THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Deborah Brooks Durden,
S.C Administrative Law Court Judge

Case No. 2202-001433

Wendell D Cooper,

Appellant,

v.

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

Respondents.

Final Appellant Amended Brief

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STANDARD OF REVIEW

"A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1." S.C. Code Ann. § 1-23-380 (Supp. 2013). "The review must be conducted by the court and must be confined to the record." § 1-23-380(4). "The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." § 1- 23-380(5). "The court of appeals may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is . . . clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record . . .." S.C. Code Ann. § 1-23-610(B) (Supp. 2013).

LAW

The Administrative Procedures Act (APA) provides a party who has exhausted all administrative remedies available within an agency is entitled to judicial review. S.C. Code Ann. § 1-23-380 (Supp. 2013). The APA defines an agency as "each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases." S.C. Code Ann. § 1-23-310 (Supp. 2013). Under this definition, the SCDEW is an agency. See Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding the Employment Security Commission, the predecessor to the SCDEW, was an agency within the APA, based upon its authority to make rules, as well as its ability to hear and

decide contested matters). To receive benefits, an unemployed worker must demonstrate, among other things, the claimant is able to work, available to work, and unemployed through no fault of their own. S.C. Code Ann. § 41-35-110 (Supp. 2013). "The burden is on a claimant to show compliance with benefit eligibility requirements. This includes a duty to show availability for work and a reasonable effort to obtain employment." Wellington v. S.C. Emp't Sec. Comm'n, 281 S.C. 115, 117, 314 S.E.2d 37, 38 (Ct. App. 1984). "[A]availability implies an applicant's 'unrestricted exposure' to the labor market." Id. The Panel determines whether a claimant has an unrestricted exposure to the labor market by looking at the facts and circumstances of each case. Id. The ALC "may not substitute its judgment for the judgment of the [Panel] as to the weight of the evidence on questions of fact." § 1-23-380(5). "Whether a claimant is available for work is a question of fact for the [Panel]. Murphy v. S.C. Emp't Sec. Comm'n, 328 S.C. 542, 544, 492 S.E.2d 625, 627 (Ct. App. 1997).

"Review of an administrative agency's factual findings is governed by the 'substantial evidence' test of the [APA]." Id. "Substantial evidence under § 1-23- 380 . . . is neither a mere scintilla of evidence nor evidence viewed blindly from one side of a case, but rather is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached." Carroll v. Gaddy, 295 S.C. 426, 428, 368 S.E.2d 909, 911 (1988). "The substantial evidence rule does not allow judicial fact-finding or the substitution of judicial judgment for agency judgment. A judgment upon which reasonable men might differ will not be set aside." Todd's Ice Cream, Inc. v. S.C. Emp't Sec. Comm'n, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984).

FACTS

The Appellant filed claims for federal; PUA benefits every week from the claim week ending March 21, 2020, through the week ending June 26, 2021, which was the final week of the federal PUA program benefits were available in South Carolina (*See Page 5 of the Respondent's reply in opposition to Appellant's motion to set the Panel's order and Respondent's motion to dismiss Appellant appeal for mootness).*

On November 23, 2020, Appellant stopped accepting substitute teaching positions based on his doctor's advice regarding Appellant's medical conditions and concerns about Covid – 19.

The Appellant's UI benefits year expired on March 13, 2021, the Appellant continued to be eligible for federal UI benefits under PEUM benefits due to Congress's extension of the program for individuals who could not reach their place of employment due to quarantine imposed by a medical professional for health reasons.

On August 10, 2021, The Panel ruled that the Appellant was ineligible for UI benefits effective June 6, 2021. August 21, 2021 *(R. pg. 2 par 2).*

The Appellant filed a new application for UI benefits on June 9, 2021. The Department determined that the Appellant could receive UI benefits on a new benefits year, effective March

14, 2021, based on his wages with Greenville *(See p. 5 par. 2 of Respondent's Reply to Appellant's*

The claim adjudicators denied the Appellant UI benefit for having a reasonable assurance of returning to work and not accepting all available work hours.

The Appellant filed claims for state UI Benefits from the claim week ending July 3, 2021, through the claim week ending September 4, 2021. Due to the Panel's decision, the Appellant has not received state UI benefits for those weeks.

