

IN THE COURT OF APPEALS  
OF THE STATE OF MISSISSIPPI

NO. 2008-WC-00094-COA

STEPHANIE ROBERSON

APPELLANT

LFI-FORT PIERCE, INC. and  
MISSISSIPPI INSURANCE GUARANTY ASSOCIATION  
as successor-in-interest to RELIANCE NATIONAL  
INSURANCE COMPANY, in receivership

APPELLEES

and

DEEP SOUTH TRUCKING, INC. and  
AMERICAN INTERSTATE INSURANCE COMPANY

APPELLEES

APPEAL FROM THE

CIRCUIT COURT OF LAMAR COUNTY, MISSISSIPPI

BRIEF OF APPELLEES LFI-FORT PIERCE, INC. and  
MISSISSIPPI INSURANCE GUARANTY ASSOCIATION

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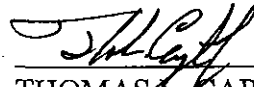
APPELLEE

CERTIFICATE OF INTERESTED PARTIES

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

1. Honorable Administrative Law Judge Cindy P. Wilson, Mississippi Workers' Compensation Commission;
2. Liles Williams, John Junkin, and Barney Schoby, Commissioners, Mississippi Workers' Compensation Commission;
3. Stephanie Roberson, Appellant;
4. LFI-Fort Pierce, Inc., incorrectly identified as Labor Finders International, Appellee;
5. Mississippi Insurance Guaranty Association, as successor in interest to Reliance National Insurance Company, in receivership, Appellee;
6. Deep South Trucking, Inc., Appellee;
7. American Interstate Insurance Company, Appellee;
8. Thomas L. Carpenter, Jr., Carr, Allison, Pugh, Howard, Oliver, & Sisson, P.C., - Attorney for Appellees LFI Fort Pierce, Inc. and Mississippi Insurance Guaranty Association;

9. Philip W. Jarrell, Dukes, Dukes, Keating & Faneca, P.A., Attorney for Appellees Deep South Trucking, Inc. and American Interstate Insurance Company.
10. The Honorable Judge Michael Eubanks, Circuit Court Judge, Circuit Court Judge of Lamar County, Mississippi.



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THOMAS L. CARPENTER, JR.  
Attorney for Appellees LFI-Fort Pierce, Inc.  
and Mississippi Insurance Guaranty  
Association

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## **STATEMENT OF THE ISSUE**

The Mississippi Workers' Compensation Commission's decision dismissed Roberson's workers' compensation appeal. The Commission determined that the the appeal was untimely filed. The circuit court affirmed the Commission's decision. The Lamar County Circuit Court's decision is correct under the law and evidence in this case. Roberson's failure to file her notice within the twenty-day period required deprived the Commission of jurisdiction to hear her appeal.

## **STATEMENT OF THE CASE**

Stephanie Roberson was a temporary employee through LFI-Fort Pierce, Inc. on September 10, 1999.<sup>1</sup> (C.P. 307).<sup>2</sup> On that date, Darrell Wallace, an LFI-Fort Pierce, Inc. employee, and Roberson's supervisor, instructed her to report to work for Deep South Trucking. (C.P. 307). Tommy Swan, Deep South's supervisor, instructed Roberson to place items onto a pallette. (C.P. 307). As she was doing so, Roberson claimed that she was hit by a forklift, and injured. (C.P. 307). Notwithstanding this claim of injury, Roberson completed her work that day. (C.P. 307).

Roberson was told repeatedly told by medical providers, such as Urgent Care, that she could return to work, as soon as the next day after the injury. (C.P. 308). However, Roberson refused to return to work. *Id.* She has never since worked. (C.P. 309).

The Administrative Law Judge, Cindy Wilson, heard this case on the merits of this case on November 2, 2006. (C.P. 306). Judge Wilson noted that Dr. David Bomboy had examined

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Roberson incorrectly identifies her employer as Labor Finders International. The local franchisee of Labor Finders International is LFI-Fort Pierce, Inc., who was Roberson's employer.

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There are two sets of numbers to the record. The first set is the appeal record, at Volumes 1-3, by (R.E.). The second set designates the court papers, at Volumes 4-6. LFI-Fort Pierce, Inc. will distinguish between the two by use of the designation (C.P.).

