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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Phillip Lenski, Administrative Law Judge

Docket No. 23-ALJ-22-0342-AP

Appellate Case No. 2024-000251

Bridgette M. Chabot,

Appellant,

v.

South Carolina Department
Of Employment and Workforce and
Wells Fargo & Company, Inc.,

Respondents.

BRIEF OF RESPONDENT SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

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STATEMENT OF ISSUES ON APPEAL

- I. DOES SUBSTANTIAL EVIDENCE SUPPORT THE APPELLATE PANEL'S DECISION HOLDING APPELLANT DISQUALIFIED FROM RECEIVING UNEMPLOYMENT BENEFITS DUE TO MISCONDUCT WHERE THE APPELLANT USED A MANAGER'S CREDENTIALS WITHOUT PERMISSION TO CONDUCT A TRANSACTION ABOVE THE LIMIT SET BY HER EMPLOYER?

- II. ARE APPELLANT'S REMAINING ISSUES UNPRESERVED FOR REVIEW AND MANIFESTLY WITHOUT MERIT, AND SHOULD THE COURT DISREGARD THEM?

STATEMENT OF THE CASE

Appellant Bridgette Chabot worked for Wells Fargo & Co. (Wells Fargo) from January 27, 2020, through May 9, 2023. (ALC Record p.50, lines 18-20). She filed for unemployment insurance (UI) benefits with Respondent South Carolina Department of Employment and Workforce (Department) on May 9, 2023. (ALC Record pp.5-8). The Department's claims adjudicator issued a determination May 30, 2023, holding Appellant disqualified from receiving benefits for twenty (20) weeks and reducing her maximum benefits by twenty (20) times her weekly benefit amount based on a finding she was discharged for misconduct connected with her work for "violating the employers accurate records and disclosures policy." (ALC Record pp.22).

Appellant appealed the claims adjudicator's decision to the Department's Appeal Tribunal (Tribunal) on June 7, 2023. (ALC Record pp.24-31). The Tribunal held a hearing on June 27, 2023, and affirmed the claims adjudicator's determination by decision on July 7, 2023. (ALC Record pp.40-81; pp.111-113). Appellant appealed the Tribunal's decision to the Department's Appellate Panel (Panel) on July 17, 2023. (ALC Record pp.114-117).

The Panel affirmed the Tribunal's decision on August 15, 2023. (ALC Record pp.1-4; pp.120-123). Appellant appealed the Panel's decision to the Administrative Law Court (ALC) on September 13, 2023. (Notice of Appeal to ALC). The ALC affirmed the Panel's decision on February 8, 2024. (ALC Final Order). On February 13, 2024, the ALC issued an Amended Final Order in this case to correct a typo in the docket number. (ALC Amended Final Order). Appellant's appeal to this Court followed.

FACTS

Appellant worked for Wells Fargo from January 27, 2020, through May 9, 2023, as a bank teller. (ALC Record p.58, lines 8-13). Appellant's Wells Fargo branch manager was Tracy McCarthy. (ALC Record p.42, lines 7-21). Wells Fargo policy requires employees to obtain proper authorization for all legal documents and to never falsify data or information. (ALC Record p.98). Further, Wells Fargo procedures require all transactions to be approved by an employee with authorization to approve that particular transaction and forbids proceeding with a transaction that has not been properly approved. (ALC Record p.104). Specifically, the procedures state, "If not approved, do *not* complete the transaction. Tell the customer the transaction cannot be completed. *This procedure is complete.*" *Id.* These policies were implemented by Wells Fargo to prevent fraud and other losses to the business. (ALC Record p.55, lines 13-19).

On January 31, 2023, Appellant conducted a \$300,000 transaction on behalf of a customer. (ALC Record p.59, lines 4-5). Because Appellant's transaction limit was \$100,000, Appellant followed the procedures discussed above and contacted Ariana Nadi, the branch manager for a different Wells Fargo branch in North Myrtle Beach and obtained

approval from Nadi to conduct the transaction using Nadi's credentials. (ALC Record p.59, lines 5-17; p.60, line 1).

