
IN THE SUPREME COURT OF MISSISSIPPI

DOCKET NUMBER: **2009-WC-1175**

BURLINGTON INDUSTRIES, INC. and
RELIANCE NATIONAL INDEMNITY COMPANY

EMPLOYER / APPELLANT
CARRIER / APPELLANT

VERSUS

MELINDA C. PRINCE

EMPLOYEE / APPELLEE

ON APPEAL FROM THE
CIRCUIT COURT OF CLARKE COUNTY, MISSISSIPPI
CIVIL ACTION No.: 2009-49-B
Mississippi Workers Compensation Commission
MWCC No. 98 09326-G-3339

BRIEF OF EMPLOYEE / APPELLEE

Oral Argument Requested

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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 justices of this Court may evaluate possible disqualification or refusal."

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<u>§71-3-51 Mississippi Code 1972</u>	10
<u>Bickham v. Department of Mental Health</u> , 592 So.2d 96 (Miss. 1991)	10
<u>Board of Levee Commissioners v. Parker</u> , 187 Miss. 621, 193 So. 346 (1940)	10
ARGUMENT	11
Standards of Review	11
<u>Aladdin Construction Co. v. John Hancock Life Insurance Co.</u> , 914 So.2d 169 (Miss. 2005)	11
<u>Derr Plantation, Inc. v. Swarek</u> , 14 So.3d 711 (Miss. 2009)	11
<u>Issaquena Warren Counties Land Co., LLC v. Blakeney</u> , 996 So.2d 747 (Miss. 2008)	11
<u>A.D.R. v. J.L.H.</u> , 994 So.2d 177 (Miss. 2008)	11
<u>Andrew Jackson Life Insurance Co. v. Williams</u> , 566 So.2d 1172 (Miss. 1990)	11
<u>Lopez v. Zachary Construction Corporation</u> , 22 So.3d 1235 (Miss.App. 2009)	11
<u>Weatherspoon v. Croft Metals, Inc.</u> , 853 So.2d 776 (Miss. 2003)	12
<u>Smith v. Jackson Constr. Co.</u> , 607 So.2d 1119 (Miss. 1992)	12
<u>Spann v. Wal-Mart Stores, Inc.</u> , 700 So.2d 308 (Miss. 1997)	12
<u>Fought v. Stuart C. Irby Co.</u> , 523 So.2d 314 (Miss. 1988)	12
<u>KLLM, Inc. v. Fowler</u> , 589 So.2d 670 (Miss. 1991)	12
<u>Lane v. Hartson-Kennedy Cabinet Top Co.</u> , 981 So.2d 1063 (Miss.App. 2008)	12
<u>Natchez Equip. Co. v. Gibbs</u> , 623 So.2d 270 (Miss.1993)	12
<u>Duke ex rel. Duke v. Parker Hannifin Corp.</u> , 925 So.2d 893 (Miss.App.2005)	12
<u>Westmoreland v. Landmark Furniture, Inc.</u> , 752 So.2d 444 (Miss.App. 1999)	12
<u>Zurich Am. Ins. Co. v. Beasley Contr. Co.</u> , 779 So.2d 1132 (Miss.App. 2000)	12
<u>Thomas v. Five County Child Development Program, Inc. and Commerce and Industry Insurance Company</u> , 958 So.2d 247 (Miss.App. 2007)	12
<u>Miss. Sierra Club, Inc. v. Miss. Dep't of Env'tl. Quality</u> , 819 So.2d 515 (Miss. 2002)	13
<u>Williams v. Fornett</u> , 906 So.2d 810 (Miss.App. 2002)	13
<u>Roebuck v. City of Aberdeen</u> , 671 So.2d 49 (Miss. 1996)	13

<u>Marantha Faith Center, Inc. v. Colonial Trust Co.</u> , 904 So.2d 1004 (Miss. 2004)	13
<u>Beamon v. State</u> , 9 So.3d 376 (Miss. 2009)	13
<u>Mason v. State</u> , 440 So.2d 318 (Miss. 1983)	13
<u>American Fire Protection, Inc. v. Lewis</u> , 653 So.2d 1387 (Miss.1995)	13
<u>Bailey v. Bryant</u> , 734 So.2d 301 (Miss.App. 1999)	13
<u>Dozier v. State</u> , 247 Miss. 850, 157 So.2d 798 (Miss. 1963)	14
PROPOSITION 1	
Whether the Circuit Court Properly Dismissed Appeal	15
<u>Rosson v. McFarland</u> , 933 So.2d 969 (Miss. 2006)	15
<u>Luther T. Munford, Mississippi Appellate Practice, Interlocutory Appeal, p.4-1</u> (MLI Press 2007)	15
<u>Radford v. CCA-Delta Correctional Facility</u> , 5 So.3d 1158 (Miss.App. 2009)	15
<u>McElveen v. Croft Metals, Inc.</u> , 915 So.2d 14 (Miss.App. 2005)	15
<u>§71-3-51 Mississippi Code 1972</u>	15, 18
<u>Cunningham Enterprises, Inc. v. Vowell</u> , 937 So.2d 32 (Miss.App. 2006)	15
<u>Bickham v. Department of Mental Health</u> , 592 So.2d 96 (Miss. 1991)	15, 16, 17
<u>§9-3-61 Mississippi Code 1972</u>	16
<u>Southern Natural Resources, Inc. v. Polk</u> , 388 So.2d 494 (Miss. 1980)	16, 18
<u>St. Regis Paper Co. v. Lee</u> , 249 Miss. 537, 163 So.2d 250 (1964)	16, 18
<u>Bullock v. AIU Insurance Company</u> , 995 So.2d 717 (Miss. 2008)	17
<u>§71-3-47 Mississippi Code 1972</u>	17
<u>Carter/Mondale Pres. Comm'n. v. Fed. Election Comm'n</u> , 711 F.2d 279, (D.C. Cir.1983)	17
<u>Newport News Shipbuilding v. Dir., Office of Workers' Comp. Programs</u> , 590 F.2d 1267, 1268 (4th Cir.1978)	17
<u>United Fruit Co. v. Dir., Office of Workers' Comp. Programs</u> , 546 F.2d 1224 (5th Cir.1977)	17
<u>Sun Shipbuilding & Dry Dock Co. v. Benefits Review Bd.</u> , 535 F.2d 758 (3rd Cir.1976)	17

