

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

SANDERSON FARMS, INC.

APPELLANT

VERSUS

CAUSE NO. 2009-WC-00840-COA

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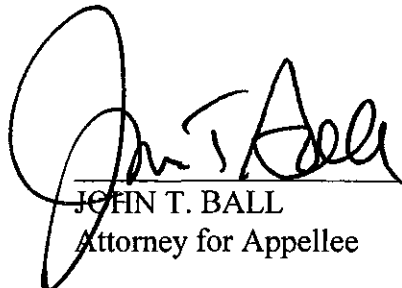
DEBRA F. JOHNSON

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

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

1. Judge Mark Henry,
Administrative Law Judge for the Mississippi Workers'
Compensation Commission
2. Hon. John T. Ball, Attorney at Law
Attorney of record for Debra F. Johnson
3. Hon. Douglas S. Boone and his law firm,
Gilchrist, Sumrall, Yoder & Boone, PLLC
Attorney of record for Sanderson Farms, Inc.
4. Mississippi Workers' Compensation Commission
5. Debra Johnson
6. Liberty Mutual Insurance Company/Helmsman Management Services, Inc.



JOHN T. BALL
Attorney for Appellee

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STATEMENT OF THE FACTS

A. FACTS AND TESTIMONY OF THE APPELLEE

The Claimant, Debra Johnson, who was 36 years of age at the time of the hearing, is a high school graduate and has a certified nurse's assistant certificate from Delta Career College (Transcript Vol. 4, p. 33; ARE, p. 1). From 1989 to March of 1990, she worked as a car hop at the Sonic Drive In in Woodville, Mississippi. She worked as a seamstress for William Carter Company until the plant closed in 1997. She worked at Walco Mart, a convenience store in Woodville, Mississippi, in 1998 (Transcript Vol. 4, p. 34-35; ARE, p. 2-3).

In August 2000, Ms. Johnson began working for the employer, Sanderson Farms, at the McComb Plant. She commuted from her home in Woodville, which was approximately 120 miles, round trip. In the beginning she earned \$6.15 per hour; however, her wages were raised to \$7.05 per hour or \$7.15 per hour after 3 months (Transcript Vol. 4, pages 37-38; ARE, pages 5-6).

In the beginning of her employment with Sanderson Farms, Ms. Johnson's job duties required her to pull the intestines from chickens. In performing that operation, she held the chicken in one hand and removed the intestines with the other. The chickens were on an assembly line (Transcript Vol. 4, pages 39-40; ARE, pages 7-9).

In a week's time, she was moved to the line using big scissors to cut the necks of the chickens. She held the chickens' necks with her left hand and used the scissors in her right hand to cut the windpipe (Transcript Vol. 4, p. 41; ARE, p. 10). These chickens were also on an assembly line. The assembly line never stopped, and Ms. Johnson was required to handle every

chicken that came down the line (Transcript Vol. 4, p. 42; ARE, p. 11).

Ms. Johnson testified that she had no problems with either hand, wrist or upper extremity when she went to work for Sanderson Farms in August 2000 (Transcript Vol. 4, p. 42; ARE, p. 10). In fact, Ms. Johnson had no prior medical problems, including pain or swelling with either her right or left upper extremities, prior to August 2000 (Transcript Vol. 4, pages 35-36; ARE, pages 3-4).

During the second week, after assuming the new duties, Ms. Johnson began to notice symptoms of pain, numbness and swelling in her hands while at work and using scissors to cut the necks of the chicken (Transcript Vol. 4, pages 42-43; ARE, pages 10-11). Ms. Johnson reported the problem to her supervisor, Mr. Dennis Lewis, who sent her to the office to make a report to the company nurse. The company nurse gave her a pill and put some cream on her hands and told her to return to work (Transcript Vol. 4, pages 44, 46; ARE, pages 11-12).

Ms. Johnson returned to the assembly line. Her hands became worse and were swelling. Ms. Johnson stated, "I continued to operate on the line doing work, it was constantly swelling." (Transcript Vol. 4, p. 47; ARE, p. 14).

Ms. Johnson saw Dr. David McGraw, a family practicing physician, at Catchings Clinic in Woodville, Mississippi, for her problems. Ms. Johnson first saw Dr. McGraw toward the end of August 2000. On November 27, 2000, Dr. McGraw took Ms. Johnson off work. One month later, on December 28, 2000, Sanderson Farms terminated her employment (Transcript Vol. 4, pages 47-48; ARE, p. 14-15).

