

IN THE SUPREME COURT OF MISSISSIPPI

MARY GUY

APPELLANT

VS.

CAUSE NO. 2007-WC-01784

**B. C. ROGERS PROCESSORS, INC.
(IN BANKRUPTCY)**

EMPLOYER/SELF-INSURED

**MISSISSIPPI WORKERS' COMPENSATION
SELF-INSURER GUARANTY ASSOCIATION**

APPELLEE

**ON APPEAL FROM THE
CIRCUIT COURT OF SCOTT COUNTY, MISSISSIPPI**

**BRIEF OF THE MISSISSIPPI WORKERS' COMPENSATION
SELF-INSURER GUARANTY ASSOCIATION, APPELLEE**

ORAL ARGUMENT NOT REQUESTED

**Virginia S. Gautier (MSB No. [REDACTED])
Wise Carter Child & Caraway, PA
600 Heritage Building
401 East Capitol Street
P.O. Box 651
Jackson, Mississippi 39205-0651
(601) 968-5540**

ATTORNEY FOR APPELLEE

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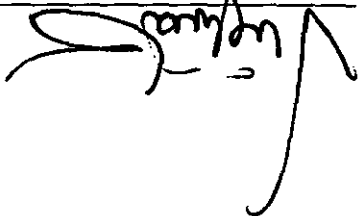
I. CERTIFICATE OF INTERESTED PERSONS

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 the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Honorable Mark Henry, Administrative Judge;
2. The Mississippi Workers' Compensation Commission: Honorable Liles Williams, Honorable Barney J. Schoby, Honorable John R. Junkin, Commissioners;
3. Honorable Marcus D. Gordon; Circuit Court Judge for the Circuit Court of Scott County, Mississippi;
3. B.C. Rogers Processors, Inc./Employer;
4. Mississippi Workers' Compensation Self-Insurer Guaranty Association, Appellee;
5. Mary Guy, Claimant/Appellant.
6. David N. Gillis, Attorney for Appellant, Mary Guy.
7. Virginia S. Gautier, Esq., Wise Carter Child & Caraway, Attorney for Appellee, Mississippi Workers' Compensation Self-Insurer Guaranty Association.

This, the 27th day of March, 2008.

VIRGINIA S. GAUTIER
Attorney of Record for Appellee

A handwritten signature in black ink, appearing to read "Virginia S. Gautier", is written over a horizontal line.

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IV. STATEMENT OF THE ISSUES

Whether the factual findings and legal conclusion of the Mississippi Workers' Compensation Commission that the Appellant failed to meet her burden of proof that a work related stroke occurred as a result of her employment with B. C. Rogers were supported by the substantial credible evidence.

V. STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

This case is an appeal from the Circuit Court of Scott County, Mississippi. On August 9, 2007, Circuit Judge Marcus D. Gordan affirmed the decisions of the Mississippi Workers' Compensation Commission which affirmed the Order of the Administrative Judge. On February 22, 2002, Mary Guy ("Appellant" or "Guy") filed a Petition to Controvert with the Mississippi Workers' Compensation Commission. (R. at Vol. 2, pp. 1-3)¹. The Petition alleged that Guy suffered a work-related stroke on or about September 4, 2000 which resulted in injuries to her arm, right leg and head. Guy alleged that the stroke was caused by stress resulting from her job as a supervisor for her employer, B. C. Rogers Processors, Inc. The Mississippi Workers' Compensation Self-Insurer Guaranty Association filed its Answer on March 13, 2002 denying that Guy's stroke was causally connected to her job with B. C. Rogers Processors, Inc. (R. at Vol. 2, pp. 4-5).

At the time of Mary Guy's alleged stroke, B. C. Rogers Processors, Inc. was qualified as a self-insurer by the Mississippi Workers' Compensation Commission under the Mississippi

¹Citations to the Record are made to volume and page number ("R. at Vol. ___, p. ___"). Citations to the Transcript are made to the page number("Tr. at p. ___"). Citations to the Exhibits are made to the Exhibit Volume and Exhibit number labeled by the Administrative Judge at trial. ("Exhibits at Volume ___").

Workers' Compensation Law and was therefore, a member of the Mississippi Workers' Compensation Self-Insurer Guaranty Association as required by Miss. Code Ann. §71-3-159. On November 19, 2001, B. C. Rogers filed a voluntary Chapter 11 petition in the United States Bankruptcy Court for the Southern District of Mississippi, Case No. 01-06515JEE. The Commission and the Association subsequently determined B. C. Rogers to be insolvent and in default under the Act as of November 19, 2001 when the employer filed bankruptcy. As a result of B. C. Rogers' insolvency, under Miss. Code Ann. § 71-3-163, the Mississippi Workers' Compensation Self-Insurer Guaranty Association became obligated to investigate, adjust, compromise, settle, deny and defend all workers' compensation claims against the debtor arising prior to November 19, 2001, or arising within 30 days thereafter. As to such covered claims, the Association "shall have all rights, duties and obligations of the insolvent self-insurer as if the self-insurer had not become insolvent." Therefore, by statute, the Mississippi Workers' Compensation Self-Insurer Guaranty Association assumed the defense of Mary Guy's workers' compensation claim against B.C. Rogers because Guy's workers' compensation claim arose prior to November 19, 2001².

