

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

CAUSE NO. 2011-CC-00020

BRUCE D. GOODWIN

APPELLANT

V.

CAUSE NO. 2011-CC-00020

**MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY AND
HOLMES OIL & GAS FIELD SERVICES, INC.**

APPELLEES

**BRIEF OF APPELLEE, MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY**

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

ORAL ARGUMENT NOT REQUESTED

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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.....	5
ARGUMEN.....	6
CONCLUSION.....	11
CERTIFICATE OF SERVICE.....	12

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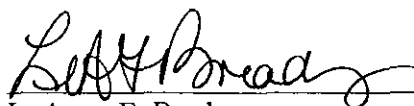
APPELLEES

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. Mississippi Department of Employment Security, Appellee
2. LeAnne F. Brady, Senior Attorney for Appellee
3. Bruce D. Goodwin, Appellant
4. Holmes Oil & Gas Field Services, Inc., Employer/Appellee
5. Honorable David H. Strong, Jr., Circuit Court Judge

This the 27th day of June, 2011.



LeAnne F. Brady
Senior Attorney (MSB # [REDACTED])
Mississippi Department of Employment Security

TABLE OF CASES AND OTHER AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Barnett v. Miss. Emp. Sec. Comm'n.,</u> 583 So. 2d 193, 195 (Miss.1991).....	6
<u>Hollingsworth v. Miss. Dept. of Emp. Sec.,</u> 976 So. 2d 393 (Miss. Ct. App. 2008).....	8, 9
<u>Richardson v. Miss. Emp. Sec. Comm'n.,</u> 593 So. 2d 31 (1992).....	6
<u>South Central Bell Telephone Co. v. Miss. Emp. Sec. Comm'n., et al.,</u> 357 So. 2d 312 (1978).....	7
<u>Sunbelt Ford-Mercury, Inc. v. Miss. Emp. Sec. Comm'n.,</u> 552 So. 2d 117 (Miss. 1989).....	8
<u>Wheeler v. Arriola,</u> 408 So. 2d 1381, 1384 (Miss. 1982).....	6
 <u>OTHER AUTHORITIES</u>	
Mississippi Code Annotated 71-5-512 (A)(1)(a).....	10
Mississippi Code Annotated 71-5-513 (3) (Rev. 2010).....	1, 5, 6
Mississippi Code Annotated 71-5-531 (Rev. 2010).....	6

STATEMENT OF THE ISSUE

Whether the Appellant, Bruce Goodwin, failed to prove he had good cause for refusing to accept an offer of suitable work pursuant to Mississippi Code Annotated Section 71-5-513 (3), thus disqualifying him from the receipt of unemployment benefits.

STATEMENT OF THE CASE

Bruce Goodwin [hereinafter also referred to as "Claimant"] was employed by Holmes Oil & Gas Field Services, Inc. [hereinafter also referred to as "Employer"] as a laborer, until March 16, 2010, when his separation occurred. (R. Vol. 2, p. 1, 26, 28). Mr. Goodwin was employed with the Employer on an as-needed basis until he refused work due to a family responsibility on February 23-26, 2010. (R. Vol. 2, p. 40). Mr. Goodwin also refused work on January 6, 2010. (R. Vol. 2, p. 31, 41). On March 11, 2010, Mr. Goodwin filed for unemployment benefits. (R. Vol. 2, p. 1).

The Claims Examiner investigated the facts and circumstances surrounding this claim and found that the Claimant did not refuse suitable employment. (R. Vol. 2, p. 13). Therefore, he was entitled to receive benefits. (R. Vol. 2, p. 13).

The Employer appealed the decision of the Claims Examiner to the Administrative Law Judge on April 13, 2010. (R. Vol. 2, p. 15). A hearing was held before the Administrative Law Judge [hereinafter also referred to as "ALJ"] on June 1, 2010, at which the Claimant and Employer representative with two witnesses participated. (R. Vol. 2, p. 24-52). Based upon the testimony and evidence presented at the hearing, the ALJ reversed the Claims Examiner's decision, finding that the Claimant had refused work without showing good cause to do so. (R. Vol. 2, p. 55-57).

