


IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2011-WC-01086-COA 

JOSEPH DEWANE JOHNSON

CLAIMANT/APPELLANT

VS.

SYSCO FOOD SERVICES

EMPLOYER/APPELLEE

AND

NEW HAMPSHIRE INSURANCE COMPANY


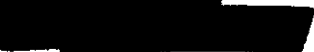
CARRIER/APPELLEE

**ON APPEAL FROM THE MISSISSIPPI WORKERS'
COMPENSATION COMMISSION**

**BRIEF OF APPELLEES, SYSCO FOOD SERVICES AND
NEW HAMPSHIRE INSURANCE COMPANY**

(ORAL ARGUMENT REQUESTED)

SUBMITTED BY:

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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. These representations are made in order that the Justices of the Supreme Court may evaluate possible disqualification or recusal.

1. Appellant, Joseph Dewane Johnson;
2. Counsel for Appellant: Carlos Moore, Esq.; Tangala L. Hollis, Esq.; and Moore Law Office, PLLC;
3. Appellee, Sysco Food Services;
4. Appellee, New Hampshire Insurance Company;
5. Counsel for Appellees: Jeff Skelton, Esq.; Pamela S. Ratliff, Esq.; and Copeland, Cook, Taylor & Bush, P.A.;
6. Gallagher Bassett Services, Third Party Administrator for the workers' compensation carrier;
7. Honorable Virginia Mounger, Administrative Law Judge, Mississippi Workers' Compensation Commission; and

8. Chairman Liles Williams, Commissioner, Mississippi Workers' Compensation Commission.

Respectfully submitted, this the 3rd day of January, 2013.

By:



JEFF SKELTON (MSB N [REDACTED])
PAMELA S. RATLIFF (MS [REDACTED])
Attorneys for Appellees, Sysco Food Services and
New Hampshire Insurance Company

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STATEMENT REGARDING ORAL ARGUMENT

Appellees, Sysco Food Services and New Hampshire Insurance Company, respectfully submit that the decisional process would be aided by oral argument. Oral argument is requested.

STATEMENT OF THE ISSUES

Substantial evidence supports the Mississippi Workers' Compensation Commission's order which found that the Claimant, Joseph Dewane Johnson, failed to present credible medical evidence supporting a causal connection between his employment as a delivery driver for Sysco and the injuries he sustained to his knees. Accordingly, the finding of the Mississippi Workers' Compensation Commission denying compensability of the claim and order of dismissal was proper. The Commission's order was neither arbitrary nor capricious and should be affirmed.

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Joseph Dewane Johnson (“Johnson”), filed a Petition to Controvert with the Mississippi Workers’ Compensation Commission on August 14, 2008, alleging he sustained a work-related injury to his knees on March 14, 2008. (R.E. 1.)¹ The Employer, Sysco Food Services, and the Carrier, New Hampshire Insurance Company (collectively, “Employer and Carrier”), denied compensability of the alleged injuries and contested Johnson’s entitlement to compensation benefits under the Mississippi Workers’ Compensation Act. (R.E. 2.)

On September 10, 2010, a hearing was held before Administrative Judge Virginia Mounger at the Mississippi Workers’ Compensation Commission. (R.E. 3.) In the Order of Administrative Judge dated January 24, 2011, Judge Mounger found there was insufficient medical proof to establish the requisite causal connection between Johnson’s bilateral knee complaints and the workplace. (R.E. 4.) Accordingly, Judge Mounger held that Johnson’s knee injuries were not compensable and dismissed his workers’ compensation claim. (R.E. 4.)

On January 28, 2011, Johnson appealed the Administrative Judge’s Order to the Full Commission. (R.E. 5.) On July 1, 2011, the Full Commission entered an Order affirming the January 24, 2011 Order of Administrative Judge which denied compensability of Johnson’s knee injuries and dismissed his claim. (R.E. 6.) Dissatisfied with the Full Commission’s ruling, Johnson filed his notice of appeal on July 14, 2011. (R.E. 7.)

