IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI

NO. 1999-WC-01520-COA

CALHOUN APPAREL, INC. AND MISSISSIPPI MANUFACTURERS ASSOCIATION WORKERS' COMPENSATION GROUP **APPELLANTS**

v.

JOSEPHINE B. HOBSON **APPELLEE**

DATE OF JUDGMENT:	08/13/1999
TRIAL JUDGE:	HON. R. KENNETH COLEMAN
COURT FROM WHICH APPEALED:	CALHOUN COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANTS:	ROBERT S. UPSHAW
	STEVEN HISER FUNDERBURG
ATTORNEY FOR APPELLEE:	B. LEON JOHNSON
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
TRIAL COURT DISPOSITION:	AFFIRMED WORKERS' COMPENSATION COMMISSION FINDING THAT HOBSON SUFFERED A WORK RELATED INJURY
DISPOSITION:	AFFIRMED - 11/07/2000
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/28/2000

EN BANC:

KING, P.J., FOR THE COURT:

¶1. Calhoun Apparel, Inc., and its workers' compensation carrier (collectively referred to as Calhoun) have appealed the Workers' Compensation Commission's award of disability benefits to Josephine Hobson alleging that there is a lack of evidence to support an award of benefits based upon a repetitive motion injury. Finding no merit in this claim, this court affirms.

FACTS

¶2. On January 7, 1997, while operating a sewing machine at Calhoun, Hobson struck her left wrist against the machine. Shortly thereafter the injured wrist began to swell. Hobson reported her injury to plant supervisors, and was given some rubbing alcohol to treat her symptoms. Hobson then returned to her machine.

¶3. Because of continued problems with her wrist, Hobson sought medical assistance from Dr. Wayne Lamar on March 31, 1997. Hobson's principal complaint at that time was "numbness and tingling in both

hands, the left more severe than the right." Hobson did not include in her complaint to Dr. Lamar any specific reference to the January 7, 1997 injury.

¶4. Dr. Lamar pursued a conservative course of treatment with Hobson. When that conservative course of treatment failed to yield the desired result, Dr. Lamar performed a left carpal tunnel release. Dr. Lamar felt that the left carpal tunnel release achieved the desired result. He released Hobson as having reached maximum medical improvement and assigned her a 10 percent permanent, partial disability to the left upper extremity.

¶5. Hobson, alleging that her disability was work related, sought workers' compensation disability benefits. Calhoun contested the benefit request stating that the injury was not work related.

¶6. A hearing on Hobson's claim was conducted by an administrative law judge. During this hearing, Hobson testified as to the repetitive nature of her job, and the nature and impact of her injury. However, she did not specifically state that the injury was caused by repetitive motion.

¶7. Dr. Lamar did not testify, although the medical record of his treatment of Hobson was made a part of the hearing record. Dr. Lamar's medical record reflected treatment of Hobson for carpal tunnel syndrome or repetitive motion injury. His medical records made no effort to associate or disassociate Hobson's injury to her work at Calhoun.

¶8. The administrative law judge made a part of the evidentiary record a 1992 Workers' Compensation Commission file of an earlier injury claim by Hobson. This file included the medical report of the physician who treated Hobson for this earlier injury. That report diagnosed Hobson with carpal tunnel syndrome from performing repetitive motion in her employment with another apparel manufacturer. This was the same job and the same motions which Hobson now performed in her employment with Calhoun.

¶9. The administrative law judge, after careful consideration of the record, including the earlier medical records, held that Hobson had a pre-existing repetitive motion injury which was aggravated by the repetitive motions of her work performed at Calhoun Apparel. This finding was affirmed by the full Workers Compensation Commission and the Calhoun County Circuit Court.

STANDARD OF REVIEW

¶10. The Workers Compensation Commission has the statutory responsibility to hear and decide worker compensation claims Miss. Code Ann. § 71-3-85 (Rev. 2000) It is the finder of fact, and a reviewing court is not authorized to re-weigh the evidence to determine where the preponderance of evidence lies. *Lanterman v. Roadway Exp., Inc.*, 608 So. 2d 1340, 1345 (Miss. 1992). Where there is credible evidence to support the Commission's decision, it must be affirmed. *Guardian Fiberglass, Inc. v. Lesuere*, 751 So. 2d 1201 (¶7) (Miss. Ct. App. 1999).

DISCUSSION

¶11. Because there was credible evidence supporting the Commission's award of benefits, we affirm the award.

¶12. The medical record introduced as a part of Hobson's earlier claim established that Hobson had been diagnosed with carpal tunnel syndrome in 1992, related to her repetitive motion work at Glenn Slacks. The

medical record established that the 1992 injury most affected the right wrist, and that a right carpal tunnel release was performed at that time.

