

**IN THE SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**KAREN JOHNSON**

**APPELLANT/CLAIMANT**

**VS.**

**SANDERSON FARMS, INC.**

**APPELLEE/CROSS-APPELLANT**

**CAUSE NO.: 2008-WC-01218-COA**

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**BRIEF OF THE APPELLEE**

**Appeal of the Decision of the Circuit Court  
Copiah County, Mississippi**

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**ORAL ARGUMENT REQUESTED**

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APPELLEE/CROSS-APPELLANT****

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**I. CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Court may evaluate possible disqualification or recusal.

1. Karen Johnson, Appellant/Claimant
2. John Hunter Stevens, Esq., Attorney for Appellant/Claimant
3. Sanderson Farms, Inc., Appellee/Employer
4. Richard O. Burson, and Ryan J. Mitchell, Attorneys for Appellee/Employer
5. The Liberty Mutual Insurance Group, insurance carrier for Appellee/Employer, Sanderson Farms, Inc.
6. Honorable Virginia Wilson Mounger, Administrative Judge, Mississippi Workers' Compensation Commission
7. Honorable Lamar Pickard, Copiah County Circuit Court Judge



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#### **IV. STATEMENT OF ISSUES**

1. Whether the Commission's decision finding Claimant developed work-related carpal tunnel syndrome while employed at Sanderson Farms is supported by substantial evidence given that all objective medical testing showed no evidence of carpal tunnel syndrome.
2. Whether the Commission's decision finding Claimant to be temporarily and totally disabled for over three years (March 19, 2002 through March 30, 2005) due to mild bilateral carpal tunnel syndrome is supported by substantial evidence.
3. Whether the Commission erred by awarding Claimant five percent permanent industrial loss of use of each upper extremity for mild carpal tunnel syndrome despite the fact that the objective medical evidence showed no evidence of carpal tunnel syndrome in either of Claimant's upper extremities.

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

##### **A. Course of Proceedings and Disposition in the Court Below**

On February 27, 2006, a Hearing on the Merits was conducted by Administrative Law Judge Virginia Mounger in Jackson, Mississippi. On July 27, 2006, Judge Mounger issued an Order finding Claimant:

- (1) had developed work-related bilateral carpal tunnel syndrome during her employment at Sanderson Farms,
- (2) was entitled to temporary total disability benefits in the amount of \$153.53 commencing on March 19, 2002 and concluding on April 14, 2005,
- (3) was entitled to permanent partial disability benefits for a 50% loss of use of

the right upper extremity in the amount of \$153.53 per week commencing on April 15, 2005 and continuing for a period of 100 weeks, and

- (4) was entitled to permanent partial disability benefits for a 25% loss of use of the left upper extremity in the amount of \$153.53 per week commencing upon the ending of the period cited above and concluding after a subsequent period of 50 weeks.

Employer petitioned the Mississippi Workers Compensation Commission for review of the Administrative Judge's decision. On February 13, 2007, the Commission issued an Order affirming the Administrative Judge's finding that the claimant had developed bilateral carpal tunnel syndrome as a result of her employment at Sanderson Farms and the award of temporary disability benefits from March 19, 2002 through March 30, 2005 but reducing the Administrative Judge's award of permanent partial disability benefits from 50% on the right upper extremity and 25% on the left upper extremity to 5% on each upper extremity.

Claimant appealed the Full Commission's decision to the Circuit Court of Copiah County, Mississippi, and Employer cross-appealed. On June 30, 2008, Judge Lamar Pickard entered an Order affirming the decision of the Mississippi Workers Compensation Commission.

The Claimant subsequently filed her appeal to this Court on July 16, 2008, and the Employer filed its cross-appeal to this Court on the same day.

