

**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 DEEP SOUTH TRUCKING, INC. and  
AMERICAN INTERSTATE INSURANCE COMPANY**

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**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 Court of Appeals 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.

  
PHILLIP W. JARRELL, Attorney for Appellees  
Deep South Trucking, Inc.  
and American Interstate Insurance Company

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## **STATEMENT OF THE ISSUE**

Whether the Circuit Court erred in finding that substantial evidence supports the Mississippi Workers' Compensation Commission's decision to dismiss Appellant's workers' compensation appeal upon the ground that the Commission lacked jurisdiction to hear the appeal because it was filed outside the 20-day time period set forth in Mississippi Code Annotated § 71-3-47 and was therefore untimely.

## **STATEMENT OF THE CASE**

Appellant alleges that she sustained a compensable injury on September 10, 1999, while an employee of Labor Finders of Hattiesburg<sup>1</sup> and temporarily assigned to work for Deep South Trucking, Inc. (R.E. 1, 132-35)<sup>2</sup>. A hearing on the merits of this case was held on November 2, 2006, and on February 28, 2007, Administrative Judge Cindy Wilson entered an Order dismissing the case, concluding that Appellant had failed to prove by a preponderance of the evidence a causal connection between her alleged injuries and a work-related accident and had further failed to prove that any injuries which she may have suffered resulted in either temporary or permanent disability. (R.E. 306-15).

On April 2, 2007, 33 days after Judge Wilson's decision, Appellant filed a letter with the Commission, appealing Judge Wilson's decision. (R.E. 316-20). Appellant acknowledged that her appeal was not timely but cited the reason for her untimeliness as a family illness, which had required her to travel to Illinois.

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<sup>1</sup> Roberson incorrectly identifies her employer as Labor Finders International. The local franchise of Labor Finders International is FLI-Fort Pierce, Inc., who was Roberson's employer.

<sup>2</sup> There are two sets of numbers to the record. The first is the appeal record, at Volumes 1-3, by (R.E.). The second set designates the court papers, at Volumes 4-6. This Appellee will distinguish between the two sets by use of the designation (C.P.)

*Id.* Appellant further explained that since she had been out of state, she had not received her mail until March 28, 2007, at which time she received Judge Wilson's decision. *Id.*

On April 5, 2007, the Commission, upon its own Motion, considered the timeliness of Appellant's appeal and determined that it had not been filed within 20 days of Judge Wilson's Order and was therefore untimely. (R.E. 323-24). The Commission stated that any further action on the claim was barred and dismissed the claim. *Id.* Appellant wrote another letter to the Commission again attempting to explain her tardiness in filing her appeal by explaining that she had traveled to Illinois based upon information provided to her by a clerk at the Commission that a decision could take up to four months. (R.E. 325-28). Appellant admitted in the letter that the clerk also had told her at some point over the telephone that a decision had been rendered. *Id.* Eventually Appellant's letter reached the Circuit Court of Lamar County and was treated as an appeal of the Commission's decision. On November 15, 2007, the Circuit Court entered a Memorandum Opinion and Order affirming the Commission's dismissal of Appellant's case on the ground that her appeal was untimely filed. (R.E. 254-57). Specifically, the Court stated:

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)

Appellant filed a Motion for Reconsideration of this decision, which the Circuit Court summarily denied citing the fact that Appellant had failed to offer any additional arguments addressing her failure to timely appeal the ALJ's decision. (R.E. 258-59; 266). On December 28, 2007, Appellant timely filed a notice of appeal of the Circuit Court's decision to the Supreme Court of Mississippi. (R.E. 277).

### **SUMMARY OF THE ARGUMENT**

Appellant filed her notice appealing Judge Wilson's Order 13 days beyond the time allowed under Mississippi workers' compensation law. The case law is clear that excusable neglect does not toll or excuse the application of the 20-day appeal deadline. *See Ford v. KLLM, Inc.*, 909 So. 2d 1194, 1196 (Miss. Ct. App. 2005). Moreover, there is absolutely no basis for finding that Appellant constructively filed the notice within the deadline or tolled the running of the deadline. Therefore, substantial evidence supports the Commission's decision dismissing the claim as time-barred and the Lamar County Circuit Court affirming same.

