

No. 018-6881

IN THE SUPREME COURT OF THE UNITED STATES

JASON ALSTON

Appellant/Petitioner,

v.

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY

Appellee/Respondent(s).

On Petition for Writ of Certiorari

To the Supreme Court of Mississippi

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Pages
Table of Contents.....	i
Table of Authorities.....	ii- iii
Petitioner's Reply to Respondent's Brief in Opposition.....	1
..	
Argument.....	1
Conclusion.....	13
Certificate of Compliance.....	14
Certificate of Service.....	15

TABLE OF AUTHORITIES

Cases	Pages
Commonwealth Coatings Corp. v. Continental Casualty Co., 393 US 145 - Supreme Court 1968 at 149 -150	8-9
COM'N ON JUDICIAL PERFORMANCE v. Sanford, 941 So. 2d 209 - Miss: Supreme Court 2006 at 212- 213.....	10
Joyce v. United States, 474 F. 2d 215 - Court of Appeals, 3rd Circuit 1973 at 219.....	6
Liljeberg v. Health Services Acquisition Corp., 486 US 847 - Supreme Court 1988 at 850.....	9
Liljeberg v. Health Services Acquisition Corp., 486 US 847 - Supreme Court 1988 at 859.....	10
Maine v. Thiboutot, 448 US 1 - Supreme Court 1980 at 4.....	12
Schmidt v. Catholic Diocese of Biloxi, 18 So. 3d 814 - Miss: Supreme Court 2009 at 821.....	7

Statutes

28 U.S. Code § 455	9-10
--------------------------	------

Other

CODE OF JUDICIAL CONDUCT Adopted by the Mississippi Supreme Court.....	10-12
Federal rules of civil procedure 12 (h) (3).....	6
Miss. Code Ann.§ 71-5-115 & 71-5-117(Rev.2004.....	3
Mississippi Rules of Civil Procedure 12 (h) (3)	6
MDES Regulations 206.00 (A)(B)	3
MDES Regulations Title 20, Part 101 of the Mississippi Administrative code.....	4
200.06(A)	4

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

Petitioner Jason Alston (hereinafter “Mr. Alston” or “Petitioner”) respectfully submits this, his Reply to Mississippi Department of Employment Security (hereinafter “MDES” or “Respondent”) Brief in Opposition. For all the reason stated below Petitioner’s Petition for a Writ of Certiorari should be granted.

ARGUMENT

MDES argues, Reason for Denying Petitioner's Writ of Certiorari (1) There are no Compelling Reasons Would Warrant Review of this Matter (2) Were Petitioner's Constitutional Due Process Rights to Notice and a Hearing Violated. All of MDES arguments should be rejected. Petitioner object to and dispute all of MDES Allegations in MDES Brief in Opposition.

MDES is attempting to create a **smoke screen** to draw attention away from MDES and Mississippi Department of Transportation (MDOT) misconduct

throughout these proceedings. Petitioner constitutional rights has been **kick, step on, and/ or violated reckless with total disregard.**

In MDES Brief in Opposition, the MDES has not mention nothing of the two (2) Hearings that MDES Board of Reviews held on the petitioner. Once the Petitioner received all the transcripts from the Lower Court (Circuit Court of Attala County, Mississippi) and after careful examine the transcripts petitioner learn of an **Second** MDES Board of Reviews Hearing with an a **new decision** that was held on **June 9, 2016** with a new final decision. (See Appendix J and K. in Petition for a writ of certiorari).

Petitioner filed his appeal with the Lower Court on June 6, 2016. (See Appendix L in Petition for a writ of certiorari).

On June 6, 2016, the Petitioner drove his vehicle from Kosciusko, Mississippi To MDES office at 1235 Echelon Parkway, Jackson, Mississippi office to inspect MDES Board of Review findings of fact that supported by substantial

Evidence in the record. To see the basis for the Conclusions of the law and the Decision.

According to MDES Handbook it states,

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.

MDES disregarded the clear notice violations in Regulation MDES handbook and ruled in favor of MDOT. MDES Board of Review decision is not stamped **MDES Board of Reviews** nor Signed **MDES Board of Reviews**. (See Appendix J and K in Petition for a writ of certiorari.)

Under the 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 for first and Second decision does not have the Issue, Findings of Facts, and Reasoning and Conclusions of the law. **MDES** disregarded the clear notice violations in Regulation MDES handbook and ruled in favor of MDOT.

MDES Board of Reviews first hearing was held on **May 23, 2016**. (See Appendix J in Petition for a writ of certiorari.) Petitioner was not given a notice nor opportunity to be heard nor present evidence for this **June 9, 2016** hearing. (See Appendix J, K, L, and N in the Petition for a writ of certiorari.)

There is compelling reasons for granting this Petition for a writ of certiorari. Respondent arguments quickly fails on the grounds that Supreme of the State of Mississippi and Court of Appeals of the State of Mississippi decision in this Case, Conflicts with Federal Law, State law and the Rules of Civil Procedure for both Federal and State.

Respondent offered speculation, subjective, opinions, and there, "own wisdom and common sense" The law requires more. Respondent arguments and would-be supporting case law are completely off the mark. Theses argument should be rejected. Respondent has unsupported assumption.