Dr. McGraw referred Ms. Johnson to see Dr. Robert Haimson and Dr. J. C. Passman, orthopedic surgeons from Natchez, Mississippi, who diagnosed her condition as bilateral carpal

tunnel syndrome. Dr. Haimson performed surgery on her left hand in 2003. She did not see improvement of her left hand condition after her surgery and therefore, has not had right hand surgery (Transcript Vol. 4, p. 50; ARE, p. 16).

At the hearing, Ms. Johnson testified that both hands continued to swell, hurt and wake her up at night (Transcript Vol. 4, pages 50-51; ARE, pages 16-17). Ms. Johnson testified that she has trouble lifting and sometimes needs help to dress and bathe. She does not sweep, mop, wash dishes, cook, or take out trash. She does very little driving. She has problems gripping, grasping and holding items (Transcript Vol. 4, pages 52-55; ARE, pages 18-21).

B. WITNESSES FOR THE EMPLOYER

The Employer presented four employees who testified at the hearing or by deposition. These employees were Ms. Mattie Walker, human resources manager for the McComb plant; Ms. Lisa Cain, an employee of Sanderson farms for thirteen years and supervisor of Ms. Johnson in 2000; Mr. Dennis Lewis, supervisor at Sanderson Farms; and Ms. Bernita Smith, a licensed practical nurse who worked for the employer, Sanderson Farms.

1. MATTIE WALKER

Ms. Mattie Walker testified live at the hearing. She is the human resource manager at Sanderson Farms, McComb Plant. The attorney for the Claimant asked Ms. Walker whether it was common in her experience to see injuries related to wrist and carpal tunnel which resulted in workers' compensation claims. Ms. Walker answered "I've seen some." (Transcript, Vol. 4, p. 100; ARE, p. 22). At this point she was reminded about her deposition testimony at Page 13 and line 25. The testimony was as follows:

“So, at the plant here, it is not uncommon to have injuries related to workers’ wrists? I guess you have had many of these claims made.

Ms. Walker’s answer was “Yes.”

The follow-up question was, “And the jobs there on the line basically require repetitive use of hands and wrists. Is that correct?” Answer, “Yes.” (Transcript Vol. 4, pages 100-101; ARE, pages 22-23).

Ms. Walker further testified that Ms. Johnson began working for the employer on August 8, 2000, at a rate of \$6.25 per hour.

On November 27, 2000, Dr. McGraw prepared a form requesting that Ms. Johnson be placed on “medical hold.” Ms. Walker, however, testified that she did not see this form until Claimant’s attorney faxed it to her on September 24, 2001 (Transcript Vol. 4, pages 107-109; ARE, pages 24-26).

2. LISA CAIN

Lisa Cain has been a long time employee of Sanderson Farms, having worked for them for 13 years. In the summer of 2000, she was one of Debra Johnson’s supervisors (Transcript Vol. 4, pages 112-113; ARE, pages 27-28). Ms. Cain described the process of “cropping”. She stated that the birds come down the assembly line and if the necks were not broken, the operator takes the scissors with one hand and pulls the necks down with the other hand. Ms. Cain stated that approximately 70 chickens come down the line past Ms. Johnson every hour (Transcript Vol. 4, p. 119; ARE, p. 29).

3. DENNIS LEWIS

Mr. Dennis Lewis was a supervisor at the Sanderson Farms plant in McComb, Mississippi, during the time of Ms. Johnson's employment with the plant and testified by deposition. Mr. Lewis was supervisor in the eviscerating department when Debra Johnson was working at Sanderson Farms. In this department workers, extracted viscera from the chickens. (Exhibit Vol. I, Exhibit E-6, p. 5; ARE, p. 30) Debra Johnson was not working in the viscerating department when her symptoms began. Mr. Lewis was familiar with the job that Ms. Johnson was doing when she began to have symptoms. Mr. Lewis stated that the chickens come down an assembly line. The workers cut the necks with a pair of scissors if the chicken was not already cut by the automated machine (Exhibit Vol. I, Exhibit E-6, pages 7-8; ARE, pages 31-32). Mr. Lewis estimated that Ms. Johnson would cut three necks per minute (Exhibit Vol. I, Exhibit E-6, p. 9; ARE, p. 33).

Mr. Lewis testified that he does not remember whether Ms. Johnson complained to him that her wrists hurt, but he did recall seeing Ms. Johnson working with a brace on her left hand. Specifically, in answer to a question as to whether Ms. Johnson ever complained to him, he stated, "Not as I know of. I don't remember – if I can – if – she was off a week, and she came back." (Exhibit Vol. I, Exhibit E-6, p. 11; ARE, p. 34). Mr. Lewis testified that when the Claimant came back to work, she had a brace on her left arm. (Exhibit Vol. I, Exhibit E-6, p. 12; ARE, p. 35). Later, Mr. Lewis testified that Ms. Johnson never complained to him about any problems (Exhibit Vol. I, Exhibit E-6, p. 12; ARE, p. 35). Furthermore, when an employee was off work for medical reasons, the employee was supposed to contact the front desk and not the employee's supervisor. After Ms. Johnson left work, Mr. Lewis talked to her on the telephone

once and saw her twice. Those three conversations involved Ms. Johnson delivering papers to the nurse (Exhibit Vol. I, Exhibit E-6, pages 14-15; ARE, pages 36-37).

