IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

HOSPITAL HOUSEKEEPING SYSTEMS, INC. AND CLARENDON NATIONAL INSURANCE COMPANY **APPELLANTS**

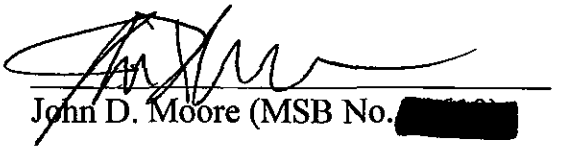
V. **CASE NUMBER. 2007-WC-00500**

MARY TOWNSEND **APPELLEE**

CERTIFICATE OF INTERESTED PARTIES

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 Supreme Court may evaluate possible disqualifications or recusal.

1. Mary Townsend, Claimant/Appellee.
2. Hospital Housekeeping Systems, Inc., Employer/Appellant.
3. Clarendon National Insurance Company, Carrier/Appellant.
4. Douglas Engell, Esquire, John Moore, Esquire, and Bea McCrosky, Esquire, attorneys for the Claimant/Appellee.
5. Jay R. McLemore, Esquire, attorney for the Employer-Carrier/Appellants, Hospital Housekeeping Systems, Inc. and Clarendon National Insurance Company.



John D. Moore (MSB No. [redacted])

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I. STATEMENT OF THE ISSUES

The Appellant proposes six separate issues which are restated by Appellee as follows:

1. The evidence is clear and convincing that the Claimant's mental disability is related to her work-related injury.
   - A. Dr. Halsey diagnosed Ms. Townsend with depression related to the inhalation accident only seven weeks after the accident occurred.
   - B. The Claimant's treating physician at Weems Mental Health indicated on almost every visit that Claimant's depression was secondary to what happened to her on her job, her medical condition and flashbacks of her chemical exposure which is an admitted work-related injury.
   - C. The possible existence of a 1998 pre-existing stroke is a red herring as Claimant never experienced any mental problems related to this purported episode.
   - D. The Claimant's treating physician's opinion bears more weight than then Employer-paid physician, Mark Webb, MD.
   - E. Judge Henry properly used his own "common sense" in making his findings of fact and conclusions of law. To suggest otherwise is improper.
2. Judge Henry did not base his finding of total disability "solely on a self-serving hearsay statement" as the Employer claims.

A. Judge Henry based his findings "on Ms. Townsend's age, education, and experience; the Weems records, the Administrative Judge's observation of Ms. Townsend at the hearing . . . and other occupationally relevant facts."

B. No hearsay objection was made by Appellant at the Administrative hearing.

3. The Circuit Court properly affirmed the Full Commission's determination that Ms. Townsend is permanently and totally disabled due to her mental injuries.

A. The Claimant complained of mental injuries only seven weeks after her physical injury - not 2 ½ years later as is alleged by appellant.

B. The Claimant has never blamed her mental injuries on anything other than her work-related physical injury.

C. The Administrative Judge and the Mississippi Workers' Compensation Commission considered the testimony offered by Dr. Mark Webb, with whom they are very familiar, and did not view it as credible.

D. All medical and other evidence was properly considered by the trier of fact.

II. STATEMENT OF THE CASE

A. Procedural History

On September 8, 2003, Mary Townsend filed a petition to Controvert for worker's compensation benefits. (R.Vol.2, p.1; R.E. at 1). This petition was based on a work-related, physical/mental injury that Ms. Townsend sustained while disposing of chemicals at her employer's direction. (R.Vol.2, p.2; R.E. at 2). On August 25, 2005, a hearing was held before the Worker's Compensation Commission, and an Administrative Judge found that Ms. Townsend was permanently and totally disabled due to her work-related injury, which was admittedly work-related. (R.Vol. 2, p.51; R.E. at 5). It was ordered that Employer/Carrier pay Ms. Townsend permanent total disability benefits beginning on November 30, 2001, and continue to do so for 450 weeks. (R.Vol. 2, p. 66; R.E. at 20). Hospital Housekeeping Systems, filed a petition for review of the Administrative Judge's order on January 6, 2006. (R.Vol. 2, p. 68; R.E. at 21). This decision was affirmed by the full Worker's Compensation Commission on June 29, 2006. (R.Vol. 2, p. 87; R.E. at 24).

