

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JASON ALSTON,

Petitioner,

v.

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

Respondent(s).

On Petition for Writ of Certiorari
to the Supreme Court of Mississippi

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

- i. Whether the Mississippi Department of Employment Security and/ or Mississippi Department of Transportation violated petitioner due process rights under Fourteenth Amendments to the U.S. Constitution?
- ii. Whether the Circuit Court of Attala County, Mississippi, Court of Appeals of the State of Mississippi, Supreme Court of the State of Mississippi has so far departed from the accepted and usual course of judicial proceedings?
- iii. Whether fraud and/ or conspiracy exist in the petitioner case for unemployment benefit?
- iv. Whether the Circuit Court of Attala County, Mississippi, Court of Appeals of the State of Mississippi, and the Supreme Court of the State of Mississippi had jurisdiction over petitioner case?

PARTIES TO THE PROCEEDING

Petitioner

Jason Alston is a pro se litigant and the petitioner in above style case and listed below are the parties to the judgment from which review is sought. The Mississippi Department of Employment Security are the only one that is been listed on the Cover page.

Respondent

Mississippi Department of Employment Security (hereinafter "MDES"), Mississippi Department of Employment Security Administrative Law Judge Catherine Paine, Mississippi Department of Employment Security Administrative Law Judge Lovetrice Walker, Mississippi Department of Employment Security Chief Gary Holmes, Mississippi Department of Employment Security Attorney John Garrett, Mississippi Department of Employment Security Board of Review, and Mississippi Department of Employment Security Attorney Albert White

Mississippi Department of Transportation (hereinafter "MDOT"), MDOT Attorney Joe Goff, and MDOT Tracee L. Brantley Compliance Director.

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Jason Alston

Petitioner,

v.

No.:

Mississippi Department of Employment Security

Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner, Jason Alston, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The order of the Lower Court affirmed the MDES Board of Review Decision denying The petitioner unemployment benefit was on August 26, 2016. The opinion is unpublished but attached hereto at Appendix B. The Court of Appeals of State of Mississippi adopting or affirmed the Lower Court Decision on November 28, 2017 And that decision is published. See Appendix A. Court of Appeals of State of Mississippi Denied Rehearing on March 20, 2018 and it is published. See Appendix R.

JURISDICTION

A judgment of the Supreme Court of the State of Mississippi was entered on May 31, 2018 and it is published. See Appendix C. Petitioner Motion for rehearing or reconsideration that was simultaneously filed with Motion to Challenge Subject Matter Jurisdiction was filed on June 14, 2018 and both Motion was denied without a clear explanation rather did the Supreme Court had jurisdiction or did not have jurisdiction over the petitioner case on June 26, 2018 and it was published on June 27, 2018. See Appendix D. This jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution › 14th Amendment

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENTS OF CASE

The facts of this case are quite simple and straightforward. Mississippi Department of Transportation ("MDOT") and Mississippi Department of Employment Security ("MDES") have been stonewalling, double talking, sidestepping, and dancing around the facts of their misconduct throughout the whole petitioner proceedings and in doing so the Respondent with MDOT has

violated Jason Alston due process and have caused the petitioner an unfair hearing in these proceedings.

On September 1, 2012, the petitioner began working for MDOT in District 5 of the Whitfield Office in Mississippi. There in MDOT District 5 office petitioner was a Maintenance Technician I and as time went he was eventually promoted to a Maintenance Technician II. Petitioner later transfer to MDOT District 2 office in Kosciusko, Mississippi where he immediately notice the workers in District 2 was not so welcoming and friendly. One African American male and the rest of the MDOT employees was Caucasian males. No MDOT women employees. The petitioner inadvertently filled a MDOT Company vehicle up with the wrong gas and as a punishment for this Human error. MDOT Supervisor Martin (Marty) Price gave instructions to an MDOT employee (who was acting Supervisor that day on behalf of Morgan Henry) by the name of Ricky McGiven ("Mr. McGiven") to have the petitioner to siphon the gas / diesel out of the MDOT company vehicle or be fired. MDOT Supervisor Morgan Henry was off that day, so McGiven was for filling his duties. Under the Supervision of MDOT Marty Price, petitioner had to siphon gas out of a MDOT Company Vehicle that was inadvertently filled with gas /diesel by the petitioner.