Following discovery in this matter, Administrative Judge Mark Henry conducted a hearing on February 24, 2006 at the Mississippi Workers' Compensation Commission in Jackson, Mississippi. The parties stipulated that: (1) on September 5, 2000, Guy's average weekly wage was \$604.55; and (2) B. C. Rogers paid premiums for long-term disability

²On November 14, 2006, Guaranty Association filed its Motion to Correct Opinion of Administrative Judge to properly identify the Defendant in this case as the Mississippi Workers' Compensation Self-Insurer Guaranty Association. Judge Henry's July 25, 2006 Order improperly identified the Defendant as the Employer and Carrier. Thereafter, on November 16, 2006, the Full Commission granted the Guaranty Association's Motion.

insurance policy from Fortis Insurance Company for the benefit of Guy from April 25, 1999 to September 5, 2000. (Tr. at p. 3). All remaining issues, including compensability, were presented to Judge Henry for adjudication.³

On July 25, 2006, Administrative Judge Henry rendered an order which correctly determined that Mary Guy did not meet her burden of proof as to a causal connection between her possible stroke and her employment with B. C. Rogers. (R. at Vol. 2 - Order of Administrative Judge at p. 57). As a result, Guy's claim for workers' compensation benefits was correctly deemed non-compensable. (R. at Vol. 2 - Order of Administrative Judge at p. 22-23). An appeal by Guy followed on August 1, 2006. The Mississippi Workers' Compensation Commission (hereinafter "Full Commission") affirmed the Order of the Administrative Judge on January 24, 2007. (R. at Vol. 2 - Order of Administrative Judge at p. 111). Thereafter, Guy appealed this matter to the Circuit Court of Scott County, Mississippi and Circuit Judge Marcus Gordon affirmed the decisions of the Full Commission and the administrative judge. Subsequently, Guy filed an appeal to this Court on or about August 27, 2007.

B. Statement of the Facts

Mary Guy worked for B. C. Rogers for a period of 39 ½ years. (Tr. at p. 11:16). For the last 20 years of her employment, she worked as a supervisor, particularly on the chicken breast trimming line. (Tr. at p. 12:12 - 12:25). As a supervisor, Guy's work duties included arriving at work at 4:00 a.m. in order to sanitize and set up the production line. (Tr. at p. 13:8-11). After the line began running at 6:00 a.m., Guy would assist where shorthanded such as trimming

³Judge Henry did not address the issue of whether the Guaranty Association was entitled to credit for the long-term disability benefits paid to Guy by Fortis Benefits Insurance Company as he found that the claim was not compensable.

chicken breasts, cleaning, bagging chicken, lifting pans of chicken, weighing and stacking boxes onto pallets, as well as making boxes. (Tr. at pp. 13:12-19; 27-29). As a supervisor, Guy also had authority to terminate employees. (Tr. at p. 14:9-14). She did not fill out any paper work or make schedules for her shift employees. (Tr. at p. 14:18-27). However, Guy typically stood on the concrete floor during her shift and observed two lines in the plant to ensure that the laborers were performing their jobs correctly. (Tr. at pp. 15:9-29 - 16:1-8; Tr. at p. 21:16 - 21). It was not unusual for Guy to fill in on the production line when an employee was absent. (Id.). Guy typically ended her work day at 3:30 p.m. (Tr. at p. 17:9-10).

Guy's alleged stroke occurred on Sunday, September 5, 2000. (Exhibit CL2 - Medical Records Affidavit for Scott Regional Hospital). However, she last worked at B. C. Rogers *three* days earlier on Thursday, September 2, 2000. (Tr. at p. 46:2-5). On Thursday, September 2, 2000, Guy worked her usual shift without any unusual incidents, physical exertion or unusual stressful events and left work at approximately 3:30 p.m. (Tr. at pp. 46:6-18; 47:1-15). During the three day period between 3:30 p.m. on Thursday, September 2, 2000 and Sunday, September 5, 2000, Guy was *on vacation* for Labor Day weekend and never entered the premises of B. C. Rogers. (Tr. at p. 48:13-29).

During the hearing in this case, Guy's deposition testimony was entered into the record regarding the events of September 2, 2000 which included Guy's testimony that her job duties on September 2, 2000 were not unusual or more physical than she had typically experienced over the years. (Tr. at pp. 46:25-29; 47:1-15). Guy did not work between Thursday, September 2, 2000 at 3:30 p.m. and Sunday, September 5, 2000 because she had requested a vacation day for Friday, September 3, 2000 in order to extend the Labor Day weekend. (Tr. at p. 48:13-29). This request was made at least two months prior to her alleged stroke. (Tr. at p. 48:13-29). It was not

until Saturday, September 4, 2000, that Guy began to experience pain in her leg and arm. (Tr. at p. 49:22-24). Early in the day on Sunday, September 5, 2000, Guy began to experience a severe headache. (Tr. at p. 50:1-9; 50:15-18). Later, on the evening of September 5, 2000, Guy presented to Scott County Emergency Room at approximately 6:35 p.m. due to a headache. (Tr. at p. 50:1-9; 50:15-18). The "history and physical" sheet from Scott Regional Hospital, dated September 5, 2000, noted that Guy thought that her right sided neck pain "was [a] crick in her neck" and that she had "tried outpatient therapy for this" in the past. (Exhibits at Vol. 3 - Claimant's Exhibit 3 - Medical Records Affidavit for Scott Regional Hospital).

