
CASE NO. 2017-WC-01016-COA

BEFORE THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CRAIG ALLEN STEVENSON,

APPELLANT

v.

GE HEALTHCARE,

APPELLEE

and

ELECTRIC INSURANCE COMPANY,

APPELLEE

**ON APPEAL FROM THE ORDER OF THE MISSISSIPPI
WORKERS' COMPENSATION COMMISSION OF JUNE 20, 2017**

BRIEF FOR THE APPELLEES

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CERTIFICATE OF INTERESTED PERSONS

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 Honorable Judges of Court of Appeals of the State of Mississippi may evaluate possible disqualifications or recusal.

1. Craig Allen Stevenson, Appellant
2. GE Healthcare, Appellee
3. Electric Insurance Company, Appellee
4. Betty B. Arinder, Esquire, Counsel for Appellees
5. Jay Foster, Esquire, Counsel for Appellant

This the 12th day of September, 2017.


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STATEMENT OF THE ISSUES

1. Whether the Full Mississippi Workers' Compensation Commission was correct in upholding the Order of the Administrative Judge denying the Appellant's Motion to Reinstate Workers' Compensation Claim and in finding that the claim was barred by the one-year statute of limitations pursuant to MISS. CODE ANN. § 71-3-53 (Rev. 1990) and whether Appellant can show excusable neglect in failing to timely appeal the dismissal of his claim by simply relying on his previous lawyer's alleged representations.
2. Whether even if this Court of Appeals of the State of Mississippi does not uphold the Order of the Full Mississippi Workers' Compensation Commission affirming the Order of the Administrative Judge, and/or whether this Honorable Court finds that the Appellant can show excusable neglect in relying on his previous lawyer's alleged representations, the claim is barred by the two-year statute of limitations per MISS. CODE ANN. § 71-3-35 (Rev.1990).

STATEMENT OF THE CASE

The Appellant filed a Petition to Controvert in this matter on November 13, 2012, alleging an injury in the course and scope of his employment as a technician on October 25, 2008. The Appellant alleged that he was driving in his employer's vehicle to pick up a package when he was involved in a motor vehicle accident in which he sustained an injury to his right lower extremity and right hip. The Appellees filed their Answer on December 5, 2012, denying that a work-related injury occurred as the Appellant was not performing his employer's business at the time of the motor vehicle accident, but was rather running a personal errand. In their affirmative defenses filed with their Answer, the Appellees asserted that the two-year statute of limitations had run, and thus, that the claim was time-barred, as it was well over two years after the injury that the Appellant filed his Petition to Controvert. The Mississippi Workers' Compensation Commission (hereinafter referred to as "the Commission") does not have any record of the Appellant filing a Petition to Controvert before November 13, 2012, over four years after the Appellant's alleged work-related injury. The Appellees denied the claim, and as such, no indemnity or medical benefits were paid by the Appellees to or on behalf of the Appellant.

At the time that the Appellees filed their Answer, they also propounded written discovery on the Appellant. The Appellant never responded to the written discovery requests. The Appellant took no action whatsoever to prosecute his claim after the Appellees filed their Answer. The last discovery period in this claim expired on October 17, 2014, and it was indicated in the Notice of Expiration from the Commission that the Appellant's prehearing statement would be due on or before November 1, 2014. The Appellant did not file a timely prehearing statement. Further, the Appellant failed to respond to status inquiries from the Commission on November 3, 2014, and on

December 2, 2014. As a result of that failure, the claim was dismissed for failure to respond to status inquiries, and Administrative Judge Linda Thompson issued an Order Dismissing Claim for Failure to Respond to Status Request on January 8, 2015.

The Appellant attempted to file a prehearing statement in this claim on or about February 12, 2015, over three months after it was due. But, the Commission rejected the prehearing statement, first because it was deemed incomplete, and second, because the claim had already been dismissed on January 8, 2015. The Commission forwarded correspondence to the Appellant on February 18, 2015, indicating that the prehearing statement was incomplete and providing information regarding the reasons for same. The correspondence included a note at the bottom stating "this case has been dismissed. A motion to reinstate case will need to be filed."

