

STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

James M. Harley, Appellant v. South Carolina Department of Employment and
Workforce & Bradshaw Automotive Group, Inc., Respondents

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Aug 11 2025

SC Court of Appeals

INITIAL APPELLATE BRIEF OF APPELLANT & DESIGNATION OF MATTER

Appeal from the South Carolina Administrative Law Court Case No.: 2021AL220047AP
Appellate Case No.: 2024-001795 Filed: August 11, 2025

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- EEOC v. Convergys Customer Mgmt. Group, Inc., 491 F.3d 790 (8th Cir. 2007)
- EEOC v. Sears, Roebuck & Co., 233 F.3d 432 (7th Cir. 2000)
- McEachern v. S.C. Emp. Sec. Comm'n, 370 S.C. 553, 635 S.E.2d 644 (Ct. App. 2006)
- Pennsylvania State Police v. Suders, 542 U.S. 129 (2004)
- Suders v. Easton, 325 F.3d 432 (3d Cir. 2003), rev'd on other grounds, Suders, 542 U.S. 129
- Blasingame v. Commissioner of Labor, 2021 NY Slip Op 01345 (App. Div. 3d Dept. 2021)

Statutes & Regulations

- S.C. Code Ann. § 1-23-380(A)(5)
- S.C. Code Ann. § 41-35-750
- 42 U.S.C. § 12112
- 29 C.F.R. pt. 1630
- Conn. Agencies Regs. § 31-236-18

Other Authorities

- UIPL No. 16-20 (U.S. Dept. of Labor, 2020)
- UIPL No. 16-20, Change 5 (Feb. 25, 2021)
- EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship (2002)
- Restatement (Second) of Contracts § 35 (1981)
- Restatement (Second) of Contracts § 36 (1981)



STATEMENT OF THE CASE.....Page 1

This is an appeal from a final order of the South Carolina Administrative Law Court (ALC) affirming the denial of unemployment benefits to Appellant James M. Harley (R. p. 179). Mr. Harley filed a claim for unemployment benefits after his employment with Respondent Bradshaw Automotive Group, Inc. was terminated (R. p. 122). The South Carolina Department of Employment and Workforce (SCDEW) initially denied the claim, finding that Mr. Harley had voluntarily quit his employment without good cause (R. p. 115). Mr. Harley appealed this determination to the ALC, arguing that his separation was not a voluntary quit because he had rescinded his resignation, was constructively discharged, and was eligible for benefits under federal Pandemic Unemployment Assistance (PUA) guidelines (R. p. 163). The ALC, however, affirmed the denial of benefits, holding that the separation was a voluntary quit and finding no basis for the other claims (R. p. 179). This appeal follows, seeking judicial review of the ALC's order pursuant to S.C. Code Ann. § 1-23-380(A)(5).

STATEMENT OF ISSUES.....Page 2

1. Did the Administrative Law Court err by finding that Appellant James M. Harley voluntarily quit when he rescinded his resignation before its effective date, and the employer instead terminated his employment?
2. Did the employer's refusal to provide a reasonable accommodation for Appellant's disability and its failure to address a hostile work environment amount to a constructive discharge under the Americans with Disabilities Act (ADA), thereby rendering his resignation involuntary and for good cause?
3. Did the South Carolina Department of Employment and Workforce (SCDEW) and the lower tribunal err by failing to recognize Appellant's eligibility for Pandemic Unemployment Assistance (PUA) under federal law, given that he left his employment due to his disability and unsafe, COVID-19-related workplace conditions?



I. The Lower Tribunal Erred by Concluding Appellant Voluntarily Quit Because His Rescinded Resignation Resulted in an Employer-Initiated Termination.

