IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

No. 2009-WC-01511-COA

MISSISSIPPI SECURITY POLICE and
COMMERCE & INDUSTRY INS. CO.
Employer and Carrier/Appellants

V.

SUSAN PATTERSON
Claimant/Appellee

BRIEF OF THE APPELLEE

ON APPEAL FROM AN ORDER OF THE CIRCUIT COURT

OF JACKSON COUNTY, MISSISSIPPI, AFFIRMING

MISSISSIPPI WORKERS' COMPENSATION COMMISSION

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COUNSEL FOR CLAIMANT/APPELLEE

IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

SUSAN PATTERSON	**CLAIMANT**
VERSUS	**CAUSE NO.: 2009-01511-COA**
MISSISSIPPI SECURITY POLICE	**EMPLOYER**
AND	
COMMERCE & INDUSTRY INS. CO.	**CARRIER**

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 so that the Judges of this Court may evaluate possible disqualification or recusal.

1. Susan Patterson – Claimant/Appellee;

2. Jackye C. Bertucci - Attorney for Susan Patterson, Claimant/Appellee;

3. Mississippi Security Police – Employer/Appellant;

4. Commerce and Industry Insurance Co. – Carrier/Appellant;

5. Jeff Moffett – Attorney for Appellants;

6. Honorable Melba Dixon – Administrative Law Judge;

7. Mississippi Workers' Compensation Commissioners: Liles Williams, Augustus Collines, John R. Junkin; and

8. Circuit Court Judge, Dale Harkey

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STATEMENT OF THE ISSUE

The Circuit Court of Jackson County was correct in affirming the Order of the Mississippi Workers' Compensation Commission finding Claimant's injury to be compensable pursuant to the Mississippi Workers' Compensation Act.

STATEMENT OF THE CASE

Course of Proceedings Below

The Claimant filed her Petition to Controvert in this matter on March 31, 2006, asserting her claim for medical treatment and compensation due to an injury she sustained on or about November 19, 2005, in the course and scope of her employment with Mississippi Security Policy. The Employer/Carrier filed its Answer denying, *inter alia*, that the Claimant had suffered a work-related injury. The parties engaged in discovery and ultimately presented their respective cases on the sole issue of compensability at a hearing before the Honorable Melba Dixon on February 28, 2008.

Judge Dixon entered her *Order of Administrative Judge* on April 14, 2008, finding "that the claimant suffered a compensable work related injury on or about November 19, 2005, and is entitled to all benefits and reasonable and necessary medical treatment, pursuant to the Mississippi Workers' Compensation Act." *See* Order of Administrative Judge dated April 14, 2008. (R. 23.) The Employer/Carrier filed its *Petition for Review of Decision by Administrative Law Judge* on or about April 24, 2008, along with a *Request for Oral Argument*, and the Claimant filed her *Response to Employer/Carrier's Petition for Review of Decision by Administrative Law Judge* on or about May 2, 2008.

The Commission granted Oral Argument, which was heard on September 22, 2008. On September 25, 2008, the Full Commission affirmed the decision of the Administrative Law Judge. *See* Full Commission Order (R. 45.) The Employer and Carrier filed a Notice of Appeal to the Circuit Court of Jackson County on October 21, 2008, and the Circuit Court entered its Order Affirming Mississippi Workers' Compensation Commission on August 20, 2009.

Statement of Facts

The Claimant, Susan Patterson, suffered a work-related injury on November 19, 2005, when she stepped out of a vehicle provided by the Employer and hurt her back. The Claimant testified at the hearing before Judge Dixon, "During the shift night, I went to step out of the truck, and because they are kind of high off the ground, you know, for my height, when I went to step out, I recall going down on my right leg and something pulling." (R., p. 10.)

Mrs. Patterson testified that she reported the incident to her supervisor, Brook Walters, the day following the incident, which was the next time that Claimant saw Mr. Walters. (R., p. 10.) Mr. James Wilson, who was Claimant's co-worker at the time, testified at the hearing that he heard Mrs. Patterson advise Mr. Walters that she had hurt her back getting out of the truck. (R., p. 61.) Both the Claimant and Mr. Wilson testified that Mr. Walters made light of Mrs. Patterson's report, and Mr. Wilson testified that Mr. Walters said he did not believe her, and that he wasn't going to give her an incident report. (R., pp. 61, 66.)

