

HEEKIN CAN CO. v. WATSON.

5-3688

396 S. W. 2d 929

Opinion delivered December 20, 1965.

1. WORKMEN'S COMPENSATION—COMMISSION'S FINDINGS—SCOPE & EXTENT OF REVIEW.—Where there is any substantial evidence to sustain the finding of the commission, the decision will not be set aside on appeal.
2. WORKMEN'S COMPENSATION—COMMISSION'S FINDINGS—WEIGHT & SUFFICIENCY OF EVIDENCE.—The commission's finding that claimant's disability was not due to any injury he claims to have received while working for appellant held supported by substantial evidence.

Appeal from Mississippi Circuit Court, Chickasawba District; *Charles W. Light*, Judge; reversed.

Reid and Burge By: *Donald E. Prevallet*, for appellant.

H. G. Partlow, Jr., for appellee.

SAM ROBINSON, Associate Justice. This is a workmen's compensation case. Claimant contends that he received a back injury while working for appellant in December, 1961. The Workmen's Compensation Commission denied compensation. On appeal to the Circuit Court, the decision of the Commission was reversed. The employer, Heekin Can Company, has appealed to this court.

Appellant contends there is substantial evidence to sustain the finding of the Commission, and that the Circuit Court was, therefore, in error in reversing the decision of the Commission.

In the year 1958, the employee, while working for appellant, Heekin Can Company, received an injury to his back necessitating the removal of one, and a part of another vertebra. At that time he was awarded compensation for 20% permanent partial disability. He continued to work for appellant company until the 26th day of December, 1961. There is substantial evidence that he was discharged at that time because of a reduction in the working force. He did, however, go to see a doctor on the 15th day of December, claiming an ailment to his back. But it appears that he had been bothered with his back for about two weeks at that time.

On the 23rd of January, 1962, about 30 days after he left the employment of the Heekin Can Company, he went to work for the Scott Valve Company and worked for that company continuously until April 22, 1963, at which time he became disabled with the condition of his back and was operated on shortly thereafter. He worked with valves weighing up to 400 pounds, and his foreman testified that during the 15 months he worked for Scott he never made any complaint about his back and did everything that he was told to do.

The facts as outlined would constitute substantial evidence that appellee's back was injured while working at Scott Valve Comapny. In these circumstances we cannot say there is no substantial evidence to sustain the

Commission's finding that appellee's disability, which began April 22, 1963, was not due to any injury he claims to have received while working for appellant, Heekin Can Company, 15 months previously. If the employee's disability is due to the injury he received in 1958, a recovery at this time is barred by the statute of limitations. Ark. Stat. Ann. § 81-1318(b) (Repl. 1960).

We have held many times that if there is any substantial evidence to sustain the findings of the Commission, the decision will not be set aside on appeal.

Reversed.