<u>Lane v. Hartson-Kennedy Cabinet Top Co.</u> , 981 So.2d 1063 (Miss.App. 2008)	12
<u>Lopez v. Zachary Construction Corporation</u> , 22 So.3d 1235 (Miss.App. 2009)	11
<u>Marantha Faith Center, Inc. v. Colonial Trust Co.</u> , 904 So.2d 1004 (Miss. 2004)	13
<u>Mason v. State</u> , 440 So.2d 318 (Miss. 1983)	13
<u>McElveen v. Croft Metals, Inc.</u> , 915 So.2d 14 (Miss.App. 2005)	15
<u>McMahan, et al., Trustees, Etc., v. Adult Membership Bds. of Phi Kappa, Dusty and Debs Clubs</u> . 244 Miss. 692, 146 So.2d 359 (1962)	18
<u>Miss. Sierra Club, Inc. v. Miss. Dep't of Env'tl. Quality</u> , 819 So.2d 515 (Miss. 2002)	13
<u>Natchez Equip. Co. v. Gibbs</u> , 623 So.2d 270 (Miss.1993)	12
<u>Newport News Shipbuilding v. Dir., Office of Workers' Comp. Programs</u> , 590 F.2d 1267, 1268 (4th Cir.1978)	17
<u>Port of Boston Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic</u> , 400 U.S. 62, 91 S.Ct. 203, 27 L.Ed.2d 203, 209 (1970)	17
<u>Radford v. CCA-Delta Correctional Facility</u> , 5 So.3d 1158 (Miss.App. 2009)	15
<u>Roebuck v. City of Aberdeen</u> , 671 So.2d 49 (Miss. 1996)	13
<u>Rosson v. McFarland</u> , 933 So.2d 969 (Miss. 2006)	15
<u>St. Regis Paper Co. v. Lee</u> , 249 Miss. 537, 163 So.2d 250 (1964)	16, 18
<u>Sliman v. Nguyen</u> , 22 So.3d 1173 (Miss. 2009)	18
<u>Smith v. Jackson Constr. Co.</u> , 607 So.2d 1119 (Miss. 1992)	12
<u>Sonford Products Corp. v. Freels</u> , 495 So.2d 468 (Miss. 1986)	18
<u>Southern Natural Resources, Inc. v. Polk</u> , 388 So.2d 494 (Miss. 1980)	16, 18
<u>Spann v. Wal-Mart Stores, Inc.</u> , 700 So.2d 308 (Miss. 1997)	12
<u>Sun Shipbuilding & Dry Dock Co. v. Benefits Review Bd.</u> , 535 F.2d 758 (3rd Cir.1976)	17
<u>Thomas v. Five County Child Development Program, Inc. and Commerce and Industry Insurance Company</u> , 958 So.2d 247 (Miss.App. 2007)	12
<u>United Fruit Co. v. Dir., Office of Workers' Comp. Programs</u> , 546 F.2d 1224 (5th Cir.1977)	17
<u>Weatherspoon v. Croft Metals, Inc.</u> , 853 So.2d 776 (Miss. 2003)	12
<u>Westmoreland v. Landmark Furniture, Inc.</u> , 752 So.2d 444 (Miss.App. 1999)	12

<u>Williams v. Fornett</u> , 906 So.2d 810 (Miss.App. 2002)	13
<u>Zurich Am. Ins. Co. v. Beasley Contr. Co.</u> , 779 So.2d 1132 (Miss.App. 2000)	12

CONSTITUTIONS

Mississippi

none

United States

none

STATUTES

Mississippi

<u>§9-3-61 Mississippi Code 1972</u>	16
<u>§71-3-3 Mississippi Code 1972</u>	19
<u>§71-3-15 Mississippi Code 1972</u>	3
<u>§71-3-47 Mississippi Code 1972</u>	17
<u>§71-3-51 Mississippi Code 1972</u>	xi, 5, 7, 10, 15, 18
<u>§71-3-63 Mississippi Code 1972</u>	5

United States

none

TREATISES

<u>Dunn, <i>Mississippi Workers' Compensation</i>, §285 (3rd ed. 1982)</u>	18
<u>Luther T. Munford, <i>Mississippi Appellate Practice, Interlocutory Appeal</i>, p.4-1 (MLI Press 2007)</u>	15

RULES OF COURT

<u>Rule 11(b)(1) MRAP</u>	8
<u>Workers' Compensation Commission Procedural Rule 10</u>	7

STATEMENT OF ISSUES

Whether a Full Commission Order concerning a workers' compensation claim as to which no "award" has been granted is an interlocutory order.

Appellee / Claimant Prince respectfully suggests that, absent an "award" approved by the Commission, the Full Commission Order is interlocutory and not an appealable "final order." §71-3-51 Mississippi Code 1972. Cunningham Enterprises, Inc. v. Vowell, 937 So.2d 32 (Miss.App. 2006).

Whether the parties' stipulation that, if a the claim is compensable, then claimant is totally and permanently disabled, combined with the Full Commission Order finding compensability, constitutes an appealable "final order" of the Commission.

Appellee / Claimant Prince respectfully suggests that the parties may not stipulate a "final award of the commission," so as to render a Full Commission Order without an "award" an appealable order. Board of Levee Commissioners v. Parker, 187 Miss. 621, 633, 193 So. 346, 348 (1940).

CONCLUSION

This Honorable Court should affirm the learned Circuit Judge of Clarke County and remand this cause to the Mississippi Workers' Compensation Commission.

STATEMENT OF THE CASE

A.
NATURE OF THE CASE

Following the Administrative Law Judge's finding of compensability, the parties stipulated (1) that, if the compensability finding was sustained on appeal, then Appellant Employer / Carrier (1) would

. . . pay this claim as if the claimant is permanently and totally disabled from May 13, 1998 through 450 straight weeks at \$258.37 per week. Interest and penalties will be added to that amount. * * *.

and (2) Appellee Claimant reserved "the right to present evidence of out of pocket medical expenses, mileage, and her motion for nursing care." The Full Commission did not make an "award" or enter a "final order." Contending that a combination of the Full Commission Order affirming the ALJ and the parties' stipulation constituted a "final order," Appellant Employer / Carrier appealed from the Full Commission Order to the Circuit Court of Clarke County. Finding that the Full Commission Order was not a "final order" and merely interlocutory, the Circuit Court dismissed Appellant's appeal and remanded to the Workers' Compensation Commission. This appeal followed.

