IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
CASE NO. 2009-WC-00444-COA

JOSHUA LOWELL ODOM — APPELLANT

VERSUS

FEDEX GROUND PACKAGE SYSTEMS, INC. — APPELLEE

REPLY BRIEF

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The "substantial evidence" scope of judicial review of administrative agency decisions is that the courts may interfere only where the agency is arbitrary and capricious. *Raytheon Aerospace Support Services v. Millers*, 861 So. 2d 330, 335 (Miss. 2003). The decision of the Workers' Compensation Commission ("Commission") denying benefits to the Joshua Lowell Odom ("Odom") was arbitrary and capricious and simply not supported by substantial evidence. It, therefore, should be reversed.

Doubtful claims should be resolved in favor of compensation so as to fulfill the beneficial purposes of statutory law. *Frito-Lay, Inc. v. Leatherwood*, 908 So. 2d 175, 180 (Miss. Ct. App. 2005) (*citing Sharpe v. Choctaw Electronics Enterprises*, 767 So. 2d 1002, 1006 (Miss. 2000)). A workers' compensation claimant does not have to prove with absolute medical certainty that his work-related injury was the cause of his disability. *Frito-Lay*, 908. So. 2d at 180. "Even though the testimony may be somewhat ambiguous, as to causal connection, all that is necessary is that the medical findings support a causal connection." *Id.* (*quoting Sperry-Vickers, Inc. v. Honea*, 394 So. 2d 1380, 1385 (Miss. 1981)). The medical evidence is sufficient if it supports, even if it does not fully prove, a finding of disability. *Id.* In fact, the "disability need not be proved by medical testimony as long as there is medical testimony which will support a finding of disability." *Id.* (*quoting Hall of Mississippi, Inc. v. Green*, 467 So. 2d 935, 938 (Miss. 1985)). In order for a claimant's claim to be compensated, the claimant's injury need only be connected to his employment. *Imperial Palace Casino v. Wilson*, 960 So. 2d 549, 553 (Miss. Ct. App. 2006) (*citing Sharpe*, 767 So. 2d at 1005).

As pointed out in the Order of the Administrative Law Judge, Odom's treating physician,

testified that Odom told him he had injured his back at work in the early part of December, 2003. Order of Administrative Law Judge ("Order"), p. 9. The treating physician also testified that Odom told him that he did not believe he was entitled to workers' compensation benefits because he was only a part-time employee, which is why the doctor's office did not contact Fed Ex about the claim. *Id.* Further, the treating physician stated that Odom's injury was consistent with the injury described to him by Odom and that it was his opinion to a reasonable degree of medical probability that the claimant's injury was work related. *Id.*

As discussed by Fed Ex in its brief, the Commission relied heavily on the few and minor inconsistencies in Odom's testimony in basing its decision to deny Odom benefits. The evidence, however, including that of Odom himself and his treating physician, showed that such inconsistencies were irrelevant to the issue of whether Odom's injury was causally related to his work with Fed Ex. Both testimonies revealed that Odom injured his back while working at Fed Ex and that such injury was causally related to his work there as a package handler. Even the testimony of Tracy Boone, Odom's Fed Ex manager, corroborates a finding in Odom's favor for benefits.

As Fed Ex pointed out in its brief, it is true that when a patient gives a history to a physician that is inconsistent with allegations in a workers' compensation case, this is a significant factor in support or denial of a claim. *Raytheon*, 861 So. 2d at 336 (*citing Hudson v. Keystone Seneca Wire Cloth Co.*, 482 So. 2d 226, 227-28 (Miss. 1986)); *See* Brief of Appellee, p. 8. However, the mere fact that a claimant cannot remember or is confused about specific dates on which certain events occurred is not uncommon and certainly not fatal to his case, as the Commission made it to be. In *Raytheon*, the claimant visited a doctor for treatment for an allegedly second work-related injury but failed to mention the first injury all together. 861 So.

2d at 336.

