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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

AUG 09 2023
SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW

The Honorable Deborah Brooks Durden, Administrative Law

Docket No. 21-ALJ-22-0448-AP

Appellate Case No. 2022-001433

Wendell D. Cooper,

Appellant,

v.

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

Respondents.

RECORD ON APPEAL

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Appellant

INDEX

Order of September 6, 2022	1
Order of May 19, 2022	7
Order of March 16, 2022	
Appeal Tribunal Decision August 10, 2021.....	17
Appeal Tribunal Decision September 2, 2021.....	19
Appellant Panel Decision September 22, 2021.....	21
Appellant Panel Decision October 12, 22, 2021.....	25
Appellant Brief June 1, 2022.....	29
Respondent Reply Brief July 11, 2022.....	41
Appellant Opposition Reply Brief February 11, 2022.....	61
Respondent Opposition Reply Brief February 1, 2022.....	71
Appellant Motion to Strike Respondent Reply Brief February 29, 2022.....	83
Appellant Reply to Respondent's Brief	89
Transcript of Testimony (Break in Terms).....	101
Transcript of Testimony (Not Accepting All Available Work).....	126
Respondent's Exhibits 8 (Paid UI Benefits During a Break in School Terms.....	145
Medical Letter from Prisma.....	149
Notice of Appeal.....	150
Fox New Report in The Rise of COVID Cases In (Greenville County School).....	151

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Wendell D. Cooper,

Docket No. 21-ALJ-22-0448-AP

Appellant,

v.

ORDER

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

Respondent.

STATEMENT OF THE CASE

Wendell D. Cooper (Appellant) appealed the decision of the South Carolina Department of Employment and Workforce (Department), which found Appellant ineligible for unemployment insurance (UI) benefits. The Administrative Law Court (Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. section 41-35-750 (2021). Upon consideration of the record and the briefs, this Court affirms, finding substantial evidence supports the Department's decision.

BACKGROUND

Appellant began working as a substitute teacher for the School District of Greenville County (Employer) on January 28, 2020. Appellant filed an initial claim for regular UI benefits on March 18, 2020. The Department's claims adjudicator issued a determination on May 1, 2020, holding Appellant indefinitely disqualified from receiving benefits, effective March 15, 2020. At the time Appellant filed his initial claim for UI benefits, he had not earned eight times his weekly benefit amount with Employer. Therefore, Appellant's claim was adjudicated based on his separation from his most recent employer who had paid him at least eight times his weekly benefit amount. The Department found Appellant left work with the previous employer voluntarily and without good cause.

Appellant then filed for a claim for Pandemic Unemployment Assistance (PUA) benefits on May 5, 2020. The Department's claims adjudicator issued a determination on June 2, 2020, holding Appellant eligible to receive PUA benefits effective March 15, 2020. Appellant's first benefit year expired on March 13, 2021, but Appellant continued to be eligible for PUA benefits



due to Congress's extension of the program. The PUA program ended in South Carolina on June 26, 2021. In November, 2020, Appellant stopped accepting substitute teaching positions based on the advice of his doctor regarding Appellant's medical conditions and concerns about COVID-19.

On July 12, 2021, the Department's claims adjudicator issued a determination (reasonable assurance determination) holding Appellant ineligible to use wages from Employer to establish a UI claim, effective June 6, 2021, based on finding Appellant was filing during a break between school terms and he had reasonable assurance to work after that break. Also on July 12, 2021, the Department's claims adjudicator issued a determination (still working determination) holding Appellant ineligible to receive UI benefits, effective March 14, 2021, based on finding Appellant was still working and not accepting available hours with Employer. Neither of these determinations negatively affected Appellant's eligibility for PUA benefits.

From July 13, 2021, to July 20, 2021, Appellant filed multiple appeals of the two claims adjudicators' determinations with the Department's Appeal Tribunal (Tribunal). The Tribunal held a hearing on August 9, 2021, to discuss Appellant's appeals from the claims adjudicator's reasonable assurance determination. On August 10, 2021, the Tribunal issued a decision affirming the claims adjudicator's reasonable assurance determination, finding Appellant was filing for UI benefits during a regular break between school terms while Appellant had a reasonable assurance of returning to work after the school break. On August 15, 2021, Appellant appealed the Tribunal's decision regarding the reasonable assurance determination to the Department's Appellate Panel (Panel). On August 30, 2021, the Tribunal held a hearing to discuss Appellant's appeals from the claims adjudicator's still working determination. On September 2, 2021, the Tribunal issued a decision affirming the claims adjudicator's still working determination, finding Appellant was no longer accepting work with Employer due to Appellant's concerns regarding COVID-19. On September 11, 2021, Appellant appealed the Tribunal's decision regarding the still working decision to the Panel.

On September 22, 2021, the Panel issued a decision regarding the reasonable assurance determination affirming the Tribunal upon finding Appellant filed for benefits during a break in the school term with reasonable assurance of returning to work following the end of the break period. On October 12, 2021, the Panel issued a decision regarding the still working determination affirming the Tribunal upon finding Appellant was no longer accepting all available work with Employer. Appellant appealed both Panel decisions to the Court. However, Appellant did not

challenge the Panel's finding that he was unavailable for work. By Order dated January 5, 2022, the Court consolidated both appeals into the instant case.

ISSUES ON APPEAL

1. Whether Appellant is eligible for UI benefits.
2. Whether Appellant is eligible for UI benefits because he meets the eligibility requirements for PUA benefits.
3. Whether the Department misapplied various portions of S.C. Code Ann. section 41-35-130 (2021).
4. Whether the Department misapplied S.C. Code Ann. section 41-27-20 (2021).

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 the Employment Security Commission, a 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, and 1-23-600(D) (Supp. 2021); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Com'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). The standard used by appellate bodies to review agency decisions is provided by section 1-23-380(5). See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1-23-380(5)). The section states:

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 [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. Com'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact 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 Com’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)). Finally, the party challenging an agency action has the burden of proving convincingly the agency’s decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917; citing Hamm v. AT&T, 302 S.C. 210, 213, 394 S.E.2d 842, 844 (1990).

DISCUSSION

Appellant argues the Department erred in finding he did not meet the eligibility requirements to receive UI benefits. The Court disagrees.

S.C. Code Ann. section 41-35-110 (2021) states “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 at his usual trade, occupation, or business or in another trade, occupation, or business for which he is qualified based on his prior training or experience” “Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.” Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). “The ‘unchallenged ruling, right or wrong, is the law of the case and requires affirmance.’” Id. (citing First Union Nat’l Bank of S.C. v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998).

The Panel found Appellant was ineligible for UI benefits on two separate grounds. First, Appellant was ineligible because he was still employed by Employer since he failed to request his

name be removed from the substitute teacher list. Second, the Panel found that even if Appellant was still an employee, Appellant was not available for work. Appellant failed to contest the Panel's finding that he was unavailable for work and was not seeking work. Therefore, this finding by the Panel is the law of the case and the Court may not find otherwise. Since Appellant was not available for work during the weeks he claims, he is ineligible for UI benefits.

Appellant argues in his response to the Department's brief that he was prohibited from raising a new argument on appeal and could not address the Panel's finding he was unavailable for work. Appellant refers to the legal precedent that "an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Appellant misapprehends this legal precedent. The issue of Appellant's UI benefits eligibility was raised to the Panel and the Panel ruled upon that issue by finding Appellant was unavailable to work. Appellant had the opportunity to challenge this finding in his Notice of Appeal and brief and failed to do so. Therefore, the Court must accept this ground for the Panel's decision as the law of the case and find Appellant ineligible for UI benefits.

With respect to Appellant's remaining issues, the Court finds them manifestly without merit because Appellant's PUA eligibility, section 41-35-130, and section 41-27-20 have no bearing on Appellant's eligibility for UI benefits. "The administrative law judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit." SCALC Rule 40. Therefore, the Court declines to address Appellant's remaining issues.

ORDER

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



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

September 6, 2022
Columbia, South Carolina

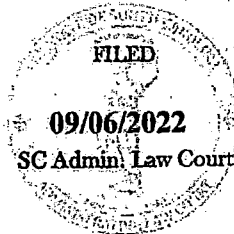
CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

September 6, 2022
Columbia, South Carolina



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Wendell D. Cooper,

Appellant,

v.

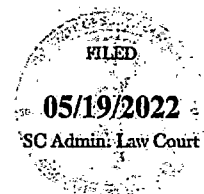
South Carolina Department of Employment
and Workforce and School District of
Greenville County,

Respondents.

Docket No. 21-ALJ-22-0448-AP

**ORDER DENYING
ALL PENDING MOTIONS**

This matter is before the Administrative Law Court (ALC or Court) on an appeal from a final decision of the South Carolina Department of Employment and Workforce (Respondent or Department) pursuant to S.C. Code Ann. section 41-35-750 (2021). Appellant filed two appeals with the Court. The first appeal, filed with this Court on October 20, 2021, arose from a September 22, 2021 final decision of the Department's Appellate Panel (Panel). The Panel's decision held Appellant ineligible to receive unemployment insurance (UI) benefits pursuant to S.C. Code Ann. section 41-35-20 (2021) for the period June 6, 2021, through August 21, 2021. The decision rests upon a finding that Appellant was unemployed from the School District of Greenville County (Greenville) during those weeks due to a scheduled break in academic terms and that Appellant had a reasonable assurance to return to work with Greenville when the break ended. Appellant filed the second appeal with this Court on November 5, 2021. It relates to an October 12, 2021 final decision of the Panel. The Panel's decision held Appellant ineligible to receive partial UI benefits effective March 14, 2021, pursuant to S.C. Code Ann. section 41-35-110 (2021). It is based upon a finding that Appellant was still working for Greenville, but he was not accepting all available work. On January 5, 2022, this Court issued an order granting Respondent's motion for consolidation of the two cases to promote judicial economy. On March 16, 2022, this Court issued an order denying Respondent's Motion to Dismiss, granting Appellant's Motion to Supplement the Record, and setting out a schedule for the record and briefs to be filed. On April 5, 2022, Respondent filed a comprehensive Record on Appeal.



On April 18, 2022, Appellant filed a Motion to Correct Hearing Transcripts, Record on Appeal, Add Documents to the Record on Appeal and Submit a Supplemental Brief. On April 28, 2022, Respondent filed its Response to Appellant's motion, and renewed its Motion to Dismiss Appellant's appeal for mootness. On May 10, 2022, Appellant filed a reply in opposition to Respondent's response to his motion and to Respondent's renewed Motion to Dismiss.

Respondent's Motion to Dismiss Appellant's Appeal for Mootness

Respondent moved to dismiss Appellant's appeal because the case is moot. Respondent argues the facts of the case show Appellant was "unable to work" during the time period at issue. Therefore, Respondent argues Appellant is ineligible to receive UI benefits under South Carolina law, preventing the Court from granting effectual relief if the Court reversed the Department. The Department points to Appellant's admission in his prior reply "that he was unable to work until August 23, 2021, because his doctor required him to quarantine due to COVID-19." Respondent argues the Court cannot grant Appellant relief because South Carolina law requires an unemployed insured worker to be "able to work and available to work" to be eligible for benefits. § 41-35-110(3).

Respondent argues the record shows Appellant was "unable to work" because of his doctor-recommended quarantine. This argument addresses the merits of the appeal and the substantial evidence supporting the agency decision. The facts argued by Respondent go to the merits of the case, but do not render the case moot. The doctrine of mootness prevents an appellate court from addressing moot and academic questions or make an adjudication where there remains no actual controversy. Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." Id., quoting Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). Therefore, this case is not moot and Respondent's Motion to Dismiss is denied.

Appellant's Motion to Supplement the Record

Appellant moved to supplement the record with a copy of a copy of a Tribunal decision dated December 3, 2021 concerning Appeal Number 21-LA-044498 and an August 12, 2021 print-out from <https://scuihub.dew.sc.gov/CSS/CSSClaimHomePage.htm?auditAction=Print&printAction=print&claimID=1547476> showing the Department's benefit payments to Appellant from March 31, 2020 to June 26, 2021. Because the December Tribunal decision was issued after the Panel

decisions, which are the subjects of this appeal, it could not have been considered by the Department in these matters. It is clear from the comprehensive record that the print-out Appellant seeks to add to the record was not introduced as evidence in the hearings below. Therefore, Appellant's Motion to Supplement the Record is denied.

Appellant's Motion to Correct Documents

Appellant moved to have the hearing dates on the covers of both hearing transcripts corrected in the Record. Respondent has stipulated that the covers of the transcripts contain a clerical error. Also, the correct dates are indicated in the body of the transcripts. Therefore, Appellant's Motion to Correct Hearing Transcripts is denied.

Appellant's Motion to Supplement Brief

Appellant moved to request this Court allow him to file a supplemental brief addressing only the issues not addressed in his previous filings and relying on the previous brief for the issues addressed therein. The Court will consider the brief filed by Appellant on December 7, 2021, along with any additional brief filed according to the briefing schedule established in this Court's March 16, 2022 Order. Therefore, Appellant's Motion to file a Supplemental Brief is denied.

ORDER

IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is **DENIED**.

IT IS ALSO ORDERED that Appellant's Motion to Supplement the Record is **DENIED**, and Appellant's Motion to Correct Documents in the record is **DENIED**.

IT IS FURTHER ORDERED that Appellant's Motion to Supplement Brief is **DENIED** and the briefing schedule established in this Court's March 16, 2022 Order stands.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

May 19, 2022
Columbia, South Carolina

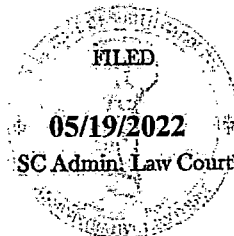
CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

May 19, 2022
Columbia, South Carolina



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Wendell D. Cooper,

Appellant,

v.

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

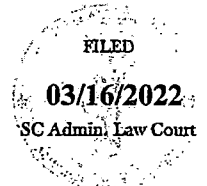
Respondents.

Docket No. 21-ALJ-22-0448-AP

ORDER

This matter is before the Administrative Law Court (ALC or Court) on an appeal from a final decision of the South Carolina Department of Employment and Workforce (Respondent or Department) pursuant to S.C. Code Ann. section 41-35-750 (2021). Appellant initially filed two appeals with the Court. The first arose from Appellant's appeal filed with this Court on October 20, 2021, from a September 22, 2021 final decision of the Department's Appellate Panel (Panel). The Panel's decision held Appellant ineligible to receive unemployment insurance (UI) benefits pursuant to S.C. Code Ann. section 41-35-20 (2021) effective June 6, 2021, through August 21, 2021, upon a finding Appellant was unemployed from the School District of Greenville County (Greenville) during those weeks due to a scheduled break in academic terms and that Appellant had a reasonable assurance to return to work with Greenville when the break ended. The Record on Appeal was filed in this case on November 17, 2021. Appellant's brief was filed with this Court on December 7, 2021. The second appeal arose from Appellant's appeal filed with this Court on November 5, 2021, from an October 12, 2021 final decision of the Panel. The Panel's decision held Appellant ineligible to receive partial UI benefits effective March 14, 2021, pursuant to S.C. Code Ann. section 41-35-110 (2021), upon finding Appellant was still working for Greenville, but he was not accepting all available work.

On November 29, 2021, Appellant filed a Motion to Supplement the Record to include the Notice of Appeal and a copy of a note from Appellant's physician. Petitioner also moved to strike page 36 of the record. On December 7, 2021, counsel for Respondent filed a Motion to Consolidate Cases, stating that the two cases involve the same parties, a substantial overlap in records, and a similarity in issues. On January 5, 2022, the Court granted Respondent's Motion to Consolidate



Cases in the interest of promoting judicial economy. On January 18, 2022, Appellant filed a Motion for Extension of Time, requesting thirty additional days to file a Motion for Reconsideration of the Court's order granting consolidation.

On January 21, 2022, Appellant filed a motion to set aside the Panel's Final Order. Appellant argued in light of the December 3, 2021 decision of the Department's Appeal Tribunal (Tribunal) finding Appellant eligible to receive Pandemic Unemployment Assistance (PUA) benefits, if otherwise eligible, the Court should set aside the Panel's order and enter its own ruling restoring unpaid benefits to Appellant. On February 1, 2022, Respondent filed its Reply in Opposition to Appellant's Motion to Set Aside the Panel's Order and its Motion to Dismiss Appellant's Appeal for Mootness. Respondent argues the facts of the case show Appellant was "unable to work" during the time period at issue. Therefore, Respondent argues Appellant is ineligible to receive UI benefits under South Carolina law, preventing the Court from granting effectual relief if the Court reversed the Department. Appellant filed a Reply in Opposition to Respondent's Motion to Dismiss on February 11, 2022. The Department filed a Response to Appellant's Reply on February 17, 2022, arguing Appellant admitted in his prior reply "that he was unable to work until August 23, 2021, because his doctor required him to quarantine due to COVID-19." On March 2, 2022, Appellant filed a Motion to Strike Respondent's Second Reply Brief, arguing Respondent's February 17 reply was out of judicial order, included a new argument, and misapplied a federal regulation.

Appellant's Motion to Supplement the Record

Appellant moved to supplement the record with a copy of a note written by his physician from Prisma Health and the correct Notice of Appeal. This physician's note was read by the Hearing Officer and entered into evidence at the August 8, 2021 Tribunal hearing without objection as Claimant Exhibit 1. Respondent does not object to Appellant's Motion to Supplement the Record. Appellant's Motion to Supplement the Record with the physician's note and the correct Notice of Appeal is granted.

Appellant's Motion to Strike

Appellant moved to strike a June 9, 2021 Department questionnaire filled out by Appellant located on page thirty-six of the record. Appellant argues the document was not entered into the record at the time of the hearing, the document is not relevant to the issue on appeal, and Appellant did not request benefits for loss of self-employment income. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of

the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. This document is part of the evidence which the Panel considered. Appellant answered on the questionnaire that he planned to become self-employed on July 1, 2021, in the field of driver's education for ten to twenty hours a week. Appellant also indicated his self-employment would not prevent him from looking for and accepting immediate full-time work. Appellant's answers relate to the primary issue before the Court of whether Appellant qualified for UI benefits. Specifically, Appellant's response that he is still looking for and accepting immediate full-time work despite pursuing self-employment is directly relevant to determining Appellant's eligibility for benefits. S.C. Code Ann. section 41-35-110(3) (2021) states:

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 at his usual trade, occupation, or business or in another trade, occupation, or business for which he is qualified based on his prior training or experience[, or] is available for this work either at a locality at which he earned wages for insured work during his base period.

S.C. Code Ann. section 41-35-110(3) (2021). Therefore, Appellant's Motion to Strike is denied.

Appellant's Motion for Extension of Time

Appellant moved for an extension of time, requesting thirty additional days to file a Motion for Reconsideration of the Court's order granting consolidation. "For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law." SCALC Rule 3(B). Appellant's Motion for Extension of Time did not provide any explanation regarding the need to extend the time for Appellant to file a Motion for Reconsideration. Therefore, Appellant's Motion for Extension of Time is denied.

Appellant's Motion to set aside the Panel's Final Order

Appellant moved the Court to set aside the Panel's Final Order and issue its own ruling taking into consideration the Tribunal's findings on December 3, 2021. S.C. Code Ann. section 1-23-600(E) (Supp. 2021) states:

Review by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the Administrative Law Court, must be in the same manner as prescribed in Section 1-23-380 for judicial review of final agency decisions with the presiding administrative law judge exercising the same authority as the court of appeals

S.C. Code Ann. section 1-23-600(E) (Supp. 2021). Section 1-23-380 does not provide a procedure for this Court to set aside the Department's findings and issue its own replacement order. Therefore, Appellant's Motion to set aside the Panel's Final Order is denied.

Respondent's Motion to Dismiss Appellant's Appeal for Mootness

Respondent moved to dismiss Appellant's appeal because the case is moot. "An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." Curtis v. State, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." Id., quoting Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). "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).

Respondent argues the Court cannot grant Appellant relief because South Carolina law requires an unemployed insured worker to be "able to work and available to work" to be eligible for benefits. § 41-35-110(3). Respondent argues the record shows Appellant was "unable to work" because of his doctor-recommended quarantine. However, the record does not support Respondent's characterization of the record as establishing Appellant was "unable to work." The letter from Appellant's physician stated Appellant was "advised to stay home at the time that COVID-19 was surging." This is not the same as declaring Appellant unable to work, since it is possible to work from home. Furthermore, the Panel did not find Appellant "unable to work," so this is not a matter in which the Court is bound to the Department's judgment as to the weight of evidence on a question of fact. Section 41-35-110(3) does not necessarily bar Appellant from being granted effectual relief. Therefore, this case is not moot and Respondent's Motion to Dismiss is denied.

Appellant's Motion to Strike Respondent's Second Reply Brief

Appellant argues Respondent's Second Reply Brief was out of judicial order, included a new argument, and misapplied a federal regulation and therefore should be struck. SCALC Rule 38 states:

Upon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided in these rules or by order of the Court.

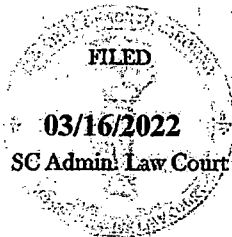
CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).

Robin Coleman

Robin E. Coleman
Judicial Aide to Judge Deborah Brooks Durden

March 16, 2022
Columbia, South Carolina



SCALC Rule 38. The Court's rules do not provide for striking a brief that violates the Court's rules. Instead, the rules provide the Court the discretionary power to dismiss an appeal or resolve the appeal adversely to an offending party for failure to comply with any of the Court's rules. This is an extreme contingency and the Court finds this power should only be exercised in the event a rule violation rises to the level of warranting such an action.

Respondent's Second Reply Brief merely reiterates Respondent's argument that the case is moot. Additionally, Appellant has not asked the Court to dismiss this case on the grounds of any alleged violation caused by Respondent's brief. The Court does not find any cause to sanction Respondent for the Second Reply Brief. Therefore, the Court will not sanction Respondent for any purported violation of the Court's rules caused by its Second Reply Brief. Appellant's Motion to Strike Respondent's Second Reply Brief is denied.

ORDER

IT IS HEREBY ORDERED that Appellant's Motions to Supplement the Record are **GRANTED**, Appellant's Motions to Strike are **DENIED**, Appellant's Motion for Extension of Time is **DENIED**, and Appellant's Motion to set aside the Panel's Final Order is **DENIED**.

IT IS ALSO ORDERED that Respondent's Motion to Dismiss is **DENIED**.

IT IS FURTHER ORDERED that Respondent shall file a Comprehensive Record by April 5, 2022. Appellant shall have twenty days from the date the Comprehensive Record is filed to file a brief. Respondent shall have twenty days from the date Appellant's Brief is filed to file its brief. Any reply brief must be filed within ten days from the date Respondent's brief is filed.

AND IT IS SO ORDERED.



Deborah Brooks Durden, Judge
S.C. Administrative Law Court

March 16, 2022
Columbia, South Carolina



South Carolina
Department of Employment and Workforce



18833480

DECISION OF APPEAL TRIBUNAL

Hearing Date: August 9, 2021

Appeal Number: 21-LA-032283

WENDELL D COOPER
117 PALM SPRINGS WAY
SIMPSONVILLE SC 29681

CLAIMANT

SCHOOL DISTRICT OF GREENVILLE COUNTY
PO BOX 2848
GREENVILLE SC 29602-2848

EMPLOYER

APPELLANT: Claimant

SSN: XXX-XX-XXXX

CLAIMANT ID: XXXXXXXX

APPEARANCES

FOR THE CLAIMANT: Claimant

FOR THE EMPLOYER: Employer

ISSUE STATEMENT

The issue in this case is whether the claimant had reasonable assurance of returning to work.