Dr. Howard Clark has been Guy's family physician for over 40 years. (Exhibits at Vol. 1 - Claimant's Exhibit 1- depos. of Dr. Howard Clark at p. 6). Dr. Clark is **not** board certified in cardiology or neurology. He practices in the area of family medicine and trauma medicine. (Id. at 36:14-18). Dr. Clark testified by deposition and reported that he treated Guy following her admission to Scott County Emergency Room on September 5, 2000. (Id. at pp. 11:11-25; 12:1-6). According to Dr. Clark, a CT scan was performed during Guy's hospitalization on September 6, 2000 but it *failed to show that a stroke had occurred*. (Id. at pp. 12:24-25; 25:2-6). Following Guy's discharge from the hospital, Dr. Clark continued to provide medical treatment to her on an ongoing basis. (Id. at p. 13:13-24). During the course of Dr. Clark's treatment of Guy *prior* to her alleged stroke, she *never* indicated to him that she was undergoing any type of emotional stress at work. (Id. at p. 34:3-11; Records of Dr. Clark attached to his deposition as Exhibit 1). Her only complaints were of fatigue related to her job and pain from her non-work related phlebitis. (Id. at p. 20:18-22). Dr. Clark admitted that he never discussed with Guy what her actual job duties entailed when she last worked at B. C. Rogers on September 2, 2000. (Id. at p. 26:16-24). He further admitted that he had never reviewed a written job description for Guy

nor did he know which production line that she supervised. (Id. at pp. 26:5-25; 27:1-7). Dr. Clark also did not recall any statement by Guy that the symptoms that she reported upon admission to the hospital on September 5, 2000 began at work. (Id. at pp. 32:19-25; 33:1-2).

Dr. Parveen Athar testified by medical records affidavit in this case. (Exhibits at Vol. 2, Claimant's Exhibit 4 - Medical Records Affidavit of Dr. Athar). Dr. Athar is a neurologist located in Brandon, Mississippi and she initially examined Guy on June 25, 2001 as a referral from Dr. Howard Clark. (Id.) At the initial office visit, Guy complained of right arm and right leg tingling and numbness, shoulder pain, pain from thigh to hip area with radiation down to her knee, as well as swelling of both feet and ankles. (Id.) Dr. Athar performed a physical examination and diagnosed Guy with peripheral neurology, history of stroke with right hemiparesis and right carpal tunnel syndrome. (Id.) Dr. Athar recommended that Guy undergo a nerve conduction study of the right arm and leg. (Id.) Following Guy's nerve conduction study, Dr. Athar diagnosed her with mild right carpal tunnel syndrome. (Id.) Guy continued to receive medical treatment from Dr. Athar through May 20, 2003. (Id.) On May 20, 2003, Dr. Athar wrote to Dr. Clark advising him that it was her medical opinion that she could *not* relate Mary Guy's right hand pain and numbness to her work with B. C. Rogers. (Id.) Dr. Athar never opined that Guy's alleged stroke was related to her work as a supervisor at B. C. Rogers. (Id.)

Dr. Edward Rigdon, a board certified vascular surgeon, also examined Mary Guy at the request of Dr. Howard Clark. Dr. Rigdon testified at the hearing in this matter by medical records affidavit. (Exhibits at Vol. 2, Claimant's Exhibit 6 - Medical Records Affidavit of Dr. Rigdon). When Dr. Rigdon initially examined Guy on May 17, 2001, she reported numbness in both of her arms and legs. (Id.) Following a history and examination of Guy, Dr. Rigdon opined that Mary Guy's "symptoms were not very suggestive of TIA's" . . . and that he "saw no

significant atherosclerotic disease or stenosis, so I don't think the bruits are related to her symptoms." (Id.) In other words, it is clear from his records that Dr. Rigdon did not believe that Guy's symptoms were suggestive of a stroke. Dr. Rigdon was further of the opinion that Guy "probably had thoracic outlet syndrome or some other peripheral neuropathy" and suggested that she be referred to a neurologist for further treatment. (Id.) Like Dr. Athar, Dr. Rigdon also did not set forth an opinion causally connecting any physical problems of Guy to her job at B. C. Rogers. (Id.)

Dr. Myers, an expert in the field of neurology, first examined Guy on November 13, 2002 at the request of the Guaranty Association. (Exhibits at Vol. 2, Employer/Carrier's Exhibit 7 - depos. of Dr. Myers at p. 5:1-4). He was provided with records from Guy's treating physicians at the time of her alleged stroke and thereafter, including the records of Dr. Parveen Athar, Dr. Howard Clark and Scott Regional Hospital⁴. (Id. at p. 5:5-17). Dr. Myers noted that Guy presented to Scott Regional Hospital on September 5, 2000 with a three day history of right sided neck pain and a severe headache with an onset earlier that day. (Id. at pp. 7:22-29; 8:1-11). Dr. Myers further noted that medical personnel at Scott Regional Hospital had diagnosed Guy with a stroke (or CVA) involving the left side of her brain. (Id. at p. 7:5-18). Dr. Myers opined that a diagnosis of a left sided brain stroke would be inconsistent with Guy's symptoms as typical symptoms are "right body symptoms – numbness, weakness, incoordination possibly, possibly speech and language problems. Pain can occur with certain strokes. The pain is usually a vague,

⁴On pages 23 through 24 of Guy's Brief, she claims that Dr. Myers "failed to consider all of the facts contained in the hospital admission record." However, this assertion is untrue. Dr. Myers testified in his deposition that he reviewed the records of Scott Regional Hospital and considered those records in rendering his ultimate opinion. (Exhibits at Vol. 2, Employer/Carrier's Exhibit 7 at pp. 12:14-16; 13:6-7).

a dull, a burning, *not an acute sudden severe pain localized to the right side of the neck. That would be a very unexpected symptom with left sided stroke.*" (Id. at p. 8:4-11) (emphasis added).

