

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

PAUL R. COOK

APPELLANT

VERSUS

CASE NO.: 2009-WC-01551-COA

Rankin County Circuit Court No.: 2009-099-R

**THE HOME DEPOT AND
AMERICAN ASSURANCE COMPANY**

APPELLEE

APPELLANT'S BRIEF

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CERTIFICATE OF INTERESTED PERSONS

I, JOHN H. ANDERSON, do hereby this day certify that the following listed persons
have an interest in the outcome of this case:

**Hon. P. Sharkey Burke, Attorney for Appellee
The Home Depot, Appellee
American Home Assurance Company, Appellee
John H. Anderson, Attorney for Appellant
Paul R. Cook, Appellant**

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STATEMENT OF ISSUE

I. The Commission as well as the Circuit Court erred in finding that the Statue of Limitations had expired for reinstating the case and dismissing the claim with prejudice, when the claimant continued to pursue even if no formal “Motion to reinstate” was found in the file within a year after dismissal.

STATEMENT OF THE CASE

The case began as a Workers' Compensation matter when, Paul Cook filed his petition to controvert dated August 2, 2004, alleging an injury May 13, 2003. An answer was filed and issue was joined. Workers' Compensation benefits were stopped and claimant filed a motion to review cessation of benefits and payment of medical bills. In disposition of said motion, the Administrative Judge ordered an Independent Medical Examination by Dr. Rahul Vohra R (2)(10). The employer and carrier was to pay this bill but never did so, therefore claimant's attorney paid it in order to get the report. The pretrial statement became due and was not timely filed and the case was dismissed from the active docket July 27, 2006. The action was not reinstated by the Administrative Judge. This action was affirmed by the full Commission and the Rankin County Circuit Court and this appeal results.

STATEMENT OF FACTS

Paul Cook was employed at Home Depot where he injured his back lifting cast iron bathtubs. Following treatment, and some temporary total benefit payments, the initial treating physician opined that he was able to return to work. In course, the temporary total benefits were ceased and a petition to controvert was filed. Mr. Cook saw several physicians of his own choosing including but not limited to Dr. David Lee in Hattiesburg, Mississippi, who believed him to have disabling injuries. When the carrier refused to authorize the treatment recommended by Dr. Lee, a motion was filed with the Commission which resulted in the Administrative Judge ordering a consultation with Dr. Vhora. The Administrative Judge ordered Employer and Carrier to pay for this consult; however, this was never done and instead had to be paid by claimant's attorney in order to get the report.

The discovery period ended and the pre-hearing statement came due and was not immediately filed. The matter was dismissed for this failure. A pre-hearing statement was filed; however, reinstatement was denied because the statement did not comply with the current form.

The Claimant filed the appropriate pre-hearing statement as well as a notices of deposition during a period between December 2006 and July 2007. Believing that the time limitation for requesting reinstatement would run July 27, 2007, claimant's attorney became concerned about reinstatement. To that end, he visited the Commission and received the right form for pre-hearing statement and delivered the same along with the second amended motion to reinstate on July 21, 2007, to the front desk. Believing that these documents would be filed, claimant's attorney did not request a stamp filed copy. While the file does not reflect documents filed on

that day, they were hand delivered to the front desk by this attorney on July 21, 2007. Work on the case continued with the deposition and negotiation, and claimant was of the opinion the reinstatement issue was or would be resolved in due course. While we understand the great respect which must be given to the integrity of a filing system, we would not waste my time or risk making an affidavit to something I did not do or believe that I did.

Wanting to resolve the matter or get it moved to a conclusion, I again began to inquire about the re-in-statement. As my letter of June 16, 2008, to Ms. Lakeshae Gordon, Legal Assistant, indicates, I visited the Commission again and Ms. Gordon and I were unable to locate a motion to reinstate in the file despite pre-hearing statements and several notices of deposition. Ms. Gordon suggested that I send her the Motion which I hand delivered July 21, 2007. I did not find a stamped copy, however, I found a dated copy which I forwarded her along with a letter which is filed. Obviously, because there was no file stamped copy in the file and I could not provide one, The Administrative Judge determined that it did not happen and dismissed the claim finally. As I reflected on the hearing proceedings and reviewing the files along with Judge Lott, I remembered seeing what appeared to be another original motion to reinstate dated July 21, 2007, in the file but stamped June 2008. I wrote and mentioned this to Judge Lott; however, this letter was likely received after she had ruled. This suggested to me that the motion which I delivered on July 21, 2007 was located and placed in the file as I do not believe I forwarded two (2) motions with my June 16, 2008 letter.

SUMMARY OF ARGUMENT

This case brings to bear the operation of Mississippi Code Annotated §71-3-53. The Mississippi Workers' Compensation operates pursuant to statutes to administer the affairs of injured workers and their employers and Workers' Compensation Insurance Carriers. The Commission while operating pursuant to the statutes and rules is to effect the beneficent purpose of the act in seeing that injured workers are cared for and compensated. While seeing that the purpose for the act is carried out, rigidity should not be mandated.

This case bring into play Mississippi Code Annotated §71-3-53 which provides for finality on a claim which set dormant for a year after an action which is otherwise ends proceeding in a case.

