

SUPREME COURT OF MISSISSIPPI

Lovett v. Delta Regional Medical Center

157 So. 3d 88 (Miss. 2015) · Decided January 29, 2015

SUMMARY

The Mississippi Supreme Court reviews a workers’ compensation dispute involving a security guard’s slip-and-fall injuries, alleged loss of wage-earning capacity, and subsequent medical treatment. The Court holds that substantial evidence supported the Commission’s rejection of a thirty percent industrial loss determination, but concludes that Lovett was entitled to compensation for her undisputed two percent functional impairment to her right lower extremity. The Court affirms in part and remands for entry of an award addressing that impairment.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Presiding Justice; Waller, Chief Justice; Dickinson, Presiding Justice; Lamar, Justice; Kitchens, Justice; Chandler, Justice; Pierce, Justice; King, Justice; Coleman, Justice
JURISDICTION	Mississippi
DECIDED	January 29, 2015
DISPOSITION	remanded
PROCEDURAL POSTURE	Lovett sought review of a Mississippi Workers’ Compensation Commission decision concerning permanent partial disability benefits and medical treatment. The Mississippi Court of Appeals affirmed the Commission, and the Mississippi Supreme Court granted Lovett’s petition for writ of certiorari.
STANDARD OF REVIEW	The Commission’s decision will be reversed only if it is not supported by substantial evidence, is arbitrary or capricious, or is based on an erroneous application of the law.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Yvonne Lovett v. Delta Regional Medical Center

TOPICS

- workers compensation
- administrative law
- standard of review
- appellate procedure
- remedies

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether Lovett was entitled to a separate two percent permanent partial disability award for the functional impairment to her right lower extremity.
2. Whether substantial evidence supported the Commission's rejection of the administrative judge's finding that Lovett sustained a thirty percent loss of wage-earning capacity from her back injury.
3. Whether Dr. Jenkins's treatment was within the requisite chain of referral.

HOLDINGS

1. The Commission's finding that Lovett did not sustain a thirty percent loss of wage-earning capacity was supported by substantial evidence and was affirmed.
2. Because Lovett had an undisputed two percent functional impairment to a scheduled member, she was entitled to a permanent partial disability award for that impairment.
3. The chain-of-referral issue was waived because Lovett raised it for the first time in her petition for certiorari review.

KEY QUOTATIONS

"The Commission's decision will be reversed only if it is not supported by "substantial evidence, is arbitrary or capricious, or is based on an erroneous application of the law." (¶ 7)

"Workers' losses are divided into two types: (1) industrial or occupational; and (2) functional or medical." (¶ 8)

"When medical or functional loss to a scheduled member occurs, the "worker is always entitled to compensation." (¶ 8)

FACTUAL BACKGROUND

Lovett worked as a security guard for Delta Regional Medical Center when she slipped and fell at work, injuring her back and right knee. After returning to work, she later experienced dizziness and weakness and was diagnosed with a transient ischemic attack. Delta paid related medical expenses and disability benefits, and Lovett was assigned a two percent impairment to her lower right extremity and a five percent whole-body impairment from her back injury.

PROCEDURAL HISTORY

Lovett filed two workers' compensation claims arising from a workplace slip-and-fall injury and a later mini-stroke; the claims were consolidated. The administrative judge found a thirty percent loss of wage-earning capacity from the back injury but denied compensation for the mini-stroke and certain medical expenses. The Commission reversed the thirty percent wage-earning-capacity finding and denied responsibility for treatment by two doctors outside the requisite chain of referral. The Court of Appeals affirmed. The Supreme Court affirmed

the substantial-evidence determination but remanded for the Commission to award compensation for Lovett's undisputed two percent functional impairment to her right lower extremity.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The case was remanded to the Mississippi Workers' Compensation Commission to enter a judgment awarding Lovett a two percent disability for the impairment to her right lower extremity.

CASES CITED

- *Moreno v. State*, 79 So. 3d 508, 509 (Miss. 2012)
- *Weatherspoon v. Croft Metals, Inc.*, 853 So. 2d 776, 778 (Miss. 2003)
- *Meridian Profl Baseball Club v. Jensen*, 828 So. 2d 740, 745 (Miss. 2002)
- *Smith v. Jackson Constr. Co.*, 607 So. 2d 1119, 1126 (Miss. 1992)
- *City of Laurel v. Guy*, 58 So. 3d 1223, 1226 (Miss. Ct. App. 2011)

OPINION

RANDOLPH, J.

ON WRIT OF CERTIORARI RANDOLPH, Presiding Justice, for the Court: ¶ 1. Yvonne Lovett was employed as a security guard for Delta Regional Medical *89Center. While on duty, Lovett slipped and fell..As a result of her fall, Lovett experienced injuries to her back and to her right knee. Months after returning to work at Delta, Lovett experienced dizziness and weakness and sought treatment.