¹ Appellees’ record excerpts will be referred to as “(R.E. [number]).”

B. STATEMENT OF FACTS

Johnson began working for Sysco Food Services (“Sysco”) in July of 2007, as a delivery driver. (R.E. 3, Hearing Transcript pgs.7;18.)² Johnson’s job duties included delivering groceries to restaurants located in central Mississippi and northern Louisiana. (R.E. 3, Hearing Transcript pg.18.) He was responsible for offloading supplies from the delivery truck at the customer’s store/restaurant. (R.E. 3, Hearing Transcript pg. 18.) He was not, however, responsible for loading the delivery truck. (R.E. 3, Hearing Transcript pg.18.)

At the hearing on the merits, Johnson testified that his knees began hurting in February of 2008 and became steadily worse. (R.E. 3, Hearing Transcript pgs.8;19.) Johnson initially believed he was suffering from arthritis and purchased over-the-counter arthritis medication which failed to relieve his pain. (R.E. 3, Hearing Transcript pgs. 8; 19.) At one point, he even wore bilateral knee braces. (R.E. 3, Hearing Transcript pgs. 8; 19.) Although he testified that he had pain in both knees, it was his right knee which was the most problematic and for which he initially sought treatment. (R.E. 3, Hearing Transcript pg.19.)

According to Johnson, on March 14, 2008, while walking down a ramp on his delivery truck with a dolly loaded with groceries, his knees “locked up” and he was unable to extend his leg. (R.E. 3, Hearing Transcript pgs. 9; 20.) The following day, Johnson sought treatment for right knee pain at Central Mississippi Medical Center (“CMMC”) emergency department. (R.E. 3, Hearing Transcript pgs. 9-10; 21.) According to CMMC emergency department records, on March 15, 2008, Johnson presented with complaints of right knee pain which he reported began two weeks prior. (R.E. 8.) Johnson told hospital staff that **his right knee pain started two weeks earlier when he**

² Hearing transcript from the September 10, 2010 hearing on the merits held before the Mississippi Workers’ Compensation Commission is referred to as “(R.E. 3, Hearing Transcript pgs.[])”.

began running again. (R.E. 8.) Johnson did not report any left knee pain and examination of his left knee failed to reveal anything abnormal. (R.E. 8.) Johnson was placed in a right knee immobilizer and was referred to board certified orthopedic surgeon, Dr. Gary McCarthy, for evaluation and treatment of right knee pain and possible meniscal injury. (R.E. 8.)

Johnson first saw Dr. Gary McCarthy on March 31, 2008, and completed a Patient History Form. (R.E. 9.) **Johnson listed right knee pain as the reason for his visit and expressly indicated that his knee pain was not caused by an accident and was not work-related.** (R.E. 9.) There was no mention by Johnson on the Patient History Form, or in any of the medical notes for that visit, of any left knee problem or injury. (R.E. 9.) Although Dr. McCarthy examined both of Johnson's knees, he found nothing abnormal with regard to Johnson's left knee. (R.E. 10, Deposition of Dr. Gary McCarthy, pgs, 38-39.) Dr. McCarthy diagnosed Johnson with internal derangement, right knee, and recommended an MRI scan of the knee. (R.E. 11.) An MRI scan of Johnson's right knee was performed at CMMC on April 7, 2008, and revealed a tear of the posterior horn of medial meniscus. (R.E. 12.) Johnson returned to Dr. McCarthy on May 9, 2008. (R.E.13.) With regard to Johnson's right knee injury, Dr. McCarthy believed, "given the nature of his job he most likely did this at work" (R.E. 13.) Johnson did not return to Dr. McCarthy after May 9, 2008.