This Court should affirm the Circuit Court and remand to the Workers' Compensation Commission.

B.
COURSE OF PROCEEDINGS BELOW ¹

Mississippi Workers' Compensation Commission

Administrative Judge

On May 30, 2007, MWCC Administrative Law Judge Cindy P. Wilson entered the Order

¹ "CP." means "Clerk's Papers."

of the Administrative Judge (CP.25-39; 62-76, 134-148, 190-204), stating:

Proceedings were initiated in this cause by the filing of Claimant's Petition to Controvert on July 16, 1998, alleging disabling back, right leg and psychiatric injuries due to an accident occurring on March 24, 1998, in the course and scope of her employment with Burlington Industries, Inc. (hereinafter "employer"). Employer / carrier acknowledge the occurrence of a work-related accident and resultant injuries to claimant's right leg, but deny injury to her back or any psychiatric injury. Subsequently, this matter was tried before the Administrative Judge at a hearing on the merits in Meridian, Mississippi and the parties agreed that there is one issue and no stipulations. The issue for decision is whether the claimant suffered a work-related injury to her back and /or a psychiatric injury. [emphasis supplied]. (CP.25, 62, 134, 190).

and

FINDINGS

After carefully considering the pleadings, pre-hearing statements and the lay and medical evidence, the demeanor of the witnesses at the hearing and the applicable law, this Administrative Judge finds that claimant did suffer a work related injury to her back and resulting psychological problems as a result of the March 24, 1998, accident. Although claimant report [sic] to the employer, it is the opinion of the undersigned that she nonetheless did injure her back during this fall.

In reaching this opinion, I have relied, in part, on the following:

1. Mr. Norbert Lewis, the only witness to the accident, testified that claimant fell and landed on her back and her legs went in the air. As such, there is an eye witness who confirms that Ms. Prince had a work related accident resulting in her falling to the ground on her back. Of note is the fact that based on the employer / carrier's responses to discovery and Mr. Lewis' testimony, the employer never spoke with him about this accident; [*38, 75, 146, 203]

2. Ms. Prince testified that the reason she did not submit this as a workers' compensation injury was because she believed she would receive a reprimand and be in danger of losing her job. It is the opinion of the undersigned, based on the claimant's demeanor during the course of the hearing, a review of her past performance with the employer and the testimony of co-employees, that although claimant's understanding of Burlington's disciplinary process may have been incorrect, other employees had a similar understanding. Ms. Raines testified that she thought that an injury resulted in a written reprimand. Mr. Ivey's testimony was similar and the prior human resource director testified that it was possible that an on the job injury might result in a written reprimand if a safety violation is involved. Although claimant's understanding of the process may have been incorrect, it nonetheless was her understanding;

3. The claimant was extremely credible and I found her testimony compelling. I believed her testimony that she advised her treating physicians of the accident but told them that she would not be filing claims under workers' compensation; and

4. In regard to claimant's psychological condition, Dr. Ivey referred claimant to Dr. White, her treating psychiatrist, and he relates her psychological condition to the June 1998 back surgery. As such, it is the opinion of the undersigned that the undersigned that same is compensable.

DECISION

IT IS, THEREFORE, ORDERED AND ADJUDGED that the employer

/ carrier provide as follows:

1. Any total temporary disability benefits which may be owed relating to the back injury and related psychological condition; and
2. All medical services and supplies required by the nature of her injury and the process of [*39, 76, 147, 204] her recovery as provided by Section 71-3-15 and the Medical Fee Schedule.

SO ORDERED on May 30, 2007.

[emphasis original, emphasis supplied]. (CP.37-39; 74-76; 145-147; 202-204).

First (1st) Full Commission Order

On July 11, 2007, the Mississippi Workers' Compensation Commission entered a "*Full Commission Order*" (CP.205-206) reciting:

The above styled cause is before the Commission to consider the Employer / Carrier's Petition for Review before the Commission and Request for Oral Argument of an Administrative Judge Order of May 30, 2007. The Claimant filed her Motion to Dismiss Petition for Review. The Commission finds that the Claimant's Motion is well taken, this Order is interlocutory in nature in that it fails to dispose of all issues pending before the Administrative Judge. * * *

* * *

Having studied the record and applicable law, the Commission finds the Employer/Carrier's Petition for Review Before The Commission should be, [*206] and is hereby, dismissed without prejudice and the cause remanded to the Administrative Judge for such further proceedings as may be appropriate. If appeal is sought by either party following a final ruling by the Administrative Judge on the merits of the claim, the Commission can effectively review the claims presently raised by the Employer and Carrier, along with any other issues which may arise.

[emphasis supplied]. (CP.205-206).

Stipulation

On April 1, 2008, the Parties entered a "Joint Stipulation" (CP.40-42, 77-78, 149-150, 207-208) reciting that (1) the "original injury occurred on March 24, 1998;" (2) claimant's last day of work was May 13, 1998; (3) "the "compensability of this case was heard on December 7 and 8, 2006;" (4) the claim was found compensable; (5) leaving unresolved the "industrial loss / loss of wage earning capacity issue" and "other issues related to medical treatment of the claimant" [emphasis supplied] (CP.40, 77, 149). The employer and carrier appealed to the Commission, but the Commission declined to hear the appeal until the loss of wage-earning capacity issue was decided (CP.40, 77, 149). The Stipulation included a 2/11/2009 calculation of

a Lump Sum Award to Claimant for Permanent Total Disability (CP.41). The Stipulation concluded:

IT IS, THEREFORE, STIPULATED, by the parties that the issue of compensability may be appealed by the Employer and Carrier to the Full Commission and, after all appeals, should the compensability issue be affirmed, the Employer and Carrier agree to pay this claim as if the claimant is permanently and totally disabled from May 13, 1998 through 450 straight weeks at \$258.37 per week. Interest and penalties will be added to that amount. Further claimant reserves the right to present evidence of out of pocket medical expenses, mileage, and her motion for nursing care. [emphasis supplied]. (CP.42, 78, 150).

Employer / Carrier's Motion to Reinstate

On April 10, 2008, Appellants / Employer / Carrier filed a "*Motion to Reinstate Appeal*" (CP.209-211).

Second (2nd) Full Commission Order

On April 25, 2008, the Full Commission entered an Order granting Appellants / Employer / Carrier's Motion to Reinstate Appeal (CP.212).

