

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

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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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 representations are made in order that the Justices of this Court may evaluate potential disqualifications or refusal.

1. The Honorable Linda A. Thompson, Administrative Law Judge;
2. The Honorable Ann H. Lamar, Circuit Court Judge;
3. Ralph E. Chapman, Esq. and Sara B. Russo, Esq. of Chapman, Lewis, & Swan, counsel for Claimant/Appellant;
4. Robert S. Upshaw, Esquire of Upshaw, Williams, Biggers, Beckham & Riddick, LLP, counsel for Carrier/Employer/Appellees.

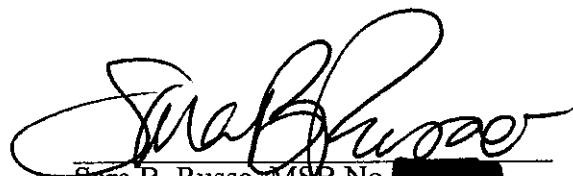

Sara B. Russo, MSB No. [REDACTED]

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IN THE COURT OF APPEALS OF MISSISSIPPI

BRIEF OF APPELLANT

I.

STATEMENT OF ISSUE

Is the Circuit Court's Order affirming the Opinion of the Full Commission of the Workers Compensation Commission supported by Mississippi case law?

II.

STATEMENT OF THE CASE

This appeal arises from an appeal of the Full Commission of the Workers Compensation Commission affirming the order of the Administrative Law Judge dated December 6, 2006. (R. 5-21). The Circuit Court of Tallahatchie County, Mississippi for the Second Judicial District affirmed this decision on April 11, 2007. (R. 284-85). On or about June 25, 2005, the Appellant/Claimant Dr. Mary Ellen Bouldin ("Dr. Bouldin") filed a petition to controvert alleging that she had been injured during the course and scope of her employment with Mississippi Department of Health when she was struck by a vehicle. (R. 4). The petition was answered by Mississippi State Department of Health. After discovery was conducted, a hearing was held on or about January 19, 2006 before the Honorable Linda A. Thompson, Administrative Law Judge.

By Order entered on August 31, 2006, the Administrative Law Judge found that Bouldin's injuries did not occur while she was in the course and scope of her employment. (R. 5-21). Appellant/Claimant, Mary Ellen Bouldin, appealed that order to the Full Commission who affirmed the Administrative Law Judge's Order. (R. 22). Claimant Bouldin appealed that Order to the Second Judicial District of the Circuit Court of Tallahatchie County, Mississippi, and Circuit Court Judge, Ann H. Lamar, affirmed the Order of the Mississippi Workers' Compensation Commission. (R. 284-85). As shown below, the Order of the Administrative Judge and the Full Commission and the Order of the circuit court should all be overruled as there is Mississippi case law, as well as other

persuasive law, that defines an employee like Bouldin as a traveling employee, and when Bouldin's activity of walking during her lunch break is viewed as "a whole", her injuries did occur while she was in the course and scope of her employment.

III.

STATEMENT OF FACTS

Both parties stipulated to the facts in this case and submitted to the Commission a Stipulation of Facts. (R. 218-21).¹ At the time of the subject accident, the Appellant/ Claimant, Dr. Mary Ellen Bouldin, an adult resident citizen of Clarksdale, Coahoma County, Mississippi, was employed as a physician senior for the Mississippi State Department of Health, and was working at the Tallahatchie County Health Department in Sumner, Mississippi. (R. 222-23). Prior to and at the time of the accident, Dr. Bouldin performed physician services for Coahoma County, Quitman County, Panola County, Tunica County and the Second Judicial District of Tallahatchie County in Sumner, Mississippi at the state health departments. (R. 218-21). Dr. Bouldin worked a set weekly and monthly schedule, rotating between the above set forth health departments. Dr. Bouldin worked out of Clarksdale, Mississippi, her home base, approximately eleven days per month and traveled from Clarksdale approximately nine days per month. *Id.* In the course of her employment, Dr. Bouldin traveled to Tunica, Mississippi, approximately two times per month; Marks, Mississippi approximately four times per month; Sumner, Mississippi approximately two times per month; and Batesville, Mississippi approximately one time per month. *Id.* Clarksdale, Mississippi is approximately forty-two miles round trip from Dr. Bouldin's job location in Sumner, Mississippi. *Id.* At the time of the accident, Dr. Bouldin was in Sumner, Mississippi because of her employment.

Dr. Bouldin received reimbursement for her mileage from the Coahoma County Health Department to the other county health departments based on these other county health departments being a temporary place of work, as defined in the State Travel Policy Rules and Regulations (R.

