

IN THE SUPREME COURT OF MISSISSIPPI

MARY GUY

VS.

B. C. ROGERS PROCESSORS, INC.

AND

MISSISSIPPI WORKERS' COMPENSATION
SELF-INSURER GUARANTY ASSOCIATION

FILED

APPELLANT

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SUPREME COURT
COURT OF APPEALS

APPELLEES

ON APPEAL FROM
CIRCUIT COURT OF SCOTT COUNTY, MISSISSIPPI
NO. 2007-CV-044-SC-G
MISSISSIPPI WORKERS' COMPENSATION COMMISSION
NO. 02 02065-H-3548-D

BRIEF OF MARY GUY, APPELLANT

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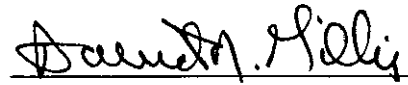
CERTIFICATE OF INTERESTED PERSONS

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

1. Mary Guy, Appellant, P. O. Box 332, Morton, MS 39117;
2. B. C. Rogers Processors, Inc., Appellee, c/o Virginia S. Gautier, Wise Carter Child & Caraway, P.A., P. O. Box 651, Jackson, MS 39205-0651;
3. Mississippi Workers' Compensation Self-Insurer Guaranty Association, Appellee, c/o Virginia S. Gautier, Wise Carter Child & Caraway, P.A., P. O. Box 651, Jackson, MS 39205-0651;
4. Honorable Mark Henry, Administrative Judge, Mississippi Workers' Compensation Commission, P. O. Box 5300, Jackson, MS 39296-5300;
5. Honorable Liles Williams, Honorable Barney J. Schoby, Honorable John R. Junkin, Commissioners, Mississippi Workers' Compensation Commission, P. O. Box 5300, Jackson, MS 39296-5300;
6. Honorable Marcus D. Gordon, Circuit Court Judge, P. O. Box 220, Decatur, MS 39327;

7. Virginia S. Gautier, Wise Carter Child & Caraway, P.A., Attorneys for Appellee, P.
O. Box 651, Jackson, MS 39205-0651;

8. David N. Gillis, Attorney for Mary Guy, Appellant, 405 Tombigbee St., Jackson, MS
39201.

A handwritten signature in cursive script, reading "David N. Gillis", written over a horizontal line.

David N. Gillis

Attorney for Mary Guy, Appellant

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STATEMENT OF THE ISSUES

Are the opinions of the examining medical specialist entitled to greater weight than those of the attending general practitioner considering that the specialist did not have knowledge of all the relevant facts concerning Claimant's life, her job and her work activities and considering that the specialist based his opinion of no work-connection on the false assumption that Claimant did not experience physical and emotional stress at work.

STATEMENT OF THE CASE

(A) Nature of the Case.

Mary Guy sustained a work-related accident and injury on September 5, 2000, when she suffered a stroke brought on by the cumulative stress and trauma of performing her job activities as a supervisor with B. C. Rogers Poultry, Inc. As a result of her accident and injury, Mrs. Guy is permanently and totally occupationally disabled.

(B) The Course of the Proceedings and its Disposition in the Court Below.

The Order Affirming The Decisions Of Full Commission And The Administrative Judge was entered in the Circuit Court of Scott County, Mississippi, on August 13, 2007. In its Order, the Circuit Court agreed with both the Full Commission and the Administrative Judge that Mrs. Guy had failed to prove that she had suffered a stroke and that the stroke was work-related. The Administrative Judge had stated that the primary question to be decided was whether the stroke suffered by Claimant was work-related. Claimant's treating physician, a family practitioner, gave his opinion that the stroke was work-related. However, the non-treating physician, a neurologist hired by the employer, believed the stroke was not causally related to Claimant's employment. Upon finding that the opinions of the neurologist were entitled to greater weight than the opinions of the family practitioner due to the neurologist's specialized training and experience, the Administrative Judge denied and dismissed Claimant's claim for workers' compensation benefits.

Claimant's Notice Of Appeal was filed on August 28, 2007, on the grounds that the

Circuit Court Order was not supported by substantial evidence, was clearly erroneous, was contrary to the overwhelming weight of the evidence and was contrary to law. Additionally, Claimant's appeal was filed on the grounds that the Circuit Court Order failed to apply the Act in a just and reasonable manner and failed to give due regard for the beneficent intent and purpose of the Act resulting in a manifest injustice to the Claimant.

(C) Statement of Facts.

Testimony of Mary Guy.

Mary Guy testified she was a resident of Morton, Mississippi, and was 65 years old at the time of the hearing. (T.8-9). Although Mrs. Guy completed the 7th grade in school, she is unable to read a book, a newspaper or her own deposition and is unable to complete an application for benefits. (T.9-11; 46; 53-54).

Mrs. Guy began working with the B. C. Rogers on June 9, 1961, when she was 21 years old. (T.11-12). The job with B. C. Rogers was the only job Mrs. Guy ever had in her life, and she continued working with the employer full time and continuously for the next 39 years until she suffered her stroke on September 5, 2000. (T.11-12).

Mrs. Guy began work with B. C. Rogers trimming livers with scissors on the straight line. (T.12; 41). She then moved to the cut-up line where she used a knife cutting drumsticks, breasts, etc. (T.12; 41). She then became a supervisor and continued working in that position for approximately the last 20 years of her employment. (T.12). As a supervisor, she first worked on the cut-up line and then moved to the debone department. (T.12). For most of her final 20 years at B. C. Rogers, she supervised the breast trimming department which is where she was working when she had her stroke. (T.12-13).

As a supervisor, Mrs. Guy arrived at work at 3:45 a.m. and would perform sanitation work, which involved inspecting the work area for cleanliness, and would prepare the line for the other employees who would begin work at 6:00 a.m. (T.13; 17; 43). If the employer were shorthanded, Mrs. Guy would have to step in and do the work of the employees she supervised. (T.13). When they were shorthanded, Mrs. Guy would trim, pick up meat off the floor, wash

down the line, help with bagging, weigh and stack boxes on the pallets and form the boxes in which she would put bags of meat. (T.13).

The boxes weighed 40 pounds and contained four bags weighing 10 pounds each. (T.20). The boxes would be placed on a scale and weighed and then would be picked up and placed on a pallet. (T.20). Mrs. Guy performed this work every day or every other day. (T.21). Mrs. Guy would place meat in pans which weighed 25 to 30 pounds and would carry the pans to a combo where she dumped the meat, and she performed this work every day. (T.13-14; 21).

Mrs. Guy had authority to fire employees but not to hire them. (T.14). Because Mrs. Guy was unable to fill out and complete paperwork, she had another employee keep up with the work performed each day and prepare a typewritten document which Mrs. Guy would turn in at the end of the shift. (T.10-11; 14). Mrs. Guy did not prepare work schedules for employees. (T.14). When Mrs. Guy was not performing the work of absent employees, she would stand and watch over two lines to make sure the employees did not get behind in their work. (T.15-16). However, because they were shorthanded almost every day, Mrs. Guy was required to fill in for the employees who were not present. (T.16).

The job required Mrs. Guy to stand on her feet all day long on a concrete floor. (T.16; 21). The only time she was able to sit was during her lunch break. (T.16).

Mrs. Guy's workday started at 3:45 a.m. and ended at 3:30 p.m. (T.17). She worked from 5 1/2 to 7 days a week. (T.17-20). About half the time Mrs. Guy worked until noon on Saturday and the other half of the time she worked all day on Saturday. (T.19). If she worked all day Saturday, she had to also work on Sunday to perform maintenance which meant checking the lines to be sure nothing was torn up. (T.17-18). On Sundays, she worked from 7:00 a.m. to 10:30 or 11:00 a.m. (T.19-20).

Mrs. Guy was diagnosed with a stroke on September 5, 2000. (T.21). On that day she was experiencing pain in her right leg and right arm, and she was taken by her daughter to the emergency room at Scott Regional Hospital where she was admitted and treated by Dr. Howard Clark. (T.21-22). The pain in Mrs. Guy's leg and arm began when she woke up the previous day on September 4, 2000, and continued that night and on into the next day when she was carried to

the emergency room. (T.49).

Claimant told her personnel manager that she had suffered a stroke, and she also called Mickey McMillan, her supervisor, and told him after she got home from the hospital. (T.23-24).

