IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2004-WC-00064-COA

TEXAS GAS TRANSMISSION CORPORATION AND LIBERTY MUTUAL INSURANCE COMPANY, EMPLOYER AND CARRIER	**APPELLANTS/CROSS-APPELLEE**
v.	
ELMER O. DABNEY	**APPELLEE/CROSS-APPELLANT**

DATE OF JUDGMENT:	12/17/2003
TRIAL JUDGE:	HON. GEORGE B. READY
COURT FROM WHICH APPEALED:	DESOTO COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANTS:	R. BRITTAIN VIRDEN
ATTORNEY FOR APPELLEE:	DANA J. SWAN
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
TRIAL COURT DISPOSITION:	GRANT OF DISABILITY CLAIM AFFIRMED
DISPOSITION:	AFFIRMED 08/02/05
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE LEE, P.J., IRVING AND ISHEE, JJ.

IRVING, J., FOR THE COURT:

¶1. Elmer Dabney filed a petition to controvert, alleging that he had received a snakebite on September 1, 1992, while in the course and scope of his employment with Texas Gas Transmission Company. On January 25, 1995, a hearing was held before an administrative law judge, and the administrative law judge found that Dabney had a compensable injury as a result of the snakebite. The administrative law judge awarded temporary total disability benefits from September 1, 1992, to and including September 13, 1993, at the rate of $227.18 per week. She also ordered fifty-two

and one-half weeks of permanent partial disability benefits, at the same weekly rate, based upon a thirty percent impairment rating of the lower extremity and a maximum medical improvement date of September 13, 1993. The administrative law judge further ordered Texas Gas and Liberty Mutual Insurance Company, its workers' compensation carrier (Texas Gas/Liberty Mutal), "to provide medical services and supplies as required by the nature of [Dabney's] injury and the process of his recovery therefrom. . . ." The order of the administrative law judge was entered on July 17, 1995. Texas Gas/Liberty Mutual appealed the administrative law judge's decision to the Full Commission which, on March 15, 1996, affirmed the order of the administrative law judge. Texas Gas/Liberty Mutual did not appeal the decision of the Full Commission. Therefore, the Full Commission's March 15, 1996 order became final and binding upon Texas Gas/Liberty Mutual.

¶2. Over three years later, on May 7, 1999, Dabney filed a motion with the Mississippi Workers' Compensation Commission seeking to reopen the case and to compel the payment of a medical bill in the amount of $1,135.99 from Neurology Clinic, P.A. On May 7, 2002, a hearing was held before an administrative law judge. On September 11, 2002, the administrative law judge held that the immunoglobulin treatment rendered by Dr. Charles A. Cape of the Neurology Clinic was medically necessary and ordered Texas Gas/Liberty Mutual to provide "[m]edical treatment, services and supplies . . . for such period as [Dabney's injury and the process of [Dabney's] recovery may require, specifically including the immunoglobulin treatment recommended by Dr. Cape and now tendered by Dr. O'Brien. . . ." However, the administrative law judge did not award additional benefits for temporary total disability or permanent partial disability.

¶3. Thereafter, Dabney filed a motion to amend the opinion of the administrative law judge to include additional benefits. This motion was denied, and both Dabney and Texas Gas/Liberty Mutual appealed to the Full Commission. The Full Commission affirmed in toto the order of the

administrative law judge. Texas Gas/Liberty Mutual appealed to the circuit court, and Dabney filed a cross-appeal. The Circuit Court of DeSoto County affirmed the decision of the Full Commission.

¶4. Texas Gas/Liberty Mutual has now appealed the decision of the circuit court, asserting the following issues: (1) whether the order of the Full Commission should be overruled because there is no expert scientific or medical evidence which proves by a reasonable degree of medical probability that Dabney's condition of peripheral poylneuropathy was caused by a copperhead snakebite, and (2) whether Dabney suffers from pre-existing diseases or unrelated medical conditions which are medically recognized causes of neuropathy and, if so, whether Dabney proved a direct causal relationship between his current medical condition of peripheral polyneuropathy and the incident of a copperhead snakebite. Texas Gas/Liberty Mutual also argues that the evidence was insufficient to support the findings of the Full Commission that Dabney's current medical condition of polyneuropathy was caused by copperhead snake venom. Texas Gas/Liberty Mutual further argues that Dabney's current medical treatment of injection of immunoglobulin drugs is not medically reasonable and necessary for his diagnosis of mild polyneuropathy.

¶5. Dabney has cross-appealed, asserting that the Full Commission was in error in not awarding additional temporary total disability or permanent partial disability benefits.

FACTS

¶6. Dabney was employed by Texas Gas for twenty-four years as an electrical specialist. On September 1, 1992, Dabney became ill while at work and was transported from work to Baptist Memorial Hospital-DeSoto. He was admitted for cardiac evaluation and diagnosed with hypertensive crisis with chest pain and possible transient ischemic attack. However, Dabney testified that he was hospitalized because he was bitten that day by a snake, supposedly a copperhead, while in the course and scope of his employment with Texas Gas.

¶7. Dabney took an early retirement in May or June of 1995, when he was fifty-nine years old. Dabney testified that his supervisor, Jerrell Wheat, gave him the option to perform a job making clerk's pay or take an early retirement and that early retirement was the most viable option.

¶8. Currently, Dabney's principal treatment is immunogloblin treatment which stimulates the nerves and reduces the pain. Dabney testified that he will have to continue the immunogloblin treatment for the rest of life. Dabney has numerous medical conditions including gastrechtomy, anemia, a severe fibula break, left ankle fracture, an injury to the left knee and an injury to the left wrist requiring surgery, rotator cuff surgery resulting in residual arthritic conditions, degenerative disc disease resulting in back surgery, a cardiovascular condition resulting in several heart attacks, osteomyelitism, and stroke.

¶9. Dabney was treated by various physicians including Dr. Tom Morris, Dr. Cape, and Dr. Malcolm Baxter.[1] On October 13, 1992, Dabney was treated by Dr. Morris, orthopedic surgeon, for either an insect or snakebite on the left calf. Dr. Morris treated Dabney because Dabney had an area of cellulitis secondary to the snakebite which was in an area of his leg where he had experienced a previous orthopedic procedure on the fibilia. Dabney was admitted to the hospital for intravenous antibiotics and possible drainage of the left leg. Dabney stayed in the hospital two days and was discharged with cellulitis with abscess formation.

¶10. After several treatments with antibiotics, the cellulitis resolved itself. Dr. Morris stated that on January 4, 1993, when Dabney complained of chest pain, the leg infection had been resolved. On May 19, 1993, Dabney went to the emergency room with a tender and swollen left leg and was

[1] In order to present a comprehensive view of the evidence available to the Commission, we discuss Dabney's medical history and treatment beginning with the treatment following the snakebite even though much of this medical treatment was rendered prior to the initial determination that Dabney suffered a compensable injury as a result of the snakebite.

admitted to the hospital and followed for several days but released with a determination of bacteria cultured for drainage. Dabney had a relapse on August of 1993 that was treated the same way. Dr. Morris never treated Dabney for polyneuropathy.

¶11. Dr. Malcolm Baxter, Jr., board certified family practitioner in Hernando, Mississippi, testified that he had treated Dabney and his family since 1987 and last saw Dabney on July 9, 2001. Dr. Baxter treated Dabney for a snakebite that Dabney reported on September 1, 1992. Dr. Baxter testified to a reasonable degree of medical certainty that the neuropathy that Dabney suffers is secondary to the snakebite. The bases of Dr. Baxter's opinions are (1) the literature on snake venom indicates that snake venom contains neurotoxins, (2) neurotoxins affect nerve function, (3) Dabney did not have neural problems prior to the snakebite but since the snakebite he has had all kinds of neuropathy type pain, and (4) infection in the area can affect nerves in the area. In this regard, Dr. Baxter testified that Dabney "had a draining sinus from his leg that took forever to heal.

