

IN THE COURT OF APPEALS OF MISSISSIPPI
CASE NO. 2010-WC-00535-COA

BRITTON & KOONTZ BANK, N.A.
AND
AMFED NATIONAL INSURANCE COMPANY

APPELLANTS

VERSUS

FLORENCE TOWNSEND

APPELLEE

BRIEF OF APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

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

1. Mississippi Workers' Compensation Commission
2. Hon. John T. Ball, Attorney at Law
Attorney of record for the Appellee, Florence Townsend
3. Hon. Daniel P. Culpepper and
Hon. James M. Anderson
Anderson, Crawley & Burke, PLLC
Attorneys for the Appellants, Britton & Koontz bank, N.A. and
Amfed National Insurance Company
4. Florence Townsend, Appellee
5. Britton & Koontz First National Bank, Natchez, MS, Appellant
6. Amfed National Insurance Company, Appellant



JOHN T. BALL
Attorney for Appellee

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STATEMENT OF ISSUE ON APPEAL

Are the Employer and Carrier in a Mississippi Workers' Compensation Claim required to pay interest to a Claimant for all past due installments of compensation benefits from the date that they become due or from the date of the filing of a Petition to Controvert.

STATEMENT OF THE CASE AND RELEVANT FACTS

This Appeal arises out of the refusal of the Employer and Carrier to pay interest on compensation installments which were due and unpaid at the time the Claimant was awarded a lump sum payment by the Mississippi Workers' Compensation Commission. The Employer and Carrier have appealed the Full Commission's Order requiring them to pay interest on 132.285714 weeks of due and unpaid installments of compensation benefits. As calculated by the Commission, the total interest due on these installments, at the legal rate of eight percent (8%) per annum is \$3,882.15.

On June 7, 2007, the Commission directed the Employer and carrier to make a lump sum payment to the Claimant representing the balance of compensation due to the Claimant for permanent total disability. The Employer and Carrier had previously admitted its liability to the Claimant for permanent total disability benefits. The Employer and Carrier alleged that the Commission erred in ordering them to pay interest on each installment of past due benefits and claimed that the Commission has no authority to assess interest since the Claimant's entitlement to compensation was never adjudicated. Additionally, the Employer and Carrier contend that the case was resolved without the filing of a Petition to Controvert and therefore, interest cannot

accrue except from after the date of filing a Petition to Controvert. Finally, the Employer and Carrier contend that Mississippi Code Annotated Section 75-17-1 (Rev. 2000), which provides for interest on Judgments and Decrees is the only applicable interest statute the Commission may use.

The Appellee contends that the Commission's method of computing interest is based on over 40 years of case law which holds that interest on workers' compensation installments runs from the due date of each such installment and continues accruing until each installment is paid. Support for this proposition is found in Miss. Code Annotated Section 75-17-1(1), which provides for interest at 8% per annum to be assessed on all notes, accounts and contracts.

STANDARD OF REVIEW ON APPEAL

Absent an error of law, if there is substantial evidence to support the Workers' Compensation Commission's finding, the Appellate Courts must affirm. In other words, the Supreme Court will reverse an Order of the Mississippi Workers' Compensation Commission only if it finds the Order clearly erroneous and contrary to the overwhelming weight of the evidence.

SUMMARY OF THE ARGUMENT

For nearly forty years the law was clear in Mississippi regarding when interest begins to accrue in a workers' compensation claim. The relevant cases provided for damages for the unsuccessful appeals prosecuted by the Employer and Carrier. Concerning interest, the Courts consistently held that each weekly installment should bear interest from its due date until paid.

The rationale for requiring the Employer and Carrier to pay interest on each unpaid installment of benefits is based on the premise that the liability of the Employer for workers' compensation benefits was in the nature of a debt to the Claimant, in the nature of a note, account or contract. The obligation was in the nature of a debt partially by the virtue of the contract. *Goodnite v Farm Equipment Co.*, 234 Miss. 342, 106 So. 2d 383 (1958), error overruled 234 Miss. 342, 106 So2d 683 (1958). The statutory basis for this premise is Miss. Code Section 75-17-1 (1) (Rev. 1999), which provides interest at 8% per annum on all notes, accounts and contracts.

