

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2012-WC-00811-COA**

**MILTON HARPER, DECEASED, BY AND  
THROUGH HIS DEPENDENTS, MAGGIE  
HARPER AND ANDREA HARPER**

**APPELLANT**

v.

**BANKS, FINLEY, WHITE & CO. OF  
MISSISSIPPI, P.C.**

**APPELLEE**

DATE OF JUDGMENT:	09/27/2011
TRIAL JUDGE:	HON. WILLIAM A. GOWAN JR.
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	WILLIE T. ABSTON
ATTORNEYS FOR APPELLEE:	PHILLIP ANDREW LAIRD JR. WILLIAM ANTHONY DAVIS III H. THOMAS WELLS III
NATURE OF THE CASE:	CIVIL - WORKERS' COMPENSATION
TRIAL COURT DISPOSITION:	REVERSED THE DECISION OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION AND DENIED WORKERS' COMPENSATION BENEFITS
DISPOSITION:	REVERSED AND RENDERED - 04/15/2014
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

**BEFORE LEE, C.J., BARNES AND ISHEE, JJ.**

**LEE, C.J., FOR THE COURT:**

¶1. This appeal arises from the Hinds County Circuit Court's decision reversing the Mississippi Workers' Compensation Commission (the Commission) and finding that Milton Harper's conduct disqualified him from receiving workers' compensation benefits. As we find the Commission's decision was supported by substantial evidence, we reverse the judgment of the circuit court and reinstate the decision of the Commission.

## FACTS AND PROCEDURAL HISTORY

¶2. Harper was the managing partner and president of the accounting firm Banks, Finley, White & Company of Mississippi (Banks). He was first diagnosed with high blood pressure on January 4, 1995, by Dr. Marvin Jeter. In October 1995, Harper went to the emergency room after becoming dizzy. At that time, Dr. Jeter began prescribing him blood-pressure medication. Harper saw Dr. Jeter four times from 1995 until 1998. During that time, Harper would intermittently take his blood-pressure medication, which resulted in his blood pressure ranging from normal to elevated.

¶3. On August 3, 2000, Harper was rushed to the emergency room at St. Dominic Hospital. Dr. Jeter examined Harper, noted that he had not been taking his blood-pressure medication, and concluded that he had suffered a stroke. Dr. Jeter referred Harper to Dr. Salil Tuwari, a neurologist. After a series of tests, it was determined that Harper had suffered multiple small-vessel strokes in the brain.

¶4. After resting for two weeks, Harper returned to work, initially part-time and then to his usual full-time schedule of 8:00 a.m. until 6:30 or 7:30 p.m. However, Harper did not work as many weekends as he did prior to his stroke.

¶5. In the early morning of Sunday, July 8, 2001, Harper woke up to go to the restroom. When he returned, Harper's wife, Maggie, asked him a question, and Harper responded with unintelligible noises and became nonresponsive. Harper was taken by ambulance to the University of Mississippi Medical Center, immediately put on life support in the intensive-care unit, and never regained consciousness. On July 10, 2001, Harper was taken off life support and died from the stroke he had suffered two days earlier.

¶6. On July 29, 2002, Maggie and her daughter, Andrea Harper, filed two petitions to controvert with the Commission, seeking workers' compensation benefits for Harper's strokes on August 3, 2000, and July 8, 2001. The administrative judge (AJ) found that Harper's strokes were too proximally connected to separate and combined the cases. The AJ held a hearing that began on September 25, 2008, and concluded on November 12, 2008.

¶7. The AJ found Maggie and Andrea proved that Harper's work-related stress caused his high blood pressure, which, in turn, caused his stroke on August 3, 2000, and his death on July 10, 2001. The AJ found that Maggie and Andrea proved a compensable workers' compensation claim, and that Banks did not prove Harper had a preexisting condition to warrant denial of the claim or apportionment.

¶8. Banks appealed to the Commission, which heard the case on December 7, 2009. The Commission affirmed the AJ's findings with regard to the compensability of the claim. However, the Commission held that Harper had a clearly identifiable preexisting condition that materially contributed to his death, and it apportioned the benefits by sixty-five percent. One commissioner dissented, stating that he would deny the claim because the stroke was not in any way work related.

