

IN THE SUPREME COURT OF MISSISSIPPI

MELISSA WINTER

APPELLANT

V.

CAUSE NO. 2007-WC-01717-COA


**WAL-MART SUPERCENTER
AND
AMERICAN HOME ASSURANCE COMPANY**

APPELLEES

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons or entities 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. Melissa Winter, Appellant, 701 Martin Street, Tupelo, MS 38804;
2. Wal-Mart Supercenter, Appellee;
3. American Home Assurance Company, Appellee;
4. Honorable Andrew K. Howorth, Circuit Court Judge, Union County, Mississippi,
1 Courthouse Square, Ste. 201, Oxford, MS 38655;
5. John P. Fox, Attorney for Appellant, P.O. Box 167, Houston, MS 38851; and
6. Roxanne P. Case, Attorney for Appellees, P.O. box 13429, Jackson, MS 39236-3429.



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STATEMENT OF THE ISSUES

Did the Workers' Compensation Commission and Union County Circuit Court err when it declined to reopen and reinstate Mrs. Winter's case for a full hearing on the merits under the following facts and circumstances:

1. Mrs. Winter's claim was dismissed for failure to file a completed pre-hearing statement;
2. During the pendency of her claim, Mrs. Winter's original Attorney be came ill and unfortunately passed away;
3. Wal-Mart failed to file its Answer to Mrs. Winter's Petition to Controvert until requested by the Commission;
4. Wal-Mart failed to file a B-31 until more than five (5) months following the request for the same from the Commission;
5. Wal-Mart's B-31 was erroneous in that it represented the last date of paid benefits to or for Mrs. Winter was November 2002, when in fact Wal-Mart paid benefits for and on behalf of Mrs. Winter through July 2004;
6. Mrs. Winter justifiably and to her detriment relied on Wal-Mart's continued payment of benefits via payment of doctor bills and prescription medicines filled by the Wal-Mart pharmacy; and
7. At the time Mrs. Winter's claim was dismissed, Mrs. Winter's medical treatment was continuing and ongoing?

STATEMENT OF THE CASE

This is an appeal from the Union County Circuit Court affirming the Mississippi Workers' Compensation Commission denying Claimant's Motion to Reinstate.

A Petition to Controvert on behalf of Claimant (hereinafter "Mrs. Winter") was received by the Workers' Compensation Commission on July 3, 2002, and an Amended Petition to Controvert was filed on September 23, 2002, both relative to Claimant's back, hip and leg injuries. (RE5-13; R1-9 of the records for the Compensation Commission) Only after a request from the Commission, an Answer was filed by the employer and carrier (hereinafter "Wal-Mart") on October 21, 2002, wherein it was admitted that Mrs. Winter has sustained an injury while an employee and while performing service growing out of and in the course of employment. However, Wal-Mart disputed the extent of Mrs. Winter's injuries and her average weekly wage. (RE14-17; R10-13)

In paragraph 7 of Wal-Mart's Answer, affirmatively set forth was the defense of estoppel, thereby acknowledging the doctrine of estoppel and its appropriate applicability to workers' compensation cases. (RE16, ¶7; R12)

On September 19, 2003, Mrs. Winter filed her second pre-hearing statement with the Commission, asserting that she was ready to proceed to a hearing. (R19-24) Thereafter, on October 23, 2003, Wal-Mart filed its pre-hearing statement. (R25-30)

On November 10, 2003, on the initiative of the Administrative Law Judge, Mrs. Winter's claim was dismissed for failure to file a completed pre-hearing statement. (RE18; R31)

On December 10, 2003, the Commission requested from Wal-Mart the filing of a form B-31, however, the B-31 was not received and filed by the Commission until May 26, 2004.

(RE19; R32)

While Mrs. Winter's case was pending, unfortunately, her original attorney, Mr. Roy Farrell, became ill and died.

