

**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS**

WADE SHORT

CLAIMANT/APPELLANT

V.

NO. 2008-TS-01224

WILSON'S MEAT HOUSE, LLC

EMPLOYER/APPELLEE

AND

BRIDGEFIELD CASUALTY INSURANCE COMPANY

CARRIER/APPELLEE

REPLY BRIEF OF APPELLANT

**APPEALED FROM THE CIRCUIT
COURT OF COPIAH COUNTY,
MISSISSIPPI**

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned Counsel of record for the Claimant certifies that the following listed persons have an interest in the outcome of the case. These representations are made in order that this Court may evaluate possible disqualifications or recusal:

1. Wade Short, Claimant/Appellant.
2. John H. Stevens, Esq., Grenfell, Sledge & Stevens, PLLC, Attorney for Claimant/Appellant.
3. Wilson's Meat House, LLC, Employer/Appellee.
4. Bridgefield Casualty Insurance Company, Carrier/Appellee.
5. Peter L. Corson, Esq., Attorney for Employer/Appellee and Carrier/Appellee.
6. Hon. Mark Henry, Administrative Judge, Mississippi Workers' Compensation Commission, 1428 Lakeland Drive, Jackson, MS 39216.
7. Hon. Lamar Pickard, Copiah County Circuit Court Judge, P. O. Box 310, Hazlehurst, MS 39083.

This the 12 day of November, 2008.



John Hunter Stevens

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INTRODUCTION

COMES NOW the Claimant, by and through his attorneys, and files his Reply Brief urging the Court of Appeals to reverse and remand the Mississippi Worker's Compensation Claim on the basis that the findings of the Mississippi Workers' Compensation Commission and subsequent affirmance by the Circuit Court are against the substantial weight of evidence and the Commission's refusal to allow the Claimant to provide medical evidence by way of supplementation will result in no prejudice to the Employer and Carrier, but would result in extreme prejudice in denying the Claimant his claim for legitimate benefits. When evaluating the evidence in this record there is no question but that the Claimant unequivocally proved an injury occurred on this job. Claimant, a long-term loyal employee, provided light-duty excuses, gave consistent histories of the medical problem, had a documented herniated disc, and to prevent the Claimant from providing legitimate unquestioned evidence by way of supplementation before the finder of fact is prejudicial and defeats the intent and purpose of the Act. Furthermore, when there is no evidence to support the Commission's findings such as in the instant case, the Appellant Court with jurisdiction should not hesitate to reverse. *Foamex Prods. vs. Simmons*, 822 So.2d 1050, 1053 (Miss. Ct. App. 2002). "A finding is clearly erroneous when ... the reviewing Court on the entire evidence is left with a definite and firm conviction that a mistake has been made by the Commission in its findings of fact, and its application of the Act." *JR Loggin vs. Halford*, 765 So.2d 580, 583 (Miss. Ct. App. 2000). (citation omitted).

DISCUSSION

It is apparent from the Brief of Appellee that while the Employer and Carrier cannot refute that an incident occurred on the job, their primary argument is that the Plaintiff carries the burden

of proof of medical causation and that without the Claimant's neurosurgeon opining that the surgery itself was from the accident on the job that the Claimant failed to carry that burden. Furthermore, by virtue of Claimant supplementing with a report from the doctor explaining the causation after the initial hearing, that that was too late in that the Commission did not abuse their discretion in not considering this information since the Commission itself is the actual finder of fact. It is important to note again that the initial hearing on this matter was held on January 12, 2007, when the Claimant had only filed a Petition to Controvert on August 29, 2006. Less than five months from the date of the initial filing. From a review of the record see R. 7-9, Claimant filed a Motion to Compel Payment of Temporary Total Disability Benefits and Medical Treatment using the emergency provisions of the Act. As a result of a telephonic hearing, the Administrative Law Judge asked for a hearing on the evidence, although the discovery period had not passed. It was obvious at that time that the Claimant was not yet at maximum medical improvement. This Commission is now trying to punish the Claimant for trying to utilize the emergency provisions of the Act, even though the medical element of the claim had not been fully developed; therefore, there is a legitimate explanation for failure to have medical diagnostic opinions which were in the form of those submitted ultimately explaining the doctor's opinion on causation. This is despite the fact that there was no evidence directly refuting that the Claimant did not hurt his back on the job as alleged in the Petition. Of the many witnesses that testified, none refuted the Claimant's allegations or the medical proof.

