

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Lavisha N. Green,)
)
Appellant,)
)
v.)
)
South Carolina Department of)
Employment and Workforce and Celco)
Partnership,)
)
Respondents.)

Docket No. 21-ALJ-22-0461-AP

ORDER

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Nov 04 2022

SC Court of Appeals

STATEMENT OF THE CASE

Lavisha N. Green (“Appellant”) appealed the decision of the Appellate Panel (Appellate Panel) of the South Carolina Department of Employment and Workforce (Department), in which she was found ineligible to receive unemployment benefits upon finding that she voluntarily quit her job without good cause. The Administrative Law Court (Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (2021). Upon consideration of the Record on Appeal (Record), briefs and applicable law, this Court affirms the Appellate Panel decision.

BACKGROUND

Appellant began working for Celco Partnership (Employer) on August 28, 2014, as a Customer Service Retention Agent in a call center. In 2020, Appellant was out of work for a period of time until December 10, 2020 on an approved medical leave of absence. Upon her return to work, Appellant informed her supervisor, Ms. McCrea, that she needed additional training on the telephone system because some enhancements had changed. Thereafter, the Employer’s Return-to-Work Team Center sent certain training modules to Appellant to complete. During the time Appellant was in the return-to-work process, she completed only two of twenty-two training units. After she and her supervisor began discussing this lack of completion, Appellant began submitting time off or not responding to her supervisor at other times. On January 23, 2021, Appellant texted Ms. McCrea and asked for the address to return her work equipment. Ms. McCrea was unable to reach Appellant after receiving the message to discuss Appellant’s intent. On January 30, 2021, Appellant sent another text message resigning her employment. Appellant alleged the resignation

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was coerced. She also stated that she was not provided the training she needed.¹

On July 29, 2021, a Department claims adjudicator determined that Appellant was ineligible to receive unemployment benefits pursuant to S.C. Code Ann. § 41-35-120 after finding she voluntarily left employment without good cause. Appellant subsequently filed her appeal of the initial determination. On September 1, 2021, the Appeal Tribunal, after a hearing, affirmed the initial decision made by the Department claims adjudicator. Appellant then appealed to the Appellate Panel, and it affirmed the decision of the Appeal Tribunal. Appellant subsequently sought review in this Court on October 18, 2021.

ISSUE ON APPEAL

Did the Department err in finding that Appellant was ineligible to receive unemployment benefits pursuant to S.C. Code Ann. § 41-35-120, upon a finding that she voluntarily quit her employment?

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, the 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. 2020); 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). Section 1-23-380(5) of the South Carolina Code (Supp. 2020) provides the standard used by appellate bodies to review agency decisions. See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section states:

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;

¹ There is evidence of a demotion on December 6, 2020, with a corresponding decrease in salary; however, this did not seem to be at issue regarding the resignation.

- (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. 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. 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)). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 466 S.E.2d 357 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C 348, 461 S.E.2d 388 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 467 S.E.2d at 917.

DISCUSSION

Pursuant to S.C. Code Ann. § 41-35-120:

An insured worker is ineligible for benefits for: (1) Leaving work voluntarily. If the department finds he left voluntarily, without good cause, 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 until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim.....”

The South Carolina Supreme Court has defined “good cause” as a “cause attributable to or connected with [a] claimant’s employment.” *Stone v. S.C. Employment Sec. Comm’n*, 219 S.C. 239, 247, 64 S.E.2d 644, 647 (1951). Generally, “good cause means circumstances that would cause a reasonable person in a similar situation to leave employment rather than continue working and that the quitting must be for such a cause as would reasonably motivate, in a similar situation, the average able-bodied and qualified worker to give up his or her employment.” 76 Am. Jur.2d Unemployment Compensation § 105.

Here, both the Appeal Tribunal and Appellate Panel found that Appellant voluntarily quit her employment without good cause. Based on the Record, there is substantial evidence that supports this finding. Appellant first sent a text message on January 23, 2021, asking her direct supervisor how to return her employer-issued equipment. Thereafter, Appellant’s supervisor maintained that she had a difficult time contacting Appellant. Then, on January 30, 2021, Appellant sent a message to Jennifer Symder, Human Resources Business Partner, resigning her position.