Mrs. Winter employed undersigned counsel on September 3, 2004. (RE26; R57) As soon as Mrs. Winter's voluminous file was received, a Motion to Reopen and Reinstate and Place on Docket was filed on her behalf on October 27, 2004. (RE20-25; R33-38) Mrs. Winter filed an Amended Motion on December 8, 2004. (RE38-40; R49-51) An Amended Pre-hearing Statement was filed by Mrs. Winter on March 4, 2005. (RE41-44; R59-62)

On March 9, 2005, the Administrative Law Judge entered an Order denying Mrs. Winter's Motion and Amended Motion to Reopen and Reinstate and Place on Docket. (RE27-28; R63-64) Claimant would note that the hearing relative to her Motion was held via telephone, that is, Mrs. Winters was not present before the Administrative Law Judge to offer testimony. In fact, Mrs. Winters would affirmatively state that to date she has yet been permitted before any Judge on the merits.

From that Order, Mrs. Winter petitioned for a full Commission Hearing, which was held on June 27, 2005. (R65-66) On December 16, 2005, the Workers' Compensation Full Commission entered an Order affirming the order of the Administrative Law Judge. (RE32-37; R82-87) From that Order, Mrs. Winter appealed to the Honorable Circuit Court of Union County, from which issued an Order Affirming the Full Commission. (RE2) Thereafter, Mrs. Winter appealed to this Honorable Supreme Court of Mississippi. (RE3-4)

SUMMARY OF THE ARGUMENT

Mrs. Winter indisputably suffered compensatory work-related injuries on June 30, 2000, and on February 25, 2002. Wal-Mart has admitted these as work-related, compensable injuries.

Fortunately, following Mrs. Winter's first injury on June 30, 2000, she recovered enough to return to work. However, Mrs. Winter was unfortunately never to return to work following her injury on February 25, 2002.

Mrs. Winter attempted to diligently pursue her claim, all the while continuing treatment for her injuries. At all relevant times, a completed pre-hearing statement was and would have been premature. That notwithstanding, Mrs. Winter's claim was promptly dismissed for failure to file a completed pre-hearing statement.

Wal-Mart has throughout been dilatory in filing its required documents. The Commission had to request Wal-Mart's Answer to Mrs. Winter's Petition to Controvert, as well as the filing of the B-31. Wal-Mart did not file the B-31 until over five (5) months after it was requested by the Commission. Even when it was filed, it was incomplete and incorrect in that it states the last benefit payments were in November 2002, when in fact Wal-Mart continued to pay benefits for and on behalf of Mrs. Winter through July 2004.

Applying the theory of estoppel, the spirit of the Workers' Compensation Act, and plain old justice, Mrs. Winter's claim should be reconsidered, reinstated, and finally provided a hearing on the merits.

ARGUMENT

A. Requirement of Form B-31

Relative to the B-31 Form, Miss. Code Ann. §71-3-37(7) states as follows:

Within thirty (30) days after the final payment has been made, the employer shall send to the commission a notice in accordance with

a form prescribed by the commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails so to notify the commission within such time, the commission may assess against such employer a civil penalty in an amount not exceeding One Hundred Dollar (\$100.00). No case shall be closed nor any penalty be assessed without notice to all parties interested and without giving to all such parties an opportunity to be heard.

Rule 17 of the Workers' Compensation Commission Procedural Rules states as follows:

The requirement for the filing of Commission Form B-31, shall be deemed to have been met upon receipt by the Commission of such form, signed by the claimant, provided however, that the form so filed is in accordance with the requirements of section 71-3-37(7) of the Act and contains the information specified therein. In the event Form B-31 is not signed by claimant, the unsigned form shall be filed with the Commission with notice of such filing thereafter given to the claimant by the employer or carrier by certified mail. Should the original or any subsequent Form B-31 be filed that does not furnish all medical or other information required, another Form B-31 containing complete information shall be filed as soon as possible thereafter as provided in section 71-3-37(7).