FINDINGS OF FACT

The claimant appealed the claims adjudicator's determination mailed July 12, 2021, which held the claimant ineligible for benefits effective June 6, 2021 due to a break between academic terms.

The claimant worked for the employer as a substitute teacher beginning January 23, 2020. The claimant is reasonably assured of returning to work when school resumes on August 17, 2021. The claimant has not signed a letter of intent to return to the employer for the 2021-2022 school year. Substitute teachers do not sign contracts they are on a call list and are called when needed. The claimant has contacted the school to place his name on pause so that he would not be called at this time due to the Pandemic and at the advice of his Physician.

**South Carolina
Department of Employment and Workforce**

REASONS

S.C. Code Ann. § 41-35-20 prohibits payment of benefits based on service performed for a school during a period between academic terms or school years if the individual has a contract or reasonable assurance of performing services in the same capacity in both terms or years.

The evidence in this case establishes the claimant's separation was temporary in nature, due to a break between academic terms. He was assured of returning to work when school resumed, however he has placed himself unavailable. By law, he is not eligible for benefits during the school break.

DECISION

The Tribunal holds the claimant ineligible for benefits effective June 6, 2021, because he has reasonable assurance of returning to work in the next academic term. This decision affirms the claims adjudicator's determination mailed July 12, 2021.

It is noted that the claimant was paid PUA for a period of the weeks in question.

This will be the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed by mail addressed to "Appellate Panel, Post Office Box 1752, Columbia South Carolina, 29202", or by fax at 803-737-3166. For additional information on filing an appeal, visit our web site at <https://dew.sc.gov/individuals/manage-your-benefits/appeals>.

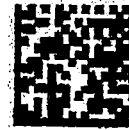
Erika S. Davis

**Erika S. Davis
Administrative Hearing Officer**

Decision Mailed: August 10, 2021



South Carolina
Department of Employment and Workforce



19703850

DECISION OF APPEAL TRIBUNAL

Hearing Date: August 30, 2021

Appeal Number: 21-LA-035058

WENDELL D COOPER
117 PALM SPRINGS WAY
SIMPSONVILLE SC 29681

CLAIMANT

SCHOOL DISTRICT OF GREENVILLE COUNTY
PO BOX 2848
GREENVILLE SC 29602-2848

EMPLOYER

APPELLANT: Claimant

SSN: XXX-XX-XXXX

CLAIMANT ID: XXXXXXXX

APPEARANCES

FOR THE CLAIMANT: Participated

FOR THE EMPLOYER: Participated

ISSUE STATEMENT

The issue in this case is whether the claimant is eligible for benefits.

FINDINGS OF FACT

The claimant appealed the claims adjudicator's determination mailed July 12, 2021, which held the claimant ineligible for benefits effective March 14, 2021, because he is was not accepting all available hours from the employer.

The claimant is a substitute teacher and had not been working since November 23, 2020, due to the recommendation from his doctor that he self-quarantine to avoid health complications from contracting Covid. The claimant has multiple health issues that make him high risk. The claimant returned to work on August 23, 2021. The employer did not question his absence as the claimant is a substitute teacher and they may accept or reject teaching assignments as they see fit. The

**South Carolina
Department of Employment and Workforce**

claimant was still employed by the employer but was not accepting work due to concerns with Covid and his heightened risk of a serious outcome.

REASONS

S.C. Code Ann. § 41-27-20 provides benefits for workers who are unemployed through no fault of their own.

S.C. Code Ann. § 41-27-80 weekly benefits for partial unemployment. Each eligible individual who is unemployed in any week must be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of the wages (if any) payable to him with respect to such week which is in excess of one-fourth of his weekly benefit amount. Such benefit is not a multiple of one dollar must be computed to the next lower multiple of one dollar.

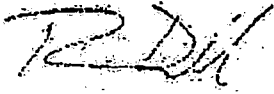
In this case, the claimant continues to be employed for the employer but was not accepting available work due to his doctor's recommendation. Therefore, the Tribunal finds that the claimant is still employed, not accepting available hours and is ineligible for regular unemployment benefits.

DECISION

The Tribunal holds the claimant ineligible for benefits effective March 14, 2021, upon finding the claimant did not accept any work due to Covid risk. This decision affirms the claims adjudicator's determination mailed July 12, 2021.

It is noted the claimant received PUA through the benefit week ending June 26, 2021.

This will be the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed by mail addressed to "Appellate Panel, Post Office Box 1752, Columbia South Carolina, 29202", or by fax at 803-737-3166. For additional information on filing an appeal, visit our web site at <https://dew.sc.gov/individuals/manage-your-benefits/appeals>.



Roman Dodd
Administrative Hearing Officer

Decision Mailed: September 2, 2021



South Carolina
Department of Employment and Workforce



19955243

09/22/2021

WENDELL D COOPER
117 Palm Springs Way
Simpsonville SC 29681-8001

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the mailing date of SCDEW's final decision (see the mailing date above).

The address of the Administrative Law Court is:

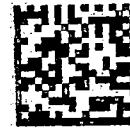
**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia SC 29201**

Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice law in South Carolina.

South Carolina
Department of Employment and Workforce



19955243

Office of Appellate Panel

WENDELL D COOPER)
117 PALM SPRINGS WAY)
SIMPSONVILLE SC 29681)
Claimant SSN: XXX-XX-XXXX)
Claimant ID: XXXXXXXX)

APPELLATE PANEL
DECISION

SCHOOL DISTRICT OF GREENVILLE)
COUNTY)
PO BOX 2848)
GREENVILLE SC 29602-2848)

Appellant: WENDELL D COOPER

Appeal Number: 21-HA-002726

Appellant: Claimant

The Claimant established a claim for regular unemployment insurance (UI) benefits and for the CARES Act extension of the UI program, pandemic emergency unemployment compensation (PEUC) benefits. The claims adjudicator's determination mailed July 12, 2021, held the Claimant ineligible to use his school wages to establish his claim effective March 14, 2021, based upon a finding the Claimant had reasonable assurance of returning to work in the same capacity after the break between terms. The Claimant appealed to the Appeal Tribunal. After an evidentiary hearing, the Tribunal modified the determination's effective date and held the Claimant ineligible to use his school wages to establish a claim effective June 6, 2021. The Claimant appealed the Appeal Tribunal decision on August 15, 2021 to the Appellate Panel.

The Appellate Panel issued this decision upon review of the record on appeal. We modify the Appeal Tribunal decision. The Claimant is ineligible for UI benefits effective June 6, 2021, to August 21, 2021, upon finding he had reasonable assurance of employment in the same capacity for the next school term. This decision ends the period of ineligibility on the reasonable assurance issue to correlate with the end of summer break.

BACKGROUND

Department records show the Claimant began working for the Employer in January 2020 as a substitute teacher. The Employer maintains the Claimant has remained on the active substitute

South Carolina
Department of Employment and Workforce

list, and he had reasonable assurance of returning to work with the Employer in the same capacity after the summer break. The Claimant contends he paused his availability for assignments on the advice of his doctor beginning in November 2020 through the end of the summer break in August 2021. The Claimant notes he was emailed and called about work during the summer, but he did not accept summer work.

FINDINGS

S.C. Code Ann. § 41-35-20 prohibits payment of benefits based on service performed for a school during a period between academic terms or school years if the individual has a contract or reasonable assurance that he will perform services in the same capacity in both years or terms.

The evidence in this case establishes the Claimant's separation during the summer of 2021 was temporary in nature, due to a break between academic terms, and he had reasonable assurance from the Employer he could perform services in the same capacity as a substitute teacher in the 2021-2022 school year. Therefore, we find by law the Claimant is ineligible to use his wages from his school Employer to establish a claim during the 2021 summer break, June to August 2021. Although the Claimant denies he was active on the substitute list, his "pause" in employment was due to his own actions and medical issues, and not to actions by the Employer. Consequently, the Claimant is ineligible for benefits from June 6, 2021, to August 21, 2021, because without his school wages he does not have sufficient wages in his base period to be monetarily eligible for UI benefits.

In his appeal to the Appellate Panel, the Claimant requested to submit additional evidence pertaining to his eligibility for benefits. As a board of review, the Appellate Panel generally is confined to the record developed by the Appeal Tribunal and does not consider additional information which was not previously presented in the evidentiary hearing before the Tribunal. The Claimant's request is denied.

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 Carolina. 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. We also note the Appeal Tribunal decision in 21-LA-035058 mailed September 2, 2021, held the Claimant ineligible for UI benefits effective March 14, 2021, upon finding he was not accepting all available hours with the Employer. The Claimant may establish his claim as of a subsequent date by calling the Department at 866-831-1724, and providing evidence he meets the availability requirements of the law.

South Carolina
Department of Employment and Workforce

DECISION

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 finding he had reasonable assurance of employment in the same capacity for the next school term.

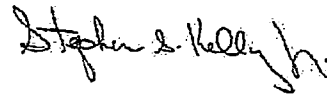
**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE
APPELLATE PANEL**



E.B. AYERS



TIM DANGERFIELD

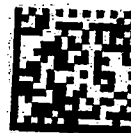


STEPHEN S. KELLY, JR.

Date Mailed: 09/22/2021



South Carolina
Department of Employment and Workforce



20138405

10/12/2021

WENDELL D COOPER
117 Palm Springs Way
Simpsonville SC 29681-8001

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the mailing date of SCDEW's final decision (see the mailing date above).

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia SC 29201**

Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice law in South Carolina.

South Carolina
Department of Employment and Workforce



20138405

Office of Appellate Panel

WENDELL D COOPER)
117 PALM SPRINGS WAY)
SIMPSONVILLE SC 29681)
Claimant SSN: XXX-XX-)
Claimant ID:)

APPELLATE PANEL
DECISION

SCHOOL DISTRICT OF GREENVILLE)
COUNTY)
PO BOX 2848)
GREENVILLE SC 29602-2848)

Appellant: WENDELL D COOPER

Appeal Number: 21-HA-002994

Appellant: Claimant

The Claimant filed an initial claim for regular unemployment insurance (UI) benefits effective March 15, 2020. He was held disqualified from UI benefits but eligible for pandemic unemployment assistance (PUA) benefits effective March 15, 2020. The Claimant filed a new UI claim effective March 14, 2021. After the PUA program ended on June 26, 2021, the Claimant's eligibility for benefits under the UI program was considered. The claims adjudicator's determination mailed July 12, 2021, held the Claimant ineligible for partial UI benefits effective March 14, 2021, upon finding he was not accepting all available hours with the Employer. The Claimant appealed to the Appeal Tribunal. After an evidentiary hearing, the Appeal Tribunal affirmed the determination. The Claimant appealed the Appeal Tribunal decision on September 11, 2021 to the Appellate Panel.

The Appellate Panel issued this decision upon review of the record on appeal. We affirm the Appeal Tribunal decision. The Claimant is ineligible for partial benefits effective March 14, 2021, upon finding he was not accepting all available work and does not meet the eligibility requirements for partial benefits under the UI program.

BACKGROUND

The Claimant began working for the Employer on or about January 28, 2020, as a substitute teacher. He remains on the substitute teachers' list, and work is available for him. The Claimant

South Carolina
Department of Employment and Workforce

stopped accepting substitute positions in November 2020, on the advice of his doctor due to his medical issues and his concerns about COVID-19. The Claimant began accepting work again from the Employer on August 23, 2021.

FINDINGS

Pursuant to the CARES Act Title II, Subtitle A, Section 2102, PUA payments are designed to provide assistance to the individual who is unemployed as a result of the COVID-19 pandemic and is not eligible for unemployment compensation but meets the PUA qualifying requirements.

S.C. Code Ann. § 41-35-110(5) requires a claimant's eligibility for regular unemployment insurance benefits to be based on the separation from the "most recent bona fide employer." The term "most recent bona fide employer" means the most recent employer from whom the claimant separated and earned at least eight times the weekly benefit amount of the claim.

S.C. Code Ann. § 41-35-60 is entitled "Weekly benefits for partial unemployment" and requires the payment of benefits to an eligible claimant who earns less than the weekly benefit amount of the claim.

S.C. Code Ann. § 41-35-110 requires as a condition of eligibility that an individual must be able to work, available for work, and actively-seeking work during each week for which benefits are claimed.

The subject Employer is the Claimant's most recent bona fide employer for the purposes of determining his eligibility for UI benefits effective March 14, 2021. The credible evidence shows the Employer has had work available for the Claimant, but the Claimant restricted his availability for work. While the PUA program was in place, the Claimant's medical issues and his concerns about COVID provided compensation. However, under the UI program requirements, the Claimant was not available for work, and was not actively-seeking work during each claim week. Therefore, we hold the Claimant ineligible for UI benefits effective March 14, 2021, upon finding he does not meet the eligibility requirements of the UI program.

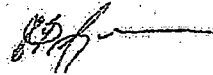
In his appeal to the Appellate Panel, the Claimant argues he quit employment in November 2020, when he informed the Employer he would not be accepting work. He also argues his UI claim should be effective June 27, 2021. We do not find these arguments or the other arguments in his appeal to have merit. The Claimant did not request his name be removed from the substitute teacher list, and the Employer considered him as still employed. Further, even if the Claimant were found to have been eligible for UI benefits due to the nature of his November 2020 separation, he would remain ineligible under the UI program because he was not available for work and not actively-seeking work. As to the effective date of his claim, the Claimant last filed a claim application on June 9, 2021, and the UI claim was backdated to March 14, 2021. The backdating has no effect on this claim for benefits.

South Carolina
Department of Employment and Workforce

DECISION

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 does not meet the eligibility requirements for partial benefits under the UI program.

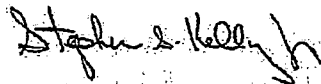
**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE
APPELLATE PANEL**



E.B. AYERS



TIM DANGERFIELD



STEPHEN S. KELLY, JR.

Date Mailed: 10/12/2021

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

WENDELL COOPER

APPELLANT,

V.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT
AND WORKFORCE DIVISION, AND SCHOOL DISTRICT
OF GREENVILLE COUNTY,

RESPONDENTS.

DOCKET NO: 21-AJ-22-0448-AP

Appellant's Brief

Wendell Cooper, Pro Se
117 Palm Springs Way
Simpsonville SC 29681
Phone: (864) 230 - 7040
Email: wendelldoncooper@yahoo.com

TABLE OF CONTENTS

Table of Authorities

Statement of Issues on Appeal

Statement of the Case

Standard of Review

Facts

Conclusion

ARGUMENTS

1. Respondents failed to apply the appropriate legal standards for individuals that are prevented from reaching their workplace due to the spread of Covid-19 and are under the care of a physician within the 15 U. S. Code § 9021 (b)(ff) -Pandemic Unemployment Assistance guidelines.
2. Respondent failed to correctly apply the Federal Statute 26 USC Code 3304 (A)(6)(A)-Section(5)(A) – Federal Unemployment Tax Act (FUTA). Upon arriving at their determination, the Appellant was ineligible for unemployment insurance benefits (UI); due to being unemployed because of a break-in school term and having the assurance of employment the next school term.
3. Respondent failed to apply the appropriate legal standards under S.C. Code 41-Labor and Employment, Chapter 35- Section 41-35-130(A)(1). The Respondent was unable to acknowledge the effects of COVID 19 – and its impact of the disease on workers in the workplace. In particular, the impact of the illness on Greenville teachers' and students' health and the health of the citizens of Greenville County according to the Center of Disease Control (CDC) health guidelines.
4. Respondent failed to apply the legal standards under S.C. Code 41-Labor and Employment, Chapter 35- Section 41-35-130(A)(3). Refusal of work without good cause.
5. Respondent failed to use the appropriate legal standards under S.C. Code 41-Labor and Employment, Chapter 35- Section 41-35-130(B)(3). The employer must provide the Department of Employment and Workforce (Department) with copies of the notices of an individual's refusal to accept an offer of work.
6. Respondent failed to use the appropriate legal standard under the Cares Act Federal 26. USC § 3304 (a)(11) and S.C. Code Ann § 41- 27-20 provide benefits for unemployed workers through no fault of their own.

7. Respondent failed to use the legal standard under the Care Act 15 USC. Code § 9021 (b)(ff). The Appellant was entitled to UI benefits as a matter of law because he was unable to reach his place of employment due to the advice of a health care provider to self-quarantine related to health concerns

TABLE OF AUTHORITIES

CASES

Preziosi v. Dept of Emp. Sec., Bd. of Rev. 529 A. 2d 133 (1987)
Sulat v. Board of Review, 424 A. 2d 451 (NJ. Super Ct. App Division (1980)
Stonco v. Bd. of Rev., 106 NJ Super 6.9 (App Div.1969)
Wolf's v. Iowa Employment Security Comm., et al. 59 N.W. 2d 216 (1953)
Leissring v. DILHR, 115 Wis.2d 475 (1983)
Milliken & Co. v. Griffin 309 S.E.2d 733 (1983)

STATUTES

S.C. Code Ann § Section - 41-35-120 (1)(4)
S.C. Code Ann § Section - 41-35-120 (1)
S.C. Code Ann § Section - 41-35-130 (A)(1)
S.C. Code Ann § Section - 41-35-130 (A)(3)
S.C. Code Ann § Section - 41-35- 130 (B)(3)
S.C. Code Ann § Section - 41-27-20

OTHER AUTHORITIES

Federal. 26 USC Code § 3304 (A)(6)(A) – Section (5)(A)
Federal. 15 USC. Code § 9021 (b)(ff)
Federal. 26. USC Code § 3304 (a)(11)
Federal. 20 C.F.R. Code § 604.4 (a)(b)
South Carolina Unemployment Practice Manual Pages 12 and 19
Ump. Ins. Program Letter NO. 5-17

STATEMENT OF ISSUE ON APPEAL

Did the Panel base their final decision upon unlawful procedures when they determined that the Appellant was ineligible for UI benefits?

Did the Panel make interpretation errors when applying state and federal laws in arriving at their final decision that the Appellant was ineligible for UI benefits?

STATEMENT OF CASE

On October 20, 2021, the Appellant filed a final appeal from September 22, 2021.

The decision of the Panel. The Panel's decision made help Appellant ineligible to receive

Unemployment insurance (UI) benefits pursuant to S.C. Code Ann. § section effective June 6, 2021, through August 21, 2021, upon a finding that Appellant was unemployed from the School District of Greenville County (Greenville) during those weeks due to a scheduled break in academic terms and that Appellant had a reasonable assurance to return to work with Greenville when the break ended. The Record on Appeal was filed in this case on November 17, 2021. The Appellant's brief was filed with this Court on December 7, 2021. The second appeal arose from the Appellant's appeal with this Court on November 5, 2021, from an October 12, 2021, the Panel's final decision. The Panel's decision held the Appellant ineligible to receive partial UI benefits effective March 14, 2021, Pursuant to S.C. Code Ann. 41-35-110, upon finding the Appellant was still working for Greenville but not accepting all available work.

FACTS

Appellant qualified for PUA benefits effective March 15, 2020, and received benefits until the PUA program ended on June 26, 2021 (See Rec. page 6). Also, see (*TR. Page 126, 2-8*), and (*Rec. page 163*) the Appeal Tribunal stated Appellant received PUA benefits until June 26, 2021. In addition, the Panel also said that the Appellant received PUA benefits from March 15, 2020, through June 26, 2021 (*Rec. Page 174*). The Appellant was able to receive PUA benefits as the result of COVID – 19 Pandemic relief because he was unable to reach his place of employment due to the advice of a health care provider to self-quarantine related to health concerns (*U.S.C § 9021(b)FF*) and (*Rec. page 165*) Respondents' February 18, 2021, fact-finding questions. Furthermore, the Respondents did not refute that the Appellant physician informed him to self-quarantine. George Ward representing Greenville, states that he is not questioning the legitimate reasons, Appellant's reasons he voluntarily quit work and was not accepting the available position. He also testifies that Greenville does not keep track of jobs accepted or not accepted by the Appellant (*See Tr. Page 134 25 to 28 and Page 135 1 to 3*).

Greenville is required by law under *S.C. Code 41-Labor and Employment, Chapter 35- Section 41-35-130(B)(3)*. The employer must provide the Department of Employment and Workforce (Department) with copies of the notices of an individual's refusal to accept an offer of work. Consequently, Greenville has not provided the Department with the above documents, thereby preventing them from claiming that the Appellant was not accepting a position.

On December 4, 2020, Fox Carolina reported that between November 29, 2020, to December 3, 2020, there were 103 new positive COVID – 19 cases, according to Greenville's website. This was the highest new case count the district has seen in a single week, given the rise of Covid – 19 in the Greenville school system. In addition, to the number of Greenville's previous reported COVID - 19 cases. Appellant physicians recommended that he quarantine himself from a toxic environment such as Greenville schools due to his high risk of developing COVID disease (*Rec. page 52*).

On or about November 23, 2020, Appellant removed himself from the substitute list because of the number of reported Greenville COVID – 19 cases. In conjunction with the Appellant's physician's orders to self-quarantine for health reasons.

On February 18, 2021, Appellant informed Respondent that he was still unemployed due to COVID – the 19 Pandemic. Respondent asked Appellant to submit a doctor's note. He provided the Department with a doctor's note, which stated that the Appellant was instructed to self-quarantine for health reasons for the months in question. The Respondent continued to pay Appellant PUA benefit until June 26, 2019 (*Rec. Page 163 and Tr. Page 126, 2-8*).

On August 30, 2021, the Appellant informed hearing officer Roman Dodd (HO) that he could be under only one program at a time. The HO said this was not true (*Tr. Page 124, 24 to 25*). However, the Panel disagrees with the HO and states that Appellant can only be under one program at a time (*Rec. Page 174*).

Appellant applied for UI benefits on March 14, 2021. There is no employer separation statement informing the Department that the Appellant was not accepting all available work in the record on appeal. Furthermore, the Appellant would not be eligible to apply for UI benefits because he received PUA benefits during the same eligibility period. On March 11, 2021, the American Rescue Plan Act of 2021 (ARPA) from March 15, 2021, through September 4, 2021 (*Rec. Page 170, PP. 2*). The Appellant can only receive benefits from one program at a time. Accordingly, he would not be working all of the available work hours during the above time frame because his medical doctor advised him to self-quarantine due to the reported Greenville Covid – 19 cases. (*Tr. Page 130, 9 to 15 and Page 131, 11 to 18*).

The Appellant could not be placed on Greenville's substitute list for August 2021 until his doctor released him to return to work (*Tr. Page 82, 5 to 9*).

The Appellant removed his name from the automatic system that calls substitutes (sub) when absences are in the system. The system did not have an option to remove the Appellant's name from the sub-list. While the pause prevented him from receiving a call to fill an absence, the Appellant was still receiving personal calls from principals, secretaries, and teachers. He informed them to remove his name from their sub-list for medical reasons (*Tr. Page 84, 9 to 22*). The Appellant was unable to attend the mandatory summer sub training, which is required to be placed on Greenville's August 17, 2021, sub list. Due to him being self-quarantined for medical reasons (*Tr. page 77, 26 to 28 and Tr. page 78 1 to 2*). Greenville informed the Department that the Appellant had the reasonable assurance to return to work on August 17, 2021, and he did not return to work until August 23, 2021 (*Tr. page 13, 11 – 20*). Greenville informed the Department that the Appellant's last creation date was July 6, 2021 (*Rec. Page 45, pp. 5*).

