

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

**CASE NO. 2011-CC-00824**

**SONYA PATTERSON**

**APPELLANT**

**V.**

**CASE NO. 2011-CC-00824**

**MISSISSIPPI DEPARTMENT OF  
EMPLOYMENT SECURITY AND  
DIRECT GENERAL INSURANCE AGENCY**

**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 ALCORN COUNTY  
STATE OF MISSISSIPPI**

**ORAL ARGUMENT NOT REQUESTED**

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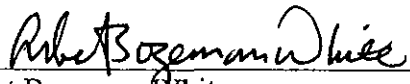

**APPELLEES**

**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. Ms. Sonya Patterson, Appellant/Claimant
2. Albert Bozeman White, Assistant General Counsel for Appellee
3. Mississippi Department of Employment Security, Appellee
4. Direct General Insurance Agency, Appellee/Employer
5. Honorable Jim S. Pounds, Alcorn County Circuit Court Judge

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

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

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### **STATEMENT OF ISSUE**

1. Whether the Board of Review's decision should be affirmed, finding that the Employer, DIRECT GENERAL INSURANCE AGENCY, proved by substantial evidence that the Claimant, SONYA PATTERSON, 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 rude, unprofessional conduct, and dishonesty?

## STATEMENT OF THE CASE

SONYA PATTERSON [hereinafter also referred to as "Claimant" or "Ms. Patterson"] was employed by DIRECT GENERAL INSURANCE AGENCY [hereinafter also referred to as "Employer"] as an agent manager from June 11, 2007, until August 20, 2010, when she was discharged. (R. Vol. 2 p. 1, 9-11). Ms. Patterson was discharged after she either directly or indirectly accused a vendor of acting in a racial manner, and then misrepresenting this accusation during an investigation. (R. Vol. 2 p. 10, 15). She was aware of the Employer's policy, and should have known that such conduct violated the Employer's policy prohibiting rude, unprofessional conduct towards a vendor or customer, and dishonesty. (R. Vol. 2 p. 10-11, 44-45).

After termination, Ms. Patterson filed for unemployment benefits. (R. Vol. 2 p. 1). The Claims Examiner investigated by interviewing an Employer Representative, Stephanie Haynes, Human Resource Generalist, and Ms. Patterson. (R. Vol. 2 p. 9-11). The Employer also submitted a UI-21A questionnaire indicating Mr. Patterson violated Employer Policy Number 240.00. (R. Vol. 2 p. 7). Ms. Haynes stated that Ms. Patterson was discharged for asking a representative of another company, which referred customers to the Employer, why it only referred African-American customers to the Employer. During an investigation, she then failed to include this accusation in her written statement. (R. Vol. 2 p. 10). Ms. Patterson denied that she made the statement, and responded that she was just fired for not taking responsibility for her actions. (R. Vol. 2 p. 9-11).

Based on the information obtained, the Claims Examiner awarded Ms. Patterson benefits finding that the Employer failed to prove that she was discharged for misconduct. (R. Vol. 2 p. 12).

The Employer appealed. (R. Vol. 2 p. 14-15). A telephonic hearing was noticed and held before an Administrative Law Judge [hereinafter also referred to as "ALJ"]. (R. Vol. 2 p. 21-31, 32-92). Mr. Noel Coward testified on behalf of the Employer, and presented exhibits. Ms. Stephanie Haynes acted as the Employer representative. (R. Vol. 2 p. 40-52). Ms. Patterson also testified. (R.

Vol. 2 p. 53-78). Afterwards, the ALJ reversed the Claims Examiner's decision. (R. Vol. 2 p. 94-97). In so doing, the ALJ made fact findings as set out in full herein below. Based on the facts, the ALJ concluded that Ms. Patterson was discharged for willfully and wantonly violating the Employer's policy prohibiting rudeness, unprofessional and unethical conduct by asking a vendor, or a company referring customers, a racial question, which constituted misconduct. (R. Vol. 2 p. 94-97).

