IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2010-WC-003630COA

SCOTT COLSON'S SHOP, INC. and
THE OHIO CASUALTY INSURANCE COMPANY **APPELLANT**

VS

PARNELL S. HARRIS **APPELLEE**

APPEAL FROM THE
CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI
CAUSE NO. 251 - 08 - 077 CIV

BRIEF OF APPELLEE PARNELL S. HARRIS

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case.

1 Parnell S. Harris - Appellee

2. Louise Harrell, Esq. - Attorney for Appellee

3. Scott Colson's Shop, Inc. - Employer/ Appellant

4. The Ohio Casualty Insurance Company - Carrier /Appellant

5. Douglas B. Bagwell, Esq. - Attorney for Appellants, Employer and Carrier

6. Honorable Winston Kidd - Circuit Court Judge, Hinds County, Mississippi

7. Commissioners, Mississippi Workers' Compensation Commission

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   The Mississippi Worker's Compensation Law is a no fault system in which the employer provides benefits for a work injury without reference to the fault of either party.

   The Commission incorrectly analyzed Appellee Harris' claim under concepts used in fault based tort law.

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2. **The Commission improperly considered hearsay evidence which violated Appellee Harris' due process rights.**

   The Commission admitted and considered improper medical testimony made by a layperson in a hearsay affidavit.

   This medical testimony lacked a proper foundation and further was not properly before the Commission. In considering this medical testimony, the Commission did not comply with Procedural Rule 9 of the Mississippi workers' compensation commission.

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3. **The Commission's findings were not based on the correct legal standard. The Commission failed to view all evidence in its entirety as required by Mississippi law.**

   Because the Commission did not properly weigh and evaluate all the evidence, the Commission's order is clearly erroneous and contrary to the overwhelming weight of the evidence.

III. STATEMENT OF THE CASE

In this case, Appellee Parnell S. Harris worked for Employer Scott Colson's Shop for six months. For each work day during this six month period, Appellee Harris suffered a constant barrage of intimidation, abusive language, and racial epithets from his immediate supervisor, Alex D. McGowan. Appellee Harris complained to the shop owner who refused to correct McGowan's abuse and racial harassment of Appellee Harris.

Appellee Harris is now mentally ill and permanently disabled. Appellee Harris' mental problems did not start until after he began work for Scott Colson's in December 1998. Prior to being hired by Scott Colson's, Appellee Harris had no history of mental problems or mental illness. Appellee Harris' mental problems arose from a racially hostile work environment and other forms of abuse he suffered during his employment at Scott Colson's.

As discussed in detail herein, the racially hostile work environment and abuse Appellee Harris experienced in Scott Colson's were not ordinary incidents of the work environment. Rather, what Appellee Harris experienced were untoward and unusual events. Further, the racial harassment and other abuse at work imposed severe mental and psychological stress on Appellee Harris. All evidence in this case, properly viewed in it's entirety, and without regard to tort law fault issues as required by Mississippi law, clearly shows that Appellee Harris' current disability is causally connected to the racial harassment and workplace abuse.

During the six months he was employed at Scott Colson's Shop, Appellee Parnell Harris experienced the following incidents: (1). His supervisor subjected him to a continuous course of harassment, verbal abuse, and intimidation. (2). His supervisor consistently referred to him as "MF" and "stupid MF". (3). Appellee's supervisor would curse Appellee Harris throughout

the day and would bring Appellee's race into the cursing by referring to Appellee Harris as a "Black MF". (4). Appellee Harris' supervisor did not curse and scream at white employees in this manner. (5). Appellee's supervisor on at least three different occasions used the racial slur "nigger" in conversation with Appellee Harris or in Appellee Harris's presence. (6). When Appellee Harris reported his supervisor's behavior to company president, Scott Colson, Colson told Appellee Harris the supervisor was just being himself. (7). Company president Scott Colson also told Appellee Harris the word "nigger" was just another word. (8). Company president Scott Colson told Appellee Harris he could not work there if he wore his feeling on his sleeve and invited Appellee Harris to leave. (9) Appellee Harris' supervisor told Appellee he would not be working there long and that if someone sued him, they would not live to enjoy it. These events represent untoward events and are not ordinary incidents of employment.

The Commission Order acknowledges that McGowan used racial epithets in the workplace and in Appellee Harris presence. In addressing the mental harm these racial epithets caused Appellee Harris, the Commission improperly focused on the motive of McGowan in his use of the racial epithets. In the Commission's opinion McGowan meant no harm to Harris. The Commission should have focused on the harm these racial epithets caused to Harris, not the intent of McGowan in using the racial epithets. An injury is not removed from worker's compensation coverage simply because the co-worker who caused the injury did not intend to injury his fellow co-worker. Further, an injury is not removed from worker's compensation coverage because there was an apology for the injury causing behavior.

Additionally, the Commission's Order is based on inadmissible medical statements made in an inadmissible hearsay affidavit of a Jimmy Hudson. In accepting the hearsay

affidavit of Jimmy Hudson, the Commission allowed into the hearing and improperly considered an unfounded medical opinion from Jimmy Hudson. The purported medical testimony of Jimmy Hudson did not comply with Procedural Rule 9 of the Mississippi Workers' Compensation Commission.

The Commission's Order is also based on an employer hired expert, Dr. Wood Hiatt, who saw Appellee Harris on one occasion five (5) years after the racial incidents which injured Harris. The Commission did not give proper weight to Appellee Harris' treating physician, Dr. Mark Ladner.

The Commission incorrectly found that Appellee Harris did not suffer a compensable work related injury. The Commission's finding is against the overwhelming weight of the evidence. The facts, medical evidence, and all other evidence, taken as a whole, in the case show Appellee Harris is entitled to workers' compensation benefits. The Commission did not properly weigh and evaluate all evidence under the totality of the circumstances.

A. Procedural History

Appellee filed a Petition to Controvert with the Mississippi Workers' Compensation Commission on June 9, 2000. The matter was set for hearing in June 2006 before the Workers' Compensation Commission, Honorable Mark Henry, Administrative Law Judge, presiding. Due to Appellee Harris' mental condition, no witness testimony was taken at the hearing. Exhibits 1-15 were admitted into evidence. An Affidavit of Jimmy Hudson was marked Exhibit ID-A for identification only. After admission of the exhibits, the matter was submitted to the Administrative Law Judge for decision on the record.

