

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2007-WC-01525-COA

MARTHA LOTT

APPELLANT

VS.

HUDSPETH CENTER AND
MISSISSIPPI STATE AGENCIES
WORKERS' COMPENSATION TRUST

APPELLEES

ON APPEAL FROM THE
CIRCUIT COURT OF MONTGOMERY
COUNTY, MISSISSIPPI; CAUSE NO. 2006-0120-CVL

BRIEF OF APPELLEES

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NO. 2007-WC-01525-COA

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APPELLANT/CLAIMANT

VS.

HUDSPETH CENTER AND
MISSISSIPPI STATE AGENCIES
WORKERS' COMPENSATION TRUST

APPELLEES/EMPLOYER AND CARRIER

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 Circuit Court Judge may evaluate possible disqualification or recusal.

1. Hudspeth Center, Appellee/Employer;
2. Mississippi State Agencies Workers' Compensation Trust, Appellee/Carrier;
3. Martha Lott, Appellant/Claimant;
4. Honorable Joseph H. Loper, Jr.
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5. Honorable Liles Williams, Chairman
Honorable Barney J. Scoby, Former Commissioner
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THIS, the 20th day of December, 2007.



W. BIENVILLE SKIPPER
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STATEMENT OF THE ISSUE

Whether the Circuit Court of Montgomery County, Mississippi, correctly affirmed the decision of the Mississippi Workers' Compensation Commission ("Commission"), when the Commission's decision is supported by substantial evidence.

STATEMENT OF THE CASE

This appeal involves a review of the opinion of the Circuit Court of Montgomery County, Mississippi, which affirmed the decision of the Commission to award Martha Lott, the claimant/Appellant (hereinafter "Lott"), benefits for 100% industrial loss of use to her arm. As the record contains clear evidence that Lott retains the ability to work, the Commission's decision to award her the maximum benefits available for her scheduled member injury is supported by substantial evidence and, as a result, should be affirmed. Additionally, since Lott's education, work history and other relevant criteria illustrate she retains the ability to be employed, the Commission's decision that Lott has no additional loss of wage earning capacity in excess of the maximum allowed for scheduled member injuries by Mississippi Code Annotated §71-3-17(c) is supported by substantial evidence. Therefore, Appellees submit the Commission's ruling, as independently and thoroughly reviewed and affirmed by the Montgomery County Circuit Court, is supported by substantial evidence, is in conformity with the law and should be affirmed by this Court.

I. Nature of the Case and Course of Proceedings

This particular appeal arises out of a shoulder injury sustained while Lott was employed as direct care worker at Hudspeth Center. As a consequence of her injury, Lott claimed to have sustained a permanent disability.

Following a hearing on the merits, the Administrative Judge (hereinafter sometimes referred to as "AJ") entered an order on August 17, 2005, finding Lott permanently totally disabled, despite the fact that workers' compensation benefits for arm injuries are limited to a maximum of 200 weeks of benefits by Miss. Code Ann. § 71-3-17(c) unless such an injury produces a total inability to earn wages. Aggrieved by the AJ's decision, the employer and carrier petitioned for review by the Commission, the statutory finder of fact. Following briefing, oral argument and a complete review of the record, on June 29, 2006, the Commission entered its order modifying the order of the AJ and holding Lott was entitled to benefits for 100% industrial loss of use to her arm and awarding her the maximum 200 weeks of permanent partial disability benefits available under the statutory schedule.

Lott appealed to the Circuit Court of Montgomery County, Mississippi. The Circuit Court entered its order on August 31, 2007, carefully reviewing and affirming the Commission's decision.

Lott now appeals to this Court, seeking reversal of the Circuit Court's order by suggesting that Commission erred by not weighing the evidence more to her advantage. The record, though, supports the Commission's decision, and the employer and carrier therefore submit the Circuit Court did not err in determining that substantial evidence supports the Commission ruling and request the Circuit Court's decision be affirmed.

II. Statement of Relevant Facts

On May 15, 2003, Lott was assisting a patient when she felt a "pop" in her right shoulder.