Hospital Housekeeping Systems appealed the decision of the full Worker's Compensation Commission to the Circuit Court of Lauderdale County. (R.Vol.2, p. 89; R.E. at 26). The decisions of both the Administrative Judge and the Worker's Compensation Commission were affirmed by the Circuit Court on March 6, 2007. (R.Vol. 1, p. 72; R.E. at 27). It is from this decision that Hospital Housekeeping Systems

files the current appeal before this Court. (R.Vol. 1, p. 74; R.E. at 74).

B. Factual History

1. Primary Treatment for Severe Allergic Reaction Due to Chemical Exposure.

On November 30, 2001, Mary Townsend, a housekeeper at Hospital Housekeeping Systems, disposed of the contents of a spray bottle at the direction of her supervisor, Shelia McGraw. (R.Vol. 3, pp. 15-16; R.E. at 28-29). When Ms. Townsend attempted to discard the contents of the spray bottle, she was exposed to chemicals which caused a violent allergic reaction and the swelling of Ms. Townsend's face. (R.Vol. 3, pp. 17; R.E. at 30). Ms. Townsend was taken to the emergency room, where she felt weak, had labored breathing and blurred vision. Upon her transportation from the emergency room to the critical care unit, Ms. Townsend lost consciousness. (R.Vol. 3, pp.19-20; R.E. at 31-32). Ms Townsend continued treatment at Rush Foundation Hospital, ("Rush") where she was under the care of Dr. Eric Bridges and Dr. Larry Shea Hailey. (Ex. 2, November 30, 2001, Consultation Record of Dr. Hailey; R.E. at 33). As part of Ms. Townsend's treatment at Rush, a magnetic resonance image (MRI) of Ms. Townsend's brain was performed. It was discovered that Ms. Townsend had an area of ischemic infarction in her right posterior parietal lobe. (Ex. 2, MRI Report of Ralph E. Williams, M.D., dated 12-03-01; R.E. at 35).

Ms. Townsend was finally released from Rush Foundation Hospital on December 7, 2001. (Ex.2, December 6, 2001, handwritten progress record notes; R.E. at 39). Ms.

Townsend was instructed by the treating physician at Rush to continue treatment with Dr. Dennis Simms for her allergic reaction and also to begin treatment with Dr. Rafique Ahmad, a neurologist, regarding Ms. Townsend's MRI results. (Ex. 2, December 7, 2001, handwritten physician's orders; R.E. at 40) Dr. Ahmad concluded that Ms. Townsend had suffered a stroke in 1998; however, the stroke did not result in any residual deficit, other than subjective paresthesia, which is the "sensation (e.g., tingling or pins and needles); usually associated with partial damage to a peripheral nerve, of the left arm and leg." (Ex. 2A, December 4, 2001, Consultation by Dr. Rafique Ahmad, M.D; R.E. at 41), (Dictionary of Medical Terms 423 (Mikel A. Rothenber ed., 4th ed., Barron 2000)). Upon the recommendation of Dr. Ahmad, Ms. Townsend went to Dr. Andrew Parent, a neurologist. (Ex. 10, March 25, 2002, treatment note by Dr. Andrew Parent; R.E. at 44). Dr. Parent did not notice any abnormalities on her neurological exam; however, he did determine that Ms. Townsend had a left intrasellar pituitary tumor as well as a lesion in the right occipital area. (*Id*). This lesion, as determined by Dr. Parent, was consistent with an area of encephalomalacia or an old infarction; but the possibility of low-grade glioma was remote, given the absence of edema. (*Id*). On October 6, 2003, Dr. Parent conveyed to Ms. Townsend that there was a possibility that the lesion could be a brain tumor and recommended brain surgery, so that a biopsy may be taken. (*Id*). Ms. Townsend never submitted to this exploratory surgery and now, seven years later, it appears she made the absolutely correct decision as she has had no further problems

related to this suspected tumor.

