



**I. CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record for the Appellant hereby certifies that the following 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 judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Vickie Clark, Byhalia, Ms.
2. Spherion Corporation, Olive Branch, Ms.
3. David L. Walker, Batesville, Ms.
4. Robert F. Stacey, Oxford, Ms.

Respectfully submitted,

This the 26<sup>th</sup> day of October 2008.

  
David L. Walker MBN   
Counsel for Appellant

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#### **IV. STATEMENT OF THE ISSUE**

- I. WHETHER THE DECISION OF THE CIRCUIT COURT OF DESOTO COUNTY, MS. AFFIRMING THE DECISION OF THE MISSISSIPPI WORKERS' COMMISSION IS BASED UPON SUBSTANTIAL EVIDENCE.**

## **V. STATEMENT OF THE CASE**

The Administrative Judge on January 18<sup>th</sup>, 2007 issued an order finding Finding that the Appellant/ Claimant suffered an admitted work injury to her Right arm and that her carpal tunnel syndrome in her right arm was related To her job duties with the employer. Order of Administrative Judge R. at 25.

The Administrative Judge awarded the Appellant/Claimant temporary total disability benefits beginning on February 7<sup>th</sup>, 2003. R. at 26. Finally, the Administrative Judge found that the Appellant/Claimant's work restrictions prevented her from returning to work for the Appellee/employer Id. The Appellee/employer filed a petition for review with the Commission. R. at 27-29.

The Full Commission (two commissioners only) considered the Appellee/Employer-Carrier's petition for review on June 18<sup>th</sup>, 2007 and held that there was no credible history to support a work related case of carpal tunnel syndrome, and there was no medical support for such a

finding. R. at 36. Additionally, the Full Commission held that the Appellant/Claimant failed to prove that she was entitled to temporary total disability benefits for the right shoulder injury admitted by the Appellee/ Employer/Carrier. R. at 37.

The Appellant/Claimant was hired by the employed by Spherion Corporation on October 28<sup>th</sup>, 2001. T. at 11. She mostly hammered on a socket set. T. at 12. She was terminated on February 10<sup>th</sup>, 2003. Id. She worked in the State of Mississippi, not the State of Tennessee. Id. On February 7<sup>th</sup>, 2003 she was handling a socket set and felt a sharp pain through her right arm, shoulder and gradually went down through her right hand. Id. She had hammered about eight hours that day. She was terminated because she was injured on the job. T. at 12-13. She was offered employment as an office worker, but had no training as an office worker. T. at 14. She had never experienced any pain in her right arm, right shoulder and right wrist pain other than on the job for the employer. T. at 15.

The Appellant/Claimant was working as a house cleaner at the time of the hearing, but she continued to have arm pain. She supported two children and had no choice but to work. T. at 19. She worked only 18-25 hours per week. Id.

A review of the Appellant/Claimant's emergency room records at Baptist Memorial Hospital-Desoto reveals joint pain and sharp extremity pain. A diagram in the records indicates pain in an arm.

The medical records of Dr. Bruce Randolph contain numerous references to right wrist pain. She had pain with the movement of her right thumb. See records of Dr. Bruce Randolph.

Dr. A.H. Manugian examined the Claimant/Appellant on November 26<sup>th</sup>, 2003 for an independent medical evaluation. Deposition of Dr. Manugian at 6. She presented with a history of pain in her right shoulder and arm, with intermittent numbness of the right hand. Id. He found that she had a very mild carpal tunnel compression test. Id. at 8.

On July 14<sup>th</sup>, 2004 Dr. Manugian was of the opinion that the Claimant/Appellant was having a lot more in the way of carpal tunnel symptoms as well as signs. Id. at 11. She had positive compression and irritability tests. Id.

The Claimant/Appellant's symptoms began at work according to Dr. Manugian. Id. at 12. His opinion, based upon a reasonable degree of medical certainty, was that if the Claimant did not have any other history of problems up to the point of her injury, then it would not be that unreasonable

to think that maybe something that aggravated her symptoms. Id. at 12-13. He noted that with carpal tunnel syndrome that pain can radiate from the hand all the way up to a shoulder. Shoulder pain is sometimes associated with carpal tunnel syndrome. Id. at 18. This opinion explains the Claimant/Appellant's complaints of right shoulder as reflected in her medical records. His opinion was also that traumatic carpal tunnel syndrome would have symptoms that would start immediately. R. at 22.

The unrebutted testimony of the Claimant/Appellant is that on February 7<sup>th</sup>, 2003 she was handling a socket set and felt a sharp pain through her right arm and shoulder and it gradually went down through her right hand. R. at 12-13. She also reported sharp extremity pain in her initial emergency room visit. She complained of right wrist pain and right thumb pain to Dr. Randolph.