#### **B. Statement of Facts**

In March 2002, Dr. Alfonso Santos began treating the Claimant for bilateral hand

and wrist pain. (Claimant Ex. 10) On April 22, 2002, after several visits, Dr. Santos ordered a nerve conduction study to determine whether Claimant had carpal tunnel syndrome. (Id.) On April 26, 2002, the nerve conduction study on both upper extremities showed "there was no electrophysiologic evidence of carpal tunnel syndrome." (Employer Ex. 5)

On May 2, 2002, Dr. Sheila Lindley began treating the Claimant and ordered an EMG study to evaluate for possible carpal tunnel syndrome. (Claimant's Ex. 4) On May 2, 2002, Dr. Art Leis performed the EMG study and concluded there was no evidence of carpal tunnel syndrome and no evidence of cervical radiculopathy. (Employer Ex. 8) Dr. Leis formed these opinions based on the objective results of the EMG testing. (Id.) Despite these objective findings, Dr. Lindley continued to diagnose mild carpal tunnel syndrome with possible thoracic outlet syndrome.<sup>1</sup> (Claimant's Ex. 4) Dr. Lindley then recommended physical therapy, heat, stretch and modalities treatment and a possible steroid injection. (Claimant Ex. 4)

On August 8, 2002, Dr. Lindley noted that Claimant's "being off of work had assisted her in her pain." (Employer Ex. 8) Dr. Lindley's impression during this August 8 visit was "possible very mild carpal tunnel syndrome; however, EMG and nerve conduction studies are negative." (Id.) Dr. Lindley's recommendations during this visit were for more physical therapy. (Id.) Dr. Lindley further stated she would "see her one more time in follow-up" and would refer her to Rehabilitation Medicine as she noted "**this is a non-surgical problem.**" (Id.) Consistent with her August 8 note, Dr. Lindley wrote a

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<sup>1</sup> Dr. Lindley later stated the thoracic outlet syndrome had resolved with no permanent restriction or impairment rating.

letter to the Claimant's attorney at the time (Floyd Doolittle) stating the Claimant had a nonoperative condition and could be released at maximum medical improvement within two to three month's time. (Employer Ex. 6)

On November 21, 2002, Dr. Lindley performed a steroid injection into Claimant's right wrist and instructed her to utilize right wrist splintage. (Employer Ex. 8) On January 23, 2003, Dr. Lindley again noted the claimant was not a surgical candidate because she failed to get any improvement from the carpal tunnel injection. (Id.) Claimant's next appointment with Dr. Lindley came over a year later, on January 7, 2004.

In the interim, Dr. Eric Wegener conducted an independent medical examination on September 9, 2003. (Employer's Ex. 1 and General Ex.16) Dr. Wegener's physical examination found Claimant's range of motion and strength to be normal and the sensory mapping to be inconsistent with the Claimant's behaviors. (Id.) Dr. Wegener repeated the steroid injection to see if it would improve her subjective complaints. (Id.) In her follow-up visit to Dr. Wegener, the Claimant stated that the injection made her worse for 24 hours then improved the symptoms for a period of 2-3 days. (Id.) The Claimant complained she could not do her activities of daily living; however, on physical examination Dr. Wegener found the Claimant to have good range of motion and no swelling. (Id.)

After this visit, Dr. Wegener stated it was his opinion to a high degree of medical certainty the Claimant had no carpal tunnel syndrome. (Id.) He assigned a permanent impairment rating of 0% and released the Claimant to return to work with no restrictions. (Id.) Dr. Lindley testified at her deposition she could not find much to disagree with in Dr.



Wegener's IME report. (Claimant's Ex. 3, depo at pg. 36-37) Despite Dr. Wegener's diagnosis of no carpal tunnel syndrome and Dr. Lindley's diagnosis of very mild carpal tunnel syndrome, Claimant never attempted to return to work at Sanderson Farms. (T. at pg. 21)

Claimant finally returned to see Dr. Lindley on January 7, 2004. (Employer Ex. 5) During that visit, Dr. Lindley incorrectly noted that the Claimant was currently working at Sanderson Farms, and, despite all of the objective medical evidence to the contrary, Dr. Lindley ordered a repeat EMG nerve conduction study to evaluate for carpal tunnel syndrome. (Id.) Predictably, this EMG performed by Dr. Wee on January 14, 2004 was also normal showing no electrophysiological evidence of a neuropathy, myopathy, or cervical motor radiculopathy. (Id.)

