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 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 evaluates possible disqualification or recusal.

1. Judge Mark Henry,
   Administrative Law Judge for the Mississippi Workers' Compensation Commission

2. Honorable Douglas S. Boone and his law firm,
   Gilchrist Sumrall Yoder & Boone, PLLC,
   Attorney of record for Sanderson Farms, Inc.

3. Honorable John T. Ball
   Attorney for Claimant/Appellee

4. Mississippi Workers' Compensation Commission

5. Sanderson Farms, Inc.

6. Debra Johnson

7. Liberty Mutual Insurance Company/Helmsman Management Services, Inc.

8. Judge Michael M. Taylor

Douglas S. Boone,
Attorney for the Appellant

TABLE OF CONTENTS

CITED AUTHORITIES

ORAL ARGUMENT REQUESTED

The issue presented in this case is as follows, to-wit:

> Is the decision of the Mississippi Workers' Compensation Commission that Claimant's alleged carpal tunnel syndrome is work related, arbitrary and capricious when that decision is based on medical opinions which were not supported by any scientific evidence when contra evidence was presented based upon scientific evidence that carpal tunnel syndrome is not caused or contributed to by work?

In this case, Debra Johnson, the Appellee, presented testimony by Dr.'s Passman and Haimson. Neither could refer to a single scientific study to suggest that Claimant's alleged carpal tunnel syndrome was caused or contributed to by work at Sanderson Farms. Employer presented unrefuted scientific evidence through Dr. Norton Hadler that Claimant's alleged carpal tunnel syndrome was not caused or contributed to by work. It was error on the part of the Mississippi Workers' Compensation Commission to accept opinions from physicians which are not supported by science when those opinions are contra to compelling epidemiological studies and the acceptance of unsupported opinions over supported opinions is by definition arbitrary and capricious. We believe oral argument would be helpful in this case as we are of the opinion a determination should be made as to whether *Daubert* should be used as a rule of exclusion or as a guide to evaluating evidence. In either case, if it is used as a rule of exclusion or if it is used as a guide to evaluate evidence, we believe the Commission's decision was arbitrary and capricious when it adopted the opinions of Passman and Haimson which were not supported by science and rejected the opinion of Dr. Hadler which opinion was supported by science.

RECORD EXCERPTS

We have prepared supplemental Record Excerpts which contain Dr. Nortin Hadler's CV and his report regarding this case. Such was attached as Exhibits to his deposition.

ISSUE

Is the decision of the Mississippi Workers' Compensation Commission that Claimant's alleged carpal tunnel syndrome is work related, arbitrary and capricious when that decision is based on medical opinions which were not supported by any scientific evidence when contra evidence was presented based upon scientific evidence that carpal tunnel syndrome is not caused or contributed to by work?

REPLY TO APPELLEE'S BRIEF

In this case Dr. Hadler set forth compelling evidence based on scientific studies that show that the belief that carpal tunnel syndrome is caused by repetitive movement is no longer a tenable hypothesis. This science is based on cross sectional studies such as the Schottland study which established that median nerve conductivity in long-term poultry workers was no different from applicants for their jobs and longitudinal studies which established that median nerve conductivity slows with age but not from work tasks. Dr. Hadler discussed in his deposition and report the two long-term longitudinal studies which we have outlined in our Appellant's brief and both confirm that median nerve conductivity is not placed at risk by physical demands of work. Appellee's witnesses, Dr. Haimson and Dr. Passman, whose opinions were accepted by the Mississippi Workers' Compensation Commission were based on nothing more than pontification and speculation. Neither witness offered a single scientific basis for their opinions nor were they even aware of the current science available on this issue.

Appellee cites a Tennessee case (*Barker v. Home-Crest*) as "the best case to explain why carpal tunnel injuries are considered as compensable, work related injuries". We note the etiology of carpal tunnel syndrome was not challenged in *Barker.*[1] Also Appellant notes the Court in *Barker* relied on a 1962 Tennessee Law Review article and a 1921 House of Lords decision. Appellee's reliance on dated information essentially proves Appellant's case. Appellee assumes that science is constant. It is not. It is dynamic. It seems we find nearly every day where some popular notion is debunked by empirical science. The scientific data

[1] Nor was it challenged in the recent case of Johnson v. Sanderson Farms, Inc. 17 So 3d. 1119 (Miss. 2009) The etiology of carpal tunnel is, however, being challenged in this case.

now available on the etiology of carpal tunnel syndrome is compelling. Studies are now available which Dr. Hadler explained represent the cutting edge of epidemiology debunk the popular notion that carpal tunnel syndrome is caused or contributed by work. If one looks objectively at the science and evidence in this case, we believe the only conclusion this Court can make is the Mississippi Workers' Compensation's decision in this matter was arbitrary and capricious.

Appellee's Brief confirms that Appellee's witnesses, Haimson and Passman, did not cite a single scientific study to support their opinions. We note *Daubert* is a simple expression of fundamental due process as it requires that opinions be more than "subjective belief of unsupported speculation". 113 Supreme Court 2786 (1973). The opinions of Haimson and Passman were nothing more than "subjective belief of unsupported speculation".

Appellee essentially argues that the testimony of Passman and Haimson should be accepted and their testimony's are beyond evaluation but our court, even before *Daubert* has held that medical opinions did not necessarily constitute substantial evidence and that expert testimony must be supported by valid medical records and data and we set forth these cases in our Appellant's Brief. The Appellee had the burden of proof in this case to prove her case by expert testimony as to medical causation and Appellant squarely put this issue before the Commission with the opinions based on science of Dr. Hadler. Appellee's witnesses did not present one iota of scientific evidence that contradicted the evidence and scientific studies which were presented by Dr. Hadler. Dr. Hadler so testified that the science he presented represented the "cutting edge of clinical epidemiology". Dr. Hadler was asked in cross-examination the following:

> Q. Dr. Hadler, would you agree with me that there's another school of thought regarding the issue of whether repetitive motion injuries are caused by - - are caused in the workplace and caused by or precipitated by work activities?
>
> Is there another school of thought other than yours, is what I'm saying. Are there other studies who disagree with the studies that you have?

