

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

PAUL R. COOK

APPELLANT

V.

**CASE NO.: 2009-WC-01551-COA
Rankin County Circuit Court No.: 2009-099-R**

**THE HOME DEPOT AND
AMERICAN ASSURANCE COMPANY**

APPELLEE

BRIEF OF APPELLEES

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that following listed persons may have an interest in the outcome of this case. These representations are made in order that Justices of this Court may evaluate possible disqualifications or recusal. _____

1. The Home Depot, Appellee
2. American Home Insurance Company, Appellee
3. P. Sharkey Burke, Jr., Esq, Counsel for Appellees
4. Paul R. Cook, Appellant
5. John H. Anderson, Counsel for Appellant



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AMERICAN HOME ASSURANCE COMPANY,
Appellees

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STATEMENT OF THE FACTS

The facts in this case are largely undisputed. The Appellant's original Pre-Hearing Statement in this cause was due on or about May 24th, 2006. On July 27, 2006, the Administrative Judge in this cause properly issued an Order dismissing this claim for failure to file a completed Pre-Hearing Statement pursuant to Mississippi Workers' Compensation Commission Procedural Rule 5. It is undisputed that no request or petition for review by the Full Commission was filed within twenty (20) days of the order of dismissal's entry provided by Miss. Code Ann. §71-3-47 (Rev. 2000).

On or about October 24, 2006, the Appellant filed a Motion for Order Re-Instating Claim and attached a document identified as a "Pre-Trial Statement." The Appellant failed to offer any evidence in his original Motion for an Order Re-Instating Claim that there had been a change in conditions justifying further review, or that there had been a mistake in determination of fact justifying his failure to adhere to Mississippi Workers' Compensation Commission Procedural Rule 5. Further, the Pre-Trial Statement attached to the Appellant's Motion did not comply with the requirements for a complete Pre-Hearing Statement as set out in Mississippi Workers' Compensation Commission Procedural Rule 5. Thus, the Administrative Judge properly denied the Appellant's Motion to Reinstate Claim on December 6, 2006, on the grounds that the Appellant did not attach a properly completed Pre-Hearing Statement. It is undisputed that no request or petition for review by the Full Commission was filed within twenty (20) days of the entry of this order provided by Miss. Code Ann. §71-3-47 (Rev. 2000).

On June 16, 2008, Counsel for the Appellant prepared a letter to the

Mississippi Workers' Compensation Commission with a copy of a Second Amended Motion To Reinstate enclosed and a copy of a Pre-Hearing Statement that he dated July 21, 2007, alleging that he had hand delivered a copy of those documents to the Commission on July 21, 2007. The Appellant's Second Amended Motion to Reinstate is not in the record as being actually filed at the Mississippi Workers' Compensation Commission on July 21, 2007, as alleged by counsel for the Appellant. The Second Amended Motion to Reinstate bears only the Mississippi Workers' Compensation Commission stamp date of June 17, 2008, the date the Commission received it as an attachment to his correspondence dated June 16, 2008. The Appellees would also state that they never received a copy of the Appellant's Second Amended Motion to Reinstate on or about July 21, 2007, as alleged in the Appellant's Certificate of Service.

On August 29, 2008, the Administrative Judge entered an order holding that although the Appellant's counsel stated that he filed motions to reinstate on January 21, 2007, and July 21, 2007, neither motion appears in the Commission file, and stamped filed copies of the motions were not produced from any other source. Further, the Administrative Judge held that the one year statute of limitations began to run on December 26, 2006, and that it was not tolled or erased such that it ran on December 26, 2007, and this claim was barred by the one year statute of limitations contained in Miss. Code Ann. §71-3-53 (Rev. 2000). On January 7, 2009, this matter came on for review by the Full Commission and after reviewing the record and applicable law, the Full Commission affirmed the Order of the Administrative Judge dated August 29, 2008. On August 20, 2009, the Circuit Court of Rankin County issued an Order Affirming Commission Findings.

