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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

ALC Case No. 21-ALJ-22-0047-AP

James M. Harley, Appellant,

v.

South Carolina Department of Employment and Workforce, and Bradshaw Automotive Group.
Inc., Respondents.

Appellate Case No. 2024-001795

RECORD ON APPEAL

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P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



MAR 17 2021

Henry McMaster
Governor

G. Daniel Ellzey
Executive Director

SCANNED

P.O. Box 8597
Columbia, South Carolina 29202
(803) 737-0395
FAX (803) 737-0124

March 16, 2021

The Honorable Milton Kimpson
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: James Harley v. SCDEW and Bradshaw Automotive Group
Case No: 21-ALJ-22-0047-AP

Dear Judge Kimpson:

Enclosed is the Record on Appeal in the above referenced case. Also enclosed is a Proof of Service to the other parties. An electronic copy of the Record was sent by email to your clerk, Mr. Goldman, today.

With kind regards, I am

Sincerely Yours,

Kristi Chesley
Administrative Legal Assistant for
Paul Famolari
Attorney for South Carolina Department of
Employment and Workforce

COAINED

MAR 17 2021

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James Harley,	)	Docket No. 21-ALJ-22-0047-AP
Appellant,	)	
	)	RECORD ON APPEAL
vs.	)	
	)	
South Carolina Department of	)	
Employment and Workforce and	)	
Bradshaw Automotive Group,	)	
Respondent(s),	)	
_____	)	

APPEAL FROM SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT
AND WORKFORCE APPELLATE
PANEL

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Employer Attorney

**THE SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
) CERTIFICATION
COUNTY OF RICHLAND)

The South Carolina Department of Employment and Workforce, by its Legal Department, hereby certifies that the attached hereto is a true and correct copy of the Record on Appeal in the matter of James Harley v. SCDEW and Bradshaw Automotive Group together with a true and correct copy of the original decision of the Appellate Panel therein.

**THE SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**

Kristi Chesley
Kristi Chesley, Administrative Legal Assistant

Columbia, South Carolina

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South Carolina
Department of Employment and Workforce



15141032

01/20/2021

JAMES M HARLEY
238 Woods Rd
Greer SC 29650-3238

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the mailing date of SCDEW's final decision (see the mailing date above).

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia SC 29201**

Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice law in South Carolina.

South Carolina
Department of Employment and Workforce



15141032

Office of Appellate Panel

JAMES M HARLEY)
238 WOODS RD)
GREER SC 29650)
Claimant SSN: XXX-XX-XXXX)
Claimant ID: XXXXXXXX)

APPELLATE PANEL
DECISION

BRADSHAW AUTOMOTIVE GROUP)
INC)
P O BOX 2269)
GREER SC 29652-2269)

Appellant: JAMES M HARLEY

Appeal Number: 20-HA-001715

Appellant: Claimant

The Claimant filed for unemployment benefits on May 4, 2020. The claims adjudicator's determination mailed July 16, 2020, held the Claimant indefinitely disqualified from benefits, upon finding he voluntarily left work without good cause attributable to the employment. The Claimant appealed to the Appeal Tribunal. After an evidentiary hearing, the Appeal Tribunal affirmed the determination. The Claimant appealed the Appeal Tribunal decision on December 10, 2020 to the Appellate Panel.

In light of the COVID-19 pandemic and pursuant to S.C. Code Ann. § 41-35-710, the Appellate Panel issued this decision upon review of the record on appeal without oral argument. We affirm the Appeal Tribunal decision. The Claimant is indefinitely disqualified from receiving benefits effective May 3, 2020, upon finding he voluntarily left employment without good cause attributable to the employment.

BACKGROUND

The Claimant worked for the Employer from August 26, 2019, through February 29, 2020, most recently as a sales consultant. The Claimant was separated from employment because he submitted a resignation notice to be effective February 29, 2020. At the evidentiary hearing before the Appeal Tribunal the Claimant cited concerns over the Employer's denial of his workplace accommodations and the working environment as the reasons why he submitted the resignation

South Carolina
Department of Employment and Workforce

notice on January 31, 2020. With regard to the workplace accommodations, the Claimant has a medical condition and he had requested to use his personal laptop to complete his work duties. The Claimant noted he had raised this issue with his trainer and management as early as October 2019, but his request was denied. The Claimant renewed this concern with the human resources manager (HR manager) on January 30, 2020, by letter. With regard to the working environment, the Claimant asserted there were co-workers who would bully him or harass him in front of customers. The Claimant noted he had ongoing concerns about the working environment, and in the January 30, 2020 letter to the HR manager he referenced concerns with a particular employee. The following day, the Claimant submitted his letter of resignation. In the Claimant's resignation letter, he noted a personal desire to relocate to the Midwest to be near family and he referenced his discussions in the previous two days with the general sales manager as the reason for his resignation. In the notice, the Claimant agreed to work until February 29, 2020.

