

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

CASE NO. 2010-CC-01405

JACQUELINE PENDLETON

APPELLANT

V.

CASE NO. 2010-CC-01405

**MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY AND
SANDERSON FARMS, INC.**

APPELLEES

**BRIEF OF APPELLEE, MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY
(hereinafter also "MDES" or Department")**

**APPEAL FROM THE CIRCUIT COURT OF COPIAH COUNTY
STATE OF MISSISSIPPI**

ORAL ARGUMENT NOT REQUESTED

OF COUNSEL:

**ALBERT BOZEMAN WHITE
ASSISTANT GENERAL COUNSEL
MS BAR NO. [REDACTED]**

**LEANNE F. BRADY
SENIOR ATTORNEY
MS BAR NO. 100793**

**MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY
POST OFFICE BOX 1699
JACKSON, MS 39215-1699
Telephone: (601) 321-6073
Facsimile: (601) 321-6076**

TABLE OF CONTENTS

| | |
|---|-----|
| TABLE OF CONTENTS..... | i |
| CERTIFICATE OF INTERESTED PERSONS..... | ii |
| TABLE OF CASES AND OTHER AUTHORITIES..... | iii |
| STATEMENT OF THE ISSUE..... | 1 |
| STATEMENT OF THE CASE..... | 2 |
| SUMMARY OF THE ARGUMENT..... | 6 |
| ARGUMENT..... | 8 |
| Standard of Review..... | 8 |
| Record Evidence..... | 9 |
| Argument and Authorities..... | 13 |
| CONCLUSION..... | 16 |
| CERTIFICATE OF SERVICE..... | 17 |

IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS

CASE NO. 2010-CC-01405

JACQUELINE PENDLETON

APPELLANT

V.

CASE NO. 2010-CC-01405

MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY AND
SANDERSON FARMS, INC.

APPELLEES

CERTIFICATE OF INTERESTED PARTIES

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 possible disqualification or recusal.

1. Ms. Jacqueline Pendleton, Appellant/Claimant
2. Albert Bozeman White, Assistant General Counsel for Appellee
3. Mississippi Department of Employment Security, Appellee
4. Sanderson Farms, Inc., Appellee/Employer
5. Honorable Lamar Pickard, Copiah County Circuit Court Judge

This the 23rd day of September, 2011.

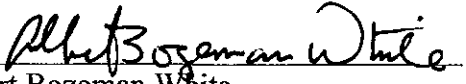


Albert Bozeman White
Assistant General Counsel (MSB )
Mississippi Department of Employment Security

TABLE OF CASES AND OTHER AUTHORITIES

| <u>CASES</u> | <u>PAGE</u> |
|--|-------------|
| <u>Allen v. Miss. Emp. Sec. Comm'n.,</u> 639 So. 2d 904, 906 (Miss. 1994)..... | 8 |
| <u>Barnett v. Miss. Emp. Sec. Comm'n.,</u> 583 So. 2d 193 (Miss.1991)..... | 8 |
| <u>Booth v. Miss. Emp. Sec. Comm'n.,</u> 588 So. 2d 422 (Miss. 1991)..... | 7, 8 |
| <u>Halbert v. City of Columbus,</u> 722 So. 2d 522 (Miss. 1998)..... | 15 |
| <u>Henry v. Miss. Dept. Emp. Sec.,</u> 962 So. 2d 94 (Miss. Ct. App. 2007)..... | 14 |
| <u>Miss. Dept. Corr. v. Scott,</u> 929 So. 2d 975 (Miss. Ct. App. 2006)..... | 14 |
| <u>Miss. Emp. Sec. Comm'n. v. Douglas,</u> 758 So. 2d 1059 (Miss. Ct. App. 2000)..... | 14 |
| <u>Miss. Emp. Sec. Comm'n. v. Flanagan,</u> 585 So. 2d 783 (Miss. 1991)..... | 14, 15 |
| <u>Miss. Emp. Sec. Comm'n. v. Lee,</u> 580 So. 2d 1227 (Miss. 1991)..... | 14 |
| <u>Miss. Emp. Sec. Comm'n. v. Percy,</u> 641 So. 2d 1172 (Miss. 1994)..... | 14 |
| <u>Miss. Emp. Sec. Comm'n. v. Phillips,</u> 562 So. 2d 115, 118 (Miss. 1990)..... | 8 |
| <u>Miss. Emp. Sec. Comm'n. v. Ratcliff,</u> 754 So. 2d 595 (Miss. Ct. App. 2000)..... | 14 |
| <u>Richardson v. Miss. Emp. Sec. Comm'n.,</u> 593 So. 2d 31 (1992)..... | 7, 8 |
| <u>Wheeler v. Arriola,</u> 408 So. 2d 1381 (Miss. 1982)..... | 6 |
| <u>Young v. Miss. Emp. Sec. Comm'n.,</u> 754 So. 2d 464 (Miss. 1999)..... | 15 |

