

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

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**CASE NO. 2007-WC-00634**

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**ANNIE C. DANIELS**

**APPELLANT/CROSS-APPELLEE**

**VS.**

**PECO FOODS OF MISSISSIPPI, INC.,  
A SELF-INSURED**

**APPELLEE/CROSS-APPELLANT**

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**BRIEF OF APPELLEE/CROSS-APPELLANT PECO FOODS OF MISSISSIPPI, INC.**

**On Appeal from the Circuit Court of Madison County, Mississippi**

**(ORAL ARGUMENT NOT REQUESTED)**

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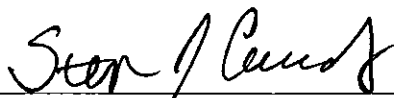
**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following persons listed have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court may and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Peco Foods of Mississippi, Inc., Appellee/Cross-Appellant;
2. Stephen J. Carmody, Esq., Christopher R. Fontan, Esq., Brunini, Grantham, Grower & Hewes, PLLC, 248 East Capitol Street, Suite 1400, Jackson, MS 39201, Counsel for Appellee/Cross-Appellant;
3. Annie C. Daniels, Appellant/Cross-Appellee;
4. Al Chadick, Esq., Steele & Chadick, 134 E. Jefferson Street, Kosciusko, MS 39090;
5. Honorable William E. Chapman, III, Madison County Circuit Court Judge; and
6. Liles Williams, Chairman, John Junkin, Commissioner, and Gen. Augustus Collins, Commissioner, Full Commission of the Mississippi Workers' Compensation Commission.

Dated, this the 13<sup>th</sup> day of September, 2007.

By: \_\_\_\_\_



Stephen J. Carmody,  
Attorney for Appellee/Cross-Appellant,  
Peco Foods of Mississippi, Inc.

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**I. STATEMENT OF THE ISSUES**

- A. The Mississippi Workers' Compensation Commission's was correct in ruling that Annie C. Daniels did not sustain a compensable mental and/or psychological injury.
- B. The Mississippi Workers' Compensation Commission's erred in ruling that Annie C. Daniels sustained a work-related injury to her head or scalp on or about June 5 or 6, 2001.

**II. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS**

Appellant/Cross-Appellee Annie C. Daniels ("Daniels") and Appellee/Cross-Appellant Peco Foods of Mississippi, Inc. ("Peco") have appealed the Opinion and Order of the Honorable William E. Chapman, III ("Judge Chapman"), dated March 16, 2007 ("Judge Chapman's Order"). In this case, Daniels alleged she sustained two separate physical injuries during the course and scope of her employment at Peco, and further alleged that these physical injuries resulted in psychological or mental injury.

**A. Procedural History**

Daniels originally filed two separate workers' compensation claims—one for an alleged scalp injury and one for an arm injury. These separate claims were consolidated at the Mississippi Workers' Compensation Commission ("the Commission") on April 5, 2005. At that time, the Administrative Judge awarded Daniels compensation for the two separate physical injuries. Additionally, the Administrative Judge related Daniels' supposed mental ailment to these physical injuries. The Order of the Administrative Judge (the "A.J. Order") was issued on June 10, 2005.

On June 30, 2005, Peco appealed the A.J. Order before the Full Commission. Peco sought review of the Administrative Judge's findings regarding compensability for the alleged

scalp injury and the alleged mental injury. On June 15, 2006, the Commission issued its Final Commission Order (the “Full Commission Order”), in which it affirmed the A.J. Order as to the alleged scalp injury and to the arm injury, but reversing the A.J. Order as to the alleged mental injury—denying compensation and dismissing the claim.

On June 20, 2006, Daniels appealed the Full Commission Order to the Circuit Court of Madison County, Mississippi. On July 13, 2006, Peco filed a cross-appeal of the Full Commission Order. On March 16, 2007, Judge Chapman issued his Order affirming the Full Commission Order in its entirety.

On March 29, 2007, Daniels appealed Judge Chapman’s Order to this Court. Specifically, Daniels challenged Judge Chapman’s affirmation of the Commission’s denial and dismissal of her claim for the alleged mental injury. Daniels contends that the Commission erred in not finding compensability based on overwhelming medical evidence. Peco cross-appealed Judge Chapman’s Order on April 11 2007, challenging Judge Chapman’s affirmation of the Commission’s ruling of the work-relatedness of the alleged scalp injury, as well as the imposition of interest and penalties for the alleged arm injury. Daniels’ Brief was filed with this Court on August 14, 2007. Peco files this Brief in response to Daniels’ Brief and in support of its Cross-Appeal.

