

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

CASE NO. 2007-CC-00940

FELISHA TILLMON

APPELLANT

VS.

**MISSISSIPPI DEPARTMENT
OF EMPLOYMENT SECURITY**

APPELLEE

APPELLANT'S BRIEF

**FELISHA TILLMON
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(662) 336-9469**

APPELLANT

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VS.

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CERTIFICATE OF INTERESTED PARTIES

The Appellant certifies that the following listed persons have an interest in the outcome of this case. These representations 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) Felisha Tillmon | - Appellant |
| (2) Mississippi Department of
Employment Security | - Appellee |
| (3) Leanne F. Brady, Esq.
P.O. Box 1699
Jackson, MS 39215-1699 | - Attorney for Appellee |
| (4) Hon. Ashley Hines
P.O. Box 1315
Greenville, MS 38702 | - Circuit Judge |

SO CERTIFIED this the 26 day of Dec., 2007.


FELISHA TILLMON
APPELLANT

TABLE OF CONTENTS

PAGE(S)

1. CERTIFICATE OF INTERESTED PARTIES	i
2. TABLE OF CONTENTS	ii
3. TABLE OF AUTHORITIES	iii
4. STATEMENT OF ISSUES	iv
5. STATEMENT OF THE CASE	1
6. SUMMARY OF THE ARGUMENT	2
7. ARGUMENT	3
8. CONCLUSION	5
9. CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

PAGE(S)

- | | |
|--|---|
| 1. <u>Holt v. Miss. Emp. Sec. Comm'n</u> , 724 So.2d 466 (Miss. Ct. App. 1998) | 4 |
| 2. <u>Southwood Door Co. V. Burton</u> , 847 So.2d 833 (Miss. 2003) | 4 |

STATUTES, RULES, ETC.

- | | |
|-------------------------------------|------|
| 1. Miss. Code Ann. Section 71-5-519 | 3, 4 |
|-------------------------------------|------|

STATEMENT OF ISSUES

I. WHETHER APPELLANT'S APPEAL TO THE MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY BOARD OF REVIEW WAS TIMELY FILED

II. WHETHER APPELLANT SHOWED GOOD CAUSE FOR FAILURE TO APPEAR
FOR TELEPHONE HEARING BEFORE ADMINISTRATIVE LAW JUDGE

STATEMENT OF THE CASE

The Appellant, Felisha Tillmon, was employed as a counselor with the Mississippi Delta Community Mental Health in Greenville, Mississippi from August 16, 2005 until August 14, 2006.(Tr. Page 1) Appellant was informed by her supervisor on the date of discharge that she was no longer needed. On the same date, August 14, 2006, Appellant filed an initial claim for benefits with the Mississippi Department of Employment Security. (Tr. pages 1, 3) Said claim was denied and a Notice of Monetary Decision was issued on August 15, 2006. (Tr. Page 4)

Appellant submitted a letter on September 2, 2006 protesting the decision denying her unemployment benefits. A Notice of Telephone hearing before an Administrative Appeals Officer was issued on September 28, 2006. (Tr. pages 5, 6) A Decision of the Administrative Law Judge was issued on October 5, 2006 dismissing Appellant's appeal and determining that the appeal had been abandoned since Appellant did not appear. (Tr. pages 8-9). On October 8 and 17, 2006, Appellant submitted letters to Appellee stating that she had not received the Notice of telephone hearing and requesting that another hearing be scheduled. Said request was denied by letter to Appellant on October 23, 2006. (Tr. pages, 10,13, 14)

On or about October 30, 2006, Appellant filed an appeal to the Mississippi Department of Employment Security Board of Review from the decision of the Administrative Law Judge dismissing her appeal and denying request for rehearing. The Board of Review issued a Decision dated November 30, 2006 dismissing the appeal and finding that it was filed more than 14 days after the decision of the Administrative law Judge on October 5, 2006. (Tr. pages 18-19) Said Decision was affirmed by Order of the Circuit Court of Washington County, Mississippi on May 9, 2007.

SUMMARY OF ARGUMENT

The Decision of the Administrative Law Judge was issued on October 5, 2006. However, Appellant immediately submitted her request for rehearing on October 8, 2006 stating as good cause that she did not receive the notice of telephone hearing that had been issued on September 28, 2006. This request for rehearing was denied by letter dated October 23, 2006. Appellant then filed an appeal to the Board of Review on October 30, 2006, within 14 days of the final decision denying the rehearing. Appellant's appeal to the Board of Review was, therefore, timely filed.

