IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

SUPERIOR MANUFACTURING GROUP, INC. *ET AL.*	**EMPLOYER & CARRIER/APPELANT**
Vs.	**CAUSE NO.: 2010-WC-00534-COA**
BILL CRABTREE	**CLAIMANT/APPELLEE**

BRIEF OF CLAIMANT/APPELLEE

Prepared and Submitted By:
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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed personal have an interest in the outcome of this case. These representations are made in order that the members of the Mississippi Workers' Compensation Commission, any Circuit Court Judge assigned to review this appeal, and/or the justices of the Supreme Court or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. CLAIMANT – Bill Crabtree
2. EMPLOYER – Superior Manufacturing Group
3. CARRIER – Hartford Insurance Company
4. CARRIER – Twin City Fire Insurance Company
5. COUNSEL FOR CARRIER, Twin City Fire Ins. Company – Amy Lee Topik, Esq.
6. COUNSEL FOR CARRIER, Hartford Insurance Company – C. Paige Herring, Esq.
7. COUNSEL FOR CLAIMANT, Bill Crabtree – Jolly W. Matthews, Esq.
8. JONES COUNTY CIRCUIT COURT JUDGE – Honorable Billy Joe Landrum
9. ADMINISTRATIVE LAW JUDGE – Honorable Tammy Harthcock

JOLLY W. MATTHEWS, ESQ. (MSB # 1936)
Counsel for Claimant/Appellee, Bill Crabtree

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STATEMENT OF ISSUES

A. Whether the Commission was correct when it granted the Claimant's Motion to Reopen and allow addition, necessary, evidence in the case.

STATEMENT OF THE CASE

The claimant went to work for Superior in July of 1997. He worked for several different departments before he became the forklift operator. All of the jobs that he had at Superior were manual jobs which required heavy lifting, bending, stooping and carrying. His job as forklift operator required him to lift and separate heavy rolls of rubber mat material with rubber and foam composition. The rolls were from 2 feet long to 75 feet long and weighed as much as 450 pounds to as little as 75 – 100 pounds. Often, because of where the rolls were located, the Claimant would have to pick up the rolls, put it on his shoulder and carry it to the fork lift truck, as he was unable to reach the rolls with the forklift. This was an everyday occurrence.

Over the period of time he worked and in particularly six months before August of 2003, his right arm began to go numb each time he looked up or reached up. Finally on or about August 21, 2003, the claimant, Bill Crabtree, reported to the human resources director, Terri Spiers, that his arm was going to sleep and that he had severe pain in his neck and arm and that he needed to see the doctor.

The Claimant was sent by Terri Spiers, Human Resources Director, to the doctor at NANS Family Clinic. The Claimant was eventually referred to Dr. Patterson and Dr. Folse. He was referred to physical therapy. He would work for several hours a day, go to physical therapy and then return to work. This went on for a period of two to three weeks. The physical therapy did not help and the Claimant was eventually operated on and a cervical fusion was performed on the Claimant.

On or about March 21, 2004 the claimant was lifting a roll of paper to replace it on a holding rod and as he twisted to place it on the holding rod, felt a stabbing pain in his lower back. He immediately sat down right there. His supervisor walked by and saw him sitting there and asked him what the problem was and he told him he had just suffered a severe pain in his lower back and believed he was injured. His supervisor, Wesley Hannah, immediately sent him to Work Well. When he returned to work Terry Spiers, human resources director, told him he had been sent to the wrong place and that he should go to NANS Family Clinic and not to Work Well. He went to NANS twice and was referred back to Dr. Patterson.

Copies of his first report of injury from the NANS Family Clinic of March 26, 2004, and March 29, 2004, were previously submitted for evidence.

Dr. Patterson determined that the Claimant's neck should be operated on before his lower back, which had a collapsed disk at L5-S, (the MRI was previously submitted as evidence. Dr. Patterson operated on the Claimant at C6-7 and used bone from the bone bank. There was a non-union and the fusion did not fuse. Dr. Patterson redid the operation and placed hardware in the Claimant's neck. Dr. Patterson then did a fusion on his low back at L5-S1.

The Claimant has had no special skill. His work history includes working in machine shops, drive large trucks, work in a garment manufacturing plant and work for Superior. His work history is obviously heavy manual labor or work that includes heavy manual labor. He is no longer able to drive a heavy truck or forklift or pick up over 100 pounds, which he has done in the past. The Claimant is totally disabled and is unable to return to work.