Ms. Patterson again appealed. (R. Vol. 2 p. 98). After carefully reviewing the record, the Board of Review affirmed, adopting the ALJ's fact findings and opinion. (R. Vol. 2 p. 102-104).

The ALJ's Fact Findings and Opinion were, in pertinent part, as follows, to-wit:

Findings of Fact

Claimant was employed from June 11, 2007 to August 20, 2010, as an agent manager, by Direct General Insurance Agency, Corinth, Mississippi, when she was discharged for violation of standard of conduct policy.

The policy stated an employee will be terminated for behavior such as: rudeness directed toward customers, clients, vendors and/or employees, and illegal or unethical behavior. Claimant was aware of policy upon hire.

On August 12, 2010, a vendor contacted the district sales manager, and was upset about a racial question the claimant asked the vendor on August 11, 2010.

The claimant had sent the district manager an email on August 11, 2010, informing him that she had seen a pattern that this vendor was sending all the whites to another insurance company, and sending all the blacks to Direct General.

On August 12, 2010, the district sales manager asked the claimant to explain what she asked the vendor, which she told him it was the same question she sent him in the email. The district sales manager asked the claimant to apologize to the vendor, but the claimant told the manager he would have to bail her out of jail, because if she faced the vendor she would not be responsible as to what would happen.

On August 13, 2010, the district sales manager reported the incident to corporate office, and asked claimant to provide him with a written statement of what happened, and what she meant by bailing her out of jail. The claimant changed her story, and blamed the racial statement on the vendor. The claimant never disclosed to the district sales manager on August 12, 2010, that it was the vendor.



On August 20, 2010, the district sales manager discharged the claimant for unethical behavior and rudeness towards a vendor. The claimant filed a grievance, which was upheld.

### 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... 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, wrongful intent or evil design, 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 claimant was discharged because her conduct of behavior towards the employer's vendor. The claimant was aware of the employer's policy.

The claimant's conduct was unprofessional, rude and unethical to openly ask a racial question to the employer's vendor. Therefore, the claimant actions shows a disregard of the interest that rises to the level of misconduct connected with the work as that term is defined by Law.

The decision rendered by the Adjudicator is not in order.

### Decision

Reversed. The claimant is disqualified from August 21, 2010, and until she has been re-employed in covered employment and earned eight times her weekly benefit amount. The employer's experience rating record is entitled to a non-charge based on this issue.

(R. Vol. 2 p. 94-97).

Ms. Patterson then appealed to the Circuit Court of Alcorn County. (R. Vol. 1, p. 4-17).

MDES filed an Answer and the Record Transcript on April 1, 2011. (R. Vol. 1, p. 18-23).

Afterwards, the Circuit Court affirmed without any Briefs being filed. Ms. Patterson then appealed to this Honorable Court. (R. Vol. 1, p. 29-36).

## 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 one willful and wanton, or grossly negligent, violation of reasonable Employer policy constitutes disqualifying misconduct, particularly where the policy so provides. Miss. Emp. 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 this case, Ms. Patterson was an agent manager for the Employer. Regarding the incident leading to her discharge, on August 11, 2010, Ms. Patterson called an auto dealer that referred auto insurance customers to the Employer, and questioned a representative as to where they were referring customers not sent to the Employer. The auto dealer representative was very concerned and upset about this phone call; and on August 12, 2010, reported to Ms. Patterson's manager, Noel Coward, that she accused the auto dealer, i.e. Rides-To-Go, of acting in a racist manner by referring all of its white customers to Alpha Insurance, and all of, or only, its black customers to Direct General, the Employer. Ms. Patterson also sent an email to Mr. Coward late in the day on August 11, 2010, reporting this incident, and that Rides-To-Go was referring only black customers to the Employer, and all white customers to Alpha Insurance. After receiving the phone call and email, Mr. Coward investigated by first talking to Ms. Patterson and then obtaining a written statement from her on August 13, 2010. Mr. Coward testified that when Ms. Patterson was questioned, she admitted asking the auto dealer representative the question in the manner reported to him by the representative, i.e.

why they were only sending black customers to Direct General, and where they were sending white customers. However, she later denied doing so. As a result of this incident, Ms. Patterson was ultimately discharged for rude, unprofessional, and unethical conduct and dishonesty during the investigation, which violated Employer policy.

