

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

CHRISTINE LANG

APPELLANT/CROSS-APPELLEE

V.

NO. 2009-WC-01540-COA

**MISSISSIPPI BAPTIST MEDICAL CENTER
AND RECIPROCAL OF AMERICA (MISSISSIPPI
INSURANCE GUARANTY ASSOCIATION
A/K/A "MIGA")**

APPELLEES/CROSS APPELLANTS

REPLY BRIEF OF APPELLANT/CROSS-APPELLEE

**APPEALED FROM THE CIRCUIT
COURT OF HINDS COUNTY,
MISSISSIPPI**

ORAL ARGUMENT REQUESTED

**HON. JOHN HUNTER STEVENS
MSB: [REDACTED]
GRENFELL, SLEDGE AND STEVENS
1535 LELIA DRIVE
JACKSON MS 39216
TEL NO. (601) 366-1900
FAX NO. (601) 366-1799
ATTORNEY FOR
APPELLANT/CROSS-APPELLEE**

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

CHRISTINE LANG

APPELLANT/CROSS-APPELLEE

VS.

NO. 2009-WC-01540-COA

**MISSISSIPPI BAPTIST MEDICAL CENTER
AND RECIPROCAL OF AMERICA (MISSISSIPPI
INSURANCE GUARANTY ASSOCIATION
A/K/A "MIGA")**

APPELLEES/CROSS-APPELLANTS

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel for the Appellant/Cross-Appellee, Christine Lang, certifies the following parties have an interest in the outcome of this case. These representatives are made in order that the Court may evaluate possible disqualifications or recusal.

1. Christine Lang, Appellant/Cross-Appellee;
2. John Hunter Stevens, Grenfell, Sledge & Stevens, PLLC, Counsel for Appellant/Cross-Appellee;
3. Mississippi Baptist Medical Center and Reciprocal of America (Mississippi Insurance Guaranty Association a/k/a "MIGA"), Appellees/Cross-Appellants;
4. Douglas R. Duke, Esq., Counsel for Appellees/Cross-Appellants..

THIS the 3 day of March, 2010.



JOHN HUNTER STEVENS

TABLE OF CONTENTS

	<u>PAGE</u>
Certificate of Interested Persons	i
Table of Contents	ii
Table of Cases	iii
Introduction	1
Discussion	1
Conclusion	3
Certificate of Service	4,5

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

CASES

PAGE

None

INTRODUCTION

The Combined Brief of Appellees/Cross-Appellants hospital is without merit. The argument is based on the two incorrect arguments:

1. That the Claimant did not get hurt on the job; and,
2. That the Claimant has no credibility, and despite an exhaustive job search, and Claimant's cooperation with the vocational rehabilitation expert hired by the Employer and Carrier was essentially a sham. Both of these arguments are based on the astonishing position by the Employer and Carrier that apparently the Claimant's complete claim should be denied because she has no credibility. Despite the fact that until the Employer admitted Claimant's injury on the job, she had a good record and was loyal to the Employer for 23 years. Instead, the hospital insinuates that not only was the Claimant lacking credibility, but also claims that the Administrative law Judge misrepresented the facts in the claim. The arguments of the Employer and Carrier are without merit.

DISCUSSION

Originally, a large part of the argument set forth in Cross-Appellants' brief seemed to be based on the premise that the Employer and Carrier deny that the Claimant sustained an on the job injury. In support of this, they basically say that the Claimant and her physicians are lying. Notwithstanding the Employer and Carrier paid temporary total disability benefits (per the Full Commission Order) from January 31, 2002 through July 28, 2003, all for a period of at least 77 weeks, and possibly for as much as 93 weeks, as well as medical benefits. Amazingly, now the hospital would have this Court believe that no actual injury occurred. Again, this is all based on the mistaken argument by the Employer alleging even the Administrative Law Judge misrepresented the facts, and that the Claimant, of course, has no credibility.

The hospital's argument is that an injury on the job did not occur is frivolous. Nothing in

the medical or the Claimant's testimony refutes that she has sustained an injury on the job. The hospital would have this Court utilize speculation and conjecture, both of which the Administrative Law Judge and Full Commission refused to acknowledge such a frivolous argument. Furthermore, it defies common sense and logic that an Employer, such as this hospital would pay a claim for at least more than a year, continue to pay medical on the claim, and wait until the hearing, and amazingly decide that an injury did not occur. This argument warrants no further consideration.

