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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Judge Phillip Lenski, Administrative Law Judge

Case No. 23-ALJ-22-0379-AP
Appellate Case No. 2024-000251

Bridgette Chabot, Appellant,

v.

South Carolina Department of Workforce and
Wells Fargo & Company, Inc., Respondents.

REPLY BRIEF OF APPELLANT

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STANDARD OF REVIEW

Following reasons why the Appellant Chabot is appealing the decision, as per State Statue:

Again, Appellant is just reviewing here the grounds in which she bases her appeal:

> 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:
>
> (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)

INTRODUCTION:

The Appellant seeks a reversal in the decision by the Administrative Law Court to disqualify the Appellant Chabot from unemployment insurance benefits because the ALC's findings that the Appellant committed misconduct are unfounded and unsupported by record evidence and the record compels contrary findings.

ARGUMENT

I. No Deliberate Misconduct by the Appellant can be substantiated on the record.

1. The Surveillance Footage itself cannot be considered substantial evidence. The surveillance footage and testimony on the footage should not be considered because it is not entered in to evidence and not found on the record, in accordance with Rule 37(c)(1): "A party that without substantial justification fails to disclose information required by Rule(26)(a) or 26(e)(1) shall

not, unless such a failure is harmless, be permitted to use evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed." The surveillance footage from February 2, 2023, testified on by McCarthy. (*ROA pg51 lines27-29; pg52 lines1-2; pg54 lines10-11)* Again, McCarthy does not say she watched the footage herself and nor does the Hearing Officer execute her role as a neutral party by questioning McCarthy on whether McCarthy watched the footage or not. McCarthy's testimony does imply to a reasonable mind that she actually did not watch the footage: McCarthy: "According to the footage that **they** reviewed." (*pg54 lines10-11). (*Although the *"they"* during trial is not formally clarified.) McCarthy's testimony on the surveillance footage is what the Hearing Officer and Respondents' use as the basis for their arguments that the Appellant acted "unilaterally" and that the Appellant's alleged completion of the transaction is what establishes her misconduct. The Hearing Officer's decision and Respondents' argument are based on only assumed actions taken by the Appellant that are not substantiated on the Record.

The Court defines "Substantial" under Rule 1.0 (p) ""Substantial": when used in reference to degree or extent denotes a material matter of clear and weighty importance." The Respondents' briefs have been rooted on hearsay evidence and hearsay testimony that contains no merit in accordance with Court Rule 220(c)(2): "The Court of Appeals need not address a point in which is manifestly without merit." And in accordance with SC Court Rule 802: "Hearsay is not admissible."

In conclusion, although the Appellant insisted during the trial for a chance to enter the Surveillance Footage in to trial Chabot: "I would be happy for somebody to subpoena that video and watch it." Hearing Officer: "Well Ma'am, that would had to have been done prior to the

hearing today by you." (*ROA, pg61 lines8-11)* , and since it is not found on the record, attempted to enter it retroactively, so that it could be substantiated, the present appeal must not consider surveillance footage that is not substantiated or found on the record. What the surveillance footage captured is thoroughly debated during trial. McCarthy who testifies that Chabot called Nadi on Thursday: "It's my understanding and talking to the investigators that Bridgette [Chabot] did try to contact the branch manager [Nadi] at the next branch that she called on Tuesday, was unsuccessful in reaching her." (*ROA pg51 lines12-16)* Even the verbiage McCarthy chooses here: "my understanding" indicates a hearsay re-telling of events that occurred on Thursday, versus what Chabot testifies to first hand: "While [Tyler] was calling, so I didn't make any phone calls at all that day [Thursday, day of transaction.]" *(ROA, pg59 lines27-28)* McCarthy re-tells a version of what happened on Thursday that would fit the narrative of why she decided to terminate the Appellant.