## **B. The Alleged Scalp Injury**

Daniels claims she sustained a physical injury to her head or scalp on or about June 5 or 6, 2001 (the “alleged scalp injury”). (C.P.III at 13)<sup>1</sup>. At the time of the alleged scalp injury,

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<sup>1</sup> Citations to the record will be abbreviated as follows: Exhibits – “(Ex. \_\_)” ; Clerk of the Madison County Circuit Court’s Papers – “(C.P.I. at \_\_)” ; Clerk of the Mississippi Worker’s Compensation Commission regarding the Arm Injury/Claim #01-15674-H-5261 – “(C.P.II at \_\_)” ; Clerk of the Mississippi Worker’s Compensation Commission regarding the Alleged Scalp Injury/Claim #02-11628-H-5283 – “(C.P.III at \_\_)” ; Transcript from the Hearing at the Mississippi Workers Compensation Commission on May 2, 2005 – “(Tr. \_\_)” .

Daniels was working on the IQF<sup>2</sup> line at Peco. (Tr. at 14). Daniels alleged she was reaching over into a barrel when a plastic bag filled with frozen chicken breasts dropped from a conveyor belt and struck her on the top of the head. (Tr. at 17). At the time of the alleged scalp injury, Daniels was wearing three (3) layers of protective clothing on her head—a plastic scarf, a hooded cotton sweatshirt, and a paper hair net. (Tr. at 32-33). The frozen chicken that she claims struck her head was sealed in a plastic bag. (Tr. at 16). Nevertheless, Daniels hypothesized that dry ice penetrated the sealed plastic bag, as well as all three layers of her protective clothing, resulting in a light frost and burning sensation on the top of her head. (Tr. at 42).

Daniels informed her supervisor of these alleged events. (Tr. at 17). Her supervisor gave her two aspirin. (Tr. at 7). She then returned to work and completed her shift. (Tr. at 7). Daniels never discussed the alleged scalp injury further with any member of Peco management, and never missed any time at work as a result of the alleged scalp injury. (Tr. at 31-32).

On June 6, 2001, Daniels sought treatment at Canton Family Medical Clinic. (Tr. at 17). She complained of tightness in her chest, hair loss, redness and a dull burning sensation. (Ex. 5). The treating nurse practitioner diagnosed Daniels with bronchitis and prescribed Erythromycin. (Ex. 5). Daniels returned to work the following day and did not mention her clinic visit or medical treatment to Peco management. (Tr. at 30).

On August 20, 2001, Daniels returned to Canton Family Medical Clinic with complaints of headache and hair loss. (Ex. 5).<sup>3</sup> Daniels was referred to Dr. Joseph Robinson for a dermatological evaluation. (Ex. 5). Dr. Robinson initially evaluated Daniels on September 21,

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<sup>2</sup> The IQF line trims away unnecessary chicken parts, disposes of the scraps, and forwards the useful parts of the chicken down the line, where they are later prepared for shipment.

<sup>3</sup> Daniels also filed the charges for this August 20th office visit and treatment on her private insurance and returned to work without notification or incident. (Tr. at 30).

2001. (Ex. 13). Dr. Robinson diagnosed Daniels with scalp alopecia and psoriasis. (Ex. 13).<sup>4</sup> On October 22, 2001, a scalp biopsy was recommended, but never carried out. (Ex. 13). Daniels returned to full-duty work at Peco and did not mention the injury or medical treatment to Peco management. (Tr. at 30-31). Daniels did not seek any additional treatment for the alleged scalp injury for nearly two years. (Ex. 1).

On June 20, 2003—over two years after the date the alleged scalp injury occurred—Dr. William Burrow, a dermatologist, evaluated Daniels following a referral from the Truly Family Medical Clinic. (Ex. 1). Daniels complained of an allegedly work-related scalp burn that resulted in hair loss. Dr. Burrow performed a scalp biopsy and diagnosed Daniels with discoid lupus erythematosus. (Ex. 1). Nearly seventeen (17) months later, in November 2004, Daniels returned to Dr. Burrow, at which time he prescribed Diprolene cream.

