

NO. 2009-WC-01175-COA

IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

**BURLINGTON INDUSTRIES, INC. AND
RELIANCE NATIONAL INDEMNITY COMPANY,**

APPELLANTS

V.

MELINDA PRINCE,

APPELLEE

*ON APPEAL FROM AN ORDER OF THE CIRCUIT COURT OF
CLARKE COUNTY, MISSISSIPPI, 10th JUDICIAL DISTRICT*

**REPLY BRIEF FOR BURLINGTON INDUSTRIES, INC. AND
RELIANCE NATIONAL INDEMNITY COMPANY**

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ARGUMENT

I. MAY 30, 2007 ORDER OF THE ADMINISTRATIVE JUDGE, COMBINED WITH THE JOINT STIPULATION ENTERED INTO BETWEEN THE PARTIES, RESOLVED ALL ISSUES TO BE DETERMINED BY AN ADMINISTRATIVE JUDGE. THE FULL COMMISSION ORDER OF FEBRUARY 10, 2009 IS A FINAL ORDER FROM WHICH APPEAL CAN BE TAKEN

The Claimant, Melinda Prince, contends that the Full Commission Order is interlocutory in nature and is not appealable. See Brief of Employee/Appellee, P. 16. In support of this position, Ms. Prince states that 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’.” See Brief of Employee/Appellee, P. 16.

Burlington contends that this analysis is flawed when viewing the totality of the facts in the case at bar. The Administrative Judge found that Ms. Prince’s claim was compensable. Thereafter, the parties entered into a Joint Stipulation, agreeing that Ms. Prince would be entitled to full benefits under the Mississippi Workers’ Compensation Act (“Act”), if the issue of compensability was upheld on appeal. The Joint Stipulation, which was entered into by both parties after negotiating at arms length as to the terms therein, resolved any additional issues that the Administrative Judge would need to address to create a “final order.” Combining the Joint Stipulation with the Administrative Judge’s order regarding compensability, eliminated any further issue from pending at the administrative judge level, thereby creating an “award.” The Full Commission recognized this, and was correct in finding that the appeal was no longer interlocutory in nature - thereby finding that an “award” had been found - via its Order dated April 25, 2008, granting Burlington’s Motion to Reinstate Appeal.

Ms. Prince stated in her Brief that the Workers' Compensation Commission did not "approve" the parties' April 1, 2008 Joint Stipulation. Ms. Prince did not cite any authority in support of her position that this needed to be "approved," nor did she discuss the mechanism that would have constituted "approval." However, Burlington would state that the "approval" of this Joint Stipulation was implied based upon the actions of the Full Commission in accepting the appeal of Burlington, once this Joint Stipulation was entered into between the parties.

The Full Commission was given two opportunities to review this matter. When this case was first brought before them on a Petition for Review, they rejected the appeal based on their finding that there were outstanding issues to be resolved by the administrative judge, thereby making the appeal interlocutory in nature. After the Order of the Full Commission was entered rejecting the appeal as interlocutory based on the grounds that issues concerning disability remained outstanding, the parties entered into the Joint Stipulation on April 1, 2008.

Burlington thereafter filed a Motion to Reinstate Appeal, stating that the Administrative Judge's May 30, 2007 Order, combined with the Joint Stipulation addressing disability, established that there were no further issues to be decided at the administrative judge level. No response nor objection was raised by Ms. Prince to the Motion to Reinstate Appeal. The Full Commission granted Burlington's motion, and entered an Order on April 25, 2008, allowing the appeal to proceed.

Had the Mississippi Workers Compensation Commission determined that the Joint Stipulation was not a valid and binding document between the parties, or found that this document was flawed in any way, the Motion to Reinstate Appeal would not have been granted. The fact that Burlington's Motion to Reinstate Appeal was granted after the creation of the Joint Stipulation, whereas its prior attempt at appeal was denied as interlocutory in nature, clearly

reflects that the Workers' Compensation Commission "approved" of the Joint Stipulation. The Full Commission further found that this document eliminated any further issues from needing to be addressed at the administrative judge level, as it allowed the appeal to proceed. Its Order subsequently rendered on February 10, 2009, is a final order, from which appeal can be taken.

II. MS. PRINCE DID NOT PRESERVE HER ARGUMENT FOR APPEAL

As stated, the Full Commission was given two opportunities to review this matter.

Burlington first filed a Petition for Review on June 15, 2007, following the entry of the May 30, 2007, Administrative Judge's Order finding that the Claimant had suffered a compensable, work-related injury. This Petition for Review was filed before the parties entered into the Joint Stipulation addressing disability.

In response to the Petition for Review filed on June 15, 2007, Ms. Prince filed a Motion to Dismiss the Petition for Review on the grounds that it was interlocutory in nature because the only issue addressed by the Administrative Judge was compensability, and that the degree of disability had not yet been determined. There is no mention in this Motion to Dismiss Petition for Review, that the appeal was interlocutory because the Administrative Judge had not determined a specific figure for out-of-pocket medical expenses, mileage reimbursements or nursing care.