Chabot: "So this was from Tyler's computer because it was Tyler's customer and Tyler's transaction. I stepped away from the computer. Tyler printed the cashier's check to complete his transaction for his customer." *(ROA, pg60 lines17-20)*

2. There is no substantial evidence nor sound testimony on record to justify the Appellant Chabot's termination for "misconduct." Under South Carolina Code Section 41-35-120(2): "Substandard performance due to inefficiency, inability, or incapacity shall not serve as a basis for disqualification of unemployment insurance benefits." Although Appellant Chabot suggested to co-worker Faizo to use Nadi's employee number under Nadi's precedent to complete his transaction, Chabot's advice to Faizo was a problem-solving quick-on-your-feet way to solve a customer service dilemma. Perhaps it was not up to someone at Wells Fargo's

standard, it does not mean Chabot delivered this advice with any deliberate intention to hurt Wells Fargo as a company or to demonstrate misconduct and on the contrary, Chabot reiterated Nadi's advice to Faizo to use Nadi's "numbers anytime"(*ROA pg59 lines15-16; pg64 lines7-8; pg72 line28-29, pg73 line1-2)* was only to ensure a timely transaction for a regular customer to ensure Wells Fargo's expected level of customer service. Even McCarthy explains during her testimony: "What [Chabot] had told me was that when she talked to her on Tuesday and reviewed the transaction from Tuesday, that the manager [Nadi] told her she trusted her judgment and that she could proceed with the transaction, to which Bridgette explained to me that she thought that meant that [Nadi] trusted her judgment on any transaction." (*ROA, pg54 lines18-23).* (After this quote, you will hear a very long pause of silence by the Hearing Officer, obviously displeased with the answer. The Appellant's Designation of Matter did include *Exhibit B,* the full audio recording of the trial.) Chabot: "Like I said, using this policy is not a regular. We don't exercise this policy regularly.." (*ROA pg72 likes13-14).* Hearing Officer: "do you know if there have been any circumstances where the claimant approved a transaction and used an employee's credentials without speaking to them first?" McCarthy: "Prior to this, not to my knowledge. Typically, there's usually someone here to approve those transactions." *(ROA, pg76 lines12-16).* If the policy was a well-known policy Bank Tellers should of known, why did Tyler Fazio, equal co-worker to Chabot in pay and job title, need help and ask for advice in the first place? Chabot: " [Tyler] looked at me and said, I don't know what to do." *(ROA, pg59 lines25)* Chabot in her initial appeal letter: "Tyler asked me for help, so I obliged because there was no other employee avilable.. Although I offered a helping hand, Tyler Fazio is responsible for his own transactions in his cashbox. Reviewing a

transaction for a peer is a common practice." (*ROA pg117)* And why did Wells Fargo coach Fazio on how they want him to use the policy after this transaction occurred without any formal discipline (*ROA pg75 lines16-21)* , if it is supposed to be a "known" company policy? Hearing Officer: "Did you ever ask for clarification on the policy?" Chabot: "They [Wells Fargo] clarified after this transaction took place. They told us that they would like us to call somebody and get them on the phone before using their employee ID, but that was only coached to use after the transaction had taken place." (*ROA, pg67 lines11-15)*

3. In Wells Fargo's brief, page2, Respondent Wells Fargo outlines why the Approver Not Present Policy exists: it is stated in their "Facts" section that "These policies [the one the Appellant was terminated for] were implemented by Wells Fargo to prevent fraud and other losses to the business." (ALC Record p.55, lines13-19) Both the Appellant: "And as we know now, there's no monetary loss to the company [for this transaction]." (*ROA pg73 lines12-13*) and McCarthy establish there was no fraud or loss to Wells Fargo because of this transaction; Hearing Officer: "And was there any loss to the bank associated with this transaction?" McCarthy: "No." (*ROA, pg55 lines5-7*) The Approver Not Present policy exists solely to prevent fraud and there was no fraud as a result of Faizo completing this transaction and no fraud as a result of Chabot's advice. Furthermore, if Nadi was concerned her employee numbers could of been on a transaction that could of possibly been fraudulent, why did she not call the Appellant's branch after she received the email confirmation upon completion of the transaction? Chabot: "[Nadi] never called that day." *(ROA, pg62, line7).* Nadi did not call to review or try to reverse the transaction upon her receiving the email and did not call the Appellant's branch at all.

