

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

**THERESA CUMMINGS**

**APPELLANT**

**VS.**

**CAUSE NO. 2006-CC-02030**

**MISSISSIPPI DEPARTMENT OF  
EMPLOYMENT SECURITY**

**APPELLEE 2**

*Brady*

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representatives are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Mississippi Department of Employment Security, Appellee
2. Theresa L. Cummings, Appellant
3. LeAnne F. Brady, Attorney for Appellee
4. Albert Bozeman White, Esq., Attorney for Appellee
5. Luckett Tyner Law Firm, P.A, Employer

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**CAUSE NO. 2006-CC-02030**

**MISSISSIPPI DEPARTMENT OF  
EMPLOYMENT SECURITY AND  
LUCKETT TYNER LAW FIRM**

**APPELLEES**

**BRIEF OF APPELLEE  
MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY**

**STATEMENT OF ISSUES**

1. Whether the Circuit Court correctly decided that Claimant, Theresa L. Cummings, untimely filed her appeal from the Board of Review's Decision to the Circuit Court, pursuant to M.C.A. Sections 71-5-529 and 71-5-531 (Rev. 1995), such that her appeal should be dismissed?
  
2. Alternatively, whether the Board of Review and Circuit Court Decisions should be affirmed finding that the Employer, Lockett Tyner Law Firm, proved by substantial evidence that the Claimant, Theresa L. Cummings, committed disqualifying misconduct, pursuant to M.C.A. Section 71-5-513(A)(1)(b)(Rev.1995) by willfully and wantonly failing to perform her job duties to the Employer's expectations, after counseling?

**STATEMENT OF THE CASE**

Theresa L. Cummings [hereinafter also "Claimant"] was employed by Lockett Tyner Law Firm [hereinafter also "Employer"] as an Associate Attorney from January 3, 2005, to

November 30, 2005, when the Employer terminated her Employment Contract for cause. (R. Vol. 2 p. 6-7, 15-16, 94-98). The Contract provided that Ms. Cummings could be terminated without notice for good cause, including neglect, and failure to meet expectations. (R. Vol. 2 p. 15-16).

After her termination, Ms. Cummings filed for unemployment benefits with the Mississippi Department of Employment Security [hereinafter "MDES"]. (R. Vol. 2 p. 1). A Claims Examiner investigated by interviewing Bill Luckett, Partner, and Claimant. (R. Vol. 2 p. 6-7). This investigation revealed that Ms. Cummings resigned her employment on October 17, 2005, effective January 2, 2006. (R. Vol. 2 p. 71, 73). However, on November 30, 2005, the Employer terminated the Contract for cause and Ms. Cummings' employment, pursuant to Section 7 of the Contract. (R. Vol. 2 p. 6-7, 68-69). Thus, the Claims Examiner disqualified Claimant for committing misconduct under the Contract for failing to perform up to the Employer's expectations. (R. Vol. 2 p. 8).

Ms. Cummings appealed; and the parties were notified of a Hearing date. (R. Vol. 2 p. 9, 10-11). A Hearing was held in which Claimant and Bill Luckett, the Employer representative, testified and produced documents. (R. Vol. 2 p. 12-75). Afterwards, the Administrative Appeals Officer [now "ALJ"] found that Claimant was discharged for unsatisfactory job performance, but the Employer failed to show her poor performance was due to misconduct. (R. Vol. 2 p. 76-78).

The Board of Review's decision was mailed to Claimant on July 7, 2006. (R. Vol. 2 p. 31). The decision informed Ms. Cummings that she had **twenty (20) days from July 7, 2006**, to appeal to the Circuit Court. (R. Vol. 2 p. 145-146). The Board of Review's decision provided that she had until **July 27, 2006** to file her appeal. M.C.A. Section 71-5-529 and 71-5-531 (Rev. 1995). (R. Vol 1. P. 146).