Dr. Myers further noted that a CT scan is typically used in the diagnosis of a stroke, yet Guy's September 6, 2000 CT scan was *normal*. (Id. at p. 8:12-28) (emphasis added). After performing a physical examination of Guy on November 13, 2002, and after studying her medical records and reviewing her September 6, 2000 CT scan, Dr. Myers was of the opinion that there was "simply no concrete evidence of the kind of neurological deficits that would make one sure that [Mary Guy] had a stroke." (Id. at pp. 12:14-16; 13:6-7). Dr. Myers further noted that Guy's physical examination on November 13, 2002 was inconsistent with the symptoms typically found in a stroke victim. (Id. at p.12:14-19). With regard to the inconsistent symptoms, Dr. Myers testified as follows:

Q Did you perform a physical examination on November 13, 2002?

A Yes.

Q Can you describe that for the record, please.

A Yes. . . . Her strength in the left arm and left leg was normal. I noted give way weakness of the right arm and right leg strength capacity. It appeared to me that her strength was normal in the right arm and right leg, but that she was embellishing and that she was releasing the effort when trying to give me a good result of strength testing. Her strength was inconsistent during the exam involving the right side. With coaxing she appeared to have normal strength in all her muscle groups but continued to have this inconsistent or give way tendency with the right side of the body.

(Id. at pp. 10:28-29; 11:1-4; 11:22-29; 12:1-5). Dr. Myers also found it significant that Guy was taking Coumadin, a "strong blood thinner, at the time of her alleged stroke which should help to prevent the possibility of stroke." (Id. at p. 16:8-11). Unlike Dr. Clark, Dr. Myers also considered Guy's detailed account of her duties as a supervisor for B.C. Rogers in reaching his

opinion as to a causal connection between the possible stroke and Guy's job. (Id. at p. 16:8-11). Most importantly, Dr. Myers opined that, in his opinion and based upon a reasonable degree of medical probability, **"there was not a relationship between what happened at work and the possibility of this stroke."** (Id. at p.16:17-27).

Guy subsequently returned to Dr. Myers' office approximately one year later on November 11, 2003 for a *second* examination. (Id. at p. 18:2-5). At that office visit, Dr. Myers learned that Guy had undergone a MRI in March 2003, more than two years after she was diagnosed with a possible stroke. (Id. at pp. 19:26:29 - 20:1). In January, 2004, Dr. Myers received and reviewed the 2003 MRI scan. (Id. at p. 20:4-6). Again, Dr. Myers did not see any evidence of a definite stroke on the MRI scan. (Id. at p. 20:12-13). He specifically noted that the radiologist's addendum to the MRI study indicated a finding of an old infarct; however, Dr. Myers stated that it would be *impossible* to state within a reasonable degree of medical probability as to whether the stroke occurred before or after September 5, 2000. (Id. at pp. 24:22-26; 25:1-23). With regard to this issue, Dr. Myers testified as follows:

- Q I want to go back one minute to the March 24th, 2003 MRI study. The addendum to the MRI which was approximately three weeks after the MRI was originally done, do you have any idea why a radiologist would go back three weeks later and relook at a study and add an addendum like that?
- A I'm not sure how that would have come about.
- Q All right. The addendum said in the last sentence this is most likely an old infarct. Is there any way to tell the age of an old infarct?
- A Not of something that small. Two millimeters is, you know, like a couple of pinpoints stick. That's pretty tiny. There would be no way to know the age.
- Q If there were an old infarct there, based on this MRI is there any way to know within a reasonable degree of medical probability as to whether it occurred before or after September 5th, 2000?

A No, there would be no way.

(Id. at pp. 24:22-29 - 25:1-11). Again, **Dr. Myers was of the opinion that any physical exertion by Guy at work on September 2, 2005 unequivocally could not be related to the symptoms that she presented at the emergency room on September 5, 2000.** (Id. at p. 23:9-28). Dr. Myers further opined that Guy reached maximum medical improvement by at least November 11, 2003 and that Guy had no permanent medical impairment rating. (Id. at pp. 21:21-29; 22:1-15).

When combined with the medical evidence, additional facts of this case substantially support the Commission's ruling against compensability. For instance, it was more than *fifteen months after* Guy's alleged stroke before she made any attempt to file a claim for workers' compensation benefits. Following her discharge from her September 5, 2000 hospital admission, Guy specifically informed her supervisor that she had suffered a stroke and would not be returning to work, but she never reported to him that her stroke was work related or that she wanted to file a claim for workers' compensation benefits. (Tr. at pp. 51:27-29; 52:1-17). Instead, Guy submitted her medical bills for her September 5, 2000 Scott County Emergency Room visit and subsequent medical treatment related to her alleged stroke through her group medical insurance that she had in place with B.C. Rogers. (Tr. at p. 51:1-26). Guy continued to file her bills with B.C. Rogers' group medical insurance carrier up until the date that the employer filed for Bankruptcy on November 19, 2001. (Id.). Despite Guy's knowledge of the importance of reporting a workers' compensation claim to the employer and her specific supervisory training as to the procedure for reporting such a claim, Mary Guy did not make a claim for a workers' compensation related stroke until after her group medical insurance was

cancelled when B.C. Rogers filed for bankruptcy on November 19, 2001. (Tr. at pp. 44:3-23; 52:11-25; 53:1-4).

