

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Miya Freeman,)
)
Appellant,)
)
v.)
)
South Carolina Department of Employment)
and Workforce and Amazon Com Services, Inc.,)
)
Respondents.)

Docket No. 22-ALJ-22-0098-AP

FINAL ORDER

RECEIVED

JUL 15 2022

SC Court of Appeals

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on March 22, 2022 by Miya S. Freeman (Appellant). The Appellant seeks review of the South Carolina Department of Employment and Workforce Appellate Panel's decision affirming the Appeal Tribunal's decision finding that the Appellant filed an untimely appeal to the Appeal Tribunal and the case was properly dismissed.

After careful consideration of the parties' briefs, the record, and the applicable law, the court finds that substantial evidence in the record supports the Panel's determination that the Appellant did not timely appeal the claims adjudicator's decision to the Tribunal. Accordingly, the Panel's decision is affirmed as modified.

BACKGROUND

The Appellant filed a claim for unemployment insurance (UI) benefits on August 25, 2021. The claims adjudicator's determination mailed on October 4, 2021 held the Appellant indefinitely disqualified from benefits effective August 22, 2021, upon finding she voluntarily severed the employer/employee relationship without good cause by filing for unemployment benefits while on a leave of absence. The determination contained a clear and specific notice that the determination would be final unless the Appellant filed an appeal by October 14, 2021. On October 19, 2021, the Appellant appealed to the Appeal Tribunal. After an evidentiary hearing on the timeliness of the appeal, the Tribunal found the Appellant's appeal was untimely and dismissed the case. The Appellant appealed to the Appellate Panel and the Panel affirmed the Tribunal decision finding that the Appellant filed an untimely appeal to the Appeal Tribunal and the case was properly dismissed.

State of South Carolina
FILED
JUN 21 2022
Court

STANDARD OF REVIEW

The Department is an “agency” under the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA’s appellate standard governs appeals from Department decisions. *See* S.C. Code Ann. § 1-23-380 (Supp. 2020); S.C. Code Ann. §1-23-600(D) (Supp. 2020); *Gibson*, 282 S.C. at 386, 318 S.E.2d at 367.

Section 1-23-380(5) of the South Carolina Code provides the standard of review to be utilized by appellate bodies, including the ALC, when reviewing Department decisions:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2020); S.C. Code Ann. § 1-23-600(E) (Supp. 2020) (directing administrative law judges to conduct appellate review in the same manner as prescribed in Section 1-23-380).

This court’s review in appellate cases is limited to the record. *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2020); SCALC Rule 36(G). “‘Substantial evidence’ is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). “The limited substantial evidence standard of review is intended only to assure that the [agency’s] action is properly supported and that, therefore, no abuse of delegated authority occurred.” *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 595, 281 S.E.2d 118, 119 (1981). Thus, the fact that the record, when considered as a whole, presents the possibility of drawing two

inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996). A reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact for which there is room for a difference of intelligent opinion. *See Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n*, 319 S.C. 225, 229, 460 S.E.2d 383, 386 (1995). Accordingly, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001). The party challenging an agency action on appeal has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

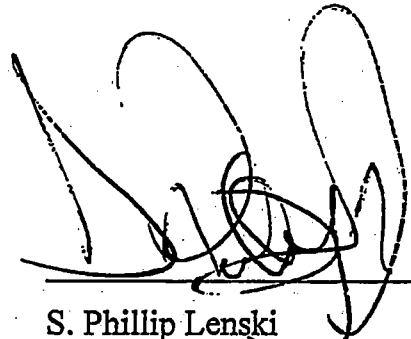
A claimant wishing to appeal from the initial determination of a Department claims adjudicator must file the appeal "not later than ten days after the determination was mailed to his last known address." S.C. Ann. § 41-35-660 (2021); *see also* S.C. Code Ann. Regs. 47-51(A)(1) (Supp. 2020) ("The party appealing from any determination of a claims adjudicator . . . shall file electronically, by fax, by mail, or otherwise deliver to the Department a Notice of Appeal, setting forth the grounds for the appeal."). Unfortunately, "[t]he service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court." *Hill v. S.C. Dep't of Health and Env't Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010); *see also Allison v. W.L. Gore & Assoc.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) ("[T]he question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction . . ."). Accordingly, "the failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction . . ." *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004).

In this case, the Appellant acknowledges that her appeal to the Appeal Tribunal was untimely, however, the Appellant argues that her untimeliness was due to diagnosed medical conditions for which she had requested medical leave from her employer, Amazon Com Services

Inc (Employer or Respondent).

While the court is sympathetic to the Appellant's situation, substantial evidence in the record supports the Panel's determination that the Appellant did not timely appeal the claims adjudicator's decision to the Tribunal. Consequently, the claims adjudicator's determination that the Appellant is ineligible for UI benefits because she voluntarily severed the employer/employee relationship without good cause by filing for unemployment benefits while on a leave of absence must stand. *See Atl. Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”). Therefore, based on the foregoing,

IT IS HEREBY ORDERED that the Department's determination is **AFFIRMED**.
AND IT IS SO ORDERED.

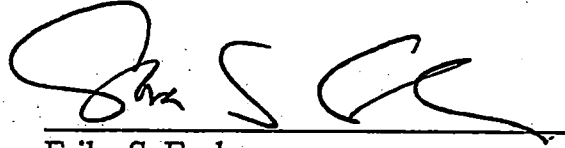


S. Phillip Lenski
Administrative Law Judge

June 21, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler
Judicial Law Clerk

June 21, 2022
Columbia, South Carolina

