

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 95-CC-01173 COA**

**LENA WEDGEWORTH**

**APPELLANT**

**v.**

**McCARTY FARMS, INC. AND UNITED STATES  
FIDELITY & GUARANTY COMPANY**

**APPELLEES**

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

DATE OF JUDGMENT:	10/30/95
TRIAL JUDGE:	HON. ROBERT G. EVANS
COURT FROM WHICH APPEALED:	SIMPSON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JAMES W. NOBLES JR.
ATTORNEY FOR APPELLEES:	ROBERT J. ARNOLD, III
NATURE OF THE CASE:	CIVIL - CLAIM FOR WORKERS' COMPENSATION BENEFITS
TRIAL COURT DISPOSITION:	AFFIRMED THE FULL COMMISSION ORDER WHICH DISMISSED APPELLANT'S CLAIM BECAUSE IT WAS BARRED BY TWO-YEAR STATUTE OF LIMITATIONS
DISPOSITION:	AFFIRMED - 2/10/98
MOTION FOR REHEARING FILED:	2/20/1998
CERTIORARI FILED:	4/22/1998
MANDATE ISSUED:	

BEFORE BRIDGES, C.J., COLEMAN, AND SOUTHWICK, JJ.

COLEMAN, J., FOR THE COURT:

Lena Wedgeworth appeals from an order of the Circuit Court of Simpson County which affirmed the full commission order of the Mississippi Workers' Compensation Commission. The full commission order had in turn affirmed the order of administrative judge which dismissed with prejudice Wedgeworth's petition to controvert because she had failed "to controvert the claim within the two year statute of limitations." We affirm the order of the Simpson County Circuit Court.

## I. FACTS

On April 23, 1991, while she was gathering eggs in the course of her employment at McCarty Farms in Magee, a rooster pecked Lena Wedgeworth on the lateral area of her right leg just above her ankle. The rooster's pecking caused multiple small puncture wounds, which Wedgeworth's niece, also an employee of McCarty Farms, immediately cleaned. Later that afternoon, another McCarty employee, Dale Crocker, instructed Wedgeworth to go to McCarty Farm's main office to seek medical treatment. Patty Rhodes, whom Ms. Wedgeworth described as the bookkeeper, but who also served as the plant's nurse, treated Ms. Wedgeworth's wound, which the rooster had pecked, with some samples of salve which she would rub on the wound. Ms. Rhodes also gave Ms. Wedgeworth two Tylenol tablets.

Three weeks after her injury, Ms. Wedgeworth consulted Dr. Amnuey Chiemprabha, a family-practice physician and general surgeon in Mendenhall on May 4, 1991. Dr. Chiemprabha treated the wound, which he described in his deposition as red, inflamed, and infected, and provided Ms. Wedgeworth with some cream to put on her wounds. McCarty Farms sent Ms. Wedgeworth to see Dr. Frank Wade, another family practitioner in Mendenhall. In his chart for his treatment of Ms. Wedgeworth on January 27, 1992, Dr. Wade described Ms. Wedgeworth's wound as "a raised rash[,] not red" and defined the condition as "contact dermatitis" or an inflammation of the skin. Ms. Wedgeworth returned to Dr. Wade for further treatment of her injury on February 18, 1992, but afterwards, she resumed seeing Dr. Chiemprabha because she felt Dr. Wade's treatment was not helping her at all. On June 4, 1992, Ms. Wedgeworth returned to Dr. Chiemprabha, and she complained to him that her leg "itched" where the rooster had pecked her. Dr. Chiemprabha gave her some ointment to decrease the itching. In his deposition, Dr. Chiemprabha testified that to the best of his knowledge Ms. Wedgeworth was still working and that he had never taken her off of work because of her injury inflicted by the rooster. Dr. Chiemprabha saw Wedgeworth several more times about her leg's itching, but the doctor explained that he did not place any physical restrictions on her. Dr. Chiemprabha did not believe that she had any permanent disability.

Wedgeworth argues that the itching became unbearable and as result she was unable to continue working at McCarty Farms. Ms. Wedgeworth and McCarty Farms dispute the date she left her employment at McCarty Farms. Wedgeworth testified that she left in August 1992, but McCarty Farms maintains that she quit in August 1991. To this Court, the most singularly important fact is that Ms. Wedgeworth never received any disability payment under the workers' compensation act, whether temporary or permanent.