The Claimant testified that her back got progressively worse, although she continued to work. (R., p. 11.) She consulted a physician in December due to the increasing pain, and that physician, Dr. Fineburg, treated her for a pulled muscle. (R., p. 11.) Claimant testified, regarding what ultimately led to her emergency surgery on January 24, 2006:

> Well, I had went and pulled overtime, and that was on a Thursday night. The shift goes from 5:00 at night until 5:00 in the morning, and during that night, I started feeling tingliness in my legs; and it just worsened over the weekend. And the following day I went to the hospital, and that's when - -"

(R., p. 13.) The Claimant testified she went to the emergency room on Sunday, and was told she needed to follow up with her physician. (R., p. 13.) She returned to the hospital on Monday, however, and was admitted for emergency surgery. *(Id.)* Specifically, Claimant underwent

emergency laminectomies at the L3-4 and L4-5 on the right on January 24, 2006. *See* General Exhibit 2, deposition of Dr. John McCloskey, at p. 7.

SUMMARY OF THE ARGUMENT

It is well settled that "courts may not hear evidence in compensation cases." *Westmoreland v. Landmark Furniture, Inc.*, 752 So. 2d 444, 447 (Miss. App. 1999). "The standard of review in appeals of workers' compensation cases is limited." The appellate court "must determine only whether the decision of the Commission is supported by substantial evidence and whether the law was correctly applied." *Scott v. KLLM, Inc.*, 2009-WC-00415-COA, ¶9 (June 15, 2010) (citing *Georgia Pacific Corp. v. Taplin*, 586 So. 2d 823, 826 (Miss. 1991)).

The Appellant is asking this Court to review the evidence, determine the Claimant's testimony was not credible, and substitute its judgment for that of the Commission. As the Mississippi Supreme Court has made clear, "[t]he Commission sits as the ultimate finder of facts; its findings are subject to normal, deferential standards upon review." *Scott, supra*, at ¶9 (citing *Casino Magic v. Nelson*, 958 So. 2d 224, 228 (¶13) (Miss. Ct. App. 2007)).

It is presumed that the Commission found the Appellant's testimony to be credible. Furthermore, Claimant had a disinterested, corroborating witness testify that she reported her injury to him, and that he heard her report the incident to her supervisor the day after her injury, which was the next time she saw her supervisor. (R., pp. 61, 62.) The Commission presumably believed this witness as well.

The Claimant's treating physician, Dr. John J. McCloskey, testified that the history the Claimant gave him regarding the injury at work was consistent with the injury for which he treated her. (General Exhibit 2, p. 23). Dr. McCloskey further testified that, to a reasonable degree of medical probability, the disc herniation that necessitated her surgeries was caused,

aggravated, or at least accelerated by the injury she reported in late November of 2005. (General Exhibit 2, p. 23.)

While the Employer/Appellant would rather have the court believe Dr. Fineburg's testimony, *i.e.,* that the Claimant did not report her injury to him as work-related, "[t]he Commission also serves as the ultimate fact finder in addressing conflicts in medical testimony and opinion." *Raytheon Aero. Support Servs. v. Miller,* 861 So. 2d 330, 336 (Miss. 2003). Furthermore, Dr. Fineburg offered no conflicting testimony about the Claimant's medical status, and testified that he would defer to Dr. McCloskey regarding her status, the injury, and the causal relationship between her surgery on January 24, 2006 and her work. (Employer/Carrier Exhibit 3, p. 39.)

Finally, the Court is reminded that "[p]ursuant to Mississippi's public policy in workers' compensation cases, doubtful cases must be resolved in favor of compensation, so as to fulfill the beneficent purposes of the statute." *Moore v. Independent Life and Accident Ins. Co.*, 788 So. 2d 106, 113 (Miss. App. 2001) (citing *Reichhold Chem. Inc. v. Sprankle*, 503 So. 2d 799, 802 (Miss. 1987)).

ARGUMENT

Standard of Review

This Court's standard of review in workers' compensation cases is well established and very limited. The Workers' Compensation Commission sits as the finder of fact, *Inman v. Coca Cola/Dr. Pepper Bottling Co. of Memphis, Tennessee*, 678 So. 2d 992, 993 (Miss. 1996), and its findings are "entitled to substantial deference when challenged on appeal to the judiciary." *Vance v. Twin River Homes, Inc.*, 641 So. 2d 1176, 1180 (Miss. 1994). "Findings of facts made by the Full Commission are binding on this Court provided they are 'supported by substantial evidence.'" *Moore*, 760 So. 2d at 787 (citing *Vance v. Twin River Homes, Inc.*, 641 So. 2d 1176, 1180 (Miss. 1994)). The Court of Appeals will only reverse the Commission's decision "if it was not supported by substantial evidence, was arbitrary and capricious, or if the judgment contained an error of law." *International Staff Mgt. and Legion Ins. Co. v. Stephenson*, 2008-WC-01641-COA (Mar. 9, 2010).

