

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00541 COA**

**MISSISSIPPI EMPLOYMENT SECURITY
COMMISSION AND WILLIAM T. DAVES**

APPELLANTS

v.

YAZOO VALLEY OIL MILL, INC.

APPELLEE

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

DATE OF JUDGMENT:	04/26/96
TRIAL JUDGE:	HON. BETTY W. SANDERS
COURT FROM WHICH APPEALED:	LEFLORE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANTS:	JAN D. GARRICK
ATTORNEY FOR APPELLEE:	HENRY DONALD BROCK, JR.
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES (OTHER THAN WORKER'S COMPENSATION)
TRIAL COURT DISPOSITION:	DENIAL OF UNEMPLOYMENT BENEFITS TO DAVES
DISPOSITION:	REVERSED AND BENEFITS REINSTATED 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE THOMAS, P.J., COLEMAN, AND HINKEBEIN, JJ.

THOMAS, P.J., FOR THE COURT:

William T. Daves filed a claim for unemployment benefits pursuant to the Mississippi Employment Security Law. The claims examiner disqualified Daves for benefits on the ground that Daves left work voluntarily without good cause. Daves appealed, and the appeals referee entered a finding of fact and opinion that Daves left his job voluntarily but with good cause after being physically assaulted by his supervisor at Yazoo Valley Oil Mill, Inc. Yazoo Valley appealed to the Mississippi Employment Security Commission board of review which affirmed the decision of the appeals referee. Yazoo then appealed to the Circuit Court of Leflore County which reversed the board of review's decision. The Commission and Daves appeal to this Court and assert the following issues as

error:

I. WHETHER THE UNPROVOKED PHYSICAL ASSAULT OF AN EMPLOYEE BY HIS SUPERVISOR IS "GOOD CAUSE" FOR THE EMPLOYEE TO LEAVE WORK WITHIN THE MEANING OF MISS. CODE ANN. § 71-5-513(A)(1)(a) ENTITLING THE EMPLOYEE TO UNEMPLOYMENT BENEFITS.

II. WHETHER THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN REVERSING THE DECISION OF THE MISSISSIPPI EMPLOYMENT SECURITY COMMISSION BOARD OF REVIEW AND DENYING UNEMPLOYMENT BENEFITS TO WILLIAM T. DAVES.

Finding error, we reverse the circuit court and reinstate the decision of the board of review.

FACTS

William T. Daves was employed by Yazoo Valley as a laborer. Daves worked in the hull room, and his responsibility was to keep the hull room clean. One afternoon, the conveyer belt in the hull room stopped and seeds spilled onto the floor. Daves was leaving the room to find his supervisor when the company general superintendent, Jim Cobb, came in and found the mess in the hull room. Daves asked questions about how to turn off the machine and alleges that Cobb became irate and grabbed Daves by the arm and put him in a headlock. Daves then stated that Cobb held Daves in the headlock squeezing his head and cursing Daves as he showed Daves how to turn off the machine. Daves testified that he was terrified because he had not been in a situation like that before. Cobb denies putting Daves in a headlock.

Daves did not work the next day; however, he went in to pick up his W-2 form and bring back his coveralls. Daves testified that he did not work because he was afraid of Cobb and because his back was hurting due to shoveling seed and cleaning up the hull room from the day before. Daves received the tenth point on a progressive disciplinary system for his absence, and he was terminated.

The appeals referee found that Daves voluntarily quit his employment after the incident in the hull room but allowed Daves unemployment benefits after finding that he had good cause to leave work. The board of review affirmed the decision of the appeals referee. The Circuit Court of Leflore County accepted the factual findings of the appeals referee but reversed as a matter of law ruling that Daves quit his job during a moment of pique during a brief misunderstanding with Cobb, the superintendent. The circuit court found that the altercation was an isolated incident, and the altercation did not render Daves's work unsuitable.

ANALYSIS

I.

WHETHER THE UNPROVOKED PHYSICAL ASSAULT OF AN EMPLOYEE BY HIS SUPERVISOR IS "GOOD CAUSE" FOR THE EMPLOYEE TO LEAVE WORK WITHIN THE MEANING OF MISS. CODE ANN. § 71-5-513(A)(1)(a) ENTITLING THE EMPLOYEE

TO UNEMPLOYMENT BENEFITS.

II.

WHETHER THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN REVERSING THE DECISION OF THE MISSISSIPPI EMPLOYMENT SECURITY COMMISSION BOARD OF REVIEW AND DENYING UNEMPLOYMENT BENEFITS TO WILLIAM T. DAVES.

The Commission and Daves contend that an employee who was held in a headlock by his supervisor causing the employee to become terrified had "good cause" within the meaning of Miss. Code Ann. § 71-5-513 (Rev. 1995) to leave his employment. The Commission and Daves also contend that the circuit court erred in denying Daves unemployment benefits after finding that the unprovoked assault upon him was an isolated incident during a moment of pique arising out of a brief misunderstanding with the supervisor. Yazoo Valley asserts that Daves did not timely file his appeal from the claims examiner to the appeals referee, and therefore Daves is barred. Alternatively, Yazoo Valley contends that Daves voluntarily left work without good cause; and therefore, he is disqualified from receiving employment benefits. Yazoo Valley argues that the altercation that led to Daves's separation from employment was an isolated incident and did not render Daves's work unsuitable pursuant to prevailing Mississippi jurisprudence.