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) articulates the standard for judicial review of cases decided by the ALC. See S.C. Code Ann. 1-23-610(B)-(C) (Supp. 2007); Olson v. S.C. Dept of Health & Envtl. Control, 379 S.C. 57, 663 S.E.2d 497, 500-501 (Ct. App. 2008) (Judicial review of the ALC judges order is governed by section 1-23-610(C) . . .). Section 1-23-610(C) of the South Carolina Code illuminates:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal 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 of the finding, conclusion, or decision is:

- (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.

AUGMENT

Respondents Failed to Apply the Appropriate Legal Standards for Individuals That Voluntarily Quit for "Good Cause" Because They Are Prevented from Reaching Their Workplace Due to the Spread of Covid-19 And Are Under the Care of a Physician Within the 15 U. S. Code § 9021 (b)(ff) - Pandemic Unemployment Assistance Guidelines.

The South Carolina Law Section 41-35-120 (1) – Define "Good Cause" as a reason connected to employment and would justify a reasonable person leaving work. Appellant meets the criteria in the following: (1) Greenville had a high number of reported COVID – 19 cases among teachers and students; (2) Appellant informed principals, teachers, and secretaries that he would not be accepting any sub jobs due to increasing COVID – 19 reported case in Greenville; (3) Appellant's doctor advised him to self-quarantine due to his high risk of developing server COVID disease; and (4) 15 U.S. Code § 9021 (b)(ff) affords Appellant UI benefits because he was unable to reach a place of employment due to the spread of COVID – 19 and this law would supersede any ineligibility determinations by the Department. Furthermore, a reasonable person

would follow the recommendation of his doctor. Thus, the Appellant involuntarily left work for a good cause and based on the above reasons; the law prevents the Department from withholding UI benefits from June 6, 2021, to August 21, 2021. *In Milliken & Co. v. Griffin* 309 S.E., 2 733 (1983), in this case, the claimant filed for unemployment benefits against her employer. She alleged that she quit her job as a shift manager because of physical stress.

The adjudicator found that the claimant quit work involuntary due to health and awarded her benefits. The claimant left the job because the doctor advised that she would have to change careers or be assigned her work a shift not longer than eight hours due to her muscular spasms. The Griffin court found that a claimant who leaves a job for health reasons has left involuntary with good cause attributable to the employer and is entitled to unemployment benefits. The Griffin court citing *Watson*, 273 N.C. 629, 633, S.E. 2d. At 5-6, a person who must quit a job for health but is available for other employment is not a person envisioned by this language. Both reason and justice demand that such a claimant receive unemployment.

Respondent failed to correctly apply the Federal Statute 26 USC Code 3304 (A)(6)(A)(i) of the Federal Unemployment Tax Act (FUTA). Upon arriving at their determination, the Appellant was ineligible for unemployment insurance benefits (UI); due to being unemployed because of a break-in school term and having a reasonable assurance of employment the next school term.

To establish under the Federal Statute 26 USC Code 3304 (A)(6)(A) -Section(5)(A) – Federal Unemployment Tax Act (FUTA). For the Respondent must meet the threshold of establishing reasonable assurance, they must meet all of the following three elements:

1. The offer of employment may be written, oral, or implied and must be a genuine offer, that is, an offer made by an individual with actual authority to offer employment. The Respondent failed to meet these three elements in the following ways:
 - (a) Greenville did not offer per diem substitutes a contract, and they did not provide Appellant a contract for the next school term.
 - (b) To be placed on the substitute for the next school year is contingent on attending a training session that the Appellant did not participate in because he was self-

quarantined at his doctor's request. The Appellant's absence from this mandatory meeting was his communication to the district that he did not want his name placed on their substitute list. Subsequently, they added his name to their substitute list without his permission, and this action does not establish that the Appellant had the reasonable assurance of employment. See *Slat v. Board of Review*, 176 N.J. Super. 584 (1980). In addition, the Slat court determined that a teacher without a contract for the subsequent academic year is genuinely unemployed. If sec. 41-25-20 is construed as the Respondent's urges; the school district could easily avoid the payment of UI benefits during an intervening summer period by offering the possibility of substitute teaching with no guarantee of steady employment or a regular source of income. To allow this creates the potential for abuse and is contrary to the statute. Also, see *Abel v. UN. Comp. Bd. Of REV.*, 102 Pa. Commonwealth Ct. 209, 517 A.2d. 594 (1986).

(c) Appellant's last day of work was on or about November 23, 2020. When he made himself unavailable for the electronic phone system to contact him for job vacancies, this was his notice to Greenville that he wanted to remove his name from the substitute list. Furthermore, the Appellant did not sign up for or participate in the mandatory training as a substitute for the next school term. See (*Rec. page 165 pp. 7*), (*Tr. page 130, 9 to 15*), and (*Tr. Page 77, 26 to 28, and Tr. Page 78 1-25*). George Ward representing Greenville, testified that if Appellant were not interested in returning to work, he would remove his name from the automatic system that calls subs when there are absences in the system. However, Mr. Ward states that Appellant is on the sub list but doesn't know if he participated in training to be on the sub list for the next school term. At the very least, this position should raise a "red flag" and give some credence to the comments in the above paragraph. Thus, the Appellant could not have applied for UI benefits during a break in the school term because he removed his name from the sub list.

(d) Thereby severing the relationship between him and the Greenville and giving that certainty, any pre-existing, or continued unilateral "reasonable assurance" on the part of Greenville would necessarily become a nullity. To the point of him quitting to self – quarantine Appellant was no longer an employee and made himself "available for suitable work," and thus eligible for benefits under the law. See *Abel v. UN. Comp. Bd. Of REV.*, 102 Pa. Commonwealth Ct. 209, 517 A.2d. 594 (1986).

2. The employment offered in the following academic year or term, or the remainder of the current academic year or term, must be in the same capacity. Services under sec. 3304(a)(6)(A), FUTA, are performed in two capacities: (1) a professional capacity or (2) a non-professional capacity. The employment offered in the following academic year or term must be provided in the same capacity as the previous academic year's or term's

(a) In *Preziosi v. Dept. of Emp. Sec., Bd. of Rev.* 529 A.2d. 133 (1987) the court, citing and agreeing with *Leissring v. Department of Industry, Labor and Human Relations*, 115 Wis.2d 475, 340 N.W. 2d. 533 (1983) In *Leissring* two full-time teachers, with guaranteed hours and wages, were laid off at the end of the school year, and they were offered the opportunity to be placed on a substitute-teaching list, with no guaranteed wages or hours, for the upcoming year. The *Leisenring* court held that teachers did not have reasonable assurance that they would perform services in any

such capacity as required by the statute. *Id.* at 478, 340 N.W.2d at 535. The Preziosi court said that per diem substitutes do not have reasonable assurance because they do not earn full salaries and benefits. Therefore, substitutes under this category are eligible for benefits during the summer break.

3. The economic conditions of the job offered may not be considerably less in the following academic year or term (or portion thereof) than in the first academic year or term (or portion thereof). The Department interprets "considerably less" to mean that the economic conditions of the job offered will be considerably less if the claimant will not earn at least 90% of the amount that the claimant made in the first academic year or term or a corresponding period if the claimant does not regularly work successive terms (i.e., the claimant works the spring term each year).

(a) Greenville cannot guarantee the Appellant 90 % of his salary from year to year because his availability for work is based on a teacher's request for a substitute and could be impacted by a decline in student enrollment. (*See, Preziosi v. Dept. of Emp. Sec., Bd. of Rev. 529 A.2d 133 (1987).*)

Based on the above reasons and the evidence in the record, The Respondents have not met all three elements. They are prohibited from denying Appellant UI benefits based on reasonable assurance as a matter of law.

Respondent failed to apply the appropriate legal standards under S.C. Code 41-Labor and Employment, Chapter 35- Section 41-35-130(A)(1). The Respondent was unable to acknowledge the effects of COVID 19 – and its impact of the disease on workers in the workplace. In particular, the impact of the illness on Greenville teachers' and students' health and the health of the citizens of Greenville County according to the Center of Disease Control (CDC) health guidelines.

The Panel ignores the "Common Knowledge" of the impact COVID -19 had on the Greenville County community under the CDC health guidelines. The Appellant's doctor advised him to quarantine due to the spread of COVID – 19 diseases. The Panel refused to acknowledge that spread of the disease was prevalent in Greenville Schools is a "gross" application of section 41-35-130(A)(1). The record shows that the Appellant involuntary quit work for medical reasons related to work beyond his control and should be eligible for benefits as a matter of law.

Respondent failed to apply the legal standards under S.C. Code 41-Labor and Employment, Chapter 35- Section 41-35-130(A)(3). Refusal of work without good Cause

Appellant refused to work for a good cause in the following ways:

- (a) Greenville had experienced a surge in COVID – 19 among both teachers and students. Consequently, making the workplace unhealthy for teachers with underlining conditions.
- (b) Appellant could not reach a place of employment due to the surge of COVID -19 cases based on his doctor's advice to self-quarantine for health reasons.

Appellant is eligible for benefits because he involuntarily quit work for medical connected to his work on his doctor's advice. *See Milliken & Co. v. Griffin* 309 S.E.2d 733 (1983).

Respondent failed to use the appropriate legal standards under S.C. Code 41-Labor and Employment, Chapter 35- Section 41-35-130(B)(3). The employer must provide the Department of Employment and Workforce (Department) with copies of the notices of an individual's refusal to accept an offer of work

Greenville failed to provide the Department with copies of the notices documenting that the Appellant refused job offers. George Ward testified:

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

Hence, Greenville is incapable of meeting the above standard, and the Appellant is eligible for UI benefits as a matter of law.

Respondent failed to use the appropriate legal standard under the Cares Act Federal 26. USC § 3304 (a)(11) and S.C. Code Ann § 41- 27-20 provide benefits for unemployed workers through no fault of their own.

Appellant became unemployed through no fault of his own for the following reasons:

- (a) There was a surge in COVID – 19 among Greenville's teachers and students.
- (b) The Appellant's doctor advised him to self-quarantine for health reasons in coordination with the CDC health guidelines.

The Appellant has no control over the disease or his doctor's health decisions. Thus, Appellant is eligible for UI benefits as a matter of law.

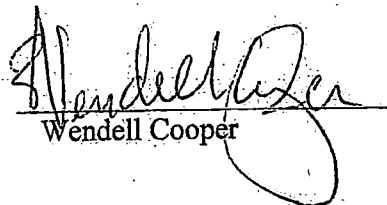
Respondent failed to use the legal standard under the Care Act 15 USC. Code § 9021 (b)(ff). The Appellant is entitled to UI benefits as a matter of law because he was unable to reach his place of employment due to the advice of a health care provider to self-quarantine related to health concerns.

On November 23, 2020, the Appellant's doctor advised him to self-quarantine, and he was released to return to work on August 23, 2021, with stipulation. So, Appellant is eligible for UI benefits until his doctor removes him to return to work.

CONCLUSION

On November 23, 2022, Appellant severed his relationship with Greenville for a good cause and was no longer an employee. He made himself available for suitable work. Therefore, the issues of reasonable assurance and not working all open hours is irrelevant to the issues before the court. The issue before the court is that the Appellant was unable to reach a place of employment because his doctor advised him to self-quarantine for health reasons. The law stipulates that he is eligible for UI benefits as a matter of law.

Respectfully,


Wendell Cooper

June 1, 2022

REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE
FOR THE YEAR 1897

AND
OF THE LANDS AND MINES OF THE DISTRICT OF COLUMBIA
(Including the District of Columbia)

WASHINGTON, D. C.

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STATEMENT OF ISSUES ON APPEAL

1. SHOULD THIS COURT AFFIRM THE PANEL'S DECISIONS BASED ON THE TWO ISSUE RULE WHERE APPELLANT FAILED TO CHALLENGE THE PANEL'S FINDING THAT EVEN IF APPELLANT WAS FOUND ELIGIBLE BASED ON A TOTAL SEPARATION FROM HIS EMPLOYER, HE STILL WOULD NOT BE ELIGIBLE FOR BENEFITS BECAUSE HE WAS NOT AVAILABLE FOR WORK OR ACTIVELY SEEKING WORK?
2. ARE THE APPELLATE PANEL'S FINDINGS THAT APPELLANT WAS STILL JOB ATTACHED AND MERELY WAITING TO BE CLEARED TO RETURN TO WORK BY HIS DOCTOR SUPPORTED BY SUBSTANTIAL EVIDENCE?
3. IS THE APPELLATE PANEL'S FINDING THAT APPELLANT WAS NOT ACCEPTING ALL AVAILABLE WORK SUPPORTED BY SUBSTANTIAL EVIDENCE?
4. ARE THE APPELLATE PANEL'S FINDINGS THAT APPELLANT WAS OUT OF WORK DUE TO A BREAK BETWEEN TERMS DURING THE SUMMER OF 2021 AND THAT APPELLANT HAD REASONABLE ASSURANCE OF AVAILABLE WORK WHEN SCHOOL RESUMED IN THE FALL SUPPORTED BY SUBSTANTIAL EVIDENCE?
5. WOULD APPELLANT STILL BE INELIGIBLE TO RECEIVE UI BENEFITS EVEN IF THIS COURT FINDS APPELLANT VOLUNTARILY QUIT HIS EMPLOYMENT DUE TO MEDICAL ISSUES AS HE CONTENTS?
6. ARE APPELLANT'S REMAINING ARGUMENTS MANIFESTLY WITHOUT MERIT?

STATEMENT OF THE CASE

Appellant Wendell Cooper began working for the Greenville County School District (Greenville) on January 28, 2020. (R.p.10). He filed an initial claim for regular unemployment compensation (UI) benefits on March 18, 2020. (R.pp.9-12). The Department's claims adjudicator issued a determination May 1, 2020, holding Appellant indefinitely disqualified from receiving benefits, effective March 15, 2020, based on a finding he left work with a previous employer voluntarily and without good cause.¹ (R.p.25). Appellant then filed a claim for Pandemic Unemployment Assistance (PUA) on May 5, 2020. (R.pp.27-29). The Department's claims adjudicator issued a determination June 2, 2020, holding Appellant eligible to receive PUA benefits effective March 15, 2020. (R.p.30). Appellant's first benefit year expired on March 13, 2021, but Appellant continued to be eligible for PUA benefits due to the pandemic and Congress's extension of the programs. The PUA program ended in South Carolina on June 26, 2021.

On July 12, 2021, the Department's claims adjudicator issued a determination holding Appellant ineligible to use wages from Greenville to establish a UI claim, effective June 6, 2021, based on findings he was filing during a break between terms and he had reasonable assurance of returning to work after that break between terms ("reasonable assurance determination"). (R.p.45). Also on July 12, 2021, the Department's claims

¹ At the time Appellant filed his initial claim for benefits on March 18, 2020, he had not earned eight times his weekly benefit amount with Greenville. As a result, his claim was adjudicated based on his separation from his most recent employer who had paid him at least eight times his weekly benefit amount (Spartanburg County Schools District #7) rather than Greenville. See S.C. Code Ann 41-27-310; see also S.C. Code Ann. § 41-35-110(5).

adjudicator issued a determination holding Appellant ineligible to receive UI benefits, effective March 14, 2021, based on a finding he was still working and not accepting all available hours with his current employer ("still working determination"). (R.p.47). Neither of these determinations negatively affected Appellant's eligibility for PUA benefits and Appellant received over \$38,000.00 in combined CARES Act benefits from March of 2020, through the end of the programs in South Carolina on June 26, 2021.

From July 13, 2021, to July 20, 2021, Appellant filed several appeals from the two claims adjudicators' determinations with the Department's Appeal Tribunal (Tribunal). (R.pp.49-59). The Tribunal held a hearing on August 9, 2021, to discuss Appellant's appeals from the claims adjudicator's reasonable assurance determination. (R.pp.65-87). On August 10, 2021, the Tribunal issued a decision affirming the claims adjudicator's determination and holding Appellant ineligible to receive UI benefits, effective June 6, 2021, based on a finding he was filing for UI benefits while on a regular break between terms and that Appellant had reasonable assurance of returning to work at the end of that break between terms. (R.p.95-97). On August 15, 2021, Appellant appealed the Tribunal's August 10, 2021, decision to the Department's Appellate Panel (Panel). (R.pp.99-111). On August 30, 2021, the Tribunal held a hearing to discuss Appellant's appeals from the claims adjudicator's still working determination. (R.pp.119-138). On September 2, 2021, the Tribunal issued a decision affirming the claims adjudicator's still working determination and finding Appellant was ineligible to receive UI benefits because he was not accepting work with his current employer due to his personal COVID concerns. (R.pp.147-149). On September 11, 2021, Appellant appealed the Tribunal's still working decision to the Panel.

(R.pp.150-171). On September 22, 2021, the Panel issued a decision finding Appellant ineligible to receive UI benefits, effective June 6, 2021, through August 21, 2021, based on a finding he had been filing during a regular break between terms with reasonable assurance of returning to work at the end of that regular break period. (R.pp.172-175). That decision modified the previous Tribunal decision because the break between terms had actually ended and Appellant had returned to work by the time of the Tribunal hearing; therefore, the Panel was able to put an end date on the disqualification. *Id.* On October 12, 2021, the Panel issued a decision finding Appellant was ineligible to receive UI benefits, effective March 14, 2021, based on a finding he was not accepting all available work with his current employer. (R.pp.176-180). Appellant appealed both Panel decisions to this Court and by Order dated January 5, 2022, this Court consolidated both appeals into this single case.

FACTS

I. Documentary Evidence

On June 16, 2021, Greenville submitted a response to a Department request for information which indicated Appellant was currently filing during a break between academic terms, that Greenville intended to rehire Appellant at the end of that break, and that Appellant knew he was going to be rehired. (R.p.42). Appellant provided a doctor's note dated June 11, 2021, which stated that Appellant's doctor had previously advised him to stay home during the duration of the COVID pandemic in 2020 and 2021 due to a "high risk of developing severe COVID disease." (R.p.52).

II. Testimony

During the August 9, 2021, hearing, George Ward, testifying on behalf of Greenville, stated that Greenville schools closed for summer break on June 4, 2021, and would reopen on August 17, 2021, at the end of that break. (R.p.77, lines 7-14). Ward further stated that Appellant had reasonable assurance of returning to work with the school system. (R.p.77, lines 15-18). Greenville substitute teachers are not required to sign a contract every year. (R.p.77, lines 19-25). Greenville uses an automated call system that calls substitutes when a school has a teacher absence. (R.p.78, lines 13-19). Substitute teachers have the ability to remove themselves from the list by calling in and telling "Ms. Caster" that they would not be returning. (R.p.78, lines 20-25). As of the date of the hearing, Appellant was still an active substitute teacher in Greenville's automated system. (R.p.78, lines 26-28). Appellant testified that he had gone into the system and "paused" his ability to be called for substitute work until he was cleared from his physician. (R.p.84, lines 9-12). Appellant admitted he was still getting calls for substitute work with Greenville and that he wanted to return to subbing because he liked working with the kids. (R.p.84, lines 12-22).

During the August 30, 2021, hearing, Appellant stated he began working for Greenville in January of 2020, and that he still worked for them as a substitute teacher. (R.p.129, lines 1-6; p.132, lines 3-5). He stated he filed for benefits because he "had not returned to work yet from the doctor's order." (R.p.129, lines 7-10). Appellant began self-quarantining on November 23, 2020, based on his doctor's advice and returned to work on August 23, 2021, also based on his doctor's recommendation. (R.p.130, line 9-p.131, line

25). There was work available to Appellant as a substitute teacher with Greenville during the time he was quarantined. (R.p.135, lines 5-8).

III. Panel Decision (September 22, 2021)

In its September 22, 2021, decision, the Panel found:

The evidence in this case establishes [Appellant]'s separation during the summer of 2021 was temporary in nature, due to a break between academic terms, and he had reasonable assurance from [Greenville] he could perform services in the same capacity as a substitute teacher in the 2021-2022 school year. Therefore, we find by law [Appellant] is ineligible to use his wages from [Greenville] to establish a claim during the 2021 summer break, June to August 2021. Although [Appellant] denies he was active on the substitute list, his "pause" in employment was due to his own actions and medical issues, and not to actions by [Greenville]. Consequently, [Appellant] is ineligible for benefits from June 6, 2021, to August 21, 2021, because without his school wages he does not have sufficient wages in his base period to be monetarily eligible for UI benefits.

(R.p.3).

IV. Panel Decision (October 12, 2021)

In its October 12, 2021, decision, the Panel found:

[Greenville] is [Appellant]'s most recent bona fide employer for the purposes of determining his eligibility for UI benefits effective March 14, 2021. The credible evidence shows [Greenville] has had work available for [Appellant], but [Appellant] has restricted his availability for work. While the PUA program was in place, [Appellant]'s medical issues and his concerns about COVID provided compensation. However, under the UI program requirements, [Appellant] was not available for work, and was not actively-seeking work during each claim week. Therefore, we hold [Appellant] ineligible for UI benefits effective March 14, 2021, upon finding he does not meet the eligibility requirements of the UI program.

In his appeal to the Appellate Panel, [Appellant] argues he quit employment in November 2020, when he informed [Greenville] he would not be accepting work. He also argues his UI claim should be effective June 27, 2021. We do not find these arguments or the other arguments in his appeal to have merit. [Appellant] did not request his name be removed from the

substitute teacher list, and [Greenville] considered him as still employed. Further, even if [Appellant] were found to have been eligible for UI benefits due to the nature of his November 2020 separation, he would remain ineligible under the UI program because he was not available for work and not actively-seeking work. As to the effective date of his claim, [Appellant] last filed a claim application on June 9, 2021, and the UI claim was backdated to March 14, 2021. The backdating has no effect on this claim for benefits.

(R.p.7).

ARGUMENT

I. Standard of Review

The Department is an agency governed by the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding the Department's predecessor, the Employment Security Commission, subject to the APA). Under the APA, a reviewing court:

[M]ay 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(5) (Supp. 2021).

With regard to factual issues, this Court's review is limited to determining whether the Panel's decision was "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *Id.*

"Substantial evidence" is something less than the weight of the evidence; it is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action. The substantial evidence rule does not allow judicial fact-finding, or the substitution of judicial judgment for agency judgment.

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); *see also Friends of Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010) ("Substantial evidence is . . . evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency."). Further, "[t]he findings of the agency are presumed correct and will be set aside only if unsupported by substantial evidence." *Kearse v. State Health & Human Serv. Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995). The possibility of drawing two inconsistent conclusions from the evidence does not mean the agency's conclusion is unsupported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). Finally, the Appellant bears the burden "to prove convincingly that the agency's decision is unsupported by the evidence." *Id.*

- II. **This Court should affirm the Panel's decisions pursuant to the Two Issue Rule because Appellant has failed to challenge all the grounds for the Panel's October 12, 2021, decision, the unchallenged grounds have become the law of the case, and those unchallenged grounds prevent Appellant from being eligible for UI benefits for the entire duration for which he is seeking those benefits.**

"Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). "[A]n unchallenged ruling, right or wrong, is the law of the case and requires affirmance." *Id.* (citing *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 566, 511 S.E. 2d 372, 378 (Ct.App.1998)) (internal citations omitted and emphasis added). Appellant argues that he should be eligible for UI based on an alleged separation from Greenville in November of 2020. (App.Br.7). Although Respondent maintains there was no separation in November of 2020 and that even if Appellant had voluntarily quit his employment at that time, he would not be eligible because his alleged separation would not have been due to "good cause" under state UI law, that disagreement is made irrelevant by Appellant's failure to challenge all grounds upon which the Panel's decision was based. In its October 12, 2021, decision, the Panel stated, "Further, even if [Appellant] were found to have been eligible for UI benefits due to the nature of his November 2020 separation, he would remain ineligible under the UI program because he was not available for work and not actively-seeking work." (R.p.12). The Panel expressly found in its October 12, 2021, decision that even if Appellant were to win on the grounds he is challenging before this Court, he would remain ineligible for UI benefits because he was not available or actively seeking work, that ruling has become the law of the case, and this Court must affirm the Panel's decision as a result. *See Jones*.