4. BERNITA SMITH

Ms. Bernita Smith is a licensed practical nurse who worked as a plant nurse for the employer. She also testified by deposition. Ms. Smith testified that she was aware of other carpal tunnel syndrome claims made at the McComb plant (Exhibit Vol. I, Exhibit E-7, p. 9; ARE, p. 38).

Ms. Smith indicated that the first records showing a visit made by Debra Johnson to the nurse's station was September 13, 2000. The code indicated "soreness". The notes state that Ms. Johnson was given Ibuprofen and "wrapped." (Exhibit Vol. I, Exhibit E-7, p. 13; ARE, p. 39). The other document in the file was a Sanderson Farms form completed by Dr. David McGraw showing the Claimant was unable to work. This form was dated November 27, 2000 (Exhibit Vol. I, Exhibit E-7, p. 18; ARE, p. 40). Ms. Smith was not personally aware of any of the forms (Exhibit Vol. I, Exhibit E-7, p. 19; ARE, p. 41).

C. MEDICAL TESTIMONY

1. DR. DAVID MCGRAW

Dr. David McGraw is a family practicing physician from Woodville, Mississippi. His medical records were introduced at the hearing. Dr. McGraw's records indicate that on August 27, 2000, he saw Ms. Johnson with complaints of pain to both wrists. On the September 8, 2000 visit, Ms. Johnson told Dr. McGraw that her pain began while using scissors to cut chickens at work.

An EMG nerve conduction study of June 25, 2001, confirmed diagnosis of bilateral carpal tunnel syndrome. Thereafter, Dr. McGraw referred Ms. Johnson to be treated by Dr. J. C. Passman, an orthopedic surgeon from Natchez, Mississippi.

2. J. C. PASSMAN, M.D.

Dr. J. C. Passman is a Board Certified orthopedic surgeon from Natchez, Mississippi. He testified through his deposition and medical records. Dr. Passman first saw Ms. Johnson on August 21, 2001, on referral from Dr. McGraw. Dr. Passman reviewed the EMG results and concluded that Ms. Johnson had bilateral carpal tunnel syndrome.

Ms. Johnson told Dr. Passman that she had bilateral hand pain since August 15, 2000. She explained that she was at work at Sanderson Farms cutting chickens with scissors on the job when she developed pain and numbness in both hands, with increased pain on the right side. She stated that she continued to work as long as possible and saw Dr. McGraw in November of 2000. Dr. McGraw placed her on medical leave and she was fired in December 2000 (Exhibit Vol. I, Exhibit CL-12, pages 9-10; ARE, pages 42-43).

Dr. Passman testified that the EMG done by Dr. Lee Voulters, neurologist from Vicksburg, Mississippi, revealed evidence of median nerve entrapment neuropathy at the wrist bilaterally, which was a neuropaxic type of injury. Dr. Passman explained that neuropaxy is damage to the axons in the nerve; the filaments in the nerve from pressure as opposed to a toxic substance or a chemical. Dr. Passman stated that results indicated that trauma caused numbness and pain rather than neuropathy (Exhibit Vol. I, Exhibit CL-12, p. 10; ARE, p. 43).

Dr. Passman related the causes of carpal tunnel on pages 12 and 13 of his deposition testimony:

There are ten structures that pass through a bony canal at the base of the wrist. There are nine tendons and a median nerve. The flexor tendons are all very tough and are not affected by the tightness of this canal. The median nerve is subject to malfunction with pressure and with swelling or repetitive actions. This canal, frequently called the carpal tunnel, will respond with irritation and swelling and it becomes too tight. When this happens, the function of the median nerve is affected and the patient usually has numbness of the thumb, index, long, and half of the ring finger. Frequently the thenar muscles, the group of muscles at the base of the thumb, will be affected and will atrophy and there will be loss of the space and size of these muscles. There is associated weakness of the thumb also and the patient finds it hard to oppose the thumb, as in reaching over and touching the fifth finger.

The problem can be relieved by resecting the transverse carpal ligament, which is overlying and is the lower portion of the carpal tunnel. The results from surgical decompression are very good when failure of conservative treatment has occurred, such as anti-inflammatory agents and splinting. Occasionally, in the newer or fresher patient I will inject steroids into the carpal tunnel.