Roberson. (C.P. 311-12). Judge Wilson noted Dr. Bomboy found that “the mild contusion she received in the 1999 accident had long since healed and left her with no residual.” (C.P. 313). She also noted that Dr. Bomboy “did not feel that she had any temporary impairment.” *Id.* Judge Wilson concluded that “[t]here is no opinion presented by any medical expert which makes the causal connection required between the injury and the medical treatment.” (C.P. 314). She also concluded that Dr. David Bomboy opined that “claimant has no ‘problem related to her injury.’” *Id.* Judge Wilson then held the following:

The Claimant has failed to prove by a preponderance of the evidence a causal connection between her alleged injuries and the alleged September 10, 1999 incident. Further, claimant has failed to prove that any injuries which she may have suffered resulted in disability, either temporary or permanent. As such, claimant’s claim is hereby dismissed and held for naught.

(C.P. 315).

Judge Wilson rendered her opinion on February 28, 2007. *Id.* On April 2, 2007, thirty-three days after her decision, Roberson filed a letter with the Commission appealing that decision. (C.P. 316). Roberson claimed family illness and being away from Mississippi as a reason for not timely filing her appeal. (C.P. 317). Roberson did not pick up her mail with the ALJ’s decision until March 28, 2007, 28 days after the ALJ decision was filed. *Id.*

The Mississippi Workers’ Compensation Commission examined Roberson’s appeal.(C.P. 323). The Commission, *sua sponte* dismissed the appeal on April 5, 2007. (C.P. 324). The Commission stated “[i]t is clear that the Petition for Full Commission Review was not filed with twenty (20) days of the Administrative Judge’s Order, and is, therefore, untimely.” (C.P. 323-24). The Commission then stated that the “Petition for Review is hereby dismissed accordingly.” (C.P. 324).

Roberson wrote the Commission, explaining her late filing. (C.P. 325). She stated that she had contacted a clerk in the Commission. (C.P. 325). That clerk allegedly stated that a decision could take four months to render. (C.P. 325). Roberson claims she went out of the state in reliance upon the clerk. (C.P. 325). However, Roberson also stated she learned from the Commission by phone that a decision had been rendered before she received a copy of the decision. (C.P. 326). Roberson does not say when she learned of this decision. (C.P. 326).

Roberson apparently appealed the Commission's dismissal of her appeal as an appeal from the Mississippi Employment Security Commission. (C.P. 329). The Mississippi Department of Employment Security, the successor to the Employment Security Commission, forwarded the appeal to the Forrest County Circuit Court. (C.P. 328). Ultimately, the Commission forwarded this appeal of its decision to this Court by letter enclosure, bringing this case to the jurisdiction of the Circuit Court of Lamar County, Mississippi. (R.E. 4).

On November 15, 2007, Judge Michael Eubanks, of the Circuit Court of Lamar County, Mississippi, affirmed the decision of the Mississippi Workers' Compensation Commission. (R.E. 254-57). In that opinion, Judge Eubanks stated the following:

Here, the record reflects, that the Appellant did not file her notice of appeal until thirty three (33) days after the ALJ's order was entered. While, the Court does not doubt that the appellant was in Illinois dealing with a family emergency; however, both the statute and the case law are clear that excusable neglect does not relieve a party from filing within twenty (20) days. Thus, this Court is compelled to AFFIRM the decision of the Full Commission and DISMISS, the appeal.

(R.E. 256)

The Appellant timely perfected her appeal to this Court.



## **SUMMARY OF THE ARGUMENT**

The Mississippi Workers' Compensation Commission Order of April 5, 2007 is absolutely correct in its opinion dismissing Roberson's appeal. Further, the Lamar County Circuit Court's opinion affirming this Order is absolutely correct, for the same reason. Both Mississippi Code Annotated section 71-3-47 and Procedural Rule 10 of the Mississippi Workers' Compensation Commission require that a petitioner must appeal an adverse decision of the administrative law judge to the Mississippi Workers' Compensation Commission within 20 days of the decision. The Mississippi Supreme Court has repeatedly held that failure to meet this appeal deadline deprives the Commission of its very jurisdiction to consider an appeal. *Marlboro Shirt Co. v. Whittington*, 195 So. 2d 920, 921 (Miss. 1967). Excusable neglect, assuming that Roberson's voluntary decision to leave the State with no means of ensuring that she would receive her notice in a timely manner constitutes excusable neglect, does not toll or excuse the application of this twenty-day appeal deadline. *Ford v. KLLM, Inc.*, 909 So. 2d 1194, 1196 (Miss. Ct. App. 2005).

## **ARGUMENT**

This argument will be a slight elaboration of the summary of the argument, and of the Mississippi Workers' Compensation Commission decision itself. The Commission decision cites all of the primary cases in support of the principle that an appeal filed after the twenty-day window for appeals of administrative law judge (ALJ) decisions may not be heard.