Third (3rd) Full Commission Order

On February 10, 2009, the Mississippi Worker's Compensation Commission entered its "Full Commission Order" (CP.43-54, 79-90, 213-224) (CP.44-54, 80-90, 151-162)] stating:

The above styled cause came on for review in the offices of the Mississippi Workers' Compensation Commission, Jackson, Mississippi on the Employer/Carrier's "Petition for Review" and the Employer/Carrier's "Motion to Strike Claimant's Brief of Claimant/Appellee in Support of Order of Administrative Judge" to the Full Commission. Having thoroughly studied the record and the applicable law, the Full Commission affirms the "Order of Administrative Judge" dated May 30, 2007, and the "Motion to Strike Claimant's Brief on Appeal to the Full Commission" filed by Employer/Carrier is hereby denied. [emphasis supplied]. (CP.43, 79, 151).

Circuit Court of Clarke County

Appellant / Employer / Carrier Appeals

On March 25, 2009, Mississippi Workers' Compensation Commission issued its "Transmittal Letter to Circuit Court" transmitting the Commission's original file to the Circuit Court, citing §71-3-51 Mississippi Code 1972 (CP.95, 107, 130) and the Commission's Secretary's Certificate authenticating the transmitted record (CP.108, 131).

On March 26, 2009, Appellant / Employer / Carrier filed A Notice of Appeal to the Circuit Court from the Mississippi Workers Compensation Commission (CP.1; 22-24).

On April 1, 2009, Appellant / Employer / Carrier filed a Civil Cover Sheet in the Circuit Court (CP.98-100, 109-110, 132-133).

Appellee / Claimant's Objections and Motions

On April 1, 2009, Appellee / Claimant Prince filed a "*Motion to Dismiss Appeal for Sanctions, Penalties and Interest*" (CP.13-55) alleging that appeal was improper due to lack of jurisdiction (1) because the Full Commission's Order was merely interlocutory and not a final order (CP.13-14) and (2) because the amount of compensation and expenses due to Claimant Prince remained outstanding (CP.15) and quoting / discussing applicable Mississippi cases (CP.16-17).

Also on April 1, 2009, Appellee / Claimant Prince filed a "*Motion to Require Posting of a Supersedeas Bond*" (CP.56-90), relying in part upon §71-3-51 Mississippi Code 1972 (CP.58), reciting that Appellant / Employer / Carrier owed Appellee Claimant approximately \$1,330,135.94 in(1) past due compensation benefits, penalties, interest, past due medical charges, out of pocket medical charges, past due mileage, past due nursing care and (2) future compensation benefits, medical charges, mileage, and nursing care (CP.60).

Also on April 1, 2009, Appellee / Claimant Prince filed a "*Motion for Payment of Additional Services and Expenses*" (CP.91-97), relying in part upon §71-3-63 Mississippi Code 1972 (CP.92), citing four (4) Mississippi cases as precedent for enhanced attorney's fees on

appeal (CP.93), and citing another Mississippi case as precedent for enhanced compensation for out of pocket expenses (CP.93).

Appellant / Employer / Carrier's Response to Motions

On April 16, 2009, Appellant / Employer / Carrier filed a "*Response of Employer and Carrier to Claimant's Motion to Require Supersedeas Bond*" (CP.101-116), including an "*Application for Appeal to the Circuit Court of Clarke County, Mississippi with Supersedeas and Without Bond*" dated April 13, 2009 (but not file stamped) (CP.111-116).

Also on April 16, 2009, Appellant / Employer / Carrier filed an "*Amended Application for Appeal to the Circuit Court of Clarke County, Mississippi with Supersedeas and Without Bond*" (CP.117-120).

Also on April 16, 2009, Appellant / Employer / Carrier filed a "*Response of Employer and Carrier to Claimant's Motion to Dismiss Appeal, For Sanctions, Penalties and Interest*" (CP.121-163)

Clarke County Circuit Court Ruling

On June 1, 2009, the Circuit Court of Clarke County, Mississippi entered its Order Dismissing Appeal (CP.173-177). The learned Circuit Judge noted:

The Employee/Carrier admits that the Administrative Law Judge's Order and the Full Commission's Order were not final orders; but rather, they are interlocutory orders which would not be appealable to the Circuit Court. (Response of Employer/Carrier to Claimant's Motion to Dismiss Appeal, For Sanction, Penalties and Interest p.2). However, the parties entered into a Joint Stipulation on April 10, 2008, wherein the Employer/Carrier agreed that if the compensability issue was upheld on appeal, the Employer/Carrier would concede that Claimant is permanently and totally disabled. The Employer/Carrier argues that its concession of Claimant's permanent and total disability in the Joint Stipulation resolved any issues remaining at the administrative law judge's level; thus, allowing the Employer/Carrier to bring the compensability issue before this Court on appeal. (Response of Employer/Carrier to Claimant's Motion to Dismiss Appeal, For Sanction, Penalties and Interest p.2).

The Court is of the opinion that the Administrative Law Judge's Order and Full Commission's Order finding compensability only, without a determination of the total amount of compensation to be paid to Claimant are interlocutory in nature, and over which, this Court has no jurisdiction.

[emphasis added]. (Order Dismissing Appeal 2, CP.174).

The learned Circuit Judge also noted that §71-3-51 Mississippi Code 1972 only authorized appeal of a “final award of the commission” (CP.174) and that the

... Full Commission’s Order in this case expressly states that the Administrative Judge’s decision did not dispose of all issues to be determined at the administrative level. (Full Commission Order, [*176] docket p. 131). Clearly, the only issue addressed by the Administrative Judge and the Full Commission was compensability.

* * *

The issue of compensability is simply the threshold issue, with the determination of the monetary amount of compensation to be paid to Claimant still to be determined. (See Bullock v. AIU Ins. Co., 995 So.2d [717,] at 722. Because the total monetary amount of compensation has not been decided, [*177] substantial rights of the parties remain undetermined. (See Id.). Where, as in this case now before the Court, the parties have substantial rights that remain undetermined, the order is interlocutory and not appealable to the Circuit Court, despite a stipulation purporting to allow the appeal of the compensability issue only. (See generally Id.). Judgments of circuit court emanating from appeals for interlocutory orders of Workers’ Compensation Commission are nullities. Bickham v. Department of Mental Health, 592 So.2d 96 (Miss. 1991).