Following Guy's alleged stroke, on November 22, 2000, Guy with the assistance of her sister, completed an application for disability benefits through Fortis Insurance Company. (Tr. at 53:5-29; 54:1-28; Exhibits at Vol. 3, Employer/Carrier's Exhibit 10 - Claimant Statement of Application). During Guy's employment, B.C. Rogers paid the premiums for Appellant's long term disability policy with Fortis. Because Guy is unable to read or write, her sister completed her application for disability benefits. (Tr. at p. 54:17-28). After completing the application, Guy's sister read the information on the form to her to verify its accuracy before Guy signed it. (Id.) Part of the application contained a question that required Guy to identify "the nature of illness and when symptoms first appeared or describe how and when the accident occurred". (Tr. at p. 55:1-6; Exhibits at Vol. 3, Employer/Carrier's Exhibit 10 - Claimant Statement of Application). Mary Guy responded that she "had a stroke that occurred *at home* on September 5, 2000. (Tr. at p. 55:1-6).

Bruce Brawner testified as a vocational expert at the hearing in this matter on behalf of Guy. Based upon Brawner's review of Guy's medical records and after performing certain vocational tests, he concluded that she is employable with a "fair" to "good" vocational potential for securing employment. (Tr. at pp. 84:22-29; 85:1-7; 93:25-29 - 94:1). Brawner met with Mary Guy on only one occasion. Thereafter, Guy never contacted him regarding assistance in obtaining her GED or for any job placement assistance. (Tr. at pp. 89:20-21; 89:26 - 91:7). Brawner testified that he never obtained a written job description from B.C. Rogers nor did he talk to Guy's supervisor to determine her specific job duties as a supervisor for the employer. (Tr. at p. 88:17-27). According to Mary Guy's own admission, she never sought assistance from

Mr. Brawner in obtaining employment. (Tr. at p. 57:23-28). Furthermore, May Guy has not made any attempts to find employment nor has she contacted B.C. Rogers about returning to work since September 5, 2000. (Tr. at p. 36:15-20; 57:23-28).

VI. STANDARD OF REVIEW

In reviewing decisions below, the appellate court is “obligated to give substantial deference to those findings of fact made by the Commission.” Ross v. B.C. Rogers Processors, Inc., 787 So. 2d 664, 667 (Miss. Ct. App. 2001) (citing Pilate v. Intern’l Plastics Corp., 727 So. 2d 771, 774 (Miss. Ct. App. 1999); Natchez Equip. Co. v. Gibbs, 623 So. 2d 270, 273 (Miss. 1993)). “An appellate court may not simply reweigh the evidence and substitute its decision for that of the Commission. Indeed, this Court has a duty to defer to the Commission when its decision can be supported.” Sellers v. Tindall Concrete Products, Inc., 878 So. 2d 1096, 1100 (Miss. Ct. App. 2004). The appellate court must not substitute its “own independent view of where the more persuasive evidence might lie; rather, if [this Court] . . . determine[s] that there is substantial evidence in the record to support the Commission’s fact-finding, [it is this Court’s] obligation . . . to affirm.” Lanterman v. Roadway Exp. Inc., 608 So. 2d 1340, 1345 (Miss. 1992).

VII. SUMMARY OF THE ARGUMENT

Mary Guy’s claim that she suffered a stroke as a result of work stress is unsupported by the facts, the medical evidence and the testimony of the credible expert witnesses. Dr. Rigdon and Dr. Myers questioned the diagnosis of a stroke altogether. But, regardless of whether Guy had a stroke or not, the opinion of neurologist Dr. Mitchell Myers was that Guy’s “stroke” was too remote in time to be linked to physical exertion from her job and that Guy did not indicate that she was under any unusual stress from her employment as a supervisor with B. C. Rogers which could have precipitated a stroke. As a specialist who diagnoses and treats stroke patients,

the Commission properly gave greater weight to Dr. Myers' opinions than those of Dr. Clark, a general practitioner. Furthermore, Guy's claim lacks credibility due to her total failure to make a claim for workers' compensation benefits until after B. C. Rogers filed for bankruptcy which resulted in cancellation of her group medical insurance. The evidence presented in this case unequivocally fails to support a causal connection between Guy's alleged stroke and her employment with B. C. Rogers. Hence, the Full Commission's decision below was well-reasoned and supported by the substantial weight of the credible evidence and should be affirmed.

VIII. ARGUMENT

A. The credible and substantial evidence presented in this case fails to prove by a preponderance of the evidence that Mary Guy sustained a compensable injury on September 5, 2000 while employed with B.C. Rogers.

"Under Mississippi law it is the Claimant's burden to prove, by a preponderance of the evidence that a work related injury occurred, that a disability exists and that there is a causal connection between the injury and such disability. Vardaman Dunn, Mississippi Worker's Compensation § 265 (3d ed. 1990). "The latter two elements 'must be supported by medical findings'." Johnson v. Sanderson Farms, Inc., 1998 WL 329677 (Miss. Work. Comp. Com.). "[I]n all but the simple and routine cases: the claimant must establish causation by expert medical testimony, Cole v. Superior Coach, 106 So. 2d 71, 72 (Miss. 1958), and such medical proof must be to a degree of reasonable probability rather than mere possibility. Harrell v. Time Warner, 856 So. 2d 503, 511 (Miss. App. 2003), citing, Burnley Shirt Corp. v. Simmons, 204 So. 2d 451 (Miss. 1967)." Curl v. Quality Alum. Prod., 2006 WL 3346197 (Miss. Work. Comp. Com.). "The probative value of medical testimony is for the fact finding tribunal to decide."