Following this normal study, Dr. Lindley referred the Claimant to a physical medicine specialist, Dr. Michael Winkelmann, for "possible initiation of physical therapy and some guidance pertaining to her current therapy involvement." (Id.) Dr. Winkelmann's physical examination revealed the Claimant had normal reflexes and pulse deficit but did have some "myofascial component to discomfort." (Employer Ex. 7) Dr. Winkelmann's impression was tendonitis-related hand pain. (Id.) He felt a short course of physical therapy would get her back into work. (Id.) On May 17, 2004, Dr. Winkelmann stated that the Claimant had overall good response to the physical therapy. (Id.) He planned to get a functional capacity evaluation and proceed to return her to work. (Id.) Dr. Winkelmann again stated that he felt the Claimant's pain was mostly tendonitis related. (Id.) When she found out Dr. Winkelmann planned to return

her to work after the functional capacity evaluation, Claimant refused to participate and returned to see Dr. Lindley. (T. at pgs. 29-33)

On September 16, 2004, Dr. Winkelmann indicated the Claimant could return to work without restrictions. (Employer Ex. 7) Interestingly, the Claimant never talked to Dr. Lindley about Dr. Winkelmann's treatment, and Dr. Lindley never followed up with Dr. Winkelmann to determine what his recommendations were, despite the fact that Dr. Lindley recommended the Claimant be seen by Dr. Winkelmann.

On June 24, 2004, despite all nerve conduction studies being negative for carpal tunnel syndrome and Dr. Winkelmann diagnosing claimant with tendonitis, Dr. Lindley recommended and began planning for a carpal tunnel release on Claimant's right wrist. (Claimant Ex. 4). On October 8, 2004, under the mistaken impression that the Claimant had a positive nerve conduction study, Dr. Lindley performed an open decompression of the median nerve at the carpal canal on the right upper extremity. (Employer Ex. 6) Dr. Lindley's operative note erroneously stated the Claimant had an EMG/nerve conduction study that was consistent with carpal tunnel syndrome. (Id.) Dr. Lindley had already performed the surgery by the time she realized she was mistaken about the existence of the positive EMG/nerve conduction study. (Id.) By her own testimony, the surgery performed by Dr. Lindley should not have been performed absent a positive nerve conduction study. (Claimant Ex. 3).

At her November 17, 2004 deposition, Dr. Lindley testified that she did not consider the Claimant to be a surgical candidate as long as the objective nerve conduction studies were normal. (Claimant Ex. 3) Dr. Lindley testified that she only

decided to perform surgery after she received positive, or abnormal, results on the nerve conduction studies. (Id.) Although Dr. Lindley initially testified she was certain there was a positive nerve conduction study done sometime between January 2003 and June 2004, she was unable to produce a medical record showing a positive study and eventually had to concede at her second deposition that the Claimant never had a positive nerve conduction study showing the existence of carpal tunnel syndrome. (Id.)

On December 16, 2004, Dr. Lindley sent the Claimant for yet another bilateral nerve conduction study to be performed by Dr. Blount. (Employer Ex. 6) These nerve conduction studies again showed no objective evidence of carpal tunnel syndrome. (Id.) Dr. Lindley also noted that the Claimant's sensation in her right hand had returned to almost 100% with a marked decrease in pain. (Id.) Despite the absence of abnormal nerve conduction studies and apparently willing to perform surgery regardless of the objective testing, Dr. Lindley did an open decompression of Claimant's left carpal tunnel on December 20, 2004. (Id.)

On April 15, 2005, Dr. Lindley placed Claimant at maximum medical improvement and noted Claimant had regained all motion and sensation in her left upper extremity. (Id.)

## **VI. SUMMARY OF THE ARGUMENT**

The Commission's decision finding Claimant developed carpal tunnel syndrome while employed at Sanderson Farms is not supported by substantial evidence. The overwhelming medical evidence in this case indicates Claimant did not suffer from bilateral carpal tunnel syndrome. In fact, none of the physicians that treated Claimant

diagnosed her with carpal tunnel syndrome prior to Dr. Lindley's surgical procedure, which was admittedly performed under the mistaken impression that Claimant's EMG had been positive for carpal tunnel syndrome. From that point on, Dr. Lindley's opinions must be viewed with skepticism because she had a clear self-interest in making the diagnosis of carpal tunnel syndrome.<sup>2</sup> The reliable medical evidence introduced in this case were the numerous nerve conduction studies that were negative for carpal tunnel syndrome and Dr. Winkelmann and Dr. Wegener's opinions that the claimant did not have carpal tunnel syndrome.

