

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

**CASE NO. 2011-CC-00816**

**SONJA CANNON**

**APPELLANT**

**V.**

**CASE NO. 2011-CC-00816**

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

**APPELLEES**

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

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**APPEAL FROM THE CIRCUIT COURT OF LINCOLN 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**

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**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. Sonja Cannon, 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 David Strong, Lincoln County Circuit Court Judge

This the 14<sup>th</sup> day of December, 2011.



Albert Bozeman White  
Assistant General Counsel (MSB # [REDACTED])  
Mississippi Department of Employment Security

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### **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, SONJA CANNON, 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 reasonable standards of behavior?

## STATEMENT OF THE CASE

SONJA CANNON [hereinafter also referred to as "Claimant"] was employed by SANDERSON FARMS, INC. [hereinafter also referred to as "Employer"] as a line worker from August 9, 2007, until March 12, 2010, when she was discharged. (R. Vol. 3, p. 48-49). Ms. Cannon was discharged for acting in an inappropriate manner while on the job. (R. Vol. 3, p. 15, 17).

After termination, Ms. Cannon filed for unemployment benefits. (R. Vol. 3, p. 1). The Claims Examiner investigated by interviewing an Employer Representative, Blake Robinson, Personnel Supervisor, as well as Ms. Cannon. (R. Vol. 3, p. 10-14). Mr. Robinson stated that Ms. Cannon was discharged on March 9, 2010 for stalking and harassing another employee. According to Mr. Robinson, the other employee reported two (2) prior incidents in which Ms. Cannon stalked him by continuously asking him out, after he had made it clear to Ms. Cannon that he was married and not interested in her advances. Ms. Cannon was initially given a warning on July 15, 2009, that the behavior was not acceptable and would not be tolerated. (R. Vol. 3, p. 12). On December 21, 2009, Ms. Cannon was again reprimanded for stalking/harassing the other employee and was advised that if she continued, her behavior could result in her discharge. Finally, on March 9, 2010, the other employee again complained to the Employer that Ms. Cannon was stalking and harassing him. The Employer then decided to discharge Ms. Cannon for inappropriate behavior in the workplace. (R. Vol. 3, p. 13).

Mr. Robinson also stated that harassment was against company policy and could result in discharge at the discretion of management. The policy was contained in the Employee Handbook. (R. Vol. 3, p. 12). The Employer also gave Ms. Cannon a chance to cease the behavior; and although she ceased for a while, she eventually began again. (R. Vol. 3, p. 14).

The Claims Examiner also interviewed Ms. Cannon. (R. Vol. 3, p. 13-14). She stated that on the day of the final incident, March 9, 2010, she grabbed the arm of the other employee to brace her fall. She stated that the employee gave her an ugly look, and then she told him that she hated him. Ms. Cannon also stated that the other employee led her on by giving her eye contact, coming around her often, and putting his bag on her work station. (R. Vol. 3, p. 13). When asked whether the other employee had verbally made any comments that he was interested in her, Ms. Cannon replied that he did not. She also admitted that he did not write her any notes, send her any text messages, brush up against her, or ask her out. However, she stated that she could tell by his body language that he was interested in her, and she felt that she had been led on. (R. Vol. 3, p. 14).

Ms. Cannon also stated that she still had feelings for the other employee even after being discharged, and did not feel the discharge was fair. (R. Vol. 3, p. 14). She admitted that she was given a warning on July 15, 2009 for stalking/harassing the other employee. Ms. Cannon also admitted that she was aware of that harassment was against the company policy, and that violating the policy could result in discharge. (R. Vol. 3, p. 13).

Based on the information obtained, the Claims Examiner disqualified Ms. Cannon, finding that she was discharged for acting in an inappropriate manner while on the job, thus constituting misconduct connected with the work. (R. Vol. 3, p. 15, 17).