On January 22, 2007, the Administrative Law Judge issued an Opinion and Order finding that Appellee Harris had suffered a worker related injury and that Appellee's work contributed to or aggravated or accelerated in a significant manner Appellee's mental condition. The Administrative Law Judge found Appellee totally disabled due to the injury and entitled to permanent total disability benefits beginning on June 9, 1999, with penalties and interest. The Administrative Law Judge also ordered the Employer and Carrier to pay for all reasonable and necessary medical supplies and services as required by the nature of Appellee's injury and recovery.

Employer and Carrier appealed the Administrative Law Judge's Opinion and Order to the full Workers' Compensation Commission. On December 5, 2007, the Full Commission reversed and vacated the Administrative Law Judge's Opinion and Order.

Harris appealed the Commission's opinion to the Circuit Court of Hinds County, Mississippi. On December 23, 2009, the Hinds County Circuit Court, Honorable Winston Kidd, reversed the decision of the full Commission. The Employer and Carrier filed this appeal.

B. Statement of Facts

1. Appellee Harris was Subjected to Racial Harassment by his Supervisor

Defendant hired Appellee Harris in early December 1998. At all times, Appellee Harris' immediate supervisor was Alex D. McGowan. McGowan is also known as "Donnie". *Suppl. Rec. Excp. 73;*[1] *MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at p 15.* Within a day or two after Appellee Harris arrived at work, McGowan embarked on an unrelenting course of harassment and abusive behavior towards Harris. *Suppl. Rec. Excp. 74; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 18-19.* This harassment continued for the entire six month period Appellee Harris worked at Scott Colson's. *Suppl. Rec. Excp. 74; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 18-19.*

From the very beginning, McGowan would curse Appellee Harris throughout the day and constantly called Appellee Harris "MF", "Black MF", and "stupid MF". *Suppl. Rec. Excp. 82-83; MWCC Record Ex. 11, Harris Depo. Mar. 9, 2001, at 28-29; Suppl. Rec. Excp. 74; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 19.* McGowan cursed at Appellee Harris in this manner everyday. *Suppl. Rec. Excp.* 82; *MWCC Record Ex. 11, Harris Depo. Mar. 9, 2001, at 21.* Harris thus suffered from McGowan's conduct 8 hours a day for a period of 6 months, approximately 180 days. McGowan did not curse and scream at white employees in this manner. *Suppl. Rec. Excp. 82; MWCC Record Ex. 11,, Harris Depo. Mar. 9, 2001, at 21.*

Eventually, McGowan's behavior escalated from cursing Appellee Harris to telling

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[1] *Suppl. Rec. Excp.* refers to pages and materials in Appellee's Record Excerpts.

"stories" wherein McGowan would find a way to use the word "nigger" in Appellee Harris's presence. It seems that McGowan sensed some sensitivity in Harris for this type behavior because McGowan would specifically seek Appellee Harris out to tell him these stories. *Suppl. Rec. Excp.74; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 20.* On one occasion, Appellee Harris was going to lunch and McGowan took pains to make sure Appellee Harris overheard him telling a story wherein McGowan boasted that someone had shot off the genitals of a black man. *Suppl. Rec. Excp. 74-75*; *MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 20- 21.*

On another occasion, McGowan told a story in the break room wherein McGowan again found a way to incorporate the racial slur "nigger" into his story. *Suppl. Rec. Excp. 77; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 32* and *Suppl. Rec. Excp. 84; MWCC Record Ex. 11, Harris Depo. Mar. 9, 2001, at 31-32.* McGowan always made a point to look directly in Appellee Harris' face when he told these stories and used the racial slur. *Suppl. Rec. Excp. 74-75; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 20-21, 24.*

Scott M. Colson was the president of Scott M. Colson, Inc. When Appellee Harris went to Colson's office and informed Colson of McGowan's use of the racial slurs, cursing, and racial harassment, Colson exhibited total indifference to the situation and told Appellee that was just "Donnie being Donnie". *Suppl. Rec. Excp. 76-77; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 27- 28, 29.* When Colson again had an opportunity to address McGowan's behavior, Colson gave this same response. *Suppl. Rec. Excp. 77; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 29-30.*

After Colson refused to do anything about McGowan's use of the racial slur and other

abusive behavior toward Appellee Harris, Harris did not complain again directly to Colson about McGowan's behavior. *Suppl. Rec. Excp.77 ; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 31.* Appellee Harris did, however, complain to a coworker. *Suppl. Rec. Excp. 101; MWCC Record Ex. 15, Antonius McKay Depo., at 17.* When McGowan again told a "story" and again found a way to incorporate the word 'nigger" into his "story", Appellee Harris clocked out and went home. *Suppl. Rec. Excp.* 77; *MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 32.*

Appellee Harris returned the next day thinking there would be an apology given by McGowan. *Suppl. Rec. Excp. 78; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 33.* A meeting was scheduled for 7:00 a.m. where McGowan was to apologize. *Rec. Excp.* 78; *MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 33.* McGowan did not attend the meeting and did not apologize. *Suppl. Rec. Excp.* 78; *MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 34.*

At this very same meeting where McGowan was supposed to apologize, rather than the apology he expected, what Appellee Harris got was Colson telling him "if you are going to carry your feeling on your shoulder, you might as well walk out". *Suppl. Rec. Excp. 78 ; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 35; Suppl. Rec. Excp. 93; MWCC Record Ex. 13, Colson Depo., at 53; Suppl. Rec. Excp. 88; MWCC Record Ex. 12, Clay Depo., at 31.* Colson further told Appellee Harris the word "nigger" is just another word. *Suppl. Rec. Excp. 93; MWCC Record Ex. 13, Colson Depo., at 53-54*; *Suppl. Rec. Excp. 88; MWCC Record Ex. 12, Clay Depo., at 29-30.* Appellee Harris was given a choice, if he wanted to continue his employment at Colson's, he would have to tolerate McGowan's behavior. *Suppl. Rec. Excp. 78; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 35, Suppl. Rec. Excp. 93; MWCC Record Ex. 13, Colson Depo., at 53.*

Colson did not see anything wrong with what Donnie did in using the racial slur and really did not see anything that needed correcting. *Suppl. Rec. Excp. 94; MWCC Record Ex. 13, Colson Depo., at 65-66.* Colson also felt the real problem with the situation was Appellee Harris, not McGowan. While Colson did not deny that McGowan used racial slurs, Colson felt Appellee Harris was over-reacting to the racial slurs and was too sensitive. *Rec. Excp.* 93, 95; *MWCC Record Ex. 13, Colson Depo., at 54, 70.*

