

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Robert E. Shirley, Jr.,

Appellant,

vs.

South Carolina Department of Employment  
and Workforce and The Boeing Company,

Respondents.

Docket No. 22-ALJ-22-0227-AP

ORDER

**RECEIVED**

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SC Court of Appeals

**STATEMENT OF THE CASE**

This matter is before the Administrative Law Court (ALC or Court) pursuant to appeal filed by Robert E. Shirley, Jr. (Appellant) from the South Carolina Department of Employment and Workforce's (Department) Appellate Panel (Panel) Decision No. 22-HA-000626, affirming the decision of the Appeal Tribunal (Tribunal) finding that Appellant was disqualified from benefits on the basis he voluntarily left employment without good cause. On June 1, 2022, Appellant commenced this action seeking judicial review of the Panel's decision. This Court has jurisdiction to hear this matter pursuant to Sections 1-23-380 and -600(E), and Section 41-35-750 of the South Carolina Code. S.C. Code Ann. § 1-23-380 and -600 (Supp. 2022); S.C. Code Ann. § 41-35-750 (2021). Upon consideration of arguments raised in the parties' briefs, and a review of the record on appeal and the law, the decision of the Department's Appellate Panel is affirmed.

**BACKGROUND**

Appellant worked for The Boeing Company (Employer) from May 4, 2012, until June 1, 2020, and most recently, as an assembler. On June 15, 2020, an application was made for unemployment benefits. On December 17, 2021, the claims adjudicator mailed his decision concluding Appellant was ineligible for benefits from June 14, 2020, finding Appellant voluntarily left his employment without good cause.<sup>1</sup> Appellant timely appealed the claim adjudicator's determination by mail on December 23, 2021, and facsimile on December 24, 2021, to the Department's Appeal Tribunal (Tribunal). On March 16, 2022, the Tribunal conducted an

<sup>1</sup> On February 27, 2021, Appellant completed a Claim Verification Notice for submission to the Department stating he had been laid off and that it was COVID related.

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evidentiary hearing. Appellant testified as did Employer's human resources data management specialist and a quality manager. Employer was represented by legal counsel.

Appellant testified he did not voluntarily quit his job on June 1, 2021, and instead, was asked to leave by the plant supervisor but given no reason. Appellant gathered his belongings and left without asking whether he was being discharged from his employment. Appellant did not subsequently follow up with Employer to get clarity as to why he was asked to leave.

Appellant testified that a couple weeks after he was asked to leave Employer's premises, funds started being deposited into his checking account. Based on this, Appellant assumed Employer had submitted a claim for benefits on his behalf. Appellant testified he never filed the claim and Employer testified it never files benefits claims on behalf of its employees. Employer's testimony is contradicted by the record which contains a facsimile from Employer's representative, Equifax, to the Department on June 2, 2021.<sup>2</sup> Appellant said the Department's paperwork initially said, "Layoff," but was subsequently changed to, "Other."

Appellant testified that on May 29, 2021, just three days before he was asked to leave Employer's premises, his worker's compensation claim was mediated and a settlement reached with Employer. Appellant testified a condition of the agreement was that he could no longer work for Employer. Appellant referred to it as being "pretty much forced to quit or leave or resign or whatever you want to call it." On that same or the following day (May 29<sup>th</sup> or May 30<sup>th</sup>), Appellant posted on Facebook that he was retiring.<sup>3</sup> On July 9, 2020, Appellant signed the settlement agreement in connection with his worker's compensation claim. Appellant testified the settlement agreement contained a resignation clause.

Employer's human resources data management specialist had limited relevant information. She was unaware of any executed settlement agreement relating to Appellant's separation from the company and insisted any such agreement would be contained in her records if it existed. The human resources data management specialist is physically located in Plano, Texas and not in the

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<sup>2</sup> Also, in referring to this facsimile of June 2, 2021, the Department's brief states, "The Employer had previously filed a one-week unemployment claim for Appellant for week ending May 2, 2020."

<sup>3</sup> At the hearing, Appellant admitted he posted on Facebook that he was retiring but did not say he was retiring specifically from Employer. He said part of the reason for his post was that his wife had just become eligible for Medicare and did not realize his Facebook friends "would take it the way they took it ... And - - it was basically for someone else. One of my friends. Because he and I have been talking about some other things, and all of a sudden it just took off like wildfire."

local office where Appellant was employed. Employer's quality manager also had no direct knowledge of what transpired on June 1, 2021.

On March 18, 2022, the Tribunal issued its decision. After noting the conflict in the parties' testimony and stating it was difficult to reconcile what actually occurred with regard to Appellant's separation from employment, the Tribunal concluded a preponderance of the evidence indicated Appellant voluntarily quit. The decision also noted Appellant publicly stated his desire to retire via social media. On April 4, 2022, Appellant timely appealed the Tribunal's decision to the Panel. On May 17, 2022, the Panel mailed its decision affirming the Tribunal's finding that Appellant voluntarily quit employment without good cause.

On June 1, 2022, Appellant filed a Notice of Appeal. Appellant filed his brief on September 19, 2022. The Department filed its brief on October 6, 2022. On October 15, 2022, Appellant filed a reply.