Aggrieved by the ALJ's decision, the Claimant timely appealed to the Board of Review on June 10, 2010. (R. Vol. 2, p. 58). After careful review and consideration of the record, the Board of Review affirmed the ALJ's decision on July 19, 2011 (R. Vol. 2, p. 62), which found as follows, to wit:

FINDINGS OF FACT

Based on the record and testimony, the Administrative Law Judge finds as follows:

Employer hired the claimant to work as a laborer on an “as needed” basis in 02/2008. The claimant last worked for the employer on 03/18/2010.

The employer called the claimant to come to work on 02/23/2010, 02/24/2010, 02/25/2010, and 02/26/2010. The claimant did not report for work because he had to take care of his granddaughter after she had been hospitalized.

REASONING AND CONCLUSION

Section 71-5-513 (3) of the Mississippi Employment Security Law provides that an individual shall be disqualified for benefits if the Department finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or Department, to accept suitable work when offered him or to return to his customary self-employment (if any) when so directed by the Department, such disqualification shall continue for the week in which such failure occurred and for not more than twelve (12) weeks which immediately follow such week, as determined by the Department according to the circumstances in each case.

Section 71-5-355 of the Mississippi Employment Security Law provides, in part, that an employer’s experience rating record shall be chargeable with benefits paid to a claimant, provided that an employer’s experience rating record shall not be chargeable if the Department finds that the claimant left work voluntarily without good cause connected with the work, was discharged for misconduct connected with the work, or refused an offer of available, suitable work with the employer.

The claimant did not report to work because of family responsibilities. His reason for refusing work is not good cause under the Law. A disqualification based on his separation is in order.

DECISION

Reversed. The claimant is disqualified from 02/23/2010, to 02/27/2010, for refusing suitable work without good cause. The employer is entitled to a non-charge.

(R. Vol. 2, p. 56-57).

On August 9, 2010, the Claimant appealed the Board of Review’s decision to the Circuit Court of Lincoln County, Mississippi. (R. Vol. 2, p. 63-64). Briefs were not filed by either party. After reviewing the administrative record, the Honorable David Strong, Jr. affirmed the decision of the Board of Review on November 30, 2010. (R. Vol. 1, p. 30-31). On December 17, 2010,

Mr. Goodwin filed his appeal of the circuit court's decision to this Honorable Court. (R. Vol. 1, p. 33).

SUMMMARY OF THE ARGUMENT

The primary issue in this case concerns whether the Claimant, Bruce Goodwin, refused an offer of suitable work without good cause. The applicable statute in this case is Mississippi Code Annotated Section 71-5-513 (3), which provides that an individual shall be disqualified from unemployment benefits if MDES finds that the claimant, “has failed, without good cause, either to apply for available suitable work when so directed by the employment office or the department, to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the department.”

The record shows that the Claimant refused an offer of suitable work without providing a reasonable excuse under the law. Therefore, the decision of the Board of Review affirming the decision of the Administrative Law Judge is correct and should be affirmed by this Honorable Court.

ARGUMENT

I. *Standard of Review*

The provisions of Mississippi Code Annotated Section 71-5-531, govern this appeal. That section provides that the Circuit Court will consider the record made before the Board of Review of the Mississippi Department of Employment Security, and absent fraud, will accept the Findings of Fact supported by substantial evidence. Richardson v. Miss. Emp. Sec. Comm'n., 593 So. 2d 31 (Miss. 1992); Barnett v. Miss. Emp. Sec. Comm'n., 583 So. 2d 193 (Miss.1991); Wheeler v. Arriola, 408 So. 2d 1381 (Miss. 1982)

In Barnett, the Mississippi Supreme Court stated that:

{J}udicial review, under Miss Code Ann. Section 71-5-531 (1972), is in most circumstances, limited to questions of law, to-wit:

In any judicial proceedings under this section, the findings of the board of review as to the facts, if supported by substantial evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said shall be confined to questions of law.