On February 2, 2023, Appellant was working with another teller identified as Tyler. (ALC Record p.59, lines 18-22). At that time, the branch manager, Tracy McCarthy, was away on vacation. (ALC Record p.58, 22-23). While Appellant and Tyler were alone at the branch that Thursday, a customer entered the branch and asked Tyler for a cashier's check in the amount of \$156,000. (ALC Record p.59, line 18-p.60, line 2). Neither Tyler nor Appellant were authorized to approve a transaction of that amount. *Id.* Upon realizing he could not complete the transaction as requested, Tyler asked Appellant what he should do and Appellant informed him he "need[ed] to call a manager, try to get somebody on the phone." *Id.* Tyler attempted to reach the North Myrtle Beach branch several times but was unable to reach anyone. (ALC Record p.60, lines 20-23). Appellant made no attempt to contact anyone to obtain transaction approval because she "didn't feel it was [her] responsibility to get in touch with anyone because it was Tyler's transaction." (ALC Record p.59, lines 27-28; p.61, lines 2-4). After Tyler informed Appellant he was unable to reach an approver, Appellant retrieved Ariana Nadi's employee ID from McCarthy's desk, entered that ID into the system, and used it to complete the transaction. (ALC Record p.63, lines 8-11). Because Nadi's employee ID was used to complete the transaction, the system automatically sent an email to Nadi notifying her of the use of her credentials. (ALC Record p.61, lines 14-17; p.62, lines 7-10). After receiving the email, Nadi contacted the Wells Fargo district manager Shannon Murphy and informed Murphy that her credentials had been used without her authorization. (ALC Record p.62, lines 10-12). Later that same

day, Appellant received an email from Murphy asking for an explanation of the transaction. (ALC Record p.62, lines 12-15). Following an investigation, Wells Fargo discharged Appellant on May 9, 2023, for using a branch manager's credentials without permission to override a customer transaction that was over Appellant's limit. (ALC Record p.51, lines 2-21).

I. Panel Decision

In its decision, the Panel found: 1) Appellant knew Wells Fargo's policies required her to receive approval from management before authorizing a transaction above \$100,000; 2) Appellant used a manager's credentials, without that manager's consent, to approve a transaction above \$100,000; 3) Appellant's contention that Nadi, who she had previously reported for harassment, had given her blanket authority to use her credentials to approve transactions lacked credibility; 4) Appellant's actions constituted a deliberate violation and disregard of the standards of behavior which Wells Fargo had a right to expect; and 5) Appellant was discharged for misconduct and a twenty-week disqualification was required by law. (ALC Record pp.3-4).

II. ALC Decision

In its order, the ALC affirmed the Panel's decision based on a finding that "substantial evidence in the record supports the [Panel]'s determination." (ALC Amended Order p.2). The ALC found:

The record establishes that the Appellant used a branch manager's credentials to approve a customer transaction that exceeded her authorized limit...Further, based on the Appellant's acknowledged contact with the North Myrtle Beach branch manager on January 31, 2023 and the

Appellant's instruction to the coworker to obtain management authorization, the Appellant knew the Employer's policy and procedure.

(ALC Amended Order pp.4-5). In affirming the Panel's decision, the ALC further found: "The Appellant's failure to obtain approval from a manager to authorize a transaction in excess of her \$100,000 limit is a deliberate violation of the standards of behavior which [Wells Fargo] had a right to expect." (ALC Amended Order p.5).

STANDARD OF REVIEW

DEW 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 DEW's predecessor, the Employment Security Commission, subject to the APA). Under the APA:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgement for the judgement of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (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. § 1-23-610(C) (Supp. 2023).

"The decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue*

Ribbon Taxi Corp. v. S.C. Dept. of Motor Vehicles, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008). “The ALC judge’s order should be affirmed if supported by substantial evidence in the record.” *Id.* “Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the Administrative Law Court and is more than a scintilla of evidence.” *Id.* at 605, 670 S.E.2d at 676. “The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.” *Id.* at 605, 670 S.E.2d at 677.