The Full Commission granted the Motion to Dismiss Petition for Review, pursuant to an Order entered July 11, 2007, stating that the Order entered by the Administrative Judge on May 30, 2007 was interlocutory in nature, because it only addressed compensability. After the Order of the Full Commission was entered rejecting the appeal as interlocutory based on the grounds that issues concerning disability remained outstanding, the parties entered into a Joint Stipulation on April 1, 2008.

Burlington thereafter filed a Motion to Reinstate Appeal, stating that the Administrative Judge's May 30, 2007 Order, combined with the Joint Stipulation addressing disability, established that there were no further issues to be decided at the administrative judge level. Ms. Prince clearly agreed that there were no further issues to be decided at the administrative level, because she did not file any objection to the Motion to Reinstate Appeal. The Full Commission granted Burlington's motion and entered an Order on April 25, 2008 allowing the appeal to proceed.

The parties proceeded with the briefing process and participated in oral arguments. At no time during the briefing process, nor during oral arguments, did Ms. Prince object to the appeal as being interlocutory in nature. The Full Commission thereafter entered a final Order, by vote of 2-1, on February 10, 2009.

Ms. Prince's prior actions, or inactions, clearly establish that the Joint Stipulation eliminated any further issues as pending at the administrative judge level. Moreover, she waived any objection she had to this issue, by failing to object to the Motion to Reinstate or thereafter, appeal the Full Commission's granting of the Motion to Reinstate. Therefore, Ms. Prince failed to preserve this argument for appeal and, therefore, cannot raise it now. As such, Ms. Prince's request to deny this appeal is improper, as it has not been properly preserved for appeal. Moreover, even if this Court determines that Ms. Prince is permitted to properly raise this issue, the basis upon which Ms. Prince requests that this appeal be denied is wholly without merit. As such, this Court must find that Burlington's appeal is proper and remand this case to the Circuit Court for a determination of the underlying, substantive issues in this case.

**III. A SPECIFIC AMOUNT OF OUT-OF-POCKET MEDICAL EXPENSES,
MILEAGE REIMBURSEMENT COSTS, AND NURSING CARE
EXPENSES ARE NOT NEEDED TO CONSTITUTE AN AWARD**

In her Brief, Ms. Prince states that Burlington cites no authority in support of their position that a specific rendering of amounts owed for out-of-pocket medical expenses, mileage reimbursement, and nursing care expenses is not required as part of the final award of compensation, from which an appeal can be taken. This is contradicted by the Appellants' Brief filed in this matter.

Specifically, Burlington discusses the case of *Cives Steel Company, et al. v. Williams*, 903 So. 2d 678 (Miss. S. Ct. 2005) to support its position that these issues do not need to be specifically determined for an appeal to proceed.

In *Williams*, an appeal was sought following an Administrative Judge's Order finding that total temporary disability and permanent partial disability was owed, and that "Williams was entitled to all medical services and supplies required by the nature of his injury and in the process of his recovery as provided in Mississippi Code Annotated § 71-3-15 (Rev.2000) and the medical fee schedule." *Williams* at 679, 680.

The Circuit Court in *Williams* accepted the appeal on these issues. *Id.* at 680. In other words, the appellate court in *Williams* found that the lower court's language pertaining to medical services, both past and future, as well as for supplies required, **resolved all of the same issues that the Circuit Court has carved out as the only remaining issues in this case which preclude the appeal from being proper: a specific determination of out-of-pocket medical expenses, mileage reimbursement, and nursing care expenses.**

The lower court's Order upon which the appeal is based in *Williams*, contains language almost verbatim to the language Judge Wilson utilized in the Order of the Administrative Judge

at issue herein. See *Williams* at 680. The Court in *Williams* did not require a specific delineation of amounts to be assigned to these categories for the appeal to be perfected. Rather, the Circuit Court found this language adequate and accepted the appeal. *Id.* This was later affirmed by the Supreme Court, with remand given on an unrelated issue, which is not relevant to the issues before this Court. *Id.*

Obviously, Burlington did cite authority in support of its position that a specific rendering of amounts attributable to out-of-pocket medical expenses, mileage reimbursements, and nursing care expenses are not required for an Order to be considered final, from which an appeal can be made. All such costs are encompassed in the Administrative Judge's finding of compensability, in that Burlington is required to pay for all medical services and supplies - that being out-of-pocket medical expenses, mileage reimbursements, and nursing care expenses - that are provided for under the Mississippi Workers' Compensation Act and the Fee Schedule, provided they are related to the work injuries at issue. The Joint Stipulation provides that Burlington will be responsible for all of these costs, pursuant to the Act, should the issue of compensability be upheld on appeal.