SUMMARY OF ARGUMENT

Based upon the undisputed facts, the Appellant failed to file his Pre-Hearing Statement due on or about May 24, 2006 in accordance with the Mississippi Worker's Compensation Procedural Rule 5. Therefore, the matter was dismissed on July 27, 2006. The Appellant failed to request or petition for review by the Full Commission within twenty (20) days of the Order of Dismissal's entry, and finally filed a Motion for Order Reinstating Claim on October 24, 2006. In said Motion, the Appellant failed to offer any evidence that there had been a change in conditions justifying further review, or that there had been a mistake in determination of fact justifying his failure to adhere to Mississippi Workers' Compensation Procedural Rule 5. Further, the Pre-Trial Statement attached to the Appellant's Motion to Reinstate Claim on October 24, 2006, did not comply with the requirements as set out in Mississippi Workers' Compensation Commission Procedural Rule 5. Therefore, on December 6, 2006, the Administrative Judge properly denied the Appellant's Motion to Reinstate Claim on the grounds that the Appellant did not attach a properly completed Pre-Hearing Statement. Again, the Appellant failed to file a request or petition for review by the Full Commission within twenty (20) days of the entry of that Order pursuant to Miss. Code Ann. §71-3-47 (Rev. 2000). On August 29, 2008, the Administrative Judge entered an order holding that although the Appellant's counsel stated that he filed motions to reinstate on January 21, 2007, and July 21, 2007, neither motion appears in the Commission file and stamp filed copies of the motions were not produced from any other source. Further, the Administrative Judge held that the one year statute of limitations began to run

on December 26, 2007, and this claim was barred by the one year statute of limitations contained in Miss. Code Ann. § 71-3-53 (Rev. 2000).

Clearly, the Appellant has failed to comply with Mississippi Workers' Compensation Commission Procedural Rule 5, Miss. Code Ann. § 71-3-47 (Rev. 2000), and Miss. Code Ann. § 71-3-53 (Rev. 2000). The Full Commission correctly held that the applicable Statute of Limitations in the matter began to run on December 26, 2006, and effectively ran on December 26, 2007. Further, the Commission correctly held that the Appellant failed to file his Second Amended Motion to Reinstate or invoke the Commission's continuing jurisdiction pursuant to Miss. Code Ann. § 71-3-53 (Rev. 2000), within one year of December 26, 2006, by showing that there had been a change in conditions justifying further review, or that there had been a mistake in determination of fact justifying further review. The Full Commission correctly concluded that this claim was barred by the one year statute of limitations contained in Miss. Code Ann. § 71-3-53 (Rev. 2000), and that they were without jurisdiction to reopen, reconsider, or otherwise review this matter.

ARGUMENT

The standard of review in workers' compensation cases is limited. The substantial evidence test is used. Walker Mfg. Co. v. Cantrell, 557 So.2d 1243, 1245-47 (Miss. 1991). The Workers' Compensation Commission is the trier and finder of facts in a compensation claim. "This Court will overturn the Workers' Compensation Commission decision only for an error of law or an unsupported finding of fact." Georgia Pac. Corp. v. Taplin, 586 So.2d 823, 826 (Miss.1991). Reversal is proper only when a Commission order is not based on substantial evidence, is arbitrary or capricious, or is based on an erroneous application of the law. Smith v. Jackson Constr. Co., 607 So.2d 1119, 1124 (Miss.1992)

In Garcia v. Super Sagless Corp., the Appellant was injured during the course of his employment on November 14, 2002. 975 So. 2d 267, 268 (Miss. App. 2007). The Appellant received workers' compensation benefits and filed a Petition to Controvert on February 14, 2003. *Id.* The Appellees answered the Petition to Controvert admitting that the injury occurred during the course of employment, but they denied the extent of the Appellant's alleged injuries. *Id.* The Administrative Judge entered an Order on November 4, 2003, dismissing the claim for failure of the Appellant to file a completed Pre-Hearing Statement as required by Procedural Rule 5 of the M.W.C.C. *Id.* Thereafter, the Claimant took the deposition of a neurosurgeon on March 17, 2004. *Id.* The Employer and Carrier participated in the deposition, and the parties continued to negotiate a settlement agreement. *Id.* The Employer and Carrier claimed to have filed with the Commission a B-31 on January 26, 2004, but it was determined that no B-31 was ever actually filed. *Id.*