In addition, a review of the medical records from the University Medical Center before the surgery, all substantiate that an injury occurred on the job, and was a result of continued heavy lifting on the job after the Claimant voluntarily produced a light-duty excuse (the Petition alleged a

continuing injury) which was undisputedly ignored by the Employer. It is inconceivable that the Commission would now punish the Claimant and ignore causative opinion reports from his treating physician linking up the causation, even though this information was available. Quite frankly, the Commission has made emergency provisions of the Act worthless to a Claimant.

This violates the clear meaning of the Act which is to be liberally construed in favor the Claimant and to fulfill the beneficent purposes of the Act. The provisions of the Mississippi Workers' Compensation Act were ignored in this instance. The Administrative Law Judge, while indicating there was evidence to substantiate a long-term loyal employee was injured on the job, denied the claim based on what he found to be lack of causative medical evidence. When this issue was cleared up before the actual fact finder, the Commission ignored this evidence and instead chose to punish the Claimant for trying to get benefits under the Act when he was desperate for medical and financial assistance.

The Commission abused its discretion in not utilizing the opinions of the proposed supplemental evidence in its decision. It would not have prejudiced the Employer in any manner, shape or form. Had the Claimant not chosen to attempt emergency relief under the Act, and had the Administrative Law Judge not asked for a hearing on the evidence on the Claimant's motion to compel, this would have never occurred. If the Claimant had gone through the discovery process and obtained depositions and/or waited until the end of the Claimant's treatment then the causation issues, if any, would have been addressed and the claim would have been found compensable. The Commission's refusal to consider the opinions of Dr. Harkey defy the logic and intent of the Act and require a reversal. The Claimant, a long-term loyal employee, was injured on the job, which ultimately required surgery as established by medical evidence.

Even if this Court finds that the Commission did not err in ignoring the subsequent medical evidence submitted after the emergency motion to compel and hearing on that was had, case authority still requires reversal of the Commission's findings. When the decision of the Commission in denying benefits for injuries sustained by a worker was not supported by the substantial evidence based on the inability of the doctor to pinpoint exact physical cause of disability of the worker will not in and of itself defeat a claim for workers' compensation. See *Trest vs. B.C. Rogers Processors, Inc.*, 592 So.2d, 110, 113 (Miss. 1991). The facts in Trest are not dissimilar from the instant case. In this case, Claimant had an injury and went to the emergency room in December of the year before, and subsequently received a diagnosed herniated disc and the doctor gave him a light duty work excuse, which was undisputedly provided to the employer. He continued to work, but unrefutably, his condition progressively got worse (as alleged) until he had emergency surgery in August of the next year. Simply put, there was no evidence to refute this, as in Trest, a claim for compensation given the beneficent purpose of the Act. *Id at 113*. In this case, the commission ignored the beneficent purpose and liberal construction of the Act.

CONCLUSION

Claimant respectfully request this matter be remanded to the Commission for a hearing on the merits to determine the extent of disability sustained by the Claimant and to require the Employer and Carrier to fulfill the obligations under the Act.

Respectfully submitted the 12 day of November, 2008.

WADE SHORT, CLAMANT

BY: 

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CERTIFICATE OF SERVICE

I, John Hunter Stevens, do hereby certify that I have this day mailed by United States Mail, postage prepaid, the above foregoing document to:

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DATED, this the 12 of November, 2008.



John Hunter Stevens