Although the testimony is conflicting, based upon Mr. Coward's testimony and Ms. Patterson's admissions, there nevertheless is substantial evidence to support the Board of Review and Circuit Court decisions that Ms. Patterson committed disqualifying misconduct by willfully and wantonly disregarding the employer's interest, policy, and the standards of behavior the employer had a right to expect from her, an agent manager. Thus, the 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 AND AUTHORITIES

### Standard of Review

Ms. Patterson's appeal is governed by Mississippi Code Annotated Section 71-5-531 (Rev. 2010), which provides for an appeal to the Circuit Court and then Supreme 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 (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).

### Facts

In the instant case, Stephanie Haynes, Human Resource Generalist, acted as the Employer representative. (R. Vol. 2 p. 32-40). Noel Coward, District Sales Manager, testified for the Employer. (R. Vol. 2 p. 40). Ms. Patterson's date of hire was confirmed to be June 11, 2007, and date of discharge as August 20, 2010. She was employed as the agent manager. (R. Vol. 2 p. 40).

Ms. Patterson was discharged for violating Employer Policy Number SPM240.00B, prohibiting unprofessional conduct for dishonesty. (R. Vol. 2 p. 42). Mr. Coward stated that the policy fell under the head note of "Standard Behavior". (R. Vol. 2 p. 42-44). The ALJ then read the policy. In pertinent part, the policy prohibited use of language or any other conduct conflicting with the company goals, or unprofessional conduct. It also listed prohibited behavior, which included discrimination, harassment, rudeness, and unethical behavior. From this list, she violated Policy Numbers 4D, 1, 2 and 8. (R. Vol. 2 p. 42-45).

Mr. Coward also stated that Ms. Patterson was aware of the policy having received a copy of the Handbook. (R. Vol. 2 p. 44-45). The policy and her acknowledgment of receipt were tendered into evidence as Employer Exhibits A and B.

Regarding the specific incident, Mr. Coward stated that on August 11, 2010, at 5:30 P.M., he received an email from Ms. Patterson stating that she saw a pattern in an auto dealer's, referred to a "vendor", referral of customers to the Employer. In the email, Ms. Patterson stated that "Rides-To-Go" was sending white customers to Alpha Insurance and black customers to Direct General. (R. Vol. 2 p. 45). Mr. Coward tried to call Rides-To-Go that day, but it was closed.

The next morning at about 7:30 A.M., he received a call from Allison and Jason at Rides-To-Go stating that they received a phone call from Ms. Patterson the day before that upset them. She accused them of racism, stating that she accused them of sending white customers to Alpha Insurance and black customers only to Direct General. They were very upset and asked that Mr. Coward investigate. (R. Vol. 2 p. 45-46).

He then called Ms. Patterson, who was off work that day. Ms. Patterson admitted that she asked them about a pattern of sending white customers to Alpha and black to Direct General. She called to ask them about the pattern. (R. Vol. 2 p. 46-47).

Mr. Coward stated that he told Ms. Patterson about the phone call from Allison and Jason, and that they were very upset about the accusation. He asked why she made the comment to them without contacting him first. He told her that it was very unprofessional; and asked her to go by to see them and apologize. (R. Vol. 2 p. 46-47).

When asked to apologize, Ms. Patterson responded that if she did, Mr. Coward would have to bail her out of jail. Mr. Coward stated that that comment shocked him. He asked what she meant. Ms. Patterson said that if Allison and Jason got in her face that she would not be responsible for what happened. However, she said that she would go apologize. (R. Vol. 2 p. 46-48). However, she again stated that she could not handle an apology, but would anyway. (R. Vol. 2 p. 48).

