THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Case No. 2012-ALJ-22-0503-AP

Frederick Scott Pfeiffer,

Appellant,

v.

South Carolina Department of
Employment and Workforce,

Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. The decision of the Administrative Law Court that Pfeiffer was disqualified from employment benefits for 17 weeks following his termination from employment by order of the South Carolina Supreme Court due to the interim suspension of his license to practice law was affected by an error of law, namely that the interim suspension of a professional license is, by itself, cause sufficient to warrant disqualification where the employer testified that the Appellant was not terminated for cause and where there is no evidence in the record to demonstrate any cause other than suspension of the license.

2. The decision of the Administrative Law Court that Pfeiffer was disqualified from employment benefits for 17 weeks following his termination from employment by order of the South Carolina Supreme Court due to the interim suspension of his license to practice law was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

3. The decision of the Administrative Law Court that Pfeiffer was disqualified from employment benefits for 17 weeks following his termination from employment by order of the South Carolina Supreme Court due to the interim suspension of his license to practice law was arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

RESPONDENT'S RESTATEMENT OF ISSUES ON APPEAL

1. DOES THE SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTS A FINDING THAT APPELLANT WAS DISCHARGED FOR CAUSE CONNECTED WITH HIS EMPLOYMENT?

2. PURSUANT TO RULE 220(c), SCACR, SHOULD THIS COURT AFFIRM THE ADMINISTRATIVE LAW COURT'S ORDER AS MODIFIED BECAUSE THE RECORD ON APPEAL SUPPORTS THE APPELLATE PANEL'S DECISION THAT APPELLANT WAS DISCHARGED FOR CAUSE, OTHER THAN MISCONDUCT, PURSUANT TO S.C. CODE ANN. § 41-35-120(2)(B), WHICH BECAME EFFECTIVE ON JUNE 18, 2012?

STATEMENT OF THE CASE

Appellant Frederick S. Pfeiffer filed an initial claim for unemployment benefits with Respondent South Carolina Department of Employment and Workforce ("SCDEW") on June 18, 2012. (ALC Record pp.5-12). Appellant's employer, Respondent Gleaton Wyatt Hewitt PA ("Law Firm"), responded to the claim on June 19, 2012. (ALC Record pp.13-15). The initial claim adjudication determined Appellant ineligible for benefits because he was an officer of the corporation. (ALC Record p.20). Appellant timely appealed from this initial determination on July 10, 2012. (ALC Record pp.22-25). A subsequent claim adjudication determined that Appellant was discharged for cause in connection with work, and therefore, he was disqualified from receiving benefits for 17 weeks, with a corresponding reduction in the maximum potential benefit amount, pursuant to S.C. Code Ann. § 41-35-120(2)(b) (Supp. 2012). (ALC Record p.26). Appellant timely appealed from this claim adjudication to the Appeal Tribunal. (ALC Record pp.27-28).

On August 12, 2012, a hearing was held on Appellant's claim. (ALC Record pp.30-45). In Decision No. 2012-A-13699, the Appeal Tribunal found Appellant was eligible for benefits, but had been discharged for cause other than misconduct. The Appeal Tribunal held Appellant disqualified from receiving benefits for 17 weeks. (ALC Record pp.57-59).

Appellant thereafter appealed to the SCDEW Appellate Panel. (ALC Record pp.60-63). The Appellate Panel affirmed the Appeal Tribunal's finding that Appellant was discharged for cause, other than misconduct, connected with the employment and

therefore affirmed Appellant's 17-week disqualification from benefits. (ALC Record pp.1-3, Decision No. 2012-P-2156).

Appellant appealed SCDEW's final decision to the Administrative Law Court (ALC). On May 17, 213, the ALC affirmed SCDEW's decision disqualifying Appellant from benefits for 17 weeks. (ALC Order dated May 17, 2013).

Appellant thereafter timely appealed to the Court of Appeals. After failing to timely file his initial brief and designation of matter, the Court of Appeals dismissed the appeal. (Court of Appeals Order dated July 29, 2013). However, upon Appellant's petition for rehearing, the Court reinstated the appeal on October 21, 2013. (Court of Appeals Order dated October 21, 2013).

FACTS

Appellant worked as an attorney with Respondent Gleaton Wyatt Hewitt PA ("the Law Firm") from February 1, 1999, until June 15, 2012. (ALC Record p.35). At the time of his termination, Appellant was the managing partner of the Law Firm.