4. Furthermore, the Approver Not Present policy that is prevalent in this case is not found in the Employee Handbook as falsely stated by McCarthy during trial : “It [Approver Not Present Policy] is written in the employee handbook, which I have sent over, I sent over to Jesse [Goode, Wells Fargo lawyer] and he has copies of that.” *(ROA pg55 lines24-25)* Jesse Goode, Wells Fargo attorney violated SC Court Rule 3.3; Candor Toward the Tribunal: “(a) A Lawyer shall not knowingly: (3) offer evidence that the lawyer knows to be false.” If Goode did have the Employee Handbook, he would have to offer the fact that the Approver Not Present policy is not present in that handbook. Goode deliberately misleads the trial: “are you aware of whether or not the claimant signed an acknowledgment of having received the employee handbook?” McCarthy: “She did, yes.” (*ROA pg56-57 lines 26-lines3)*

This sentiment is reiterated by the Respondents in their briefs: On page3 of Respondent Wells Fargo’s brief: “Appellant signed an acknowledgement that she received Wells Fargo’s employee handbook containing the Approver Not Present Policy on December 13, 2019.” (R. at 56, Line 26-57, Line 8.) . The Hearing Officer does not ask for the Employee Handbook to be entered in to the trial and the Employee Handbook itself is not entered in the record and cannot be corroborated. Respondent Wells Fargo violates SC Court Rule 3.3; Candor Toward the Tribunal, as the Employee Handbook is not on record, not corroborated and if in the position of the Attorney Goode and available to the Respondents, they will know the Approver Not Present Policy is NOT presented in the Employee Handbook.

II. There is no Substantial Evidence found on the record to justify the ALC’s judgement as McCarthy provides an unreliable hearsay testimony that does not establish reasonable probability.

It has already been thoroughly established during this appeal that the Surveillance Footage, the Employee Handbook and any tangible evidence is not found on the record. The only "substantial evidence" that the Respondents' apply to their argument is Tracy McCarthy's testimony. This testimony cannot itself be substantiated as revealed by McCarthy's inconsistent testimony as follows:

McCarthy: "So in January, and I apologize. I don't have the exact dates. I was out of the office." (*ROA, pg51 lines3-4).* Not only do we establish that McCarthy was not present during the transaction, she cannot even recall the dates she was out or when the transaction even took place.

McCarthy: "It's My Understanding and talking to the investigators that Bridgette did try to contact the branch manager at the next branch that she called on Tuesday, was unsuccessful in reaching her." (*ROA, pg51 lines 12-16)* This testimony establishes that McCarthy again, is reiterating from her unreliable memory what a nameless investigator told her. Chabot establishes consistently contention with McCarthy's testimony through the whole of the trial. Chabot firmly asserts she did not make any phone calls to Nadi on Thursday. (*ROA pg.59 lines27-28)* The investigator and investigative notes are not found on the record. This testimony is also contested by Appellant Chabot, telling the Hearing Officer that McCarthy's testimony is false (*ROA pg57, line19)* **(**McCarthy testifies that in corroboration with Chabot that Chabot did talk to Nadi on Tuesday for a **separate** transaction which occurred on a different day.)

The record reveals that McCarthy's testimony is unreliable and unsound and cannot be used to find reasonable probability or as substantial evidence. Hearing Officer: "What was the claimant's limit for transactions she could approve, I guess is what you were saying?" McCarthy: "Off the

top of my head. I'm not 100 percent sure." Hearing Officer: "Okay. Do you remember what the transaction itself was for?" McCarthy: "I know it was over $100,000. And I want to say her limit was 25,000, maybe, or 20,000. Something along that line." (*ROA, pg52 lines10-16)*. Appellant Chabot worked under McCarthy for the whole of three years of her Wells Fargo career (*ROA pg19)* but McCarthy, Branch Manager, cannot recall or even get close to what the Appellant's "approval limit" was**.** McCarthy thinks its $20,000 when in reality Chabot: "My limit is $100,000." (*ROA pg60 line1)* This showcases McCarthy's fickle testimony and indicates her disengagement toward her job role as a Manager.