Throughout it all, McGowan remained recalcitrant in his behavior, he did not attend the meeting and did not apologize. *Suppl. Rec. Excp. 78-79; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 36-37.* In fact, by the time McGowan arrived at work, the meeting was over and everyone had gone back to work. *Suppl. Rec. Excp. 78; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 36.* The first thing McGowan did when he encountered Appellee Harris that morning was make the statement that Harris "may not be working here long". *Suppl. Rec. Excp. 78 ; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 37.*

In addition to enduring McGowan's racial slurs, Appellee Harris was subjected to threats and intimidation. *Suppl. Rec. Excp. 79-80; MWCC Record Ex. 10, Harris Depo. Oct. 3, 2000, at 40-41.* McGowan threatened violence by telling Appellee Harris that if anyone sues him, they will not live to enjoy it. *Suppl. Rec. Excp.* 85; *MWCC Record Ex. 11, Harris Depo. Mar. 9, 2001, at 36.* McGowan also pushed Appellee Harris on one occasion. *Suppl. Rec. Excp.83; MWCC Record Ex. 11,Harris Depo. March 9, 2001, 26-28.*

McGowan also refused to allow Appellee Harris to participate in certain activities with the white employees. *Suppl. Rec. Excp. 82; MWCC Record Ex. 11, Harris Depo. Mar. 9, 2001, at 21-22, 23.* Twice there was a cook-out at the shop and Appellee Harris was not allowed to

participate. *Suppl. Rec. Excp.*.82, 85; *MWCC Record Ex. 11, Harris Depo. Mar. 9, 2001, at 22-23 and 34.*

McGowan had worked for Colson off and on for about 25 years. *Rec. Excp.*.97; *MWCC Record Ex. 14, McGowan Depo. at 7.* McGowan still does not see anything wrong with using the racial slur. *Suppl. Rec. Excp. 98-99; MWCC Record Ex. 14, McGowan Depo. at 19, 21.* Colson admits he does not know whether McGowan gave an apology or not.

Appellee Harris told his co-worker Tony McKay he did not like McGowan's stories. *Suppl. Rec. Excp. 101; MWCC Record Ex. 15, McKay Depo., at 17.* Mckay admits Appellee Harris was upset by the stories. *Suppl. Rec. Excp. 101; MWCC Record Ex. 15, McKay Depo., at 17.* Appellee Harris was so upset by the stories that he could not work. *Suppl. Rec. Excp.* 101; *MWCC Record Ex. 15, McKay Depo., at 18.*

Appellee Harris left his employment at Colson's in June 1999 because of the racial harassment and abuse. Shortly thereafter, the Mississippi Employment Security Commission addressed Appellee Harris's allegations that he was victimized by racial slurs and harassment at Colson's. The Mississippi Employment Security Commission held a hearing on August 6, 1999 and took testimony on the allegations. After hearing the testimony, the Mississippi Employment Security Commission found that Appellee had been subjected to racial slurs and a hostile work environment. *Suppl Rec. Excp. 29; MWCC Record Ex. 9.*

2. The Racial Harassment Caused Severe Mental and Psychological Stress for Harris.

Appellee left Colson's Shop in June 1999. After leaving Colson's Shop, Appellee Harris could not stop thinking about the racial slurs and other verbal abuse he suffered. By October

1999, Appellee found it necessary to seek medical treatment. Appellee Harris first sought treatment at Jackson Mental Health Center (Now Hinds County Behavioral Health Services) on October 19, 1999. The intake sheet from this first visit found that Appellee Harris' problems "started after conflict (racial) that led to him quitting in June". *See, Rec. Excp. 28; MWCC Exhibit C, attached to Exhibit 4, Employer and Carrier's Answers to Appellee's Interrogatories and Document Requests.* The assessment from Appellee Harris's intake sheet at Jackson Mental Health Center also states Harris has "Excess anger due to abuse on last job where he was racially harassed." *Suppl. Rec. Excp. 28; Id.* The Pyschosocial Assessment Update, states there were "no problems until client was intimidated by employer." *Rec. Excp.* 28; *Id.*

Appellee Harris's initial treatment by a Psychiatrist was at the Jackson Mental Health Center by Dr. Mark Ladner on October 19, 1999. *See Suppl. Rec. Excp. 31; Exhibit 5.* Dr. Ladner found Appellee Harris had no past psychiatric history prior to December 1998. *Id.* Dr. Ladner assessed Appellee Harris as having major depression, single episode, moderate, and possible post traumatic stress disorder. *Suppl. Rec. Excp.* 31; *Id.*

Dr. Ladner saw Appellee Harris again on November 19, 1999 and again assessed Harris as suffering major depression, single episode, moderate and possible post traumatic stress disorder. *Suppl. Rec. Excp.* 35.

On December 17, 1999, Dr. Ladner found Harris was having recollections of past traumas which he found to be consistent with post traumatic stress disorder. *Suppl. Rec. Excp. 36; Id.* Dr. Ladner further observed Harris was having more problems with anxiety than depression although some complaints of depression continued. Dr. Ladner's impression was that Harris suffered: 1. major depression single episode, mild to moderate; 2. anxiety disorder NOS.

