

CAUSE NO. 2009-WC-1175

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

BRIEF FOR BURLINGTON INDUSTRIES, INC. and
RELIANCE NATIONAL INDEMNITY COMPANY

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ORAL ARGUMENT REQUESTED

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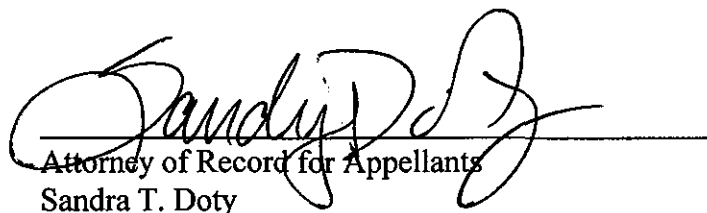
APPELLEE

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 the Supreme Court and/or the judges of the Court of Appeals may evaluate their possible disqualification or recusal.

1. Burlington Industries, Inc., Appellant;
2. Reliance National Indemnity Company, Appellant;
3. Melinda Prince, Claimant;
4. C. Ray Scales, Jr., Esq., attorney representing the Claimant;
5. Sandra T. Doty, Esq. Wilkins, Stephens & Tipton, P.A., attorney for the Appellants; and
6. Honorable Robert W. Bailey, Circuit Court Judge for the Circuit Court of Clarke County, Mississippi, 10th Judicial District issued the Order Appellants now appeal from.

Dated this the 4/14 day of December, 2009.



Attorney of Record for Appellants
Sandra T. Doty

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STATEMENT OF THE ISSUES

Whether the Circuit Court erred in denying Burlington's Motion to Reconsider, and, correspondingly erred in its granting of Ms. Prince's Motion to Dismiss Appeal, based upon its interpretation that the subject appeal was based solely upon the Order of the Administrative Judge and Order from the Full Commission dated July 11, 2007 addressing compensability only; rather than considering the Order of the Full Commission dated February 10, 2009 wherein the Full Commission found that the Administrative Judge's Order, combined with the Joint Stipulation entered into by the parties regarding disability, resolved all issues pending at the lower court level, thereby making the Full Commission's Order of February 10, 2009 a Final Order and, therefore, was proper for appeal.

Whether the Circuit Court erred in its finding that the Mississippi Workers' Compensation Commission is required, as part of determining disability benefits, to determine a specific award amount for out of pocket medical expenses, mileage reimbursements, and nursing care, before an order can be deemed a final order and, therefore, appealable.

STATEMENT OF THE CASE

This appeal stems from a workers' compensation claim that Ms. Prince asserted against Burlington via Petition to Controvert filed on July 16, 1998. (See Appellant Record Excerpt No.: 3.) The claim was denied by Burlington on July 28, 1998. (See Appellant Record Excerpt No.: 4.) The parties proceeded to a hearing on the merits of compensability before Administrative Judge Cindy Wilson, and Judge Wilson thereafter issued an Order of the Administrative Judge on May 30, 2007, finding that the claim asserted was compensable. (See Appellant Record Excerpt No.: 5.)

Burlington attempted to appeal this decision by filing a Petition for Review of the Order of the Administrative Judge on June 15, 2007. (See Appellant Record Excerpt No.: 6.) Ms. Prince filed a Motion to Dismiss Petition for Review on June 26, 2007. (See Appellant Record Excerpt No.: 7.) The Full Commission denied the appeal as interlocutory on July 11, 2007, stating that the Order of the Administrative Judge was not a final order, because it determined compensability, but did not address the degree of disability that Ms. Prince had sustained due to the injury. (See Appellant Record Excerpt No.: 8.)

The parties for Ms. Prince and Burlington thereafter entered into a Joint Stipulation on April 1, 2008, wherein Burlington conceded that, if compensability was upheld, Ms. Prince would be entitled to the maximum benefit provided for under the Act, at the agreed upon wage of \$258.37 per week. (See Appellant Record Excerpt No.: 9.) Once this Joint Stipulation was executed by both parties, Burlington filed a Motion to Reinstate Appeal with the Full Commission. (See Appellant Record Excerpt No.: 10.) No objection or motion to dismiss was filed by Ms. Prince on the grounds that the appeal was based on an interlocutory order, or on any other issue. Thereafter, the Full Commission found that the Motion to Reinstate Appeal was appropriate when considering the Administrative Judge's order and the stipulation as a whole, via Order issued on April 25, 2008. (See

Appellant Record Excerpt No.: 11.) The appeal proceeded to oral argument before the Full Commission on January 26, 2009, who then rendered a 2-1 decision in favor of Ms. Prince on February 10, 2009. (See Appellant Record Excerpt No.: 12.) It is from this Order that Burlington properly perfected their appeal to the Circuit Court. (See Appellant Record Excerpt No.: 13.)