In 1989, the Mississippi legislature amended Miss. Code Annotated, Section 75-17-7, (Supp. 1991), which is the statute on accrual of interest on judgments. The first sentence was not changed in regard to judgments founded on contract; however, the part related to interest on judgments in civil actions was amended significantly.

In 1992, the Mississippi Supreme Court decided two cases which are responsible for the dispute between the parties in this case. In *Smith v Jackson Construction Co.*, 607 So. 2d 1119 (Miss. 1992) and *Lantermann v Roadway Express, Inc.*, 608 So. 2d 1340 (Miss. 1992), the Court did not acknowledge that the 1989 amendment to Section 75-17-7 did not change the prior law on accrual of interest on workers' compensation benefits under Section 75-17-1(1). The Court

interpreted the amendment to Miss. Code Annotated Section 75-17-7 (Supp. 1991) and limited the imposition of interest in those cases from the date that the Petition to Controvert was filed.

The Mississippi Court of Appeals returned to the wisdom of the former cases in *Cooper Lighting H.I.D. v Briscoe*, 749 So. 2d 199 (Miss. Ct. App. 1999) where the Court of Appeals ordered interest be awarded for all unpaid installments of temporary total disability benefits and permanent partial disability benefits to run on each unpaid installment from the due date through date of payment.

ARGUMENT

The Mississippi Supreme Court has repeatedly ruled that when an Employer and Carrier is obligated to pay workers' compensation benefits and does not pay them in a timely manner, interest accrues on the obligation from the date of each unpaid installment until paid. One of the earliest cases that espoused this rule of law was *M.T. Reed Const. Co. v Martin*, 63 So.2d 528 (Miss. 1953), where the Mississippi Supreme Court entered Judgment for damages of 5% for the unsuccessful appeal prosecuted by the Employer and also allowed for interest on weekly installments of compensation that had accrued but remained unpaid at the time of the decision. Concerning interest, the Court held that "each weekly installment shall bear interest at the rate of six percent per annum from its due date until paid." 63 So. 2d at 530, 532.

Many other cases followed the doctrine set out by the Supreme Court in the *Reed* case (Supra) over the next forty years. In each case the Court entered an Order awarding interest from the due date of each weekly installment of compensation until paid. Again, this award was made in addition to the penalty assessed due to the unsuccessful appeal. Some of the relevant cases are as follows:

1. *Russell v Southeastern Utilities Service Co.*, 92 So.2d 877, 878 (Miss. 1957)
2. *U.S.F.G. Co. v Collins*, 96 So.2d 456 (Miss. 1957)
3. *Dependents of Harris v Suggs*, 102 So.2d 696, 698 (Miss. 1958)
4. *Grubbs v Revell Furniture Co.*, 106 So.2d 390, 393 (Miss. 1958)
5. *Central Electric Power Association v Hicks*, 112 So.2d 230, 231 (Miss. 1959)
6. *Fair Stores v Bryant*, 118 So.2d 295, 299-300 (Miss. 1960)
7. *Davis v Clark-Burt Roofing Co.*, 119 So.2d 926, 927 (Miss. 1960)
8. *Morgan, Jones and Gillis v Elmore*, 144 So.2d 785 (Miss. 1962)
9. *Cooper's, Inc. of Mississippi v Long*, 224 So. 2d 866 (Miss. 1969)
10. *Riverside of Marks v Russell*, 324 So.2d 759, 764 (Miss. 1975)
11. *South Cent. Bell Telephone Co. v Aden*, 474 So.2d 584, 598 (Miss. 1985)
12. *M & J Oil Co. v Dependents of Wilson*, 507 So. 2d 1292, 1293 (Miss. 1987)

In *Goodnite v Farm Equipment Co.*, 106 So.2d 383 (Miss. 1958), the Miss. Supreme Court explained the reasons for the accrual of interest regarding workers' compensation benefits. The Court stated, "Interest in a case of this kind is not imposed as a penalty for wrongdoing; it is allowed as compensation for the detention of money overdue." The Employer denied responsibility for payment of installments of compensation and was later held liable for benefits. The Claimant was deprived of the use of the money from the time that the benefits should have been paid. The Court in the *Goodnite* case stated the following:

Interest in a case of this kind is not imposed as a penalty for wrong doing; it is allowed as compensation for the detention of money overdue. *Miller v Henry*, 139 Miss. 651, 103 So. 203; *Rubel v Rubel*, 221 Miss. 848, 75 So. 2d 59, 47 A. L. R. 2d 1410.