The Appellant filed his Motion to Reinstate Workers' Compensation Claim via electronic filing on August 18, 2016, a year and a half after the Notice was received from the Commission indicating that the Appellant's prehearing statement had been rejected and that a motion to reinstate was required. The Appellees electronically filed their Response to the Appellant's Motion to Reinstate on August 29, 2016, requesting that reinstatement be denied. The Appellant then electronically filed a Rebuttal to that Response on September 12, 2016, including a copy of a Petition to Controvert showing an alleged filing date of September 20, 2010, with a signature from an attorney other than the Appellant's current attorney. The Appellees electronically filed a Response to the Appellant's Rebuttal on September 14, 2016, indicating there was no proof on record at the Commission of a Petition to Controvert being filed in September 2010, or anytime before the Petition to Controvert that was filed on November 13, 2012. The Appellees argued in both their Response to the Appellant's Motion, as well as their Response to the Appellant's Rebuttal, that the

one-year statute of limitations had run and that the claim was barred as one year passed after the final Order dismissing the claim with no action taken by the Appellant. The Appellees further argued that the claim was also barred by the two-year statute of limitations since the Appellant waited over four years from the date of his injury to file a Petition to Controvert. During that four years, the claim had been denied by the Appellees, and no benefits had been paid to the Appellant, or on his behalf, in that time that would have tolled the two-year statute of limitations.

The Appellant's Motion to Reinstate was heard on October 11, 2016, and the Administrative Judge presiding at that time ruled that the claim had been dismissed by the previous Administrative Judge on January 8, 2015, and that the Appellant failed to timely appeal same within the required twenty days. The Administrative Judge ruled that the Order dismissing the claim thus became final on January 28, 2015, and the Appellant failed to file a motion to reinstate within a year of the Order becoming final, as well as failed to take any other action to toll the one-year statute of limitations, which effectively ran on January 28, 2016. The Administrative Judge ruled that procedural dismissals which become final orders are sufficient to trigger the one-year statute of limitations pursuant to MISS. CODE. ANN. § 71-3-53 (Rev. 1990), and as such, a claim may become barred one year from the date of such an Order. Therefore, the Administrative Judge issued an Order denying the Appellant's Motion to Reinstate on January 30, 2017.

The Appellant appealed the Administrative Judge's Order to the Full Commission via his Petition for Review and Appeal filed on April 7, 2017, wherein he requested that the Full Commission overturn the Administrative Judge's Order denying his Motion to Reinstate. The Full Commission adopted and affirmed the Administrative Judge's Order of January 30, 2017, denying the Appellant's Motion to Reinstate by way of the Full Commission Order dated June 20, 2017. The

Appellant filed his Notice of Appeal before the Supreme Court of Mississippi/Court of Appeals of Mississippi on July 17, 2017, and the issue of the Administrative Judge's Order of January 30, 2017, is now before this Honorable Court of Appeals of the State of Mississippi. The Appellant attempts to argue that he should be excused from his undisputed failure to timely respond to status inquiries from the Commission, his undisputed failure to appeal the dismissal of his claim and his undisputed failure to attempt reinstatement of his claim before the one-year statute of limitations ran because of his reliance on his previous attorney's alleged representations for which he has submitted no proof to the Administrative Judge, the Full Commission or this Honorable Court.

The Full Commission's Order of June 20, 2017, affirming and adopting the Administrative Judge's Order of January 30, 2017, denying the Appellant's Motion to Reinstate was proper under the law and should stand on appeal to this Honorable Court.

ARGUMENT

I. STANDARD OF REVIEW

It is well settled under Mississippi law that the Mississippi Workers' Compensation Commission is the ultimate trier of fact in workers' compensation cases. *Tyson Foods, Inc. v. Thompson*, 765 So. 2d 589, (¶10) (Miss. Ct. App. 2000) (citing *Pilate v. International Plastics Corp.*, 727 So. 2d 771, (¶12) (Miss. Ct. App. 1999)). See also *Harper v. N. Miss. Medical Ctr.*, 601 So. 2d 395 (Miss. 1982); *Day-Brite Lighting Div., Emerson Elec. Co. v. Cummings*, 419 So. 2d 211 (Miss. 1982). "[T]he Commission may accept or reject an administrative judge's findings" in its discretion. *Hardin's Bakeries v. Dependent of Harrell*, 566 So. 2d 1261, 1264 (Miss. 1990). The findings of the Commission are binding on the appellate courts as long as they are supported by substantial evidence. *Vance v. Twin Rivers Homes, Inc. and Travelers Ins. Co.*, 641 So. 2d 1176, 1180 (Miss. 1994).