On or about June 14, 2012, Appellant was indicted by the State Grand Jury for nine (9) counts of securities fraud and two (2) counts of criminal conspiracy.[1] As a result, the South Carolina Supreme Court placed him on interim suspension on June 15, 2012. (ALC Record p.24).

Due to the suspension of Appellant's law license, the Law Firm terminated Appellant from employment on June 15, 2012. (ALC Record p.25). Appellant filed online for unemployment benefits **on June 18, 2012.**[2] (ALC Record pp.5-12). Appellant explained on his claims application that he was discharged because his "[l]icense to practice law was suspended." (ALC Record p. 7). On June 19, 2012, the Law Firm

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[1] At the hearing on his unemployment claim, Appellant testified he was indicted for "allegedly aiding and abetting securities fraud. Well, not securities fraud, but a violation of the securities act." (ALC Record p.39, lines 17-18). In his brief, Appellant elaborates that he was:

> [I]ndicted by the South Carolina Attorney General for allegedly "aiding and abetting" a former client's violation of the South Carolina Securities Act, in that from 2002-2006, [Appellant] reviewed and opined on Prospectuses issued by the client that were registered by qualification with the South Carolina Attorney General's Office and that allegedly omitted certain facts deemed material by the Attorney General.

(App.Br.p.6).

SCDEW asks that this Court take judicial notice of the South Carolina Supreme Court's Disciplinary Order No. 2012-06-15-01 which states that Appellant was indicted on nine (9) counts of securities fraud and two (2) counts of criminal conspiracy. *See* http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2012-06-15-01 (last accessed November 20, 2013).

[2] The record clearly reflects that Appellant filed his Initial Claims Application on Monday, June 18, 2012 at 4:01 p.m. (ALC Record pp.5-12). Because benefits run weekly from Sunday to Saturday, the claim effective date is June 17, 2012. (ALC Record, p.47).

responded to Appellant's claims application stating that it was forced to discharge Appellant because of his interim suspension from the practice of law. (ALC Record p.15).

The claims adjudicator found that Appellant was discharged for cause, specifically for "being unable to provide authorized licensing that was required for the performance of your duties.... Failing to obtain or maintain the required licensing for performing the duties for which you were hired constitutes discharge for cause in connection with the work under the South Carolina Code, Section 41-35-120(b)." (ALC Record p.47). This determination resulted in Appellant being disqualified from benefits for 17 weeks. Appellant timely appealed this adjudication to the Appeal Tribunal. (ALC Record p.27).

At the administrative hearing before the Appeal Tribunal, the Law Firm's witness, Ralph Gleaton, testified that the Law Firm discharged Appellant in compliance with the Supreme Court's Order. (ALC Record pp.35-36). Mr. Gleaton indicated he would have employed Appellant even as a clerk but for the fact that the Supreme Court's Order disallowed Appellant's employment in any capacity. (ALC Record p.37).

At the hearing, Appellant denied the criminal charges.[3] (ALC Record p.39, lines 15-20). Appellant acknowledged that as an attorney, he was required to maintain his license in order to practice law, and due to his suspension, he was "unable to perform [his] job duties." (ALC Record p.40, lines 1-8). Despite the suspension of his law license, Appellant maintained he was not discharged for cause connected to his work.

[3] SCDEW notes that Appellant on September 18, 2013 pled guilty to two counts of securities fraud and one felony count of conspiracy. *See* http://easley.patch.com/groups/police-and-fire/p/greenville-attorney-pleads-guilty-to-charges-related-to-easley-securities-fraud-case (last accessed November 20, 2013).

The Appeal Tribunal found that Appellant was discharged for cause, other than misconduct, connected with employment and thereby disqualified him from benefits for 17 weeks, pursuant to S.C. Code Ann. § 41-35-120(2)(b). (ALC Record pp.57-59).

The Appellate Panel agreed with the Appeal Tribunal and affirmed the 17-week disqualification from benefits. (ALC Record pp.1-3). The Appellate Panel explained that pursuant to S.C. Code Ann. § 41-35-120(2)(b), "cause, other than misconduct, connected with the employment ... may include unintentional violations of policy, an unintentional disregard for the standards of behavior the employer can rightfully expect of an employee, or carelessness or negligence of an employee." (ALC Record p.2).

