THE STATE OF SOUTH CAROLINA
In The 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 Reply Brief

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SOUTH CAROLINA
COURT OF APPEALS

WENDELL COOPER, Appellant, vs. SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT, WORKFORCE DIVISION, AND SCHOOL DISTRICT OF GREENVILLE COUNTY. Respondents.	DOCKET NO: 21-ALJ-22-0448-AP **FINAL APPELLANT REPLY BRIEF TO RESPONDENT'S BRIEF**

FINAL APPELLANT REPLY BRIEF TO RESPONDENT'S BRIEF

Appellant respectfully submits this reply to the South Carolina Department of Employment and Workforce (the Department). The Defendants have alleged the following:

- The record supports the Panel's decision upon the Court's review of the entire record.
- The Court should use the two-issue rule because the Appellant failed to challenge "good cause and not available for work and actively seeking work.
- The Appellant was still attached to his job.
- Appellant was not accepting all available work.
- Appellant had the reasonable assurance of employment.

Arguments

I. The Whole Record as Whole Does Not support the Panel's Final Decisions

For simplicity in the following paragraphs, Appellant with bold **ALL undisputed facts**. Before the Court can determine if the record supports the Panel's final decision, there must be an examination of the federal laws that apply to the matter before the Court. Appellant argues that the added federal unemployment eligibility laws to address individuals' unemployed as a result of COVID – 19 must consider when determining eligibility for UI benefits. States are bound by these changes because they receive funds

from the federal government to run their state unemployment program. Secondly, The Court consolidated the Appellant's two appeal cases, and for simplicity, the Department referred to the above cases as "Reasonable Assurance" and "Still Working." The Appellant will provide the Court with a map to determine fact from fiction in the following charts and paragraphs.

(a). Reasonable Assurance of Employment – The Federal Government Requires Defendant to Prove All Three Elements to Prove Appellant Had Reasonable Assurance of Employment

Law *26 USC CODE 3304 (A)(6)(A)*	*Not In the Record*
First Element Offer of employment written in a contract	**George Word (Dep No. 24 and 25) There's no contract for substitutes** **There is no signed contract in the record by Appellant for the following school year. Furthermore, the Appellant's employment was contingent on his participation in a summer training program and not on whether Greenville has funding for the position. The Defendants have not presented any documentation that the Appellant attended this training**
Second Element Employment must be in the same capacity	Respondent cannot guarantee employment in the same capacity because Appellant employment is dependent on the absences of teachers in terms of day-to-day or long-term positions
Defendants cannot guarantee 90 % of Appellant earnings the following school year	Respondent cannot guarantee Appellant salary because his salary is contingent on the absenteeism of teachers

In George Ward's testimony, he said that the Appellant had to attend summer training and that it was mandatory to be considered for employment in the upcoming school year. Still, he was not sure if the Appellant attended *(Tr. Page 77, 19 – 28, and Page 78, 1-2)* Consequently, Defendants are prohibited from documenting that the Appellant had the reasonable assurance of employment. Appellant agrees that he worked for the Greenville Public Schools (Greenville) in August 2021; after contacting the person over substitutes and following their instructions to meet the criteria a week before, he accepted the substitute assignment in August of 2021. Also, George Ward testified that the Appellant could do some makeup training by contacting the substitute office, which was the case for the Appellant *(Tr. Page 78, 2 – 7)*. Based on the above information, the record does not support the Panel's decision to rule the Appellant ineligible for

benefit; on the contrary, the history shows that he did not have reasonable assurance of employment as a matter of law.

(b). Appellant Can Prove That Defendants Can Not Establish Reasonable Assurance of Employment Because the Appellant's Physician Instructed Him to Self-Quarantine Due to The Rise In COVID, and Appellant's Last Day of Work for Greenville was on November 23, 2020. He Was Released to Work in August of 2021.

Defendants have not submitted any pay stubs or any other documents of the Appellant's employment history with Greenville from November 2020 to August 2021. Moreover, the record shows that the Appellant received Pandemic Unemployment Assistance (PUA) benefits. (Federal Program) from March 15, 2020, until June 26, 2021; this fact is undisputed. Defendants argue that the PUA program differs from Unemployment Insurance (UI). The Appellant disagrees with the Defendants that the eligibility requirements for the two programs vary.

