IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

YAMENIA WILSON — APPELLANT

VS. — CAUSE NO.2009-CC-00358

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY AND WALMART # 2717 — APPELLEES

REPLY BRIEF OF APPELLANT

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TABLES OF CASES, STATUTES AND OTHER AUTHORITIES CITED

CASES **PAGES**

STATUTES:

MISSISSIPPI CODE OF 1972, as amended:

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ARGUMENT

I.

Standard of Review

Appellee Mississippi Department of Employment Security argues that section 71-5-531 of the Mississippi Code of 1972, as amended governs this appeal. (Appellee's brief, page 5) Appellant Yamenia Wilson agrees that the above statutory section governs the rules regarding granting unemployment benefits. In fact, it is from this section, 71-5-513, that we find who has the burden of proof in unemployment cases. Section 71-5-513 A (1) (c) states that "[t]he burden of proof of good cause for leaving work shall be on the claimant, and the burden of proof of misconduct shall be on the employer." In the case of Allen v. Mississippi Employment Security Commission and Vesuvius USA Corporation, 639 So. 2d 904, 906, (Miss. 1994), which Appellant Wilson cited in her earlier brief, "...[t]he burden of proving disqualifying misconduct by clear and convicting evidence rests with the employer." This has been Appellant Wilson's argument that Appellee Walmart #2717 failed to meet its burden of proof in establishing that Appellant Wilson was discharged for misconduct.

Appellee Mississippi Department of Employment Security further states that courts "...absent fraud, shall accept the findings of fact if supported by substantial evidence, and the correct law has been applied." Richardson v. Miss. Emp. Sec. Comm'n, 593 So. 2d 31, 34 (Miss. 1992); Barnett v. Miss. Emp. Sec. Comm'n, 583 So. 2d 193, 195 (Miss. 1991); Wheeler v. Arriola, 408 So. 2d 1381, 1384 (Miss. 1982)." Reciting Barnett the court held as follows:

[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.

(Appellee Mississippi Department of Employment Security brief, page 5)

Appellant Wilson again is in agreement with the above court cases. However, the operative words are **substantial evidence** (emphasis added). Thus, the Administrative Agency must assert that the evidence presented in an unemployment case is supported by substantial evidence. Substantial evidence has been defined in Johnson v. Ferguson, 435 So. 2d 1191, 1195, (Miss. 1983), "as something more than a 'mere scintilla' of evidence.'"

Further, Appellant Yamenia Wilson does not dispute the court conclusion in Allen, that a rebuttable presumption exists in favor of the Board of Review "... and the challenging party has the burden of proving otherwise." Id. at 960. (Appellee Mississippi Department of Employment Security brief, page 5) Appellant Wilson is of the opinion that the evidence set forth in her initial brief supports her contention that the evidence presented to the Appellee Mississippi Department of Employment Security by Appellee Walmart #2717 did not meet the substantial evidence. Thus, since the evidence did not meet the substantial evidence test the presumption was rebutted.

II.

The Board of Review's decision should be affirmed, finding that the Employer, Wal-Mart #2717, proved by substantial evidence that the Claimant, Yamenia Wilson, committed disqualifying misconduct pursuant to Mississippi Code Annotated Section 71-5-513 A (1) (b) Supp. 2008.

Appellee Mississippi Department of Employment Security argues the case of Wheeler v. Arriola, 408 So. 2d 1381, 1383 (Miss.1982) which cites the language from Boynton Cab Co. v. Neubeck, 237 Wis. 249, 296 N. 636 (1941). In Boynton, the Court held,

> ... that the meaning of the term 'misconduct, as used in the unemployment compensation statute, was conduct evincing such willful and wanton disregard of the employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect from his employee. Also, carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability, wrongful intent or evil design, and showing an intentional or substantial disregard of the employer's interest or of the employee's duties and obligation to his employer, came within the term. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, or inadvertences and ordinary negligence in isolated incidents, and good faith errors in judgment or discretion were not considered 'misconduct' within the meaning of the statute.