Ms. Prince filed a Motion to Dismiss Appeal in Circuit Court, stating that Burlington's appeal from the February 10, 2009 Order was interlocutory in nature because the issue of the amount of medical expenses, mileage reimbursement and nurse care expenses had not been determined. (See Appellant Record Excerpt No.: 14.) Burlington filed a Response to the Motion to Dismiss Appeal, stating that the appeal was not interlocutory because no further issues remained to be determined at the Mississippi Workers' Compensation Commission. (See Appellant Record Excerpt No.: 15.) Following oral argument, the Circuit Court granted Ms. Prince's Motion to Dismiss Appeal, stating that the Administrative Law Judge's Order and the Full Commission's Order addressed compensability only, and did not address a determination of the total amount of compensation to be paid to Ms. Prince because a specific amount for out of pocket medical expenses, mileage reimbursements, and nursing care had not been assigned, thereby making the appeal interlocutory in nature, and over which the Circuit Court had no jurisdiction. (See Appellant Record Excerpt No.: 16.)

Burlington thereafter filed a Motion to Reconsider on June 10, 2009, clarifying that the Order that was being appealed from was the Full Commission Order entered on February 10, 2009 - after the Full Commission had determined that the appeal was proper when considering the Administrative Judge's Order and the Joint Stipulation as a whole - and not the Full Commission Order entered on July 11, 2007, wherein the Full Commission first rejected the appeal on the grounds that it was interlocutory. (See Appellant Record Excerpt No.: 17.) The Circuit Court denied this

motion via Order dated June 30, 2009. (See Appellant Record Excerpt No. 2.) Burlington then filed the subject appeal to this Court.

SUMMARY OF THE ARGUMENT

On May 30, 2007 an Order was entered by the Administrative Judge finding that Ms. Prince had suffered a compensable, work related injury. Although no decisions were made as to the degree of disability suffered by Ms. Prince at that hearing, the parties thereafter entered into a Joint Stipulation on April 1, 2008, wherein Burlington conceded that Ms. Prince was permanently and totally disabled, should the issue of compensability issue be upheld on appeal. The Full Commission agreed that the combination of the Administrative Judge's order addressing compensability, combined with the Joint Stipulation entered into between the parties regarding disability, eliminated any further issues from being determined at the administrative level. Via Order dated April 25, 2008, the Full Commission allowed the appeal to proceed.

The parties engaged in the briefing process and participated in oral arguments, from which the Full Commission rendered a Final Order on February 10, 2009, upholding the Administrative Judge's finding of compensability. Burlington appealed this decision to the Circuit Court of Clarke County. Ms. Prince filed a Motion to Dismiss, stating that the appeal was interlocutory in nature because there had not been a specific delineation of out of pocket medical expenses, mileage reimbursement, or nursing care costs by the Administrative Judge.

The Circuit Court agreed with Ms. Prince, and granted the motion to dismiss. In its Order, the Circuit Court relied upon the wrong Full Commission Order when it asserted that the Order upon which the appeal was based was interlocutory. The Circuit Court incorrectly relied on the Full Commission Order of July 11, 2007, which did find a prior appeal attempt to be interlocutory. However, this appeal is based upon the Full Commission Order from February 10, 2009. This Order was issued after the Full Commission accepted the appeal from the administrative judge level, and

ruled on the underlying substantive issue. The Circuit Court has erred in its dismissal of the appeal because it was relying on the incorrect order from which Burlington was appealing. The February 10, 2009 appeal is a Final Order and properly appealable.

