

IN THE SUPREME COURT OF MISSISSIPPI

CAROLYN K. MCNEEL

APPELLANT

VS.

NO.: 2010-CC-01399

MISSISSIPPI DEPARTMENT
OF HUMAN SERVICES

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF
WINSTON COUNTY, MISSISSIPPI

BRIEF FOR APPELLANT

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

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

1. Carolyn K. McNeel, Appellant
2. David E. Bane, Jr., Attorney for Appellant
3. Mississippi Department of Human Services, Appellee
4. Kathy Caldwell, Attorney for Appellee
5. Donald R. Taylor, Former MDHS Executive Director
6. Don Thompson, MDHS Executive Director
7. William H. Smith, III, Former Hearing Officer, Mississippi Employee Appeals Board
8. Falton O. Mason, Jr., Hearing Officer, Mississippi Employee Appeals Board
9. Roosevelt Daniels, II, Former Hearing Officer, Mississippi Employee Appeals Board
10. Ingrid D. Williams, Hearing Officer, Mississippi Employee Appeals Board
11. Billy Gene McNeel, Appellant's husband
12. Wesla Sullivan Leech, Hearing Officer, Mississippi Employee Appeals Board
13. Joseph H. Loper, Jr., Judge for the Circuit Court of Winston County, Mississippi

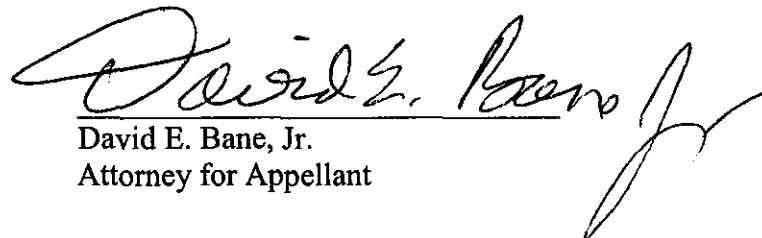

David E. Bane, Jr.
Attorney for Appellant

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STATEMENT OF ISSUES

The following issues are presented for review by the appellant:

1. Carolyn K. McNeel should have been awarded compound interest.
2. The Mississippi Employee Appeals Board should have specified the date when interest should begin accruing.
3. The Mississippi Employee Appeals Board should have had an independent accounting firm or the Mississippi State Auditor's office to calculate all monies owed to Carolyn K. McNeel.
4. Carolyn K. McNeel's raise should have been greater than she received.
5. Carolyn K. McNeel should get additional benefits because of her recent promotion.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This case has as its genesis the wrongful termination of Carolyn K. McNeel's, hereinafter referred to as "McNeel", employment by the Mississippi Department of Human Services, hereinafter referred to as "MDHS". The purpose of this case is to make her whole as much as possible because of said wrongful termination.

II. COURSE OF THE PROCEEDINGS

McNeel filed an appeal to the Mississippi Employee Appeals Board, hereinafter referred to as "EAB", seeking relief on July 22, 2004. Hearing Officer Falton O. Mason, Jr. issued an order on August 16, 2005 which granted some of the relief requested by McNeel and denied some of the relief requested by McNeel. Cause No. 2007-CC-02189 R. at Vol. III, 247-248. MDHS and McNeel appealed to the Full Board of the EAB. Hearing Officer Mason's order issued on August 16, 2005 was affirmed by the Full Board of the EAB by order entered on July 7, 2006. Cause No. 2007-CC-02189 R. At Vol. III, 249-250. MDHS sought review by filing a Petition for Writ of Certiorari with Supersedeas in the Circuit Court for the First Judicial District of Hinds County on July 14, 2006. Cause No. 2007-CC-02189 R. at Vol. I, 18-30. McNeel filed a Notice of Appeal with the Circuit Court of Winston County, Mississippi on July 31, 2006. Cause No. 2007-CC-02189 R. at Vol. I, 3-5 and 11-15. McNeel also requested the Circuit Court for the First Judicial District of Hinds County to transfer MDHS's Petition for Writ of Certiorari with Supersedeas to the Circuit Court of Winston County. Cause No. 2007-CC-02189 R. at Vol. I, 32-35. On August 9, 2006, the Circuit Court for the First Judicial District of Hinds County issued an Order transferring MDHS's Petition for Writ of

Certiorari with Supersedeas to the Circuit Court of Winston County. Cause No. 2007-CC-02189 R. at Vol. I, 36-37.