Further, because the Panel's ruling that Appellant was not available or actively seeking work has become the law of the case due to Appellant's failure to appeal those

grounds, that same ruling requires the affirmance of the Panel's September 22, 2021, decision. The October 12, 2021, decision addressed the entire period from when Appellant "stopped accepting substitute positions in November 2020" to when Appellant "began accepting work again from [Greenville] on August 23, 2021." (R.p.12). As a result, the unappealed law of the case prevents Appellant from being eligible for benefits during the June 6, 2021, to August 21, 2021, period covered by the September 22, 2021, Panel decision and this Court must also affirm that decision on that basis. *Id.*

Although Respondent maintains the Panel's decisions should be affirmed pursuant to the two issue rule based on the binding law of the case that Appellant was ineligible for benefits because he was unavailable and not actively seeking work, Respondent addresses several additional issues out of an abundance of caution.

III. The Panel's finding that Appellant was still job attached and not fully separated from Greenville is supported by substantial evidence.

The central dispute in this case involves two different ways to construe the same set of basic facts. Appellant worked for Greenville as a substitute teacher when the COVID pandemic hit in early 2020. (R.p.129, lines 1-6). Schools initially taught classes remotely; however, when schools returned to in-person teaching in November of 2020, based on medical advice from his doctor, Appellant temporarily stopped working due to the risks associated with the COVID pandemic. (R.p.52; p.84, lines 9-22; 130, line 9-p.131, line 25). Appellant remained out of work until his doctor released him to return, at which point Appellant immediately returned to work for Greenville on August 23, 2021. *Id.*

The Panel found Appellant was still job attached to Greenville and that he was ineligible to receive UI benefits because he was not accepting all available work during the school year. (R.p.7). The Panel also found Appellant was still job attached during the summer break between terms and that he had reasonable assurance of available work during the fall semester. (R.p.3). Appellant contends that he was actually totally separated from his employer in November of 2020 because he voluntarily quit employment when he stopped accepting substitute jobs due to his doctor's advice. (App.Br.7-8). However, Appellant never communicated any intention to permanently quit employment to Greenville, he remained on the substitute list during the entirety of his quarantine, he expressly wanted to return to working as a substitute as soon as his condition permitted, and he did return as soon as his doctor cleared him. (R.p.84, lines 5-22; p.131, lines 21-25). The Panel's interpretation of events, namely that Appellant was continuously job attached during the time he was quarantined and that he was just waiting to be cleared by his physician to return to work, is supported by substantial evidence and that finding supports both of the Panel's subsequent decisions.

IV. Even if this Court agrees with Appellant's contention that he voluntarily quit his employment for medical reasons in November of 2020, Appellant would still be ineligible to receive UI benefits.

S.C. Code Ann. §41-35-120 provides:

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...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...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 held that "good cause" means cause "attributable to or connected with" the employment. *Stone Mfg. Co. v. S.C. Emp't Sec. Comm'n*, 219 S.C. 239, 257, 64 S.E.2d 644, 647 (1951). Appellant bases his argument for eligibility on the contention that he quit employment in November 2020 due to medical reasons which were completely unrelated to his work. (App.Br.7). Under *Stone*, Appellant would not be eligible for benefits even if this Court agreed with Appellant's strained interpretation of events because Appellant's reasons for allegedly quitting are not attributable to or connected with his employment. Therefore, if this Court finds Appellant did quit employment with Greenville in November of 2020, this Court should still affirm the decisions finding Appellant ineligible to receive UI benefits because even if Appellant had voluntarily quit his employment as he contends, he would have lacked "good cause" to do so. *See Stone*.

V. The Panel's finding that Appellant was not accepting all available work is supported by substantial evidence.

S.C. Code Ann. § 41-35-110(3) states that a claimant is eligible for UI benefits only if he "is able to work and is available to work..." at either his usual job or another job "for which he is qualified based on his prior training or experience..." and is "actively seeking work...." In the Panel's September 22, 2021, decision, it found that Greenville had work available to Appellant while Appellant was quarantined and that Appellant was not available for work or actively seeking work during each of those claim weeks. (R.p.7). Appellant submitted a doctor's note which clearly stated that his doctor had advised him to remain out of work during portions of both 2020 and 2021. (R.p.52). Appellant admitted

he paused his availability to be called as a substitute teacher with Greenville until he was cleared by his physician. (R.p.84, lines 9-14). Ward testified that work was available for substitute teachers throughout Appellant's quarantine period. (R.p.135, lines 5-8). A reasonable person could conclude, based on the whole record, that Appellant was not available for work or actively seeking work. *See Todd's Ice Cream; see also Friends of Earth*. Therefore, the Panel's September 22, 2021, decision is supported by substantial evidence and this Court should affirm.

VI. The Panel's findings that Appellant was out of work during the summer of 2021 due to a break between terms and that he had reasonable assurance of available work when school resumed in the fall are supported by substantial evidence.

S.C. Code § 41-35-20(1) provides:

Benefits based on service in an instructional...capacity in an...educational institution...must not be paid to an individual for any week of unemployment which begins during the period between two successive academic years...if the individual has a contract or a reasonable assurance that the individual will perform services in this capacity for both these academic years or both these terms.²

S.C. Code Ann. § 41-35-20(6) defines "reasonable assurance" to mean "a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term." Appellant remained on the substitute list without any material change to that condition of his employment. (R.p.84, lines 9-22). Appellant performed services as a substitute teacher in the academic year preceding June 6, 2021.

² Respondent notes that Appellant's reliance on 26 USCA 3304 (a)(6)(A) is technically misplaced. (App.Br.8). That statute does not apply directly to State Workforce Agencies; however, S.C. Code § 41-35-20 is substantially similar.

(R.p.38). The only interruption to his employment was caused by his lack of availability due to his physician's recommendation. (R.p.84, lines 9-22). Greenville still considered him to be job attached and Appellant continued to get direct offers of work even after he "paused" his availability in the electronic substitute system. *Id.* When asked whether he "expected to return to the school district when school resumes in August of [2021]," Appellant stated "that decision will be made by my—by my physician." (R.p.82, lines 5-8). Appellant had not been given any reason to think substitute teaching would not be available to him when school resumed in the fall and his own testimony repeatedly recognizes that he would return to substitute teaching as soon as his doctor released him to return to work. A reasonable person could find that Appellant was filing for benefits from June 6, 2021, through August 21, 2021, during a break between academic terms and he had reasonable assurance of available work when school resumed in the fall. Therefore, substantial evidence supports the Panel's September 22, 2021, decision finding that Appellant was ineligible to receive benefits from June 6, 2021, through August 21, 2021, because he had reasonable assurance of employment in the same capacity for the next school term and this Court should affirm.

Appellant attempts to formulate a multi-factor test with no basis in South Carolina law in an attempt to establish that he should not have been held ineligible for benefits due to § 41-35-20(1). (App.Br.8-10). However, Appellant's cited out-of-state case law on reasonable assurance is completely irrelevant to this case except to the extent that it supports the Panel's decision. Appellant cites several cases where a teacher was moved from one position to another against their will, a situation wholly distinguishable from this

case. One such case cited by Appellant even explicitly recognizes the general consensus that substitute teachers are disqualified from receiving benefits during a break between terms under "reasonable assurance" laws: "This case is in vivid contrast to the many cases standing for the proposition that a substitute teacher has a disqualifying 'reasonable assurance' of employment if substitute teaching will be available in the succeeding year." *Sulat v. Board of Review*, 176 N.J. Super. 584, 589, 424 A.2d 451 (N.J. Super 1980). Appellant then directly misstates the ruling in the *Preziosi* case by saying, "The *Preziosi* court said that per diem substitutes do not have reasonable assurance because they do not earn full salaries and benefits." (App.Br.10). That is an outright misrepresentation of the ruling in that case. What the *Preziosi* court actually said was that the Rhode Island Department of Employment Security "must decide whether reasonable assurance has been supplied to an individual per diem substitute on a case-by-case basis." *Preziosi v. Dep't. of Emp't. Sec., Bd. of Review*, 529 A.2d 133, 138 (1987). Even if *Preziosi* was binding precedent in this state, which it is not, the Panel would have met that standard in this case. This Court should not be deceived by Appellant's repeated attempts to mislead this Court. Greenville made no change to the terms or conditions of Appellant's employment as a substitute teacher and Appellant had reasonable assurance of available work when school resumed in the fall. Appellant is ineligible to receive benefits during that break between terms and this Court should disregard Appellant's convoluted and deceitful attempt to prove otherwise.

VII. Appellant's remaining arguments are manifestly without merit.

Appellant makes several other arguments in his brief which are manifestly without merit. Although this Court should disregard those arguments without addressing them pursuant to SCALC Rule 40, Respondent addresses these remaining arguments here in summary fashion out of an abundance of caution.

Appellant, in several places, argues that he should be eligible for UI benefits because he meets the eligibility requirements for PUA benefits under 15 U.S.C. Ann. § 9021(a)(3)(A)(ii)(I)(ff) because he was advised by a health care provider to quarantine due to concerns related to COVID-19. (App.Br.7-8, 12). The eligibility requirements for PUA benefits under federal law are unrelated to the requirements for eligibility for UI benefits under state law, except to the extent that you must be ineligible for UI benefits to qualify for PUA. 15 S.C. Code Ann. § 9021(a)(3) (A "covered individual" for the purposes of PUA benefits "(A) means an individual who—(i) is not eligible for regular compensation or extended benefits under State or Federal law or [PEUC]..."). The question of whether Appellant meets the eligibility requirements for the PUA program is irrelevant to the question of whether Appellant is eligible for UI benefits. The federal laws enacted as part of the CARES Act programs (PUA, PEUC, FPUC, etc.) did not alter or modify the eligibility requirements found in state law and Appellant's argument to that effect is unavailing.

Appellant argues that the Department misapplied various portions of S.C. Code Ann. § 41-35-130. (App.Br.10-11). That statute deals with "[p]ayments which must not be charged to [a] former employer." § 41-35-130. It has nothing to do with eligibility for

benefits and any analysis or argument related to the statutory language therein is irrelevant to this case.

Appellant argues that the Panel failed to properly apply S.C. Code Ann. § 41-27-20. (App.Br.11). § 41-27-20 is a general statement of public policy and reads in pertinent part:

The General Assembly therefore declares that in its considered judgement the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

Appellant argues that because his unemployment was not his fault, he should be entitled to UI benefits. (App.Br.11-12). As a general statement of public policy, § 41-27-20 does not define the eligibility requirements for the UI program. The conditions for eligibility for UI benefits are found at § 41-35-110. Being unemployed through no fault of your own is merely one of the conditions for eligibility for UI benefits and is not determinative alone.

CONCLUSION

This Court should affirm the Panel's decisions pursuant to the Two Issue Rule. The Panel explicitly found that even if Appellant was found eligible based on the alleged total separation Appellant points to in November of 2020, Appellant would still be ineligible because he was not available for or actively seeking work. Appellant has not challenged that ruling, and that unappealed ruling, right or wrong, is now the law of the case.

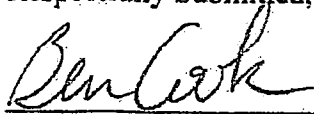
Even if Appellant's arguments weren't foreclosed by the Two Issue Rule, this Court should still affirm the Panel's decision. Substantial evidence supports the Panel's interpretation of events, namely that Appellant was continuously job attached to Greenville throughout the pandemic period and that he was merely waiting on a release from his doctor

to return back to work. Even if Appellant had totally separated from Greenville in November of 2020, his separation would have been voluntary and without "good cause" because his personal medical quarantine was not attributable to his job.

Substantial evidence supports the Panel's finding that Appellant was job attached and not accepting all available work from March 14, 2021, until the time he returned to teaching in the Fall semester of 2021. Substantial evidence also supports the Panel's findings that Appellant was filing for benefits during a break between terms and that he had reasonable assurance of available work when school returned to session in the fall semester of 2021.

Appellant's remaining arguments are manifestly without merit and should be disregarded by this Court. Appellant has given this Court no reason to disturb the Panel's decisions and this Court should decline to do so. Based on all the foregoing, Respondent respectfully submits this Court should affirm the Panel's decisions.

Respectfully Submitted,



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July 11, 2022

**SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

**APPELLANT REPLY IN OPPOSITION
TO RESPONDENT'S
MOTION TO DISMISS APPELLANT'S
APPEAL FOR MOOTNESS AND
RESPONSE TO RESPONDENT'S
OPPOSITION TO SET ASIDE THE
PANEL'S ORDER**

Appellant respectfully submits this reply in opposition to Respondent's motion to dismiss Appellant's appeal for mootness. The Appellant has a valid claim for state unemployment insurance (UI) benefits for the weeks that he certified for benefits.

The reason for the Appellant's complaint would lie in the Court's determination if the current COVID-19 federal unemployment laws were applied correctly in the Appellant's claim for unemployment benefits. Consequently, the Appellant's position is that Respondent did not follow federal unemployment Laws and guidelines, and he is entitled to receive benefits for all certified weeks. For the Court to better understake the claim process, below are the eligibility requirement and disqualification guidelines.

1. Eligibility Requirements for Applying for Unemployment Insurance Benefits (UI)

1.1 To be eligible for UI benefits and keep the benefits, you must:

- Have lost a job through no fault of your own.
- Report any income during the week's claim.
- Continue to search for work actively.
- Be able to work, available for work, and actively seeking employment during a claim week.

- Accept any suitable offer of work that you receive.

1.2 Disqualifications of benefit-even when sufficient wages qualify you for benefits, other reasons can disqualify you, including:

- I am leaving work voluntarily without good cause.
- He was being discharged for a cause other than misconduct.
- He was being discharged for misconduct connected to employment.
- Refusing to accept a suitable job offer from an SC work center or employer.
- They are voluntarily retiring.
- They are becoming unemployed because of a labor dispute.

The above UI guidelines are the baseline for being of non-bias evaluation of an individual's application for benefits.

2. Department of Unemployment and Workforce (DEW) Appellant's Determination for PUA Benefits

On October 26, 2021, a decision by the Appeal Tribunal determined that the Appellant was last employed as a substitute teacher from January 15, 2020. The Appellant presented DEW with medical documentation indicating that he stopped working as a direct result of COVID-19 under the advisement of his physician (*See Exhibit 1*) and, he testified that he was not released to return to work until August 23, 2021, because his physician said that he no longer needs to self-quarantine. The law states the following (*See Exhibit 2*):

"An unemployed individual must meet one of the following criteria to receive PUA benefits. The individual cannot reach work the place of employment because a health care provider has advised the individual to self-quarantine due to concerns related to COVID -19."

Thereby making the Appellant eligible for PUA benefits effective August 23, 2020, and ending August 23, 2021; The PUA program ended on June 26, 2021, he received his final of \$270.00 under this program (*see Exhibit 3*). This fact is not disputed by the Respondent and is supported by the record.

3. Department of Unemployment and Workforce (The Department) Appellant's Determination for Benefits

Appellant filed for a continuation of benefits under the South Carolina Unemployment Insurance Program (UI) following the end of the PUA program on June 26, 2021. The Appellant earned enough wages to qualify for UI benefits, but the Department ruled him ineligible for UI benefits for the following reasons:

- 3.1 Reasonable assurance of employment
- 3.2 Still working

The records show's that Appellant certified the following weeks for unemployment UI benefits from July 3, 2021, to August 21, 2021, and was not paid for these weeks of unemployment (*See Exhibits 4 to 10*). Moreover, the Respondent has misstated the facts of the Department's October 26, 2021, decision that they relied heavily on in making their case to the Court to dismiss Appellant's appeal. In addition, the Respondent has used non-applicable laws in determining if the Appellant has reasonable assurance of employment and still working. The Appeal Tribunal (Tribunal) concluded that the Appellant was eligible for PUA benefit from August 23, 2020, to August 23, 2021, because he could not reach the employment site due to COVID -19 and on the advice of his physician to self-quarantine. Under these conditions, the law classifies Appellant as unemployed and eligible to receive UI benefits from August 23, 2020, to June 26, 2021 (*See Exhibit 11*).

The Respondent denied Appellant UI benefit for the above period stating that Appellant was still working and failed to work all available hours. The Appellant removed his name from the substitute list in November of 2020 because his physician advised him to self-quarantine, and he received UI benefits for the above time frame. The Respondent has not presented any documentation showing the Appellant refused any teaching assignments or employed during this period. Here, the Respondent decided about Appellant eligibility solely based on the testimony

by the Appellant's employer. At the same time, they were ignoring Appellant's testimony and documentation in opposition to his employer's testimony. Nevertheless, the Appellant was self-quarantined and was no longer working. Respondent's decision denying UI for him still working and not working all of the available hours is baseless and without any legal merit.

3.1 DEW Denial of UI Benefits for Reasonable Assurance of Employment

For the Respondent to determine that Appellant has reasonable assurance of employment for next school term, they must conduct a thorough vetting process under the prerequisites for a contract or reasonable assurance determination under 26 US Code 3304(a)(6)(A) – Section (5)(A) Federal Unemployment Tax Act. The interpretations of the terms “contract” and “reasonable assurance” in this UIPL apply to any employee subject to the clauses of Sec. 3304(a)(6)(A), FUTA, whether the employment professional or a non-professional capacity. Prerequisites for a "contract" or "reasonable assurance" determination. Before deciding whether there is a contract or reasonable assurance, the state must determine whether the employment offered in the following academic year or term, or the remainder of the current academic year or term meets three prerequisites. *If any of the three prerequisites are not met, the state UC agency may not deny the claimant UC based on the between and within terms denial provision.* However, if all three prerequisites are met, the state UC agency must determine if the claimant has a contract or reasonable assurance. They are as follows:

- (a). The offer of employment may be written, oral, or implied and must be a genuine offer, that is, an offer made by an individual with actual authority to offer employment. Thus, if someone without authority to commit the educational institution to employ an individual makes the offer, this prerequisite is not met because of the following:
First, Defendant has not presented the name and date of the employer that informed the Appellant that he would be hired as a substitute fall school term (August 2021). **Second**,

there is no evidence in the record that the Appellant was under a previous contract or worked for Respondent in the spring school term (January 2021). Therefore, Respondent cannot imply that he would have reasonable assurance of employment next school term (August 2021). **Third**, with the Department's ruling on December 3, 2021, that Appellant qualified for PUA benefits from August 23, 2020, to August 23, 2021, when his physician advised him to self-quarantine because of Covid-19. Consequently, the Respondent cannot guarantee employment under these conditions for the fall school term (August 2021) because it is uncertain when he will return to work for medical reasons. **Fourth**, the Respondent's submitted a request for a reasonable insurance form as evidence and marked Appellant has a reasonable assurance of employment (*See Exhibit 12*). The document does not constitute a contract under the law. Any implied job must be sealed by a written notice of continued employment to the Appellant and not DEW in the questioner form. Respondent is on record stating that substitute teachers are not on contract.

(b). The employment offered in the following academic year or term, or the remainder of the current academic year or term, must be in the same capacity. Respondent cannot meet this prerequisite for the following:

First, the Respondent cannot guarantee employment in the same compacity. There is a long-term substitute pay rate, and a daily substitute rate and employment vacancies vary throughout the school terms; as a result, the number of days of employment is uncertain from to time. **Second**, Respondent is prohibited from offering work in the same compacity for the fall school term (August 2021) because Appellant quit his job before the spring school term (January 2021) for a good cause. And he was receiving UI benefits under the PUA program during the spring school term (2021); as noted in the record and by law, the

Appellant is considered unemployed. Meaning Respondent can not offer employment in the same compacity because Appellant was not working for them.

(c). The economic conditions of the job offered may not be considerably less in the following academic year or term (or portion thereof) than in the first academic year or term (or portion thereof). The Department interprets "considerably less" to mean that the economic conditions of the job offered will be considerably less if the claimant will not earn at least 90% of the amount that the claimant made in the first academic year or term or a related term if the claimant does not regularly work successive terms (i.e., the claimant works the spring term each year).

First, the Appellant was not employed in the spring school term (January 2021), and he earned no wages that can be considered for the fall school term (2021). Moreover, the Respondent has not presented any documentation that his wages for the spring school term (2021) that Respondent can use to ensure he earns at least 90% of his previous salary because there are no wages to compare. **Second**, the Appellant has not worked successive terms, and he stopped working before the spring school term (2021). Respondent has not proven all of the three prerequisites; as a result, they are forbidden by the above the law to rule that Appellant has reasonable assurance and deny Appellant his UI benefits.

3.2 Respondent's Alleged That Appellant Was Not Working All Available Bona Fide Employer and Still Working and Denied Him UI Benefits

The law states that Appellant is prohibited from receiving UI benefits while working and receiving wages. The record shows that the Appellant removed his name from the substitute list in November 2020 through the end of the summer break in August 2021 and received PUA benefits during this period.

As stated in the Department's December 3, 2021, decision Appellant is eligible to receive PUA benefits from August 23, 2020, to August 2021. Thus, as a matter of law, the Appellant was not

employed by the Respondent from June 6, 2021, to August 21, 2021, because he was receiving PUA benefits until the program ended on June 26, 2021. When the PUA program ended, the Appellant filed a claim to continue UI benefits because he was unemployed from June 26, 2021, to August 21, 2021. Respondent's failure to remove Appellant from their substitute list after he removed himself from the substitute list does not in any way mean that he is still employed. The Department agrees with Appellant by paying him PUA benefits for the above unemployed time frame.

Consequently, the only way Respondent can claim that the Appellant is working is if a contract states the beginning and end of his employment, and the Appellant has not signed such a contract. This document is not in the record for the Court to review. Subsequently, Appellant was not working on all of the hours available to him since his physician advised him to self-quarantine, and under these conditions, the law states that he cannot be denied UI benefits.

4. The Should deny Respondent's Reply in Opposition to Appellant's Motion to Set Aside the Panel's Order Respondent's Motion to Dismiss Appellant's Appeal for Mootness.

The Respondent has asked the Court to dismiss Appellant Appeal because Appellant's physician advised him that he no longer needed to self-quarantine and could not work. Also, Respondent argues that Appellant could not work during the periods he is seeking UI benefits. Respondent is not basing their argument on the Department of Labor's (DOL's) guidelines for individuals affected by the Coronavirus Disease 2019 (COVID-19). Under CFR 604.4 (b), if an individual has previously demonstrated their ability to work and availability for work following the most recent separation from employment, the state may consider the individual able to work during the week of unemployment claimed despite the individual's illness or injury unless the individual has refused an offer of suitable work due to such illness or injury. Consequently, this law states that the Appellant is eligible for UI benefits. The Appellate Panel (Panel) ruled Appellant was ineligible for UI benefits from June 6, 2021, to August 21, 2021. The Respondent argues

67 Appellant physician said Appellant was unable to work during the above appealed period for UI

benefits. Thus, he was not eligible for UI as a matter of law. That said, the Department correctly applied CFR 604.4(b) regulations in their recent decision that Appellant was eligible for UI benefits from August 23, 2020, to August 23, 2021. He received UI benefits covering this period. In addition, the Appellant received UI benefits from June 6, 2021, to June 26, 2021, which covers the time frame that Respondent says Appellant is ineligible to receive UI benefits because he was unable to work. This law debunks, Respondent's argument because the law allows Appellant to be eligible for UI benefits if he cannot reach the employment site because of COVID-19. If the Court accepts the Respondent's argument, it would overturn the Appeals Tribunal (AT) ruling of eligibility for UI benefits and cause an overpayment of benefits. For the Court to overrule this decision would be improper because the Tribunal has ruled as a matter of law that the Appellant is eligible for PUA benefits.