The Claimant filed a motion to reinstate on April 8, 2005. *Id.* The Employer and Carrier responded alleging that the Claimant's claim was barred by the one-year statute of limitations. *Id.* "The Administrative Judge entered an order on July 12, 2005, denying the Claimant's motion as being barred by the one year statute of limitations set forth by Miss. Code Ann. §71-3-53 (Rev. 2000). *Id.* The Commission and the Circuit Court affirmed the decision of the Administrative Judge. *Id.* at 269. The Claimant appealed the decision and the matter was held before the Court of Appeals. *Id.* The Claimant argued among other things that the Administrative Judge erred by not considering the Employer and Carrier's failure to file a B-31. The Court of Appeals disagreed and cited to Miss. Code Ann. §71-3-53 (Rev. 2000) which states in pertinent part:

Upon its own initiative or upon the application of any party in interest on the ground of a change in conditions or because of a mistake in a determination of fact, the commission may, at any time prior to one (1) year after date of the last payment of compensation, whether or not a compensation order has been issued, *or at any time prior to one (1) year after the rejection of a claim*, review a compensation case, issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation.... Miss. Code Ann. §71-3-53 (Rev. 2000).

Id. The court held that this issue was of no consequence because neither the Administrative Law Judge or the Commission relied on the filing of the Form B-31 in determining whether the Claimant's claim was barred by the statute of limitations. *Id.* The court believed that the one-year limitation period began to run when the Administrative Law Judge's order of dismissal became final. Hence, "a dismissal of a workers' compensation claim for failure to file a

required Pre-Hearing Statement should be treated as a rejection of a claim and should begin the limitations period." The court concurred that the Claimant's claim was dismissed on November 4, 2003, and hence became final on November 24, 2003, in accordance with Miss. Code Ann. §71-3-47 (Rev. 2000). *Id.* at 270. Thereafter, the Claimant had until November 24, 2004, to file his motion to reinstate his claim. *Id.* at 270.

"Lastly, the Claimant argued that a strict interpretation of the workers' compensation statute defeats the beneficent purposes of the legislation." *Id.* The Court disagreed and held that "the interpretation given to the statute as applied in this case can hardly be considered 'strained and technical,' as Garcia asserts." *Id.* The Court held that the Commission is afforded by statute the right to promulgate rules to determine the practice and procedure in the settlement and adjudication of claims. *Id.* Further, it was held that "this Court has stated that 'it is a rare day when we will reverse the Commission for an action taken in implementation and enforcement of its own procedural rules...' (citing Pennington v. U.S. Gypsum Co., 722 So. 2d 162, 165 (Miss. Ct. App. 1998)(quoting Delta Drilling Co. V. Cannette, 489 So. 2d. 1378, 1380-81 (Miss. 1986)). The decision of the Circuit Court was **affirmed** by the Court of Appeals. *Id.*

In Samuel D. Burt v. Bruce Furniture Industries, LLC, and Travelers Insurance Company, the claim was dismissed on November 10, 2003, pursuant to M.W.C.C. Procedural Rule 5, for the Claimant's failure to file a Pre-Hearing Statement. 2005 WL 3775452. Pursuant to Miss. Code Ann. §71-3-47 (Rev. 2000), the order dismissing the claim became final when there was no request

for review filed within 20 days. *Id.* at 1. The Claimant filed a Motion to Reinstatement on April 26, 2005, and the Administrative Judge granted the motion. *Id.* The Employer and Carrier filed a Petition for Review on the grounds that the Administrative Judge erred in reinstating the claim. *Id.* In **reversing this ruling**, the Commission stated the following:

In a line of decisions going back to June 17, 2003, we have said that when a claim is dismissed by a Judge for failure to comply with procedural rules of the Commission, and neither party files a petition for review within (20) days, that dismissal order becomes final, and constitutes at that point a 'rejection of the claim' within the meaning of Miss. Code Ann. §71-3-53 (Rev. 2000). Hence, a request to reinstate or reopen such a claim would have to be filed within one (1) year of the date the dismissal order became final, or else the Commission is without jurisdiction to consider such a request.

Id. The Commission **reversed and vacated** the Administrative Judge's Order Reinstating Claim on the grounds that the Claimant's Motion to Reinstatement was filed more than one year after the order dismissing the claim became final. *Id.* at 2.