(A.R.E. 1).¹ She sought treatment with Dr. Asa Bennett, an orthopaedic specialist in Greenwood, Mississippi. (*Id.*; A.R.E. 4). Dr. Bennett diagnosed Lott with a torn rotator cuff and performed surgical repair on October 6, 2003. (A.R.E. 1). Post-operatively, Dr. Bennett prescribed a course of physical therapy and released Lott at maximum medical improvement on June 29, 2004. (A.R.E. 4). Dr. Bennett assigned Lott a 10% impairment to the right upper extremity and released her from his care without any work restrictions. (*Id.*).

Following her discharge by Dr. Bennett, Lott filed a Petition to Controvert her injury with the Commission, claiming entitlement to permanent disability benefits in excess of the anatomical rating assigned by Dr. Bennett. (A.R.E. 1). Lott was then referred, by her attorney, to Ms. Kay Cannon for a functional capacity evaluation ("FCE"). (A.R.E. 5). In testing, marked inconsistencies in Lott's performance were noted. Ms. Cannon remarked that "based on her [Lott's] performance today, the client may work at sedentary-light physical demand level" (*Id.*). However, the FCE noted limiting factors were Lott's "very poor body mechanics," and that Lott "self-limited due to pain, stating 'that's all I can do'". (*Id.*).

In deposition testimony, Dr. Bennett stated that he does not refer patients to Ms. Cannon, in the Tupelo, Mississippi, area, for FCE testing, preferring his patients undergo testing at Southern Physical Medicine in Jackson, Mississippi. (A.R.E. 4). As such, Lott was sent for evaluation by Dr. David Collipp, a physical medicine specialist at Southern Physical Medicine, who prescribed a course of physical therapy to recondition Lott and then referred her for another FCE on June 7, 2005. (A.R.E. 6,7). For the first time, the Lott's FCE performance was

¹ Citations to Appellant's Record Excerpts are abbreviated as "R.E. ____" and citations to Appellees' Record Excerpts are abbreviated "A. R. E. ____".

compared to her pre-injury job duties. (A.R.E. 7). The only deficit noted on this most recent FCE was that Lott is unable to lift 100 pounds. (*Id.*). The evaluator noted, "Ms. Lott is capable of performing all aspects of her pre-injury job other than the ability to lift up to 100 pounds on an occasional basis," concluding "Ms. Lott is currently able to tolerate lifting 63 pounds safely from floor to waist and 58 pounds safely from waist to shoulder height." (*Id.*). Following this FCE, Dr. Collipp opined on June 13, 2005, that Lott met the ability to return to work in a medium duty category with a maximum lifting limit of 60 pounds. (A.R.E. 6).

A hearing on the merits of Lott's claim was conducted on July 6, 2005. (A.R.E. 1). The sole issue for determination was the existence and extent of permanent disability occasioned by Lott's shoulder injury. (*Id.*). At the hearing, Lott's medical records and the FCE reports of Ms. Cannon and Dr. Collipp were entered into evidence. (*Id.*) David Stewart, a vocational expert, also testified. (*Id.*, A.R.E. 3). Mr. Stewart testified he believed Lott was able to perform some jobs, but based upon his review of Ms. Cannon's FCE, he believed she was only able to perform sedentary to light work. (*Id.*). Mr. Stewart admitted, however, that he had not been asked by Lott, who had retained him, to review Dr. Collipp's more recent medical records or the most recent FCE report, and, thus, had not used it to form his vocational conclusions. (*Id.*). Instead, Mr. Stewart had only been asked to base his opinions and report upon the earlier FCE solicited by Lott's attorney. (*Id.*).

Mr. Stewart conceded that Lott has an above-average educational background, an extensive previous work history and a solid vocational foundation. (*Id.*). He agreed the only restriction on the most recent FCE was she could not lift 100 pounds. (*Id.*). It was also noted that Lott demonstrated 4/5 strength throughout her bilateral upper extremities, with no weakness noted, and

that her bilateral grip strength was above average. Based upon the specific findings of the most recent FCE, Mr. Stewart conceded there were more jobs that Lott would be able to do than he had originally opined. (*Id.*).