Additionally, the Commission's decision awarding temporary total disability benefits from March 19, 2002 through March 30, 2005 is not supported by substantial evidence and should be reversed. Claimant was released to return to work on several occasions by Dr. Lindley during the time period she claims she was totally disabled, yet she made no effort to find employment at Sanderson Farms, or elsewhere, during this time. On October 21, 2003, Dr. Wegener determined the claimant had a zero percent impairment rating and could return to work without restrictions, and on May 17, 2004, Dr. Winkelmann was ready to schedule a functional capacity evaluation and return the claimant to work.

As for the claim for permanent disability benefits, the Commission was correct in finding claimant's loss of industrial use to be five percent because the Claimant intentionally sabotaged her chances to gain employment by making self-limiting notations on job applications. Therefore, if this Court finds there is substantial evidence in the

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<sup>2</sup> As will be discussed at greater length below, Dr. Lindley admitted in her deposition that she would not have performed surgery on Claimant without having first received a positive EMG study. Therefore, her testimony that follows is, at the very least, suspect due to the fact that Dr. Lindley had in essence admitted a breach in the standard of care and was faced with an opportunity to justify her actions with her observations during and after Claimant's surgery.

record to support the Commission's decision that claimant did have work-related carpal tunnel syndrome, then it should likewise find there is substantial evidence to support the Commission's finding that claimant had a five percent permanent industrial loss of use.

## **VII. ARGUMENT**

### **A. THE FULL COMMISSION'S DECISION REGARDING THE COMPENSABILITY OF CLAIMANT'S WORK-RELATED ALLEGED CARPAL TUNNEL SYNDROME IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE GIVEN THE FACT THAT THE OBJECTIVE MEDICAL EVIDENCE SHOWED NO EVIDENCE OF CARPAL TUNNEL SYNDROME**

It is a well established rule in our case law that findings from the Mississippi Workers Compensation Commission should be only be upheld if they are supported by substantial evidence. *Hardin's Bakery v. Taylor*, 631 So.2d 201 (Miss. 1994). Likewise, when the findings of the Commission are not supported by substantial evidence, they should be overturned. *Id.*

Substantial evidence, though not easily defined, means something more than just a "mere scintilla" of evidence, yet, it does not rise to the level of a "preponderance of the evidence". *Attala County Nursing Center v. Moore*, 757 So.2d 784 (Miss. Ct. App. 2000) (quoting *Delta CM1 v. Speck*, 586 So.2d 768, 773 (Miss. 1991)). See, also, *Edwards v. Marshall Farms, Inc.*, 754 So.2d 556 (Miss. Ct. App. 2000). The Mississippi Court of Appeals has stated that substantial evidence can be evidence affording a substantial basis of fact from which the fact and issue can reasonably be inferred. *Id.* In this case the Full Commission's decision as to the compensability of Claimant's claims for bilateral carpal tunnel syndrome is clearly contrary to the overwhelming weight of objective medical evidence in the record indicating that Claimant never suffered from any

degree of bilateral carpal tunnel syndrome. Therefore, the Full Commission's decision that Claimant was in any way disabled due to the existence of mild bilateral carpal tunnel syndrome is not supported by substantial evidence. The only decision that could be supported as such is that Claimant never had any degree of bilateral carpal tunnel syndrome.

Furthermore, the Claimant bears the burden of proving the facts requisite to an award of workers' compensation. *Oatis' Estate v. Williamson & Williamson Lumber Co.*, 92 So.2d 557 (Miss. 1957). The familiar rule of liberal construction of the workers' compensation law does not eliminate this burden. *Ingalls Shipbuilding Corp. v. Howell*, 74 So.2d 863 (Miss. 1954). In other words, the Claimant must establish by a preponderance of the evidence that she had an injury of carpal tunnel syndrome arising out of and in the course of her employment with Sanderson Farms. *Narkeeta, Inc. v. McCoy*, 153 So.2d 798 (Miss. 1963). As outlined above, the Claimant failed to meet her burden because of the negative results of the nerve conduction studies and the opinions of Dr. Eric Wegener and Dr. Michael Winkelmann.

