

IN THE SUPREME COURT OF MISSISSIPPI

MARGARET BROOKS

APPELLANT

VS.

CAUSE NO. 2008-CC-01153

**MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY and
NORTHWOOD COUNTY CLUB**

APPELLEES

**BRIEF OF APPELLANT, MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY**

**APPEAL FROM THE CIRCUIT COURT OF LAUDERDALE COUNTY,
STATE OF MISSISSIPPI**

ORAL ARGUMENT NOT REQUESTED

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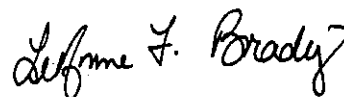
APPELLEES

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 representatives 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. Mississippi Department of Employment Security, Appellee
2. Honorable LeAnne F. Brady, Esq., Attorney for Appellee
3. Margaret Brooks, Appellant
4. Honorable Bennie L. Jones, Jr., Attorney for Appellant
5. Northwood Country Club, Appellee
6. Honorable Ronnie L. Walton, Attorney for Appellee Northwood Country Club
7. Honorable Brenda Jones, Esq.
8. Honorable Robert W. Bailey, Circuit Court Judge – Lauderdale County, Mississippi

This the 3rd day of March, 2009.



LeAnne F. Brady, Esq.

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**BRIEF OF THE APPELLEE
MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY**

STATEMENT OF THE ISSUE

Whether there is substantial evidence to support the Board of Review's decision finding that the Claimant, Margaret Brooks, committed disqualifying misconduct pursuant to Mississippi Code Annotated Section 71-5-513 (A) (1)(b)(2008).

STATEMENT OF THE CASE

Margaret Brooks [also hereafter referred to as "Claimant"] was employed with Northwood Country Club [also hereafter referred to as "Employer"] as the AM Banquet Chef, until her separation on March 8, 2007. (R. Vol. 2, p. 13 & 17). On March 12, 2007, Ms. Brooks filed for unemployment benefits. (R. Vol. 2, R. p. 1). The Claims Examiner investigated the facts and circumstances surrounding this case, and disqualified the Claimant from receiving benefits for misconduct. (R. Vol. 2 p. 3-5). Subsequently, the Claimant appealed the decision of the Claims Examiner. (R. Vol. 2, p. 6).

A hearing before the Administrative Law Judge [hereafter also referred to as "ALJ"] was held on May 2, 2007, at which the Claimant and an Employer Representative testified. (R. Vol. 2, p. 7-27). The ALJ found that the Claimant was eligible for unemployment benefits and reversed the decision of the Claims Examiner. The Employer appealed to the Board of Review,

which reversed the decision of the ALJ. The Board's Findings of Facts and Opinion are as follows:

FINDINGS OF FACT AND OPINION:

The claimant was employed as a morning cook for Northwood Country Club. She was discharged for receiving approximately nine warnings and for leaving her job after being suspended. The last incident occurred when a guest became upset because he could not be served because no cook was available. The employer investigated and determined the claimant was taking an unauthorized break at 1:15 p.m. The employer had previously instructed the claimant not to take a break until after 1:30. She knew the rule, but failed to get permission to take an early break. She was then told she was being suspended pending an investigation. She became upset and loud. The employer told the claimant to leave.

On appeal, the ALJ found the claimant was discharged. Moreover, the ALJ held the evidence failed to support the claimant's actions constituted a willful or wanton disregard of the employer's interest.

The Board of Review agrees with the ALJ the claimant may have concluded she was discharged. However, the claimant clearly had a history of violating company policy and had been repeatedly warned about her actions. Therefore, the Board of Review is of the opinion the testimony and evidence clearly shows a pattern of negligent conduct, constituting misconduct connected with her work, and thus a deliberate disregard of the standards of behavior which the employer has a right to expect from its employees.

(R. Vol. 2, p. 36-37).

The Claimant appealed the Board's decision the Circuit Court of Lauderdale County. (R. Vol. 1, p. 2). On June 2, 2008, the Circuit Court Judge affirmed the decision of the Board of Review. (R. Vol. 1, p. 30). The Claimant then perfected her appeal to this Honorable Court. (R. Vol. 1, p. 31).

SUMMMARY OF THE ARGUMENT

The applicable statute in this case, Mississippi Code Annotated Section 71-5-513 (A)(1)(b) provides for disqualifying persons from benefits otherwise eligible, if they have committed acts of misconduct on the job.

In the present case, substantial evidence can be found in the records proving The Claimant, Margaret Brooks, committed disqualifying misconduct. She had received nine warnings, and at least two of those were for unauthorized breaks. This pattern of behavior led to the terminating event when her supervisor discovered that she had gone on break early and had failed to prepare a lunch order for a customer.

Therefore, it is the Appellee's contention that the testimony and evidence, taken as a whole, was sufficient and substantial and did show that the Claimant's actions constitute misconduct. Thus, the Claimant is disqualified from receiving benefits under the Mississippi Employment Security Act and this Honorable Court should affirm the decision of the Board of Review.

ARGUMENT

Ms. Brooks's appeal to the Circuit Court is governed by Mississippi Code Annotated Section 71-5-531 (2008), which provides for an appeal to the Circuit Court by any party aggrieved by the decision of the Board of Review. Section 71-5-531 states that the appeals court shall consider the record made before the Board of Review of the Mississippi Employment Security Commission, and absent fraud, shall accept the findings of fact if supported by substantial evidence, and the correct law has been applied. (emphasis added). Richardson vs. Mississippi Employment Security Commission, 593 So. 2d 31 (Miss. 1992); Barnett vs. Mississippi Employment Security Commission, 583 So. 2d 193 (Miss.1991); Wheeler vs.