ARGUMENTS

- I. **The ALC properly found that substantial evidence in the record supports the Panel’s finding that Appellant was discharged for misconduct where Appellant used a manager’s credentials without permission and in violation of company policy to conduct a transaction above the limit set by her employer.**

S.C. Code Ann. § 41-35-120(2)(a) (Supp. 2023) requires disqualification from benefits for twenty weeks when the Department finds an employee was discharged for misconduct. Section 41-35-120(2)(a) defines misconduct as follows:

[Misconduct] is limited to conduct evincing such wilful and wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in the carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of an employer’s interests or of the employee’s duties and obligations to his employer.

Moreover, the public policy of South Carolina is that only those who are “unemployed through no fault of their own” are entitled to UI benefits. S.C. Code Ann. § 41-27-20 (2021).

In determining that Appellant was discharged for misconduct, the Panel found: 1) Appellant approved a customer transaction that exceeded her limit by using a branch manager's credentials without authorization; 2) Appellant's actions, both on January 31, 2023, and February 2, 2023, show that she knew both the requirement and the proper procedure for seeking approval for a transaction above her limit; and 3) Appellant's contention that she had received blanket approval to use Nadi's credentials to complete transactions without approval lacked credibility. These findings are supported by substantial evidence in the record and this Court should affirm.

During the Tribunal hearing, Appellant testified that the largest transaction she was permitted to approve was \$100,000. (ALC Record p.60, line 1). She further testified that on February 2, 2023, a customer came into her branch and requested a cashier's check for \$156,000. (ALC Record p.59, lines 18-21). Appellant then admitted she told her coworker he needed to call a manager for approval, made no effort to contact a manager herself, received no approval for the transaction, and used Nadi's credentials without Nadi's permission to approve the transaction above her limit. (ALC Record p.59, line 24-p.60, line 2; p.63, line 4-12).¹

Appellant contends that Wells Fargo policy does not require her to get approval for a particular transaction; however, the policy entered without objection into evidence during

¹ Appellant repeatedly argues that the transaction was technically under her coworker's name; however, she does not contest that she was the one that used Nadi's credentials to approve the transaction which was above her preset limit. The fact that the transaction was technically completed under her coworker's name is irrelevant.

the Tribunal hearing clearly, explicitly, and unambiguously contradicts Appellant's contention:

...

Teller: Process an assisted approval

Used for deposit, item cashing, purchase bank check, branch settlement, and debit memo post transactions only.

1. Direct the transaction to an approver for review.
2. If approved go to the next step.

If not approved, do *not* complete the transaction. Tell the customer the transaction cannot be completed. *This procedure is complete.*

...

(ALC Record p.104). Further, despite her contention, Appellant reached out to Nadi two days prior to seek approval for a \$300,000 transaction and, when Tyler asked her what he should do when confronted with a request for a cashier's check above his limit, Appellant told him he needed to contact a branch manager for approval. (ALC Record p.59, lines 4-26). Appellant's contentions that the policy does not require individual approval and that she did not know she needed to get approval for the transaction lack credibility and the Panel's finding to that effect is supported by substantial evidence.

Appellant further contends that Nadi told her on January 31, 2023, that "you can use my numbers any time." (ALC Record p.59, lines 13-14). Appellant contends that statement was a blanket permission from Nadi to use Nadi's credentials to approve transactions above Appellant's limit in direct contravention of Wells Fargo policy requiring particularized approval of each transaction by someone with approval authority. However, when

Appellant used Nadi's credentials to approve the \$156,000 cashier's check and Nadi received an email notification to that effect, Nadi contacted the district manager to notify the district manager that her credentials had been used without authorization. (ALC Record p.62, lines 7-12). Appellant contends that Nadi's report to the district manager was motivated by retaliatory intent due to a complaint brought by Appellant with Wells Fargo Human Resources several months prior. (ALC Record p.74, lines 4-10). When looked at together, Appellant is arguing that a person who bore a personal grudge against her for an alleged prior complaint gave Appellant blanket permission to use their credentials to authorize transactions above Appellant's limit in clear violation of company policy. As the Panel found, this contention is internally inconsistent and lacks credibility.