SUMMARY OF ARGUMENT

The claimant, if allowed to reopen his case, will be able to prove that his medical condition is related to his on the job injury. The Administrative Law Judge, as well as the Full Commission, were correct in allowing the claimant to reopen his case and this Court, based on the law, the facts and the procedural rulings, should sustain the findings and the rulings of the Workers' Compensation Commission.

ARGUMENT

The question before the Commission is: was the Administrative Law Judge correct in allowing the Claimant to reopen his case for additional medical evidence? The law is clearly on the side of the Claimant and the ruling of the Administrative Law Judge. It is an abuse of discretion for the Administrative Law Judge not to allow the Claimant in this case, or any other case, to reopen and to allow additional evidence for the purpose of proving his case.

The Mississippi Supreme Court has a long history of ruling that it was an abuse of discretion for an Administrative Law Judge (Attorney – Referee) not to reopen a case after the Claimant has rested to put on additional evidence necessary to prove his case. The first land mark case is *Wells – Lamont Corporation v. Watkins*, 151 So2d 600 (Miss 1963). In this case, the Court had the following to say:

> "As a general rule, even in formal hearings in a regular trial Court, the reopening of a case for the purpose of showing facts vital to the issue involved, is liberally allowed by the trial judge and a failure to do so may be considered an abuse of judicial discretion."
>
> "The right to reopen proceedings for the purpose of introducing testimony inadvertently omitted has been liberally allowed, even in criminal trials on formal hearings." (See *Lee v. State,* 201 Miss. 423, 29 So.2d 211, 30 So.2d 74*; Summerville v. State,* 207 Miss. 54, 41 So.2d 377*)*
>
> "It may be said as a general rule that the right to reopen proceedings to take further evidence in workmen's compensation

> hearings is within the sound discretion of the hearing officer. (100 C.J.S. Workmen's Compensation §596, pp.843-844)
>
> "In the instant case, we are of the opinion that the attorney-referee should not have dismissed the claim until it had been fully developed, and we are of the further opinion that the Workmen's Compensation Commission should have permitted the introduction of the testimony on the motion of the appellant under the peculiar circumstances of this case. "

Not only has the Supreme Court ruled that it is an abuse of discretion, or judicial discretion, not to reopen a case, the Supreme Court has ruled that it is an abuse of discretion of the Administrative Law Judge (Attorney – Referee), and/or the Commission, not to reopen a case.

This is one of the few instances where the Supreme Court has stated that the Administrative Law Judge has the authority to reopen and is the arbiter of that procedural ruling, as well as the Full Commission.

Normally the Full Commission is the arbiter of Workers Comp cases; however, in rulings and reopening cases, the Administrative Law Judge is as much the arbiter as is the Full Commission. The Supreme Court has continued its long line of cases, ruling in favor of reopening cases in the case of *Day Detectives, Inc. vs. Savell,* 291 So.2d 716 (Miss. 1974) when the Supreme Court had the following to say:

> "As a general rule, it is discretionary with the commission as to whether it will allow the case to be reopened for additional evidence to be heard by the referee or by the full commission and that the refusal of the commission to hear additional evidence is not subject to review in the absence of a clear abuse of discretion.

> ... This Court has held in a number of cases that the statutes presuppose generally a full hearing on the merits and that a claim should not be dismissed until all of the evidence pertinent to the issues has been heard. (*Scott Builders, Inc. v. Dependent of Layton,* 244 Miss. 641, 145 So.2d 165, 1962)

In *Dunn v. Dunn,* 577 So.2d 378, (Miss. 1991) it was found "[T]he opportunity to reopen should be granted when the opposing party would not be surprised and when a refusal would deprive a litigant of the opportunity to introduce material evidence." (quoting from *Reagan Equipment Co. v. Vaughn Gin Co.,* 425 So.2d 1045, 1047 (Miss. 1983))

Further, in any ordinary situation, if a trial judge feels that by inadvertence or mistake, there has been a failure to introduce available evidence upon a material issue in the case of such a nature that the absence...a miscarriage of justice [would result, the judge,] may properly permit evidence to be introduced at any time before the case has been decided.