## II. LITIGATION

On October 4, 1993, almost two-and-one-half years after her injury occurred, Ms. Wedgeworth filed a motion to controvert with the Mississippi Workers' Compensation Commission against her employer, McCarty Farms, Inc., and its insurance carrier, United States Fidelity and Guaranty Company (USF&G). Four days after McCarty Farms and USF&G filed their answer to Ms. Wedgeworth's motion to controvert, they filed a motion to dismiss in which they asserted that Ms. Wedgeworth's claim was barred by Section 71-3-35(1) of the Mississippi Code.<sup>(1)</sup>

At the hearing, Wedgeworth testified to the facts surrounding her injury and testified that a check was sent to the pharmacy from USF&G for the medicine which was prescribed by her physicians.

Wedgeworth admitted that she had never been paid either permanent or temporary disability benefits after her injury on April 23, 1991. John Goforth, a representative of USF&G, testified that his company received official notification of Wedgeworth's injury during the month of May 1991 from McCarty Farms. He continued that USF&G had paid Ms. Wedgeworth's medical bills which she incurred for the treatment of the rooster's pecking wounds, but he also testified, as we noted that Ms. Wedgeworth also testified, that USF&G had not paid any disability compensation to Ms. Wedgeworth.

After the hearing on the motion to controvert, the administrative law judge ordered that Wedgeworth's claim against McCarty Farms and USF&G "be dismissed with prejudice pursuant to Miss Code Ann. § 71-3-35(1) (1972), for [Ms. Wedgeworth's] failure to controvert the claim within the two year statute of limitations." As we previously related, the Commission affirmed the order of administrative judge which had dismissed with prejudice Ms. Wedgeworth's motion to controvert, and the Circuit Court of Simpson County affirmed the full commission order which the Commission had entered.

### III. ISSUE AND ANALYSIS

The claimant and appellant, Lena Wedgeworth, presents one issue for this Court's review, analysis, and resolution. We quote the issue verbatim from her brief:

**The issue to be decided on this appeal is whether Lena Wedgeworth is precluded from recovering benefits under the Mississippi Workers' Compensation Act as a result of a latent/patent injury which would manifest itself for a short period of time, go away and return where she was paid medical benefits only for a period of two years after which the condition remanifested itself and resulted in a lost time injury. Said injury resulted from claimant being pecked by a rooster which was infected with bacteria which, from time to time, causes claimant's leg to erupt into lesions.**

#### A. STANDARD OF REVIEW

We must first examine the standard of review which this Court employs when it resolves issues in an appeal from a decision of the Mississippi Workers' Compensation Commission.

This Court reviews the decision of the Workers' Compensation Commission within a limited scope, as it considers only whether there is substantial evidence to support the findings of the Workers' Compensation Commission. The findings of the Commission will be reversed by an appellate court only if the findings are clearly erroneous and contrary to the overwhelming weight of the evidence. If the findings are supported by substantial evidence, then they are beyond the power of this Court to disturb. This Court also stated the following: We do not sit as triers of facts; that is done by the Commission. When we review the facts on appeal, it is not with an eye toward determining how we would resolve the factual issues were we the triers of fact; rather, our function is to determine whether there is substantial credible evidence which would support the factual determination made by the Commission. If there be such substantial credible evidence, we are without authority to disturb that which the Commission has found, even though that evidence would not be sufficient to convince us were we the factfinders.

*Hardin's Bakery v. Taylor*, 631 So.2d 201, 204-5 (Miss. 1994) (citations omitted). In other words, the findings and order of the Workers' Compensation Commission are binding on this Court so long as they are supported by substantial evidence. *Vance v. Twin River Homes, Inc.*, 641 So. 2d 1176, 1180 (Miss. 1994).