(Appellee Mississippi Department of Employment Security Commission brief, page 6)

Appellee Mississippi Department of Employment Security argues that Appellant Wilson failed to appear before the Administrative Law Judge. It is true that the Appellant never received a call from the Administrative Law Judge and therefore, did not provide any testimony at her hearing. The Appellee Mississippi Department of Employment Security argues, "[f]rom the record, it is clear that the ALJ attempted to contact Ms. Wilson and her representative at the number they provided and received no

answer." (Appellee Mississippi Department of Employment Security brief page 6) The Administrative Law Judge stated on the record that he telephoned Appellant Wilson and her Representative, Virginia, at the numbers that were provided to the Mississippi Department of Employment Security. (T. 9) The Administrative Law Judge does not state with specificity which numbers he telephoned. The only number that was submitted to the Appellee Mississippi Department of Employment Security was submitted per Notice of Appearance filed by the Representative for Appellant Wilson. (T. 19)

However, Appellee Mississippi Department of Employment Security failed to state that Appellant Wilson and her Representative had telephoned the Administrative Law Judge on the date and scheduled time of Appellant Wilson's hearing. They were advised that the Administrative Law Judge was behind schedule and would call. If this message had been given to the Administrative Law Judge, then maybe he would have realized that the parties were awaiting his telephone call. (T. 24-25) In any case, when the Representative for Appellant Wilson telephoned the Administrative Judge again and discovered that the hearing had been held without her client, she immediately prepared a request for a re-hearing and faxed same to the Administrative Law Judge regarding the missed telephoned call. This was done prior to the Administrative Law Judge rendering a decision in the case. In his decision, the Administrative Law Judge did not acknowledge Appellant Wilson's Representative's request for a re-hearing.

Upon receipt of the adverse decision from the Administrative Law Judge, Appellant Wilson's Representative filed a request for a new hearing to the Board of

Review based upon the following language from the Appellee Mississippi Department of Employment Security:

Appeal Rights (emphasis not added)

> This decision will become final fourteen (14) days after the date indicated above unless you file an appeal with the Board of Review within that time; or if neither of you nor your representative attended your hearing, you may file a written request with the Administrative Law Judge for a rehearing within the aforesaid fourteen (14) days. Your request should state the reason you failed to attend. The Administrative Law Judge will determine if good cause exists to grant a rehearing. (T.23)

Appellee Mississippi Department of Employment Security cites Regulation 200.50 for the proposition that when a party fails to appear, MDES has the discretion to refuse to re-open a hearing. (Appellee Mississippi Department of Employment Security brief page 6) The exact language from this section reads as follows:

> The Board of Review or the Appeals Department may make informal disposition of any adjudicatory proceeding by default when the appealing party or the party with the burden of proof fails to appear at the scheduled hearing. A party shall be deemed to have failed to timely appear at a hearing when the party fails to appear as provided in the notice of hearing, including calling an Appeals Department telephone number or providing in advance a telephone number as required by the notice of hearing, or **by failing to be present at the hearing number provided by the party for ten (10) or more minutes past the scheduled start time for the hearing**. (Emphasis added)

(T.68-69)

It is conceivable, that the Administrative Law Judge may have telephoned the number listed by Appellant Wilson's Representative on one (1) occasion. Since the record only documents one (1) telephone call to the number listed for Appellant Wilson, the Administrative Law Judge failed to comply with one of the requirements, i.e. calling the claimant at least on two (2) occasions within ten (10) minutes of the start of the

hearing, as set forth by Regulation 200.50. (T.9,69-69) Appellant Wilson believes that Regulation 200.50 was promulgated because there are very few, if any, face to face unemployment hearings conducted by Appellee Mississippi Department of Employment Security. If the face to face hearing had been in place, Appellant Wilson would not be before this Court arguing good cause due to the failure of a telephone system. Thus, the Mississippi Department of Employment Security, through the Regulations promulgated recognized that there may be some circumstances in which a claimant may fail to appear at a hearing and good cause found. (T.68-69)

Section (B) of Regulation 200.50 states, "[a]ny such default may be set-aside by the Board of Review or Appeals Department for good cause shown." (T. 69) Appellant Wilson and her Representative have argued throughout her appeal process that good cause existed for a re-hearing of her case. To this day, Appellant Wilson has not been advised why Appellee Mississippi Department of Employment Security did not find good cause for a re-hearing in her case. (T.68-69)

Although Appellee Mississippi Department of Employment Security argues that because of Appellant Wilson's "failure to participate in the hearing, she is barred from complaining about the Administrative Law Judge's decision finding for the Employer." (Appellee Mississippi Department of Employment Security brief, page 7) This argument is an incorrect assertion of the law that Appellee Mississippi Employment Security Commission has cited. Section 71-5-513 A (1)(c) of the Mississippi Code of 1972, as amended, requires that the burden of proof is upon the employer in cases of dismissal. Further, case law cited stated above also states that there must be substantial

evidence presented. See Wheeler at 1384 and section 71-5-531 of the Mississippi Code, as amended.