Conclusion

This Court should dismiss Respondent's motion to dismiss Appellant's Appeal and their objection to Appellant's motion to set aside the Panel's order. The Respondent has failed to use correct unemployment regulation guides to determine his eligibility for UI benefits. The following are the appropriate federal laws that Respondent should have used in making their decision they are as follow: (1) 26 US Code 3304(a)(6)(A) – Section (5)(A) Federal Unemployment Tax Act when determining if Appellant had a reasonable assurance of employment. Also, Respondent applied the incorrect unemployment regulation in determining if Appellant is eligible for UI benefits when he cannot reach the workplace because of COVID-19; (2) CFR 604.4 (b), which allows individuals to qualify for benefits. Likewise, not only have Respondents not used the appropriate unemployment regulations to determine Appellant's eligibility for UI benefits, but they have also incorrectly stated a

determination by the Department. In the Respondents conclusion statement, they noted the following:

“Moreover, a final and un-appealed decision of the Department found Appellant did not meet the eligibility requirements under South Carolina law to receive state UI Benefits until August 23, 2021.”

The Respondent is referring to their (Exhibit 17) and See Appellant Exhibit (13) and a decision rendered by the Department on October 26, 2021. The decision by the Department addresses the Appellant’s eligibility for Disaster Unemployment Insurance (DUI) which is a federal program and different from the State Unemployment Insurance program for which the Appellant applied for benefits and in this Court on appeal. The Court should strike this argument from the record while considering this case for the following reasons:

1. **Respondent:** states the Department ruled Appellant was eligible for UI benefits on August 23, 2021.

Response: The document states that Appellant was ineligible for DUI benefits from August 23, 2021.

2. **Respondent:** states that the decision was final un-appealed.

Response: The Appellant appealed this decision on October 28, 2021, and a hearing was scheduled for November 24, 2021 (See Exhibits 13 and 14). The Tribunal said its decision reverses the determination mailed October 26, 2021 (See Exhibit 15).

3. **Respondent:** States that Appellant returned to work on August 23, 2021, and began earning wages above his weekly been amount.

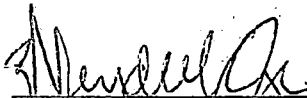
Response: There is no information in the record before the Court that shows the Appellant filed for UI benefits on August 23, 2021, and the Department ruled him eligible for benefits. Furthermore, the Department is forbidden from ruling that Appellant is eligible for UI benefits because he is working and receiving wages and is not unemployed. Consequently, the wages earned by the Appellant after August 23, 2021, have no bearing on this case.

Even if the Respondent interpreted the Department decision correctly, the decision has been replaced. It is no longer relevant to any decisions concerning the Appellant’s eligibility for either PUA or UI benefits. His wages earned after August 23, 2021, is non-applicable because he did not

file for UI benefits, and the Department can not approve eligibility for UI benefits not applied for as a matter of law.

Therefore, the Court should set aside the Panel's order and deny Respondent's motion to dismiss Appellant appeals for mootness because all of the justiciable controversies before the parties determined that Appellant is eligible for UI benefits a matter of law. Lastly, a significant part of the Respondent's arguments was based on the Department's decision that was reversed by the Tribunal, using rules to support the denial of UI benefits that does not apply to individuals impacted by COVID-19. Moreover, the Respondent alleged that the Appellant had been involved for UI benefits. The Department determined him eligible for UI effective August 23, 2021, and his wages exceeded his weekly benefit amount. He is not entitled to UI benefits. As stated above, the Appellant did not apply for UI benefits that would be effective on this date. The Respondent submitted two forms titled "Request to Employer for Separation Information Page" s See Respondent's Exhibits 1 and 12, and Appellant Exhibits 16 and 17. This form is submitted to your employer when you separate, and Respondent signed the papers on March 19, 2020, and June 16, 2021. There is no form sign in the record from the Appellant's employer stating that his last day of employment was August 23, 2021. The Respondent was aware of this when they made the above bogus argument and tried to compensate for this missing document by falsely misstating the Department's eligibility decision. In addition, Appellant is requesting a phone conference with the parties if there are any unclear claim procedures.

Respectfully Submitted,



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February 11, 2022

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Wendell D. Cooper,

Appellant,

v.

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

Respondents.

Docket No: 21-ALJ-22-0448-AP

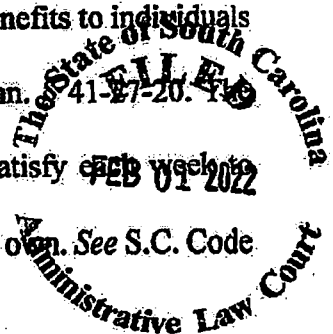
**RESPONDENT'S REPLY IN
OPPOSITION TO APPELLANT'S
MOTION TO SET ASIDE THE
PANEL'S ORDER AND
RESPONDENT'S MOTION TO
DISMISS APPELLANT'S APPEAL
FOR MOOTNESS**

Respondent South Carolina Department of Employment and Workforce (the Department) respectfully submits this reply in opposition to Appellant's recent motion to set aside the Appellate Panel's (Panel) decisions on his claim for state unemployment insurance (UI) benefits. Respondent also moves this Court to dismiss Appellant's appeal since there is no longer a justiciable controversy because his appeal is now moot.

This case has a lengthy and convoluted procedural history spanning several years and multiple state and federal UI programs. The Department, however, will endeavor in this filing to simplify the issues and establish for Appellant and this Court that Appellant has received every UI benefit he is entitled to receive under state and federal law and, as a result, the appeal is moot, and this Court should dismiss.

I. Brief overview of the state UI program

The UI program in South Carolina is intended to provide UI benefits to individuals who are "unemployed through no fault of their own." S.C. Code Ann. § 41-27-20. The Legislature mandated a series of requirements an individual must satisfy each week to establish they are truly unemployed that week through no fault of their own. See S.C. Code



Ann. § 41-35-110. Importantly, an individual must be able to work, available to work, and actively seeking work during a week to be eligible to receive state UI benefits for that week. S.C. Code Ann. § 41-35-110(3) ("An unemployed insured worker is eligible to receive benefits with respect to a week only if the department finds he...(3) is able to work and is available for work in his usual trade, occupation, or business...and, in addition to having complied with subsection (2), is himself actively seeking work....") (emphasis added).

II. Federal UI programs under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Congress passed the CARES Act in March 2020 to alleviate the economic hardship resulting from the COVID-19 pandemic. Among other programs, the CARES Act created two new federal UI programs relevant to this case. The first program, Pandemic Unemployment Assistance (PUA), provided federal UI benefits to individuals who were unemployed, underemployed, or unable to work as a direct result of one of eleven COVID-19 specific reasons, but who were ineligible to receive any other state or federal UI benefits (e.g., independent contractors, the self-employed, gig economy workers, or workers with an insufficient wage history to establish a state UI claim). *See* 15 U.S.C. § 9021. An individual cannot receive federal PUA benefits in the same week that they receive state UI benefits. *Id.* The second program, Federal Pandemic Unemployment Compensation (FPUC), provided an additional weekly federal payment to individuals eligible to receive UI benefits under various state and federal UI programs, including state UI and federal PUA. *See* 15 U.S.C. § 9023. Eligible individuals could receive \$600 per week in FPUC

from the week ending April 4, 2020, through the week ending July 25, 2020, and \$300 per week beginning with the week ending January 2, 2021.

The federal UI benefits were available in South Carolina until the state withdrew from the programs effective June 30, 2021. *See Brannon v. McMaster*, 434 S.C. 386, S.E.2d 548 (2021) (finding the Governor had the authority to direct the Department to terminate South Carolina's participation in the CARES Act UI programs, which the Department did effective June 30, 2021). As a result, the claim week ending June 26, 2021, was the last claim week that the federal UI programs were available in South Carolina¹.

III. Appellant's claim history

Appellant voluntarily retired from Spartanburg School District 7 (Spartanburg) effective June 30, 2019. *See Exhibit 1, Retirement Notice and Response*. During the 1st quarter of 2020, Appellant went to work for the Greenville County School District (Greenville). *See Exhibit 2, Appellant's fact-finding statement*. Appellant filed an initial claim for state UI benefits on March 18, 2020, after Greenville closed in-person instruction due to the COVID-19 pandemic. *See Exhibit 3, Appellant's March 18, 2020, UI claim application*.

¹ Claim weeks in South Carolina are effective Sunday through Saturday. *See* S.C. Code Ann. Regs. § 47-24(A)(1) (a week of unemployment begins "with the Sunday prior to the day such individual files such request."); United States Department of Labor Unemployment Insurance Program Letter 16-20, Change 6 (states that terminated the PUA program early "must process and pay benefits under the PUA program for all weeks of unemployment ending on or before the date of termination.")

Appellant was monetarily eligible to receive state UI benefits effective March 15, 2020, based on the wages he earned from Spartanburg². *See Exhibit 4, State UI Monetary Determination.* After establishing his potential monetary eligibility for state UI, the Department evaluated Appellant's eligibility to receive state UI benefits based on his job separation. *See S.C. Code Ann. § 41-35-110(5).* Although Appellant was most recently separated from employment from Greenville, the Department had to base his eligibility for state UI benefits on his separation from Spartanburg because Appellant had not earned eight times his weekly benefit amount while working for Greenville. *Id.*³ The Department mailed a determination on May 1, 2020, holding Appellant indefinitely disqualified from receiving state UI benefits effective March 15, 2020, because he had voluntarily left his employment with Spartanburg without good cause. *See Exhibit 5, state UI job separation determination.*

² An individual is monetarily eligible to receive state UI benefits if they earn sufficient wages in their base period. S.C. Code Ann. § 41-27-310. An individual's base period is usually the oldest four of the last five completed calendar quarters preceding the date of the UI claim application. S.C. Code Ann. § 41-27-150(A).

³ To be eligible to receive state UI benefits, the Department must find that the individual "has separated, through no fault of his own, from his most recent bona fide employer; provided, however, the term "most recent bona fide employer" means the work or employer from which the individual separated regardless of work subsequent to his separation in which he earned less than eight times his weekly benefit amount." S.C. Code Ann. § 41-35-110(5). Appellant's weekly benefit amount was established at \$326. *See Exhibit 4.* Therefore, the Department had to evaluate Appellant's job separation from the last employer to have paid him \$2,608 ($\$326 \times 8$). Appellant only earned \$1,130.67 from Greenville in the first quarter of 2020. Therefore, the most recent employer to have paid Appellant \$2,608 when he filed his state UI claim on March 18, 2020, was Spartanburg.

Appellant applied for federal PUA benefits on May 5, 2020. *See Exhibit 6, PUA application.* The Department mailed a determination on June 2, 2020, holding Appellant eligible to receive federal PUA benefits effective March 15, 2020, since he was unemployed from Greenville as a direct result of one of the COVID-19 criteria established in the CARES Act. *See Exhibit 7, PUA determination.* Appellant filed claims for federal PUA benefits every week from the claim week ending March 21, 2020, through the claim week ending June 26, 2021, which was the final week federal PUA benefits were available in South Carolina. *See Exhibit 8, PUA weekly payment screenshots.* Appellant received \$38,256 in federal PUA and FPUC benefits. *See Exhibit 9, PUA payment summary screenshot.*

Appellant filed a new application for state UI benefits on June 9, 2021. *See Exhibit 10, June 9, 2021, claim application.* The Department determined that Appellant was monetarily eligible to potentially receive state UI benefits on a new benefit year effective March 14, 2021, based on his wages with Greenville. *See Exhibit 11, Initial Determination of Status as an Insured Worker.* Greenville responded to this claim and indicated that Appellant was currently unemployed due to a regularly scheduled break in terms and that Greenville had paid Appellant wages during the previous two quarters. *See Exhibit 12, June 16, 2021, Greenville fact-finding response.* The Department mailed two determinations on July 12, 2021, one holding Appellant ineligible to receive state UI benefits effective March 14, 2021, because he was still working but not accepting all available work from Greenville, and another holding him ineligible to receive state UI benefits effective June 6,

2021, because Appellant was unemployed during a regularly scheduled break between academic terms. *See Exhibit 13, July 12, 2021, determinations.* Appellant appealed both determinations, and both determinations were ultimately upheld by separate decisions of the Department's Appellate Panel (Panel). *See Exhibit 14, Panel decisions.* Appellant appealed the two Panel decisions to this Court, and this Court consolidated those appeals under the above docket number by order dated January 5, 2022.

Appellant filed claims for state UI benefits from the claim week ending July 3, 2021, through the claim week ending September 4, 2021. *See Exhibit 15, state UI weekly payment screen.* Appellant has not received state UI benefits for those weeks due to the Panel's decisions. *Id.* Further, Appellant reported wages in excess of his weekly benefit amount for the claim weeks ending August 28 and September 4, 2021, and he has not filed a claim for UI benefits since the week ending September 4, 2021. *Id.* Greenville has reported to the Department on its quarterly wage reports⁴ that it has paid Appellant over \$19,000 in wages since September 2021. *See Exhibit 16, wage reporting screenshot.*

On October 26, 2021, after the Appellate Panel had issued its decisions in Appellant's two state UI appeals, the Department issued a determination holding Appellant disqualified from receiving federal PUA benefits effective August 23, 2020, upon a finding he was no longer unemployed as a direct result of one of the specific COVID-19 criteria as of that date. *See Exhibit 17, October 26, 2021, PUA determination.* Appellant appealed that

⁴ Pursuant to S.C. Code Ann. § 41-31-160 and S.C. Code Ann. Regs. § 47-16, employers are required to file quarterly wage reports with the Department listing the wages the employer paid to its employees.

determination to the Department's Appeal Tribunal (Tribunal). The Tribunal mailed a decision on December 3, 2021, reversing the PUA denial and holding Appellant eligible to receive federal PUA benefits effective August 23, 2020. *See Exhibit 18, December 3, 2021, Tribunal decision.* Notably, Appellant testified under oath to the Tribunal, and the Tribunal found as a fact, that Appellant was unable to work at the direction of his physician and that his physician did not clear him to return to work until August 23, 2021. *Id.* Appellant did not appeal this decision, and it became final as a matter of law on December 13, 2021⁵. Further, Appellant submitted a doctor's note to this Court on November 29, 2021, dated June 11, 2021, indicating that he was unable to work as of that date due to the risk of COVID-19. *See Exhibit 19, Appellant's November 29, 2021, letter to this Court.*

IV. Appellant's appeals are moot because he has received all state and federal UI benefits that he is eligible to receive.

"Before any action can be maintained, there must exist a justiciable controversy." *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996) (internal citations omitted). Courts "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Curtis v. State*, 345 S.C. 557, 567-68, 549 S.E.2d 591, 596 (2001) (internal citations omitted). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible for the reviewing Court to grant effectual

⁵ See S.C. Code Ann. § 41-35-680 (the Tribunal's decision "must be considered the final decision of the department, unless within ten days after the date of mailing the decision a further appeal is initiated...").

relief.” *Id.* (internal citations and quotations omitted). “[M]oot appeals result when intervening events render a case nonjusticiable.” *Id.*

Appellant’s appeals are now moot because Appellant has received all the federal PUA benefits he is eligible to receive and because, by his own sworn testimony in a subsequent appeal, he is statutorily ineligible to receive state UI benefits for the only remaining weeks in question. Therefore, there is no longer any justiciable controversy that can be resolved by considering Appellant’s appeals, and this Court should dismiss them as moot.

This Court is considering Appellant’s appeals of two Panel decisions affecting his state UI benefits. As noted, the Department has paid Appellant all the federal UI benefits that he is eligible to receive, totaling over \$38,000 from the claim week ending March 21, 2020, through the claim week ending June 26, 2021, when South Carolina ended the federal CARES Act programs. *See Exhibits 8 and 9.* Starting with the claim week ending July 3, 2021, however, the only UI benefit program available to Appellant was the state UI program. Appellant filed state UI claims for ten weeks, from the week ending July 3, 2021, through the week ending September 4, 2021. *See Exhibit 15.* These are the only weeks in question, and they are the only weeks that can be affected by a decision from this Court on the merits.

The Department’s decision that Appellant was ineligible to receive state UI benefits effective March 14, 2021, because he was still working for Greenville but not accepting all available work has been mooted by the Department’s subsequent decision to hold

Appellant eligible to receive federal PUA benefits through the week ending June 26, 2021. See 15 U.S.C. 9021 (establishing that the threshold eligibility for PUA benefits is that an individual be ineligible for state UI).

Starting with the claim week ending July 3, 2021, Appellant had to meet all of the weekly eligibility requirements under South Carolina law to be eligible to receive state UI benefits. Crucially, Appellant must show that he was able to work, available for work, and actively seeking work during each week in question. See S.C. Code Ann. § 41-35-110(3). Appellant recently testified under oath, and the Tribunal found as a fact, that Appellant was not able to work or available to work until his physician cleared him to return to work on August 23, 2021. See *Exhibit 14*. As a result, Appellant cannot be eligible to receive state UI benefits until August 23, 2021, because he was not able or available to work as required by clear South Carolina law. Further, Appellant, cannot receive benefits for the weeks ending August 28 and September 4, 2021, because he reported wages in excess of his weekly benefit amount and therefore did not meet the state's definition of unemployed. See S.C. Code Ann. § 41-27-370(1) ("An individual is considered "unemployed" in a week during which he performs no services and with respect to which no wages are payable to him or in a week of less than full-time work if the wages payable to him with respect to that week are less than his weekly benefit amount.") (emphasis added).

Consequently, even if this Court reversed the Panel's finding that Appellant had reasonable assurance of returning to work for Greenville, which it should not⁶, Appellant would still be ineligible to receive state UI benefits for the weeks in question because a final decision of the Department found that he was not able to work until August 23, 2021, when his physician cleared him to return to work, and Appellant was not unemployed, as defined by law, in the remaining two claim weeks after August 23, 2021. This is true even if, as Appellant has argued to the Panel and to this Court, that he voluntarily quit employment with Greenville with good cause in November 2020.⁷ It is a bedrock eligibility requirement in South Carolina that an individual must be able to work and available to work to receive state UI benefits. *See* S.C. Code Ann. § 41-31-110(3); *Hyman v. S.C. Emp't Sec. Comm'n*, 234 S.C. 369, 373, 108 S.E.2d 554, 556 (1959) (holding that an individual UI claimant bears the burden of proof "to show that he met the benefit eligibility conditions and he was available for work."); *Wellington v. S.C. Emp't Sec. Comm'n*, 281 S.C. 115, 117, 314 S.E.2d 37, 38 (Ct. App. 1984) (citing *Hyman* in explaining a UI claimant's burden "includes a duty to show availability for work"). There is simply no scenario under South Carolina law where Appellant can receive state UI benefits from the claim week ending

⁶ The facts that: (1) Appellant reported excessive wages in each of his final two weekly claims for state UI benefits; (2) Appellant stopped filing for UI benefits after the claim week ending September 4, 2021; and (3) Greenville subsequently reported nearly \$20,000 in wages for Appellant all indicate that Appellate truly did have a reasonable assurance to return to work when school resumed and in fact did so.

⁷ Appellant essentially argues that the Department's still working determination and reasonable assurance determination were both erroneous because he severed his employment relationship with Greenville in November 2020. *See* Appellant's "Opening Brief" filed with this Court on December 7, 2021, prior to the Court's order consolidating cases.

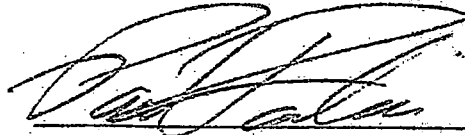
July 3, 2021, through the claim week ending August 21, 2021, because he has asserted to the Department and to this Court that he was unable and unavailable to work until August 23, 2021. In other words, a ruling from this Court on Appellant's appeals "will have no practical legal effect upon the existing controversy." *See Curtis, supra*. Therefore, this Court should deny Appellant's motion and dismiss his appeal because there is no longer a justiciable controversy for this Court to resolve.

V. Conclusion

This Court should dismiss Appellant's appeal because Appellant has received all the state and federal UI benefits that he is eligible to receive. Moreover, a final and unappealed decision of the Department found Appellant did not meet the eligibility requirements under South Carolina law to receive state UI benefits until August 23, 2021. Thereafter, Appellant returned to work and began earning wages in excess of his weekly benefit amount. As a result, a decision by this Court reversing either or both of the Panel decisions would not grant Appellant the relief he seeks since he was, by his own admission, unable and unavailable to work during the only weeks in dispute. Therefore, there is no justiciable controversy before the parties and the appeal should be dismissed as moot. The Department further requests that all pending deadlines be held in abeyance pending resolution of this motion.

SIGNATURE APPEARS ON FOLLOWING PAGE

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Paul Famolari', is written over a horizontal line.

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**Attorney for Respondent SC Department of
Employment and Workforce**

February 1, 2022

**SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

**APPELLANT'S MOTION TO STRIKE
RESPONDENT'S SECOND REPLY
BRIEF AND APPELLANTS' REPLY D**

**APPELLANT'S MOTION TO STRIKE RESPONDENT'S SECOND REPLY BRIEF AND
APPELLANTS' REPLY**

Appellant respectfully submit this motion to strike Respondent's second reply brief.

Appellant also moves this Court to instruct the South Carolina Department of Employment and Workforce (Department) to pay state unemployment insurance (UI) benefits for this claim. Since the Employment and Training Administration Advisory System, US Department of Labor (ETA) issued program letter no. 24-20 on May 14, 2020. In this letter, the ETA makes it very clear there are no differences in terms of 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 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. Therefore, the above laws debunked ALL of Respondent's arguments that Appellant was not eligible for UI benefits under South Carolina unemployment guidelines. The Statute tells the States that they must apply the new eligibility law requirements to federal and state UI programs. This new law applies to the Appellant's case.

"... 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..."

Furthermore, the record shows that Appellant could not reach his place of employment due to Covid - 19 from about March 2020 to about August 20, 2021, and the Respondent does not dispute this fact. The record further shows that the Department paid Appellant UI benefits under the Pandemic Unemployment Assistance (PUA) program because Appellant was unable to work through no fault of his own, which is another fact not disputed by Respondent. Consequently, when the Appellant applied for UI benefits after the PUA program, he could still not work through no fault of his own. Under the law, according to the above regulations, he is eligible for UI benefits under the State program. While the Respondent informed the Court that Appellant had to qualify under the State eligibility guidelines for UI benefits, they never told the Court what those specific guidelines were. We know that the exact eligibility requirements are the same for both the Federal and State programs. Defendant's offered reasons for denying

Appellant benefits are nullified under the above laws. Thus, the Appellant moves the Court to set aside Panel's Order and remand the case back to the Department for payment of UI benefits. In addition, the Appellant also moves the Court to strike the Respondent's reply on the merits. The Court should strike the Respondent's brief for the following reasons. First, Respondent's reply brief is out of judicial order. Second, Respondent's reply brief includes a new argument. Third, Respondent has misapplied 20 CFR 604.4. (a)(b) in this case.

