STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James M. Harley, Appellant, v. South Carolina Department of Employment and Workforce, and Bradshaw Automotive Group, Inc., Respondents.	Docket No. 21-ALJ-22-0047-AP **ORDER**

STATEMENT OF THE CASE

James M. Harley (Appellant) appeals the decision of the South Carolina Department of Employment and Workforce (Department), holding him indefinitely ineligible to receive unemployment benefits pursuant to S.C. Code Ann. § 41-35-120(1) (Westlaw Edge through 2024 Act No. 80). The Administrative Law Court (ALC or Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Westlaw Edge through 2024 Act No. 146). Upon consideration of the record and briefs the Court affirms the Department's decision.

BACKGROUND

Appellant worked for Bradshaw Automotive Group, Inc. (Employer) from August 26, 2019, until February 29, 2020, as a sales consultant. Appellant has a medical condition[1] and argues his medical condition necessitates the use of specialized computer programs to facilitate his use of computers. Starting in October, 2019, Appellant requested Employer allow him to use his personal laptop at work. Employer declined Appellant's request. Appellant testified his personal laptop possesses the specialized computer programs necessary to accommodate Appellant's medical condition. Employer's general sales manager was aware of Appellant's accommodation request, but Employer's policy prohibits its employees from having access to Employer's business software on their personal laptops. Additionally, the general sales manager was not aware of any specific request from Appellant regarding specific computer software or features Appellant requested to

[1] Neither the Appeal Tribunal (Tribunal) nor the Appellate Panel (Panel) made findings of fact regarding the specific medical condition Appellant has, but Appellant asserts he has a diagnosis of post-traumatic stress disorder (PTSD).

help him complete his work duties. Appellant periodically renewed his request to use his personal laptop throughout the remainder of his employment and Employer denied each request. Additionally, Appellant testified he experienced repeated instances of co-workers bullying him in front of customers. Employer's general sales manager testified Appellant did not raise the issue of workplace bullying with Employer until around January 31, 2020. Employer investigated Appellant's claims of workplace bullying and determined Appellant had not been bullied.

Appellant raised his concerns about the workplace environment and Employer's failure to accommodate Appellant's medical condition with Employer's human resources manager (HR Manager) on January 30, 2020. On January 31, 2020, Appellant submitted a letter of resignation to the HR Manager in which Appellant agreed to work until February 29, 2020. There was continuing work available to Appellant at the time he submitted his resignation notice. Appellant stated in his resignation letter he wanted to relocate to be near his family. On February 5, 2020, Appellant submitted another letter to the HR Manager indicating his intent to rescind his prior resignation. The HR Manager met with Appellant the same day and told Appellant Employer accepted Appellant's resignation. Appellant believed his recission nullified his prior resignation despite Employer's general sales manager regularly reminding Appellant his last day of work would be February 29, 2020. Appellant continued working through February 29, 2020, and Employer paid Appellant severance through April 1, 2020.

Appellant applied for South Carolina unemployment benefits on May 4, 2020. The claims adjudicator mailed Appellant a determination on July 16, 2020, which found Appellant indefinitely disqualified from unemployment benefits because Appellant voluntarily quit his employment without good cause attributable to the employment. Appellant appealed to the Tribunal. After an evidentiary hearing, the Tribunal affirmed the claims adjudicator's determination. On December 16, 2020, Appellant appealed to the Panel. The Panel affirmed the Tribunal's decision. This appeal followed.

ISSUES ON APPEAL

1. Was the Department's decision finding Appellant ineligible for unemployment benefits supported by substantial evidence in the record?
2. Did the Department create improper and unnecessary hurdles to Appellant's eligibility for unemployment benefits and other claims?

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, the 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 (Westlaw Edge through 2024 Act No. 334), S.C. Code Ann. § 1-23-600(D) (Westlaw Edge through 2024 Act No. 60); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). Section 1-23-380(5) provides the standard used by appellate bodies to review agency decisions. See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380(5) states:

> 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:
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> (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.