Rather than actually filing a Notice of Appeal, Ms. Cummings attempted to file a Motion For Extension of Time to Appeal, which contains a Certification of Service indicating that she mailed this Motion to the Court Clerk on July 24, 2006. (R. Vol. 1 p. 5). The Clerk received this Motion on July 26, 2007. (R. Vol. 1 p. 1). However, the Clerk did not file the Motion because no case was pending at that point, and Ms. Cummings did not include a Civil Cover Sheet. (R. Vol 1. p. 6). Subsequently, the Civil Cover Sheet was received and the Motion was filed by the Court Clerk on August 7, 2006. (R. Vol. 1 p. 4, 8-11). Another Civil Cover Sheet was received and filed on August 11, 2006. (R. Vol.1 p. 8-11). Motions to Dismiss were then filed by the Employer and MDES. (R. Vol. 1 p. 13-16, 20-22). The MDES also filed the its Answer and the Record on September 29, 2006. (R. Vol. 1 p. 17-19).

Prior to any Briefs being filed, on October 20, 2006, the Honorable Joseph H. Loper, Jr. affirmed the decision of the Board of Review. In so doing, Judge Loper stated that Ms. Cummings appeal was dismissed for failing to file her appeal timely. Judge Loper also stated that he considered the case on its merits. Having done so, Judge Loper further found that the

Board of Review's decision finding that Ms. Cummings committed disqualifying misconduct was supported by substantial evidence; and should be affirmed. (R. Vol. 1 p. 28-29).

Ms. Cummings then appealed to this Honorable Court. (R. Vol 1, p. 30-36).

### **SUMMARY OF THE ARGUMENT**

The first issue for the Court's consideration is the timeliness of Claimant's appeal from the Board of Review Decision to the Circuit Court. In that regard, *Uniform Rules of Circuit Court Procedure* number 5.02 specifically provides that "**The time and manner for the perfecting of appeals from lower authorities shall be as provided by statute.**". M.C.A. Sections 71-5-529 and 71-5-531 (Rev. 1995) are the statutes applicable to an appeal from the Board of Review of the MDES. These statutes provide that such appeals must be taken within 20 days of the Board of Review Decision mailing date. Id. Claimant apparently does not dispute that a twenty day time frame applies, but claims she appealed timely.

The Court should consider the Mississippi Supreme Court's ruling in Wilkerson vs. Mississippi Employment Security Commission, 630 So.2d 1000 (Miss. 1994). This case holds that where an appeal is even **one day late**, it must be dismissed. The Court further states the statutory time limit for appeal cannot be extended absent some event, not caused by a party, affecting that party's substantial rights. Id. at 1002. Further, in Wilkerson, the Supreme Court confirms that the time period for appeal begins running from the mailing date, when mailed to the Claimant's correct last known address.



In the instant case, the Board of Review's Decision was mailed to Ms. Cummings on July 7, 2006, at the address she provided to the MDES, as of the time its Decision was made. Ms. Cummings then attempted to file a Motion for Extension of Time to Appeal, but no case was pending in which to file this Motion. Thus, the Court Clerk did not file the Motion until a Civil Cover Sheet was received. Helmert v. Biffany, 842 So. 2d 1287 (Miss. 2003)(When a civil action is not pending, a Civil Cover Sheet must be filed to open the case.) By the time the Clerk received the Civil Cover Sheet, Ms. Cummings had missed the twenty day deadline.

Ms. Cummings argued that the M.R.C.P. do not require the filing of a Civil Cover Sheet to commence an action, but a Complaint. While the M.R.C.P. so provides, Ms. Cummings did not submit a Complaint, but a Motion in a case that was not pending. Thus, the Court appropriately denied this Motion when it dismissed her appeal.

Regarding the misconduct issue, the case authorities establish that repeated, grossly negligent poor job performance rises to the level of disqualifying misconduct. Shavers v. Mississippi Employment Security Commission; 763 So.2d 183 (Miss. COA 2000); Kellar v. Mississippi Employment Security Commission; 756 So.2d 840 (Miss. COA 2000); Reeves v. Mississippi Employment Security Commission; 806 So.2d 1178 (Miss. COA 2002); Johnson v. Mississippi Employment Security Commission; 767 So.2d 1088 (Miss. COA 2000). In this case, the testimony and documents established that on September 6, 2005, Ms. Cummings gave her notice that she was quitting her employment effective January 2, 2006.