Ms. Cannon appealed. (R. Vol. 3, p. 19). A telephonic hearing was noticed and held. (R. Vol. 3, p. 26-28, 34-38, 39-99). Mr. Blake Robinson, Personnel Supervisor, represented and testified on behalf the Employer. (R. Vol. 3, p. 48-64). Ms. Cannon also testified, and was represented by Ms. Mary Ann Marshall. (R. Vol. 3, p. 64-98). The ALJ affirmed the Claims



Examiner's decision finding that Ms. Cannon was discharged for misconduct. (R. Vol. 3, p. 103-105).

Ms. Cannon again appealed. (R. Vol. 3, p. 106). After carefully reviewing the record, the Board of Review affirmed the ALJ's decision, adopting the ALJ's fact findings and opinion. (R. Vol. 3, p. 110). The ALJ's Fact Findings and Opinion were as follows, in pertinent part, to-wit:

#### Findings of Fact

The employer, Sanderson Farms Inc-Processing Division, employed the claimant as an over wrap line worker from March 9, 2007 to March 9, 2010. The employer discharged the claimant for harassing a coworker. (Emphasis added).

The employer has a zero tolerance harassment and workplace violence policy, and violation will result in disciplinary action up to and including termination of employment. The employer made the claimant aware of the policies and procedures during orientation upon hire. The claimant received a copy of the policy and the policy was posted in the break room and the main hallway at the employer's facility. (Emphasis added).

On July 15, 2009, the employer issued a written warning to the claimant for harassing and stalking a male co-worker, in which the male co-worker asked the claimant to leave him alone. On December 21, 2009, the employer issued formal warning to the claimant because the same male co-worker reported that the claimant was still harassing and stalking him. The claimant admitted that she told the male co-worker that she loved him. The final incident occurred on March 5, 2010, the claimant and the male co-worker were working in her department, and the claimant grabbed the male co-worker's arm and said she hated him. The male co-worker told the claimant to leave him alone. The male co-worker reported that incident to management. The employer called the claimant to the office on March 9, 2010, to investigate the complaint. The employer sent the claimant home pending investigation. The employer terminated the claimant's employment immediately. The claimant admitted in the hearing that she grabbed the male co-worker's arm because she slipped and was trying to prevent from falling down, and she said she hated the co-worker because he scared her. The claimant admitted to receiving the warnings. (Emphasis added).

#### 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) of the *Mississippi Employment Security Law* 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 be chargeable with benefits paid to a claimant, provided that an employer's experience rating 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.

*Mississippi Employment Security Regulation* 308.00 provides that a claimant will not be found guilty of misconduct for a violation of a rule unless: (1) the employer knew or should have known of the rule; (2) the rule was lawful and reasonably related to the job environment and job performance; and (3) the rule is fairly and consistently enforced.

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, wrongful intent or evil design, and showing 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 facts show that the employer discharged the claimant for continually harassing a male co-worker. The record is clear that the claimant received progressive warnings regarding the issue. Therefore, the actions that caused the claimant's discharge were a willful disregard of the employer's best interest, which constitutes misconduct as that term is defined in the above section of the Law.** The Department's decision is in order. (Emphasis added).

(R. Vol. 3, p. 103-104).

Ms. Cannon then appealed to the Circuit Court of Lincoln County. (R. Vol. 3, p. 113, and R. Vol. 1 p. 4-60). The Department filed its Answer and the record transcript on September 23, 2010. (R. Vol. 1 p. 61-63). Ms. Cannon then responded. (R. Vol. 1 64 to R. Vol. 2 p. 163). MDES also filed a Brief. (R. Vol. 2 p. 164-181). The Circuit Court affirmed the decision of MDES on May 16, 2011, finding that Ms. Cannon knew the Employer's policy prohibiting harassment, and failed to follow it, after warning, which constitutes misconduct. (R. Vol. 2 p. 182-184).

Ms. Cannon 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... (emphasis added).