OTHER AUTHORITIES

PAGE

| | |
|--|---|
| Mississippi Code Annotated, 71-5-513 (A) (1) (b) (Rev. 2010)..... | 1 |
| Mississippi Code Annotated, 71-5-531 (Rev. 2010)..... | 8 |

STATEMENT OF ISSUE

1. Whether the Board of Review and Circuit Court decisions should be affirmed, finding that the Employer, Sanderson Farms, Inc., proved by substantial evidence that the Claimant, Jacqueline Pendleton, committed disqualifying misconduct pursuant to Mississippi Code Annotated Section 71-5-513(A)(1)(b) (Rev. 2010), by willfully and wantonly violating the Employer's policy prohibiting an employee from clocking-in for another employee?

STATEMENT OF THE CASE

Jacqueline Pendleton [hereinafter also "Claimant"] was employed by Sanderson Farms, Inc. [hereinafter also "Employer"] from November 29, 2000, to August 17, 2009, when she was discharged. (R. Vol. 1 p. 1, 10-14). Ms. Pendleton was terminated for clocking-in a co-worker on August 11, 2009, approximately 30 minutes before he arrived for his shift. (R. Vol. 1, p. 10-14, 37-38). During the Employer's investigation, she denied doing so, but admitted that she had the co-worker's badge. (R. Vol. 1, p. 39, 53). The Employer discharged Ms. Pendleton for violating its policies prohibiting falsification of time records. (R. Vol. 1, p. 40-41).

After termination, Ms. Pendleton filed for unemployment benefits. (R. Vol. 1, p. 1). The Claims Examiner investigated by interviewing Tracy Hall, Field Employee Relations Manager, and Ms. Pendleton. (R. Vol. 1, p. 10-14). Ms. Hall stated that Ms. Pendleton was discharged for clocking-in a co-worker, Joe Coleman, while he was not at work. Ms. Hall also stated that one incident of clocking-in for another employee was considered falsifying time records, and grounds for immediate discharge. Ms. Pendleton denied clocking-in for Mr. Coleman, but admitted that she had his badge. (R. p. 10-14). Based upon the information obtained, the Claims Examiner disqualified Ms. Pendleton. (R. Vol. 1, p. 15, 17).

Ms. Pendleton appealed. (R. Vol. 1, p. 19). A telephonic hearing was noticed and held. (R. Vol. 1, p. 23-32, 33-67). Tracy Hall, Field Employee Relations Manager, testified for and represented the Employer. (R. Vol. 1, p. 39-53). Tiffany Outlaw, Personnel Supervisor, also testified for the Employer. Ms. Pendleton also testified. (R. Vol. 1, p. 54-68). Ms. Pendleton also attempted to call Joe Coleman as a witness, but the ALJ was unable to reach him after several attempts.

After hearing the testimony, the Administrative Law Judge [hereinafter "ALJ"] affirmed

the Claims Examiner's decision. (R. Vol. 1, p. 69-71). The ALJ found that Ms. Pendleton was discharged for clocking-in a co-worker on August 11, 2009, by swiping his badge at about 10:00 p.m., when he did not arrive until about 10:30 p.m. The ALJ noted that although she denied clocking-in the co-worker, she had his badge, and she admitted clocking-in others on occasions. The ALJ concluded that since Ms. Pendleton admitted clocking-in others, she admitted violating the Employer's policy, which constituted disqualifying misconduct. (R. Vol. 1, p. 69-71).