¶9. Banks appealed to the Hinds County Circuit Court. The circuit court agreed that substantial evidence supported the Commission's findings that: (1) Harper's strokes arose out of and in the course of employment; (2) Harper was an officer of a corporation; and (3) Harper's workers' compensation benefits should be apportioned. But the circuit court reversed the Commission's judgment because it found that Harper's decision not to obtain workers' compensation insurance disqualified him from receiving benefits that he would

have otherwise been entitled to receive.

¶10. Harper now appeals, arguing: (1) coverage was not waived under Mississippi Code Annotated section 71-3-79 (Rev. 2011); and (2) his injury was compensable.

#### STANDARD OF REVIEW

¶11. The standard of review in a workers' compensation case is well settled. If the findings of the Commission are supported by substantial evidence, then they are binding on this Court. *Mitchell Buick, Pontiac & Equip. Co. v. Cash*, 592 So. 2d 978, 980 (Miss. 1991). "The [Commission] sits as the 'ultimate finder of facts' in deciding compensation cases, and therefore, 'its findings are subject to normal, deferential standards upon review.'" *Pilate v. Int'l Plastics Corp.*, 727 So. 2d 771, 774 (¶12) (Miss. Ct. App. 1999) (quoting *Natchez Equip. Co. Inc. v. Gibbs*, 623 So. 2d 270, 273 (Miss. 1993)). "We are bound even though the 'evidence would convince the [C]ourt otherwise if it were instead the ultimate fact[-]finder.' We will overturn [the] Commission's decision only when there is an error of law or an unsupportable finding of fact." *Montana's Sea Kettle Rest. v. Jones*, 766 So. 2d 100, 102 (¶7) (Miss. Ct. App. 2000) (internal citation omitted) (quoting *Walker Mfg. Co. v. Butler*, 740 So. 2d 315, 320 (¶19) (Miss. Ct. App. 1998)).

#### DISCUSSION

##### I. EXCLUSION OF COVERAGE

¶12. As president of Banks, Harper was responsible for making decisions regarding insurance. Even though Banks had at least five employees and was obligated to obtain coverage under Mississippi Code Annotated section 71-3-5 (Rev. 2006), Harper erroneously determined that Banks did not have the requisite number of employees to legally mandate

Banks to purchase workers' compensation insurance. Based on that determination, Banks chose not to obtain the insurance.

¶13. Banks argued before the Commission that Harper could not receive workers' compensation benefits because it was his decision not to obtain the insurance and therefore opt out of the coverage. While under section 71-3-79 an executive officer can elect to exclude himself from workers' compensation insurance coverage, this exclusion must be in writing. The Commission found that Harper could not have "elected not to be covered as an executive officer because there was no policy from which he could have otherwise excluded himself."

¶14. At the circuit court level, Banks argued that it was unjust for the Commission to hold that Harper was covered for failure to opt out under section 71-3-79, because it was Harper's decision that Banks not acquire workers' compensation insurance. The circuit court found this argument compelling and denied Harper benefits. On appeal, Banks asserts that when Harper affirmatively elected not to procure workers' compensation insurance for either himself or his firm, he also affirmatively elected not to be covered under the act.

¶15. When applying a statute, a court must determine if the language of the statute is ambiguous. If a statute is not ambiguous, the court should apply the plain meaning of the statute. *City of Natchez v. Sullivan*, 612 So. 2d 1087, 1089 (Miss. 1992). Section 71-3-79 clearly states that an "executive officer may reject [the] coverage by giving notice in writing to the carrier of this election not to be covered as an employee." At no point did Harper reject the coverage by giving notice in writing. The Commission's finding that Harper did not opt out of coverage is supported by substantial evidence. This issue is without merit.