A. No. I think at this point the – we're talking at the cutting edge of clinical epidemiology. I don't think you would find very much argument about the statements I just made. (Exhibit Vol II, Exhibit 15, Page 90, Line 13 through 24).

...

Now, if there are people who are unaware of the state of the art or are laboring under some social construction that floats around or are totally ignorant of what's happened in the science in the past 20 years, that's not a different school of thought. That's a different approach to information. (Exhibit Vol II, Exhibit 15, Page 92, Line 24 through Page 92, Line 5)

The Commission's acceptance of their unsupported opinions defines arbitrary and capricious as neither Haimson nor Passman were even aware of the science that has occurred in the last twenty years. As Dr. Hadler explained, their opinions are not another school of thought. Their opinions are "a different approach to information".

The Appellee considered herself totally disabled at least six years prior to her employment with Sanderson Farms. She applied for Social Security Disability in 1994, 1996 and 1999. She began work at Sanderson Farms on August 12, 2000. Her job was essentially to backup a machine that cut the skin and windpipe of chickens. Her job was to cut the skin and the windpipes if the machine failed to accomplish that task. She used scissors in her right hand. It was not necessary to use her left hand in the performance of the job but could. The left hand was used only to steady the product and such did not require flexion of her wrist. She was required to cut the flesh from the windpipes of the chickens no more than one to four times a minute. The Appellee complains that she acquired bilateral carpal tunnel syndrome within two weeks of her limited exposure at Sanderson Farms. Appellee worked for a total of fourteen weeks at Sanderson Farms averaging thirty hours a week. Lisa Cain, Appellee's supervisor, testified that in her thirteen years at Sanderson Farms, no one had suffered any injury doing Appellee's job. Further, contrary to Appellee's assertions, Mattie Walker never testified that she had seen many carpal tunnel claims. Haimson performed a surgical release on the Appellee's left wrist (she used scissors in her right hand) and Appellee continues to consider herself totally disabled. Dr. Hadler accurately predicted prior to the surgical release that a surgical release

would be ineffective in relieving her somatic complaints as carpal tunnel syndrome was not her problem and not the result of her work at Sanderson Farms. Her problem is her own functional somatic illness. She believes she is disabled and had believed such long before her brief employment at Sanderson Farms. That is why, as Dr. Hadler predicted, a surgical release of the carpal tunnel would have no impact on her feelings of disability.

The two longitudinal studies that have been performed are compelling as the work exposure evaluated and tested was far in excess of anything the Appellee did in this case. The Portland, Oregon study tested Employees on very light resistant low repetition to very high resistance high repetition and at the five-year mark and ten-year mark the investigators found that slowing of the median nerve correlates with age but not occupational use. The Swedish study tested employees who used vibrating tools which is considered by ergonomists as extremely physically demanding. Median nerve conductivity did not change as a function of the exposure over the five-year period of this study.

We do believe that if one looks objectively at the evidence the thought that repetitive work causes or aggravates the median nerve at the carpal tunnel is untenable. The Appellant offered compelling epidemiological cross-sectional and longitudinal studies as evidence. Appellee offered unsupported opinions. Fundamental due process would require that before an award is made, Appellee's evidence should be subject to scrutiny. *Daubert* provides a framework for scrutinizing the evidence. Whether you use *Daubert* as a rule of exclusion or a guide to evaluate the evidence, the only conclusion one can make is Appellee's evidence is not substantial and Appellant's evidence is overwhelming. We respectfully suggest the Mississippi Workers' Compensation decision in this cause was arbitrary and capricious as it was based not on evidence but the Commission's own biases of an unsupported popular notion. Appellee's witnesses could not refer to a single scientific study to suggest that Appellee's alleged carpal tunnel syndrome was caused or contributed to by work at Sanderson Farms. The Appellant, however, established by reliable and unrefuted scientific evidence that her alleged carpal tunnel

syndrome was not caused or contributed to by her work. It is error to accept opinions from physicians which are not supported by science when those opinions are contra to compelling epidemiological studies and the acceptance of unsupported opinions over supported opinions is by definition arbitrary and capricious. Such occurred in this case and we respectfully request reversal of the Mississippi Workers' Compensation Commission finding of a compensable claim.

Respectfully submitted this the 11th day of January, 2010.

SANDERSON FARMS, INC.

By: _____
Douglas S. Boone, its attorney

Douglas S. Boone, MB [redacted]
Gilchrist Sumrall Yoder & Boone, PLLC
Post Office Box 106
Laurel, MS 39441-0106
(601) 649-3351

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, Douglas S. Boone, do hereby certify that I have this day served a true and correct copy of the above and foregoing **REPLY BRIEF OF APPELLANT** by mailing a true and correct copy of the same, postage prepaid to the following, to-wit:

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

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

Honorable John Tyler Ball, Esquire
210 Main Street
Natchez, MS 39121

This the 11th day of January, 2010.

Douglas S. Boone

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

I, Douglas S. Boone, attorney of record for Appellant in Civil Action No. 2009-WC-00840-COAdo hereby certify that pursuant to Mississippi Rules of Appellant Procedures 25 and 31, I have this day delivered for filing the original and three copies of the foregoing **REPLY BRIEF OF THE APPELLANT** 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, Mississippi 39205-0249

This the 11th day of January, 2010.

Douglas S. Boone