

**IN THE SUPREME COURT OF MISSISSIPPI
NO. 2007-CC-02236**

**MISSISSIPPI DEPARTMENT OF EMPLOYMENT
SECURITY AND CITY OF CLINTON**

APPELLANTS

VS.

LINDA JOHNSON

APPELLEE

**REPLY BRIEF OF THE APPELLANTS
MISSISSIPPI DEPARTMENT OF EMPLOYMENT
SECURITY AND THE CITY OF CLINTON**

**ON APPEAL FROM THE CIRCUIT COURT OF
HINDS COUNTY, MISSISSIPPI**

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TABLE OF CONTENTS

	PAGE
Table of Contents	i
Table of Authorities	ii
Argument	1
Conclusion	3
Certificate of Service	4

TABLE OF AUTHORITIES

CASES

Page(s)

Acy v. Miss. Employment Sec. Comm'n,
2007 WL 334690 (Miss. App. Feb. 6, 2007)..... 1

Allen v. Mississippi Employment Sec. Comm'n,
639 So.2d 904 (Miss. 1994)..... 2

Foster v. Miss Employment Sec. Comm'n,
632 So. 2d 926 (Miss. 1994)..... 2

Gore v. Miss. Employment Sec. Comm'n,
592 So. 2d. 1008, 1010 (Miss. 1992)..... 2

Statutes

Miss. Code Ann. Section 71-5-531 (Rev. 1995) 1

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ARGUMENT

Despite the arguments contained in Appellee's Brief, the Circuit Court simply substituted its opinion for that of the Employment Security Commission. The guideline of §71-5-531, in essence, requires that the decision of the Board of Review (R-160) upholding the decision of the Administrative Law Judge (R-137-139) be affirmed. The cases relied on by both Johnson and the Employment Security Commission/City of Clinton are essentially the same. The real issue is whether substantial evidence supported the decision of the Employment Security Commission. The mere fact that the parties can use the same cases to take opposite positions demonstrates that Johnson should be denied benefits.

Nothing in the Circuit Court's Order refutes the factual findings of the Employment Security Commission. Therefore, the decision should have been upheld by the Circuit Court.

The cases relied upon by Johnson in her Brief are not conclusive, but clearly open to interpretation. Johnson argues that she never had the ability to do her job; and thus her disregard of her job duties should not be considered willful and wanton. However, the cases cited by Johnson's Brief are distinguishable. Acy v. Miss. Employment Sec. Comm'n, 2007 WL 334690 (Miss. App. Feb. 6, 2007) involved an isolated incident of misconduct.

Gore v. Miss. Employment Sec. Comm'n, 592 So. 2d. 1008, 1010 (Miss. 1992) involved whether Gore's discussion of salary or bonuses with other employees after instructions not to do so constituted insubordination. The Court in Gore simply held that a single violation of an instruction did not meet the definition of insubordination, which requires repeated and continuous violation of a reasonable directive. In Allen v. Miss. Employment Sec. Comm'n, 639 So. 2d 904 (Miss. 1994) and Foster v. Miss Employment Sec. Comm'n, 632 So. 2d 926 (Miss. 1994), the Court held that those persons' failure to perform up to standards were isolated incidents of ordinary negligence, or ineptitude.

The telephonic testimony clearly established the relevant incidents in this case, all of which lead to Johnson's termination. These facts constitute substantial evidence supporting the Employment Security Commission's finding of misconduct. The Conclusion is justified in finding that Johnson did what was alleged, and that her continued failure to follow the Employer's receptionist duties and assignments, after warnings, constitutes misconduct, pursuant to Employer standards of behavior, and Mississippi Unemployment Compensation Law. The Circuit Court should have accepted the Board's Findings of Fact, since there was no fraud, and the facts supported the Board's conclusion. Nothing in the Order supports the Circuit Court's overturning the decision of the Board of Review.

The Order of the Circuit Court which reversed the Employment Security Commissions decision was prepared by Johnson's counsel. It sets out no basis for the reversal but simply substitutes the Opinion of the Circuit Court for that of the Employment Security Commission. The Order ignores the findings of the Administrative Law Judge (upheld by the Board of Review) which recites a long history of Linda Johnson's failures and concludes that such misconduct warranted a disqualification of benefits. (See Appellants' Brief at pages 2-4) There is no finding in the Order that fraud existed or that the correct law was not applied. Absent such findings, the Circuit Court was obligated to uphold the decision of the Employment Security Commission.

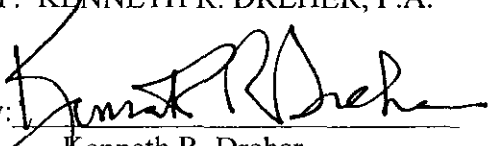
CONCLUSION

This Court should reverse the Circuit Court's Order and uphold the finding of the Mississippi Department of Employment Security. This Court should further order that Linda Johnson repay the benefits to which she was not entitled under the unemployment law.


Respectfully submitted, this the 19th day of September 2008.


MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY COMMISSION
and CITY OF CLINTON

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CERTIFICATE OF SERVICE

I, Kenneth R. Dreher, one of the Attorneys for Appellants, Mississippi Department of Employment Security Commission and City of Clinton, certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Brief of Appellant, City of Clinton to the following:

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Honorable W. Swan Yerger
Circuit Court Judge
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This the 19th day of September 2008.



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