South Carolina law disqualifies unemployment claimants who "voluntarily leave work without good cause." However, this disqualification does not apply when the separation is initiated by the employer. The lower tribunal committed an error of law by failing to recognize that Appellant James M. Harley's separation was an employer-initiated termination, not a voluntary quit. Mr. Harley submitted a resignation notice on January 31, 2020 (R. p. 132), with an effective date of February 29, 2020. Crucially, he rescinded that resignation in writing on February 5, 2020 (R. p. 144)—well before the effective date and before the employer took any irreversible action. The employer's subsequent refusal to honor the rescission and its exclusion of Mr. Harley from the workplace functioned as a discharge, not a voluntary departure (R. p. 177).

A. A Resignation Is Revocable Under Basic Contract Principles, and Its Revocation Precludes a "Voluntary Quit."

Since South Carolina's unemployment statutes do not specifically address rescinded resignations, this Court should look to established common law principles for guidance. Under basic contract law, a resignation notice with a future effective date is analogous to an offer to terminate the employment relationship. The Restatement (Second) of Contracts §§ 35 and 36 confirm that an offer may be revoked prior to its acceptance, and such revocation terminates the offeree's power of acceptance. In the employment context, this means that unless the employer has accepted the resignation or relied upon it to its detriment (e.g., by hiring a replacement), the employee retains the right to withdraw the resignation. Appellant's rescission occurred within ¹⁶⁸~~24~~ hours of the original notice and weeks before the effective date (R. p. 132, 144). The record contains no evidence that Bradshaw Automotive Group, Inc. had accepted the resignation or taken any irreversible action based on it. Therefore, the rescission was legally valid. The employer's decision to ignore the rescission and proceed with the separation was not passive acceptance, but an active decision to terminate the employment.



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B. Jurisdictions Recognize that a Rescinded Resignation Leads to an Employer-Initiated Separation for Benefits Purposes.

While South Carolina lacks a specific regulation on rescinded resignations, other jurisdictions provide persuasive guidance. For example, Connecticut's unemployment regulation (Conn. Agencies Regs. § 31-236-18) states that an employee who rescinds a resignation before the notice period ends is not considered to have quit voluntarily unless the employer had already hired a replacement. This reflects a broader policy principle: unemployment benefits are intended for individuals separated "through no fault of their own." When an employee attempts to remain employed and the employer refuses, the fault lies with the employer. Courts have echoed this logic. In *Blasingame v. Commissioner of Labor* (2021), a New York appellate court held that an employee who rescinded a resignation and was nonetheless terminated was eligible for benefits because the separation was employer-initiated. The South Carolina Court of Appeals, in *McEachern v. S.C. Emp. Sec. Comm'n*, 370 S.C. 553, emphasized that eligibility determinations must be grounded in the actual circumstances of separation—not rigid formalities. Here, the actual circumstance was Mr. Harley's express desire to continue working, met with the employer's refusal.

C. The Employer's Refusal to Reinstate Appellant Was a Discharge.

Mr. Harley's rescission was a clear expression of his intent to continue working. The employer's response—locking him out of company systems, removing him from the work schedule, and denying him access to the workplace—was an active decision to terminate employment (R. p. 177). This conduct amounts to a discharge under South Carolina law. The Administrative Law Court's failure to recognize this distinction constitutes an error of law under S.C. Code Ann. § 1-23-380(A)(5). The tribunal's conclusion that Mr. Harley "voluntarily quit" disregards the rescission and fundamentally mischaracterizes the nature of the separation.

D. The Denial of Benefits Undermines the Remedial Purpose of Unemployment Law.

Unemployment compensation statutes are remedial in nature and must be liberally construed in favor of claimants. Penalizing an employee who made a good-faith effort to remain employed contradicts the purpose of the law. Mr. Harley's actions demonstrate a clear desire to work and mitigate disruption. The employer's refusal to allow him to do so renders the separation involuntary. Under S.C. Code Ann. § 41-35-750 and the principles of fairness embedded in South Carolina's unemployment scheme, Mr. Harley should not be disqualified from benefits.



II. The Employer's Intolerable Working Conditions Constituted a Constructive Discharge, Rendering the Resignation Involuntary.