The Form B-31 was not filed by Wal-Mart until May 26, 2004, i.e., six (6) months AFTER the entry of the November 10, 2003, Order of dismissal, and then only after being requested by the Commission. (RE19; R32)

In pertinent part, Rule 5 of the Workers' Compensation Commission Procedural Rules states: "Failure of the claimant to timely file the prehearing statement **may** result in the dismissal of the case or other sanctions." (emphasis added)

Pursuant to Rule 5, Mrs. Winter's claim was promptly dismissed on November 10, 2003, just about 2½ weeks following Wal-Mart's filing of its pre-hearing statement. However, at the time Mrs. Winter's claim was dismissed, Wal-Mart had not complied with Rule 17 and §17-3-37(7) in filing a Form B-31. In fact, Wal-Mart did not file its Form B-31 until May 26, 2004, and

then only after having been requested by the Commission.

Additionally, Wal-Mart's B-31 was incomplete and incorrect. Wal-Mart's B-31 makes the representation that the last benefit payment was 11/05/02, when in fact Wal-Mart continued to pay medical bills and prescription costs for Mrs. Winter through July 2004. (See Exhibit 1 & 2 attached hereto).

B. The Commission's Application of §71-3-37(7) and Rule 5

As noted above, on November 10, 2003, on the initiative of the Administrative Law Judge, Mrs. Winter's claim was dismissed for failing to file a completed pre-hearing statement. This dismissal was entered without notice to Mrs. Winter that her pre-hearing statement was deficient.

Then on December 10, 2003, the Commission had to request the form B-31 from Wal-Mart. Wal-mart did not file the form B-31 until May 26, 2004, over five (5) months later. That notwithstanding, Wal-Mart was assessed no penalty or consequence whatsoever for its failure to comply with Miss. Code Ann. §71-3-37(7). Specifically, Miss. Code Ann. §71-3-37(7) provides that: "Withing thirty (30) days after the final payment of compensation has been made, the employer **shall** send to the Commission a notice in accordance with the form prescribed by the commission[.]" (emphasis added). Sub-section (7) goes on to provide that: "If the employer fails so to notify the commission within such time, the commission **may** assess against such employer a civil penalty in an amount not exceeding One Hundred Dollars (\$100.00)." (emphasis added).

Rules of the Mississippi Workmen's Compensation Commission, Procedural Rule 5, states in pertinent part: "Failure of the claimant to timely file the pre-hearing statement **may** result in the dismissal of the case **or other sanctions.**" (emphasis added).

Mrs. Winter's case was promptly dismissed without ever having been heard on the merits. This is, of course, the most severe of sanctions for a claimant.

Clearly, the Commission's application of the statutes and rules to Wal-Mart and Mrs. Winter appears on its face to be uneven, in that Mrs. Winter is meted out the severest of sanctions while Wal-Mart is permitted to use the statutory and procedural rule time allocations to their exclusive benefit.

C. Continued Payments by Wal-Mart

Mrs. Winter was obviously diligently attempting to comply with the rule requirement of a completed pre-hearing statement. All the while, she was continuing to receive medical treatment and Wal-Mart was continuing to pay for such treatment, thereby rendering a completed pre-hearing statement premature. Inasmuch as Wal-Mart continued to make medical and prescription payments for and on behalf of Mrs. Winter, as evidenced by the attached Exhibits "1" and "2," this evidence cannot possibly have been unknown or prejudicial to Wal-Mart. It is particularly telling that all of Mrs. Winter's prescriptions were provided by the Wal-Mart pharmacy.

Further, Wal-Mart's Form B-31 makes misrepresentations, in that medical payments and prescription payments continued significantly beyond the represented date of November 5, 2002, causing Mrs. Winter to rely, in good faith and to her detriment, on the actions of Wal-Mart, as clearly evidenced by the posture she is currently in, i.e., having to appeal her case even to the Mississippi Supreme Court/Court of Appeals. That is, Wal-Mart continued to pay medical benefits for and on behalf of Mrs. Winter relative to her work-related injury following the November 10, 2003, Order dismissing Mrs. Winter's claim, and yet subsequently attempts to bar Mrs. Winter's claim pursuant to that order. See Broadway v. International Paper, 982 So.2d

1010 (Miss. 2008) for a holding that the employer's continued payment for prescription drugs tolled the one-year statute of limitations.