Probable post traumatic stress disorder. *Rec. Excp.* 36; *Id.*

Dr. Ladner treated Appellee Harris again on February 3, 2000 and at that time found Harris still having trouble with his past traumatic memories. *Suppl. Rec. Excp. 37; Id.* Dr. Ladner's diagnosis again was that Harris suffered: 1. Anxiety disorder NOS, probable post traumatic stress disorder. *Suppl. Rec. Excp. 37; Id.* 2. Major depression single episode, now mild. Dr. Ladner gave Appellee Harris this same diagnosis on March 16, 2000. *Suppl. Rec. Excp. 38; Id.*

By April 17, 2000, Dr. Ladner found Harris still having "distressing recollections of what occurred to him at work in the past." *Suppl. Rec. Excp. 39; Id.* At this time Dr. Ladner found Appellee Harris to be suffering from: 1. Anxiety disorder NOS, probable post traumatic stress disorder. 2. Major depression single episode, now mild, now with some mild psychotic features (paranoia). *Suppl. Rec. Excp.* 39; *Id.*

On June 8, 2000, Dr. Ladner diagnosed Appellee Harris as suffering from 1. Post traumatic stress disorder. 2. Major depression, single episode, mild to moderate. *Suppl. Rec. Excp.* 41; *Id.* In diagnosing Harris, Dr Ladner found Harris to fit into the DSM categories for post traumatic stress disorder. *Suppl. Rec. Excp. 41; Id.* Dr. Ladner commented that Harris "was confronted by a threat of serious injury. His response involved intense fear. He has dreams about these events. He has feelings of detachment from others with a restricted range of affect and efforts to avoid activities, thoughts and feelings about what occurred." *Suppl. Rec. Excp. 41; Id.*

Dr. Ladner again treated Appellee Harris on July 13, 2000, August 8, 2000, and September 19, 2000. After each treatment session, Dr. Ladner diagnosed Appellee Harris as

suffering from 1. Major depression, single episode, moderate with mood congruent psychosis; 2. Probable post traumatic stress disorder. *Suppl. Rec. Excp.* 43-45; *Id.*

From October 1999 until October 2000 Appellee Harris was diagnosed as suffering from post traumatic stress disorder and depression. Dr. Ladner specifically attributed Harris' mental and psychological maladies to the racial incidents Appellee Harris suffered at his job. *Suppl. Rec. Excp. 46-47; Id.*

Four years latter, in May 2004, Appellee Harris was examined by Dr. Wood C. Hiatt, M.D. Dr. Hiatt was hired by the Employer and Carrie for this specific purpose. This examination was five (5) years after Appellee Harris suffered the initial racial incidents on his job.

VI. SUMMARY OF THE ARGUMENT

1. The Commission's decision violated the no- fault mandate of Miss. Code Ann. §§ 71-3- 3(b) and 71-3-7. The Mississippi Worker's Compensation Statute is a no fault system. The employer provides benefits for an on the job injury without reference to the fault of either the employee or the employer. The Commission incorrectly analyzed Appellee Harris' claim under concepts used in fault based tort law. The Commission's decision did not correctly apply Mississippi's workers' compensation law as set out in Miss. Code Ann. §§ 71-3- 3(b) and 71-3-7. For that reason, the Commission's decision is not entitled to deference by this Court.

2. The Employer offered as evidence a purported affidavit of Jimmy Hudson. Jimmy Hudson is not a physician. Hudson's affidavit contained the following medical opinion: "Mr. Harris appeared to have some sort of psychiatric or emotional condition, as he talked to himself frequently." *Suppl. Rec. Excp. 21, 102.* Appellee Harris objected and the Administrative Judge sustained Appellee Harris' objection. The Commission, in over-ruling the Administrative Judge, cited to and in part relied on Hudson's improper medical testimony.

Hudson's statement constitutes inadmissible hearsay and inadmissible medical testimony. Mississippi Workers' Compensation Commission Procedural Rule 9 controls the admission of medical testimony. In relying on Hudson's hearsay medical statement, the Commission violated its Procedural Rule 9. Due process dictates that the Commission follow its own procedural process. *Georgia Pacific Corporation v. Charles L. McLaurin,* 370 So.2d 1359 (Miss. 1979). The Commission failed to follow its procedural rules and this failure prejudiced Appellee Harris.

3. The Workers' Compensation Commission and the Mississippi Supreme Court have recognized the compensability of mental and psychological injuries. *Borden, Inc. v. Eskridge*, 604 So.2d 1071 (Miss. 1991); *Mid-Delta Home Health v. Denise Robertson,* 749 So.2d 379 (1999). In cases involving mental situations, an Appellee must prove that the injury is related to some "untoward event", unusual occurrence, accident or injury incident to employment.

"Untoward event" and unusual circumstances are defined as an injury incident to employment caused by something more than the ordinary incident of employment. *Brown & Root Construction Co. v. Duckworth,* 475 So.2d 813 (1985); *Miller Transporters, Ltd. v. Reeves,* 195 So.2d 95 (1967); *Countrybrook Living Center,* 609 So.2d 1247 (Miss. 1992); *Kemper National Insurance v. Coleman,* 812 So.2d 1119 (Miss.App. 2002).

Appellee Harris suffered a mental injury due to untoward events and usual occurrences at his workplace and he is entitled to compensation. McGowan's use of racial slurs and threats to harm Harris if he sued are more than ordinary incidents of employment. McGowan's racial "stories" which he frequently told Harris are also more than ordinary incidents of employment. McGowan's racial "stories" somehow always dealt with cutting off the genitals and other violence towards Black males. Harris found McGowan's use of the racial slurs and the telling of these stories stressful and frightening.

VII. ARGUMENT AND AUTHORITIES

A. STANDARD OF REVIEW

This Court reviews the decision of the Commission, not that of the ALJ or the circuit court. While appeals to the Supreme Court are technically from the decision of the Circuit Court, the decision of the Commission is that which is actually under review. *Delta CMI v. Speck*, 586 So. 2d 768, 773 (Miss. 1991).

Appellate courts use a *de novo* standard of review when passing on questions of law. *ABC Mfg. Corp. v. Doyle*, 749 So.2d 43 (Miss.1999). Where the Commission has misapprehended the controlling legal principles, an appellate Court must reverse on *de novo* review." *Smith v. Jackson Constr. Co.*, 607 So.2d 1119, 1125 (Miss.1992). When an agency has misapprehended a controlling legal principle, no deference is due." *Smith*, 607 So.2d at 1125.

This Court is bound by the decision of the Mississippi Workers' Compensation Commission only if the Commission's findings of fact are supported by substantial evidence. Stated differently, this Court must reverse the Commission's order if it finds that order clearly erroneous and contrary to the overwhelming weight of the evidence. The Mississippi Supreme Court has defined a decision as clearly erroneous when "although there is some slight evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made by the Commission in its findings of fact and in its application of the Act." *Good Earth Dev., Inc. v. Rogers*, 800 So.2d 1164, 1166 (Miss.Ct.App.2001) (quoting *J.R. Logging v. Halford*, 765 So.2d 580, 583 (Miss. Ct. App.2000); *Barber Seafood, Inc. v. Smith*, 911 So.2d 454, 461 (Miss. 2005) (quoting *Hardaway Co. v. Bradley* 887 So.2d 793, 795 (Miss. 2004) (citations omitted)).