In explaining the "substantial evidence" standard, the Mississippi Supreme Court has stated, "'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*, 760 So. 2d 784, 788 (Miss. 2000) (quoting *Delta CMI v. Speck,* 586 So. 2d 768, 773 (Miss. 1991)). The court further explained, "Under the substantial evidence rule, we are further bound from rendering a different decision than that reached by the Full Commission even though the evidence presented may lead us to conclude otherwise had we been sitting as the ultimate finder of fact." *Attala County*, 760 So. 2d at 787-88 (citing *Barnes v. Jones Lumber Co.,* 637 So. 2d 867, 869 (Miss. 1994)).

The Mississippi Supreme Court discussed the deferential standard of review in *Raytheon Aero Support Svcs. v. Miller*, 861 So. 2d 330 (Miss. 2003), where it quoted a 1997 case, stating:

> . . . it is not the role of the circuit court to determine where the preponderance of evidence lies, when the evidence is conflicting, given that it is presumed that the Commission as trier of fact has previously determined which evidence is credible and which evidence is not. This highly deferential standard of review essentially means that this Court and circuit courts will not overturn a Commission decision unless said decision was arbitrary and capricious. . . . Caselaw from this Court indicates that it is only in rather extraordinary cases that a circuit court should reverse the findings of the Commission.

Raytheon, 861 So. 2d at 335 (quoting *Hale v. Ruleville Health Care Ctr.*, 687 So. 2d 1221, 1224-25 (Miss. 1997) (citing *Metal Trims Indus., Inc. v. Stovall*, 562 So. 2d 1293 (Miss. 1990)).

This standard applies when addressing conflicts in medical testimony and opinion as well. "Where medical expert testimony is concerned, this Court has held that whenever the expert evidence is conflicting, the Court will affirm the Commission whether the award is for or against the claimant." *Raytheon*, 861 So. 2d at 336 (quoting *Kersh v. Greenville Sheet Metal Works*, 192 So. 2d 266, 268 (Miss. 1966)).

Legal Argument

The Appellant submits that "[t]he compensability of this claim turns almost entirely upon the credibility of Claimant's testimony as compared with the other available evidence presented," and argues that "[f]inding Claimant credible on this issue though requires several illogical conclusions, primary among these a determination Dr. Fineburg's records were hopelessly inaccurate and his testimony false." *See* Appellant's Brief, p. 14. The Appellant is asking this Court to reevaluate the evidence and make a different decision than the one made by the Full Commission. Respectfully, this is not the role of appellate courts. *See Raytheon, supra* at 335.

"Under settled precedent, courts may not hear evidence in compensation cases. Rather, their scope of review is limited to a determination of whether or not the decision of the commission is supported by the substantial evidence." *Westmoreland v. Landmark Furn., Inc.*, 752 So. 2d 444 (Miss. App.1999). Furthermore, "[p]ursuant to the substantial evidence standard, an appellate court's belief as to the credibility of witnesses is irrelevant." *Raytheon,* 861 So. 2d at 336. In the instant case, the decision of the commission is clearly supported by substantial evidence.

The Claimant testified that she hurt her back at work, and a corroborating witness, a co-worker, testified that she advised him of her injury the next day, and that he heard her report it to her supervisor. (R., pp. 61, 62.) The Mississippi Supreme Court has stated that "[w]hen the testimony is undisputed and not so unreasonable as to be unbelievable, taking into account the factual setting of the claim, the claimant's testimony generally ought to be accepted as true." *Westmoreland v. Landmark Furn., Inc.* 752 So. 2d 444, 449 (Miss. App. 1999)(citing *White v. Superior Products, Inc.,* 515 So. 2d 924, 927 (Miss. 1987)).

Claimant's corroborating witness, James Wilson, had nothing to gain by testifying on the Claimant's behalf. He testified that he only worked with the Plaintiff "a few weeks, maybe a month." (R., p. 61.) He left his employment with Mississippi Security Police "probably less than a week" after the Claimant's injury because he had already accepted a job at Keesler Air Force Base. (*Id.*). He and the Claimant never socialized outside of work. (R., p. 62.)