In response to Roberson's brief, Appellees note that Roberson spends the vast majority of her brief debating the merits of her case. (App. br., pg. 2-4 & 7). Roberson does so in both her statement of the facts and the argument itself. Only in the summary of the argument does Roberson attempt to explain why she was late.

As she discusses the merits, Roberson misses the point. The merits of her case are not on appeal. The Commission never reached the merits of Roberson's case. The Commission ruled that Roberson's filing was untimely. The untimely filing of appeal deprived the Commission to hear the case on the merits.

Thus, the issue is whether this Court should affirm the Commission's determination that Roberson filed her appeal late, which barred her appeal. This argument addresses that point. The Commission was correct in declining to hear her case because of untimely filing. The circuit court was correcting in affirming that decision.

**A. Standard of Review**

If the decision of the Commission is "supported by substantial evidence," its decision must be affirmed. *Vance v. Twin River Homes, Inc.*, 641 So. 2d 1176, 1180 (Miss. 1994). The decision of the Commission can only be reversed where its order "is clearly erroneous and contrary to the overwhelming weight of the evidence." *Mitchell Buick, Pontiac & Equip. Co. v. Cash*, 592 So. 2d 978, 980 (Miss. 1991). In this case, the undisputed facts show that the Commission dismissed a Petition for Review filed thirty-three days after the ALJ decision, when such appeals must be filed within twenty days of that decision. The Commission's decision is in exact compliance with established Mississippi law on untimely filed Petitions. Thus, this Court should affirm the Commission's decision.

**B. The Mississippi Workers' Compensation Commission's decision dismissing Appellant's workers' compensation appeal, upon the grounds that the appeal was untimely, is amply supported by the law and evidence in this case, as Appellant's failure to file her notice within the twenty-day period required deprived the Commission of jurisdiction to hear her appeal.**

There is absolutely no question but that Roberson's appeal letter, filed April 2, 2007, was filed thirty-three days after the Administrative Law Judge's decision dated February 28, 2007.

There is also no question that as a matter of law, appeals from the Administrative Law Judge to the Mississippi Workers' Compensation must be made within twenty days. Procedural Rule 10 of the Mississippi Workers' Compensation Commission states:

In all cases where either party desires a review before the Full Commission from the decision rendered at the evidentiary hearing, the party desiring the review shall within twenty (20) days of the date of said decision file with the Secretary of the Commission a written request or petition for review before the Full Commission.

This deadline is not only a procedural rule. The deadline is part of the statutory governing law established by the legislature for the Mississippi Workers' Compensation Commission's operations:

Upon the conclusion of any such (administrative law judge's) hearing, the commission's representative shall make or deny an award, and file the decision in the office of the commission. Immediately after such filing, a notice of decision shall be sent to all interested parties. **This decision shall be final unless within twenty (20) days a request or petition for review by the full commission is filed.**

Miss. Code Ann. §71-3-47 (2007) (emphasis supplied).

The next question is what is the significance of not meeting the deadline?

The Mississippi Supreme Court has held that this twenty day appeal window is not merely a guideline. Filing in a timely manner creates the basis of the Mississippi Workers' Compensation Commission's jurisdiction to hear an appeal from the ALJ:

If the petition for review was not filed within twenty days, the action is barred since this section is jurisdiction. *Gulf, Mobile & Ohio Railroad Co. v. Forbes*, 228 Miss. 134, 87 So. 2d 488 (1956).

*Marlboro Shirt Co. v. Whittington*, 195 So. 2d 920, 921 (Miss. 1967).

Following that principle, the Mississippi Supreme Court stated a mistake in law as to calculation of when the appeal was due, leading to the Petition being filed one day late, on a Monday rather than a Saturday, would not furnish grounds to permit the Commission to hear the appeal. *Marlboro Shirt Co.*, 195 So. 2d at 921.<sup>3</sup> Further, the Mississippi Court of Appeals affirmed the dismissal of an appeal filed one day late in 2005. *Ford v. KLLM, Inc.*, 909 So. 2d 1194 (Miss. Ct. App. 2005). The *Ford* Court noted that the appeal was filed “twenty-one days later (after the ALJ decision).” *Ford*, 909 So. 2d at 1195. The court noted the Commission “held that Ford’s petition for review was untimely and, thus, dismissed the appeal.” *Id.*

Ford argued that her failure to file her petition timely, although within her control, was “the result of excusable neglect.” *Id.* She argued, under Mississippi Rule of Appellate Procedure 4(g), her mistake in mailing the Petition on the last day it was due, rather than having it filed that day, should constitute “excusable neglect,” thus serving to extend the deadline. *Id.*