One of the paramount symptoms of this is the patient will awaken at night and the hand is tingling like it's been numb and is waking up. They can sling the hand repeatedly and for some reason this seems to help. I think any activity helps initially when it has been asleep. (Exhibit Vol. I, Exhibit CL-12, pages 12-13; ARE, pages 44-45).

Dr. Passman was of the opinion that the work at Sanderson Farms caused or aggravated her right carpal tunnel syndrome based on the testimony that she used scissors in the right hand to cut the chickens (Exhibit Vol. I, Exhibit CL-12, pages 34-36; 39, 42; ARE, pages 51-55). Dr. Passman stated that it was not significant that Ms. Johnson was working with scissors for one week prior to the onset of her symptoms (Exhibit Vol. I, Exhibit CL-12, p. 17; ARE, p. 46). He did believe, however, that a person could develop carpal tunnel syndrome from a week of using scissors to cut chickens, even if the person had to cut only one chicken a minute.

When asked to assume that Ms. Johnson had pulled chickens with her left hand while cutting chickens with scissors in her right hand, Dr. Passman stated that such explanation would be sufficient to relate the left carpal tunnel syndrome condition with her work. Additionally, the Claimant complained of bilateral carpal tunnel from the onset (Exhibit Vol. I, Exhibit CL-12, p. 18; ARE, p. 47).

Dr. Passman treated Ms. Johnson conservatively but then opted for surgery and on August 22, 2003, his partner, Dr. Robert Haimson, performed left carpal tunnel release. Ms. Johnson's condition did not improve, and therefore, right carpal tunnel surgery has never been done.

Dr. Passman testified that maximum medical improvement was in 2003 and he assigned a 5% permanent partial impairment to each upper extremity (Exhibit Vol. I, Exhibit CL-12 [2nd Depo. Dr. Passman], pages 29-31; ARE, pages 48-50). Dr. Passman permanently restricted Ms. Johnson from performing any repetitive flexion type of work and restricted her to lifting less than 10 lbs. frequently.

3. ROBERT HAIMSON, M.D.

Dr. Robert Haimson is a board certified orthopedic surgeon practicing in Natchez, Mississippi. He has performed carpal tunnel surgeries for the past 15 years (Exhibit Vol. I, Exhibit CL-13, p. 11; ARE, p. 56). Dr. Haimson has practiced orthopedic surgery since 1993 and does thirty to forty carpal tunnel release surgeries per year. Dr. Haimson testified through his deposition and his medical records.

He saw Ms. Johnson on referral from his partner, Dr. J. C. Passman. Dr. Haimson performed left carpal tunnel release surgery on Ms. Johnson on August 22, 2003. Dr. Haimson was able to visually inspect the surgical site. During the operation, Dr. Haimson noted that the median nerve was "inflamed and irritated." Dr. Haimson stated that these conditions were consistent with carpal tunnel syndrome and the claimant's complaints (Exhibit Vol. I, Exhibit CL-13, pages 19-21; ARE, pages 57-59).

Following surgery, Ms. Johnson had an initial period of improvement. However, the symptoms increased and therefore, Ms. Johnson declined further surgery. Dr. Haimson felt that Ms. Johnson reached maximum medical improvement regarding her left carpal tunnel surgery six months after the surgery. Dr. Haimson does not calculate impairment ratings. He suggested that she undergo a Functional Capacity Evaluation to establish restrictions (Exhibit Vol. I, Exhibit CL-13, pages 35, 37; ARE, pages 61-62).

Dr. Haimson agreed with Dr. Passman's assessment that the left carpal tunnel syndrome was work related based on the fact that Ms. Johnson used both hands to cut the chickens. Dr. Haimson responded to the following hypothetical:

Q. If you're given the hypothetical . . . Ms. Johnson . . . was working on a conveyor at Sanderson Farms cutting chickens with her right hand and gripping the birds with her left hand and during that process began having bilateral carpal tunnel symptoms, do you stand by your earlier opinion that based on reasonable medical probability those activities caused or contributed to the carpal tunnel problems that she later described and had and for which surgery was done on the left hand?

A. Yes.
(Exhibit Vol. I, Exhibit CL-13, p. 67; ARE, p. 64).

Dr. Haimson also stated, "My opinion is that repetitive activities with the hand can create carpal tunnel. I particularly think that if you are using the hand in a way that applies pressure across the median nerve, that it can create carpal tunnel syndrome." (Exhibit Vol. I, Exhibit CL-13, p. 34; ARE, p. 60).

