IN THE SUPREME COURT OF MISSISSIPPI

COPY

CAUSE NO. 2007-CC-433

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COURT OF APPEALS

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY — PLAINTIFF/APPELLANT

VS.

JOHN D. JOHNSON II
And GREENVILLE PUBLIC SCHOOLS — DEFENDANT/APPELLEES

BRIEF OF THE APPELLANT, MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

APPEAL FROM JOHN D. JOHNSON II

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CAUSE NO. 2007-CC-433

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VS.

JOHN D. JOHNSON II And GREENVILLE PUBLIC SCHOOLS — **DEFENDANT/APPELLEES**

CERTIFICATE OF INTRESTED PARTIES

This certifies that the following listed persons have an interest in the outcome of this case.

1. Mississippi Department of Employment Security (f/k/a/ Mississippi Employment Security Commission) "MDES", Plaintiff-Appellant
2. John D. Johnson II, , Defendant-Appellee
3. Greenville Public Schools, Defendant-Appellee
4. Honorable Margaret Carey-McCary, Circuit Judge, Washington County

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STATEMENT OF ISSUE

Whether the lower court's interpretation of the Little case is erroneous and the decision of the Board of Review affirming the Administrative Appeals Officer's decision dismissing the Claimant's appeal should not be affirmed.

STATEMENT OF CASE

I, John D. Johnson II [also hereafter referred to as "Claimant"] was employed as an Auto Body Repair instructor at Greenville Public Schools [also hereafter referred to as "Employer"], in Greenville, Mississippi, from 4 January 99, and ending 16 June 06, My contract with Greenville Public Schools was not renewed because the alleged failure to perform my work up to the standards required by the employer.

On 6 July 06, I filed for unemployment benefits. An MDES interviewer investigated my separation by speaking with the Employer and the Claimant. During these conversations, the Employer stated that I was not doing my job, and the school district elected not to renew my contract. The claims examiner disqualified me from receiving unemployment

benefits for misconduct with work. On 25 July 06, I filed an appeal and a telephonic hearing before the Administrative Appeals Officer [hereafter referred to as "AAO"] was held on 25 August 06. I failed to participate at the hearing. Based upon the record, the AAO found that I abandoned my appeal and therefore, the claims examiner's decision was followed, as to wit:

> This case came on before the Administrative Appeals Officer on appeal by John D. Johnson, II (the claimant) for a telephone hearing scheduled for 25 August 06, at 8:30 a.m.
>
> The Appeals Tribunal Officer mailed a Notice of Hearing to the interested parties on 16 August 06.
>
> After due notice was provided for the date, time, and place of the hearing, no one was available to participate. The claimant-appellant in this case has not given notice of any reason or cause for non-appearance.
>
> The Mississippi Department of Employment Security Appeal Regulation 10 provides that a default ruling may be entered against the appellant for failing, without good cause, to appear at a hearing. Upon abandonment of a request for a hearing or appeal by the party who filed it, the Administrative Appeals Officer may dismiss the appeal or request for a hearing.
>
> A party shall be deemed to have abandoned a request for a hearing if neither the party appealing nor his/her representatives appears at the time and place fixed for the hearing and prior to the hearing such party does not show good cause why he/she or his/her representative cannot appear.
>
> As of the date of this order, the appellant did not appear or show cause for non-appearance. The Administrative Appeals Officer, having determined that the appeal has been abandoned, hereby DISMISSES the appeal.

I appealed to the Board of review and after careful review and consideration; the Board of Review affirmed and adopted the AAO's Findings of Fact and Opinion. Aggrieved, I perfected my appeal of the Board's decision to the Circuit Court of Washington County on 6 October 06. On 22 January 07, the Honorable Margaret Carey-McCray, entered an order overruling the decision of the AAO dismissing the Claimant's appeal and awarded benefits to

me. The Honorable Judge Carey-McCray cites to Little v. Miss. Emp. Sec. Comm'n and Kentucky Fried Chicken. 754 So. 2d 1258 (Miss. Ct. App. 1999), as the basis for her opinion. In her order, Judge Carey-McCray found that the employer had the burden of proof, and therefore the employee was not required to offer rebuttal evidence or an explanation. Judge Carey-McCray ruled that requiring the employee to offer evidence to rebut the employer's allegation of misconduct, was an improper shifting of the burden of proof, and therefore I should be awarded benefits. Aggrieved by this decision, the Mississippi Department of Employment Security filed its appeal to this Honorable Court on 13 February 07.

SUMMMARY OF THE ARGUMENT

I informed a representative at the Employment Agency that my new rural mail deliverer placed my mail as well as a few of my neighbor's mail in the wrong boxes. When I got my mail and read the letter, I did not have time to submit a phone number in advance. I had hoped the number listed on the appeal letter would have been used, but I never received a call. True the Appeals Officer had the right to dismiss the case but the officer also could have requested for a hearing since neither myself or the Greenville Public School representative were present for the hearing.

ARGUMENT

I was wrongfully dismissed from my job, which had nothing to do with my performance. When I got the job in 1999, the Auto Body Repair program was in the delete status. This means that the program was about to be closed. As of 13 June 06, the program was listed in the top five (5) out of the twenty-four (24) programs in the state. In 2002 – 2003 and 2004 – 2005, I was

awarded by the Greenville Public Schools for "Exceeding Expectation" in my job performance. I was selected by Mississippi State's Curriculum Research and Development Department four (4) times as an advisor for the States Auto Body Repair curriculum and my name is on the curriculum that is currently being used this day throughout the state. I had one of the highest percentages in the school of having students passing the state exam that is required for all second year students. My name and picture was used for the entire 2006- 2007 school year as a recruitment tool.

CONCLUSION

I was denied a hearing with the school district and denied a hearing with MDES. I have gone through the Employment Agency/WIN Job center to try to find work but have not been able to find employment of any kind. I have also sought jobs in other areas but have not been successful. The benefits were to be $200 a week, which would at least buy food for my family. I have been pursuing this claim for over a year. The money that I was to receive is far less than the money and time the state is spending to deny me employment insurance benefits. I did everything that was required of me. I know that there are conditions that would change how rules and regulations are applied in each case. That is why you have the appeal process. I contested the decision and the appeal was ruled in my favor. I am not a lawyer and do not pretend to be, but I am an excellent auto body instructor who would not succumb to a supervisor who does not display up most professional behavior, in which I sought help from another federal agency for resolution. I ask that you allow me to receive my benefits because my former employer did not present any evidence that I did not perform my job according to the states

requirements. The representative for the school did not appear because they had no case or cause to terminate my employment.