B. THE COMMISSION'S DECISION VIOLATED NO FAULT PRINCIPLES OF THE MISSISSIPPI WORKERS' COMPENSATION STATUTE

Mississippi Worker's Compensation is a no fault system which provides benefits for on the job injuries without reference to the fault of either the employee or the employer. Miss Code Ann. §§ 71-3- 3(b) and 71-3-7.

Miss. Code Ann § 71-3-3(b) states:

> "Injury" means accidental injury or accidental death arising out of and in the course of employment without regard to fault which results from an untoward event or events, if contributed to or aggravated or accelerated by the employment in a significant manner.

Miss. Code Ann. § 71-3-7 follows that language in stating:

> Compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease. An occupational disease shall be deemed to arise out of and in the course of employment when there is evidence that there is a direct causal connection between the work performed and the occupational disease.

The Commission's Decision which is the subject of this appeal violated the principle of the no-fault workers' compensation law as espoused in Miss Code Ann. §§ 71-3- 3(b) and 71-3-7. The Commission misapplied the Mississippi Workers' Compensation statue in this case.

The Commission incorrectly analyzed Appellee Harris' claim under concepts used in fault based tort law. Mississippi workers' compensation law looks at whether an injury is related to the employment, not who is was at fault The Commission erred when it used a fault analysis in ruling against Appellee Harris.

The Commission Order acknowledges that McGowan used racial epithets in the workplace and in Appellee Harris presence. In addressing the mental harm these racial epithets caused Appellee Harris, the Commission improperly focused on the motive of McGowan in his use of the racial epithets. In the Commission's opinion McGowan meant no harm to Harris. The Commission should have focused on the harm these racial epithets caused to Harris, not the intent of McGowan in using the racial epithets. An injury is not removed from worker's compensation coverage simply because the co-worker who caused the injury did not intend to injury his fellow co-worker. Further, an injury is not removed from worker's compensation coverage because there was an apology for the injury causing behavior.

The Commission erred when it focused on McGowan's mental state of mind when he used the racial epithets. The Commission took the position that McGowan was not malicious and thus not harmful to Harris. While Harris does not agree that McGowan meant no harm, Harris states that even if McGowan was engaged in the equivalent of horseplay when he made the racial comments and told his "stories", McGowan's behavior is not outside Workers' compensation coverage. The Commission erred in using this fault based analysis in ruling against Appellee Harris.

C. THE COMMISSION IMPROPERLY CONSIDERED INADMISSIBLE HEARSAY EVIDENCE WHICH VIOLATED APPELLEE HARRIS' DUE PROCESS RIGHTS.

1. Jimmy Hudson's Affidavit was not Admissible and was not Medical Testimony, but the Commission Improperly Evaluated Hudson's Affidavit as Medical Evidence

The commission improperly considered inadmissible hearsay evidence which violated Appellee Harris' due process rights. Jimmy Hudson's affidavit contains medical conclusions and statements which lack proper foundation. What qualifies Hudson to state Harris appeared to have some sort of psychiatric or emotional condition. Hudson is not qualified to make this statement. *Suppl. Rec. Excp. 102.* Also, the veracity of this statement by Hudson is seriously suspect. No other person who worked with Appellee Harris at Scott Colson's testified that Appellee Harris appeared to have some sort psychiatric or emotional condition.

Admission of medical evidence in Workers' Compensation matters is controlled by Procedural Rule 9 of the Mississippi Workers' Compensation Commission. Procedural Rule 9 requires notice and requires the proper medical affidavit. Hudson's affidavit does not comply with the admissibility standards of Procedural Rule 9. *Robinson Property et. al. v. C. Newton,* 2007 MSCA, 2006 -WC-01-01288-COA; *Georgia Pacific Corporation v. Charles L. McLaurin,* 370 So.2d 1359 (Miss. 1979).

It was an error of law for the Commission to admit the affidavit of Hudson in violation of Procedural Rule 9. For this reason, as well as all other reasons discussed above, the Court must reverse the Commission's Order.

2. The Affidavit of Jimmy Hudson Is Inadmissible Hearsay.

The affidavit of Jimmy Hudson is also inadmissible hearsay. The Employer asserts this affidavit is admissible pursuant to Rule 804(b)(5) of the Mississippi Rules of Evidence. The Employer is incorrect in that assertion.

Hudson's affidavit does not meet the admissibility requirements of Rule 804(b)(5). Before hearsay evidence may be admitted under Rule 804(b)(5), the statements must have circumstantial guarantees of trustworthiness. *See, Cummins v. State*, 515 So.2d 869 (Miss. 1987) (overruled on other grounds); *Thomas v. State,* 812 So.2d 1010 (Miss. 2001).

Hudson's affidavit is not credible and does not meet the guarantees of trustworthiness required by Rule 804 (b)(5) and Mississippi Supreme Court precedent. Hudson states in his affidavit that racial slurs were not used. This is in direct conflict with the testimony of all witnesses. Hudson's affidavit directly conflicts with the testimony of Antonius McKay; with the testimony of Alex D. McGowan; with Appellee Harris' testimony; and with the testimony of Mark Clay. All these persons admit McGowan used "nigger" in the work place. McGowan himself admitted he used "nigger" when telling his "stories". No person, except Hudson, denies the racial slur was used. Hudson's testimony is just not credible.

Hudson's Affidavit also directly contradicts the findings of the Mississippi Employment Security Commission. *Suppl. Rec. Excp. 29.* The Mississippi Employment Security Commission addressed Appellee Harris' claim of racial slurs and harassment in the workplace at Colson's Shop. *Suppl. Rec. Excp. 29.* The Mississippi Employment Security Commission held a hearing and heard testimony of witnesses regarding the racial slurs and harassment. *Suppl.*

Rec. Excp. 29. The Mississippi Employment Security Commission found that racial slurs did occur at Colson's Shop and that Appellee Harris was subjected to a racially hostile environment. *Suppl. Rec. Excp. 29.*

Additional doubt is cast on the veracity of Hudson's affidavit by the testimony of Antonius McKay wherein McKay describes discussing McGowan's racial slur with Hudson.