### **ARGUMENT**

#### **A. Standard of Review.**

A Commission's Order should be affirmed unless it was not supported by substantial evidence. *See Roberts v. Junior Food Mart*, 308 So. 2d 232, 233 (Miss. 1975). Although a Court should review all questions of law and fact, it may not pass upon the weight of the evidence where it is sufficient to support the Commission's Order. *Id.* A decision of the Commission will not be overturned



unless said decision was arbitrary and capricious. See *Hale v. Ruleville Health Care Ctr*, 687 So. 2d 1221, 1225 (Miss. 1997). Only in extraordinary cases should a reverse findings of the Commission. *Id.*

**B. Substantial evidence supports the Commission's decision to dismiss Appellant's workers' compensation appeal and the Circuit Court's decision to uphold said decision on the ground that the Commission lacked jurisdiction to hear the claims due to the fact that Appellant filed her notice outside the 20-day time frame permitted under the law.**

Substantial evidence supports the Commission's decision that Appellant's appeal was untimely because the appeal was clearly filed outside the deadline prescribed in Mississippi Code Annotated § 71-3-71 and Procedural Rule 10 of the Commission. Mississippi Code Annotated § 71-3-47 provides that a party has 20 days in which to file a Petition for Review by the Full Commission. Procedural Rule 10 of the Commission also allows 20 days for filing a Petition for Review. The Supreme Court of Mississippi has stated, "case law is equally clear that if the Petition for Review is not filed within 20 days, further action is barred." *Williams v. Furniture Land*, 637 So. 2d 191 (Miss. 1994) (citing *Staples v. Blue Cross and Blue Shield*, 585 So. 2d 747, 748 (Miss. 1991); *Marlboro Shirt Co. Reliance Mftg. Co. v. Whittington*, 195 So. 2d 920, 921 (Miss. 1967)).

This 20-day time frame is strictly applied, and barring a constructive filing or any action that would toll the running of the deadline, appellants must file their Notice of Appeal within 20 days. Excusable neglect will not excuse appellants from meeting the deadline. See *Ford*, 909 So. 2d at 1196. In the case herein, Judge Wilson entered the Order dismissing Appellant's workers' compensation claim on the merits on February 28, 2007. Appellant did not file her letter

appealing Judge Wilson's Order until April 2, 2007 – 33 days after the Order was entered. See *Ford*, 909 So. 2d at 1196. However, as LFI-Fort Pierce, Inc. and Mississippi Insurance Guaranty Association correctly identify in their appellate brief, Appellant spends the majority of her brief arguing the merits of her claim rather than addressing the precise issue before this Court. In an attempt to extrapolate the pertinent arguments from Appellant's brief, it appears that Appellant's argument is that her failure to timely file her notice should be overlooked for the following reasons: (1) she is a layman; (2) she was experiencing a family crisis during the time frame to file the notice; (3) her circumstances during that time period should not be ignored; and (4) she called the Commission during the time frame to file the appeal. In Appellant's reply brief, she adds as reasons for her delay the fact that during the 20-day time frame to file her appeal, she was experiencing financial hardships and had no one to retrieve her mail. In short, Appellant argues excusable neglect in failing to timely file her notice. However, Appellant's reason for filing her Petition outside the deadline is of no consequence, as the case law is clear that the 20-day time frame applies regardless of whether Appellant's delay constituted excusable neglect.

Further, Appellant filed nothing between the time Judge Wilson entered her Order on February 28, 2007, and the date she filed her notice of appeal. Therefore, no argument can be made that Appellant constructively filed her Petition within the time frame or otherwise tolled the running of the deadline. Appellant was clearly outside the 20 days when she submitted her letter 33 days

after Judge Wilson's decision. Consequently, substantial evidence supports the Commission's decision finding the appeal time-barred and dismissing the claim and the Circuit Court's decision upholding same.

### **CONCLUSION**

Appellant filed her Petition for Review to the Commission 13 days beyond the deadline specified in Mississippi Code Annotated § 71-3-47 and Procedural Rule 10 of the Commission. As there is no basis for finding that Appellant either constructively filed her Petition within the time frame or tolled the running of the deadline and excusable neglect does not excuse strict compliance with the 20-day time frame, substantial evidence supports the Commission's decision dismissing the appeal due to untimeliness. The Employer, Deep South Trucking, Inc., and Carrier, American Interstate Insurance Company, also join in the appellate brief of Appellees LFI-Fort Pierce, Inc. and Mississippi Insurance Guaranty Association and affirm the arguments advanced therein. Deep South Trucking and American Interstate Insurance Company hereby pray that this Court affirm the Circuit Court's decision as supported by ample law and evidence.

RESPECTFULLY SUBMITTED, this the 22 day of May, 2008.

DEEP SOUTH TRUCKING, INC.  
And  
AMERICAN INTERSTATE INSURANCE  
COMPANY, Appellees

  
PHILLIP W. JARRELL

### CERTIFICATE OF FILING AND SERVICE

Pursuant to Rule 25(a) of the Mississippi Rules of Appellate Procedure, I, Phillip W. Jarrell, attorney for the Appellees, 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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The Honorable Judge Michael R. Eubanks  
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This the 22 day of May, 2008.

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