Dr. McCarthy's deposition was taken on January 11, 2010. He testified he believed Johnson's right knee injury was work-related based on Johnson's description of work duties and his examination of Johnson's knee. (R.E. 10, Deposition of Dr. McCarthy, p. 52.) However, Dr. McCarthy testified that walking up and down an incline or flat surface, even while pushing or pulling

a heavy load, would not likely cause a meniscal tear. (R.E. 10, Deposition of Dr. McCarthy, pgs.10; 54-55.) According to Dr. McCarthy, there has to be a twisting of the knee to cause a meniscal tear. (R.E. 10, Deposition of Dr. McCarthy, p. 55.) **Dr. McCarthy candidly admitted that he had no idea whether the twisting which caused Johnson's meniscal tear occurred while Johnson was at work, running or somewhere else.** (R.E. 10, Deposition of Dr. McCarthy, pgs. 54-56.) With regard to Johnson's left knee injury, Dr. McCarthy testified that he was unable to state to a reasonable degree of medical probability that Johnson's left knee injury was work-related. (R.E. 10, Deposition of Dr. McCarthy, p. 46.)

On July 13, 2009, Johnson, on referral from his attorney, saw Dr. Howard T. Katz for an Independent Medical Evaluation. (R.E. 14.) Johnson complained of bilateral knee pain and informed Dr. Katz that his knee pain began in late February or early March 2008, while working as a delivery driver for Sysco. (R.E. 14.) According to Johnson, both knees began hurting while he was in the back of the truck, and as he started walking down the ramp, his knee pain worsened. (R.E. 14.) By the time he reached the bottom of the ramp his right knee locked up. (R.E. 14.) Johnson subsequently purchased over-the-counter arthritis medication and Neoprene braces for each leg but did not go to the doctor. (R.E. 14.) Instead, Johnson said he attempted running to help strengthen his knee but was unable to do so due to pain. (R.E. 14.) He eventually went to the emergency department at CMMC for treatment of right knee pain. (R.E. 14.)

Dr. Katz reviewed Johnson's prior medical records and obtained a patient history. (R.E. 14.) He also performed a physical examination of Johnson and rendered the following findings: (1) meniscal tear, right medial meniscus; (2) right Baker's cyst; (3) history of knee pain not present

today; and (4) essentially a normal examination. (R.E. 14.) **With regard to causation, Dr. Katz indicated there was no specific injury to Johnson's knees documented in the medical record.** (R.E. 14.) However, Johnson's history was that he injured his knees in early 2008 at work. (R.E. 14.) Dr. Katz opined that Johnson had reached maximum medical improvement for both knees. (R.E. 14.) He assigned a 1% impairment rating to Johnson's right leg and a 0% impairment rating to his left leg. (R.E. 14.)

Johnson saw board certified orthopedic surgeon, Dr. David Gandy, on May 5, 2010, at Employer and Carrier's request. (R.E. 15.) Prior to performing a physical examination, Dr. Gandy reviewed Johnson's medical records and obtained a complete history. (R.E. 15.) It was Dr. Gandy's initial opinion that Johnson's left knee injury was not work-related in nature while his right knee, based on the history given by Johnson, was caused by a twisting injury at work. (R.E. 15.) Dr. Gandy subsequently amended his opinion regarding Johnson's right knee injury after reviewing medical records completed by Johnson wherein he indicated that his right knee injury was not the result of an accident and was not work-related. (R.E. 15.) Based on the new information, Dr. Gandy withdrew his previous opinion regarding the cause of Johnson's right knee injury and opined instead that Johnson's right knee injury was not work-related. (R.E. 15.) Dr. David Gandy's deposition was taken on August 25, 2010. (R.E. 16, Deposition of Dr. Gandy.) He testified he saw Johnson on May 5, 2010, at which time he obtained a patient history, performed a physical examination, and reviewed Johnson's medical records. (R.E. 16, Deposition of Dr. Gandy, pgs. 5-7.) Dr. Gandy initially believed Johnson's right knee complaint could have been work-related, but after reviewing all the medical records, he determined that Johnson initially reported injuring his knee while running and later expressly denied that his injury was work-related. (R.E. 16, Deposition of Dr. Gandy, p. 16.) Therefore, it was Dr. Gandy's opinion that neither Johnson's right knee injury, nor his left knee

injury, were work-related. (R.E. 16, Deposition of Dr. Gandy, pgs.15-17.) Moreover, Dr. Gandy elaborated that without a mechanical injury such as a twisting injury, simply walking up and down a ramp would not, within a reasonable degree of medical probability, cause a meniscal tear. (R.E. 16, Deposition of Dr. Gandy, p. 20.)