As to cases where there is a question concerning statute of limitations, the Court of Appeals of Mississippi and the Supreme Court of Mississippi have held that the Commission has continuing jurisdiction to reopen a case if required, and that a decision by the Commission concerning same will not be overturned unless the Administrative Judge and the Commission abused their discretion. *J.R. Logging v. Halford*, 765 So. 2d 580, (¶ 19) (Miss. Ct. App. 2000); *Bennett v. United Parcel Service*, 382 So. 2d 469, 472 (Miss. 1980).

The Full Commission's Order upholding the Administrative Judge's ruling in this case is fully supported by substantial evidence. The denial of the Appellant's Motion to Reinstate should stand because the one-year statute of limitations ran pursuant to MISS. CODE ANN. § 71-3-53 (Rev. 1990), and the decision to deny reinstatement of the claim was fully supported by the facts and was

not an abuse of the Commission's discretion. The Full Commission was correct in upholding the Administrative Judge's denial of the reinstatement of this claim as the Appellant very clearly, and without dispute, failed to respond to at least two status inquiries from the previous Administrative Judge, which led to the rightful dismissal of this claim, after which more than one year passed after the Order of dismissal became final without any action from the Appellant. As such, the Full Commission's Order should stand. The substantial evidence in this case supports the decision of the Full Commission, and thus, this Court should affirm the Full Commission's Order of June 20, 2017.

II. THE FULL MISSISSIPPI WORKERS' COMPENSATION COMMISSION WAS CORRECT IN UPHOLDING THE ORDER OF THE ADMINISTRATIVE JUDGE DENYING THE APPELLANT'S MOTION TO REINSTATE WORKERS' COMPENSATION CLAIM AND IN FINDING THAT THE CLAIM WAS BARRED BY THE ONE-YEAR STATUTE OF LIMITATIONS PURSUANT TO MISS. CODE ANN. § 71-3-53 (REV. 1990) AND APPELLANT CANNOT SHOW EXCUSABLE NEGLIGENCE IN FAILING TO TIMELY APPEAL THE DISMISSAL OF HIS CLAIM BY SIMPLY RELYING ON HIS PREVIOUS LAWYER'S ALLEGED REPRESENTATIONS.

The Full Commission was correct in upholding the Administrative Judge's denial of the Appellant's Motion to Reinstate because the one-year statute of limitations ran after the Order of dismissal of January 8, 2015, became final on January 28, 2015, without a timely appeal, or any appeal, by the Appellant. The Full Commission fully affirmed and adopted the Administrative Judge's Order denying the Appellant's Motion to Reinstate, in which the Administrative Judge correctly noted that the Appellees denied the Appellant's claim of a work-related injury on October 25, 2008, after which the claim was dismissed on January 8, 2015, for failure to respond to a status request. In fact, the Appellant failed to conduct any discovery in his claim, and he failed to respond to no less than two status inquiries from the Commission to determine the status of the claim. Essentially, the Appellant took no action to prosecute his claim between the filing of his Petition to

Controvert and the dismissal of his claim. The Appellant attempted to file a prehearing statement in February 2015, but same was rejected by the Commission because it was deemed incomplete and because the claim had already been dismissed a month prior. The Commission was clear that the Appellant must file a motion to reinstate the claim before the Commission could consider reopening the claim, yet the Appellant did not file a Motion to Reinstate until August 18, 2016, a year and a half after the Commission provided such notice.

The Appellant's sole argument in his brief before this Honorable Court is that his prior attorneys are allegedly at fault for the dismissal of his claim and that therefore, he should not be held responsible for the dismissal of the claim, his failure to appeal that dismissal timely or his failure to seek timely reinstatement of his claim. In his Petition for Review and Appeal before the Full Commission, filed on April 7, 2017, and in his Brief before this Honorable Court, the Appellant states that his first lawyer passed away and that his second lawyer told him incorrect information about his claim. Despite resting his entire argument on this accusation, the Appellant provides no proof of the allegations concerning his second lawyer, and he has offered nothing in support of these accusations. Regardless, despite his arguments to the contrary, the actions or non-actions of his previous attorneys do not excuse the Appellant's failure to prosecute his claim, his failure to respond to the Commission's status requests, his failure to make a timely appeal from the dismissal of his claim or his failure to move to reinstate his claim within the one-year statute of limitations.

