

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Fredrick S. Pfeiffer,

Docket No. 12-ALJ-22-0503-AP

Appellant,

vs.

**ORDER**

South Carolina Department of Employment  
and Workforce, and Gleaton Wyatt Hewitt,  
PA,

Respondents.

**STATEMENT OF THE CASE**

The Appellant, Fredrick S. Pfeiffer, appealed the decision of the South Carolina Department of Employment and Workforce (Department), which disqualified him from receiving unemployment benefits for a period of seventeen weeks after finding his employer, Gleaton Wyatt Hewitt, PA (Employer), terminated his employment for cause connected with work. The Administrative Law Court (ALC or Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2012). Upon consideration of the record and the briefs, this Court affirms, finding substantial evidence to support the Department's decision.

**BACKGROUND**

Appellant worked as an attorney for Employer from February 1, 1999 until June 15, 2012. Appellant was the managing partner of the law firm. On or about June 14, 2012, Appellant was indicted by the State Grand Jury for nine counts of securities fraud and two counts of criminal conspiracy. As a result of the indictment, Appellant was placed on interim suspension by the South Carolina Supreme Court. Upon Appellant's interim suspension, the South Carolina Supreme Court notified Employer that Appellant could in no way be affiliated with the practice of law. Appellant was terminated after Employer received the notification.

Appellant filed for benefits with the Department on June 17, 2012. Initially, Appellant was found ineligible for benefits because he was an officer of the Employer. However, Appellant timely filed a successful appeal on that issue. A subsequent claim adjudication

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determined that Appellant was discharged for cause, and found Appellant disqualified for seventeen weeks with a corresponding reduction in his benefits. Appellant timely filed an appeal with the Appeal Tribunal. The Appeal Tribunal conducted an evidentiary hearing on August 10, 2012. The Appeal Tribunal issued a decision holding that Appellant was terminated for cause and disqualified the Appellant from receiving benefits for seventeen weeks.

Appellant appealed the Appeal Tribunal decision to the Appellate Panel. The Appellate Panel issued the final decision affirming the Appeal Tribunal decision and finding that Appellant was discharged for cause connected with work and disqualified from receiving benefits for seventeen weeks. Appellant filed an appeal to the ALC on November 15, 2012.

### **ISSUE ON APPEAL**

Did the Department err in finding that Appellant was terminated for cause?

### **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 standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2012); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm’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 S.C. Code Ann. § 1-23-380(5) (Supp. 2012). See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380(5)). That 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.

S.C. Code Ann. § 1-23-380(5) (Supp. 2012).

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. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). 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, “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. Dept. 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)).

## DISCUSSION

The Appellant argues that the Department erred in finding that Employer terminated him for cause. Appellant raises two issues. First, he challenges the Department’s assertion that a recently amended statute applies to this case to define the grounds to disqualify a claimant from receiving benefits. Second, he argues there is no substantial evidence in the record to support a finding of fact that his employment was terminated for misconduct.

S.C. Code Ann. § 41-35-120 was amended by the South Carolina Legislature by 2012 Act No. 247, effective June 18, 2012. The amendment included a new requirement that the Department find a claimant partially ineligible for benefits if it finds that “he has been discharged for cause, other than misconduct.” South Carolina courts had interpreted the prior statutory language to equate “for cause” in the previous version of the statute with the term “misconduct.” Mickens v. Southland Exch.-Joint Venture, 305 S.C. 127, 130, 406 S.E.2d 363, 365 (1991), citing Lee v. S.C. Employment Security Comm’n, 277 S.C. 586, 291 S.E.2d 378 (1982). The amended statutory scheme differentiates between “discharge for misconduct” and “discharge for cause other than misconduct.” Where an employee has been discharged for misconduct, the employee is ineligible for benefits for twenty weeks and benefits reduced by 20

percent thereafter. § 41-35-120(2)(b) Upon finding that an employee has been discharged for cause other than misconduct, the Department must disqualify the employee for benefits for a period based on the seriousness of the cause for discharge. § 41-35-120(2)(b). The disqualification period can extend from a minimum of five weeks to a maximum of nineteen weeks with a corresponding reduction in benefits thereafter. Id.

South Carolina caselaw recognizes a presumption that statutory enactments are to be given prospective rather than retroactive effect. An exception to the presumption arises when the enactment is remedial or procedural in nature, such as a statute of limitations. These are merely rules of construction, however, and are subject to the paramount rule that the intent of the legislature determines whether a statute will have prospective or retroactive application. Jenkins v. Meares, 302 S.C. 142, 146, 394 S.E.2d 317, 319 (1990) citing Goff v. Mills, 279 S.C. 382, 308 S.E.2d 778 (1983); Hercules, Inc. v. South Carolina Tax Comm'n, 274 S.C. 137, 262 S.E.2d 45 (1980).