The Claimant's testimony is certainly "not so unreasonable as to be unbelievable, taking into account the factual setting of the claim. . . ." *See Westmoreland, supra* at 449. For example, Mr. Wilson also testified:

> I was in the same truck before – the night before she was, and it's a very big truck. And she said as she was trying to get in and out of it, she – I guess she

> stumbled or something. And it jarred her back. And I could believe that being a short person because I have difficulty getting in and out of that. (R., 61.)

Dr. John J. McCloskey, the Claimant's treating physician, testified that, to a reasonable degree of medical probability, the disc herniation that necessitated her surgeries was caused, aggravated, or at least accelerated by the injury she reported in late November of 2005. (General Exhibit 2, p. 23.) He testified that the history Mrs. Patterson gave him regarding the injury at work was consistent with the injury for which he treated her. (General Exhibit 2, p. 23.) Dr. McCloskey testified, "She said she had been having problems in recent months; but, four days ago, she began to really have difficulty." (General Exhibit 2, at p. 6.)

"Pursuant to Mississippi's public policy in workers' compensation cases, doubtful cases must be resolved in favor of compensation, so as to fulfill the beneficent purposes of the statute." *Moore v. Independent Life and Accident Ins. Co.*, 788 So. 2d 106, 113 (Miss. App. 2001) (citing *Reichhold Chem. Inc. v. Sprankle*, 503 So. 2d 799, 802 (Miss. 1987)). In *Moore*, the claimant, Florence Moore, slipped and fell on an icy parking lot at work on January 23, 1990. *Moore*, 788 So. 2d at 108. She sought medical treatment on February 12, 1990, complaining of pain in her shoulder radiating down her arm. *Id.* The doctor administered a steroid shot and told Mrs. Moore that her problem was arthritis. *Id.* Moore continued to work. *Id.*

Moore did not seek further medical treatment until August 30, 1990, when she went to an emergency room and gave a history of experiencing pain in her shoulder for two to three weeks. *Id.* at 109. "Moore reported no trauma and gave no history of any fall, nor did she relate the problem to work." *Id.* The emergency room physician "took x-rays which showed an inflammatory process around the nerve root which he found compatible with either trauma or degenerative condition." *Id.*

Moore continued to work and did not seek further medical treatment until almost a year later. *Id.* Shortly thereafter, she stopped working, applied for workers' compensation benefits, and was awarded benefits. *Id.* Benefits were discontinued, however, based upon reports of physicians the workers' compensation carrier required Moore to see. *Id.*

Moore thereafter sought treatment from Dr. Danielson on September 17, 1991, approximately twenty months after her fall in the parking lot. *Moore*, 788 So. 2d at 110. Moore gave Dr. Danielson a history of the January 1990 fall, and Dr. Danielson found she had spondylosis at multiple levels and a herniated disc. *Id.* "Dr. Danielson found there was a causal connection between Moore's fall and her herniated disc, but not her spondylosis." *Id.* The Commission concluded there were sufficient medical findings to support a causal connection between the claimant's accident in her employer's parking lot and her injury, and the Court of Appeals affirmed. *Id.* at 113.

As in *Moore*, the treating physician in the instant case testified to a causal connection between Claimant Patterson's incident at work and her injury. *See* General Exhibit 2, p. 23. James Wilson, a completely disinterested party, testified that the Claimant told him she had hurt her back, and he corroborated Claimant's testimony that she reported hurting her back to her supervisor on November 20, 2005, the day after the incident occurred. (R., p. 60.) The Claimant testified that she did not tell anyone in a superior position to her supervisor because she felt she had done her part, and that "when it went up the chain of command, then they'll get back with me." (R., p. 28.) Mrs. Patterson reported the injury to her supervisor, as she was instructed to do, and she should not be penalized for her supervisor's refusal to properly handle the report of injury.

The Employer/Carrier has placed great emphasis on the fact that Mrs. Patterson did not give Dr. McCloskey a history of having injured herself at work during his initial examination of her. However, Dr. McCloskey noted in his operative report, which was dictated on January 24, 2006 and transcribed on January 27, 2006, that the Claimant "had for some time been having problems with back and leg pain, but things got a lot worse three or four days ago." *See* General Exhibit 1, pp. 90/97-92/97. This statement of the Claimant's history reported to Dr. McCloskey at the time of her admittance to the hospital is completely consistent with Mrs. Patterson's testimony regarding the timing of her injury and increasing pain, although she may not have told Dr. McCloskey on the day of her admittance that the problems which had started in recent months were the result of an incident at work.

