

From: [Staley, Denesha](#)
To: [Court Of Appeals Filings](#)
Subject: FW: Designation of Matter and Initial Brief for James M. Harley vs. SCDEW and Bradshaw Automotive
Date: Monday, August 11, 2025 9:34:34 AM

From: J Michael Harley <jmichaelharley@gmail.com>
Sent: Monday, August 11, 2025 9:33 AM
To: Staley, Denesha <dstaley@sccourts.org>
Subject: Re: Designation of Matter and Initial Brief for James M. Harley vs. SCDEW and Bradshaw Automotive

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Ms. Staley,

I do apologize the Initial Brief and Designation of Matter did not attach to my email earlier this morning.

Thanks for your guidance a few minutes ago about binding, filing by ctapp@sccourts.org with a copy to you at dstaley@sccourts.org and service by US Mail to the other parties.

See below the contents:

Designation of Matter

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

Appellate Case No.: 2024-001795 Lower Court Case No.: 2021AL220047AP

1. **Nature of the Appeal:** This is an appeal from a final order of the South Carolina Administrative Law Court.
2. **Type of Case:** This is an administrative law matter concerning a denial of unemployment compensation benefits.
3. **Issues on Appeal:** The issues involve the lower court's legal conclusion that Appellant voluntarily quit his employment and its failure to apply the legal doctrines of rescinded resignation, constructive discharge, and eligibility for federal Pandemic Unemployment Assistance (PUA) under the CARES Act.

4. **Requested Relief:** Appellant requests that the Court of Appeals reverse the decision of the Administrative Law Court and remand with instructions to award unemployment benefits.

Initial Brief of Appellant

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

APPELLATE BRIEF OF APPELLANT

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

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- *Atkinson v. Serco, Inc.*, 658 F.3d 1230 (10th Cir. 2011)
- *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)

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

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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?
-

ARGUMENT

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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."

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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 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.

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

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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.

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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.

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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.

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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 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.

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

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In addition to the denial of accommodations, Mr. Harley endured ongoing workplace harassment from a supervisor and coworkers 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).

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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

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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

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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:

- **Sarah M. Gable** Ogletree Deakins Law Firm First Base Building 3243 Boyce

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- **Valerie McMellan**

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Do let me know if this draft raises any concerns administratively.

Best regards,

Mike

J. Michael Harley

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On Mon, Aug 11, 2025 at 5:39 AM J Michael Harley <jmichaelharley@gmail.com> wrote:

Dear Denisha,

I hope all is well with you.

Do I need to file the attached Designation of Matter and Initial Brief in person? I want to effectively file and serve this initial brief and designation of matter today.

Please advise.

I am Pro Se and any guidance you can provide would be most appreciated.

Thanks.

Best regards,

Mike

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