Johnson v. Gulfport Laundry & Cleaning Co., 162 So. 2d 859, 863 (Miss. 1964). As the fact finding tribunal, “[i]t is the role of the Commission to weigh the credibility of the witnesses and decide what weight and worth to give to the evidence.” Pickering v. Cooper Tire & Rubber Co., 792 So. 2d 298, 300 (Miss. Ct. App.), cert. denied, (Miss. 2001). “Where there is conflicting medical testimony, the Commission has the responsibility to apply its expertise and determine which evidence is more credible.” Wesson v. Fred’s Inc., 811 So. 2d 464, 469 (Miss. Ct. App. 2002). Here, the Commission applied its expertise and determined the credibility and weight of the evidence; however, Guy seeks to have this court re-evaluate the evidence and to substitute its own opinion as to the credibility and weight of the evidence which is outside the purview of a Mississippi appellate court.

The real issues presented by this appeal are whether the substantial credible evidence supported the Commission’s findings as to (1) whether Mary Guy had a stroke on September 5, 2000; and (2) if she did in fact have a stroke, was it causally connected to her job as a supervisor with B. C. Rogers? The cumulative evidence presented at the hearing below substantially supports the Commission’s finding against a compensable work injury.

The medical evidence presented at the hearing in this matter before Administrative Judge Henry revealed that the experts had conflicting opinions as to both of these issues. Judge Henry carefully studied the testimony of the medical experts, the testimony of the live witnesses at the hearing, Guy’s medical records, diagnostic studies and other exhibits presented at the hearing before finding that the evidence substantially weighed in favor of a non-compensable injury. In reaching his ultimate ruling against compensability, the Commission, in adopting Judge Henry’s order, appropriately relied upon Raytheon Aerospace Support Serv. v. Miller, 861 So. 2d 330 (Miss. 2003) as authority for their decision to place more weight upon the opinions of Dr. Myers,

a neurologist, than the opinions expressed by Dr. Howard Clark, a general practitioner, especially when viewing all of the evidence as a whole.

In Raytheon, the Mississippi Workers' Compensation Commission, acting as the finder of fact, reviewed the conflicting medical evidence presented, as well as other evidence in the case, and rejected the opinions of the claimant's *treating family doctor in favor of the opinion of a specialist who had examined the claimant on only one occasion*. Id. at 334. On appeal, the Circuit Court reversed the decision of the Full Commission in favor of the claimant which was upheld on appeal to the Mississippi Court of Appeals. Id. Ultimately, the Mississippi Supreme Court reversed the Court of Appeals and reinstated the findings of the Commission denying compensability thereby giving greater weight to the medical specialist's opinion who saw the claimant on only one occasion. Id. at 338. As quoted in Judge Henry's opinion, which the Commission adopted, the Mississippi Supreme Court explained its reversal in Raytheon as follows:

The Commission also serves as the ultimate fact finder in addressing conflicts in medical testimony and opinion. "Where medical expert testimony is concerned, this Court has held that whenever the expert evidence is conflicting, the Court will affirm the Commission whether the award is for or against the claimant." Kersch v. Greenville Sheet Metal Works, 192 So. 2d 266, 268 (Miss. 1966). The Commission properly considered treating and examining specialists versus a general practitioner and chose to accept the version of the treating and examining specialists who did not see any of Miller's disabilities as "total" or "permanent" disabilities.

Id. at 336. (R. at Vol. 2 - Order of Administrative Judge at p. 21). Relying upon the Mississippi Supreme Court's holding in Raytheon, the Commission (by adopting Judge Henry's ruling) reasoned that the medical opinions of the treating expert are "merely [a] useful aids to making determinations and are not substitutes for reaching *reasoned*

decisions based on the records as a whole.” (R. at Vol. 2 - Order of Administrative Judge at p. 21) (emphasis added).

Mary Guy seeks to have this Court reweigh the evidence presented below. However, the evidence presented in this case and viewed in its entirety substantially supports the Commission’s finding that Mary Guy failed to meet her burden of proof as to whether her purported stroke occurred and whether it was work related. The record is replete with compelling evidence that supports the Full Commission’s ruling.

First, the medical opinions of Dr. Mitchell Myers are more credible, more persuasive and more soundly reasoned than those of Dr. Clark. Dr. Clark was of the opinion that Guy’s stress at work caused the onset of an alleged stroke, yet he had no knowledge of Guy’s specific job duties or the specific production line that Guy supervised at B.C. Rogers. (Exhibits at Vol. 1 - depos. of Dr. Howard Clark at pp. 17:13-25; 18:1-9; 26:5-8). In contrast, Dr. Myers is a board certified neurologist whose speciality includes the diagnosis and treatment of strokes. While it is true that the Guaranty Association requested the examination by Dr. Myers, he did not examine Mary Guy on just one occasion. Instead, Dr. Myers examined Guy on *two* occasions (one year apart) and also carefully reviewed her medical records and diagnostic studies while considering her job duties at B.C. Rogers in order to reach his ultimate opinion. (Exhibits at Vol. 2, Employer/Carrier’s Exhibit 7 - depos. of Dr. Myers C-7 at p. 18:2-5). Unlike Dr. Clark, Dr. Myers actually reviewed and studied Guy’s September 6, 2000 CT scan and her March 2003 MRI. (*Id.* at p. 20:4-6). **Dr. Clark admitted that the CT scan did not reveal a stroke and further admitted that he had never actually looked at the 2003 MRI.** (Exhibits at Vol. 1 - depos. of Dr. Howard Clark at pp. 29:2-6; 29:7-25;