STANDARD OF REVIEW

The standard of review for appeals from administrative agency decisions is well established and limited. In actions arising under workers' compensation law, an appellate court review is to determine whether the Commission erred as a matter of law or made fact findings contrary to the overwhelming weight of the evidence. *Smith v. Johnston Tombigbee Furniture Mfg. Co.*, 43 So. 3d 1159, 1164 (¶ 15) (Miss. Ct. App. 2010); *Clements v. Welling Truck Serv., Inc.*, 739 So. 2d 476, 478 (¶ 7) (Miss. Ct. App. 1999) (citing *Fought v. Stuart C. Irby Co.*, 523 So. 2d 314, 317 (Miss. 1988)). Great deference is given to the findings of the Commission and appellate courts may not substitute their judgment for that of the Commission, nor may the court re-weigh the evidence presented. *Pub. Employees' Ret. Sys. v. Marquez*, 774 So. 2d 421, 429 (¶ 32) (Miss. 2000). The Commission, as a fact finding agency, reviews not only the facts presented to the administrative judge but the underlying law supporting the administrative ruling. *Id.* When the Commission's decision is supported by substantial evidence it must be upheld. *Vance v. Twin River Homes, Inc.*, 641 So. 2d 1176, 1180 (Miss. 1994).

In workers' compensation cases, a decision by the Commission is afforded great deference. Facts determined by the Commission may not be disturbed on appeal when those facts are supported by substantial credible evidence. *Raytheon Aerospace Support Servs. v. Miller*, 861 So. 2d 330, 335 (¶ 11) (Miss. 2003) (citations omitted). On appeal, the "arbitrary and capricious" standard of review is applied to factual questions. *Bynum v. Anderson Tully Lumber Co.*, 996 So. 2d 814, 817 (¶ 11)

(Miss. Ct. App. 2008). Even if this Court, as the fact-finder, would have reached the opposite conclusion, it may only interfere when the Commission's factual findings are found to be unsupported by substantial evidence or found to be arbitrary and capricious. *Clark v. Spherion Corp.*, 11 So. 3d 774, 777 (¶13) (Miss. Ct. App. 2009) (citations omitted). "Where the decision of the Commission is supported by substantial evidence, there can be no findings of arbitrariness and caprice." *Richardson v. Johnson Elec. Auto., Inc.*, 962 So. 2d 146, 150 (¶10) (Miss. Ct. App. 2007) (citing *Miller*, 861 So. 2d at 335 (¶9)). Substantial evidence, though not easily defined, can be said to mean "such relevant evidence as reasonable minds might accept as adequate to support a conclusion." *Delta CMI v. Speck*, 586 So. 2d 768, 773 (Miss. 1991) (citations omitted). Substantial evidence is more than a "mere scintilla" of evidence. It affords "a substantial basis of fact from which the fact in issue can be reasonably inferred." *Id.* With regard to matters of law, the appellant court will not interfere with the Commission's application thereof unless found to be clearly erroneous. *Dukes ex rel. Duke v. Parker Hannifin Corp.*, 925 So. 2d 893, 896 (¶11) (Miss. Ct. App. 2005). As with all questions of law, the Court's standard of review is de novo. *Harrison County v. City of Gulfport*, 557 So. 2d 780, 784 (Miss. 1990).

As the finder and trier of fact, it is the responsibility of the Commission to determine the credibility of the witnesses "and, when conflicts in credible evidence arise, to determine where the preponderance of the evidence lies." *Richardson*, 962 So. 2d at 152. (¶16). Contradictory or negative testimony concerning the cause of injury may be substantial evidence upon which a claim may be denied. *Westmoreland v. Landmark Furniture, Inc.*, 752 So. 2d 444, 449 (¶15) (Miss. Ct. App. 1999).