The Employer's testimony established that prior to that date Ms. Cummings' work was needing improvement. After her notice, the Employer's witnesses' testimony established that her work performance became unsatisfactory, and continued as such even after counseling by Bill Luckett. Further, the Employer's proof indicated that she disregarded instructions on completing an assignment, and other duties such as refusing to take a phone call from an important client, and refusing to meet with a client.

The case authorities establish that willful and wanton violations of reasonable Employer instructions, and reasonable standards of behavior, constitutes disqualifying misconduct. Mississippi Employment Security Commission vs. Percy, 641 So.2d 1172 (Miss. 1994). The record reflects that Ms. Cummings was terminated for cause pursuant to her Employment Contract for failing to meet the Employer's standards. Thus, this Honorable Court should affirm the MDES and Circuit Court decisions that she was discharged for misconduct.

### **ARGUMENT**

This appeal is governed by Miss. Code Ann. Section 71-5-531 (Rev.1995), which provides for an appeal by any party aggrieved by the decision of the Board of Review. Section 71-5-531 provides that the appeals court shall consider the record made before the Board of Review and, absent fraud, shall accept the findings of fact if supported by substantial evidence, and the correct law has been applied (emphasis added). Richardson,

supra at 593 So.2d 31 (1992); Barnett, supra at 583 So.2d 193 (Miss. 1991); Booth, supra at 588 So.2d 422 (Miss. 1991). A rebuttal presumption exists in favor of the Board of Review's decision and the challenging party has the burden of proving otherwise. Allen v. Mississippi Employment Security Commission, 639 So.2d 904 (Miss. 1994). The appeals court must not reweigh the facts nor insert its judgment for that of the agency. Id.

### **1. TIMELINESS OF APPEAL ISSUE**

Regarding the timeliness issue, Ms. Cummings asserted that she should be relieved from late filing because a Civil Cover Sheet was not mandatory to file her Motion for Extension of Time to file her appeal. In that regard, the Board of Review's Decision was mailed to Ms. Cummings on July 7, 2006, at the address she provided to the MDES. The Court Clerk did not file the Motion until a Civil Cover Sheet was received. Helmert v. Biffany, 842 So. 2d 1287 (Miss. 2003)(When a civil action is not pending, a Civil Cover Sheet must be filed to open the case.) By the time the Clerk received the Civil Cover Sheet, Ms. Cummings had missed the twenty day deadline.

Ms. Cummings argued that the M.R.C.P. do not require the filing of a Civil Cover Sheet to commence an action, but a Complaint. While the M.R.C.P. so provides, Ms. Cummings did not submit a Complaint, but a Motion in a case that was not pending. Thus, the Court appropriately denied this Motion when it dismissed her appeal. Mississippi Employment Sec. Comm'n v. Gilbert Home Health Agency, 909 So. 2d 1142 (Miss. COA

2005). See Wilkerson vs. Mississippi Employment Security Commission, 630 So.2d 1000 (Miss. 1994)(statutory appeal deadlines to be strictly construed).

## **2. MISCONDUCT ISSUE**

The case authorities establish that intentional or grossly negligent violations of reasonable Employer policies, instructions, and reasonable standards of behavior, constitutes disqualifying misconduct. Mississippi Employment Security Commission vs. Percy, 641 So.2d 1172 (Miss. 1994)

Two hearings occurred in this case. The following is a summary of the testimony from both hearings, and a discussion of the documentary evidence.

In the instant case, Bill Luckett, President of Luckett Tyner Law Firm, P.A., testified first. (R. Vol. 2 p. 15). Mr. Luckett testified that an Employment Contract was entered into between the firm and Theresa Cummings on October 29, 2004, specifying a beginning date of January 3, 2005. (R. Vol. 2 p. 15-16, 66-69). Ms. Cummings then worked for the firm as an Associate Attorney until November 30, 2005.

