

FILED

JUL 10 2009

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DAVID CREWS, CLERK
BY *[Signature]*
Deputy

MICHAEL D. MATHIS

PLAINTIFF

VERSUS

CIVIL ACTION NO: 3:09 CV 071-P-A

NORTHEAST MISSISSIPPI
ELECTRIC POWER ASSOCIATION

DEFENDANT

JURY TRIAL DEMANDED

COMPLAINT

This is an action to recover actual damages and punitive damages for violation of civil rights. The following facts support the action:

1.

Plaintiff, MICHAEL D. MATHIS, is an adult resident citizen of 298 County Road 415, Oxford, Mississippi 38655.

2.

Defendant, NORTHEAST MISSISSIPPI ELECTRIC POWER ASSOCIATION, is a non-profit corporation, which may be served with process by service upon its President, James S. Downs, 10 PR 2050, Oxford, Mississippi 38655.

3.

This Court has civil rights jurisdiction under 28 U.S.C. § 1331 and federal question jurisdiction under 28 U.S.C. § 1331 for a cause of action arising under 42 U.S.C. § 1981, arising

under the anti-retaliation provisions of the Bankruptcy Act, 11 U.S.C.A. § 525.

4.

Plaintiff, Michael Mathis, was employed by the Defendant, Northeast Mississippi Electric Power Association, for a period of six (6) years.

5.

During Plaintiff's employment, he was subjected to racial taunts and slurs, to such an extent that the workplace was oppressive. Nevertheless, Plaintiff was an excellent employee and continued to work despite the racial taunts.

6.

On or about June 21, 2008, Plaintiff was assaulted by his ex-girlfriend, who then made a false charge against Plaintiff, resulting in Plaintiff's arrest. The charge was ultimately remanded to the files because there was no basis for the charge.

7.

Indifferent to the facts of the case, and without any factual basis and because of its bias and prejudice against Plaintiff, the Defendant, acting through its executive officials, discharged Plaintiff from his employment on the basis that he did not call in to report the arrest. This reason was frivolous since the Defendant knew, or in the exercise of any care would have known, Plaintiff could not call in because he could only make one call and was not allowed to call. His discharge was frivolous.

8.

Defendant fires black persons for no reason but tolerates gross misconduct by white

employees. A substantial cause of Plaintiff's discharge is his race, black.

9.

The Defendant discriminated against Plaintiff because Plaintiff has not been given the same right to contract as white persons, in violation of 42 U.S.C. § 1981.

10.

Plaintiff's discharge violates Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991.

11.

The Defendant was prejudiced against Plaintiff and made statements indicating prejudice against Plaintiff because Plaintiff had filed a bankruptcy petition in 2003. Discharging Plaintiff because he previously filed bankruptcy violates the anti-retaliation provisions of the Bankruptcy Code, 11 U.S.C. § 525(b).

12.

The Defendant is *collaterally estopped* to claim that Plaintiff was guilty of any misconduct at work because Plaintiff had a hearing before the Mississippi Department of Employment Security and received a favorable determination, attached hereto as Exhibit "A."

13.

Plaintiff has filed an EEOC charge, attached hereto as Exhibit "B," and received the Right-to-Sue letter, attached hereto as Exhibit "C."

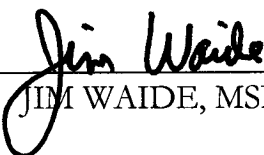
PRAYER

Plaintiff prays for actual and punitive damages in an amount to be determined by a jury,

for reinstatement and for reasonable attorneys' fees.

Respectfully submitted,

WAIDE & ASSOCIATES, P.A.

BY: 
JIM WAIDE, MSB #6857

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Attorneys for Plaintiff

BOR
Mississippi Department of Employment Security | M | D | E | S |
BOARD OF REVIEW DECISION


Date Mailed: 03/03/2009

Docket Number: 44590

PARTIES INVOLVED**APPELLANT**

Claimant SSN: ***-**-5832

MICHAEL MATHIS
 CR 415 HOUSE 298
 OXFORD MS 38655
OPPONENT

MDES EAN: 36-00055-0-00

NORTH EAST MISS ELECTRIC POWER ASSN
 PO BOX 1076
 OXFORD MS 38655-1076
CASE HISTORY

An initial claim for benefits under the Mississippi Employment Security Law was filed by the above-named individual, hereinafter called claimant, effective June 24, 2008. On August 19, 2008, the Claims Examiner disqualified the claimant for benefits finding the claimant was discharged for misconduct pursuant to Section 71-5-513A (1) (b) of the Law. On appeal by the claimant, the Administrative Law Judge modified the decision of the Claims Examiner as to the date of disqualification on October 16, 2008. The claimant then filed further appeal to the Board of Review. After careful review, the Board of Review remanded the appeal for additional testimony regarding who was the aggressor and who presented the weapon first in the domestic altercation between claimant and his child's mother on December 18, 2008. An additional hearing before the Administrative Law Judge was held on January 8, 2009. The case came on for final review and decision by the Board of Review at Jackson, Mississippi, on February 17, 2009.

