

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-CT-00385-SCT

ROBERT SHEFFIELD

v.

***S.J. LOUIS CONSTRUCTION INC. AND ZURICH
AMERICAN INSURANCE COMPANY***

ON WRIT OF CERTIORARI

DATE OF JUDGMENT:	02/28/2018
TRIAL COURT ATTORNEYS:	GARNER JAMES WETZEL JAMES KENNETH WETZEL WILLIAM BIENVILLE SKIPPER
COURT FROM WHICH APPEALED:	MISSISSIPPI WORKERS' COMPENSATION COMMISSION
ATTORNEYS FOR APPELLANT:	JAMES KENNETH WETZEL GARNER JAMES WETZEL
ATTORNEYS FOR APPELLEES:	WILLIAM BIENVILLE SKIPPER SUZANNE C. HUDSON
NATURE OF THE CASE: DISPOSITION:	CIVIL - WORKERS' COMPENSATION THE JUDGMENT OF THE COURT OF APPEALS IS REVERSED. THE DECISION OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION IS REINSTATED AND AFFIRMED - 12/12/2019
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

KING, PRESIDING JUSTICE, FOR THE COURT:

¶1. Robert Sheffield was injured on the job while working for S.J. Louis Construction (S.J. Louis). Sheffield filed a petition to contravert, and the administrative law judge (AJ) awarded Sheffield permanent-partial disability benefits. S.J. Louis appealed the decision to

the full Mississippi Workers' Compensation Commission (Commission), and the Commission reversed this finding, concluding that Sheffield did not suffer any additional disability from the 2015 injury than that caused by a 2010 injury. Sheffield appealed, and the Court of Appeals reversed the Commission's decision. S.J. Louis filed a petition for writ of certiorari with this Court. Because we find that the Commission's decision was supported by substantial evidence, we reinstate and affirm that decision.

FACTS AND PROCEDURAL HISTORY¹

¶2. On June 1, 2015, while employed as a truck driver by S.J. Louis,

Sheffield lost his balance when he attempted to look into the back of his dump truck. Although Sheffield grabbed a handle on the side of his truck to steady himself, he still missed the step beneath him. Sheffield experienced immediate lower-back pain, which he reported to his supervisor, Max Hardin. Hardin then reported the injury to his supervisor, Telley Lopez, who took Sheffield to see Dr. Rickey Chance. Dr. Chance ordered X-rays of Sheffield's back and prescribed Sheffield pain medicine and muscle relaxers. Sheffield participated in physical therapy but had to stop due to increased pain. He followed up with Dr. Chance, who recommended an MRI and referred Sheffield to Dr. Wolfson.

On August 13, 2015, Sheffield saw Dr. Wolfson, who then referred him to Dr. Samir Tomajian, a pain-management specialist. After treatment methods provided minimal or temporary pain relief, Sheffield underwent a functional-capacity evaluation (FCE). The physical therapist who performed the FCE recommended that Sheffield perform only light-duty work and limit standing and sitting for prolonged time periods. On October 27, 2015, Dr. Eric Amundson performed an employer medical evaluation (EME) on Sheffield. Dr. Amundson found Sheffield could return to work in a moderate-duty capacity, but he recommended that Sheffield lift no more than forty pounds.

In February 2016, Dr. Wolfson found that Sheffield had reached [maximum medical improvement, or] MMI[,] for his 2015 back injury. Sheffield testified that Dr. Wolfson stated he could do nothing else and did not

¹The recitation of facts is taken largely from the Court of Appeals opinion and includes the facts relevant to the issue on which certiorari was granted.

recommend surgery for Sheffield. Dr. Wolfson assigned Sheffield a 7% impairment rating to the body as a whole and stated Sheffield was capable of performing light-duty work. After Dr. Wolfson released Sheffield to return to work, Sheffield began completing job applications in May 2016. Sheffield applied for at least 130 jobs and even contacted Hardin, his former supervisor at S.J. Louis. S.J. Louis informed Sheffield, however, that it had no job openings.

Sheffield v. S.J. Louis Constr. Inc., No. 2018-WC-00385-COA, 2019 WL 1349766, at *2-3

(Miss. Ct. App. Mar. 26, 2019).

¶3. Prior to his 2015 back injury, Sheffield suffered two other work-related injuries. In 1990, during his employment with Dibs Chemical Company, Sheffield fell while moving a dolly loaded with fifty-pound bags of sand. Due to the fall, Sheffield injured his lower back and ultimately required a lumbar fusion. About a year and a half after his back surgery, Sheffield's doctor released him to return to work. Sheffield testified that he fully recovered from the 1990 back injury and related surgery.

In 2010, while employed by Warren Paving, Sheffield injured his neck during a work-related automobile accident. Sheffield underwent surgery to fuse the C6 and C7 vertebrae in his neck. On October 24, 2011, Sheffield's treating physician, Dr. Eric Wolfson, placed Sheffield at . . . [MMI] and released Sheffield to return to work with light-duty restrictions. Dr. Wolfson assigned Sheffield an 8% impairment rating to the body as a whole.