¹General Exhibit #16 was inadvertently omitted from the Record and is attached hereto as an Appendix.

226-76; Appendix). A temporary place of work is defined as "any location at which the employee performs services on an irregular or short-term (i.e., generally a matter of days or weeks) basis, but may be for a longer period of time. State employees traveling on official business will be reimbursed authorized and documented expenses between home and the temporary place of work." See Appendix.

Dr. Bouldin's hours of work were 8:00 a.m. to 5:00 p.m. daily. (R. 219). Dr. Bouldin was paid a monthly gross salary which was based on an eight hour work day / forty hour work week. *Id.*

Dr. Bouldin's eight hour work day included her travel time from Clarksdale to and from the other health departments she worked on a given date. *Id.* As a matter of right, Dr. Bouldin was entitled to a one hour lunch break, which was usually taken after all the patients had been seen, and she was not paid for her lunch break. *Id.* Dr. Bouldin was entitled to leave the premises for her lunch break. *Id.*

The subject accident occurred while Dr. Bouldin was taking a walk on her lunch break in the city streets of Sumner, Mississippi. *Id.* During her lunch break, a motor vehicle struck her, severely injuring her. *Id.* The accident occurred approximately forty yards north of the health department premises, as shown on the accident report. (R. 224). There is a worn path from the premises of the health department to the street where Dr. Bouldin was injured, and this path runs between the City Hall/firehouse and a house which are north of the premises of the health department. (R. 220). The door on the northwest side of the health department is to the left of the path/sidewalk (as you approach the health department) as shown on the photographs. (R. 277-281). When Dr. Bouldin left the health department for lunch, she left through this rear door on the northwest side of the building. (R. 220).

As noted on the accident report, the accident occurred approximately at 1:49 p.m. (R. 282). On the day of the accident, Dr. Bouldin broke for a late lunch sometime after 1:00 p.m. because of the patient load. (R. 90). While in Sumner for her job, it was part of Dr. Bouldin's activities to take a short walk during lunch prior to her eating her lunch. (R. 90, 96). She was typically absent for

a short period of time, 15 to 35 minutes, which corroborates the evidence of her return. (R. 97).

IV.

SUMMARY OF THE ARGUMENT

The opinion of the Circuit Court affirming the Opinion of the Full Commission should be reversed. Appellant/ Claimant's, Dr. Mary Ellen Bouldin, injuries do arise out of and in the course of her employment. "[W]orker's compensation law is to be liberally and broadly construed, resolving doubtful cases in favor of compensation so that the beneficial purposes of the act may be accomplished". *Financial Institute Ins. Serv. v. Hoy*, 770 So. 2d 994, 997 (Miss. App. Ct. 2000).

V.

ARGUMENT

Based upon the facts, Dr. Bouldin is a traveling employee. An employee is covered from the time she leaves home until such time as she returns if her business or work necessitates travel. See *Hoy*, 770 So. 2d at 998. A traveling employee is considered to be in the course and scope of his employment "[i]f the work of the employee creates a necessity of travel . . . though he is serving at the same time some purpose of his own". *Id.* The activity of a traveling employee "is not to be lifted from the perimeters of his employer's mission and viewed 'in isolation' but must be viewed in its context 'as a Whole' ". *Id.* at 999. An example of a compensable injury for a traveling employee is "when a traveling man slips in a street or is struck by an automobile between his hotel and a restaurant, the injury has been held compensable, even though the accident occurred on a Sunday evening, or involved an extended trip occasioned by employee's wish to eat at a particular restaurant". *Id.* (citing *Smith & Johnson, Inc. v. Eubanks*, 374 So.2d 235 (Miss. 1979)). Some of these compensable injuries include injuries that occurred during a personal comfort activity such as eating, and Mississippi courts have found personal comfort activities to arise out of employment. Personal comfort includes activities such as cleaning teeth, changing clothes for purposes of personal mission after work, drinking water and taking refreshment. *Collins v. Caledonia Manuf. Co.*, 115 So.2d 672 (Miss. 1959). Benefits for injuries sustained during such activities are awarded on the theory that the activity, while not a necessity of employment, is reasonably incidental to employment.

Id. Dr. Bouldin's walk was reasonably incidental to her employment. Dr. Bouldin's work required her to travel away from her home base in Clarksdale, Mississippi to other health departments, including the health department in Sumner, Mississippi. Contrary to the Administrative Judge's Order, Dr. Bouldin is not a commuting employee. Unlike the other employees at the health department in Sumner, Dr. Bouldin was receiving reimbursement for her travel. Dr. Bouldin was paid differently due to her position / title and her job responsibilities.