> Q. Did you and Mr. Hudson discuss the story to your recollection?
> A. Yes, ma'am
> Q. And when did you and Mr. Hudson discuss the story to your recollection?
> A. On our way to the house.
> Q. That same day?
> A. Yes.
> Q. What was the nature of that discussion?
> A. Well, nothing no more that about Neil had gotten mad about the situation.

Here McKay testified that he and Hudson discussed McGowan's "stories". *Suppl. Rec. Excp. 101; MWCC Record Ex. 15, Mckay Depo.* 18. This directly contradicts Hudson's statement that he was not aware of racial slurs at Colson's Shop. Hudson's affidavit is simply not credible. The Commission should have excluded this affidavit as evidence.

Further, admission of hearsay testimony under Rule 804(b)(5) requires the proponent of the evidence to give the adverse party prior notice of the intended use of the evidence. *Thomas v. State,* 812 So.2d 1010 (Miss. 2001). The Employer did not comply with the notice requirement of Rule 804(b)(5). The Employer and Carrier did not provide notice of the intended use of Hudson's statement until the date of the parties conference to agree on the record, which was essentially the hearing. Notice on the date of a hearing or trial is insufficient notice. *Cummins v. State*, 515 So.2d 869 (Miss. 1987) (overulled on other grounds); *Thomas v. State,*

812 So.2d 1010 (Miss. 2001). Appellee knew of the existence of Hudson's affidavit prior to the hearing date but Appellee did now Employer and Carrier intended to introduce this affidavit into evidence until the date of the hearing. Hudson's affidavit is thus further inadmissible due to the lack of proper notice to Appellee Harris.

Appellee Harris was not present when Hudson gave the affidavit. Appellee Harris did not have a representative present when Hudson gave the affidavit. Appellee Harris did not have an opportunity to cross examine Hudson on the affidavit. This created a fundamental unfairness for Appellee Harris. The Commission gave full credit to Hudson's hearsay affidavit and cited to this affidavit in finding against Appellee Harris. *Suppl. Rec. Excp. 21.*

It is obvious from reading the Commission's opinion that it placed great weight on the content of Hudson's affidavit. The Commission's action in this respect was not fair to Harris. It was reversible error for the Commission to receive Hudson's hearsay affidavit and use the same hearsay as evidence against Harris. *Robinson Property et. al. v. C. Newton,* 2007 MSCA, 2006 -WC-01-01288-COA; *Georgia Pacific Corporation v. Charles L. McLaurin,* 370 So.2d 1359 (Miss. 1979).

In admitting the Hudson's affidavit, the Commission misapprehended a controlling legal principles regarding the admissibility of hearsay. For that reason, no deference is due the Commission's finding. The Commission erred and this Court must reverse.

D. THE COMMISSION DID NOT PROPERLY WEIGH AND EVALUATE THE EVIDENCE AND THE COMMISSION'S ORDER IS CLEARLY ERRONEOUS AND CONTRARY TO THE OVERWHELMING WEIGHT OF THE EVIDENCE.

In evaluating the evidence in this cause, the Commission did not apply the standard of review as established by the Mississippi Supreme Court. The Commissions findings are clearly erroneous in that the Commission did not take into account the entire body of evidence when making its findings of fact and in its application of the act. The Commission gave improper weight to the statements of the Employer's doctor who was hired specifically for this case and who saw Appellee Harris only once, and that was five (5) years after the events on Harris' job. The Commission ignored the treatment and opinions of Appellee's treating physicians.

The Commission improperly considered medical statements in affidavit of Jimmy Hudson which was hearsay. Hudson's hearsay affidavit gave medical testimony which Mr. Hudson was in no way qualified to give. The Commission's Order is overwhelmingly grounded in the opinion of Dr. Hiatt and the "medical testimony" in the hearsay affidavit of Jimmy Hudson.

As demonstrated in the following discussion, a proper review of all the entire body of evidence shows that Appellee suffered a compensable mental injury and he is entitled to compensation.

1. The Commission Gave Improper Weight to Dr. Wood Hiatt

The Employer has produced a statement from Dr. Wood Hiatt which conflicts with that of Appellee's treating psychiatrist. Dr. Hiatt is the Employer and Carrier's retained expert. Dr. Ladner was Appellee's regular treating physician. Dr. Ladner saw Appellee in 1999 after he left Scott Colson's. Dr. Ladner saw Appellee numerous times after October 1999. Dr. Hiatt saw Appellee only once, five years after the traumatic events on the job.

The Commission was incorrect in its failure to accept the testimony of Appellee Harris' treating physician over the physician who was hired by the Employer and who had seen Harris only once. *Mueller Copper Tube Co., Inc. v. Upton,* 930 So.2d 428 (Miss.App. 2005); *South Central Bell Telephone Co. v. Aden,* 474 So.2d 584, 593 (Miss. 1985). The opinion of a doctor who examined the Appellee on several occasions is not undercut by the subsequent contradictory opinion given by a physician who examines the Appellee only once. *See also Johnson v. Ferguson,* 435 S.2d 1191 (Miss. 1983).

Dr. Ladner treated Appellee Harris over numerous months and made repeated notations and references to Appellee's work experience as being the critical factor in Appellee's condition. Dr. Hiatt saw Appellee once and that was five (5) years after the racial harassment. The doctor who examines the Appellee last does not necessarily become the most credible. *South Central Bell Telephone v. Aden,* at 593.

The Commission did not review the evidence in its entirety and found that Appellee's mental conditions was related to what happened to him while working at Colson's Shop. The Commission should not have taken the word of Dr. Hiatt over all other medical and lay

testimony presented in this case, this was error. The Commission was incorrect in how it reviewed, evaluated, and weighed the evidence.

2. The Harassment Appellee Suffered Were Much More than Ordinary Incidents of the Work Place.

The Workers' Compensation Commission and the Mississippi Supreme Court have recognized the compensability of mental and psychological injuries. *Borden, Inc. v. Eskridge,* 604 So.2d 1071 (Miss. 1991); *Mid-Delta Home Health v. Denise Robertson,* 749 So.2d 379 (1999). In cases involving mental situations, a Appellee must prove that the injury is related to some "untoward event", unusual occurrence, accident or injury incident to employment. "Untoward event" and unusual circumstances are defined as an injury incident to employment caused by something more than the ordinary incident of employment. *Brown & Root Construction Co. v. Duckworth,* 475 So.2d 813 (1985); *Miller Transporters, Ltd. v. Reeves,* 195 So.2d 95 (1967) *Countrybrook Living Center,* 609 So.2d 1247 (Miss. 1992); *Kemper National Insurance v. Coleman,* 812 So.2d 1119 (Miss.App. 2002).