Ms. Pendleton again appealed. (R. Vol. 1, p. 73). After carefully reviewing the record, the Board of Review affirmed, adopting the ALJ's fact findings and conclusion. (R. Vol. 1, p. 76-77). The ALJ's Fact Findings and Reasoning and Conclusion were as follows, in pertinent part, to-wit:

FINDINGS OF FACT:

The claimant was employed from October 30, 2000 to August 18, 2009, as a housekeeper with Sanderson Farms Inc, Processing Division, Laurel, Mississippi. She was discharged for time falsification.

On August 11, 2009, she swiped the ID badge of another employee in at 10pm. The employee she swiped in did not arrive to work until around 10:30pm. An employee has to use their own ID badge to clock in. The claimant alleged she had the employee's ID badge because she found it in the laundry room a few days before. However, she denied punching him in. She did admit to the employer that she had punched other people in when she knew they were going to be there and they were running late. She was discharged after an employer investigation of the matter was concluded.

Known employer policy provides that falsification of time is grounds for immediate termination without any prior warnings.

Note: The claimant indicated she had a witness for the hearing. The Administrative Law Judge made several attempts to contact her witness by phone. The phone would be picked up and then disconnected without anyone saying anything.

REASONING AND CONCLUSION:

Section 71-5-513 A (1) (b) of the *Mississippi Employment Security Law* provides that an individual shall be disqualified for benefits for the week or fraction thereof which immediately follows the day on which he was discharged for misconduct connected with the work, if so found by the Department,... Section 71-5-513 A (1) (c) provides that in a discharge case, the employer has the burden to establish the claimant was discharged for misconduct connected to the employment.

Section 71-5-355 of the *Mississippi Employment Security Law* provides, in part, that... an employer's experience rating shall not be chargeable if the Department finds that the claimant... was discharged for misconduct connected with the work...

In the Mississippi Supreme Court, in the case of *Wheeler vs. Arriola*, 408 So. 2d 1381 (Miss. 1982), the Court held that:

"The meaning of the term 'misconduct', as used in the Unemployment Compensation Statute, was conduct evincing such willful and wanton disregard of the employer's interest as is found in deliberate violations or disregard of the standards of behavior which the employer has the right to expect from his employees. Also, carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability ..., and showing an intentional or substantial disregard of the employer's interest or of the employee's duties and obligations, to his employer, came within the term....". (emphasis added).

Although the claimant denied punching the other employee in on the final incident, she did admit to punching other employees in when they were not there. Her actions showed a willful and wanton disregard of the employer's interests and amounted to theft of company time. Her actions constituted misconduct connected with the work as that term is used in the Mississippi Employment Security Law.

The Department's determination is in order.

DECISION:

Affirmed. The claimant is disqualified beginning August 19, 2009, and until she has been re-employed in covered employment and earned eight (8) times her weekly benefit amount, or \$1,880. The employer's experience rating record will not be charged based on this issue.

(R. Vol. 1, p. 69-71).

Ms. Pendleton then appealed to the Circuit Court of Copiah County, Mississippi. (R. Vol. 1, p. 93.) MDES filed a transcript of the record and Answer. (R. Vol. 1, p. 94). No Briefs were filed. On July 26, 2010, the Circuit Court affirmed the decision of the MDES. Ms. Pendleton then appealed to this Honorable Court.

SUMMARY OF THE ARGUMENT

In the case of Wheeler v. Arriola, 408 So. 2d 1381 (Miss. 1982), the Supreme Court adopted the following definition of misconduct in unemployment benefit cases, to-wit:

"The meaning of the term 'misconduct', as used in the unemployment compensation statute, was conduct evincing such willful and wanton disregard of the employer's interest as is found in deliberate violations or disregard of the standards of behavior which the employer has the right to expect from his employees. Also, carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability ..., and showing an intentional or substantial disregard of the employer's interest or of the employee's duties and obligations, to his employer, came within the term...." (emphasis added).