### ISSUE

Whether substantial evidence exists in the record to support the Department's decision Appellant was indefinitely disqualified from receiving benefits upon finding he voluntarily left work without good 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 65, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). This Court reviews decisions of the Department in an appellate capacity and is "restricted to reviewing the decision[s] below." *Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000). According to Section 1-23-600(E) of the South Carolina Code, when acting in an appellate capacity, the Court must apply the criteria of Section 1-23-380(5) which states:

(5) 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 (Supp. 2022).

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 v. S.C. Land Res. Conservation Comm'n*, 467 S.E.2d at 917.

#### DISCUSSION

The public policy underlying the unemployment insurance program is to provide benefits only to those who are unemployed through no fault of their own. S.C. Code Ann. § 41-27-20 (2021). Thus, an insured worker is eligible to receive benefits only if the Department finds he "has separated, through no fault of his own, from his most recent bona fide employer." S.C. Code Ann. § 41-35-110(5) (2021). As noted by the Department, "'fault' in this context is not limited to something that is blameworthy, culpable or wrong," but rather, "must be construed as meaning failure or volition." *Stone Mfg. Co. v. S.C. Emp't Sec. Comm'n*, 219 S.C. 239, 246-247, 64 S.E.2d

644, 646 (1951) (citations omitted). Also, when an employee resigns employment for a negotiated settlement, the employee is ineligible for benefits. See *Ex parte S.C. Emp't Sec. Comm'n, v. Medical University of South Carolina*, 332 S.C. 286, 504 S.E.2d 345 (1998).

Here, substantial evidence exists in the record to support the Panel's decision finding Appellant voluntarily severed his employment with Employer without good cause and pursuant to a negotiated settlement agreement that required his resignation. While Appellant maintains there was no official paperwork until he signed the settlement agreement on July 9, 2020, he volunteered at the hearing that the agreement reached on May 29, 2020, required him to resign as a condition of settlement. Appellant discounted his intent at the hearing before the Panel, but nevertheless, announced his resolve to retire on social media immediately following the verbal agreement that had been reached on May 29, 2020. Appellant testified at the hearing he had planned to retire but it "was probably going to be right around October." In his briefs, however, Appellant stated a different date of retirement of January 2021.

While the Court is empathetic with Appellant's position, even if it viewed the evidence in a different light than the Panel, the law prohibits the Court from substituting its judgment as to the weight of the evidence. *Grant v. S.C. Coastal Council*, supra. While some of the evidence is disputed, evidence exists in the record from which a reasonable person could conclude Appellant voluntarily quit his employment without good cause. In his reply, Appellant stated that he would like to see the Department's evidence that he voluntarily quit on or before June 1, 2020; unfortunately, in an appeal such as this, the burden is on Appellant to convincingly prove the agency's decision is unsupported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 467 S.E.2d at 917. Appellant failed to meet this burden.

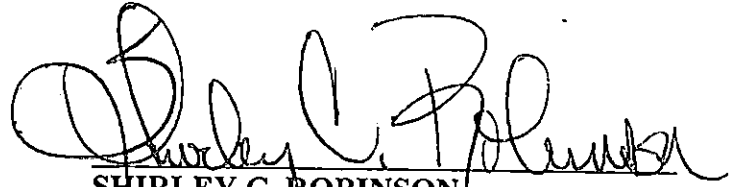
In Appellant's brief, he raised issues regarding his availability for employment, overpayment, and waiver. These issues were not raised at the hearing before the Tribunal or addressed in the Tribunal or Panel's decision in this case. Unfortunately, the Court cannot consider them in this case as its review is confined to the record and decision issued by the Panel in this case. *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) ("[I]ssues not raised to and ruled on by the agency are not preserved for judicial consideration."

**ORDER**

Based on the foregoing,

**IT IS HEREBY ORDERED** that the decision of the South Carolina Department of Employment and Workforce's Appellate Panel is **AFFIRMED**.

**AND IT IS SO ORDERED.**

  
**SHIRLEY C. ROBINSON**  
Administrative Law Judge

October 20, 2022  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

I, Shanice Hagood, 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).



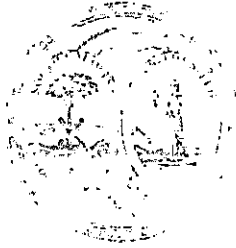
Shanice Hagood  
Judicial Law Clerk

October 20, 2022  
Columbia, South Carolina



STATE OF SOUTH CAROLINA  
**Administrative Law Court**

**Shirley C. Robinson**  
*Administrative Law Judge*



PHONE: (803) 734-0550  
FAX: (803) 734-6400  
WEB: WWW.SCALC.NET

November 7, 2022

Mr. Robert Shirley  
16 Stocker Drive  
Charleston, SC 29407

RE: Robert Shirley v. South Carolina Department of Employment and Workforce  
Docket No: 22-ALJ-22-0227-AP

Dear Mr. Shirley:

The court issued an Order in your case on October 20, 2022. This order is final, and the case has been closed in our office.

Best Regards,

A handwritten signature in cursive script, appearing to read "Shanice Hagood".

Shanice Hagood  
Judicial Law Clerk to  
The Honorable Shirley C. Robinson

cc: South Carolina Department of Employment and Workforce Legal Department

