

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CC-00303 COA**

JOSEPH L. OWENS

APPELLANT

v.

**MISSISSIPPI EMPLOYMENT SECURITY
COMMISSION AND INGALLS SHIPBUILDING,
INC.**

APPELLEES

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

DATE OF JUDGMENT:	01/31/96
TRIAL JUDGE:	HON. WILLIAM B. JONES
COURT FROM WHICH APPEALED:	JACKSON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	PRO SE
ATTORNEY FOR APPELLEES:	ALBERT B. WHITE
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES (OTHER THAN WORKERS' COMPENSATION)
TRIAL COURT DISPOSITION:	AFFIRMED DECISION OF THE MISSISSIPPI EMPLOYMENT SECURITY COMMISSION TO DENY UNEMPLOYMENT BENEFITS
DISPOSITION:	AFFIRMED - 1/27/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/27/98

BEFORE McMILLIN, P.J., KING, AND PAYNE, JJ.

McMILLIN, P.J., FOR THE COURT:

Joseph L. Owens has filed a pro se appeal from his denial of unemployment compensation benefits after he was terminated as a welder at Ingalls Shipbuilding, Inc. Viewing Owens's brief in its most favorable light, we conclude that he is arguing that his behavior leading to his involuntary termination did not rise to the level of disqualifying "misconduct" within the meaning of section 71-5-513(A)(1) (b) of the Mississippi Code of 1972. We disagree with that proposition and affirm Owens's disqualification.

History

We accept, for purposes of our review, the findings of fact as initially made by the Appeals Referee and later adopted by the Board of Review of the Mississippi Employment Security Commission. There can be no dispute on this score because the referee appears to have drawn his facts exclusively from Owens's own version of events. They are, in several particulars, substantially at odds with the statements of other witnesses presented in written form at the hearing -- statements which are even less favorable to Owens's contentions than his own version of the episode.

Owens was approached while at his work station by the welding foreman. The foreman's purpose was to issue to Owens a written warning of unsatisfactory work performance and failure to follow instructions. This was an authorized personnel action under existing written company policies. Owens, apparently unhappy with the manner in which the foreman was carrying out this duty, attempted to strike the foreman in the head with his fist; however, the foreman ducked and avoided the blow. The foreman immediately retreated from the scene, but Owens, still agitated, attempted to follow him and stopped only when he felt his blood pressure rising to a dangerous level. Owens then returned to his work station, but shortly thereafter, a security guard arrived and escorted Owens off the business premises. Owens was terminated from employment for this behavior.

Owens applied for unemployment benefits. Benefits were denied on a finding that the circumstances of his termination constituted disqualifying "misconduct" under the applicable statute. Owens appealed the administrative decision to the Circuit Court of Jackson County but was unsuccessful. He then perfected his appeal to this Court.

Discussion

In *Wheeler v. Arriola*, the Mississippi Supreme Court said 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 employee." ***Wheeler v. Arriola*, 408 So. 2d 1381, 1383 (Miss. 1982).**

This Court gives substantial deference to the agency's findings and determinations in matters such as this. ***Westbrook v Greenville Council on Aging*, 599 So. 2d 948, 949 (Miss. 1992).** It is not our function to substitute our judgment for that exercised by the Board of Review absent a finding that the decision is not supported by substantial evidence or that an incorrect legal standard was applied. ***Id.***

We find neither of these considerations to have any application in this case. This Court has little difficulty in concluding that an employee's attempt to inflict physical harm on a supervisor, especially when the incident occurs while the supervisor is attempting to carry out his required duties, is an egregious breach of the reasonable standard of conduct an employer is entitled to expect from its employees.

Owens, in an apparent attempt to downplay the seriousness of the incident, seeks to make an issue of the fact that he missed the foreman when he swung at him. Nevertheless, he freely admits that he intended to strike him. We are satisfied beyond doubt that Owens's failure to accomplish his intended

purpose of inflicting physical injury, despite his best effort to do so, does not render his conduct less blameworthy.

Though Owens does not cite the case in his brief, we note that in *Mississippi Employment Security Commission v. McLane-Southern, Inc.* the supreme court held that one isolated event involving an altercation between two employees did not, standing alone, constitute the kind of wilful misconduct that would disqualify a claimant from unemployment benefits. *Mississippi Employment Sec. Comm'n v. McLane-Southern, Inc.*, 583 So.2d 626, 628-29 (Miss. 1991). We conclude that the circumstances in this case are substantially different from the *McLane-Southern* case. An unprovoked physical assault on a supervisor in the course of carrying out his duties is a substantially graver violation of the duty an employee owes his employer than is involvement in an altercation with a fellow employee. We, therefore, conclude that the principles announced in *McLane-Southern* do not bind the Court to a similar result in this case. The judgment of the circuit court must be affirmed.

THE JUDGMENT OF THE CIRCUIT COURT OF JACKSON COUNTY IS AFFIRMED.

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