

BEFORE THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

DOCKET NUMBER: 2010-WC-01793-COA

ERICA L. FELTER

CLAIMANT/APPELLANT

V.

FLOORSERVE, INC.

EMPLOYER/APPELLEE

AND

THE EMPLOYERS FIRE INSURANCE COMPANY
(ONE BEACON INSURANCE)

CARRIER/APPELLEE

**BRIEF OF EMPLOYER/CARRIER/APPELLEES', FLOORSERVE, INC AND THE
EMPLOYERS FIRE INSURANCE COMPANY
(ONE BEACON INSURANCE)**

ORAL ARGUMENT NOT REQUESTED



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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of the case. These representations are made in order that the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

**Ms. Erica L. Felter
Pro Se Claimant/Appellant
110 Alexander Road
Natchez, Mississippi 39120**

**Floorserve, Inc.
Employer
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Dalton, Georgia 38720**

**The Employers Fire Insurance Company
TPA: One Beacon Insurance
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Canton, Massachusetts 02021**

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A handwritten signature in black ink, consisting of several large, overlapping loops and a long horizontal stroke extending to the right.

**CHADWICK L. SHOOK, [REDACTED]
OF COUNSEL FOR APPELLEES**

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STATEMENT REGARDING ORAL ARGUMENT

The Employer/Carrier respectfully submit that oral argument in this matter is not necessary and is not reasonably likely to assist the Court in its decision.

However, the Employer/Carrier stand ready to provide oral argument if this Court deems necessary.

STATEMENT OF THE ISSUE

Pursuant to Rule 28 of the *Mississippi Rules of Appellate Procedure*, the Appellees, FloorServe, Inc. and The Employers Fire Insurance Company (One Beacon Insurance) (hereinafter Employer/Carrier) respectfully submit the following dispositive issue:

- I. WHETHER THE CIRCUIT COURT OF ADAMS COUNTY, BASED ON THE SUBSTANTIAL CREDIBLE EVIDENCE, PROPERLY AFFIRMED THE ORDER OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION?

STATEMENT OF THE CASE

This matter is before this Honorable Court on appeal from the Circuit Court of Adams County, Mississippi which correctly sustained the unanimous Order of the Mississippi Workers' Compensation Commission¹. As will be demonstrated, this case is one that is procedurally barred because Claimant/Appellant did not meet statutory timelines for seeking review of her case. Despite her protests about the quality of her counsel, unfounded allegations about the Administrative Judge's² rulings, and, for the first time here, a plea for a remand for trial by jury³, these issues are of no consequence because of the procedural bar to this appeal.

The Employer-Carrier respectfully submit that the Circuit Court properly sustained the Full Commission based on the procedural bar. Moreover, assuming *arguendo* that the Claimant's appeal was not procedurally barred, the merits of the case still require this Court to affirm the court below⁴.

¹ In her appeal to this Court, as well as her previous filings at the Commission and Circuit Court level, Claimant has raised issues, including but not limited to medical history and treatment, not contained in the Commission record nor included in the record of the Administrative Judge's hearing on the merits. Claimant never supplemented the Administrative Judge record; therefore, anything presented in her appeal that does not appear in the Commission record and/or that was presented for consideration to the Administrative Judge at the merits' hearing and/or that was not included in the Designation of Record pursuant to M.R.A.P. 10 is not properly before the Court.

² Pursuant to M.R.A.P. 28(k), these references on p. 5 of Employee's "Facts" section of her filing should be stricken.

³ Jury trials are not permitted in standard workers' compensation cases. See *Walters v. Blackledge*, 71 So. 2d 433, 442 (Miss. 1954). Additionally, Claimant's issue in this regard is barred because it was not raised at the Commission level, and she provides no decisional authorities supporting her request. See *Stingley v. Redland Ins. Co.*, 943 So.2d 86(¶16) (Miss. App. 2006); *Roberson v. LFI Ft. Pierce, Inc.*, 2 So.3d 788(¶5) (Miss. App. 2008).

⁴ See *Roberson v. LFI Ft. Pierce, Inc.*, 2 So.3d 788(¶5) (Miss. App. 2008).

SUMMARY OF THE ARGUMENT

The actual, stipulated record in this case plainly demonstrates that the Circuit Court properly sustained the Full Commission. The Commission decision was correct in recognizing the procedural bar in this case. Moreover, the Order of the Administrative Judge thoroughly sets out the basis for the decision and the evidentiary support. (R.E. 1-10). Even if the Claimant's appeal was not procedurally barred, a review of the case on the merits plainly demonstrates that no substantive error occurred at the Commission level. This fact is demonstrated in the Circuit Court's consideration of the merits of the appeal while also sustaining the procedural bar correctly imposed by the Commission.