The primary issue in this case is whether Ms. Pendleton violated the Employer's policy prohibiting falsification of time records by clocking Joe Coleman in on August 11, 2009. The Employer's witnesses' testified as to the Employer's policy, and that another employee is prohibited from clocking another employee in for any reason. The Employer's witnesses' also testified that doing so was grounds for immediate discharge; and employees are informed of the policy through the Handbook, and the postings in the breakroom. Further, Ms. Pendleton admitted that clocking another employee in was prohibited.

While the testimony is conflicting concerning the facts establishing that Ms. Pendleton clocked-in Mr. Coleman on August 11, 2009, based on the Employer's witnesses' testimony, and the circumstances, there is sufficient evidence to support the Board of Review's decision. The record establishes that someone clocked Mr. Coleman in at about 10::00 p.m. on that date, and he arrived at work at about 10:30 p.m. Based upon Ms. Pendleton admitting that she had Joe Coleman's badge, and occasionally clocked employees in early when she knew they were coming to work, there is substantial evidence for the Board of Review to Review to conclude that the Employer proved that she did so. Further, during the investigation, Ms. Pendleton wrote a

statement indicating she occasionally clocked co-workers in as a favor, although she denied making such a statement during her testimony. Further, she also admitted that she clocked Mr. Coleman in on a day when he was absent, but did so allegedly by accident; and she did not inform the Employer of this alleged mistake, such that Mr. Coleman presumably was paid for that work day.

The testimony substantially supports the Board of Review and Circuit Court decisions finding that Ms. Pendleton committed disqualifying misconduct by willfully and wantonly violating the Employer's policy prohibiting clocking-in other employees. Thus, this Honorable Court should affirm, based upon the standard of review on appeal. Richardson v. Miss. Emp. Sec. Comm'n., 593 So. 2d 31 (1992); Booth v. Miss. Emp. Sec. Comm'n., 588 So. 2d 422 (Miss. 1991).

ARGUMENT

Standard of Review

Ms. Pendleton's appeal is governed by Mississippi Code Annotated Section 71-5-531 (Rev. 2010), which provides for an appeal to the Circuit Court by any party aggrieved by the decision of the Board of Review. Section 71-5-531 states that the appeals court shall consider the record made before the Board of Review and, absent fraud, shall accept the findings of fact if supported by substantial evidence, and the correct law has been applied. (emphasis added). Richardson v. Miss. Emp. Sec. Comm'n., 593 So. 2d 31 (1992); Barnett v. Miss. Emp. Sec. Comm'n., 583 So. 2d 193 (Miss. 1991); Booth v. Miss. Emp. Sec. Comm'n., 588 So. 2d 422 (Miss. 1991).

Further, a rebuttal presumption exists in favor of the Board of Review's decision and the challenging party has the burden of proving otherwise. Allen v. Miss. Emp. Sec. Comm'n., 639 So. 2d 904 (Miss. 1994). The appeals court must not reweigh the facts nor insert its judgment for that of the agency. Id.

Further, misconduct imports conduct that reasonable and fair minded external observers would consider wanton disregard of the employer's legitimate interests. Miss. Emp. Sec. Comm'n. v. Phillips, 562 So. 2d 115, 118 (Miss. 1990).

Record Evidence

In the instant case, Tracy Hall, Field Employee Relations Manager, testified first on behalf of the Employer. (R. Vol. 1, p. 36). Ms. Hall testified that Ms. Pendleton was employed as a housekeeper on the sanitation crew from October 30, 2000, until August 18, 2009. (R. Vol. 1, p. 37). She was discharged for time falsification due to clocking others into work, and particularly Joe Coleman.

Regarding the final incident, she stated that Ms. Pendleton clocked-in Mr. Coleman at 10 p.m. on August 12, 2009, which date was later corrected to August 11, 2009. Ms. Hall explained that Mr. Coleman's supervisor saw him arriving at the plant at 10:30 p.m., even though he had already been clocked-in. (R. Vol. 1, p. 38-39).