The Circuit Court also stated in its order that a determination was required to be made at the administrative judge level of out of pocket medical expenses, mileage reimbursement and nursing care costs before an appeal could proceed. Burlington asserts that this is erroneous for two reasons. The first reason is that the Administrative Judge did address this issue in the May 30, 2007 Order. This Order states that, in conjunction with the finding that Ms. Prince had suffered a compensable, work related injury, that Burlington was required to provide any temporary total disability benefits which may be owed related to the back injury and related psychological condition; **and all medical services and supplies required by the nature of her injury, and the process of her recovery as provided in Section 71-3-15 and the medical fee schedule.** This language establishes that all such reasonable and necessary costs found to be related to the injury, would be the responsibility of Burlington.

The second reason is even if these areas had not been addressed via the Order of the Administrative Judge (which they were), a specific determination of these areas is not required. If it were required, it would be impossible for the Administrative Judge to make a determination as to a specific amount attributable for each of these categories, as the Circuit Court is stating must happen for the appeal to continue. This is due to the fact that the amounts attributable to each category would not be fixed, but would rather be continuing throughout the remainder of the life of this case. Numerous other appeals have proceeded with this exact language regarding payment of medical expenses found in the body of the Administrative Judge's order. There is no statutory requirement

nor case law to support the Circuit Court's position that a specific delineation as to these costs must be rendered before a case can be appealed.

Finally, the Circuit Court was erroneous in its finding that the Joint Stipulation entered into between the parties failed to address the issue of penalties and interest, thereby making the appeal improper. To illustrate that this is clearly not the case, one only needs to look to the final paragraph of the Joint Stipulation, which reads in part:

IT IS, THEREFORE, STIPULATED by the parties that the issue of compensability may be appealed by Burlington to the Full Commission and, after all appeals, should the compensability issue be affirmed, Burlington agree to pay this claim as if the claimant is permanently totally disabled from May 13, 1998 through 450 straight weeks at \$258.37 per week. **Interest and penalties will be added to that amount.**

Obviously, as part of the arms length negotiations and considerations between the parties in entering into the Joint Stipulation, they accounted for the issue of interest and penalties.

Based upon the above and forgoing, the Circuit Court had no basis upon which to deny Burlington's Motion to Reconsider, and , correspondingly, the Circuit Court had no basis upon which to dismiss the appeal. The Circuit Court's decision must be reversed, and the appeal remanded back to the Circuit Court to proceed on the underlying, substantive issues which were the basis of the original appeal by Burlington.

ARGUMENT

I. STANDARD OF REVIEW

It is well settled under Mississippi law that the Mississippi Workers' Compensation Commission is the ultimate trier of fact in Workers' Compensation cases. *Tyson Foods, Inc. v. Thompson*, 765 So. 2d 589 (¶10) (Miss. Ct. App. 2000), (citing *Pilate v. Int'l Plastics Corp.*, 727 So. 2d 771 (¶12) (Miss. Ct. App. 1999)). See also *Harper v. N. Miss. Med. Ctr.*, 601 So. 2d 395 (Miss. 1992); *Day-Brite Lighting Div., Emerson Elec. Co. v. Cummings*, 419 So. 2d 211 (Miss. 1982). As long as the Commission's decision is supported by the substantial weight of the evidence, it should be binding upon the Appellate Court. *Wagner v. Hancock Med. Ctr.*, 825 So. 2d 703 (¶10) (Miss. Ct. App. 2002), (citing *Smith v. Jackson Constr. Co.*, 607 So. 2d 1119, 1124 (Miss. 1992)). Where the Commission reviewing an administrative judge's decision remands the case to the administrative level for further proceedings, the order is interlocutory only and is not appealable. *Blankenship v. Delta Pride Catfish, Inc.*, 676 So. 2d 914, 916 (Miss. 1996) (citing *Bickham v. Department of Mental Health*, 592 So. 2d 96, 97 (Miss. 1991)).

Burlington asserts that the Full Commission was correct in its Order dated April 25, 2008 granting Burlington's Motion to Reinstate Appeal, on the grounds that the May 30, 2007 Order of the Administrative Judge, combined with the Joint Stipulation entered into between the parties, resolved all issues to be resolved by an Administrative Judge, thereby allowing the appeal on the compensability issue to properly proceed. Correspondingly, the Full Commission Order of February 10, 2009 is a final order from which appeal can be taken. Burlington further asserts that a specific rendering of amounts owed for out of pocket medical expenses, mileage reimbursements, and

nursing care expenses is not required as part of the final award of compensation, from which an appeal can be taken.