## II. COMPENSABLE INJURY

¶16. In his petition to controvert, Harper seeks death benefits under Mississippi Code Annotated section 71-3-25 (Supp. 2013). For Harper's death to be covered under Mississippi's workers' compensation statutes, his death must have resulted from an injury that "ar[ose] out of and in the course of employment[.]" Miss. Code Ann. § 71-3-3(b), (c) (Rev. 2011). For the injury to arise out of employment, there must be "a causal connection between the employment and the injury." *Singley v. Smith*, 844 So. 2d 448, 453 (¶20) (Miss. 2003). One is injured in the course of employment when an injury results from an activity that was actuated partly by a duty to serve the employer or was reasonably incident to the employment. *Id.*

¶17. The AJ, the Commission, and the circuit court agreed that the injury arose out of the course and scope of Harper's employment. The Commission looked to the testimony of Dr. John Davis, a neurosurgeon who had never examined Harper, which stated that Harper's strokes were caused by his high blood pressure. The Commission also relied on Dr. Jeter's testimony that Harper's significantly stressful work aggravated his high blood pressure to some degree and was a contributing cause of his death. Dr. Jeter also noted in his testimony that Harper had no other risk factors for vascular disease except high blood pressure.

¶18. Maggie testified that Harper was a "workaholic," and that he was "constantly working." She also stated that Harper kept saying that he was getting behind at work and having problems balancing being out of town for audits and trying to manage the office at the same time. Harper's coworkers Kaiser Brown and Dian Parkinson both testified that Harper worked from 8:00 a.m. until 6:30 or 7:00 p.m. on week nights and usually worked some on

the weekends. Additionally, Parkinson stated that Harper had more responsibilities than anyone else at Banks because he was the president. The Commission agreed with the AJ's findings that the injuries arose out of the course and scope of Harper's employment, but found that Harper's preexisting condition of high blood pressure materially contributed to his death. We find this decision was supported by substantial evidence. Because the Commission's decision was supported by substantial evidence, we reverse the judgment of the circuit court and reinstate the Commission's judgment, including the apportionment of benefits by sixty-five percent.

**¶19. THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT IS REVERSED AND RENDERED, AND THE JUDGMENT OF THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION IS REINSTATED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.**

**GRIFFIS, P.J., BARNES, ISHEE, ROBERTS, MAXWELL, FAIR AND JAMES, JJ., CONCUR. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY IRVING, P.J.**

**CARLTON, J., DISSENTING:**

¶20. I respectfully dissent. I submit that the decision of the Commission is not supported by substantial evidence. *See Lott v. Hudspeth Ctr.*, 26 So. 3d 1044, 1048 (¶12) (Miss. 2010); *Walker Mfg. Co. v. Cantrell*, 577 So. 2d 1243, 1245-47 (Miss. 1991). The record fails to support a finding that Harper's employment caused or contributed to his chronic failure to treat, and hence control, his established high blood pressure. The record shows that his high blood pressure continued unabated over the course of many years and that he took his medicine intermittently. No evidence in the record, or in the Commission's decision, indicates that Harper's employment prevented him from taking his medicine or from

accessing the pertinent medical services or medicines. The record indicates that Harper knew he suffered from high blood pressure for many years. Yet he failed to comply with the treatment, resulting in chronic, untreated high blood pressure.

¶21. The record reflects that Dr. Davis, a neurosurgeon, testified that Harper's death was caused by a brain hemorrhage, which resulted from uncontrolled high blood pressure, and was not caused or contributed to by his employment. The Commission's opinion acknowledges that Harper's death was largely due to uncontrolled high blood pressure and that the condition, in and of itself, is not work related. The Commission nonetheless found Harper's death compensable, but apportioned the benefits.

¶22. However, I submit that the record fails to show how Harper's employment prevented him from seeking treatment for his high blood pressure. The record shows that the Commission's order even acknowledged that Harper failed to take his blood-pressure medicine even though his high blood pressure had been repeatedly documented. The Commission also acknowledged that a hypertensive hemorrhage in the brain is the most common complication of chronically untreated high blood pressure. The Commission further provided that the most common place to suffer such a brain hemorrhage was the basal ganglia, which was where Harper suffered his hemorrhage.

¶23. The crux of the issue is that Harper failed to treat his high blood pressure and allowed his hypertension to be chronically uncontrolled, thereby causing his death by a brain hemorrhage. I thus find that the Commission's decision determining that Harper's death was compensable is not supported by substantial evidence. *See generally Guy v. B.C. Rogers Processors Inc.*, 16 So. 3d 29, 37 (¶¶30-31) (Miss. Ct. App. 2008). I would therefore affirm

the decision of the circuit court.

**IRVING, P.J., JOINS THIS OPINION.**