In *Borden,* the administrative law judge and the Commission found that "a proximate cause of Eskridge's disability was not an incident of ordinary employment, but a 'course of conduct' on the part of Borden's plant supervisor." *Borden,* at 1071-1072. The Mississippi Supreme Court found there was substantial evidence supporting the Commission finding and affirmed.

In *Mid-Delta Home Health,* the administrative law judge found Mid-Delta to be "a hellish work environment." The employee in *Mid-Delta* was found to have suffered a work-related mental injury because of the stress she endured as an administrative assistant. The employee

in *Mid-Delta* was found to have three general stressors, flashbacks of work incidents including impressions of mistreatment and overwork, her husband's illness and IRS and legal troubles, and the inability to work after having been a hard worker. The employee in *Mid-Delta* did not have a prior history of mental and emotional problems.

What Appellee Harris suffered at Scott Colson's fits the Mississippi Supreme Court's definition of untoward events and unusual occurrences as described in *Borden* and *Mid-Delta.* McGowan's treatment of Appellee Harris goes far beyond the ordinary incidents of the workplace. The "untoward events and unusual occurrences" Appellee Harris suffered were a course of conduct by his supervisor which culminated in Harris' breakdown and subsequent disability.

Appellee Harris suffered the following events and these events underlie his claim that what he suffered was more than the ordinary events and incidents in the workplace:

(1). Appellee Harris' immediate supervisor, Donnie McGowan, cursed at Appellee Harris on a daily basis and repeatedly referred to Appellee Harris as a "Black MF", "MF", or "stupid MF".

(2). Appellee Harris's immediate supervisor told stories about African Americans where he deliberately found a way to use the racial slur "nigger".

(3). The stories told by Appellee Harris' immediate supervisor were intimidating in that they involved violent actions against African Americans and implicated vigilante justice and castration.

(4). The same supervisor made an implied threat that Appellee Harris would be harmed if he filed a lawsuit over the incidents and that Harris was about to lose his job.

(5). Appellee Harris and the other Black employees were stigmatized and subjected to disparate treatment when they were sent home and not allowed to participate in cook-outs at the shop.

(6). When Appellee Harris informed the company president of the supervisor's use of the word "nigger", rather than taking corrective

action, the company president informed Appellee Harris the supervisor was just being himself.

(7). The company president also told Appellee Harris the word "nigger was just another word". The company president further responded by telling Appellee Harris that Appellee Harris could not work there if he carried his feelings on his shoulder.

(8). The company president readily admits that he did not see that the supervisor's use of the word "nigger" was anything to apologize for.

(9). The supervisor was not abusive to white employees.

(10). Company knew Appellee Harris's supervisor had a history of using the word "nigger" and made no effort to prevent the supervisor from using this racial epithet in the work environment, even after Appellee Harris made it known that he found it offensive and stressful.

(11). McGowan pushed Appellee Harris.

(12). McGowan refused to apologize. McGowan felt he did not have anything to apologize for.

Appellee Harris' situation is not unlike the events in *Borden* and *Mid-Delta.* In both *Borden* and *Mid-Delta,* the employees were subjected to a course of abusive conduct by a supervisor. There was no legitimate work related objectives for the supervisor's behavior in *Borden* and *Mid-Delta.*

In the instant case, Appellee Harris was likewise subjected to a course of abusive conduct by his supervisor. Appellee Harris was called "MF", stupid "MF", and Black "MF" by McGowan and McGowan used racial slurs. There was no justification for McGowan's mistreatment of Appellee Harris and use of racial slurs. It is incomprehensible to think of McGowan's treatment of Appellee as "ordinary incidents of employment."

Even though the *Mid-Delta* employees had what could be considered major non-work related stressors, the Commission nevertheless found her mental injury compensable. The same is true for *Borden* were the employee had a myriad of other health problems and stressors.

Appellee in the instant case has no history of mental illness and had no stressors other than the abusive treatment he received from McGowan. Appellee Harris, like the employees in *Borden* and *Mid-Delta,* is entitled to compensation for his disability.

Appellee Harris' situation was made worse by the fact that when Scott Colson learned of the harassment, Colson was totally indifferent to Harris's plight. Colson in fact acted as if Appellee Harris was really the problem by telling Harris he was too sensitive and was over reacting to the use of the word "nigger." Colson overlooked the fact that his supervisor McGowan was mistreating Harris. McGowan could have told his "stories" without using slurs.

No one ever asked McGowan why he had to use the n-word in telling his "stories". McGowan could have used Black or African American to refer to the race of persons in his "stories." McGowan was purposefully being offensive towards Harris and was purposefully playing on Harris' sensitivity telling these "stories" and using the racial epithet to tell the stories.

Another facet of the hostile work environment which Appellee encountered was a form of disparate treatment in the terms and conditions of Harris' employment. Appellee Harris was not allowed to participate in cook outs which were held on company grounds. On days when a company sponsored event such as a cook out was taking place, Appellee Harris and the other black employees were required to clock out and go home. Appellee Harris had to suffer the additional stigma of being singled out and sent home because of race. This disparate treatment negatively affected Appellee Harris and produced a certain amount of psychological harm from being singled out and treated differently due to his race.

Appellee Harris was a further victim of disparate treatment in that white employees were not subjected to a barrage of curse words on a daily basis. Additionally, White employees were not called stupid on a daily basis. White employees were also not called "MF" on a daily

basis. Appellee Harris, by comparison, was often addressed with the title "MF" or "Black MF".

The psychological harm of being singled out for overt disparate treatment due to his race is not a common ordinary incident of employment. The disparate treatment Harris suffered represents something more than the ordinary incidents of his employment.

The psychological stress Appellee suffered had it's genesis at Colson's Shop. Prior to accepting the job at Colson's, Appellee was working and functioning just fine in society. Appellee's medical records reveal no other stress factors on Appellee Harris other than how he was treated by McGowan and Colson's indifference to McGowan's abusive and offensive behavior.

McGowan's constant abuse of Appellee Harris and use of racial slurs proved too much for Appellee Harris. The situation was made worse when Appellee was told by Scott Colson that he was wearing his feeling on his sleeve by getting upset at McGowan's behavior.

