

COPY

**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

MARGIE BROWN

PLAINTIFF/APPELLANT

VS.

CAUSE NO. 2008-CC-02142

**MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY A/K/A
MISSISSIPPI COMMISSION AND
WAL-MART ASSOCIATES, INC.**

DEFENDANT (S) /APPELLEE (S)

BRIEF OF APPELLANT

FILED

AUG 13 2009

Office of the Clerk
Supreme Court
Court of Appeals

SUBMITTED BY:

**RAY CHARLES EVANS
POST OFFICE BOX 193
NEWTON, MS 39345
601-683-3300
ATTORNEY FOR APPELLANT**

Table of Contents

Certificate of Interested Parties	1
Facts	2-4
Issue	5
Standard of Review	5-6
Analysis	6
Summary	6-7
Certificate of Service	8

Table of Cases

Johnson v. Mississippi Employment Security Commission
761 Southern Second 861, 863 (p) 5 (Miss. 2000) p.5

Mississippi Employment Security Commission V. Parker
903 Southern Second 42, 45 (Miss. 2005) p.6

Wilkerson V. Mississippi Employment Security Commission
630 Southern Second 1000 (Miss. 1994) p.7

Satutes

Section 71-5-517 Mississippi Code Annototed 1972 p.5

**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

MARGIE BROWN

PLAINTIFF/APPELLANT

VS.

CAUSE NO. 2008-CC-02142

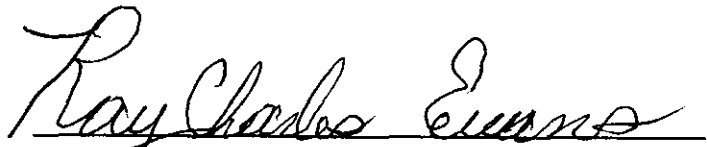
**MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY A/K/A
MISSISSIPPI COMMISSION AND
WAL-MART ASSOCIATES, INC.**

DEFENDANT(S) /APPELLEE(S)

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or refusal.

- | | | |
|----|--|------------------------|
| 1. | Margie Brown | Plaintiff/Appellant |
| 2. | Mississippi Department of
Employment Security | Defendant/Appellee |
| 3. | Wal-Mart Associates | Defendant/Appellee |
| 4. | Ray Charles Evans | Attorney for Appellant |


RAY CHARLES EVANS

FACTS

Plaintiff/Appellant MARGIE BROWN, [hereinafter referred to as Brown] was employed by Defendant WAL-MART ASSOCIATES [hereinafter after referred to as Wal-Mart], from August 18, 2004, until May 9, 2008. [RE 1][R. J. Brown was employed as an Overnight Stocker in Wal-Mart's Newton, Mississippi Store. [RE 1][R.]Brown's employment ended when she was discharged on May 9, 2008. [RE][R]. On May 12, 2008 an initial claim for Unemployment Benefit was filed by Brown with the Mississippi Department of Employment Security [herein after referred to as MDES][RE]. The MDES mailed notices of Monetary Benefits Determination to Brown and Wal-Mart on May 13, 2008[R][RE]. As grounds for Brown's alleged discharge; TALX UCM Services, INC., UC Express (sm) a duly authorized agent empowered to act on behalf of Wal-Mart; responding to Defendant/Appellee Mississippi Department of Employment Security [herein after referred to as MDES] Request for Information. RE 6-7[R]. States that Brown was discharged. "The final incident occurred when Claimant (Brown) took a forty-five (45) minute break instead of fifteen (15) minutes that is allotted. She had previously received all levels of coaching and was made aware that her employment was in jeopardy. Per company policy, there are certain actions of misconduct that may result in immediate termination. Misuse of company time is one of those actions. Associates are made aware of the policies in orientation, computer based training, prior

coaching and weekly meetings presented by The management team.”[RE 7][R].

Fact finding by MDES for (Claimant) Brown revealed that she was discharged by the Newton Wal-Mart Store Manager Clinton Sampson for too long breaks. [Claimant] Brown took too long of breaks and was warned before discharge. [RE 12-13][R.]

General Discharge Questionnaire alleges that [Claimant] Brown took forty-five (45) minutes break on May 9, 2008. The Company [Wal-Mart] did not provide details about previous warnings other than [Claimant] Brown had been issued a final warning during the prior twelve (12) month period and was placed on one year probation.

On June 6, 2008 MDES mailed its Notice to Employer of Claims Determination Decision to Wal-Mart and Brown. [RE][R] Said decision determined that Brown was eligible for Unemployment Insurance Benefits; Further, that Wal-Mart had not proved Brown was discharged for misconduct. Said decision expressly stated June 20, 2008, which is fourteen (14) calendar days from the date mailed June 6, 2008. If an appeal is filed after the fourteen (14) day period; a hearing will be held to determine whether good cause exist for the filing delay [RE][R]. By Notice of Appeal date June 20, 2008, Wal-Mart through TALX UCM Services, Inc. UC Express duly authorized agent to act on its behalf. Ryan Flanery, appealed to the Administrative Law Judge [RE 19][R]. A Notice of Telephone Hearing was sent with a hearing scheduled date of July 21, 2008. [R

32][R.] There being no apparent hearing on whether Wal-Mart timely filed Notice of Appeal of the Claims Examiners Decision.

Testimony was taken before Administrative Law Judge Cindy C. Gill (hereinafter referred to as ALJ.) [RE][R]

The ALJ decision reversed the Claims Examiners Decision, Finding that Brown had been discharged from her employment with Wal-Mart for misconduct; mailed on July 23, 2008 [RE 112-114][R]. Brown filed an Appeal to the MESC Board of Review on July 25, 2008[RE][R]. On August 28, 2008, the Board of Review affirmed the Decision on the ALJ. [RE 119-120][R] on September 3, 2008, Brown appealed to the Circuit Court of Newton County, Mississippi [RE][R].