Regarding Appellant's discharge due to his interim suspension, the Appellate Panel specifically found as follows:

> [Appellant's] failure to maintain his license to practice law by becoming subject to professional discipline by Order of the Supreme Court of South Carolina (Court) is sufficiently connected to his employment as the reason for separation. While the employer was willing to employ [Appellant] in some other capacity if permissible, the employer discharged [Appellant] to avoid any adverse effect of it business interests and fully comply with the Court's Order. [Appellant's] actions, though unintentional, constituted a disregard for the reasonable standard of behavior that the employer had the right to expect.

(ALC Record pp.2-3).

Therefore, the Appellate Panel disqualified Appellant for cause, other than misconduct, pursuant to S.C. Code Ann. § 41-35-120(2)(b) (Supp. 2012). (ALC Record p.3).

The ALC affirmed, but under the prior version of S.C. Code Ann. § 41-35-120(2)(b) (Supp. 2011). (ALC Order dated May 17, 2013). Despite the different statutory version used by the ALC, the ALC's ultimate conclusion was the same as the

Appellate Panel's, namely that Appellant was at fault for causing the separation in employment, thereby justifying a 17-week disqualification from unemployment benefits.

ARGUMENT

Standard of Review

SCDEW is an agency governed by the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding SCDEW's predecessor, the Employment Security Commission, subject to the APA). Under the APA:

> [A] reviewing tribunal may reverse or modify the decision of the agency where it is arbitrary or capricious or constitutes an abuse of discretion. Reviewing courts apply the substantial evidence rule, under which the agency's decision is upheld unless it is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record."

McEachern v. S.C. Emp. Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006) (footnotes and citations omitted). This is a very "narrow scope of review." *Id.* at 561, 635 S.E.2d at 649.

"Substantial evidence" is defined as:

> [S]omething less than the weight of the evidence; it is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action. The substantial evidence rule does not allow judicial fact-finding, or the substitution of judicial judgment for agency judgment.

Todd's Ice Cream, Inc. v. S.C. Emp. Sec. Comm'n, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984); *see also Friends of Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010) (substantial evidence is "evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency").

Furthermore, the reviewing court "may not substitute its judgment ... as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-610(B) (Supp. 2011). "The findings of the agency are presumed correct and will be set aside only if unsupported by substantial evidence." *Kearse v. State Health & Human Services Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995). The possibility of drawing two inconsistent conclusions from the evidence does not mean the agency's conclusion is unsupported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). Finally, the Appellant bears the burden "to prove convincingly that the agency's decision is unsupported by the evidence." *Id.*

In the instant case, SCDEW decided that Appellant was discharged for cause connected with his employment. Under this Court's narrow scope of review, it is clear the agency's ruling is supported by substantial evidence and the ALC correctly affirmed. Hence, this Court also should affirm.

1. <u>The substantial evidence in the Record supports a finding that Appellant was discharged for cause connected with his employment when his law license was suspended after being criminally indicted.</u>

In June 2012, Section 41-35-120(2) was amended by the South Carolina Legislature. *See* 2012 Act No. 247, effective June 18, 2012. As will be more fully argued *infra* in Argument 2, SCDEW believes that it properly applied the current statute to Appellant's case because he filed for benefits on June 18, 2012. The ALC, however, found that the former version of the statute applied to this case. The ALC held that "applying the Department's findings of fact ... yields the same result" regardless of the two somewhat different standards of disqualification for cause found in each version of

the statute. (ALC Order dated May 17, 2013, p.6). On the dispositive issue, therefore, the ALC decided that "the Appellate Panel did not err in determining that Appellant was discharged for cause." (ALC Order dated May 17, 2013, p.6).

In other words, the ALC concluded that substantial evidence in the record supports the Department's decision to impose a 17-week disqualification from benefits irrespective of which version of the statute was applied. This Court should affirm the ALC's conclusion.

Prior to the 2012 amendment, Section 41-35-120(2) permitted a disqualification from unemployment benefits when the Department found that the claimant had "been discharged for cause connected with his most recent work." S.C. Code Ann. § 41-35-120(2) (Supp. 2011). The statute further stated that "'[c]ause connected with the employment' as used herein shall require more than a failure in good performance of the employee as the result of inability or incapacity." *Id.* Cause connected with employment includes "the disregard of the standard of behavior which an employer can *rightfully expect* from an employee." *Mickens v. Southland Exch.-Joint Venture*, 305 S.C. 127, 130, 406 S.E.2d 363, 365 (1991) (quoting *Lee v. S.C. Employment Security Commission,* 277 S.C. 586, 291 S.E.2d 378 (1982)).

