

IN THE SUPREME COURT OF MISSISSIPPI

JADONNA PEARSON

APPELLANT

VERSUS

NO. 2009-WC-00908COA

LIGHTHOUSE POINT CASINO

APPELLEE

**ON APPEAL FROM
CIRCUIT COURT OF WASHINGTON COUNTY, MISSISSIPPI,
MISSISSIPPI WORKERS' COMPENSATION COMMISSION**

APPELLEE'S BRIEF

**Mark W. Verret (MS # [REDACTED])
Brett M. Bollinger (MS # [REDACTED])
Allen & Gooch
3900 N. Causeway Blvd.
One Lakeway, Suite 1450
Metairie, LA 70002
Telephone: (504) 836-5200
Fax: (504) 836-5205**

**Attorneys for Defendant/Appellee
Lighthouse Point Casino and Federal
Insurance Company**

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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 representations are made in order that the Judges of the Circuit Court may evaluate possible disqualification or recusal.

1. Jadonna Pearson, 2310 West 7th Street, Apt. 34, Hattiesburg, MS 39401;
2. Mark W. Verret, Brett M. Bollinger, Allen & Gooch, Attorneys for Defendant/Appellee;
3. Lighthouse Point Casino, represented by Mark W. Verret, Allen & Gooch, 3900 N. Causeway Blvd., One Lakeway, Suite 1450, Metairie, LA 70002, Attorneys for Defendant/Appellee;
4. Federal Insurance Company, represented by Mark W. Verret, Allen & Gooch, 3900 N. Causeway Blvd., One Lakeway, Suite 1450, Metairie, LA 70002, Attorneys for Defendant/Appellee;
5. Honorable Denise Turner Lott, Administrative Judge, Mississippi Workers' Compensation commission, P.O. Box 5300, Jackson, MS 39296-5300
6. Honorable Liles B. Williams, Honorable Augustus L. Collins, Honorable John R. Junkin, II, Commissioners, Workers' Compensation Commission, P.O. Box 5300, Jackson, MS 39296-5300
7. Honorable Ashley Hines, Circuit Court Judge, P.O. Box 1315, Greenville, MS 38702
8. David N. Gillis, Attorney for Jadonna Pearson, Appellant, 405 Tombigbee St., Jackson, MS 39201

Dated this 3rd day of September, 2009.

A handwritten signature in black ink, appearing to read 'Mark W. Verret', written over a horizontal line.

Mark W. Verret (MS #10270)
Brett M. Bollinger (MS #101502)
Allen & Gooch
3900 N. Causeway Blvd.
One Lakeway, Suite 1450
Metairie, LA 70002
Telephone: (504) 836-5200
Fax: (504) 836-5205

Attorneys for Defendant/Appellee
Lighthouse Point Casino and Federal
Insurance Company

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STATEMENT OF THE CASE

A. Nature of the Case

This is a workers' compensation case filed on December 27, 2007. (See Appellee's Record Excerpts, p. 1). According to the Petition to Controvert filed by the claimant in this matter, the claimant allegedly suffered an injury while in the course and scope of her employment with Lighthouse Point Casino in Greenville, Mississippi on October 17, 2005. (See Appellee's Record Excerpts, p. 1). The pertinent issue for review by this Court is whether the claimant timely filed the Petition to Controvert pursuant to Miss. Code Ann. 71-3-35.

B. Course of Proceedings and Disposition in the Court Below

This claimant-appellant filed a Petition to Controvert on December 27, 2007. (See Appellee's Record Excerpts, p. 1). The defendant-appellee's Motion to Dismiss came before the Administrative Law Judge on August 4, 2008. (See Appellee's Record Excerpts, p. 4). The issue underlying the Motion to Dismiss was that the claimant failed to timely file the Petition to Controvert pursuant to the two year statute of limitations in Miss. Code Ann. 71-3-35. Following the hearing, the Administrative Law Judge entered an Order on August 8, 2008, dismissing the claimant's Petition to Controvert as barred by the applicable statute of limitations in Miss. Code Ann. 71-3-35. (See Appellee's Record Excerpts, p. 1).

Following the Order by the Administrative Law Judge, the claimant filed a Petition for Review with the full Mississippi Workers' Compensation Commission. (See Appellee's Record Excerpts, p. 3). On November 7, 2008, the Full Commission Order was entered into the record, affirming the Administrative Law Judge's Order dismissing the claimant-appellant's Petition to

Controvert as time barred under Miss. Code Ann. 71-3-35. (See Appellee's Record Excerpts, p. 3).