ARGUMENT

I. DID THE COURT MAKE AN ERROR IN USING THE TWO-ISSUE RULE, FINDING THE APPELLANT FAILED TO APPEAL ALL STATUTES THE DEPARTMENT USED IN DENYING HIM UI BENEFITS

The Panel and Administration Law Court Judge (ALCJ) have introduced unemployment statutes that were not part of the adjudicator's original decision to deny the Appellant's UI benefits. The Adjudicator (ADJ) denied Appellant UI benefits based on *S.C. Code Ann 41-35-20. (See R. p.45).* The Appellant timely appealed their decision to the Appeal Tribunal (Tribunal), and Tribunal's affirmed their decision *(See R. p. 97).* Following this ruling, the Appellant filed a timely appeal to the Panel, and they affirmed the Tribunal's decision that the Claimant was ineligible for UI benefits effective June 6, 2021, to August 2021, upon finding he had the reasonable assurance of employment in the same capacity for the next school year. *(See R. p. 4).* **Second,** the Adjudicator denied the Appellant UI benefits under S.C. Code Section 41-35-110. *(See R. p. 47),* the Appellant filed a timely appeal to the Tribunal *(See R. p. 149),* and they affirmed the ADJ's decision. Next, the Appellant filed a timely appeal with the Panel, and they affirmed the ADJ's decision that the Claimant was ineligible for UI benefits finding he was not accepting all available work.

In this case, the two-issue rule would not be applied as suggested by the ALCJ for the following reasons: **First,** the ALCJ may not substitute its finding for the Department's findings,

and as stated above, the agency denied Appellant UI benefits for not working all available hours and reasonable assurance of employment; opposed to still working and failure to request the removal of his name from the substitute list none of which were statutes used by the agency to deny the Appellant's UI benefits; **Second**, as the record shows the Appellant correctly appealed both of the statutory reasons the Department used to deny him UI benefits, and there are no unchallenged decisions as supported in the record on appeal. **Third,** the Panel's authority is to review the decisions of the Department to determine if there is substantial evidence in the record to support their decision. The two-issue rule cannot be proper in this case because the process prohibits the Appellant from having a jury to decide the issues of his defense. As duly noted in the record, the Department has not filed a complaint with a lower court and asked for a jury trial. The two-rule issue is applied when it comes to verdict forms "where there is no proper objection to the use of the general verdict; reversal is improper where no error is found as to one of two issues submitted to the jury [one of which could be determinative of the case] on the basis that the Appellant is unable to establish that he has been prejudiced." See Whitman, 383 So.2nd at 619.

Moreover, the ADJ's decision to deny Appellant UI benefits in both of his appeals was made on a single defense. Thus, the two-issue rule would not be applicable in this case. The decisions were as follows:

> **First Appeal** *(R. pg. 5, Numbers 23- 30)* and *(R. pg. 6 Numbers 1-8)* Hearing Officer – We are on record with Appeal Number 21-LA-032283) in this case of the claimant Wendell Cooper and the employer School District of Greenville Count. The claimant appealed a determination mailed on July the 12th of, 2020, whereby he was held ineligible for benefits based on a break in terms and reasonable assurance of returning to work…
>
> **Second Appeal** *(R. pg. 4, Numbers 20 – 24)* Hearing Officer – The claimant appealed a determination mailed July 12th of 2021, whereby the claimant was held

IV. DID THE COURT MAKE AN ERROR LAW IN FINDING THAT THE APPELLANT WAS INELIGIBLE FOR UI BENEFITS DUE TO A BREAK IN ACADEMIC TERMS AND HAVING A REASONABLE ASSURANCE OF EMPLOYMENT

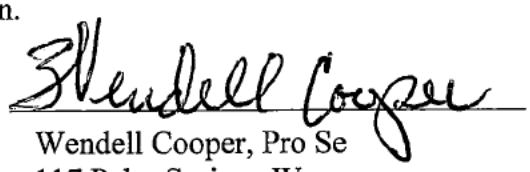
To establish reasonable assurance under the federal statute 26 USC Code 3304 (A)(6)(A)(i), the Respondent has to meet all three elements, and the one element that the Respondent cannot meet the legal requirement because they cannot guarantee 90 % of the Appellant's salary as a substitute teacher. A substitute teacher's job depends on the teacher having to miss work which differs from year to year *(See Appellant brief pg. 8, 9, and 10)*. **Second**, the Appellant must have a contract (See R. pg. 13).

HEARING OFFICER:	Do the substitutes in Greenville County or Greenville districts, school districts, um, are they required to sign a contract every year to return?
GEORGE WARD	No ma'am. There is no contract for them. They're usually given some correspondence about summer trainings that they have to attend and but there's no contract for substitutes.

United States Department of Labor Unemployment Insurance Letter 16-20 (states an individual that lacks a contract or reasonable assurance and, as a result, is not subject to the "between and within terms."

Conclusion

The Court should reverse the ALC decision because the Appellant could not reach his place of employment through no fault of his own.



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CERTIFICATE OF COUNSEL.

The undersigned certify that this Final Brief complies with Rule 211(b), SCACR.

July 17, 2023

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