4. LON ALEXANDER, M.D.

Dr. Lon Alexander, a neurosurgeon from Meridian, Mississippi, examined the Claimant one time, on March 27, 2002, and the behest of the employer. Dr. Alexander's examination was done prior to the date of Dr. Haimson's surgery. Based on his one time examination, Dr. Alexander found "no objective evidence of carpal tunnel syndrome." He indicated, however, that the EMG nerve conduction study done by Dr. Lee Voulters showed evidence of medial nerve entrapment, neuropathy at the wrist, or bilateral carpal tunnel syndrome. Dr. Alexander did not believe that the employment at Sanderson Farms was the cause of the carpal tunnel syndrome. He felt that any irritation caused by the work would have resolved with cessation of the repetitive injury.

5. NORTON E. HADLER, M.D.

Sanderson Farms retained Dr. Nortin E. Hadler, a rheumatologist and college professor. Dr. Hadler is not an orthopedic surgeon, and has never been engaged in clinical practice. He is a faculty member at The University of North Carolina. Dr. Hadler believes that the development of

carpal tunnel syndrome is never the result of repetitive motion and the manifestation of the syndrome is the result of nothing more than “psycho-social” phenomena. Dr. Hadler never examined Ms. Johnson. He did not have the benefit of reviewing any medical records of her carpal tunnel surgery or follow-up treatment. The premise of his studies deals solely with the “etiology” of carpal tunnel syndrome.

SUMMARY OF THE ARGUMENT

The Full Commission affirmed the Order of Administrative Law Judge Mark Henry, who found in favor of the Claimant on the issue of compensability. He relied on the opinions of the two treating orthopedic surgeons, Dr. Passman and Haimson, who opined that the Claimant had bilateral carpal tunnel syndrome that was caused or materially contributed to by the working conditions at Sanderson Farms. Judge Henry noted that Dr. Alexander found no objective indications of carpal tunnel syndrome but then agreed with the opinions of Dr. Passman and Dr. Haimson regarding the EMG nerve conduction findings of bilateral carpal tunnel syndrome.

Dr. Hadler performed a “paper review” for the Employer and opined that Ms. Johnson did not have carpal tunnel syndrome, and if she did, her condition would not be causally related to her work because carpal tunnel syndrome is never related to repetitive work activities. Dr. Hadler never examined Ms. Johnson and did not have the benefit of the depositions of Dr. Passman and Dr. Haimson.

The rulings noted that in resolving conflicting medical opinions, the Mississippi Court of Appeals has stated that treating physicians’ opinions can often carry more weight than those physicians who examine the claimant solely for the purpose of testifying. *Stewart v Singing River Hospital*, 928 So.2d 176, 183 (Miss. Ct. App. 2005), quoting *Clements v Welling Truck Service, Inc.*, 739 So.2d 476, 478 n.1 (Miss. Ct. App. 1999), which in turn quoted Arthur Larson & Lex K. Larson, *Larson’s Workers’ Compensation Law*, Section 80.24(b) n.83.1.

Judge Henry, in fact, held that the “well settled preferences for the opinions of treating physicians” should apply even more strongly in this case where the employer’s physicians

rendered their opinions before Dr. Haimson performed surgery where he found the irritated median nerve. Judge Henry further noted that the Commission and courts routinely regard orthopedic surgeons as experts in the field of carpal tunnel syndrome. Therefore, orthopedic surgeons are experts in the etiology of carpal tunnel syndrome and as such, they are competent to offer their opinions that a Claimant's carpal tunnel syndrome is causally connected to a claimant's repetitive work activity. The Full Commission affirmed these findings.

Regarding Dr. Hadler's opinions, the Commission noted that the employer did not cite a single decision in which the commission or our courts have accepted Dr. Hadler's opinions. To the contrary, this Commission discounted Dr. Hadler's opinion in *Shirley v Howard Industries, Inc.*, MWCC No. 99 11936-H-8093-D (Feb. 24, 2006). Judge Henry then made the profound point that Dr. Hadler's opinions have not been granted general acceptance as a scientific view.

ARGUMENT

Ms. Johnson contends that her carpal tunnel condition was aggravated or lighted up by the assembly line work that she was doing at Sanderson Farms resulting in symptoms in both arms and wrists. Both of her treating orthopedic physicians, J. C. Passman, M.D. and Robert Haimson, M.D., positively testified that the bi-lateral carpal tunnel syndrome was caused by her work, which consisted of working on an assembly line and cutting chickens with scissors in her right hand and gripping the birds as they came down the conveyor belt with her left hand. Both doctors felt that this activity precipitated bilateral carpal tunnel symptoms which resulted in the disability.