Arriola, 408 So. 2d 1381 (Miss. 1982). Likewise, the Supreme Court should apply the same standard in further reviewing this matter.

In Barnett, the Mississippi Supreme Court stated that "[J]udicial review, under Miss Code Ann. Section 71-5-531 (1972), is in most circumstances, limited to questions of law, to-wit:

In any judicial proceedings under this section, the findings of the board of review as to the facts, if supported by substantial evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said shall be confined to questions of law."

Barnett, 583 So. 2d at 195. Furthermore, a rebuttable presumption exists in favor of the Board of Review's decision and the challenging party has the burden of proving otherwise. Allen vs. Mississippi Employment Security Commission, 639 So. 2d 904 (Miss. 1994). The appeals court also must not reweigh the facts nor insert its judgment for that of the agency. McLaurin vs. Mississippi Employment Security Commission, 435 So. 2d 1171-1172 (Miss. 1983).

Mississippi Code Annotated Section 71-5-513 provides for disqualifying persons from benefits otherwise eligible for acts of misconduct connected with their work. The term misconduct as used in the Mississippi Employment Security Law is usually defined as an act of wanton or willful disregard of the employer's interest, a deliberate violation of the employer's rules, a disregard of the standard of behavior which an employer has the right to expect from an employee, or carelessness and negligence indicating an intentional or substantial disregard of the employer's interest or of the employee's duties and obligations to the employer. Wheeler vs. Arriola, 408 So. 2d 1381 (Miss. 1982).

In Mississippi Employment Security Commission vs. Percy, 641 So. 2d 1172 (Miss. 1994), the Supreme Court stated that when analyzing misconduct not only the violation in question should be assessed, but all actions or inactions expected of the employee that affect the reasonable interest of the employer. After discussing the purpose of the employer's policy, the

Court then held that the failure of Ms. Percy, a nurse, to follow the hospital's time keeping procedure constituted misconduct. *Id.* at 1176. Additionally, a repeated neglect of the Employer's interest may show a pattern of misconduct on the part of the claimant. Mississippi Employment Security Commission vs. Jones, 755 So. 2d 1259 (Miss. 2000).

In the case *sub judice*, the Claimant's behavior clearly shows a wanton or willful disregard for the Employer's interests. The Claimant's supervisor, Phillip Mitchell, testified that Ms. Brooks had received nine (9) warnings since he took the position just a year and-a-half prior to her termination. While Mr. Mitchell did not provide copies of these warnings, he did read portions of them into the record. Specifically, Mr. Mitchell testified that the Claimant received a warning on October 22, 2006, for consistently leaving her workstation "during volume shifts, especially on Sunday brunch. (R. Vols. 2, p. 16). Mr. Mitchell stated that the Claimant was very hostile and disrespectful and refused to sign this warning. (R. Vol. 2, p. 16).

On the date of her separation, Ms. Brooks ignored a direct request from her employer to wait and take her break at 1:30 p.m. (R. Vol. 2, p. 22). This caused Ms. Brooks to miss a customer's lunch order. (R. Vol. 2, p. 22-23).

The Claimant disputed that she had nine (9) warnings, but she did admit to two written warnings prior to the terminating event. (R. Vol. 2, p. 20). Ms. Brooks testified that she received a warning for refusing to make a soup as requested by Mr. Mitchell, and another warning for leaving food out. (R. Vol. 2, p. 21). Ms. Brooks also testified that Mr. Mitchell instructed her to take her break at 1:30 p.m. (R. Vol. 2, p. 22). In regards to the March 8 incident, the Claimant admitted that she to her break at 1:15 instead of 1:30. (R. Vol. 2, p. 22).

The Claimant argues that this is simply a case in which she could not meet the expectations of new management. However, the incidents in questions do not relate to job performance, nor are they subjective in nature. Ms. Brooks failed to follow a basic instruction to

take her break at 1:30 p.m. as directed by her supervisor. This is a simple directive to comply with, and the fact that Ms. Brooks defied this direction on more than one occasion is plainly a willful act on her part.


The Appellant's argument that the Board of Review's decision is not supported by substantial evidence is unpersuasive considering the testimony presented at the hearing before the Administrative Law Judge. Clearly, the Claimant's repeated warnings demonstrate a negligent pattern of behavior towards the Employer's interests. Thus, applying Wheeler, Percy, and Jones, this Honorable Court should affirm the decision of the Board of Review.

CONCLUSION


There is substantial evidence to support the decision of the Board of Review that the Claimant did commit acts of misconduct, and should be, and in fact, is disqualified from receiving unemployment benefits under the Mississippi Employment Security Act. Thus, this Honorable Court should affirm the decision of the Board of Review in this matter.

Respectfully submitted this the 3rd day of March, 2009.

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CERTIFICATE OF SERVICE

I, LeAnne F. Brady, Attorney for the Mississippi Department of Employment Security, hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Brief of the Appellee to:

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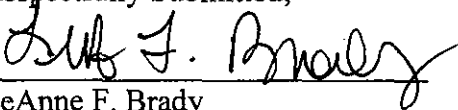
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This the 3rd day of March, 2009.

Respectfully Submitted,



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