The case authorities consistently hold that willful and wanton, or grossly negligent, violations of reasonable Employer policy constitutes disqualifying misconduct, particularly where the policy so provides. Mississippi Employment Sec. Comm'n. v. Percy, 641 So. 2d 1172 (Miss. 1994); Henry v. Miss. Dept. Emp. Sec., 962 So. 2d 94 (Miss. Ct. App. 2007).

In the instant case, Ms. Cannon was discharged for violating the Employer's policy prohibiting harassment due to continuing to have inappropriate, prohibited contact with a male employee, after repeated warnings not to do so, and a suspension. The Employer's investigation concluded that Ms. Cannon continually harassed a male employee, despite being given two (2) prior warnings to stay away from the employee. (R. Vol. 3, p. 15, 17). Ms. Cannon was aware of the Employer's policy, was warned, and was given an opportunity to cease the offensive behavior. She also was aware that continuing such prohibited conduct may result in discharge. (R. Vol. 3, p. 13).

The testimony reflects that the Employer had sufficient evidence that Ms. Cannon acted in an inappropriate manner violating the Employer's policy against harassment, and continued to do so after warnings. Thus, there is substantial evidence supporting the Board of Review and Circuit Court decisions that Ms. Cannon committed disqualifying misconduct by willfully and wantonly violating the Employer's reasonable standards of behavior, such that this Honorable

Court should affirm, based upon the standard of review on appeal. Richardson v. Miss. Emp. Sec. Comm'n., 593 So. 2d 31 (Miss. 1992); Booth v. Miss. Emp. Sec. Comm'n., 588 So. 2d 422 (Miss. 1991).

## ARGUMENT

### Standard of Review

Ms. Cannon's appeal is governed by Mississippi Code Annotated Section 71-5-531 (Rev. 2010), which provides for an appeal by any party aggrieved by the decision of the Board of Review, and Circuit Court. 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 (Miss. 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, Blake Robinson, Personnel Supervisor, represented and testified first on behalf of the Employer. (R. Vol. 3, p. 48-64). He confirmed that Ms. Cannon worked as a line worker on the over route from August 9, 2007 until March 12, 2010, when she was notified by Mattie Walker, Human Resources Manager of her discharge for harassment. (R. Vol. 3, p. 48-49).

Regarding incident leading to her discharge, on March 9, 2010, Ms. Cannon grabbed the arm of another employee, William Smith, and told him that she hated him. Following the incident, Mr. Smith told Ms. Cannon to leave him alone, and reported the incident to Ken Thompson, Second Shift Personnel Supervisor, and Ms. Walker. (R. Vol. 3, p. 51). Mr. Thompson began an investigation, and, based on witness statements from employees who witnessed the incident, suspended Ms. Cannon on March 9, 2010. After speaking with Ms. Walker the following day, the decision was made to discharge Ms. Cannon, according to Company Policy. (R. Vol. 3, p. 52).

Mr. Robinson also testified that during the investigation, Ms. Cannon admitted to grabbing Mr. Smith by the arm and telling him she hated him. She signed a written statement in the presence of Ms. Walker and Mr. Thompson, and was discharged on March 12, 2010. (R. Vol. 3, p. 54).

Mr. Robinson also testified that Ms. Cannon was reported for harassing and stalking Mr. Smith on two (2) prior occasions. (R. Vol. 3, p. 55). On July 15, 2009, Mr. Smith reported that Ms. Cannon harassed and stalked him. Mr. Smith also reported to his supervisor that two months previously, in May 2009, he had told Ms. Cannon that he was a married man and to leave him alone. (R. Vol. 3, p. 55-56). Following Mr. Smith's complaint, Mr. Thompson informed

Ms. Cannon that her behavior was unacceptable and would not be tolerated. He also informed her that if she repeated the behavior, it would result in further disciplinary action up to termination. (R. Vol. 3, p. 56).