Dr. McCloskey testified that at the time he was taking her initial history, "the whole emphasis there was that it didn't matter what the problem was, she needed to get fixed right away." (General Exhibit 2, p. 30.) He further testified that he "wasn't really interested in all this stuff," he was just interested in her paralysis. (General Exhibit 2, p. 45.) He stated, "it could be my fault that the documentation is not there." *(Id.)* Dr. McCloskey further characterized Mrs. Patterson as not being "your usual good historian." (General Exhibit 2, pp. 45-46.)

The instant case is quite similar to the 2006 case of *Imperial Palace Casino v. Wilson*, 960 So. 2d 549 (2006). When Johnie Wilson went to work for Imperial Palace in 2001, he suffered from chronic back pain. *Wilson*, 960 So. 2d at 551. Mr. Wilson's job duties included carrying bags of coins weighing twenty to thirty pounds. *Id.* The facts of Mr. Wilson's injury and early medical treatment were summarized by the Court of Appeals as follows:

> Wilson worked a full shift on October 25 and on October 26 of 2002. On October 27, Wilson woke up with a stiff neck. Despite his discomfort, he returned to work and worked throughout the week, although he testified that his pain intensified as the days passed. On October 31, 2002, Wilson saw Dr. Pacita

> Coss, a general physician. Dr. Coss noted that Wilson appeared to be in severe pain during their meeting. Wilson worked on November 1, but his pain was so severe on November 2 that he was unable to go to work. On November 4, Dr. Coss sent Wilson to a hospital emergency room due to the severity of his pain.

Wilson, 960 So. 2d at 551.

Mr. Wilson later met with Dr. Lowry, a neurosurgeon. *Id.* The intake form from that visit indicated that he was "probably" injured at work as he lifted bags of coins. *Id.* Wilson ultimately underwent surgery by Dr. Lowry. *Id.*

Imperial Palace argued that there was no causal relationship between the work and Mr. Wilson's injury. *Id.* at 552. Imperial Palace claimed that Mr. Wilson "merely mentioned in his in-take form [with Dr. Lowry] that he probably was injured at work and that he had been carrying coins the day before but it did not bother him until the next day." *Id.* The Court of Appeals addressed Imperial Palace's argument, stating:

> While it is true that Wilson denied being injured at work during his first meeting with Dr. Lowry, Dr. Lowry further explained in his deposition that he and Wilson both thought that Wilson's work likely caused his injury: "I remember him talking to me about this, wanting to know what I thought about that. And he was wondering it, too: 'Well, did my kind of work—' 'Since you don't want me to lift these heavy bags, did that have anything to do with [the injury]?"

Id.

Dr. Lowry later wrote a letter to Mr. Wilson's attorney, stating, "I do feel that the kind of work that he was doing prior to the onset of this problem, did contribute to the cervical disc herniation, at the very least." *Id.* at 552-53. The Court of Appeals concluded that substantial evidence existed from which the Commission could have determined that Wilson's employment caused his injury. *Id.* at 553. In reaching its conclusion, the Court of Appeals noted:

> In order for Wilson's claim to be compensable, his injury need only be connected to his employment. *Sharpe v. Choctaw Elecs. Enters.*, 767 So. 2d 1002, 1005 (P13) (Miss. 2000). An employee's work does not

> need to be the "sole source of the injury." *Id.* (quoting *Chapman v. Hanson Scale Co.*, 495 So. 2d 1357, 1360 (Miss. 1986)). The Mississippi Supreme Court specifically noted: "Injury. . . arises out of and in the course of employment even when the employment merely aggravates, accelerates or contributes to the injury." *Id.* (quoting *Chapman*, 495 So. 2d at 1360).

Wilson, 960 So. 2d at 553.

The Appellant/Employer argues that Dr. Fineburg's records and testimony do not support the Claimant's position. However, Dr. McCloskey, the neurosurgeon who performed the Claimant's surgeries, testified that, to a reasonable degree of medical probability, the disc herniation that necessitated her surgeries was caused, aggravated, or at least accelerated by the injury she reported in late November of 2005. (General Exhibit 2, p. 23.) As the Mississippi Court of Appeals noted, in *Attala County Nursing Ctr. v. Moore*, 760 So. 2d 784 (Miss. Ct. App. 2000):

> . . . [G]iven that the testimonies of the two medical experts are in conflict, we are reminded that the Full Commission, as fact finder, was entitled to weigh the competing testimonies and render its decision accordingly provided that the acceptance of one testimony over that of another did not result in a decision which was clearly erroneous and contrary to the overwhelming weight of the evidence.