Here we see McCarthy cannot recall the date of the transaction, nor can she recall correctly what the Appellant's approval limit was and uses verbiage indicating she did not review any surveillance footage and verbiage to the uncertainty of the events that happened "my understanding" (*ROA pg51 lines12-13), McCarthy: "*To my understanding, no. According to the footage that **they reviewed**" (*ROA pg54 line10-11)* - but the court is expected to take her word of what happened during a transaction she was not even present for. McCarthy's testimony is unreliable. The Respondents' arguments are based solely on McCarthy's testimony, thus making them feeble arguments at best. In accordance with SC Court Rule 802: "Hearsay is not admissible" and therefore there was an error of law because the decision by the Hearing Officer and Admin. Law Court was founded and based on McCarthy's testimony, as seen as the falsies stated in their findings.

The Hearing Officer continuously questions McCarthy on surveillance footage but does not question or establish if McCarthy ever watched the surveillance footage herself. (The Appellant

can't cite the record because the Hearing Officer does not make these fundamental establishments anywhere during trial or on the record.)

The Hearing Officer in fact, does not gather any information on the investigation, only McCarthy's hearsay testimony on the events she was not present for, by a nameless investigator. McCarthy's testimony is refuted by the person that actually was present, the Appellant, throughout the whole of the trial, in her initial appeal letter and as found on the record.

We see McCarthy provides contradicting testimony: Hearing Officer: "And the name of the teller, who was the teller that actually completed the transaction?" McCarthy: "Tyler Fazio. It was done on his computer." (*ROA, pg53 lines20-22).*

McCarthy: "[Chabot] was assisting another teller [Tyler Faizo] with a transaction that he was doing," *(ROA, pg51 lines3-4).* At the onset of McCarthy's testimony, she herself establishes it was Tyler Fazio's transaction and the Appellant was "assisting." This transaction led to the Appellant Chabot being terminated but Faizo being coached on how to use the policy in the future. Please note the disparity between two equal co-workers who were of the same job title and equal in compensation. "I was expected to know the correct interpretation of the "Approver Not Present" policy but Tyler was not, although we both have the same job title and description and the same compensation." (*ROA pg117)*

III. Respondents base their whole defense on McCarthy's unsubstantiated testimony.

Respondent attorneys have self-righteously determined the facts of the case where no substantial evidence can be found or facts can be determined. What the Respondents deem are facts are in reality, are hearsay by an unreliable witness. The Respondents arguments have no merit because

again, their arguments are founded on hearsay and according to SC Court Rule 802: “Hearsay is not admissible.”

Respondents exploit McCarthy’s testimony in their briefs to drive their narrative. The Appellant will outline here that the Record in fact compels contrary findings to the Board’s decision which is unsupported by record evidence. “This Court has previously held that hearsay testimony may be admissible in matters of this nature if corroborated by facts, circumstance, or other evidence.” *Com. & Indus. Inc. Co. v. Second Inj. Found of S.C., No 2015-UP-103 (S.C. Ct. App. Mar.4, 2015)* Tracy McCarthy’s testimony is not admissible because there are no facts, circumstance or any other evidence to corroborate her testimony including the missing Surveillance Footage. The summary judgement made by the Admin. Law Court erred in their decision because “One of the principal purposes of the summary judgement rule is to isolate and dispose of factually unsupported claims.” *Riggs v. AirTran Airways, Inc, 2007 (Court of Appeals for the Tenth Circuit).* Both Respondents’ briefs have no merit: Court Rule 220(c)(2): “The Court of Appeals need not address a point in which is manifestly without merit.”