The claimant/appellant then sought review of the Full Commission Order in the Circuit Court of Washington County, Mississippi. (See Appellee's Record Excerpts, p. 1). Upon review of the briefs submitted by the parties and the record, the Circuit Court found that, "the decision of the Mississippi Worker's Compensation Commission was supported by the evidence, was not arbitrary or capricious, was within the power of the administrative to make, and did not violate any statutory or constitutional rights of the appellant." (See Appellee's Record Excerpts, p. 1). Accordingly, the Judgment of the full Mississippi Workers' Compensation Commission was affirmed. This appeal followed.

C. Statement of Relevant Facts

The claimant alleges that upon closing a door to a slot machine, a piece of glass on top of the slot machine fell, making contact with the claimant's head. (See Appellee's Record Excerpts, p. 1). The claimant alleges this incident took place on October 17, 2005, at the Lighthouse Point Casino in Greenville, MS. (See Appellee's Record Excerpts, p. 1). The claimant sought medical treatment at the emergency room on the day of the accident, Leland Medical Clinic, and Dorsey Chiropractic Clinic. (See Appellant's Brief at Page 2). The claimant last sought medical treatment on November 30, 2005. (See Appellant's Brief at Page 2). The claimant filed the Petition to Controvert on December 27, 2007, more than two years since her last treatment. (See Appellee's Record Excerpts, p. 1).

As a result, defendants-appellees filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the Mississippi Rules of Civil Procedure. (See record, Page 35). The basis for the Motion to

Dismiss is the claimant failed to file their Motion to Controvert timely in accordance with Miss. Code Ann. 71-3-35 (1) which states,

“Regardless of whether notice was received, if no payment of compensation (other than medical treatment or burial expense) is made and no application for benefits filed with the commission within two years from the date of the injury or death, the right to compensation therefore shall be barred.”

The claimant allegedly suffered her work injury on October 17, 2005. (See Appellee’s Record Excerpts, p. 1, Appellant’s Brief, p. 2.) The claimant last sought medical treatment for this alleged injury on November 30, 2005. (See Appellant’s Brief, p. 2). As stated above, the claimant-appellant’s Motion to Controvert was filed on December 27, 2007. (See Appellee’s Record Excerpts, p. 1). As such, the claimant-appellant was clearly time barred from filing the Petition to Controvert by Miss. Code Ann. 71-3-35(1). As noted in the previous section, the Administrative Law Judge, the Full Mississippi Workers’ Compensation Commission, and the Circuit Court agreed that the claimant’s Petition to Controvert was time barred. Thus, claimant has appealed these Orders to this Court.

SUMMARY OF THE ARGUMENT

According to the claimant-appellant’s own arguments made before this Court, the claimant allegedly sustained an injury on October 17, 2005, and last treated for the injuries she allegedly sustained in this incident on November 30, 2005. (See Appellee’s Record Excerpts, p. 1 and Appellant’s Brief, p.2). Thereafter, claimant filed this Petition to Controvert on December 27, 2007. (See Appellee’s Record Excerpts, p. 1). As a result, the claimant’s Petition to Controvert was time barred by the applicable statute of limitations in Miss. Code Ann. 71-3-35(1), which states in pertinent part:

“Regardless of whether notice was received, if no payment of compensation (other than medical treatment or burial expense) is made and no application

for benefits filed with the commission within two years from the date of the injury or death, the right to compensation therefore shall be barred.”

STANDARD OF REVIEW

The Workers’ Compensation Commission’s decisions are reviewed for an “error of law or an unsupported finding of fact.” *Georgia Pacific Corp. v. Taplin*, 586 So.2d 823, 826 (Miss. 1991). The decision of an agency shall not be overruled by this Court unless one of the following factors is present: 1) the decision is unsupported by substantial evidence, 2) the decision was arbitrary or capricious, 3) the decision was beyond the authority of the agency, or 4) a statutory or constitutional right of the claimant was violated. *Miss. Sierra Club, Inc. v. Miss. Dept. of Env’tl. Quality*, 819 So.2d 515, 519 (Miss. 2002). A question of law is determined *de novo*. *Jordan v. Pace Head Start*, 852 So.2d 28, 30 (Miss. Ct. App. 2002). Claimant-Appellant is unable to meet any of the above criteria in order to overturn the decision of the Administrative Law Judge, Mississippi Workers’ Compensation Commission, and the Circuit Court.