On August 12, 2010, Mr. Coward phoned Allison and Jason to follow up. Ms. Patterson did call and apologize. However, they remained very concerned and requested that he investigate. (R. Vol. 2 p. 48). Mr. Coward then sent an email to the Human Resource Department letting them know. He also expressed his concerns about the investigation being handled professionally. (R. Vol. 2 p. 48).

On August 13, 2010, he asked Ms. Patterson to write a statement as to what happened. At that time, Ms. Patterson changed her story. She said that she did not make the accusation to Allison about Rides-To-Go only sending white customers to Alpha Insurance, and black customers to Direct General. She claimed that Allison brought that up. (R. Vol. 2 p. 49).

Mr. Coward stated that this was inconsistent with her earlier email, and what she told him the day before. He told her that she needed to be up front and honest in the investigation and her written statement. Nevertheless, her written statement conflicted with the email. (R. Vol. 2 p. 49).

Mr. Coward also asked Allison to send a written statement, which she did on August 17, 2010. In Allison's statement, she said that Ms. Patterson questioned her about a pattern that she noticed, in which Rides-To-Go allegedly sent only white customers to Alpha Insurance, and black customers to Direct General. (R. Vol. 2 p. 49-50). Mr. Coward commented that Allison's written statement was consistent with Ms. Patterson's earlier email. (R. Vol. 2 p. 50).

When Ms. Patterson was again questioned, she became very defensive. She denied saying it. She also denied making the statement about having to be bailed out of jail when she made the apology to Allison and Jason. (R. Vol. 2 p. 50). Mr. Coward then reminded her that she had responsibilities to vendors, and could not act in that manner. He also reminded her that she did make the statement about having to be bailed out of jail. She commented that she did not have to address that, because it was a conversation between Mr. Coward and her that took place while she was off of work. (R. Vol. 2 p. 50).

As part of the investigation, he asked another agent, Trinis Robinson, to report what he heard. He said he was with a customer and didn't hear the entire conversation. Nevertheless, from this, he concluded that Ms. Patterson's statements were made in front of a customer; and thus, were unprofessional. (R. Vol. 2 p. 50-51).

The decision was made to terminate her for unprofessional conduct and rudeness, and giving false statements during an investigation. (R. Vol. 2 p. 51). Ms. Patterson filed a grievance with the Employer, which upheld the determination. (R. Vol. 2 p. 52).



Mr. Coward was questioned about a witness named Damien Fields. He said that Ms. Patterson did tell him that one of her family members also heard the conversation. However, he did not speak to Mr. Fields, since it was Ms. Patterson's family. (R. Vol. 2 p. 51).

Regarding the documents, Employer Exhibits A and B were made part of the record. (R. Vol. 2 p. 53-54). The documents that Ms. Patterson stated she submitted were also discussed. However, she failed to send those documents to the Employer as required by the MDES procedures. Thus, her documents, which included a hand-written statement dated October 25, 2010, were not admitted into evidence. (R. Vol. 2 p. 54-56).

Ms. Sonya Patterson testified next. She confirmed her dates of employment from June 11, 2007, until August 20, 2010, as agent manager. She was discharged by Mr. Coward for failing to accept responsibility. (R. Vol. 2 p. 57).

Regarding the incident in question, she asked Allison where they were sending all of their customers that were not sent to Direct General. She denied ever mentioning race. However, she claimed that Allison mentioned that the white customers were sent to Alpha Insurance and the black customers sent to Direct General. Allison also allegedly cursed her out. (R. Vol. 2 p. 58). Allison also claimed that Alpha was sending Rides-To-Go \$10.00 for each referral.

Ms. Patterson also stated that Rides-To-Go had not sent Direct General a customer in over a year. She also claimed that Jason cursed her out in March. Allison cursed her that day. (R. Vol. 2 p. 58).