SUMMARY OF THE ARGUMENT

It is a fundamental concept of workers' compensation law that the claimant has the burden of proving the causal connection between his employment and the resulting disabling condition. *Hedge v. Leggett & Platt, Inc.* 641 So. 2d 9, 12-13 (Miss. 1994). "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." *Id.*

This Court has said that "[i]n all but the simple and routine cases . . . it is necessary to establish medical causation by expert testimony." *Calhoun Apparel, Inc. v. Hobson*, 770 So. 2d 539, 542 (Miss. Ct. App. 2000) (citing *Cole v. Superior Coach Corp.*, 234 Miss. 287, 291, 106 So. 2d 71, 72 (1958)). While the Workers' Compensation statute is to be liberally construed in favor of compensation, the Court in *Olen Burrage Trucking Co. v. Chandler* said that its commitment to a liberal construction of this State's compensation laws nevertheless did "not allow [the court] to bridge gaps in the failure of the medical testimony or to find causal connections to the employment where none exists." 475 So. 2d 437, 439 (Miss. 1985).

ARGUMENT

I. THE ORDER OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION WAS BASED UPON SUBSTANTIAL AND CREDIBLE EVIDENCE AND WAS NEITHER ARBITRARY NOR CAPRICIOUS

A. THE COMMISSION CORRECTLY HELD THAT THERE WAS INSUFFICIENT MEDICAL PROOF TO ESTABLISH A CAUSAL CONNECTION BETWEEN JOHNSON'S KNEE INJURIES AND THE WORKPLACE

Based on the testimony presented at hearing, both lay and medical, the Commission correctly determined that Johnson failed to establish a causal connection between his knee injury and his work at Sysco. Johnson contends that this finding is contrary to the substantial evidence based on the conflicting medical opinions of Dr. Katz, Dr. McCarthy and Dr. Gandy. Johnson is mistaken.

Johnson wishes this Court to believe that the Commission's findings were based on conflicting medical testimony. However, upon closer review of the testimony offered in this matter, the medical testimony of Dr. McCarthy, Dr. Katz and Dr. Gandy are not conflicting. Both Dr. McCarthy and Dr. Gandy testified that meniscal tears, such as the one experienced by Johnson, require some type of twisting injury and are not caused by simply walking up and down an incline or on a flat surface. Likewise, they both agreed that there was no medical evidence to support a finding that Johnson's left knee injury was work-related.

Johnson testified at the hearing that he began experiencing knee pain in February 2008, which he attributed to arthritis. He attempted to treat his symptoms with over-the-counter medications and bilateral knee braces. Johnson first sought medical treatment for right knee pain on March 15, 2008, at CMMC emergency department. Medical records show Johnson complained only of right knee pain and told the emergency department staff that his knee pain began two weeks earlier when he

began running again. At no time did Johnson ever advise the hospital personnel that his injury was work-related. In fact, on referral to Dr. Gary McCarthy, Johnson completed a Patient History Form in which he expressly denied that his injury was caused by an accident or was work-related.(R. E 9.)

While Dr. McCarthy testified that Johnson's right knee injury, given the nature of his job, most likely occurred at work, he nevertheless testified that walking up and down an incline or flat surface is not likely to cause a meniscal tear. (R.E.10, Deposition of Dr. McCarthy, pgs.10-11.) According to Dr. McCarthy, a twisting of the knee is required to cause a mensical tear. (R.E. 10, Deposition of Dr. McCarthy, p. 55.) Further, Dr. McCarthy candidly admitted that he was unable to state whether the twisting which caused Johnson's meniscal tear occurred while he was at work, running or was somewhere else. (R.E.10, Deposition of Dr. McCarthy, pgs. 54-56.) Clearly, Dr. McCarthy's testimony does not establish a causal link between Johnson's right knee meniscal tear and his work at Sysco. Based on Dr. McCarthy's testimony, Johnson failed to carry his burden to make a prima facie case that his injury was work-related.

