STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dawn M. Pica, Appellant, v. South Carolina Department of Employment and Workforce and Wal-Mart Associates, Inc., Respondents.	)))))))))))	Docket No. 21-ALJ-22-0472-AP **ORDER**

STATEMENT OF THE CASE

Dawn M. Pica (Appellant) appealed the decision of the Appellate Panel (Appellate Panel) of the South Carolina Department of Employment and Workforce (Department), which found that she was ineligible to receive unemployment benefits because 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 Wal-Mart Associates, Inc. (Employer) on May 11, 2017, as a Customer Host/Asset Protection. Toward the end of July 2020, Appellant was out of work because she was experiencing symptoms of COVID-19. Under those circumstances, Wal-Mart protocol required a 14-day quarantine period. After that period, Appellant stated that she tried to reach out to someone to get back on the schedule, but was unable to reach anyone. Appellant's supervisor contacted her on September 8, 2020, to ask if she was ready to be put back on the schedule. Appellant had decided to move out-of-state by that date to be closer to family and to try to find a better job. She informed her supervisor on September 8, 2020, that she was moving. Her supervisor told Appellant that Wal-Mart would end the employment at that store and that she could reapply in her new state. Appellant discovered that there were no openings when she arrived in Reno, Nevada.

Appellant applied for benefits on April 23, 2021. On June 18, 2021, a Department claims

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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 August 31, 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 Appellate Panel 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). Section 1-23-380(5) 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;
>
> (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 this 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 notified her supervisor on September 8, 2020, that she was moving and would not be returning to work. Her testimony at the hearing was that she tried for "a couple of weeks" to get back on the schedule between the end of her quarantine and her decision to move out-of-state. However, other than her testimony that she made several telephone calls, it is not clear what Appellant did exactly to notify her employer that she was ready to return to work. When her direct supervisor called her on September 8, Appellant stated she was moving that day. She gave her reason for leaving as she was trying to find a better job and to move closer to family. She did say that she needed the income because she was not put back on the schedule immediately. However, on the date Appellant notified Wal-Mart that she leaving, her supervisor was calling to put her back on the schedule.[1]

The evidence supports the Appellate Panel decision that Appellant voluntarily quit her job without good cause. 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.

ORDER

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

IT IS SO ORDERED.

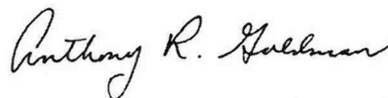
November 3, 2022
Columbia, SC

Milton G. Kimpson, Judge
South Carolina Administrative Law Court

[1] Employer did not participate in the hearing, and therefore, there is only Appellant's testimony regarding what the COVID-19 return-to-work policy. There is no evidence regarding why Appellant was not put back on the schedule in the second half of August. However, it is clear that Appellant's direct supervisor contacted Appellant to put her back on the schedule on September 8 and Appellant resigned from her employment by informing the supervisor that she was moving.

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).



November 3, 2022
Columbia, SC

Anthony R. Goldman
Judicial Law Clerk