Appellant deliberately chose to use a manager's credentials without permission to authorize a transaction above her limit in clear violation of the plain text of the employer's policy which directs her to "*not* complete the transaction" and "[t]ell the customer that the transaction cannot be completed." (ALC Record p.104). Despite Appellant's argument to the contrary, Appellant's own testimony and all her actions on the day in question evidence knowledge that she had a \$100,000 limit, she needed authorization to exceed that limit, and she deliberately bypassed that limit by using a manager's credentials without express permission to do so. Substantial evidence in the record supports the Panel's findings that Wells Fargo had a right to expect Appellant to abide by the \$100,000 limit or obtain approval for the transaction, Appellant deliberately chose to violate that expectation, and Wells Fargo discharged Appellant for that deliberate violation. Therefore, the Panel's finding that Appellant was discharged for misconduct is supported by substantial evidence.

See S.C. Code Ann. § 41-35-120(2)(a) (defining misconduct as "...deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee..."). The ALC properly found as such and this Court should affirm.

II. Appellant's remaining issues are unpreserved for appellate review, manifestly without merit, and should be disregarded by this Court.

The Court should disregard Appellant's numerous meritless arguments. These remaining arguments were not ruled upon by either the Panel or the ALC, or both, and are, therefore, not preserved for review. See *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("[A]n 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."). The ALC's decision was limited to whether substantial evidence supported a finding of misconduct. (ALC Amended Final Order). The ALC did not rule on any of Appellant's other issues and Appellant did not file a Motion for Rehearing or Reconsideration following the Amended Final Order under appeal to this Court. Thus, those issues have been waived and are not preserved for review by this Court. See *I'on, LLC, v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 726 (2000) ("If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.").

Appellant alleges the Tribunal improperly allowed an attorney to represent the employer in the Tribunal hearing without a prior-filed letter of representation. (App.Br.pp.6-7). This issue is unpreserved because it was never ruled upon by the Panel or the ALC. See *I'on* at 422, 526 S.E.2d at 726 (2000). Additionally, Appellant identifies

no rule or regulation which would require such a letter prior to an attorney's participation in the hearing and there is, in fact, no such rule.

Appellant alleges that the Tribunal's questioning showed partiality or bias because the Tribunal repeatedly questioned Appellant on various subjects. (App.Br.pp.7-10). This issue is unpreserved because it was never ruled upon by the ALC. *See I'on* at 422, 526 S.E.2d at 726 (2000). Additionally, the Tribunal is required to be an active participant in hearings, including the questioning of parties and witnesses. *See* S.C. Code Regs. 47-51(C)(1) (Supp. 2023) ("All [Tribunal] hearings shall be de novo in nature and conducted in such manner as to ascertain the substantial rights of the parties.... The [Tribunal] shall examine a party and his witnesses[.]"). It is a hearing officer's responsibility to examine witnesses and evidence to determine the truth of the matter, and the hearing officer did so in this case in an unbiased and impartial manner. Further, on review of the transcript, the Tribunal's numerous questions are prompted by apparent inconsistency and a lack of responsiveness on behalf of Appellant. As Appellant has pointed out numerous times, she was the only witness present in the hearing with firsthand testimony of what happened in the bank branch on the day in question. It is only natural that she would receive most of the questioning about what took place at the time of the incident leading to her discharge.

Appellant argues that the Tribunal erred in allowing the full Wells Fargo policy for processing an assisted approval to be entered into evidence because she contends that only the snippet showing the fourth step in the process, labelled "4. If the approver is not present:" was relevant. (App.Br.p.29). This issue is unpreserved because it was never ruled upon by either the Panel or the ALC. *See I'on* at 422, 526 S.E.2d at 726 (2000). This

argument is also manifestly without merit. On the face of the policy, a worker cannot arrive at the fourth step without first obtaining actual approval for the transaction in the first step, and the second step directs the worker not to complete the transaction or continue with the procedure if the transaction is not approved. (R.p.104).

Appellant alleges the Tribunal erred by permitting hearsay testimony during the hearing. (App.Br.pp.10-12). This issue is unpreserved because it was never ruled upon by the Panel or the ALC. *See I'on* at 422, 526 S.E.2d at 726 (2000). Additionally, S.C. Code Regs. 47-51(C)(3) (Supp. 2023) provides, in the case of Tribunal hearings, that “[e]vidence will not be excluded solely because it may be hearsay.” Further, Appellant made no contemporary objections to any alleged hearsay testimony and does not identify any findings by the Panel which resulted from a hearsay statement.² The findings of both the Tribunal and the Panel were based on Appellant’s own testimony that she used a manager’s credentials without permission to approve a transaction above her limit.