Even if Mr. Harley's rescinded resignation were not dispositive, the conditions leading to his departure constituted a constructive discharge. This doctrine treats a resignation as a de facto firing when an employer's actions make working conditions "so intolerable that a reasonable person in the employee's position would feel compelled to resign" (R. p. 176). *Pennsylvania State Police v. Suders*, 542 U.S. 129, 141 (2004). The record demonstrates that Mr. Harley was subjected to an intolerable workplace environment that was rife with disability-based discrimination and harassment, which the employer failed to remedy (R. p. 176).

A. The Employer's Failure to Accommodate Appellant's Disability Created Intolerable Working Conditions.

Appellant is a qualified individual with a disability, and the record shows that his employer was aware of his disability and his need for accommodations (R. p. 127). Yet, the employer repeatedly refused to provide reasonable accommodations, in violation of the Americans with Disabilities Act (42 U.S.C. § 12112). The EEOC's interpretive guidance on the ADA confirms that a failure to accommodate a disabled employee's essential needs is itself a form of discrimination. See also *EEOC v. Convergys Customer Mgmt. Group, Inc.*, 491 F.3d 790 (8th Cir. 2007). Courts have long recognized that an employer's discriminatory failure to accommodate can create an actionable constructive discharge claim. As the Seventh Circuit held in *EEOC v. Sears, Roebuck & Co.*, 233 F.3d 432, 440-41 (7th Cir. 2000), an employee who resigns due to an employer's discriminatory failure to accommodate can claim they were effectively discharged. Mr. Harley notified management of his disability and requested accommodations for certain physically ^{and mentally} strenuous duties and medical appointments, but his requests were ignored (R. p. 177). Supervisors instead subjected him to belittlement and excessive discipline for his disability-related limitations (R. p. 171). This conduct, when it leaves an employee with no alternative but to resign, is a constructive discharge motivated by the employer's discrimination. ^{including technology}



B. Employer's Inaction in the Face of Harassment Exacerbated the Intolerable Environment.

In addition to the denial of accommodations, Mr. Harley endured ongoing workplace harassment from a supervisor and coworkers ^{even in front of a customer} due to his disability and COVID-19 safety concerns (R. p. 177). This included derisive comments, an increased workload beyond his medical restrictions, and threats of termination when he raised these issues (R. p. 171). Such unchecked harassment created a hostile work environment. Mr. Harley followed the proper procedure by notifying management of the harassment, but the employer took no effective action (R. p. 177). The Supreme Court in *Suders* affirmed that when a supervisor's actions create a hostile work environment, an employee's decision to resign can be a "fitting response" to the intolerable conditions. 542 U.S. at 141. Mr. Harley was facing health risks, ridicule, and a complete disregard for his rights (R. p. 171). The law does not require employees to remain in a job and suffer abuse while the employer turns a blind eye. The employer's actions and omissions created these intolerable conditions, and the law treats Mr. Harley's resignation as a formal discharge by the employer.

III. The Lower Tribunal Erred by Failing to Recognize Appellant's Eligibility for Pandemic Unemployment Assistance (PUA).

Regardless of whether Mr. Harley qualifies for regular state benefits, he is independently eligible for Pandemic Unemployment Assistance (PUA) under the federal CARES Act. The lower tribunal erred by not applying this federal law and its binding guidance from the U.S. Department of Labor. The CARES Act, and its implementing guidance in Unemployment Insurance Program Letter (UIPL) No. 16-20 and Change 5, explicitly expand eligibility for workers who quit their jobs for certain COVID-19 related reasons. Mr. Harley's circumstances align perfectly with the program's purpose: he left his job to preserve his health in the face of an employer that disregarded his disability and failed to follow COVID-19 safety protocols (R. p. 173). UIPL 16-20, Change 5, issued on February 25, 2021, explicitly expanded PUA eligibility to include "workers who refused to work or left employment due to unsafe COVID-19 workplace conditions." The U.S. Department of Labor's news release on the matter confirmed that workers who leave an unsafe workplace to protect their health during the pandemic may qualify for PUA. Mr. Harley's situation is a prototypical example of this scenario, as his health was directly threatened by the employer's failure to provide a safe working environment and reasonable accommodations (R. p. 173). The lower tribunal's failure to consider this federal directive constitutes a reversible error of law under S.C. Code Ann. § 1-23-380(A)(5).