¶13. The administrative law judge after reading the pleadings and medical records, and weighing the credibility of the witnesses found compensability. This evidence included an unchallenged 1992 medical diagnosis of carpal tunnel syndrome in both the left and right upper extremities. The repetitive motions performed by Hobson at Calhoun in 1997 were identical to the repetitive motions which caused her 1992 carpal tunnel injury. Notwithstanding this evidence, Calhoun suggests that the absence of specific medical testimony stating Hobson's 1997 carpal tunnel syndrome was caused by her employment precludes compensability . The Mississippi Supreme Court rejected that suggestion in *Hall of Mississippi, Inc. v. Green*, 467 So. 2d 935, 938, (Miss. 1985) stating, "disability need not be proved by medical testimony as long as there is medical testimony which will support a finding of disability."

¶14. There is clearly medical evidence in the record, as identified by the administrative law judge, which supports a finding of disability. Accordingly, this court affirms.

¶15. **THE JUDGMENT OF THE CIRCUIT COURT OF CALHOUN COUNTY IS AFFIRMED. COSTS OF APPEAL ARE ASSESSED TO THE APPELLANTS**.

BRIDGES, IRVING, LEE, AND PAYNE, JJ., CONCUR. McMILLIN, C.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY SOUTHWICK, P.J., MOORE, AND THOMAS, JJ. MYERS, J., NOT PARTICIPATING.

McMILLIN, C.J., DISSENTING:

¶16. I respectfully dissent. In my view, the majority has failed to come to grips with two issues. First, the evidence is entirely inconsistent with the claimant's own theory of how her disability arose. Secondly, no matter what theory of compensability is employed, there is a complete lack of expert opinion testimony connecting Hobson's medical condition to an occurrence or series of occurrences at work. In my view, either is fatal to Hobson's claim.

¶17. It is a fundamental concept of workers compensation law that the claimant has the burden of proving the causal connection between the claimant's employment and the resulting disabling condition. *Hedge v. Leggett & Platt, Inc.*, 641 So. 2d 9, 12-13 (Miss. 1994); *Olen Burrage Trucking Co. v. Chandler*, 475 So. 2d 437, 439 (Miss. 1985). Hobson's theory of compensability, as set out in her petition to controvert, was that her left wrist was injured when she struck it against a machine at work. That claim was not substantiated by the proof. Her first post-incident visit to a medical provider occurred almost three months after the alleged injury and she presented herself to Dr. Wayne T. Lamar complaining of numbness and tingling in both hands. Dr. Lamar diagnosed her condition as carpal tunnel syndrome in both wrists. Complaints of that nature are inconsistent with a claim of a traumatic injury to one extremity. There is no suggestion in the record that carpal tunnel syndrome can be caused by a single traumatic incident to the affected extremity, much less both wrists. Thus, on Hobson's own theory of her claim, the proof of job-related causation is lacking.

¶18. Even if we assume that Hobson could advance one theory of injury causation yet recover if she happened to stumble onto some yet-unadvanced alternate theory of compensability during the course of her proof - in this case, carpal tunnel syndrome caused by repetitive motion - Hobson's claim still fails. There is

no competent medical evidence that Hobson's left wrist injury was a non-traumatic repetitive-motion injury caused by her duties at her work.

¶19. The majority finds the necessary connection by giving combined effect to two things. First, it notes Hobson's testimony describing the repetitive nature of her duties at Calhoun Apparel. The majority then takes note of a five year old medical report (from a doctor different from her treating physician on the Calhoun Apparel injury) indicating that Hobson had developed carpal tunnel syndrome while performing similar duties at an earlier job. From those two disconnected threads of evidence, the majority concludes that Hobson demonstrated that her injuries were job-related. I find that proof insufficient to establish the necessary connection between Hobson's present employment and her medical condition.

¶20. The Mississippi Supreme Court has said that "[i]n all but the simple and routine cases . . . it is necessary to establish medical causation by expert testimony." *Cole v. Superior Coach Corp.*, 234 Miss. 287, 291, 106 So. 2d 71, 72 (1958). I fear that the majority has substituted its own understanding of the nature and causation of repetitive-motion injuries (an understanding that may or may not have some measure of accuracy but is simply not competent evidence) for the necessary proof that can only be supplied by a qualified expert, *i.e.*, a physician skilled in such areas of medicine and knowledgeable of the particulars of the claimant's condition.

¶21. In *Olen Burrage Trucking Co. v. Chandler*, the supreme court 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 at 439. While anyone reviewing the record in this case might fervently wish that someone had sought Dr. Lamar's opinion as to a connection between Hobson's medical condition and the nature of her work-related duties, and while Dr. Lamar's answer to that unasked question might seem so self-evident as to be a foregone conclusion, the fact remains that the inquiry was not made. That failure in the proof creates the fatal gap that the majority, improperly in my view, bridges without any supporting evidence.

¶22. I would reverse and render judgment in favor of the employer because of Hobson's evident failure to meet her burden of showing the necessary connection between her work and her injury.

SOUTHWICK, P.J., MOORE AND THOMAS, JJ., JOIN THIS SEPARATE WRITTEN OPINION.