II. THE FEBRUARY 10, 2009 ORDER OF THE FULL COMMISSION IS A FINAL ORDER FROM WHICH APPEAL IS PROPER

- A. The Full Commission, via Order of April 25, 2008, properly found that the Order of the Administrative Judge addressing compensability, combined with the Joint Stipulation entered into between the parties addressing disability, created a situation where no additional issues remained to be decided by the Workers' Compensation Administrative Judge and, therefore, allowed the appeal addressing the issue of compensability to proceed.**

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.

Burlington filed their 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 for which Burlington was required to provide temporary total disability benefits related to the back injury and related psychological conditions of Ms. Prince, as well as to provide all medical services and supplies required by the nature of her injury, and the process of her recovery as provided in § 71-3-15 and the medical fee schedule. This Petition for Review was filed before the parties entered into the Joint Stipulation addressing disability.

Ms. Prince filed a Motion to Dismiss 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, and not the degree of disability Ms. Prince was assigned as a result of the work injury. In their order, the Full Commission stated "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 Burlington, along with any other issues which may arise."

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, wherein Burlington conceded that Ms. Prince was permanently and totally disabled, should the issue of compensability issue be upheld on appeal. Specifically, that they would agree to "pay this claim as if the claimant is permanently totally disabled from May 13, 1998 through 450 straight weeks at \$258.37 per week. Interest and penalties will be added to that amount." The execution of this Joint Stipulation resolved all pending issues of disability, thereby eliminated the necessity for the parties to return to the administrative judge for a decision on these issues.

Mississippi Code Annotated § 71-3-47 (Rev.2000) provides that a decision to "make or deny an award" becomes final if a petition for review is not filed within twenty days. 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 Judge, the "award" she would have rendered would have pertained to the amount of compensation Ms. Prince would have been owed

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 Workers' 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.

Burlington then filed a Motion to Reinstate Appeal stating that the ruling by the Administrative Judge on May 30, 2007, 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, entering 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 regarding the issue of compensability, by vote of 2-1, on February 10, 2009.

The procedural history of this case at the Mississippi Workers' Compensation Commission clearly indicates that this appeal is not being sought on an interlocutory order or ruling. The Order of the Administrative Judge, combined with the Joint Stipulation, resolved all issues that could be determined at the administrative level. If these issues hadn't been resolved, it is clear that the Full Commission would have not accepted the appeal. This was evidenced by their initial order of July 11, 2007, wherein they dismissed the appeal as interlocutory because the degree of disability had yet

to be determined. 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. The Full Commission recognized this by granting Burlington's Motion to Reinstate Appeal on April 25, 2008.

The Order of February 10, 2009 was entered after the appeal was accepted, without objection by Ms. Prince, and following oral arguments. The Order of February 10, 2009 is a final order. Accordingly, it was wholly proper for Burlington to appeal the Order of February 10, 2009 to the Circuit Court. Based upon these factors, the Circuit Court's Granting of the Motion to Dismiss and Denial of the Motion for Reconsideration must be reversed, and the case remanded back to it for further proceedings on the issue of compensability.

B. The Circuit Court relied upon the wrong Full Commission Order

In the Circuit Court's Order Dismissing Appeal, it states that Burlington admits that the Order of the Administrative Judge and the Full Commission Order were not final orders; but rather, that they were interlocutory orders which would not be appealable to the Circuit Court. This assertion is unequivocally incorrect.

Burlington would state that the Full Commission Order entered on *July 11, 2007*, wherein the Petition for Review was denied on the grounds that it was interlocutory, would not be considered a final order from which an appeal could be made. However, Burlington did not, and is not, appealing that order. Burlington is appealing the Full Commission Order entered on February 10, 2009. At no time has Burlington asserted that the Full Commission Order rendered on February 10,

2009, is interlocutory in nature. To the contrary, the fact that the Full Commission granted the Motion to Reinstate appeal brought by Burlington, which was brought without objection from Ms. Prince, after first rejecting the appeal on the grounds that there were issues remaining to be determined at the administrative judge level, provides clear evidence that the subject appeal is not interlocutory in nature. The Full Commission's subsequent decision of February 10, 2009, is a final order and is appealable.