Subsequently, Lovett was diagnosed as having suffered a transient ischemic attack, commonly referred to as a mini-stroke. ¶ 2. Delta covered the costs of Lovett's related medical treatments and paid her disability benefits during the time in which she could not work. Lovett was assigned a date of maximum medical improvement, and she was assigned a five percent impairment to her body as a whole resulting from her back injury and a two percent impairment to her lower right extremity resulting from her knee injury. ¶ 3.

Lovett filed two ¿workers' compensation claims based on the two events, which were consolidated. After receiving stipulations and conducting a hearing on the matter, the administrative judge found that as a consequence of the slip-and-fall injury, Lovett had a thirty percent loss of wage-earning capacity, but that the mini-stroke claim was noncompensable.

The administrative judge found certain subsequent medical expenses were not related to her employment and would not be covered. Both parties sought review by the Mississippi Workers'

Compensation Commission (“the Commission”). ¶4.

The Commission affirmed in part and reversed in part, finding that there was not substantial evidence to support a thirty percent loss of wage-earning capacity, thus denying her permanent disability benefits, and that Delta would not be held responsible for the payment of Lovett’s treatment with two doctors who were outside the “requisite chain of referral.” The Commission affirmed the judgment of administrative judge on all other issues. ¶ 5.

The Mississippi Court of Appeals affirmed the Commission’s judgment. *Lovett v. Delta Regional Med. Ctr.*, 2013-WC-00410-COA, 157 So.3d 90, 94-95, 2014 WL 1687925, *4 (Miss.Ct.App. Apr. 29, 2014). This Court granted Lovett’s petition for writ of certiorari. She raised the following three issues: I. Whether Lovett is absolutely entitled to a two percent disability to her right lower extremity for her knee injury.

II. Whether the Commission was arbitrary and capricious by reversing the administrative judge’s finding that she suffered a thirty percent loss of wage-earning capacity for her back injury. III. Whether Dr. Jenkins’s treatment was in the chain of referral. ¶ 6.

Because we find that substantial evidence supports the Commission’s finding that Lovett did not receive a thirty percent loss of wage-earning capacity, we affirm in part. Since the administrative judge found that Lovett had suffered a thirty percent industrial loss, which was greater than the two percent functional loss, a separate award was not made.. {See ¶ 8, *infra*}.

However,- when the Commission reversed the administrative judge’s finding, it failed to then consider Lovett’s functional loss. Lovett raises Issue III for the first time in her petition for certiorari review, thus the issue is waived and may not be considered by this Court. See *Moreno v. State*, 79 So.3d 508, 509 (Miss.2012). STANDARD OF REVIEW ¶ 7.

The Commission’s decision will be reversed only if it is not supported by “substantial evidence, is arbitrary or capricious, or is based on an erroneous application of the law.” *Weatherspoon v. *90Croft Metals, Inc.*, 853 So.2d 776, 778 (Miss.2003) (citation omitted). ANALYSIS ¶ 8. Workers’ losses are divided into two types: (1) industrial or occupational; and (2) functional or medical.

Meridian Prof’l Baseball Club v. Jensen, 828 So.2d 740, 745 (Miss.2002) (quoting *Smith v. Jackson Constr. Co.*, 607 So.2d 1119, 1126 (Miss.1992)). Industrial or occupational loss determinations consider, *inter alia*, whether a loss of wage-earning capacity has occurred. A functional or medical loss determination disregards loss of wage-earning capacity and does not require evidence of “loss of ability to work.” *Id.* If the industrial loss is greater than the functional loss, then the worker is awarded the greater of the two.

Jensen, 828 So.2d at 745. When medical or functional loss to a scheduled member occurs, the “worker is always entitled to compensation.” City of Laurel v. Guy, 58 So.3d 1223, 1226 (Miss.Ct.App.2011) (citing Jensen, 828 So.2d at 745-46 (¶¶ 13-14)). ¶ 9. It is uncontradicted that Lovett was assigned a two percent impairment to her lower right extremity.

Therefore, Lovett is entitled to receive permanent partial disability for the two percent impairment to a scheduled member, i.e., her right lower extremity, in accordance with Mississippi Code Section 71-3-17(c). Miss.Code Ann. § 71-3-17(c) (Supp.2014). CONCLUSION ¶ 10.

We affirm the decisions reached by the Court of Appeals and the Mississippi Workers’ Compensation Commission. However, we remand this case to the Mississippi Workers’ Compensation Commission for entry of a judgment on Issue I, awarding Lovett a two percent disability to her right lower extremity, which the Commission failed to address. ¶ 11. AFFIRMED IN PART AND REMANDED.

WALLER, C.J., DICKINSON, P.J., LAMAR, KITCHENS, CHANDLER, PIERCE, KING AND COLEMAN, JJ., CONCUR.