It is also significant to note that the overall unemployment compensation scheme was enacted for the benefit of persons unemployed through no fault of their own. *See Stone Mfg. Co. v. S.C. Emp. Sec. Comm'n*, 219 S.C. 239, 246, 64 S.E.2d 644, 646 (1951). Indeed, the public policy underlying South Carolina's unemployment benefits system was declared clearly by the Legislature as follows:

> The General Assembly therefore declares that in its considered judgment the public good and the general welfare of the citizens of this State require

> the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used **for the benefit of persons unemployed through no fault of their own**.

S.C. Code Ann. § 41-27-20 (1986) (emphasis added). "And it has been held that the word 'fault' as used in the declaration of policy is not limited to something that is blameworthy, culpable or wrong." *Stone Mfg. Co. v. S.C. Emp. Sec. Comm'n*, 219 S.C. at 246, 64 S.E.2d at 646.

Here, the ALC correctly found the evidence in the record showed that "Appellant's conduct related to his employment disregarded the standard of behavior that an employer had the right to expect by his involvement in activity that led to the interim suspension of his law license." (ALC Order dated May 17, 2013, pp.5-6). The ALC also properly recognized that the "maintenance of his license to practice law is required for employment in the job Appellant held."[4] (ALC Order dated May 17, 2013, p.6).

The evidence is undisputed that Appellant, a licensed attorney, was criminally indicted for charges related to securities fraud. It is clear the criminal indictment is connected with his most recent work. Appellant acknowledges that the conduct underlying the criminal charges involved his actions in counseling a client. Appellant was suspended from practicing law as a direct result of the indictment. Furthermore, Appellant testified at the hearing that as an attorney, he was required to maintain his license in order to practice law, and due to his suspension, he was "unable to perform [his] job duties." (ALC Record p.40, lines 1-8). Therefore, his disciplinary suspension is directly linked to his employment as an attorney.

[4] It is a felony to engage in the unauthorized practice law. *See* S.C. Code Ann. § 40-5-310.

The reasonable conclusion is that Appellant's discharge was connected to employment. The ALC's legal conclusion that Appellant's 17-week disqualification from unemployment benefits should therefore be affirmed by this Court.

Appellant raises several arguments as to why the ALC's Order should be reversed. Appellant's contentions, however, are without merit.

First, Appellant contends that the suspension of his license is insufficient to sustain a disqualification from benefits. He maintains that if "suspension of a professional license alone was enough to disqualify, the Legislature could have made that a specific category of disqualification." (App.Br.p.11). SCDEW agrees that the Legislature could have made this a separate category; however, simply because professional licensing is not listed in the statute does not mean this fact scenario is not properly captured by Section 41-35-120(2).

"The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons." *Faile v. S.C. Emp. Sec. Comm'n*, 267 S.C. 536, 540, 230 S.E.2d 219, 221-22 (1976). Here, it is clearly reasonable for SCDEW to decide Appellant was discharged for cause because his law license was suspended as a result of him being criminally indicted.

Furthermore, other states have held that a failure to maintain proper certification is justification for the denial of unemployment insurance benefits because the claimant is at fault. *See, e.g., Pisarek v. Com. of Pa., Unemployment Comp. Bd. of Review*, 532 A.2d 54, 56 (Pa. Commw. Ct. 1987) ("because Claimant failed to obtain the necessary [physician's assistant] certification, he was not qualified for employment as a physician's assistant. Thus, he is unemployed through his own fault."); *Claim of Di Clemente*, 207

A.D.2d 945, 616 N.Y.S.2d 678 (1994) ("substantial evidence supports the Board's conclusion that claimant lost his employment through misconduct by failing to renew his [emergency medical technician] certification when it was a requirement for his job").

When an attorney's license is suspended or revoked, thus requiring an employer to discharge the attorney, the State of New York considers this a "provoked discharge" which renders the claimant disqualified for benefits. *Goldenthal v. Levine*, 50 A.D.2d 658, 374 N.Y.S.2d 823, 824 (1975) ("the record does contain substantial evidence that the claimant had at some time engaged in conduct which he should have known might result in his being no longer employable as an attorney at law").

Accordingly, Appellant's contention that the suspension of his law license is not "enough" to warrant disqualification is meritless.