### **C. The Arm Injury**

Daniels sustained a separate physical injury to her right upper extremity on December 12, 2001 (the “arm injury”). (C.P.II at 1-2). Specifically, Daniels claimed she was walking out of Peco’s Canton facility, when she slipped and fell, injuring her right arm. (Tr. at 19). Daniels was immediately taken to the emergency room at University Medical Center (“UMC”), where she was diagnosed with a comminuted fracture of the distal aspect of the right radius. (Ex. 12).

Daniels followed up with Dr. Alan Freeland at University Orthopedic Associates. (Ex. 3). Though initially recommending physical therapy over surgery, Dr. Freeland performed an anterior interosseous nerve and posterior interosseous nerve neurectomy on April 8, 2002. (Ex. 3). On April 18, 2002, Dr. Freeland noted Daniels’ pain relief to be remarkable, and assigned her a permanent impairment rating of fifteen percent (15%) to the right upper extremity, with no permanent work restrictions. (Ex. 3).

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<sup>4</sup> A fungal test was also performed, but the results were negative. (Ex. 13).

On June 6, 2002, Peco's Employment Supervisor, Linda Senter, sent correspondence to Daniels acknowledging Dr. Freeland's April 18th work release and requesting that she contact Peco to make arrangements to resume her work duties. (Ex. 11). However, Daniels never contacted Peco, nor returned to work at Peco's Canton facility. (Tr. at 39).<sup>5</sup> Subsequently, Daniels worked as a housekeeper at Comfort Inn in Canton, Mississippi from June 11, 2002, until May 21, 2003, when she voluntarily quit that employment. (Tr. at 22-23).

#### **D. The Alleged Mental Injury**

From these two independent physical injuries, Daniels purports to have sustained a psychological condition or mental injury (the "alleged mental injury"). (Tr. at 4). On April 17, 2003, Daniels reported to the Truly Family Medical Center complaining of depression and trouble sleeping. (Ex. 12). Later that same day, she reported to the emergency room at UMC, complaining of depression, suicidal ideation and hallucinations, at which point she was admitted to the psychiatric unit. (Ex. 12). Daniels reported hearing voices and seeing imaginary friends telling her to harm herself. (Ex. 12). At UMC, she gave a history of a chemical accident that occurred a year before that resulted in hair loss and scarring. (Ex. 12). However, only once during her seven day stay at UMC was it documented that Daniels alleged her complaints to be work-related. (Ex. 12). Daniels was discharged from UMC on April 23, 2003, with a referral to Region 8 Mental Health Center. ("REMHC").

On April 25, 2003, Daniels sought treatment at REMHC with complaints of depression for one year following multiple deaths in her family, as well an accident at work. (Ex. 9). Daniels was evaluated on May 19, 2003, by Dr. James Brister, who diagnosed her with depression and post-traumatic stress disorder ("PTSD"). (Ex. 2 at 6). Dr. Brister never reviewed any of Daniels' previous medical records—not even the records from her in-patient treatment at

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<sup>5</sup> At the hearing on the merits, Daniels could not recall receiving this correspondence, but did not dispute that it was mailed to her correct mailing address. (Tr. at 39).

UMC, from which the referral was generated. (Ex. 2 at 17). The only record Dr. Brister relied upon was a dermatologist's report generated by Dr. Burrow. (Ex. 2 at 17). Thus, Dr. Brister's evaluation and subsequent treatment of Daniels was based solely on Daniels' version of her medical history. (Ex. 2 at 18).<sup>6</sup>

On September 8, 2003, Daniels underwent an independent psychological evaluation by Dr. Mark Webb. (Ex. 4 at 4). Before his evaluation, Dr. Webb reviewed Daniels' medical records, which he considered to be "critical" in forming his opinions. (Ex. 4 at 5). Daniels reported to Dr. Webb that she experienced depression and anxiety, along with panic attacks, her entire life. (Ex. 4 at 11). She described growing up in a dysfunctional family. (Ex. 4 at 11). Daniels also reported that she sought treatment from her family physician in the mid-1980's, and the doctor placed her on psychiatric medication continuing throughout the 1990's. (Ex. 4 at 11). Further, Daniels told Dr. Webb of a series of tragedies in her life during the 1990's, including the death of her mother, father, and sister. (Ex. 4 at 11-12). Even more recently, she recounted the death of a nephew and her brother's suicide. (Ex. 4 at 11-12). Daniels also reported a family history of depression to Dr. Webb. (Ex. 4 at 12). Furthermore, she told Dr. Webb about her involvement in two difficult marriages—one with a husband that was both physically and sexually abusive toward her. (Ex. 4 at 12, 15).<sup>7</sup>