The Oregon Court of Appeals recognized that an injury occurring during the lunch hour for a traveling employee is compensable. *See Pacific Power & Light v. Jacobson*, 854 P.2d 999, 1001 (Or. Ct. App. 1993). The Oregon court recognized that although an employer has no control over his employee while on his lunch break, "the employer contemplated that claimant would carry out ordinary comfort activities at the location where he was working and thereby anticipated the risk of an injury that might occur in the context of ordinary comfort activities". *Id.* The Oregon court also noted that it would be inconvenient for the employee to drive all the way home for a one-hour lunch break. *Id.*

Dr. Bouldin's injuries occurred within the course and scope of her employment. Her work requires her to travel and she would not have been in Sumner, Mississippi, but for her job. Further, Dr. Bouldin received reimbursement for her travel expenses on the basis that Sumner, Mississippi was a temporary work place. Since Dr. Bouldin's business necessitated travel, she is covered from the time she leaves home until she returns. Also, it would be impossible for Dr. Bouldin to go home to eat or to walk or to perform any other comfort activity at home within the allotted time for lunch. Dr. Bouldin's work required her to be at Sumner, Mississippi on the day of the accident and she had to stay within that vicinity. Therefore, injuries occurring during her lunch hour are covered, as long as it is reasonably incidental to her work. Dr. Bouldin's activities of eating and walking are personal comfort activities, and as such, it benefits her employer by allowing her to refresh her mind to prepare herself for the remainder of her work.

In applying the test, as noted by the court in *Hoy*, Dr. Bouldin's injuries are compensable

since her work created the necessity for travel to Sumner. As further noted by the test, if her work creates a necessity of travel, as it does, then she is in the course of her employment, though she is serving at the same time some purpose of her own. The ultimate necessity of Dr. Bouldin's journey was to do business for the Mississippi Department of Health, which as *Hoy* states, makes activities that are private in nature covered within the scope of Dr. Bouldin's employment.

As noted by the photographs and accident report, Dr. Bouldin's accident occurred near her place of employment, and the evidence implies that she was returning to the county health department via the well-worn path. Even if she arguably deviated from the business of her employer, the evidence supports that she had returned to her employer's business before she was injured. See *Houston v. Minisystems, Inc.*, 806 So. 2d 292 (Miss. Ct. App. 2002). This Court can certainly take notice of her well documented habit, routine and custom. Miss. R. Evid. 406. The court in *Houston* refused to draw a fine line regarding what distance an employee had to be within before finding that she had returned to her employer's business. *Houston*, 806 So. 2d at 294. In *Houston*, although the employee was not on a direct business route when she was killed, the court found it to still be compensable because no evidence proved that she was not returning to her office. Similarly, the employer has provided no evidence to prove that Dr. Bouldin was not returning to work, and clearly her habit, routine and custom establishes the fact she was returning.

Additionally, Dr. Bouldin's injuries are compensable under the threshold doctrine. See *Stephney v. Ingalls Shipbuilding Div., Litton Sys., Inc.*, 416 So. 2d 963 (Miss. 1982). A hazard is created by the well-worn, foot access path from the health department to the gas station, and the foot access path is closely associated with the premises of the health department building since the path leads from the rear door of the building to a point near the gas station.

VI.

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 24th of September, 2007.

Respectfully submitted,

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By: 
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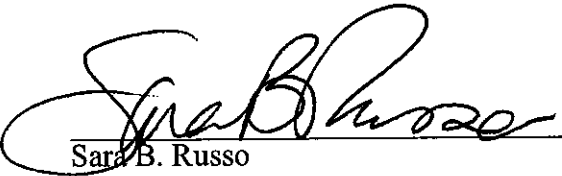
CERTIFICATE OF SERVICE

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

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Harris F. Powers, III, Esq.
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Ms. Barbara Adams
Ms Worker's Compensation Commission
Post Office Box 5300
Jackson, MS 39296-5300

THIS, the 24th of September, 2007.


Sara B. Russo

STATE TRAVEL POLICY RULES AND REGULATIONS



July 1, 2004

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100.

INTRODUCTION

Section 25-3-41, Mississippi Code of 1972, establishes guidelines for travel reimbursement of officers and employees of the State of Mississippi, and of any department, institution, board or commission thereof. It also provides that the State Department of Finance and Administration shall promulgate rules and regulations to effectuate economies for all expenses authorized under this section. All rules and regulations contained herein apply to all state officers and employees. The provisions governing meal expense reimbursement applies to officers and employees of all other political subdivisions of the State as well as state officers and employees.

