

IN THE SUPREME COURT OF MISSISSIPPI

TERRIENCE BATES

APPELLANT

VS.

CASE NO. 2010-WC-00792

DEDICATED MANAGEMENT GROUP, LLC
AND EMPLOYERS INSURANCE OF
WAUSAU, A MUTUAL COMPANY


APPELLEE

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. Dedicated Management Group, LLC, Appellee;
2. Employers Insurance of Wausau, A Mutual Company, Appellee;
3. Terrience Bates; Appellant
4. Honorable Liles Williams, Chairman
Mississippi Workers' Compensation Commission
1428 Lakeland Drive
P.O. Box 5300
Jackson, MS 39296-5300
5. Honorable John R. Junkin, Commissioner
Mississippi Workers' Compensation Commission
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6. Honorable Cindy P. Wilson, Administrative Judge
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9. Honorable David Strong
Circuit Court Judge
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THIS, the 9th day of November, 2010.


TARA S. CLIFFORD
ATTORNEY FOR APPELLEE

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TARA S. CLIFFORD
ATTORNEY FOR APPELLEE

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STATEMENT OF THE ISSUES

- A. Whether the Commission's decision denying compensability of claimant's alleged work-related injury is supported by substantial evidence.

STATEMENT OF THE CASE

This case involves a review of the decision of the Mississippi Workers' Compensation Commission, reversing the Administrative Judge's Order and denying the compensability of claimant's alleged work-related injury. The employer and carrier submit the Commission's ruling is supported by substantial evidence and should be upheld by this Court.

A. Nature of the Case and Course of Proceedings Below

Claimant, Terrience Bates ("Bates"), began working at Dedicated Management Group, LLC ("Dedicated") in April 2005. On March 21, 2006, Bates filed a Petition to Controvert, claiming he injured his back at work on August 26, 2005. Following the trial of this cause, the Administrative Judge entered an Order on January 9, 2009, finding that Bates had sustained a work-related injury to his lower back sometime "during August, 2005."

Aggrieved by this decision, Dedicated and the carrier appealed to the Full Commission. Following a review of the record, the Commission entered an Order on April 30, 2009, reversing the Order of the Administrative Judge and denying Bates' claim. Bates appealed to the Circuit of Court of Lincoln County, seeking reversal of the Commission's decision. The Circuit Court of Lincoln County affirmed the Commission's decision. Bates has now appealed to this Court. However, Dedicated and the carrier submit that the Full Commission's Order is supported by substantial evidence and it should be upheld.

B. Statement of Relevant Facts

Bates was working for Dedicated at McLane's in Brookhaven, Mississippi unloading groceries at the time of his alleged injury. Exhibit "2" at 10.¹ Bates began working at Dedicated in April 2005, and customarily worked approximately thirty hours per week. Exhibit 1. On March 21, 2006, Bates filed a Petition to Controvert, alleging he injured his back on August 26, 2005. R. at 1. More specifically, Bates claimed he had slipped a disk while trying to maneuver a jack with no power steering. *Id.* As Bates never reported any injury, and his initial medical records did not corroborate a work injury, the Employer and Carrier disputed compensability. R. at 3. Interestingly, Bates maintained his injury occurred on August 26, 2005 but attempted to change the date of his alleged injury at the hearing on the merits. Tr. at 42.

Bates maintained he was injured while operating a faulty jack that was out of power steering fluid. Ex. 2 at 11-12. According to Bates, he was using his whole body to force the jack to move when he felt pain in his back. *Id.* In his deposition, Bates testified he reported his injury to his supervisors, Jeff or Randy. *Id.* at 10. He testified that he left work and went to King's Daughters Hospital in Brookhaven, Mississippi on the same day of his injury. *Id.* at 11. Bates further testified he informed the doctor that his injury had occurred at work while using faulty equipment. *Id.*

At trial, though, Bates' testimony changed. Bates claimed he first felt pain in his back while bending over cutting cardboard. Tr. at 36. Then he stated bumping the pallet jack caused his pain Tr. at 37. Bates also stated he felt pain every time he bent over his last day of work. *Id.*

¹For purposes of Appellees' brief, citations to those exhibits offered into evidence at trial of this cause, as compiled by the Secretary of the Mississippi Workers' Compensation Commission are abbreviated "Ex."; citations to the trial transcript are abbreviated "Tr."; citations to the record are abbreviated "R."

His story changed once again to allege that his back began to hurt the day before and that he had told several co-workers his back and hip were hurting and then came to work the following day and told his supervisor he was hurting. *Id.* At trial, Bates identified the supervisors as “Eric” or “Rod”. *Id.* at 26.