On June 14, 2018, the Petitioner 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 Doc. # M#2018-2332 and Motion
to Challenge Subject Matter Jurisdiction Doc. # M # 2018-2333 in 2016-CT-01347-
COA that was published.

Supreme Court of the State of Mississippi deny Doc. # M # 2018-2333 without
Proven that Supreme Court of State of Mississippi had subject matter jurisdiction.
(See Appendix C and D in the Petitioner's Petition for a writ of certiorari.)

The Supreme of the State of Mississippi and Court of Appeals of the State of
Mississippi decision in this Case, Conflicts with Federal Rules of Civil Procedure 12
(h) (3) and Mississippi Rules of civil procedure 12 (h) (3)

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

Subject matter jurisdiction is a threshold inquiry which must be determined before a court may proceed to the merits. Schmidt v. Catholic Diocese of Biloxi, 18 So. 3d 814 - Miss: Supreme Court 2009 at 821

All Judges have an ethical obligation to be fair and impartial, ensure judicial neutrality.

Petitioner is alleging because of the judges connection with Governor of Mississippi who oversee and appoint people in their position for MDES, Petitioner did not receive a fair hearing and/ or decision in neither Court of Appeals of the State of Mississippi nor Supreme Court of the State of Mississippi.

Governor of Mississippi Phil Bryant **Appointed** Court of Appeals of the State of Mississippi Judges Judge Jack L. Wilson, and Judge Jim M. Greenlee Who ruled against the Petitioner in favor for Governor of Mississippi.

Honorable Judge Sean J. Tindell was appointed by the Governor of Mississippi But he did not participate in the decision in this case.

Judge Virginia C. Carlton was not appointed by the Governor of Mississippi but has
An **connection** with the Governor and she ruled against the petitioner as well for
the Governor of Mississippi. (See Exhibit A pages 1-3 that highlighted)

Governor of Mississippi Phil Bryant **Appointed** Mississippi Judges in the
Supreme of the State of Mississippi James D. Maxwell II, Judge Dawn H. Beam,
and Judge David M. Ishee. (See Exhibit B pages 1-3 that highlighted)

In **Commonwealth Coatings Corp. v. Continental Casualty Co., 393 US 145 –**
Supreme Court 1968 at 149 and 150 this Honorable Courts states,

Social Relations.

". . . [A judge] should, however, in pending or prospective litigation before him be
particularly 150*150 careful to avoid such action as may reasonably tend to awaken
the suspicion that his social or business relations or friendships, constitute an
element in influencing his judicial conduct."

This rule of arbitration and this canon of judicial ethics rest on the premise that any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias. We cannot believe that it was the purpose of Congress to authorize litigants to submit their cases and controversies to arbitration boards that might reasonably be thought biased against one litigant and favorable to another.

"Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U. S. C. § 455(a), as amended. *Liljeberg v. Health Services Acquisition Corp.*, 486 US 847 - Supreme Court 1988 at 850

Title 28 U. S. C. § 455 provides in relevant part:

"(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

859*859 "(b) He shall also disqualify himself in the following circumstances:

.....

"(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

.....

"(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household."

Liljeberg v. Health Services Acquisition Corp., 486 US 847 - Supreme Court 1988 at 859

In COM'N ON JUDICIAL PERFORMANCE v. Sanford, 941 So. 2d 209 –
Miss: Supreme Court 2006 at 212- 213

The Commission found by clear and convincing evidence that Judge Sanford's conduct violated Canons 1, 2A, 2B, 3B(1), 3B(2), 3B(7), 3B(8), and 3E of the Judicial Code. Furthermore, the Commission found by clear and convincing evidence that Judge Sanford engaged in "willful misconduct" and "conduct prejudicial to the administration of justice which brings the judicial office into disrepute" thus causing such conduct to be actionable pursuant to the provisions of Miss. Const. art. 6, § 177A. We have previously defined the phrase "willful misconduct" as follows:

"Willful misconduct in office is the improper or wrongful use of power of his 213*213 office by a judge acting intentionally, or with gross unconcern for his conduct and generally in bad faith . . . A specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew or should have known was beyond the legitimate exercise of his authority constitutes bad faith . . . Willful misconduct in office of necessity is conduct prejudicial to the administration of justice that brings the judicial office into disrepute."

The judges that had a connection with the Governor of Mississippi had a duty to disqualify themselves, but fail to do so.

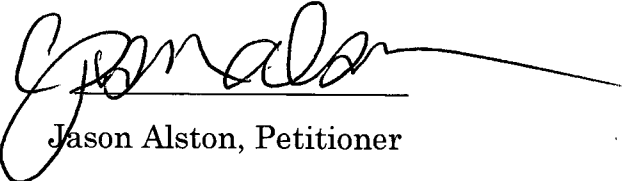
The Supreme Court of State Mississippi and the Court of Appeals of State Mississippi decision Conflicts with 28 U.S. Code § 455 and CODE OF JUDICIAL CONDUCT Adopted by the Mississippi Supreme Court.

In *Maine v. Thiboutot*, 448 US 1 - Supreme Court 1980 at 4,
this Honorable Court states,
Section 1983 provides:
"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." (Emphasis added.)

CONCLUSION

For these reasons stated above, this Honorable Court should grant Petition for a writ of certiorari.

Respectfully submitted this the 3 day of January, 2019.



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By: Jason Alston
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