The Employment and Training Administration Advisory System, U.S. Department of Labor (ETA), issued program letter no. 24-20 on May 14, 2020. In this letter, the ETA makes it very clear that there are no differences in eligibility requirements between the Federal-State extended benefits (EB) program in response to the economic impact of the coronavirus disease 2019 (COVID-19) pandemic emergency. The programs and provisions within Division D, Emergency Unemployment Insurance Stabilization and Access Act Of 2020 (EUISAA), and the CARES ACT operate in tandem with the fundamental eligibility requirement of the Federal-State unemployment compensation (UC), which will remain in. place and require adherence. In addition, some of the Care's Act programs include new eligibility requirements, which states must apply. The requirements include that individuals are only entitled to benefits if they are no longer working through no fault of their own, and individuals must be able and available for work. And the ETA sent out another program letter N0. 9-21 on December 30, 2020. The programs and provisions within the Continued Assistance Act, EUISAA, and the Cares Act operate in tandem with the fundamental eligibility requirements of the Federal-State UI program.

These requirements include that an individual file certification with respect to each week of unemployment that is paid and that an individual is able to work and available for work except as expressly provided for in the state. However, once an individual becomes eligible for benefits under either program, they must both meet the exact weekly benefits requirements to receive the benefits also (See S.C. Code 41-35-110(3) (2021).

To receive unemployment benefits, the Appellant would have to be unemployed, and the undisputed record documents that the Appellant was unemployed and receiving PUA benefits at the same time frame Defendants are alleging he was unemployed due to a break between terms with Greenville.

Date Appellant Stop Working for Greenville	*Dates Appellant Received PUA Benefits as A Result of Being Unemployed Due to COVID*	*Date Panel Ruled Appellant Separated from Employment*	*Date Appellant Received Unemployment Benefits Despite Being Denied UI Benefits*
November 23, 2020, his doctor did not release him for work until August 2021	**Appellant received PUA from November 23, 2020, to June 26, 2021**	**The panel ruled the Appellant ineligible for UI benefits from June 6, 2021, to Appellant on August 15, 2021. because of a break in terms and reasonable assurance of employment**	**Appellant received PUA benefits from June 6, 2021, to June 26, 2021, because he was unemployed, not because of a break in school terms**

Federal laws state that an individual can only receive benefits under one program at a time. Here the Department inappropriately ruled on the Appellant's claim for UI benefits before the PUA program ended on June 26, 2021, which is not allowed under the law. The record shows that the Appellant would not be unemployed because of a break-in term. Instead, Appellant was unemployed because of an outbreak in COVID cases on November 23, 2020.

In addition, the Defendants argue that the Panel arrived at their decision of Appellant reasonable assurance of employment based on the Appellant returning to work in August of 2021. This summation of the record by the Panel would be irrelevant because the Panel had no prior knowledge that the Appellant's doctor would be releasing him for work in August of 2021,

even if the Court excepted the Defendant's argument. Defendants have not proved all 3 federal elements needed to prove Appellant had a reasonable assurance of employment. The Court should reject the Defendant's argument on this issue for the reasons stated above.

(c). Appellant Was Not Employed with Greenville Public Schools (Greenville) at The Time Respondents Ruled Him Ineligible for UI Benefits Due Not Accepting All Available Employment. The Appellant was Self-quarantined and Was Unable to Work Because of the Teacher's and Student's Contact with COVID-19

When Defendants alleged that Appellant was not working, all available jobs. The S.C. Code Section 41 – 35 – 130 (B) (3) require that the employer must provide the Department with copies of the notices of an individual's refusal to accept an offer of work. Greenville has not provided the Department with the legally required documents, and this is just another example of the Department not following the law or misinterpreting its legal intent of the law.

Date Appellant Stop Working for Greenville Because of COVID 19	*Dates Appellant Received PUA Benefits as A Result of Being Unemployed Due to COVID*	*Date Panel Ruled Appellant Ineligible for UI Benefits for Not Accepting Available Work*	*Dates Appellant Received Unemployment Benefits*
November 23, 2020, and Appellant's doctor did not release him for work until August 2021	**Appellant received PUA from November 23, 2020, to June 26, 2021**	**June 6, 2021, To Appellant August 15, 2021.**	**Appellant Received PUA Benefits from June 6, 2021, to June 26, 2021. Appellant Could Have Not Worked Doing This Period**

The Defendants have not presented any written data proving the Appellant refused any assigned jobs from November 23, 2020, to June 26, 2021. As the above chart show, Appellant received PUA benefits from November 23, 2020, to June 26, 2021. Thus, the Defendants cannot claim that the Appellant did not accept **ALL** available jobs during this time frame for the reasons stated above. Likewise, the issue before the Court is simple, can the Appellant refuse substitute employment opportunities when he is self–quarantined because of COVID – 19 and is receiving PUA benefits that require him not to be unemployed. This is another factor for the Court should

not accept Defendant's argument on this matter. George Ward, the representative for Greenville, testified:

> "...Well, he could notify us, but as a substitute teacher, he can work whenever he wants to work. So, if they take off on their own, they don't have to accept any jobs, and we don't really track that..." (Tr. Page 134, 25 – 28).