A MDOT co-worker took a poison Venomous Water Moccasin that was thick, and heavy and the snake head was thick and blocky. The petitioner is terrified of snakes and told this co -worker he is terrified of snakes and this co- worker pick the

snake up and set the Moccasin right next to the petitioner weed cutter or weed eater and would not remove the Moccasin after the petitioner ask him nicely to please remove the Snake so that the petitioner can finish his job assignment. That same worker months early intentionally cause petitioner to spill coffee on himself when this employee was intentionally with disregards driving reckless while we was on snow detail. That same co -worker told another MDOT employee to ram the MDOT Company Truck petitioner was driving, that MDOT employee wanted the petitioner to move out on the highway into ongoing traffic.

Another MDOT coworker threaten to fight plaintiff stating "I don't like you". This same employee who threaten the petitioner ask the petitioner "let's go in the woods and see who will be the last man to come out".

Petitioner file a Race Discrimination Charge June 10, 2015 against MDOT, after his supervisor had non-response to petitioner complaints, petitioner filed an internal grievance against his supervisor. Petitioner reported several incidents of harassment to his supervisor.

Petitioner informed the same supervisor that he needed to go to the doctor to take a test, which petitioner identified the test that petitioner needed to take. Upon petitioner return to work, everyone knew about petitioner medical examination. After petitioner return, the same supervisor requested that petitioner take another test because the same supervisor said the employees felt uncomfortable and the petitioner needed to present a doctor's excuse in writing that petitioner was ok. The same supervisor told petitioner he does not know much about "HIV". Petitioner

returned to the doctor and obtained the necessary paper work to prove he does not have HIV and it was a kidney infection. The same supervisor faxed a copy of doctor's certification to Mississippi Department of Transportation II (2) office in Batesville, MS.

On July 13, 2015. Petitioner filed a retaliation charge against the MDOT. MDOT Supervisors in the Kosciusko, Mississippi District 2 wanted to make an example out the petitioner for filing a grievance on one of the Supervisor and for reporting their unlawful conduct to the EEOC. The Petitioner was consistently written-up for violations that were not petitioner fault.

On October 2, 2015 (EEOC) Equal Employment Opportunity Commission remind MDOT Attorney Joe Goff it is unlawful for any person to threaten, intimidate, or individual(s) because he have file a Charge of Discrimination with (EEOC) Equal Employment Opportunity Commission.

Petitioner suffer a retaliation from MDOT. The petitioner was suspended 4 days without pay. Petitioner had a nervous breakdown from all the harassment and disregards for the petitioner safety, from the MDOT employees in Kosciusko, Mississippi. Petitioner was admitted in hospital from all the unlawful conduct at MDOT in Kosciusko, Mississippi. See Plaintiff's Motion to Leave to Amend to Strike Part of Plaintiff Hospital Records of Appellant's motion to take judicial notice that filed on December 8, 2017 Doc. # M # 2017-4865 in The Supreme Court of Mississippi Doc. # 2016-CT-01347-SCT.

On October 26, 2015, petitioner was force to resign his position "Due to constructive discharge tactic used regularly by my supervisors. I am forced to resign my position. See EEOC case pending" the petitioner wrote in his Exit Interview on said day. Petitioner father Jerry Brown was his witness to the filling out and signing of the Exit Interview form on October 26, 2015.