On November 20, 2007, the Circuit Court of Winston County entered an Opinion and Order which affirmed in part and reversed and remanded in part the decision of the EAB. Cause No. 2007-CC-02189 R. at Vol. I, 61-81. On December 5, 2007, MDHS filed its Notice of Appeal with the Mississippi Supreme Court. Cause No. 2007-CC-02189 R. At Vol. I, 82-86. Likewise, McNeel filed her Notice of Cross-Appeal on December 7, 2007. Cause No. 2007-CC-02189 R. at Vol. I, 91-94.

On June 4, 2009, The Mississippi Supreme Court entered its opinion which affirmed in part and reversed and remanded in part the Winston County, Mississippi Circuit Court. Mississippi Department of Human Services v. Carolyn K. McNeel, 10 So.3d 444 (Miss.2009).

Upon remand, the Mississippi Employee Appeals Board entered an Order on December 1, 2009. The Mississippi Employee Appeals Board found as follows:

(1) That MDHS shall place McNeel in the position that she would have been eligible for but for her wrongful termination which is Area Social Work Supervisor of Winston County.

(2) MDHS shall give McNeel all promotions and salary increases that she would have been entitled to but for her wrongful termination which include the following: Reclassification to Social Worker Advanced starting October 1, 1999; Promotion to Area Social work Supervisor starting November 1, 1999; Legislative Pay Increase on November 1, 2003; Legislative Pay Increase on July 1, 2006; Legislative Pay

Increase on January 1, 2007; Legislative Pay Increase on July 1, 2007. McNeel shall receive these promotions and increases minus any applicable tax deductions.

(3) MDHS shall pay McNeel all medical expenses during her wrongful termination, that have been provided to the Court, in the amount of \$7,470.37.

(4) MDHS shall report and pay to the Social Security Administration McNeel's back pay each year of McNeel's wrongful termination pursuant to IRS Publication 957 minus McNeel's contribution.

(5) MDHS shall pay 8% interest in Post Judgment from the overall lump sum of McNeel's back pay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that MDHS shall place McNeel in the position of Area Social Work Supervisor of Winston County, pay all advances and increases that would have been entitled to McNeel minus appropriate taxes, pay medical expenses to McNeel in the amount of \$7,470.37, report and pay to the Social Security Administration McNeel's back pay each year of McNeel's wrongful termination pursuant to IRS Publication 957 minus McNeel's contribution, pay 8% interest in Post Judgment from the overall lump sum of McNeel's back pay which includes adjustment made by this Order. Appellant's R. E. 11-12.

III. DISPOSITION BY THE WINSTON COUNTY CIRCUIT COURT

On August 11, 2010, the Winston County Circuit Court entered an order affirming the decision of the Mississippi Employee Appeals Board. R. 9-10

IV. STATEMENT OF FACTS

McNeel began working for MDHS in 1979 in Rankin County. CM at 1¹. In 1987, McNeel took off 18 months to care for her son William. *Id.* McNeel returned to work for MDHS on September 16, 1988 and continued to work there until November 10, 1999 when her employment was wrongfully terminated by MDHS. *Id.*, The Mississippi Department of Human Services v. McNeel, 869 So.2d 1013, 1014 (Miss. 2004). McNeel appealed her termination to the EAB. On October 20, 2000, Hearing Officer Falton O. Mason, Jr. reinstated McNeel to her former position with back pay and all benefits as of the date of the wrongful termination, subject to setoff any sums received from other sources. *Id.* At 1014. MDHS appealed Hearing Officer Mason's decision to the Full Board of the EAB. *Id.* Hearing Officer Mason's decision was affirmed unanimously by the Full Board of the EAB. *Id.* MDHS petitioned the Hinds County Circuit Court for a Writ of Certiorari to review the decision of the Full Board of the EAB. *Id.* The Hinds County Circuit Court affirmed Hearing Officer Mason's decision. *Id.* MDHS then appealed to the Mississippi Supreme Court. *Id.* On April 29, 2004, the Mississippi Supreme Court unanimously affirmed Hearing Officer Mason's decision. *Id.* At 1020. On July 16, 2004, MDHS sent a check in the amount of \$92,251.39 to McNeel for her back pay. Cause No. 2007-CC-02189 T. at 114-115. MDHS had McNeel's back pay as being \$147,294.10. *Id.* After taxes, social security, retirement, and Medicare were deducted, the remaining amount was the aforementioned sum of \$92,251.39. *Id.* McNeel resumed her employment with MDHS on June 1, 2004. On July 22, 2004, McNeel filed an appeal to the EAB. The goal of McNeel's July 22, 2004 appeal was and is an attempt to make her whole, i.e., to put her in the position she would have been but for the

¹ CM refers to McNeel's reconstructed testimony which is a part of the record of Cause No. 2007-CC-02189 in the Mississippi Supreme Court.

