

IN THE COURT OF APPEALS 12/29/95

OF THE

STATE OF MISSISSIPPI

NO. 95-CC-00237 COA

MISSISSIPPI EMPLOYMENT SECURITY COMMISSION

APPELLANT

v.

SUSIE L. THOMPSON

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. HENRY LAFAYETTE LACKEY

COURT FROM WHICH APPEALED: LAFAYETTE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

PATRICK M. TATUM

ATTORNEY FOR APPELLEE:

SUSIE L. THOMPSON

NATURE OF THE CASE: STATE BOARDS AND AGENCIES

TRIAL COURT DISPOSITION: REVERSED JUDGMENT OF THE MESC AND GRANTED
BENEFITS TO CLAIMANT

BEFORE FRAISER, C.J., BARBER, AND McMILLIN, JJ.

FRAISER, C.J., FOR THE COURT:

In April, 1994, Susie L. Thompson, appellee, filed a claim for benefits under the Mississippi Employment Security Law. The Claims Examiner disqualified Thompson under Mississippi Code, section 71-5-315(A)(1)(2), because she left work voluntarily without good cause. Thompson then filed for and received a hearing before the Mississippi Employment Security Commission (MESC) Appeals Referee. The following facts are determinations made by the Referee in June, 1994:

Claimant was employed for approximately 14 years as a cook with Kappa Alpha Theta, University, MS, until her separation on April 12, 1994. At that time she voluntarily left her employment. On the day in question, claimant was assigned to cook french fries for lunch. At around 11:30, claimant informed her supervisor that she was out of french fries. The supervisor then left and went to the store to purchase additional fries. When she returned, she informed the claimant that it was her responsibility to let her know that she did not have enough french fries to prepare a meal. She informed the claimant that she expected her to do that and if she didn't want to do that, she would get someone who is willing to do it. At that point, the claimant resumed her duties. . . . Claimant worked a few minutes then informed a fellow employee that she was leaving. Claimant indicated to the supervisor that she was not coming back.

The Referee denied benefits and rendered the following opinion:

Section 71-5-513 (A)(1)(a) of the Law provides that an individual shall be disqualified for benefits if he left work voluntarily without good cause.

It is the opinion of the Referee that there is no doubt claimant voluntarily left her employment and was not discharged. This is demonstrated by the claimant, after having conversation with the supervisor, resumed her normal duties. It was then the claimant's decision to leave the premises. The issue before the Referee is whether or not she had good cause to leave the job. There has been no evidence presented by the claimant to show that during the course of the reprimand, the employer was out of line in any regard. There is no evidence of inappropriate behavior on the part of the employer during the reprimand.

Thompson appealed to the MESC. The Board of Review of MESC adopted the findings of fact and opinion of the Referee, and affirmed his decision. Thompson appealed to the Lafayette County Circuit Court where her cause was reversed. MESC appealed to this Court.

Thompson failed to submit an appellate brief. In cases where the appellee (Thompson) fails to submit a brief, the case of *Jackson v. Walker* controls. In *Jackson*, the Mississippi Supreme Court stated:

The appellant filed a brief and an assignment of error. No brief was filed by the appellee. The case was submitted without argument.

In *United States F. & G. Co. v. State for Use and Benefit of Tompkins*, 204 So. 2d 852 (Miss. 1967), this Court stated:

The failure to file this brief (by the appellee) is tantamount to a confession of error, and will be accepted as such, and the judgment of the court below will be reversed, since an answer to the appellant's brief cannot be safely made by us, without our doing that which the appellee, by its attorney, should have done, i.e., brief the appellee's side of the case. This we are not called on to do, therefore the case falls within, and is governed by, *W. T. Raleigh Co. v. Armstrong*, 165 Miss. 380, 140 So. 527 (1932). (204 So. 2d at 852-853).

Since the appellant's brief in the case at bar makes out an apparent case of error, we do not regard it our obligation to look to the record to find a way to avoid the force of the appellant's argument.

Jackson v. Walker, 240 So. 2d 606, 606 (Miss. 1970).

Moreover, after perusal of the record, it is apparent that the circuit court erroneously reversed the MESC's decision. The circuit court relied on case law that stated the burden of proving good cause falls on the employer. See *Ferrill v. Mississippi Employment Sec. Comm'n*, 642 So. 2d 933, 936 (Miss. 1994) (holding that burden of proving disqualification is upon employer.). However, the claimant's job separation in *Ferrill* occurred prior to an amendment to section 71-5-513 (A)(1)(c) of the Mississippi Code that specifically places upon the claimant the burden of proof of good cause for leaving work. The circuit court ignored language in *Ferrill* specifically recognizing that applicability of the amendment, "would require a different result in the case sub judice." *Ferrill*, 642 So. 2d at 936 n.1. House Bill 683, enacted and effective February 28, 1994, amended section 71-5-513(A)(1)(c). The resulting amendment to the statute states:

(c) The burden of proof of good cause shown for leaving work shall be on claimant, and the burden of proof of misconduct shall be on the employer.

Miss. Code Ann. § 71-5-513 (A)(1)(c) (Rev. 1995). The amended statute was in effect when Thompson left her place of employment.

We reverse the judgment of the Lafayette County Circuit Court and render the cause.

THE JUDGMENT OF THE LAFAYETTE COUNTY CIRCUIT COURT GRANTING UNEMPLOYMENT BENEFITS TO THOMPSON IS REVERSED AND THE CAUSE RENDERED. COSTS ARE TAXED TO APPELLANT.

**BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN,
PAYNE, AND SOUTHWICK, JJ., CONCUR.**