¶12. Dr. Baxter testified to a reasonable degree of medical certainty that Dabney's peripheral polyneuropathy could be contributed to by Dabney's gastrectomy and inability to absorb B-12, but Dr. Baxter could not testify to a percentage of contribution. Dr. Baxter also testified that Dabney's diabetes has contributed to Dabney's polyneuropathy, but Dr. Baxter again could not testify to a percentage of contribution. Dr. Baxter stated that he referred Dabney to Dr. Cape.

¶13. Dr. Cape, an expert in the field of neurology, testified by deposition that he first saw Dabney on October 27, 1995, for numbness of the lower extremities from which Dabney had suffered for three years. Based on Dabney's history of snakebite, Dr. Cape performed nerve condition tests, which were abnormal; EMG tests, which were normal; and Shillings and other diagnostic testing to arrive at the cause of Dabney's lower extremity numbness. Based on his evaluations and neurologic examinations, Dr. Cape opined that Dabney suffered from peripheral polyneuropathy

secondary to the snakebite and autoimmune disease resulting from the snakebite. Dr. Cape testified that Dabney reached maximum medical improvement in May of 1997.

¶14. Dr. Cape testified that Dabney's polyneuropathy currently causes numbness distally in the arms and legs, greater in the legs with primary sensory loss in the feet. Dr. Cape testified to a reasonable degree of medical probability that the polyneuropathy was precipitated in Dabney by the snakebite and that the polyneuropathy is going to be permanent in nature. Dr. Cape stated that based on the *AMA Guidelines to Permanent Impairment*, that Dabney had a five percent permanent medical impairment to the body as a whole in October of 1999. Dr. Cape testified that the medical treatment that Dabney will require in the future will cost in excess of $7,500 per month in immunoglobulin therapy, diagnostic testing, physician care and drugs. Dr. Cape also testified that there are no objective tests to apply in order to prove that the neuropathy is caused by the snake venom and that there are other causes of autonomic neuropathy, but the general implication is snakebite.

¶15. Dr. Fredrick B. Carlton, a board certified physician in internal medicine, emergency medicine and toxicology, testified that he seriously questioned whether or not Dabney was bitten by a snake. Dr. Carlton stated that the evidence is non-existent to support a snakebite on September 1, 1992. Dr. Carlton's opinion was based on his experience in treating snakebites over the years, extensive review of literature, and researching peripheral neuropathy. Dr. Carlton testified that a copperhead bite to the leg is generally the least serious of all snakebites and that it is uncommon to have systemic symptoms from copperhead bites.

¶16. Dr. Carlton stated that occasionally with significant envenomation there will be nausea, vomiting, hypertension, weakness, and dizziness. Dr. Carlton stated that he treats individuals with copperhead bites with antivenin and that determining the course of progression determines whether

antivenin treatment is necessary. Dr. Carlton stated that in his opinion one rarely needs to treat a copperhead bite in the lower extremity with antivenin and that the basic treatment for a copperhead bite to the lower extremity is to elevate the extremity. Dr. Carlton stated that pain is the hallmark of the envenomation with the copperhead bite and that it is incredibly uncommon for copperhead bites to produce systemic symptoms.

¶17. Dr. V. V. Vedanaryanan, a pediatric neurologist at University Medical Center, testified that based on the medical records that he evaluated, Dabney does not have autoimmune polyneuropathy, and at best Dabney may suffer from a mild sensory polyneuropathy, which may be caused by low levels of vitamin B-12 secondary to the gastrectomy, alcohol exposure for vitamin deficient individual, abnormal glucose tolerance, and swelling in the area of the injured fibia. Dr. Vedanaryanan testified that intravenous immunoglobulin is an improper treatment for polyneuropathy. Dr. Vedanaryanan further testified that the treatment should be discontinued and that Dabney would not worsen as a result.

¶18. Mr. Terry L. Vandeventer, a field associate in herpetology at the Museum of Natural Science in Jackson, has studied herpetology (the study of reptiles and amphibians) for over forty-five years. Vandeventer testified that copperheads and pit vipers have only a minimal impact on the nerve system of a bitten individual. Vandeventer further testified that snakes, other than pit vipers which venom impacts the nerve system, are not normally in existence in north Mississippi. Vandeventer further testified that normal recovery is expected from copperhead bites.

¶19. The administrative law judge acknowledged that Dr. Carlton and Dr. Vedanarayanan testified persuasively (1) that Dabney's neuropathy would be the first case known in the world in which a snakebite caused neuropathy, (2) that Dabney does not have autoimmune polyneuropathy and may have a mild sensory polyneuropathy, (3) that Dabney has other medical conditions that

could have contributed to the polyneuropathy and that immunoglobulin intravenously is an improper treatment for Dabney's current condition.

¶20. However, the administrative law judge also found that neither Dr. Carlton nor Dr. Vedanarayanan had ever examined Dabney, while Doctors Morris, Baxter, and Cape had treated Dabney for years. Because of this, the administrative law judge found the testimony of Doctors Morris, Baxter, and Cape to be more reliable and compelling than the testimony of Doctors Carlton and Vederarayanan. She also found that there was no direct or significant evidence to a reasonable degree of medical certainty that Dabney's polyneuropathy is secondary to one of Dabney's many medical conditions which pre-existed the snakebite. Further, she discounted the testimony of Mr. Vandeventer, finding that his testimony substantially addressed an issue that had been decided in the initial hearing.

STANDARD OF REVIEW

¶21. The standard of review which we must employ in this case is well established:

> The standard of review in workers' compensation cases is limited. The substantial evidence test is used. The Workers' Compensation Commission is the trier and finder of facts in a compensation claim. This Court will overturn the Workers' Compensation Commission decision only for an error of law or an unsupported finding of fact. Reversal is proper only when a Commission order is not based on substantial evidence, is arbitrary or capricious, or is based on an erroneous application of the law.

Weatherspoon v. Croft Metals, Inc., 853 So. 2d 776, 778 (¶6) (Miss. 2003). "The claimant bears the burden of proving by a fair preponderance of the evidence each element of the claim." *International Paper Co. v. Greene*, 773 So. 2d 399, 401(¶4) (Miss. Ct. App. 2000).

ANALYSIS AND DISCUSSION OF THE ISSUES

¶22. Although Texas Gas/Liberty Mutual has listed several issues, all of the issues may be collapsed into one issue: whether there is substantial evidence to support the Commissions's finding

that Dabney's current condition of polyneuropathy was caused by the snakebite that he suffered in 1992, and if so, whether the immunoglobulin treatment, which Dabney is expected to have to take indefinitely, is medically reasonable and necessary for his diagnosis of mild polyneuropathy. Therefore, we collapse the issues and discuss them accordingly.

¶23. Texas Gas/Liberty Mutual maintains that the testimony of Dr. Cape and Dr. Baxter is not supported by medical or scientific proof but is merely based on Dabney's subjective medical history with no supporting medical or scientific authority. Texas Gas/Liberty Mutual contends that Dr. Cape did not perform any test that linked the occurrence of polyneuropathy with a copperhead snakebite and offered no basis for his opinion of causation other than a temporal relationship between the onset of polyneuropathy and the snakebite. Texas Gas/Liberty Mutual maintains that its experts, Dr. Carlton, who routinely treats snakebite patients, and Dr. Vedanarayanan, who has performed studies of snakebite envenomation on human nerves, clearly established that there is no recognized medical or scientific link between copperhead snake venom and polyneuropathy.