IV. Both Respondent Wells Fargo’s Brief is riddled with inaccuracies and falsies in which their argument is entrenched.

1. Respondent Wells Fargo writes on page5 of their brief: “Wells Fargo surveillance footage that corroborated Wells Fargo’s findings that the Appellant had violated the Approver Not Present Policy.” (R at 54 lines8-11)Again, the surveillance footage is not substantiated as outlined previously in this brief. “Wells Fargo discharged Appellant for using Nadi’s credentials without her permission.. to override a customer transaction,” (R @ 58 lines11-17). Chabot thoroughly

testifies Faizo completed the transaction, which would mean Faizo over-rode the customer's transaction upon completion. (*ROA pg57 line19, pg59 lines18-22, pg60 lines18-20)*

2. Respondent Wells Fargo writes on page8 of their brief: "There is no question that Appellant's unilateral decision to use Nadi's credentials without permission for a transaction..." Respondent SCDEW writes on page3 of their brief: "Appellant retrieved Ariana Nadi's employee ID from McCarthy's desk, entered that ID into the system, and used it to complete the transaction." However, McCarthy testifies to the contrary: "On Thursday, this was when another customer came in and another teller [Tyler Faizo] was assisting the customer" (*ROA pg51 lines10-12),* this testimony by McCarthy during trial in corroboration with the Appellant's testimony that the transaction Chabot was terminated for was in nfact Tyler Faizo's transaction (*ROA pg59 lines18-22, pg60 lines18-20)* which invalidates the Respondents' arguments that this transaction was done "unilaterally" by the Appellant. A logical mind would conclude an approval happens upon completion of a transaction and as Tyler Faizo completed the transaction, it is logical to conclude that the Appellant's advice or action was not of a sole facilitator. Appellate Panel Decision based on the Hearing Officer's decision: "Claimant used a branch manager's credentials to approve a customer transaction" (*ROA pg122)* based on "Employer conducted its investigation [not substantiated by anything on the Record] by [allegedly] interviewing all of the parties involved, and reviewing surveillance video and documentation." (*ROA pg122).* The Appellate Panel erred in basing any of the hearsay on non-existent hard evidence and the surveillance footage is contested by the Appellant consistently and the footage is not found on the Record. Final Order by the Admin Law Court decided by Judge Phillip Lenski (Case No. 23-ALJ-22-0342-AP) dated February 8, 2024: "The record establishes that the Appellant used a

branch manager's credentials to approve a customer transaction that exceeded her authorized limit." To be clear, the Hearing Officer in trial made a judgement call which is affirmed by the Appellate Panel and Admin Law Court; all of which are based on non-existent evidence and testimony by a non-credible witness. The affirmations are based on the Hearing Officer's error and clearly erroneous acceptance of unsubstantiated evidence and testimony. SC Court Rule 802 states: "Hearsay is not admissible."

If the Appellant acted unilaterally, why was it not done on her computer? Hearing Officer: "who was the teller that actually completed the transaction?" McCarthy: "Tyler Faizo. It was done on his computer." (*ROA, pg53 lines20-22)* Appellant thoroughly states consistently that she did not complete Tyler Faizo's transaction as he, at the computer, reviewed and printed that cashier's check. (*ROA pg59 lines19-22; lines27-28; pg60 lines17-20; pg61 lines8-9 lines27-28; pg69 lines17-23; pg75 lines13-21)* Both Respondents' arguments contained within their briefs that the Appellant acted unilaterally has no merit. In accordance with SC Court Rule 3.3, Respondents' withholding knowledge of who actually completed the transaction (and thus if done unilaterally) the Appellant was terminated for is unlawful and misleading.

> The Court defines "Substantial" under Rule 1.0 (p) ""Substantial": when used in reference to degree or extent denotes a material matter of clear and weighty importance." The Respondents' briefs have been rooted on hearsay evidence and hearsay testimony that contains no merit in accordance with Court Rule 220(c)(2): "The Court of Appeals need not address a point in which is manifestly without merit." And in accordance with SC Court Rule 802: "Hearsay is not admissible."

3. Wells Fargo's Statement of Issue on Appeal, on page1 of their brief, for example, displays from the onset that Wells Fargo is not accurately transcribing the record: "Appellant was discharged for misconduct for using a manager's credentials to approve a transaction without permission." The Court of Appeals will find on reviewing the record that both Chabot and McCarthy testify that Chabot did not use the manager's credentials- it was her co-worker Faizo.

