

**COPY**

IN THE SUPREME COURT FOR THE STATE OF MISSISSIPPI

ANNIE DANIELS

CLAIMANT-APPELLANT

VS.

CASE NO. 2007-WC-00634

PECO FOODS OF MISSISSIPPI, INC.

EMPLOYER-APPELLEE

**FILED**

AUG 14 2007

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COURT OF APPEALS

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BRIEF OF CLAIMANT-APPELLANT

(On Appeal from the Circuit Court of Madison County, Mississippi)

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Oral Argument Not Requested

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**VS.**

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**CERTIFICATE OF INTERESTED PERSONS**

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 justices of this Court may evaluate possible disqualification or recusal.

1. Annie Daniels, Appellant
2. Al Chadick, Attorney for Appellant
3. Peco Foods of Mississippi, Inc., Appellee
4. Christopher R. Fontan, Attorney for Appellee
5. Honorable William E. Chapman, III, Circuit Court Judge

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## **STATEMENT OF THE ISSUES**

The following issue is presented for review:

Whether the Mississippi Workers' Compensation Full Commission's findings were against the substantial evidence and law finding that the claimant failed to meet her burden of proving a causal connection between the mental injury she suffered and the physical injuries she suffered while on the job at Peco Foods of Mississippi, Inc.

## STATEMENT OF THE CASE

### **A. Procedural Background**

The claimant has alleged that she sustained two separate physical injuries during the course and scope of her employment at Peco Foods of Canton, Mississippi. The resulting physical injuries have caused or aggravated a psychological or mental injury for which she has been treated. Ms. Daniels received physical injuries on the 5<sup>th</sup> or 6<sup>th</sup> of June, 2001, when she was struck in the head by a plastic bag containing frozen chicken. Her second injury occurred on December 12, 2001, when she slipped and fell at work causing an injury to her right upper extremity. Ms. Daniels has alleged that as a result of both of these physical injuries, she is now suffering from a psychological condition or mental injury which is disabling and causing her to receive mental treatment at this time. The first hearing was held on the 2<sup>nd</sup> of May, 2005, in front of Judge Tammy Harthcock of the Mississippi Workers' Compensation Commission. The administrative judge at that time determined that the claimant had indeed suffered two (2) separate physical injuries as described above and that the claimant's psychological overlay was indeed related to her work and these injuries.

The employer and carrier, feeling aggrieved, appealed that decision and a hearing was held on the 19<sup>th</sup> of December, 2005, after which the Full Commission entered an order dated 15 June, 2006, finding that the claimant had suffered compensable injuries to her scalp on or about the 5<sup>th</sup> or 6<sup>th</sup> of June, 2001, and a compensable injury to her right upper extremity in December of 2001. However, the Full Commission did reverse the decision of the administrative judge and found that the claimant was not suffering from a

work-related psychological or psychiatric overlay. It is from this last part of the decision that the claimant appealed this decision to the Circuit Court of Madison County.

Briefs were filed by both parties to the Honorable William E. Chapman, III, who rendered an Opinion and Order dated the 16<sup>th</sup> of March, 2007, affirming the decision of the Mississippi Workers' Compensation Full Commission in its entirety.

Feeling aggrieved of this latest decision, the claimant has once again perfected her appeal to this Honorable Court.

### **B. Summary of the Facts**

The following is a brief summary of the factual testimony presented to the administrative judge and considered by the Full Commission.

The claimant, Annie C. Daniels, at the time of the hearing, was a 43 year old female, currently a 46 year old female, with a 10<sup>th</sup> grade education and a certificate as a certified nurses aide. (R. at 6 & 7). The claimant never has practiced as a CNA but has performed manual labor her entire life. She first started working in a cotton gin as well as other small parts assembly jobs. She eventually began work at Peco Foods and worked there for an extended period of time, working her way up from custodian to a lead person on one of the production lines. It was in her capacity as a lead person that she suffered her first injury.

The first injury occurred in June of 2001. The claimant testified that while she was working on the line, she was bent over a barrel pulling out bags of chicken and cutting them open to be placed back on the line. (R. at 17). While bending over the barrel, the conveyer line kicked a bag of frozen chicken parts over onto the claimant's head, striking her on the top of her scalp. (R. at 18). Claimant sought treatment from