Additionally, Fed Ex has argued that pursuant to the testimony of Tracy Boone, the manager at the Fed Ex facility where Odom was employed, that because Fed Ex failed to maintain an accident report verifying Odom's injury, that the absence of such a report implies that Odom did not report any work-related injury. *See* Brief of Appellee, p. 9.

This logic is thoroughly flawed. If it were the case that when an employer failed to complete and/or maintain an accident report verifying a claimant's work injury and that in and of itself would result in an inference that the claimant failed to report a work-related injury, then no employer would ever maintain such an accident report so as to avoid liability. In this case, Odom reported to his supervisor, William Thompson, that he had hurt his back and was sent home early that day. This court of events was verified by Tracy Boon, who testified:

> A: When he hurt himself I think it was a Friday. I'm not for sure when, if it was the 13th or 14th, but the outbound manager told me – he had called me that night and we were talking, and he told me that he had sent Josh home early.
>
> And I asked him why. And he said he picked up a box and he said that his back just felt funny. So he let him go to get some rest.
>
> Deposition of Tracy Boone 1 ("Boone 1"), p. 26.

And again:

> Q: Who was the outbound manager?
>
> A: William Thompson at the time.
>
> Q: William Thompson?
>
> A: Right.
>
> Q: Where is he now?
>
> A: He was in Phoenix, but--well, Tempe, Arizona, but he's no longer with the

company.

Q: Do you know where he's at?

A: No, I don't.

Q: Okay, But he was the outbound manager at the time?

A: Right.

Q: And he called you at home and told you--

A: Right.

Q: -- that-- okay, and told you that Josh had hurt his back picking up a package?

A: Right.

Q: Okay. And you don't remember Josh working anytime after that?

A: No.

Q: Okay. Did anybody tell you about Josh going to the emergency room?

A: When it happened?

Q: Yes, ma'am.

A: No.

Q: Or at any time?

A: He went--not to the emergency room. He went to a doctor sometime after that. I mean, I don't remember.

Q: For his back?

A: Yeah.

Q: Okay. Which doctor was it? Do you know?

A: I don't -- I don't know.

Q: How do you know he went to a doctor?

A: That's what Will told me.

Boone 1, pp. 27-28.

Boone went on to testify that she believed that William Thompson had not filed an accident report, despite company policy requiring an accident report in the event of injury. *Id.* at pp. 29-30. Therefore, Fed Ex's contention that the only person who claims to know anything about an accident report is Odom is unfounded. *See* Brief of Appellee, p. 9. Odom should not be punished for Fed Ex's failure to abide by company procedures.

CONCLUSION

It is clear that no substantial evidence exists to support the Commission's denial of benefits. The evidence in the record reveals that Odom injured his back while working at Fed Ex. He reported this injury to his supervisor, William Thompson, who sent him home early. William Thompson called Tracy Boone, the facility manager, notifying her of Odom's injury. Odom immediately sought treatment for his injury with Dr. Beamon and continued treatment with Dr. Molleston, who corroborated Odom's claim that his injury was work-related. Therefore, Odom met his burden of proof by showing by a preponderance of the evidence that he suffered an accidental injury arising out of and in the course of his employment with Fed Ex, and the decision by the Commission denying him benefits should be reversed.

Respectfully submitted, this the 21st day of July, 2009.

JOSHUA LOWELL ODOM, Claimant

BY: _____

LEN MELVIN, of Counsel

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CERTIFICATE OF SERVICE

I, Len Melvin, attorney for Appellant, do hereby certify that I have this day mailed for filing, via United States mail, postage prepaid, the original and three (3) copies of the foregoing Reply Brief, as well as one (1) copy on electronic disk, to Ms. Betty Sephton, Clerk of the Supreme Court of the State of Mississippi, Post Office Box 117, Jackson, Mississippi 39205.

THIS the 21st day of July, A.D., 2009.

LEN MELVIN

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CERTIFICATE OF SERVICE

I, Len Melvin, attorney for Appellant, do hereby certify that I have this day mailed, via United States mail, postage prepaid, a true and correct copy of the foregoing Reply Brief to the following:

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