4. Respondent Wells Fargo's brief pg4: "unilaterally approved the transaction." Nadi's recieved an email notification that her employee ID was used to complete the transaction. McCarthy: "The [automatically generated] email that Ariana received [Thursday] stated, initiator Tyler [Faizo]." (*ROA pg76 lines2-3)* How can the respondent falsely state that the Appellant "unilaterally" completed the transaction when on the record it is fundamentally founded by both parties; the Appellant and McCarthy that Tyler Faizo completed the transaction?

For the Respondents' : *Unilaterally,* by definition is to indicate that something was done by one party. McCarthy's testimony in corroboration with Chabot's testimony is that this was blatantly done bilaterally, not unilaterally.

5. Respondent Wells Fargo's brief pg.5: "During her interview with McCarthy, Appellant admitted she engaged in the aforementioned misconduct." Appellant only relayed to McCarthy HER role in the transaction which was to give her co-worker Faizo advice on how to problem solve and complete a transaction for a regular customer in the absence of a present Manager (absent both physically and over the phone.) As McCarthy is obviously an untrustworthy witness, as established by her swaying testimony, we cannot rely on Respondents' statements that "the Appellant admitted she engaged in the aforementioned misconduct" during an interview with McCarthy: Respondents should know better to throw down statements in their brief that

cannot be found on the record. Instead of jumping to an unsubstantiated claim in which they base their argument, SC Court Rule 210(c): “the South Carolina Appellate Court Rules provides “The Record shall not, however, include matter which was not presented to the lower court or tribunal...” The only mention of McCarthy’s interview with the Appellant during trial is when McCarthy admits that Chabot told her she thought she could utilize Nadi’s numbers by giving them to Tyler Faizo. (*ROA, pg54 lines18-23)* No other parts of the interview between McCarthy and Chabot are discussed by the Hearing Officer or on trial (further demonstrating the Hearing Officer’s bias.)

6. Respondents Wells Fargo’s brief pg7 : “Although Appellant alleges she was never trained on the Approver Not Present Policy, she also testified that (1) the policy is contained in the Wells Fargo’s handbook.” This statement is completely false and you will not anywhere on record where the Appellant testifies the Approver Not Present policy is found in the Employee Handbook.
7. Respondent Wells Fargo’s brief pg7 : “Appellant contradicts herself bu subsequently testifying that on February 2, 2023, she “made a judgement call” when she unilaterally used Nadi’s credentials.” Again, this whole statement is false. The Hearing Officer in fact tried but failed to lead the Appellant in to stating a judgement call: Hearing Officer: “So you made a judgement call?” Chabot: “YOU can say I made a judgement call...” (*ROA pg64 lines25-26)* The Appellant deflects this question as she saw that the Hearing Officer was driving a narrative. The judgement call would of been up to Tyler Faizo since he completed the transaction. Again a violation of SC Court Rule 3.3 by Respondent Wells Fargo in their brief.

8. Respondent Wells Fargo's brief pg7: "Appellant failed to submit any record evidence suggesting that Wells Fargo mishandled its investigation or that the surveillance footage reviewed by Wells Fargo did not capture her engaged in the misconduct discussed herein." The only reason the Appellant Chabot did not subpoena the surveillance footage was out of sheer pro se litigant ignorance and not without trying that we see her ask the Hearing Officer to enter the video and thereafter. This is the first time the Appellant has been terminated and first time navigating court or an unemployment trial and she was operating under sheer ignorance of unemployment proceedings. A trial de novo could be in order now that the Appellant has more legal bearings.

It may be appropriate to add here as well, that Wells Fargo did not call the investigator or any Wells Fargo HR rep to trial, but the Manager, who claims she did not terminate the Appellant "unilaterally". (*ROA pg56 lines21-25).* The Manager McCarthy was ultimately responsible for terminating the Appellant. If that decision to terminate was out of McCarthy's hands, why didn't Wells Fargo have an investigator or representative that could attest first hand to the surveillance footage that McCarthy did not watch and testify on a transaction she was not present for?

