

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
CAUSE NO. 2008-WC-01202-COA

VICKIE CLARK

APPELLANT

VS.

SPHERION CORPORATION

AND

AMERICAN HOME ASSURANCE COMPANY

APPELLEES

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 disqualifications or recusals.

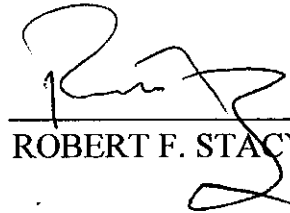
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Claimant/Appellant
2. David L. Walker, Esq.
Counsel for Claimant/Appellant
3. Honorable Robert P. Chamberlin, Jr.
Circuit Court Judge.
4. Mississippi Workers' Compensation Commission
5. Spherion Corporation
Employer/Appellee
6. American Home Assurance Company
Carrier/Appellee

7. Robert F. Stacy, Jr., Esq.
Counsel for Appellees

Respectfully Submitted,

SPHERION CORPORATION AND
AMERICAN HOME ASSURANCE
COMPANY, APPELLEES

BY:



ROBERT F. STACY, JR.

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BRIEF OF APPELLEES

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I. STATEMENT OF THE ISSUES

1. Whether the decision of the Mississippi Workers' Compensation Commission that claimant's carpal tunnel syndrome was not work related was supported by substantial evidence.

2. Whether the decision of the Mississippi Workers' Compensation Commission that claimant was not entitled to temporary or permanent benefits for her shoulder injury was supported by substantial evidence.

II. STATEMENT OF THE CASE

A. Nature of the claim and the course of the proceedings.

This matter is before this Court pursuant to the jurisdiction conferred upon it by Mississippi Code Annotated § 71-3-51 (1972) to hear appeals of decisions of the Mississippi Workers' Compensation Commission.

On June 10, 2003, Vicki Clark [hereinafter "Claimant"] filed a Petition to Controvert, alleging that she sustained injuries to her whole body, right shoulder, arm and hand on or about February 7, 2003, as a result of the hammering nature of her job with Spherion Corporation [hereinafter "Employer"]. (R. pp. 1, 3). Employer and its insurance carrier, American Home Assurance Company [hereinafter "Carrier"] filed an Answer on June 23, 2003, admitted the injury to Claimant's right arm and shoulder only, but disputing the extent of any disability and denying any injury to Claimant's right hand. (R. p. 4).

A hearing on the merits was held on August 17, 2006, with Administrative Judge Virginia Wilson Mounger presiding. On January 18, 2007, the Administrative Judge issued an Order finding that Claimant suffered an admitted injury to her right upper extremity and found that Claimant's carpal tunnel condition was related to her work injury. R. 19-26. The Administrative Judge awarded temporary total disability benefits in the amount of \$173.67 per week commencing on February 7, 2003. (R. p. 26). It was further held that Claimant's work restrictions would have prevented a

return to the Employer, recognizing that no such return to the job was attempted by the Claimant. (R. p. 25).

On February 1, 2007, Employer and Carrier filed a Petition for Review before the Full Commission appealing the Order of the Administrative Judge. (R. pp. 27-29).

On November 8, 2007, the Full Commission entered its order finding that Claimant failed to prove that her carpal tunnel syndrome was related to her work and further finding that claimant failed to prove she was entitled to temporary total disability benefits or permanent disability benefits for her shoulder injury. The Full Commission reversed the Order of Administrative Judge as to those issues. (R. pp. 30-39).

Claimant filed her Notice of Appeal to the Circuit Court of DeSoto County. Circuit Court Judge Robert P. Chamberlin, Jr. entered an Order dated June 26, 2008, affirming the decision of the Commission.

Claimant filed her notice of appeal to this Court.

B. Scope of Review

If the decision of the Full Commission was based upon substantial evidence and there is no error of law, it must be affirmed. The Full Commission is the trier of fact and judge of the credibility of witnesses and its decision should be affirmed if it is supported by substantial evidence. *Harrell v. Time Warner/Capitol Cablevision and Travelers Cas. and Surety Co.*, 856 So. 2d 503 (Miss. App. 2003). This court is

bound by a decision supported by substantial evidence even if the appellate court would have been convinced otherwise. *In re Dependents of Harbin*, 958 So. 2d 1260 (Miss. App. 2007).