Bates’ King’s Daughter’s medical records were offered into evidence at trial and contradicted his testimony. The emergency physician records reflect Bates presented to King’s Daughter on August 22, 2005, complaining of right flank/hip pain and low back pain for one month and nausea and vomiting for four days with no history of a work injury. Ex. 3. The record actually reflected that there was no recent injury and his pain began at home. *Id.*

The King’s Daughter’s records also reflect that Bates returned for treatment two days later – August 24, 2005 – requesting additional time off from work and stating he had taken a pain pill from his grandmother. *Id.* The nurses’ note states Bates injured himself at work on August 22, 2005, although, the physician’s notes state no recent injury and pain in the back for one month which began at home. At this time, he was taken off work until August 29, 2005. *Id.*

At trial, Bates testified he did not know when his injury occurred, but suggested that his medical records would reflect the date. Tr. at 29. Throughout the course of litigation, however, Bates was certain the injury occurred on his last day of work at Dedicated and was certain he had been treated on that same day. Tr. at 38. Bates’ pay records from Dedicated, though, refuted that story as well. According to his pay records and the testimony of the general manager, James Randall Hughes, Bates’ last day of work was August 19, 2005. Tr. at 60 and Exhibit 1.

Mr. Hughes testified Bates did not report any injury to him. Tr. at 54. As to Bates' claim that he reported his injury to his supervisor, "Eric," Mr. Hughes stated there is not a supervisor named Eric. Tr. at 55. Further, no injury had been reported to Rob. *Id.* Mr. Hughes testified Bates brought in a work excuse on August 22, 2005, stating he had been injured, but never told anyone the injury allegedly happened at work. Tr. at 55. Due to the fact that Bates did not return to work at the end of the work excuse Mr. Hughes had received, Bates was terminated. Tr. at 53 - 54. As to Bates' allegations the pallet jack was faulty and without power steering fluid, Mr. Hughes testified that a pallet jack does not even have power steering and, thus power steering fluid is not needed. Tr. at 59.

At the hearing on the merits, Bates may have been unsure of the date of his accident, but he admitted that he was injured and went to the ER on that same day. Tr. at 38. He also testified that he did not return to work after he sought treatment at the ER. Tr. at 27. According the King's Daughter's medical admissions, the first time Bates was treated for back pain was on August 22, 2005. Exhibit 3. However, according to Mr. Hughes and Bates' wage records, Bates' last day was August 19, 2005. Exhibit 1 and Tr. at 60. A cursory reading of the hearing transcript reveals that, despite all his efforts, Bates simply could not invent a story that satisfied all the facts. For this reason, the Commission was correct in denying the claim.

As the record clearly supports the conclusions of the Full Commission, the Employer and Carrier petition this Court to affirm the Full Commission's Order as it is supported by the overwhelming testimony and substantial evidence in the record.

STANDARD OF REVIEW

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, 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).

Simply stated, in workers' compensation cases, the Mississippi Workers' Compensation 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). On appeal to both the Circuit Court and Supreme Court of the State of Mississippi, as to factual matters, the Commission's findings are entitled to great weight and deference. *Natchez Equip. Co.*, 623 So. 2d at 273.

The Commission is also the ultimate judge of the credibility of witnesses. *Miller Transporters, Inc. v. Guthrie*, 554 So. 2d 917, 918 (Miss. 1989). Further, as long as the Commission's decision contains no error of law and is based on substantial evidence, both the Circuit Court, sitting as an intermediate appellate court, and the Supreme Court must not disturb the Commission's findings, and the Commission's Order must be affirmed. *Id.*; *KLLM, Inc. v. Fowler*, 589 So. 2d 670, 675 (Miss. 1991); *Strickland v. M. H. McMath Gin, Inc.* 457 So. 2d 925, 928 (Miss. 1984). It is with these standards in mind that the Court must consider the instant case.

ARGUMENT

This case centers around Bates' credibility and the simple fact that the evidence does not support Bates' story of sustaining an injury at work. The Commission reviewed Bates' deposition testimony, his hearing testimony, employment records and medical records, and the Commission's Order reflects the observations and careful and thorough review of the medical evidence. As a result, the Commission correctly determined that Bates' version of events was not supported by the preponderance of credible evidence and properly denied this claim. Thereafter, the Commission properly found that Bates failed to prove his claim of a work-related injury, this decision was based on substantial evidence.

