IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
CAUSE NO. 2010-TS-01284

RT

MARTHA KAY STANFORD **APPELLANT**

VS

V.F. JEANSWEAR, LP AND
FIDELITY & GUARANTY INSURANCE COMPANY **APPELLEES**

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 and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. William O. Rutledge III and Valarie B. Hancock of Rutledge, Davis and Harris, PLLC, Counsel for Martha Kay Stanford, Appellant;

2. M. Reed Martz, Freeland Shull, PLLC Counsel for Appellants;

3. Honorable Andrew K. Howorth,
Circuit Court Judge;

4. Honorable Virginia Mounger,
Administrative Law Judge

Respectfully submitted, this the 15th day of April, 2011.

VALARIE B. HANCOCK

ATTORNEY FOR
MARTHA KAY STANFORD, APPELLANT

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APPELLANT'S REPLY BRIEF

COMES NOW, Appellant, pursuant to M.R.A.P. 31(b) and files her Reply Brief in this matter, and in support thereof would show as follows:

The standard of review is well established in this case. This Court can reverse the Commission's decision when there is evidence the Commission is acting with a lack of substantial evidence, if the Commission's decision was arbitrary and capricious, or if there is an error of law. (*Public Employees' Ret. Sys. v. Dearman*, 846 So. 2d 1014, 1018 (Miss. 2003) (quoting *Miss. State Dep't of Health v. Natchez Cmty. Hosp.*, 743 So. 2d 973, 976 (Miss. 1999); *Metal Trims Industries v. Stovall*, 562 So. 2d 1293, 1297 (Miss. 1990); *Universal Manufacturing Co. v. Barlow*, 260 So.2d 827 (Miss. 1972))

Claimant met her burden of proof and, in fact, did show all of the elements of her claim. She showed that she was injured while acting in the scope of her employment that left her disabled. There is no doubt that there is a causal connection between her injury and her disability. The burden of proof then shifted to the Employer/Carrier to refute the Claimant's affirmative evidence. *Hedge v. Leggett & Platt*, 641 So. 2d 9 (Miss. 1994); *Pontotoc Wire Products Co. v. Ferguson*, 384 So. 2d 601 (Miss. 1980); *Thompson v. Wells-Lamont Corp.*, 362 So. 2d 638 (Miss. 1978). Employer/Carrier did not do so.

There is no dispute that the Commission did not believe Stanford, questioning her credibility. The dilemma is the Commission had no basis whatsoever to question Stanford's credibility. When the Commission finds a claimant to be not credible based purely on bias and prejudice, an injustice has occurred that is contrary to the purpose of the Workers' Compensation Act.

The Employer/Carrier is concerned with the fact that Claimant's treating physician initially said that her injury appeared to be "insidious." There has been discussion over the meaning of insidious and the Employer/Carrier continues to make contradictory statements as to Stanford's injury. Employer/Carrier cannot claim insidious means the injury happened slowly, over a period of time, one minute, and then agree the next that Stanford was fine and working with no restrictions before she left and injured when she came returned to her terminal. This clearly is a contradiction and shows that Stanford's injury was **not** insidious.

Stanford was at a cookout, laughing and playing horseshoes with her neighbors immediately before she left on a truck run for the Employer/Carrier. Yet, when she returned, she was seriously injured and could no longer work. This does not fit the definition of insidious. Even if Stanford's condition had been insidious, any degeneration, acceleration or aggravation of an injury would have occurred during the time she was driving a truck for the Employer. Degenerative conditions are common for truck drivers due to the constant stress on their bodies. Such an insidious injury would also have been covered by workers compensation so there would be no reason for Stanford to lie about the manner in which the injury occurred.

Employer/Carrier states that Claimant has made "a leap too far, arguing that this before/after evidence is probative of what happened in the interim." There is no leap at all. There can be no denying that before Claimant left on the work trip, she was fine. When she returned, she was disabled. Clearly something did happen in the interim. Claimant testified as to what happened as did her husband who was an eye-witness. It is not necessary that the injury itself occur in front of dozens of witnesses to be compensable. If this was true, a large majority of workers compensation cases would never be filed.

Claimant admits that there have been some inconsistencies in the evidence and has attempted to explain how this happened. Employer/Carrier attempts to make it seem shady that Claimant has actually been able to produce such explanations. Because Claimant has explanations, Employer/Carrier claim that she has "invented" them. If Claimant had not produced explanations, Employer/Carrier would have stressed the point that she had no explanation.