The case was dismissed by an Administrative Judge upon deciding that a pre-trial statement was not filed. Despite filing a conforming pre-trial statement, seeking medical assistance, noticing and taking depositions, the case was finally dismissed because a formal "Motion to reinstate" was not found in the file despite counsel being confident that one was tendered. Such rigidity was never intended by this statute in light of the other things done to further Appellant's claim.

ARGUMENT

This case bring before the Court the operation of Mississippi Code Annotated §71-3-53. While I must respect the great deference Courts give to administrative agencies, §71-3-53 is being treated as a Statute of Limitations and as such this Court must consider and in fact apply a de novo standard of review. "This Court uses a de novo standard of review when passing on questions of law including Statutes of Limitations issues." Stephens v. Equitable Life Assurance Soc'y of the U. S., 850 So. 2d 78, 82(10) (Miss. 203) (quoting ABC Mfg. Corp. v. Doyle, 749 So. 2d 43, 45(10) Miss, 1999).

Finality is always in order and there should be period after which matters are laid to rest if they are allowed to lay dormant. However, this statute only comes into play when a matter stands dormant for more than one year. If on the other hand action is taken to continue to pursue the case, the statute is tolled and the claimant is allowed his day in Court.

In the case at bar, the claimant's claim was dismissed for failure to file a properly completed pre-trial statement on July 26, 2006. The following action was taken to pursue the case after dismissal. Order of Dismissal filed by the Administrative Judge (R)(52) documents.

1. October 30, 2006, claimant filed a motion to reinstate accompanied by a pre-hearing statement and notice of deposition of Dr. Lee. This motion was denied December 6, 2006, as not being a proper pretrial statement.

2. On December 13, 2006, an amended pretrial statement was filed along with another deposition notice.

3. On January 8, 2007, another amended pretrial statement was filed along with another

notice of deposition of Dr. David Lee and Dr. Michael Patterson.

4. On March 9, 2007, a third notice of deposition was filed.

5. On April 9, 2007, claimant's attorney reviewed the Commission file.

6. On April 16, 2007, another notice of deposition was filed.

7. On June 12, 2007, another notice of deposition was filed and Dr. Lee was deposed

December 28, 2007. R(2)(53).

Appellant agrees that Mississippi Code Annotated §71-3-53 will serve to finally close a case if nothing is done within one year to prevent such finality. The question becomes, how much is enough to toll the statute. The Administrative Judge specifically found that the filing of numerous amended pretrial statements and notices of deposition would not prevent the running of the Statute of Limitations. Instead there must have been a "Motion to reinstate". This appears to be just that formality which the beneficent nature of the Commission is to guard against.

Margaret Harper in her case against North Mississippi Medical Center simply wrote a letter complaining of her lack of treatment within the one year period covered by Mississippi Code Annotated §71-3-53 and she was found to have tolled the statute

Because of the beneficent purpose of the Mississippi Workers' Compensation Act, we construe the statutes liberally in favor of the injured worker. *Metal Trims Industries, Inc. v. Stovall* 562 So. 2d 1293, 1297 (Miss. 1990); *Big "2" Engine Rebuilders vs Freeman*, 379 So. 2d 999 (Miss. 1980)... we find that the filing of the preliminary medical reports together with Harper's November 14, 1984, letter are sufficient request and enforcement of payment so as to serve as a substitute for a formal petition to reopen.

The Mississippi Supreme Court again considered this issue in ABC Manufacturing

Corporation and Continental Casualty Company vs. Martha Jane Doyle 749 So. 2d 43. There

Mrs. Doyle's attorney simply filed an Entry of Appearance during the one year period. The

Court commented as follows:

Larson's Workers Commission Law §77A 10 at 15-1 to 15-3 (1999) (footnotes omitted). Finally, Miss. Code Ann. §71-3-53(i) provided that the Commission shall not be bound by "technical or formal rules or procedure except as provided by this Chapter." Due to the beneficent purpose of the Mississippi Workers' Compensation Act, we construe the statutes liberally in favor of the injured workers.....The petition for entry of appearance filed by Doyle's attorneys within one year after ABC filed its for B-31, was sufficient to toll the statute of limitations.

Surely, the filing of numeral pretrial statements, several notices of depositions and the actual taking and filing of a deposition more readily indicated Cook's intention to pursue his case than simply writing a complaint letter to the Commission or filing an Entry of Appearance.

CONCLUSION

While we continue to maintain that a Motion to Reinstate was timely tendered for filing and was lost in the Commission, we are of the opinion that the law is in favor of allowing this claim to continue to hearing and decision. The filing of pre-hearing statements, medical reports, and several re-set notices to take depositions more that appraised the Commission of Mr. Cook's continued desire to process his case and not abandon the same or to allow it to lay dormant. He request that this action be reversed and remanded for disposition on the merits. To do otherwise will allow this carrier having total disregarded the Administrative Judge's Order to pay for the Independent Medical opinion to further avoid responsibility.

RESPECTFULLY SUBMITTED, this the 2nd day of April, A.D., 2010



JOHN H. ANDERSON, ATTORNEY

CERTIFICATE OF SERVICE

I, JOHN H. ANDERSON, do hereby certify that I have this day caused a true and correct copy of the above and foregoing Appellant's Brief to be forwarded via U. S. Mail postage prepaid to Hon. P. Sharkey Burke at the usual and last known mailing address the same being Post Office Box 2540 Ridgeland, MS 39158-2540.

DATED this the 2nd day of April, A.D., 2010.



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