Appellee Mississippi Department of Employment Security argues that the "... issue regarding the Claimant's default is within MDES's authority to determine under Mississippi Code Annotated Sections 71-5-523 and 71-5-525 (Miss. 2008), and the regulation making authority of the Department. (Appellee Mississippi Department of Employment Security brief, page 7) However, discretion by any Agency should not be abused or be arbitrarily applied. The Court held in Sprouse v. Mississippi Employment Security Commission, 639 So. 2d 901, 901 (Miss. 1994), the following principle:

> An agency's conclusions must remain undisturbed unless the agency's order 1) is not supported by substantial evidence, 2) is arbitrary or capricious, 3) is beyond the scope or power granted to the agency, or violates one's constitutional rights.

See also Mississippi Commission on Environmental Quality v. Chickasaw County Board of Supervisors, 621 So. 2d 1211 (Miss. 1993)

The case of Molden and April Avery v. Mississippi State Department of Health, 730 So. 2d 29, 43 (Miss. 1998) offers definitions to the terms of art as follows: the court held that

> ... the terms 'arbitrary' and 'capricious' are open textured and not susceptible of precise definition or mechanical application....
> 'Arbitrary' means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequately determining principle; not done according to reason or judgment, but depending upon the will alone,-absolute in power, tyrannical, despotic, non-rational,-implying either a lack of understanding of or a disregard for the fundamental nature of things.
> 'Capricious' means freakish, fickle, or arbitrary. An act is capricious when it is done without reason in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settlement controlling principles....

Appellant Wilson argues that the failure of Appellee Mississippi Department of Employment Security to grant her a re-hearing fits the definition of arbitrary and capricious as set forth in Molden.

Appellee Mississippi Department of Employment Security next argument is that

> ... the Employer met its burden of proof by submitting substantial evidence that the claimant committed disqualifying misconduct. The Claimant's behavior leading to the terminating event clearly exhibits a wanton or willful disregard for the Employer's interests. Her repeated negligence further indicates an intentional disregard of her duties and obligations to the Employer. According to the testimony of the Employer's representative, Ms. Salenta Vaughn, Ms. Wilson had been given multiple verbal warnings about her work performance by different supervisors over the course of her employment. These warnings were followed by a written warning about her negligence in cash shortages and overages on March 29, 2006. (R.Vol. 2, p. 12) The third step was another written warning on January 17, 2007, for her deliberate violation of Employer's instruction not to leave the door to answer the lobby phone. Once she did answer the telephone, she deliberately ignored the further instructions not to divulge that conversation. This improper conduct resulted in a 'decision day,' which gives the employee an opportunity to reflect on the behavior and draft a statement showing a plan to correct that behavior. Apparently, Ms. Wilson did not turn in her statement. (R. Vol. 2, p. 14-15) A 'decision day' puts the employee on notice that one more violation within the year will result in termination. (R. Vol. 2, p.15)

(Appellee Mississippi Department of Employment Security brief, page 7)

Appellant Wilson argues that Appellee Mississippi Department of Employment Security statements are not support in fact or law. Appellant would cite the case of Williams v. Mississippi Employment Security Commission and Anderson-Tully Company, 395 So. 2d 964 (Miss. 1981). Appellee Mississippi Department of Employment Security argues that Williams is distinguishable from the case at bar. According to Appellee Mississippi Department of Employment Security the evidence presented in Williams

was "only one letter and the Court held that 'uncorroborated hearsay is not substantial evidence.'" (Appellee Mississippi Department of Employment Security brief, page 8)