Accordingly, this case law establishes that there are no issues pending at the workers' compensation level. This illustrates that the Full Commission Order of February 10, 2009 is a final order from which appeal is proper. The Circuit Court's dismissal of Burlington's appeal on these grounds is improper and **requires** that Burlington's appeal be granted, and the case be remanded to the Circuit Court for a determination of the underlying, substantive issues.

IV. THE JOINT STIPULATION DOES NOT WAIVE THE REQUIREMENT OF A FINAL ORDER, RATHER, THE JOINT STIPULATION COMBINED WITH THE ADMINISTRATIVE JUDGE'S ORDER CREATES A FINAL ORDER

In her brief, Ms. Prince argues that, if the appeal were granted based upon the Joint Stipulation entered into between the parties, it would change the law requiring that a “final order” exist before an appeal is proper. This is erroneous both in application and analysis with regard to the facts of this matter.

Burlington is not attempting to argue that the Joint Stipulation, on its own, constitutes a “final order” from which appeal can be brought. Rather, Burlington states that the Administrative Judge’s Order regarding compensability, combined with the Joint Stipulation, creates a *de facto* “final order” from which appeal can be brought.

The Joint Stipulation eliminated any need for the parties to return to the Administrative Judge for a finding on the issue of disability. Simply put, the Administrative Judge could not award any more benefits than those that were conceded in the Joint Stipulation. The parties agreed to proceed with the appeal on compensability, and reserved the right to address out-of-pocket medical expenses, mileage reimbursements, and nursing care costs after such appeal was complete.

Accordingly, this Joint Stipulation was created in the interest of judicial economy, by eliminating the need for this case to take up any additional time of the Administrative Judge regarding the issue of disability. The entry of the Joint Stipulation was not an attempt to circumvent case law defining a final award, as is asserted by the Circuit Court and Ms. Prince. Burlington would categorically deny this assertion and would state that there is no case law nor

statutory authority cited by the Circuit Court nor Ms. Prince to support an assertion that the entry of the Joint Stipulation was in any way improper.

The Joint Stipulation resolved all issues relating to the degree of disability owed, by conceding that Ms. Prince would be entitled to all benefits pursuant to the Act, if the issue of compensability was upheld on appeal. This concession, along with the Administrative Judge's order addressing compensability, resolved all issues to be decided at the administrative level, thereby making the appeal proper.

CONCLUSION

There are no issues remaining to be determined by the Mississippi Workers' Compensation Commission, which would preclude this appeal from being proper to the Circuit Court. The procedural history illustrates that the issue of compensability, and all medical expenses and services related thereto, have been appropriately addressed in the Order of the Administrative Judge rendered on May 30, 2007. Although this Order did not address disability benefits, the Joint Stipulation entered into by both parties resolved any and all issues that may have been pending in that regard. Ms. Prince acknowledged in the Joint Stipulation that the appeal on the issue of compensability could properly proceed, and she reserved her right to address the issue of out-of-pocket medical expenses, mileage reimbursements, and nursing care costs once the issue of compensability was decided on appeal. Finally, the Joint Stipulation also included the concession by Burlington that penalties and interest would be paid, should the compensability issue be affirmed on appeal.

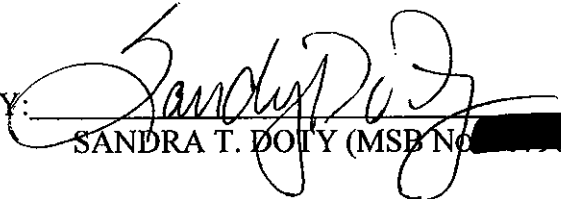
Case law clearly supports the position that a specific delineation of medical costs, expenses and services is not needed to perfect an appeal. The Claimant failed to properly preserve her erroneous position that a specific rendering in these areas is required before an appeal can be perfected. The Full Commission considered all of these factors and properly found that the Order of the Administrative Judge, combined with the Joint Stipulation, resolved all pending issues, thereby allowing the appeal to proceed. This appeal was properly brought from the Full Commission Order rendered on February 10, 2009. The Circuit Court erred in its decision to dismiss the appeal, and this Court has no alternative but to reverse the Order of the Circuit Court Denying Burlington's Motion to Reconsider and, correspondingly, reverse the

Order of the Circuit Court Granting the Motion to Dismiss, and remand this case back to the Circuit Court for a determination on the issue of compensability.

Respectfully submitted, this the 18th day of February, 2010.

BURLINGTON INDUSTRIES, INC. AND RELIANCE
NATIONAL INDEMNITY COMPANY, *Appellants*

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CERTIFICATE OF SERVICE


I, SANDRA T. DOTY, attorney for the Appellants, do hereby certify that I have this day served via United States mail, postage prepaid, a true and correct copy of the above and foregoing *Reply Brief for Burlington Industries, Inc. and Reliance National Indemnity Company* to:

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