Ms. Stacy Kail, the client service supervisor for the Employer/Appellee testified that she wrote the Claimant/Appellant a letter offering her office work in consultation with the adjuster for the carrier. T. at 8. Everything was operating efficiently at the office at the time that she wrote this letter. T. at 9. This office job was located in the State of Tennessee and the Claimant/Appellant never worked in an office



setting prior to her work injury. Id. She had no training to work as an in-house office worker. Id. Ms. Kail was not sure of how long this job would have lasted. This office job did not include a production bonus, thus the Claimant/Appellant would have made less money. R. at 10. Sometimes in house office workers are employed for less than 40 hours per week. R. at 11.

## **VI. SUMMARY OF ARGUMENT**

The circuit court erred in affirming the decision of the Mississippi Workers' Compensation Commission that there was no credible history to support a work related case of carpal tunnel syndrome and that there was no medical support for such a findings.

## **VII. ARGUMENT**

In workers' compensation cases, the Mississippi Workers' Compensation Commission, and not the administrative law judge, is the ultimate fact-finder. **Goodlow v. Marietta-American**, 919 So 2d 149, 151, (Miss. Ct. App. 2005).

The Mississippi Workers' Compensation Commission is the trier of facts and the judge of the credibility of the witnesses. Facts as found by the Mississippi Workers' Compensation Commission that are supported by substantial evidence should be affirmed by the circuit court. **Lankford v.**

**Rent-a-Center, Inc.** 961 So.2d 774

An order of the

Mississippi Workers' Compensation Commission may be reversed when the reviewing court finds that it is clearly erroneous and contrary to the

weight of the credible evidence. **Mitchell Buick, Pontiac & Equipment**

**Co. v. Cash**, 592 So. 2d 978, 980 (Miss. 1991). The circuit court of Desoto

County, Mississippi filed an order on June 26<sup>th</sup>, 2008 affirming the order

of the Mississippi Workers' Compensation Commission finding that the

Commission's order was supported by substantial evidence and correctly

applied the applicable law. Clerk's record at 38-40. The Appellant then

filed a notice of appeal of this order on July 8<sup>th</sup>, 2008. Clerk's record at

40-41. Generally, administrative appeals can only be made from a final

Order. **Cives Steel Co. v. Williams**, 903 So. 2d 678, 680 (Miss. 2005).

The order of the circuit court is clearly a final order of the final order of the

Mississippi Workers' Compensation Commission. Thus, jurisdiction is

proper before this court.

The workers' compensation act should be liberally construed to carry out its beneficent remedial purpose. **Stuard v. Brown**, 543 So. 2d 652,

(Miss. 1989.) The full commission did not mention this at all in its decision.

The Claimant/Appellant is not required to move to another part of the state in which she was injured to accept a different job offered by the employer. **Piper Industries, Inc. Herod,** 560 So. 2d 732 (Miss. 1990). The replacement job offered by the Employer/Appellee was not within the Claimant/Appellant's usual duties with the employer. Nor did she drive in the State of Tennessee, R. at 14.

The restrictions placed upon the Claimant/Appellant by Dr. Randolph and Dr. Manugian would in all likelihood would have prevented her from returning to work for the Employer/Appellee.

The administrative law judge was correct in determining that the Claimant/Appellant's right carpal tunnel syndrome was not so remote in time nor circumstance to be denied or considered. This conclusion is dictated as well by the beneficent purposes of the workers' compensation Act. **Order of Administrative Judge** at 7.

The full commission noted that Dr. Manugian testified that if the Claimant/Appellant 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 work related contributed to her symptoms. **Full**

**Commission Order** at 4-5. The Employer/Carrier failed to introduce any evidence indicating that other any other history of problems prior to her work injury.


The Full Commission found that Dr. Manugian could not state to a reasonable degree of medical probability that the work incident on February 7<sup>th</sup>, 2003 caused the right carpal tunnel symptoms. **Full Commission Order** at 5. At Dr. Manugian's initial visit with the Claimant/Appellant he was given a history of pain in her right shoulder and arm with intermittent numbness of the right hand. **Deposition of Dr. Manugian at 6.** She related her symptoms to hammering a socket set at work. *Id.* at 12.

Dr. Manugian's opinion based upon a reasonable degree of medical certainty that if the Claimant/Appellant did not have any other other history of problems up to that point and symptoms started at that point, then it would not be that unreasonable to think that maybe something aggravated her symptoms. *Id.* at 12-13. The decision of the Full Commission to not accept this testimony was clearly erroneous and contrary to the overwhelming weight of the evidence requiring a reversal of the

proceedings.

Respectfully submitted,

This the 26th day of October 2008.

  
David L. Walker MBN [REDACTED]  
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Batesville, Ms. 38606  
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Certificate of Service

I, David L. Walker, counsel for Claimant/Appellant, hereby certify that I have this day either mailed or hand-delivered a copy of the Claimant/Appellant's Brief to Hon. Robert P. Chamberlin, Circuit Court Judge and Robert F. Stacy, Jr. Esq., counsel for Employer/Carrier/Appellee, at their usual business addresses.

This the 26th day of October 2008.

  
David L. Walker