2. Referral to Dr. James Halsey

Ms. Townsend continued treatment for her allergic reaction after her release from Rush, in December of 2001. She was treated by Dr. Simms, who ultimately referred Ms. Townsend to Dr. James Halsey in Birmingham, Alabama. (Ex. 8, January 16, 2002, Dr. David Simms' medical records; R.E. at 47). Dr. Halsey examined Ms. Townsend on January 18, 2002, approximately seven weeks after the chemical exposure. In his assessment of Ms. Townsend, Dr. Halsey found that most of Ms. Townsend's symptoms from the allergic reaction had subsided; however, she suffered "Multiple symptoms likely due to depression and anger referrable to the inhalation accident." (Ex. 1, January 18, 2002, Dr. James Halsey's report; R.E. at 48). He additionally stated that, "Judgment of MMI for the exposure is that this has occurred for neurology, except for functional symptoms likely due to depression and anger referrable to the inhalation accident." (*Id.*). Dr. Halsey's psychiatric conclusion for Ms. Townsend stated, ". . . depression moderate, likely anger involved with the respiratory episode." (*Id*). The fact that Dr. Halsey's report was issued a mere seven (7) weeks after the chemical exposure, completely rebuts the Employer's claim that the symptoms did not develop until 2003, which was two and a half (2 ½) years after the accident.

On February 11, 2002, Ms. Townsend returned to Dr. David Simms. (Ex. 8,

February 11, 2002, Dr. David Simms' medical records; R.E. at 46). Dr. Simms found that Ms. Townsend, while still suffering headaches and weakness, should be able to return to work. (*Id*). Ms. Townsend returned to work for Hospital Housekeeping at Rush Foundation Hospital on April 1, 2002. (Ex. 6, March 9, 2005, Wage Statement; R.E. at 51). She balanced work with frequent visits to the doctor's office regarding both physical and mental ailments, such as chronic headaches, dizziness and nervousness. (Ex. 5, January 27, 2005, Deposition of Mary Townsend; R.E. at 54). Ms. Townsend remained at Rush until she was terminated on February 19, 2003, for the pretextual reason of absenteeism. (Ex. 9, February 19, 2003, Termination Record; R.E. at 63.)

4. <u>Psychiatric Evaluations Conducted at Weems Mental Health Clinic</u>

Ms. Townsend first sought treatment at Weems Mental Health Clinic on March 3, 2004. (Ex. 11, March 3, 2004, Intake/Assessment Form; R.E. at 64.) During her initial evaluation, Ms. Townsend explained the facts surrounding her chemical exposure and the effects the exposure had on her mental stability. (*Id*). It was initially determined that Ms. Townsend's depression, flashbacks and other mental ailments were "secondary to an incident at work where she was exposed to cleaning chemicals." (*Id*). The medical records provided by Weems Mental Health Clinic indicate that, throughout treatment, Ms. Townsend made some improvements; however, her depression and other mental disabilities have not subsided. (Ex. 11, June 13, 2005, Progress Notes; R.E. at 67). These records provide clear evidence of a mental disability related to her chemical exposure.

5. Mississippi Employment Security Commission Records

As previously stated, Ms. Townsend returned to work at Rush Foundation Hospital in April of 2002. (Ex. 6, March 9, 2005, Wage Statement; R.E. at 51). In February, 2003, Ms. Townsend questioned her employer, Chance McDonald about her paycheck. Mr. McDonald responded by telling Ms. Townsend that she was to begin working with chemicals again or she would lose her job. (Ex. 5, January 27, 2005, Deposition of Mary Townsend; R.E. at 54). Ms. Townsend was unable to resume working with chemicals due to her mental condition, and, as a consequence, was fired. Mr. McDonald and Rush used the pretext that Ms. Townsend was fired for absenteeism.