### ***B. DOES SECTION 71-3-35 BAR THE APPELLANT'S CLAIM?***

Relevant to the answer to this question is the admitted fact that Ms. Wedgeworth received neither temporary nor permanent disability payments from USF&G, her employer's insurer. Because she did not, *Speed Mechanical, Inc. v. Taylor*, 342 So. 2d 317 (Miss. 1977), answers this question, "Yes." In *Taylor*, the employee, Taylor, a plumber, accidentally fell in May 1971 and sustained serious mouth injuries which required extensive dental surgery and treatment. *Id.* at 318. However, Taylor lost no wages because of his injuries and he filed no claim for such. *Id.* In August 1971, the carrier paid the sum of \$1,225 for one lump sum dental bill. *Id.* More than two years after his injury had occurred in May 1971, Taylor filed a claim for additional medical benefits in November 1973. *Id.* The Mississippi Supreme Court held that Section 71-3-35 barred Taylor's claim for the payment of additional medical benefits by explaining:

[T]he two year statute [§ 71-3-35(1)] expressly states that it runs from the date of the injury. As pointed out in *Graeber Bros., Inc., supra*, the two year statute clearly indicates that the legislature considered medical treatment as a payment of compensation; and, in special instances where medical only is paid, the legislature has provided that two years from the date of the injury is a sufficient period of time in which to either file a claim for compensation, or be barred therefrom. The bar of the two year statute cuts off the rights to all compensation (lost time subsidy, medical and funeral expenses) and does not except from its operation anything.

*Id.* at 320. The Mississippi Supreme Court's interpretation of the plain language of Section 71-3-35(1) in *Taylor*, which involved facts similar, if not identical to the facts in the case *sub judice*, compels this Court to conclude that because Ms. Wedgeworth received no disability compensation payments within two years of her injury on April 23, 1991, her claim for any benefits under the Mississippi Workers' Compensation Act which she first made by filing her motion to controvert on October 4, 1993, is barred by Section 71-3-35(1).

### ***C. THE "LAST INJURIOUS EXPOSURE" RULE***

Ms. Wedgeworth contends that this Court may apply the "last injurious exposure" rule to circumvent the application of Section 71-3-35(1) to bar her claim. In *Singer Co. v. Smith*, 362 So. 2d 590, 593 (1978), the Mississippi Supreme Court defined this rule and established when its application was appropriate:

The "last injurious exposure rule" as set forth by Larson, *Workmen's Compensation Law* § 95 (1978) is:

When a disability develops gradually, or when it comes as the result of a succession of accidents, the insurance carrier covering the risk at the time of the most recent injury or exposure bearing a causal relation to the disability is usually liable for the entire compensation.

In *Singer Co.*, the claimant Smith, who operated a woodworking machine at a furniture factory, alleged disability due to inhalation of abiruana dust while employed first by Consolidated Furniture Industries, a division of Magnavox (Magnavox), and then by The Singer Company (Singer). ***Id.* at 591.** Thus, one of the issues to be resolved by the supreme court was "which insurance carrier should be held liable under the facts of the present case." ***Id.*** Magnavox argued that the supreme court should apply the last injurious exposure rule "to hold Singer totally liable since the 'last exposure' was the period March 16 to April 11, during which Singer owned the plant" in which Smith had breathed the abiruana dust." ***Id.* at 593.**

The Mississippi Supreme Court opined that "[i]n the absence of difficulty in locating a definite and certain time, the [last exposure] rule has no application." ***Singer Co.*, 362 So. 2d at 590.** The supreme court noted that the Workers' Compensation Commission had determined that Smith had become disabled on September 1, 1972, the date of his initial exposure to the abiruana dust, when Magnavox owned the plant in which he worked. ***Id.* at 593.** The supreme court then concluded that "the medical history and testimony . . . substantially supported" the Commission's determination and that, therefore, "the resulting disability had manifested itself prior to the change of ownership of the factory." ***Id.*** Thus, the supreme court found no need to apply the last exposure rule to hold Singer's insurer liable for Smith's injuries, and it affirmed the Commission's finding that Magnavox was liable for Smith's claim. ***Id.***

Ms. Wedgeworth also cites ***Bolivar County Gravel Co. v. Dial*, 634 So. 2d 99 (Miss. 1994)**, as another case in which the Mississippi Supreme Court discussed the last exposure rule. While the supreme court discussed this rule, it apparently again declined to apply the rule because the court opined that "[d]ue to the nature of the injury and the difficulty of locating a definite and certain point of injury, Bolivar County Gravel Company and Hartford cannot be excused from liability." ***Id.* at 104.** However, while the supreme court affirmed the Commission's finding that Dial's injury was compensable, it also affirmed on the employer and carrier's cross-appeal the Commission's apportionment of Dial's injury and concomitant reduction of his award of benefits by ninety percent. ***Id.* at 106.**