ARGUMENT AND AUTHORITIES

1.) The Appellee Employer moved pursuant to Rule 12(b)(6) of the Mississippi Rules of Civil Procedure, to dismiss Claimant’s Complaint for failure to state a claim upon which relief can be granted. Claimant by her own admission stated that her allegedly compensable work related injury occurred on **October 17, 2005**. (See Appellee’s Record Excerpts, p. 1). Claimant last sought medical treatment on **November 30, 2005**. (See Appellant’s Brief, Page 2). Claimant filed her Petition to Controvert on **December 27, 2007**. (See Appellee’s Record Excerpts, p. 1).

2.) Appellee Employer rightfully argued to the Administrative Law Judge Denise Turner Lott, the Mississippi Workers' Compensation Commission, and the Circuit Court of Washington County, Mississippi, that Claimant's Petition to Controvert was barred by the applicable statute of limitations provided for in *Miss. Code Ann. 71-3-35*, which states in pertinent part:

"Regardless of whether notice was received, if no payment of compensation (other than medical treatment or burial expense) is made and no application for benefits filed with the commission within two years from the date of the injury or death, the right to compensation therefore shall be barred."

3.) Claimant-Appellant's reliance on *Baker v. IGA Super Valu Food Store*, 990 So.2d 254 (Miss. App. Ct. 4/22/2008) is misplaced. Initially, this issue was raised in oral argument and previously briefed to the Circuit Court of Washington County. Therefore, it was previously considered and rejected. Second, in *Baker*, the employer had paid the employee's medical expenses for two years following the incident. It was then after the cessation of these benefits that the employee filed a Petition to Controvert. In *Baker*, the Petition to Controvert was filed only two months following the cessation of payments of medical expenses. However, in the present matter, a much longer period of time elapsed from the date the claimant last sought medical treatment. As fully set forth in this brief, the claimant-appellant waited in excess of two years to file a Petition to Controvert from the last medical treatment. This prolonged delay is far in excess of the two month period in *Baker* from the moment the employer stopped paying medical benefits to the moment the Petition to Controvert was filed. The employer in *Baker, supra* was ordered to pay the outstanding medical benefits prior to January 9, 2004, due to the fact that the employer was

already paying those benefits. The Administrative Law Judge simply ordered the employer to pay any outstanding bills. In *Baker, supra*, the employer had already undertaken the obligation to pay those expenses.

4) In the present matter, the employer-appellee paid for the authorized medical treatment ending on November 15, 2005. From this cessation of payment, the claimant-appellant did not file a Petition to Controvert until over two years later. Clearly, the present matter is distinguished from the facts of *Baker, supra*. Furthermore, the holding of the Court in *Baker, supra*, found that the statute of limitations commenced on the date of the injury and that the two year statute of limitations applied, such as the Administrative Law Judge, the Full Commission Order, and the Circuit Court held in this matter.

5) Claimant incorrectly argued that her claim was timely because the Appellee Employer failed to file a Form B-31 in accordance with *Miss. Code Ann. 71-3-37(7)* providing notice that the Defendant Employer considered its obligation owed to Claimant fulfilled in violation of her right to due process of law.

6.) Claimant made the additional argument that her claim was timely under *Miss. Code Ann. 71-3-53*, which is sometimes referred to as the “one-year statute.”

7.) The Administrative Judge, Full Commission Order, and Circuit Court correctly determined that the Appellee Employer’s central argument concerned *Miss. Code Ann. 71-3-35*, sometimes referred to as the “two-year statute.”

8.) The “two-year statute” comes into effect upon two conditions: 1) if no payment of compensation (other than medical treatment or burial expense) is made; and 2) if no application for benefits has been filed with the commission with two years from the date of injury or death. *Martin v. L. & A. Contracting Co.*, 249 Miss. 441, 162 So.2d 870 (1964).

9.) Both of these requirements were met in the instant matter. Appellee Employer paid for the authorized medical treatment received by claimant ending on November 15, 2005. Moreover, no disability payments have been made to Claimant as evidenced by claimant’s own admission in her Petition to Controvert.

10.) “It is clear that this two year statute runs from the time of injury and applies in instances where there has been no payment of disability income benefits or nonburial death benefits. In the case at hand there were no disability or death benefits paid. Therefore, the two year statute applies.” *Jordan v. Pace Head Start*, 852 So.2d 28, 30(¶ 5) (Miss.Ct.App.2002). (Citations Omitted).