There are numerous reasons why an Appellant might accept a job assignment, such as being sick, and Greenville has no tools to track this for substitutes. It is Greenville's Policy that for a substitute to teach from home in his certified area, the Appellant would have to be under a contract; otherwise, he is limited to teaching in the school buildings. The substitute system only lists teacher vacancies of teachers that are doing in-person teaching. Subsequently, it is impossible for the Court to rule for the Defendants on this issue for the following reasons: (1). Greenville does not keep track of the jobs that were accepted or not accepted by the Appellant; (2) There is no documentation to inform the Court if the jobs were virtual or in person that the Appellant refused, and (3) Greenville has no way of tracking substitutes that don't accept the job assignment because of illnesses. As a matter of law, it is Greenville's responsibility to prove that he was not accepting all available jobs.

II. Defendant Was Permanently Detached from His Employment with Greenville at The Time Applied for UI Benefits

Defendants argued that the Appellant remained on the Greenville substitute list. If Appellant remained on Greenville's substitute list, it was without his knowledge or consent. Greenville's substitute policy requires substitutes to attend a mandatory summer workshop for individuals to be on their substitute status for the upcoming school year. Appellant never participated in a summary workshop because he was self-quarantined due to the rise in COVID – 19 cases under his doctor's supervision. Thus, the Appellant's name was automatically removed from the substitute list according to Greenville's substitute policy. The Appellant can't be guaranteed reasonable assurance of employment if he is not a Greenville employee.

III. The Court Should Not Affirm Panel's Decision Under the Two Issue Rule: Appellant Did Proper Challenge the Panel's Decision on Appeal.

The Appellant is only required to appeal the Panel's final decision. The Court ruled to consolidate the Appellant's two Appealed cases into one and determined they would be labeled as (1). Reasonable Assurance Case and (2) Still Working Case. Thus, the Appellant is bound only to challenge these cases. Moreover, the Department nor the Panel included in their decision that the Appellant was ineligible for UI benefits because he voluntarily quit work without a "good cause," and was not available for or actively seeking work.

The Panel decision on September 22, 2021, reads as follows:

> "The Appeal Tribunal decision mailed August 10, 2021, is modified. The Claimant is ineligible for UI benefits effective June 6, 2021, to August 21, 2020, upon the finding that he had the reasonable assurance of employment in the same capacity for the next school term *(See Tr. Page 4)*.

The Panel decision on November 12, 2021, reads as follows:

> "The Appeal Tribunal decision mailed September 2, 2021, is affirmed. The Claimant is ineligible for UI benefits effective March 14, 2021, upon finding he was not accepting all available work and did not meet the eligibility requirements for partial benefits under the UI program *(See Tr. Page 8)*.

The Court has ruled that the Defendant's argument that the Appellant was not available for work was incorrect for the following reason: (1). The record does not support that the Appellant was unable to work, and (2). The Panel did not find the Appellant unable to work. The Court should deny affirming the Panel's decision on the above matter under the two-issue rule because the Appellant was not required to challenge the above issues. After all, the Panel did not find that he separated from work without a good cause or was not available for or actively seeking work. Moreover, the Defendants are prohibited from introducing new arguments, and the court is not bound to consider these issues in their deliberation of this case. The Court should reject all augments associated with these issues based on the above information.

IV. Appellant Involuntary Quit His Employment for Medical Reasons Due to The Rise in COVID–19 Cases in Greenville

Defendants have improperly labeled the Appellant's medical illness not associated with his employment. It is irrefutable that there was a rise in COVID–19 cases in Greenville County. Likewise, it is also incontrovertible that the Appellant's doctor told him to self-quarantine due to the increase in COVID–19 cases. According to Greenville's website, Greenville reported that there were 103 new COVID–19 cases among students between November 29 and December 3, 2020. Constituting the highest new case count the district has seen in a single week. Altogether, the district has reported 759 student cases and 375 staff cases this fall *(See Rec. Page 164).* The Appellant testified that his doctor told him not to go to work because of COVID risk *(See Rec. Page 129).* The law states that employees have the right to work in a safe and healthy environment. Based on the unchallenged report from Fox Carolina News, the district's environment posed a health risk to the Appellant. The precedent set by the court would define the above matter as involuntarily leaving his employment for a good cause. Consequently, a reasonable person would not expect an employee to work in an environment that would be detrimental to his health.