D. Estoppel

Black's Law Dictionary, 6th Edition, defines *estoppel*:

"Estoppel" means that party is prevented by his own act from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly. (citation omitted) A principle that provides that an individual is barred from denying or alleging a certain fact or state of facts because of that individual's previous conduct, allegation, or denial. A doctrine which holds that an inconsistent position, attitude or course of conduct may not be adopted to loss or injury of another. (citations omitted)

Estoppel is a bar or impediment which precludes [] denial of a certain fact or state of facts, in consequence of previous [] conduct []. . .

Estoppel is or may be based on []; actual or constructive fraudulent conduct, . . . ; assumption of position which, if not maintained, would result in injustice to another; . . . ; conduct or acts amounting to a representation []; . . .

Estoppel in pais. The doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak, from asserting a right which he otherwise would have had. (citations omitted)

Black's further defines *Representation, estoppel* in pertinent part, as:

It arises when one by acts, representations, admissions, or silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. (citations omitted)

It is the effect of voluntary conduct of a party whereby he is absolutely precluded from asserting rights which might perhaps have otherwise existed. (citations omitted) It is a species of "equitable estoppel" or estoppel by matter in pais. Elements or essentials of such estoppel include change of position for the worse, (citation omitted); detriment or injury or prejudice to party

claiming estoppel, (citation omitted); express or implied representations; false representation, (citation omitted); ignorance of facts by party claiming estoppel, (citation omitted); inducement to action by party claiming estoppel; intent that other party should act on representation or gross and culpable negligence of party sought to be estopped; knowledge, actual or constructive, of facts by person estopped, (citation omitted); misleading of person claiming estoppel, (citation omitted); reliance of one party on conduct of other party, (citation omitted). The doctrine ordinarily applied only to representation as to past or present facts, (citation omitted).

In defining *In pais, estoppel*, the 6th Edition of Black's Law Dictionary states, inter alia: "Elements or fundamentals of "estoppel in pais" include admission, statement or act inconsistent with claim afterwards asserted[.]" (citation omitted).

In paragraph 7 of Exhibit A to Wal-Mart's Answer to Claimant's Petition to Controvert, Wal-Mart acknowledges the applicability of, and in fact, asserts the doctrine of estoppel as a potential defense relative to previous acts and/or conduct of Mrs. Winter. (RE16-17; R12-13)

In McCrary v. City of Biloxi, 757 So2d 978 (Miss. 2000), before the Mississippi Supreme Court on Writ of Certiorari, Claimant Paul McCrary's case was reversed and remanded to the Mississippi Worker's Compensation Commission based on the doctrine of estoppel. The McCrary court clearly acknowledged the "appli[cation] [of] estoppel to workers' compensation cases in the past." McCrary, 757 So2d 978, 981, (citing Holbrook By and Through Holbrook v. Albright Mobile Homes, Inc., 703 So2d 842 (Miss. 1997)).

The McCrary court noted that the failure of the single act of "fil[ing] the required notice by itself does not prevent the employer from raising the statute of limitations defense, this is a factor to be considered in the overall scheme." Id. @ 982.

In reversing and remanding McCrary, the court

[c]onsider[ed] that the City failed to file the required statutory Notice of Controversy, told McCrary it would file his claim and

engaged in settlement negotiations for a substantial period of time, taken in conjunction with the fact that the Workers' Compensation Act is to be liberally and broadly construed in favor of compensation, we find that the City is estopped from asserting the statute of limitations ban in this case. McCrary relied on the City's representations to his detriment in this case. Therefore, the judgments of the Court of Appeals, the circuit court, and the Commission are reversed and this case is remanded to the Mississippi Worker's Compensation Commission for further proceedings consistent with this opinion.

Id.