On December 21, 2009, Mr. Smith again reported Ms. Cannon for harassing and stalking him. (R. Vol. 3, p. 56). According to Mr. Smith, Ms. Cannon told him that she loved and missed him, and would sit in the parking lot waiting for him. Wanda Geither, another employee, witnessed the incident, and reported it to Mr. Thompson and Ms. Walker. (R. Vol. 3, p. 57). An investigation was again conducted. Mr. Smith stated that he had no personal relationship with Ms. Cannon, and that he was a married man and wanted Ms. Cannon to leave him alone. (R. Vol. 3, p. 58). When Ms. Cannon was confronted by Mr. Thompson and Ms. Walker, she verbally admitted to making the statements that she loved and missed Mr. Smith. (R. Vol. 3, p. 57-58). As a result of this incident, on December 21, 2009, she was given a formal warning, which she signed. (R. Vol. 3, p. 58).

Regarding the Employer's policy, Mr. Robinson stated that the Employer had a written, zero tolerance policy prohibiting harassment in the work place. He also stated that the policy was addressed in orientation, and it was posted in the main hallway and break areas. Ms. Cannon received a copy of the policy, and it was also addressed with her in orientation. (R. Vol. 3, p. 59). He also commented that there was no reason why Ms. Cannon would not understand the zero tolerance harassment policy. (R. Vol. 3, p. 60).

Mr. Robinson was then questioned by Ms. Marshall, Ms. Cannon's representative. (R. Vol. 3, p. 61-64). Mr. Robinson testified that a witness to the December 21, 2009 incident, Ms. Geither, was interviewed. Ms. Geither was an employee that worked with Ms. Cannon. During



the investigation, Ms. Geither told Mr. Robinson that Ms. Cannon stated that she loved Mr. Smith, and “couldn’t stay away from” him. (R. Vol. 3, p. 61).

Mr. Robinson also testified that Ms. Cannon signed the July 15, 2009 and December 21, 2009 warnings. She also signed a statement regarding the March 9, 2010 incident, stating that **“On Friday, March 9, 2010, I grabbed William Smith by the arm and told him I hated him.”** (R. Vol. 3, p. 62). Mr. Robinson did not know whether Ms. Cannon wrote the statement herself, but testified that her signature was on the statement. (R. Vol. 3, p. 62-63).

Ms. Cannon was then allowed to testify. (R. Vol. 3, p. 64-98). She worked as a line worker in the over route department from March 9, 2007, until March 10, 2010, when she was discharged by Ms. Walker for harassing and stalking Mr. Smith. (R. Vol. 3, p. 64-65). She admitted to grabbing Mr. Smith’s arm and telling him that she hated him on March 9, 2010, but alleged that she accidentally grabbed him when she slipped on a wet glove. (R. Vol. 3, p. 65). According to Ms. Cannon, Mr. Smith gave her a look like he “could kill” her, so she told him that she hated him.

Ms. Cannon also testified that she thought she was going to fall or run into Mr. Smith, so she grabbed him to brace her fall. She made the statement that she “hated him” because she was afraid of him. (R. Vol. 3, p. 67). She denied waiting on him in the parking lot afterwards. (R. Vol. 3, p. 66).

Following the incident, she was confronted by Mr. Thompson and Ms. Walker. (R. Vol. 3, p. 68). Ms. Walker allegedly shouted during the meeting. She denied giving Ms. Walker a written statement. (R. Vol. 3, p. 69). After meeting with them, Ms. Cannon was escorted from the building by a security guard. However, before leaving, she was called back in by Ms. Walker to sign a statement. Ms. Walker told her to sign the statement, but did not allow her to

read it, nor did she allow her to explain what had happened. (R. Vol. 3, p. 70). Ms. Cannon also testified that she spoke to Mr. Thompson, who told her to go home and not worry about what happened. (R. Vol. 3, p. 71).

Ms. Cannon stated that on March 10, 2010, she called Ms. Walker, but was told not to return to work or call until she again heard from her. (R. Vol. 3, p. 72). On March 12, 2010, Ms. Cannon went to the Employer's office to collect her check, but was not allowed to enter the building for some time. (R. Vol. 3, p. 72-73). Ms. Walker finally called Ms. Cannon into the office, and told her that she had been discharged. (R. Vol. 3, p. 73).