30:16-18). Instead, Dr. Clark solely relied upon the written opinions rendered by the radiologists. Dr. Myers also noted that the chief symptoms reported by Mary Guy at the emergency room on September 5, 2000 were *inconsistent* with a left sided stroke, specifically the severe right sided neck pain. (Exhibits at Vol. 2, Employer/Carrier's Exhibit 7 - depos. of Dr. Myers C-7 at p. 8:4-11). Her symptoms, coupled with her objective diagnostic studies, did not convince Dr. Myers of anything other than the "possibility" of a stroke. (Exhibits at Vol. 2, Employer/Carrier's Exhibit 7 - depos. of Dr. Myers C-7 at pp. 12:14-16; 13:6-7). Dr. Myers was certain that any physical exertion by Guy at work on September 2, 2000 was too remote in time to be linked to a possible stroke *three days later* on September 5, 2000. (Exhibits at Vol. 2, Employer/Carrier's Exhibit 7 - depos. of Dr. Myers C-7 at p. 16:17-27). Finally, Guy never reported to Dr. Myers during her two examinations that she had been under any unusual stress at work prior to and including September 2, 2000. (Exhibits at Vol. 2, Employer/Carrier's Exhibit 7 - depos. of Dr. Myers C-7). If Mary Guy had thought that any physical or emotional stress at work had caused her to have a stroke, then surely she would have thought that information to be worthy of mentioning to Dr. Myers. However, she never indicated to him that her job at B.C. Rogers had caused her stress of any kind. (Id.) Finally, Dr. Myers considered a detailed description by Guy of her job duties at B.C. Rogers in reaching his final opinion that there was no causal connection between Mary Guy's possible stroke and her job at B.C. Rogers. (Exhibits at Vol. 2, Employer/Carrier's Exhibit 7 - depos. of Dr. Myers C-7 at p.16:17:27).

In stark contrast, Dr. Clark's opinion that Guy's job at B.C. Rogers caused her to have a stroke on September 5, 2000 is unsound, illogical and unsupported by the facts.

While Dr. Clark provided medical treatment to Guy during her hospitalization in September 2000, he could not confirm that he had ever even reviewed Guy's September 6, 2000 CT scan or her March 2003 MRI. (Exhibits at Vol. 1 - depos. of Dr. Howard Clark at pp. 29:2-6; 29:7-25; 30:16-18). Dr. Clark also admitted that Guy neither reported to him any particular emotional stress caused by her job at B.C. Rogers, despite his frequent examinations of her over the years, nor that she reported to him that she had undergone any unusual events at work on September 2, 2000 that put her symptoms into motion. (Exhibits at Vol. 1 - depos. of Dr. Howard Clark attached to his deposition as Exhibit 1). Dr. Clark's medical records when studied as a whole do not bear out *any* complaints by Ms. Guy of unusual stress at work. (Id.) Of particular significance is that Dr. Clark could not recall Guy reporting to him at any time that her symptoms of September 5, 2000 began three days earlier at work. (Exhibits at Vol. 1 - depos. of Dr. Howard Clark at pp. 32:19-25; 33:1-2).

Guy argues in her brief that Dr. Clark was of the opinion that the purported stroke was caused by a rise in her blood pressure resulting from the pain that she endured from standing at work when her phlebitis was active. (see Id. at pp 19:9-15; 20:3-22; 33:14-25 - 33:1-2.) Yet, there is no proof in the record that Guy ever presented to Dr. Clark for treatment of phlebitis or leg pain in which she complained that her job was causing increased pain or stress on her during the one year period preceding her September 5, 2000 admission to Scott Regional Hospital Emergency Room. (Id. at Exhibit 1 - Dr. Clark's medical records for treatment rendered to Mary Guy). Furthermore, Dr. Clark's file for Ms. Guy is also void of any proof that he ever took Guy off of work due to leg pain or stress. (Id.).

Dr. Clark also based his opinion as to causal connection on very limited knowledge of Guy's job duties at B.C. Rogers which is certainly a relevant set of facts for a medical expert to consider. Dr. Clark made vague and general assumptions about Guy's job duties and also assumed stress even though it was *never* recorded in his medical records. (Exhibits at Vol. 1 - depos. of Dr. Howard Clark at pp. 17:13-25 - 18:1-9; 26:5-8; 33:14-25 - 34:1-11). His testimony as to her alleged stress came strictly from his memory. Dr. Clark also had virtually no knowledge of Guy's specific work duties at B. C. Rogers on September 2, 2000 or any other time. (Exhibits at Vol. 1 - depos. of Dr. Howard Clark at pp. 33:14-25 - 34:1-11). Lack of knowledge of facts that would have been pertinent to his analysis and expert medical opinion certainly render his final opinion unreliable and lacking in probative value. The Mississippi Supreme Court has stated that "testimony . . . based merely on memory, estimate or casual observation, must yield to that which is based on actual measurement." S.H. Kress & Co. v. Sharp, 126 So. 650, 651 (Miss. 1930) (quoting 1 Moore on Facts, § 415). Dr. Clark's specialty is that of family medicine. Greater deference should be given to the opinion testimony of a specialist in neurology and/or cardiology as a medical condition such as a stroke is squarely within the purview of the neurologist's specialty and the cardiologist's specialty. When viewing the testimony of the medical experts in this case, Dr. Clark's opinions are clearly unreliable as compared to the opinions of Doctors Myers, Athar and Rigdon which are based upon sound scientific analysis grounded firmly in the facts of this case. Thus, any attempt by Dr. Clark to connect Mary Guy's job to her alleged stroke is based purely upon memory, conjecture and assumptions unsupported by the facts of this case which renders Dr. Clark's opinion unreliable.