Both Dr. Wegener and Dr. Winkelmann examined the Claimant on multiple occasions, and both of these well respected doctors concluded the Claimant did not have carpal tunnel syndrome. Both doctors also opined the Claimant had no permanent impairment and could return to work with no restrictions. While Dr. Lindley did diagnose carpal tunnel syndrome, she did so based on her mistaken impression that a nerve conduction study had shown evidence of carpal tunnel syndrome. To the contrary, Claimant had several nerve conduction studies and none ever showed any

objective evidence of carpal tunnel syndrome. After erroneously diagnosing the Claimant with carpal tunnel syndrome based on her mistaken belief that a positive nerve conduction study existed, Dr. Lindley compounded the problem by performing a carpal tunnel release on the Claimant. Dr. Lindley testified that one of the indications for surgery was the nonexistent positive nerve conduction study. Dr. Lindley did not find out until after the surgery that the positive nerve conduction study did not exist. By then it was too late, and she was forced to try to avoid a potential malpractice claim by defending the diagnosis and surgery she had already performed.

Claimant would have this Court believe that none of Claimant's treating physicians would disagree with Dr. Lindley's misguided diagnosis of bilateral carpal tunnel syndrome. That is simply not true. After concluding that Claimant was not a surgical candidate, Dr. Lindley referred Claimant to Dr. Michael Winkelmann. Dr. Winkelmann opined that Claimant did not have carpal tunnel syndrome and stated she could return to work without restrictions. During Claimant's first visit on April 7, 2004, Dr. Winkelmann performed a thorough physical examination and ordered a short course of physical therapy. After the physical therapy, the Claimant returned to Dr. Winkelmann on May 14, 2004, and he stated that Claimant's problems were mostly tendonitis related. Dr. Winkelmann planned to release the Claimant to return to work after a functional capacity evaluation could be performed. Not surprisingly though, when the Claimant learned she would be released to return to work, she refused to follow through with the functional capacity evaluation and stopped her treatment with Dr. Winkelmann. Dr. Winkelmann then released the Claimant to return to work without

restrictions.

Dr. Wegener also examined the Claimant on multiple occasions, initially stating that she showed the signs and symptoms of carpal tunnel syndrome. However, after conducting a diagnostic injection and reviewing her medical history, Dr. Wegener concluded "to a high degree of medical certainty" that the Claimant had "no carpal tunnel syndrome and no abnormalities that could be detected other than subjective abnormalities." Based on this conclusion, Dr. Wegener assigned a permanent impairment rating of 0% and returned the Claimant to regular duty work without restrictions. After Dr. Lindley performed two surgeries on the Claimant, Dr. Wegener reviewed the medical records, including the operative note and confirmed that his opinions had not changed.

In contrast, Claimant rests her claim on the post-operative opinions of Dr. Lindley. These opinions were based, at least in part, on Dr. Lindley's admittedly false belief that the results of the nerve conduction studies were positive, when in fact they were negative. Because Dr. Lindley's opinions were based on erroneous information, they do not rise to the level of substantial evidence sufficient to support the Commission's finding that the claimant had carpal tunnel syndrome.

The only other medical evidence submitted by the Claimant was the medical records affidavit of Dr. Chris Etheridge. Similar to the other physicians that had examined the Claimant, Dr. Etheridge formed an initial opinion that the Claimant had carpal tunnel syndrome based on her subjective complaints; however, Dr. Etheridge stated that he wanted to get a copy of the nerve conduction study prior to going forward



with surgery. After Dr. Etheridge requested the nerve conduction study, the Claimant never returned to follow up. There is no evidence as to what Dr. Etheridge's opinions would have been had the Claimant returned with the negative nerve conduction study. The most significant aspect of Dr. Etheridge's records is that he was adamant about obtaining the nerve conduction studies. These studies were obviously vital to all of the physicians who examined and treated the Claimant, and these studies were all normal. Dr. Etheridge was eager to review the nerve conduction studies because they are the best objective evidence in determining whether a person has carpal tunnel syndrome.

Once the Court has had an opportunity to review the physicians' records along with Claimant's multiple nerve conduction studies taken at various time intervals since Claimant last worked in April 2002, it should become abundantly clear that the Full Commission's decision regarding the compensability of Claimant's work-related injury claim for alleged bilateral carpal tunnel syndrome is not supported by substantial evidence and all of the objective medical evidence produced by all of the physicians who properly reviewed the results of the Claimant's nerve conduction studies. As such, the Commission's decision is not based upon substantial evidence as required, and therefore it should be reversed. Once the Court reaches this conclusion, it should find in favor of the Employer, and the other issues related to this appeal become moot.