Mrs. Guy continued to be treated by Dr. Howard Clark for her stroke after she was released from the hospital. (T.24; 25). Mrs. Guy has been treated by Dr. Clark for approximately 40 years, and she has always gone to see him for treatment whenever she would get sick or need to see a doctor. (T.24; 45-46).

Mrs. Guy says that her complaints have not changed from the time she was released from the hospital following her stroke. (T.25-26). Mrs. Guy testified that her right arm still goes to sleep and her hand and leg ache. (T.26). The pain starts in the right shoulder and travels down the length of her arm into her hand. (T.26). The pain in the arm is present most of the time. (T.26). Mrs. Guy testified that if she tries to pick up a skillet she is afraid she will drop it because she has no strength in her hand. (T.26-27).

The pain in Mrs. Guy's leg starts in the thigh and travels down the leg into the knee and calf area where she previously suffered with blood clots. (T.27-28). Mrs. Guy experiences numbness in her leg when she sleeps or when she sits for long periods. (T.27). On occasion, she has fallen upon awakening and attempting to walk after she gets out of bed. (T.27). Mrs. Guy has pain in her leg every day, her leg swells when she is on her feet and she must elevate her leg during the day to control the swelling. (T.29). In addition to the pain and swelling, the stroke caused Mrs. Guy's leg to drag when she walks. (T.29-30). Because she has difficulty walking, Mrs. Guy mostly stays at home. (T.29). When she has a doctor's appointment, Mrs. Guy's daughter drives her. (T.29; 45).

Mrs. Guy has difficulty sleeping because of her arm and leg pain. (T.30). She takes over the counter pain medication to relieve the pain. (T.30).

Prior to her stroke, Mrs. Guy developed blood clots in her leg in January or February 1999. (T.30). She was treated for the blood clots by Dr. Clark, who admitted her to the hospital for about a week. (T.30-31). After she was released from the hospital, Mrs. Guy stayed off work for a while until Dr. Clark allowed her to return to work. (T.31). After a period of time back at

work, Mrs. Guy's leg would begin to swell and Dr. Clark would take her off work again until she recovered enough to return to work. (T.31). This pattern of working until her leg swelled too much to continue and of then being taken off work until she recovered enough to return to work continued up until September 5, 2000, when she suffered her stroke. (T.31).

Prior to developing the blood clots in January or February 1999, Mrs. Guy had never missed work due to illness or injury. (T.31-33). When Mrs. Guy returned to work after recovering from the blood clots, she would have to stand against the wall with one foot propped up. (T.33). Eventually, however, the pain and swelling would force her to return to see Dr. Clark, who would again take her off work. (T.33).

Whenever Mrs. Guy experienced pain and swelling in her leg, she would see the employer's nurse who kept a record of Mrs. Guy's visits. (T.33; 58). Mrs. Guy saw the plant nurse on many occasions for complaints of pain due to the blood clots in Claimant's leg. (T.58). Although in her discovery requests, Claimant requested that the employer produce copies of documents pertaining to Claimant's complaints to the plant nurse, no such documents were ever produced by B. C. Rogers. (T.58-59).

Mrs. Guy experienced stress on the job prior to her stroke because she was always shorthanded. (T.33-35; 47-48). Mrs. Guy testified that she felt unable to fill all the orders her employer gave her to do at work. (T.34). Mrs. Guy testified, "When you're shorthanded, you can't do everything. You're going to get stressed out over it. ... I was just steady running and running." (T.34). Because they were always shorthanded, Mrs. Guy was not only required to perform her own supervisory job but she also had to do the work of any missing employees. (T.47-48). There were usually multiple absences on any given day rather than just one absent employee, and the frequency of absences had increased over the final two or three years of Mrs. Guy's employment at B. C. Rogers. (T.47-48).

After the blood clots and prior to the stroke, Mrs. Guy would experience pain in the calf of her leg after standing for long periods of time. (T.35-36). After the stroke, Mrs. Guy began experiencing pain in her arm and pain and numbness starting in her thigh and going all the way down her leg. (T.35-36).

Mrs. Guy never returned to work at B. C. Rogers after she had her stroke. (T.36). Mrs. Guy testified she did not feel like she was able to return to work and do the work activities required by B. C. Rogers and knew she could not stand all day on the concrete floor. (T.36). She did not seek work with other employers because she did not feel able to do the work and she had no education. (T.36-37). B. C. Rogers never talked to Mrs. Guy about coming back to work and never offered to accommodate her in any other type of work. (T.37).

Mrs. Guy's medical treatment related to her stroke was paid for under a medical insurance policy held through her employment with B. C. Rogers. (T.37-38). The policy paid 80% of the treatment costs and Mrs. Guy paid the other 20%. (T.38). The policy terminated when B. C. Rogers filed a petition in bankruptcy at the end of 2001. (T.38). Since the termination of the policy, Mrs. Guy has been forced to pay 100% of the cost of medical treatment. (T.38-39).

Mrs. Guy has been receiving Social Security disability benefits since March or April of 2003. (T.39).

Mrs. Guy also received benefits under a long-term disability policy with Fortis Insurance Company. (T.39-40).

Testimony of Brenda Guy.

Brenda Guy is 52 years old and is a farmer residing in Pulaski, Mississippi. (T.62-63). Brenda Guy is Mary Guy's daughter-in-law, and she has known Mary Guy for about 40 years. (T.63). She and Mary Guy worked at the same B. C. Rogers plant for five or six years. (T.63).

Brenda Guy lived about a mile and a half from Mary Guy and would see Mary Guy three or four times a week in the years before Claimant suffered her stroke. (T.63). Prior to Claimant's stroke, Brenda Guy testified that Mary Guy was in good health and was working every day in spite of having developed blood clots. (T.63-64). Brenda Guy was not aware of Claimant having any difficulties with her mental capabilities prior to the stroke. (T.64).

After Mrs. Guy suffered her stroke, Brenda Guy continued to visit with Claimant three or four times per week and would take Mrs. Guy wherever she might need to go, including taking

Claimant to visit her physicians. (T.64). Brenda Guy testified that prior to the stroke the Claimant "could walk circles around (her)" but that after the stroke the Claimant could not hold out walking like she could before the stroke. (T.65). Brenda Guy testified that the Claimant began to drag her leg after the stroke and stated that Claimant "kind of loses the use of it ... when she gets to walking." (T.65). Brenda Guy stated that the Claimant used to be very active and would never sit down but that since her stroke the Claimant tires easily, is unable to work in the yard like she used to and mostly just stays around the house. (T.67-68).

Brenda Guy testified that since the stroke the Claimant has difficulty remembering things, tends to forget things and is unable to comprehend or understand what she is told. (T.66). Brenda Guy testified that she would take Claimant to see her physicians, including Dr. Howard Clark and Dr. Mitchell Myers, and would go into the examining room with the Claimant because "when we would go to the doctors, she don't understand what they talking about." (T.66-67). Brenda Guy would ask the doctor to explain things to her so that Brenda Guy could then try to tell the Claimant what the doctor had said. (T.66). "She didn't understand what he was talking about." (T.66).

Testimony of Bruce Brawner.

Bruce Brawner, of 855 South Pear Orchard, Ridgeland, Mississippi, testified on behalf of the Claimant, and the parties stipulated that he is an expert in vocational rehabilitation. (T.69-70). Mr. Brawner performed a vocational rehabilitation evaluation of the Claimant to determine Claimant's residual functional capacity to perform work activities and to determine what work she could perform based on the medical evidence. (T.70-71).

As part of his evaluation, Mr. Brawner reviewed the medical records along with the depositions of Dr. Clark, Dr. Myers and Claimant. (T.72). The opinions of Dr. Clark revealed that Claimant was not as mentally sharp following the stroke, would not be able to perform her supervisory job with B. C. Rogers and could only perform part time sedentary work. (T.72-73). According to Mr. Brawner, Dr. Myers' opinion was that Claimant could not lift more than 20 pounds, would need to sit every 1 1/2 to 2 hours and should not do a lot of bending and

stretching. (T.73).

In his evaluation, Mr. Brawner felt that Claimant's age of 65 was a relevant factor to consider since Claimant is now a person of retirement age. (T.74). Mr. Brawner testified that "We have a little more difficult time as we age with making occupational adjustments." (T.74). Claimant is limited by her 7th grade education but is limited even further by reading at the 1st grade level and by performing math at the 3rd grade level. (T.76-77). Mr. Brawner testified that Claimant did not perform as well as anticipated on reading and mathematics testing compared to her 7th grade education. (T.77). Mr. Brawner stated that the reason for Claimant's low level of performance may be due to the stroke since Dr. Clark had testified that Claimant's mental abilities had diminished after the stroke. (T.77).