In the Order Dismissing Appeal, the Circuit Court states that the appeal at issue is based solely on the issue of liability and that the amount of compensation owed to Ms. Prince has not been addressed. In support of this position, the Circuit Court cites the Administrative Judge's decision stating " . . . parties agreed there is one issue . . . the issue for decision is whether the claimant suffered a work related injury to her back and/or a psychiatric disability." This Court goes on to utilize the Full Commission's Order of *July 11, 2007*, wherein the Full Commission stated that the Administrative Judge's decision did not dispose of all issues to be determined at the administrative level and thereby did not accept the appeal. It is based on these two documents that the Circuit Court found that the only issue addressed by the Administrative Judge and the Full Commission was compensability.

The Circuit Court relied upon the incorrect order from the Full Commission. The Full Commission Order referenced in the Order Dismissing Appeal was the initial order entered on *July 11, 2007*, prior to the Joint Stipulation being entered into by the parties. As stated above, it was subsequent to the Full Commission's initial denial of appeal on *July 11, 2007*, based on the grounds that it was interlocutory in nature, that the parties entered into the Joint Stipulation conceding permanent and total disability at the rate of \$258.37, with penalties and interest, should the finding

of compensability be upheld on appeal. Following the entry of this Joint Stipulation, a motion to reinstate appeal was filed and from which the Full Commission, finding there were no remaining issues which would render the appeal interlocutory, accepted the appeal and proceeded with same.

The Joint Stipulation was entered into by both parties after negotiating the terms of same at arms length. This Joint Stipulation concedes that Ms. Prince is entitled to the maximum benefits as prescribed under the Mississippi Workers' Compensation Act, should the issue of compensability be upheld on appeal. The parties considered the issue of out of pocket medical expenses, mileage reimbursements, and nursing care costs while negotiating the terms of the Joint Stipulation, and memorialized them in same. The parties agreed that with the concession of disability benefits, combined with the Administrative Judge's order regarding compensability, that the appeal on compensability issues could proceed. Ms. Prince agreed to these terms, and specifically reserved the right to address out of pocket medical expenses, mileage reimbursements, and nursing care costs once the issue of compensability had been determined on appeal.

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, she could not award any more benefits than those that were conceded. 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 served to the principle 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. Burlington would categorically deny this assertion and

would state that there is no case law nor statutory authority cited by the Circuit Court to support an assertion that the entry of the Joint Stipulation was in any way improper.

Obviously, the Full Commission would not have granted the motion to reinstate appeal if the appeal would have remained interlocutory in nature. In its April 25, 2008 Order, the Full Commission correctly found that the Order of the Administrative Judge, along with the Joint Stipulation entered into between the parties addressed both compensability and damages, thereby resolving all issues that were pending at the lower court level. Based on this finding, the Full Commission properly allowed the appeal to continue. Thereafter, oral arguments proceeded, with no objection from claimant, and from which a Full Commission Order was rendered on *February 10, 2009*. It is from this Full Commission Order that Burlington properly appealed to the Circuit Court.

- C. The Circuit Court is erroneous in its finding that a specific amount of out of pocket medical expenses, mileage reimbursement costs, and nursing case expenses must be determined as part of the monetary amount of compensation owed to claimant, before an appeal can be taken.**

The Circuit Court was incorrect in its assertion that the appeal is not proper because the Mississippi Workers' Compensation Commission has not yet determined the specific amount of out of pocket medical expenses, mileage reimbursement and nursing care expenses. It is Burlington's position that these areas have been addressed via the Administrative Judge's Order of May 30, 2007. Specifically, the May 30, 2007 Order of the Administrative Judge found, in conjunction that claimant had suffered a compensable, work related injury, that Burlington was required to provide any temporary total disability benefits which may be owed related to the back injury and related psychological condition; **and all medical services and supplies required by the nature of her**

injury, and the process of her recovery as provided in Section 71-3-15 and the medical fee schedule.

This language states that Ms. Prince is owed benefits. Obviously, it does not address the percentage of disability owed. The Joint Stipulation takes care of that, by stating that Claimant is owed disability benefits equivalent to the maximum she would be entitled to receive under the Mississippi Workers' Compensation Act, at the rate of \$258.37, plus penalties and interest, should compensability be upheld on appeal. However, the Order does clearly state that, along with the finding of compensability, that Burlington would be responsible for payment of **all** medical services and supplies required by the nature of her injury, and the process of her recovery as provided in Section 71-3-15, and the medical fee schedule.