Attala County Nursing Ctr. v. Moore, 760 So. 2d at 788 (citing *Baugh v. Central Miss. Planning & Devel.*, 740 So. 2d 342 (Miss. Ct. App. 1999)).

The Claimant's burden of proof in a workers' compensation claim has been set forth by the Mississippi Supreme Court as follows:

> In a workers' compensation case, the claimant bears the burden of proving by a "fair preponderance of the evidence" each element of the claim. These elements are: (1) an accidental injury, (2) arising out of and in the course of employment, and (3) a causal connection between the injury and the death or claimed disability.

Hedge v. Leggett & Platt, Inc., 641 So. 2d 9, 13 (Miss. 1994). The Claimant has met her burden of proof in this case. The Claimant testified that she hurt her back at work, and a corroborating witness, a co-worker, testified that she advised him of her injury the next day, and that he heard her report it to her supervisor. Dr. McCloskey, the Claimant's treating physician, testified that, to a reasonable degree of medical probability, the disc herniation that necessitated her surgeries was caused, aggravated, or at least accelerated by the injury she reported in late November of 2005. (General Exhibit 2, p. 23.)

The Employer/Carrier devoted significant time at the hearing and in its brief to this Court to Claimant's prior medical history, apparently attempting to show that Claimant had experienced back problems in the past and that her injury was therefore not compensable. A review of the Claimant's medical history does reveal complaints of back pain prior to November 19, 2005, but most of those complaints were related to her *left* side. *See* Employer/Carrier Exhibit 5, Composite of Medical Records. Furthermore, any prior back problems she may have had did not prevent her from working.

The Mississippi Supreme Court has consistently held that "the existence of a pre-existing disease or infirmity of the employee does not disqualify a claim under the 'arising out of employment' requirement of the statute, if the employment aggravated, accelerated or combined with the disease or infirmity to produce the disability for which compensation is sought." *Miller Transporters, Inc. v. Guthrie*, 554 So. 2d 917, 919 (Miss. 1989) (quoting *Ingalls Shipbuilding Corp. v. Byrd*, 60 So. 2d 645 (1952)).

Dr. McCloskey opined, to a reasonable degree of medical probability, that the disc herniation that necessitated Mrs. Patterson's surgeries was caused, aggravated, or at least accelerated by her injury on November 19, 2005. *See* General Exhibit 2, p. 23. The

Employer/Carrier has pointed to no accident or incident between November 19, 2005 and the date of the Claimant's surgery that would provide any other explanation of her injury.

The decision of the Full Commission is not clearly erroneous or contrary to the overwhelming weight of the evidence. Appellant Employer and Carrier wants this court to reconsider the evidence and arrive at a different decision, but "[t]he weight and credibility to be given to medical evidence and doctors' testimony are factual issues to be decided by the Commission, not this Court." *Levy v. Mississippi Uniforms*, 909 So. 2d 1260, 1265 (Miss. App. 2005).

The courts are prohibited from hearing evidence or otherwise evaluating evidence and determining facts in a workers' compensation case. *Levy*, 909 So. 2d at 1263 (citations omitted). Substantial evidence exists to justify the Commission's award of compensation. "Caselaw from [the Mississippi Supreme] Court indicates that it is only in rather extraordinary cases that a circuit court should reverse the findings of the Commission." *Raytheon*, 861 So. 2d at 335 (quoting *Hale v. Ruleville Health Care Ctr.*, 687 So. 2d 1221, 1224-25 (Miss. 1997)). This is not such a case, and the Circuit Court was correct to affirm the Order of the Mississippi Workers' Compensation Commission.

CONCLUSION

Claimant respectfully submits that she has sustained her burden of proof, and that the Circuit Court was correct in affirming the decision of the Workers' Compensation Commission, affirming the Order of the Administrative Judge finding Claimant's injury to be compensable pursuant to the Mississippi Workers' Compensation Act. Claimant requests this Court affirm the Circuit Court, and finally require the Employer/Carrier to

provide medical and compensation benefits in this matter, retroactive to the date of the Claimant's injury.

Respectfully submitted, this the 30th day of June, 2010.

SUSAN PATTERSON

By: Jackye C. Bertucci
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Certificate of Service

I, Jackye C. Bertucci, do hereby certify that I have this day mailed, via United States Mail, postage prepaid, a true and correct copy of the above and foregoing *Brief of Appellee* to:

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This the 30th day of June, 2010

Jackye C. Bertucci