Dr. Hadler never examined Ms. Johnson. He did not have the benefit of reviewing any medical records of her carpal tunnel surgery or follow-up treatment. The premise of his studies deals solely with the “etiology” of carpal tunnel syndrome.

The Mississippi Supreme Court has considered many cases over the years dealing with the issue of the aggravation of a pre-existing condition. In order to establish a prima facie case of disability, a workers’ compensation claimant must show by a fair preponderance of the evidence: 1) an accidental injury; 2) arising out of and in the course of employment; and 3) a causal connection between the injury and the claimed disability. For the purpose of a workers’ compensation claim, an injury arises out of the employment when there is some causal connection between the employment and the injury. Furthermore, a workers’ compensation claimant is entitled to benefits if the employment acts upon the Claimant’s pre-existing condition to produce disability. Once a workers’ compensation claimant establishes a prima facie case of

disability, the burden of proof shifts to the employer. *Mabry v Tunica County Sheriff's Department and Mississippi Public Entity Workers' Compensation Trust*, 911 So. 2d 1038 (Miss. App. 2005). Furthermore, the worker's employment need not be the sole source of an injury. A claim for benefits is compensable if the injury is in part work connected. Therefore, injuries arise out of an in the course of employment even when employment merely aggravates, accelerates or contributes to the injury. The reason for this premise is that the employer takes the worker as the worker is found, with all strengths and weaknesses that the worker brings to the job, including physical strengths and weaknesses. *Dependents of Chapman v Hanson Scale Company and Continental Casualty Co.*, 495 So. 2d 1357 (Miss. 1986).

The best case that explains why carpal tunnel injuries are considered as compensable work-related injuries is found in *Barker v Home - Crest Corporation and CNA Insurance Company*, 805 S.W. 2d 373 (Tenn. 1973). In this case, the Supreme Court of Tennessee held that carpal tunnel syndrome condition is a gradual injury and the "accidental injury" occurs on the date the employee's condition is sufficiently severe to prevent him or her from working. This analysis has its basis in comments from Professor Larson. 1B Larson, Workman's Compensation Law Section 39.40 and 39.50 (1987). Also, citing Workmen's Compensation - Gradual Injuries, 29 Tenn. L. Rev. 477 (1962). Professor Larson comments that the repeated trauma or cumulative trauma doctrine appears to have appeared with a 1921 House of Lords decision.

Following this line of thought, the Mississippi Supreme Court has ruled that when an expert's opinion in a workers' compensation case is based upon an inadequate or incomplete examination, that opinion does not carry as much weight and has little or no probative value

when compared to the opinion of an expert who has made a thorough and adequate examination. *Mabry v Tunica County Sheriff's Department and Mississippi Public Entity Workers' Compensation Trust*, 911 So. 2d 1038 (Miss. App. 2005). In this case, Dr. Hadler questioned whether Ms. Johnson even had carpal tunnel syndrome. In retrospect, Dr. Haimson, Claimant's treating orthopedic surgeon, testified that during surgery he did find inflammation and entrapment of the carpal tunnel. (Exhibits Vol. I, Exhibit CL-13, p. 65; ARE, p. 63). Dr. Passman, Claimant's other treating orthopedic surgeon, clearly stated on page 38 of his first deposition that Claimant's work activities consisting of working on the assembly line, cutting chickens with scissors in her right hand and holding chickens with her left as they came down the assembly line, was the probable cause of the carpal tunnel symptoms of pain, stinging and swelling experienced by the Claimant while at work. To further support his opinion, it is noteworthy that Ms. Johnson had never experienced any pain, stinging or swelling in either upper extremity prior to her working at the Sanderson Farms plant in McComb, Mississippi. Appellant claims that the Appellee alleged a carpal tunnel problem when she applied for Social Security disability benefits. The cited document is dated 8/9/01, almost a year after the injury date of August 2000 (See Appellant's Brief, p. 6).

The Claimant submits that Dr. Hadler's opinions and studies have no relevance to the issues at hand. However, the Claimant takes issue with Dr. Hadler's conclusions that carpal tunnel syndrome is never the result of repetitive movements of wrists. Dr. Hadler cites no decisions where his theories have been adopted by any courts. One study was conducted in Sweden. He never did any studies in the State of Mississippi and none of his studies involve

carpal tunnel injuries resulting from poultry producing plants (Exhibits Vol. II, Exhibit E-15, p. 62; ARE., p. 65). The latter fact is important in light of Sanderson Farms' own witness, Mattie Walker, who clearly testified to the fact that many employees at the Sanderson Farms Plant in McComb, Mississippi, have suffered from carpal tunnel syndrome. Dr. Hadler's citation of the "Schottland" Study, regarding poultry workers in Alabama is flawed as Dr. Hadler admitted that his study could not test "survivor bias", meaning there was no way to discover how many workers left the plant due to developing carpal tunnel syndrome and therefore, could not be part of the study.