Similarly, it was Dr. Gandy's opinion, based on review of the medical records and examination of Johnson, that Johnson's right knee injury was not work-related. Like Dr. McCarthy, Dr. Gandy testified that a mechanical injury such as a twisting injury, and not simply walking up and down a ramp, is required to cause a meniscal tear. Stated differently, Dr. Gandy's testimony fails to establish a causal relationship between Johnson's knee injury and his work at Sysco. Accordingly, the Commission properly found that the medical evidence failed to support Johnson's claim as work-related.

Finally, even the opinion of Dr. Katz, the board certified physiatrist hired by Claimant, fails

to establish a causal link between Johnson's injury and his employment. Contrary to what Johnson would have the this Court believe, Dr. Katz never actually opined that Johnson's knee injuries were work-related. Rather, Dr. Katz rendered an opinion that "there has been no specific injury to [Johnson's] right or left knee that is documented well in the medical records." (R.E. 14.) We agree. Dr. Katz then states, "[b]ased on the history given by Mr. Johnson he injured his knees in early 2008 at work." (R.E. 14.) Unlike Johnson, we do not read that sentence to state that Dr. Katz is rendering a medical opinion that Johnson's knee injuries occurred at work. Rather, it appears that Dr. Katz is merely reciting Johnson's reported history that his knee injuries occurred at work. Accordingly, Johnson failed to carry his burden to make a prima facie case that his injury was work-related.

B. No Medical Evidence Was Offered to Support Johnson's Current Claim that His Injuries Are the Result of an Aggravation of a Possible Pre-Existing Condition

To recover, a workers' compensation claimant must prove: (1) an accidental injury, (2) which arises from the course and scope of employment, and (3) there must be a causal relationship between the injury and the alleged disability. *Hedge v. Leggett & Platt, Inc.* 641 So. 2d 9, 12-13 (Miss. 1994). The definition of "injury" refers to accidental injury resulting "from an untoward event or events." *Miss. Code Ann.* § 71-3-3(b). An injury is considered accidental whether the injury occurred suddenly, from a single event at a precise time, or whether the injury developed gradually.

Johnson's current claim that his injuries were the result of "aggravation of a possible pre-existing condition arthritis in his knees" (Appellant's Brief, p.11) is pure conjecture and totally devoid any medical support or proof. No doctor diagnosed Johnson with right knee arthritis or rendered any medical opinion that his work activities caused an exacerbation of a pre-existing right knee condition or disease.

In the current matter, Johnson alleges he began experiencing knee pain sometime in February 2008 which progressively worsened. Johnson testified that on March 14, 2008, while walking down the ramp of his delivery truck, he felt pain in his knees and his knee “locked up on him.” The following morning he presented to the emergency department at CMMC with complaints of right knee pain. Johnson, however, failed to mention any left knee pain and informed the emergency department staff that **his right knee pain started two weeks earlier when he began running again.** (R.E. 8.)

Only now does Johnson attempt to allege that his right knee injury was the result of a repetitive use work injury or an exacerbation of pre-existing condition. Not only are these claims not supported by the medical evidence and testimony in this case, they are not supported by the history Johnson initially gave to the medical providers at CMMC

Both Dr. McCarthy and Dr. Gandy agree that meniscal tears, such as the one Johnson experienced, do not occur absent some type of twisting injury and are not caused from simply walking up and down an incline or flat surface. While Dr. McCarthy testified that Johnson’s right knee injury could have occurred at work, he candidly agreed that he could not say whether Johnson’s injury occurred at work, while running or somewhere else. Neither Dr. McCarthy nor Dr. Gandy offered testimony that Johnson’s left knee injury was work-related. In fact, both agreed they were unable to state to a reasonable degree of medical certainty that Johnson’s left knee injury was job related.