This handbook is intended to serve as a quick reference for the provisions of Section 25-3-41 of the Mississippi Code and other relevant statutes, as well as rules and regulations adopted by the State Department of Finance and Administration affecting all areas of reimbursable state travel.

NOTE: State Departments and political subdivisions are authorized to supplement these regulations providing the requirements set forth herein are not exceeded and any such supplement does not constitute deviation from provisions of law on allowable reimbursements. State Departments and political subdivisions must ensure that adequate internal control is maintained over travel. State departments are responsible for providing a copy of the State Travel Regulations and their department supplement, if any, to the employee or individual traveling on official business for the State of Mississippi. State travel regulations are also contained in the Mississippi Agency Accounting Policies and Procedures (MAAPP) Manual, Section 13.

ISSUED BY:

DEPARTMENT OF FINANCE AND ADMINISTRATION

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101. DEFINITIONS

1. **COMMUTING** - travel by a state officer/employee between the employee's official residence, and official duty station or other regular place of work. State employees will not be reimbursed for expenses when traveling between home and any regular place of work.
2. **OFFICIAL RESIDENCE** - the city, town, or other location where an employee maintains a residence which is used as a primary domicile by the officer/employee. Determination by the agency head or authorized designee regarding an employee's residence is to be based on items such as voter registration, ownership, or long-term rental of a personal residence, and the permanent address carried in the officer/employee's personnel file.
3. **OFFICIAL DUTY STATION** - the city, town, or other location where the employee's primary office is located, or the city, town or location where the employee's primary work is performed on a permanent basis. If the employee regularly works in two or more areas, his/her official duty station shall be where the primary place of work is located. The primary place of work should be determined by the agency head or authorized designee based on total time ordinarily spent working in each area and the degree of business activity in each area.
4. **TRAVEL STATUS** - the official status of an employee when away from the employee's Official Duty Station and Official Residence on official state business. The employee who works in two or more offices, or regular places of work, may claim mileage reimbursement to travel from one office or regular place of work to another place of work, but not between either regular work site and home, regardless of the distance of the commute. NOTE: An employee is not in travel status and shall not receive lodging nor meal reimbursement while at his/her Official Duty Station. Reimbursement will continue to be allowed for other approved and documented expenses incurred during any authorized meeting/workshop/conference held in the official duty station, not including meals and lodging.
5. **REGULAR PLACE OF WORK** - is any location at which the State employee works or performs services on a regular basis. There may be more than one regular place of work as in the example given by IRS: A doctor going between his residence and one or more offices, clinics, or hospitals at which he works or performs services on a regular basis is defined as commuting. State employee's will not be reimbursed for such expenses when traveling between home and any regular place of work.
6. **TEMPORARY PLACE OF WORK** - is any location at which the employee performs services on an irregular or short-term (i.e., generally a matter of days or weeks) basis, but may be for a longer period of time. State employees traveling on official business will be reimbursed authorized and documented expenses between home and the temporary place of work.

102. ADMINISTRATION

The State Travel Branch is established in the State Department of Finance and Administration, Office of Purchasing and Travel to administer the State Travel Management Program.

1. The STATE TRAVEL DIRECTOR will:

- a. Oversee the operations of the Travel Management office;
- b. Monitor contractor performance and agency compliance;
- c. Work with State departments, boards, commissions and institutions to ensure the effective and efficient operation of the Travel Management Program;
- d. Serve as liaison with State departments, boards, commissions and institutions for the appropriate resolution of problems and complaints; and
- e. Provide informational material concerning the State Travel Management Program to department travel coordinators and employees.

2. DEPARTMENT DIRECTORS will:

- a. Be responsible for ensuring compliance with Section 25-3-41, Mississippi Code of 1972, by providing adequate internal control over employee travel; and
- b. Designate an existing employee(s) to serve as a department travel coordinator(s) within the organization for the purpose of monitoring employee compliance with these regulations.

3. DEPARTMENT TRAVEL COORDINATORS will:

- a. Monitor employee compliance in accordance with these rules and regulations;
- b. Provide assistance to employees concerning questions and problems with travel arrangements and reimbursement;
- c. Serve as liaison with the State Travel Director's office; and,
- d. Book airline/railway travel, car rentals, and lodging reservations for that department's employees through one of the state contract travel agencies or by other methods. This is not meant to indicate that no one else can make such arrangements, but rather to suggest that it is easier to monitor employee compliance when travel is handled by one person.