Appellant argues that the hearing officer showed bias by permitting Wells Fargo to enter evidence during the hearing and not allowing Appellant to issue a subpoena for records. (ALC Record pp.25-26). This issue is unpreserved because it was never ruled upon by the Panel or the ALC. *See I'on* at 422, 526 S.E.2d at 726 (2000). Permitting records to be entered as evidence and issuing a subpoena are not the same thing and are not equivalent.

² Appellant alleges that she made an objection to hearsay testimony during the Tribunal hearing; however, she merely identifies a section of the transcript where she calls a statement made by the employer false when asked if she has any questions for the employer witness. (App.Br.p.11). That is not a legal objection and did not even obliquely reference hearsay.

Firstly, when asked if Appellant had any objection to the employer entering the approval policy, Appellant responded by saying, “No, I do not object. You can definitely have that.” (ALC Record p.78). As a result, any objection she would have now would not be preserved. *See State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (“To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court.”). Secondly, the hearing was already in progress by the time Appellant first mentioned a subpoena and the hearing officer’s response that a request for a subpoena would have had to be filed prior to the hearing was entirely proper and in keeping with due process. The hearing notice mailed to Appellant prior to the hearing explained the process for requesting a subpoena prior to the hearing and Appellant made no effort to avail herself of that process. (ALC Record p.37). Further, contrary to Appellant’s generalized contention that the hearing officer “does not ask or offer [Appellant] to enter in new evidence in to trial,” Appellant was advised at the beginning of the hearing that, “If you have any documents or exhibits that you feel should be considered in this case, you’ll need to present them during your testimony” and was offered a final chance to provide anything additional at the end of the hearing: “Is there anything else that either party would like to add before we conclude the hearing today, Mr. Goode?...Ms. Chabot?” (ALC Record p.47; p.80). Instead of attempting to offer any other evidence, Appellant simply says, “No.” (ALC Record p.80).

Appellant repeatedly argues that other Wells Fargo employees committed various acts of wrongdoing or violated Wells Fargo policy. (App.Br.pp.25-28; pp.31-33). This issue is unpreserved because it was never ruled upon by the ALC. *See I’on* at 422, 526

S.E.2d at 726 (2000). Additionally, none of these alleged wrongdoings are relevant to the case at hand because none of them change the fact that Appellant deliberately violated Wells Fargo policy by using a manager's credentials without her approval to complete a transaction above Appellant's \$100,000 limit.

Appellant argues that the events in question represent an "extraordinary circumstance that cannot be anticipated" and that, therefore, Appellant's actions cannot be considered unreasonable under the circumstances. (App.Br.pp.32-33). This issue is unpreserved because it was never ruled upon by the Panel or the ALC. *See I'on* at 422, 526 S.E.2d at 726 (2000). Additionally, the Wells Fargo policy in evidence contemplates a circumstance where a worker is unable to obtain approval for a transaction and instructs the worker to "not complete the transaction" and to "[t]ell the customer the transaction cannot be completed." (ALC Record p.104).

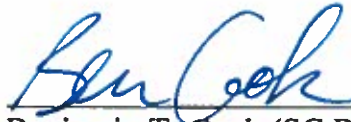
CONCLUSION

The record offers substantial evidence to support the Panel's finding that Appellant was discharged for misconduct for using a manager's credentials without approval to complete a transaction that was beyond her preset monetary limit. The Wells Fargo policy which was entered into evidence without objection clearly directs employees not to complete a transaction for which they do not have specific approval. Appellant knew she was required to seek approval for transactions above her \$100,000 limit because she had sought approval for a transaction two days prior and instructed her coworker to seek approval on the day in question. Appellant then deliberately violated the employer's reasonable expectations by using a manager's credentials without permission to approve a

transaction beyond her limit. Appellant has failed to prove convincingly that the Panel's decision finding she was discharged for misconduct is unsupported by substantial evidence. Appellant has also failed to establish any reason why the ALC's decision should be disturbed. Therefore, this Court should affirm.

[Signature on Following Page]

Respectfully Submitted,



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