Regarding the December 12, 2009 incident, Ms. Cannon also testified that she thought she had received a verbal warning only. Although Ms. Walker wrote some things down, she did not allow Ms. Cannon to read them. (R. Vol. 3, p. 74). She admitted that Ms. Walker told her not to speak to Mr. Smith anymore, and that Mr. Smith made a complaint that she was harassing and stalking him. (R. Vol. 3, p. 74-75). Ms. Cannon stated that she did not talk to him anymore. (R. Vol. 3, p. 75).

Ms. Smith also denied stalking or harassing Mr. Smith, stating that she and Mr. Smith "looked at each other". If he saw her talking to anyone else, he got mad, and then complained to Ms. Walker about her. She admitted never having a relationship with Mr. Smith, but "he would put his bag on [her] machine." She thought he did so because he "liked to be close to [her]." (R. Vol. 3, p. 75). She also stated that Mr. Smith would "be around" her all the time, and would wait on her in the parking lot, parking near her. (R. Vol. 3, p. 76).

Ms. Cannon also admitted that she told Mr. Smith that she loved him, but stated that she told everyone that, and there was nothing intimate about it. (R. Vol. 3, p. 76-77). She was

speaking to a friend on December 21, 2009 and told her that she loved Mr. Smith as a friend, but that he took it the wrong way. (R. Vol. 3, p. 77).

Regarding the July 15, 2009 incident, she stated that Mr. Smith became upset because some other, female, employees were teasing him about their relationship. She admitted that she received a warning from Ms. Walker and was told that Mr. Smith had made a complaint about her. However, Ms. Walker never read the complaint to her. (R. Vol. 3, p. 78-79).

Ms. Cannon was aware that Mr. Smith made the complaints about her in July. She admitted telling several other employees that she loved them, but that she did not mean it in the way Mr. Smith interpreted it. She again stated that she and Mr. Smith only looked at each other from a distance after the July 15, 2009 incident. (R. Vol. 3, p. 79). She admitted that she was aware that if Mr. Smith reported her for stalking/harassing him again, she could be discharged. (R. Vol. 3, p. 79-80). She was not aware that Mr. Smith made complaints about her following the July 15, 2009 incident. (R. Vol. 3, p. 80).

Ms. Cannon again admitted that she expressed to Ms. Geither that she loved Mr. Smith, but that she did not mean it the way he took it. (R. Vol. 3, p. 80). She denied being "madly in love" with Mr. Smith. She knew the Company Policy prohibiting harassment, but did not feel that she was harassing Mr. Smith. She admitted to going through orientation when she was hired, and that the policy was posted in the main halls of the facility and in the break room. She was also given a copy. (R. Vol. 3, p. 81).

Ms. Cannon testified that she believed Mr. Smith reported her purposely so that she would be discharged, because another co-worker knew his wife, and Mr. Smith did not want the co-worker saying anything to her. She also claimed that Mr. Smith never told her not to talk to

him, and that they had originally been friends. She also denied not leaving him alone. (R. Vol. 3, p. 82).

Ms. Cannon was then questioned by Ms. Marshall. (R. Vol. 3, p. 83-88). However, this testimony added little to the facts already established.

Ms. Cannon was also questioned by Mr. Robinson. (R. Vol. 3, p. 89-92). Ms. Cannon admitted that she was unaware of the Employer's open door policy. Ms. Cannon reiterated that she felt like Mr. Smith wanted her to be discharged, and denied being infatuated with him. She also did not report that Mr. Smith carried a knife around with him because Ms. Walker liked Mr. Smith, and because "a man is worth more than a woman." She also stated that Mr. Smith misled another female employee, but she did not report him, because they were friends, and Mr. Smith tricked her.

Ms. Cannon also admitted that she only signed one (1) document on the day she was discharged, and again insisted that she was not allowed to read the document. (R. Vol. 3, p. 92).