The Department's entire file relative to the claim herein, made evidence by Law, and the testimony taken by the Administrative Law Judge constitute the record in this case, made and considered by the Board of Review.

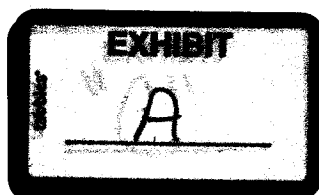
FINDINGS OF FACT

The claimant worked for approximately six years last working as an apprentice lineman with the North East Mississippi Electric Power Association, Oxford, Mississippi ending on June 23, 2008. The employer discharged the claimant this day due to an incident that occurred on June 21, 2008.

On June 21, 2008, the claimant was on-call. The employer provided the claimant with a service truck and a cellular telephone so that he could immediately respond to any service call. The employer had advised the claimant that he must be available to work while on call. The employer also advised the claimant that if he could not work, then he must notify his supervisor.

On June 21, 2008, the claimant went to visit his uncle at the apartment complex where his uncle lives. While the claimant was visiting his uncle, he was confronted by the mother of one of his children. The child's mother asked the claimant for money. The claimant refused to give her any money, and they began arguing. The child's mother pulled a box cutter, and she cut the claimant's chest. The Oxford police was summoned.

A police officer asked the claimant to report to the police station to make a statement. The claimant got in the company truck and drove to the police station. The claimant did not radio the employer on the radio in the employer's truck nor did he telephone the employer on the company issued cellular telephone because he thought he was only going to the police station to make a statement. Therefore, he thought he was available to respond to all calls. However, after the claimant arrived at the police station, he was arrested and charged with domestic violence. The claimant was given one telephone call which he used to call a bail bonding company.



2398290

R-01/2008

DECISION

The meaning of the term 'misconduct', as used in the Unemployment Compensation Statute, is conduct evidencing 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 employees. Also, carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability, wrongful intent or evil design, and showing an intentional or substantial disregard of the employer's interest or of the employee's duties and obligations to his employer, come within the term 'misconduct'. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, or inadvertencies and ordinary negligence in isolated incidents, and good faith errors in judgment or discretion are not considered 'misconduct' within the meaning of the Statute. *Wheeler v. Arriola*, 408 So.2d 1381 (Miss. 1982).

Based on the testimony and the evidence presented at the hearing, the Board of Review is of the opinion that claimant's actions do not rise to the level of misconduct as it is defined in *Wheeler v. Arriola*. The claimant was unaware that he was going to be unavailable to respond to calls on June 21, 2008, because he was only asked to come to the police station to give a statement. It was only once the claimant got to the police station that he was arrested and charged.

Based on the above consideration, the decision of the Administrative Law Judge is hereby reversed.

DECISION:

Reversed. If otherwise eligible, the claimant is entitled to the receipt of benefits based on the job separation. The employer's experience-rating record is chargeable for benefits paid to the claimant during the current benefit year.

SO ORDERED AND ADJUDGED, THIS THE 17 DAY OF FEBRUARY, 2009.

APPEAL RIGHTS

An appeal may be filed in the Circuit Court in the county in which you reside by **03/23/2009**, which is 20 calendar days from the date this decision was mailed. Appeals filed by individuals or organizations not residing in Mississippi should be filed in the county where the employer resides, where the cause of action occurred, or in the county of employment.

Please send a copy of your appeal to:

MDES Legal Department, PO Box 1699, Jackson MS 39215-1699.

Claimant Instructions: Should an appeal be filed and you remain unemployed, you should continue to file weekly certifications until you receive a decision from the court. In the event the court rules in your favor, benefits will be paid only for those weeks you have filed, if otherwise eligible.

Dated and mailed on 03/03/2009.



EEOC Form 161-B (3/98)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Michael D. Mathis
298 County Road 415; Apt.: 298
Oxford, MS 38655

From: Memphis District Office
1407 Union Avenue
Suite 901
Memphis, TN 38104

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No. 846-2008-57619
EEOC Representative Karen Booker, Investigator
Telephone No. (901) 544-0154

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

- X More than 180 days have passed since the filing of this charge.
Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
X The EEOC is terminating its processing of this charge.
The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Katharine W. Kores, Director

JUN 19 2009

(Date Mailed)

Enclosures(s)

CC: Lawrence L. Little
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