settlement agreement was reached. Settlement approval was procured by the Commission via *Order*

Approving Compromise Settlement and Dismissing Claim With Prejudice dated October 21, 2016. To the knowledge of appellee, claimant has not offered to return the settlement funds or interplead such funds into the registry of this Court. Instead, claimant attempts to make application to have her claim re-opened. *Miss Code Ann.* § 71-3-53, controls concerning the potential for re-opening a claim. It states, in pertinent part:

Upon its own initiative or upon the application of any party in interest on the ground of a change in conditions or because of a mistake in a determination of fact, the Commission may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of the claim, review a compensation case, issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation...

This language specifically states that the Commission may re-open a claim under two grounds. If a change in condition can be shown or a mistake in a determination of fact can be shown, the Commission, at its discretion, may re-open a claim for compensation.

The Commission found claimant failed to present any evidence to establish either a change in condition or a mistake in determination of fact. Nothing set forth in claimant's February 22, 2017, correspondence to the Full Commission, which operates as her *Motion to Re-open* in this matter, reflects any type of change in condition or any type of mistake in determination of fact. The Full Commission pointed this out in their April 13, 2017, *Order* denying claimant's *Motion to Re-Open*. Mississippi statute states that the Commission has the final authority in questions of whether or not a settlement is in the best interest of the injured worker. The Full Commission's finding that claimant's *Motion to Re-Open* should be denied is supported by substantial evidence, as there is no evidence or even allegation that either of the grounds for the re-opening of a claim have been met. Claimant does not allege a change in condition. There is also no allegation of a mistake in a determination of fact. The claimant entered into a settlement agreement. The claimant knew that she was settling her claim. She was advised by her legal counsel, an independent

mediator, and an Administrative Law Judge as to the force and effect of a settlement. She gladly accepted the settlement funds and cashed the check. Now, she seeks to re-open her claim, which would do a great injustice on the employer and carrier here, as a substantial amount of money has changed hands and will never be recovered.

CONCLUSION

The claimant entered into a settlement agreement. The settlement agreement was appropriately approved by the Mississippi Workers' Compensation Commission. Claimant attempted to have her claim re-opened by the Full Commission. The Commission has stated, "Claimant has failed to present any evidence to establish a change in condition or a mistake in determination of fact as grounds for this matter to be re-opened." Claimant's May 10, 2017, *Notice of Appeal to the Supreme Court of Mississippi* does not state any ground for re-opening her claim. Further, the brief of appellant in this matter alleges seven issues, when the only appropriate issue on appeal is whether or not the Commission's finding that claimant has not presented any evidence constituting a mistake in determination of fact or change in condition is supported by substantial evidence. In the brief of appellant, there are many allegations, but there is no presentation whatsoever of any factual basis for the re-opening of claimant's settled workers' compensation claim. The decision of the Full Commission to not re-open claimant's settled workers' compensation claim should be affirmed.

RESPECTFULLY SUBMITTED THIS THE 2nd day of November, 2017.

MINACT LOGISTICAL SERVICES, LLC AND COMPANION
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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed, via MEC, a true correct copy of the ***Brief of Appellee***, and a copy of same will be provided, via U.S. Mail, to:

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THIS the 2nd day of November, 2017.

/s/ Bryan G. Bridges
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