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Dec 13 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Katrina Daniels,

Appellant,

v.

South Carolina Department of Employment
and Workforce and 4056 LLC,

Respondents.

Docket No. 21-ALJ-22-0116-AP

FINAL ORDER

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on April 22, 2021, by Katrina Daniels (Appellant). The Appellant seeks review of the South Carolina Department of Employment and Workforce (Department or Respondent) Appellate Panel's decision affirming the Appeal Tribunal's decision holding her ineligible for benefits effective May 10, 2020, upon a finding that she refused an offer of suitable work without good cause.

On June 14, 2021, the Department filed the Record on Appeal (ROA). On June 21, 2021, the Appellant filed a Motion to Supplement the Record on Appeal with additional documents.¹ On June 29, 2021, the Department filed a response to the Appellant's motion, asking the court to deny the motion. On July 16, 2021, the Appellant filed her reply to the Department's response, which included reference to additional documents.² On July 28, 2021, the court issued an Order denying the Appellant's motion to supplement the record on appeal. On August 13, 2021, the Appellant filed her brief. On September 2, 2021, the Department filed a Motion to Dismiss for Appellant's Repeated Disregard of the Rules and the Order of this Court. On September 7, 2021, the Appellant filed the Appellant's Response to Respondent's Motion to Dismiss. On September 16, 2021, the court denied the Respondent's Motion to Dismiss. On October 6, 2021, the Department filed its brief. On October 13, 2021, the Appellant filed her reply. After careful consideration of the parties'

¹ The additional documents were not included with the Appellant's motion filed with the court. On June 22, 2021, the Appellant's father electronically contacted the court and forwarded the documents as an attachment.

² The additional documents were also not included with the Appellant's reply. On July 16, 2021, the Appellant sent another electronic message with the additional documents as attachments. Again, despite being informed that the court required actual (not electronic) copies of the documents to be filed with the court, the Appellant has failed to do so.

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briefs, the record, and the applicable law, the court finds that substantial evidence in the record supports the Panel's determination. Accordingly, the Panel's decision is affirmed.

BACKGROUND

The Appellant filed an initial application for Pandemic Unemployment Assistance (PUA) benefits on April 26, 2020 and was initially held eligible for benefits effective March 8, 2020. The claims adjudicator's determination, mailed June 12, 2020, found the Appellant indefinitely ineligible for benefits effective May 10, 2020, because she refused an offer of suitable work without good cause. The Appellant appealed and a hearing was held on October 7, 2020. The Employer was not in attendance at the hearing. The Appeal Tribunal decision mailed on October 14, 2020, reversed the claims adjudicator's June 12, 2020 determination, and found the Appellant eligible to receive benefits. The Employer filed an appeal to the Appellate Panel (Panel) and the Panel remanded the case back to the Appeal Tribunal for a hearing regarding the Employer's absence from the October 7, 2020 hearing. On January 19, 2021, the Appeal Tribunal issued a decision finding that the Employer was not afforded a fair opportunity for a hearing and ordered a new hearing on the merits. On January 28, 2021, the Appeal Tribunal held a hearing, and in a determination mailed February 9, 2021, found the Appellant ineligible for benefits effective May 10, 2020, upon a finding that the Appellant refused to accept a suitable offer of work. The Appellant appealed to the Appellate Panel and on March 31, 2021, the Panel issued its decision affirming the Appeal Tribunal's decision finding her ineligible for benefits effective May 10, 2020, because she refused an offer of suitable work without good cause. On April 22, 2021, the Appellant appealed to this court.

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 that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA's appellate standard governs appeals from decisions of the Department. *See* S.C. Code Ann. §§ 1-23-380 & 1-23-600(D). This court's review in appellate cases is limited to the record. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). Substantial rights of the

appellant are prejudiced when, among other things, the agency's decision, including the agency's findings, inferences, and conclusions, are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *Id.* However, the party challenging an agency action on appeal has the burden of proving convincingly that the agency's decision is not supported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (citation omitted).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing *Kearse v. State Health & Human Servs. Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)); 73A *C.J.S. Public Administrative Law and Procedure* § 497 (2015). A reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact for which there is room for a difference of intelligent opinion. *See Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n*, 319 S.C. 225, 229, 460 S.E.2d 383, 386 (1995) (citation omitted); *Grant*, 319 S.C. at 353, 461 S.E.2d at 391 (citation omitted). As such, "[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 Nat. Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark*, 276 S.C. at 136, 276 S.E.2d at 307).

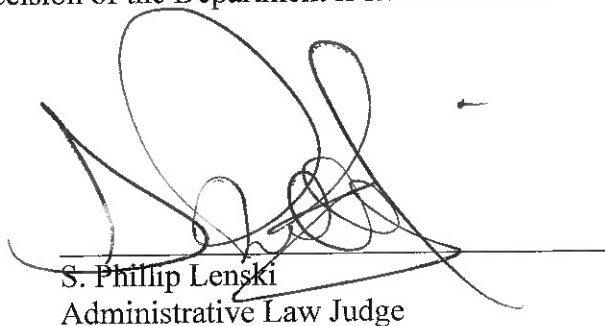
DISCUSSION

The Appellant worked part-time for the Employer's coffee and ice cream shop while attending Clemson University. The Employer closed on March 20, 2020 due to the Covid-19 health emergency. On May 14, 2020, the Employer emailed all staff asking which of them would return to work. The Appellant had left town in March 2020, at the end of the semester. She responded to her Employer that she was looking for full-time employment where she was currently living, to pay for her college residence expenses. She also indicated that she was anticipating returning to her internship in Charlotte later in the summer. The Appellant had secured a summer internship in Charlotte, North Carolina, however, the commencement of the internship was postponed due to the pandemic.

An insured worker is ineligible for benefits if the Department finds that he or she has failed, without good cause to accept available suitable work when offered to him or her by an employer. S.C. Code Ann. § 41-35-120(5)(a)(i)(B). The record establishes that the Employer offered the

Appellant an opportunity to return to work under circumstances similar to her previous employment as a part-time employee. The offer was suitable for the Appellant, but she refused the offer because she had moved at the end of the school semester. Therefore, based on the foregoing,

IT IS HEREBY ORDERED that the decision of the Department is **AFFIRMED**.
AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

October 21, 2021
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Erika S. Easler, 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).

A handwritten signature in black ink, appearing to read 'Erika S. Easler', written over a horizontal line.

Erika S. Easler
Judicial Law Clerk

October 21, 2021
Columbia, South Carolina