IT IS THEREFORE ORDERED AND ADJUDGED, that the Claimant’s Motion to Dismiss Appeal be and hereby is granted as the Decision of the Administrative Judge and the Full Commission’s Order are interlocutory orders, which the Circuit Court has no jurisdiction to hear. The Employer/Carrier’s appeal is hereby dismissed without prejudice. * * *.
[[bracketed] citation and emphasis supplied]. (CP.176-177).

Employer / Carrier’s Motion to Reconsider

On June 11, 2009, Appellants / Employer / Carrier filed a “*Motion to Reconsider*” (CP.179-224) arguing, inter alia, that

... the fact that the Full Commission accepted this appeal brought by the employer and carrier provides proof that there are no outstanding issues to be determined that would render this an interlocutory appeal. * * *.
(CP.180).²

² Workers’ Compensation Commission Procedural Rule 10 states:

REVIEW HEARINGS. In all cases where either party desires a review before the Full Commission from any decision rendered by an Administrative Judge, 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. * * *.
(emphasis supplied).

On July 1, 2009, the Circuit Court filed an "*Order Denying Appellants Motion to Reconsider*" (dated June 30, 2009) denying Appellant's Motion to Reconsider (CP.225, 229).

Appeal to Court of Appeals

Circuit Court filings

Notice of Appeal

On July 17, 2009, Appellants / Employer / Carrier filed a "*Notice of Appeal to the Supreme Court of Mississippi*" from the Circuit Court's June 30, 2009 Order (CP.226-229).

Designation of Record

On July 23, 2009, Appellants / Employer / Carrier filed a "*Designation of Record*" (CP.230-232).

Circuit Clerk's Statement of Costs

On July 31, 2009, the Clarke County Circuit Clerk entered the Clerk's Statement of Costs (CP.236).

Appellant's Certificate of Compliance with Rule 11 MRAP

On August 17, 2009, Appellants / Employer / Carrier filed a "*Certificate of Compliance with Rule 11(b)(1)*" (CP.233-234).

Circuit Clerk's Certificates

On September 23, 2009 certificate of authenticity (CP.235) and Notice of Completion of Record (CP.237-238).

Court of Appeals

Appellee's Motions

On July 22, 2009, Appellee Prince filed (1) a *Motion to Dismiss Appeal, For Sanctions, Penalties, and Interest* and (2) a *Motion to Require Posting of Supersedeas Bond* and (3) a *Motion for Payment of Additional Services and Expenses*.

On September 25, 2009, the Court of Appeals entered its Order (serial 157886) upon

Appellee Prince's "Motion to Require Posting of Supersedeas Bond" and ruled "that the motion is not well taken and should be denied."

On September 25, 2009, the Court of Appeals entered its Order (serial 157887) upon Appellee Prince's "Motion to Dismiss Appeal, For Sanctions, Penalties and Interest" and ordered that the Motion be "passed for consideration of the merits of the appeal"

On September 25, 2009, the Court of Appeals entered its Order (serial 157888) upon Appellee Prince's "Motion for Payment of Additional Services and Expenses" and ordered that the Motion "should be dismissed without prejudice to the right to recover the contract amount."

C.
STATEMENT OF FACTS

This Honorable Court's attention is invited to MWCC Administrative Law Judge Cindy P. Wilson's May 30, 2007 Order of the Administrative Judge (CP.25-39; 62-76, 134-148, 190-204). For this appeal, Appellee / Claimant Prince respectfully suggests that the learned Administrative Law Judge adequately summarized the pertinent facts giving rise to Appellee / Claimant Prince's Workers' Compensation claim. For this appeal, Appellee / Claimant Prince adopts the learned Administrative Judge's summary as Appellee / Claimant's Statement of Facts.

SUMMARY OF THE ARGUMENT

PROPOSITION 1

Whether the Circuit Court Properly Dismissed Appeal

The Workers' Compensation Commission never entered an "award" or a "final order." §71-3-51 Mississippi Code 1972 governs appeals from the Workers' Compensation Commission and requires a "final order." "To be appealable, the order of the commission must be a final order." Bickham v. Department of Mental Health, 592 So.2d 96, 97 (Miss. 1991). Any other Commission order is interlocutory and is not appealable.

While the parties may stipulate as to facts, they can not, by stipulation, change the law. Board of Levee Commissioners v. Parker, 187 Miss. 621, 633, 193 So. 346, 348 (1940). The parties' stipulation is not a substitute for the Commission's "award" in a "final order."

The Circuit Court should be affirmed and the matter remanded to the Commission. This Honorable Court should consider Appellee Claimant Prince's "*Motion to Dismiss Appeal, For Sanctions, Penalties and Interest*" and grant appropriate relief.

ARGUMENT

Standards of Review

Review of Questions of Fact

The Supreme Court does not sit to redetermine questions of fact. Aladdin Construction Co. v. John Hancock Life Insurance Co., 914 So.2d 169, 174 (¶8) (Miss. 2005).

Review of Questions of Law

Questions of law are reviewed under a *de novo* standard of review. Derr Plantation, Inc. v. Swarek, 14 So.3d 711, 715 (¶8) (Miss. 2009); Issaquena Warren Counties Land Co., LLC v. Blakeney, 996 So.2d 747, 749 (¶5) (Miss. 2008).

Legal conclusions are also reviewed under a *de novo* standard of review. A.D.R. v. J.L.H., 994 So.2d 177, 180(¶9) (Miss. 2008); Andrew Jackson Life Insurance Co. v. Williams, 566 So.2d 1172, 1183-1184 (Miss. 1990).

Review of Jurisdictional Questions

Jurisdictional questions are subject to *de novo* standard of review. Derr Plantation, Inc. v. Swarek, 14 So.3d 711, 715 (¶8) (Miss. 2009); Issaquena Warren Counties Land Co., LLC v. Blakeney, 996 So.2d 747, 749 (¶5) (Miss. 2008).