III. SUMMARY OF THE ARGUMENT

Despite the diluted Statement of Appellant's Issues, and the likewise diluted restatement of these issues by Appellee, this matter boils down to one thing - whether or not Ms. Townsend's undisputed mental injury is causally related to her undisputed work-related physical injury.

The Workers' Compensation claim involves what is commonly known as a physical-mental injury. It is undisputed and stipulated that Mary Townsend sustained a compensable physical injury when she suffered a severe reaction from chemical exposure on November 30, 2001. This exposure, and subsequent allergic reaction (the physical injury), left Ms. Townsend mentally debilitated, causing her to have anxiety, depression, delusions and hallucinations. Her mental disabilities were noted by a physician a mere

seven weeks after the exposure, and not two and a half years later, as the employer claims in the face of clearly written medical evidence to the contrary.

Prior to the undisputed work-related injury, Ms. Townsend had never in her life suffered with a mental illness. Indeed, her treating physicians connected her mental disabilities directly to the chemical exposure and allergic reaction she suffered at work.

The Mississippi Worker's Compensation Commission and the Lauderdale County Circuit Court correctly held that there was clear and convincing evidence connecting Ms. Townsend's mental disabilities to her chemical exposure, which, again, was admittedly work-related. Ms. Townsend is now permanently and totally disabled due to her resulting psychiatric illness and the decisions of both the lower courts should be affirmed.

IV. STANDARD OF REVIEW

Reversal of a decision made by the Worker's Compensation Commission " . . . is proper only when a Commission order is not based on substantial evidence, is arbitrary or capricious, or is based on an erroneous application of the law." *Weatherspoon v. Croft Metals, Inc.,* 853 So. 2d 776, 778, (Miss. 2003) (*citing Smith v. Jackson Construc. Co.,* 607 So. 2d 1119, 1124 (Miss. 1992)). "Absent an error of law, and if the decision of the Commission is based upon substantial evidence the decision will be affirmed on appeal. Thus, if there is a quantum of credible evidence which supports the decision of the Commission, no court will reverse the decision." *Metal Trim Industries, Inc. v. Stovall,* 562 So. 2d 1293, 1296 (Miss. 1990).

The question then becomes, "What is 'Substantial Evidence'"?

> "Substantial" denotes the quantity of evidence, and anything more than a "scintilla," that is, practically *any* credible evidence, is enough to support a Commission finding of fact on review. *South Cent. Bell Telephone Co. v. Aden*, 474 So.2d 584 (Miss. 1985).

9 MS Prac. Encyclopedia MS Law § 76:175 (emphasis in original).

One of the issues raised by Appellant is, in essence, that the employer-hired psychiatrist, Dr. Mark Webb, should have more weight attributed to his testimony because he is a specialist (a psychiatrist). This issue has been addressed in this way:

> A reviewing court may not substitute its own judgment for the Commission's in making a choice between conflicting evidence, *even when the conflict is in the medical realm. Cole v. Superior Coach Corp*, 234 Miss. 287, 106 So.2d 71 (1958); *Attala County Nursing Center v. Moore*, 760 So.2d 784 (Miss. Ct. App. 2000). The

> courts are sometimes want to make rules for the Commission about reconciling medical evidence, for example, that the treating physician's testimony must always carry more weight than an examining physician's or that a specialist's opinion should always be given more weight than the general practitioner's, but in doing so, the court is invading the province of weighing the evidence that belongs exclusively to the Commission, in its expertise and experience with injuries and the medical treatment required therefor, bolstered by its power to order independent medical evaluations (*Miss. Code Ann. § 71-3-15(2)*), its authority to seek the advice of review boards of medical experts (*Miss. Code Ann. § 71-3-15(3)*), and so forth.

9 MS Prac. Encyclopedia MS Law § 76:175 (emphasis added).

In other words, if the Commission had felt it necessary to order an independent medical examination or refer the case to a review board, it could have done so. The Commission decided that such was not necessary in light of the substantial and clear and convincing evidence in favor of compensability.