The Claimant has proven at least a 50% loss of wage earning capacity. The only argument based by the Employer that warrants discussion is its cross-appeal that the Claimant is not entitled to an award for loss of wage earning capacity. This is despite that even its own paid litigation expert acknowledged that the Claimant was disabled from being a licensed practical nurse, and disabled from the job that she had done for this Employer as a loyal employee for 23 years. Again, the Employer and Carrier based their baseless accusations on the credibility of the Claimant, despite the fact that the credibility was never questioned for 23 years until she got hurt. The hospital feebly attempts to persuade this Court that a delayed, after the fact job offer, all for accommodation in an attempt to minimize the workers' compensation award should be a walk away defense to any loss of wage earning complaint. Furthermore, a paid vocational rehabilitation expert hired after the fact should again allow it to escape an admitted loss of wage earning claim by a long term loyal employee. The fact that the Claimant is on social security disability for this condition was not questioned. That it was directly related to a back injury is not disputable. The fact that physicians and the hospital's own expert acknowledged that she cannot return to her 23 year profession could not somehow justify a 50% loss of wage earning capacity shows a miscarriage of justice would be undertaken to this if Claimant is awarded any less. The Commission's arbitrary reduction of the

award ignores the facts and the liberal interpretation of the Act.

The Claimant had no incentive whatsoever to not try to return to work at the hospital. She was less than three years away from her vested retirement which would have included benefits. She was not given the opportunity to go on for that three more years, based on the facts and evidence as found by the Administrative Law Judge, reasonable efforts to return to other employment and sustained a 50% loss of wage earning capacity. The Claimant submits that there is no legitimate evidence to refute the findings of the Administrative Law Judge and that they should be reinstated, and the Commission's findings reversed. Even the Full Commission found that admittedly she could not return to her previous duties as an LPN that she had done for 23 years. With only a GED, she had sustained a loss of wage earning capacity, and at 52 years of age, it would difficult for her to regain any type of similar earning capacity. In addition, she credibly testified, and the medical backs up, that she continues to suffer with chronic back pain for which she continues to take pain medication which has a sedating affect. That the Claimant sustained a loss of wage earning capacity is not disputable, the Employer and Carrier's arguments are otherwise based on speculation and conjecture. The Administrative Law Judge's findings are instead based on the actual evidence and should be reinstated.

CONCLUSION

The hospital's argument that the Claimant did not sustain an injury on the job is frivolous. The fact that they admitted the injury and paid significant benefits prove the absurdity of this position. The hospital's argument is likewise frivolous with regard to its attempted assassination of the character and credibility of the Claimant. The hospital attempts to make a mockery of this loyal employee who gave them 23 years of employment, yet at no point until this injury ever question her

productivity. The Employer and Carrier made no reasonable attempt to accommodate the Claimant's restrictions, nor even attempt to keep her on so she could claim her retirement for three more years. The Claimant did sustain at least a 50% loss of wage earning capacity which is substantiated by the overwhelming evidence, and the Administrative Law Judge's findings should be reinstated.

Respectfully submitted, this the 3 day of March, 2010.

**CHRISTINE LANG, APPELLANT/CROSS-
APPELLEE**

BY:

JOHN HUNTER STEVENS

John Hunter Stevens, Esq.- MSF [REDACTED]
GRENFELL, SLEDGE & STEVENS/PLLC
1535 Lelia Drive (39216)
P. O. Box 16570
Jackson, MS 39236-6570
Telephone: (601) 366-1900
Facsimile: (601) 366-1799

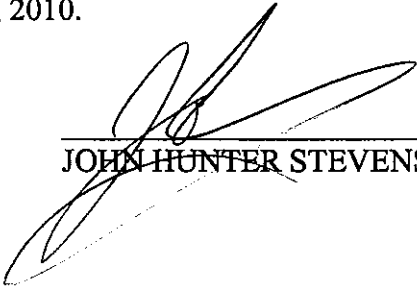
CERTIFICATE OF SERVICE

I, John Hunter Stevens, attorney for Christine Lang, do hereby certify that I have this day mailed by United States Mail, postage prepaid, the above and foregoing document to:

Douglas R. Duke, Esq.
SHELL BUFORD, PLLC
P. O. Box 157
Jackson, MS 39205-0157

William Coleman
Hinds County Circuit Court Judge
P. O. Box 27
Raymond, MS 39154

DATED this the 3 day of March, 2010.



JOHN HUNTER STEVENS