Respondent's Second Reply Brief Does Not Follow the Briefing Guidelines of SC Admin. Law Ct. 37 And Should Be Stricken from The Record

Appellant filed a motion asking the Court to set aside the Panel's order. Respondent filed a motion in opposition and motion to dismiss Appellant's appeal. Appellant filed his reply and opposition to dismiss his appeals. Respondent filed another reply brief opposing Appellant's reply brief that was unauthorized by the Court. The Appellant is granted the final word in these proceedings and not the Respondent. The Respondent's without prior approval or authorization of the Court blatantly included a reply brief to the Appellant's reply brief. Next, the law does not allow the Respondent to reply to the Appellant's rebuttal brief in the instant action.

SC R. P. Admin. Law Ct. 37 Brief Guidelines	Filed Briefs
Brief of Appellant	Appellant filed A Brief to Set Aside Panel's Order
Brief of Respondent	Respondent filed a Brief in Opposition and Motion to
Reply Brief of Appellant	Appellant filed a Brief in Opposition to Respondent's Motion to Dismiss and Reply
End of Judicial Proceeding	Respondent's Filed a Reply Brief in Opposition to Appellant's Reply Brief

The Respondent's Reply Brief Introduces a New Argument That Is Not Allowed by Law

The Respondent filed a motion to consolidate both of the Appellant's appeals, and the Court granted the Respondent's motion. In Respondent's motion, they informed the Court that the arguments would focus on (1) reasonable assurance of employment; and (2) still working.

Respondent's reply brief argues that Appellant's medical note by his physician stated that he was not physically able to work. This statement is both impertinent and scandalous Respondent was very much aware Appellant's physician recommended that he self-quarantine to avoid health complications from contracting Covid. On August 30, 2021, the Appeal Tribunal, in their Fact-Finding statement, stated the following:

"The claimant is a substitute teacher and had not been working since November 23, 2020, due to the recommendation from his doctor that he self-quarantine to avoid health complications from contacting Covid" (See Exhibit 1).

Furthermore, Respondent is aware that Appellant could not receive UI benefits under any state or federal program without being mentally and physically able to work. Each week the Appellant had to certify his weekly benefits under the PUA program. By answering these questions, (are you still unemployed because of COVID, and he answered yes) and (are you mentally and physically able to work and yes was his reply. Furthermore, there is no factual proof in the record that Appellant was not physically unable to work other than the Respondent's incorrect interpretation of his physician's medical note (See Exhibit 2 and 3). The Respondent's inclusion of this argument in its unauthorized reply brief is nothing more than legal gamesmanship to win the case on a technicality. Moreover, The Respondent's view on this issue is baseless and factually incorrect and should be stricken from the record.

The SC Department of Employment and Workforce (Department) Has Applied 20 CFR 604.4(a)(b). In Their Decision, In Determining Appellant Was Eligible for PUA Benefits.

The Appellant worked for Greenville County Public Schools in August 2020 and stopped working on November 23, 2020, due to the recommendation from his physician to self-quarantine (See Exhibit 1). 20 CFR 604.4(b) ("If an individual has previously demonstrated his or her ability to work and available for work following the most recent separation from employment, the State may consider the individual able to work during the week of employment

claimed...” (emphasis added). The Respondent has taken the Appellant’s reply out of context based on the above facts. The record shows that Appellant was self-quarantined from working for Greenville County Public Schools due to Covid-19 on November 23, 2020, to about August 25, 2021. Second, the above facts clearly show Appellant demonstrated his ability to work and availability to work following his most recent separation from employment. Secondly, the Appellant would also qualify under 20 CFR 604.4(b) A State may consider an individual to be able to work during the claim week if the individual is able to work for all or a portion of the week claimed, provided any limitation on his or her ability to work does not constitute a withdrawal from the labor market. The Department used this Statute to rule that the Appellant was eligible for PUA benefits. The Appellant could not reach his place of employment because his physician advised him to self-quarantine. The Department concluded that Appellant was able to work during his claim week and paid him UI benefits which are not in dispute by the Respondent. The chart below shows that Appellant was eligible for the exception under 20 CFR 604.4 (a)(b) and is eligible for UI benefits. Therefore, the Court should strike the Respondent’s unauthorized reply brief from the record.

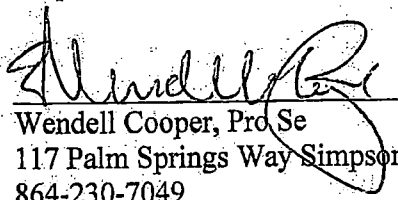
Date Appellant Started work	Date That Appellant Physician Advised Him to Self-Quarantine	Respondent Response	Appellant Response	Does Appellant Qualify for Exception under CFR 20 604.4(a)(b)
Appellant worked for Greenville School in August of 2020 (See Exhibit 1)	Appellant Physician Advised him to Self-Quarantine due to the high number of Covid-19 cases in Greenville County Public Schools for Health Reasons on November 23, 2020. (See Exhibit 1)	Argue that Appellant said he separated From Greenville on June 20 because he could not work. If true, he would not have demonstrated his ability to work and availability following his most	Appellant was Self-Quarantine on June 20 because his physician had not released him to return to work until August 23, 2021. Therefore, his official separation date would be November 23, 2020, and he demonstrated	Yes

		recent separation and would not qualify for the exemption.	his ability to work and availability following his most recent separation (See Exhibits 1 and 2).	
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Conclusion

FOR ALL THE ABOVE STATED REASONS, for the Court to accept the Defendant's unauthorized reply brief would be wholly unfair and prejudicial to Appellant's reply brief and stand prior case -law upside-down. Furthermore, the body of evidence in the record shows that Appellant was physically able and willing to work so much that he was paid UI benefits under the PUA program. There are no more legal issues to decide by this Court. The law demands that if an individual cannot work because of no fault of his own, he is eligible for UI benefits under both Federal and State laws. The Appellant is asking the Court to end this legal posturing by Respondent and grant his motion to set aside the Panel's order and remand this case back to the Department for payment of the Appellant's IU benefits as the law requires.

Respectfully Submitted,



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February 29, 2022

**SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

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

**APPELLANT'S REPLY TO
RESPONDENT'S BRIEF**

APPELLANT'S REPLY 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's to Prove All Three Elements to Prove Appellant Had Reasonable Assurance of Employment

<i>Law</i> 26 USC CODE 3304 (A)(6)(A)	<i>Not In the Record</i>
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.

<i>Date Appellant Stop Working for Greenville</i>	<i>Dates Appellant Received PUA Benefits as A Result of Being Unemployed Due to COVID</i>	<i>Date Panel Ruled Appellant Separated from Employment</i>	<i>Date Appellant Received Unemployment Benefits Despite Being Denied UI Benefits</i>
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 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.

<i>Date Appellant Stop Working for Greenville Because of COVID 19</i>	<i>Dates Appellant Received PUA Benefits as A Result of Being Unemployed Due to COVID</i>	<i>Date Panel Ruled Appellant Ineligible for UI Benefits for Not Accepting Available Work</i>	<i>Dates Appellant Received Unemployment Benefits</i>
November 23, 2020, and his 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 arguments associated with these issues based on the above information.

IV.

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

Defendants have improperly labeled Appellant 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.

VI. 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

<i>S.C. Ann. Section 41-35-110 (3)</i>	<i>Dates Appellant Received PUA Benefits as A Result of Being Unemployed Due to COVID</i>	<i>Dates The Department Found Appellant Eligible to Receive Benefits Under Section 41-35-110 (3)</i>
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.

VII. 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.

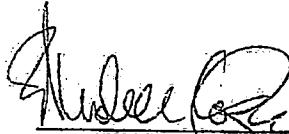
Conclusion

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 part of the Panel's decision and constituted a new argument. The law prohibits Court from hearing these issues. Moreover, this 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 he considered for a substitute position for the upcoming school year, the Appellant is required to 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 appeals before the Court are without merit because an individual cannot receive benefits from

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Wendell D. Cooper", is written over a horizontal line.

Wendell D. Cooper, Pro
117 Palm Springs Way
Simpsonville SC 29681
Phone: 864-230-7049
Email: wendelldoncooper@yahoo.com

SOUTH CAROLINA

DEPARTMENT OF EMPLOYMENT & WORKFORCE

Columbia, South Carolina

**Transcript of Testimony
Before**

Erika Davis, Administrative Hearing Officer

Wendell D. Cooper) **CLAIMANT**
117 Palm Springs Way)
Simpsonville, South Carolina 29681)
Claimant SSN: XXX-XX-XXXX)

School District of Greenville County) **LIABLE EMPLOYER**
P.O. Box 2848)
Greenville, South Carolina 29601)

PLACE OF HEARING: SC Department of Employment & Workforce
Central Office Annex
631 Hampton Street
Columbia, SC 29201

DATE OF HEARING: August 08, 2021

APPEARANCES:

For Claimant: Wendell D. Cooper, Claimant
For Employer: George Ward, Employer Representative

TESTIFYING WITNESSES

CLAIMANT WITNESSES:

Wendell D. Cooper, Claimant

EMPLOYER WITNESSES:

George Ward, Employee Relations Representative

CONTENTS

GEORGE WARD

Testimony of George Ward 12

WENDELL D. COOPER

Testimony of Wendell D. Cooper 17

EXHIBITS ENTERED

<u>Exhibit</u>	<u>Description</u>	<u>Page</u>
Agency Exhibit 1	Agency Documents	12
Claimant Exhibit 1	Letter from Prima Health	19

1 Before Erika Davis, Administrative Hearing Officer

2 HEARING OFFICER'S PREAMBLE

3 ALL WITNESSES SWORN

4 [Recording started]

5 [Call connected]

6 UNIDENTIFIED MALE: Hello.

7 HEARING OFFICER: Hello, may I speak with Wendell Cooper, please?

8 WENDELL D. COOPER: Uh, this is he. Okay. Just one moment. This

9 HEARING OFFICER: I'm sorry, I can barely hear you Mr. Cooper.

10 WENDELL D. COOPER: Okay. Just one moment. This is he. Can you hear me
11 now?

12 HEARING OFFICER: Yes, sir. I can. My name is Erica Davis. I'm with the
13 South Carolina Department of Employment Workforce.
14 We're calling about unemployment appeal that you
15 requested. Are you ready to go forward?

16 WENDELL D. COOPER: Yes, ma'am.

17 HEARING OFFICER: I'm calling about unemployment appeal that you
18 requested. Are you ready to go forward?

19 WENDELL D. COOPER: Yeah.

20 HEARING OFFICER: All right. Let me see if I can get the School District of
21 Greenville on the line and we'll proceed.

22 WENDELL D. COOPER: Okay.

23 [Call connected]

24 UNIDENTIFIED MALE: Greenville County Schools. This is George Ward.

1 HEARING OFFICER: Mr. Ward, this is Erica Davis with the South Carolina
2 Department of Employment Workforce.

3 GEORGE WARD: Yes, ma'am.

4 HEARING OFFICER: I am calling regarding unemployment appeal on a
5 Wendell Cooper.

6 GEORGE WARD: Yes, ma'am.

7 HEARING OFFICER: All right. Are you ready to go forward?

8 GEORGE WARD: Yes.

9 HEARING OFFICER: Mr. Cooper, are you there? I'm sorry?

10 WENDELL D. COOPER: Yes, ma'am. I am.

11 HEARING OFFICER: Um, I have--

12 GEORGE WARD: Hello?

13 HEARING OFFICER: I have a couple of things before I begin, gentlemen.
14 Number one, if you are on a cell phone or cordless phone,
15 I do need you to please stay in one spot so that I do not
16 lose your transmission. The hearing is tape recorded. So
17 it's very important that you avoid any background noise to
18 ensure that we get a good recording. The hearing today is
19 on a break in terms, um, or reasonable assurance. There is
20 a separate hearing that has been requested but it has not
21 been scheduled at this time, Mr. Cooper, and that is
22 regarding your separation or your your employment with
23 the school. So you have two separate issues here. Okay?

24 WENDELL D. COOPER: Yeah, I don't know. Uh, I don't know if it's dealing with
25 the same school system or not.

26 HEARING OFFICER: Yes, sir. It is. One is-- one is based on a break in terms
27 and whether you are and that's what we're here to discuss
28 today--

29 WENDELL D. COOPER: Yeah.

1 HEARING OFFICER: -- is whether you are or are not unemployed as a result of
2 a break in terms, um, and whether or not you have
3 reasonable assurance of returning. There is another-- there
4 is another appeal that I, um, that I saw that has not been
5 scheduled and that is based on your employment or your
6 separation from the school district. Okay?

7 WENDELL D. COOPER: Yeah. That would be with Spartanburg School District,
8 not with Greenville County.

9 HEARING OFFICER: I'm sorry. The hearing-- the second hearing with
10 Greenville County is on the still working that you
11 appealed, whether you're laid off or still working.

12 WENDELL D. COOPER: Oh.

13 HEARING OFFICER: Okay.

14 WENDELL D. COOPER: I didn't-- I don't think I made that appeal. I'm looking at
15 my appeal forms now.

16 HEARING OFFICER: Okay. Because I see an appeal on-- I just showing. But I
17 can see there was an appeal on that one also.

18 HEARING OFFICER: Okay.

19 WENDELL D. COOPER: Yes.

20 HEARING OFFICER: But again, the hearing today is only on the break in terms
21 issue. Okay?

22 WENDELL D. COOPER: Okay.

23 HEARING OFFICER: All right. I have just a brief statement that will go over the
24 procedures and then I will take testimony from both
25 parties.

26 We are on record with Appeal Number 21-LA-032283 in
27 the case of the claimant Wendell Cooper and the employer
28 School District of Greenville County. The claimant
29 appealed a determination that was mailed on July the 12th
30 of 2020 whereby he was held ineligible for benefits based

1 on a break in terms and reasonable assurance of returning
2 to work. The issue in this hearing is the claimant's
3 eligibility for benefits. This hearing is being conducted on
4 August the ninth of 2021 by teleconference before Erica
5 Davis and administrative hearing officer with the South
6 Carolina Department of Employment and Workforce. The
7 claimant Wendell Cooper is participating with no
8 additional witnesses.

9 Is that correct, Mr. Cooper?

10 **WENDELL D. COOPER:** Yes, ma'am.

11 **HEARING OFFICER:** Thank you.

12 And the employer School District of Greenville County is
13 participating with one witness George Ward, Employee
14 Relations. And I'm sorry, it is Employee Relations, is that
15 correct, Mr. Ward?

16 **GEORGE WARD:** That's correct.

17 **HEARING OFFICER:** Thank you. Gentlemen, all testimony in the hearing is
18 recorded as required by state law. And your testimonies
19 must be taken under oath or affirmation. So at this time, I
20 will place both of you under oath.

21 Do you solemnly swear or affirm that the testimony you're
22 about to give is the truth, the whole truth and nothing but
23 the truth, so help you God?

24 Mr. Cooper?

25 **WENDELL D. COOPER:** Yeah.

26 **HEARING OFFICER:** And Mr. Ward?

27 **GEORGE WARD:** Yes, I do.

28 **HEARING OFFICER:** Initially, I will ask questions of each of you. You will
29 have the opportunity to answer those questions and to
30 provide any additional testimony that is relevant to this

1 case. If you have any documents or exhibits that you feel
2 should be considered in the case, they should have been
3 sent in prior to this hearing as instructed on the hearing
4 notice.

5 Are there any questions regarding the issue or the
6 procedure of this hearing before I go forward with the
7 testimony?

8 Mr. Cooper, do you have any questions?

9 WENDELL D. COOPER: No, ma'am.

10 HEARING OFFICER: Thank you.

11 And Mr. Ward, do you have any questions?

12 GEORGE WARD: No, ma'am.

13 HEARING OFFICER: Both parties will be notified of the decision in this case.
14 That decision is mailed to the address of record.

15 Mr. Cooper, I'm showing your address as 117 Palm
16 Springs way and that's in Simpsonville, South Carolina
17 29681. Is that correct?

18 WENDELL D. COOPER: Yes.

19 HEARING OFFICER: And your telephone number 864-230-7049?

20 WENDELL D. COOPER: Yes.

21 HEARING OFFICER: Thank you.

22 Mr. Ward, I'm showing the address of record for the
23 School District of Greenville County, Post Office Box
24 2848, Greenville, South Carolina 29602. Is that correct?

25 GEORGE WARD: Yes, that's correct.

26 HEARING OFFICER: And the telephone number 864-355-3977?

27 HEARING OFFICER: Great. Thank you.

1 Since the initial determination is a break in terms or a
2 between terms reasonable assurance issue, I do begin the
3 testimony with the employer. Before I begin testimony,
4 Mr. Cooper, I do have that determination here that found
5 you ineligible to use the wages from the School District of
6 Greenville County based on the finding that you were
7 unemployed due to a break in terms is that the
8 determination you have appealed in this case?

9 WENDELL D. COOPER: Um-m-m, well I may need a little bit of clarification on
10 that because I think that I've submitted a letter from my
11 physician that's part of the record.

12 HEARING OFFICER: Okay, but the issue here is whether or not you are
13 unemployed due to a break in terms, not whether you're
14 able to work or available for work. Um, that would be a
15 separate issue or separation issue.

16 WENDELL D. COOPER: Okay.

17 HEARING OFFICER: So it determination that found you ineligible because you
18 are unemployed due to a break in terms, and therefore you
19 are not able to use the wages from a school system. If it is
20 a break in terms or an educational institution, if it is a
21 break in terms you're not eligible to use those wages to
22 establish a claim or to receive benefits from.

23 So are you appealing that issue as well as you're still
24 working or separation issue?

25 WENDELL D. COOPER: Well, my-- Okay. Well, I don't know what the-- I don't
26 know what the language is. Basically--

27 HEARING OFFICER: Yes, sir.

28 WENDELL D. COOPER: Basically when I sent the letter from my doctor preventing
29 me from going into the [UNCLEAR] do due to the surge
30 in the COVID-19. That was my reason for not returning--

31 HEARING OFFICER: Okay, but--

1 WENDELL D. COOPER: -- to the school there. So I don't know what the-- I don't
2 know what the determination as far as that going. Uh, I
3 think that what I was-- the representative it was that my
4 doctor had quarantined me. And that was the reason why I
5 was not going back to work.

6 HEARING OFFICER: Sir, I understand that. And that's a different issue that as
7 I-- as I was telling you earlier, you do have another issue
8 of separation or eligibility--

9 WENDELL D. COOPER: Okay.

10 HEARING OFFICER: -- that has not been scheduled. Um, the one today is
11 whether or not the wages from the school district can be
12 used or can be used for your claim, because it-- if it is a
13 break in terms, okay?

14 WENDELL D. COOPER: Okay.

15 HEARING OFFICER: By law, if you are unemployed-- Okay. And I'm going to
16 explain that. By law, if you are unemployed from a school
17 district due to a summer break, or spring break or, or
18 Christmas break, any break in the terms you cannot use
19 those wages that are paid in by the employer to establish a
20 claim or to receive benefits, if it is deemed that that is a
21 reason why you are not working.

22 Um, you in your case, you have two separate issues. You
23 have the one whether you can or cannot use those wages,
24 you know, based on why you're not working, or whether it
25 is a break in terms. Okay? So you have two separate
26 issues. So we have to--

27 The issue today is to determine whether you can use those
28 wages that were earned through the school district to
29 receive benefits if you are found eligible. Okay?

30 WENDELL D. COOPER: Okay.

1 HEARING OFFICER: It's kind of a tricky situation with a school district. They
2 have, um, they are what we call a... I can't think of the
3 word. I'm sorry. A reimbursable employer, meaning they
4 don't pay unemployment like a regular employer does.
5 They pay unemployment if someone is deemed eligible.
6
7 So a regular employer has to pay quarterly. So it's a
8 different situation because you worked for a school
9 district. So you have two issues. So one we're going to do,
10 like I said, the one we're going to handle today is whether
11 you can use those wages to establish your claim or or if
12 you are found eligible. Okay?
13
14 So do you have any objection to me entering this
15 determination into the record to show the purpose of this
16 appeal today?
17 WENDELL D. COOPER: Again, I don't know whether I have objections to it. But it
18 wasn't-- that wasn't my issue, but because--
19 HEARING OFFICER: Okay. So you're not appealing the determination that
20 found you ineligible to use those wages?
21 WENDELL D. COOPER: Well, see that's a little bit confusing to me.
22 HEARING OFFICER: Yes, sir.
23 WENDELL D. COOPER: Fact is that I believe in, and the representative from the
24 school can correct me on this, but I believe the wages of
25 which I'll referred to would go all the way to, uh, the end
26 of the school year. And I think that the school year ended
27 sometime in May, would that be, sir?
28 HEARING OFFICER: And we're here to establish that. What, you know, when
29 the school year began, when the school year ended, when
30 the breaks in terms work. And that's what we're here to
address. But I first have to establish what it is that you are
appealing.

1 WENDELL D. COOPER: Okay. Well, I was appealing to decision. Uh, my appeal
2 more stems with the second part of it.

3 HEARING OFFICER: Okay.

4 WENDELL D. COOPER: I didn't know there was issues. I thought there was all just
5 one--

6 HEARING OFFICER: Do you want-- No, sir. They're separate issues.

7 WENDELL D. COOPER: Yeah, I had no idea.

8 HEARING OFFICER: And you have--

9 WENDELL D. COOPER: [UNCLEAR].

10 HEARING OFFICER: Do you want to proceed with this hearing today?

11 WENDELL D. COOPER: Uh-h-h, yeah, we can.

12 HEARING OFFICER: Okay. So I'm going to take administrative notice that this is the
13 decision that is being appealed and enter it into the record.

14 Mr. Ward, do you have any objection to that document
15 being placed into the record just for the purpose of this
16 appeal today?

17 GEORGE WARD: No, ma'am.

18 HEARING OFFICER: All right. I also have some additional documents, Mr.
19 Cooper, and what that is, is your unemployment
20 application and this is the most recent unemployment
21 application that was filed in 2021.

22 WENDELL D. COOPER: Um-hmm.

23 HEARING OFFICER: Okay, um, and I have the statement regarding reasonable
24 assurance, whether you are filing during the break in the
25 school terms, and the information that was received from
26 Greenville County Schools.

27 Do you have any objection to those documents being put
28 into the record?

1 WENDELL D. COOPER: No. I don't have a copy of them, but I don't have any
2 objection.

3 HEARING OFFICER: Thank you.

4 Mr. Ward. Do you have any objection to the
5 documentation being placed into the record?

6 GEORGE WARD: No, ma'am.

7 HEARING OFFICER: Then without objection, I will enter those documents as
8 Agency Exhibit 1.

9 **AGENCY EXHIBIT NUMBER 1**

10 **IS HEREBY ENTERED**

11 HEARING OFFICER: Mr. Ward, if you would, would you please state your
12 name for the record spelling your first and last name?

13 GEORGE WARD: Yes, ma'am. George Ward, GEORGE WARD.

14 HEARING OFFICER: Thank you, and your job title Mr. Ward?

15 GEORGE WARD: Employee Relations Representative.

16 HEARING OFFICER: Thank you. Um, Mr. Ward, what position that Mr. Cooper
17 hold with the School District of Greenville County?