103. TRAVEL ADVANCES

Travel advances for out-of-state travel are authorized by Section 25-1-79, Mississippi Code of 1972, if approved by the Executive Director of the department. (A travel advance for State officers and employees is never given for in-state travel) An advance will generally not be issued earlier than 10 days before the travel is to commence. As soon as the employee returns from the travel, a travel expense voucher must be completed and the advance settled. This is to be done whether the employee's expenses were more than the advance, less than the advance, or the same as the advance.

The State Department of Finance and Administration has the authority to withhold payment of further claims for expense reimbursement if any advance has not been settled. (Section 25-1-81, Mississippi Code of 1972.) If an advance is not settled within 10 working days after the end of the month in which travel was completed, the employee's paycheck WILL be held until the debt to the state is resolved. Only one travel advance shall be outstanding at one time, additional advances require DFA-Bureau of Financial Control (BFC) approval. Travel Authorization Form (MAAPP form 13.20.20), a combined form, is included at the end of this manual.

104. TRAVEL REIMBURSEMENT

These regulations establish a State Travel Management Program under the jurisdiction of the State Department of Finance and Administration to ensure fairness and consistency in the application and administration of travel expense reimbursement and to reduce and control the State's costs related to all components of official state business travel.

An employee traveling on official state business is expected to exercise the same care incurring expenses as would a prudent person traveling for personal reasons. Travel for business should be conducted at a minimum cost for achieving the success of the mission. In order to receive reimbursement of travel expenses, travelers SHALL request air/rail/bus, hotel and rental car reservations as far in advance as possible and shall utilize the lowest logical rate available. Travel in first class or business class is not a reimbursable expense.

House Bill 1488-Effective July 1, 2002 allows city and county officers and employees to utilize the State of Mississippi Travel Agency Contracts administrated by the Office of Purchasing and Travel. In addition, this bill allows state agency employees to make reservations for ALL travel arrangements, either through one of the State Contract Travel Agencies or by other methods. The amount paid for airline transportation for any state officer or employee, whether the travel was arranged by a State Contract Travel Agency or was arranged otherwise, shall not exceed the amount specified in the state contract established by the Department of Finance and Administration, Office of Purchasing and Travel, unless prior approval is obtained from the Office of Purchasing and Travel.

Basically, this means the employee has the option of booking flights over the Internet if they can save money. If reservations are made over the Internet or by other methods, a receipt/itinerary must accompany the request for reimbursement.

For all flights which are not booked through one of the contract travel agencies, the state agency should maintain in its files a cost comparison showing the published state contract rate for the specific flights (available at

http://www.mmrs.state.ms.us/Purchasing/Travel/aircraft_transport.pdf) and the fare obtained by other means. A copy of the cost comparison shall be submitted with the employee's Travel Voucher. The cost comparison should show the fare and any issuance cost. We understand that there will be taxes and airport fees attached to the ticket cost but these should be relatively the same using the contract fare or another means. This cost comparison must show a savings. If, for some reason such as restricted schedules, the employee must book a flight at a price in excess of the published state contract rate, the agency must, prior to booking the flight, submit a Waiver Request to the Office of Purchasing and Travel. The Office of Purchasing and Travel will review the request and approve or deny it. If approved, the agency shall maintain a copy of the approved Waiver Request in the appropriate file. A waiver will not be required if the cost comparison shows a savings.

105. TRAVEL EXPENSE REIMBURSEMENT VOUCHERS

1. Included with this booklet is the SPAHRS form to be used by your agency for payment of travel expenses.

2. One state employee should not claim expenses for another state employee.
3. Travel expense vouchers should be typed or completed in ink and signed by the employee.
4. Hotel/motel receipts must be itemized in order to be reimbursed. The hotel bill submitted shall be the original form the hotel provides when the bill is paid, as opposed to a non-itemized Express Check Out form or credit card receipt.
5. Necessary travel expenses do not include personal expense items such as entertainment and trip insurance. American Express provides \$350,000.00 FREE life insurance with each ticket issued to a state employee using the AMEX BTA account or an AMEX Corporate Card. Several of the state contract travel agency vendors offer insurance with tickets as well.

106. TRANSPORTATION

1. TRAVEL ROUTING

- a. Whether by public transportation, privately-owned vehicle, State-owned vehicle, etc., reimbursement will be made for the most direct practicable route.
- b. Business travel and vacation/personal leave may be combined when ALL OF THE FOLLOWING CONDITIONS ARE MET: 1) the primary purpose of the trip is official state business; 2) the employee uses his/her approved leave for the personal part of the trip; 3) the state agency incurs no expenses beyond what it would have incurred had there been no personal travel involved in the trip. If the employee would normally be expected to arrive the day before, or remain in the area of official business overnight and return the following morning, and does so, expenses for either/both night(s) and the appropriate meals will be allowed. The contract travel agency should be advised that the business part of the ticket will be billed to the State and the personal travel part to the employee's personal credit card at the time the airline reservations are made.