¶24. Additionally, Texas Gas/Liberty Mutual argues that the medical treatments of immunglobulin ordered by Dr. Cape are not medically necessary. Texas Gas/Liberty Mutual maintains that in the opinion of Dr. Vedanarayanan, the known side effects of immunoglobulin greatly outweigh the benefits and that risks include morbidity in light of Dabney's well-known history of cardiovascular disease. Texas Gas/Liberty Mutual further asserts that none of Dabney's other physicians, including Dr. Morris and Dr. Baxter prescribed any treatments for Dabney for his left leg injury and that the known injury from the snakebite has been fully resolved and has been since July 1993.

¶25. Dabney counters that Dr. Cape testified that his condition was related to the snakebite and that the immunoglobulin injections are necessary as treatment for his condition. Dabney asserts that Dr. Cape is his treating physician and that higher credibility and weight is given to the opinion of

a treating physician as opposed to physicians or experts selected by the employer. *South Central Bell Telephone Co. v. Aden*, 474 So. 2d 584, 593 (Miss. 1985). Thus, Dabney asserts that he has proven by a preponderance of the evidence that he suffered a work-related injury and that the subsequent medical treatment ordered by Dr. Cape is necessary and reasonable.

¶26. The Mississippi Supreme Court has stated that it is not within the authority of a reviewing court to re-weigh the evidence in order to determine whether the preponderance of the evidence "might favor a result that is contrary to the Commission's determination." *Hollingsworth v I.C. Isaacs and Co,* 725 So. 2d 251, 254 (¶11) (Miss Ct. App 1998). "So long as there is substantial evidence in the record to support the Commission's findings, this Court is obligated to affirm the Commission." *Id*. at 254-255 (¶¶11-12)..

¶27. In the case *sub judice,* there is substantial evidence that Dabney's condition of polyneuropathy was caused by a snakebite and that the immunoglobulin treatments were medically necessary. Dr. Baxter testified to a reasonable degree of medical certainty that Dabney's condition of neuropathy is secondary to the snakebite. Additionally, Dr. Cape testified that, based on his evaluations and neurologic examinations, Dabney suffered from peripheral polyneuropathy secondary to the snakebite. Dr. Cape also testified that the immunoglobulin treatments were needed to counteract the autoimmune disorders that attack the nerves.

¶28. The Mississippi Supreme Court has held that "whenever the expert evidence is conflicting, the court will affirm the Commission whether the award is for or against the claimant." *International Paper*, 773 So. 2d at 401 (citing *Kersh v. Greenville Sheet Metal Works*, 192 So. 2d 266, 268 (Miss. 1966)). "The Commission, as fact finder, is entitled to weigh the competing testimonies and render its decision accordingly, provided that the acceptance of the testimony over that of the other did not result in a decision which was clearly erroneous." *International Paper*, 773 So. 2d at 402 (citing

Baugh v. Central Miss. Planning and Dev. Dist, 740 So. 2d 342 (¶8) (Miss. Ct. App. 1999)). Accordingly, we find that there is substantial medical evidence to support the Commission's decision. We now turn to a discussion of the issues raised in the cross-appeal.

¶29. In his cross-appeal, Dabney asserts that the previous awards for temporary total benefits and permanent partial benefits were based only upon the initial treatment given by Dr. Morris and were not based upon Dabney's current condition of polyneuropathy. Dabney maintains that he should be given additional temporary benefits and that the maximum medical improvement should be changed from September 13, 1993, to May of 1999, the date which Dr. Cape testified that Dabney reached maximum medical improvement.

¶30. Texas Gas/Liberty Mutual argues that the administrative law judge clearly specified the issues for decision prior to the hearing of May 7, 2002, and that Dabney's new issues were not part of the administrative law judge's consideration. Texas Gas/Liberty Mutual asserts that Dabney offered no proof whatsoever to address the issues of temporary disability or permanent disability, and therefore, waived any consideration of these issues and any request for additional benefits should be denied.

¶31. Dabney counters that both issues of temporary total disability and permanent partial disability benefits were listed on his pretrial order and that he specifically brought these issues to the attention of both the administrative law judge and Texas Gas/Liberty Mutual's counsel. Dabney maintains that since the administrative law judge found the testimony of Dr. Cape to be credible on the issue of causation that it was error not to further award disability benefits based upon the additional five percent impairment rating and the additional date of maximum medical improvement as opined by Dr. Cape.

¶32. A review of the record reveals that Dabney did in fact list the issues of temporary and permanent disability benefits in his pretrial statement. The record also indicates that at the beginning of the hearing, after the administrative law judge stated the issues to be considered and asked if there were any additions or revisions to anything that she had said, Dabney's counsel responded as follows: "Well, other than if it's related [the neuropathy to the snakebite], then the MMI and the extra impairment rating of Dr. Cape would have to be considered by the Court." However, Dabney failed to assert the issue of temporary total disability benefits in his notice of appeal to the circuit court. He appealed only the denial of permanent partial disability benefits. Therefore, Dabney is now procedurally barred from raising the issue of the denial of temporary total disability benefits. *Crowe v. Smith*, 603 So.2d 301, 305 (Miss. 1992).

¶33. Procedural bar notwithstanding, we find no basis for holding the Commission in error for not awarding additional temporary benefits. Dr. Morris, who first treated Dabney for the snakebite, released Dabney to return to work on September 13, 1993, which was also the date of maximum medical improvement. The administrative law judge awarded Dabney temporary total benefits in the amount of $227.18 per week beginning in September 1, 1992, and continuing through September 13, 1993. Dabney was also awarded fifty-two and one- half weeks of permanent partial disability benefits, at the same weekly rate, based upon a thirty percent impairment rating of the left lower extremity and a maximum medical improvement date of September 13, 1993. There is no direct evidence in the record that the initial maximum medical improvement date was incorrect. It is true that Dr. Cape stated that Dabney reached maximum medical improvement in May 1997. However, Dr. Cape did not start treating Dabney until after the first order was entered in this case setting the maximum medical improvement date of September 13, 1993. That date was set based upon competent medical evidence. At best, Dr. Cape's testimony represents a conflict in the evidence.

It is the prerogative of the Commission to resolve conflicts in the evidence. In this case, it apparently resolved the conflict against Dabney. We find no error.

¶34. Turning to Dabney's other claim that he should have been awarded additional permanent partial benefits, we note that in October 1999, Dr. Cape gave Dabney a five percent impairment rating to the body as a whole. Dr. Cape did not explain why his permanent partial disability impairment rating was not made until approximate two and one-half years after he concluded that Dabney had reached maximum medical improvement. In any event, as previously noted, the Commission had already awarded Dabney fifty-two and a half weeks of permanent partial disability. Dabney asserts that if the Commission believed Dr. Cape with respect to Dr. Cape's finding that Dabney's polyneuropathy was causally connected to the snakebite, then it should have believed Dr. Cape's testimony that Dabney has a five percent permanent partial impairment rating. It is well-settled law that a fact-finder is not obligated to accept a witness's testimony in toto. Moreover, there is no indication in the record that Dr. Cape was even aware of the prior permanent partial disability rating, and if so, whether that fact impacted the rating given by him. We affirm the decision of the Commission denying additional permanent partial disability benefits.