Mr. Brawner administered the Crawford Small Part Dexterity Test which measures fine dexterity. (T.79). That test revealed that Claimant had a lack of coordination and dexterity in her right hand and was in the lowest percent of other persons tested. (T.79).

It was Mr. Brawner's opinion that Claimant could not return to her job as supervisor with B. C. Rogers due to the standing, walking and lifting required. (T.82). Following Dr. Clark's opinions, Claimant has lost access to 80% of the labor market. (T.82-84). Using Dr. Myers' opinions, Claimant has lost access to 40% of the labor market. (T.84). Although Claimant's potential for securing work at the present time is fair based on Dr. Clark's opinions, she would need vocational services to find a job and even then it would not be easy to find a job. (T.84-85).

Claimant's average weekly wage was stipulated to be \$604.55. (T.86). Mr. Brawner's opinion is that Claimant could only earn \$5.15 hourly for four hours per day based on Dr. Clark's testimony or \$103.00 per week. (T.86). Claimant's loss of earnings per week would amount to \$501.55 which is equivalent to a loss of 83% in her ability to earn wages. (T.86-87).

According to Mr. Brawner, the average worker in Mississippi has 11.2 years of education. (T.87-88).

The fact that Mrs. Guy is unable to drive would greatly limit her access to any available jobs. (T.95-97).

Claimant's Exhibit No. 1: Deposition Testimony of Howard Clark, M.D.

Howard Clark, M.D., testified by deposition given on September 9, 2004. (Deposition of Howard Clark, M.D., p.1). Dr. Clark graduated from Tulane Medical School in 1955, interned at University Hospital in Jackson, Mississippi, and has practiced medicine in Morton, Mississippi, for the past 47 years. *Id.*, 5-6. Dr. Clark has staff privileges at S. C. Lackey Hospital in Forest, Mississippi, and at Scott Regional Hospital in Morton, Mississippi, where he is also chief of staff. *Id.*, 6-7. Dr. Clark's specialty is family practice and he has been board certified in that field since 1977. *Id.*, 6.

Dr. Clark has treated Mary Guy as a patient since March 1, 1962. *Id.*, 7. Before February 3, 1999, Dr. Clark treated Mrs. Guy for routine conditions such as bronchitis, heart flutter and sinus infections. *Id.*, 9-10.

On February 3, 1999, Mrs. Guy presented to Dr. Clark for complaints of pain and discomfort in the right calf and she was admitted to the hospital with acute phlebitis of the right leg. *Id.*, 9-10. At that time the right calf was one inch larger than the left and the leg itself was red, hot, swollen and tender. *Id.*, 10-11. Dr. Clark treated the phlebitis with Coumadin and he continues to treat Mrs. Guy for that condition at the present time. *Id.*, 11.

On September 5, 2000, Dr. Clark treated Mrs. Guy in the emergency room with complaints that her neck and head had been bothering her for about three days. *Id.*, 11. Dr. Clark believed Mrs. Guy had a left sided CVA, or stroke, on the left side of the head which caused problems on the right side, and he admitted her to the hospital where she stayed until discharged on September 8, 2000. *Id.*, 11-12. Diagnosis upon discharge was that Mrs. Guy had sustained a left middle cerebral artery stroke, left side of the head. *Id.*, 12. The findings that led Dr. Clark to conclude the patient had a left CVA included the following: Complaints of the right side of the neck that had been bothering Mrs. Guy for about three days; decrease of strength on her right side; deficiency of closing of the right eyelid; decreased facial sensation on the right; right side of her face would not function as it should; inability to close her right eye tightly; right sided weakness; and, although initial complaints pertained to the right arm and right facial area, she later developed a weakness of the right leg. *Id.*, 12. Additionally, the findings included walking

with a limp of the right leg and headaches. *Id.*, 27-28. A CT performed at the time of admission did not show the stroke but a later MRI confirmed the stroke. *Id.*, 12-13.

After Mrs. Guy was discharged from the hospital, she continued to be treated by Dr. Clark in his office. *Id.*, 13-14. Treatment consisted of monitoring her condition and monitoring her medication which included Coumadin to help the circulation from her stroke and to help with the phlebitis condition. *Id.*, 14.

Dr. Clark referred Mrs. Guy to Dr. Rigdon, who suggested a referral to a neurologist and she was then referred to Dr. Athar, who treated Mrs. Guy's carpal tunnel syndrome. *Id.*, 15.

At the time of the deposition, Dr. Clark was still treating Mrs. Guy about once a month for her stroke. *Id.*, 16. Dr. Clark stated that "She gets around on her own, but she's, of course, not able to go back to work and that sort of thing." *Id.*, 16-17. Medications at the time of the deposition included Vioxx for the carpal tunnel syndrome; Flexeril as a muscle relaxer; Baby aspirin; Plavix, a type of blood thinner; Lotrel and hydrochlorthiozide for blood pressure; and, Nexium for ulcer symptoms. *Id.*, 17.

Dr. Clark testified that he knew that Mrs. Guy worked at the B. C. Rogers processing plant where she was employed as a foreman. *Id.*, 17. Dr. Clark knew that Mrs. Guy was in charge of an assembly line and that it was her job to make certain that the line operated smoothly and that all employees on that line performed their job properly. *Id.* If an employee was not present to work, it was Mrs. Guy's responsibility to take that employee's place. *Id.* Mrs. Guy's job position required her to walk up and down the line to supervise the workers and she was always walking or standing. *Id.*, 17-18.

After Mrs. Guy developed phlebitis but before she suffered the stroke, Dr. Guy would treat Mrs. Guy from time to time for exhaustion from her work, and Dr. Clark would take her off work for two or three days because of the condition of her leg. *Id.*, 18.

Dr. Clark diagnosed Mrs. Guy with post CVA or cerebral vascular accident or post stroke, phlebitis, hypertension and peptic ulcer disease. *Id.*, 18-19. The cause of the CVA was hypertension and stress. *Id.*, 19-20. At the time Mrs. Guy came to the emergency room, her blood pressure was 212 over 99 and she had been having her symptoms for three days before she

went to the hospital. *Id.* Factors that will cause blood pressure to rise include hereditary factors, lifestyle, work, physical work, but mental factors and stressful conditions are even more important elements causing blood pressure to rise. *Id.*, 20. Dr. Clark stated that being a foreman is a stressful condition. *Id.*, 20.

Dr. Clark testified that physical pain can also cause blood pressure to rise, and on several occasions Dr. Clark took Mrs. Guy off work because of the physical pain she experienced while working at the chicken plant. *Id.*, 20. It was Dr. Clark's opinion that the physical pain and stress experienced by Mrs. Guy while performing her work activities was definitely part of the scenario that caused the stroke. *Id.*, 20-21. Dr. Clark opined that Mrs. Guy's rise in blood pressure definitely caused or contributed to the occurrence of her CVA. *Id.*, 21. Asked to give his opinion as to whether the work activities performed by Mrs. Guy at the chicken plant caused or contributed to the occurrence of the CVA, Dr. Clark testified as follows: "The work at the plant, being a foreman, looking after eight to ten people doing a specific job, having to be sure that they perform their job efficiently, and having to do their jobs at times that they were off the line, is very physical and emotionally stressful and surely contributes to hypertension." *Id.*, 21-22.

Dr. Clark testified that although the patient's condition might improve some, he felt that she had probably reached maximum medical improvement in the last year. *Id.*, 22.

Dr. Clark testified that Mrs. Guy was able to continue to work even though she had phlebitis. *Id.*, 22-23. However, once she had the stroke, she could no longer work. *Id.*, 23. Asked to state his opinion as to whether Mrs. Guy has a percentage of permanent impairment due to the CVA, Dr. Clark testified as follows: "Well, I would think that had she not had the CVA, she'd probably still be working. So I don't know how you say -- I hate to say 100 percent, but if it was not for the CVA, she'd probably still be working." *Id.*, 23.

Asked to give his opinion as to whether Mrs. Guy has any work restrictions as a result of the CVA, Dr. Clark stated: "There's no way she could do her previous job. Still has weakness. Her affect, her mental affect, is not compatible with the responsibility of the job she had. And that's surly due to the stroke. In other words, mentally she is not as sharp as she was before the stroke. Her affect is simple." *Id.*, 23-24.

Claimant's future medical treatment for the CVA will consist of simply monitoring her condition. *Id.*, 24.