In other jurisdictions, in which workmen's compensation acts have no provision with respect to interest, the general interest statute has been applied. See *Sunny Point Packing Co. v Faigh*, 9 Cir., 1933, 63 F. 2d 921, and cases cited. Section 36, Code of 1942, provides that: 'The legal rate of interest on all notes, accounts and contracts shall be six per cent per annum; but contracts may be made, in writing, for a payment of a rate of interest as great as eight per centum per annum.

Section 6998-19, Code of 1942, which requires that compensation be paid 'periodically, promptly, in the usual manner, and directly to the person entitled thereto,' creates a liability upon the employer immediately upon the death of the employee for payment according to the terms of the statute and a right in the beneficiary or beneficiaries to that payment. The liability of the employer is of the nature of a debt, and the right of the beneficiary is that of a creditor in that debt. The liability is as definitely fixed as to amount, time and binding force, as if the employer had executed its notes due for the payment prescribed. The employer has the right under the statute to contest the matter of those payments before the commission and in the courts. If it can show that the injury or death does not come within the law, it escapes all payment and all liability for all payment; but when it contests such payments, and the courts decide that the injury or death comes within the provisions of the law, the judgment relates by the force of the statute to the time prescribed by the statute. Interest is due from the date of the maturity of each unpaid payment on the sum due. See *Consolidated Underwriters v Saxon*, Tex. Com. App. 1924, 265 S. W. 143.

In this case interest at the rate of six per cent per annum was due the claimants on the unpaid installments from the due date of each installment, as fixed by the statute, to the date of payment. The motion to correct judgment, so as to provide that each weekly installment of the award of death benefits shall bear interest at the rate of six percent per annum from its due date until paid, is therefore sustained, and the attorney's fee heretofore allowed shall include 33-1/3% of the amount of interest thus accrued.

Authors Bradley and Thompson in their treatise on Mississippi Workers' Compensation viewed the *Goodnite* case as a finding by the Court that the liability of the employer for workers' compensation benefits was in the nature of a debt to the claimant, in the nature of a note, account or contract. "The obligation is in the nature of a debt partially by virtue of the contract of employment, a basis of workers' compensation coverage, as modified by the workers' compensation law in a way which creates a larger employment contract." Bradley and Thompson, Mississippi Workers' Compensation, Section 6:41 at page 387. Professor Bradley and Judge

Thompson argue that there is a statutory basis for accrual of interest on unpaid workers' compensation benefits, which is found in the general law and not the workers' compensation law. The general interest statute found that Miss. Code Annotated Section 75-17-1, (Rev. 2000), provides for the accrual of interest on the underlying obligation to pay workers' compensation benefits from the time that payment becomes due. The authors further interpreted the Court's ruling in *Goodnite v Farm Equipment Co.*, 234 Miss. 342, 106 So.2d 393 (1958), stating:

The workers' compensation law provides that the employer must pay workers' compensation benefits "periodically, promptly, in the usual manner, and directly to the person entitled thereto, without an award except where liability to pay compensation is controverted [disputed] by the employer." Workers' compensation benefits "become due on the fourteenth day after the employer has notice . . . of the injury or death, on which date all compensation then due shall be paid," and after that first installment of compensation, remaining installments must be paid every 14 days unless the Commission specifies a different time. Interest thus accrues on each unpaid biweekly installment of benefits beginning with the due date of each unpaid installment and continuing until paid.

Section 75-17-1(1), Miss. Code Annotated (Rev. 2000), provides for the accrual of interest from the time payment is due until payment is made.

In 1989, the Mississippi legislature amended Section 75-17-1 which is the statute regarding accrual of interest on judgments. The first sentence was not changed in regard to judgments founded on contracts, but the part relating to interest on judgments on civil actions was amended significantly. In the case of *Smith v Jackson Const. Co.*, 607 So. 2d 1119 (Miss. 1992), the Mississippi Supreme Court failed to note that the amendment to Section 75-17-7 did not change the prior law on accrual of interest and workers' compensation benefits under Section 75-17-1(1). The Court interpreted the 1989 amendment to Section 75-17-7 to limit Claimants entitlement to interest only from the date that the action was first instituted.