An "award" from which an appeal can be made, 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 Judge, the "award" she would have rendered would have pertained to the amount of compensation Ms. Prince would have been owed based upon her disability assigned. The issues involving out of pocket medical expenses, mileage reimbursements, and nursing care expenses are ancillary to any such award. More specifically, 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.

It is clearly established that Burlington is required to pay for **all** of the areas that the Circuit Court states are undetermined - medical expenses, mileage reimbursement and nursing care expenses

- which are proper under the Mississippi Workers' Compensation Act, and are related to the injury. As such, these areas are not undetermined. A specific delineation of amounts for each such category is not required. Accordingly, the Administrative Judge's Order, combined with the Joint Stipulation, have resolved all pending issues which would preclude an appeal from progressing.

In addition, the parties considered these issues when they entered into the Joint Stipulation. Specifically, Ms. Prince reserved the right to present evidence on these matters, while agreeing that the stipulation resolved all issues pertaining to a disability award, thereby allowing the appeal on the compensability issue to proceed. Accordingly, not only did the Administrative Judge address these areas, but both Ms. Prince and the Full Commission recognized that a specific delineation of amounts for each such area was not required for the appeal on compensability to proceed. The Circuit Court has no authority to deny the appeal on these grounds, and, therefore, the Circuit Court's Order Denying Motion to Reconsider and corresponding Order Granting Motion to Dismiss must be reversed.

Even if these areas had not been addressed via the Order of the Administrative Judge (which they were), it would be impossible for the Administrative Judge to make a determination as to a specific amount attributable for each of these categories, as the Circuit Court is stating must happen for the appeal to continue. This is due to the fact that the amounts attributable to each category would not be fixed, but would rather be continuing throughout the remainder of the life of this case. If this was the appropriate standard, then no party would ever be able to appeal a ruling, since there would never be a final order received.

The Circuit Court cites the case of *Bullock v. AIU Insurance Company*, 995 So. 2d 717 (Miss. 2008) in support of its position that there are issues remaining in this case which preclude it from

being a final order. Specifically, the issues identified by the Circuit Court as remaining include only a determination of the amount of out-of-pocket medical expenses, mileage reimbursement and nursing care expenses. The reliance on *Bullock* in support of the Circuit Court's dismissal of this case is flawed. In *Bullock*, the primary issue before the Supreme Court was whether a ruling from the Administrative Judge on compensability only, was a final order from which the applicable statute of limitations began to run. *Bullock* at 721.

In *Bullock*, an initial hearing took place on the issue of compensability. *Id.* at 719. The Administrative Judge found the claim compensable. *Id.* No appeal was sought by the employer. *Id.* Thereafter, a second hearing took place on October 15, 2003 to determine the degree of disability suffered by the claimant. *Id.* The administrative law judge entered an order on December 1, 2003, awarding benefits. *Id.* The appeal in *Bullock* focused on whether the initial order rendered on October, 1999 regarding compensability only, was a final order. *Id.* at 720. The Court found that it was not a final order because it only addressed compensability and did not render a decision regarding the specific amount of disability benefits owed. *Id.* at 722.

There is no assertion in *Bullock* that the October, 1999, hearing on compensability was not a final order because a specific amount was not assigned to out of pocket medical expenses, mileage reimbursement or nursing care expenses. The *Bullock* court also failed to state that specific amounts for out of pocket medical expenses, mileage reimbursements or nursing care expenses were required to be determined as part of the disability benefits owed.

In the case at bar, Burlington is not asserting that the Administrative Order entered on May 30, 2007 was a final order. This was addressed by the Full Commission via order of July 11, 2007 where they found that the appeal was interlocutory. Once the issue of disability was resolved via the

Joint Stipulation, the Full Commission found that all matters had been addressed, and that it was proper for the appeal to continue. At no time did the Full Commission require a specific delineation of out of pocket medical expenses, mileage reimbursements or nursing care be given, before the appeal could proceed.