On cross-examination, Dr. Clark was asked about the MRI taken six or seven months after the stroke which indicated an old infarct. *Id.*, 29-31. Asked whether he could state when the old infarct occurred, Dr. Clark testified that "It fits the instance of September the 5th. ... I can say that there was no other instant in her history, and we followed her pretty closely, that would suggest an infarct except the September the 5th time." *Id.*, 31.

Although Dr. Myers read the MRI as being negative, Dr. Athar read it as being positive for the occurrence of the stroke. *Id.*, 31-32.

Asked on cross examination whether he would defer to the vascular surgeon and neurologist as to whether Mrs. Guy had a stroke, Dr. Clark testified: "No. I wouldn't defer to anyone, because I saw it. I could look at it." *Id.*, 35-36.

Asked on cross examination whether he would defer to those specialists as to whether Mrs. Guy's condition was work-related, Dr. Clark testified: "Well, I don't think they're in as good a position to judge that as I, because I've treated her all those years and knew more about her position and her job than they did. I think they should defer to me on that." *Id.*, 36.

If Mrs. Guy only had a phlebitis condition, a heart condition and high blood pressure and had never had a stroke, Dr. Clark testified that she had she could still be working at B. C. Rogers. *Id.*, 37.

Claimant's Exhibit No. 2: Medical Records Affidavit of Howard D. Clark, M.D.

This affidavit contains records which were not attached as exhibits to Dr. Clark's deposition, including medical records of visits occurring after the date of Dr. Clark's deposition. The affidavit also includes documents completed and signed by Dr. Clark at the request of Fortis Benefits Insurance Company, including Dr. Clark's initial statement of disability, Dr. Clark's physical capabilities evaluation and periodic assessments of Claimant's condition signed by Dr. Clark or by his nurse.

Claimant's Exhibit No. 3: Medical Records Affidavit of Scott Regional Hospital.

This affidavit contains the record of Claimant's admission on September 5, 2000, when she was diagnosed with left middle cerebral artery (CVA). Findings on admission included, but were not necessarily limited to, right neck pain times the past three days; headaches; blood pressure of 212/99; inability to close the right eyelid completely or tightly; decreased pupil response on the right; decreased facial sensation on the right side; decreased frown; blowout of right cheek; decreased strength and grip in the right hand; decreased strength on the right; right sided weakness; and, a limp in the right leg. The Claimant was discharged on September 8, 2000, with a diagnosis of left middle cerebral artery (CVA).

This affidavit also contains the results of the MRI of the brain performed on March 24, 2003, and the addendum to that MRI dated April 14, 2003, which found a small 2 to 3 mm size focal area of increased signal anterolateral to the frontal horn of the left lateral ventricle which was stated to be most likely an old infarct.

Also included in this affidavit are the records of Claimant's admission on February 3, 1999, for complaints of severe pain in the right calf, and discharge on February 8, 1999, with a diagnosis of deep vein thrombosis of the right lower leg and cellulitis of the right leg.

This affidavit additionally contains numerous other records of Claimant's treatment at the hospital, including her visits for anticoagulant therapy.

Claimant's Exhibit No. 4: Medical Records Affidavit of Parveen Athar, M.D.

This affidavit contains records of Dr. Athar's treatment of Claimant for right arm, hand and leg pain and numbness.

Claimant's Exhibit No. 5: Vocational Rehabilitation Evaluation of Bruce H. Brawner.

At the hearing of this cause, Mr. Brawner testified according to the findings and opinions contained in his Vocational Rehabilitation Evaluation.

Carrier's Exhibit No. 6: Medical Records Affidavit of Edward E. Rigdon, M.D.

Dr. Rigdon saw Claimant on May 9, 2001, on referral from Dr. Howard Clark for complaints of numbness in her arms and pain and numbness in her legs. Dr. Rigdon felt she had thoracic outlet syndrome or some other peripheral neuropathy and suggested she be referred to a neurologist. Dr. Rigdon saw Claimant again on February 20, 2004, on referral from Dr. Clark for complaints of numbness in her right thigh. Dr. Rigdon felt Claimant had a neuropathic problem and recommended a neurology referral.

Carrier's Exhibit No. 7: Deposition Testimony of Mitchell J. Myers, M.D.

Dr. Myers testified by deposition on June 16, 2004. (Deposition of Mitchell J. Myers, M.D., p.1). Dr. Myers examined Claimant at the request of the Mississippi Workers' Compensation Self-Insured Guaranty Association on November 13, 2002, and again on November 11, 2003. *Id.*, 4-5;18.

Dr. Myers' opinion as to diagnosis was stated as follows: "Well, there was simply no concrete evidence of the kind of neurological deficits that would make one sure that there had been a stroke. Certainly there could have been a stroke, but I was unable to come away with the findings that would tell me that that had definitely occurred." *Id.*, 12. Dr. Myers' opined that there was no relationship between what happened at work and the possibility of a stroke. *Id.*, 16.

Dr. Myers reviewed an MRI performed on March 24, 2003, and testified as follows: "I did not see a definite stroke on the scan. I saw the area that the radiologist from Scott Regional noted in his report where he was of the belief that there had been a stroke. I did not agree with that necessarily. I saw that -- how that might have been -- how that impression might have been made, but I did not think the scans were of high enough quality to be certain about it. There was artifact in the area; there was machine error in the area of that diagnosis. It simply wasn't clear. It certainly could have been a stroke. I just could not be certain about it." *Id.*, 20.

Dr. Myers testified that maximum medical improvement was reached on November 11, 2003, and that Claimant had no permanent impairment. *Id.*, 21-22. Dr. Myers assigned restrictions due to Claimant's health history and age consisting of no lifting in excess of twenty

pounds and avoiding undue environmental exposure such as high temperatures. *Id.*, 22.

Dr. Myers testified that if Claimant experienced an obvious physical stress while working on the job three days before she presented to the emergency room on September 5, 2000, then there could be a relationship between the physical stress and the stroke. *Id.*, 23.

On cross examination, Dr. Myers admitted that his opinion stating there was no relationship between Claimant's work activities and her stroke was based on the fact that he had no knowledge that Claimant had ever experienced any stress at work. *Id.* 26. "I'm not aware in the history of an event or an episode or experience at work which would have indicated, you know, some stress or physical trauma or some high exertion. I just don't have the history of anything that happened while at work that could have supported or associated with an event such as a stroke." *Id.*, 26.

Dr. Myers stated that high blood pressure is a risk factor that can lead to a stroke. *Id.*, 27. Dr. Myers testified that someone under great physical or emotional stress at work would be expected to have a difficult time controlling their blood pressure. *Id.*, 28-29. Dr. Myers stated that both acute pain and chronic pain would be expected to cause blood pressure to rise. *Id.*, 29. The Claimant had high blood pressure. *Id.*, 29.

On further cross-examination, Dr. Myers stated he does not think Claimant had a stroke but he is not sure whether she did or not and he admits that his opinion stating that Claimant did not have a stroke could be wrong. *Id.*, 30-31. "My gut feeling is I don't think she had a stroke, but I am not sure. I could not be sure about seeing a stroke on the MRI scan. I didn't see what the radiologist was seeing who read the scans for her on those March 24 studies, but there is nothing that I saw about Ms. Guy that told me definitely this woman had a stroke. But there was also nothing about her that told me definitely she did not." *Id.*, 30. Asked to confirm his testimony that he cannot say with reasonable medical probability that she did not have a stroke, Dr. Myers stated: "I cannot say with probability, no. No, it's just my sense of it is that I don't believe she had a stroke, but I certainly could be wrong about that." *Id.*, 30-31.

Dr. Myers could not state that Claimant's work activities contributed to or aggravated her preexisting high blood pressure because he had no knowledge whether Claimant was under any

stress at work. *Id.*, 31. "I don't have the history before me of the kind of physical or emotional stress that would tell me, yeah, what's happening at work is probably creating this high blood pressure problem. This is a real stressful problem. I did not have that history at the time that I saw Ms. Guy." *Id.*, 31.

Dr. Myers admitted he had no knowledge of Claimant's phlebitis after she was diagnosed with that condition in 1999. *Id.*, 32.