Barnett, 583 So. 2d at 195. Furthermore, if the Board's findings are supported by substantial evidence and the relevant law was properly applied, then the reviewing court must affirm. Id.

II. *The Appellant, Bruce Goodwin, failed to prove he had good cause for refusing an offer of suitable work pursuant Mississippi Code Annotated Section 71-5-513 (3), thus disqualifying him from unemployment benefits.*

Mississippi Code Annotated Section 71-5-513 (3) provides that an individual shall be disqualified from unemployment benefits if MDES finds that the claimant, “has failed, without good cause, either to apply for available suitable work when so directed by the employment office or the department, to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the department.” This section goes on to further explain what constitutes a suitable offer of work:

In determining whether or not any work is suitable for an individual, the department shall consider among other factors the degree of risk involved to his

health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence; however, offered employment paying the minimum wage or higher, if such minimum or higher wage is that prevailing for his customary occupation or similar work in the locality, shall be deemed to be suitable employment after benefits have been paid to the individual for a period of eight (8) weeks.

Miss. Code Ann. § 71-5-513 (3)(a).

The facts of this case are essentially not in dispute. The Claimant was employed as a laborer on a part-time as needed basis by the Employer. (R. Vol. 2, p. 28-29, 46). The Employer testified that the Claimant refused an offer to come in and work on February 23, 24, 25, and 26, 2010. (R. Vol. 2, p. 30, 40). The Claimant admitted to these facts. (R. Vol. 2, p. 47-48). The Claimant's reason for refusing to come in and work was because his granddaughter was in the hospital, and he was the only person who could take care of her.¹ (R. Vol. 2, p. 47-49). Therefore, the only issue to be decided by this Court is whether or not Mr. Goodwin refused an offer of suitable work.

While the statute does not define "good cause", the statute does provide that the Department should consider the claimant's physical fitness or prior training and whether or not the work is a danger to the Claimant's health, safety or morals. Additionally, there is little Mississippi case law providing guidance as to what is "good cause" to refuse an offer of work. However, there are a few cases that should be examined when considering this issue.

In South Central Bell Telephone Co. v. Miss. Emp. Sec. Comm'n, et. al., 357 So. 2d 312 (1978), South Central Bell closed its office in Cleveland, Mississippi, and twenty-six employees were offered the opportunity to relocate to other offices. South Central Bell, 357 So. 2d at 314. Ten employees declined to transfer and filed unemployment claims, which were initially denied on the basis that they had refused an offer of suitable work. Id. The employees appealed and

the appeals referee² reversed the initial decision because the offer to transfer them to other towns did not constitute an offer of suitable work because of the distance each would have to travel. Id. South Central Bell appealed and the appeals referee's decision was affirmed by the Board of Review and the circuit court. Id.

On appeal to the Mississippi Supreme Court, the lower court's decision was reversed finding that the employees had refused a suitable offer of work noting that, "[t]here is nothing to support a view that traveling to Greenwood, Clarksdale or Greenville from Cleveland would so substantially increase the degree of risk to health, safety or morals . . . or that the commuting contemplated was so unusual or uncommon as to make the offered work 'unsuitable.'"

Another case that examines the refusal of work is Sunbelt Ford-Mercury, Inc. v. Miss. Emp. Sec. Comm'n, 552 So. 2d 117 (Miss. 1989). In this case, an employee left his job because the employer wanted to change his job from that of an account manager to that of a salesman. Id. at 118. The employer increased his hours by one hour; days worked by one day, and decreased his salary. Id. The Mississippi Supreme Court found that this new offer of employment was suitable and that the employee could not refuse it and receive unemployment benefits. Id. at 120.