Likewise, the Court in *Bullock* did not find that the October, 1999 Order was not a final order due to the fact that a specific delineation of out of pocket medical expenses, mileage reimbursements or nursing care had not been given. Rather, the *Bullock* court found that the subject order was not a final order because the degree of disability had not been addressed. Accordingly, the *Bullock* case provides no authority in support of the Circuit Court's erroneous decision denying the appeal based solely on its assertion that a specific delineation of out of pocket medical expenses, mileage reimbursements or nursing care must be made before a final order can be rendered and the appeal be permitted

Instead, the Appellants herein would refer the Court to the case of *Cives Steel Company, et al. v. Williams*, 903 So. 2d 678 (Miss. S. Ct. 2005). 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 this Court has carved out as the only remaining issues in this case: 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.* Accordingly, this case law establishes that the Circuit Court's dismissal of Burlington's appeal on these grounds is improper and **requires** that the appeal be reinstated.

D. There are no issues remaining to be determined at the administrative level.

If the Circuit Court's decision is not reversed, and the case is not remanded to the Circuit Court for determination on the issue of compensability as set forth in the February 10, 2009 final Order of the Full Commission, there are no other issues remaining to be resolved at the administrative level.

If the parties were to return to the Mississippi Workers' Compensation Commission to address what specific medical expenses, mileage reimbursements and nursing care expenses are owed, the Administrative Judge would simply refer the parties to the Order she already entered. This fact, combined with the Joint Stipulation addressing disability benefits, precludes the Administrative Judge from awarding any more benefits than what is already articulated in her Order and what is conceded in the Joint Stipulation. Moreover, Burlington would object to the payment of any such amount until the appeal on the compensability issue was resolved. Obviously, if the issue of compensability is overturned on appeal, there would be no need for the parties to return to the

Administrative Judge on any matter. Therefore, any such determination would be futile, would only serve to delay this matter further, and result in an unnecessary expenditure of the Administrative Judge's time.

Therefore, if this appeal is not sent back to the Circuit Court to address the issue of compensability, this case will be in "appeal purgatory." The Administrative Judge will have no additional issues to rule on. The Full Commission won't accept any appeal, because they have already accepted the appeal and rendered an Order regarding the issues that were brought to the Circuit Court on appeal. There is nowhere else for this case to go, from an appeal perspective, other than to the Circuit Court. These facts clearly show that the Circuit Court's dismissal of this appeal must be reversed, and the case remanded back to the Circuit Court for a determination on the substantive issues of the appeal brought by Burlington.

E. The Circuit Court erred in its assertion that penalties and interest were not addressed in the Joint Stipulation.

The final issue raised by the Circuit Court in its Order Dismissing Appeal was its assertion that the Joint Stipulation entered into by the parties on April 1, 2008, did not contain a concession by Burlington as to interest and penalties. To illustrate that this is clearly not the case, one only needs to look to the final paragraph of the Joint Stipulation, which reads in part:

IT IS, THEREFORE, STIPULATED by the parties that the issue of compensability may be appealed by Burlington to the Full Commission and, after all appeals, should the compensability issue be affirmed, Burlington agree to pay this claim as if the claimant is permanently totally disabled from May 13, 1998 through 450 straight weeks at \$258.37 per week. **Interest and penalties will be added to that amount.**

Obviously, the parties considered the issue of interest and penalties when they entered into the Joint Stipulation. As such, the dismissal of this appeal on the grounds stated by the Circuit Court are wholly without merit and must be reversed.

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.

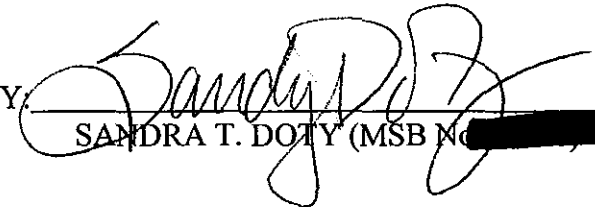
Case law clearly supports the position that a specific delineation of medical costs, expenses and services is not needed to perfect an appeal. The Full Commission considered all of these factors and properly found that the Order of the Administrative Judge, combined with the Joint Stipulation, resolved 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,

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 *Brief for Burlington Industries, Inc. and Reliance National Indemnity Company*, to:

Honorable Robert W. Bailey
Circuit Court Judge, 10th Judicial District
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P. O. Box 1167
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THIS, the 4th day of December, 2009.



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