The Record reflects continuing issues regarding Appellant’s employment after her return from a leave of absence. Although Appellant returned from the leave of absence, she continued periods of unavailability due to personal leave days as well as unplanned absences. Appellant complained she did not have adequate training on a new system. Her supervisor listened to her recorded calls and did not note any problems. The Employer provided Appellant with twenty-two training modules and the time to complete them, but Appellant only completed two. Appellant’s supervisor had difficulty reaching her at times. Nevertheless, the witnesses for the Employer testified that it was not their intent to terminate Appellant. Appellant argued she was coerced to resign, but the Employer’s witnesses clearly stated that, but for her resignation, Appellant would have continued employment with the company.

The evidence supports the Appellate Panel decision that Appellant voluntarily quit her job

without good cause. While Appellate presented testimony that she did not want to resign and was coerced into doing so, there is no evidence indicating coercion. The Court finds that the Department's decision was not erroneous in light of the substantial evidence in the record, and that the Record supports the decision. ²

²The Appellate Panel specifically found that Appellant "failed to report to work on January 20, 25 and 26, 2021." In her brief, Appellant disputes that she missed any work and states that she was compensated by her Employer for this time. Moreover, Appellant asserts that she had proof of her attendance on these days but the "Appellate Panel refused to accept the documentation from Payroll that stated I reported to work..." The Appellant attached documents to her brief for the Court's consideration. In its decision, the Appellate Panel noted that Appellant had tried to present additional evidence to it but ruled that such was not allowed because the evidence had not been presented to the Appeal Tribunal. While this Court is likewise bound by the Record, and thus, is unable to consider the documents attached to Appellant's brief, an examination of the testimony before the Hearing Officer reveals the Appellant attempted to introduce documentary evidence of some kind:

Hearing Officer: Since a review of the record indicates that the issue was adjudicated originally as a voluntary quit, I'm going to begin with the claimant's testimony. But before I begin taking testimony, are there any questions about the issue or procedure of today's hearing? Ms. Green, any questions?

Lavisha N. Green: No, but I do want to bring to your attention that I submitted evidence based on what they say I did on behalf of the reason that I was terminated or voluntarily quit. I submitted evidence.

Hearing Officer: As I previously indicated, you will need to bring that to my attention and proffer that as evidence when it becomes relevant to your testimony. Okay?

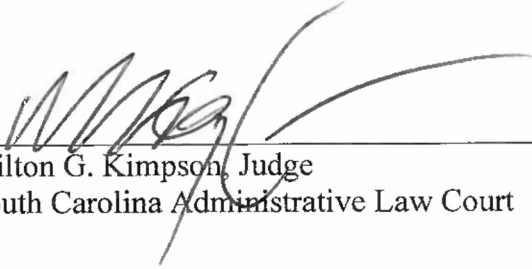
Lavisha N. Green: Okay.

Unfortunately, Ms. Green did not attempt to introduce her evidence during her testimony and the Hearing Officer did not remind her to do so. In her brief, Appellant suggests that she provided this information "before they made the ineligibility decision." Nevertheless, the information is not included in the Record. The Court can only speculate that the evidence she might have introduced before the Hearing Officer is the same evidence that she attempted to rely upon at the Appellate Panel and the same documents she has attached to her brief. Because of her contention that she did not miss the work days noted by the Appellate Panel, the Court further surmises that this evidence has some bearing on her absences. However, the reason Appellant was found to have voluntarily quit without good cause has more to do with her text seeking to return her equipment and ultimately, her communication of the desire to resign, than any missed work days. Thus, even if it could be argued that the Hearing Officer committed error in not allowing Appellant to introduce her evidence at the time she sought to do so, such an error is harmless in light of Appellant's resignation.

ORDER

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

October 4, 2022
Columbia, SC

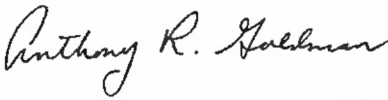


Milton G. Kimpson, Judge
South Carolina Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, 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).

October 4, 2022
Columbia, SC



Anthony R. Goldman
Judicial Law Clerk