¶35. The separate opinion, which dissents from our decision affirming the Commission's finding that Dabney's polyneuropathy was caused by snakebite misquotes the discharge summary and distorts the facts by selecting and blending disjointed statements from both the "Discharge Summary" and the "History and Physical Examination." Additionally, the entire premise of the separate opinion is that Dr. Cape's testimony should be discounted because his opinion, that Dabney is suffering from polyneuropathy, is predicated upon the assumption that the history that Dabney gave him was true when in fact that history was untrue. Specifically, the separate opinion contends that the "medical records of the initial hospitalization, beginning on September 1, 1992, states

Dabney complained of peripheral neuropathy type symptoms upon admission *and further admitted that this was a chronic condition which occurred prior to September 1, 1992*."

¶36. The separate opinion's assertion that the initial medical records indicate that Dabney suffered from a chronic condition of peripheral neuropathy type symptoms prior to September 1, 1992, is simply untrue and is not supported by the record. On the morning of September 1, 1992, after Dabney suffered the snakebite, he first saw Dr. Malcolm Baxter, his regular physician, who treated Dabney and referred him to Baptist Memorial Hospital Desoto. Dr. Baxter's notes for that visit indicate that Dabney felt numb all over and had numbness in his left hand and arm.

¶37. Baptist Memorial Hospital records indicate past and present histories for Dabney on the admission date of September 1. I quote those histories in their entirety:

> HISTORY OF PRESENT ILLNESS: Mr. Dabney is a 57 year-old white male with a history of coronary artery disease (status post myocardial infarction times two). He also has a history of mitral regurgitation that has been fairly stable up until now. He denies any recent exercise induced chest pain. Apparently, he was at work today when he developed acute onset of diaphoresis with associated nausea, vomiting, and shortness of breath. He also had a pressure like sensation in his chest. This has continued up until he came to the emergency room. He also experienced some numbness in his left arm and two fingers on the left side. He has a history of chronic two pillow orthopnea. Does have occasional paroxysmal nocturnal dyspnea and pedal edema. His edema is usually on the left side associated with old injuries. He denies any palpitations.
>
> PAST MEDICAL HISTORY: Significant for coronary artery disease, hypertension, peptic ulcer disease with gastrointestinal bleed, status post partial gastrectomy and vagotomy. He has a history of colon polyps with recent colon bleeding. He is over due for colonoscopy. History of hyperlipidemia. No history of diabetes, appendectomy, status post trauma to his left leg with multiple surgeries and residual swelling, status post surgery of his right shoulder. He is allergic to Codine.

¶38. The hospital records for the admission date of September 1 also indicate under the category, "Physical Examination," the following observations:

> NEUROLOGIC: He does have some swelling of his left lower extremity compared to the right. This is chronic by history. Good distal pulses. Deep tendon reflexes are 1 to 0 throughout and bilaterally symmetrical. There is no Babinski sign.

ASSESSMENT: 1. Chest pain, rule out myocardial infarction, rule out unstable angina

* * *

10. Chronic left leg swelling secondary to trauma

* * *

13. Status post cholecystectomy
14. Status post appendectomy
15. Status post left leg surgery and right arm surgery

¶39. The hospital's discharge summary record indicates the following:

HOSPITAL COURSE: Patient was admitted to Baptist Memorial Hospital Desoto with a diagnosis of chest pain, possible transient ischemic attack. . . . He was also complaining of some peripheral neuropathy like symptoms and B-12 and Folate levels were done. He was found to be B-12 deficient. This was felt to be secondary to partial gastrectomy and he required B-12 supplementation which was instituted during this admission. . . .

¶40. The admission and discharge summaries clearly demonstrate that there is no basis in the medical records for the separate opinion's assertion that Dabney had chronic peripheral neuropathy type symptoms prior to September 1, 1992. It is also clear that upon admission, Dabney had some numbness in his left arm and two fingers on the left side as reflected in the "History of Present Illness." It is not entirely clear whether the statement in the discharge summary under "Hospital Course" — that "[h]e was also complaining of some peripheral neuropathy type symptoms" — refers to complaints made at the time of admission or to complaints during the course of Dabney's hospital stay. It would seem logical, however, that the reference is to complaints made during the course of the hospital stay since it is included in the discharge summary under the heading "Hospital Course" and is not included in the "History of Present Illness" which was taken upon admission. Nevertheless, whether the statement refers to complaints made at the time of admission or to complaints made during the course of Dabney's hospital stay is largely academic because, in any event, when Dabney was admitted to the hospital, he had already been bitten by the snake. Also Dr.

Baxter's testimony makes it exceedingly clear that Dabney had not experienced any type peripheral neuropathy or neural problems prior to the snake bite.

¶41. The separate opinion also makes the assertion that "[d]espite what Dabney told Dr. Cape, the substantial medical evidence indicates that Dabney did not have leg numbness or neurological complaints to his lower extremities (other than ones already present) until Dabney started seeing Dr. Cape three and one-half years later in July 1995." Again, this statement is not an accurate reflection of what the record reveals. As we have already pointed out, the discharge summary indicates that Dabney was complaining of peripheral neuropathy-like symptoms during his hospital stay for the snakebite. Further, Dr. Baxter's medical notes of November 2, 1992, indicate that Dabney was seen for "follow-up with hypertension and cellulitis of his left lower leg." And again on November 13, 1992, Dr. Baxter's notes indicate "follow-up with hypertension and snakebite with secondary cellulitis of his lower leg. Leg is still draining." During Dr. Baxter's deposition, he made it clear that, in hindsight, he thought that Dabney's peripheral neuropathy began January 8, 1993, although at the time of the initial treatments he did not make that diagnosis. On this point, the record reflects the following:

> Q. If we are talking about the same thing, I guess my question originally was what was the first incidence where you yourself diagnosed a - -
>
> A. Peripheral polyneuropathy?
>
> Q. - - peripheral polyneuropathy? Yes, sir.
>
> A. I've got an office note here on December 4, '92, where he had rash on his arms and legs. I thought at that time, that was scabies, but that could have been an allergic reaction from the snakebite. He continued to have a cellulitis of his left lower leg on January 8, '93, so I would have to say - -
>
> Q. Maybe my question is not clear or we are not communicating.
>
> A. I'm calling it cellulitis, but it might have been the beginnings. That's what I would term the beginnings of this neuropathy.

Q. Let me try it one more time. Let's clear that up. What is the difference betweeen cellulitis and a peripheral polyneuropathy?

A. Cellulitis is an infection; and he had redness and swelling and heat, which is an indication of cellulitis. But that can also be the beginnings of a neuropathy.

Q. What did you diagnose on that day of December 2, 1992?

A. Scabies.

Q. Are you changing that diagnosis now?

A. No.

Q. Let me, again, I guess, repeat my question. Let me back up one more time. What was the first date, as his family physician, you diagnosed Mr. Dabney with peripheral polyneuropathy?

A. I would say it's not documented in the chart, but I would say the very beginnings of it was January 8, 1993. Looking at the chart and knowing his history and knowing all the circumstances, I would say that that was the beginnings; although, neuropathy was not mentioned in that note.

¶42. The separate opinion also incorrectly asserts that "Dr. Cape testified that there were numerous medical textbooks which established a link between snake venom and polyneuropathy. However, Dr. Cape could not identify [or] recall any such texts or authority during his deposition." While Dr. Cape did testify that there were numerous medical texts that support his opinion that snake venom can cause neuropathy, the record, as revealed in the following colloquy, belies the assertion that he could not name a single text:

Q. All right. You have mentioned a medical text that have [sic] supporting information in there that a snake then can cause neuropathy; can you refer me to the medical text?