Ms. Marshall then asked Ms. Cannon some follow-up questions, which added nothing significant to the facts already established. (R. Vol. 3, p. 93-95).

The ALJ then asked Ms. Cannon some final questions. Ms. Cannon was questioned about her allegation that Mr. Smith has a knife at work. (R. Vol. 3, p. 96-99). The hearing was then concluded. (R. Vol. 3, p. 99).

### Argument and Authorities

The instant case is analogous to the misconduct line of cases involving a grossly negligent, or willful and wanton, violation of an employer's policy, and substantial or serious disregard of the employer's reasonable standards of behavior. In these cases, the behavior causing termination is within the capacity and control of the employee, is a serious disregard of work-related duties, and constitutes misconduct. See 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); Sojourner v. Miss. Emp. Sec. Comm'n., 744 So. 2d 796 (Miss. Ct. App. 1999) (security guard's failure to follow policy prohibiting remaining on property after shift hours constituted 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) Miss. Emp. Sec. Comm'n. v. Harris, 500 So. 2d 958 (Miss. 1986) (school teachers showing of "R" rated movie violated common sense aspect of general policies).

Hux v. Miss. Emp. Sec. Comm'n., 749 So. 2d 1224 (Miss. Ct. App. 1999) is also instructive.

In this Hux, Mr. Hux was repeatedly warned about spending too much time with a female employee. The Employer had a policy prohibiting fraternization. The Employer was concerned about workplace violence that may stem from Mr. Hux's relationship with the female employee, because his spouse had visited the workplace to confront them. Despite multiple warnings, Mr. Hux did not modify his behavior. Id. at 1226. The Court found that Mr. Hux's refusal to heed the warnings willfully and wantonly violated the Employer's policy, and constituted misconduct.

In Captain v. Miss. Emp. Sec. Comm'n., 817 So. 2d 634 (Miss. Ct. App. 2002) the Court of Appeals also found that Mr. Captain committed misconduct by continuing to send unwanted emails to female employees, after warnings to cease doing so. The Court of Appeals noted that the Employer was concerned about Mr. Captain harassing the female employees by these emails, and other communications that may were borderline harassment. Id. at 639.

Considering these analogous cases, and the facts of the instant case, there is sufficient evidence, and law, supporting the Board of Review and Circuit Court decisions.

## CONCLUSION

There is substantial evidence supporting the Department's finding that Ms. Cannon violated the Employer's reasonable standards of behavior. The Employer's investigation of the matter concluded that Ms. Cannon continually harassed a male employee, despite being given two (2) prior warnings to stay away from the employee. Ms. Cannon admitted that she told the employee that she "loved him," and her explanations did not excuse her behavior while on the job. In fact, her protestations only exacerbated, and emphasized, the fact that she acted in an inappropriate manner. Ms. Cannon admitted to being aware of the Employer's policy against harassment, and that violation of such could result in her discharge.

The facts and evidence presented clearly indicate that Ms. Cannon was in control of her behavior, and knew or should have known that such action could result in her immediate termination. Thus, based on the case law and standard of review on appeal, this Honorable Court should accept the Board of Review and Circuit Court decisions and affirm.

RESPECTFULLY SUBMITTED, this the 14<sup>th</sup> day of December, 2011.

### MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

By: Albert Bozeman White  
ALBERT BOZEMAN WHITE

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

**CERTIFICATE OF SERVICE**

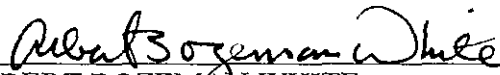
I, Albert Bozeman White, Attorney for Appellee, Mississippi Department of Employment Security, certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing pleading to the following:

Honorable David Strong  
Lincoln County Circuit Court Judge  
Post Office Drawer 1387  
McComb, MS 39649-1387

Sonja Cannon, Appellant  
115 Clara Street  
Brookhaven, MS 39601-2809

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

THIS, the 14<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
ALBERT BOZEMAN WHITE