CONCLUSION



For the foregoing reasons, Appellant's separation from employment should be treated as an involuntary discharge or a constructive discharge with good cause attributable to the employer. The denial of unemployment benefits was legally wrong and unsupported by the evidence. Appellant is entitled to benefits under South Carolina law, and additionally or alternatively, under the federal Pandemic Unemployment Assistance program.

Appellant respectfully requests that this Court reverse the decision of the lower tribunal and remand with instructions to award appropriate unemployment compensation benefits to Appellant.



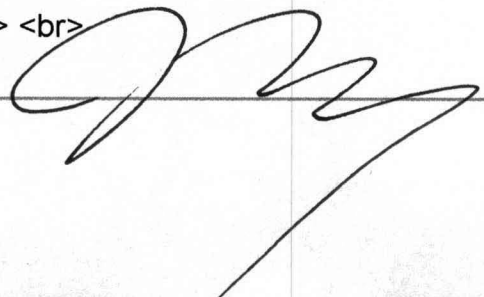
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CERTIFICATE OF SERVICE

This is to certify that the Initial Brief and Designation of Matter is being served today, August 11, 2025, by depositing it in the United States Mail, postage prepaid, to the following recipients:

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Record on Appeal Documents

- **Record on Appeal Letter:** A letter from Kristi Chesley, an Administrative Legal Assistant for the South Carolina Department of Employment and Workforce (SCDEW), to Judge Milton Kimpson of the South Carolina Administrative Law Court. It is dated March 16, 2021, and states that the Record on Appeal and a Proof of Service are enclosed. An electronic copy was also sent to Mr. Goldman, the judge's clerk.
 - **Proof of Service:** A certification that the Record on Appeal was served on Jack Cohoon (Claimant Attorney) and Christopher Thomas (Employer Attorney) on March 16, 2021.
- **Certification:** A document from the SCDEW Legal Department, signed by Kristi Chesley, that certifies the attached documents are a "true and correct copy of the Record on Appeal" and the original decision of the Appellate Panel.
- **Index:** A list of the documents contained in the appeal record, with their corresponding page numbers in the full file. The documents are:
 - Appellate Panel Decision (issued January 20, 2021)
 - Initial Determination of Status as an Insured Worker
 - Fact Finding
 - Employer Reply
 - Determination of Claims Adjudicator
 - Claimant Appeal to the Appeal Tribunal
 - Notice of Appeal Tribunal Hearing
 - Transcript of Testimony
 - Agency Exhibit 1
 - Claimant Exhibit 1
 - Appeal Tribunal Decision (mailed November 30, 2020)
 - Claimant Appeal to the Appellate Panel
 - Notice of Appeal to the Appellate Panel
 - Claimant Attorney Request for Transcript
 - Denial of In Person Hearing Request
 - Written Argument of Claimant Attorney
 - Appellate Panel Decision
- **Notice of Mailing of Appellate Panel Decision:** A notice mailed on January 20, 2021, to James M. Harley. It informs him that the attached is the final decision of the SCDEW.
- **Appellate Panel Decision:** The decision, dated January 20, 2021, affirms the Appeal Tribunal's decision. It finds that James M. Harley is indefinitely disqualified from receiving benefits, effective May 3, 2020, because he voluntarily left employment without good cause attributable to his employment. **The decision was issued without oral argument due to the COVID-19 pandemic.**
- **Initial Determination of Status as an Insured Worker:** A document dated May 5, 2020, addressed to James M. Harley. It shows he is monetarily ineligible for state unemployment benefits with a weekly benefit amount of \$0.00, but may be eligible for federal Pandemic Unemployment Assistance (PUA). The form lists his employment with Bradshaw Automotive Group from August 26, 2019, through April 1, 2020.
- **Fact Finding Questions (Claimant):** A questionnaire completed by James M. Harley on May 4, 2020. He states his reason for separation was being "**forced to retire**" by Jeff