The petitioner applied for unemployment benefits with MDES. MDES conducted investigation in petitioner allegation of constructive discharge from MDOT. MDOT Compliance Director Tracee L Brantley wrote false and misleading statements in the MDOT compliance director documents. Petitioner never stated to Mrs. Brantley that the petitioner represented to his supervisor and co-workers that he was leaving to take another job for more money. Petitioner explain to compliance director, petitioner left because of constructive discharge tactics used by his supervisor and coworker. See EEOC Charges pending.

On December 1, 2015, the petitioner appeal was filed for docket number 192118. (See Appendix E). Both parties was notify of the hearing dated February 10, 2016. Two months and ten days before the hearing the petitioner receive a letter of continuance information. (See Appendix S,E, F,).

The reason for the continuance "**The employer's attorney has a previously scheduled commitment and is not available for hearing on February 10,**

2016." (See Appendix S).

MDES violated plaintiff Guarantee Due Process of the Law by failing to provide Adequate Notice and Failing to Specify and / or follow their proper administrative procedures.

A request for continuance must include reason that constitutes good cause for granting the continuance. The need to attend to other business does not constitute good cause. (See Appendix S).

MDES Regulations Title 20, Part 101 of the Mississippi Administrative code

200.02 Scheduling of Hearings before the Appeals Department

(D) Continuances:

A request for a continuance must be made no later than three (3) days prior to the scheduled date of the hearing. A request for a continuance must include reasons that constitute good cause for granting the continuance. The need to attend to other business does not constitute good cause. A request for continuance does not grant a stay of the scheduled hearing. The Appeals Department must affirmatively grant the request or the hearing remains as scheduled. In determining whether there is good cause to grant a continuance, the following factors will be considered:

- (1) The amount of time between the receipt of the Notice of Hearing and the request for continuance;
- (2) What actions the party requesting the continuance has taken to attend the hearing;
- (3) Whether the request for continuance is due to illness or incapacity;
- (4) Whether granting the continuance would result in a decision being issued over thirty (30) days after the appeal was filed; and
- (5) To the extent the reason is the unavailability of counsel and whether there are other attorneys in the firm that may represent the requesting party.

MDES Administrative Law Judge Catherine Paine hearing was on March 11, 2016. (See Appendix G). MDES **now alleges** the Administrative Law Judge Catherine Paine was on March 18, 2016 and not March 11, 2016. (See Appendix I).

The terms "arbitrary" and "capricious" are open-textured and not susceptible of precise definition or mechanical application. We find helpful meanings North Carolina has assigned in a not-dissimilar context:

"Arbitrary" means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequately determining principle; not done according to reason or judgment, but depending upon the will alone, — absolute in power, tyrannical, despotic, non-rational, — implying either a lack of understanding of or a disregard for the fundamental nature of things. "Capricious" means freakish, fickle, or arbitrary. An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles... . [Citation omitted]

McGowan v. Mississippi State Oil & Gas Bd., 604 So.2d 312, 322 (Miss. 1992). This Court's standard of review of an administrative agency's findings and decisions is well established. An agency's conclusions must remain undisturbed unless the agency's order 1) is not supported by substantial evidence, 2) is arbitrary or capricious, 3) is beyond the scope or power granted to the agency, or 4) violates one's constitutional rights. **Allen v. Miss. Employment Sec. Comm'n, 639 So.2d 904, 906 (Miss.1994).**

MDES Administrative Law Judge Catherine Paine decision contain many errors. (See Appendix H).

Error 1. The case history does not state the actual reason and the telephone hearing before the Administrative Law Judge held on March 11, 2015 is not a true statement. (See Appendix G, and H,)

Petitioner Response: On March 11, 2015, the petitioner was still an employee for MDOT, and later was forced to resign because of constructive discharge on October 26, 2015. The issue does not state the reason "constructive discharge" that the petitioner claimed.