Dr. Webb diagnosed Daniels with dysthymia—a low-grade, non-disabling depression—as well as long-term (a decade) recurrent panic attacks. (Ex. 4 at 18). Dr. Webb further diagnosed her with histrionic personality traits, which he described as a maladaptive personality style where people tend to over-exaggerate and over-dramatize personal circumstances. (Ex. 4 at 18). Most notably, Dr. Webb felt that these issues all predated both of Daniels' alleged physical

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<sup>6</sup> Dr. Brister made no attempt to obtain any of Daniels' prior medical records. (Ex. 2 at 17-18).

<sup>7</sup> All of these factors help explain why, during her June 6, 2001, visit to Canton Family Medical Clinic, Daniels completed a patient history form, in which she complained of an extensive history of "nervous breakdown or emotional problems." (Ex. 5).

work-related injuries. (Ex. 4 at 18). Dr. Webb noted Daniels to be somewhat self-conscious about losing her hair and dealing with the difficulty of her right arm. (Ex. 4 at 20). Overall, Dr. Webb noted her objective findings were minimal to none, but subjectively, Daniels had lots of complaints. At the time of his evaluation, Dr. Webb felt Daniels was improving, since she was finally getting the treatment she needed for years. (Ex. 4 at 20). Dr. Webb felt Daniels reached maximum medical improvement (“MMI”) from a psychiatric standpoint with no permanent impairment or restrictions. (Ex. 4 at 21). He also believed returning to work would benefit Daniels. (Ex. 4 at 21).

According to Dr. Webb, the most logical explanation for Daniels’ hair loss was lupus, and that the alleged scalp injury did not cause the lupus. (Ex. 4 at 23-24). Furthermore, Dr. Webb concluded neither Daniels’ hair loss nor histrionic traits were work-related. (Ex. 4 at 30). And while her dysthymia or depression might have been increased for some time after her right arm injury, Dr. Webb opined that any aggravation ended by the time she reached MMI for the arm injury. (Ex. 4 at 31).

Dr. Webb averred that it is impossible for a psychiatrist to accurately diagnose a mental illness and its causation without having reviewed and considered a patient’s past experiences and history—criticizing and directly contradicting Dr. Brister’s methodology. (Ex. 4 at 25, 55, 63). Dr. Webb disagreed with Dr. Brister’s diagnosis of PTSD, because he felt Daniels did not fulfill the “traumatic” component of PTSD, based on her history of allegedly being struck, but continuing to work and function afterwards. (Ex. 4 at 32). According to Dr. Webb, someone is diagnosed with PTSD after they experience a terribly frightening event, or if their physical integrity is compromised. (Ex. 4 at 33). Dr. Webb did not feel Daniels’ hair loss and scarring are considered “traumatic” for purposes of PTSD qualification. (Ex. 4 at 54).

### **III. SUMMARY OF THE ARGUMENT**

The Commission did not err in limiting Daniels' recovery for the arm injury to the value of a 15% impairment rating to an upper extremity, as assessed by her treating physician. The Full Commission Order should be affirmed.

The Commission was also correct in finding no compensable mental injury attributable to Daniels' employment with Peco. In assessing the alleged mental injury, the Commission applied the correct legal standard. Furthermore, it was proper for the Commission to accept the opinions of Dr. Webb, and in turn to reject the opinions of Dr. Brister. The Commission is the ultimate finder of fact and therefore was correct in denying compensability for the alleged mental injury. To the extent it denied compensation for the alleged mental injury, the Full Commission Order should be affirmed.

The Commission however erred in declaring the alleged scalp injury to be work-related. Daniels failed to meet the burden of proof necessary to establish compensability for the alleged scalp injury. The medical evidence presented by Daniels regarding the alleged scalp injury was questionable and inconclusive. In fact, the medical evidence in the record supports Peco's position that Daniels' injuries are not the result of the alleged events at Peco's Canton facility on or about June 5 or 6, 2001. Daniels' failure to notify Peco of the need for further medical treatment regarding injury to her head or scalp, combined with her failure to seek any treatment at all for nearly two years, supports a ruling that the alleged scalp injury was not work-related. Based on this evidence, the Full Commission Order regarding compensability for the alleged scalp injury should be reversed.