In addition to the medical opinions of Dr. Myers and Dr. Clark, the remaining facts contained in the record unequivocally and substantially support the Commission's findings when viewed as a whole. Mary Guy admitted that her symptoms did not begin at work. (Tr. at p. 49:22-24). She further admitted that she did not experience any unusual physical or emotional stress on September 2, 2000 when she last worked at B.C. Rogers. (Tr. at 46:25-29; 47:1-15). It was essentially a normal work day for Ms. Guy. (Id.) Ms. Guy also conceded at the hearing that she knew the process of filing a workers' compensation claim and that she had assisted employees working under her at B.C. Rogers in filing claims with the employer in the past. (Tr. at p. 53:1-4). Yet, despite having knowledge as to the procedure for reporting a claim, she made absolutely no attempt to report her possible stroke as a work related injury until B.C. Rogers filed for bankruptcy fifteen months later and her group medical insurance was cancelled. (Tr. at 52:18-25). Clearly, Mary Guy's only motive in making a claim for workers' compensation benefits was to find a source of payment for her medical bills. During the fifteen month period between the date of the alleged stroke and the cancellation of her group medical insurance following B.C. Rogers' bankruptcy, Mary Guy also filed for long term disability insurance and represented to that carrier that her symptoms had begun at home and not at work. (Tr. at 55:1-6). All of these facts, combined with the expert medical opinion of Dr. Myers, support the Commission's finding that Mary Guy did not sustain a compensable injury on September 5, 2000 while she was employed with B.C. Rogers.

Guy places excessive weight in her brief as to an allegation that her stroke was caused by extreme stress from her job at B.C. Rogers and that Dr. Myers did not consider

that fact in rendering his expert opinion. This is simply untrue. Dr. Myers examined Mary Guy on *two* occasions and tediously reviewed her medical records (which revealed no reports of work stress) and diagnostic studies specifically to determine (1) whether she had in fact suffered from a stroke and (2) whether her medical condition, stroke or no stroke, resulted from her job at B.C. Rogers. Despite having been examined by Dr. Myers *twice*, Guy clearly never thought any stress she had at work was significant enough to mention it to Dr. Myers⁵. Dr. Myers also stated that he may or may not have advised Ms. Guy to reduce her work activities due to high blood pressure “[i]f she felt like she was able to manage her work challenges.” (Exhibits at Vol. 2, Employer/Carrier’s Exhibit 7 - depos. of Dr. Myers C-7 at p. 31:22-29). Again, Mary Guy clearly did not consider her supervisory work to be stressful enough to mention it to either her longtime family physician, Dr. Clark, or to Dr. Myers. After thoroughly considering Mary Guy’s job duties and the events of her last day at B.C. Rogers, it was Dr. Myers’ expert opinion that Guy’s possible stroke was not connected to her job. (Exhibit C-7 at pp. 37:28-29; 38-41; 42:1-11). It is purely speculative to attempt any connection between Guy’s alleged work stress and her alleged stroke. Administrative Judge Henry correctly determined, which the Commission and Circuit Court adopted by affirmation,

that the neurologist, Dr. Myers, by virtue of his specialized training and expertise, is simply better suited than the general practitioner, Dr. Clark, to opine on whether the possible stroke was work-related.

(R. at Vol. 2 - Order of Administrative Judge at p. 22).

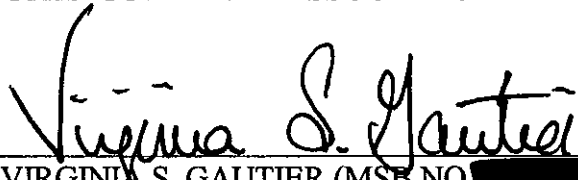
⁵Nor did Guy place enough significance on her work environment conditions to mention it to Dr. Clark over the many years that he served as her family physician as Dr. Clark’s medical file is void of any recordation of complaints by Guy of work stress of any kind.

IX. CONCLUSION

Despite the conflict in the medical evidence, when the entire record is considered as a whole, the evidence presented in this matter conclusively supports the Commission's finding that Mary Guy failed to prove that she had a stroke that was causally connected to her job as a supervisor at B.C. Rogers. The substantial evidence supports the findings of the Commission against compensability and should, therefore, be affirmed as such findings are thorough and well-reasoned. Therefore, the Guaranty Association urges this Court to affirm the Order of the Circuit Court of Scott County, Mississippi in all respects.

Respectfully submitted this, the 27th day of March, 2008.

MISSISSIPPI WORKERS' COMPENSATION SELF-
INSURER GUARANTY ASSOCIATION

By: 
VIRGINIA S. GAUTIER (MSB NO. [REDACTED])
ATTORNEY FOR GUARANTY ASSOCIATION

OF COUNSEL:

WISE CARTER CHILD & CARAWAY, P.A.
600 Heritage Building
401 East Capitol Street
Jackson, MS 39201
(601) 968-5540

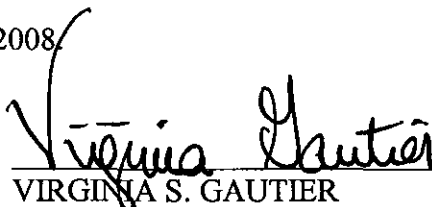
CERTIFICATE OF FILING

I, Virginia S. Gautier, hereby certify that I have this day filed with the Clerk via hand delivery and mailed, via United States Mail, postage prepaid, a true and correct copy of the above and foregoing document to the following counsel of record:

David N. Gillis, Esq.
405 Tombigbee Street
Jackson, MS 39201

Honorable Mark Henry
Administrative Judge
Mississippi Workers' Compensation Commission
Post Office Box 5300
Jackson, MS 39296-5300

This the 27th day of March, 2008.



VIRGINIA S. GAUTIER