The Supreme Court of Mississippi has held that if a party wishes to defeat an argument that he failed to meet a required deadline or take a necessary action in his case, that party must show there was "excusable neglect" for missing such deadlines or failing to take such actions. *Nunnery v. Nunnery*, 195 So. 3d 747, 752 (Miss. 2016). The test for excusable neglect is a four-prong test: (1)

was there danger of prejudice to the opposing party? (2) was there a lengthy delay and an impact on judicial proceedings?, (3) was the reason for the delay sufficient?, and (4) did the party who is alleging excusable neglect act in good faith? *Id.* Notably, the Appellant acknowledges this four-pronged test for finding excusable neglect in his Brief before this Honorable Court and cites the United States Supreme Court case of *Pioneer Investment Services Co v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993), in support of same. However, while the Appellees agree that the four-pronged test of excusable neglect is the correct test in determining whether a party's untimeliness in filing documents, etc., should be excused, the Appellant failed to mention in his Brief that the United States Supreme Court in the *Pioneer* case went on to make findings inconsistent with what the Appellant is trying to argue here.

In the *Pioneer* case, the United States Supreme Court held the following:

There is one aspect of the Court of Appeals' analysis, however, with which we disagree. The Court of Appeals suggested that it would be inappropriate to penalize respondents for the omissions of their attorney, reasoning that 'the ultimate responsibility of filing the . . . proof[s] of clai[m] rested with [respondents'] counsel.' The court also appeared to focus its analysis on policing the conduct of their attorney, rather than on whether their attorney, as respondents' agent, did all he reasonably could to comply with the court-ordered bar date. In this, the court erred.

In other contexts, we have held that clients must be held accountable for the acts and omissions of their attorneys. In *Link v. Wabash R. Co.*, 370 U.S. 626[, 633] (1962), we held that a client may be made to suffer the consequence of dismissal of its lawsuit because of its attorney's failure to attend a scheduled pretrial conference. In so concluding, we found 'no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client.' To the contrary, the Court wrote: 'Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent.' Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.' *Id.* at 633-634 [] (quoting *Smith v. Ayer*, 101 U.S. 320, 326 [] (1880).

Pioneer, 507 U.S. at 396-97. The U.S. Supreme Court in the Appellant's cited *Pioneer* case also went on to find that the above principle "applies with equal force here and requires that respondents be held accountable for the acts and omissions of their chosen counsel. Consequently, in determining whether respondents' failure to file their proofs of claim prior to the bar date was excusable, the proper focus is upon whether the neglect of respondents *and their counsel* was excusable." *Id.* at 397 (Emphasis added by Court).

In addition to the U.S. Supreme Court finding in the *Pioneer* case that a party would and should certainly be held accountable for the acts or omissions of his attorney, the Court also found that it gave little weight to the struggles or problems of the respondents' counsel as a determining factor. *Id.* at 398. The Court did find that the respondents in the *Pioneer* case were excused in their failure to timely file the necessary documents, but for reasons other than their reliance on the actions of their attorney. *Id.* It would appear, therefore, that the Appellant's use of this case in his argument was to his own peril as the *Pioneer* case does not in any way support the Appellant's argument that his inactions in his workers' compensation claim should be excused solely because of the acts or omissions of his previous attorney. Rather, it supports the Appellees' position that the Appellant is responsible for his own claim, despite any actions or inactions on the part of his previous attorney.

In looking at a more local view of the four-pronged test for excusable neglect, the Appellees cited the *Nunnery* case in their Brief before the Full Commission, and have cited same in their Brief before this Honorable Court as ruling law in Mississippi concerning the issue of a party's excusable neglect for failing to meet court deadlines. In the *Nunnery* case, the attorney for the defendants suffered a family tragedy, and as a result, he missed a deadline for filing the defendants' notice of appeal. The defendants' motion to request an extension of time to file the notice of appeal was

denied by the chancellor after the chancellor held that “the circumstances surrounding [the defense attorney’s personal family tragedy], while terrible, did not rise to the level of ‘excusable neglect’”. *Id.* at 751. The chancellor went on to state that while she was sympathetic with the defendants’ circumstances, she was also sympathetic to the opposing party whose case was prolonged because of the delays for several years. *Id.* at 750. The defendants appealed the chancellor’s order, but this Honorable Court affirmed the decision of the chancellor and held that the defendants had failed to demonstrate excusable neglect, in agreement with the chancellor. *Id.* at 751.