Cause No. 2007-CC-02189 R. at Vol. I, 61-81. The Circuit Court denied McNeel's request to clarify the language of the Hearing Officer of the EAB concerning her back pay and promotion but remanded that issue to the EAB to clarify what promotions and advancements she should be awarded, if any, by job title and the specific pay rate from which her back pay should be calculated. *Id.* The Circuit Court reversed the decision that denied McNeel prejudgment interest and remanded for the purpose of determining whether prejudgment interest should be awarded and if so, at what rate. *Id.* The Circuit Court reversed the decision that denied McNeel post-judgment interest and remanded for a determination of the post-judgment interest that McNeel was to receive on her award of back pay and benefits. *Id.* Also, the Circuit Court reversed the decision of the EAB that denied McNeel's request to have MDHS report her back pay to the Social Security Administration. *Id.*

On December 5, 2007, MDHS filed its Notice of Appeal with the Mississippi Supreme Court. Cause No. 2007-CC-02189 R. at Vol. I, 82-86. Likewise, McNeel filed her Notice of Cross-Appeal on December 17, 2007. Cause No. 2007-CC-02189 R. at Vol. I, 91-94. At that time, McNeel appealed to The Mississippi Supreme Court the decision of the Winston County, Mississippi Circuit Court that denied her reimbursement of travel and telephone expenses and comp time credited to her personal leave time; that denied her the estimated value of having medical insurance; that denied her reimbursement for continuing education expenses, attorney fees, and related costs; that denied her reimbursement of additional federal income taxes; that denied her request for an independent accounting firm or the Mississippi State Auditor's Office to calculate all

monies owed to her; and that denied her request to clarify the language of the Hearing Officer of the EAB concerning her back pay and promotions.

On June 4, 2009, the Mississippi Supreme Court entered its opinion which affirmed in part and reversed and remanded in part the Winston County, Mississippi Circuit Court. More specifically, the Mississippi Supreme Court affirmed the EAB's denial of McNeel's request for travel reimbursement and personal-leave credit, continuing professional education expenses, reimbursement of legal fees (including those associated with her unemployment benefits), reimbursement for additional income taxation, and an independent calculation of the monies owed. Mississippi Department of Human Services v. Carolyn K. McNeel, 10 So.3d 444,463. The Mississippi Supreme Court further affirmed the EAB's decision to reimburse McNeel for personal funds expended on medical insurance during the period of her wrongful termination. *Id.* McNeel has not yet received this amount of \$7,470.37 to which she is undoubtedly entitled. The Mississippi Supreme Court reversed the EAB's decision regarding reporting of McNeel's back pay to the Social Security Administration. The MDHS was required to properly report McNeel's back pay to the Social Security Administration pursuant to IRS publication 957. *Id.* The Mississippi Supreme Court reversed and remanded to the EAB the issue of post-judgment interest and directed the EAB to determine the post-judgment interest rate to which McNeel is entitled. *Id.* The Mississippi Supreme Court stated that the EAB in doing so shall act pursuant to Mississippi Code §75-17-7. The Mississippi Supreme Court held that McNeel waived her claim to pre-judgment interest. *Id.* The Mississippi Supreme Court directed the EAB to clarify what pay increases and/or advancements were offered and granted to DHS-

Social Workers similarly situated to McNeel but for her wrongful termination and determine what, if any, such pay increases and/or advancements McNeel would have been entitled to receive. *Id.* The Mississippi Supreme Court stated that should the EAB determine that McNeel is entitled to any such pay increases and/or advancements, the EAB shall order the MDHS to compensate her accordingly. *Id.* Finally, the Mississippi Supreme Court directed the EAB to render a reimbursement determination regarding whether, but for her wrongful termination, any of McNeel's documented prescription drugs and medical expenses would have been paid by "The State and School Employee's Life and Health Insurance" plan. *Id.* If so, the EAB was directed to order the MDHS to compensate McNeel for the same. *Id.*

Upon remand, the Mississippi Employee Appeals Board entered an order on December 1, 2009. Appellant's R. E. 11-12. The Mississippi Employee Appeals Board's findings in said order are set forth above. On August 11, 2010, the Winston County Circuit Court entered an order affirming the decision of the Mississippi Employee Appeals Board. R. 9-10.

At this time, McNeel is appealing to the Mississippi Supreme Court the decision of the Winston County Circuit Court. McNeel alleges that the Winston County Circuit Court erred in affirming the decision of the Mississippi Employee Appeals Court which
failed to award unto her compound interest on all monies owed to her, by not stating the
date interest was to start accruing on all monies owed to her, and by not having an
independent accounting firm or the Mississippi State Auditor's office to calculate all
monies owed to her.