11.) The Administrative Law Judge’s Order, Workers’ Compensation Commission’s, and Circuit Court’s decision to affirm said Order is based on well established Mississippi jurisprudence. In *Speed Mechanical, Inc. v. Taylor*, 342 So.2d 317 (Miss. 1977) a circumstance similar to this was addressed. In *Speed*, an employee received compensation for his dental surgery and treatment as a result of an employment related injury. No disability compensation was paid to him. *Id.* at 318. More than two years

later, claimant filed for additional benefits. *Id.* The court determined “the legislature has provided that two years from the date of the injury is a sufficient period of time in which to either file a claim for compensation, or be barred therefrom. The bar of the two-year statute cuts off the rights to all compensation and does not except from its operation anything.” *Speed* at 320.

12.) Furthermore, *Speed, supra*, provides guidance for the application of the *one-year statute* and the *two-year statutes* by stating: “The two-year statute is not to be confused with the one-year statute. Numerous reported cases deal with the one-year statute situations, wherein the one-year statute (71-3-53) commences running from the date of the last payment of compensation, whether weekly indemnity benefits or medical benefits. In contradistinction, the two-year statute (71-3-35) expressly states that it runs from the date of injury.”

13.) Thus, the Administrative Law Judge, Workers’ Compensation Commission, and Circuit Court correctly followed the precedent of the Supreme Court of Mississippi’s ruling in *Speed, supra*, by ordering Claimant’s Petition to Controvert was barred by the applicable “*two-year statute*” or Miss. Code Ann. 71-3-35 due to claimant’s admission that her Petition to Controvert was filed more than two years from the date of her allegedly compensable work related injury.

14.) Therefore, the Administrative Law Judge’s Order, Workers’ Compensation Commission’s, and Circuit Court’s affirmation of said Order, are all supported by

substantial evidence and follows a well established judicial precedent set forth by the Supreme Court of Mississippi's ruling in *Speed Mechanical, Inc. v. Taylor*, 342 So.2d 317 (Miss. 1977).

15.) For the first time during the claimant's appeal, the claimant has raised an issue related to the introduction of evidence to the Full Mississippi Workers' Compensation. However, claimant rightfully acknowledges that Procedural Rule 9 of the Mississippi Workers' Compensation grants the Commission the discretion of whether to admit additional evidence. Appellee submits to this Court that the Mississippi Workers' Compensation exercised its discretion in affirming the Administrative Law Judge's Order. Further, the Mississippi Workers' Compensation abided by its procedural rules.


16.) For the reasons set forth above, the holding of the Administrative Law Judge, the Full Commission Order issued by the Mississippi Workers' Compensation Commission, and the Circuit Court of Washington County, Mississippi should be affirmed, dismissing claimant-appellant's Petition to Controvert as untimely under the provisions of *Miss. Code Ann. 71-3-35*.

CONCLUSION

The claimant-appellant appeals the Administrative Law Judge's Order of August 8, 2008, the Full Commission Order of November 7, 2008, and the Order by the Circuit Court of Washington County, Mississippi, dismissing the claimant's Petition to Controvert as barred by the applicable statute of limitations in *Miss. Code Ann. 71-3-35*.

As set forth above, the claimant-appellant has failed to demonstrate that the Order of the Administrative Law Judge, the Full Commission Order, and the Circuit Court Order should be overturned. At all stages of the appeal process, the Courts has sided with the appellee as the evidence demonstrates that the claimant-appellant failed to file the Petition to Controvert timely, and the law supports the finding that the Petition to Controvert should be dismissed accordingly.

Dated this the 3rd day of September, 2009.

By 
Mark W. Verret (MS [REDACTED])
Brett M. Bollinger (MS [REDACTED])
Allen & Gooch
3900 N. Causeway Blvd.
One Lakeway, Suite 1450
Metairie, LA 70002
Telephone: (504) 836-5200
Fax: (504) 836-5205

Attorneys for Defendant/Appellee Lighthouse Point
Casino and Federal Insurance Company

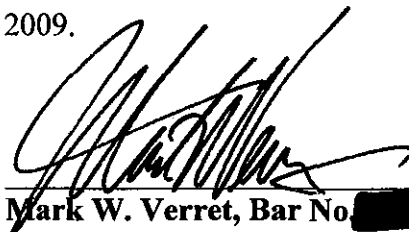
CERTIFICATE OF SERVICE

I, Mark W. Verret, attorney for Appellees, do hereby certify that I have this date caused to be mailed, by United States Mail, postage prepaid, a true and correct copy of the foregoing to:

David N. Gillis
Attorney at Law
405 Tombigee St.
Jackson, MS 39201

Honorable Ashley Hines
4th Circuit Court District Judge
P.O. Box 1315
Greenville MS 38702-1315

Dated this the 3rd day of September, 2009.


Mark W. Verret, Bar No. [REDACTED]