ARGUMENT

Standard of Review

Well-settled Mississippi jurisprudence provides the standard of review of an administrative agency decision, such as the Mississippi Workers' Compensation Commission. The Commission is the "original fact finder" in workers' compensation cases, and the administrative judge is "the 'representative' of the Commission in the exercise of the Commission's claim-resolving authority." *Kitchens v. Jerry Vowell Logging, et al.*, 874 So. 2d 456 (¶¶17-18) (Miss. App. 2004). The Commission's decision may be overturned if it is "arbitrary and capricious, or is based on an erroneous application of the law." *Meridian Prof. Baseball Club v. Jensen*, 828 So. 2d 740 (Miss. 2002)(citing *Smith v. Jackson Constr. Co.*, 607 So. 2d 1119, 1124 (Miss. 1992)). Moreover, while the standard for appellate review of workers' compensation claims is limited, "[t]his Court will overturn a [C]ommission decision only for an *error of law* or an *unsupportable finding of fact*." *Hopper v. Krevnic*, 25 So. 3d 1112(¶9)(*emphasis added*)(internal citations omitted). Assuming the Commission's decision is based on "substantial evidence", its decision will remain undisturbed on review. *Natchez Equip. Co., Inc. v. Gibbs*, 623 So. 2d 270, 273 (Miss. 1993). Finally, the findings of the Commission are binding on appellate review if they are supported by substantial evidence. *City of Laurel v. Guy*, 58 So.3d 1223(¶8) (Miss. App. 2011).

As demonstrated below, the undisputed facts and the applicable law require this Court to sustain the Circuit Court decision in this case in favor of the Employer and Carrier.

Claimant's Appeal of the Administrative Judge's Decision
Was Procedurally Barred

The Employer and Carrier respectfully submit that the Claimant's appeal to this Court is without merit in fact or law and should be overruled and the Circuit Court Order sustained. Claimant completely ignores in her brief to this Court the fact that she did not timely seek review of her claim before the Full Commission. This jurisdictional failure by the Claimant/Appellant, quite simply, bars her appeal. *Marlboro Shirt Co. (Reliance Mfg. Co.) v. Whittington*, 195 So. 2d 920 (Miss. 1964). The Full Commission found as much in the Full Commission Order (R.E. 11-12) which was sustained by the Circuit Court (R.E. 13-16). Moreover, absent from Claimant/Appellant's argument is any statutory or legal authority supporting her position. As is well-settled, "it is the duty of an appellant to provide authority in support of an assignment of error." *Jones v. Howell*, 827 So. 2d 691, 702 (¶40) (Miss. 2002). Moreover, this Honorable Court need not consider any issue cited by an appellant that is unsupported by legal authority. *Id.* Claimant/Appellant's failure to support her assignments of error with pertinent authority highlights the shortcomings of her argument. In her brief, Claimant/Appellant makes bald assertions, including inappropriate comments, about the Administrative Judge and her counsel below, as to why this Honorable Court should reverse the Circuit Court and the Full Commission decision.

However, where, as here, the substantial evidence supports the findings of the Circuit Court and, by extension, the Full Commission, the Circuit Court should be sustained for the reasons set forth in the Circuit Court Order. See generally *Ford v. KLLM, Inc.*, 909 So. 2d 1194 (Miss. App. 2005); *Marlboro Shirt Co. (Reliance Mfg. Co.) v. Whittington*, 195 So. 2d 920 (Miss. 1964). The Circuit Court's Order, in an effort to provide Claimant consideration of her medical claims, found the medical evidence at the

merits hearing to be "persuasive" and sufficient in weight and credibility to support the Administrative Judge's decision. Despite Claimant's protestations about her counsel, the administrative judge, the system, and her unfounded demands for a remand for trial by jury, the record is clear that 1) procedurally, Claimant's appeal is barred, and 2), even if the Court disregards the procedural bar, the merits of the case support the Circuit Court's decision.

Based on the preponderance of the credible evidence and the settled law of Mississippi, the Employer-Carrier respectfully submit that the Circuit Court decision should be AFFIRMED.

RESPECTFULLY SUBMITTED, this the 13th day of September, 2011.


CHADWICK L. SHOOK, [REDACTED]


CERTIFICATE OF SERVICE

I, Chadwick L. Shook, hereby certify that a true and correct copy of the foregoing Brief was mailed to the following via first class United States Mail, postage pre-paid, on the date noted below:

Ms. Erica L. Felter
Pro Se Claimant/Appellant
110 Alexander Road
Natchez, Mississippi 39120

Honorable Lillie Blackmon Sanders
Adams County Circuit Judge
Post Office Box 1384
Natchez, Mississippi 39121

DONE this the 13th day of September, 2011.



CHADWICK L. SHOOK