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. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that 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 Comm'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)). When applying the

substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 466 S.E.2d 357 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C 348, 353, 461 S.E.2d 388, 391 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

Substantial Evidence

Appellant argues the Department's determination that Appellant voluntarily quit his employment is not based on substantial evidence in the record. The Court disagrees.

A person is disqualified from unemployment benefits if that person leaves work voluntarily without good cause. § 41-35-120(1). "Good cause" means cause "attributable to or connected with" the employment. Stone Mfg. Co. v. S.C. Employment Sec. Comm'n, 219 S.C. 239, 247, 64 S.E.2d 644, 647 (1951). "[A]n employee who voluntarily left employment has the burden of showing good cause for leaving." 76 Am. Jur. 2d Unemployment Compensation § 106, Westlaw Edge (database updated Aug. 2024).

> To be entitled to unemployment compensation benefits, a worker's decision to voluntarily terminate his or her employment must be made in good faith, which is absent if the worker's decision to terminate employment was not supported by good cause or if the employee failed to make any effort to resolve the dispute before quitting. To be entitled to unemployment compensation benefits for voluntarily quitting a job for good cause, the claimant must have explored all viable options before making the decision to quit.

76 Am. Jur. 2d Unemployment Compensation § 104, Westlaw Edge (database updated Aug. 2024).

Appellant voluntarily resigned his position by submitting a written notice of resignation on January 31, 2020. Although Appellant argues Employer's failure to implement his laptop accommodation request and his workplace harassment allegations led to his resignation, Appellant first raised these concerns to his HR manager on January 30, 2020. The Panel found one day was an inadequate period of time to provide Employer to address these issues. Additionally, the record shows Appellant was still willing to work for Employer despite the conditions at work because Appellant attempted to rescind his resignation despite receiving no response from Employer

regarding his prior concerns. Appellant failed to meet his burden of proving he explored all viable options before deciding to quit his job. Therefore, the Department's finding that Appellant voluntarily quit without good cause is supported by substantial evidence.

Appellant contends his recission of his resignation retroactively nullified Employer's acceptance of his resignation. South Carolina appellate courts have not adjudicated the issue of whether the attempted recission of a resignation transforms a case of leaving work voluntarily into a termination of employment by the employer. The rule followed by a majority of jurisdictions in the United States is that "an employee who submits a voluntary resignation without good cause, but subsequently attempts to withdraw such resignation before its effective date, will generally be deemed to have left his or her employment voluntarily if the employer does not consent to the withdrawal of the resignation." 76 Am. Jur 2d Unemployment Compensation § 137 Westlaw Edge (database updated Aug. 2024). See also Cunliffe v. Industrial Claim Appeals Office of State of Colorado, 51 P.3d 1088 (Colo. Ct. App. 2002) (examining jurisdictional differences in addressing the impact on unemployment insurance when an employee attempts to rescind a resignation). A minority of jurisdictions permit an employee to rescind a letter of resignation up to the effective date of the resignation or until an employer takes some action to replace the resigning employee. See Mauro v. Administrator, 19 Conn. Supp. 362, 113 A.2d 866 (1954); Cotright v. Doyal, 195 So.2d 176 (1967); Zimmerman v. Commonwealth of Penn. Unemployment Compensation Board of Review, 101 Pa. Cmwlth. 274, 516 A.2d 102 (1986). In this case, the Panel adopted the majority view and held that the Appellant's voluntary resignation constituted a voluntary departure from his employment, that Employer was not obligated to accept his attempted rescission, and that by not accepting it, Employer did not convert Appellant's departure into a termination.

The Court concurs with the Panel's reasoning because it conforms with the majority view: an employee who voluntarily resigns without good cause from a position, and then subsequently attempts to rescind or withdraw such resignation before its effective date, will be deemed to have left their employment voluntarily if the employer does not consent to the withdrawal of the resignation. Therefore, the Department's determination is supported by substantial evidence in the record and is not arbitrary or characterized by an abuse of discretion.