A claimant must prove he suffered a work injury "beyond speculation and conjecture." *Coleman v. Chattanooga Container*, 377 So. 2d 606, 608 (Miss. 1979). Indeed, contradictions in the claimant's testimony and circumstantial evidence are sufficient to rebut testimony of a work injury. *Id.* Regarding the absence of contemporaneous corroboration of a work injury, the Supreme Court has found that, "when a patient gives a history to a physician, which is inconsistent with allegations in a workers' compensation case, this is a significant factor in support of denial

of the claim.” *Raytheon Aerospace Support Services v. Miller*, 861 So. 2d 330, 336 (Miss. 2003) (emphasis added), citing *Hudson v. Keystone Seneca Wirecloth*, 482 So. 2d 226, 227-28 (Miss. 1986).

Moreover, “if the claimant is uncorroborated as to the occurrence of a claimed accident and is shown to have made statements inconsistent with the claim, the commission is not bound to accept the testimony as the basis for an award.” *Penrod Drilling Co. v. Etheridge*, 487 So. 2d 1330, 1333 (Miss. 1986) (citing Vardaman S. Dunn, *Mississippi Workmen’s Compensation*, § 264 (3d Ed. 1982)). The Employer and Carrier would point out that none of the Bates’ allegations are consistent with the evidence. Although Bates had listed August 26th as his date of injury throughout his pleadings, during his testimony, he attempted to change his date of injury numerous times, to avoid being trapped by his own medical records. However, none of those dates coincided with his last date of work which was the only thing of which he was certain, that he went to the doctor on his last date of work.

Also, although he testified he told the ER doctor he suffered his injury at work, the treating records reflect no such history until the second visit in August 2005 and that accident occurred on August 22, 2005. Despite Bates’ testimony he injured himself at work, the records from King’s Daughter reference an injury occurring at home some months prior. More importantly, the only consistent testimony from Bates was that his injury, ER visit and last day of work all occurred on the same day. His last day of work was August 19, 2005, however his first ER visit for back pain was not until August 22, 2005.

At trial, for the first time, the claimant tried to allege and claim the date of the accident at work was August 22, 2005. He based this on the hospital records from King's Daughters hospital which shows by history that the claimant was seen on August 24, and that was the first time there is any written record that the claimant claimed he was injured at work on August 22, 2005. However, the hospital record of August 22, 2005, shows the claimant was complaining of right flank and hip pain of one month's duration.

The claimant testified that he was injured while cutting cardboard. He further testified that the piece of equipment he was using was defective and out of repair and the power steering on it did not work. However, this testimony was clearly contradicted when the claimant called the general manager, Mr. Hughes, as an adverse witness and he testified that none of the equipment the claimant would be using had power steering and none of it was in disrepair. He further testified that contrary to what the claimant testified, they had no supervisor named Eric. Mr. Hughes verified the claimant never reported or claimed any accident or injury occurring on the job to him and the claimant's last day of work was actually August 19, 2005.

The Commission properly judged the weight and sufficiency of Bates' evidence and testimony and found that it did not suffice to overcome the absolute absence of any contemporaneous history of a work injury in the non-biased and independent medical records. Bates repeatedly contradicted himself in his testimony and as such that his version of events simply cannot be relied upon. See, *White v. Superior Products, Inc.*, 515 So. 2d 924, 927 (Miss. 1987). The testimony was clearly incredible and insubstantial and certainly cannot amount to the level of substantial evidence to prove that the claimant sustained an injury while on the job and in the course and scope of his employment. There are too many inconsistencies in the claimant's own

proof that is not capable of sustaining a finding of compensability. Given the totality of the evidence, Bates simply did not prove a work-related injury by a preponderance of the evidence. Therefore, the Commission's decision was based on substantial evidence and should be affirmed.

CONCLUSION

As evidenced above, substantial evidence supports the conclusions found in the Commission's Order denying and dismissing the claim. Therefore, Dedicated Management Group, LLC and Employers Insurance of Wausau respectfully request this Court affirm the opinion of the Full Commission entered in this matter.

Respectfully submitted,

DEDICATED MANAGEMENT Group,
LLC AND EMPLOYERS INSURANCE OF
WAUSAU, A MUTUAL COMPANY

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CERTIFICATE

I, Tara S. Clifford, of counsel for Dedicated Management Group, LLC and Employers Insurance of Wausau, A Mutual Company, do hereby certify I have this day served a correct copy of the above and foregoing pleading to:

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Hon. David Strong
Circuit Court Judge
Post Office Box 1387
McComb, MS 39649

THIS, the 5th day of November, 2010.


TARA S. CLIFFORD