Review of Mississippi Workers' Compensation Commission Decisions

In Lopez v. Zachary Construction Corporation, 22 So.3d 1235 (Miss.App. 2009) [Circuit Court affirmed the Workers's Compensation Commission who affirmed Administrative Law Judge's decision awarding permanent partial disability benefits (22 So.2d at 1236 (¶3)], the Court noted:

STANDARD OF REVIEW

¶7. The standard of review in workers' compensation cases is well established. The decision of the Commission will be reversed only if it is not supported by substantial evidence, is arbitrary or capricious, or is based on an erroneous application of the law. Weatherspoon v. Croft Metals, Inc., 853 So.2d 776, 778 (¶6) (Miss. 2003) (citing Smith v. Jackson Constr. Co., 607 So.2d 1119, 1124 (Miss. 1992)). If the Commission's decision and findings of fact are "supported by substantial evidence, then we are bound by them" even if we would have been convinced otherwise. Spann v. Wal-Mart Stores, Inc., 700 So.2d 308, 311 (¶12) (Miss. 1997) (citing Fought v. Stuart C. Irby Co., 523 So.2d 314, 317 (Miss. 1988)). We exercise de novo review on matters of law. KLLM, Inc. v. Fowler, 589 So.2d 670, 675 (Miss. 1991). [22 So.3d at 1237 (¶7)].

Similarly, in Lane v. Hartson-Kennedy Cabinet Top Co., 981 So.2d 1063 (Miss.App. 2008), Lane appealed the Harrison County Circuit Court's affirmance of the Workers' Compensation Commission's denial of Lane's claim under the Mississippi Workers' Compensation Act (the "Act") [981 So.2d at 1066 ¶1]. The Commission affirmed the decision of its Administrative Law Judge [981 So.2d at 1067 ¶7]. The Court of Appeals stated:

STANDARD OF REVIEW

¶9. In workers' compensation cases, the Commission is the ultimate fact-finder, and its decisions are accorded a deferential standard of review. Natchez Equip. Co. v. Gibbs, 623 So.2d 270, 273 (Miss.1993). Therefore, we will only reverse the decision of the Commission "where issues of fact are unsupported by substantial evidence, matters of law are clearly erroneous, or the decision was arbitrary and capricious." Duke ex rel. Duke v. Parker Hannifin Corp., 925 So.2d 893, 896(¶11) (Miss.Ct.App.2005) (citing Westmoreland v. Landmark Furniture, Inc., 752 So.2d 444, 448(¶8) (Miss.Ct.App. 1999)). (emphasis original). [981 So.2d at 1067 (¶9)].

Review of Worker's Compensation in Circuit Court

"[A] circuit court [sits] as an appellate court in reviewing the final order of the Workers' Compensation Commission." Zurich Am. Ins. Co. v. Beasley Contr. Co., 779 So.2d 1132, 1134 (¶8) (Miss.App. 2000).

Review of Motions to Dismiss

In Thomas v. Five County Child Development Program, Inc. and Commerce and Industry Insurance Company, 958 So.2d 247, 249 (¶¶6-7) (Miss.App. 2007) (worker's compensation) the

Court stated:

¶6. Ordinarily, this Court reviews the decision of a circuit court regarding an agency action under the same standard of review that the lower court was required to apply. The order of an administrative agency will only be overturned where this Court determines that it "1) was unsupported by substantial evidence, 2) was arbitrary or capricious, 3) was beyond the power of the administrative agency to make, or 4) violated some statutory or constitutional right of the complaining party." Miss. Sierra Club, Inc. v. Miss. Dep't of Env'tl. Quality, 819 So.2d 515, 519 (¶15) (Miss. 2002) (citation omitted).

¶7. However, in the instant case, the appellant is challenging the circuit court's granting of a motion to dismiss her case. "The decision to grant or deny a motion to dismiss is in the discretion of the trial court and will not be reversed unless that discretion is abused." Williams v. Fornett, 906 So.2d 810, 812 (¶2) (Miss.Ct.App. 2002) (citing Roebuck v. City of Aberdeen, 671 So.2d 49, 51 (Miss. 1996)).

[958 So.2d at 249].

Review of Application of Statutes

The Supreme Court does not read statutes in isolation, but instead, the Supreme Court must construe Mississippi statutes together. Marantha Faith Center, Inc. v. Colonial Trust Co., 904 So.2d 1004, 1007 (¶8) (Miss. 2004).

Review of Arguments of Counsel in Briefs

Arguments of counsel, however "helpful", are not evidence. For example, in Beamon v. State, 9 So.3d 376, 379 (¶10) (Miss. 2009), the Supreme Court stated:

¶10. * * *. This Court has stated that:

we must decide each case by the facts shown in the record, not assertions in the brief, however sincere counsel may be in those assertions. Facts asserted to exist must and ought to be definitely proved and placed before us by a record, certified by law; otherwise, we cannot know them.

Mason v. State, 440 So.2d 318, 319 (Miss. 1983) (citations omitted). See also American Fire Protection, Inc. v. Lewis, 653 So.2d 1387, 1390 (Miss.1995) ("it is an appellant's duty to justify his arguments of error with a proper record, which does not include mere assertions in his brief, or the trial court will be considered correct."). * * *.

(emphasis supplied). [9 So.2d at 379 (¶10)].

And see: Bailey v. Bryant, 734 So.2d 301, 305 (¶¶21-22) (Miss.App. 1999) [circuit court determined worker's compensation appeal before appellant timely filed brief for appellant], the Court of Appeals noted:

¶21. In the instant case, it appears that the trial judge failed to read the appeal briefs of both the appellee and the appellants. This Court notes that it is preferable that trial judges consider briefs submitted by all parties. The brief is "for the assistance of the Court, and the lawyers should go to the fullest extent in their presentations in the brief." Dozier v. State, 247 Miss. 850, 850, 157 So.2d 798, 799 (Miss. 1963). The purpose of the brief is to "present to the Court in concise form the points and questions in controversy, and by fair argument on the facts and law of the case, to assist the Court in arriving at a just and proper conclusion, and to notify opposing counsel of the questions to be presented and the authorities relied on in reference thereto." Id.

¶22. Notwithstanding the importance of the brief, this Court notes that it is not evidence. The only evidence is that which is contained in the official record. It is upon this record, and only this record, which this Court is to render a decision.

[734 So.2d at 305 ¶¶21-22)].

PROPOSITION 1
WHETHER THE CIRCUIT COURT PROPERLY DISMISSED APPEAL

A right of appeal is statutory. Rosson v. McFarland, 933 So.2d 969, 971 (¶6) (Miss. 2006). Mississippi practice historically permitted interlocutory appeals only as prescribed by statute. Luther T. Munford, Mississippi Appellate Practice, Interlocutory Appeal, p.4-1 (MLI Press 2007).