Ms. Pendleton was interviewed by Tiffany Outlaw, Personnel Supervisor, and Allen Woodham, Maintenance Superintendent. (R. Vol. 1, p. 39). At that time, Ms. Pendleton first wrote a statement denying that she ever clocked other employees in for them. However, upon further questioning, she wrote a statement as follows: **“ . . . I, Jacqueline Pendleton, only swipe cards for people who are here at work as a favor and not people who are not at work.”** (R. Vol. 1, p. 39). At that time, Ms. Pendleton also turned in the badge for Joe Coleman.

Mr. Coleman was also discharged over this incident. (R. Vol. 1, p. 40). Ms. Hall stated that Mr. Coleman denied knowing that Ms. Pendleton had clocked him in on the date in question. Mr. Coleman was also questioned about an incident in which someone clocked him in on a Friday. He stated that he was aware that someone had clocked him in on a Friday though he was absent. He admitted not reporting that incident. (R. Vol. 1, p. 41).

Ms. Hall was questioned about the Employer's policy. She stated that time falsification was grounds for immediate discharge without a warning. Further, swiping identification cards for

other employees, whether they were at the plant or not, was an offense that would result in termination. (R. Vol. 1, p. 40-41). The rule is stated in the Employee Handbook, which employees are informed of at the time of hire. The rule is also posted in the break room. (R. Vol. 1, p. 41).

Ms. Hall also stated that employees should have one badge only. They found that both Ms. Pendleton and Mr. Coleman had a badge for Mr. Coleman. They took Mr. Coleman's badge at the time that he was fired. Ms. Pendleton also turned in a badge for Mr. Coleman at the time that she was fired. (R. Vol. 1, p. 42). Ms. Hall again stated that when Ms. Pendleton was questioned, she stated that she would only swipe people in who were coming to work as a favor. (R. Vol. 1, p. 43).

On cross-examination, Ms. Hall stated that Ms. Pendleton swiped Mr. Coleman's card on August 11, 2009, and the shift extended until August 12, 2009. (R. Vol. 1, p. 44). They did not discharge her for swiping him in on another day in which he was absent, but for the incident on August 11, 2009. (R. Vol. 1, p. 45).

Ms. Tiffany Outlaw, Personnel Supervisor, testified next for the Employer. She also stated that Ms. Pendleton was discharged for falsifying time records. Regarding the date of the incident, two supervisors and the superintendent told her that Ms. Pendleton had clocked-in another employee. They reported that they saw Joe Coleman coming through the gate after he had clocked-in. (R. Vol. 1, p. 47).

Ms. Pendleton was called in and questioned. She first denied it, but then said she would clock people in if she knew they were coming to work. (R. Vol. 1, p. 47). Ms. Outlaw stated that there was a time clock in the laundry room. When asked how she clocked people in, she showed them Mr. Coleman's ID badge. (R. Vol. 1, p. 48-49). She also obtained Ms. Pendleton's written

statement and gave that to her manager.

Regarding the policy, she stated that falsification of time was grounds for termination. She also stated it was against the rules for anyone to swipe someone else in. (R. Vol. 1, p. 48-49).

Regarding the date in question, she explained further that the supervisor saw Mr. Coleman come through the gate at 22:30, which is 10:30 p.m. However, he was clocked-in at 22:01 p.m. on August 11, 2009. She again stated that when interviewed, Ms. Pendleton admitted clocking others in. (R. Vol. 1, p. 49).

On cross-examination, Ms. Outlaw stated that Mr. Coleman was discharged. He was the only employee discharged because Ms. Pendleton admitted to clocking him in, and she had his badge. (R. Vol. 1, p. 50). She did not identify any other employees that she may have clocked-in previously, so no investigation was done in that regard. (R. Vol. 1, p. 50-51).

Ms. Pendleton testified next. She confirmed her dates of employment from August 29, 2000, until after the last incident on August 11, 2009. Ms. Hall again confirmed that she was discharged on August 18, 2009, after an investigation. (R. Vol. 1, p. 51-52). As to her job duties, Ms. Pendleton stated that she worked in housekeeping cleaning the break room and doing laundry.