In addition to the importance of the most recent FCE test, Mr. Stewart also admitted that he has, in the past, been asked to help many workers' compensation claimants return to work, but was not asked to do so in Lott's case. (*Id.*). In his vocational practice, Mr. Stewart testified he regularly offers help to claimants find employment. (*Id.*). However, Mr. Stewart testified he had only been asked by Lott to state that she had sustained a loss of access to the job market, and had never been asked to actually help find employment. (*Id.*). Mr. Stewart stated that, had he been asked to actually assist Lott in finding a job, he would have done so. (*Id.*). With regards to the overall labor market, Mr. Stewart testified the unemployment rate in Montgomery County, where Lott resides, is higher than the average state unemployment level and agreed that those economic conditions, factors unrelated to Lott's injury, limited her ability to find work as much as her injury did. (*Id.*). As found by the Commission, "[t]he sum of Mr. Stewart's testimony is that, all things considered, Ms. Lott's injury has not rendered her permanently and totally disabled . . ." (A.R.E. 1).

At the close of evidence, the AJ found Lott to be permanently totally disabled. (A.R.E. 1). Aggrieved, the employer and carrier appealed to the Full Commission which entertained oral arguments on January 30, 2006. (*Id.*). On June 29, 2006, the Full Commission entered its Order, reversing the AJ and finding Lott entitled to 200 weeks of permanent partial disability benefits, the maximum for her scheduled member injury under Miss. Code Ann. §71-3-17(c). (*Id.*). In its role as statutory fact finder, the Commission determined "Ms. Lott retains significant functional

abilities which, when coupled with her age, education, and past work history, drives the conclusion that she retains some earning capacity.” (*Id.*). In sum, the Commission concluded, “[c]onsidering the evidence as a whole, we are unable to conclude that Ms. Lott is permanently and totally disabled as the result of the injury to her arm.” (*Id.*).

Disappointed by the Order of the Full Commission, Lott appealed to the Circuit Court of Montgomery County, Mississippi, which affirmed the holding of the Commission, finding the Commission’s decision is supported by substantial evidence. (R.E. at 6). It is from this decision of the Montgomery County Circuit Court that Lott now appeals to this Court.

SUMMARY OF THE ARGUMENT

The employer and carrier request the Circuit Court’s order be affirmed, as the Commission’s decision is supported by substantial evidence. The Commission, whose Order is the only one subject to scrutiny in a workers’ compensation appeal, received and reviewed all the evidence and gave the appropriate weight to the testimony and to each admitted exhibit. Lott seeks to have this Court give different weight to the testimony and evidence, but, as this Court is well aware, an appeals court cannot re-weigh the evidence and render its own opinion of the testimony. Under the law, deference is given to the Commission, which issued its decision after its own independent review of the evidence. Even if the Order of the Full Commission is not the opinion this Court would have rendered, the fact that the Commission’s Order is supported by evidence in the record necessitates it again be affirmed.

ARGUMENT

I. The Applicable Standard of Review Supports the Commission's Decision.

Time and time again, the Mississippi Supreme Court has reiterated the narrow and limited standard of review in workers' compensation appeals:

The Workers' Compensation Commission is the trier and finder of facts in a compensation claim, the findings of the Administrative Law Judge to the contrary notwithstanding.

* * *

[An appellate court may] reverse the Commission's order only if it finds that order clearly erroneous and contrary to the overwhelming weight of the evidence.

Smith v. Container General Corp., 559 So.2d 1019, 1021 (Miss. 1990) (quoting *Fought v. Stuart C. Irby Co.*, 523 So.2d 314, 317 (Miss. 1988)). Thus, despite Lott's repeated reference to the findings of the AJ, it is the Commission's decision with which this Court must concern itself, and, as is well-settled, "[t]he Commission is the finder of facts. And if those facts are based on substantial evidence [an appellate court lacks] the power to disturb them, even though that evidence would not convince [the court] were [it] the fact finders." *Olen Burrage Trucking Co. v. Chandler*, 475 So.2d 437, 439 (Miss. 1985). See also *Scarborough v. Miss. Dept. Of Trans. Hwy. Dept.*, 764 So.2d 488 (Miss.App. 2000).

Thus, the findings of the Commission are binding so long as they are supported by substantial evidence. *Fought v. Stuart C. Irby Co.*, 523 So.2d 314, 317 (Miss.1988). Unless prejudicial error is found or the Commission's decision is found to have been against the overwhelming weight of the credible evidence, the Commission's order shall be affirmed. *Strickland v. M.H. McMath Gin, Inc.*, 457 So.2d 925, 928 (Miss. 1984). See also *KLLM, Inc. v. Fowler*, 589 So.2d 670 (Miss. 1991). The scope of review of an appellate court is, therefore, limited to a determination of whether the Commission's decision is supported by substantial

evidence. If so, the decision of the Full Commission must be upheld. *Delta CMI v. Speck*, 586 So.2d 768, 772-73 (Miss. 1991); *Walker Mfg. Co. v. Cantrell*, 577 So.2d 1243, 1247 (Miss. 1991).