Standard of Review of Workers' Compensation Commission

In workers' compensation cases, the Commission is the trier of fact, and its judgment may only be reversed if we find that its decision was "clearly erroneous and contrary to the overwhelming weight of the evidence." Radford v. CCA-Delta Correctional Facility, 5 So.3d 1158, 1163 (¶20) (Miss.App. 2009) quoting McElveen v. Croft Metals, Inc., 915 So.2d 14, 19 (¶10) (Miss.Ct.App.2005).

Appeal of Interlocutory Workers' Compensation Commission Order

§71-3-51 Mississippi Code 1972 which contemplates appeal from an "award" and states in part:

The final award of the commission shall be conclusive and binding unless either party to the controversy shall, within thirty (30) days from the date of its filing in the office of the commission and notification to the parties, appeal therefrom to the circuit court of the county in which the injury occurred. (emphasis supplied).

In Cunningham Enterprises, Inc. v. Vowell, 937 So.2d 32, 34 (¶3) (Miss.App. 2006), the Court of Appeals considered a Workers' Compensation Commission order and ruled:

¶3. Interlocutory orders by the Workers' Compensation Commission are not appealable. Bickham v. Department of Mental Health, 592 So.2d 96, 98 (Miss. 1991) (See also Miss. Code Ann. §71-3-51 (Rev.2000)). Since the Commission has issued no final order, the circuit court was without jurisdiction to hear the appeal and appropriately dismissed the case. This Court affirms the circuit court's dismissal of the appeal. (emphasis supplied). [937 So.2d at 34].

Judgments of the circuit courts, emanating from appeals from interlocutory orders of the Workers' Compensation Commission, are nullities. Bickham v. Department of Mental Health, 592 So.2d 96, 98 (Miss. 1991). It is noted that Cunningham, supra, followed the 1996 amendment of §9-3-61 Mississippi Code 1972 [General rule-making power vested in Supreme Court].

Here, the Full Commission Order is interlocutory and not appealable. In Southern Natural Resources, Inc. v. Polk, 388 So.2d 494, 495 (Miss. 1980), the Supreme Court said: "The only question considered on this appeal is whether an appeal may be taken from an interlocutory order of the Workmen's Compensation Commission." 388 So.2d at 494. Citing St. Regis Paper Co. v. Lee, 249 Miss. 537, 163 So.2d 250 (1964), the Supreme Court held:

We reaffirm the holding in St. Regis Paper Co. v. Lee, supra, and hold that an interlocutory order entered by the Workmen's Compensation Commission is not appealable. We therefore reverse and remand to the Commission so that its order directing the Administrative Judge to hold further hearing may be complied with. After a final award, if any, by the commission, either party may appeal from such final order.

REVERSED AND REMANDED
(emphasis supplied). [388 So.2d at 495].

No Final Order; No Final Award

The Workers Compensation Commission neither granted an "award" to Appellee Prince; nor approved the parties' April 1, 2008 Joint Stipulation; nor entered any "final order." The Full Commission Order dated February 10, 2009, merely affirmed the Administrative Law Judge's May 30, 2007 Order and was not a "final order."

Additionally, Appellant Employer / Carrier

... further asserts that a specific rendering of amounts owed for out of pocket medical expenses, mileage reimbursements, and (*9) nursing care expenses is not required as part of the final award of compensation, from which an appeal can be taken.

(Appellants' Brief 8-9).

Appellant cites no authority for this statement. The law requires an "award" and none has been made in this case. This Honorable Court should affirm the learned circuit judge.

What is an "award"?

In Bullock v. AIU Insurance Company, 995 So.2d 717 (Miss. 2008), the Supreme Court considered what constitutes a final order of the Workers' Compensation Commission and held:

¶18. We find that an "award" refers to a final decision to grant or deny a specific amount of compensation. Thus, under Section 71-3-47, it is a decision making or denying compensation, not a determination of liability or entitlement alone, which constitutes an "award." Miss. Code Ann. §71-3-47 (Rev.2000). Because no "award" was made or denied by the October 1999 order, it did not constitute a final order from which the statute of limitations began to run on Bullock's bad-faith claim.

¶19. Our decision is further supported by general principles of administrative law. As a general rule, administrative orders that determine liability but do not decide damages are not considered final for the purpose of judicial review. See e.g., Carter/Mondale Pres. Comm'n. v. Fed. Election Comm'n, 711 F.2d 279, 281-87 (D.C. Cir.1983) (The Federal Election Commission's "final determination" allowed for a potential reduction of damages. It was held that a final agency action, subject to judicial review, did not occur until after the Commission sent notice of its final adjustments.); Newport News Shipbuilding v. Dir., Office of Workers' Comp. Programs, 590 F.2d 1267, 1268 (4th Cir.1978) (no final agency decision where administrative law judge vacated a portion of the award and remanded for further proceedings); United Fruit Co. v. Dir., Office of Workers' Comp. Programs, 546 F.2d 1224, 1225 (5th Cir.1977) (no final order where administrative board determined liability, but remanded to administrative law judge to determine nature and extent of liability); Sun Shipbuilding & Dry Dock Co. v. Benefits Review Bd., 535 F.2d 758, 760-761 (3rd Cir.1976) (no final order where administrative board affirmed on liability, but remanded for a redetermination on amount of damages). In determining the finality of administrative decisionmaking for the purposes of judicial review, "the relevant considerations . . . are whether the process of administrative decisionmaking has reached a stage where judicial review will not disrupt the orderly process of adjudication and whether rights or obligations have been determined or legal consequences will flow from the agency action." Port of Boston Marine Terminal Ass'n v. Rederiaktiebolaget Transatlantic, 400 U.S. 62, 71, 91 S.Ct. 203, 210, 27 L.Ed.2d 203, 209 (1970) (citing ICC v. Atlantic Coast Line R.R. Co., 383 U.S. 576, 602, 86 S.Ct. 1000, 16 L.Ed.2d 109 (1966)). (emphasis supplied). [995 So.2d at 722 (¶¶18-19)].

The learned Circuit Judge correctly found that there remained significant issues to be resolved before the Commission (CP.174, 176); correctly applied well established Mississippi law; and remanded the cause to the Workers' Compensation Commission (CP.177). The Circuit Judge should be affirmed.