Likewise, in Robert Smith v. Shular Companies D/B/A Best Western Seaway Inn and Zurich American Insurance Company, the Administrative Judge dismissed the Claimant's claim on March 14, 1995, based on the Claimant's failure to file a Pre-Hearing Statement. 2007 WL 2952748. On March 20, 1995, the Claimant moved for reconsideration, but it was denied by the Administrative Judge on April 11, 1995. *Id.* at 1. The Order became final on May 1, 1995, because the Claimant did not appeal or seek further reconsideration within (20) days pursuant to Miss. Code Ann. §71-3-47 (Rev. 2000). *Id.*

On May 2, 2005, the Claimant filed yet another motion to reopen his claim. *Id.* The Administrative Judge denied this motion, and held that the Claimant's claim was effectively rejected on May 1, 1995, and the one year statute of limitations had long before expired. *Id.* The Claimant did not appeal or seek reconsideration within (20) days from this Order pursuant to Miss. Code Ann. §71-3-47 (Rev. 2000). *Id.* However, the Claimant filed an untimely motion to reconsider on August 12, 2005, and another motion to reopen on February 7, 2007. *Id.* Both motions were denied by the Administrative Judge on the grounds that one year statute of limitations had long before expired. *Id.* at 2.

The Claimant filed a Petition for Review, and the Commission **affirmed** the Administrative Judge decision holding that the Claimant's claim was effectively rejected on May 1, 1995, and no action was taken within one year thereafter to toll statute of limitations pursuant to § 71-3-53 (Rev. 2000). *Id.* "Hence, the Commission lost jurisdiction on May 1, 1996, to reopen, reconsider, or otherwise review this matter. *Id.*

Similarly, in Douglass Russell v. City of Vicksburg and The Insurance Company of the State of Pennsylvania, the Administrative Judge issued an Order on March 1, 2001, dismissing the Claimant's claim for failure to file a Completed Pretrial Statement pursuant to M.W.C.C. Procedural Rule 5. 2003 WL 21633994. The Claimant failed to request or petition for a review by the full Commission within (20) days from the entry of the order pursuant to Miss. Code Ann. §71-3-47 (Rev. 2000). *Id.* at 1. Thus, the Order became final on March 21, 2001. *Id.* On May 7, 2001, the Employer and Carrier attempted to give

notice to the Claimant as required by Miss. Code Ann. §71-3-37(7) (Rev. 2000) and §71-3-53 (Rev. 2000) that the last payment of compensation had been made. *Id.* at 2. Thereafter, the Claimant filed a Motion to Reinstate along with an attached copy of a Pre-Hearing Statement on November 12, 2002, without giving a reason or explanation for the delay in seeking reinstatement. *Id.* at 1. On December 5, 2002, the Administrative Judge issued an Order denying the Claimant's Motion to Reinstate on the grounds that the Claimant failed to file his Motion to Reinstate within one year from the date the order became final pursuant Miss. Code Ann. §71-3-53 (Rev. 2000). *Id.* at 2.

The Claimant filed a Motion to Set Aside and for Reconsideration on December 11, 2002, arguing among other things that "neither he nor his attorney ever received a copy of the March 1, 2001, Order dismissing the claim, and that neither he nor his attorney received a copy of the unsigned B-31 form, or any notice that the unsigned B-31 form had been filed by the Commission." *Id.* On February 27, 2003, the Administrative Judge issued an Order denying the Claimant's Motion to Set Aside and for Reconsideration and Request to Reinstate Claim on the grounds that it was untimely pursuant to §71-3-53 (Rev. 2000). *Id.*

The Claimant filed a Petition for Review on March 13, 2003. *Id.* The Commission held that "[o]nce the order dismissing the Claimant's claim had become final, and hence, unappealable, the Claimant's only remaining avenue of recourse was to invoke the Commission's continuing jurisdiction pursuant to Miss. Code Ann. § 71-3-53 (Rev. 2000)," which in essence would allow the Claimant one (1) year from the date of the Order of Dismissal an opportunity to

show that there had been a change in conditions justifying further review, or that there had been a mistake in determination of fact justifying further review. *Id.* at 3.