Appellant Wilson reminds the Court that, in the case at bar, the witness only had personal knowledge of one (1) incident involving Appellant Wilson. (T. 9-19) There are no copies of warnings or information regarding any other discipline or of an alleged 'decision day'. (T.15) In fact, the Administrative Law Judge did not know what a "decision day" was. This is supported by the dialogue at the hearing between the Administrative Law Judge and Appellee Walmart #2717 Representative which is as follows:

> Q: Now, what is a decision making day?
> A: A decision making day is, you know, the last step into, okay. We warned you on different occasions about your job performance or what you, you know, attendance, whether it was attendance, you know, her leaving the door or whatever and they give you a, this is your last chance. And you take the day off. You have eight hours pay. You get paid for that day, and you bring in a little small paragraph of what are you going to do to correct the problem of what you got the decision day for. And you're supposed to give that to management, what you're going to correct the problem for, about.
> Q: Okay and did she submit a statement showing that she had corrected the problem?
> A: I'm looking in her file. As of now, I do not see one.

(T.14-15)

Because Appellee Walmart #2717 Representative only had personal knowledge of one (1) incident; all other matters testified to by Appellee Walmart #2717 Representative was hearsay and as such does not meet the substantial evidence test as set forth in Williams. Id. at 966 and Mickel v. Mississippi Employment Security Commission, 765 So. 2d 1259 (Miss. 2000). (T.13,16-18) The hearsay statements of the Appellee Walmart #2717 had been denied earlier by Appellant Wilson in a

statement taken by a worker of Appellee Mississippi Department of Employment Security and no evidence of any disciplinary action was submitted into the record. (T. 3) Other than the one (1) incident Appellee Walmart #2717 Representative testified to that she personally observed, all other information was hearsay and without supporting document. (T. 16-18) Thus, the evidence does not meet the misconduct test as set forth in Piggly Wiggly v. Mississippi Employment Security Commission, 465 So. 2d 1062 (Miss. 1985) or Wheeler v. Arriola, 408 So.2d 1381 (Miss. 1982)

The court in Wheeler defined misconduct

> "...as conduct evincing such willful and wanton disregard of the employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect from his employee. Also, carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability, a wrongful intent or evil design, and showing an intentional or substantial disregard of the employer's interest or of the employee's duties and obligations to his employer, came within the term. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, or inadvertences and ordinary negligence in isolated incidents, and good faith errors in judgment or discretion were not considered 'misconduct' within the meaning of the statute. Id. at 1383.

Both the Appellee Mississippi Department of Employment Security and Appellant Wilson agree that the case of Mickel v. Mississippi Employment Security Commission, defines substantial evidence as something more than a 'mere scintilla' of evidence" and "... means such relevant evidence as reasonable minds might accept as adequate to support a conclusion." Mickel at 1261. Although Appellee Mississippi Department of Employment Security argues that the evidence presented by Appellee Walmart #2717 was sufficient, Appellant Wilson maintains her position that the

evidence was not sufficient to met the substantial evidence test.

III.

The Employer's appeal of the Notice to Employer of Claims Determination was timely.

Appellee Mississippi Department of Employment Security Commission argument that Appellee's Walmart #2717 appeal was timely is contrary to law and the very statute it cited. Appellee Mississippi Department of Employment Security cites section 71-5-517 which states that the "claimant or any party to the initial determination or amended initial determination may file an appeal from such initial determination or amended initial determination within fourteen (14) days after notification thereof, or after the date such notification was sent to his last known address." Said Appellee Mississippi Employment Security Commission continues by stating that

> ...the Employer's appeal was post-marked on June 28, 2007 and that it was the standard business practice of MDES to look to the postmark date in determining the timeliness of an appeal. Even though the Appeals Department did not stamp it received until July 2, 2007, the envelope clearly shows that the appeal was mailed by June 28, 2007.