Regarding the incident resulting in her discharge, Ms. Pendleton denied clocking-in Mr. Coleman early on August 11, 2009. (R. Vol. 1, p. 52-53). However, she admitted accidentally swiping him in on a Friday night. She explained that she found his badge and had it in her pocket to give to him. However, when she was attempting to swipe herself in, she swiped his badge instead of her badge. He did not come to work that night, so she kept his badge to give it to him later. (R. Vol. 1, p. 53). On cross-examination, Ms. Pendleton stated that she did not notify her supervisor of accidentally swiping in Mr. Coleman on that night. (R. Vol. 1, p. 57).

Regarding the policy, she admitted that she was aware of the Employer's falsification of

time policy. (R. Vol. 1, p. 55).

When she was questioned by Ms. Outlaw and Mr. Woodham, and Ryan Sandifer, she told them the whole story. She explained that she had found Mr. Coleman's card, and swiped it once accidentally. Her intention was to return it to him, but she forgot to do so when he did not come in that night. She kept it in her bag, and she believed that another employee saw his badge in her bag and reported it. (R. Vol. 1, p. 55).

On cross-examination, Ms. Pendleton acknowledged that she did not identify any other employees for whom she clocked-in. (R. Vol. 1, p. 57).

She was also questioned about her statement that another employee reported her for having Mr. Coleman's badge in her bag. She admitted that when interviewed by Ms. Outlaw and Mr. Woodham, they did not tell her that someone had reported her for having Mr. Coleman's badge. (R. Vol. 1, p. 58).

Ms. Pendleton also denied writing the statement that she clocked others in who were coming to work. (R. Vol. 1, p. 59). She also stated she never clocked anyone in but herself. (R. Vol. 1, p. 59).

The ALJ then attempted to call Mr. Coleman several times, but was unable to reach him. (R. Vol. 1, p. 60-61, 62-65).

In conclusion, Ms. Hall stated that Ms. Pendleton did not tell them that she swiped Mr. Coleman's card by accident during the interview. Further, Ms. Outlaw also confirmed that, and stated that Ms. Pendleton did say she swiped others in who were coming to work later. (R. Vol. 1, p. 61-62).

Argument and Authorities

The primary issue in this case is whether Ms. Pendleton violated the Employer's policy prohibiting falsification of time records by clocking Joe Coleman in on August 11, 2009. The Employer's witnesses testified as to the Employer's policy, and that another employee is prohibited from clocking another employee in for any reason. The Employer's witnesses also testified that doing so was grounds for immediate discharge; and employees are informed of the policy through the Handbook, and the postings in the breakroom. Further, Ms. Pendleton admitted that clocking another employee in was prohibited.

While the testimony is conflicting concerning the facts establishing that Ms. Pendleton clocked-in Mr. Coleman on August 11, 2009, based on the Employer's witnesses' testimony, and the circumstances, there is sufficient evidence to support the Board of Review's decision. The record establishes that someone clocked Mr. Coleman in at about 10:00 p.m. on that date, and he arrived at work at about 10:30 p.m. Based upon Ms. Pendleton admitting that she had Joe Coleman's badge, and occasionally clocked employees in early when she knew they were coming to work, there is substantial evidence for the Board of Review to Review to conclude that the Employer proved that she did so. Further, during the investigation, Ms. Pendleton wrote a statement indicating she occasionally clocked co-workers in as a favor, although she denied making such a statement during her testimony. Further, she also admitted that she clocked Mr. Coleman in on a day when he was absent, but did so allegedly by accident; and she did not inform the Employer of this alleged mistake, such that Mr. Coleman presumably was paid for that work day.