The Mississippi Court of Appeals rejected Ford’s argument. It cited to both the procedural rules and statutes requiring actual filing of the Petition within 20 days of the ALJ decision. *Id.* The Court of Appeals thus found that the Commission was not “in error in determining that Ford’s petition for review was untimely.” *Id.* The Court of Appeals then affirmed the trial court’s dismissal of the appeal. *Id.*

As the Mississippi Supreme Court has stated:

A person whose rights are involved in controversy is entitled to access to the proper court of original jurisdiction, to a judgment settling his rights, and for the processes of that court to enforce the rights so adjudicated. But a person is not entitled to appeal from the judgment of a court of original jurisdiction to the

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At the time, the Commission was open for one half day on Saturday, thus the appeal deadline could run on a Saturday. *Id.*

Supreme Court of the state, or to an appellate court, without complying with the conditions authorizing an appeal to be made.

*Jackson Cty. v. Meaut*, 185 Miss. 235, 238, 189 So. 819, 820 (1939), *overruled on unrelated grounds*, *Life & Casualty Ins. Co. v. Walters*, 190 Miss. 761, 774, 200 So. 732, 734 (1941).

Thus, Roberson's "right" to appeal is regulated by conditions for such appeals, to which she must comply. She failed to do so. The Commission is thus correct in dismissing her appeal. Mississippi applies this principle with equal force to appeals from Mississippi Employment Security Commission decisions. *Mississippi Empl. Sec. Comm'n v. Parker*, 903 So. 2d 42, 44-45 (Miss. 2005) (14 day appeal deadline to Board of Review is strictly constructed and rules of civil procedure extending time to file documents do not apply to administrative agencies).

With the law in mind, LFI turns to Roberson's brief. Roberson states that her inability to get her mail, while she was out of state, is an excuse permitting her appeal of the ALJ decision on the merits. (App. br., pg. 4). Roberson candidly states that she did receive the notice of appeal before she returned from Illinois in late March. *Id.* By that time, the twenty-day window had expired. *Id.*

As the circuit court judge correctly noted, "excusable neglect does not relieve a party from filing within twenty (20) days." (R.E. 256). The Mississippi Court of Appeals has already noted excusable neglect has no part in determining whether an appeal may be untimely filed, as already noted. *Ford v. KLLM, Inc.*, 909 So. 2d 1194, 1196 (Miss. Ct. App. 2005). Simply put, it does not matter if Roberson's reasons for missing her mail constitute excusable neglect or not.

Since excusable neglect does not extend the appeal window, this Court should affirm the dismissal of this appeal by the circuit court.<sup>4</sup>

### CONCLUSION

Roberson filed her Petition for Review to the Commission late. Mississippi law requires such a Petition to be filed within 20 days, and Roberson filed it 33 days after the ALJ decision. As stated, Mississippi law requires such untimely appeals to be dismissed. Accordingly, the circuit court's decision in this case is amply supported by law and evidence. It should be affirmed.

RESPECTFULLY SUBMITTED, this the 30<sup>th</sup> day of April, 2008.

**LFI-FORT PIERCE, INC. and MISSISSIPPI  
INSURANCE GUARANTY ASSOCIATION,**  
Appellees

By: CARR, ALLISON, PUGH,  
HOWARD, OLIVER & SISSON, P.C.

By:   
THOMAS L. CARPENTER, JR.



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In fact, Roberson fails to explain why she simply did not go to the post office to have her mail forwarded to Illinois. This action would have presumably resulted in faster mail service. Also, by phone or mail, Roberson could have informed the Commission she had a temporary address change. This action would also have sped up her mail service. Roberson failed to bother to do anything with her mail. Roberson thus states a problem she created herself is the reason to ignore the jurisdictional prerequisite of timely notice of appeal. This Court should decline Roberson's offer to overlook this jurisdictional prerequisite.

**CERTIFICATE OF FILING AND SERVICE**

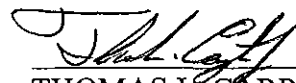
Pursuant to Rule 25(a) of the Mississippi Rules of Appellate Procedure, I, Thomas L. Carpenter, Jr., attorney for the Appellant, do hereby certify that I have this date addressed and directed via Federal Express to the Clerk of this Court an original and three copies of the Brief for Appellees and one computer readable disk of the Brief for Appellees and further certify that I have forwarded via United States Mail, postage pre-paid, a true and correct copy of the same to the following:

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Stephanie Roberson  
1500 Country Club Road #J-7  
Hattiesburg, MS 39401

The Honorable Judge Michael R Eubanks  
Senior Status Judge  
217 Lower Airport Rd  
Lumberton, MS 39455

This the 30<sup>th</sup> day of April, 2008.



THOMAS L. CARPENTER, JR.

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