Effectively, Wal-Mart asserts Mrs. Winter's dilatoriness in asking for review of the Administrative Law Judge's November 10, 2003, Order of Dismissal, yet asks that its lack of diligence in filing its Answer (only after being requested by the Commission) and in filing its incomplete B-31 with erroneous information (and again only after being requested by the Commission) be overlooked and of no consequence. Additionally, and perhaps even more importantly, Wal-Mart asks that it be overlooked and considered of no consequence that its medical benefits for and on behalf of the Claimant, Melissa Winter, remained open and active until February 2005, the last of such payments being made in July 2004. (See Exhibit 2 attached)

In fact, Wal-Mart attempts to assert that this evidence is too prejudicial and that even though it was Wal-Mart who made the payments and in fact provided prescriptions from the Wal-Mart Pharmacy, Mrs. Winter's presentation of such evidence has not allowed them sufficient time to meet and defend the same.

Wal-Mart made the payments. They should, therefore, be estopped from asserting lack of knowledge and preclusion of consideration by the Court of Mrs. Winter's ongoing medical treatment at the time of and subsequent to the November 10, 2003, Order of Dismissal.

By continuing to pay medical benefits for and on behalf of Mrs. Winter, Wal-Mart indeed made representations and conducted itself in a way justifiably relied on by Mrs. Winter. Further,

it is obvious that Mrs. Winter has suffered loss as a result of her reliance on the acts and conduct of Wal-Mart.

Additionally, inasmuch as Wal-Mart clearly lacked diligence in strictly complying with the statutes and rules governing workers' compensation cases, they should be estopped from requiring strict and rigid interpretation and application of the same to Mrs. Winter.

Clearly, Wal-Mart seeks to hold Mrs. Winter to the strict interpretation of the letter of law, including statutory law and Worker's Compensation Commission Procedural Rules, while asserting full immunity from strict compliance for itself.

Also, noteworthy pursuant to Broadway v. International Paper, supra, Wal-Mart's continued payment of benefits via medical bills and prescription drugs, tolled the one-year statute for reopening Mrs. Winter's case.

E. "Mistake in Determination of Fact"

Relative to Mrs. Winter's ongoing medical treatment, Waylon Reed v. Horseshoe Casino & Hotel and Reliance Nat'l Ins. Co., MWCC No. 01-13092-H-2608-A (June 18, 2003), offers on point guidance.

In Reed v. Horseshoe Casino, Mr. Reed's claim was dismissed by the Administrative Law Judge for failure to file a completed pre-hearing statement. Likewise, Mr. Reed's motion to reinstate his case was denied, whereupon he petitioned for a full commission review.

Like Mr. Reed, as clearly indicated by attached Exhibits "1" and "2," Mrs. Winter continued with medical treatment, which Wal-Mart continued to pay for, significantly subsequent to the November 10, 2003, Order of Dismissal.

Therefore, at all relevant times, a pre-hearing statement was premature, as Mrs. Winter continued under a doctor's care and prescription regime which Wal-Mart continued to pay until

notifying Mrs. Winter's doctor around February 2005 and Wal-Mart Pharmacy around August 2004 that they would no longer cover Mrs. Winter's medical and prescription expenses relative to her work-related injury.

Under very similar facts and the "mistake in a determination of fact" provision of Miss. Code Ann. §71-3-53, the Commission in Reed "held that the Commission has broad discretion to determine whether a mistake has occurred so as to justify further review or reinstatement of a claim." Waylon Reed, MWCC No. 01-13092-H-2608-A, @ *2, referring to Douglas Russell v. City of Vicksburg & Ins. Co. of the State of Pa., MWCC No. 98-04704-G-8395 (2003).

The Commission expounded the intention and purpose of the "mistake" provision, stating that, "[t]he Courts have given this "mistake" requirement a "broad interpretation" which would permit reinstatement "if there is **any** reasonable basis upon which the Commission may [be] justified" in reinstating a claim." Id., (quoting Staples v. Blue Cross and Blue Shield, 585 So2d 747, 748 (Miss. 1991); Armstrong Tire & Rubber Co. v. Franks, 242 Miss. 792, 137 So2d 141, 144 (1962).) (emphasis added).