Canton Family Medical Clinic originally and subsequently from a dermatologist in Jackson by the name of Dr. Robinson. (R. at 19). Subsequently the claimant was seen by Dr. Bo Burrow of Jackson, Mississippi. Dr. Burrow is a Board Certified Dermatologist. (Burrow at 5). Dr. Burrow testified he first saw the claimant in June of 2003 upon referral from Dr. Truly who was the claimant's local family physician. (Burrow at 5). Burrow testified that upon his first examination, the claimant had a loss of hair on top of her head that he believed to be discoid lupus erythematosus. (Burrow at 5). The claimant gave Dr. Burrow a history of having a burn at work from where a bag with chicken and dry ice and some other chemicals had hit her on top of the head, physically burning her and causing her hair to begin falling out. (Burrow at 6). His physical exam revealed that the claimant had hypo pigmentation scarring and redness as well as darker discoloration at the edges of the top of her scalp. She also did not have any history of a systemic problem which would have been causing this scalp condition. (Burrow at 6). Dr. Burrow ultimately opined that the claimant's condition was aggravated by the injury on the job where she was struck in the top of the head by the frozen chicken with the dry ice. Furthermore, it was his opinion that the claimant's loss of hair and scarring would not resolve or improve and was a permanent condition. (Burrow at 10). Dr. Mark Webb, a Board Certified Psychiatrist, attempted to testify that he did not feel as if the claimant's lupus was a work-related condition. He opined "the theory of the ice or frozen chicken falling on her head as the cause is not plausible, I feel. Her hair loss is not injury or work-related." (Webb at 23). However, upon cross-examination, Dr. Webb did defer to Dr. Burrow concerning the causal relationship between Ms. Daniels' lupus and the injury on the job. The administrative judge, the Full Commission, and Circuit Court have all



ruled that the medical condition which the claimant is suffering from that has caused her to have scarring and loss of hair to her scalp are related to her injury on the job.

The claimant's second injury occurred on the 12<sup>th</sup> of December, 2001. The claimant fell on the job and injured her right arm. (R. at 19). Claimant was immediately transferred to the University Hospital where she was initially seen and treated by Dr Alan Freeland. (R. at 19). In April of 2002, the claimant underwent surgery on her right arm and currently has weakness in her right arm which is her dominant arm. (R. at 21). The claimant was assigned a 15% industrial loss of use to the right upper extremity by the administrative judge for her injuries on the job. The other medical evidence submitted in this matter was medical reports from the University of Mississippi Medical Center concerning a hospitalization which Ms. Daniels underwent in April of 2003. (General exhibit 12). The chief complaint was "41 year old female who presents with depression and suicidal ideation." The additional history is, "Pt had a chemical accident last year which scarred her head and she lost her hair, apparently has been depressed since that time. Has an imaginary friend named Susie who is telling her to kill herself." The original assessment was suicidal ideation and depression. She remained hospitalized until she was discharged on the 23<sup>rd</sup> of April, 2003. Upon her discharge, the physician listed under history of present illness, "approximately a year ago, Ms. Daniels was working at the chicken plant and was involved in an accident where her head was exposed to 'dry ice'. Following this, she lost her hair and her scalp was disfigured. Since that time, she has covered her head with wraps and wigs and she has become quite depressed. Shortly after the accident, she began hearing the voice of Susie, someone who claims to be her friend. Susie also tells her that she is ugly and not her true self and that

if she used this knife to cut her own head off, she would give her a head that looked like her old one." Upon her release, the claimant was not suffering from anymore suicidal or homicidal ideation. She was discharged to follow up with Region VIII Mental Health Center in Canton.

It was at Region VIII Mental Health Center that she began treatment with Dr. James Brister, Board Certified Psychiatrist since 1994. (Exhibit 2 at p. 3). Dr. Brister began his treatment on the 19<sup>th</sup> of May, 2003, and continued through the date of his deposition which was the 11<sup>th</sup> of April, 2005. (Exhibit 2 at 5). Dr. Brister mentioned that the thing that was most traumatic in his treatment of Ms. Daniels was the disfigurement to her scalp and loss of hair. (Exhibit 2 at 11). Upon questioning as to the condition which brought Ms. Daniels in to see him, Dr. Brister answered, "...the first visit was so dramatic. I mean, she wasn't dramatic, but her story was quietly told and impressive and that when she lost her hair, she felt like the entire picture of herself as a woman was lost. She said she couldn't go to the beauty shop with her friends anymore, couldn't go in public. Everyday when she got up and looked in the mirror, there was this bald person in front of her that used to have hair." (Exhibit 2 at 11). When asked what his final diagnosis was, Dr. Brister stated that she was suffering from depression and post-traumatic stress disorder from the loss of her hair. (Exhibit 2 at 12). When asked as to his opinion based on a reasonable degree of psychiatric probability in assuming the two histories of injuries of June of 2001 and December of 2001 to be correct, and did he have an opinion as to whether or not they were significant factors in bringing about her depression, Dr. Brister answered yes. (Exhibit 2 at 14). Dr. Brister furthermore opined that the injuries were a significant factor in bringing about her psychiatric condition for

which he was treating her. (General exhibit 2 at 14). Furthermore, based upon the psychiatric conditions, Dr. Brister did not feel as if the claimant could return to work at this time. (Exhibit 2 at 15).