C. Facts relevant to the issues presented for review.

Medical Evidence

Claimant suffered an injury to her right shoulder on February 7, 2003 while hammering. (Emp. Ex. 4). Claimant initially sought treatment from Dr. John Black at Baptist Memorial Hospital - Desoto on February 9, 2003, for complaints of right shoulder pain only. (Emp. Ex. 4). The emergency room record dated February 9, 2003 notes "R shoulder pain x 2 days." (Emp. Ex. 4). She was given pain medication and ordered to follow up with her primary care physician as needed. (Emp. Ex. 4). There are several pages of records from the emergency room and there was no evidence or indication claimant complained of right wrist pain at the emergency room on February 9, 2003. (Emp. Ex. 4).

Claimant next presented to Dr. Bruce Randolph on May 13, 2003 with right arm and shoulder pain. (Emp. Ex. 3). Claimant reported a knot in her right wrist, which was diagnosed as a ganglion cyst. Dr. Randolph could not say for certain if the cyst was work related. (Emp. Ex. 3). The majority of claimant's complaints were related to her shoulder. (Emp. Ex. 3). She was instructed to perform therapeutic exercises and given an exercise program to perform twice daily for one week. Dr.

Randolph released to her to work on modified duty with restrictions of limited overhead work, repetitive movement, pushing/pulling and climbing ladders and no lifting over 10 pounds. (Emp. Ex. 3). She returned to Dr. Randolph on May 23, 2003 with continued pain. Dr. Randolph noted that Claimant had not returned to work and had no intentions of returning to her job with Employer. (Emp. Ex. 3). Claimant told Dr. Randolph that she was currently not looking for another job and that her husband provided for the family. (Emp. Ex. 3). Dr. Randolph's typed record/chart of June 18, 2003 reflects a diagnosis of "pain, left wrist." (Emp. Ex. 3). Claimant acknowledged that she was also having pain in her left wrist in May or June, 2003. (T. p. 17).

Claimant's right shoulder pain improved and she was diagnosed with mild tendinitis in her right wrist. She was given a Medrol Dose Pak and pain medication. Dr. Randolph kept Claimant on modified duty with the same restrictions as May 14, 2003 but changed lifting to none over 20 pounds. Dr. Randolph then referred Claimant to Dr. A.H. Manugian for further evaluation. (Emp. Ex. 3).

Claimant did not see Dr. Manugian until November 26, 2003, almost nine months after her work injury. Dr. Manugian recorded that Claimant had a history of pain in her right shoulder and arm with intermittent numbness in the right hand. Claimant related a history of an injury to her right shoulder while hammering a socket set on February 23, 2003. (Gen. Ex. 1, p. 6). Claimant was ultimately diagnosed with right shoulder tendinitis and paresthesias in the right wrist and hand. X-rays were

taken of Claimant's right shoulder and were normal. Dr. Manugian thought claimant had rotator cuff tendinitis that had resolved and intermittent paresthesias of her right hand. (Gen. Ex. 1 p. 9). Dr. Manugian found that Claimant had much more complaints than actual findings. He suggested that Claimant undergo nerve conduction studies to determine if she had any abnormalities.

When Claimant first saw Dr. Manugian in November 2003, she was having only minimal right wrist complaints. (Gen. Ex. 1, pp. 7-10). When she returned in July 2004, she was having a lot more in the way of carpal tunnel symptoms as well as signs. (Gen. Ex. 1, p. 11). Claimant's carpal tunnel symptoms worsened even though she had not worked since February 2003.

Dr. Manugian saw Claimant a second time on January 6, 2004. Claimant underwent a Neurometrix test which demonstrated bilateral nerve involvement and a nerve involvement of the ulnar nerve. (Gen. Ex. 1, p. 10). Claimant did not have any physical findings or clinical complaints on the left side which made the test suspect, according to Dr. Manugian. (Gen. Ex. 1, p. 10). Claimant was given a splint to wear at night and received injections in her right wrist. Claimant did not return to Dr. Manugian until over six months later in July 2004.