In this instance, the General Assembly did not manifest an intent that the new statute be applied retroactively. Act 247 of 2012 simply states, "This act takes effect upon approval by the Governor." It contains no language giving any indication of legislative intent that the new standard be given retroactive effect. 2012 Acts No. 247. While the Department applies the new standard in this case and recites it in its brief, it gives no explanation for why it believes the newly enacted statute is applicable in this case. The law applicable to a case is fixed when a cause of action accrues. Goff, 279 S.C. at 387. Appellant was dismissed from employment and filed his claim for benefits prior to the effective date of the statutory amendment. Therefore, the version of Code § 41-35-120(2) that was effective prior to June 18, 2012 is applicable in this case. The applicable language states:

An insured worker is ineligible for benefits for:

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Discharge for cause connected with the employment. If the department finds that he has been discharged for cause connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request, and continuing not less than five nor more than the next twenty-six weeks, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker's benefits to be calculated by multiplying his weekly benefit amount by the number of weeks of his disqualification. The ineligibility period must be determined by the department in each case according to the seriousness of the cause for discharge. A charge of

discharge for cause connected with the employment may not be made for failure to meet production requirements unless the failure is occasioned by wilful failure or neglect of duty. "Cause connected with the employment" as used in this item requires more than a failure in good performance of the employee as the result of inability or incapacity.

S.C. Code Ann. § 41-35-120 (Supp. 2011).

Caselaw applying this standard establishes that a discharge for cause is shown when, among other things, an employee disregards the standard of behavior that an employer can rightfully expect from the employee, such as when the employee refuses to comply with a reasonable request of the employer. Mickens, 305 S.C. 127, 130. Although a single instance of minor misconduct will not generally disqualify a claimant from receiving unemployment compensation benefits, recurrent violations of the standards of behavior which an employer has the right to expect of an employee constitutes misconduct warranting disqualification. 76 Am. Jur. 2d Unemployment Compensation § 69 (updated Nov. 2010). A finding of misconduct does not mandate some willful or deliberate act on the part of the employee. Lee, 277 S.C. at 588, 291 S.E.2d at 379.

Appellant asserts that the Appellate Panel decision was clearly erroneous in view of the substantial evidence on the record as a whole. Appellant argues that there is no substantial evidence of a cause for termination countervailing the testimony of the employer stating that he would not have been terminated but for the order of the South Carolina Supreme Court.<sup>1</sup> I disagree.

The Appellate Panel decision rests on the evidence in the record that Appellant was placed on interim suspension by the South Carolina Supreme Court and that he was indicted for criminal securities violations by a Grand Jury. The Appellate Panel found that Appellant "had knowledge of the conditions of his employment as an attorney. The [Appellant's] failure to maintain his license to practice law by becoming subject to professional discipline...is sufficiently connected to his employment as the reason for the separation." The Appellate Panel made a finding of fact that "The claimant's actions, though unintentional, constituted a disregard for the reasonable standard of behavior that the employer had a right to expect."

Here, as discussed above, there is evidence in the record showing that Appellant's conduct related to his employment disregarded the standard of behavior that an employer had the

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<sup>1</sup> Employer testified that they were willing to allow Appellant to continue working at the law firm in a non-lawyer capacity, but such an arrangement was specifically barred by the South Carolina Supreme Court.

right to expect by his involvement in activity that led to the interim suspension of his law license. The maintenance of his license to practice law is required for employment in the job Appellant held. S.C. Code Ann. § 40-5-310 (2011). As such, maintenance of the license constitutes a standard of behavior that an employer has the right to expect. See In Re: Di Clemente, 207 A.D.2d 945, 616 N.Y.S.2d 678 (1994) (failure to maintain EMT certification was substantial evidence to support conclusion that claimant lost employment through misconduct).

A review of the record indicates that it contains evidence that Appellant's license suspension resulted from a criminal indictment on multiple charges related to his employment and that the South Carolina Supreme Court suspended Appellant's license due to the incidents related to those indictments. A finding of misconduct does not require a willful or deliberate act on the part of the employee. Lee, 277 S.C. at 588, 291 S.E.2d at 379. Accordingly, there is evidence upon which a reasonable mind could conclude that Appellant was discharged for cause related to his employment. Where factual evidence is in conflict, an agency's finding of fact is conclusive. Bass v. Kenco Group, 366 S.C. 450, 622 S.E.2d 577 (2005).

Therefore, even though the Department erred in applying the amended standard for disqualification from benefits, applying the Department's findings of fact to the correct standard yields the same result. The Court concludes that the Appellate Panel did not err in determining that Appellant was discharged for cause. The Court finds that the agency's decision was not clearly erroneous in light of the substantial evidence in the record, and that the record supports the decision.

**ORDER**

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

**AND IT IS SO ORDERED.**




Deborah Brooks Durden  
Administrative Law Judge

May 17, 2013  
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, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



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Robin E. Coleman  
Judicial Aide to Deborah Brooks Durden

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Columbia, South Carolina

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