18 GEORGE WARD: He's listed as a certified substitute teacher.

19 HEARING OFFICER: Um, in March of 2021, March 14, 2021 was there a break
20 in the school terms?

21 GEORGE WARD: No, ma'am.

22 HEARING OFFICER: Was it spring break?

23 GEORGE WARD: Uh, no, ma'am. Not in March.

24 HEARING OFFICER: No. When is spring break?

25 GEORGE WARD: Uh-h-h, spring break was in April. Uh, let's pull up the old
26 calendar.

1 HEARING OFFICER: Okay.

2 GEORGE WARD: Let's see. They've taken down our old calendar, but I want
3 to say like the first week in April. I believe the first full
4 week in April.

5 HEARING OFFICER: Okay.

6 GEORGE WARD: That would have been April 5th through 9th I believe.

7 HEARING OFFICER: Okay. And when did the school go on summer break in
8 2020?

9 GEORGE WARD: Uh, June the 4th would have been last day for students of
10 2021.

11 HEARING OFFICER: And when did school resume? [UNCLEAR].

12 GEORGE WARD: Student return August 17th. Next week.

13 HEARING OFFICER: Does Mr. Cooper-- August 17, 2021.

14 GEORGE WARD: Yes, ma'am.

15 HEARING OFFICER: Did Mr. Cooper has a reasonable assurance of returning to
16 the school system?

17 GEORGE WARD: Yes, ma'am, since he's still an active, uh, substitute in the
18 system. Yes, ma'am. He does.

19 HEARING OFFICER: Do the substitutes in Greenville County or Greenville
20 districts, school districts, um, are they required to sign a
21 contract every year to return?

22 GEORGE WARD: No, ma'am. There's no contract for them. They're usually
23 given some correspondence about summer trainings that
24 they have to attend and but there's no contract for
25 substitutes.

26 HEARING OFFICER: Did Mr. Cooper attend the training in the summer?

27 GEORGE WARD: I'm not aware. I don't-- I'm sorry?

28 HEARING OFFICER: Okay, is it mandatory?

1 GEORGE WARD: Yes, ma'am. Yes.

2 HEARING OFFICER: If one does not attend that training, then they cannot return
3 in the fall?

4 GEORGE WARD: They could possibly do some makeup through contacting
5 a person over substitutes who's responsible for setting up
6 training. But they usually give them some grace period to
7 complete the training.

8 HEARING OFFICER: To your knowledge did Mr. Cooper refuse reasonable
9 assurance of returning in the school term?

10 GEORGE WARD: No, I don't think so.

11 HEARING OFFICER: Okay. Um, are substitutes placed on a list, um, to be called
12 in if needed.

13 GEORGE WARD: Yes, ma'am. It is a, uh, automated system that calls subs
14 when there are absences in the system. They can sign up
15 for which schools they would like to sub at. So that kind
16 of tailored to when-- who they want to work, or which
17 schools they want to work for. But they're usually called
18 through the system for subs or teachers can reach out to
19 individual subs as well to get them to sub for them.

20 HEARING OFFICER: So does the substitute, or in this case, would Mr. Cooper
21 have to remove himself from that list if he were not
22 interested in returning?

23 GEORGE WARD: Correct, he would just reach out to Ms. Caster [phonetic]
24 one of our-- the person over subs to let them know if he's
25 not returning.

26 HEARING OFFICER: Okay. And to your knowledge, is he still on the active sub
27 list?

28 GEORGE WARD: In our system he's still listed as active, so yes, ma'am.

29 HEARING OFFICER: Thank you. I don't believe I have any other questions. Do
30 you have anything else at this time, Mr. Ward?

1 GEORGE WARD: No, ma'am. I don't think so.

2 HEARING OFFICER: Mr. Cooper, do you have any questions for Mr. Mr. Ward
3 before I take your testimony?

4 WENDELL D. COOPER: Yes, ma'am. Just-- Just one question.

5 HEARING OFFICER: Proceed.

6 WENDELL D. COOPER: Uh, good morning, Mr. Ward.

7 GEORGE WARD: Good morning.

8 WENDELL D. COOPER: Uh, the one thing that I wanted to say when she was
9 talking about breaks, there was an email that was sent out
10 for subs needing subs for summer school. And could you,
11 uh, state when the summer school began and would have
12 ended?

13 GEORGE WARD: Um-m-m, I do not have that information. Sorry.

14 WENDELL D. COOPER: Okay. But we--

15 GEORGE WARD: But I--

16 WENDELL D. COOPER: Go ahead.

17 GEORGE WARD: The summer months-- I know the summer hours our
18 schedule is from June the 4th through August the 17th. So
19 it would have been sometime within that period.

20 WENDELL D. COOPER: Okay. And then so those opportunities for me to sub
21 would have been available had my physician prohibited
22 me from from doing so because of the COVID-19? Would
23 that be correct?

24 GEORGE WARD: Um, I'm not aware of your situation.

25 WENDELL D. COOPER: But it would have been available to me. Is that correct?

26 GEORGE WARD: I would imagine you would've-- have to apply.

27 WENDELL D. COOPER: Yes, sir. Okay. Thank you.

1 HEARING OFFICER: May I clarify your question? Mr. Cooper?

2 WENDELL D. COOPER: Go ahead.

3 HEARING OFFICER: Mr. Ward, are substitutes, um, these-- Are substitutes
4 contacted for summer school as well?

5 GEORGE WARD: Umm, as-- I-- If he says he was I would imagine they
6 opened it up for subs. I'm not sure about that. This year
7 was kind of unusual. I don't think we've done much
8 summer school in the past just because of the pandemic
9 situation--

10 HEARING OFFICER: Um-hmm.

11 GEORGE WARD: -- that they made it--

12 HEARING OFFICER: Is it customary that substitutes work summer school, or is
13 that something that the teachers do?

14 GEORGE WARD: No. They usually use teachers for that, but and if they
15 can't find enough teachers, then they would be substitutes.
16 But--

17 HEARING OFFICER: Okay.

18 GEORGE WARD: But that's not a guaranteed thing.

19 HEARING OFFICER: All right. Thank you..

20 GEORGE WARD: Yes, ma'am.

21 WENDELL D. COOPER: Well, okay. I just wanted to--

22 HEARING OFFICER: Please state your name.

23 WENDELL D. COOPER: [UNCLEAR].

24 HEARING OFFICER: I'm sorry?

25 WENDELL D. COOPER: Yeah, I'm still on that other question because I want to
26 make the, you know, to clarify that is that in this year, in
27 this situation, uh, they were looking for subs.

1 HEARING OFFICER: Okay. And I'm gonna-- I'm gonna take your clarification
2 in just a minute. Do you have any other questions for Mr.
3 Ward before I take your testimony in any any rebuttal to
4 his testimony?

5 WENDELL D. COOPER: No, ma'am.

6 HEARING OFFICER: All right. And if you would, Mr. Cooper, would you
7 please state your name for the record spelling your first
8 and last name?

9 WENDELL D. COOPER: My name is Wendell Cooper. It's W-E-N-D-E-L-L
10 C-O-O-P-E-R.

11 HEARING OFFICER: Thank you. Mr. Cooper. Um, Mr. Cooper, you are a
12 substitute teacher with the district or School District of
13 Greenville County. Is that correct?

14 WENDELL D. COOPER: Yes, ma'am.

15 HEARING OFFICER: Okay. And you wanted to clarify something about the
16 substitute teachers for this summer.

17 WENDELL D. COOPER: Uh, I think that the representative cleared it up. I just want
18 to make sure that, uh, the record reflect that while it is not
19 at as he said normal for subs to work in this summer. But
20 in this particular case, this summer, uh, that was
21 forthcoming. That's all I wanted to make sure the record,
22 uh, reflect.

23 HEARING OFFICER: Okay. Did the school-- Um, now, let me back up. You
24 went on summer break in June of this 2021, June the 4th.
25 Is that correct?

26 WENDELL D. COOPER: Uh, I believe he said.

27 HEARING OFFICER: Okay. Were you expected to work in the summer?

28 WENDELL D. COOPER: As I said before, there was an email that came from
29 [UNCLEAR] asking for a subs to sign up for summer
30 school.

1 HEARING OFFICER: Did you sign up for for summer school?

2 WENDELL D. COOPER: I did not sign up for summer school because my
3 [UNCLEAR] because of the statement from my physician
4 is in the record.

5 HEARING OFFICER: Okay. Are you expected to return to the school district
6 when school resumes in August of this year?

7 WENDELL D. COOPER: Well, the-- As I said, that I will make that-- that decision
8 will be made by my-- by my physician.

9 HEARING OFFICER: Okay.

10 WENDELL D. COOPER: Again, that matter, I think as outlined in her-- in her letter.

11 HEARING OFFICER: What letter are you referring to?

12 WENDELL D. COOPER: I'm referring-- referring to the letter that I sent in that's
13 dated 6/11/2021 from Prisma, from Dr. Lynette Giro
14 [phonetic] for internal medicine.

15 HEARING OFFICER: Was that submitted for the purposes of this hearing? Or
16 was it submitted with your appeal?

17 WENDELL D. COOPER: It was submitted for the purpose of my hearing and for my
18 appeal. Uh, I called and checked, and I informed the
19 appeals committee-- the appeals representatives as well as
20 that, that I wanted this document to be present at my
21 hearing. I called to verify that. And they said they did
22 receive a copy of it.

23 Now I--

24 HEARING OFFICER: Did you send a copy to Mr. Ward or to Greenville School
25 District as well?

26 WENDELL D. COOPER: Uh, I did not send a copy them. I was going to hand
27 deliver it on this Friday when I, uh, read when I read that
28 notice--

29 HEARING OFFICER: Um-hmm.

1 WENDELL D. COOPER: -- I believe that, uh, someone said that they're closed on
2 Fridays. So I could not get that letter to them for their
3 review.

4 HEARING OFFICER: Mr. Ward, do you have any objection to me entering a
5 letter from Prisma Health? And I'll be glad to read the
6 letter.

7 It says, "To Whom It May Concern: Wendell Don Cooper
8 was seen in my clinic on June the 11th. He was advised to
9 stay home at the time that COVID-19 was surging in our
10 area last year and this year due to his high risk of
11 developing severe COVID disease.

12 This letter is issued per his request OneNet Guerrero,
13 Cypress Internal Medicine Career.

14 GEORGE WARD: No ma'am. I don't object to the document.

15 HEARING OFFICER: I'll be glad to enter your document, Mr. Cooper, as agency
16 or excuse me, as Claimant Exhibit Number 1.

17 **CLAIMANT EXHIBIT NUMBER 1**
18 **IS HEREBY ENTERED**

19 HEARING OFFICER: According to this document, you requested the doctor to
20 complete this because you have been advised to stay at
21 home. Do you have underlying health conditions? Is that
22 why you had requested--

23 WENDELL D. COOPER: Uh-h-h, well, you know, I-- What I'm saying is that, uh,
24 that's what she advised me to do.

25 HEARING OFFICER: Okay.

26 WENDELL D. COOPER: Uh-h-h, in discussion about that she [UNCLEAR] if
27 there's any questions to contact her. So I will let her
28 address that question.

29 HEARING OFFICER: All right. Um, unfortunately, they won't discuss your
30 medical condition with us.

1 WENDELL D. COOPER: Yeah, but what I was--

2 HEARING OFFICER: That would be something that you would have to disclose.
3 Okay?

4 WENDELL D. COOPER: [UNCLEAR].

5 HEARING OFFICER: But, um, you have you have notified-- Let me just for
6 clarification, Mr. Cooper. Have you notified the school
7 that you would not be returning because of the advice of
8 your physician?

9 WENDELL D. COOPER: I don't know if I said it in that particular terms, ma'am. But
10 what I did once-- once that happened, okay? I went into
11 the system and paused-- and paused my, uh, ability to be
12 called, uh, until I was cleared from my physician. And for
13 the record, yes if she-- if my condition allows me to would
14 go back to subbing. I enjoy working with the kids.

15 HEARING OFFICER: Okay. So you're still on the substitute list? You have just
16 Paused contact?

17 WENDELL D. COOPER: Yeah, but I still was getting calls and things of that nature.
18 I think like it said is that the teachers could call me or the
19 principals could call me. And and while I did not
20 communicate directly to the representative's office, I did
21 direct that to the principal and people that-- that had called
22 me regarding my-- for me to, uh, [UNCLEAR].

23 HEARING OFFICER: Okay, thank you. I don't have any other questions at this
24 time, Mr. Cooper. Do you have anything else?

25 WENDELL D. COOPER: No, ma'am.

26 HEARING OFFICER: Mr. Ward, do you have any questions for Mr. Cooper?

27 GEORGE WARD: No, ma'am.

28 HEARING OFFICER: Do you have any additional testimony or any rebuttal to
29 the testimony that's been given, Mr. Ward?

30 GEORGE WARD: No, ma'am. I don't think so.

1 HEARING OFFICER: Mr. Cooper, do you have anything further before I close
2 the record?
3 WENDELL D. COOPER: No, ma'am.
4 HEARING OFFICER: All right. Well, there being no further questions and no
5 further testimony I declare this hearing closed. I thank you
6 both. And have a great afternoon.
7 GEORGE WARD: Thank you.
8 WENDELL D. COOPER: Okay.
9 HEARING OFFICER: Bye-bye.

10

11

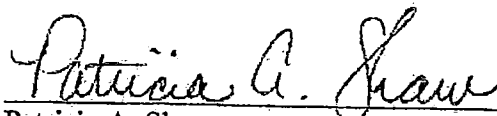
12 [Recording ended]

13

14 HEARING CLOSED

CERTIFICATE

This is to certify that this is a copy of the proceedings held in a hearing before Erika Davis, Administrative Hearing Officer, for the South Carolina Department of Employment Workforce, in the matter of Wendell D. Cooper, Claimant and School District of Greenville County, Employer on August 9, 2021 which proceedings were phonographically recorded, transcribed by me, and herein appear.

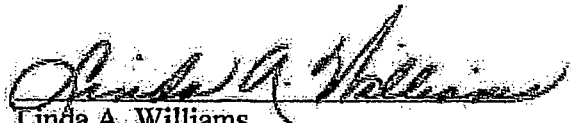

 Patricia A. Shaw
 Transcriptionist
 Williams & Associates

Richmond, Virginia

November 11, 2021

CERTIFICATE

This is to certify that this is a copy of the proceedings held in a hearing before Erika Davis, Administrative Hearing Officer, for the South Carolina Department of Employment Workforce, in the matter of Wendell D. Cooper, Claimant and School District of Greenville County, Employer on August 9, 2021 which proceedings were phonographically recorded, proofread and herein appear.


Linda A. Williams
Proofreader
Williams & Associates

Richmond, Virginia

November 11, 2021

SOUTH CAROLINA

DEPARTMENT OF EMPLOYMENT & WORKFORCE

Columbia, South Carolina

**Transcript of Testimony
Before**

Roman Dodd, Administrative Hearing Officer

Wendell D. Cooper	)	CLAIMANT
117 Palm Springs Way	)	
Simpsonville, South Carolina 29681	)	
Claimant SSN: XXX-XX-8280	)	

School District of Greenville County	)	LIABLE EMPLOYER
P.O. Box 2848	)	
Greenville, South Carolina 29601	)	

PLACE OF HEARING:	SC Department of Employment & Workforce
	Central Office Annex
	631 Hampton Street
	Columbia, SC 29201

DATE OF HEARING:	August 08, 2021
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APPEARANCES:

For Claimant:	Wendell D. Cooper, Claimant
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For Employer:	George Ward, Employer Representative
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TESTIFYING WITNESSES

CLAIMANT WITNESSES:

Wendell D. Cooper, Claimant

EMPLOYER WITNESSES:

George Ward, Employer Representative

CONTENTS

WENDELL D. COOPER

Testimony of Wendell D. Cooper 10

GEORGE WARD

Testimony of George Ward..... [EnterPage#]

EXHIBITS ENTERED

<u>Exhibit</u>	<u>Description</u>	<u>Page</u>
Agency Exhibit 1	Agency Documents (8 pages)	10
Agency Exhibit 2	[ExhibitTitle].....	[EnterPage#]
Employer Exhibit 1	[ExhibitTitle].....	[EnterPage#]
Claimant Exhibit 1	Claimant's Submission	11

1 Before Roman Dodd, Administrative Hearing Officer

2 **HEARING OFFICER'S PREAMBLE**

3 **ALL WITNESSES SWORN**

4 [Recording started]

5 [Call connected]

6 UNIDENTIFIED MALE: Hello.

7 HEARING OFFICER: Hi. May I speak to Wendell Cooper, please?

8 WENDELL D. COOPER: This is he.

9 HEARING OFFICER: Hi. This is Roman Dodd calling at the South Carolina
10 Department of Employment Workforce regarding a 10:30
11 hearing.

12 WENDELL D. COOPER: Yes.

13 HEARING OFFICER: All right. Let me get the employer on the line, one second.

14 UNIDENTIFIED MALE: Okay good morning Human Resources. This is George.

15 HEARING OFFICER: Hello, sir. This is Roman Dodd at the South Carolina
16 Department of Employment Workforce calling regarding
17 a hearing for 10:30 a.m.

18 GEORGE WARD: Yes.

19 HEARING OFFICER: Can I get your last name George?

20 GEORGE WARD: Ward. W-A-R-D.

21 HEARING OFFICER: All right. I have the claimant on the line so we will get
22 going here. All right.

23 My name is Roman Dodd. I'm an Administrative Hearing
24 Officer with the South Carolina Department of
25 Employment and Workforce. I'm scheduled to conduct an
26 unemployment insurance hearing this after-- or this

1 morning at 10:30 a.m. I have a short preamble, which will
2 outline the procedure of the hearing and then I'll take your
3 testimony.

4 If you're on a cell phone, please get an area that is quiet.
5 Please limit the use of speakerphone and Bluetooth
6 devices. And I ask that each of you speak clearly and
7 refrain from speaking while the opposing party is
8 providing testimony.

9 Mr. Cooper, do you have any additional witnesses or an
10 attorney with you today?

11 **WENDELL D. COOPER:** No.

12 **HEARING OFFICER:** Mr. Ward, do you have any additional witnesses or an
13 attorney with you?

14 **GEORGE WARD:** No, sir.

15 **HEARING OFFICER:** All right, we are now on the record. This is a hearing on
16 Appeal Number 21-LA-035058 in the case of the claimant
17 Wendell Cooper and the employer school district of
18 Greenville County. As this is an administrative proceeding
19 I am advising the parties that I am recording.

20 The claimant appealed a determination mailed July 12th
21 of 2021 whereby the claimant was held ineligible for
22 benefits effective March 14th of 2021 due to not accepting
23 all available work. The issue in this hearing is whether the
24 claimant is eligible for benefits.

25 This hearing is being conducted on August 30th of 2021
26 by teleconference. It is before Roman Dodd
27 Administrative Hearing Officer for the South Carolina
28 Department of Employment and Workforce. The claimant,
29 Wendell Cooper is present, has no additional witnesses
30 and is not represented by an attorney.

31 Is that correct Mr. Cooper?

1 WENDELL D. COOPER: Yes.

2 HEARING OFFICER: And the employer is represented by George Ward, has no
3 additional witnesses and is not represented by an attorney.
4 Is that correct, Mr. Ward?

5 GEORGE WARD: Yes.

6 HEARING OFFICER: All testimony must be taken under oath or affirmation. I
7 will initially ask questions of the employer and then the
8 client will have an opportunity to provide testimony to the
9 tribunal. Please present any exhibits or documents during
10 your testimony you feel should be considered. At this
11 time, I will place both parties under oath.

12 Do you solemnly swear or affirm the testimony you're
13 about to give in this hearing to be the truth, whole truth
14 and nothing but the truth so help you?

15 Mr. Cooper?

16 WENDELL D. COOPER: Yes.

17 HEARING OFFICER: Mr. Ward?

18 GEORGE WARD: Yes.

19 HEARING OFFICER: Okay, let the record reflect the parties have answered in
20 the affirmative. You'll get a decision in the mail as soon as
21 possible which will be sent to your address of record.

22 Mr. Cooper is that 117 Palm Springs way. Simpsonville
23 South Carolina 29681?

24 WENDELL D. COOPER: Yes.

25 HEARING OFFICER: And Mr. Ward is that P.O. Box 2848. Greenville, South
26 Carolina 29602?

27 GEORGE WARD: Yes, sir.

28 HEARING OFFICER: Mr. Cooper, do you have any questions? Actually, let's see
29 here. One second.

1 Mr. Cooper, do you have any questions before we begin?

2 WENDELL D. COOPER: No.

3 HEARING OFFICER: Mr. Ward?

4 GEORGE WARD: No, sir.

5 HEARING OFFICER: Mr. Cooper, can you please state your name for the record
6 spelling your first and last name?

7 GEORGE WARD: Wendell Cooper. W-E-N-D-E-L-L C-O-O-P-E-R.

8 HEARING OFFICER: And Mr. Ward?

9 GEORGE WARD: Yes. George Ward, G-E-O-R-G-E W-A-R-D.

10 HEARING OFFICER: All right, I have a determination mailed July 12th of 2021
11 finding you ineligible for benefits effective March 14th of
12 2021.

13 Mr. Cooper, is this the document that you're appealing?

14 WENDELL D. COOPER: Yeah.

15 HEARING OFFICER: Was there any other determination or decisions that you
16 received that you're appealing?

17 WENDELL D. COOPER: I think that there's a there is a conflict with that March
18 date, because I was already on with appeal under the PUC
19 program. And that program was continued until I believe
20 somewhere around June the 26th.

21 And so it's my understanding that you can only be under
22 one program at a time. So I think that that March 15th date
23 of theirs is incorrect.

24 HEARING OFFICER: That is-- You can-- It's not true that you can only be on
25 one at a time.

26 WENDELL D. COOPER: Oh, okay. That's the document that that I had received
27 from your office.

28 HEARING OFFICER: Which which document are you talking about?

1 WENDELL D. COOPER: I had a prior appeals hearing back in June and an
2 administrative person that represents your role, that's what
3 they had determined. And since then all the people that
4 I've spoken with at DEW they have said the same thing.

5 HEARING OFFICER: That you can't be on the Pandemic Unemployment
6 Assistance and UI benefits at the same time?

7 WENDELL D. COOPER: That is correct. That is my understand.

8 HEARING OFFICER: I want to take a look at this decision real quick. You got a
9 decision from the lower authority appeals from this
10 tribunal. Is that what you're referring to? Your appeal to
11 the determination?

12 WENDELL D. COOPER: Yeah. I think it was in June or somewhere around in 2020.

13 HEARING OFFICER: Are you talking about the federal assistance or the state
14 PUA, sir?

15 WENDELL D. COOPER: I think the federal PUA I think that's what it was.

16 HEARING OFFICER: Okay.

17 WENDELL D. COOPER: It was PEUC.

18 HEARING OFFICER: The Pandemic Emergency Unemployment Assistance.
19 Okay, okay, okay. Okay, I see the lower authority
20 decision.

21 So what are you saying about the discrepancy with the
22 March 14th of 2021?

23 WENDELL D. COOPER: What I'm saying is that I was already under that program.
24 And so I was already under that program until June of
25 26th (sic). So the date in which, preferred to the school,
26 should have been I thought after June the 26th when you
27 PEUC program ended.

28 HEARING OFFICER: So what are you-- So what are you appealing I guess is the
29 question.

1 WENDELL D. COOPER: What, what--

2 HEARING OFFICER: If you think that-- Plus you were getting benefits until the
3 26th. You received all those right? That wasn't
4 overturned, correct?