When questioned as to Rides-To-Go's relationship with the Employer, she stated that it was a car dealer, which sent insurance referrals to the Employer. (R. Vol. 2 p. 59). She also claimed that

Allison cursed her out because she asked about Rides-To-Go not sending customers to Direct General. She again claimed that she never mentioned race. (R. Vol. 2 p. 59).

When questioned further, Ms. Patterson did admit sending an email to Noel Coward on August 11<sup>th</sup> saying that Rides-To-Go was sending white customers to Alpha Insurance and black customers to Direct General. (R. Vol. 2 p. 61). However, she again stated that she did not bring that up. She just asked where they were sending customers that they did not send to Direct General. (R. Vol. 2 p. 61-62). Allison said she was sending customers to Alpha for a referral fee, which she characterized as bribery. (R. Vol. 2 p. 62). The ALJ asked Ms. Patterson if she accused Allison of bribery, and she stated that she did; and that was the reason Allison started cursing her. (R. Vol. 2 p. 62).

Ms. Patterson also stated that Trinis, who was later identified as Trinis Robinson, was also an agent meeting with a customer at the time of her conversation with the Rides-To-Go representative. He overheard the conversation and typed a statement, which she commented the ALJ should have. The customer was a relative of Ms. Patterson, Damien Fields. She also said the ALJ should have that statement. However, because she did not send the statements to the Employer, the ALJ declined to admit them into evidence. (R. Vol. 2 p. 62).

Ms. Patterson was also questioned as to why Allison cursed her. She said it was because she told Allison that receiving a referral fee from Alpha Insurance was bribery. Ms. Patterson stated that Alpha paid Rides-To-Go \$25.00 per life insurance referral purchases and \$10.00 for an auto policy referral purchase. (R. Vol. 2 p. 62-63). Ms. Patterson stated that Allison asked if Direct General would do that, and she stated no, because it was bribery.

The ALJ questioned Ms. Patterson further about apologizing to Allison as Mr. Coward instructed her to do. She stated that the conversation with Mr. Coward was on her day off. She told him she was not going out there to apologize on her day off, and furthermore Allison should apologize to her for cursing her. She stated she also thought going to see Allison might result in trouble. (R. Vol. 2 p. 65). She commented that Allison thought she was being racist just by asking the question as to where Rides-To-Go sent all customers not sent to Direct General. (R. Vol. 2 p. 66).

When questioned as to whether she commented to Mr. Coward that she would have to be bailed out of jail if she went to apologize to Allison, she denied making that comment. She also stated that Mr. Coward was not being truthful about that. She also denied saying anything about what might happen if Allison got in her face. (R. Vol. 2 p. 67-68).

Ms. Patterson did call Allison and tell her it was a misunderstanding, and that she never said anything about race. However, she did not apologize for that, because Allison was the one that brought up race. (R. Vol. 2 p. 68-69). Allison apparently did not accept the apology, because she hung up on Ms. Patterson.

On August 13, Mr. Coward asked her to provide a written statement. She denied changing her story in the written statement from her previous verbal statements. (R. Vol. 2 p. 70-71).

Ms. Patterson did file a grievance, which upheld the termination. Finally, she admitted that she was aware of company policy. (R. Vol. 2 p. 72-73).

On re-direct, Mr. Coward again stated that Ms. Patterson admitted questioning Rides-To-Go about sending white customers to other insurance companies rather than Direct General. He also stated that she changed her story in her written statement on August 13. (R. Vol. 2 p. 74-75).

Regarding her termination, she was discharged for violating company policy. She walked out when she was told, before he could finish the conversation and explain the exact policies she violated. Mr. Coward again stated that Allison told him that Ms. Patterson was the one that brought up race. (R. Vol. 2 p. 80). He also denied that Ms. Patterson ever told him that either Allison or Jason cursed her. (R. Vol. 2 p. 80-81). He also told Ms. Patterson that she needed to apologize to Rides-To-Go, because dealing with vendors was a very important part of their business, and she must be professional with them. (R. Vol. 2 p. 81).