Dr. Manugian testified that if Claimant did not have any other history of problems prior to her work injury and if her symptoms started on the date of the injury, then maybe something aggravated her symptoms. (Gen. Ex. 1, p. 12)

(emphasis added). Claimant wants the court to look at that statement in a vacuum without considering the remainder of Dr. Manugian's testimony. However, Dr. Manugian admitted that he could not be more specific due to all the "ifs" in Claimant's history and symptoms. Dr. Manugian further testified that he would have allowed Claimant to her return to work with the Employer at modified duty with restrictions imposed. (Gen. Ex. 1, p. 19).

Dr. Manugian opined that Claimant was at MMI with respect to the right shoulder injury on the date he first saw her, November 26, 2003. (Gen. Ex. 1, p. 20). Dr. Manugian did not assign any permanent restrictions or impairment ratings as a result of Claimant's right shoulder injury. (Gen. Ex. 1, p. 20). In determining the cause of carpal tunnel syndrome, Dr. Manugian stated that it would be important to know the exact date of the onset of Claimant's wrist pain. Claimant reported the work injury of February 7, 2003 as being a traumatic event while hammering. (Gen. Ex. 1, pp., 6, 21). Dr. Manugian opined that if Claimant's right carpal tunnel was caused by the single traumatic incident, Claimant's carpal tunnel symptoms would have occurred immediately after the incident. (Gen. Ex. 1, pp. 21-22). It is undisputed from the medical evidence that Claimant did not report right wrist carpal tunnel symptoms on the February 9, 2003 emergency room visit and did not report any right wrist symptoms until May 14, 2003, three months following her work injury.

Claimant gave Dr. Manugian a history of a single traumatic incident while she was hammering. (Gen. Ex. 1, p. 19).

The nerve test found Claimant to have bilateral median neuropathy at the wrists of both left and right hands. Dr. Manugian explained in his deposition testimony that many non-work related activities can aggravate an underlying carpal tunnel pathology. (Gen. Ex. 1, pp. 23-24). Dr. Manugian testified that if Claimant made complaints of left wrist pain during her treatment with Dr. Randolph, then it would have been less likely that the work injury of February 7, 2003 caused Claimant's right carpal tunnel symptoms. (Gen. Ex. 1, p. 23). Claimant made complaints of left wrist pain to Dr. Randolph in May or June 2003. (T. p. 17). Dr. Manugian testified it is unusual for a traumatic incident such as hitting something wrong with a hammer to cause carpal tunnel syndrome. (Gen. Ex. 1, p. 25). Dr. Manugian testified that it is even more unusual for a single acute event to cause carpal tunnel syndrome, and if a single event caused the symptoms he would expect claimant to begin to have the symptoms pretty soon after the event. (Gen. Ex. 1, p. 25).

Dr. Manugian could not state to a reasonable degree of medical probability that the work incident caused the right carpal tunnel symptoms if claimant did not complain of right hand symptoms almost immediately following the incident and if she also complained of left wrist pain. (Gen. Ex. 1, p.25). It is undisputed from the medical records that claimant did not complain of right hand or wrist pain on February

9, 2003 at the emergency room and that the first documented complaint of any right wrist problem was on May 14, 2003 when Dr. Randolph notes a right ganglian cyst, which he could not relate with certainty to her work injury. (Emp. Ex. 3). Additionally, Claimant testified she did suffer symptoms in her left wrist in May or June 2003, which was confirmed by Dr. Randolph's record of June 18, 2003. Based upon these undisputed facts, Dr. Manugian could not relate Claimant's right carpal tunnel to the work incident.

Lay Testimony

Claimant was born on March 17, 1966, and was a high school graduate. She began working for Employer in 2001, as a line worker and her job consisted of hammering on a socket set. Claimant described the hammer that she used as small, round and made of iron. Claimant was working with the hammer at the time of the February 7, 2003 work injury. Claimant was working in DeSoto County, Mississippi. Claimant first sought treatment from Dr. Bass, a chiropractor, in Memphis, Tennessee. She also treated with Dr. Randolph and Dr. Manugian.

