

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Wendell D. Cooper,

Appellant,

v.

South Carolina Department of Employment
and Workforce and School District of
Greenville County,

Respondent.

Docket No. 21-ALJ-22-0448-AP

ORDER

STATEMENT OF THE CASE

Wendell D. Cooper (Appellant) appealed the decision of the South Carolina Department of Employment and Workforce (Department), which found Appellant ineligible for unemployment insurance (UI) benefits. The Administrative Law Court (Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. section 41-35-750 (2021). Upon consideration of the record and the briefs, this Court affirms, finding substantial evidence supports the Department's decision.

BACKGROUND

Appellant began working as a substitute teacher for the School District of Greenville County (Employer) on January 28, 2020. Appellant filed an initial claim for regular UI benefits on March 18, 2020. The Department's claims adjudicator issued a determination on May 1, 2020, holding Appellant indefinitely disqualified from receiving benefits, effective March 15, 2020. At the time Appellant filed his initial claim for UI benefits, he had not earned eight times his weekly benefit amount with Employer. Therefore, Appellant's claim was adjudicated based on his separation from his most recent employer who had paid him at least eight times his weekly benefit amount. The Department found Appellant left work with the previous employer voluntarily and without good cause.

Appellant then filed for a claim for Pandemic Unemployment Assistance (PUA) benefits on May 5, 2020. The Department's claims adjudicator issued a determination on June 2, 2020, holding Appellant eligible to receive PUA benefits effective March 15, 2020. Appellant's first benefit year expired on March 13, 2021, but Appellant continued to be eligible for PUA benefits



due to Congress's extension of the program. The PUA program ended in South Carolina on June 26, 2021. In November, 2020, Appellant stopped accepting substitute teaching positions based on the advice of his doctor regarding Appellant's medical conditions and concerns about COVID-19.

On July 12, 2021, the Department's claims adjudicator issued a determination (reasonable assurance determination) holding Appellant ineligible to use wages from Employer to establish a UI claim, effective June 6, 2021, based on finding Appellant was filing during a break between school terms and he had reasonable assurance to work after that break. Also on July 12, 2021, the Department's claims adjudicator issued a determination (still working determination) holding Appellant ineligible to receive UI benefits, effective March 14, 2021, based on finding Appellant was still working and not accepting available hours with Employer. Neither of these determinations negatively affected Appellant's eligibility for PUA benefits.

From July 13, 2021, to July 20, 2021, Appellant filed multiple appeals of the two claims adjudicators' determinations with the Department's Appeal Tribunal (Tribunal). The Tribunal held a hearing on August 9, 2021, to discuss Appellant's appeals from the claims adjudicator's reasonable assurance determination. On August 10, 2021, the Tribunal issued a decision affirming the claims adjudicator's reasonable assurance determination, finding Appellant was filing for UI benefits during a regular break between school terms while Appellant had a reasonable assurance of returning to work after the school break. On August 15, 2021, Appellant appealed the Tribunal's decision regarding the reasonable assurance determination to the Department's Appellate Panel (Panel). On August 30, 2021, the Tribunal held a hearing to discuss Appellant's appeals from the claims adjudicator's still working determination. On September 2, 2021, the Tribunal issued a decision affirming the claims adjudicator's still working determination, finding Appellant was no longer accepting work with Employer due to Appellant's concerns regarding COVID-19. On September 11, 2021, Appellant appealed the Tribunal's decision regarding the still working decision to the Panel.

On September 22, 2021, the Panel issued a decision regarding the reasonable assurance determination affirming the Tribunal upon finding Appellant filed for benefits during a break in the school term with reasonable assurance of returning to work following the end of the break period. On October 12, 2021, the Panel issued a decision regarding the still working determination affirming the Tribunal upon finding Appellant was no longer accepting all available work with Employer. Appellant appealed both Panel decisions to the Court. However, Appellant did not

challenge the Panel’s finding that he was unavailable for work. By Order dated January 5, 2022, the Court consolidated both appeals into the instant case.

ISSUES ON APPEAL

1. Whether Appellant is eligible for UI benefits.
2. Whether Appellant is eligible for UI benefits because he meets the eligibility requirements for PUA benefits.
3. Whether the Department misapplied various portions of S.C. Code Ann. section 41-35-130 (2021).
4. Whether the Department misapplied S.C. Code Ann. section 41-27-20 (2021).

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 the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA’s standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, and 1-23-600(D) (Supp. 2021); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Com'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). The standard used by appellate bodies to review agency decisions is provided by section 1-23-380(5). See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380(5)). The section states:

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 [of an agency] 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.

§ 1-23-380(5).

A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Com'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact 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 Com’n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, “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 Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). Finally, the party challenging an agency action has the burden of proving convincingly the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917; citing Hamm v. AT&T, 302 S.C. 210, 213, 394 S.E.2d 842, 844 (1990).

DISCUSSION

Appellant argues the Department erred in finding he did not meet the eligibility requirements to receive UI benefits. The Court disagrees.

S.C. Code Ann. section 41-35-110 (2021) states “An unemployed insured worker is eligible to receive benefits with respect to a week only if the department finds he: . . . is able to work and is available for work at his usual trade, occupation, or business or in another trade, occupation, or business for which he is qualified based on his prior training or experience” “Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.” Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). “The ‘unchallenged ruling, right or wrong, is the law of the case and requires affirmance.’” Id. (citing First Union Nat’l Bank of S.C. v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998).

The Panel found Appellant was ineligible for UI benefits on two separate grounds. First, Appellant was ineligible because he was still employed by Employer since he failed to request his

name be removed from the substitute teacher list. Second, the Panel found that even if Appellant was still an employee, Appellant was not available for work. Appellant failed to contest the Panel's finding that he was unavailable for work and was not seeking work. Therefore, this finding by the Panel is the law of the case and the Court may not find otherwise. Since Appellant was not available for work during the weeks he claims, he is ineligible for UI benefits.

Appellant argues in his response to the Department's brief that he was prohibited from raising a new argument on appeal and could not address the Panel's finding he was unavailable for work. Appellant refers to the legal precedent that "an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Appellant misapprehends this legal precedent. The issue of Appellant's UI benefits eligibility was raised to the Panel and the Panel ruled upon that issue by finding Appellant was unavailable to work. Appellant had the opportunity to challenge this finding in his Notice of Appeal and brief and failed to do so. Therefore, the Court must accept this ground for the Panel's decision as the law of the case and find Appellant ineligible for UI benefits.

With respect to Appellant's remaining issues, the Court finds them manifestly without merit because Appellant's PUA eligibility, section 41-35-130, and section 41-27-20 have no bearing on Appellant's eligibility for UI benefits. "The administrative law judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit." SCALC Rule 40. Therefore, the Court declines to address Appellant's remaining issues.

ORDER

IT IS THEREFORE ORDERED that the Department's decision is **AFFIRMED**.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 6, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

September 6, 2022
Columbia, South Carolina