As stated, by the court in *Delta CMI v. Speck*, 586 So.2d 768, 772-73 (Miss.1991):

The substantial evidence rule serves as the basis for appellate review of the commission's order. Indeed, the substantial evidence rule in workers' compensation cases is well established in our law. Substantial evidence, though not easily defined, means something more than a "mere scintilla" of evidence, and that it does not rise to the level of "a preponderance of the evidence." It may be said that it "means such relevant evidence as reasonable minds might accept as adequate to support a conclusion." Substantial evidence means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred.

See also *Page v. Zurich American Ins. Co. of Illinois*, 825 So.2d 721 (Miss.App. 2002); *Toldson v. Anderson-Tully Co.*, 724 So.2d 399 (Miss. App. 1998).

Simply stated, in workers' compensation cases, the Commission is the ultimate finder of fact. *Natchez Equip. Co. v. Gibbs*, 623 So.2d 270, 273 (Miss. 1993); *R.C. Petroleum, Inc. v. Hernandez*, 555 So.2d 1017, 1021 (Miss. 1990). The appellate court is not permitted to re-weigh the evidence to determine where the preponderance of the evidence lies. *Lantermann v. Roadway Exp., Inc.*, 608 So.2d 1340 (Miss.1992). Therefore, the decision of the Commission should only be overturned for an unsupportable finding of fact showing the Commission acted arbitrarily and capriciously. If the record contains substantial evidence upon which the Commission could base its decision, its decision must be affirmed. In this, such evidence clearly exists.

II. Substantial Evidence Supports the Commission Decision

The sole inquiry on appeal is whether substantial evidence supports the Commission decision. If so, then the Circuit Court's affirmance of the Commission's Order is due to be

upheld. Here, the Commission, sitting as the statutory trier of fact, found Lott entitled to 100% industrial loss of use of her right arm – a 90% increase of the anatomical impairment rating assigned by her treating physician – but did not find she is permanently totally disabled, based on its appraisal of the totality of the evidence.

Specifically, the Commission found the following facts provided substantial evidence to support its findings:

- Dr. Asa Bennett, Lott's treating orthopaedic surgeon, placed her at maximum medical improvement from her injury and released her without any work restrictions and only a 10% partial impairment to her affected right arm. (A.R.E 4).
- After her release by Dr. Bennett, Lott underwent an FCE ordered by her attorney, not her doctor. (A.R.E. 5). The FCE was not conducted by facility to which Dr. Bennett refers his patients. (A.R.E 4).
- The FCE therapist, Ms. Cannon, opined that Lott's performance on this first test demonstrated she could tolerate work at the sedentary to light demand level. (A.R.E. 5). However, the results of the FCE were limited by Lott's "very poor body mechanics" and self-limiting pain behaviors. *Id.*
- The FCE performed by Ms. Cannon did not correlate Lott's abilities with her job duties at the time of her injury. *Id.* In fact, Ms. Cannon did not even have the Lott's pre-injury job description to evaluate. *Id.*
- After her release by Dr. Bennett, Lott underwent additional physical therapy and reconditioning ordered by Dr. David Collipp. (A.R.E. 6, 7). After completing

physical therapy, the she underwent a second FCE on June 7, 2005, ordered by Dr. Collipp of Southern Physical Medicine and Rehabilitation. *Id.* Southern Physical Medicine and Rehabilitation is a clinic to which Dr. Bennett refers patients for FCE testing. (A.R.E. 4).