A. I'm doing this free, I'll let you look that one. It's different texts. I'll let you look them up.

Q. I'll be happy to do that if you will tell me the name of the text?

A. Peter Dyck, D Y C K.

Q. That's the name of the author?

A. Right.

Q. And the text is called polyneuropathy?

A. Well purpura polyneuropaty[sic].

¶43. The separate opinion points out that there are "twelve known risk factors, symptoms or pre-existing medical conditions which the medical community and authoritative text recognize as a cause of polyneuropathy"... and that "Dabney's medical records and testimony revealed he had other pre-existing and other medical conditions which are not related to his employment." Apparently, the purpose of this observation is to suggest that Dabney's polyneuropathy may have been caused by one of these other conditions. The record speaks to this point in a colloquy between counsel for Texas Gas/Liberty Mutual:

> Q. Okay. Doctor, for the dozen or so known causes for neuropathy that you mentioned and the, I don't know, six or seven that Mr. Dabney either had before he came to you or had and developed while you were treating him, isn't it true that his polyneuropathy as well as autoimmune neuropathy could have been caused by one of these other conditions?
>
> * * *
>
> A. It could have been caused by an unknown autonomic neuropathy that I wasn't aware that he had, yes, but not the other conditions we mentioned, no.
>
> Q. Are you available to state to a reasonable degree of medical certainty that the snakebite is what caused the neuropathy if the other conditions could have caused it, could have been the snakebite or could have been one of these or could have been one of those?
>
> A. Yes, I am.
>
> Q. And it's still your opinion that the snakebite is what - -
>
> A. (Interposing.) Using historical information and ruling out other causes and as far as his neuropathy and his subsequent treatment, I believe that's the most likely etiology at this case, and I can't hundred percent exclude other causes because I didn't find a definite etiology. It's by exclusion that I come

to this, plus the historical event he had the snake bite and the next day he had the numbness or close to that.

Q. If he had not had the numbness the day after the snake bite - -

A. (Interposing.) If he had it weeks or months later, I probably wouldn't have related it to that.

Q. Did you rule out and exclude these other conditions we talked about, the B12 and the nutritional problem, the stomach remove and diabetes?

A. Well, I treated him, and it made no difference in his symptoms.

¶44. Finally, the separate opinion extols the evidential virtue of the testimony of Drs. Vedanarayanan and Carlton and Mr. Vandeventer who never saw and treated Dabney. It is sufficient to say that this case presented the classical dual between the experts. The Commission is the fact-finder. It chose to accept and credit the testimony of Dabney's treating physicians, including Dr. Cape, over the testimony of these individuals who never treated Dabney.[2] We are duty bound to defer to the findings of the Commission if there is substantial evidence to support its findings.

¶45. **THE JUDGMENT OF THE CIRCUIT COURT OF DESOTO COUNTY IS AFFIRMED ON BOTH DIRECT AND CROSS-APPEAL. COSTS OF THIS APPEAL ARE ASSESSED ONE-HALF TO THE APPELLANT AND ONE-HALF TO APPELLEE.**

KING, C.J., LEE, P.J., MYERS, CHANDLER, BARNES, AND ISHEE J., CONCUR. GRIFFIS, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY BRIDGES, P.J.

GRIFFIS, J., CONCURRING IN PART, DISSENTING IN PART:

[2] At the time his deposition was taken, Dr. Cape had taught neurology for thirty-six years. He is certified by the American Board of Psychiatry and Neurology and the American Society of Neurorehabilitation. He holds a medical license in the states of Mississippi, Tennessee, Arkansas, North Carolina, Iowa, and Kentucky.

¶46. I concur with the majority on the resolution of the cross-appeal. I respectfully dissent from the majority's resolution of the issues raised by Texas Gas/Liberty Mutual.

¶47. On September 1, 1992, Dabney was taken from work to the Baptist Memorial Hospital-DeSoto with a diagnosis of "hypertensive crisis" with chest pain and possible transient ischemic attack. He was admitted for cardiac evaluation, intensive care treatment and cardiac catheterization. The hospital's discharge summary read:

> Chronic left leg problems secondary to trauma, past history.
>
> * * *
>
> He was also complaining of peripheral neuropathy like symptoms and B-12 and Folate levels were done. He was found to be B-12 deficient. This was felt to be secondary to partial gastrectomy and he required B-12 supplementation that was instituted during this admission.
>
> * * *
>
> He also experienced some numbness in his left arm and two fingers on the left side. He has a history of chronic two-pillow orthopnea. Does have occasional paroxysmal nocturnal dyspnea and pedal edema. His edema is usually on the left side associated with old injuries. . . . Status post-trauma to his left leg with multiple surgery and residual swelling. . . . . He does have some swelling of his left lower extremity compared to the right. This is chronic by history.

Dabney testified that he incurred a snake bite at work as the cause for this hospitalization on September 1, 1992 but he was released with a primary diagnosis of hypertensive crisis. The administrative law judge's order conceded the facts of the snakebite offered by Dabney was "sketchy at best." More significantly, however, there was no medical history or objective findings during Dabney's ten day hospitalization that he suffered a snakebite, puncture wound or even cut to his lower extremities despite fully and complete medical evaluation, diagnostic testing and detailed physical examinations of lower extremities.

¶48 On October 13, 1992, more than a month later, Dabney saw Dr. Tom Morris for "either an insect or snake bite of the left calf 3 weeks ago." On October, 17, 1992, Dabney was again admitted to the hospital again. Dr. Morris treated Dabney for an infection to his left calf believed to be caused by a bacterial penetration. After treatment with antibiotics, the infection resolved itself, and Dr. Morris confirmed the date of maximum medical improvement for the left leg injury/infection was January 4, 1993. In June of 1993, Dabney apparently had a flare-up or recurrence of the leg infection, which was also treated with antibiotics and resolved by Dr. Morris. At his deposition, Dr. Morris could not state with a reasonable degree of certainty what caused the June, 1993 recurrence. Dr. Morris testified the second point of maximum medical improvement for the left leg injury regardless of the cause of the recurrence was July of 1993. Dabney did not have any further reoccurrence of the infection after July of 1993, and he received no further mediation treatment for his left leg infection after that date. Dr. Morris never treated Dabney for polyneuropathy.

¶49. Dabney first visited Dr. Cape three years later, on October 27, 1995. Dr. Cape eventually diagnosed Dabney with the condition of polyneuropathy. Dr. Cape opined that snake venom was the cause of Dabney's polyneuropathy. The administrative law judge relied on Dr. Cape's opinion that Dabney's polyneuropathy was caused by copperhead snake venom primarily because "it is well established that [ALJ's] give additional credence to the testimony of treating physicians."

¶50. The appellants argue that Dr. Cape's opinion testimony was speculative and unreliable because it was not based on substantial evidence or recognized and peer-tested medical science. Dr. Cape stated in his deposition the grounds for his opinion that the Dabney's condition of polyneuropathy was caused by the snakebite comes only from what Dabney told him via patient history. The appellants claim that basing such a critical and radical medical opinion merely on patient history is not a scientific but a mere copying of Dabney's complaints. Dr. Cape testified:

A. I feel he had an autonomic neuropathy, secondary to the venom toxicity of the snake.

* * *

Q. Is that condition caused directly by the snake-bite he reported in September 1, 1992?

A. *By history, it is. He said he had the snake bite and then he got the symptoms.* When I examined him, he had evidence of that.

* * *

Q. My question is whether or not the snake venom, is there some objective test to prove that his neuropathy is causally related to the snake bite of '92?

A. No, there is no objective test. It's only his response to treatment that makes the diagnosis of autonomic neuropathy and there are other causes of autonomic neuropathy other than snake bite, but primarily we implicate the snakes.