### **STANDARD OF REVIEW**

It is well established that the Supreme Court will only reverse the Commission's rulings where findings of fact are unsupported by substantial evidence, matters of law are clearly erroneous, or the decision was arbitrary and capricious. Westmoreland v. Landmark Furniture, Inc., 752 So.2d 444 at 448; Hale v. Ruleville Health Care Center, 687 So.2d 1221, 1225 (Miss. 1997). Also, it has been well established that in doubtful cases, such doubt should be resolved in favor of a finding of compensability to the end so that the beneficent purposes of the Workers' Compensation Act may be carried out. Barnham v. Klumb Forest Products Center, Inc., 453 So.2d 1300, 1303-04 (Miss, 1984).

### **SUMMARY OF ARGUMENT**

The claimant's first contention regarding the issue is that the Full Commission did not apply the proper standard when resolving issues involving a claimant's physical injury with a mental or psychological overlay. The Commission stated in its order overruling the administrative judge that, "it is well established that the connection between employment and alleged disabling condition must be proved by clear and convincing evidence, emphasis added. Sibley v. Unifirst Bank for Savings, 699 So.2d 1214, 1218 (Miss. 1997). (R. at 54). The Commission has clearly applied the wrong standard of proof for this type of injury. In Mississippi, when a worker alleges a mental injury following a job-related physical injury, the mental injury "must be established by evidence bringing it within the realm of probability, and the causal connection with the

accident must be proved by clear evidence.” International Paper Company v. Wilson, 139 So.2d 644, 651 (Miss. 1962). It should be noted that obviously the court was concerned with the risk involved in the cause of mental injury, however, the court DID NOT, emphasis added, interject a heightened standard of proof but indicated that the medical evidence in particular must be clear in support of the work-connectedness of a mental injury. Bradley, John R. and Thompson, Linda A., Mississippi Workers’ Compensation, Section 4-18 (2007). The standard of proof relied upon by the Full Commission is only applicable in workers’ compensation claims where the injuries did not have a physical component leading to a mental injury. A “clear and convincing evidence of causal connection between the employment and the mental injury is an announced standard instead of preponderance of evidence stemming in mental-mental situations.” Bates v. Country Brook Living Center, 609 So.2d 1247 (Miss. 1992).

The case before this Honorable Court clearly relies upon the well established principle that the claimant only need show that there is a causal connection between the claimant’s physical injury and the subsequent mental injury she suffers from as a result of the physical injury. The claimant has shown that through the testimony of Dr. Burrow, which was accepted and ordered by the Administrative Judge, Full Commission and Circuit Court Judge, that the claimant has suffered from a work connected injury to her scalp. As a result of this injury and disease, the claimant is suffering from disfigurement and total loss of hair to the scalp. As a result of this disfigurement, Dr. Brister, the claimant’s treating physician, has opined that the claimant is suffering from depression and post-traumatic stress disorder from the loss of her hair. (General exhibit 2 at 12). The standard is clear that a regular treating physician carries greater weight than does

other physicians when resolving conflicts of opinion. The Mississippi Workers' Compensation Commission is entitled to favor the testimony of a treating physician over a physician who had seen the claimant only once. South Central Bell Telephone Company v. Aden, 474 So.2d 584, 593 (Miss. 1985), Mueller Copper Tube Co., Inc. and The Travelers Insurance Company v. Stanley W. Upton, 937 So.2d 428 (Miss. 2005).

### CONCLUSION

It is the claimant's position that through the credible and reliable evidence which has been presented in this cause, the decision of the administrative judge finding the claimant's psychological or mental injury compensable was the right and appropriate decision. When the medical evidence is considered in total, it is clear that the claimant was a functioning, employed and productive individual until she suffered these two physical workers' compensation injuries. That as a result of these physical injuries, the claimant did indeed suffer an emotional breakdown requiring hospitalization in April of 2003 and subsequently has had to receive constant treatment from a Board Certified Psychiatrist. The only evidence to the contrary has been that proposed by the employer and carrier from an EME physician who evaluated this claimant on a single occasion. Furthermore, the basis of his opinions are undocumented and unreliable. The claimant suffered from no pre-existing mental condition and there has been absolutely no proof that any stresses of her prior life caused the mental condition that she currently suffers from.

The claimant therefore requests that this Court reverse and render by reinstating the Order of Administrative Judge which was previously entered in this cause and that it was the true and correct decision.

Respectfully submitted, this the 14<sup>th</sup> day of Aug., 2007.

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**CERTIFICATE OF SERVICE**

I, Al Chadick, attorney for Claimant-Appellant, do hereby certify that I have this date mailed via United States Mail, postage prepaid, at true and correct copy of the above and foregoing BRIEF OF APPELLANT to the following:

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This the 14<sup>th</sup> day of Aug., 2007.

  
\_\_\_\_\_  
AL CHADICK