Dr. Myers' knowledge of Claimant's work activities was that Claimant was on her feet for hours every day walking and was in a supervisory role but that she was sitting at times and was not engaged in any active heavy lifting or anything strenuous or demanding. *Id.*, 32-33. "I don't think anyone would reasonably say this woman should be doing a lot of lifting and bending and stretching and, you know, involved in strenuous work. I don't think that's appropriate." *Id.*, 33. Dr. Myers testified that this would be his standard recommendation for anyone with Mrs. Guy's history, i.e., in her 60's, high blood pressure, history of a blood clot and on strong blood thinners. *Id.*, 33. Dr. Myers admitted that because of Claimant's history, he would not want Claimant to perform the work activities of the employees that she supervised on the assembly line who, according to his understanding, might not be required to lift heavy weight but were required to constantly do repetitive work with their arms and reaching and stretching. *Id.*, 33-34.

Carrier's Exhibit No. 8: Deposition Testimony of Genia Jackson.

Genia Jackson worked for B. C. Rogers from November 1999 to March 2002 as an administrative assistant, benefits administrator and benefits manager. Deposition of Genia Jackson, p.5. Ms. Jackson testified that B. C. Rogers paid the premium for long-term disability benefits for all salaried employees. *Id.*, 7-9.

Carrier's Exhibit No. 9: Deposition Testimony of David Glenn Powell.

David Glenn Powell was employed with B. C. Rogers as the corporate HR manager for three or four years until he left in March 2002. Deposition of David Glenn Powell, p.6. Mr. Powell testified that the employer paid the premium for Claimant's long-term disability policy.

Id., 14.

Carrier's Exhibit No. 10: Fortis Long Term Disability Insurance Policy.

The long-term disability insurance policy issued by Fortis Benefits Insurance Company and covering Claimant's employment with B. C. Rogers was admitted as the Carrier's Exhibit No. 10.

SUMMARY OF THE ARGUMENT

1. (A) Both the Circuit Court and the Full Commission affirmed the findings of the Administrative Judge. The Administrative Judge denied benefits to the Claimant based on the opinions provided by Dr. Mitchell Myers, the neurologist hired by the employer and carrier to examine the Claimant. Dr. Myers provided two opinions in this case with his second opinion being the more important one relied on by the Administrative Judge to deny benefits. Dr. Myers first stated that he did not think that Claimant suffered a stroke. He next stated that even if Claimant did have a stroke, the stroke was not related to her work activities with B. C. Rogers.

Dr. Myers' first opinion, i.e., that there was no stroke, was based on his review of the records at the time of Claimant's admission. Upon reviewing those records, Dr. Myers found that Claimant presented with right sided neck pain and headaches and he stated those complaints were not consistent with a diagnosis of stroke. Although Dr. Myers admitted that a left CVA would be expected to produce right-sided symptoms, Dr. Myers failed to note numerous other findings at the time of admission confirming the presence of deficits existing on the right side of the body, including the following: Blood pressure of 212/99; Inability to close the right eyelid completely or tightly; Decreased pupil response on the right; Decreased facial sensation on the right side; Decreased frown; Blowout of right cheek; Decreased strength and grip in the right hand; Decreased strength on the right and right sided weakness; and, a limp in the right leg. These findings of right-sided deficits were the findings used by Claimant's treating family practitioner, Dr. Howard Clark, to confirm his diagnosis of stroke.

Additionally, Dr. Myers repeatedly admitted on cross-examination that he could be

wrong about the diagnosis of stroke. In fact, Dr. Myers even admitted that he could not say with reasonable medical probability that Claimant had not suffered a stroke.

(B) Dr. Myers based his second opinion, i.e., that even if Claimant suffered a stroke it was not work-related, on the fact that he had no knowledge of any physical or emotional stress occurring at work that could be associated with a stroke. It is understandable that Dr. Myers would have no such knowledge as he only examined Claimant on two occasions at the request of the employer and carrier. By contrast, Dr. Clark had been Claimant's regular treating physician for over 42 years having first seen her as a patient in 1962. This period of medical treatment coincided with Claimant's employment with B. C. Rogers where she was continuously employed for 39 years having first begun work in 1961. Thus, it would be expected that Dr. Clark would have intimate knowledge about Claimant's medical condition, her job and her work activities that Dr. Myers could never have.

Dr. Clark gave his opinion that Claimant's stroke was caused by the physical and emotional stress Claimant experienced at work as a supervisor for B. C. Rogers. As for the physical stress, Claimant had been diagnosed by Dr. Clark with blood clots in February 1999. Once she recovered from the blood clots, Claimant returned to her job which required her to stand during her entire shift on a concrete floor as her supervised the chicken lines. While standing at her job, Claimant's leg would swell causing her great pain. Claimant would be forced to lean against the wall with one foot propped up to alleviate her pain. She regularly sought help from the plant nurse. On a regular basis, she returned to Dr. Clark, who would take her off work for several days so she could rest her leg. She would then return to work and the cycle of pain and swelling would begin again.

In addition to the physical stress caused by constantly standing at her job, Claimant also experienced emotional stress on the job. During the last two or three years of her employment, absences by the line workers increased. Whenever workers were absent, Claimant was required to step in for that missing worker and perform that job in addition to her own job. Claimant testified about the emotional stress caused by being forced to perform several jobs at once and how the stress at work interfered with her sleep once she went home. Because of his long time

treatment of Claimant, Dr. Clark was very familiar with Claimant's job activities at B. C. Rogers, and he testified that Claimant's job as a foreman was very stressful.

Both doctors admitted that physical and emotional stress can cause high blood pressure and can lead to a stroke. Dr. Myers, however, had no knowledge of Claimant's job stresses. Because of his lack of knowledge, he was not able to relate Claimant's stroke to the stress occurring on the job. By contrast, Dr. Clark had extensive knowledge of Claimant's life, her job and her work activities. Because of his personal knowledge of his patient, Dr. Clark was able to give his opinion that Claimant's stroke was related to her work activities to a reasonable medical probability.

2. The rule stating that the opinions of the specialist take precedence over the opinions of the general practitioner should only be applied when both physicians are equally informed of the relevant facts. The rule has no utility, however, when the specialist offers an opinion without having full knowledge of the factual foundation upon which the opinion is based.

Dr. Myers' opinion stating that Claimant's stroke is not work-related is not based on the factual evidence but rather is based on an assumption. Dr. Myers falsely assumed that Claimant did not experience stress at her job with B. C. Rogers. The truth, however, is that Claimant was under great stress at work. The evidence from both the Claimant and from Dr. Clark is clear that Claimant experienced both physical and emotional stress while working at B. C. Rogers. This evidence is uncontradicted and, therefore, it must be accepted as true.

Dr. Myers' opinion of no work connection cannot stand once all the evidence is fully considered. To allow Dr. Myers' opinion to prevail under such circumstances would result in an order unsupported by substantial evidence. Additionally, such an order would be contrary to law, would do a great injustice to the Claimant and would not be in accord with the humanitarian purposes underlying the Act.

ARGUMENT

The opinion of Dr. Myers, the neurologist, stating that Claimant did not suffer a stroke lacks probative value for two reasons. First, his opinion is not based on the overwhelming evidence in the record confirming that Claimant, in fact, did suffer a left CVA producing right-sided symptoms. Second, his opinion admits to the possibility of error. Dr. Myers' opinion stating that if Claimant suffered a stroke it was not work-related is not entitled to probative value because it is based on the false assumption that Claimant did not experience physical or emotional stress at work. In this case the opinions of Dr. Clark, the treating family practitioner, are entitled to greater weight than the opinions of Dr. Myers because Dr. Clark has treated Claimant on a regular basis for over 40 years. As a result of his regular treatment of Claimant for all of her adult life, Dr. Clark has a much greater knowledge of the Claimant's life, her job and her work activities than does Dr. Myers, who examined Claimant on only two occasions at the employer's request. Most importantly, however, Dr. Clark had knowledge about the Claimant that Dr. Myers did not have. Dr. Clark had extensive knowledge of the stress Claimant experienced at work and the effect of that stress on Claimant's physical condition.

1. The Circuit Court Order is not supported by substantial evidence, is clearly erroneous, is contrary to the overwhelming weight of the evidence and is contrary to law.

(A) Dr. Myers' opinion stating that Claimant did not suffer a stroke lacks probative value.

The Administrative Judge found that Claimant's stroke was not work-related. Because of that finding, the Administrative Judge concluded that Claimant had not met her burden of proof and, therefore, he denied and dismissed her claim for benefits.