Claimant admitted that she was offered a light duty position at Employer's office by Stacy Kail on February 20, 2003. (T. p. 13). The job was located in Memphis, Tennessee, approximately ten minutes from Olive Branch, Mississippi. (T. pp. 13-14). Claimant said that she did not drive in Memphis, because of her unfamiliarity of the area. Claimant stated that she did not accept the job offered by

the Employer for two reasons: location and lack of training. However, on cross-examination, Claimant stated that if someone showed her the location and direction of the job offered by Employer in Memphis, when she would have been able to drive there without getting lost. (T. p. 16). Claimant acknowledged receiving the letter sent by Ms. Stacy Kail on February 20, 2003, which was Exhibit 2. (T. p. 17). Claimant acknowledged she was offered light duty work and did not return. (T. p. 17). Claimant said the reason she did not go to the Spherion office was that she was unfamiliar with Memphis. However, claimant sought medical treatment from Dr. Bass located on Winchester Road in Memphis and Dr. Manugian whose office is also in Memphis.

Claimant acknowledged that her left wrist hurt also in May or June 2003 and she reported this to Dr. Randolph. (T. P. 17). Claimant admitted that she had no improvements with her right wrist pain, even though she never returned to work for the Employer. Claimant confirmed that no doctor has ever restricted her from performing light duty work. (T. p. 17). At the time of the hearing, Claimant was working for Byrd Cleaning Service making \$9.00 an hour. She began working there around April 2005. Claimant's job duties at Byrd Cleaning Service included cleaning bathrooms, mopping and washing bathtubs. Claimant did not wear any type of wrist splint or brace while she works. (T. pp. 17-18).

Stacy Kail testified on behalf of the Employer. Ms. Kail is the client service supervisor for Spherion Corporation. Ms. Kail is charge of staffing for certain clients in the Olive Branch and Memphis areas. The Employer's business is to provide temporary employees to their clients. Ms. Kail prepared a February 20, 2003 letter to the Claimant offering Claimant light duty work. (T. p. 6; Emp. Ex. 2). The letter informed Claimant that she had a work assignment with the Employer that met her physician's guidelines. (Emp. Ex. 2). Ms. Kail stated that the Employer offered Claimant an in-house position to assist in filing, answering the phone, paperwork, and orientations. (T. pp. 6-7). Ms. Kail testified that the letter contained a complete job description and included the wages that Claimant would earn. The Employer would have provided training to the Claimant, if needed. (T. p. 10). Ms. Kail spoke with the Claimant the day the letter was written. Claimant indicated the she would be at the Employer's office the following day on February 21, 2003. (T. p. 6). Ms. Kail testified that Claimant would have been allowed to perform the light duty work until a doctor had released her to full or regular duty work. (T. p. 10). Claimant never reported to work for the Employer and never contacted the Employer for any type of work.

III. SUMMARY OF THE ARGUMENT

The Commission's findings that claimant's carpal tunnel syndrome was not related to her work and that claimant failed to prove entitlement to temporary or

permanent disability benefits were supported by substantial evidence and should be affirmed.

IV. ARGUMENT

A. Claimant failed to prove that her right carpal tunnel syndrome was caused by her work injury.

The Commission's determination that the Claimant failed to meet her burden of proving causation with regard to her alleged right carpal tunnel injury was supported by the substantial evidence.

In order to establish a *prima facie* case, claimant must prove a causal connection between the injury and the job. The claimant's burden of proving causal connection must rise above mere speculation or possibility "as where the medical testimony is that it could have been one way just as well as the other." *Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9 (Miss. 1994) quoting *Dunn, Mississippi Workers' Compensation*, § 273 (2d.ed 1978).

