

**FORM 15
RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
The Court of Appeals
[In The Supreme Court]

APPEAL FROM RICHLAND COUNTY
S. Phillip Lenski, Administrative Law Judge

Case No. 22-ALJ-22-0098-AP

RECEIVED

AUG 14 2023

SC Court of Appeals

South Carolina Department of Employment
and Workforce (SCDEW) and
Amazon.com Services Inc

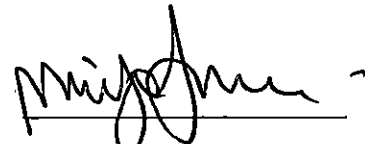
Respondent

v.

Miya S. Freeman

Appellant

AMENDED RECORD ON APPEAL WITH DESIGNATION OF MATTER ATTACHED



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INDEX

Order of June 21, 2022 . 2
Judgment.....2
Decision.....2
Pleadings.....2
Pre-Trial Matters.....3
Motion4
Closing Arguments4

{

ORDER OF JUNE 21, 2022

While the court is sympathetic to the Appellant’s situation, substantial evidence in the record support the Panel’s determination that adjudicator’s decision to the Tribunal. Consequently, the claims adjudicator’s determination that the Appellant is ineligible for the UI benefits because she voluntarily severed the employer/ employee relationship without good cause by filing for unemployment benefits while on a leave of absence must stand. See *Atl. Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 324, 329, 730 S.E. E. 2d 282, 285 (2012) (“[A]n unappalled ruling, right or wrong, is the law of the case.”). Therefore, based on the foregoing,

JUDGMENT

IT IS HEREBY ORDERED that the Department’s determination is **AFFIRMED**.
AND IT IS SO ORDERED.

(Signed) S. Phillip Lenski
 Administrative Law Judge
 June 21, 2022
 Columbia, South Carolina

DECISION

Court un-strike its decision of June 13, 2023 and allow the Appellant’s appeal to move forward to the Court of Appeals

PLEADINGS

1. WERE THE APPELLANT’S RIGHTS PREJUDICED IN THE ADMINISTRATIVE LAW COURT JUDGE’S FAILURE TO WEIGH AND CONSIDER THE APPELLANT’S *WHOLE RECORD* IN ITS DECISION TO AFFIRM THE DEPARTMENT’S PETITION?

2. DID THE ADMINISTRATIVE LAW COURT ERR IN FAILING TO UPHOLD THE APPELLANT’S ENTITLEMENT TO UNEMPLOYMENT BENEFITS?

PRE-TRIAL MATTERS

1. Exhibit A on Page 15 [of 32], Encl 1 of Appellant's Record of Appeal submitted to and received by the Court of Appeals February 1, 2023, cites Amazon Letter to Miya Freeman , Employee Identification Number 1088871897 and reads as follows "This letter confirms that the date of your voluntary resignation due to job abandonment with Amazon.com Services LLC is July 27, 2021. You have executed a Confidentiality and Invention Assignment Agreement with the Company. You are reminded that certain provisions of the agreement survive the termination of your employment with the Company and remain in full force and effect. Your agreement is available for review in the MyDocs portal for 90 calendar days after the end of your employment. We wish you the best in your future endeavors. Sincerely, Amazon Human Resources."

2. Exhibit A on page 22 and 23 [of 32], Encl 5 and 6, respectively, of Appellant's Record of Appeal submitted to and received by the Court of Appeals, February 1, 2023, cites Amazon Email, dated August 12, 2021 at 16:24:56 EDT. **Subject:** About Leave for – Miya Freeman, **Case 02298957.** **Encl 5** reads as follows: "Your leave of absence has been approved. Please review the attached documents related to your leave of absence request. Thank you, Melanie Rodriguez / Tier 2 DLS Case Manager , Disability and Leave Service." **Encl 6** reads as follows: " On July 26, 2021 we received your request for a leave of absence. See below for more information about the status of your claim." ' Medical Leave of Absence **Pending** August 12, 2021 Start Date July 27, 2021 **End Date** August 17, 2021.'

MOTION

The Court of Appeals should reverse the judgment of the Administrative Law Court and direct the Department to pay the Appellant unemployment benefits for 20 weeks based on evidence contained in the *whole record* of the case.

CLOSING ARGUMENTS

South Carolina policy favors the disposition of issues on the merits rather than on technicalities. To this end, the Appellant enjoins the court to view the evidence of the *whole record* in the light most favorable to the moving party as a Matter of Law.

1. WHETHER SUBSTANTIAL EVIDENCE EXISTS TO REVERSE THE ADMINISTRATIVE LAW JUDGE'S DECISIONS TO AFFIRM THE DEPARTMENT'S DENIAL OF PAYMENT OF UNEMPLOYMENT INSURANCE (UI) BENEFITS TO THE APPELLANT DUE TO UNTIMELY APPEAL SUBMISSIONS?
2. WHETHER IN ACCORDANCE WITH S.C. CODE ANN.§ I-23-380 (5) THE SUBSTANTIAL RIGHTS OF THE APPELLANT WERE PREJUDICED WHEN, AMONG OTHER THINGS, THE DEPARTMENT'S DECISION, INCLUDING ITS FINDINGS, INFERENCES, AND CONCLUSIONS, WERE CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD?