- The June 7, 2005, FCE found Lott able to work in the medium duty category, with a sixty pound maximum lifting limit. (A.R.E. 7). Unlike the FCE ordered by the Lott's attorney, Dr. Collipp's FCE evaluated Lott's physical abilities and compared them with her pre-injury job duties. *Id.* Lott demonstrated the ability to perform all aspects of her prior job, with the sole exception that she could no longer lift 100 pounds. *Id.*
- At trial, Lott testified she had previously worked for 16 years as a teacher's assistant. She even admitted that she could still perform her former job, except for the lifting required. (A.R.E. 2). She testified that she had applied for jobs with 194 businesses, but conceded that most places she applied were not hiring anyone, at all. (A.R.E. 1) On one application Lott submitted to Wal-Mart, she limited her availability to only 7:00 a.m. to 2:00 p.m., a restriction no doctor had imposed on her. (A.R.E. 8). Despite her 16 years of experience as a teacher's assistant, Lott did not apply for such jobs. (A.R.E. 1)
- David Stewart was hired by the Lott. (A.R.E. 1). He testified that he had issued a report stating Lott had lost access to the job market as a result of her injury, but had not been requested to assist Lott find work. (A.R.E. 3). He testified he had been provided the first FCE test ordered by the claimant's attorney and had used

it as the basis for his opinions. *Id.* Once he considered more recent FCE ordered by Dr. Collipp, though, Mr. Stewart testified that there would be many more jobs Lott was capable of performing. *Id.* He testified that the unemployment rate in the Lott's county of residence is higher than the state average and Lott's inability to find work was limited as much by the local economy as by her injury. (*Id.*, A.R.E. 1).

As set forth in the Commission's decision, the determination that Lott was not permanently totally disabled was made after careful consideration of the evidence as a whole. Upon weighing the evidence, including the testimony and all medical proof, the Commission concluded that Lott was entitled to 100% loss of use to the arm, but not to permanent total disability. That fact-finding should be affirmed, as it is within the Commission's discretion.

A. Medical Evidence Supports the Commission Decision.

In reaching its decision, it is clear that the Commission placed greater weight on Dr. Bennett's testimony and Dr. Collipp's more recent FCE evaluation than it did on Lott's purported job search effort and the FCE ordered by her attorney. It is that allocation of weight Lott seeks to have this Court reverse. However, the Commission is the arbiter of the weight of the evidence and since the proof supports the Commission finding, the Commission decision is due to be affirmed.

The medical records of Dr. Bennett demonstrate Lott was released without any work restrictions, at all, and that Dr. Bennett felt her condition would actually improve over time. The Commission properly assigned the later FCE ordered by Dr. Collipp greater weight than the earlier one solicited by Lott's attorney, since Dr. Collipp's FCE was the only one directed by a

physician, performed by a facility recommended by Dr. Bennett, and was the most up-to-date evaluation of Lott's functional ability – which coincides with Dr. Bennett's testimony that he would expect Lott to improve over time. In addition to being the most current evaluation of Lott's abilities, Dr. Collipp's FCE, unlike the first FCE, actually evaluated Lott's ability to return to her pre-injury employment. In comparing her abilities, the FCE determined that the only functional deficit Lott suffers as a result of her injury is that she can only lift 60 pounds, as opposed to 100 pounds. This evidence alone, provides substantial medical evidence from which the Commission could properly determine Lott was not permanently totally disabled by virtue of her torn rotator cuff.

As the Mississippi Court of Appeals has recently reiterated, if medical evidence in the record – even if only from one doctor – supports the Commission determination, the Commission's decision should be affirmed. See *Union Camp Corp. v. Hall*, 955 So. 2d 363, 368 (Miss. 2006) (“we are only called upon to resolve whether a quantum of credible evidence supports the Commission's decision . . . we may not resolve conflicts in the evidence based on our mandated presumption that the trier of fact, the Commission, resolved all such conflicts.”) (citation omitted). In this case, the medical records from Dr. Bennett and Dr. Collipp support the Commission's decision. As such, the Commission decision is due to be affirmed.

B. Other Evidence Supports the Commission Decision

In her brief to this Court, Lott highlights all evidence in the record supporting her claim of permanently totally disability, but seemingly labels the Commission's consideration of all evidence contrary to that position as “errors”. Fortunately, all this Court must consider is whether evidence in the record exists to support the Commission's finding. If so, then the Commission

should be affirmed.

Miss. Code Ann. § 71-3-17(c) (1) limits benefits for an injury to an arm to a maximum of 200 weeks of compensation benefits. In order for benefits for a scheduled member injury to exceed the guidelines of §71-3-17(c), the proof, both lay and medical, must be such that the Commission is convinced a claimant's injury renders him totally incapable of ever earning wages again. See *McDonald v. I. C. Isaacs Newton Co.*, 879 So. 2d 486, 491 (Miss. Ct. App. 2004). The inability of the claimant to secure other employment, however, must be "due to the injury in question." *Georgia Pacific Corp. v. Taplin*, 586 So. 2d 823, 828 (Miss. 1991). Thus the Commission is entitled to consider not only a claimant's physical abilities, but also whether other factors influence the availability of employment, whether due to the injury at work, or not. By weighing all the relevant factors, the Commission then – in its role as fact-finder – determines whether an injury is such that it should exceed the schedule of the Workers' Compensation Act.