The Commission further noted that "[t]his is especially in matters concerning the Commission's "implementation and enforcement of its own procedural rules."" Id., (quoting Pennington v. U.S. Gypson Co., 722 So2d 162 (Miss. Ct. App. 1998).).

Mrs. Winter would also note to this Honorable Court that this issue was submitted via her letter-brief submitted to the Full Commission. (RE29-31; R70-72)

F. "Beneficent Purposes of the Act"

Our Workers' Compensation Act was first enacted in Mississippi in 1948. The Act is social legislation which imposes liability without fault and is a radical departure from the common law. The law was designed to accomplish two goals: (1) to provide medical care and

income to workers injured on the job, and (2) to protect employers from costly and unpredictable litigation.

The Commission in Reed, supra, explicitly stated that the “dismissal of a claim without a full hearing on the merits is not preferred.” Id. @ *3, (citing Monroe v. Broadwater Beach Hotel, 593 So2d 26, 30 (Miss. 1992); Scott Builders, Inc. v. Dependents of Layton, 145 So2d 165 (Miss. 1962)).

Relative to workers’ compensation cases, the McCrary court stated:

The law looks with disfavor on strained and technical interpretations of statutes regarding notice of injury; and even in cases where no timely notice was given, the tendency is to temper the literal harshness of statutory bars by the recognition of various excuses and permitting waivers and exceptions.

McCrary @ 981, (quoting Port Gibson Veneer & Box Co. v. Brown, 226 Miss. 127, 132, 83 So2d 757, 759 (1955)).

The McCrary court further stated:

We are reminded that workers’ compensation law is to be liberally and broadly construed, resolving doubtful cases in favor of compensation so that the beneficent purposes of the act may be accomplished. Marshall Durbin Companies v. Warren, 633 So2d 1006, 1010 (Miss. 1994); General Electric Co. v. McKinnon, 507 So2d 363, 367 (Miss. 1987); Burham v. Klunh Forest Products Center, Inc., 453 So2d 1300, 1304 (Miss. 1984).

McCrary, @ 981, (quoting DeLaughter v. South Cent. Tractor Parts, 642 So2d 375, 377-80 (Miss. 1994)).

It is indisputable that Mrs. Winter suffered work-related, compensable injuries on June 30, 2000, and on February 25, 2002. The record clearly reflects that Mrs. Winter has yet to be afforded a hearing on the merits of either work-related injury, an option explicitly “not preferred.” See Reed, supra.

It is further clearly reflected that Mrs. Winter's denial of a hearing on the merits is due to "strained and technical interpretations of statutes" rather than compliance with "the tendency [] to temper the literal harshness of statutory bars by the recognition of various excuses and permitting waivers and exceptions." See McCrary, supra. Mrs. Winter is being denied a hearing on the merits of her claim due to a strict and letter-of-law interpretation favoring Wal-Mart and contrary to the broad and liberal construction intended to accomplish "the beneficent purposes of the act." See McCrary, supra.

CONCLUSION

Wal-Mart's clear lack of diligence in complying with rules and requirements and the contradictory assertion that Mrs. Winter should be penalized for her lack of strict compliance, together with Wal-Mart's continued payment of medical benefits for and on behalf of Mrs. Winter and her justifiable reliance to her detriment thereon, triggers the just and reasonable application of the doctrine of estoppel.

Additionally, the intended broad and liberal interpretation of the workers' compensation act and the "mistake in a determination of fact" easily qualifies Mrs. Winter's continued medical treatment as a "reasonable basis upon which the Commission [is] justified in reinstating [her] claim." See Reed, supra.


Mrs. Winter's denial of a hearing on the merits is unjust and in clear contradiction to the explicit intentions and "beneficent purposes of the act." See McCrary, supra. Furthermore, quoting the Court in Smith v. Container General Corp., 559 So.2d 1019, 1024 (Miss. 1990): "Everything considered we believe that justice requires that this matter be reconsidered." Smith (quoting Karr v. Armstrong Tire & Rubber Co., 216 Miss. 132, 61 So.2d 789, 792 (1953)).


Therefore, based on the facts, rules and law as set forth and referenced above, Mrs.