The discrepancies that the Employer/Carrier continue to drone about show absolutely nothing as to the Claimant's credibility. Clearly, there were misunderstandings and mis-communications through part of the discovery process. The accident occurred in 2006. Counsel for Claimant cannot remember all of the details of occurrences that happened more than 5 years in the past and does not expect Stanford to be able to remember such either. The Commission should not have required the Claimant to remember all of the details of the events surrounding her injury after that amount of time. Claimant was injured and in pain. Some confusion is to be expected.

There are no discrepancies in the Claimant's testimony concerning reporting the accident. This is simply the word of the Claimant against the word of the Employer/Carrier which should have been given equal weight. In fact, the Claimant's testimony should have been given more weight considering that the Employer, in violation of state law, destroyed any and all records that might have settled this question. This creates a presumption that the Claimant's testimony is true.

Employer/Carrier harps on the fact that Claimant may have received short term disability damages in the past, but this is irrelevant because, as previously stated, when Claimant left on the work trip she was fine. Nothing was wrong with her at the time she left. When she returned, she was seriously injured. Clearly, something happened on the trip which either 1) caused a work-related injury to the Claimant or 2) caused an aggravation or acceleration of a previous work-related injury.

This is the main and most important fact that the Employer/Carrier attempts to sweep under the rug. Claimant was on a truck run for the Employer/Carrier. When she left, there was nothing wrong with her. At some point on that truck run, something occurred that caused the Claimant to be injured. When she returned, she was suffering from a disabling injury. Claimant has shown that clearly and has met her burden of proof. If the Employer/Carrier is alleging that this was not a work-related injury or that no injury occurred, they have failed to show any evidence of that. They state that they are not required to show a negative, that no injury occurred or that the injury was not work related.

This is incorrect. After Claimant has met her burden of proof, it is up to the Employer/Carrier to show evidence contradicting the Claimant's allegations if they dispute

them. They have never so much as attempted to show that there was no injury that occurred on the Claimant's truck or that the injury suffered by the Claimant was not work related.

Employer/Carrier is incorrect yet again in stating that there is no medical evidence to support Stanford's claims. Dr. Crosby, Claimant's treating neurologist and neurosurgeon has presented both medical records and deposition testimony that her injury was work related. Counsel for the Employer/Carrier states that while an injury such as Claimant reported could cause her medical conditions, so could a variety of other factors. This appears to be Counsel's own opinion and is not supported by any medical evidence. While Counsel may be qualified to present a legal opinion, attorneys are not medical practitioners and are absolutely not qualified to present their own medical opinions. Additionally, Employer/ Carrier has never presented any medical testimony showing any such other factors which could possibly have caused the Claimant's condition. The Employer/Carrier simply states rhetoric and expects it to be accepted as evidence.

CONCLUSION

Regardless as to how many inconsistencies that Employer/Carrier try to throw into the case, the questions are very simple. There is no need to complicate matters. Did Claimant show that she was injured? Yes. Did she show that this occurred in the course and scope of her employment? Yes. Did she show that the injury and her current medical condition are causally related? Yes. Did the Employer/Carrier develop proof of any other scenario? No.

Stanford has met her burden of proof on these matters consistently and repeatedly. The Employer/Carrier has constantly refused to present any evidence that contradicts these occurrences, and, in fact, even destroyed every last shred of evidence that might support the

evidence in this matter. The Commission's decision was not based upon substantial evidence, making it arbitrary and capricious.

All of the points that are continually argued against Stanford in this matter are completely irrelevant when the above requirements have been met. The very fact that the Commission has dwelt on each of these trivial points of differences shows clear and unlawful bias. Therefore, this Court should find in favor of the Claimant and either enter a ruling that Claimant receive workers' compensation benefits with the Employer/Carrier paying her medical expenses, or in the alternative, this Court should remand the claim to the Mississippi Workers' Compensation Commission to be reheard by a new ALJ.

RESPECTFULLY SUBMITTED, this the 15th day of April, 2011.

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CERTIFICATE OF SERVICE

I, William O. Rutledge III, attorney for the Claimant, Martha K. Stanford, do hereby certify that I have, on this date, served a true and correct copy of the above Reply Brief on the interested parties by placing said document in the United States mail, postage prepaid, addressed to him at his usual business address as follows:

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Oxford, MS 38655

Honorable Andrew K. Howorth
Union County Circuit Court
1 Courthouse Sq., Ste. 201
Oxford, MS 38655

SO CERTIFIED, this the 15th day of April, 2011.

WILLIAM O. RUTLEDGE III