Error 2. The Finding of Fact: The MDES Judge Catherine Paine in her decision alleges, petitioner states, the petitioner voluntarily quit stating to take another position with Prairie Farm Dairy and the petitioner commented to other employees that "he accepted the other job since it provided a new opportunity with better hours and more money"

Petitioner Response: That entirety statement in error 2 is false and misleading. Through MDOT Attorney Joe Goff evidence that was not submitted to petitioner in a timely matter on March 11, 2016 hearing is what the Honorable Catherine Paine is based her assumption on. Nowhere in the transcripts you will find the petitioner tell the Honorable Catherine Paine that statement and the only time we spoke was on the March 11, 2016 hearing.

Error 3. When the petitioner originally completed the Exit Interview documentation for the Employer on October 19, 2015 he allegedly checked the appropriate box on the form showing he was leaving to take another job ready & waiting. The statement should be thrown out due to MDOT Attorney Joe Goff

mislead the court by introducing a blank sheet of paper. (See Appendix P Exit Interview Blank paper)

Error 4. The petitioner came with his father to do so and made certain that the original document was destroyed that statement is misleading and fraudulent and libel by implication. There is no evidence that would and shall support that statement at the date and time. (See Appendix T and Q)

Petitioner Response: Through MDOT own untimely evidence submit to the petitioner on March 11, 2016 proves that the statement in error 4 is an error and is not a fact and misleading. Petitioner Complaint was faxed on **March 7, 2016** to MDES Department Of Human Resources on the matter of due process pertaining to the canceling of MDES Administrative Law Judge Lovetrice Walker Schedule February 10, 2016 hearing and against MDES Chief Gary Holmes. (See Appendix O, and F) MDES Schedule another hearing that was set for March 11, 2016. (See Appendix G).

MDOT Attorney Joe Goff mailed his evidence for the March 11, 2016 schedule hearing with the MDES Administrative Law Judge Catherine Paine on March 7, 2016 to the petitioner. (See Appendix P and G). Petitioner did not receive MDOT evidence in a timely matter. MDES Administrative Law Judge Catherine Paine ruled in favor for MDOT. (See Appendix H).

The MDES Board of Reviews **first** hearing and decision was on May 23, 2016.

who allegedly careful review and consideration of all the evidence and affirmed the denial of unemployment benefits to petitioner. (See Appendix J) Petitioner did not understand the MDES Board decision But accordingly to MDES rule book, policy, or procedures in their Handbook:

MDES Regulations Title 20, Part 101 of the Mississippi Administrative code

200.06(A) Every decision of the Board of Review and Appeals Department shall be in writing and Shall include findings of facts sufficient to inform the parties of the basis for the conclusions of the law and the decision ,Findings of fact must be supported by Substantial evidence in the record.

The MDES Board of Review Decision does not have the Issue, Findings of Facts, and Reasoning and Conclusions of the law. MDES Board of Review seems to be disregarding their own procedures.

MDES Regulations Title 20, Part 101 of the Mississippi Administrative code

Source: Miss. Code Ann.§ 71-5-115 & 71-5-117(Rev.2004).

MDES Regulations 206.00 (A)(B)

All decisions of any ALJ and of the Board Of Review shall be listed in a minute book and /or electronic file provided for such purpose. Decisions of any ALJ shall be signed by the individual rendering the same, and decisions of the Board of Review shall be signed as" The **Board of Review**". The minute book or electronic file shall be kept by the Chairman of the Board Of Review. Copies of all decisions of the ALJ and the Board of Review shall be kept on file, via either paper file or electronic file, at the Agency in Jackson, Mississippi. Such decisions shall be open for inspection, in any manner without revealing the names of any of the parties or witnesses involved. The said decisions shall be numbered, codified, or identified by the Board of Review, or its authorized representative, and in such manner as it shall determine.