Regarding her separation from this employment, Mr. Luckett testified that Ms. Cummings wrote the firm a letter dated September 6, 2005, stating that she was resigning as of January 2, 2006. (R. Vol. 2 p. 15-16, 86). In this letter, and pursuant to Section 7 of the Contract, Ms. Cummings gave the firm 120 days notice. However, prior to the effective date of her resignation, Mr. Luckett and Mr. Tyner made the decision to terminate Ms.

Cummings' employment for cause on December 1, 2005, pursuant to Section 7 of the Contract. (R. Vol. 2 p. 15-24).

When questioned as to the reason for Ms. Cummings' termination, Mr. Luckett stated that the firm wanted to keep Ms. Cummings for the 120 day notice, but it became increasingly obvious that Ms. Cummings was not doing her job. (R. Vol. 2 p. 17-18). He began receiving complaints from his partner, Mr. Tyner, and the staff. His paralegals reported to him that Ms. Cummings had asked them to do the work that he had assigned to her. After giving her notice, her performance fell off to the point that she was not meeting expectations. There were complaints from the staff about Ms. Cummings refusal to meet with a client who came into the office and had questions about a Complaint that she drafted. The receptionist reported to Mr. Luckett that Ms. Cummings refused to take the phone call from an important client on the Burger King case, which she had worked on. Mr. Luckett had also asked Ms. Cummings to organize the medical records on the Kennemore plaintiff's case into related, unrelated, and unknown treatments and charges; and Ms. Cummings never completed this project. (R. Vol. 2 p. 17-24, 48-56, 97-102). She also asked others to complete this assignment for her.

Mr. Luckett also testified that Ms. Cummings appeared to totally lose interest after giving her resignation. He stated that the firm was also losing money, because he was unable to bill for the amount of time that she spent completing projects. It was after looking at the

November billings that he and Mr. Tyner decided on November 30, 2005, to terminate Ms. Cummings' Contract as of December 1, 2005. (R. Vol. 2 p. 17-18, 97-98).

Mr. Luckett was questioned as to whether Ms. Cummings was given reprimands or warnings; or whether she was told that her job was in jeopardy if her work did not improve. In that regard, Mr. Luckett explained that Ms. Cummings came to the firm from Legal Services; and a learning curve of two to three months was expected. (R. Vol. 2 p. 16, 19). He gave her simple assignments, many of which were typical things that paralegals would do. However, she still was not getting these done. (R. Vol. 2 p. 19, 20). He gave her what he considered verbal warnings in the nature of counselings about the time it took for her to do things. He gave her constructive criticism as a milder form of counseling. Mr. Luckett also stated that it took too much guidance and time for her to complete a project; and then when the work finally was done, it was not up to expectations. (R. Vol. 2 p. 19, 21). He also could not bill clients for the time it took her to complete tasks and research. (R. Vol. 2 p. 98).

Mr. Luckett also gave specific examples of cases and assignments in which there were problems with her work. He gave her an assignment on the Kennemore personal injury case with medical bills of \$200,000 to \$300,000. He told her to sort the bills out into what were related, unrelated, and unknown. This was a common task assigned to paralegals. Ms. Cummings did not get it done. (R. Vol. 2 p. 21-22). She complained that the other attorney had given her work that took precedence over this assignment, but when Mr. Luckett spoke

to the other attorney, the work assigned to her was three to four weeks earlier. (R. Vol. 2 p. 21-22).

His paralegal, Molly Barbieri, also came to him and said that Ms. Cummings brought her the Kennemore assignment and asked her to do it. (R. Vol. 2 p. 22, 99). Mr. Lockett stated that he then asked Ms. Cummings about the assignment, and tried to show her what to do, and made it clear that the assignment was her's to do. (R. Vol. 2 p. 99).

Another example was the Burger King case, in which it was reported to him that an important client had called the office to ask questions about this case while he was out of the office. When the receptionist asked Ms. Cummings to take the call, because she had also worked on the file, she refused to do so. (R. Vol. 2 p. 51-53, 100).