The Supreme Court of Mississippi granted certiorari in the *Nunnery* case to address whether the chancellor erred in her decision that the defendants failed to show excusable neglect for missing their appeal deadline and in denying their motion for extension of time for same. *Id.* The standard used by the Supreme Court of Mississippi was whether the chancellor abused her discretion in making her ruling and whether there was substantial evidence to support her factual determinations. *Id.* See also *Long v. Mem’l Hospital at Gulfport*, 969 So. 2d 35, 38 (Miss. 2007). After a review and analysis of the four-pronged test to prove excusable neglect, the Supreme Court affirmed the decision of the chancellor and found that there was no abuse of discretion, no error of law and that the test for excusable neglect was not met by the defendants, despite the defense attorney’s actions or inactions, and despite his hardships. *Id.* at 753-54.

The same excusable neglect test was used in another Mississippi case, *Maxwell v. Baptist Memorial Hospital-DeSoto, Inc.*, 15 So. 3d 427, (¶ 18) (Miss. Ct. App. 2008). In that case, the plaintiffs failed to timely serve affidavits in opposition to a motion by the defendant. This Honorable Court held that it must be determined whether the plaintiffs’ failure to act timely met the test for excusable neglect. *Id.* In that case, the attorney for the plaintiffs provided an excuse of what

amounted to a busy trial calendar, and the Court found that this did not meet the test for excusable neglect. *Id.* at (¶ 19). As such, this Honorable Court held that the trial court acted properly in striking the untimely affidavits and that there was no abuse of discretion. *Id.* This Honorable Court held that “[o]ur trial judges also have a right to expect compliance with their orders, and when parties and/or attorneys fail to adhere to the provisions of these orders, they should be prepared to do so at their own peril.” *Id.* See *Kilpatrick v. Miss. Baptist Medical Center*, 461 So. 2d 765, 767-68 (Miss. 1984) (holding that the trial court did not abuse its discretion in dismissing a case due to failure to comply with timely designation of expert witnesses). In *Montgomery v. Glaxosmithkline Corp.*, 2004 WL 5604390 (2004), the Circuit Court of Lee County, Mississippi held that good cause for failing to timely serve process on a defendant was not satisfied by a showing of “simple inadvertence or mistake of counsel or ignorance of the rules.”

The only Mississippi case cited by the Appellant in his Brief before this Honorable Court regarding the test of excusable neglect was *Van Meter v. Alford*, 774 So. 2d 430 (Miss. 2000), which is a case that was decided well before the more recent cases relied on by the Appellees. The Appellant argues that the *Alford* case is helpful to his position as the Supreme Court of Mississippi in that case held that the plaintiff in *Alford* was deprived of due process because the circuit court did not send a notice of the plaintiff’s appeal deficiencies directly to the plaintiff. However, a closer look at the *Alford* case shows that the plaintiff’s appeal had already been perfected to the circuit court because the plaintiff had already filed a timely notice of appeal. *Id.* at 432. The Court in *Alford* held that:

Even though Van Meter did not receive **actual** notice from the court clerk, Alford’s motion to dismiss provided **constructive** notice that his appeal was subject to dismissal. The administration of justice was hindered when Van Meter, who was

under a duty to insure that proper appellate procedure was complied with, sat back and waited for the court to give him actual notice of something of which he already had constructive notice and something he had a duty to know. Alford has a right to a speedy disposition of this case.

Id. at 432-33. (Emphasis added by the Court). The Appellant's reliance on this case is unclear because, unlike in the *Alford* case, the Appellant's appeal from the dismissal of his workers' compensation claim was never attempted, let alone perfected, in this case. The decision in favor of the plaintiff in *Alford* was based on the question of the harshness of sanctions for the plaintiff's failure to timely remedy the deficiencies in his already perfected appeal from county court to circuit court. *Id.* at 433. In the Appellant's case, there was no perfected appeal from the dismissal of his claim by the Administrative Judge. The *Alford* Court does not therefore apply to the instant case with regard to the Appellant's allegations of deprivation of due process as the *Alford* Court was concerned with corrections to deficiencies in the plaintiff's appeal, not the timeliness of the appeal itself. *Id.* For purposes of the correction of deficiencies of an appeal that had already been perfected, the *Alford* Court did hold that dismissal of the appeal was too harsh a sanction. *Id.* at 433. However, that is not relevant to the instant matter as the Appellant did not perfect an appeal in his claim before the one-year statute of limitations ran.