Wood v. City of Bridgeport, 216 Conn. 604, 583 A.2d 124, 125 (1990) (quoting *Hauser v. Fairfield,* 126 Conn. 240, 242, 10A.2d 689 (1940)). "As a general rule...the reopening of a case for the purpose of showing facts vital to the issue involved, is liberally allowed ... and a failure to do so may be considered an abuse of judicial discretion." (emphasis added) *Wells-Lamont Corp. v. Watkins,* 247 Miss. 379, 387-88, 151 So2d 600, 604 (1963), quoted in *Nelson v. Home Ins. Co.,* 252 So.2d 763, 765 (Miss. 1977), and *Marshall v. Oliver Elec. Manufacturing Co.,* 235 So.2d 244, 246 (Miss. 1970); accord *Green Tree Acceptance, Inc. v. Standbridge,* 265 So.2d 38 (Ala. 1990). Such discretion should be liberally exercised for the simple reason that judges are encouraged to "see that all of the necessary [evidence is introduced] so as to properly [and fairly] dispose of a case." *Anderson v. Anderson,* 249 Miss. 1, 4, 162, So.2d 853, 855 (1964); accord

Uhlir v. Golden Triangle Development Corp. 763 S.W.2d 512, 517 (Tex.App. 1988) ("The trial judge should liberally exercise that discretion to permit both sides to fully develop their cases.")

Thus, a judge who must decide whether a party should be permitted to reopen his case and introduce omitted evidence should consider: (1) Whether the cause of the omission is excusable? (2) Whether the evidence is relevant to a material issue? (3) Whether the absence of the evidence will result in a miscarriage of justice? and (4) Whether another party will be significantly or unduly prejudiced if the case were reopened? (*Wakefield v. Puckett,* 584 So2d 1266 (Miss. 1991).

As stated in *Wells-Lamont Corp. v. Watkins,* 247 Miss. 379, 387-88, 151 So2d 600, 604 (1963), "The Workmen's Compensation Commission is a fact-finding agency, organized for the purpose of determining claims for compensation. The procedure before the Commission is not that prescribed for ordinary civil actions, brought in a regular trial Court. Sec.6998-24, Miss. Code 1942, prescribes the method of procedure and authorizes the 'informal conferences and hearings in contested cases' and authorizes the procedure to be 'determined by rules of the commission.' Sec. 6998-19 permits the Commission to 'make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as it considers will properly protect the rights of all parties.' (208 So.2d at 578)" (*Kelly Brothers Contractors, Inc. v. Windham,* 410 So.2d 1322 (Miss. 1982).

CONCLUSION

"Errors along technical lines in the conduct of the hearing before the commission are not sufficient on review to cause a reversal ..." (*Mississippi Workmen's Compensation, 3rd Ed, Dunn* - §290*)*

The substantial evidence rule is the basis for review of the Commission's ruling by this Court. The test that the appellant court has sought to apply has been not as to whether or not the claim is supported by substantial evidence, "but rather whether or not the finding of the trier of the facts, either in allowing or denying the claim, is supported by substantial evidence." (emphasis added) *Babcock & Wilcox Co. v. McClain* 149 So.2d 523 (Miss. 1963). *Dunn* has stated that the "commission is allowed a wide latitude in its procedure and the receipt of evidence."

It is clear that the standard of review by this Court is to sustain the ruling of the Commission unless their ruling was clearly erroneous. In this case, there can be no question that the finding was not clearly erroneous. The Commission followed the rulings of this Court. The Commission itself, as well as the Supreme Court's ruling as to Administrative Law Judges. When it is necessary to allow a case to be reopened to allow all the evidence to be introduced, and in particular, additional medical evidence, it is proper and in keeping with prior rulings that the case be reopened and the medical evidence introduced into evidence.

Based on the standard of review in this case, this Court should sustain the ruling and affirm the ruling of the Workers' Compensation Commission.

Respectfully Submitted this the 9th day of August, 2010.

BILL CRABTREE, Claimant/Appellee

By: _____
Jolly W. Matthews, Esq.

CERTIFICATE OF SERVICE

I, Jolly W. Matthews, do hereby certify that I have this day mailed, by United States Mail, postage paid, a true and correct copy of the foregoing document to:

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This the 9th day of August, 2010.

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