#### IV. ARGUMENT

##### A. Standard of Review

The Commission is the ultimate trier of fact, notwithstanding any contrary finding by the Administrative Law Judge.<sup>8</sup> Fought v. Stuart C. Irby Co., 523 So. 2d 314, 317 (Miss. 1988). As such, appellate courts are charged with reviewing all questions of law and fact, and “[i]f the Commission’s findings of fact and order are supported by **substantial evidence**, all appellate courts are bound thereby.” Id. (emphasis added). Substantial evidence has been defined as “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion” and affords a “substantial basis of fact from which the fact in issue can be reasonably inferred.” Central Electric Power Association v. Hicks, 110 So. 2d 351, 357 (Miss. 1959). Based on this highly deferential standard, an appellate court should reverse the Full Commission Order **only** if it finds the Order to be clearly erroneous and contrary to the overwhelming weight of the evidence. Fought, 523 So. 2d at 317. The highly deferential standard applies even if the record evidence would convince this Court to rule otherwise, if it were it the ultimate finder of fact. Id.

##### B. The Commission Did Not Err in Limiting Compensation for Daniels’ Alleged Arm Injury to the Value of the Physician-Assessed Impairment Rating.

The Commission did not commit an error in limiting Daniels’ recovery for the arm injury to the value of the 15% medical impairment rating assessed by Dr. Freeland on April 18, 2002. Peco paid Daniels for the value of the medical impairment rating before the initial hearing on the merits. The Full Commission order should be affirmed.

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<sup>8</sup> In her Brief, Daniels requests that this Court reinstate the A.J. Order. However, once a matter is appealed from the Administrative Judge, the Commission becomes the **original** finder of fact. See Day-Brite Lighting Div., Emerson Elec. Co. v. Cummings, 419 So. 2d 211 (Miss. 1982). Even if this Court determines that the Commission applied an erroneous legal standard in a matter, the appropriate remedy is to, **at the most**, remand the matter back to the Commission—as the original finder of fact—for a determination in accordance with the correct legal standard. See Smith v. Container General Corp., 559 So. 2d 1019, 1023 (Miss. 1990).

**C. The Commission Did Not Err in Ruling that Daniels Did Not Sustain a Work-Related Mental Injury.**

The Commission did not commit an error by denying Daniels' request for compensation for her alleged mental injury. The Commission held that Daniels failed to establish a compensable mental and/or psychological injury. (C.P.II. at 190). The Full Commission Order should survive appellate scrutiny.

The Supreme Court has warned against "indiscriminate compensation" for mental injuries, because such mental problems might "arise from a number of causes." See Bates v. Merchants Co., 161 So. 2d 652 (Miss. 1964). In Mississippi, when a worker alleges a mental injury following a job-related physical injury, the worker bears the burden of establishing the causal connection between the alleged mental injury and his or her job-related physical injury, and "the causal connection with the accident must be proved by **clear evidence**." International Paper Co. v. Wilson, 139 So. 2d 644, 651 (Miss. 1962) (emphasis added); see also Miller Transporters, LTD v. Reeves, 195 So. 2d 95, 100 (Miss. 1967 ("The emotional upset [following a physical industrial accident] is compensable only if there is a clear causal connection between it and the physical injury.")). The Commission determines the existence of this clear causal connection based on "the evidence adduced in the cause." Miller Transporters, 195 So. 2d at 100.

At the hearing, the parties presented substantial evidence supporting the Commission's decision to deny compensability for the alleged mental injury. In its Order, the Commission accepted the testimony of Peco's medical expert, Dr. Webb, over Daniels' medical expert, Dr. Brister. Additionally, the Commission focused on the events surrounding Daniels' allegations.