The finding that the stroke was not work-related was based on the Administrative Judge's acceptance of the opinion of Dr. Myers over the opinion of Dr. Clark. Dr. Myers, a neurologist hired by the Guaranty Association, gave his opinion that if Claimant had suffered a stroke it was not related to her employment. Dr. Clark, a family practitioner who has treated Claimant for over 40 years, testified that Claimant's stroke was related to her work activities. The Administrative Judge accepted the opinion of Dr. Myers over that of Dr. Clark because "Dr.

Myers, by virtue of his specialized training and experience, is simply better suited than the general practitioner, Dr. Clark, to opine on whether the possible stroke was work-related.” Opinion Of The Administrative Judge, 22.

In making his finding, the Administrative Judge first reviewed the rules pertaining to testimony offered by treating physicians versus examining physicians and testimony offered by specialists versus general practitioners, as expressed in *Larson’s Workers’ Compensation Law* and as followed by our appellate courts:

The attending physician’s testimony should be given more weight than that of a doctor who has not examined the claimant for purposes of treatment, and testimony by a specialist in the particular field should be given more weight than that of a general practitioner. But the result is not quite so self-evident when the contest is between the two strongest elements in these pairs: What if the testimony of an attending general practitioner contradicts that of a nonattending specialist?

Arthur Larson & Lex K. Larson, *Larson’s Workers’ Compensation Law*, Section 130.05(4)(b) (2006); See also, *Clements v. Welling Truck Service, Inc.*, 739 So.2d 476, 478-79, n.1 (Miss.App.1999). After reviewing the Mississippi case cited by *Larson’s*, *Raytheon Aerospace Support Services v. Miller*, 850 So.2d 1159 (Miss.Ct.App.2002), later reversed by the Supreme Court at 861 So.2d 330 (Miss.2003), the Administrative Judge determined that the rules stated in *Larson’s* and followed in *Clements* “are merely useful aids to making determinations and are not substitutes for reaching reasoned decisions based on the record as a whole.” Opinion, 21. A close reading of the Opinion, however, reveals that the hearing judge adopted one of *Larson’s* “useful aids” and gave greater weight to Dr. Myers’ opinion simply because he was a neurologist rather than deciding the case on the whole record.

If the record as a whole is studied carefully, the opinions of Dr. Myers cannot be accorded greater weight because they are not based on the facts in evidence.

(O)pinion evidence is without weight or probative value when in conflict with the physical facts, and, accordingly, such opinion evidence must give way to uncontroverted physical facts contrary thereto, and should not be regarded as sufficient to create a substantial conflict in the evidence. So, where an expert opinion is not based on facts otherwise proved, or where it assumes facts contrary to those proved, it does not constitute substantial evidence sufficient to create a

conflict.

An expert opinion lacks probative value when it is not in accordance with the actual facts.

32A C.J.S. Evidence, Section 752 (1966). *See also, Johnson v. Ferguson*, 435 So.2d 1191, 1195-96 (Miss.1983), citing the general rule stated in 32A C.J.S. Evidence. (The Supreme Court reversed the decision of the Circuit Court affirming the Commission's denial of benefits and accorded greater weight to the uncontradicted opinion of the physician who performed the myelogram and actually saw the herniated disc over the opinion of the physician who refused to perform that procedure because he thought the patient had a psychiatric condition.).

Dr. Myers' first opinion of importance in this case, i.e., that Claimant did not suffer a stroke, is not based on all the facts in evidence. During Dr. Myers' deposition, the following exchange occurred:

Q. Just so the record is clear as to which medical records we will be referring to in these next questions, I'm going to attach these records as Exhibit 3 to Dr. Myers' deposition.

(Exhibit 3 - Scott Region Hospital Medical Records)

A. I have been able to review it.

Q. All right. What do those records reveal with regard to the symptoms that Ms. Guy presented with at Scott Regional Hospital on September 5th, 2000?

A. This record reflects that Ms. Guy presented with pain at the right of her neck, a three day history. There was a pulling complaint of her neck toward the left side, a complaint of headache as well.

...

Q. Was the diagnosis of a left CVA or stroke consistent with the complaint of a severe onset of headache which she reported on September 5th, 2000?

A. No. That would be a very unusual presentation of a stroke.

Q. All right. What about her complaints of right sided neck pain for three days, would that be consistent with a diagnosis of left CVA or stroke?

A. No, it would be inconsistent with that diagnosis.

Q. Why is that?

A. Left sided brain stroke would be expected to involve right body symptoms -- numbness, weakness, incoordination possibly, possibly speech and language problems. Pain can occur with certain strokes. The pain is usually a vague, 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.

Q. All right. Were you also provided with and included with today a copy of any diagnostic studies which were performed during this particular hospitalization in early September of 2000 for Ms. Guy?

A. Yes, there was information provided about a CT brain scan.

...

- Q. That would be September 6th, 2000?
A. September 6, 2000.
Q. And what were the findings on the CT scan?
A. The findings suggest no abnormalities.
Q. Would that be consistent with a diagnosis of a left CVA or stroke?
A. No, a stroke was not appreciated on that scan.

Deposition of Mitchell J. Myers, M.D., 6-9.

The foregoing testimony confirms that Dr. Myers's opinion that Claimant did not suffer a stroke was based solely on the fact that upon admission to Scott Regional Hospital on September 5, 2000, Claimant's only complaints were right-sided neck pain and headaches and on the fact that the CT scan showed no abnormality. In basing his opinion solely on those facts, Dr. Myers ignored numerous other facts contained in the hospital record confirming the presence of a left CVA producing right-sided deficits. Those additional facts include the following:

- 1) Blood pressure of 212/99;
- 2) Inability to close the right eyelid completely or tightly;
- 3) Decreased pupil response on the right;
- 4) Decreased facial sensation on the right side;
- 5) Decreased frown;
- 6) Blowout of right cheek;
- 7) Decreased strength and grip in the right hand;
- 8) Decreased strength on the right and right sided weakness; and,
- 9) A limp in the right leg.

Claimant's Exhibit No. 3, Medical Records Affidavit of Scott Regional Hospital. Dr. Clark confirmed that all of these additional findings were present during the admission of September 5, 2000, and were part of the findings upon which he based his opinion that Claimant had sustained a left CVA. Deposition of Howard Clark, 11-13; 27-28.

It should be noted that Dr. Myers admitted that a left CVA would be expected to result in deficits on the right side of the body such as numbness, weakness and incoordination. Deposition of Dr. Myers, 8. However, Dr. Myers was obviously not aware that Claimant, in fact, exhibited exactly the type of right-sided deficits that a left CVA would cause. Dr. Myers'

opinion, therefore, that Claimant did not suffer a stroke lacks probative value because it failed to consider all of the facts contained in the hospital admission record. 32A C.J.S. Evidence, Section 752; *Johnson v. Ferguson*, 435 So.2d at 1195-96.

Additionally, the opinion of Dr. Myers that Claimant did not suffer a stroke should not be accorded great weight because he admits he is not certain of his opinion. Dr. Myers admits his uncertainty throughout his deposition testimony as follows: “Well, there was simply no concrete evidence of the kind of neurological deficits that would make one sure that there had been a stroke. Certainly there could have been a stroke, but I was unable to come away with the findings that would tell me that that had definitely occurred.” Deposition of Mitchell J. Myers, 12. (Emphasis added). “I did not see a definite stroke on the scan. I saw the area that the radiologist from Scott Regional noted in his report where he was of the belief that there had been a stroke. I did not agree with that necessarily. I saw that -- how that might have been -- how that impression might have been made, but I did not think the scans were of high enough quality to be certain about it. There was artifact in the area; there was machine error in the area of that diagnosis. It simply wasn’t clear. It certainly could have been a stroke. I just could not be certain about it.” *Id.*, 20. (Emphasis added). “My gut feeling is I don’t think she had a stroke, but I am not sure. I could not be sure about seeing a stroke on the MRI scan. I didn’t see what the radiologist was seeing who read the scans for her on those March 24 studies, but there is nothing that I saw about Ms. Guy that told me definitely this woman had a stroke. But there was also nothing about her that told me definitely she did not.” *Id.*, 30. (Emphasis added). Finally, Dr. Myers admitted he could not state with reasonable medical probability that Claimant did not have a stroke.

Q. ...(I)t’s my understanding of your testimony that you cannot say with reasonable medical probability that she did not have a stroke.

A. I cannot say with probability, no. No, it’s just my sense of it is that I don’t believe she had a stroke, but I certainly could be wrong about that.

Id., 30-31. (Emphasis added).