9. Wells Fargo Respondent Brief page4, 7, and 8 all mention Appellant did the transaction unilaterally. For the Respondent, *Unilaterally,* by definition is to indicate that something was done by one party. Chabot has thoroughly exemplified with support from the record through this brief that the transaction was not done unilaterally but multilaterally.
10. Respondent Wells Fargo's brief page9: Respondent dismisses Appellant Chabot's use of an "extraordinary circumstance." The Respondents may have never been in a fast paced customer service-oriented position. To enlighten the Respondents: Retail Banking Institutions can be a

fast paced environment in which Tellers have been trained to get through customer transactions QUICKLY with as much efficiency as possible. The Appellant had her own customer when Tyler Faizo was assisting the customer with the transaction the Appellant was terminated for. When Tyler asks Appellant for help, Chabot advises him and when Faizo reports he cannot get in touch with a manager, Appellant states "I guess we can use her number because she told me two days ago that we could do it. And I actually stated that out loud to Tyler. And then that was it. And he printed the cashier's check and I grabbed it and gave it to Mr.Lopez." (*ROA pg69 lines20-24)* Showing that Manager Nadi set up a precedent in using in her number when no manager was to be found in branch and Tyler could not execute his transaction after he himself tried to reach a Manager himself, the Appellant offered up the what she thought was the next best solution; which was what she thought was a logical and efficient customer service solution to Faizo not having a Manager present or available. The Appellant's advice can hardly be construed as misconduct given the circumstances. The Hearing Officer establishes with McCarthy the sole purpose of the Approver Not Present Policy is to prevent fraud and Appellant establishes thoroughly at the beginning of the brief with corroboration from McCarthy and the record no fraud occurred. In Appellant's initial appeal letter before trial, she states: "Tracy herself told me on February 6, 2023, that she knew I "had the best interest of the customer at heart" that there was "nothing to worry about" as far as Mr.Lopez was concerned as he was a regular customer. She reiterated this to me on February 8, 2023... Tracy also reassured me on both those occassions that she told Ariana that I did not use Ariana's employee ID in any type of malicious way. Monetary loss to the

company is greatly considered during transactions, and there was no monetary loss to the company as Mr.Lopez was a regular customer." (*ROA pg30)*

11. Respondent Wells Fargo's brief pg10: "Evidence will not be excluded solely because it may hearsay." Appellant Chabot outlines here in this brief exactly why McCarthy is not a credible witness, she does not make any statements based on facts, there is no tangible evidence on record, none of her testimony can be corroborated except for certainties agreed upon by the Appellant and McCarthy contradicts herself consistently on record.
12. Respondent Wells Fargo's Brief pg10: "The Hearing Officer's decision to receive testimony from McCarthy was approproate because McCarthy was under oath, served as Appellant's supervisor..." Respondent diminishes the Appellant's blaring objection heard on record when Appellant tries to object by stating, "I just want to state that it is false.." here the Appellant is interrupted abrasively by the Hearing Officer as heard on *Exhibit B.* (*ROA pg57 line19)* Respondents try to diminish this objection as the Appellant did not use a legal term, "objection" which shows a bias against a pro se litigant. The Appellant obviously tries to assert the truth there to no avail. The Respondent SCDEW also brings this up as a point of contention in their **Response to Appellant's Second Motion to Strike Respondents' Briefs** that the Appellant made no formal objection to McCarthy's testimony. *Exhibit B* is found on the Appellant's entered discovery.
13. Respondent Wells Fargo brief pg13: to make it clear, yes, the Hearing Officer was harassing. The Appellant does not complain about redundant questioning, she complains that the Hearing Officer asks the same questions harrassing the Appellant to a desired answer. That is called leading the witness, harassment etc.

Chabot does not make “extremely serious accusations” lightly and asserted herself by filing Motions because the Appellant knows the truth and in any attempt within the confines of the Court, has tried to insert the truth within this appeal and within this perverse trial.

Respondent SCDEW both asserts that the Appellant makes “extremely serious accusations” while simultaneously stating her motions are “frivolous.”