SUMMARY OF THE ARGUMENT

The interest on all monies owed to McNeel should be compounded annually. The interest on all monies owed to McNeel should begin accruing as of October 20, 2000. This would include amounts owed as of that date and on each pay period (the 1st and 15th of each month) and the date of all other reimbursements. Because of the complexity of this case and other considerations, the Mississippi Employee Appeals Board should have had an independent accounting firm or the Mississippi State Auditor's Office to calculate all monies owed to McNeel. McNeel should get additional benefits because of her recent promotion. Lastly, McNeel's recent raise should have been greater than she received.

ARGUMENT

I. CAROLYN K. MCNEEL SHOULD HAVE BEEN AWARDED COMPOUND INTEREST.

It is McNeel's contention that the interest on all monies owed to her should be compounded annually. As a matter of fact, in the case sub judice MDHS paid contributions to McNeel's PERS (Public Employees' Retirement System) account that included interest calculated at 8% compounded annually. See Exhibits 7 and 9 in Cause No. 2007-CC-02189.

See also Mississippi Code Section 75-17-1 (1) which states as follows: The legal rate of interest on all notes, accounts and contracts shall be eight percent (8%) per annum, calculated according to the actuarial method, but contracts may be made, in writing, for payment of a finance charge as otherwise provided by this section or as otherwise authorized by law.

Black's Law Dictionary 8th ed. Defines "actuarial method" as follows: A means of determining the amount of interest on a loan by using the loan's annual percentage rate to separately calculate the finance charge for each payment period, after crediting each payment, which is credited first to interest and then to principal.

II: THE MISSISSIPPI EMPLOYEE APPEALS BOARD SHOULD HAVE SPECIFIED THE DATE WHEN INTEREST SHOULD BEGIN ACCRUING.

The EAB should have stated that interest on all monies owed to McNeel should begin accruing as of October 20, 2000 in the form of post judgment interest. This is the date the EAB reinstated McNeel to her former position with back pay and all benefits as

of the date of the wrongful termination, subject to setoff any sums received from other sources. Mississippi Department of Human Services v McNeel, 869 So.2d 1013, 1014 (Miss. 2004). This would include amounts owed as of October 20, 2000 and on each pay period (the 15th and 30th of each month) and the date of all other reimbursements. Interest should accrue on all monies owed to McNeel up to the time she receives payment. An amortization schedule would need to be utilized on all payments owed to and received by McNeel.

III. THE MISSISSIPPI EMPLOYEE APPEALS BOARD SHOULD HAVE HAD AN INDEPENDENT ACCOUNTING FIRM OR THE MISSISSIPPI STATE AUDITOR'S OFFICE TO CALCULATE ALL MONIES OWED TO CAROLYN K. MCNEEL.

MDHS has shown an unwillingness to provide and/or assist in obtaining the necessary records to compute the salaries, medical and prescription card savings, interest, and other items. McNeel requested that an independent party compute the amounts payable to her with the cost to be paid for by MDHS. Cause No. 2007-CC-02189 Exhibit MM. It took MDHS three months to compute her back pay and leave time. This was a relatively simple computation multiplying the rate of pay times the pay periods.

It appears MDHS does not have the capabilities or desire to compensate McNeel for all of her back pay and benefits. MDHS would lead you to believe that all you have to do is feed these figures into their Statewide Payroll and Human Resources System, known as SPAHRS, and it will calculate everything. That is simply not the case. This is a very complex case and the award must be broken down into categories and signed off

by the Court before the Social Security Administration can process it. McNeel employed an accounting firm, Billy Gene McNeel, C.P.A., in June 2004 that caught numerous errors in her back pay (a complete month was omitted) and her leave balances were incorrect. MDHS does not have the expertise to calculate these amounts correctly and the burden of calculating these amounts should not fall on McNeel. An accounting firm needs to be hired to prepare the amendments necessary to correct McNeel's social security wages. According to Larry Katz, with the Social Security Administration, this is an unusual and complex case and these type of calculations are very rare. These must be correctly reported in order not to have an adverse effect on her future Social Security Benefits. It is imperative that these amounts be calculated by a capable firm with appropriate software and experience. That is to say, it is essential in order for the amounts to be calculated correctly that amortization software be utilized and that individuals with amortization experience calculate the amounts. The Mississippi State Auditor's Office could possibly be utilized.