On June 6, 2016, petitioner went to Mississippi Department of Employment

Security office at 1235 Echelon Parkway, Jackson, Mississippi to inspect MDES

Board findings of fact that supported by substantial evidence in the record. To see the basis for the Conclusions of the law and the decision. A MDES Caucasian male greeted the petitioner but didn't introduce himself. Petitioner request to inspect any & all the record and files of the MDES Board records pertaining to petitioner. The MDES Caucasian male deny petitioner access to the MDES Board record. The petitioner request to speak to the MDES Caucasian male Supervisor or Boss to file a Complaint on him with his Boss. The MDES Caucasian male ask the petitioner to have a seat and his boss will be right with the petitioner.

The petitioner waited over an hour before someone else ask the petitioner is someone helping u. The second MDES person who was a Caucasian woman ask the petitioner who is help you. Petitioner explain to MDES Caucasian woman the petitioner did not get the person name. The MDES Caucasian woman ask the reception who is waiting on petitioner. The petitioner discover that moment his name was MDES Chief Gary Holmes who greeted him. That explains why Chief Gary Holmes did not shake petitioner hand. The petitioner requested to the MDES woman to inspect the MDES Board files and filing another complaint on Chief Gary Holmes she went up stair and within 5 mins or less the mins petitioner was greeted by the MDES Attorney John Garrett and he to denial the petitioner his rights to inspect the Mississippi Department of Employment Security Board Of Review record. Petitioner learned from Attorney John Garrett that he was unaware of any complaints been filed against Chief Gary Holmes or on petitioner due process, when the petitioner requested an Update on the complaint that was

faxed on March 7, 2016 to Mississippi Department of Employment Security Human Resource. (See Appendix O).

Petitioner resubmit the complaint on June 6, 2016 to Attorney John Garrett. Petitioner also filed an appeal in Circuit Court of Attala County. (See Appendix L). The petitioner brought this appeal to Circuit Court of Attala County, Mississippi which is a State Court (hereinafter "Lower Court"). Petitioner filed a Motion to Recuse or Disqualify on July 25, 2016 when he learned who was the presiding judge in Lower Court. On July 27, 2016, Lower Court denied petitioner Motion to Recuse or Disqualify. (See Appendix M). The Lower Court affirm the MDES Board of Review (hereinafter "Board") decision denying Mr. Alston unemployment benefits. (See Appendix B).

Petitioner discover in the transcripts that there was a MDES Board Second Hearing. (See Appendix K) Petitioner learned that MDES was committing fraud on the Court alter the dates for MDES Catherine Paine hearing. (See Appendix I)

MDES violated the petitioner due process and boldly with totally disregards attempting to cover it up. MDOT Attorney Joe Goff mailed his evidence out to the petitioner on March 7, 2016. (See Appendix P)

Petitioner timely appeal to the Court of Appeals of the State of Mississippi. who affirm the Lower Court decision November 28, 2017. (See Appendix A) Petitioner filed Appellant's Petition For Panel Rehearing And /Or Rehearing En Banc on December 5, 2017 .

On March 20, 2018, Court of Appeals of the State of Mississippi Denied Motion Rehearing but Irving, P.J., Carlton and Westbrook, JJ., would grant.(See Appendix R).Petitioner timely filed Petition for Writ of Certiorari with the Supreme Court.

On May 31, 2018, Petition for Writ of Certiorari was denied by the Supreme Court of Mississippi without explanation. (See Appendix C). The petitioner simultaneously filed with the Supreme Court of the State of Mississippi Motion for Reconsideration to Reverse and Remand Back Mississippi Department of Employment Security for New Trial and Motion to Challenge Subject Matter Jurisdiction the Supreme Court of the State of Mississippi and both Motions was denied without explanation or proof that Supreme Court had jurisdiction to hear and decide this matter. Thereafter, the Petitioner timely filed the instant Petition for Writ of Certiorari with this Honorable Court.