C. THE COMMISSION CORRECTLY APPLIED THE APPLICABLE LAW

Johnson alleges that the facts of his case are analogous to those in *Spencer v. Tyson Foods*, 869 So. 2d 1069 (Miss. Ct. App. 2004) (Appellant’s Brief, pg.11). We disagree. In *Spencer*, the

claimant, Delores Spencer, a breast puller at Tyson, alleged she suddenly felt pain in her neck, right shoulder, arm and hand while pulling a chicken breast. She claims she immediately informed her supervisor of her medical complaint and was seen that same day by the company nurse. *Id.* at 1071. She subsequently treated with her family physician who opined that her condition resulted from the cumulative effects of repetitive work motions which exacerbated her underlying condition, cervical spondylosis. *Id.* Ms. Spencer was referred to a neurologist who similarly opined that while it was impossible to know the primary cause of the claimant's injury, there was no question work activities could exacerbate her pre-existing spondylosis. *Id.* at 1072.

Unlike *Spencer*, Johnson allegedly developed knee pain sometime in February 2008 but failed to seek medical treatment until March 15, 2008. Also, unlike the claimant in *Spencer*, Johnson did not immediately report the alleged injury to his employer. Rather, Johnson waited until May 9, 2008, months later, to report the alleged work-related injury. When Johnson sought medical attention for his knee pain, not only did he tell healthcare providers that his knee injury occurred two weeks earlier after he resumed running, but also he expressly denied the alleged injury was work-related.

Finally, and perhaps more compelling, is the lack of medical expert opinion testimony causally linking Johnson's knee injuries to the workplace. Unlike *Spencer*, in the current matter no doctor has opined that Johnson's condition resulted from the cumulative effects of repetitive work motions which exacerbated an underlying condition. In fact, neither Dr. McCarthy, Dr. Gandy nor Dr. Katz ever diagnosed Johnson with right knee arthritis or rendered an opinion that his work activities caused an exacerbation of a pre-existing right knee condition or disease.

II. The Order of the Mississippi Workers' Compensation Commission is Supported by the Substantial Weight of Evidence

Johnson has the burden to prove that he sustained an accidental injury, which arose from the course and scope of employment, and the existence of a causal relationship between the injury and the alleged disability. *Hedge v. Leggett & Platt, Inc.* 641 So. 2d 9, 12-13 (Miss. 1994). While we agree the workers' compensation statute is to be liberally construed in favor of compensation, our Supreme Court in *Olen Burrage Trucking Co. v. Chandler* made it clear that its commitment to a liberal construction of this State's compensation laws nevertheless did "not allow [the court] to bridge gaps in the failure of the medical testimony or to find causal connections to the employment where none exists." 475 So. 2d 437, 439 (Miss. 1985).

Johnson failed to prove through credible medical evidence and testimony that his knee injuries were work-related. As Johnson did not meet his burden to demonstrate a compensable claim, the finding by the Mississippi Workers' Compensation Commission that Johnson's knee injuries were not compensable was proper and based on substantial evidence. The Commission's finding is further supported by the totality of the evidence presented at hearing, including medical opinion testimony.

CONCLUSION

For the reasons stated above, the Order of the Mississippi Workers' Compensation Commission should be affirmed. Johnson failed to present credible medical evidence supporting a causal connection between his employment as a delivery driver for Sysco and the injuries he sustained to his knees. Accordingly, the finding by the Mississippi Workers' Compensation Commission that Johnson's knee injuries were not compensable was proper and based on substantial

evidence and is neither arbitrary nor capricious.

RESPECTFULLY SUBMITTED, this the 3rd day of January, 2013.

SYSKO FOOD SERVICES AND NEW
HAMPSHIRE INSURANCE COMPANY, Employer
and Carrier

By:



JEFF SKELTON (M [REDACTED])

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CERTIFICATE OF SERVICE

I, JEFF SKELTON, attorney of record for the Employer and Carrier in the above-referenced civil action, do hereby certify that I have this day caused to be delivered, via United States Postal Service, first class, postage prepaid, a true and correct copy of the above and foregoing to the following:

Carlos E. Moore
Tangala L. Hollis
Moore Law Office, PLLC
Post Office Box 1487
Grenada, Mississippi 38902-1484

Chairman Lyles Williams
Mississippi Workers' Compensation Commission
Post Office Box 5300
Jackson, Mississippi 39296-5300

THIS the 3rd day of January, 2013.



JEFF SKELTON