**1) The Commission has authority to rely on the testimony provided by Dr. Webb and to reject Dr. Brister's opinions.**

The Commission favored the testimony of Dr. Webb over the testimony of Dr. Brister regarding the alleged mental injury. Daniels argues that the Commission impermissibly favored the testimony of Dr. Webb over that of Dr. Brister. However, the Commission is only entitled to favor the testimony of a treating physician over the testimony of a physician who treated a claimant only once. Moreover, the Commission is not prohibited from favoring the testimony of one physician over another, especially when both did not regularly treat the patient. When deciding if a workers' compensation claimant has met its required burden of proof, "[t]he probative value of medical testimony is for the fact-finding tribunal to decide." Miller Transporters, 195 So. 2d at 100 (citing 100 C.J.S. Workmen's' Compensation §555(5)(c)). The Supreme Court has held that, where conflicting medical opinions are admitted in a workers' compensation proceeding, "[t]he Commission is charged with the responsibility under our law for weighing and evaluating this testimony and all other testimony before it and making a finding." South Central Bell Telephone Co. v. Aden, 474 So. 2d 584, 593 (Miss. 1985).

As such, the Commission—as the ultimate trier of fact—was correct in considering the testimony of both Dr. Brister and Dr. Webb, and then concluding which opinion it felt carried more weight. The Commission found Dr. Webb's testimony to be more persuasive. (C.P.II at 188-190). The Commission reached this decision because Dr. Brister never obtained or reviewed any of Daniels' medical records or history, and chose not to delve into her past experiences. (C.P.II at 188). Dr. Brister's testimony was inadequate, incomplete and did not provide a thorough examination of Daniels' medical history. See Sibley v. Unifirst Bank, 699 So. 2d 1214 (Miss. 1997). In fact, the Commission described Dr. Brister's testimony as "suspect." (C.P.II at 190).

In stark contrast, the Commission accepted the testimony of Dr. Webb, who arrived at his opinions after carefully reviewing the Daniels' prior records and medical history, and after an in-depth discussion with the Daniels about her own personal history. Daniels argues that Dr. Webb only evaluated her on a "single" occasion. (Brief of Claimant-Appellant at 8). However, the Mississippi appellate courts have consistently held that the opinion of an EME physician based on a claimant's personal history, even if only supported by a single examination, is "clearly substantial evidence on which the Commission could base a decision." DiGrazia v. Park Place Entertainment, 914 So. 2d 1232, 1237 (Miss. App. Ct. 2005). The Commission further accepted Dr. Webb's opinion that the alleged arm injury in December 2001—at the most—"exacerbated her pre-existing mental illness," which was "temporary at most, and was neither disabling nor permanent." (C.P.II at 190).

To prevail on a mental injury claim, Daniels must establish the work-relatedness of the alleged mental injury by clear evidence. Miller Transporters, 195 So. 2d at 100 (emphasis added). Here, the Commission disregarded Daniels' proffered medical testimony regarding the alleged connection of her mental problems with her employment at Peco. (C.P.II at 189-190). As the trier of fact in this case, the Commission's decision to disregard Dr. Brister's testimony is binding on this Court. Fought, 523 So. 2d at 317

**2) The Commission ruled that the timing of events did not support a ruling of work-relatedness.**

The Commission also found the timing of events further evidenced the lack of a clear connection between Daniels' employment at Peco and her alleged mental injury. The Commission noted that Daniels' employment terminated in December 2001. However, she did not seek treatment for the alleged mental injury until April 2003—some sixteen (16) months after leaving Peco, and a full year after reaching maximum medical improvement from the alleged arm injury. During this time, Daniels also worked for a different employer. According

to Dr. Webb, at the most, the alleged arm injury temporarily exacerbated Daniels' pre-existing mental illness. The Commission found this exacerbation was neither disabling nor permanent, and was not related to her work at Peco. The Commission held that the causal connection between Daniels' work and alleged mental injury was "tenuous, at best." (C.P.II at 190).

The Commission relied on a combination of medical expert testimony and facts in determining there was no clear causal connection between Daniels' employment at Peco and her alleged mental injury. These findings were supported by substantial evidence. As such, the Commission's decision denying compensability for the alleged mental injury should be affirmed.

**D. The Commission Erred in Ruling that Daniels Proved a Compensable Work-Related Injury to Her Scalp.**

The Commission erred in awarding Daniels compensation for the alleged scalp injury. In establishing a claim for a compensable injury, a claimant bears the burden of establishing that his or her injury both arose from and in the course of his or her employment, including a causal connection of injury to the claimed disability. Narkeeta, Inc. v. McCoy, 153 So. 2d 798 (Miss. 1963). Based on the evidence presented at the Hearing, Daniels failed to meet this burden in establishing her claim for compensation for the alleged scalp injury. While decisions of the Commission are granted deference, appellate courts can overrule the findings of the Commission if the findings are contrary to the overwhelming weight of the evidence. Fought, 523 So. 2d at 317.