IV. ARGUMENT

A. The evidence is clear that the Claimant's mental disability is related to her work-related injury.

Dr. Halsey diagnosed Ms. Townsend with depression related to the inhalation accident only seven weeks after the accident occurred. On January 18, 2002, following Ms. Townsend's November 20, 2001, injury, Dr. Halsey found that the Claimant was suffering from anger and depression related to her inhalation accident. (Ex. 1, January 18, 2002, Dr. James Halsey's report; R.E. at 48.) The Employer bases much of its argument on the alleged failure of mental symptoms to appear until 2 ½ years after the accident. The Employer goes so far as to intimate that there is something nefarious about Ms. Townsend seeking treatment for her depression because she was referred by her attorney. Obviously, Mr. Engell, the Claimant's attorney, did the only responsible thing he could do when faced with a depressed client who was suffering from hallucinations.

The Employer's assertion that there were no symptoms or diagnosis of depression following the subject accident are plainly incorrect. Dr. Halsey's diagnosis of related depression and anger was rendered a mere **seven weeks** post injury - not 2 ½ years later as is alleged by the Employer in the face of clearly written medical evidence to the contrary.

After presenting to Weems Mental Health Center, the Claimant's treating physician at Weems indicated on almost every visit that Claimant's depression was secondary to what happened to her on her job, her medical condition and the flashbacks

of her chemical exposure. Granted, much of the evidence is subjective. Most diagnoses and treatments of mental diseases are, in fact, subjective. That does not mean that there is no clear evidence. Rather, clear evidence exists that Ms. Townsend has mental problems because of her consistent complaints. Frankly, with no disrespect intended, Ms. Townsend, who has an eighth grade education, would be an unlikely candidate to fool Dr. Halsey and Dr. Mishrah through malingering. In fact, it is clear from the record that Ms. Townsend wanted to return to work and was very upset that she was fired as noted by Judge Henry on p. 3 of his Opinion. (R.Vol. 2, p.51; R.E. at 8)

The obvious reasoning for the heightened burden of proof as to the connection between the employment and the injury is the reluctance to open the system to fraud as feigning and malingering are thought easy. *Fought v. Stuart C. Irby Company*, 523 So.2d 314, 317 (Miss. 1988). In the instant case, there is absolutely no evidence of any such conduct. It should also be considered that this is not a *mental/mental* case which requires clear and convincing evidence. This is a *physical/mental* case which only requires clear evidence of the connection between the injury and the mental disability. *Powers v. Armstrong Tire & Rubber Co.*, 173 So.2d 670, 672 (Miss. 1965). Importantly, even Dr. Webb, the Employer's doctor, did not conclude that any malingering took place. Indeed, Dr. Webb found that Ms. Townsend suffered from mental problems albeit probably related to a possible 1998 stroke.

It is undisputed by either party that Ms. Townsend has a mental disability. It is

also undisputed by either party that Ms. Townsend suffered a work-related physical injury. The only issue in dispute is whether the mental injury is causally related to the physical injury. The Claimant never had any mental problems prior to her work-related physical injury. She, almost immediately after the work-related physical injury, became mentally disabled. The Administrative Judge, the Full Workers' Compensation Commission, and the Lauderdale County Circuit Court, viewing all of the evidence and using their own commonsense, concluded that the mental injury is causally related to the physical injury. How Dr. Webb concluded, and the Employer alleges that Ms. Townsend's mental disability is related to life events that occurred **decades** before she complained of these mental symptoms, is, frankly, incredible.

In addition to the decades-old life events of which Ms. Townsend has never complained, the Employer also argues, and Dr. Webb concludes, that Ms. Townsend's mental problems are related to the possible existence of a 1998 undiagnosed stroke. This argument is a red herring. Claimant never experienced any mental problems related to this episode and worked for several years after 1998. In fact, Ms. Townsend was not even aware that she may have suffered such an event. Conversely, although Ms. Townsend worked in a light-duty job which was created solely for her by the Employer after her 2001 accident, she has never been able to return to the only job for which she is truly capable and trained to do – housekeeping and the use of chemicals therein.