The instant case is analogous to the misconduct line of cases involving dishonesty in the workplace, or away from the workplace that nevertheless affects the legitimate business interest

and standards of behavior which the employer has a right to expect from an employee. See Henry v. Miss. Dept. Emp. Sec., 962 So. 2d 94 (Miss. Ct. App. 2007) (security guard's disregard of duties justified termination for misconduct); Miss. Emp. Sec. Comm'n. v. Percy, 641 So. 2d 1172 (Miss. 1994) (a nurse was terminated for violating the employer's policy requiring that she appropriately complete time sheets, and not falsify time sheets); Miss. Emp. Sec. Comm'n. v. Douglas, 758 So. 2d 1059 (Miss. Ct. App. 2000)(making face identification cards used by other employees to qualify for employment was misconduct); Miss. Emp. Sec. Comm'n. v. Ratcliff, 754 So. 2d 595 (Miss. Ct. App. 2000)(falsely completing employment application was misconduct); Henry v. Miss. Emp. Sec. Comm'n., 49 So. 3d 1159 (Miss. Ct. App. 2010)(claimant was a store clerk and returned a DVD left by another customer as if it were his to collect the money for the return); Miss. Dept. Corr. v. Scott, 929 So. 2d 975 (Miss Ct. App. 2006)(copying and selling bootleg DVD's to co-workers was misconduct).

Notwithstanding whether the record established that Ms. Pendleton knowingly falsified time records for other employees, based on her written statement during the investigation that she occasionally did a favor for other employees, and clocked them in when she knew they were on the way to work, such action willfully and wantonly disregards the Employer's time keeping policy, and is a serious policy violation. Further, failure to inform the Employer that she clocked Mr. Coleman in on a day in which he was absent, and failure to turn in his badge to the Employer's personnel department, willfully and wantonly violated the Employer's policies, even if she clocked him in by accident. Several case authorities indicate that a one-time violation of the employer's reasonable behavior standards and policy constitutes misconduct. See Miss. Emp. Sec. Comm'n. v. Lee, 580 So. 2d 1227 (Miss. 1991) (Taking gun to work in violation of policy is misconduct); Miss. Emp. Sec. Comm'n. v. Flanagan, 585 So. 2d 783 (Miss. 1991) (Teacher

striking pupil in violation of policy is misconduct); Young v. Miss. Emp. Sec. Comm'n., 754 So. 2d 464 (Miss. 1999) (employee's refusal to turn in her employee identification badge during a suspension constituted insubordination); Halbert v. City of Columbus, 722 So. 2d 522 (Miss. 1998) (an employee's refusal to submit to a random drug test constituted insubordination).

CONCLUSION

The record evidence is sufficient to support the Board of Review's finding that Ms. Pendleton clocked-in another employee on August 11, 2009, and thereby violated the Employer's time falsification policy. Further, her testimony indicates that she had clocked both the particular employee in on a day he was absent in the past, as well as other employees. The testimony also indicates that Ms. Pendleton was aware, or should have been aware, of the company policy regarding time falsification. Based upon the record, there is substantial evidence supporting the MDES and Circuit Court decisions finding that Ms. Pendleton's actions on the occasion in question violated the Employer's policy, and constituted misconduct. Thus, this Honorable Court should accept the Board of Review and Circuit Court decisions; and affirm.

RESPECTFULLY SUBMITTED, this the 23rd day of September, 2011.

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

BY: Albert Bozeman White
ALBERT BOZEMAN WHITE
Assistant General Counsel

OF COUNSEL:
Albert Bozeman White, Assistant General Counsel
MSB No. [REDACTED]
Post Office Box 1699
Jackson, MS 39215-1699
Tel. (601) 321-6074

CERTIFICATE OF SERVICE

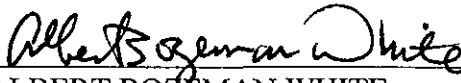
I, Albert Bozeman White, Attorney for Appellee, Mississippi Department of Employment Security, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing pleading to:

Honorable Lamar Pickard
Circuit Court Judge, Copiah County
Post Office Box 310
Hazlehurst, MS 39083-0310

Ms. Jacqueline Pendleton, Appellant
1030 Abney Lane
Hazlehurst, MS 39083

Sanderson Farms, Inc.
Post Office Box 988
Laurel, MS 39441-0988

THIS, the 23rd day of September, 2011


ALBERT BOZEMAN WHITE