At the Hearing, Daniels proffered medical expert testimony that established only the **possibility** of a connection between her scalp condition and the alleged scalp injury. Daniels' medical expert, Dr. Burrow, attempted to connect Daniels' scalp condition to the alleged scalp injury by diagnosing Daniels with discoid lupus, and attributing this diagnosis to the alleged scalp injury. (Ex. 1 at 16). However, Dr. Burrow conceded that the exact cause of this condition is unknown, but is most likely an inherited condition triggered by exposure to the sun. (Ex. 1

at 16). While Dr. Burrow opined that discoid lupus could possibly stem from sufficient exposure to dry ice, he couched his opinion in terms of exposure either directly to skin or directly to skin and hair. (Ex. 1 at 15). Furthermore, Dr. Burrow did not address the amount of exposure needed or likelihood of such a burn or injury resulting from contact with skin, hair, and three layers of protective gear, such as Daniels was admittedly wearing on the date of the alleged injury. (Tr. at 32-33). The Commission even admitted that Dr. Burrow's opinion was "belated," due to the two year gap between the occurrence of the alleged scalp injury and Dr. Burrow's examination.<sup>9</sup> (C.P.II at 184).

In rebuttal, Peco offered credible medical expert testimony directly refuting a causal connection between Daniels' scalp condition and the alleged scalp injury. Peco's medical expert, Dr. Webb, directly contradicted Dr. Burrow's findings and rejected a causal connection between the alleged scalp injury and Daniels' diagnosed discoid lupus. (Ex. 4 at 23). While he agreed the most likely cause of Daniels' hair loss and scarring was lupus, Dr. Webb expressly stated that discoid lupus is a rheumatologic illness, and is not injury or stress related. (Ex. 4 at 23). Dr. Webb declared that "[t]he theory of the ice or frozen chicken falling on her head as the cause [of the alleged scalp injury] is not plausible." (Ex. 4 at 23). Thus, even though it did not bear the burden of proof on this issue, Peco offered overwhelming medical evidence refuting the possibility of a connection between Daniels' condition and the alleged scalp injury, as was theorized by Daniels' medical expert.

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<sup>9</sup> This examination also occurred approximately sixteen months after Daniels stopped working for Peco.

Based on the overwhelming weight of the evidence in the case, Daniels failed to establish the work-relatedness of her alleged scalp injury.<sup>10</sup> Accordingly, the Full Commission Order awarding compensation for the alleged scalp injury should be reversed.

V. CONCLUSION

The Commission did not err in awarding Daniels benefits for the value of the physician assessed impairment rating for her arm injury. Likewise, the Commission did not err in denying compensability for Daniels' alleged mental injury stemming from the arm injury and alleged scalp injury in this case. Both of these affirmations are legally sound and supported by substantial evidence. Accordingly, they should be affirmed by this Court.

The Commission however did err in awarding Daniels compensation for the alleged scalp injury. Daniels failed to present sufficient evidence establishing a causal connection between her scalp condition and the alleged work-related injury. Therefore, Peco asks this Court to reverse the Full Commission Order as it relates to the alleged scalp injury.

Respectfully submitted, this the 13<sup>th</sup> day of September, 2007.

PECO FOODS OF MISSISSIPPI, INC.

By: Step Carmody  
One of Its Attorneys

OF COUNSEL:

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<sup>10</sup> The Commission apparently based its decision to award compensation for the alleged scalp injury, at least in part, on the lack of an explanation to the contrary. (C.P. II at 185).

**CERTIFICATE OF SERVICE**

I, Steve Carmody, do hereby certify that I have this date mailed, via United States mail, postage prepaid, a true and correct copy of the BRIEF OF APPELLEE/CROSS-APPELLANT PECO FOODS OF MISSISSIPPI, INC. to the following:

Al Chadick, Esq.  
Steele & Chadick  
Post Office Box 1637  
Kosciusko, MS 39090

Honorable William E. Chapman, III  
Madison County Circuit Court  
P.O. Box 1626  
Canton, MS 39046

This, the 13<sup>th</sup> day of September, 2007.

  
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Stephen J. Carmody, Esq.