In the case *sub judice*, McCarty Farms and USF&G argue that "[t]he 'last injurious exposure rule' has nothing to do with the statute of limitations and is completely inapplicable." Instead, they argue that the rule "serves to place liability exclusively upon the last of a series of employers or carriers . . . ." and they cite **V. Dunn, *Mississippi Workers' Compensation*, § 188.** Our review of the cases which Ms. Wedgeworth has cited persuades us that McCarty Farms and USF&G are correct, and we therefore reject Ms. Wedgeworth's assertion that this rule should be applied to the facts in the case *sub judice* to circumvent the application of Section 71-3-35(1) to bar her claim.

#### ***D. LATENT INJURY RULE***

In ***Speed Mechanical, Inc.***, the case which we earlier cited to support our conclusion that Ms. Wedgeworth's claim was barred by Section 71-3-35(1), the Mississippi Supreme Court acknowledged that "[a]n exception to the two year statute [Section 71-3-35] is a situation where the injury is latent and not 'reasonably apparent' as in *Struthers Wells-Gulfport, Inc. v. Bradford*, 304 So. 2d 645 (Miss. 1974)." ***Speed Mechanical, Inc.*, 342 So. 2d at 320.** Ms. Wedgeworth seeks to thwart the application of Section 71-3-35(1) to bar her claim by arguing that hers was a latent injury. She

cites and relies on *Struthers Wells-Gulfport, Inc. v. Bradford*, 304 So. 2d 645 (Miss. 1974) to support her argument. In *Struthers*, the claimant, Myrtle L. Bradford, was bitten on the ankle by a spider while she performed her duties at work on December 2, 1968. *Id.* at 646. Several days later, after her leg began to "fester and swell," the claimant went to a doctor who diagnosed her with a kidney infection caused by a poisonous bite. *Id.* The doctor prescribed medication, but the stinging feeling would recur from time to time. *Id.* After the claimant visited another doctor, her troubles seemed to subside for a while. *Id.*

Ms. Bradford left the state in April 1970, but before she left, she consulted with her doctor who stated that he did not know if the wound would stay well or if it would come back. *Id.* The problem did reoccur in September 1970, and the medicine seemed to eliminate her problem once again. *Id.* at 647. However the problem blossomed again in April, October, and December of 1971, and in February 1972, she was hospitalized for seven days at Ochsner's Clinic in New Orleans. There, Ms. Bradford was diagnosed as having a vasculitis infection in a blood vessel in her leg. *Id.* As in the case *sub judice*, the claimant, Ms. Bradford, filed a motion to controvert against the employer and the insurance carrier, but the administrative law judge denied her claim based on the two-year statute of limitations. *Id.* The Commission affirmed the decision of the administrative law judge, but the circuit court reversed the Commission and held that "the time for the running of the two-year statute of limitations did not begin to run until the claimant as a reasonable woman should have recognized the nature, seriousness and probable compensable character of her injury." *Id.* at 648. In affirming the circuit court, the Mississippi Supreme Court opined:

In summary, we hold that where latent injuries are involved, the time for filing a compensation claim under the two-year statute commences to run when it becomes reasonably discoverable that claimant has sustained a compensable injury and disability. The claim period runs from the time the compensable injury becomes reasonably apparent. Ordinarily this is an issue of fact for the Commission to determine on conflicting evidence, but in this case the evidence shows that the claim was made within the required two years.

***Struthers*, 304 So. 2d at 649.**

When an injury or disease is latent, a determination of when the statute of limitation begins to run focuses not on the time of the [accident], but on when the plaintiff discovers the injury or disease. *Sweeney v. Preston*, 642 So. 2d 332, 334 (Miss. 1994). The claimant in the *Struthers Wells-Gulfport, Inc.* case was not aware of the seriousness of the spider bite, a vasculitis infection of the blood vessels, until after the statute of limitations had expired. However, because she was not aware of the blood vessel infection until after the statute expired, her injury was, thus, latent and the clock began to run against her at the time her compensable injury became apparent.

In the case *sub judice*, Wedgeworth's multiple small puncture wounds caused by a rooster's pecking her right leg were treated by three separate physicians, all of whom opined that her injuries would not prevent her from gathering eggs at work. Ms. Wedgeworth's treating physicians further opined that her wounds had healed with their treatment. Only the itching sensation remained in the area of her leg where the rooster had pecked.