Appeals from Workers' Compensation Commission

In Bickham v. Department of Mental Health, 592 So.2d 96 (Miss. 1991) (en banc), the

Supreme Court stated:

There is no statute authorizing an appeal from anything other than a final order of the Commission. The only right of appeal from the Commission is that given by Miss. Code Ann. §71-3-51, which authorizes an appeal to the circuit court from "the final award of the commission."

Relying upon this Court's decisions, Dunn wrote: "To be appealable, the order of the commission must be a final order." Dunn, Mississippi Workers' Compensation, §285 (3rd ed. 1982). Southern Natural Resources, Inc. v. Polk, 388 So.2d 494 (Miss. 1980); St. Regis Paper Co. v. Lee, 249 Miss. 537, 163 So.2d 250 (1964).

A right of appeal is statutory. (extensive citations omitted). [*98] A circuit court has no authority to judicially create a right of appeal from an administrative agency in the absence of clear statutory authority therefor. (citations omitted).

The judgments of the circuit courts, emanating from appeals from interlocutory orders of the Commission, are nullities. McMahan, et al., Trustees, Etc., v. Adult Membership Bds. of Phi Kappa, Dusty and Debs Clubs, 244 Miss. 692, 146 So.2d 359 (1962).

The circuit courts never having acquired jurisdiction, it follows this Court has no jurisdiction to hear these appeals. (citations omitted).

This Court erred in Sonford Products Corp. v. Freels, 495 So.2d 468, 471 (Miss. 1986), in which we held that a circuit court could under certain circumstances grant an interlocutory appeal, and its holding to this effect is overruled.

The extended time in which it takes to finally determine and conclude workers' compensation cases has long been a serious concern of the judiciary, especially this Court. Counsel for litigants and circuit judges should eschew any attempt to appeal a decision of the Commission which is not final.

APPEALS DISMISSED; CAUSES REMANDED TO THE MISSISSIPPI WORKERS' COMPENSATION COMMISSION TO PROCEED UNDER ITS ORDERS.

ROY NOBLE LEE, C.J., DAN M. LEE, P.J., and BANKS and McRAE, JJ., concur.
(emphasis supplied). [592 So.2d at 97-98].

Appellant's claim is without merit. The learned circuit judge should be affirmed.

What is a "Final Order"?

Neither the Administrative Law Judge nor the Mississippi Workers' Compensation Commission issued any "final order" determining all issues as to all parties. Sliman v. Nguyen, 22 So.3d 1173, 1174 (¶6) (Miss. 2009).

Appellant Employer / Carrier's claim that a mere stipulation of the parties is a "final order" or "award" is not Mississippi law. An appeal only lies from a "final order" of the Commission. §71-3-51 Mississippi Code 1972.

Effect of Counsels' "Joint Stipulation"

A stipulation of fact is a fact which both parties agree is true. When the parties agree to a stipulation of fact, neither party can later change positions. Harper v. Harper, 926 So.2d 253, 256 (¶10) (Miss.App. 2006). While the parties may stipulate as to facts, they can not, by stipulation, change the law. Board of Levee Commissioners v. Parker, 187 Miss. 621, 633, 193 So. 346, 348 (1940) (Griffith, J.) held:

The facts relative to a particular case may be settled by the agreement of the parties thereto; for none but they have any interest in the results that flow from the particular decision on the special facts. But decisions of questions of law must rest upon the judgment of the court uninfluenced by the admissions of parties or of counsel. Jones v. Madison County, 72 Miss. 777, 793, 18 So. 87[, 88 (1895)]. (emphasis and [bracketed] citation supplied). [187 Miss. at 632-633, 193 So. at 348].

And see: Jones v. Madison County, 72 Miss. 777, 18 So. 87, 88 (1895) [Appellate court will not treat a statute as valid merely because counsel agreed to its validity].

Mississippi law requires a "final order." No "final order" exists. The parties could not stipulate to change Mississippi law requiring a "final order." Appellant Employer / Carrier wrongfully bases its appeal upon the unapproved Joint Stipulation:

* * *. An "award" is associated with a grant of a monetary sum. Mississippi Code Annotated §71-3-3 (Rev. 2000). If the parties in this case would have returned to the Administrative Law Judge, the "award" she would have rendered would have pertained to the amount of compensation Ms. Prince would have been owed (*11) based upon her disability assigned. Burlington recognized that, if compensability was upheld, Ms. Prince would be entitled to full disability benefits, pursuant to the Mississippi Worker's Compensation Act. Accordingly, the Joint Stipulation was entered into conceding these benefits, thereby rendering another hearing before the Administrative Judge unnecessary. The Order of the Administrative Judge, combined with the Joint Stipulation, together constituted an "award" from which an appeal could be taken. (Appellants' Brief 10-11).

Appellant Employer / Carrier may not waive the requirement of Mississippi law for a Workers' Compensation Commission final order / final award. Appellant Employer / Carrier's claim is unfounded in law and is meritless.

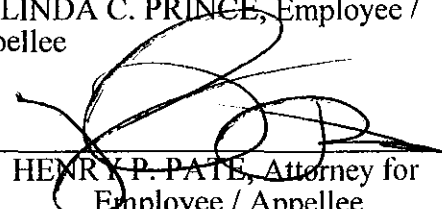
CONCLUSION

This Honorable Court should affirm the learned Circuit Court Judge. Appellant Employer / Carrier's claim to a "right" of appeal and/or error in denying the said "right" is unsupported in fact or Mississippi law. This Honorable Court should (1) affirm the circuit court; (2) remand this matter to the Workers' Compensation Commission; and (3) grant appropriate relief on Appellee Claimant Prince's "*Motion to Dismiss Appeal, For Sanctions, Penalties and Interest.*"

Respectfully submitted,

MELINDA C. PRINCE, Employee /
Appellee

BY:



HENRY P. PATE, Attorney for
Employee / Appellee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the undersigned has this day caused to be hand delivered or mailed, postage prepaid and firmly affixed thereto, a true and correct copy of the foregoing writing to the following:

Trial Judge

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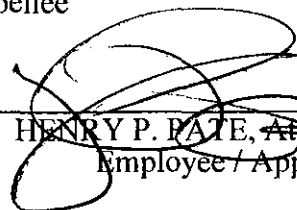
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SO CERTIFIED, this the 5th day of February, 2010 at Pascagoula, Jackson County,
Mississippi.

Respectfully submitted,

MELINDA C. PRINCE, Employee /
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