Claimant injured her right upper extremity on February 7, 2003 while hammering. Employer and Carrier admitted the injury to claimant's right shoulder and arm, but disputed the extent of other injuries including carpal tunnel syndrome. On February 9, 2003, Claimant went to the emergency room and reported pain in her right shoulder only. (Emp. Ex. 4). The emergency room records do not contain any reference to a history of right wrist pain. (Emp. Ex. 4). Claimant was given pain medication and instructed to follow up with her primary care physician. There was

no record of right wrist pain. Shortly after that, Claimant went to Byhalia Family Health Center on February 16, 2003. She again had complaints only of right shoulder and arm pain. Claimant went to the Byhalia Family Health Center on two different occasions in March of 2003 and never mentioned any right shoulder pain nor any right arm, wrist or hand problems.

It was not until May 14, 2003, over three months after Claimant's work injury, when she reported to Dr. Bruce Randolph there was a knot in her right wrist. (Emp. Ex. 3). Dr. Randolph diagnosed a ganglion cyst in her right wrist and could not opine for certain if the cyst was work related. (Emp. Ex. 3). Claimant was later referred to Dr. A.H. Manugian who found that Claimant had bilateral median neuropathy and diagnosed carpal tunnel syndrome. Dr. A.H. Manugian could not state to reasonable degree of medical probability that Claimant's carpal tunnel syndrome was related to her February 2003 work injury. Dr. Manugian explained that if there was only a single traumatic incident, then carpal tunnel symptoms would be immediate. (Gen. Ex. 1, p. 22). According to Claimant's medical records, her symptoms were not immediate. Dr. Manugian also testified that it would be unlikely that the work incident caused the right carpal tunnel symptoms if claimant did not experience symptoms immediately or at least within days following the incident. There is no medical evidence that claimant experienced right arm or wrist symptoms for several months. The most favorable testimony to claimant by Dr. Manugian was when asked

about causation he testified that if claimant had no other history of problems and the symptoms started at that point, maybe something aggravated her symptoms. (Gen. Ex. 1, pp. 12-13). There is no evidence claimant's symptoms started on February 7, 2003 or at any time before May 2003.

Claimant's carpal tunnel symptoms were too remote in time to be causally related to the work injury. Claimant failed to prove that she suffered or reported symptoms or problems in her right wrist immediately or even weeks after her work accident occurred. The medical evidence shows that Claimant first reported right wrist issues on May 14, 2003, some three months after the work incident. According to Dr. Manugian, carpal tunnel symptoms would have been immediate if they were related to the February 7, 2003 hammering incident. (Gen. Ex. 1, p. 22). Dr. Manugian could not relate Claimant's right carpal tunnel syndrome to her work injury if the symptoms did not develop immediately. Dr. Manugian also testified that if Claimant also had symptoms in her left wrist, it was unlikely the work injury caused the carpal tunnel syndrome. Claimant admitted that her left wrist also hurt which is documented in Dr. Randolph's record of June 18, 2003. (T. p. 17; Emp. Ex. 3).

Claimant failed to establish sufficient proof to show that her carpal tunnel symptoms were related to her work injury. The medical proof did not support a finding that claimant's right carpal tunnel syndrome was work related. The emergency room records of February 9, 2003, two days following the incident, are

devoid of any reference to right wrist pain or problems. (Emp. Ex. 4). Dr. Manugian could not say the carpal tunnel was related to the work injury of February 7, 2003, when considering that the injury was an acute trauma, that claimant did not report right wrist symptoms for days or months after the incident and that plaintiff also had pain in her left wrist. Therefore, the Commission's finding that claimant's right carpal tunnel was not related to the work injury of February 7, 2003 was supported by the substantial evidence and should be affirmed.

B. Claimant failed to meet her burden of proof that she is entitled to temporary total disability benefits or permanent disability benefits.

The Commission's finding that Claimant was not owed any temporary total disability benefits or any permanent disability benefits for her shoulder injury was supported by the substantial evidence and should be affirmed. Claimant failed to provide any proof supporting her testimony that she was unable to perform the modified light-duty position offered by the Employer on February 20, 2003. The position was offered to Claimant verbally and by letter sent by client service supervisor, Stacy Kail. The letter informed the Claimant that the Employer was notified by her physician that she was released to work. (Emp. Ex. 2). Claimant's treating physician agreed to the Employer's work assignment as meeting her temporary modified duty restrictions. The letter also informed Claimant to return to work at the address of the Employer in Memphis, Tennessee and the date and time to begin work. It included how many hours she was to work per day and her pay rate.