Winter respectfully requests and submits that justice favors reopening and reinstating her worker's compensation case for a full hearing on the merits.

Respectfully submitted,

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13407-0804

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 <input type="checkbox"/> MASTERCARD	 <input type="checkbox"/> DISCOVER	 <input type="checkbox"/> VISA
CARD NUMBER		SIGNATURE CODE
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STATEMENT DATE 03/03/05	PAY THIS AMOUNT \$75.00	ACCT. # 277308
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STATEMENT

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

DATE	DESCRIPTION	INSURANCE	PATIENT
PATIENT: MELISSA WINTER 277308			
277308001 NSR OUTPATIENT			
PERFORMED BY HAYNES L HARKEY MD			
* 02/17/03	1 OFFICE/OUTPATIENT VISIT	75.00	
* 04/23/03	WORKMAN COMP PAYME	61.40-	
* 04/23/03	WORKMAN COMP CONTRACTUAL ALL	13.60-	
* 11/17/03	1 OFFICE/OUTPATIENT VISIT	75.00	
* 01/14/04	WORKMAN COMP PAYME	69.22-	
* 01/14/04	WORKMAN COMP CONTRACTUAL ALL	5.78-	
* 11/29/04	1 OFFICE/OUTPATIENT VISIT	75.00	
* 02/28/05	WORKMAN COMP PAYMENT	0.00	
* 02/28/05	AUTO XFER TO GUARANTOR		75.00
* INDICATES NEW FINANCIAL ACTIVITY SINCE LAST BILL.			
IF YOU HAVE ANY QUESTIONS REGARDING YOUR ACCOUNT, PLEASE CONTACT US AT THE NUMBER LISTED IN THE UPPER LEFT PORTION OF THIS BILL.			
WE NOW ACCEPT VISA, MASTERCARD AND DISCOVER.			
TOTALS:		.00	75.00



0 - 30 DAYS	31 - 60 DAYS	61 - 90 DAYS	91 - 120 DAYS	OVER 120 DAYS
0.00	0.00	0.00	0.00	0.00

UNIV NEUROSURGEONS PLLC 601-984-5712

PAYMENT DUE: 03/17/05

DUE FROM PATIENT
75.00

WINTER, MELISSA A

Rx #: 4471456 If you have any questions, please feel free to contact your pharmacist at (662) 840-5546
Date: 07/16/2004 or KING, CHARLES at (662) 377-5930

Directions : TAKE ONE TABLET BY MOUTH TWICE DAILY

PROPO-N/APAP 100-650TAB

26

PROPOXYPHENE (proe-POX-i-feen) and ACETAMINOPHEN (a-seat-a-MIN-oh-fen)

COMMON USES: This medicine is a combination of a narcotic analgesic and acetaminophen used to relieve mild to moderate pain.

HOW TO USE THIS MEDICINE: Follow the directions for using this medicine provided by your doctor. This medicine may come with a patient information leaflet. Ask your doctor, nurse, or pharmacist any questions you may have about this medicine. **THIS MEDICINE MAY BE TAKEN WITH FOOD** if it upsets your stomach. **STORE THIS MEDICINE** at room temperature in a tightly-closed container, away from heat and light. **IF YOU MISS A DOSE OF THIS MEDICINE** and you are taking it regularly, take it as soon as possible. If it is almost time for your next dose, skip the missed dose and go back to your regular dosing schedule. Do not take 2 doses at once.