2. AUTOMOBILE TRAVEL

- a. Private Automobile used for State business
 1. When travel is by private automobile the total travel expenses reimbursed, including meals and lodging, shall not exceed the cost of the lowest unrestricted air fare unless a complete written justification signed by the employee's Executive Director determines that it is in the best interest of the agency that the employee drive, or that, on comparison of "total driving" and "total flying" expenses, it is less expensive to drive than to fly. If the employee chooses to drive and expenses exceed the cost of the lowest unrestricted air fare, reimbursement will be limited to cost of flying.
 2. Reimbursement for the use of a personal automobile or other private motor vehicle for official state business (includes private airplanes flown by the employee) will be at the same rate that federal employees are reimbursed for using private vehicles for official federal business travel. Effective January 1, 2004, the rate became 37.5¢ per mile. The mileage calculation will change from \$.36 to \$.375.
 3. For the purpose of determining reimbursable driving expenses for travel destinations which have air service, the "total cost of driving" must be compared with the "total cost of flying". This comparison is required only for driving expense reimbursement

computation, and the lowest unrestricted air fare may always be used without further justification.

- a. "Driving total cost" shall include enroute meals, enroute lodging, and the official rate for mileage reimbursement when a private vehicle is used for State business.
- b. "Flying total cost" shall include the lowest unrestricted air fare, any charges for shipping of equipment and/or supplies required at destination, and all required ground transportation at destination, e.g., limo to/from the airport and taxis to/from meeting site. If a vehicle is deemed by the agency head to be required at the destination, then the cost of a rental vehicle will also be included in this total cost for comparison.
- c. In order to be reimbursed for mileage, meals and lodging for approved travel to/from an out of state destination when an employee drives and there exists reasonable air service, the expense vouchers must include a written statement from the agency head SPECIFICALLY making one or the other of the following statements:
 1. "It is less expensive for _____ (employee name) to use his/her private vehicle for travel on _____ (dates) from _____ (origin) to _____ (destination)."
 2. "In my opinion, it is in the best interest of this agency that _____ (employee name) use his/her private vehicle for travel on _____ (dates) from _____ (origin) to _____ (destination)."

NOTE: THIS STATEMENT WILL REQUIRE A COMPLETE JUSTIFICATION BY THE AGENCY HEAD.

EXCEPTION: If the driving expenses will be held to the lowest unrestricted air fare, that fare should be checked and noted that reimbursement is being restricted to that amount, or if it is self-evident that driving is cheaper than flying, such as (to/from New Orleans, Memphis, Mobile, Birmingham), no further authorization is then required. If there is any question as to the lowest unrestricted air fare, or direct mileage totals, call the State Travel Office at 601-359-3647.

4. When two or more employees travel in one private vehicle, only one travel expense at the authorized reimbursement rate per mile shall be allowed. The person claiming reimbursement shall report the names of other State employee passengers. If cost comparison must be made between driving vs flying cost, the cost of flying should be multiplied by the number of passengers and compared to the cost of driving.
- b. Rental Car used for State business
1. When a rental car is used in lieu of a personal automobile for official state business within the state, only the actual cost of the rental car can be claimed for reimbursement when such rental is less expensive than the \$.375 mileage calculation. The Bureau of Financial Control requires that you show the comparison of the total rental car expense to the total mileage expense. Reimbursement for the lesser of the two expenses shall be shown on the travel reimbursement voucher. This reservation should be made by the employee/agency and use of the negotiated contract with Enterprise Rent A Car is required. The State Corporate ID number is TL7970. The use of any other rental car company requires a waiver from the DFA Travel Office—telephone 601-359-3647/fax 601-359-2409.
 2. A mid-sized rental car is normally the largest rental that will be reimbursed. Naturally, there will be occasions for which a larger car will be required in order to carry out the

state's business. A statement from the employee explaining why a larger vehicle was required must accompany any Expense Voucher which includes the rental of vans or luxury vehicles.