**B. THE FULL COMMISSION ERRED BY FINDING CLAIMANT TO BE TEMPORARILY AND TOTALLY DISABLED FOR OVER THREE YEARS (MARCH 19, 2002 THROUGH MARCH 30, 2005) DUE TO MILD BILATERAL CARPAL TUNNEL SYNDROME WHEN NO OBJECTIVE MEDICAL EVIDENCE EXISTED TO DEMONSTRATE THAT CLAIMANT HAD SUCH A CONDITION**

As the Court is well aware, disability is defined under the Mississippi Workers'

Compensation Act as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or other employment, which incapacity and the extent thereof must be supported by medical findings." *Miss. Code Ann. §71-3-3(i)*. Furthermore, as stated earlier, the injured employee bears the general burden of proving every element of temporary disability. *Toldson v. Anderson-Tully Co.*, 724 So.2d 399, 402 (Miss. Ct. App. 1998). So, for Claimant to be totally disabled from March 19, 2002 through March 30, 2005, the preponderance of the medical evidence must prove the Claimant was unable to earn any wages during this time period. Dr. Lindley addressed this issue at her deposition when she testified that the Claimant could have worked in a light-duty job avoiding repetitive wrist flexion or extension and repetitive gripping. (depo at pgs. 13-15) Despite this testimony from Dr. Lindley, the Claimant never contacted Sanderson Farms about potential restricted duty work. (T. at 42) In fact, the Claimant never contacted Sanderson Farms about work at all after she brought in the work excuse from Dr. Santos on April 22, 2002. (Id.)

Regardless of the date of maximum medical improvement, a Claimant must present herself to her employer for work when she is released by her physician to return to work. If a Claimant fails to present herself to her employer for work, she fails to be eligible for temporary disability benefits. *Hale v. Ruleville Health Care Center*, 687 So.2d 1221, 1226 (Miss. 1997); *Lanterman v. Roadway Exp., Inc.*, 608 So.2d 1340, 1347 (Miss. 1992). Therefore, the Claimant had an obligation to present herself to Sanderson Farms for work during the period of time Dr. Lindley testified she was able to work light duty. This time period would have been until Dr. Lindley performed the

surgery on December 16, 2004. The Full Commission recognized this fact in its Order stating that even after two physicians had released her to return to work, "Claimant made no serious effort to return to work, and steadfastly made self-limiting notations on job applications." Despite its recognition of Claimant's transparent and lackadaisical approach to returning to work, the Commission erroneously affirmed Claimant's award for temporary disability during the time frame that Claimant was cleared to return to work. Even if Claimant had suffered from mild bilateral carpal tunnel syndrome, which, as discussed in greater detail above, the overwhelming weight of the objective medical evidence demonstrates that she did not, the correct period of temporary disability should be from December 16, 2004 through the date of maximum medical improvement, or March 30, 2005.

**C. IF THE COURT FINDS THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE FULL COMMISSION'S FINDING THAT THE CLAIMANT SUFFERED A COMPENSABLE WORK-RELATED INJURY IN THE FORM OF CARPAL TUNNEL SYNDROME, THEN THE COURT SHOULD LIKEWISE AFFIRM THE FULL COMMISSION'S AWARD OF A FIVE PERCENT PERMANENT INDUSTRIAL LOSS OF USE OF EACH UPPER EXTREMITY**

While the Employer vehemently denies the Claimant suffered a compensable bilateral carpal tunnel injury as a result of her work at Sanderson Farms, if the Court determines there was substantial evidence in the record to support the Full Commission's award to the contrary, then the Court should likewise find there to be substantial evidence in the record to support the Full Commission's award of five percent permanent industrial loss of use of each upper extremity. The evidence simply does not support an award of industrial loss of use greater than the medical impairment ratings assigned by Dr. Lindley.