(Appellee Mississippi Department of Employment Security brief, page 9)

Appellant Yamenia Wilson agrees that the appeal was apparently mailed by Employer Walmart #2717 on June 28, 2007, the date it was due. Based upon the mailing date, the appeal could not have been stamped received within fourteen (14) days after notification thereof of the decision of the Claims Examiner. Receipt by the United States Postal Services is not receipt by the Appellee Mississippi Department of Employment Security. Although Appellee Mississippi Department of Employment

Security does not specifically argue Rule 6 (e) of the Mississippi Rules of Civil Procedure, in actuality, that is its argument. This argument was first put forth by the Mississippi Department of Employment Security (formerly the Mississippi Employment Security Commission) in 1994 in the Wilkerson v. Mississippi Department of Employment Security Commission, 630 So. 2d 1000 (Miss. 1982). In that case, the Court held that "[w]e interpret section 71-5-517 to mean that a party to the initial determination, claimant or employer, has fourteen days from the time that the notification is mailed to appeal to the Board of Review....". Wilkerson at 1002

In Wilkerson, the Court held, [a]pplying this interpretation here, it is undisputed that Anderson Tully received notification of the appeal on January 18, 1990, it did not file its appeal until February 2, 1990, fifteen (15) days following the mailing date of notification The appeal was filed untimely and as such, by statute, the ruling of the Claim Examiner became the final determination. Id. at 1002-1003 Appellant Yamenia Wilson also notes that Appellee Mississippi Department of Employment Security (formerly Mississippi Employment Security Commission argued the Wilkerson case in the matter styled Mississippi Security Commission v. Parker, 905 So. 2d 613, 615-616 (Miss. 2004), the Mississippi Employment Security Commission argued that the Employer's appeal was untimely. The Court of Appeals ruled that

> MESC can not promulgate rules of procedure in conflict with the Mississippi Rules of Civil Procedure. Specifically, the court finds that pursuant to Miss. R. Civ. P. 6(a) and 6(e), Parker's time to appeal her case to the Board of Review began on July 2, 2002, the day after the appeals referee mailed her decision to Parker, and ended July 19, 2002, which reflects the addition of an additional three days for Parker to respond, as required by Rule 6(e). Therefore, Parker's appeal was filed timely with

the Board Review.

Appellee Mississippi Department of Employment Security filed a writ of certiorari and in the case styled Mississippi Employment Security Commission vs. Parker, 903 So. 2d 42, 44 (Miss. 2005), the court held that "...the fourteen-day time period to appeal to the Board of Review begins to run on the date that notice is mailed to the parties." Wilkerson v. Miss. Employment Sec. Comm'n, 630 So. 2d 1000 (Miss.1994). That is, where notice of the referee's decision is sent by mail, the fourteen-day time period begins to run on the date that notice is mailed. Furthermore, while holding that an appeal filed one day late was untimely, this Court stated that the fourteen day time period as set by statute is to be strictly construed. Id at 1002. The court continued by citing Molden v. Miss. State Dep't of Health, which stated that the Mississippi Rules of Civil Procedure are inapplicable to administrative procedures and appeals. Section 71-5-517 of the Mississippi Code of 1972, as amended has not changed either of the Court's decision.

A.

The Claimant waived her right to argue the issue of the timeliness of the Employer's appeal from the Notice to Employer of Claims Determination when she failed to assert this claim before the Administrative Law Judge or the Board of Review.

This argument is contrary to the Appellee own policies and as well as the law. If the appeal is not filed timely as Appellant Wilson argues in this case, the Appellee Mississippi Department of Employment Security loses jurisdiction. The court, in the case of Holt v. Mississippi Employment Security Commission, 724 So. 2d 466, 468

(Miss. 1998), held that when an appeal is not filed within the fourteen (14) day time period, the decision becomes final and the appeal is "...herewith dismissed." The court continued by stating that in "...[t]he absence of a rule, and none existed then nor now, the strict fourteen -day requirement applied." This sums up this case. Appellee Mississippi Department of Employment Security cannot extend an appeal period when the decision has become final. Thus, Appellee Mississippi Department of Employment Security's argument that the issue was not raised before the Board of Review has absolute no merit. Further, Appellant Wilson asked for a re-hearing which would have allowed Appellant Wilson to put forth all issues but same was arbitrarily and capriciously denied.

B.

MDES's policy of considering an appeal to the ALJ or Board of Review timely filed if it is postmarked by the statutory deadline is reasonable, applied equitably, is not arbitrary and therefore, the Employer's appeal should be considered timely filed.