V. The Appellant Was Actively Seeking and Available for Work From November 2020 to August 2021

The Defendants have relied heavily on the argument that the Appellant was not actively seeking and available for work. The Court has already ruled on this matter and stated that there is no evidence in the record that the Appellant was not actively seeking or available for work. The Court also noted that the above issue was not part of the Panel's decision in determining him ineligible for UI benefits. The Defendants have not explicitly identified which weeks the Appellant was not actively seeking and available for work. On the contrary, the record does

document that at the time, Appellant applied for UI benefits he was actively seeking and available for work, as shown in the chart below.

S.C. Ann. Section 41-35-110 (3)	*Dates Appellant Received PUA Benefits as A Result of Being Unemployed Due to COVID*	*Dates The Department Found Appellant Eligible to Receive Benefits Under Section 41-35-110 (3)*
An unemployed insured worker Is eligible to receive benefits with respect to a week only if the department finds he… is able to work and is available for work…	**Appellant received PUA benefits from November 23, 2020, to June 26, 2021**	**Appellant received PUA benefits from June 6, 2021, to June 26, 2021, and he was paid for these benefits because he was actively seeking and available for work**

Thereby nullifying the Panel's argument that the Appellant was ineligible for UI benefits because he was not actively seeking and available to work. The Court should disregard all of Defendant's arguments on this question based on the above reasons.

VI. Appellant's Claim for UI Benefits Should Have Been Dismissed Because He Was Receiving Benefits from Another Program and Be Allowed To Apply For UI Benefits Once His PUA Benefits Ended

On July 15, 2020, Appellant appealed a decision by the Department denying him UI benefits. The hearing officer ruled:

> A review of this claim shows that the claimant is eligible for benefits under the federally funded PUA program. Claimants can only receive benefits under one program at a time. As a result, this claimant's eligibility for regular UI for the same period is moot. Therefore, this appeal is administratively dismissed *(See Rec. Page 168 pp. 1)*

The Panel wrote in their finding:

> We note the Claimant received pandemic unemployment assistance (PUA) benefits effective March 15, 2020, through the June 26, 2021, end of the PUA program in South Caroline. An individual may only receive benefits under one program at a time, and the Claimant would not have been eligible to receive UI or PEUC benefits while he was receiving PUA benefits… *(See Rec. Page 3 pp. 5)*

This is the same issue before the Court, and the Panel should have arrived at the same above decision and ruled that Claimant's eligibility for regular UI benefits is moot because the Appellant can only receive benefits from one program at a time. The Panel goes on to say:

> The Claimant may establish his claim as of a subsequent date by calling the Department at 866-831-17 24 and providing evidence that he meets the availability requirements of the law *(See Rec. Page 3 pp 5)*

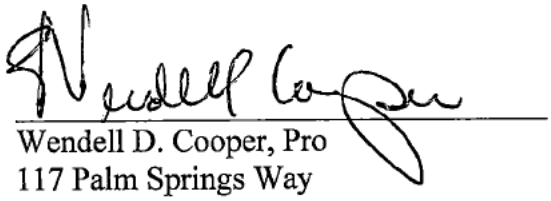
The Panel failed to follow the law and made an eligibility ruling on a " moot " claim based on the above facts. The above order also establishes that Defendants must follow federal laws when deciding on individuals' eligibility for UI benefits. Consequently, this matter should not be before the Court if the Panel adhered to the laws.

Conclusion

The Court should not affirm the Panel's decision because it failed to follow federal and state laws. The record does not support Defendant's request to confirm the Panel's decision under the Two Issue Rule. This rule does not apply to this case because the "good cause" and not being available for or actively looking for work was not part of the Panel's decision and would constitute a **new** argument. Thus, the law prohibits Court from hearing these issues. Moreover, the ALC Court has ruled on the issue of "not available for or actively looking for work." It was concluded that there was no information in the record to support this argument, and it was not part of the Panel's decision. The record is clear that Appellant was not continuously attached to his job with Greenville. George Ward testified that to be considered for a substitute position for the upcoming school year. The Appellant must attend a summer training program, which he did not attend. There is no substantial evidence in the record that Appellant participated in a summer training program sponsored by Greenville. In addition, Greenville was not the only school district he considered substituting for in the surrounding areas. Further, the Appellant involuntarily separated from his employment due to increased COVID–19 among teachers and students, which is supported by substantial evidence in the record. There is no significant evidence on the record, the eligibility date for UI benefits is incorrect, and the appeal before the

programs simultaneously. The Court should reverse Panel's decision based on the above-stated reason.

Respectfully Submitted,



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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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