Ms. Patterson was then given an opportunity to make a closing statement. (R. Vol. 2 p. 82-83).

The ALJ also attempted to call Trinis Robinson and Damien Fields, but was unable to reach them. (R. Vol. 2 p. 83-84, 87-88).

Ms. Hayes, on behalf of the Employer, was also given the opportunity to make a closing statement. (R. Vol. 2 p. 85-87). The hearing was then closed.

### **Case Authorities and Argument**

The instant case is also analogous to the misconduct line of cases involving a grossly negligent, or willful and wanton; and substantial or serious disregard of an employee's job duties; and the employer's interest. 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. **Further, in this case, the Employer's standards regarding job performance are reasonably related to the employee's performance of their job, and the Employer's business interest.** See Austin v. Miss. Dept. Emp. Sec., 976 So. 2d 969 (Miss. Ct. App. 2008)(the Court found that there was sufficient evidence to establish misconduct where a security officer left her post unattended twice in one day); 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); Miss. Emp. Sec. Comm'n. v. Lee, 580 So. 2d 1227 (Miss. 1991) (Taking gun to work in violation of Employer's standard of behavior is misconduct); 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); Johnson v. Miss. Emp. Sec. Comm'n., 761 So. 2d 861 (Miss. 2000)(statements made by a LPN towards the daughter of a nursing home patient were reasonably considered by the daughter to be threatening, and thus violated the Employer's reasonable standards of behavior, and thereby constituted misconduct).

In the instant case, Ms. Patterson was in a management position, and should have realized that creating a hostile incident with a business referral company violated the Employer's policy, and

expected standards of behavior, especially from management. While Ms. Patterson denied directly questioning Rides-To-Go about racist conduct, Rides-To-Go obviously, and reasonably, construed her questions to be an accusation of impropriety based on racism. Further, Mr. Coward contradicted Ms. Patterson's denial in a credible fashion. Further, her email to Mr. Coward included an accusation, or report, that Rides-To-Go was acting in a racist manner. Further, Mr. Coward confirmed the accusation through a Rides-To-Go representative, and obtained a written statement to that effect. Additionally, Ms. Patterson stated in her testimony that she did accuse Rides-To-Go of "bribery" for obtaining a referral fee, which certainly was unprofessional and inappropriate. Finally, she appeared to misrepresent her role in the occurrence during the investigation. Thus, based on the foregoing, there is substantial evidence supporting the Board of Review and Circuit Court decisions that Ms. Patterson willfully and wantonly violated the Employer's policies prohibiting unprofessionalism, unethical conduct, and even dishonesty.

## CONCLUSION

In this case, the facts establish that Ms. Patterson committed disqualifying misconduct when she acted rudely, and unprofessional in dealing with a vendor of the Employer. The facts also establish that Ms. Patterson was dishonest and uncooperative during an investigation of the matter.

Ms. Patterson's conduct was correctly found to be "misconduct" within Employment Security Law. Thus, based on the record evidence and case law as set out above, and standard of review on appeal, the decisions of the Board of Review and Circuit Court finding that she committed disqualifying misconduct should be accepted and affirmed.

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  
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Tel. (601) 321-6074

CERTIFICATE OF SERVICE

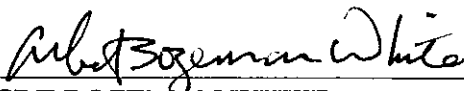
I, Albert Bozeman White, Attorney for Appellee, Mississippi Department of Employment Security, certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing pleading to the following:

Honorable Jim S. Pounds  
Circuit Court Judge, District 1  
Post Office Box 316  
Booneville, MS 38829-0316

Ms. Sonya Patterson, Appellant  
Post Office Box 2656  
Corinth, MS 38835

Direct General Insurance Agency, Employer  
1281 Murfreesboro Pike  
Nashville, TN 37217-2423

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

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