More pertinent to the instant matter is that, unlike the plaintiff in *Alford*, the Appellant did have notice from the Commission about status inquiries and deadlines for responses to same, and he did have notice from the Commission that his prehearing statement (filed three months too late) was not complete. He further had notice from the Commission that his claim had been dismissed pursuant to the Order from the Administrative Judge on January 8, 2015. The Order was clear that the Appellant had twenty days to file a written request for review of the dismissal (by January 28,

2015), and that the Order would be considered final if said review was not pursued timely. (*See* Order in Appellant's Excerpts attached to his Brief of Appellant). The Appellant never filed a written request for review within the twenty days, despite the Commission's Order regarding same. The Appellant further never made any effort whatsoever to attempt reinstatement of his claim within one year after January 28, 2015, and in fact did not do so until August 18, 2016, one year and eight months after the dismissal of his claim. By January 28, 2016, the one-year statute of limitations had already run as per the Administrative Judge's Order of January 8, 2015, in which it was stated that the final Order of dismissal is considered the "rejection of a claim' sufficient to trigger the one-year statute of limitations set forth in MISS. CODE ANN. § 71-3-53 (Rev. 2000)." (*See* Order in Appellant's Excerpts attached to his Brief of Appellant).

Not only did the Appellant fail to make a timely appeal (request for review) of the Order of dismissal of his claim within twenty days, but he already had a pattern of failing to timely respond to status inquiries from the Commission (or not at all), failing to timely file a prehearing statement per the Commission's deadline for same, failing to correct his insufficient prehearing statement (that was filed three months late) as requested by the Commission, as well as failing to respond to the Appellees' discovery propounded to him. And, the Appellant failed to file a motion to reinstate his claim in a timely manner before the running of the one-year statute of limitations, despite clear notice from the Commission that he must do so in the Order of dismissal from the Administrative Judge. Thus, this case is not like the *Alford* case in that here, not only was there no perfected appeal by the Appellant, but the Appellant's failure to make timely responses and filings in his claim was repetitive, and his failure to seek an appeal of the dismissal of his claim or reinstatement of his claim was over a year and a half, not a matter of days as in the *Alford* case. And, as shown by the case law

above, the Appellant is responsible for these failures whether they were his previous attorney's failures or his own.

The case law cited herein, much of which was decided by this Honorable Court, is overwhelmingly clear that the test of excusable neglect for a party's failure to comply with an order, file a timely document or a timely appeal, or serve a pleading timely is a very difficult test to pass. Even where there was a personal tragedy suffered by an attorney, which caused a failure to file a timely appeal, the Court did not find that the test of excusable neglect was met due to the prejudice to the opposing party and the delay caused by same. In this case, the Appellant's failure to appeal the Order of dismissal of his claim within twenty days, and his failure to seek reinstatement of his claim within one year from the final Order of dismissal, does not rise to excusable neglect. He cannot simply excuse his failures by blaming them on his previous attorney, especially where it took him over a year to take any action to reinstate his claim. The Appellees were prejudiced by the Appellant's failure to prosecute his claim and his failure to respond to status inquiries after filing his Petition to Controvert, as no medical or other information was provided by the Appellant to the Appellees about his claim, and significant time passed with no action by the Appellant whatsoever.

Further, the Appellant's failure to participate in discovery, his failure to respond to status inquiries from the Commission and his failure to timely appeal the dismissal of his claim, and to timely request reinstatement from that dismissal, caused a significant and unwarranted delay in the litigation of the claim. And, according to the Court's findings in the *Alford* case, the courts must balance a party's failure to timely take action and the reasons for same with the prejudice that further delay caused the opposing party. *Alford*, 774 So. 2d at 433. Here, the delay was not just a matter of days, as in the *Alford* case. Rather, it was over a year and a half, which created prejudice to the

Appellees for a number of reasons, not the least of which is spoliation of evidence and unavailability of witnesses.