Hospital Housekeeping Systems argues that Ms. Townsend failed to mitigate her

mental injuries. This theory is based on Dr. Webb's one-time assessment of Ms. Townsend, where he concluded that, given proper medications, Ms. Townsend would be psychiatrically fit to resume work for Employer; however, "[w]hether or not an employee's refusal to submit to proffered medical treatment is unreasonable is ordinarily a question of fact for the trier of fact, the Worker's Compensation Commission." *Walker v. International Paper Company,* 92 So.2d 445, 449 (Miss. 1957). Further, " . . . the burden of proving that a tendered operation is simple, safe and will probably effect a cure or substantial improvement is on the employer." (*Id.*)

Judge Henry properly concluded that the Claimant's treating physicians' opinions bear more weight in this case than the Employer's paid consultant, Dr. Mark Webb, who visited with Ms. Townsend one time for less than an hour and conducted no medical tests.

Judge Henry also properly questioned the credibility of the assessment performed by Dr. Webb, a psychiatrist who is well known among the bench and bar for his pro-employer evaluations. Dr. Webb saw Ms. Townsend one time. Dr. Mishra, the treating physician saw Ms. Townsend many times over two years and was very familiar with her situation. Logic dictates that Dr. Webb could not relate all of Ms. Townsend's problems to a 1998 stroke after seeing her one time - particularly in light of the fact that Ms. Townsend was never diagnosed with nor complained of depression until after her work-related accident.

The Employer's "Common Sense" argument is misplaced. Judge Henry properly used his own "common sense" in making his findings of fact and conclusions of law. To suggest otherwise is insulting. The Employer goes so far as to make light of Ms. Townsend's hair loss which she relates to her depression. In fact, a simple Web or PDR search reveals that many medications used to treat depression cause hair loss.

The Employer also argues that because Ms. Townsend hallucinates about brain surgery, that her depression must be related to her potential brain surgery. This is a chicken/egg argument. It is more properly argued that Ms. Townsend's depression, which was noted seven weeks after the exposure, came long before her hallucinations, which began two years after the exposure.

The depression was caused by the work-related injury and, because she is depressed, she has anxiety and hallucinations about things that a well person would not necessarily worry about. The heightened delusions suffered by Ms. Townsend occur as a result of her weakened mental state. Frankly, even a well and stable person would worry about brain surgery and would likely have nightmares concerning such; however, because Ms. Townsend is not well from a mental standpoint, her concerns and fears regarding the surgery are more agonizing and consuming.

Hospital Housekeeping Systems further argues that Ms. Townsend's depression and mental injuries are additionally attributable to decades-old traumatic familial experiences; specifically the early death of a parent and unhealthy marriages. This

argument is a desperate reach to grasp some alternative explanation for her undisputed mental disability. Although these past events in her life were saddening, they never caused Ms. Townsend depression or other mental injuries, from which she now suffers.

Moreover, it is completely illogical and intellectually dishonest to argue on the one hand that Ms. Townsend's mental injuries are related to incidents that occurred decades ago, and then on the other hand and as its primary argument, allege that Ms. Townsend's mental disability symptoms did not occur until 2 ½ years after the subject physical injury. These two theories are inconsistent. Hospital Housekeeping Systems attempts to attribute Ms. Townsend's present depression and mental infirmities to long ago red herrings, while ignoring recent traumatic events, such as an undisputed debilitating chemical exposure.

B. Judge Henry did not base his finding of total disability "solely on a self-serving hearsay statement" as the Employer claims.

The Employer argues that Judge Henry based his findings "solely on a self-serving hearsay statement." The Judge was clear when writing his opinion that in making his findings of fact and conclusions of law, he based his findings "on Ms. Townsend's age, education, and experience; the Weems records; the Administrative Judge's observation of Ms. Townsend at the hearing . . . and other occupationally relevant facts." (R.Vol. 2, p.65; R.E. at 19). Both Dr. Mishra, the claimant's treating psychiatrist, and Dr. Halsey related Ms. Townsend's mental condition to the work related injury.