Claimant's job duties would consist of no lifting her arms over her head and no lifting over ten pounds. (Emp. Ex. 2). Claimant would have been required to drive from Byhalia, Mississippi to 4945 American Way, Memphis, Tennessee - a distance of approximately 20 miles. Claimant exaggerates when she suggests in her brief that she would be required to move to another part of the state to accept a different job with the employer. Many, many people who live in North Mississippi work in the Memphis area.

Stacy Kail testified at the hearing on the merits that the light duty position was in-house and it required claimant to assist in filing, doing paperwork, answering the phone and orientations for Employer. (T. pp. 6-7). Ms. Kail testified the job would have continued until claimant was released to full duty by her doctor. (T. p. 10). Ms. Kail testified the Employer would have provided any training that was necessary for Claimant to do the job. (T. p. 10). This testimony was undisputed and Claimant conveniently omits this part of the testimony. On the date the letter was sent to Claimant, Ms. Kail spoke with the Claimant about returning to this job. Claimant informed Ms. Kail that she would be at the office the following day. However, Claimant never returned to work nor had any further conversations with Stacy Kail or any other personnel with the Employer.

Claimant testified that her reasons for failing to report to the Employer for the new position was that she lacked training for an office position and was not familiar

with the location in Memphis, Tennessee. Claimant further testified that she was not used to driving in that area, however, she admitted that if someone had shown her the way to the job location that she would be able to find it. Claimant never requested any type of training and never reported any type of concern with this position. Stacy Kail testified that training would have been provided to Claimant if needed or requested. (T. p. 10).

The last conversation between Ms. Kail and the Claimant was on February 20, 2003, when Claimant confirmed that she would be present to work the new position on February 21, 2003. Claimant did not show up for work, even though there was a job available. Lack of training and knowledge of the location of the job position is not sufficient proof that Claimant was unable to return to work. Claimant was assigned to a location which was about 20 miles from her home. Claimant's medical condition in no way hindered her ability to return to work for the Employer. No medical provider placed Claimant on any type of restriction that prevented her to return to this position. In fact, the Employer worked with claimant's physicians in determining a modified duty job was available within the restrictions. Claimant simply decided not to take the position offered and later found other employment. She even reported to her doctor that she had no intentions of returning to work. She failed to provide any documentation that she was taken off work by her treating physician.

Claimant must prove that she was temporarily totally disabled. First, her disability must be supported by medical findings. *Walker Mfg. Co. v. Cantrell*, 577 So. 2d 1243, 1248 (Miss. 1991). Second, a claimant must make a reasonable effort to secure gainful employment. “The law does not require that he move to another part of the state, but he must cast his eye farther than across the street.” *Id.*, at 1249, *citing Piper Industries, Inc. v Herod*, 560 So. 2d 732 (Miss. 1990).

The facts in *Cantrell* are strikingly similar to those in the present case. In *Cantrell*, Claimant suffered injury to his left hand and was treated by several doctors. 577 So. 2d at 1243. Dr. Rhea and Dr. Jabaley both recommended Claimant return to light duty work. *Id.* The employer offered Claimant an opportunity to return to work in a different position but with no change of pay. The letter from the personnel manager advised Claimant that there was work available within the doctor’s restrictions and that if he did not report for work, he would be terminated. Claimant did not return to work and the employer terminated employment and ceased paying temporary total disability benefits. *Id.* at 1244. The personnel director testified light duty work was available. *Id.* Claimant, although failing to return to the light duty work, did seek and find other employment at a garment factory making less than with the employer. *Id.* at 1245. The Administrative Law Judge assigned a 40% loss of industrial use of the left hand which was in excess of the 5% medical impairment

assigned by Dr. Gassaway. Neither Dr. Rhea nor Dr. Jabaley assigned any disability rating and both felt that the Claimant could return to light duty work. *Id.*

The case was appealed to the Commission which modified the Administrative Law Judge's Order finding Claimant provided no medical evidence that his impairment exceeded 5% and further finding that the Claimant failed to attempt his usual duties at work and had not returned to work in spite of his employer's offer. *Id.* at 1245. The decision of the Full Commission was ultimately affirmed and reinstated by the Mississippi Supreme Court. The Court noted, "We first look to the medical testimony, remembering that the Claimant's disability must be supported by medical findings." *Id.* at 1248.