IV. MCNEEL'S RAISE SHOULD HAVE BEEN GREATER THAN SHE RECEIVED.

McNeel recently received a raise of \$4,211.00 per year. In McNeel's previous job, she was making 35% of the salary range for that job description. In her new job description, she is making only 29% of the range for that job description. Based on the above, McNeel's raise should have been \$9,847.00 per year as opposed to \$4,211.00 per year.

V. MCNEEL SHOULD GET ADDITIONAL BENEFITS BECAUSE OF HER RECENT PROMOTION.

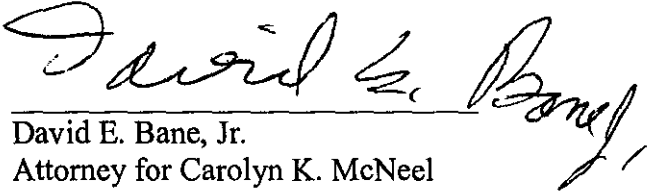
McNeel was recently promoted to area social work supervisor. This promotion was effective to 1999. Since her promotion was effective to 1999, McNeel should get all benefits, which includes travel to Kemper County and comp time for travel and all continuing education expenses, because this is a benefit to area social work supervisors. Therefore, McNeel should be reimbursed for travel and telephone expenses in the amount of \$1554.92 and should have comp time credited to her personal leave in the amount of 95 hours regarding the travel to Kemper and Neshoba Counties. See the reconstructed testimony of Carolyn K. McNeel at page 3 and see Exhibit KK in Cause No.: 2007-CC-02189. Furthermore, McNeel should be reimbursed \$2030.69 regarding continuing education expenses. See Exhibit D in Cause No. 2007-CC-02189.

VI. CONCLUSION

Through the arbitrary and capricious actions of MDHS, McNeel has suffered through emotional and financial hardships. Damages to an otherwise unblemished career cannot be corrected. While it is impossible for this Court to make McNeel whole, it should attempt to do so in every possible way. MDHS has been uncooperative with McNeel. The entire underlying matter in this case was an apparent lost file. It is McNeel's belief that the file would have completely exonerated her in 2000. It should not be forgotten that in complete denial of the original order, MDHS ordered McNeel back to work in Kemper County when she should have been placed in Winston County. With the promotion to Social Work Supervisor, McNeel would have had her travel reimbursed and would have been allowed compensation time for travel. Also, Area Social Work Supervisors are provided workshops that count as continuing education. McNeel should receive travel reimbursement to and from Kemper County, compensation

time for travel, and continuing education given to all Area Social Work Supervisors. In an attempt to make her whole, McNeel should be awarded all the benefits and remedies outlined in this brief. Furthermore, all costs in this matter should be assessed to MDHS and MDHS should be required to be responsible for all of McNeel's attorney fees concerning this matter.

Respectfully submitted,


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Attorney for Carolyn K. McNeel

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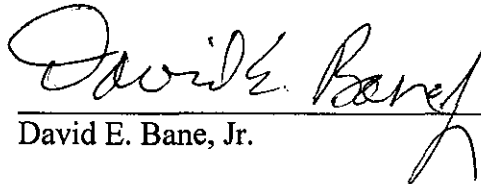
CERTIFICATE OF SERVICE

I, David E. Bane, Jr., attorney for Carolyn K. McNeel, do hereby certify that I have this day mailed, by first class United States Mail, postage prepaid, a true and correct copy of the above and foregoing Brief of the Appellant to the following:

Honorable Katherine Caldwell
Special Assistant Attorney General
P.O. Box 220
Jackson, MS 39205-0220

Honorable Joseph H. Loper, Jr.
Circuit Court Judge
P.O. Box 616
Ackerman, MS 39735

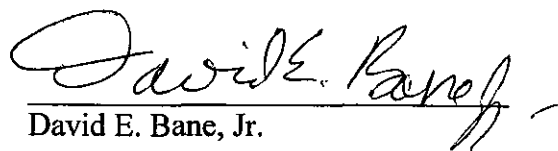
This the 15th day of December, 2010.


David E. Bane, Jr.

Certificate of Filing

I, David E. Bane, Jr., attorney for appellant, Carolyn K. McNeel, do hereby certify that on the 15th day of December, 2010, I have sent by overnight delivery via Federal Express, the original and four copies of the Brief for Appellant concerning the case of Carolyn K. McNeel, Appellant v. Mississippi Department of Human Services, Appellee, No.2010-CA-01399, in the Supreme Court of the State of Mississippi, to Kathy Gillis, Clerk for the Supreme Court and Court of Appeals, at the address of Gartin Justice Building, 450 High Street, Jackson, Mississippi 39201.

So certified on this the 15th day of December, 2010.


David E. Bane, Jr.