The Commission reasoned that the first question that must be addressed is whether the request was made timely within one (1) year from the date of the last payment of compensation, or one (1) year after the rejection of a claim. (Emphasis added) *Id.* The Commission held that they need not address the factual dispute as to whether the notice of last payment of compensation was properly provided to Russell, because the date of the notice of final payment was not an operative date in this claim. *Id.* at 4. Instead, the Commission held that they should focus on the date of the final rejection of the claim, which occurred on March 21, 2001. *Id.*

The final order of dismissal signifies, in our view, the 'rejection of a claim' within the meaning of Miss. Code Ann. §71-3-53 (Rev. 2000), and the one year statute of limitations provided therein commences accordingly...To treat these final orders of dismissal as anything other than a rejection of the claim so as to trigger the one year statute of limitations would render these and other orders completely useless, and would destroy any sense of finality that the statute and our procedures otherwise attempt to impose.

Id. citing Barq'a Bottling Co. V. Broussard, 239 Miss. 561, 124 So. 2d 294 (1960). The Commission held that because the Claimant did not make his request for a Petition for Review or file a motion to reinstate claim within one (1) year from the date of the final order of dismissal, the Administrative Judge and the Commission were without jurisdiction to grant any relief. *Id.* at 5 and 7.

The Appellant argues in the case *subjudice* that a case can be reopened if sufficient action is taken by the Appellant to reopen their claim within one (1)

year period. The Appellant relies on Harper v. North Mississippi Medical Center and United States Fidelity and Guaranty Company, 601 So. 2d 395 (Miss. 1992), and ABC Manufacturing Corporation v. Doyle, 749 so. 2d 43 (Miss. 1999). Both Harper and Doyle involve efforts made by a Claimant to have a claim reopened after the date of the "last payment of compensation."

In Barr v. Conoco Chems., Inc., the Mississippi Supreme Court held that in order to prevent a claim from becoming time-barred after the filing a notice of final payment the injured worker must request and enforce payment of medical benefits within the one year period. 412 So. 2d 1193, 1194 (Miss. 1982).

If medical benefits are supplied or authorized after the case is closed and within the one year allowed for reopening the case, or if a claim for additional benefits is filed with the Commission within such time, this tolls the statute. On the other hand, once the claim has been barred, it will not be revived and a new period set in motion by the furnishing of medical services after the claim period has run.

Id. In Harper, the Claimant executed a Final Report and Settlement receipt (B-31), and it was filed on August 4, 1984. 601 So. 2d 395 (Miss. 1992). The Claimant incurred further expenses approximately one month later and the Carrier paid the expenses. *Id.* On November 14, 1984, the Claimant wrote the Commission a letter placing them on notice that she went back to work, she was laid off, she was still having problems with her back, still having to take medication, and that she was going to try to talk to someone to help her in this matter. *Id.* at 396. Thereafter, an Amended B-31 was executed and filed with the Commission on December 13, 1984. *Id.* at 395. The Supreme Court held that the one year statute of limitations began to run pursuant to Miss. Code Ann. §71-3-53. *Id.* The Claimant continued to experience lower back pain and

sought treatment with a new physician within 10 months after the filing of the Amended B-31. *Id.* at 396. A Preliminary Medical Report was filed with the Commission by the Claimant's new physician, and the Claimant's employer forwarded the forms to the Carrier recommending that the claim not be paid. *Id.* The Court relied on Barr and other authorities holding that the filing of the Preliminary Medical Report together with the November 1984 letter were sufficient to request and enforce payment. *Id.* at 398.

Similarly in Doyle, a form B-31 was filed by the Employer and Carrier with the Commission on October 20, 1993. 749 So. 2d 43, 45 (Miss 1999). The Claimant acknowledged receipt of the Form B-31 mailed to her *via* certified mail. *Id.* The Claimant sought medical treatment for her back on several different occasions between November of 1993 and November of 1994. *Id.* The Claimant retained an attorney and an entry of appearance was filed in June of 1994. *Id.* Included as an attachment was a notice of controversy stating that the Claimant alleges injuries arising out of and in the course of her employment, the Claimant is unable to return to work, the Claimant is temporarily disabled, and that she is due medical and indemnity benefits. *Id.* An actual Petition to Controvert was not filed until April of 1995. *Id.* The Court relied on Barr and other authorities, and held that the actions by her new attorney of filing the entry of appearance with its attached notice of controversy was sufficient to request payment, and as such, sufficient to toll the statute of limitations. *Id.* at 47.