Because Dr. Myers admits he is uncertain as to whether Claimant had a stroke, his opinion that she did not have a stroke cannot be granted great weight. “The fact that the witness

... admits, or recognizes, the possibility of error ... affects the weight of his testimony.... 32A C.J.S. Evidence, Section 732.

Dr. Myers' first opinion, i.e., that Claimant did not suffer a stroke, is not entitled to great weight and lacks probative value because it was not based on and did not consider important facts in the hospital record confirming the presence of a left CVA producing right sided deficits and also because it admitted to the possibility that the opinion could be wrong.

(B) Dr. Myers' opinion stating that if Claimant suffered a stroke it is not work-related lacks probative value.

Dr. Myers' second opinion, i.e., that even if Claimant had a stroke, the stroke was not work-related, was the more important issue to be decided according to the Administrative Judge. Opinion, 21. In a similar manner, however, Dr. Myers' second opinion cannot be granted great weight because it assumes facts which are not true.

Dr. Myers was very clear as to the reasons he did not find a work relationship.

Q. Okay. Could you just tell me what your opinion of no work relationship, can you tell me what that is based on.

A. I'm not aware in the history of an event or an episode or experience at work which would have indicated, you know, some stress or physical trauma or some high exertion. I just don't have the history of anything that happened while at work that could have supported or associated with an event such as a stroke.

Deposition of Mitchell J. Myers, M.D., 26. Later in his deposition, Dr. Myers confirms the basis for his opinion that there was no work relationship.

A. I don't have the history before me of the kind of physical or emotional stress that would tell me, yeah, what's happening at work is probably creating this high blood pressure problem. This is a real stressful problem. I did not have that history at the time that I saw Ms. Guy.

Id., 31.

Dr. Myers' opinion that the stroke was not work-related was based on the assumption that Claimant was not under any stress at work. However, the facts in evidence reveal that Claimant experienced both physical and emotional stress while performing her work activities at B. C. Rogers. Claimant had been in great physical pain as a result of the blood clots that developed in

her right leg in February 1999. Claimant's Exhibit No. 3, Medical Records Affidavit of Scott Regional Hospital. Claimant testified about the pain she experienced during the next year and a half prior to the stroke as she attempted to work while standing all day on the plant's concrete floor.

Q. And -- and did you recover from the blood clots?

A. Well, when I got out, I had to stay off from work so long. He released me, and I went back to work. I would work so long till it'd get to bothering me so bad. It'd swell so big, I'd go back to him. He'd take me off work, and then I'd go back. I worked off and on from then till I had the stroke.

T.31.

Q. Okay. (P)rior to the stroke, did you have any difficulties working at BC Rogers because of the blood clots?

A. Well, I tried to work. I mean, I would go up there and work. I stood up beside the wall a lot of days with one foot propped up. But it'd get to swelling so big and get to hurting, I'd have to go back to the doctor and he'd send me home.

Q. ... (D)id you complain to BC Rogers --

A. Yes.

Q. -- about your leg?

A. I went to the nurse.

Q. Okay. And did you do that -- how many times?

A. I don't know how many times. She would always write my name down in the book when I went in there.

T.33.

In his deposition, Dr. Clark testified about his treatment of Claimant's painful leg condition following the development of the blood clots.

Q. After you treated -- after you first treated her for the phlebitis condition on up until the time of the stroke, do you have any knowledge of her ability to go back to work and do the job?

A. Given the time of her phlebitis up until the stroke?

Q. Right.

A. Yeah. She would come in from time to time and be kind of exhausted from her work, and we'd give her two or three days off from time to time. And -- because she just had to have it every so often because of the condition of that leg.

Deposition of Dr. Clark, 18.

Q. Do you have any knowledge of whether this patient experienced physical pain while performing her work activities at the chicken plant?

A. Yes. Several times.

...

Several times. Several times she came in because the pain was the reason we gave her two or three days off, because of the pain in the leg. We gave her two or three days off from work to rest up.

Id., 20.

Not only did Claimant experience physical pain while working but she also experienced great emotional stress.

Q. ... Prior to you having the stroke, did you feel like you were under any stress at BC Rogers?

...

A. Yes.

Q. (W)hat were you feeling?

A. Well, I was just stressed out so bad till I couldn't sleep when I went home.

Q. Why were you stressed?

A. On account of my job trying to get everything done. You had so much on you up there. They would give me orders to fill, and I would try to get them. And when you're shorthanded, you can't do everything. You're going to get stressed out over it.

Q. (W)ere you stressed because you were shorthanded?

A. Yeah, because I couldn't --

...

I said, yes, I was stressed out because I had so much on me, and I tried to get every order that they give me filled. I was just steady running and running.

...

Q. Okay. And during that time period, you -- did you experience a shorthandedness at -- at work before the stroke? Did that occur oftentimes at BC Rogers?

A. Yes.

Q. ... (W)ould you have to fill-in on those occasions?

A. Yes.

T.33-35.

A. When you're shorthanded, you're trying to do your job and their job too.

Q. All right. How were you shorthanded?

A. They just wouldn't come into work.

Q. So sometimes you'd have one -- an employee missing that's normally --

A. You hardly never have one. Sometimes you'd have more than one, and the hands would try to double up, you know, and help keep up. And we have got behind and throwed it in combos and have two combos after we got off.

Q. All right.

A. We called it overflow.

Q. Was this something that went on the whole time you were supervisor, somebody not showing up and it just caused an extra stress for you that day?

A. It had got worse.

Q. How long had it been worse?

A. Probably for the last two or three years.

T.47-48.

At the time of his deposition, Dr. Clark had been treating Claimant as a patient for over 42 years. Deposition of Dr. Clark, 7. Because of his long-term treatment of Claimant, Dr. Clark was well aware of the Claimant's job activities at B. C. Rogers.

Q. ... Dr. Clark, do you have any knowledge of what the patient did for work, what job she did or where she worked?

A. Yeah. She worked for B.C. Rogers processing plant. She was a foreman, which meant she was in charge of a certain line. And it was her job to see that the line went smoothly and all the employees on that line did their thing properly. And, you know, foreman, if someone has to leave the line, then she has to take their place till they come back.

Q. ... Do you have any knowledge of what the conditions of her job were like as far as whether she had a desk job or whatever like that?

A. No. That's -- being a foreman, you're standing; you're walking up and down the line; you're being sure that each person does that particular job that they're assigned to do, that they're doing right.

And, as I say, take their place every so often if they have to have a break or something. So it's a standing, walking job.

Deposition of Dr. Clark, 17-18.

Dr. Clark was also well aware that Claimant's job caused her emotional stress.

A. ... Being a foreman is a stressful condition.

Id., 20.

Q. Did she ever report to you any emotional stress at B.C. Rogers? ...

A. No. Hers was mostly physical stress. Of course, I knew she had emotional stress.

Id., 34.

Dr. Clark stated his opinion that the cause of Claimant's left CVA was hypertension and stress. Deposition of Dr. Clark, 19-20. Claimant's blood pressure at the time of her admission on September 5, 2000, was 212 over 99. *Id.* Dr. Clark testified that physical pain and emotional stress are important factors causing blood pressure to rise. *Id.*, 20. "The work at the plant, being a foreman, looking after eight to ten people doing a specific job, having to be sure that they perform their job efficiently, and having to do their jobs at times that they were off the line, is very physical and emotionally stressful and surely contributes to hypertension." *Id.*, 21-22. It

was Dr. Clark's opinion that the physical pain and stress experienced by Claimant while working at B. C. Rogers definitely contributed to the rise in blood pressure and to the stroke. *Id.*, 20-21.

Dr. Myers admitted that Claimant had high blood pressure and that high blood pressure is a risk factor for stroke. Deposition of Dr. Myers, 27; 29. Dr. Myers further admitted that pain causes blood pressure to rise and that a person under physical and emotional stress at work would be expected to have a difficult time controlling blood pressure. *Id.*, 28-29.

The facts in evidence reveal that Claimant experienced both physical and emotional stress at work. Dr. Myers' opinion that the stroke was not work-related is based on the assumption that Claimant was under no stress at work. Because Dr. Myers' opinion is based on a false assumption, it lacks probative value. "(W)hen the key medical opinion was based ... upon facts or inferences themselves not supported by evidence ... the award could not stand." *Larson's*, Section 130.05(4)(a), citing *Johnston v. Hattiesburg Clinic, P.A.*, 423 So.2d 114 (Miss.1982).