Mr. Boone went to great lengths to question Dr. Passman and Dr. Haimson regarding a study entitled "Longitudinal Study of Median Nerve Sensory Conduction in Industry: Relationship to Age, Gender, Hand Dominance, Occupational Hand Use and Clinical Diagnosis." This study is also flawed in that the authors themselves make the point that assembly line workers were under represented when they reviewed the data in 1989 (Page 851, bottom sentence of first partial paragraph).

The Circuit Court opinion discussed the Appellant's position that the treating orthopedic surgeon should not be allowed to provide expert opinions on causation since they were not published and had not done studies regarding the cause of carpal tunnel conditions. The Circuit Court reviewed the cited case of *Fresenius Medical Care Co. v Woolfolk*, 920 So. 2d 1024 (Miss. 2005), where the Court of Appeals reversed the full Commission in awarding benefits to the estate of a deceased employee, where the claimant died from complications caused by a ruptured aneurysm. The claimant argued that the rupture was caused by the stress of a work related phone call requiring the claimant, a nurse, to determine whether or not to provide additional medical

care to a patient. Substantial testimony established that the claimant handled a routine medical call, regarding a situation that arose commonly in the claimant's line of work. The Claimant's expert, a neurosurgeon, who reviewed the record, but never saw the patient, testified that stress, such as that caused by the phone call could cause a rupture. The expert for the employer, also a neurosurgeon, testified that stress could not cause the type of rupture the claimant suffered.

The Circuit Court distinguished the *Fresenius* case based on the finding that the expert opinion was not supported by evidence; where in this case, the Court stated that "the only real dispute is whether the claimant's expert testimony, which states that the repetitive activity that Ms. Johnson performed for Sanderson Farms could have caused carpal tunnel syndrome, should have been admissible under the *Daubert* rule."

The Circuit Court further noted that the Mississippi Workers' Compensation Commission operates under a "relaxed evidentiary standard" citing Miss. Code Ann. Section 71-3-55 (1) (Rev. 2000); M.W.C.C. Procedure Rule 8 (1993).

The Commission may look to rules of evidence or procedure which apply to courts of law to aid in the consideration of evidence, but it is not bound to strictly follow the rules proscribed for courts of law. *Walters v Blackledge*, 71 So. 2d 433, 446 (Miss. 1954). The Commission may choose to look to M.R.E. 702 and *McLemore* for instruction, but if an alleged expert falls short of the *McLemore* standards, the Commission has the right to relax the formal rules of evidence and admit the testimony if the evidence is 'relevant and competent,' and the admission will help satisfy the overriding concern of how 'best to ascertain the rights of the parties.' Miss. Code Ann. Section 71-3-55 (1) (Rev. 2000); M.W.C.C. Procedural Rule 8(fn2).

Affirming the Order of the full Commission, the Circuit Court found that the testimony of the two treating orthopedic surgeons who had extensive experience throughout their careers in treating patients with carpal tunnel syndrome was both relevant and competent pursuant to Mississippi Statutes and Rules.

The Circuit Court affirmed the Commission's rejection of the Appellant's expert, noting that his testimony went to the weight and not to the admissibility. The Court further stated:

The Claimant's experts testified that the repetitive work for Sanderson Farms caused carpal tunnel syndrome, the employer's expert testified that the work could not have caused carpal tunnel syndrome. The court notes that the employer seems to be urging that his expert has some particular expertise beyond that of the orthopedic surgeons who testified for the claimant. The argument fails. Even if the claim is true it goes to weight not admissibility. The record does not reveal that there is anything so particular or special about the claimant's condition that only the expert offered by the employer should be allowed to offer testimony.

It is worth noting that medicine evolves and competent experts may differ. Medical journal articles are not precedent. Sometimes they are considered persuasive authority for other practitioners. Often they are merely the start of a line of inquiry or the first test of a theory. One article, or a dozen, does not end the inquiry or bind the hands of a trier of fact.

The Appellee submits that the entire testimony of the Appellant's expert is totally irrelevant to this case. As with other pre-existing conditions, a Claimant can aggravate an asymptomatic pre-existing condition to cause symptoms. The Appellee is only required to show that a carpal tunnel condition was aggravated or lighted up by conditions at work, creating pain and symptoms. The pain and symptoms caused the disability.

The treating orthopedic physicians are in a much better position to state opinions concerning the real issues surrounding causation, that being whether the work "caused or substantially contributed" to the disability.