3. Charges for rental cars shall be allowed only when there is a demonstrated cost savings, including compensated employee time, over other modes of transportation, such as buses, subway, and taxis, and not for the convenience of the employee. The State WILL NOT reimburse for rental cars obtained for personal use, such as sightseeing or optional travel to/from restaurants, while on official business travel. Only the rental car which is consistent with the size requirements of the business task to be performed will be reimbursed.
4. The car rental contract for all rentals which originate outside the State of Mississippi, for 2004/2005 will be with Budget RentACar. The corporate rate should be checked every time a rental car will be used. The new contract carries a surcharge on one day rentals commencing on Tuesdays or Wednesdays. The Mississippi corporate ID number for Budget is T243900. This number must be used in order to obtain the free Collision Damage Waiver/Loss Damage Waiver insurance coverage offered under the State contract. The contract rental information for Budget Rent A Car is included at the back of this booklet.

We have also negotiated a contract with Enterprise Rent-A-Car for all car rentals which originate within the State of Mississippi. The corporate ID number for Enterprise is TL7970. Enterprise locations and contract rental rates are included at the back of this booklet.

The rental car contracts for 2004/2005 include unlimited mileage and free collision insurance. The option to purchase insurance should always be declined and will not be reimbursed. (See exceptions below.) All rentals require either a corporate or personal credit card. Be prepared to show proper identification when picking up rental vehicle.

5. EXCEPTIONS:

The provisions of the Budget contract apply only to rentals in the continental United States, Alaska and Hawaii with some franchise location exceptions. You will be advised at the time of booking if your rental is not under the contract rate and provisions. It is better, however, to always ask the rental car company at the time of rental if the rental includes CDW/LDW insurance. Remember: American Express no longer provides automatic insurance coverage for rental vehicles for its corporate card holders. YOU MUST ALWAYS BE COVERED BY INSURANCE EITHER PROVIDED BY THE CONTRACT OR BY PURCHASE.

6. REGIONAL PRICE DIFFERENTIALS:

Regional price differentials will be added to the daily rate at several larger cities. The rate quoted by the travel agency will include any applicable differentials.

7. Fill the car with gasoline prior to return. Otherwise you will be charged up to \$2.50 per gallon for a full tank of gasoline even if the tank is 3/4 full when returned.

c. State-owned Vehicle

Actual operating expenses incurred in the use of state-owned vehicles for official travel will be reimbursed on presentation of receipts for gasoline and oil. No mileage reimbursement will be made for State-owned vehicle use.

3. PUBLIC CARRIER (airplane, commercial bus and train)

a. GENERAL

1. Contract Travel Agencies

The Department of Finance and Administration has approved a list of travel agencies to provide travel services for the officers and employees of the State of Mississippi.

This multiple award contract is based on proposals received from various agencies and does include transaction fees. A listing of fees and travel agencies is provided at the back of this booklet.

Each state agency may choose one or more travel agencies to handle its travel requirements. It is our recommendation, that the state agency advise its employees which travel agency(s) is to be used and designate a liaison to work with the travel agency(s).

A new law went into effect July 1, 2002—

House Bill 1488 allows city and county officers and employees to utilize the State of Mississippi Travel Agency Contracts administered by the Office of Purchasing and Travel. In addition this bill allows state agency employees to make reservations for all travel arrangements, either through one of the State Contract Travel Agencies or by other methods. (See page 6 for complete details).

When travel arrangements are handled by a state contract travel agency an itinerary form will be attached to the inside of the ticket jacket which will include all travel confirmations. A copy of this itinerary form must be attached to the expense voucher for reimbursement. Travelers should make every effort to keep their copy of the ticket itinerary/invoice because they will be charged a fee by the travel agency for additional copies.

2. Airline Travel

When an officer or employee on official State business will travel by air, the selection of the departure airport must include the following considerations:

- a. When traveling by regularly scheduled air service, travelers are to utilize their local airport. Use of the local airport is assumed to result in travel costs that are most economical to the State.
- b. The criteria for determining which airport or mode of transportation to use, however, is to be based upon:

1. Travel costs that are most economical to the State. All costs should be considered, i.e., travel, labor, lodging, meals, etc., in making the determination
2. Travel that is more advantageous to the State. For example: (1) time away from the job, (2) business to be transacted enroute, (3) traveler's disability such as required wheelchair use, which precludes use of smaller aircraft because of access difficulties.
- c. In all cases, the least expensive routing will be used. Delays-enroute that will not delay the traveler's arrival at destination by more than 3 hours actual travel time within the same day travel was begun and that result in a substantial cost benefit to the State will be used.
- d. Alternate departure and return dates and times will be proposed to all travelers when they will result in lower fares. It is incumbent upon the traveler to provide information to the travel agent which could result in lower fares. Traveler's preferences will determine flight departure times when travel costs are equal. If, for whatever reason, routing or accommodations other than the most economical are required, the agency travel-authorizing officer may specify alternate routing and accommodations. The state contract travel agencies are not required to enforce State rules and regulations, only to administer them, and will book specified arrangements. A report of all exceptions to policy will be provided by the travel agency to the Office of Purchasing and Travel and subsequently to state agency heads.
- e. Frequent Flyer Program Awards

Any bonus or promotional gratuity received as a result of official state travel shall be used to offset or reduce the cost of subsequent official state travel. Under no circumstances can the traveler keep a bonus or other promotional gratuity so earned for his/her own personal use. As sufficient mileage, earned as a result of State-paid travel, is accumulated, free ticket coupons will be applied for and used to offset official state travel costs. Follow airline procedures to exchange the miles for a ticket.