Based on the case law governing this issue, the lengthy delay was not excusable simply because the Appellant's previous attorney allegedly told him incorrect information about the claim, especially where the Appellant has offered no proof of such a conversation with his previous attorney. Even if the Appellant could prove such an accusation against his previous attorney, the case law herein supports that the Appellant's failure to secure a timely appeal and reinstatement of his claim is ultimately his own responsibility, and thus the denial of his Motion to Reinstate should stand.

Although the only issue on appeal cited by the Appellant is the actions, or inactions, of his previous attorney and the effect of same on his claim, the Appellees would offer the following analysis of the one-year statute of limitations under Mississippi workers' compensation law as they are arguing that the one-year statute of limitations effectively ran in this case on January 28, 2016.

MISS. CODE ANN. § 71-3-3-53 (Rev. 1990) governs the continuing jurisdiction of the Commission and sets forth the one-year statute of limitations under workers' compensation law. The one-year statute of limitations will begin running when a claim is dismissed/rejected by the Commission and there is no appeal taken from the order of dismissal/rejection within twenty days from the date of said order. *Id.* If no appeal is sought within that twenty-day period, the order becomes final. If no further action is taken by the Appellant before one year passes after the date of the final order, the claim will be barred by the one-year statute of limitations, and a motion to reinstate cannot then be considered. *See Cook v. Home Depot*, 81 So. 3d 1041, 1046 (Miss. 2012).

In this case, as has been previously noted, the Order of dismissal from the previous Administrative Judge was dated January 8, 2015. Thus, the Appellant had until January 28, 2015, to appeal the Order. The Order stated:

This order will become final unless claimant or any other party files a written request for review of this order within twenty (20) days per Miss. Code Ann. 71-3-47 (Rev. 2000). A final order of dismissal for failure to respond to a status request is 'the rejection of a claim' sufficient to trigger the one-year statute of limitations set forth in Miss. Code Ann. Section 71-3-53 (Rev. 2000).

The Appellant did not appeal that Order of dismissal within twenty days, or by January 28, 2015. Therefore, the Order became final on January 28, 2015. The Appellant then failed to file a motion to reinstate within one year from the final Order, and as such, the claim became barred by the one-year statute of limitations as of January 28, 2016. As of the running of the one-year statute of limitations, the Commission no longer retained jurisdiction over the claim, and as such, the Administrative Judge held that the Appellant's Motion to Reinstate was untimely and must be denied, a decision which was affirmed by the Full Commission on review.

The statutory provision governing the one-year statute of limitations is clear, and there is no dispute that the Appellant failed to appeal the Order of dismissal before it became final on January 28, 2015. There is also no dispute that one year passed from the date of the final Order of dismissal with no request for reinstatement by the Appellant. As such, the Administrative Judge's Order of January 30, 2017, denying the Appellant's Motion to Reinstate, which was not filed until August 18, 2016, was proper and was based on substantial evidence. Given that the Appellant has not provided sufficient proof of excusable neglect for failing to prosecute his claim, failing to file a timely appeal and failing to file a timely motion to reinstate before the one-year statute of limitations ran, the Full Commission's Order upholding the Administrative Judge's denial of reinstatement of the claim should be upheld by this Honorable Court. The Appellant has not put forth any proof of reversible

error, and the Full Commission's Order of June 20, 2017, is supported by the applicable statutes and case law and does not constitute an abuse of discretion.

III. EVEN IF THIS HONORABLE COURT OF APPEALS OF THE STATE OF MISSISSIPPI DOES NOT UPHOLD THE ORDER OF THE FULL MISSISSIPPI WORKERS' COMPENSATION COMMISSION AFFIRMING THE DENIAL OF APPELLANT'S MOTION TO REINSTATE WORKERS' COMPENSATION CLAIM AND/OR FINDS THAT THE APPELLANT CAN SHOW EXCUSABLE NEGLIGENCE IN RELYING ON HIS PREVIOUS LAWYER'S ALLEGED REPRESENTATIONS, THE CLAIM IS BARRED BY THE TWO-YEAR STATUTE OF LIMITATIONS PER MISS. CODE ANN. § 71-3-35 (REV.1990).

MISS. CODE ANN. § 71-3-35 (Rev. 1990) states, in part:

Regardless of whether notice was received, if no payment of compensation (other than medical treatment or burial expense) is made and no application for benefits filed with the commission within two (2) years from the date of the injury or death, the right to compensation therefor shall be barred.

