

**IN THE COURT OF APPEALS 05/21/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CC-00855 COA**

**CITY OF JACKSON**

**APPELLANT**

**v.**

**EDWARD MARION STEVENS**

**APPELLEE**

**PER CURIAM AFFIRMANCE MEMORANDUM OPINION**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JAMES GRAVES

COURT FROM WHICH APPEALED: CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY

ATTORNEY FOR APPELLANT:

HUGH W. TEDDER, JR.

ATTORNEY FOR APPELLEE:

JOHN H. DOWNEY

NATURE OF THE CASE: WORKERS' COMPENSATION

TRIAL COURT DISPOSITION: GRANTED BENEFITS TO CLAIMANT

BEFORE BRIDGES, P.J., DIAZ, AND SOUTHWICK, JJ.

## PER CURIAM:

The City of Jackson (the City) appeals from a judgment of the Hinds County Circuit Court affirming an award of benefits to Edward Marion Stevens by the Mississippi Workers' Compensation Commission.

The City, the employer, argues in this appeal that the claimant failed to establish a causal connection between his illness and his employment. Additionally, the City contends that the admission of Dr. Wilson's letter as substantive evidence constitutes hearsay and violates procedural rules of the commission. Finding no merit to the issues raised by the Appellant, we affirm the judgment of the trial court.

## FACTS

Edward Marion Stevens was employed by the City of Jackson from November 1983 to July 1991. During his eight years of employment, Stevens became the Director of Community Improvement. In his capacity as Director of Community Improvement Stevens examined vacant buildings throughout Jackson. Stevens examined the King Edward Hotel building located in downtown Jackson approximately eight times. This vacant building contained accumulations of pigeon droppings ranging from two inches on the lower floors to twelve inches or more on the upper floors.

Stevens retired from employment with the City of Jackson on June 30, 1991. He was diagnosed with cryptococcal meningitis in November 1992. According to medical testimony, cryptococcal meningitis is caused by a fungus easily isolated in pigeon droppings.

## DISCUSSION

### 1. Did the Lower Court Err in Upholding

the Commission's Finding of Causal Connection

Between the Claimant's Injury and His Employment?

The commission is the trier of fact, and its decision will be affirmed when supported by substantial evidence. *Borden, Inc. v. Eskridge*, 604 So. 2d 1071, 1073 (Miss. 1991); *Cole v. Superior Coach Corp.*, 106 So. 2d 71, 72 (Miss. 1958). Our review of the record satisfies us that there is substantial evidence to support the findings of the commission as to medical causation. The commission had the right to evaluate the medical testimony of both experts and to accept that of the claimant. *See Georgia Pacific Corp. v. Taplin*, 586 SO. 2d 823, 828-829 (Miss. 1991); *McGowen v. Orleans Furniture, Inc.*, 586 So. 2d 163, 168 (Miss. 1991); *Cole*, 106 So. 2d at 72. The claimant need only prove minimal causation, less than is necessary to prevail in a torts claim. *KLLM, Inc. v. Fowler*, 589 So. 2d 670, 676 (Miss. 1991). Dr. Holloman, Stevens' medical expert, testified that many victims of cryptococcal meningitis have been exposed to pigeon droppings, and this exposure substantially increases the risk of acquiring the disease. The employer's expert, Dr. Henderson, admitted that the

highest concentrations of cryptococcal fungus are found in pigeon droppings. The commission accepted Stevens' medical testimony of causation, and there was a substantial basis for doing so.

2. Was it Error for Dr. Wilson's Letter

to be Relied Upon by the Commission?

We find no merit to the employer's second assignment of error. The City of Jackson entered Dr. Wilson's letter into evidence and cannot claim this as error on appeal. *See Parmes v. Illinois Cent. Gulf R.R.*, 440 So. 2d 261, 268 (Miss. 1983); *Deposit Guar. Bank & Trust Co. v. Nelson*, 54 So. 2d 476, 480 (Miss. 1951).

3. Should Sanctions be Awarded to

Stevens Due to a Frivolous Appeal?

Stevens contends in his brief that the employer's appeal is frivolous and that he should be awarded attorney's fees and costs consistent with the provisions of the Litigation Accountability Act. Miss. Code Ann. § 11-55-1 to -15 (Supp. 1995). This Court is not in the habit of capriciously awarding sanctions. However, the Litigation Accountability Act was enacted to prevent and punish parties which file appeals without substantial justification. The Court has seriously considered awarding attorney's fees in this case. The claimant in this case is a seriously ill man in need of immediate compensation, and the employer should have been aware that there was but a minuscule possibility of prevailing on appeal. Although we decline to award sanctions today, in the future

parties should carefully investigate the merits of an appeal of this nature and be confident that their position is substantially justified and firmly based in law and evidence prior to filing.

**THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT IS HEREBY AFFIRMED.  
ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING,  
McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**