

IN THE SUPREME COURT OF MISSISSIPPI

THERESA L. CUMMINGS

APPELLANT

V.

CASE #2006-CC-02030


MISSISSIPPI DEPARTMENT OF  
EMPLOYMENT SECURITY AND  
LUCKETT TYNER LAW FIRM, P.A.

APPELLEES

*Brief*

CERTIFICATE OF INTERESTED PERSONS

Appellee, Lockett Tyner Law Firm, P.A. adopts the  
certificate of interested persons shown in Appellant's Brief.

  
EUGENE T. HOLMES  
MISSISSIPPI BAR NO. [REDACTED]  
COUNSEL FOR LUCKETT TYNER  
LAW FIRM, P.A.

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STATEMENT OF THE ISSUES

STATEMENT OF THE CASE

Appellee, Luckett Tyner Law Firm, P.A. generally adopts Appellant's statement of the issues and statement of the case, except to the extent inconsistent with Appellee's statements in this Brief.

### SUMMARY OF THE ARGUMENT AND ARGUMENT

In her Brief, Appellant ("Employee") admits that she was initially employed by Appellee, Lockett Tyner Law Firm, P.A. ("Employer") on January 3, 2005, and that she submitted her written resignation of her employment on September 6, 2005, effective January 2, 2006. Employee further admits that she and Employer had discussed her unsatisfactory performance (e.g., taking more time than justified on routine law office assignments, and giving some of her work to others in the office who had their own assignments to perform). She further admits that her Employer decided to make her resignation effective as of November 30, 2005, instead of January 2, 2006. During the period of time between her notice and its effective date, Employer was required to take action and terminate Employee due to her continued lack of performance. Thus this case is really about less than two months' worth of unemployment benefits, for an employee who had admittedly been advised that her work was not satisfactory.

Employee's Brief also notes that the Mississippi Department of Employment Security (MDES) Board of Review found that the Employer's action was justified and did not entitle Employee to unemployment benefits. Employee's Brief further

notes that on October 20, 2006, the Choctaw County Circuit Court ruled that Employee's notice of appeal of MDES' decision was untimely, and that even if it had been timely, the Circuit Court would still have upheld MDES' decision. Employee asserts that she should have been permitted more time to respond to MDES' Motion to Dismiss that was filed the day before the Circuit Court's ruling, even though she had also failed to respond to the Employer's Motion to Dismiss filed more than six weeks earlier, on August 30, 2006.

Ironically, Employee is now arguing the timeliness of her own actions in her appeal of MDES' decision that her employment had been justifiably terminated by her former Employer due to her slow work pace. With all due respect to Employee, these continued appeals over less than two months' worth of benefits border on the frivolous.

This case is governed by Mississippi Code Annotated Section 71-5-531, as applied by this Court in *Hoerner Boxes, Inc. v. Mississippi Employment Security Commission*, 693 So. 2d 1343 (Miss. 1997); and *Melody Manor, Inc. v. McLeod*, 511 So. 2d 1383 (Miss. 1987). Those cases hold that the Circuit Court and this Court are bound by the findings of the Commission's Board of Review, which are conclusive absent fraud or lack of

substantial evidence. Even on the face of Employee's brief, there was substantial evidence before the Commission's Board of Review to support its finding that she was not entitled to the unemployment benefits claimed.

Not only did Employee not have valid grounds for appealing the decision of the Commission's Board of Review, she also failed to perfect her appeal in a timely manner. Employee's Brief states that she filed a Motion for Extension of Time and Notice of Appeal in the Circuit Court of Choctaw County before the deadline of July 27, 2006. Actually, the document filed was only a request for an extension of time for Employee to file her appeal with the Circuit Court. (Appellee's Record Excerpts, page 3).

Employee's Motion for Extension of Time claimed that this was justified because she was "living in the state of Texas," and showed an Arlington, Texas address below her signature. Under Miss. Code Sec. 71-5-53, an appeal by a nonresident of Mississippi must be filed in the county where the employer resides, or the county where the cause of action arose, or the county of employment. Choctaw County met none of those tests.

Employee's Motion also stated as a ground for extension of time to appeal the fact that she had "had difficulty

securing legal counsel." This claim ignores the facts that she had been handling her case at the MDES *pro se*, and was herself an active member of the Mississippi Bar. Employee's Brief further acknowledges that the Circuit Court Clerk wrote her a letter on July 26, 2006, pointing out that she had omitted to file the required civil cover sheet and original copy of the Board of Review's decision, and also that these items were not filed until August 11, 2006, two weeks after the filing deadline.

There is ample evidence in the record to support the Circuit Court's dismissal of Employee's appeal as untimely, as well as the Court's additional conclusion that even if the appeal had been timely it would still have been denied on the merits.

#### CONCLUSION

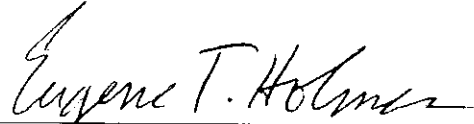
Wherefore, Appellee-Employer Luckett Tyner Law Firm, P.A. requests that this Court reject Appellant-Employee's appeal, and affirm the decisions of the Mississippi Department of Employment Security and the Choctaw County Circuit Court.



This, the 9 of May, 2007.

Respectfully submitted,

LUCKETT TYNER LAW FIRM, P.A.

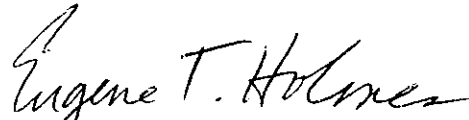
A handwritten signature in cursive script, reading "Eugene T. Holmes". The signature is written in dark ink and is positioned above a horizontal line.

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ENTRY OF APPEARANCE

Eugene T. Holmes, MB # 2561, hereby enters his appearance as counsel of record in this matter for Appellee, Lockett Tyner Law Firm, P.A., this the 9 of May, 2007.



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CERTIFICATE OF SERVICE

I, Eugene T. Holmes, Counsel for Appellee Lockett Tyner Law Firm, P.A., hereby certify that I have this day mailed, first class postage prepaid, a true copy of the foregoing Brief of Appellee, Lockett Tyner Law Firm, P.A. to the following:

Mississippi Supreme Court Clerk  
Honorable Betty Stepton  
P.O. Box 249  
Jackson, MS 39205

Mississippi Department of Employment Security  
Honorable LeAnne F. Brady  
P.O. Box 1699  
Jackson, MS 39215

Honorable Theresa L. Cummings  
P.O. Box 636  
Ackerman, MS 39735

Choctaw County Circuit Judge  
Honorable Joseph Loper  
P.O. Box 34  
Ackerman, MS 39735

This, the 9 of May, 2007.

  
\_\_\_\_\_  
EUGENE T. HOLMES