In summary, what Appellee Harris suffered obviously goes beyond the ordinary incidents of employment. A disabling mental injury which is either caused, contributed to or aggravated by something other than the ordinary incidents of employment is a compensable injury. The Commission incorrectly found Appellee Harris did not suffer a compensable mental injury while working at Colson's Shop.

3. Any Pre-existing Weakness of Appellee Harris does not Defeat his Claim for Benefits.

If Harris had a pre-existing weakness or infirmity, that does not defeat his claim for benefits when the work incident is a contributing cause of the disability. Under Miss. Code Ann. § 71-3-3(b), if McGowan aggravated a pre-existing condition of Harris, Harris is still entitled to benefits.

In *Insurance Dept. Mississippi v. Dinsmore*, 233 Miss. 569, 102 So.2d 691, 693-694, (Miss. 1958), nwith respect to pre-existing conditions, the Mississippi Supreme Court stated:

> Dunn's Mississippi Workmen's Compensation, Section 94, pp. 75-76, contains a good statement of the holding of our cases with reference to the relationship of work to disability, to wit: While disability or death from the physical or medical standpoint must arise out of employment *578 as a proximate result, it is sufficient as a basis for compensation that the work is a contributing **694 cause. It need not be the sole or even the primary cause of resulting disability or death, but if substantial contributing causal connection is found, the claim is fully compensable without apportionment or deduction. Moreover, causal connection is viewed from the standpoint of the injured employee, and pre-existing disease or infirmity does not disqualify the claim if it be found that the employment aggravated, accelerated or combined with the disease or infirmity to produce the disability or death for which claim is made.' The above text lists many decided cases, beginning with *Ingalls Shipbuilding Corporation v. Byrd, 215 Miss. 234, 60 So.2d 645,* and continuing up to and including *Prentiss Truck & Tractor Co. v. Spencer,* Miss., 87 So.2d 272.

As the Court said, the employer takes his employees as they are. *Insurance Dept. Mississippi v. Dinsmore,* 102 So.2d 691 (1958), 104 So.2d 296 (1958); *Ingalls Shipbuilding Corp v. Byrd,* 60 So.2d 645 (1952). This is so even if the employer has no knowledge of the Harris' preexisting condition.

4. Appellee's Current Disability Is Causally Connected to the Racial Harassment and Workplace Abuse.

When evaluating medical proof and causation, the entire record must be viewed as a whole so that the compensation process is not allowed to degenerate into a game of "say the magic word". The entire testimony, both medical and lay, viewed in its entirety, must receive liberal interpretation in order to carry out the spirit of the act. Dunns, *Mississippi Workmen's Compensation,* Section 281.1 (3rd Ed. 1982).

Employer and Carrier are incorrect in urging the Commission to disregard all evidence except that of Dr. Hiatt and the hearsay affidavit of Jimmy Hudson. The Commission failed to consider and evaluate all the evidence in finding that Appellee's mental condition was not causally connected to the racial harassment and other abuse he suffered at Colson's Shop.

The evidence presented shows clearly that the racial slurs and verbal abuse Appellee Harris suffered at work and his mental break down are causally related and Harris is entitled to compensation. Appellee was 31 years old when he got the job at Scott Colson's in 1998. Prior to Appellee Harris becoming employed at Scott Colson's he had no history of mental or psychological problems and was functioning well. Appellee Harris completed his GED and had completed two years and received a degree from Hinds Community College. Appellee Harris had also worked other jobs without incident. From his background and history, it can accurately be said that Appellee Harris was successfully dealing with the normal and ordinary stresses of life, school, and work. He did not lose his ability to cope with normal life stresses until he was subjected to McGowan's abuse and racial slurs.

stress disorder, major depression, single episode, mild to moderate. *Suppl. Rec. Excp. 41-42.* Throughout his treatment of Appellee Harris and his diagnosis of Appellee Harris, Dr. Ladner makes repeated references to the fact that Harris was having flashbacks and past traumatic memories of what happened on the job. *Suppl. Rec. Excp. 41-42.*

The history of what happened to Appellee on the job and his treatment and diagnosis by Dr. Ladner show that the racial slurs and abuse he suffered were the contributing factors in his mental break down.

VIII. CONCLUSION

The Commission incorrectly analyzed Appellee Harris' claim under concepts used in fault based tort law. Mississippi workers' compensation law looks at whether an injury is related to the employment, not who is was at fault. The Commission erred when it used a fault based analysis in ruling against Appellee Harris.

The Commission improperly considered hearsay evidence which violated Appellee's due process rights. The Commission improperly admitted and considered medical testimony contained in a hearsay affidavit. This medical testimony was not properly before the Commission and in considering this medical testimony, the commission did not comply with Procedural Rule 9 of the Mississippi Workers' Compensation Commission.

The Commission's findings were not based on the correct legal standard. The Commission failed to view all evidence in its entirety as required by Mississippi law. Because the Commission did not properly weigh and evaluate the evidence, the Commission's order is clearly erroneous and contrary to the overwhelming weight of the evidence.

In this case, Appellee Harris suffered a worker related injury and Appellee Harris' work injury contributed to or aggravated or accelerated in a significant manner Appellee's mental condition. Appellee Harris is totally disabled due to the injury and entitled to permanent total disability through workers' compensation.

Dated: the 15th day of October 2010.

Respectfully submitted,
Parnell S. Harris
Appellee

By: 

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CERTIFICATE OF SERVICE AND FILING

Pursuant to Rule 25 (a) of the Mississippi Rules of Appellate Procedure, I Louise Harrell, Attorney for Appellee Parnell Harris, do hereby certify that on this date, October 15, 2010, I mailed to the Clerk of this Court, via United States mail, postage prepaid, an original and three (3) copies of the Brief of Appellee Parnell Harris, one computer readable disk containing Appellee's Brief, and four (4) copies of Appellee's Record Excerpt.

I, Louise Harrell, further certify that on October 15, 2010, I forwarded a true and correct copy of Appellee's Brief and Record Excerpts by U. S. mail, postage pre-paid, to the following:

Robert E. Briggs, Esq.
14231 Seaway Road
Building 2000, Suite 2001
Gulfport, MS 39503

Honorable Winston Kidd
Hinds County Circuit Court Judge
407 E. Pascagoula Street
Jackson, MS 39201

THIS, the 15th day of October 2010.

Louise Harrell