REASONS FOR GRANTING THE WRIT

The Lower Court judge violated the Canons of Judicial Ethics in refusing to Recuse or Disqualify himself and denied the petitioner Due Process of the law. Judiciary officers are required to follow the same law as the litigants. The Judiciary Officers does not get a free ride. If any trial judge exceeds his or hers Authority under the law, that is an abuse of power which has consequences, Such as a

“reversal” of his or her decision and him or her been reported to a judicial officer for whatever the judicial officer deem proper for the judge misconduct if any. This case has national importance because it involve this Honorable Court correcting and stop a government agency from abuse of their power. Millions of Mississippi are waiting and hoping that petitioner can get justice from this miscarriage of justice.

One of the fundamental rights of a litigant under our judicial system is that he is entitled to a fair trial in a fair tribunal, and that fairness requires an absence of actual bias or prejudice in the trial of the case." **United States v. Brown, 539 F. 2d 467, 469, (5th Cir. 1976)**

MDES Board of Reviews decision with no signature nor clear explanation why it affirm the decision on May 23, 2016. Mississippi Department of Employment Security Board of Review held a Second hearing and decision on June 9, 2016. Petitioner filed his Appeal with the Lower Court on June 6, 2016.

A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court." **Old Wayne Mut. L. Assoc. v. McDonough, 204 S. 8, 27 S. Ct. 236 (1907)**. Where there is no jurisdiction over the subject matter, there is, as well, no discretion to ignore that lack of jurisdiction. **Joyce v. United States, 474 F. 2d 215 - Court of Appeals, 3rd Circuit 1973 at 219.**

It is elementary that the first question which must be determined by the trial court in every case is that of jurisdiction. **Harris v. Seidell, 1Cal. App. 2d 410 – 15.**

Cal: Court of Appeal, 3rd Appellate Dist. 1934 at 417"

Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." **Dillon v. Dillon, 187 P. 27 - 1919.**

Unemployment compensation is an insurance, not an entitlement, program designed to provide a cushion for workers who are involuntarily unemployed through no fault or act of their own. **Brady v. Board of Review, 704 A. 2d 547 – NJ: Supreme Court 1997 at 222.** If the factual findings of an administrative agency are supported by sufficient credible evidence, courts are obliged to accept them. **Self v. Board of Review, 453 A. 2d 170 - NJ: Supreme Court 1982 at 459.**

Unless a Court finds that the agency's action was arbitrary, capricious, or unreasonable, the agency's ruling should not be disturbed. **Brady v. Board of Review, 704 A. 2d 547 - NJ: Supreme Court 1997 at 210.**

In Matter of Warren, 566 A. 2d 534 - NJ: Supreme Court 1989 at 297 All agree that a court may not contravene the Board's measure of discipline unless the court finds that the Board's action was arbitrary and capricious. This shorthand expression for the scope of judicial review really encompasses three inquiries: (1) whether the agency's action violates the enabling act's express or implied legislative policies; (2) whether there is 297*297 substantial evidence in the record to support the findings on which the agency based its action; and (3) whether, in applying the

legislative policies to the facts, the agency clearly erred by reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

Matter of Warren, 566 A. 2d 534 - NJ: Supreme Court 1989 at 297

Unless a Court finds that the agency's action was arbitrary, capricious, or unreasonable, the agency's ruling should not be disturbed. **Brady v. Board of Review, 704 A. 2d 547 - NJ: Supreme Court 1997 at 210.** Under that 211*211 standard, the scope of judicial review of an agency's action is restricted to four inquiries:

- (1) whether the agency's decision offends the State or Federal Constitution;
- (2) whether the agency's action violates express or implied legislative policies;
- (3) whether the record contains substantial evidence to support the findings on which the agency based its action; and
- (4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors. **Brady v. Board of Review, 704 A. 2d 547 - NJ: Supreme Court 1997 at 211.** The Equal Protection Clause of the Fourteenth Amendment commands that no State shall "deny to any person within its jurisdiction the equal protection of the laws," which is essentially a direction that all persons similarly situated should be treated alike. **Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985)**

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted this the 1 day of August, 2018.



Jason Alston, Petitioner

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