5 WENDELL D. COOPER: Right. And what I'm saying is, I got a letter saying that--
6 today about the hearing and it's talking about voluntary
7 quitting, discharge and layoff. I thought that I had already
8 taken care of that.

9 HEARING OFFICER: Okay. So you're saying you'd like to withdraw the appeal?

10 WENDELL D. COOPER: No. I'm not withdrawing appeal because this-- from what I
11 understand is that this is a different matter then the other
12 matter I had appealed. I'm just-- going through with that
13 and--

14 HEARING OFFICER: Okay. This has to do when you apply for UI benefits. And
15 when did you apply for UI benefits?

16 WENDELL D. COOPER: I applied for the benefits like they told me to apply for the
17 benefit. It was sometime in May. They-- In my benefits
18 portal, they said that I need to apply for UI benefits.

19 HEARING OFFICER: Because your year ended, right?

20 WENDELL D. COOPER: Yeah.

21 HEARING OFFICER: Because your benefit year ended.

22 WENDELL D. COOPER: Not because of my year ended but because pandemic
23 benefits were ending in-- Again, that date--

24 HEARING OFFICER: June. June 26th.

25 WENDELL D. COOPER: Yeah, in June 26th. So they sent me this thing in my
26 portal, told me I applied for the benefits, and I was just
27 following procedures.

28 HEARING OFFICER: So you weren't-- but you aren't rejected because you were
29 receiving PUA benefits. You were rejected because it says

1 you were not working all available hours with your
2 current bona fide employer.

3 WENDELL D. COOPER: Yeah.

4 HEARING OFFICER: Okay,

5 WENDELL D. COOPER: Yeah, that was-- I think that the adjudicator came up with
6 two reasons to deny benefits. So this is the second reason
7 I'm assuming.

8 HEARING OFFICER: What was the first reason?

9 WENDELL D. COOPER: The first reason was said that there wasn't a break in
10 service-- receiving benefits from the school while there
11 was a break in service. I believe it was summer school that
12 break in between summer and fall.

13 HEARING OFFICER: Yeah, so I saw that because you are reasonably assured to
14 be returning to work.

15 WENDELL D. COOPER: Yeah.

16 HEARING OFFICER: All right, so let's just proceed with this. And I think once
17 the facts come out, we'll kind of fuss out what really needs
18 to be determined. Because the date is based on when you
19 apply for benefits. It's not-- So it can't really be adjusted.
20 So we'll get into this and then, you know, we'll change it if
21 it needs to be changed, but let's just finish this preamble.

22 So do you have another hearing? I think you have another
23 hearing scheduled, don't you for the other issue?

24 WENDELL D. COOPER: Yeah. You're elevated up to a higher court. That is correct.

25 HEARING OFFICER: Okay. All right.

26 I'm required to enter all documents used by the agency to
27 reach this decision into evidence as Agency Exhibit 1.
28 This eight page document includes the determination letter
29 mailed July 12th of 2021; your claimant summary taken
30 from your benefit application; the claimant's appeal and

1 separation details provided by the employer but dated in
2 July of 2021. Two of them. In total eight pages.
3 Before entered the described document into the record,
4 would you have an objection with me doing so Mr.
5 Cooper?
6 WENDELL D. COOPER: No, but with what I need to do is that I sent a bunch of
7 documents that I also wanted for the record that was part
8 of documents that are part of the-- documents that are part
9 of the record as well with the Department of Employment.
10 I sent-- I faxed it to you. Is this the time for those
11 documents or not?
12 HEARING OFFICER: During your testimony, that'll be the time to bring those
13 into onto the record.
14 WENDELL D. COOPER: Yeah. Okay.
15 HEARING OFFICER: So any objections sir?
16 WENDELL D. COOPER: [No audible response]
17 HEARING OFFICER: So no objections Mr. Cooper?
18 WENDELL D. COOPER: No.
19 HEARING OFFICER: Okay. Mr. Ward, do you have any objections?
20 GEORGE WARD: No, sir.
21 HEARING OFFICER: Hearing no objections I'll enter the described document
22 into the record as Agency Exhibit 1.
23 **AGENCY EXHIBIT NUMBER 1**
24 **IS HEREBY ENTERED**
25 HEARING OFFICER: So I'm actually going to start with the claim and I said the
26 employer, but we're gonna start with the claimant because
27 it's based on him not accepting all available hours, the
28 decision.

1 So Mr. Cooper, when did you work for the School District
2 of Greenville County?

3 WENDELL D. COOPER: And I think it was in January of I think maybe 2020,
4 maybe, I'm not for sure.

5 HEARING OFFICER: And do you still work with them?

6 WENDELL D. COOPER: Yes.

7 HEARING OFFICER: So when you applied for benefits what was-- why were
8 you applying for the UI benefits?

9 WENDELL D. COOPER: Because I still had not returned to work yet from the
10 doctor's order.

11 HEARING OFFICER: So a doctor told you not to go to work due to COVID
12 risk?

13 WENDELL D. COOPER: Yeah. Yes, and that doctor-- and that document is part of
14 the documents that sent to you. It's a letter from Dr. Giro
15 [phonetic] dated 6/11/2021.

16 HEARING OFFICER: Okay. All right. So I do have the letter dated June 11,
17 2021. Would you like to submit that as claimant's
18 submission one for the record?

19 WENDELL D. COOPER: Yeah.

20 HEARING OFFICER: Okay. Okay. That is one page and that'll be claimant's
21 submission one.

22 **CLAIMANT EXHIBIT NUMBER 1**

23 **IS HEREBY ENTERED**

24 HEARING OFFICER: This is June 11, 2021. So was it he also advised you to
25 stay home back in March of 2021 as well?

26 WENDELL D. COOPER: The next document I have will explain that. That
27 document is the document here where it says it was an
28 interview. My response to the questionnaire that was sent

1 to me it's three pages that I would like to enter into the
2 record. It's a fact-finding questionnaire.

3 HEARING OFFICER: Okay, I don't have that in this in these files. But let me see
4 if I can find it.

5 WENDELL D. COOPER: Yes, I sent it to or I faxed it to you. it was it was
6 completed February the 18th, 2021.

7 HEARING OFFICER: So can you just tell me what it says? Can you just explain
8 in your own words?

9 WENDELL D. COOPER: Yeah, basically what it says is that it says: When did your
10 set quarantine began? And it was 11/23 of 2020.

11 HEARING OFFICER: All right. I did see that when I was reviewing the case. So
12 I will take that for face value. So that's when you begin
13 self- quarantining is November 23rd of 2020. Was that
14 based on doctor's orders?

15 WENDELL D. COOPER: Yes.

16 HEARING OFFICER: And what is the condition that you have?

17 WENDELL D. COOPER: And I have several conditions. I have a heart condition,
18 blood sugar and those are a couple of things.

19 HEARING OFFICER: All right. Now do you have documentation of these
20 conditions from a doctor?

21 WENDELL D. COOPER: Yes. I've already submitted those to you.

22 HEARING OFFICER: So they've been uploaded to your client portal?

23 WENDELL D. COOPER: Yeah, that was done. That was done in the first hearing in
24 June of 2020.

25 HEARING OFFICER: Okay.

26 WENDELL D. COOPER: All those documents are in there.

27 HEARING OFFICER: Okay. All right. So you were started self-quarantining in
28 November of 2020. And when did you return to work?

1 WENDELL D. COOPER: Last month.
2 HEARING OFFICER: In July?
3 WENDELL D. COOPER: No. It was September 23rd.
4 HEARING OFFICER: Oh, you're saying that's when you return to work?
5 WENDELL D. COOPER: Yes.
6 HEARING OFFICER: So you have not returned to work yet?
7 WENDELL D. COOPER: No, sir. Yeah. September the 23rd I return to work.
8 HEARING OFFICER: Okay. I asked when you returned like past tense. So you
9 have not returned to work? So you do return to work on
10 September of 2021?
11 WENDELL D. COOPER: Yeah, I'm working right now, sir. So you returned in--
12 Okay. I'm sorry. When did you return to work?
13 WENDELL D. COOPER: Last Monday.
14 HEARING OFFICER: Last Monday. So August 23rd?
15 WENDELL D. COOPER: Yes. Excuse me. August the 23rd.
16 HEARING OFFICER: All right. I was a little confused. Okay.
17 So you returned on August 23 of this month?
18 WENDELL D. COOPER: Yeah.
19 HEARING OFFICER: Okay.
20 WENDELL D. COOPER: Yeah.
21 HEARING OFFICER: Has the doctor stated that you are, you know, it's safe to
22 return or did you kind of just decide that you needed to
23 work or how did that go about?
24 WENDELL D. COOPER: You know, yes, we discussed it. And she said that it
25 would be okay, you know, with certain conditions. But
26 right now I got a doctor's appointment with her own

1 Friday because they started having her surgeon in cases
2 again. And so we'll have to revisit that.

3 HEARING OFFICER: Okay. And okay, so what is your what is your job there at
4 school?

5 WENDELL D. COOPER: I'm a substitute teacher.

6 HEARING OFFICER: Okay.

7 WENDELL D. COOPER: [UNCLEAR].

8 HEARING OFFICER: I'm sorry. Go ahead.

9 WENDELL D. COOPER: [UNCLEAR] at 11:00. And I thought that this would be
10 over by 11:00.

11 HEARING OFFICER: A-h-h-h, 11:15. I believe.

12 WENDELL D. COOPER: Yeah. I thought it would be over. I got to hurry because I
13 got a class in two minutes.

14 HEARING OFFICER: All right. I don't have any other-- I mean, how many-- Do
15 you work part-time? How many hours a week do you
16 work?

17 WENDELL D. COOPER: I'm working. I'm working every day now.

18 HEARING OFFICER: Okay.

19 WENDELL D. COOPER: Yeah, I'm working every day. I'm on the long-term
20 substitute position now. And here, come on kids now.

21 HEARING OFFICER: All right. I mean, you don't-- You can leave, that's fine.
22 But I'm going to continue to ask questions to the
23 employer. So.

24 WENDELL D. COOPER: Oh, okay. I mean, you know, that's fine. They're, they're
25 coming. I'll get them set. I get them situated here.

26 But that, yeah. Yeah. I think the crust of what I was saying
27 is that I, you know, I quarantined in November, November
28 23rd.

1 HEARING OFFICER: Yep. I got all the I have all the information that I need
2 from you.

3 Mr. Ward, do you have any questions for Mr. Mr.
4 Cooper?

5 GEORGE WARD: I know he has lead just one. Did you send a letter-- that
6 copy of that doctor's note to the school district?

7 WENDELL D. COOPER: Guys, come on sit down. [Speaking to students]
8 No, I didn't. I didn't send a copy.

9 GEORGE WARD: Okay.

10 WENDELL D. COOPER: I gave-- If I'm not-- Go ahead and sit down guys. Sit down
11 for me. Okay? Crisscross applesauce for me. Okay? Go
12 ahead and sit down. Find your seat on your spot. Thank
13 you guys for coming in quietly. Okay? Okay.

14 Give me just a moment. Guys, I need for you to sit
15 crisscross applesauce, please.

16 Okay, all right. Mr. Ward?

17 GEORGE WARD: Yes, sir.

18 WENDELL D. COOPER: I can-- I have a copy of that letter right now I can fax it to
19 you. But, if I'm not mistaken I was doing a lot of work
20 over at early college.

21 GEORGE WARD: Um-hmm.

22 WENDELL D. COOPER: And I think that I showed her a copy of the letter.

23 GEORGE WARD: Okay.

24 WENDELL D. COOPER: Excuse me. Just a minute.

25 [Speaking to students] Boys and girls, boys and girls. I
26 need you to sit down crisscross applesauce. And I need for
27 you to be quiet. Okay?

1 Ah-ah, boys and girls, I still hear talking. Crisscross
2 applesauce. I need you to face that area right down there.
3 Can you sit down and I'll be with you in just a moment?
4 Put your water bottle over there.
5 Thank you boys and girls. I appreciate that.
6 Okay, all right. Okay, go ahead. I'm sorry.
7 HEARING OFFICER: No. Okay. And Mr. Ward. So is there anything else that
8 that I should know, based on his testimony? Or is
9 everything pretty factually correct from what you're--
10 GEORGE WARD: I don't have any clue because, like I said, I don't think we
11 have a copy of that letter on file and as a substitute
12 teacher, he works whenever he wants to work. Sometimes
13 they do long-term assignments as a certified. So. But he is
14 still actively employed on our record.
15 HEARING OFFICER: Okay. So do you know that he was quarantining due to the
16 doctor's recommendation for this all this time or?
17 GEORGE WARD: No, sir.
18 HEARING OFFICER: Okay.
19 WENDELL D. COOPER: Well, I don't think that I--
20 HEARING OFFICER: Sir, this is just Mr. Ward right now.
21 WENDELL D. COOPER: Okay.
22 HEARING OFFICER: So you didn't know. Okay. Is he responsible for telling
23 you or someone else? Like who's who should know if he
24 was out for that reason?
25 GEORGE WARD: Well, he could notify us but as a substitute teacher, he has
26 the ability to work whenever he wants to work. So if they
27 take time off on their own, they just don't have to accept
28 any jobs and we don't really track that.

1 HEARING OFFICER: I see. So he you don't you're not questioning if he's
2 rejecting offers of work. You're not questioning it, or what
3 the reasoning behind it is, even if it's a legitimate reason?

4 GEORGE WARD: No.

5 HEARING OFFICER: Got you. Okay, that's why you-- Okay, okay. Okay, that
6 makes sense. So there was available work throughout this
7 time, correct?

8 GEORGE WARD: Oh, yes.

9 HEARING OFFICER: Okay. All right. I don't have any other questions for you,
10 sir. Do you have any questions for Mr. Ward, Mr.
11 Cooper?

12 WENDELL D. COOPER: Yes. Basically, there is a place where you can document
13 that at. And what I did is I went into the SmartFind. And
14 that was in the point that I said that I would not be
15 accepting any other positions.

16 Then, too, I think that I received some correspondence
17 from whoever is in charge of the substitutes that, you
18 know, they knew and were aware that a lot of our subs
19 were not accepted substitute teacher assignments because
20 of the quarantine.

21 And as so I think that they have written that one of the
22 reasons why I'm still there, because they said that they
23 would penalize--

24 HEARING OFFICER: Sir?

25 WENDELL D. COOPER: Yes, go ahead.

26 HEARING OFFICER: All right. Do you have any questions for Mr. Ward
27 though?

28 WENDELL D. COOPER: Oh, I was just-- I don't think so.

29 HEARING OFFICER: Okay. Is there anything else you'd like to ask for the
30 record?

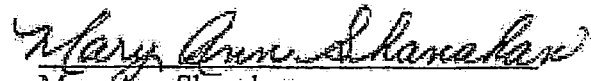
1 **WENDELL D. COOPER:** Not other than what I just said.
2 **HEARING OFFICER:** Okay. Mr. Ward, is there anything else that you'd like to
3 ask for the record?
4 **GEORGE WARD:** No, I don't think so. Nothing new.
5 **HEARING OFFICER:** All right. I'll declare this hearing adjourned. You'll get a
6 decision in the mail in 7 to 10 days to your address for the
7 record.
8 Thank you for your time. Have a good day.
9 **GEORGE WARD:** All right.
10 **HEARING OFFICER:** Okay, thanks.

11
12
13
14 [Recording ended]
15

16 **HEARING CLOSED**

CERTIFICATE

This is to certify that this is a copy of the proceedings held in a hearing before Roman Dodd, Administrative Hearing Officer, for the South Carolina Department of Employment Workforce, in the matter of Wendell D. Cooper, Claimant and School District of Greenville County, Employer on August 30, 2021 which proceedings were phonographically recorded, transcribed by me, and herein appear.

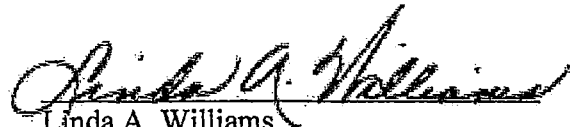

Mary Ann Shanahan
Transcriptionist
Williams & Associates

Richmond, Virginia

November 12, 2021

CERTIFICATE

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Linda A. Williams
Proofreader
Williams & Associates

Richmond, Virginia

November 12, 2021

Exhibit 8

SSN: [REDACTED] Claimant ID: [REDACTED] Name: COATES, JESSIE C Date of Birth: [REDACTED] Search

Address: 11750 S. 10th Ave. City/State/Zip: Phoenix, AZ 85041 Phone: (602) 234-1234 Language: English Clear

Claim ID: [REDACTED] BYD: [REDACTED] BYE: [REDACTED] Debit State: [REDACTED] Program: [REDACTED] Status: [REDACTED]

Monday, 11/11/2014 10:00 AM EST 2014-11-11 10:00 AM EST

Payment Summary

DATE	Payment Type	PID Date	Payment Date	Payment Status	Earnings	Deductions	Compensable Amount	Distributions	Amount Paid	Payment Method	Adjust	OP
10/21/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
10/21/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
10/21/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
10/21/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
10/21/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
10/21/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
10/21/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
10/21/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
10/21/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
10/21/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
10/21/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	

Payment Details | Certificate Responses | Adjustments | Claim Payment Summary

SSN: [REDACTED] Claimant ID: [REDACTED] Name: COATES, JESSIE C Date of Birth: [REDACTED] Search

Address: 11750 S. 10th Ave. City/State/Zip: Phoenix, AZ 85041 Phone: (602) 234-1234 Language: English Clear

Claim ID: [REDACTED] BYD: [REDACTED] BYE: [REDACTED] Debit State: [REDACTED] Program: [REDACTED] Status: [REDACTED]

Monday, 11/11/2014 10:00 AM EST 2014-11-11 10:00 AM EST

Payment Summary

DATE	Payment Type	PID Date	Payment Date	Payment Status	Earnings	Deductions	Compensable Amount	Distributions	Amount Paid	Payment Method	Adjust	OP
04/01/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
04/01/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
04/01/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
04/01/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
04/01/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
04/01/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
04/01/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
04/01/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
04/01/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
04/01/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	
04/01/2014	Continued Work	01/01/2014	01/01/2014	Closed	0.00	0.00	0.00	0.00	0.00	Direct	Yes	

Payment Details | Certificate Responses | Adjustments | Claim Payment Summary

[illegible]147

5. "Amazônia do Nordeste" (1957) (1957); L. 6. 2. 4. 2. 6. 7. "Acadêmicos"

Physical Details	Criminal Record	Admissions	Claim Physical Summary
------------------	-----------------	------------	------------------------

Name: WENDELL Don Cooper | DOB: [REDACTED] MRN: [REDACTED] PCP: Lynnette Jumaquio Guirao, MD

Letter Details

PRISMA HEALTH

Wendell Don Cooper
117 Palm Springs Way
Simpsonville SC 29681-8001

Date of Birth: [REDACTED]
Today's Date: 6/11/2021

To Whom it May Concern:

Wendell Don Cooper was seen in my clinic on 6/11/2021. He was advised to stay home at the time that COVID-19 was surging in our area last year and this year due to his high risk of developing severe COVID disease. This letter is issued per his request.

If you have any questions or concerns, please don't hesitate to call.

Sincerely,

Lynnette Jumaquio Guirao, MD
CYPRESS INTERNAL MEDICINE-GREER
325 MEDICAL PARKWAY SUITE 200
GREER SC 29650-2450
864-797-9550

CC: No Recipients

This letter was initially viewed by WENDELL Don Cooper at 6/12/2021 4:39 AM.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P. O. Box 995, Columbia, South Carolina 29202

Notice of Appeal to Appeal Tribunal

Claimant's Name: Wendell Don Cooper

Social Security Number: [REDACTED]

Claimant's Address: 117 Palm Springs Way

Telephone: 864 - 230 -7049

Employer's Name: Greenville County Public School

Telephone: 864-355-3100

Employer's Address: 301 E. Campdown Way, Greenville South 29601

Please refer to Determination by Claims Adjudicator to complete section below.

On 7/12/2021

(Date of receipt)

I received the determination mailed 7/12/2021

(Mailing date on Notice)

I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons:
When the school district allowed students to return back to school full time and the surging of Covid-19 cases in the area. My physician recommended that self-quarantine (see attached letter).

If appeal is untimely or you were absent from a prior hearing, state the reason: _____

I must continue to file my claim for each week of unemployment until I receive the Appeal Tribunal or Appellate Panel decision, until I return to work, or until my claim is exhausted. If I win the appeal, I know I can only be paid for those weeks that I have timely claimed.

WDC

(Claimant's Initials)

Does claimant need an interpreter? ☐ YES ☒ NO What language/dialect? _____

Claimant is ☐ Deaf ☐ Mute

(If it appears necessary to subpoena witnesses or documents, please complete Form APP-107 and attach it when you submit your appeal.)

SUBPOENA ☐ YES ☐ NO

Who is filing appeal: ☐ Claimant ☐ Employer

Signature: _____

Title: _____

Date: _____

Please submit form by fax to 803.737.0287 or by mail to: "Appeal Tribunal, P.O. Box 995, Columbia, SC 29202."

https://www.foxcarolina.com/news/greenville-county-schools-reports-more-than-100-new-covid-19-cases-this-week/article_de82c852-3829-11eb-9a86-cff0b74ad92e.html

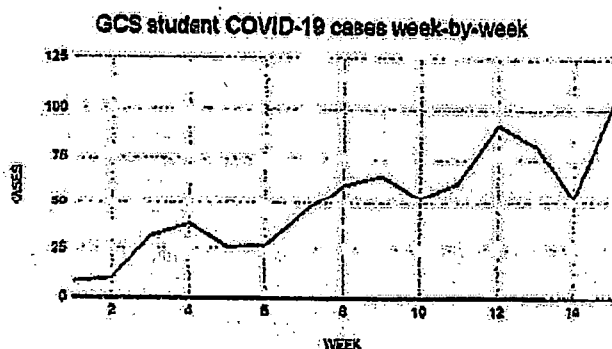
Greenville County Schools reports more than 100 new COVID-19 cases this week

GRACE RUNKEL

POSTED DEC 4, 2020

GREENVILLE, SC (FOX Carolina) — Greenville County School District officials are reporting a record number of new COVID-19 cases among students.

Between Nov. 29 and Dec. 3, there were 103 new positive COVID-19 cases, according to the district's website. That's the highest new case count the district has seen in a single week.



This graph shows how many new COVID-19 cases were reported among students each week by the district. (Dec. 4, 2020 / FOX Carolina)

There were 55 new cases reported on Nov. 30 alone.

Out of the 103 students, 48 were not in a school building while they were contagious.

The previous week with the most cases was Nov. 8-14 with 92 cases.

Altogether, the district has reported 759 student cases and 373 staff cases this fall.

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Grace Runkel
Reporter

THE STATE OF SOUTH CAROLINA

RECEIVED

AUG 09 2023

SC Court of Appeals

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Case No. 21-ALJ-22-0490-AP

Appellate Case No. 2022-001433

Wendell D. Cooper,

Appellant,

v.

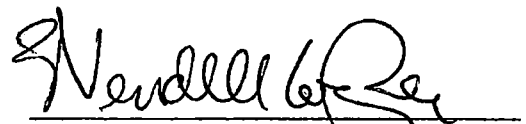
South Carolina Department of
Employment of Workforce, and
School District of Greenville County,

Respondents.

CERTIFICATE OF COUNSEL.

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.

August 5, 2023



Wendell Cooper, Pro Se
117 Palm Springs Way
Simpsonville, South Carolina 29681
864-230-7049
Attorney for Appellant