Daves filed his notice of appeal with the appeals referee three days beyond the fourteen day deadline in accordance with Miss. Code Ann. § 71-5-517 (Rev. 1995). The appeals referee held a hearing to determine if Daves had good cause for the late filing. At the hearing, Lemman Gandy, attorney for Daves, testified that the reason for the late filing was due to Gandy having oral surgery, having other court dates, and having moved offices during the period of time. The appeals referee thereafter found Daves's appeal to be timely filed.

In *Cane v. Mississippi Employment Sec. Comm'n*, 368 So. 2d 1263, 1264 (Miss. 1979), the claimant sent a change of address form to the Commission after he moved. Thereafter, his disqualification for benefits was mailed to his previous address. *Id.* Cane appealed the disqualification, and the appeals referee and the circuit court found the appeal to be untimely. *Id.* The supreme court reversed the board's decision, stating that "it would be unfair to penalize Cane because of a mistake not of his own making." *Id.*

Yazoo Valley contends that the case of *Wilkerson v. Mississippi Employment Sec. Comm'n*, 630 So. 2d 1000 (Miss. 1994), controls to bar Daves. In *Wilkerson*, the court was faced with the question of whether the Commission could extend the statutory time limits for appeals, absent a showing of some event not caused by a party affecting that party's substantial rights. *Wilkerson*, 630 So. 2d at 1001. The board of review was allowing an unwritten practice of granting an extension of filing time of three days to the appeal referees. The court held that the Commission did not have the power to arbitrarily or capriciously add three days to the time for appeals. *Id.* at 1002. "Since the statute 'is clear and unambiguous, no room exists for judicial construction, and the courts are obligated to apply the clear meaning of the statute.'" *Id.* (quoting *Bronner v. Gatewood*, 512 So. 2d 102, 105-06 (Ala. Civ. App. 1986)). While coming to its decision, the *Wilkerson* court noted that

"[w]e have no quarrel, either, with a relaxation of the standard for 'good cause' as exemplified in *Cane*." *Wilkerson*, 630 So. 2d at 1002.

In coming to its decision on the matter of timeliness, the appeals referee stated:

The issue presented in this case is whether or not the appeal was timely filed to the Referee. Based upon the documents of the claimant's file, claimant's testimony, and other evidence, the Referee is of the opinion that the appeal was timely filed.

In this decision, the appeals referee was inferring that good cause was shown by Daves; and therefore, the appeal was timely filed. We agree with the appeals referee that Daves proved good cause for the delay in appealing his cause from the claims examiner to the appeals referee. We must now decide whether Daves voluntarily left work without good cause.

"The underlying purpose of implementing employment security law in Mississippi is to protect those workers not permitted to continue employment through no fault of their own." *Allen v. Mississippi Employment Sec. Comm'n*, 639 So. 2d 904, 906 (Miss. 1994). "Miss. Code Ann. § 71-5-513(A)(1) (a) provides that an employee is disqualified for benefits if the employee left work voluntarily without good cause." *Hoerner Boxes, Inc. v. Mississippi Employment Sec. Comm'n*, 693 So. 2d 1343, 1346 (Miss. 1997). The standard of review for appealing the board of review decision to the circuit court and the Mississippi Supreme Court is governed by **Miss. Code Ann. § 71-5-531 (Rev. 1995)**, which provides, in pertinent part:

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

See also Hoerner Boxes, Inc. v. Mississippi Employment Sec. Comm'n, 693 So. 2d 1343, 1346 (Miss. 1997); *Mississippi Employment Sec. Comm'n v. Percy*, 641 So. 2d 1172, 1174 (Miss. 1994). The board of review must be affirmed absent substantial evidence to support its factual findings or misapplication of the law. A rebuttable presumption exists in favor of the board of review's decision and the challenging party has the burden of proving otherwise. *Allen*, 639 So. 2d at 906. Further, the appellate court must not insert its judgment for that of the board of review nor reweigh the facts of the case. *Id.*

Yazoo Valley argues that the "moment of pique" doctrine of *Mississippi Employment Sec. Comm'n v. Rakestraw*, 254 Miss. 56, 179 So. 2d 830 (1965), controls the case *sub judice*. In *Rakestraw*, the supreme court, without elaborating on the facts of the case, held that the claimant was denied benefits because she "quit her job during a moment of pique during a brief misunderstanding with the plant manager." *Id.* at 61, 179 So. 2d at 831. We are unable to conclude that Daves lost his job due to a moment of pique during a brief misunderstanding. Daves was placed in a headlock and cursed by Cobb, one of his supervisors. This was no misunderstanding. This was terrifying to Daves as his testimony indicates. Daves was afraid to return to work due to his fear of Cobb. This finding by the Commission was well within its authority. Therefore, we reverse the circuit court and reinstate the decision of the appeals referee and the board of review.

THE JUDGMENT OF THE LEFLORE COUNTY CIRCUIT COURT IS REVERSED AND

THE JUDGMENT OF THE MISSISSIPPI EMPLOYMENT SECURITY COMMISSION BOARD OF REVIEW IS REINSTATED. ALL COSTS ARE ASSESSED AGAINST THE APPELLEE.

BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.