* * *

Q. I would like to know what is the basis of your opinion that the neuropathy is caused by the snake bite of 1992?

A. *Historical. He stated the symptoms began the day after he got bit by the snake.*

Q. Besides subjectively telling you that, do you have any other objective evidence?

* * *

A. This has been questioned by someone every time I turn around. The insurance company and the Methodist Hospital questioned it. . . . and I go by his history and in his history, he stated he had - I've known him 5 or 6 years or so, and he's always been very honest and straight forward, and historically he told me had a snake bite and the day after he got this, he had the symptoms. . . . . But if they tell you that, you take their word or if they tell you they fell out of a building, you take their word.

* * *

Q. Okay. Now, I guess my understanding basically is the gist of your testimony is because he didn't have these conditions before of *numbness* in his history

and now he does, you are putting a time relationship in there; is that a fair statement?

A. Right.

¶51. Dabney did not present any medical records or reports to Dr. Cape. Instead, Dr. Cape simply wrote down what Dabney told him about his medical history. The medical records of the initial hospitalization, beginning on September 1, 1992, states Dabney complained of peripheral neuropathy type symptoms upon admission and further admitted that this was a *chronic* condition which occurred prior to September 1, 1992.

¶52. Cross-examination of Dr. Cape revealed three significant facts which prove his opinions of a causal relationship are unreliable. Dr. Cape confirmed that if Dabney had not informed him by subjective history that he had "numbness" the day after the snake bite, he would not have related the snake bite to the polyneuropathy when Dr. Cape testified "if he had had it [numbness] weeks or months later, I probably wouldn't have related it to that." The central basis of Dr. Cape's opinions that Dabney's peripheral polyneuropathy was caused by the incident of September 1, 1992 was because Dabney complained of left leg numbness via patient history is contradicted by Dabney's medical records. The records from the September 1, 1992 hospitalization, which were never reviewed by Dr. Cape, confirmed Dabney's history of longstanding pre-existing peripheral neuropathy like symptoms upon admission on the date of the incident. Thus, Dabney's medical records provide substantial evidence that the numbness in Dabney's extremities which Dr. Cape relied upon to make his causal relationship opinion was not a new condition caused by the snakebite but was indeed chronic and occurred years before. Dr. Cape admitted that he would not relate the peripheral polyneuropathy to snakebite venom if the symptoms of numbness "developed weeks or

months after the incident." Of course, the discovery that the numbness actually pre-existed the snake bite confirms Dr. Cape's opinions on medical causation are unreliable.[3]

¶53. Drs. Morris and Baxter were the only physicians who treated Dabney after the September 1, 1992 incident up to the point where Dr. Cape became involved. Dr. Morris' records, for the time period immediately after September 1, 1992, indicates that Dabney only complained of pain and swelling in his left calf due to the infection. Dr. Morris' records confirm Dabney made no complaints of numbness or neurological complaints throughout this treatment. In fact, on May 18, 1993, upon Dabney's second admission for leg pain and swelling due to infection, Dr. Morris' physical examination noted "NEUROLOGICAL: Neurovascular status of the lower extremity is within normal limits." Likewise, the records of Dr. Baxter, Dabney's longtime family physician, indicates that he treated Dabney for snakebite and secondary cellulitis in his lower leg without any

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[3] In Dr. Cape's first deposition, taken September 18, 2000, he testified:

> Q. How do you know that the snakebite that he says he sustained several years before you saw him is the cause of his peripheral polyneuropathy?
>
> A. I only know by history and the other things I mentioned later. The history that the sensation and abnormalities came out at that time. . .
>
> Q. Would your opinion be different if he did not have complaints about these neurological problems immediately after the snakebite or within the first year after the snakebite?
>
> A. Oh, yeah, if it didn't come out until I saw him three years later, yeah. Then I, of course, would state that it was a neuropathy we just didn't know the etiology of and then ends up later on saying its an autoimmune neuropathy, and we can't find the cause for the autoimmune, the basis for it.
>
> Q. So one of the basis for your opinion is the onset of neurological complaint of the patient shortly after the snakebite?
>
> A. Right.

complaints of neurological difficulty or left leg numbness. Despite what Dabney told Dr. Cape, the substantial medical evidence indicates that Dabney did not have any leg numbness or neurological complaints to his lower extremities (other than ones already present) until Dabney started seeing Dr. Cape three and one-half years later in July of 1995.

¶54. Next, Dr. Cape admitted Dabney suffered from six of at least twelve known risk factors, symptoms or pre-existing medical conditions which the medical community and authoritative text recognized as a cause of polyneuropathy.[4] Dabney's medical records and testimony revealed he had other pre-existing and other medical conditions which are not related to his employment. Such conditions which are known causes of polyneuropathy include:

1. Gastrectomy removing 75% Dabney's stomach wall, and vagotomy;
2. Chronic B-12 deficiency;
3 Alcohol intake of one six-pack per day or six pack per week;
4. Type II Diabetes;
5. History of chronic lower extremity swelling;
6. High blood pressure;
7. Peptic ulcer disease;
8. Fractured left tibia and fibula with nonunion and eight left leg surgeries from motor vehicle accident;
9. Anemia;
10. Cardiovascular disease with two heart attacks;
11. Hemotoma resulting from trauma to left leg;
12. Swelling of both lower extremities.

¶55. Finally, Dr. Cape was unable to cite to any medical literature, studies or authorities which supported his opinion that Dabney's polyneuropathy was caused by copperhead snake venom, except for a list of "found articles" from "Google" where Dr. Cape inserted the search terms of "neuropathy and snake venom." There was no evidence that Dr. Cape read these internet articles himself as a review of the actual articles with the search terms therein does not provide any medical

[4] Dr. Baxter, confirmed Dabney's known conditions of B-12 deficiency, diabetes and gastrectomy caused or contributed to his peripheral polyneuropathy.

or scientific support for Dr. Cape's opinions that polyneuropathy can be caused by snake venom. The review of the articles did not provide any support for the conclusion that snake venom causes polyneuropathy and appearance of the search terms in these random articles is entirely inconsequential as these search terms are frequently paragraphs, if not numerous pages, apart. Dr. Cape testified there were numerous medical textbooks which established a link between snake venom and polyneuropathy. However, Dr. Cape could not identify recall any such texts or authority during his deposition.

¶56. Dr. Cape further admitted that he does not treat patients for snakebite or for snake envenomation. Most significant, Dr. Cape could not remember any other patient of his which had polyneuropathy caused by snake venom.

¶57. Dr. Vedanarayanan performed an independent medical review. He is a Professor of Neurology at the University of Mississippi Medical Center and is a Board Certified neurologist, who routinely treats polyneuropathy. Dr. Vedanarayanan has performed specific studies concerning the effect of snake bites on patients' neurological systems upon presentation to the emergency room in his native country of India. Dr. Vedanarayanan opined that Dabney does not suffer from a diagnosis of auto-immune polyneuropathy, and he disagrees with Dr. Cape's diagnosis. Dr. Vedanarayanan testified there are specific tests to provide supportive evidence as to the determining cause of the diagnosis of polyneuropathy. These tests include lumbar puncture, spinal fluid examination and a more extensive nerve conduction study or nerve biopsy. Dabney's treating physicians failed to perform any of these additional tests, which concerned Dr. Vedanarayanan.