The Employer did not present any evidence that Ms. Townsend could return to work in her previous job despite their burden to do so, having fired Ms. Townsend after

her injury when she refused to work with chemicals. The Employer relies solely on a July 12, 2002, letter from Dr. Parent stating that chemicals would not have an adverse effect on the **pituitary tumor**. This pituitary tumor has nothing to do with the client's mental condition, nor does it have anything to do with her admitted physical injury. Not even Dr. Webb would say otherwise. Every diagnosis by Dr. Mishra, including the 6/13/05 record which is the most recent entry in Cl. Ex. 11 ended with the same conclusion - No change. (Ex. 11, June 13, 2005, Progress Notes; R.E. at 67). As a result of these records and his own observations, and a review of the credible evidence, Judge Henry determined and the Full Commission affirmed without modification, that Ms. Townsend continues to suffer from debilitating depression and is unable to work.

Beyond these obvious inconsistencies with the Employer's argument, the Employer did not properly preserve a hearsay objection at the Administrative hearing. Such objection was not raised until the Employer appealed the decision to the Full Commission.

C. The Circuit Court properly affirmed the Full Commission's determination that Ms. Townsend is permanently and totally disabled due to her mental injuries.

The standard of review for the Circuit Court from a ruling of the Mississippi Workers' Compensation Commission is delineated in the Act, which provides that "[i]f no prejudicial error be found, the matter shall be affirmed and remanded to the commission for enforcement." Miss. Code Ann. § 71-3-51 (1972, as amended). The

Supreme Court has held that Circuit Courts should use a highly deferential standard of review, and should only reverse findings of the Commission in rather extraordinary cases. *Hale v. Ruleville Health Care Center,* 687 So.2d 1221 (Miss. 1997).

The Circuit Court adhered to this standard of review in its evaluation of the Employer's appeal, finding that the opinions of Ms. Townsend's treating physicians are substantial evidence in support of finding that Ms. Townsend is permanently and totally disabled as a result of her mental disability which is causally related to her physical injury. The employer argues that there is no evidence that Ms. Townsend cannot work again; however, they present no evidence that states that she can, despite the fact that the employer fired Ms. Townsend because she could not and would not work with chemicals.

The Employer relies on *Mid-Delta Home Health, Inc. v. Robertson,* a Mississippi Court of Appeals case in which the Court overruled the decisions of the Full Worker's Compensation Commission and the Circuit Court, based on a lack of medical evidence. 749 So.2d 379 (Miss. App.1999). The *Robertson* case is easily distinguishable from the case presently before this Court. In *Robertson,* the Claimant alleged *mental* injury only against her employer. In other words, it was a mental/mental case. Claimant worked in an environment that could, at times, become stressful; however, Claimant suffered through many additional events during her employment that could have attributed to her mental injury. Claimant began working for her employer in the Fall of 1988. Claimant's spouse was afflicted with Sickle Cell Anemia and he "suffered occasional crises." (*Id.* at

382). In 1990, Claimant's sister suffered a detrimental, although not fatal poisoning, which left her with very poor health. In 1991, Robertson ran for Circuit Clerk of Washing County, Mississippi. Although the campaign proved to be both time consuming and expensive, Claimant was unsuccessful in her pursuit of the office. During 1990 and 1991, Claimant's family was audited by the IRS. This audit showed that the Robertson's owed approximately $6,000.00 in taxes. In 1992, Claimant's husband was "interrogated by law enforcement officials." (*Id.*). He was arrested at the Robertson's home and was convicted of a crime in July of 1994, which resulted in his serving five months in jail. "He was released pending a new trial in November of 1994. Eventually, the charges were dismissed by a federal district court." (*Id*).

In *Robertson,* Claimant was faced with many difficult situations that were undoubtably emotionally and mentally taxing. Robertson's treating physician stated that Claimant's injuries were a combination of stress at work and her tumultuous home life. (*Id.* at 384). However, the Court understood the Claimant's treating physician to have determined that Claimant would be able to "return to work immediately in similar employment and without limitations." (*Id.* at 386). Therefore Robertson was not permanently or totally disabled. (*Id.*).