This most recent case to examine this issue is Hollingsworth v. Miss. Dept. of Emp. Sec., 976 So. 2d 393 (Miss. Ct. App. 2008). Prior to Hurricane Katrina, Ms. Hollingsworth was employed with the Eye Glass Factory in Pascagoula, Mississippi, as an office assistant from 8:00 a.m. to 2:00 p.m. Hollingsworth, 976 So. 2d at (¶2). Her last day to work was August 26, 2005, which was the Friday before Hurricane Katrina struck the gulf coast. Id. On September 16, 2005, Ms. Hollingsworth was asked to return to work by one of the owners. Id. at (¶3). Ms. Hollingsworth testified before the appeals officer that she initially agreed to return to work because she would

¹ In his "brief" to this Court, Mr. Goodwin claims that his phone records do not show that the employer called him on the dates in question; however, he admitted that they did in his hearing before the ALJ.

² At this time, the Administrative Law Judge was referred to as "appeals referee."

be allowed to bring her children and work her previous schedule. Id. at (¶4). However, when she learned that she would have to work a full day, she refused to return to work stating that she could not work that long with her children present. Id. The appeals officer³, Board of Review and the circuit court all found that Ms. Hollingsworth refused an offer of suitable work and was disqualified from unemployment benefits. Id. Ms. Hollingsworth also argued on appeal that she could not return to work because the working conditions were hazardous to her health and her children's health, although she did not make this argument to the appeals officer. Id.

The Mississippi Court of Appeals affirmed finding as follows:

Hollingsworth's employer needed her to return to work and agreed to accommodate her by letting her bring her children to work. He also said that she would still be assisting customers and that she would have to help with clean up after the hurricane. Furthermore, he only increased her workday by approximately two to three hours. Like the court in Sunbelt, we cannot say that her employer's new offer of employment was unsuitable. We find that the board of review's decision was supported by substantial evidence, and we affirm.

Id. at (¶15).

While these cases are helpful, they are not directly on point. It seems the suitability of the job in question is not a factor in this case. Mr. Goodwin does not appear to make the argument that the work was not suitable and he was employed by Holmes Oil and Gas for many years. He was properly trained on how to perform the job and does not assert that the job was a danger to his health, safety or morals. This issue appears to be whether or not Mr. Goodwin had good cause for refusing to accept the work. Again, Mr. Goodwin testified that the reason he did not report to work was because he had to take care of his granddaughter who was hospitalized. While this may have been a good personal reason for refusing the offer of work, MDES asserts that it does not equal good cause under the law. In the cases previously cited, the courts have found that requiring

³ At this time, the Administrative Law Judge was referred to as "appeals officer."

employees to drive further to work, increasing their hours or duties, or decreasing their salary, does not make the work unsuitable. Following this logic, these factor would not give an employee good cause to refuse an offer of work. Moreover, while Mississippi Code Annotated Section 71-5-512 (A)(1)(a) governs good cause for voluntarily leaving employment, it provides that, “marital, filial and domestic circumstances and obligations shall not be deemed good cause” for leaving employment. Therefore, MDES asserts that it would follow that domestic circumstances would not be deemed good cause for refusing an offer of suitable work.

It is the position of MDES that Mr. Goodwin was given an offer of suitable work by the Employer, and he failed to show that he had good cause for refusing the offer work. The decision of the circuit court should be affirmed finding that Mr. Goodwin is disqualified from unemployment benefits for refusing an offer of suitable work without good cause.

CONCLUSION

There is substantial evidence to support the findings of fact and the opinion of the Board of Review that the Claimant refused an offer of suitable work, thus, he is disqualified from receipt of unemployment benefits under Mississippi Employment Security Law until he has earned eight (8) times his weekly benefit amount in covered employment. Therefore, this Honorable Court should affirm the decision of the lower court in this matter.

RESPECTFULLY SUBMITTED this the 27th day of June, 2011.

MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY,



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CERTIFICATE OF SERVICE

I, LeAnne F. Brady, Attorney for the Mississippi Department of Employment Security, hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Brief of the Appellee to the following:

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District 14 Circuit Court Judge
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This the 27th day of June, 2011.


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