On redirect testimony during the first hearing, and in response to Ms. Cummings' testimony, Mr. Lockett offered to present the testimony of additional witnesses to corroborate his statements. (R. Vol 2 p. 48-55). However, the ALJ decided that that testimony was unnecessary at that time. (R. Vol 2 p. 54). On appeal, the Board of Review remanded the case to the ALJ to allow this and other testimony to be taken.

In response to comments made by Ms. Cummings during her testimony, Mr. Lockett stated that Ms. Cummings learned how to do legal research in law school, such that she should have been able to complete projects assigned within the time assigned. When Mr. Lockett reviewed her time statements, it was necessary to cut those billings significantly, because she spent too much time on certain research. (R. Vol 2 p. 55).

Mr. Luckett also commented that Ms. Cummings always seemed to have a baseball game playing on her computer while at work. (R. Vol 2 p. 56). Mr. Luckett stated that with an Associate Attorney, it was expected that she would complete the work assigned, within the time assigned; and it was not uncommon for Associate Attorneys to work weekends if necessary to get assignments done. (R. Vol 2 p. 56).

In response to her comments that she had no experience reviewing medical records, Mr. Luckett stated that this complaint by her was far fetched, because it did not take ten months on the job to learn to do that, or other simple tasks assigned to her. (R. Vol 2 p. 55-60). Mr. Luckett stated that Ms. Cummings managed other attorneys at Legal Services. She also had a Ph. D. and was very intelligent. She had done other types of litigation with Legal Services involving analogist procedures and pleadings. Mr. Luckett also testified that Ms. Cummings admitted when she resigned that she just did not "get into" the work. (R. Vol. 2 p. 59-60).

Regarding exhibits introduced into evidence, correspondence between Ms. Cummings and the Employer was attached to the record from the first hearing, along with a copy of the Employment Contract. (R. Vol 2 p. 65-75). The Contract provided in Section 7 that either party may terminate the Contract for no reason upon 120 days notice; and the Employer could terminate the Contract without notice for good cause, which was specified as including neglect and failure to meet expectations of a practicing attorney. (R. Vol 2 p. 67-68). In that



regard, Mr. Luckett's testimony was that Ms. Cummings was terminated for failing to meet the expectations of the practicing attorneys.

At the second hearing, Ms. Cummings' resignation letter dated September 6, 2005, was also introduced into evidence as Employer Exhibit 1. (R. Vol 2 p. 103-104). A letter from Robert Tyner to Ms. Cummings dated October 12, 2005, was introduced into evidence as Employer Exhibit 2. (R. Vol 2 p. 104). Finally, the determination letter from the firm to Ms. Cummings dated November 30, 2005, was introduced into evidence as Employer Exhibit 3. (R. Vol 2 p. 104-105). Mr. Luckett stated that the Employment Contract was sent to the MDES at an earlier date. (R. Vol 2 p. 105).

Regarding witnesses for the Employer, Mr. Luckett first offered the testimony of Katrina Neil, receptionist. (R. Vol 2 p. 111-113). Ms. Neil testified that she reported to Mr. Luckett about a client calling on the Burger King case, asking for Ms. Cummings, and Ms. Cummings refusing the call. Ms. Neil stated that this was a big client; and the client asked for her specifically. (R. Vol 2 p. 111-112). Ms. Neil further stated that Ms. Cummings, as any Associate Attorney, was expected to take calls until the day that she left. On cross-examination by Ms. Cummings, Ms. Neil stated that Ms. Cummings' comment to her was that it would be a waste of her time to speak to the client, because she was leaving the firm. (R. Vol 2 p. 112-113).

Ms. Molly Barbieri, Legal Assistant, testified next. (R. Vol 2 p. 116-121). Ms. Barbieri stated that she had complained to Mr. Luckett about Ms. Cummings' job

performance. Specifically, the firm was working on a plaintiff's case, the Milton case, and Ms. Cummings had drafted the Complaint. The client, Mr. Milton, came into the office to get a copy of the Complaint; and wanted to ask Ms. Cummings about the amount of damages demanded. (R. Vol 2 p. 116-117). Ms. Cummings refused to talk to the client. Mr. Lockett was out of the office at the time. (R. Vol 2 p. 116-117).