Contrarily, in the instant case Ms. Townsend was given no such assurance that she would be able to return to work and function normally. The only physician that found that Ms. Townsend was able to return to work from a psychiatric standpoint was Dr.

Webb, albeit with heavy medications. (Ex. 7, February 23,2005, Medical Report of Dr. Mark Webb; R.E. at 72).

The Full Commission was correct in determining that Ms. Townsend was permanently and totally disabled. Ms. Townsend returned to work after the chemical exposure. Her position, which required no chemical use, was specially created for her. Ms. Townsend was ultimately fired from Hospital Housekeeping Systems; primarily because she was asked to resume the use of chemicals, which she was not mentally able to do. Additionally, Ms. Townsend was required to miss work often because she frequently visited the doctor's office regarding her chemical exposure. Ms. Townsend's emotional state has shown little to no improvement and both lower courts correctly found that she is permanently and totally disabled. In so doing, the lower courts properly considered all medical and other evidence, recognized that Ms. Townsend has never blamed her mental injuries on anything other than her work-related physical injury.

Finally, the Administrative Judge and the Mississippi Workers' Compensation Commission considered the testimony offered by the employer-hired Dr. Mark Webb, with whom they are very familiar, weighed his testimony with that of the treating physicians, and simply did not believe Dr. Webb.

One of Appellant's main issues is, in essence, that the employer-hired psychiatrist, Dr. Mark Webb, should have more weight attributed to his testimony because he is a specialist (a psychiatrist). This issue has been addressed in this way:

> A reviewing court may not substitute its own judgment for the Commission's in making a choice between conflicting evidence, *even when the conflict is in the medical realm. Cole v. Superior Coach Corp*, 234 Miss. 287, 106 So.2d 71 (1958); *Attala County Nursing Center v. Moore*, 760 So.2d 784 (Miss. Ct. App. 2000). The courts are sometimes want to make rules for the Commission about reconciling medical evidence, for example, that the treating physician's testimony must always carry more weight than an examining physician's or that a specialist's opinion should always be given more weight than the general practitioner's, but in doing so, the court is invading the province of weighing the evidence that belongs exclusively to the Commission, in its expertise and experience with injuries and the medical treatment required therefor, bolstered by its power to order independent medical evaluations (*Miss. Code Ann. § 71-3-15(2)*), its authority to seek the advice of review boards of medical experts (*Miss. Code Ann. § 71-3-15(3)*), and so forth.

9 MS Prac. Encyclopedia MS Law § 76:175 (emphasis added).

In other words, if the Commission had felt it necessary to order an independent medical examination or refer the case to a review board, it could have done so. The Commission decided that such was not necessary in light of the substantial and clear and convincing evidence in favor of compensability.

V. CONCLUSION

Ms. Townsend suffered an undisputed work-related injury which, unfortunately, resulted in a mental disability. Employer has admitted that this injury occurred while Ms. Townsend was carrying out duties that were within the course and scope of her employment; however, they deny responsibility for the mental disability that came about as a result of this injury. Because this is a *physical/mental* injury, this Court must only

find that there is clear evidence of the connection between the injury and the mental disability. *Powers v. Armstrong Tire & Rubber Co.,* 173 So.2d 670, 672 (Miss. 1965). There is a specific and clear connection between the injury and Ms. Townsend's mental disability as concluded by her treating physicians. Both the Full Worker's Compensation Commission and the Circuit Court Judge properly found this clear connection based on all of the credible evidence and Ms. Townsend respectfully requests that this Court do the same.

Respectfully submitted this 30th day of October, 2007.

Mary Townsend, Appellee

By: 

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Certificate of Service

I certify that I have served via First Class United States Mail, postage prepaid, a true and correct copy of the above and foregoing *Brief of Appellee* to:

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Honorable Robert W. Bailey
Circuit Court Judge
Post Office Box 1167
Meridian, Mississippi 39302

This 30th day of October, 2007.

JOHN D. MOORE