To oppose Ms. Wedgeworth's claim that the compensable nature of her injuries remained latent, McCarty Farms and USF&G stress the following facts which are established by substantial evidence in the record. First, Dr. Chiemprabha correctly diagnosed Ms. Wedgeworth's condition as an infection of her multiple small puncture wounds, which infection responded to his and other physician's treatment to such an extent that after several months, an itching was all that remained in the area of her wounds. Second, Ms. Wedgeworth testified at the hearing that she left her employment at McCarty Farms "three months" after the rooster attacked her because the wounds which were inflicted in the attack rendered her unable to work. We quote from the appellees' brief, "Certainly, it would be impossible for the claimant to make these statements and then to say she did not recognize the compensable nature of her claim at that time."

Ms. Wedgeworth argued in her brief that her injury "has reoccurred several times over the years since the injury" and that her rooster-inflicted wounds may be substituted for the spider's bite in *Struthers*. In *Struthers*, the supreme court noted that whether an injury is latent is "an issue of fact for the Commission to determine." *See Struthers, 304 So. 2d at 649*. In fact, the record reflects that during the hearing on her motion to controvert, Ms. Wedgeworth did not assert that her injury was latent. The record does contain the following exchange between the administrative law judge (ALJ) and counsel for Ms. Wedgeworth at the conclusion of the hearing. When the ALJ asked counsel about how he proposed to get around the statute of limitations, which the ALJ thought barred Ms. Wedgeworth's claim, her counsel replied: "Well, your honor, she's got some lost time, and also, she's got some -- they didn't provide the medical until January of '92." In response to that comment, the ALJ asked, "Is that the law, that if they don't provide the medicine, that that would interrupt the running of the statute of limitations?" Ms. Wedgeworth's counsel replied, "I don't think so."

Regardless of our foregoing comment about the content of the record, we find that there was no evidence, substantial in nature, which might have supported the Commission's determination that the compensability of Ms. Wedgeworth's injury was latent until after the two-year period of limitation, which Section 71-3-35(1) proscribes, had expired. We accept McCarty Farm and USF&G's arguments that her injury was not latent; therefore, we reject Ms. Wedgeworth's claim that her injury was latent so that her claim was not barred by Section 71-3-35(1).

#### IV. CONCLUSION

Because the claimant, Ms. Wedgeworth, did not file her motion to controvert with the Mississippi Workers' Compensation Commission until October 4, 1993, almost two-and-one-half years after she was injured while she worked gathering eggs for her employer, McCarty Farms, on April 23, 1991, Section 71-3-35(1) of the Mississippi Code bars her claim for further benefits under the Mississippi Workers' Compensation Act. Section 71-3-35(1) bars her claim because during the two-year period which followed her injury, Ms. Wedgeworth was paid no disability compensation, either temporary or permanent. The "last injurious exposure" rule cannot be applied to avoid the application of Section 71-3-35(1) to bar her claim simply because -- as we have endeavored to explain -- it has nothing at all to do with the statute of limitations. While a latent injury can thwart the application of Section 71-3-35(1) to bar a claim for compensation, the evidence in this case fails to establish that Ms. Wedgeworth's multiple small puncture wounds which the rooster inflicted on her right leg were latent. Instead, the evidence establishes that her wounds healed in response to the treatment of the

three physicians whom she consulted, and the only apparent long-term consequence of her injuries was an "itchiness" in the area of her right leg where the rooster had pecked her. Therefore, pursuant to the dictate of our standard of review, we affirm the judgment of the Circuit Court of Simpson County which affirmed the full commission order entered by the Mississippi Workers' Compensation Commission in this case.

**THE JUDGMENT OF THE CIRCUIT COURT OF SIMPSON COUNTY, WHICH AFFIRMED THE FULL COMMISSION ORDER, IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**

1. The portion of Section 71-3-35(1) which is relevant to this issue provides:

[I]f no payment of compensation (other than medical treatment or burial expense) is made and no application for benefits filed with the commission within two years from the date of the injury or death, the right to compensation therefor shall be barred.

**Miss. Code Ann. § 71-3-35(1) (Rev. 1995).**