

IN THE COURT OF APPEALS OF MISSISSIPPI

NO.2007-WC-00810

MARY ELLEN BOULDIN

CLAIMANT/APPELLANT

VERSUS

MISSISSIPPI STATE DEPARTMENT OF HEALTH

EMPLOYER/APPELLEE

AND

**MISS. STATE AGENCIES WORKERS'
COMPENSATION TRUST**

CARRIER/APPELLEE

REPLY BRIEF OF APPELLANT

**APPEALED FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT
OF TALLAHATCHIE COUNTY, MISSISSIPPI
CAUSE NO. CV-2007-02-LT2**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
I. ARGUMENT	1
II. CONCLUSION	2
CERTIFICATE OF SERVICE	3

TABLE OF AUTHORITIES

Description:	<u>Page</u>
<i>Total Transp, Inc. of Miss. v. Shores,</i> 2007 WL 2729022 (Miss. 2007)	1, 2

IN THE COURT OF APPEALS OF MISSISSIPPI

REPLY BRIEF OF APPELLANT

I.

ARGUMENT

The Mississippi Supreme Court in a recent opinion has reiterated when an employee is “acting within the course and scope of his employment”. *Total Transp, Inc. of Miss. v. Shores*, 2007 WL 2729022 (Miss. 2007). As previously stated in Appellant’s Brief, Appellant Bouldin is a traveling employee, and as a traveling employee, her injuries are compensable. “A traveling employee remains in the course of employment during breaks to stop and eat, such activity being reasonably incidental to employment as a traveling employee.” *Shores*, 2007 WL 2729022, at *2 (emphasis added) (citing *Total Transp., Inc.*, 2006 Miss. App. LEXIS 874, at *25-26 (dissent)). The Court found Mr. Shores’ activity to be more than a “mere dinner break” and that he was “not acting reasonably incident to employment”. *Id.* at *3. In analyzing whether or not an injury is compensable, the Court quoted “that in order for a claim to be compensable, there must be some causal connection between the employment and the injury. . . . This causation may be minimal or even ‘reasonably incidental’ to the employment, including ‘such personal pursuits as cleaning teeth, smoking and procuring tobacco, and going to the telephone’ ”. *Id.* at *5 (internal citations omitted).

Although, the Court did not find Shores’ activity compensable, the Court’s reasoning is instructive in the present case. Unlike Shores’ who logged off-duty from his trucking job with no intentions of returning to duty, went to a bar, and drank several drinks, Appellant Bouldin, remained in the course of her employment at all times. Appellant Bouldin merely went on an activity reasonably incidental to her employment which required her to travel to and from work in Sumner. Appellant Bouldin was no more than a dinner break. A causal connection exists between Appellant Bouldin’s employment and her injury. Appellant Bouldin’s employment requires her to be in

Sumner, and as the Court has noted, a traveling employee who is injured while on a personal pursuit reasonably incidental to their employment, should receive compensation for any injuries occurring during this time. For these reasons, together with those stated in Appellant's Brief, the opinion of the Circuit Court affirming the Full Commission's Order should be reversed

II.

CONCLUSION


The opinion of the Circuit Court affirming the Full Commission's Order should be reversed. The Order finding Dr. Bouldin's injuries not to arise out of and in the course of her employment is contrary to the facts of this case and the case law which establish that Dr. Bouldin was a traveling employee for the Mississippi State Department of Health. Dr. Bouldin's injuries are compensable under the existing case law regarding whether a traveling employee's injuries arise out of and in the course of employment. Accordingly, the opinion of the Circuit Court should be reversed, and the Appellant/Claimant, Mary Ellen Bouldin, respectfully requests this Court to find that she was acting within the course and scope of her employment and that her injuries are compensable at the maximum allowable rate.

THIS, the 9th of November, 2007.

Respectfully submitted,

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By: 

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CERTIFICATE OF SERVICE

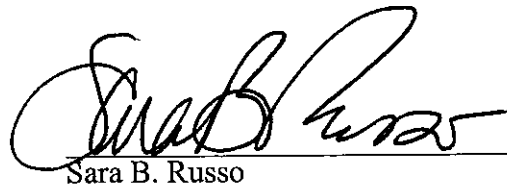
I, Sara B. Russo, do hereby certify that I have this day faxed a true and correct copy of the foregoing Appellant's Reply Brief to:

Honorable Ann H. Lamar
Circuit Court Judge
P.O. Box 249
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THIS, the 9th of November, 2007.



Sara B. Russo