CAUTIONS: DO NOT EXCEED THE RECOMMENDED DOSE or take this medicine for longer than prescribed without checking with your doctor. Exceeding the recommended dose or taking this medicine for longer than prescribed may be habit-forming. Check with your doctor about the use of alcohol while you are using this medicine. **THIS MEDICINE MAY CAUSE DIZZINESS OR DROWSINESS. DO NOT DRIVE, OPERATE MACHINERY, OR DO ANYTHING ELSE THAT COULD BE DANGEROUS** until you know how you react to this medicine. Using this medicine alone, with other medicines, or with alcohol may lessen your ability to drive or to perform other potentially dangerous tasks. **THIS MEDICINE CONTAINS ACETAMINOPHEN.** Do not take additional acetaminophen for pain or fever without checking with your doctor or pharmacist. Ask your pharmacist if you have questions about which medicines contain acetaminophen. Acetaminophen may cause liver damage. If you drink alcohol on a daily basis, do not take this medicine without first discussing it with your doctor. Alcohol use combined with acetaminophen may increase your risk for liver damage. **BEFORE YOU BEGIN TAKING ANY NEW MEDICINE**, either prescription or over-the-counter, check with your doctor or pharmacist. **CAUTION IS ADVISED WHEN USING THIS MEDICINE IN THE ELDERLY** because they may be more sensitive to the effects of the medicine. **FOR WOMEN: IF YOU PLAN ON BECOMING PREGNANT**, discuss with your doctor the benefits and risks of using this medicine during pregnancy. **THIS MEDICINE IS EXCRETED IN BREAST MILK. IF YOU ARE OR WILL BE BREAST-FEEDING** while you are using this medicine, check with your doctor or pharmacist to discuss the risks to your baby.

POSSIBLE SIDE EFFECTS: SIDE EFFECTS, that may go away during treatment, include dizziness, drowsiness, lightheadedness, constipation, nausea, or vomiting. If they continue or are bothersome, check with your doctor. **CONTACT YOUR DOCTOR IMMEDIATELY** if you experience yellowing of eyes or skin, dark urine, unusual itching, or prolonged stomach pain. **AN ALLERGIC REACTION** to this medicine is unlikely, but seek immediate medical attention if it occurs. Symptoms of an allergic reaction include rash, itching, swelling, severe dizziness, or trouble breathing. If you notice other effects not listed above, contact your doctor, nurse, or pharmacist.

3. Information Expires 08/19/2004

WAL-MART
PHARMACY

(662) 840-5546
3929 N. GLOSTER ST.
TUPELO, MS 38804-0000

\$24.88

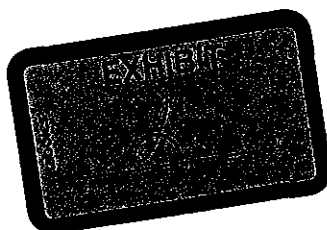
WAL-MART
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TUPELO, MS 38804-0000

\$24.88

WINTER, MELISSA A 07/16/2004 REFILL
701 MARTIN TUPELO, MS 38801
RX: 4471456 Ref # 1 QTY: 60 DAW: 0 DS: 30
NDC: 00093-0490-05 PROPO-N/APAP 100-650TAB TEV
KING, CHARLES NABP: 2517312
U04198N5D42C00
WWC MS Patient Pay \$0.00

WINTER, MELISSA A 07/16/2004 REFILL
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IN THE SUPREME COURT OF MISSISSIPPI

MELISSA WINTER

APPELLANT

V.

CAUSE NO. 2007-WC-01717-COA

WAL-MART SUPERCENTER

AND

AMERICAN HOME ASSURANCE COMPANY

APPELLEES

CERTIFICATE OF SERVICE

I, John P. Fox, attorney for Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Brief of Appellant to the following parties:

**Honorable Andrew K. Howorth
Circuit Court Judge
1 Courthouse Square, Ste. 201
Oxford, MS 38655**

**Roxanne P. Case, Esq.
Wilkins, Stephens & Tipton
P.O. Box 13429
Jackson, MS 39236-3429**

So certified on this the 10th day of October, 2008.



JOHN P. FOX

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330 EAST MADISON STREET
HOUSTON, MS 38851
(662) 456-4201**

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CERTIFICATE OF MAILING

I, PAULA P. HARMON, certify pursuant to Rule 25(a) of the Mississippi Rules of Appellate Procedure that on the 10th day of October, 2008, I shipped with Federal Express, cost prepaid, to the Mississippi Supreme Court Clerk the original and three copies of the Brief of Appellant.

SO CERTIFIED, this the 10th day of October, 2008.

Paula P. Harmon