Professor Bradley and Judge Thompson disagreed with and were critical of the ruling of the Court in *Smith v Jackson Construction* (Supra). In their treatise, Bradley and Thompson, Mississippi Workers' Compensation 6:41 at page 390 state:

One obvious problem with this statement, even if one were to (incorrectly) equate a petition to controvert to a complaint in a civil action, is that it flies directly in the face of the language of the 1989 amendment to Section 75-17-7 which limits its application to causes of action accruing on or after July 1, 1989. Lanterman filed his petition to controvert in 1980, and Smith in 1986.

Second, a complaint is a pleading initiating a civil action in the judicial system. A petition to controvert at the Commission, an administrative agency in the executive branch of the state government, is not a complaint in a civil action nor should it be considered comparable. Third, the *Smith* and *Lanterman* cases ignore the long-established line of cases in which the court applied the general interest statute, Section 75-17-1(1) to determine that interest accrues from the due date of the underlying obligation.

The Mississippi Court of Appeals returned to the wisdom of the former cases in *Cooper Lighting H.I.D. v Briscoe*, 749 So. 2d 199 (Miss. Ct. App. 1999). The Court did not discuss the issue of interest in its opinion but worded the judgment as follows:

The judgment of the Circuit Court of Warren County affirming the decision of the Workers' Compensation Commission is affirmed. Statutory penalties and interest are allowed on the award of temporary total disability and on all installments of permanent partial disability which have accrued prior to the issuance of the mandate in this proceeding. **Interest is to run on each unpaid installment from the due date through date of payment.** (Emphasis added).

**REQUEST FOR PENALTIES PURSUANT TO
SECTION 75-17-7, MISS. CODE ANNOTATED, AS REVISED**

The Appellee, Florence Townsend, submits that this Court should assess additional interest and penalties to her pursuant to Miss. Code Annotated, Section 71-3-51 (1972), if the Court in its wisdom deems that the case should be affirmed. This statute states: "Any award of compensation made by the Circuit Court and appealed to the Court shall bear the same interest and penalties as due other judgments awarded in the Circuit Court."

CONCLUSION

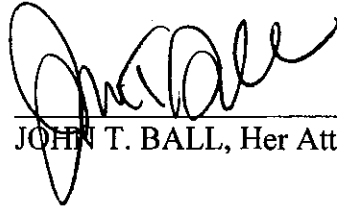
For nearly forty years the law was clear in Mississippi regarding when interest begins to accrue in a workers' compensation claim. The courts consistently held that each weekly installment should bear interest from its due date until paid. The rationale is based on the premises that the liability of the employer for workers' compensation benefits is the nature of a debt to the Claimant, in the nature of a note, account or contract. The employer and carrier have an obligation to pay benefits timely to a Claimant. The employer and carrier should not be rewarded for unilaterally terminating benefits that are due to a Claimant. Therefore, interest should accrue on all past due installments of compensation from the due date of each installment until paid regardless of whether the obligation to pay is assumed voluntarily, or arises from an award, judgment or decree.

The Appellee, Florence Townsend, submits that the ruling of the Mississippi Workers' Compensation Commission granting her interest at the rate of 8% per annum on the unpaid and past due installments of compensation be affirmed. The Appellee further requests additional relief pursuant to Miss. Code Ann. Section 75-17-7, as revised.

Respectfully submitted, on this the 19th day of July, 2010.

FLORENCE TOWNSEND, APPELLEE

BY:

A handwritten signature in black ink, appearing to read 'J. T. Ball', written over a horizontal line.

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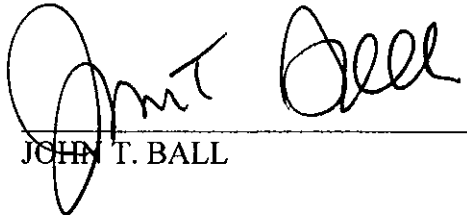
FLORENCE TOWNSEND

APPELLEE

I, John T. Ball, attorney of record for Appellee in Civil Action No. 2009-WC-00840-COA, hereby certify that pursuant to Mississippi rules of Appellate Procedures, I have this date delivered for filing the original and three copies of the foregoing **BRIEF OF APPELLEE** by placing same in United States Mail, postage prepaid, to:

Ms. Kathy Gillis
Clerk of the Mississippi Supreme Court and the Court of Appeals
P. O. Box 249
Jackson, MS 39205-0249

This the 19th day of July, 2010.



JOHN T. BALL