Since the Board of Review determined that the appeal was not timely filed within 14 days of the decision of the Administrative Law Judge, it never made a determination of whether the Appellant had shown good cause for a rehearing on her claim. Appellant's appeal was timely filed, as discussed above, and this issue should have been considered by the Board of Review. Appellant submits that good cause was shown for her failure to appear for the administrative hearing, and that she is entitled to unemployment benefits on the claim filed herein.

ARGUMENT

I. WHETHER APPELLANT'S APPEAL TO THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY BOARD OF REVIEW WAS TIMELY FILED

Pursuant to Miss. Code Ann. Section 71-5-519, the parties shall be given a "reasonable opportunity" for fair hearing on the initial or amended determination of a claim for unemployment benefits. The Decision of the Administrative Law Judge, issued in this case on October 5, 2006, provides :

"... if neither you nor your representative attended your hearing, you may file a written request with the Administrative Law Judge for a rehearing within the aforesaid fourteen(14) days. Your request should state the reason you failed to attend. The Administrative law Judge will determine if good cause exists to grant a rehearing.
(Tr. pages 8-9)

After the Decision of the Administrative Law Judge was issued on October 5, 2006, Appellant submitted a letter dated October 8, 2006 stating that she did not receive the notice of the telephone hearing until October 7, 2006. A second letter dated October 17, 2006 was sent by Appellant to Appellee requesting a rehearing which was stamped received on October 19, 2006. (Tr. pages 10, 13) Both of these letters were filed with Administrative Law Judge within fourteen days of the Decision of October 5, 2006. The Administrative Law Judge issued a Decision on October 23, 2006 denying the request for rehearing and stated the following:

" If you wish to file further appeal from the Administrative Law Judge's decision dated October 5, 2006, you will have 14 days from the date of this letter to do so.
(Tr. page 14)

Based on the date of the final Decision of the Administrative Law Judge denying the said request for rehearing on October 23, 2006, Appellant's 14 days to appeal would have extended until November 7, 2006. The appeal to the Board of review was filed on October 30, 2006, as stated in its Decision dated November 30, 2006. (Tr. pages 18-19) Consequently, said appeal was timely filed in accordance with the requirements of the Decision of the Administrative Law Judge denying Appellant's request for rehearing. The Decision of the Board of Review was, therefore, erroneous and the Order entered in this cause affirming said Decision should be reversed and set aside. Southwood Door Co. V. Burton , 847 So.2d 833 (Miss. 2003)

II. WHETHER APPELLANT SHOWED GOOD CAUSE FOR FAILURE TO APPEAR FOR TELEPHONE HEARING BEFORE ADMINISTRATIVE LAW JUDGE

Pursuant to Miss. Code Ann Section 71-5-519, notices required on appeals must be actually received, and proof of mailing is not sufficient. Holt v. Miss. Emp. Sec. Comm'n , 724 So.2d 466 (Miss. Ct. App. 1998) After the Decision of the Administrative Law Judge on October 5, 2006, Appellant submitted a letter indicating that the Notice of telephone hearing was not actually received until October 7, 2006. (Tr. page 10) The Administrative Law Judge determined that good cause was not shown and denied Appellant's request for rehearing. (Tr .page 14) Said Decision was contrary to Mississippi law and should be set aside.


The Board of Review never made a determination on Appellant's request for rehearing for good cause since its Decision was based upon the timeliness of the appeal. The Court should, therefore, reverse the Decision of the Administrative Law Judge, or remand this proceeding to The Mississippi Department of Employment Security Board of Review.

CONCLUSION

Appellant timely filed the appeal of the Decision of the Administrative Law Judge, dated October 23, 2006, denying the request for rehearing. The Board of Review determination that said appeal was not timely is erroneous and should be set aside. The Order of the Circuit Court of Washington County should, therefore, be reversed.

Appellant did not actually receive the notice of telephone hearing herein until two days after the hearing. Proof of mailing said notice is not sufficient and good cause for a rehearing was properly established.

Respectfully Submitted,


FELISHA TILLMON
APPELLANT

CERTIFICATE OF SERVICE

I, Felisha Tillmon, certify that I have this day served a copy of the foregoing Appellant's Brief by mailing same in the U.S. Mail, postage prepaid addressed to the following persons:

Hon. Leanne F. Brady
Post Office Box 1699
Jackson, MS 39215-1699

Hon. Ashley Hines
Circuit Court Judge
Post Office Box 1315
Greenville, MS 38702-1315

This the 26th day of December 2007.


FELISHA TILLMON