Sheffield petitioned the Commission for approval to settle the claim arising from his 2010 neck injury. . . . In his sworn petition for approval of the third-party settlement, Sheffield acknowledged that Dr. Wolfson had limited him to light-duty work after the 2010 accident and that the settlement included compensation for any loss of wage-earning capacity he experienced due to the 2010 neck injury.

Id. at *1-2.

¶4. Sheffield filed a petition to contravert against S.J. Louis and its insurer, Zurich American Insurance Company (Zurich American).

¶5. On August 26, 2016, Dr. Rahul Vohra conducted an independent medical evaluation (IME) on Sheffield. Dr. Vohra concurred with Dr.

Wolfson’s finding that Sheffield had reached MMI on February 19, 2016. Dr. Vohra noted Sheffield’s 7% whole-person impairment rating for the 2015 back injury as well as his preexisting whole-person impairment rating for his lumbar spine. Dr. Vohra concluded that “in light of no structural change or neurological involvement” no additional impairment resulted from Sheffield’s 2015 back injury.

In response to Sheffield’s petition to controvert, [S.J. Louis and Zurich American] admitted that Sheffield experienced a work related injury.^[2] However, they denied that he suffered any permanent injury or loss of wage-earning capacity due to the 2015 back injury. Following a hearing, the AJ determined that . . . Sheffield had suffered a 60% loss of wage-earning capacity from his 2015 back injury and was entitled to \$359.26 a week in permanent-partial disability benefits for 450 weeks.

Id. at *3.

¶6. S.J. Louis and Zurich American appealed the AJ’s decision to the full Commission.

[T]he Commission reversed the AJ’s finding that Sheffield suffered a loss of wage-earning capacity due to his 2015 back injury. In reversing the AJ’s finding, the Commission relied on evidence from two sources: (1) [S.J. Louis’s and Zurich American’s] vocational-rehabilitation expert Ty Pennington and (2) Dr. Vohra. Both Pennington and Dr. Vohra provided evidence that Sheffield’s work at S.J. Louis exceeded Dr. Wolfson’s work restriction after the 2010 neck injury and that, as a result, the 2016 back injury returned Sheffield to his baseline capabilities following his 2010 neck injury[,] rather than created additional loss of wage-earning capacity.

Pennington never personally met with or spoke to Sheffield, but he prepared a vocational report for the litigation and testified at the hearing before the AJ. Despite Dr. Wolfson’s light-duty work restrictions following Sheffield’s 2010 neck injury, Pennington stated that a truck-driving position like the one Sheffield held at S.J. Louis is considered medium-level work. Pennington therefore testified that Sheffield’s job at the time of his 2015 back injury fell outside Dr. Wolfson’s work restrictions. Although Pennington acknowledge that Sheffield might have difficulty finding work within the

²“No dispute exists that Sheffield sustained a work-related compensable injury while employed by S.J. Louis. The parties dispute, however, whether Sheffield . . . experienced a new injury in 2015 that resulted in an *additional* loss of wage-earning capacity.” *Id.* at *1 (emphasis added).

restrictions given to him, he testified that if Sheffield could return “to the light work level, as described by Dr. Wolfson in 2011[,] and [to] the light to light-medium work level, as described by Dr. Vohra, [Sheffield would] have return[-]to[-] work options.” Further, when directly asked whether, in his expert opinion, Sheffield’s “7 percent body[-]as[-]a[-]whole rating and light-duty restrictions from 2016” caused any greater loss of access to the labor market than the “8 percent body[-]as[-]a[-]whole impairment and light-duty restriction in 2011[,]” Pennington answered that the new impairment created no significant loss of access to the labor market for Sheffield. Based on such findings, Pennington ultimately concluded that Sheffield’s 2015 back injury resulted in no decrease in wage-earning capacity or significant loss of access to the labor market.

The Commission found that the conclusion reached by Dr. Vohra, who performed the IME on Sheffield, supported Pennington’s vocational proof. In forming his opinion, Dr. Vohra reviewed Sheffield’s medical records and conducted a one-time physical examination of Sheffield. Dr. Vohra noted Sheffield’s preexisting impairment “to the whole person for his lumbar spine” As previously discussed, Dr. Wolfson had assigned Sheffield an 8% whole-body impairment rating after the 2010 neck injury and found Sheffield was capable of performing light-duty work. After the 2015 back injury, Dr. Wolfson again restricted Sheffield to light-duty work but assigned him a lower whole-body impairment rating of 7%. According to Dr. Vohra, “in light of no structural change or neurological involvement, there is no additional impairment . . . [resulting from Sheffield’s 2015] on-the-job injury.” The Commission therefore concluded Dr. Vohra’s evidence corroborated Pennington’s testimony of no loss of wage-earning capacity.

Id. at *3-4.

¶7. Sheffield appealed the Commission’s decision, and the case was assigned to the Court of Appeals. A divided Court of Appeals reversed the Commission. The Court of Appeals found that “[s]ubstantial evidence supported the AJ’s finding that Sheffield’s 2015 injury resulted in an additional loss of wage-earning capacity” *Id.* at *5. The Court of Appeals thus found that the Commission’s decision was arbitrary and capricious. Judge Jack Wilson dissented, arguing that the majority misapplied the standard of review for the

Commission’s decision. *Id.* at *5 (J. Wilson, J., dissenting). S.J. Louis and Zurich American filed a petition for writ of certiorari with this Court, which we granted.