In the present case, Dr. Randolph and Dr. Manugian allowed Claimant to return to modified or light duty work within certain restrictions. Dr. Randolph restricted Claimant from overhead work, repetitive movement, pushing, pulling and climbing ladders and no lifting over 10 pounds which was later increased to no lifting over 20 pounds. (Emp. Ex. 2). Dr. Manugian testified that he had no objection to Claimant performing modified duty work within those restrictions. (Gen. Ex. 1, p. 19). It is undisputed that Spherion Corporation offered Claimant a light duty job within her medical restrictions. The job duties consisted of the following: no lifting arms overhead and no lifting over 10 pounds. In addition, the employer stated that "if

necessary, we will work with you and your physician to modify the job duties to meet any limitations as you work toward a full duty release.” (Emp. Ex. 2).

The Claimant testified she was aware of the offer and refused the offer because she was unfamiliar driving in Memphis. The Claimant lived in Byhalia and the address at which she would be working in Memphis was between a 10 and 20 minute drive from her home. The Court in *Cantrell* found that the Claimant failed to offer evidence that he was refused employment based upon his disability to his hand and that he failed to produce any witnesses to corroborate his statements or inability to perform the usual duties of his customary employment. Cantrell apparently testified that he made no search for work outside Gattman, his home town, saying that his car had been repossessed and was without transportation. The Court noted that the Commission may reasonably have found Claimant had imposed limitations upon himself and that he had not attempted or sought normal work duties with Walker Manufacturing or other comparable employers in his home county. 577 So. 2d at 1249.

In the present case, the Claimant completely failed to prove entitlement to any temporary total or any other disability benefits as a result of the injury to her shoulder. Claimant was offered a modified duty job with the Employer and did not attempt the job. She told Dr. Randolph she had no intention of working and that her husband would provide for the family.

Claimant failed to meet her burden of proof that she is entitled to temporary total disability benefits. The Commission was correct in finding that Claimant was not entitled to temporary total disability benefits commencing on February 7, 2003 or any permanent disability benefits for her shoulder injury. She reached maximum medical improvement from the shoulder injury on November 26, 2003 and was released with no restrictions or impairment rating. The Commission's finding that Claimant is not entitled to temporary total disability benefits or permanent disability benefits for her shoulder injury was supported by substantial evidence and should be affirmed.

V. CONCLUSION

The Commission's findings that Claimant's carpal tunnel syndrome was not work related and that Claimant was not owed temporary total or permanent disability benefits were supported by substantial evidence and must be affirmed. Claimant failed to prove that her carpal tunnel was caused by her work injury of February 7, 2003. Claimant failed to establish sufficient proof to support an award for temporary total disability benefits or permanent disability benefits. Claimant is not owed any temporary total disability or permanent disability benefits because she chose not to return to work after being offered a job within her medical restrictions. Claimant reached maximum medical improvement from her admitted shoulder injury by November 26, 2003, and was released with no restrictions and no impairment rating.

This Court should affirm the Circuit Court's order which affirmed the Commission's Order.

Respectfully submitted,

SPHERION CORPORATION AND
AMERICAN HOMES ASSURANCE
COMPANY, APPELLEES

BY:


OF COUNSEL

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CERTIFICATE OF SERVICE

I, Robert F. Stacy, Jr., of counsel for appellees, do hereby certify that I have this day mailed via United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellees to:

David L. Walker, Esq.
P.O. Box 719
Batesville, MS 38606-0719

Honorable Robert P. Chamberlin, Jr.
Circuit Court Judge
P. O. Box 280
Hernando, MS 38632

Mississippi Workers' Compensation Commission
1428 Lakeland Drive
P. O. Box 5300
Jackson, MS 39296-5300

THIS, the 14th day of November, 2008.



ROBERT F. STACY, JR.