Plunkett, the General Sales Manager. He claims he was verbally warned for failing to meet new metrics, and that the final incident was on February 29, 2020, when Mr. Plunkett asked him to leave the dealership.

- **Fact Finding Questions (Employer):** A questionnaire completed by Coleece Posey Cochran, the Human Resources Manager, on May 13, 2020. The employer's reason for separation is listed as a "Quit". The response states Harley tried to rescind his resignation but the employer did not accept it. **The claimant gave written notice on January 31, 2020, and continued to work until February 29, 2020, receiving severance pay through April 1, 2020. The employer's reason for the quit was Harley wanting accommodations for PTSD and health issues, including bringing his own computer, which were not granted.**
- **Fax Cover Sheet and Employer Reply:** A fax cover sheet from Amy Kledzik, HR Assistant at Bradshaw Automotive Companies, dated May 7, 2020, transmitting information about James Harley's claim. **The attached form, dated May 5, 2020, indicates the claimant's reason for separation was "I was forced to retire". However, the employer marked "Voluntary Quit/Other Reason" and wrote, "Mr Harley voluntarily quit... He did rescind his resignation, however we accepted the resignation".**
- J. Michael Harley's Resignation Email

An email dated January 31, 2020, from J. Michael Harley to Coleece Posey Cochran. It states his desire to resign, effective February 29, 2020, citing a compelling desire to find work near his sons in the Midwest and his mother's upcoming surgery as reasons. It also mentions discussions with Jeff Plunkett in the previous two days as a reason for resigning and requests to continue working until the effective date.

- J. Michael Harley's Rescission Email

An email dated February 5, 2020, from J. Michael Harley to Coleece Posey Cochran, which rescinds his resignation. **It outlines his requests for reasonable accommodations related to his "conditions," including using his personal laptop with software from his former employer and school, and being managed by a trained manager who would be accommodating. The email also details issues with bullying and a hostile work environment.**

- **Appeal Tribunal Decision:** The decision mailed on November 30, 2020, affirmed the initial determination that the claimant voluntarily quit without good cause. The hearing officer found that even though the claimant attempted to rescind his resignation, there was no explicit confirmation from the employer that they accepted the rescission. **The decision notes the claimant's concerns about accommodations and bullying but ultimately concludes he voluntarily quit.**
- **Claimant's Appeal to the Appellate Panel:** A letter dated December 10, 2020, from Jack Cohoon, Mr. Harley's attorney, appealing the Appeal Tribunal's decision. The appeal argues that the decision was erroneous and that **Mr. Harley should have been found eligible for benefits under "compelling family circumstances". It also contends that**



the employer's failure to accommodate his disability and address bullying constituted good cause for quitting.

- **Notice of Appeal to the Appellate Panel:** A notice mailed on December 11, 2020, to James M. Harley and Bradshaw Automotive Group, confirming the appeal and stating that the case will be reviewed based on the record, though an in-person hearing could be requested.
- **Claimant's Attorney Written Argument:** A letter dated January 14, 2021, from Jack E. Cohoon to the Appellate Panel. **It provides a statement of facts and legal arguments, asserting that Mr. Harley was constructively discharged, that he legally rescinded his resignation before it was accepted, and that he had good cause to quit due to the employer's failure to accommodate his PTSD and address bullying. The argument also claims the hearing officer denied Mr. Harley a fair hearing by exhibiting bias and admitting evidence without sufficient notice.**

