

Tommy GUY v. BREEKO CORPORATION and Cigna
Insurance Company

92-629

832 S.W.2d 816

Supreme Court of Arkansas
Opinion delivered June 29, 1992

WORKERS' COMPENSATION — PETITION FOR REVIEW DENIED — DUE PROCESS ISSUE NOT RAISED — ALJ REVERSED BY COMMISSION — CASE NOT DEPENDENT ON CREDIBILITY. — Although the petitioner argued that, because the ALJ was reversed by the Commission in this case, it was distinguishable from *Scarbrough v. Cherokee Enter.*, 306 Ark. 641, 816 S.W.2d 876 (1991), where the court said due process was not implicated as to issues of credibility where there was no disagreement between the ALJ and the Commission, the petition for review was denied because this case was not dependent upon credibility but simply involved conflicting medical evaluations of the percentage of a partial anatomical impairment, an *opinion* in which variable factors are weighed depending on the viewpoint of the particular expert.

Petition for Review of a Decision of the Court of Appeals Pursuant to Ark. Sup. Ct. R. 29(6); denied.

Anthony W. Bartels, for appellant.

Richard Andrew Lusby, for appellee.

PER CURIAM. This is a workers' compensation case. The Court of Appeals affirmed the decision of the Arkansas Workers' Compensation Commission that petitioner's permanent impairment equaled seven and one-half percent of the lower extremity and his healing period ended in September 1989. The Court of Appeals found substantial evidence in the record to affirm the

Commission, noting that the Commission explained why it gave greater weight to the anatomical rating assigned by Dr. Carnesale than by Dr. Lopez. Dr. Carnesale's estimate was seven and one-half percent of the lower extremity whereas Dr. Lopez's was thirty-nine percent. The reason was that Dr. Carnesale was the treating physician who also performed the surgery on petitioner's knee, whereas Dr. Lopez saw petitioner only once, and only for the purpose of evaluation.

In his petition for review petitioner points out that the Administrative Law Judge gave a rating of twenty percent and maintains that this case is thereby distinguishable from *Scarborough v. Cherokee Enterprises*, 306 Ark. 641, 816 S.W.2d 876 (1991), where we said due process was not implicated as to issues of credibility where there is no disagreement between the ALJ, the Commission and the Court of Appeals with respect to the factual issues of the case. Here, petitioner argues, unlike *Scarborough*, the ALJ was reversed by the Commission. That is true, but this is not a case dependent on an issue of credibility. The dispute simply involved conflicting medical evaluations of the percentage of a partial anatomical impairment, an *opinion* in which variable factors are weighed depending on the viewpoint of the particular expert. Moreover, the medical evaluations in this case were entirely in the form of written reports and depositions, no live medical testimony was presented to the ALJ.

Petition denied.