The Appellant's position flies in the face of established case law. The Court of Appeals of Mississippi has recently rendered a decision factually similar to the case at hand. In *Johnson v Sanderson Farms, Inc.*, 17 So. 3d 1119 (Miss. 2009), the Court of Appeals of Mississippi affirmed the Commission's finding that the Claimant developed carpal tunnel syndrome while

employed as a deboner and loader of chickens. Sheila Lindley, M.D., the treating orthopedic surgeon, affirmatively testified that Claimant's history and physical examination showed provocative testing for carpal tunnel syndrome even though no nerve conduction studies revealed positive findings for carpal tunnel syndrome. The doctor's opinion that the carpal tunnel syndrome was related to Claimant's repetitive work was based on the Claimant's complaints and on the fact that Claimant received relief from carpal tunnel injections. Dr. Lindley testified that Claimant's work at Sanderson Farms contributed to her carpal tunnel syndrome. The Court found substantial evidence in support of the Commission's findings.

Johnson v Sanderson Farms, Inc. (supra) supports the Appellee's submission that opinions from treating orthopedic surgeons are competent and acceptable in establishing causation in carpal tunnel syndrome cases. The Commission based its finding of causation on the opinions of Dr. Sheila Lindley, the treating orthopedic surgeon. In this case, the Commission considered the opinions of the treating orthopedic surgeons, Drs. Passman and Haimson, as well as the testimony of Appellant's expert, Dr. Hadler, and resolved the issues in favor of the Appellee.

CONCLUSION

The Appellant attempts to overturn settled workers' compensation law that for years has recognized the nexus to repetitive use injuries and carpal tunnel syndrome. "Syndrome" connotes "symptoms" and the "accidental injury" occurs on the date that the employee's condition is sufficiently severe to prevent him or her from working.

The Mississippi Workers' Compensation Commission found that the Appellee's symptoms began at work while cutting chicken necks with scissors. The treating physicians have given opinions connecting the injury to the work.

The Appellant asks this Honorable Court to set a new precedent that would remove carpal tunnel injuries from the workers' compensation law in Mississippi. They ask this Court to adopt Dr. Hadler's opinions but cite no case law from any other jurisdiction that supports Dr. Hadler's position. Finally, the studies of Dr. Hadler are inherently flawed and unreliable.

Expert opinions are not obligatory or binding on triers of fact, but are advisory in nature. *Freight Line, Inc. v Tanksley*, 608 So.2d 1149 (Miss. 1992). The weight to be accorded expert opinion evidence is solely within the discretion of the judge sitting without a jury. *Georgian v Harrington*, 990 So. 2d 813 (Miss. App. 2008); *University of Mississippi Medical Center v Pounders*, 970 So. 2d 141 (Miss. 2007). In this case the Mississippi Workers' Compensation Commission is the trier of fact.


Respectfully submitted, on this the 8 day of December, 2009.

DEBRA JOHNSON, APPELLEE

BY:



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

SANDERSON FARMS, INC.

APPELLANT

VERSUS

CAUSE NO. 2009-WC-00840-COA

DEBRA F. JOHNSON

APPELLEE

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, do hereby certify that I have this date mailed, via United States Mail, postage prepaid, a true and correct copy of the above and foregoing **Brief of Appellee** to the following:

Hon. Michael M Taylor
Pike County Circuit Court Judge
P. O. Box 1350
Brookhaven, MS 39602

Mississippi Workers' Compensation Commission
P. O. Box 5300
Jackson, MS 39297-5300

Hon. Douglas S. Boone
Gilchrist, Sumrall, Yoder & Boone
P. O. Box 106
Laurel, MS 39441-0106

SO CERTIFIED this the 8 day of December, 2009.


JOHN T. BALL

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

SANDERSON FARMS, INC.

APPELLANT

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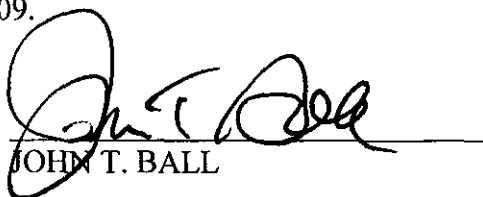
DEBRA F. JOHNSON

APPELLEE

I, John T. Ball, attorney of record for Appellee in Civil Action No. 2009-WC-00840-COA, hereby certify that pursuant to Mississippi rules of Appellate Procedures, I have this date delivered for filing the original and three copies of the foregoing **BRIEF OF APPELLEE** by placing same in United States Mail, postage prepaid, to:

Ms. Kathy Gillis
Clerk of the Mississippi Supreme Court and the Court of Appeals
P. O. Box 249
Jackson, MS 39205-0249

This the 8 day of December, 2009.


JOHN T. BALL