MESC filed the Administrative Record with the Circuit Court of Newton County, Mississippi. [RE 124][R]. MESC further filed its answer to the Appeal. Brown filed her arguments for reversal of the Board of Review Decision [RE][R].

On November 25, 2008, the Circuit Court of Newton County, Mississippi entered its Order Affirming the Decision of the Board of Review. [RE][R].

On December 24, 2008, a motion to proceed In Forma Paupers was filed in the Circuit Court of Newton County, Mississippi. [RE][R]. The Circuit Court of Newton County, Mississippi entered its Amended Order Affirming the Decision of the Board of Review. Brown filed Supplemental Notice of Appeal. It is the November 25, 2008 and January 6, 2009 Order and Amended order Affirming the Decision of

the Board of Review for which this appeal is filed.

ISSUE:

THE CIRCUIT COURT OF NEWTON COUNTY, MISSISSIPPI COMMITTED A REVERSIBLE ERROR, HOLDING THAT THE MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY BOARD OF REVIEW FINDING(S) OF FACT(S) AND CONCLUSION OF LAW; ADOPTED FROM THE ADMINISTRATIVE LAW JUDGE'S DECISION, THAT WAL-MART TIMELY APPEALED THE DECISION OF THE CLAIM EXAMINER'S DECISION WITHIN THE MEANING OF MCA 71-5-517.

STANDARD OF REVIEW:

(p)5. The scope of review in an unemployment compensation case is limited. The findings as to the facts of the Board of Review are conclusive if supported by substantial evidence and absent fraud. Johnson v. Mississippi Employment Security Commission 761 So 2d 861,863(p)5 (Miss. 2000). Therefore, judicial review is limited to questions of law. Id. The denial of unemployment benefits will be disturbed if (1) unsupported by substantial evidence, (2) arbitrary or capricious, (3) beyond the scope of power granted to the agency or (4) in violation of the employee constitutional rights. Id.

Section 71-5-517 Mississippi Code Annotated providers that the Claimant or any party to the initial determination may file an appeal form such determination within fourteen (14) days after notification thereof or after the date of such notification was mailed to the last known address. Wilkerson v. Mississippi Employment Security Commission 630 So 2d 1000 (Miss.1994) The Mississippi Supreme Court held: We interpret MCA 71-5-517 to mean

that a party to the initial determination Claimant or employer has fourteen (14) days from the time that the notification is mailed to appeal to the Board of Review. Only if the notification is by means other than mail to the party's last known address will the time begin to run upon notification of claim 630 So 2d at 1002.

ANALYSIS:

In the case at bar, the ALJ decision a finding that Wal-Mart timely appealed the Claims Examiner Decision. This is despite the fact that the Mississippi Code 71-5-517 allows only fourteen(14) days unless the delay is clearly justified. The ALJ in this case allowed a period from June 6, 2008 (date of mailing of notification) through June 25, 2008 (date of appeal received); this is a total of nineteen (19) days. This clearly exceeds the Statute without reasonable justification. The ALJ, the Circuit Court of Newton County, Mississippi committed a reversible error in reversing the Claims Examiner's decision. I respectfully request that the Decision be reversed. Mississippi Employment Security Commission v. Parker 903 So 2d 42,45 (Miss. 2005). This case held that the fourteen (14) day rule was strictly construed.

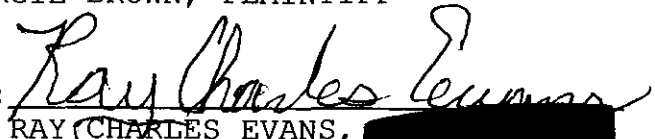
SUMMARY:

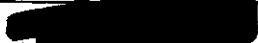
In summary, from the above and foregoing analysis I respectfully request that the Decision of the Circuit Court of

Newton County, Mississippi be reversed. The Issue being that Wal-Mart timely appealed the Decision of the Claims Examiner within the meaning of MCA-5-517. I feel a reversible error was committed by the Circuit Court of Newton County, Mississippi in allowing Wal-Mart's Appeal. It exceeded the fourteen (14) day statute and The Mississippi Employment Security Commission v. Parker 903 2d 42,45 (Miss. 2005) supports my contention. I do pray that the Mississippi Supreme Court will correct this reversible error and overturn the decision by the Circuit Court of Newton County, Mississippi, the ALJ and reinstate the Decision of the Claims Examiner.

Respectfully submitted,
MARGIE BROWN, PLAINTIFF

BY:



RAY CHARLES EVANS, 
POST OFFICE BOX 193
NEWTON, MS 39345
601-683-3300
ATTORNEY FOR APPELLANT

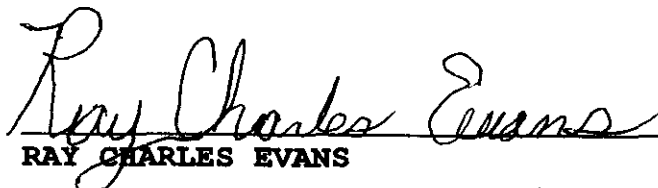
CERTIFICATE OF SERVICE

I, RAY CHARLES EVANS, Attorney of Record for the Appellant,
certify that I have this day mailed a true and correct copy of
Appellant's Brief to:

Honorable Leanne F. Brady
Attorney for Mississippi
Department of Employment Security Commission
Post Office Box 1699
Jackson, MS 39215-1699

The Honorable Vernon R. Cotten
Circuit Court Judge
205 Main Street
Carthage, MS 39051-4117

This the 13th day of August, 2009.


RAY CHARLES EVANS