Appellant also suggests that because the Law Firm's witness testified he was not terminated for "cause" and he would have kept him employed if he could, the Appellate Panel was wrong to impose a disqualification and this was clearly erroneous in view of the substantial evidence in the record. Yet, it is the Appellate Panel that has the duty to decide appeals in unemployment cases, and the Employer's testimony is not conclusive on the issues. *See* S.C. Code 41-29-300(A) (Supp. 2012) (the purpose of the Appellate Panel is to "hear and decide appeals").

Appellant also appears to argue there is insufficient evidence showing that he "engaged in any behavior that constituted a disregard for the reasonable standard of behavior that the employer had a right to expect." (App.Br.p.14). Appellant's argument is tantamount to this: Because Appellant denied the wrongdoing alleged in the indictment, and the Law Firm believed the charges to be baseless, the Appellate Panel

could not find he was discharged for cause. As discussed above, however, Appellant's underlying conduct which resulted in both the criminal indictment and the subsequent suspension of his law license is directly connected to his employment because the conduct involved Appellant acting in his capacity as a lawyer to his client.

Finally, Appellant maintains the Appellate Panel's decision was arbitrary and capricious or characterized by an abuse of discretion. "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985).

It was neither arbitrary nor capricious for the Appellate Panel to determine that Appellant's discharge disqualified him from unemployment benefits. The Appellate Panel had a rational basis to decide to disqualify Appellant because it was his own conduct that resulted in criminal charges and then the suspension of his law license. There are no "cogent reasons" to overrule the Agency's determination in this case. *Faile*, 267 S.C. at 540, 230 S.E.2d 222.

In sum, there is substantial competent evidence to support the ALC's decision that Appellant was discharged for cause. Put simply, Appellant has not satisfied his burden "to prove convincingly that the agency's decision is unsupported by the evidence." *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). The ALC's decision is not erroneous, and therefore, the 17-week disqualification should be affirmed.

2. **Pursuant to Rule 220(c), SCACR, this Court should affirm the Administrative Law Court's Order as modified because the record on appeal supports the appellate panel's decision that Appellant was discharged for cause, other than misconduct, thereby supporting appellant's 17-week disqualification from unemployment benefits, pursuant to S.C. Code Ann. § 41-35-120(2)(B), which became effective on June 18, 2012.**

In 2012, Section 41-35-120(2) was amended by the South Carolina Legislature, and the amendment became effective on June 18, 2012. *See* 2012 S.C. Act No. 247.[5] SCDEW correctly applied the amended version of South Carolina Code Section 41-35-120(2) because Appellant filed for unemployment benefits on June 18, 2012, which coincided with the effective date of the statutory change. Therefore, the Court should affirm the ALC's decision as modified.

"A claimant for unemployment compensation has no vested right in the mode and manner of computing benefits in effect at the time of his or her discharge or loss of employment." 76 Am. Jur. 2d *Unemployment Compensation* § 44. Instead, **the date of filing** the unemployment claim is generally the date which determines the law to be applied. *See, e.g., Claim of Waterman*, 285 A.D. 1106, 139 N.Y.S.2d 529, 531 (App. Div. 1955) (unemployment claim was properly determined under the law as it existed at the time the claim was filed).

SCDEW began applying the version of the new law, effective on June 18, 2012, to all unemployment claims filed on that date or later. Therefore, the ALC inaccurately suggested that SCDEW had retroactively applied the law in the instant case. (ALC Order dated May 17, 2013, pp.3-4). Indeed, this Court has already recognized that the correct version of South Carolina Code Section 41-35-120 to be applied is based on the date

[5] Section 4 of the Act states: "This act takes effect upon approval by the Governor," and the Governor signed the law on June 18, 2012.

when the claimant files the unemployment claim. *See AnMed Health v. S.C. Dep't of Emp. & Workforce*, 404 S.C. 224, 228 n.1, 743 S.E.2d 854, 856 n.1 (Ct. App. 2013) ("The current version of section 41-35-120 reads differently. **We are applying the version of the statute in effect when [the claimant] filed her unemployment benefits.**") (emphasis added).

The ALC stated in its Order that "Appellant was dismissed from employment **and filed his claim for benefits** prior to the effective date of the statutory amendment." (ALC Order dated May 17, 2013, p.4). While the record reflects that Appellant was separated from employment on June 15, 2012, the record does not support the ALC's statement that Appellant filed for benefits prior to June 18, 2012. The Initial Claims Application filed by Appellant has a date/time stamp of "6/18/2012 4:01:31 PM" on the footer of all eight pages of the application. (ALC Record, pp.5-12).