3. State Contract Air Fare Rules

The current contract fares are available from July 1, 2004 through June 30, 2005. These contract fares are listed inside the back cover of this booklet for your convenience.

Contract fares generally are higher than the lowest penalty fare and we will continue the policy of encouraging the use of penalty fares. They are, however, lower than any published unrestricted fare where an over-Saturday-night stay is not involved.

RULES & REGULATIONS GOVERNING THE USE OF CONTRACT AIR FARES

- a. CONTRACT FARES MAY ONLY BE USED FOR OFFICIAL STATE BUSINESS TRAVEL AND ONLY BY OFFICERS AND EMPLOYEES OF THE STATE.

- b. State travelers will be required to utilize contract flights wherever schedules permit. The State, however, reserves the right to utilize transportation provided by other carriers when:
 - 1. comparable transportation is offered to the general public by another airlines at a fare which is less than the State contract fare;
 - 2. the contract carrier's flights are full;
 - 3. the traveler is handicapped and would have to be hand carried on-board;
 - 4. the traveler's schedule does not permit the use of the contract carrier (requires a memo from the Exec. Dir.).
- c. The contract fares will be available for all tickets purchased over contract routes from July 1, 2004 through June 30, 2005, for travel to be completed no later than July 31, 2005.
- d. Contract fares will apply seven days a week for coach class seats between the scheduled origin and destination for contract city-pairs on the contract carrier, and shall be the highest fare that will be reimbursed for transportation in that market. Lower fares offered to the general public by the contract carrier or by any other carrier shall also be available to the State.
- e. The fare code YCAMS or QCAMS on any flight segment will indicate that a State contract fare has been utilized for that flight segment. Each itinerary/invoice will include one of the following statements: "State contract fare was used," "State contract fare was not used because (1) a lower fare was used, (2) there were no seats on the contract carrier, (3) passenger is handicapped, (4) passenger's schedule did not permit use of contract carrier flights. If statement (4) above is used, a statement from the head of the agency that the employee's schedule did not allow use of the contract carrier schedule must accompany the expense voucher.
- f. The contract fares listed inside the back cover may be purchased through a State contract travel agency only.
- g. If a contract fare between city pairs exists, this fare shall be the most expensive you can use without authorization from the agency/department head. Fares higher than the contract fare require prior approval from the head of the agency.

4. Airline Penalty Fares

- a. The Department of Finance and Administration has adopted the policy that airline penalty fares shall be utilized whenever possible, and that the Department of Finance and Administration's Bureau of Financial Control will honor requisitions for warrants in payment of penalties or administrative fees when business circumstances require that schedules be changed or canceled. Such tickets are non-transferable and you cannot change the name to allow another person to use the ticket. Although the ticket is issued in the employee's name, and only that employee can use it, the ticket belongs to the State.

For travel on or after October 1, 2002 most carriers now require that changes be made and re-ticketed on or before the departure date of each ticketed flight. After the departure date Non-refundable (penalty fare) tickets will have no value.

CERTIFICATE OF SERVICE

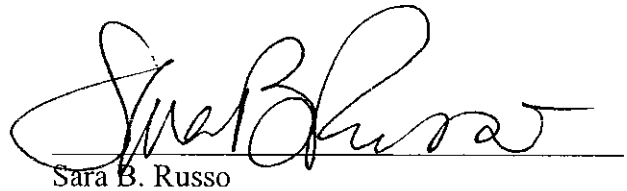
I, Sara B. Russo, do hereby certify that I have this day faxed a true and correct copy of the foregoing Record Excerpts Table of Contents to:

Honorable Ann H. Lamar
Circuit Court Judge
P.O. Box 249
Jackson, MS 39205

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Harris F. Powers, III, Esq.
Post Office Drawer 8230
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Ms. Barbara Adams
Ms Worker's Compensation Commission
Post Office Box 5300
Jackson, MS 39296-5300

THIS, the 27th of September, 2007.



Sara B. Russo