Regarding the Kennemore case, Ms. Barbieri stated that Ms. Cummings was told to go through medical bills and make a chart of related, unrelated, and unknown charges. However, she did not do it. Ms. Cummings also asked Ms. Barbieri to do the assignment for her. Mr. Lockett also asked her about it several times, but she never finished it. Ms. Barbieri stated that she eventually had to complete it. (R. Vol 2 p. 118). On cross-examination, Ms. Barbieri stated that Ms. Cummings may have asked her about how to do the chart; and she did give her assistance. (R. Vol 2 p. 119-121).

Diana Hester, Legal Assistant, testified next on behalf of the Employer. (R. Vol 2 p. 122-124). Ms. Hester stated that she also had complaints about Ms. Cummings' work. Ms. Cummings was trying to pass off work to her and others. Ms. Hester stated that the attorneys would assign her work; and then she would bring the work to them and say "you are more familiar with this, why don't you do it". (R. Vol 2 p. 123-124). Ms. Hester thought this occurred after Ms. Cummings had turned in her resignation. Ms. Hester was not aware of how many times this occurred. Ms. Hester was also aware that Ms. Cummings had refused to take calls on cases. (R. Vol 2 p. 123-124).

Theresa Cummings also testified at both hearings. (R. Vol 2 p. 35-50, 58, 61, 126-133). Ms. Cummings stated that she was hired as an Associate Attorney; and she was expected to know more than a paralegal. Her prior employment was with the Mississippi Rural Legal Services. She had never worked for an insurance defense firm before. (R. Vol 2 p. 36).

Ms. Cummings resigned on September 6, 2005, because she was not learning what she thought she should, and she expected more teaching from the partners. (R. Vol 2 p. 37, 127). However, Ms. Cummings acknowledged that she was given instructions on assignments, there were examples that she could review, and the paralegals would also show her. The majority of time she understood what was required of her. (R. Vol 2 p. 38).

Ms. Cummings was questioned as to whether she had lost interest after submitting her resignation, which she denied. She was questioned as to completing the Kennemore medical record assignment, which she said was a difficult assignment because the case was extreme. (R. Vol 2 p. 41).

Ms. Cummings denied refusing any phone calls, but stated that there may have been one case where she did not take a call, because she felt she would be unable to answer the client's questions; and she had no comfort in making the firm look good. (R. Vol 2 p. 48-50, 128).

Ms. Cummings also denied asking anyone to do her assignments for her. (R. Vol 2 p. 41).

Ms. Cummings was also questioned about a letter from Mr. Tyner dated October 13, 2005, in which Mr. Tyner stated that he accepted her resignation, and she would not be required to work out the 120 day notice. (R. Vol 2 p. 42). She put her response back to Mr. Tyner in a letter dated October 17, 2005, stating that she chose to remain until the end of the 120 day notice period. (R. Vol 2 p. 42-43, 132, 71).

Regarding her termination, Ms. Cummings stated that Mr. Tyner told her in October or early November that she was not meeting expectations. (R. Vol 2 p. 45). Ms. Cummings acknowledged that the Contract did provide for termination without notice if expectations were not met. (R. Vol 2 p. 45). She received a letter dated November 30, 2005, from Mr. Luckett and Mr. Tyner stating the reasons that she was not meeting expectations and informing her about her COBRA rights. (R. Vol 2 p. 46-47, 75).

Ms. Cummings also offered the testimony of Angela Collins on her behalf. (R. Vol 2 p. 134-139). Ms. Collins stated that she was a friend of Ms. Cummings. She would often take Ms. Cummings to work and pick her up after work, so that she could use Ms. Cummings' car. (R. Vol 2 p. 136). Ms. Collins stated that she often took Ms. Cummings to work around 7:45 and picked her up around 5:15. (R. Vol 2 p. 137). Ms. Collins had no knowledge about Ms. Cummings performance of her work. (R. Vol 2 p. 137). She could only state that Ms. Cummings also brought some work home. (R. Vol 2 p. 138). On cross-examination, Ms. Collins stated that Ms. Cummings also sometimes left at 4:30. (R. Vol 2 p. 139).