V. Respondent SCDEW’s brief is riddles with inaccuracies and falsies on which their argument is entrenched.

1. On Respondent SCDEW page2 of their brief : The Approver Not Present policy is to prevent fraud, covered earlier in the brief.
2. On Respondent SCDEW page3 of their brief: Appellant “used [ID] to complete the transaction.” Again this argument covered earlier.
3. On page4, Respondent quotes “disregard of the standards of behavior which Wells Fargo had a right to expect.” However, Appellant does cover how having no Manager available created an extraordinary circumstance, coupled with the fact neither Bank Teller, Chabot or Fazio were trained on how to use the Approver Not Present Policy.
4. On pg5, the Respondent uses Standard of Review: “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.” Appellant has fully explored in this brief that there was no substantial evidence on the record and therefor an error of law did occur.
5. On Respondent SCDEW page.6 of their brief: Appellant “conduct[ed] a transaction above the limit set by her employer.” Conduct by dictionary definition is to “organize and carry out” - the use of the word in the SC DEW’s brief implies that the Appellant completed the

transaction which is thoroughly contested on the record as the Appellant states Fazio completed the transaction.

6. Respondent SCDEW pg7 of their brief: Appellant's contention that she received blanket approval to use Nadi's credentials to complete transactions without approval lacked credibility." To the contrary, McCarthy testified that Chabot "to which Bridgette explained to me that she thought that meant that she trusted her judgment on any transaction." (*ROA pg54 lines20-23)* Explaining from McCarthy's point of view and testimony that Chabot did in fact tried to utilize the Approver Not Present policy under Nadi's precedent.
7. Respondent SCDEW page13 of their brief:

The Appellant ignorantly thought that handed over information, it was the Court that did the subpoenas. If we excuse that ignorance, the pro se Appellant then asks for the footage to be entered during trial and that request is denied by the Hearing Officer. Appellant asks for it especially after hearing McCarthy's false testimony on what the footage captured.

8. Respondent SCDEW pg11-13 of their brief: "by apparent inconsistency and lack of responsiveness on behalf of the Appellant" SCDEW alleges that the Hearing Officer was just doing her job by asking the Appellant questions. As outlined in the Appellant's Initial brief, you will see the excessive amounts of times the Hearing Officer asked the same questions over and over, obviously to lead the Appellant to a desired answer. This is not for the lack of the Appellant actually answering those questions over and over again as found on the record and on *Exhibit B.*

CONCLUSION:

The Respondents in this case are asking the Court of Appeals to affirm a judgment that was solely based on an unsupported and unsubstantiated hearsay witness who was not present during the transaction for which the Appellant was terminated. That sole witness provided an inconsistent testimony which can be reviewed thoroughly on record. Wells Fargo did not feel that they needed to enter any actual evidence and they counted on receiving a default judgement in an unemployment trial because they feel they have the upper hand, a corporation vs. a pro se litigant. A judgement based on such a loose and inconsistent testimony lacks any foundation to determine a fair judgement and Respondents' did not produce a shred of legal support except depending on abstract conclusions produced by assumptions that tie to authorities and statues that are not applicable in this case. There is no justice in assumptions.

Again, to reiterate, the Appellant Chabot concludes that the decision to deny Unemployment benefits be reversed under Section 41-27-20: "unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

Respectfully Submitted,

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RECEIVED
Sep 20 2024
SC Court of Appeals

FORM 7
PROOF OF SERVICE FOR:
APPELLANT'S REPLY BRIEF

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

Appellate Case No. 2024-000251

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

v.

Bridgette Chabot, Appellant.

PROOF OF SERVICE

I certify that I have served the **Appellant's Reply Brief** on SC Dept. of Employment & Workforce and on Wells Fargo & Co.,by depositing a copy of it in the United States Mail, postage prepaid, on , addressed to their attorneys on record: Ben Cook ESQ, SC Dept. of Employment & Workforce, P.O. Box 8597 Columbia, SC 29202 and Wells Fargo's counsel Matthew Korn of Fisher & Phillips, LLP, 1320 Main Street, Ste 750, Columbia SC 29201.

Respectfully,

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