¶58. Dr. Vedanarayanan testified that Dabney has a mild case of "sensory polyneuropathy" and the most probable cause was his chronic B-12 deficiency, diabetes, alcohol use, and prior severe left leg trauma, all well known risk factors and symptoms which cause polyneuropathy. About the

existence of any medical or scientific evidence that could establish a direct causal link between Dabney's polyneuropathy and the snake bite incident of September 1, 1992, Dr. Vedanarayanan testified:

> Q. And, Doctor, specifically again as to Mr. Dabney, would the snake-bite incident of September 1, 1992, when he was working for my client, Texas Gas, would that in your opinion have caused or contributed in any way to his sensory polyneuropathy?
>
> A. Based on my review of literature, I see no association between the snake-bite and the sensory polyneuropathy.
>
> Q. Okay, can you explain more fully why you have that opinion that the snake-bite did not cause the sensory polyneuropathy?
>
> A. Well, the main reason is snake-bites typically, if you break them down to the way I look at it, is two types. One is one that works on the clotting mechanism, called the hemotoxic, the second one that works on the nervous system. And amongst most of the nervous system - toxins that work on the nervous system - they work at the neuromuscular junction; that is, where the nerves and the muscles come together.
>
> The typical presentation is usually one of weakness, with fatigue, and it's quite rapid in onset and doesn't generally produce sensory symptoms with it because it is acting at the level of the nerve at the muscle junction and it blocks the neurotransmitters' effect at the neuromuscular junction. So it does not really have any direct effect on the nerve itself. And then it's clear. So from a snake-bite, either you die from the neurotoxic snake-bite or you recover without any symptoms thereafter.
>
> That's been the experience of those 14 patients we have studied, plus the experience of my colleagues in southern India who have looked at a lot more patients previously who have had snake-bites, and none of them have had persistent or sensory complaints. So for those reasons, there is no biological mechanism by which we can think why it should effect the sensory nerves. And since there is no indication of an auto-immune process being involved, I feel that these two things, the polyneuropathy in him and the snake-bite, are unrelated.

¶59. Even though there was a disagreement among Dr. Vedanarayanan and Dr. Cape regarding the exact diagnosis of polyneuropathy as auto-immune or sensory, Dr. Vedanarayanan provided

testimony with a hypothetical assumption that Dr. Cape's diagnosis of auto-immune polyneuropathy was the correct one. Dr. Vedanarayanan testified:

> Q. Assuming for a second that Dr. Cape's diagnosis of auto-immune polyneuropathy is correct, in your opinion, based on a reasonable degree of medical probability, would that diagnosis of auto-immune polyneuropathy be in any way caused or contributed to by snake-bite or snake venom?
>
> A. Okay. No, sir. There is no reported association, there is no case report, there is no reports; and plus, in my experience, and plus talking to other of my colleagues, you know, during the study that we performed, there is no association between snake venom and polyneuropathy.

Dr. Vedanarayanan's expert report further confirmed that "there is no known association between a polyneuropathy and snake-bite. My personal experience, as well as review of medical literature, shows no association between an acquired polyneuropathy and snake venom."

¶60. Dr. Rick Carlton, an expert in the field of toxicology, reviewed Dr. Cape's opinion. Dr. Carlton is a Board Certified physician in the fields of toxicology, emergency medicine and internal medicine. As the Associate Medical Director of the Mississippi Regional Poison Control Center, Dr. Carlton routinely treats patients with snakebites among other toxins. Dr. Carlton testified that he is very familiar with the types of venomous snakes indigenous to Mississippi and the effects caused by snake envenomation, and he treats dozens of snakebites each year for the Mississippi Regional Poison Control Center, the majority of which are bites from copperhead snakes, identified by its scientific name of Crotalidae. Dr. Carlton opined that there is absolutely no evidence to support a conclusion that Dabney's peripheral polyneuropathy was caused by, or even related to, a snakebite as there had never been any report, study or medical literature relating the two. Dr. Carlton's conclusion was that medical treatment for snakebites last for a few months but never years as alleged here. Snakebites cause an acute reaction that will resolve itself and not cause future "flare-ups" or latent medical conditions after a few weeks much less three years as is the opinion

of Dr. Cape. Dr. Carlton also explained that copperhead bites are normally the most insignificant venomous snake bites that he treats. Dr. Carlton explained that copperhead venom does not have much, if any, "neurological effect, or toxic effect on the nerves of a human." Dr. Carlton also explained the normal course of treatment for a copperhead bite does not call for immediate anti-venom but rather routine medical treatment such as tetanus immunization, possible antibiotic therapy, pain medication, and elevation of the wound. Dr. Carlton's treatment of snakebite victims normally only includes 6 to 12 hours of observation in an emergency room and rarely a follow-up visit. Further, even with a copperhead bite of severe envenomation, Dr. Carlton knew of no long term effects, other than possible skin grafts which occur in these cases and certainly no subsequently developing neurological disease. Finally, Dr. Carlton confirmed he has never seen any case where polyneuropathy is caused by snake venom and emphatically testified that Dabney's medical condition of peripheral polyneuropathy was not caused by copperhead snake venom.

¶61. Terry Vandeventer, an expert herpetologist, testified regarding the immediate reaction to a snake bite, and particularly a copperhead snakebite where actual envenomation occurred. Significantly, out of the known symptoms and effects copperhead snake venom has on humans, these symptoms do not include numbness. Vandeventer also described the indigenous snakes to Mississippi and testified the only venomous snake in Mississippi which would have possible toxic effects on a human's nervous system was a coral snake found only in southern Mississippi, far away from Dabney. Any "neurotoxin" of a copperhead bite is not known to actually effect individual nerves, but the neuromuscular junction. Vandeventer testified that copperhead venom has a "hemorrhagic" which effects a victim's circulatory system and breaks down blood vessels. Mr. Vandeventer also explained the standard protocol for first aid and medical treatment of snakebites and any known long-term medical effects, which would Mr. Vandeventer confirmed would only be

pain and tenderness lasting for a month to a maximum of four months. After the three or four month period, Mr. Vandeventer testified there is no future medical treatment necessary for a victim bitten by a copperhead snake with actual envenomation.

¶62. Dabney failed to prove that his polyneuropathy was caused by the snake bite. There is no expert, scientific, medical evidence which establishes by the required reasonable degree of scientific probability that copperhead snake venom causes polyneuropathy. The only evidence offered to establish a possible causal relationship is from Dr. Cape who based his opinion entirely on subjective medical history told to him by Dabney, without support of any scientific or medical tests, studies, literature, authorities or even review of Dabney's previous medical records. Simply put, Dabney failed to offer any credible evidence of causation, and the findings of the Commission should have been reversed by the Circuit Court.

¶63. While deference is given to the findings of the Commission, the Mississippi Supreme Court has stated that it will not simply "rubber stamp" decisions from the Commission, and will not hesitate to reverse the Commission when there is "no evidence or only a scintilla of evidence" to support that decision. *Metal Trim Industries, Inc. v. Stovall*, 562 So.2d 1293, 1297 (Miss. 1990). This Court recently held that:

> [E]ven though medical evidence is to be given liberal construction and that doubtful cases should be resolved in favor of compensation, the Commission is called upon to apply "common knowledge, common experience and common sense" when weighing the evidence. *See Miller Transporters, Inc. v. Guthrie*, 554 So. 2d 917, 918 (Miss. 1999); *Hill v. United Timber & Lumber Co.*, 68 So. 2d 420, 424 (Miss. 1953). The adherence to a liberal standard does not avoid the requirement that the claimant must also prove in order to recover. *It is well settled that proof of causal connection must rise above mere possibility. Fought*, 523 So. 2d at 317. *These type of cases require expert medical opinion to help establish causation.*

Janssen Pharmaceutical, Inc. v. Stuart, 856 So. 2d 431 (Miss. Ct. App. 2003).