See Mississippi Employment Security Commission v. Percy, 641 So.2d 1172 (Miss. 1994) (a nurse was terminated for violating the employer's policy requiring that she appropriately complete time sheets); Sojourner v. Mississippi Employment Sec Comm'n, 744 So. 2d 796 (Miss.Ct.App. 1999) (security guard's failure to follow policy prohibiting remaining on property after shift hours constituted misconduct) Hux v. Mississippi Employment Sec. Comm'n 749 So. 2d 1223 (Miss Ct. of App. 1999)(factory worker's failure to follow management's directives not to have contact with a co-employee held misconduct); Young v. Mississippi Employment Security Comm'n, 754 So. 2d 464 (Miss.1999)(employee's refusal to turn in her employee identification badge during a suspension constituted insubordination); Halbert v. City of Columbus, 722 So. 2d 522 (Miss. 1998)(an employee's refusal to submit to a random drug test constituted insubordination); Shavers v. Mississippi Employment Security Commission; 763 So.2d 183 (Miss. COA 2000) (Repeated disregard of job duties after warnings may rise to the level of misconduct.); Kellar v. Mississippi Employment Security Commission; 756 So.2d 840 (Miss. COA 2000)(pattern of errors in job performance and refusal to comply with instructions is misconduct); Reeves v. Mississippi Employment Security Commission; 806 So.2d 1178 (Miss. COA 2002)(failure to clean up parts after repeated instructions is misconduct); Johnson v. Mississippi Employment Security Commission; 767 So.2d 1088 (Miss. COA 2000)(postal workers failure to complete route after being instructed to do so is misconduct); Claiborne v. Mississippi Employment Security Comm'n, 872 So. 2d 698 (Miss. Ct. of App.

2004)(prolonged and persistent failure to perform routine duties, especially after repeated warnings, constitutes misconduct); Mississippi Employment Security Comm'm v. Barnes, 853 So. 2d 153 (Miss. COA 2003)(paint mixer's violation of a safety rule rose to the level of misconduct)

It is apparent from Ms. Cummings's testimony that she did not take the appropriate interest in her job to protect it. The Employer's proof reflects a wilful and wanton disregard for the Employer's interest.

### CONCLUSION

Ms. Cummings failed to comply with the Rules of Court for commencing her appeal. Based upon the facts and law, this Court should find that Ms. Cummings's appeal was untimely filed. Further, the records contains substantial evidence of misconduct due to violation of the Employer's standards of behaviour, such that the Board of Review's Decision should be affirmed on this basis as well. Thus, this Honorable Court should dismiss her appeal as untimely filed; or alternatively, affirm the Board of Review and Circuit Court Decisions based upon a misconduct finding.

Respectfully submitted this the 2<sup>nd</sup> day of <sup>July</sup>~~June~~, 2007.

MISSISSIPPI DEPARTMENT OF  
EMPLOYMENT SECURITY

By: Albert Bozeman White  
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**CERTIFICATE OF SERVICE**

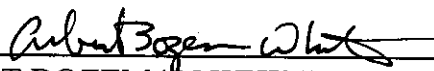
I, Albert Bozeman White, Attorney for Appellee, Mississippi Department of Employment Security, certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing pleading to the following, to-wit:

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

Luckett Tyner Law Firm, Employer  
Attn: Honorable William O. Luckett, Jr.  
Post Office Drawer 1000  
Clarksdale, MS 38614-1000

Honorable Joseph Loper  
Circuit Court Judge, Choctaw County  
Post Office Box 34  
Ackerman, MS 39735-0034

THIS, the 2nd day of <sup>July</sup>~~June~~, 2007. <sup>HBW</sup>

  
ALBERT BOZEMAN WHITE