The Appellees assert in the present case that the Claimant's authorities cited are inapplicable to this cause inasmuch that this matter does not deal with actions made by the Appellant or his attorney which would be sufficient to

reopen a claim after a notice of final payment (B-31) has been filed with the Commission. In fact, there has been no filing of a B-31, which would constitute the date of the last payment of compensation within the meaning of Miss. Code Ann. §71-3-53. The issue in this cause focuses on the one (1) year statute of limitations that begins to run after the "rejection of a claim" within the meaning of Miss. Code Ann. §71-3-53. As in *Garcia*, the Administrative Judge's decision in this matter to originally dismiss this claim was based on the Claimant's failure to file a completed Pre-Hearing Statement.

The Appellant cites in his appeal that he continued to work the case up with deposition and negotiations. However, the Court of Appeals in *Garcia*, and the Administrative Judge in this matter correctly held that the notice of depositions or participation in actual depositions were not sufficient to effectively erase the one (1) year statute of limitations.

The Administrative Judge correctly entered an Order on December 6, 2006, denying the Appellant's Motion to Reinstate. Record at 25. It is undisputed that no request or petition for review by the Full Commission was filed within twenty (20) days of its entry provided by Miss. Code Ann. §71-3-47 (Rev. 2000). In accordance with Miss. Code Ann. §71-3-47 (Rev. 2000), the Order became final on December 26, 2006. Record at 52. December 26, 2006, constituted the date of the "rejection of the claim" within the meaning of Miss. Code Ann. §71-3-53 (Rev. 2000), and the authorities cited above. The Appellant's only remaining avenue of recourse was to invoke the Commission's continuing jurisdiction pursuant to Miss. Code Ann. § 71-3-53 (Rev. 2000)," which in essence would allow the Claimant **one (1) year from the date of the**

Order of Dismissal an opportunity to show that there had been a change in conditions justifying further review, or that there had been a mistake in determination of fact justifying further review.

The Administrative Judge correctly held that the applicable statute of limitations in this matter began to run on December 26, 2006, and effectively ran on December 26, 2007. The Appellant failed to file his Second Amended Motion to Reinstate or invoke the Commission's continuing jurisdiction pursuant to Miss. Code Ann. § 71-3-53 (Rev. 2000)," within one year of December 26, 2006, by showing that there had been a change in conditions justifying further review, or that there had been a mistake in determination of fact justifying further review.

Though the counsel for the Appellant alleges that he hand delivered the Appellant's Second Amended Motion to Reinstate on July 21, 2007, the Appellant's Second Amended Motion to Reinstate bears no such filing date, but instead the a file date of June 17, 2008, the date the Commission received it as an attachment to his correspondence received on June 17, 2008. The Administrative Judge and Full Commission correctly concluded that the statute of limitations was not tolled or erased such that it ran on December 26, 2007, and this claim was barred by the one year statute of limitations contained in Miss. Code Ann. §71-3-53 (Rev. 2000). The Commission is without jurisdiction to reopen, reconsider, or otherwise review this matter.

As such, there is adequate support from Procedural Rule 5 of the M.W.C.C, Miss. Code Ann. §71-3-47 and §71-3-53, and the case law cited above, such that the findings of the Full Commission should be affirmed.

CONCLUSION

In conclusion, based on the above, the Appellees would assert that the Appellant failed to file his Second Amended Motion to Reinstate or invoke the Commission's continuing jurisdiction pursuant to Miss. Code Ann. § 71-3-53 (Rev. 2000)," within one year of December 26, 2006, by showing that there had been a change in conditions justifying further review, or that there had been a mistake in determination of fact justifying further review. The Administrative Judge correctly denied the Appellant's Second Motion to Reinstate because it was filed untimely long after the statute of limitations had run. The Full Commission correctly affirmed the findings of the Administrative Judge as did the Rankin County Circuit Court. Therefore, the Appellees respectfully request that said findings of the Administrative Judge, Full Commission and Rankin County Circuit Court be affirmed by this honorable Court.

RESPECTFULLY SUBMITTED, this 30th day of April, 2010.

THE HOME DEPOT and
AMERICAN HOME ASSURANCE COMPANY,
Appellees

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CERTIFICATE OF SERVICE

I, P. Sharkey Burke, Jr., attorney of record for the Employer and Carrier, do hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Reply Brief to the following counsel of record for the Claimant:

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Honorable Samac S. Richardson
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This the 30th day of April, 2010.



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