ANALYSIS

1. *Standard of Review*

¶8. In workers’ compensation cases, “this Court reviews the decision of the Commission, not that of the [AJ], the circuit court, or the Court of Appeals.” *Short v. Wilson Meat House, LLC*, 36 So. 3d 1247, 1250 (Miss. 2010). In reviewing the Commission’s decision, this Court will only reverse if the Commission’s decision lacks the support of substantial evidence, is arbitrary or capricious, is beyond the Commission’s scope or its power, or violates constitutional or statutory rights.³ *Id.* In determining whether the Commission’s decision is supported by substantial evidence, this Court serves only as a reviewing court and will not evaluate or re-weigh the evidence. *Id.* “Substantial evidence” means more than a mere scintilla of evidence but does not rise to the level of a preponderance of the evidence. *Id.* at 1251 (quoting *Delta CMI v. Speck*, 586 So. 2d 768, 773 (Miss. 1991)). Substantial evidence consists of sufficient evidence for reasonable minds to accept as adequate to support the Commission’s conclusion. *Id.* Thus, to be substantial, the evidence must “afford[] a substantial basis of fact from which the fact in issue can be reasonably inferred.” *Id.* (internal quotations omitted) (quoting *Speck*, 586 So. 2d at 773). The arbitrary and capricious standard overlaps with the substantial evidence standard in that, if the Commission’s decision is not supported by substantial evidence, that decision is arbitrary and

³Sheffield does not argue that the Commission’s decision was beyond its power or that it violates his constitutional or statutory rights.

capricious. *Id.* The deference granted the Commission by this Court's standard of review means that this Court cannot set aside a Commission's decision that is supported by substantial credible evidence, even if conflicting evidence exists and even if this Court may have found the facts otherwise if it were the trier of facts. *Id.* at 1251-52. Thus, this Court will uphold the Commission's decision if it is based on substantial evidence even if the AJ's contrary decision is also supported by substantial evidence. *Day-Brite Lighting Div., Emerson Elec. Co. v. Cummings*, 419 So. 2d 211, 213 (Miss. 1982).

2. *The Commission's Decision*

¶9. Sheffield's testimony was that he fully recovered from his previous injuries, had been pain-free prior to June 2015, and he points to the fact that he was working beyond his prior job restrictions for support of this notion. His new impairment rating for the 2015 injury was lower than that for the 2010 injury, which may also support the inference that Sheffield had recovered beyond his impairment rating for the 2010 injury. However, Dr. Vohra concluded that Sheffield had no additional impairment beyond his prior permanent impairment. Dr. Amundson's report supports this conclusion and expressed skepticism that Sheffield had been pain-free prior to his 2015 injury, given his past injuries.⁴ Moreover, Dr. Wolfson gave Sheffield an 8 percent *permanent* impairment rating after Sheffield's 2010 injury. That the

⁴To be clear, we do not foreclose the possibility of a case in which a claimant fully recovers from a prior disability, even one deemed permanent, and then suffers a new injury and additional disability. Indeed, were we reviewing the AJ's decision in this case, it is likely that we would find the AJ's decision supported by substantial evidence. However, in this case, while a full recovery was plausible and Sheffield's desire to work despite disabilities is commendable, substantial evidence also exists to support the conclusion that Sheffield did not suffer additional disability from the later injury.

permanent impairment rating for the 2015 remains virtually unchanged at 7 percent, while not dispositive, supports the decision that Sheffield suffered no *additional* disability from the 2015 injury.⁵ Moreover, Pennington testified that Sheffield's 2015 injury caused no additional loss of wage-earning capacity than did his 2010 injury and no additional problems with job access. In this case, the opinions of two medical experts and the essentially unchanged permanent impairment rating provide sufficient evidence from which reasonable minds could infer that Sheffield did not suffer additional permanent disability from the 2015 injury. The Commission's decision is therefore supported by substantial evidence and is not arbitrary and capricious.

CONCLUSION

¶10. Substantial evidence supports the Commission's decision that Sheffield did not suffer any additional permanent disability from his 2015 injury. We therefore reverse the Court of Appeals' judgment and reinstate and affirm the decision of the Mississippi Workers' Compensation Commission.

¶11. THE JUDGMENT OF THE COURT OF APPEALS IS REVERSED. THE DECISION OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION IS REINSTATED AND AFFIRMED.

KITCHENS, P.J., COLEMAN, MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR. RANDOLPH, C.J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION.

⁵This supports an inference that Sheffield may have been working beyond his impairment rating *in spite of* his disability. While it is true that the evidence that Sheffield was working beyond his prior disability rating may support an inference that Sheffield had fully recovered from his 2010 injury, where the conflicting evidence can support either claim, the Commission would be justified in making either finding. *Ga.-Pacific Corp. v. Veal*, 484 So. 2d 1025, 1027-28 (Miss. 1986).