Gibson v. Florence Country Club, 282 S.C.384 at 318 S.E.2d 365, 367 (1984) Circuit Court's reversal of The Employment Security Commission's denial of Gibson's unemployment benefits provides precedence for a similar reversal of the ALC's and the Department's denial in this case.

The Department relied on the erroneous statement in Amazon's letter dated July 27, 2021, that the Appellant abandoned her job as the basis for denying her claims for unemployment benefits. The Department erred in its initial decision to deny the Appellant's claim for unemployment benefits for 20 weeks. **ALL** of the Department's subsequent actions pertain to the Appellant's late submission of appeals **FLOW** from this initial, erroneous decision.

Among the assorted reasons for denying the payment of benefits, the Department stated: the Appellant *voluntarily severed her employee relationship with Amazon*; filed for benefits while on a leave of absence; was unable to work due to a health condition; did not provide the specified number of verifiable contacts; did not provide evidence that she was available and actively seeking full time work; was on vacation and not available for work.

The Department should not have denied the Appellant's claim for unemployment benefits for the following reasons:

On July 28, 2021, via email with a letter attachment dated July 27, 2021, Amazon discharged the Appellant from her employment and cited *job abandonment* as the reason for its action. On August 12, 2021, Amazon sent another email to the Appellant informing her of its July 26, 2021, decision to deny her Federal Family and Medical Leave [FMLA] from July 27, 2021, to August 17, 2021; and further, of their denial of FMLA from July 17, 2021, to July 26, 2021. In addition, the email also showed that as of August 12, 2021, her request for medical leave from July 27, 2021, to August 17, 2021, **as being in a pending status (in contravention to her notice of termination, dated July 27, 2021).**

Moreover, the email also communicated that as of August 12, 2021, Amazon approved her medical leave of absence from July 17, 2021, to July 26, 2021.

The period of medical leave shown in Amazon's letter of August 12, 2021, **is different** from the from the period stated in Amazon's Case Number 02298957 (**July 17, 2021, to August 18, 2021**) request for information sent to the Appellant's medical service provider.

The Appellant's '**whole record**' contains incontrovertible evidence that shows the Appellant **DID NOT** voluntarily sever her employee/employer relationship with Amazon, the rationale the Department used to deny the Appellant's initial claim.

In its June 7, 2022, BRIEF OF RESPONDENT, the Department restated its erroneous rationale (R.p.29) and enumerated instances of the Appellant's late submission of her appeal. See (R.p.37); (R.pp.44); (R.pp.47-91) and (R.pp.1-4; pp.99-102), which served as the basis for the June 21, 2022, Administrative Law Court Judge's decision to AFFIRM the Department's determination that denied payment of unemployment benefits to the Appellant.

In its June 7, 2022, BRIEF OF RESPONDENT, the Department, however, was **SILENT** on the **CONTENTS of the Appellant's appeal submissions dated September 29, 2021, and October 4, 2021, respectively.**

Beyond the January 5, 2022, Evidentiary Hearing's inconclusive and confusing exchange between the Hearing Officer and the Appellant; the Department asserted that October 19, 2021, was the Appellant's first attempt to appeal the October 4, 2021, separation determination, without addressing the 'contents' of the Appellant's September 29, 2021, and

October 4, 2021, respectively, correspondence submitted via FAX to 803-727-0287, **per lines 12-14, page 061 of Evidentiary Hearing on January 5, 2021.**

The Appellant contends that she did not voluntarily sever her relationship with Amazon and the Appellate Panel's and the Department's decisions were based on Amazon's improper termination of her employment on July 27, 2021, and were, therefore, flawed.

CLOSING ARGUMENTS

1. WHETHER SUBSTANTIAL EVIDENCE EXISTS TO REVERSE THE ADMINISTRATIVE LAW JUDGE'S DECISIONS TO AFFIRM THE DEPARTMENT'S DENIAL OF PAYMENT OF UNEMPLOYMENT INSURANCE (UI) BENEFITS TO THE APPELLANT DUE TO UNTIMELY APPEAL SUBMISSIONS?
2. WHETHER IN ACCORDANCE WITH S.C. CODE ANN. § I-23-380 (5) THE SUBSTANTIAL RIGHTS OF THE APPELLANT WERE PREJUDICED WHEN, AMONG OTHER THINGS, THE DEPARTMENT'S DECISION, INCLUDING ITS FINDINGS,
3. INFERENCES AND CONCLUSIONS WERE CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD?

The Appellant argues that the ALC's and the Department's decisions were ***clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.***

For the reasons stated, the Court of Appeal should reverse the judgement of the Administrative Law Court and direct the Department to pay the Appellant unemployment benefits for 20 weeks based on evidence contained in the ***whole record*** of the case.

August 14, 2023

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