When an employee suffers an injury to a scheduled member that results in a permanent partial disability to that member, she is entitled to the greater amount of compensation determined under two alternate theories of computation." *Hollingsworth v. I.C. Isaacs and Co.*, 725 So.2d 251(¶ 10) (Miss.Ct.App.1998). First, a determination of functional disability of the member must be made. *Id.* Then, alternatively, "an industrial disability must be determined that is based, not just on the medical evidence, but upon evidence of how the limited function of the member affects the employee's ability to perform those duties normally associated with the claimant's job." *Hollingsworth*, 725 So.2d at (¶ 10). Stated differently, 'medical' disability is the equivalent of functional disability and relates to actual physical impairment. 'Industrial' disability is the functional or medical disability as it affects the claimant's ability to perform the duties of employment. *Walker Mfg. Co. v. Butler*, 740 So.2d 315(¶ 44) (Miss.Ct.App.1998) (quoting *Robinson v. Packard Elec. Div., General Motors Corp.*, 523 So.2d 329, 331 (Miss.1988).

In determining the Claimant's level of industrial disability, it is important to point out that the degree of Claimant's alleged carpal tunnel syndrome was always characterized as mild in nature. Additionally, after the surgeries were performed, Dr. Lindley stated the Claimant regained essentially all of her sensation in her hands. Dr. Lindley stated there would be some permanent restrictions, but she also stated the Claimant should be able to return to work with some modifications to her work duties.

As for Claimant's alleged job search, she all but eliminated her chances of gaining employment by limiting her options on the applications. First, the Claimant was

only interested in a job where she could be assured she would make the same or more than she made at Sanderson Farms (\$8.60/hr) despite the fact that she worked at Sanderson Farms for almost ten years to get to the point where she was able to earn \$8.60/hr. (T. at pg. 34). Next, the Claimant informed some of the employers that she would be limited in the hours she would be available to work. And most importantly, the Claimant never made an attempt to return to work at Sanderson Farms. (T. at pg. 35)

The Claimant was clearly not interested in returning to work. If she had been, she would have followed up with the functional capacity evaluation ordered by Dr. Winkelmann. Presumably, she would have also contacted Sanderson Farms and requested a job within the restrictions set out by Dr. Lindley. The Claimant, obviously uninterested in returning to work in any capacity, should not be rewarded for failing to make a legitimate effort to return to work.

Should the Court affirm the Commission's finding that the Claimant sustained a work-related injury in the form of bilateral carpal tunnel syndrome, the Court should also affirm the Commission's award of five percent permanent industrial loss of use of each upper extremity.

### **VIII. CONCLUSION**

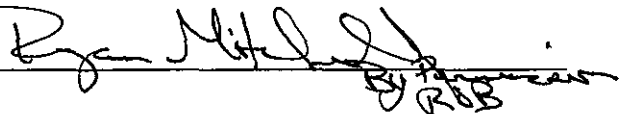

For the aforementioned reasons, the Court should find that the Mississippi Workers' Compensation Commission's decision finding the developed carpal tunnel syndrome while employed at Sanderson Farms is not supported by substantial evidence. Likewise, once the Court has had an opportunity to review the physicians' records along with Claimant's multiple nerve conduction studies, all of which were normal, taken at

various time intervals since Claimant last worked in April 2002, it should become abundantly clear that the bilateral carpal tunnel surgeries performed by Dr. Lindley were not reasonable and necessary because the nerve conduction studies showed no evidence of carpal tunnel syndrome.

Alternatively, if the Court does find there is substantial evidence to support the Commission's finding that the Claimant had bilateral carpal tunnel syndrome, then the Employer requests the Court reduce the time period of temporary total disability and affirm the percentage of permanent partial disability assigned by the Commission.

Respectfully submitted, this the 3<sup>rd</sup> day of November, A.D., 2008.

**SANDERSON FARMS, INC.,  
APPELLEE/CROSS-APPELLANT**

By:   
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**CERTIFICATE OF SERVICE**

I, Ryan J. Mitchell, do hereby certify that I have this day filed the above and foregoing **Brief of the Appellee**, along with three copies as required by the Mississippi Rules of Appellate Procedure, with the Secretary of the Supreme Court of Mississippi and have mailed, postage prepaid, a true and correct copy of same to:

**JOHN HUNTER STEVENS., Esq.**  
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**HONORABLE LAMAR PICKARD, CIRCUIT JUDGE**  
Copolah County Circuit Court  
Post Office Box 310  
Hazlehurst, MS 39083

This, the 3<sup>rd</sup> day of November, A.D., 2008.

  
RYAN J. MITCHELL