¶64. Here, the only evidence offered by Dabney that his medical condition of peripheral polyneuropathy was caused by a snakebite occurring at work was the uncorroborated, unscientific and speculative testimony of Dr. Cape. Indeed, Dr. Cape's opinion was based solely on what Dabney told Dr. Cape in his medical history. The credibility of what Dabney told Dr. Cape is questionable when considered along with established medical evidence that Dabney complained of these same conditions years before the snake bite. Also, the review of the treating physicians records, for treatment immediately after the incident, indicates that Dabney's underlying condition of polyneuropathy was not symptomatic until three years post-incident.

¶65. Further, the experts who routinely treat snakebite patients, Dr. Carlton, or who have performed studies of snakebite envenomation on human nerves, Dr. Vedanarayanan, clearly established there is no recognized medical or scientific link between copperhead snake venom and polyneuropathy. The claims of a diagnosis by exclusion and from patient history performed by Dr. Cape is speculative, improper and not based on generally accepted scientific principles in this field. *See Daubert v. Merrill Dow Pharm., Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993); *Kansas City Southern R.R., Inc. v. Johnson*, 798 So. 2d 374 (Miss. 2001); *Frye v. U.S.*, 293 F. 1013 (D.C. Cir. 1923).

¶66. Mississippi appellate courts have routinely held that medical causation of a claimant's medical condition to his employment is a prerequisite for recovery in workers' compensation claims under Mississippi law. The Court has routinely ruled "in all but the simple and routine cases, . . ., it is necessary to establish medical causation by expert testimony." *Cole v. Superior Coach Corp.*, 106 So. 2d 71, 72 (Miss. 1958); *Calhoun Apparel, Inc. v. Hobson*, 770 So. 2d 539, 541 (Miss. Ct. App. 2000); *Kersh v. Greenville Sheet Metal Works*, 192 So. 2d 266, 268 (Miss. 1966). Further, the wide deference in favor of an employee's claim in a workers' compensation litigation does not apply

to the strict requirement of expert medical causation to the claimed injury and employment based on generally accepted scientific principles. *Olen Burrage Trucking Co. v. Chandler*, 475 So. 2d 437, 439 (Miss. 1985). "In cases such as this, medical proof is essential to establish the necessary causation." *Turner v. J. P. Mills Co.*, 736 So. 2d 519, 521 (Miss. Ct. App. 1999).

> [T]he burden, as usual, is upon the Claimant and that the rule of liberality cannot dispense with the necessity of proof of facts prerequisite to recovery and the causal connection is one of such facts. The factual issue on this score is usually one for the medical experts and the Commission as triers of the fact, *and the Commission may not award compensation in the absence of medical proof to show causal connection*.

Kersh v. Greenville Sheet Metal Works, 192 So. 2d 266, 268 (Miss. 1966) (emphasis added). *See Janssen*, 856 So. 2d at 436 (explaining that "in workers' compensation cases, claimant has the burden to show an accidental injury arising out of and in the course of employment and a causal connection between the injury and the claimed disability").

¶67. As in all cases where experts provide their specialized knowledge to assist the trier of fact, the medical evidence provided in a workers' compensation claim must be based on "reasonable probability and not possibility." *Bracey v. Packard Elec. Div. General Motors Co.*, 476 So. 2d 28, 29 (Miss. 1995). "It is well settled that proof of causal connection must rise above mere possibility." *Kirk v. K-Mart Corp.*, 838 So. 2d 1007 (Miss. App. 2003); DUNN, MISSISSIPPI WORKERS' COMPENSATION, § 273 (3d ed. 1992).

¶68. In *Cuevas v. Copa Casino*, 828 So. 2d 851 (Miss. Ct. App. 2002), this Court denied benefits and medical treatment to a claimant for alleged back injuries as there was no expert medical/scientific evidence that the back injury was caused by her employment. The claimant's only evidence of causation between her work-related slip and fall and her back pain was unsupported and speculative testimony from her treating physician who based his opinions on Cuevas' subjective statements given in her medical history. We found that such evidence did not support a causal

relationship, especially in light of other medical/scientific evidence offered by the employer/carrier that Cuevas' complaints of back pain were not caused by the slip and fall at work. *Id.*

¶69. Just as in *Cuevas*, Dabney's physicians offered only speculative opinions concerning causation that were not based on any scientific knowledge connecting a copperhead bite and polyneuropathy. Such speculation cannot support a finding that Dabney's polyneuropathy was work related, as not only was there not any credible evidence of causation, there is no scientific evidence at all supporting causation. The appellants have submitted substantial and credible evidence that a copperhead snakebite will not cause polyneuropathy. There was undisputed testimony that copperhead venom is not a neurotoxin and does not have any affect on the nervous system. All of the credible scientific evidence shows that there is not a causal connection between Dabney's snakebite and the occurrence of polyneuropathy.

¶70. In *Janssen Pharmaceutica, Inc. v. Stuart*, 856 So. 2d 431 (Miss. Ct. App. 2003), the claimant was involved in a motor vehicle accident returning to the airport for a work-related business trip. *Id.* at 433. Over two months later, the claimant reported to the emergency room claiming unbearable back pain. Numerous treating physicians and experts submitted testimony, and this Court found that the claimant failed to prove a causal connection between the work-related motor vehicle accident and his subsequent back pain/injury. *Id.* at 437. We affirmed the finding that the testimony of treating physicians that a causal relationship between the subject motor vehicle accident and claimant's back injury was a "possibility" did not rise to the level of substantial evidence to support a claim for workers' compensation benefits. *Id.*

¶71. In *Kirk v. K-Mart Corporation*, 838 So. 2d 1007 (Miss. Ct. App. 2003), this Court found that claimant failed to prove a direct causal relationship between her alleged mental injury/disability and her work-related trauma. This Court focused on the testimony of treating physicians that a causal

relationship "may" be established and confirmed the Commission's finding that such inconclusive testimony "does not sound to us in terms of reasonable and dependable medical probabilities, but merely in terms of possibility." *Id.* at 1011.

¶72. The majority here concludes that "there is substantial evidence that Dabney's condition of polyneuropathy was caused by a snakebite." The majority states that there Commission properly relied on Drs. Baxter and Cape. I disagree. I do not believe that this is an issue of weighing credibility. Rather, I find that there is simply no evidence to support these opinions. None of Dabney's treating physicians performed any test that could link the occurrence of polyneuropathy with a copperhead snakebite. They offered no basis for their opinions of causation other than a temporal relationship between the onset of polyneuropathy and the snakebite. This causal link is questionable due to (a) Dabney's medical history, which indicates many conditions and symptoms of polyneuropathy before the snakebite, (b) the fact that Dr Cape did not have knowledge of Dabney's full medical history of these conditions and symptoms, and (c) the absence of medical literature to establish that snake venom causes polyneuropathy. On the other hand, the testimony of the experts offered by Texas Gas/Liberty Mutual clearly demonstrated that copperhead venom does not affect the nervous system, but instead is a hemorrhagic toxin that affects the ability of the blood to clot.

¶73. This is not a case of dueling experts testifying about various causes of the Claimant's polyneuropathy with one a "treating" and other retained expert. Rather, this is a case where the Dabney's expert has offered an opinion based completely on unreliable history with no medical or scientific basis to support the finding. The employer/carrier's experts offered credible and sufficient evidence that demonstrated that polyneuropathy could not be caused by a copperhead snakebite.

¶74. I am of the opinion that Dabney failed to prove that his polyneuropathy was caused by the snake bite. For this reason, I would reverse and render the Commission and the Circuit Court.

BRIDGES, P.J., JOINS THIS SEPARATE OPINION.