In *Johnston v. Hattiesburg Clinic, P.A.*, the Supreme Court reversed the Circuit Court's order affirming the Commission's denial of benefits because the opinion of the cardiologist denying a work relationship was based on the physician's unproven assumption that Claimant's work did not involve physical exertion. 423 So.2d at 120.

A. My opinion is based on the fact that I have not been told that she did any strenuous physical exertion....

...

Q. And whether or not she was engaged in any physical exertion or not engaged in any physical exertion, you do not know?

A. No.

Q. You only assume that she did not, and based upon that assumption, then you say her attack was not work related?

A. Yes, sir.

Id. In a similar manner, Dr. Myers' opinion in the instant case is also based on the assumption that Claimant was not under any stress at work. "I'm not aware in the history of an event or an episode or experience at work which would have indicated, you know, some stress or physical trauma or some high exertion. I just don't have the history of anything that happened while at work that could have supported or associated with an event such as a stroke." Deposition of Mitchell J. Myers, M.D., 26. Contrary to Dr. Myers' assumption, however, the evidence from

both Claimant and Dr. Clark is clear that Claimant was under great stress at work. Since Dr. Myers' opinion is based on the assumption that Claimant did not experience stress while at work and since the true facts indicate otherwise, Dr. Myers' opinion cannot stand. "Furthermore, we have the unqualified testimony of Dr. Cowan ... that he was basing his testimony on an assumption. This clearly does not satisfy the standards set out in prior cases...." *Johnston*, 423 So.2d at 120.

2. The Circuit Court Order failed to apply the Mississippi Workers' Compensation Act in a just and reasonable manner and failed to give due regard for the beneficent intent and purpose of the Act, resulting in a manifest injustice to the Claimant.

The Full Commission Order clearly failed to follow the liberal construction of the Mississippi Workers' Compensation Act in this case. "The Act is to be given a broad and liberal construction and doubtful cases are to be resolved in favor of compensation." Dunn, *Mississippi Workers' Compensation*, Section 32 at p.29 (3rd ed.1982).

The main goal of the Workers' Compensation Act is to promote the welfare of laborers in Mississippi. Miss. Code Ann. Section 71-3-1 (Rev.1995); *Big "2" Engine Rebuilders v. Freeman*, 379 So.2d 888,889 (Miss.1980). "As remedial legislation to compensate and make whole, it should be construed fairly to further its humanitarian aims." *Id.* (citations omitted). In any event, doubtful cases are to be compensated. *Id.* (citing *Evans v. Continental Grain, Co.*, 372 So.2d 265 (Miss.1979).

Adams v. Lemuria, Inc., 738 So.2d 295, 297 (Miss.1999).

Furthermore, "Close questions should be resolved in favor of compensating a worker whose injury and disability have an employment connection.... A liberal construction of the Workers' Compensation Law is proper in order to accomplish its purpose as remedial, social legislation." *Smith and Sanders, Inc. v. Peery*, 473 So.2d 423, 431 (Miss.1985).

In its two-page decision, the Circuit Court simply affirmed the Administrative Judge's finding that the opinions of Dr. Myers, the specialist in neurology, take precedence over the opinions of Dr. Clark, the family practitioner. This finding, however, can only be adopted if the specialist knows as much about the patient as the family practitioner. When the evidence in this case is examined closely, it is clear that Dr. Clark had much more knowledge of his patient than

did Dr. Myers. Dr. Clark, therefore, was in a much stronger position to express opinions concerning Claimant's medical condition and the relation of that condition to her work activities. Under such circumstances, the finding by the Administrative Judge, affirmed by the Full Commission and the Circuit Court, does not follow or promote the underlying humanitarian purposes of the Act.

The physical pain and emotional stress experienced by Claimant while performing her work activities at B. C. Rogers was fully described by Claimant in her testimony. Because Claimant's testimony is uncontradicted, it must be accepted as true.

Uncontradicted or undisputed evidence should ordinarily be taken as true by the triers of the facts. More precisely, evidence which is not contradicted by positive testimony or circumstances, and which is not inherently improbable, incredible, or unreasonable, cannot, as a matter of law, be arbitrarily or capriciously discredited, disregarded or rejected, even though the witness is a party or interested; and unless uncontradicted evidence is shown to be untrustworthy, it is to be taken as conclusive and binding on the triers of facts.

V. Dunn, *Mississippi Workers' Compensation*, Section 271 (3rd ed.1982).

In this case, Claimant worked for B. C. Rogers for 39 years and never missed work due to illness or injury until she developed blood clots in February 1999. For the next the one and one-half years before she had her stroke, Claimant suffered with her painful leg every day while working at B. C. Rogers. She would lean against the wall at work with her leg propped up to alleviate the pain. She sought medical help from the plant nurse on numerous occasions. Eventually, the leg would swell and the pain would increase to the point where she would be forced to seek treatment with Dr. Clark, who would then prescribe rest at home for several days until she could recover enough to return to work. During this same period of time, the absences from work of the line workers increased and Claimant was forced to additionally fill in and perform the duties of the missing workers. In addition to physical stress, both Claimant and Dr. Clark testified about the emotional stress Claimant experienced at work due to the shortage of help. All of this testimony is uncontradicted and must be taken as true. *Id.*

The Commission accepted the opinion of Dr. Myers over that of Dr. Clark because Dr. Myers was the specialist. As shown hereinabove, however, the opinion of Dr. Myers stating

there was no work-relationship has no probative value and is not entitled to weight because it is based on the false assumption that Claimant was under no stress at work. In this case, therefore, the opinions of Dr. Clark must take precedence over those of Dr. Myers not only because Dr. Myers' opinions are based on unproven assumptions or on facts not in evidence but also because there is no other doctor with more knowledge of Claimant's medical condition than Dr. Clark.

At the time of his deposition, Dr. Clark had regularly treated Claimant as a patient for 42 years since 1962. During the entire time of Dr. Clark's treatment, Claimant was employed at B. C. Rogers. She started work at B. C. Rogers in 1961 and she worked continuously for the next 39 years until her stroke on September 5, 2000. Because Dr. Clark treated Claimant on a regular basis during the entire time she worked at B. C. Rogers, Dr. Clark was well aware of both the physical and emotional stress Claimant experienced at work. Because of their long term doctor-patient relationship, Dr. Clark not only had extensive knowledge of Claimant's medical condition but he also had personal knowledge of Claimant's employment and her activities of employment. Dr. Clark, therefore, knew better than anyone else how those employment activities affected Claimant's health.

Dr. Clark stated it best after it was suggested on cross-examination that he should defer to the opinions of the specialists who had stated there was no relationship between Claimant's work and her job activities: "Well, I don't think they're in as good a position to judge that as I, because I've treated her all those years and knew more about her position and her job than they did. I think they should defer to me on that." Deposition of Dr. Clark, 36.

In the instant case, the testimony of the treating physician, Dr. Clark, is entitled to greater weight than that of the neurologist, Dr. Myers. Dr. Myers' opinion that there was no stroke is invalid because it is not based on all the evidence in the medical records confirming that Claimant had suffered a left CVA producing right-sided symptoms. Further, his opinion lacks probative value because he repeatedly admits to the possibility of error. Dr. Myers' opinion that the stroke was not work-related lacks probative value because it is based on the false assumption that Claimant did not experience physical and emotional stress at work. Additionally, Dr. Clark had more knowledge than any other physician of Claimant's physical condition and the stresses

she experienced at work because he had treated Claimant on a regular basis for the past 42 years.

When everything else is equal, then the rule cited by *Larson*, i.e., that the testimony of a specialist should be given greater weight than that of a general practitioner, should be applied. But when everything else is not equal, as the facts in the instant case clearly show, then the application of the rule would not only be inappropriate and but would also be unfair and unjust and contrary to the humanitarian purposes underlying the Act.

CONCLUSION

The Circuit Court Order must be reversed and benefits for total and permanent occupational disability must be awarded to Claimant.

RESPECTFULLY SUBMITTED, this the 28 day of February, 2008.

MARY GUY

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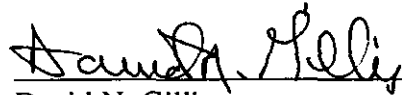
CERTIFICATE OF SERVICE

I, David N. Gillis, attorney for Claimant, do hereby certify that I have this date served, by United States Mail, postage prepaid, a true and correct copy of the foregoing document, as follows:

Honorable Marcus D. Gordon
Circuit Court Judge
P. O. Box 220
Decatur, MS 39327

Virginia S. Gautier
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THIS, the 28 day of February, 2008.


David N. Gillis