Department Conduct

Appellant argues the Department created improper and unnecessary hurdles to Appellant's eligibility for unemployment benefits. Specifically, Appellant argues he was denied a fair hearing by the Tribunal hearing officer's lack of objectivity and frequent instances of cutting off his testimony. Appellant also argues the Department's failure to provide him a hearing date for an appeal he raised on April 19, 2021, improperly disqualified Appellant from receiving benefits when Appellant had good cause to quit under the Americans with Disabilities Act, and improperly found Appellant ineligible for Pandemic Unemployment Assistance (PUA). The Court disagrees.

Courts sitting in an appellate capacity may not consider issues not raised or ruled on by an administrative agency. Carson v. S.C. Dep't of Natural Res., 371 S.C. 114, 120, 638 S.E.2d 45, 48 (2002). In this matter, the Court sits in an appellate capacity and therefore its review is limited to the Panel's decision on appeal to the ALC. See Timms v. Timms, 286 S.C. 291, 294, 333 S.E.2d 74, 75 (Ct. App. 1985) ("[The Court is] confined to the record in deciding issues on appeal."). The issues of Appellant's April 19, 2021 appeal, whether Employer violated the Americans with Disabilities Act, and Appellant's eligibility for PUA were not raised to and ruled on by the Panel. Therefore, the Court must disregard these issues.

Appellant did raise the issue of the Tribunal hearing officer's conduct to the Panel and the Panel ruled the hearing officer afforded Appellant a fair hearing. Therefore, this issue is properly before the Court on appeal. "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard[.]" S.C. Const. art. I, § 22. The "requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review." German Evangelical Lutheran Church of Charleston v. City of Charleston, 352 S.C. 600, 608, 576 S.E.2d 150, 154 (2003). "[P]roof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice." Palmetto Alliance, Inc. v. S.C. Public Serv. Comm'n, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984).

The transcript of the hearing shows the hearing officer did not frequently cut off Appellant's testimony and did not treat Appellant differently than the opposing party. Appellant also argues in his Reply Brief the hearing officer denied Appellant's request to have a brief restroom break for the additional purpose of conferring with counsel. The record shows

Appellant's counsel specifically asked "Is it possible we could take a brief recess just to use the restroom?" The hearing officer replied "I mean, we can do that, but just maybe to keep things ordered, I'll let you go ahead and do cross, and then we can have a brief break if everyone needs one." Appellant's counsel explicitly stated the purpose of the requested break was "just to use the restroom," and made no mention of any other purpose for the break. Furthermore, the hearing officer did not deny this request and merely suggested proceeding with cross examination before taking the break in the interest of keeping the hearing ordered. Finally, Appellant did not express disagreement with this proposed course of action by the hearing officer and did not raise an objection. Therefore, the events cited by Appellant do not show Appellant was prejudiced by the hearing officer's conduct. Appellant has failed to prove he was substantially prejudiced by the administrative process. The Panel's conclusion that the hearing officer "allowed [Appellant] a full and fair opportunity to present his case, and conducted the hearing with impartiality" is a reasonable conclusion based on the substantial evidence in the record and the Court will not reverse or modify that finding.

On August 5, 2024, Respondent Bradshaw Automotive Group, Inc. filed a Motion to Withdraw and Substitution with this Court, requesting Christopher R. Thomas, Esquire, be withdrawn as its counsel and to substitute Sarah Gable, Esquire, as counsel for Respondent.

ORDER

IT IS THEREFORE ORDERED that Respondent's Motion to Withdraw and Substitution is **GRANTED** and Sarah Gable, Esquire, be substituted as counsel for Respondent.

IT IS FURTHER ORDERED that the Department's decision is **AFFIRMED.**

AND IT IS SO ORDERED.

Deborah Brooks Durden

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

September 19, 2024
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 19, 2024
Columbia, South Carolina