The above argument by Appellee Mississippi Department of Employment Security is contrary to Parker which was filed by Appellee Mississippi Department of Employment Security after the Circuit Court and Court of Appeals found a claimant's appeal, which was filed one (1) day late, was timely. Appellee Mississippi Department of Employment Security filed a writ of certiorari. This court granted certiorari and rendered its decision in 2005 in the case of Mississippi Employment Security Commission v. Parker, 903 So. 2d 42, 45. One assignment of error was "[w]hether the decision rendered by the Court of Appeals of the State of Mississippi on April 13, 2004

is contrary to the Employment Security Laws of the State of Mississippi." In the prior Parker case, the Court of Appeals applied Rue 6 of the Mississippi Rules of Civil Procedures which allowed for three (3) days for mailing. In Parker the court reaffirmed its earlier ruling which was that the fourteen-day time period for appeal of an unemployment matter "is to be strictly construed." Id. at 44.

Appellee second argument is that

> "MDES receives approximately 4000 to 6000 pieces of mail at its state office a day. The mail does not always get sorted to the appropriate department on the day it is received. It may take several days for the appeals department to receive a notice of appeal. Due ot this problem, the support staff in appeals must look to the postmark on the envelope to determine if a notice of appeal was filed timely.

(Appellee Mississippi Department of Employment Security brief, page 11-12) Appellee Mississippi Department of Employment Security did not submit any affidavits from any person from the Unemployment Division. But most importantly, if this was a problem the Courts have said that Appellee Mississippi Department of Employment Security may promulgate Regulations to the contrary. However, this has not been done. Holt at 468. Further, even if the Department looked at the postmark date, the appeal of Appellee Walmart #2717 could not have been timely. The appeal was mailed on June 28, 2007 and the appeal had to be received on or before June 28, 2007. So if the appeal was placed in the mail on the date due, it is clear that the appeal could not be timely.

Appellee Mississippi Department of Employment Security stated that Holt supports its position that an appeal filed by an interested party is filed timely if it is postmarked by the statutory deadline. (Appellee Mississippi Department of

Employment Security brief, page 12) Appellant Wilson believes this is an incorrect statement of the law cited in Holt. In Holt, the court ruled that the fourteen (14) day requirement required strict compliance. Id. at 468.

CONCLUSION

The facts in the case are simply, the Appellee Mississippi Department of Employment Security should have found that the appeal of the Employer Walmart #2717 was untimely and dismissed the appeal. Appellee Mississippi Department of Employment Security raised the issue that 4000 to 5000 pieces of mail flows through its office per day and that the mail may not be stamped the date of receipt. If 4000 to 5000 pieces of mail is coming into the office, how much is going out? Is the date that is stamped as the mail date the correct day? Such a statement places the integrity of the system that is in place in that agency.

Another argument presented by Appellee Mississippi Department of Employment Security was that one has to look at the stamped postal date. If mail is mailed on the date it is due, clearly it cannot be timely received under any circumstance. Appellee Mississippi Department of Employment Security should have simply done the right thing and followed the law and its own policies which it acknowledged in Parker and dismissed the employer's appeal.

All other arguments regarding the sufficient of the evidence and misconduct are smoke screens and are not the pivotal points in the case at bar. However, if the court looked at the evidence presented in this case, it would be insufficient to find Appellant

Wilson guilty of misconduct as defined in law.

RESPECTFULLY SUBMITTED,

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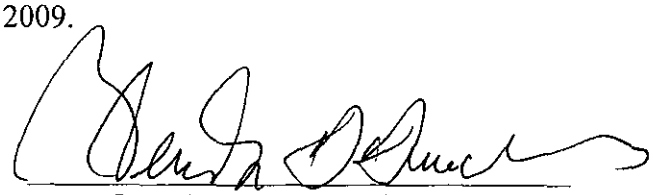
CERTIFICATE

I, Glenda F. Funchess, Attorney for Appellant, do certify that I have this day, mailed through the United States Postal Service, postage pre-paid, two (2) true and correct copies of the foregoing Appellant's Reply Brief to the Mississippi Department of Employment Security to Attorney LeAnne F. Brady, Senior Attorney for the Mississippi Department of Employment Security at her last known address, Post Office Box 1699, Jackson, MS 39215-1699 and hand delivered one (1) copy of Appellant's Reply Brief to the Honorable Robert Helfrich, Circuit Court Judge, Post Office Box 309, Hattiesburg, MS 39403-0309.

This the 1st day of October, 2009.



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