In the instant case, SCDEW appropriately applied the disqualification known as "cause other than misconduct" under S.C. Code Ann. § 41-35-120(2)(b) (Supp. 2012), and the ALC improperly relied on the prior law on cause connected to employment found in S.C. Code Ann. § 41-35-120(2) (Supp. 2011).

As the ALC recognized, however, this does not alter the outcome in this case: Appellant's 17-week disqualification should still be affirmed.

The statute amended in 2012 provides that if SCDEW finds that an unemployment insurance claimant has been discharged "for cause, other than misconduct, as defined in item (2)(a), connected with his most recent work," then the claimant will be partially disqualified from receiving benefits. S.C. Code Ann. § 41-35-120(2)(b) (Supp. 2012). When a claimant is found to have been discharged for cause,

other than misconduct, SCDEW determines the length of the claimant's disqualification based on the "seriousness of the cause for discharge." *Id.*

Discharge for "cause, other than misconduct," is a new term of art under South Carolina unemployment law. Misconduct is now expressly defined as follows:

> "Misconduct" is limited to conduct evincing such wilfull and wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in the carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of an employer's interests or of the employee's duties and obligations to his employer.

S.C. Code Ann. § 41-35-120(2)(a) (Supp. 2012).

"Cause other than misconduct" encompasses conduct not rising to the level of misconduct defined Section 41-35-120(2)(a), but still attributable to fault of the claimant and connected with employment. *See* § 41-35-120(2)(b). Moreover, as discussed above, the public policy underlying the State's unemployment system is that only those who are "unemployed through no fault of their own" are entitled to benefits. *See* S.C. Code Ann. § 41-27-20 (1986). Indeed, a condition of eligibility for unemployment benefits is that the claimant has been "separated, through no fault of his own." S.C. Code Ann. § 41-35-110(5) (Supp. 2012).

Therefore, in order for there to be a finding of "cause other than misconduct," the claimant must be at fault to some degree in bringing about the separation of his employment. *See* §§ 41-27-20, 41-35-110, & 41-35-120(2)(b). As the Appellate Panel noted, examples of cause other than misconduct may include "unintentional violations of policy, an unintentional disregard for the standards of behavior the employer can

rightfully expect of an employee, or carelessness or negligence of an employee." (ALC Record p.2).

Turning to the instant case, substantial evidence supports the Appellate Panel's decision that Appellant was discharged for cause, other than misconduct, connected with his employment at the Law Firm.

Appellant, a licensed attorney, was criminally indicted for numerous securities fraud charges. Because Appellant acknowledges that the conduct underlying the criminal charges involved his actions in counseling a client, it is clear the indictment is connected with his most recent work. As a direct result of the indictment, Appellant was suspended from practicing law. His disciplinary suspension is inextricably linked with his employment as an attorney. In other words, Appellant cannot escape the fact that his own actions led to his law license being suspended. Based on these facts, the Appellate Panel correctly determined that Appellant's actions constituted a disregard for the reasonable standard of behavior the Law Firm had a right to expect, and this conduct amounts to "cause other than misconduct" pursuant to Section 41-35-120(2)(b).[6]

Accordingly, the Court should affirm the ALC's Order as modified to reflect that Appellant's 17-week disqualification from benefits was imposed under S.C. Code Ann. § 41-35-120(2)(b) (Supp. 2012).

[6] The Appellate Panel implicitly decided that Appellant did not deliberately disregard the employer's standards, because otherwise it would have completely disqualified Appellant for discharge due to misconduct, under S.C. Code Ann. § 41-35-120(2)(a) (Supp. 2012).

CONCLUSION

For the reasons discussed above, this Court should affirm the ALC's Order which affirmed the SCDEW Appellate Panel Decision No. 2012-P-2156 holding Appellant partially disqualified for benefit for 17 weeks.

Respectfully submitted,

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November 20, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2013-001230

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South Carolina Department of
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PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter of Respondent SC DEW, on Appellant Frederick Scott Pfeiffer depositing a copy of it in the United States Mail, postage prepaid, on November 20, 2013, to his address of record, Frederick Scott Pfeiffer, 214 Loblolly Lane, Greenville, SC 29607. A copy has also been sent to the former employer addressed to Mr. Ralph Gleaton, 935 S. Main Street, Suite 203, Greenville, SC 29601

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