The Commission's decision in this case reflects that it carefully weighed the evidence and the medical testimony in making its decision. Unlike what Lott would have this Court decide, the Commission was inclined to give greater weight to the fact that Lott retains significant functional abilities despite her injury. It also gave weight to the fact that the unemployment rate in her area is higher than the state average, concluding that part of her unsuccessful job search was due to factors other than her injury (as Mr. Stewart, Lott's own expert, agreed). As noted by the Commission, Mr. Stewart, the claimant's own vocational expert, testified that the Ms. Lott would have many more jobs available to her according to the most recent FCE by Dr. Collipp and that the economic conditions in her area influence her employability as much as her injury. Clearly, evidence exists in the record to support the Commission decision. That being so, the standard of

review dictates that the Commission decision be affirmed.

C. Lott Challenges the Commission's Determination of Facts

Lott couches her brief to this Court in terms of errors of law, in hopes the Court will go behind the fact-finding of the Commission. Lott's assignments of error on appeal, however, merely challenge the Commission's determination of the facts. As this Court has repeatedly recognized, the Commission is the statutory fact finder and is entitled to weigh the evidence and determine the facts according to its own judgment. It did so in this case, and in so doing awarded Lott 90% greater industrial loss to her arm than her doctor had. It did not, however, act arbitrarily or misconstrue controlling law as Lott alleges.

In her brief to this Court, Lott asserts – “as a matter of law” – that the Commission “ignored Mississippi Supreme Court precedent that provides that an injured workers’ retention of some functional capacity to perform jobs does not compel the conclusion that she is not permanently and totally disabled . . .” In this, Lott’s statement is correct, but her implied argument is wrong. Retention of vocational ability does not compel any conclusion by the Commission. It is simply one factor the Commission may weigh in making its determination as to the extent of disability sustained as a result of a work injury. Lott’s error is not in her statement, but in its implied converse. Whereas retention of vocational ability does not compel a conclusion a claimant is not permanently totally disabled, neither does it compel the opposite conclusion that a worker is so disabled. In fact, such evidence, in and of itself, creates no presumption at all. Lott’s functional abilities, work history and education are simply factors to be considered by the Commission. As with the medical proof, all are relevant to the issue of permanent disability, but none are dispositive. Once again, the Commission, as it did in this case,

weighs all of the evidence to reach its decision. Just because the Commission did not award Lott as much as she wanted does not mean it erred as a matter of law.

In her brief, Lott cites the Court to several cases, with the argument that they compel a finding of permanent total disability. In fact, none do. The case law is consistent that the Commission should consider all relevant factors in reaching its decision. The Commission's Order in this case demonstrates that it did so. After carefully reviewing the medical evidence, Lott's job search evidence and all relevant factors, the Commission determined Lott was entitled to a 90% greater industrial loss of use award than that assigned by her doctor. The Commission simply was not convinced by its determination of the facts that Lott is permanently totally disabled. Lott can point to no case law which mandates such a finding because none do.

CONCLUSION

That Lott is unhappy with the Commission decision is understandable. That unhappiness does not, however, entitle her to ask this Court to re-weigh the evidence in hopes of a decision in her favor. The task of weighing the evidence rests solely with the Commission as the statutory finder of fact. As it is abundantly clear that substantial evidence supports the Commission's decision, the decision is due to be affirmed.

Respectfully submitted,

HUDSPETH CENTER AND
MISSISSIPPI STATE AGENCIES
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CERTIFICATE OF SERVICE

I, W. Bienville Skipper, of counsel for employer and carrier herein, do hereby certify that
I have this day mailed via United States mail, postage prepaid, a true and correct copy of the
above and foregoing Brief of Appellees to:

William B. Ryan, Esq.
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Honorable Joseph H. Loper, Jr.
Post Office Box 616
Ackerman, MS 39735
Montgomery County Circuit Court Judge

THIS, the 20th day of December, 2007.



W. BIENVILLE SKIPPER