The Appellant alleged an injury in the course and scope of his employment on October 25, 2008. The claim involved injuries resulting from a motor vehicle accident. The Appellees filed their Answer denying the claim on the basis that the Appellant was not doing work for his employer (Appellee GE Healthcare) at the time of the accident, but was rather on a personal errand. The Appellees therefore did not pay any indemnity or medical benefits to or on behalf of the Appellant at any time. Thus, to avoid his claim being barred by the two-year statute of limitations pursuant to MISS. CODE ANN. § 71-3-35 (Rev. 1990), the Appellant should have filed his Petition to Controvert on or before October 25, 2010. The Commission has no record of any Petition to Controvert filed by the Appellant until November 13, 2012, which is over four years after the alleged injury.

While the Full Commission and the Administrative Judge did not specifically address, or rule on, the Appellees' argument that the claim is time-barred by the two-year statute of limitations in

their Orders of June 20, 2017, or January 30, 2017, respectively, it is noted in the Administrative Judge's Order that the Appellant filed his Petition to Controvert on November 13, 2012, and not before. Thus, even if this Honorable Court does not uphold the Full Commission's Order affirming the decision of the Administrative Judge to deny the Appellant's Motion to Reinstate based on the running of the one-year statute of limitations and Appellant's failure to show excusable neglect, there is no question that the claim is barred by the two-year statute of limitations and thus, it should not be reinstated. *See McKinney v. Univ. of Miss. Medical Center*, 110 So. 3d 332, (¶ 5) (Miss. Ct. App. 2013).

CONCLUSION

The Full Commission's Order of June 20, 2017, upholding the Administrative Judge's decision to deny the Appellant's Motion to Reinstate Workers' Compensation Claim is supported by substantial evidence and by the applicable statutes and case law cited herein, much of which was decided by this Honorable Court. The Appellant did not prosecute his claim, did not respond to status inquiries from the Commission and did not timely file an appeal from the Order of dismissal on January 8, 2015. After twenty days, on January 28, 2015, the Order of dismissal became final. The Appellant made no effort to appeal or reinstate the claim within a year from the final Order of dismissal, or by January 28, 2016. At that time, the claim became time-barred by the one-year statute of limitations. Further, pursuant to the case law cited herein, as well as the case law cited by the Appellant in his own Brief, the Appellant cannot show excusable neglect for his failure to timely appeal the dismissal of his claim (or his lack of effort to attempt an appeal at all) or for his failure to attempt to reinstate his claim before the running of the one-year statute of limitations by simply blaming the actions or omissions of his previous attorney.

Even if this Honorable Court should find that the one-year statute of limitations did not run and the claim is not time-barred by same, and even if this Court finds excusable neglect on the part of the Appellant, the claim is still barred by the two-year statute of limitations pursuant to MISS. CODE. ANN. § 71-3-35 (Rev. 1990). The Appellant alleged an injury in the course and scope of his employment on October 25, 2008, due to a motor vehicle accident. The Appellees denied the claim on the basis that the motor vehicle accident did not occur in the course and scope of the Appellant's employment. As such, no indemnity or medical benefits were paid to the Appellant, or on his behalf, by the Appellees. Thus, the Appellant had until October 25, 2010, to file a Petition to Controvert. He did not do so. The only Petition to Controvert on file with the Commission, as recognized by the Administrative Judge in her Order of January 30, 2017 (upheld by the Full Commission), was filed by the Appellant on November 13, 2012, over four years after the Appellant's alleged work injury. There is no other Petition to Controvert on record in this claim, despite the Appellant's prior attempts to argue same. As such, the two-year statute of limitations ran as of October 25, 2010.

Based on the foregoing arguments, the Full Commission correctly and properly upheld the Order of the Administrative Judge in denying the Appellant's Motion to Reinstate Workers' Compensation Claim, and the Full Commission's Order should be affirmed by this Honorable Court.

Respectfully submitted,

GE HEALTHCARE, and ELECTRIC INSURANCE
COMPANY, Appellees

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CERTIFICATE OF SERVICE

I, BETTY B. ARINDER, attorney for the Appellees, do hereby certify that I have this day served, via overnight delivery, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEES**, to:

Jay Foster, Esq.
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Attorney for Appellant

Mississippi Workers' Compensation Commission
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THIS the 12th day of September, 2017.



BETTY B. ARINDER