On February 5, 2020, the Claimant submitted another letter to the HR manager which indicated his intent to rescind his resignation notice. In the letter the Claimant also referenced his accommodation request to use his personal laptop and software to complete some of his work duties. In a meeting with the Claimant on February 5, 2020, the HR manager told the Claimant the Employer was accepting the resignation as final. The Claimant believed the Employer could not accept the resignation notice after he attempted to rescind the notice, and assumed since he continued working through the notice period, the Employer had implicitly agreed to allow him to rescind the resignation notice. The Claimant noted he wanted to continue his employment even though the Employer continued to deny his request for accommodations. The general sales manager noted he regularly reminded the Claimant the Employer was moving forward with the separation and the Claimant's last day would be February 29, 2020. The Employer allowed the Claimant to continue working through February 29, 2020, and paid the Claimant severance through April 1, 2020.

The general sales manager was aware of the Claimant's accommodation request, but noted as a general business practice the Employer did not allow employees to have access to business software on their personal laptops. The general sales manager was not aware of any specific request from the Claimant regarding specific computer software or features the Claimant was requesting to help him complete his work duties. The general sales manager also noted the Claimant had not addressed any concerns about the working environment until around the time of the resignation notice. The Employer conducted an investigation and determined the Claimant had not been bullied or harassed. The general sales manager noted if the Claimant was dissatisfied with the response from management and HR regarding his accommodation requests or the issues with the co-workers, he could have addressed his concerns up the chain of command which included the general manager and the owner. There was continuing work available to the Claimant when he submitted his resignation notice.

FINDINGS

S.C. Code Ann. § 41-35-120(1) requires an indefinite disqualification from benefits when the Department finds the claimant left work voluntarily without good cause. The disqualification

South Carolina
Department of Employment and Workforce

continues until the claimant returns to work and earns eight times the weekly benefit amount of the claim in covered employment.

"Good cause" refers to a material, substantial change in the conditions of employment, or other circumstances directly attributable to the employment, which would cause a reasonable person to become totally unemployed rather than continue working.

The record establishes the Claimant voluntarily resigned his employment when he initially offered his resignation notice on January 31, 2020. By doing so, the Claimant initiated the severing of the employment relationship. Although the Claimant later attempted to rescind his resignation notice, the Employer was under no obligation to allow him to rescind the notice or continue the employment relationship. Moreover, he had received specific communication from the HR manager the resignation notice was accepted as final. Regarding the Claimant's concerns related to the accommodation request and working environment, the record indicates the Claimant had only escalated his concerns to HR on January 30, 2020, one day before submitting his resignation notice. The Claimant did not allow the Employer an adequate opportunity to address his working environment concerns and his request for reasonable workplace accommodations before he offered his resignation notice. Furthermore, when the Claimant desired to continue his employment and attempted to rescind his resignation notice, there had been no change to management's denial of the Claimant's request to use his personal laptop for his work duties. Yet the Claimant was willing to continue working, had the Employer rescinded the resignation notice. Given the totality of the situation at the time of the Claimant's separation, we do not find the circumstances rise to the level that a reasonable person would become totally unemployed rather than continue working. Therefore, we find the Claimant voluntarily left work without good cause attributable to the employment.

The Claimant's counsel argues the hearing officer's conduct was unprofessional and biased. Upon careful review of the record, we find the hearing officer allowed the Claimant a full and fair opportunity to present his case, and conducted the hearing with impartiality. We further find the hearing officer appropriately questioned the parties on the specific details of the Claimant's separation and did not err in the administration of the case. Counsel further contends he was denied an opportunity to review physical copies of the evidence submitted by the Employer in connection with this claim for benefits; however, the Employer did not proffer any exhibits into the record. As such, counsel's evidentiary argument is moot.

South Carolina
Department of Employment and Workforce

DECISION

The Appeal Tribunal decision mailed November 30, 2020, is affirmed. The Claimant is indefinitely disqualified from receiving benefits effective May 3, 2020, upon finding he voluntarily left work without good cause attributable to the employment.

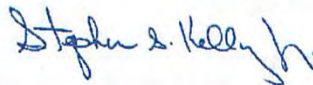
**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE
APPELLATE PANEL**



E.B. AYERS



TIM DANGERFIELD



STEPHEN S. KELLY, JR.

Date Mailed: 01/20/2021



South Carolina
Department of Employment and Workforce



8800591

JAMES M HARLEY
238 WOODS RD
GREER SC 29650-3238

Claim ID: 1569123
Claimant ID: [REDACTED]
SSN: xxx-xx-xxxx
SC Works Center: Greenville
Effective Date: 05/03/2020
Date Filed: 05/04/2020
Date Prepared: 05/05/2020

Initial Determination of Status as an Insured Worker

***BENEFITS YOU MAY BE ELIGIBLE FOR**

WEEKLY BENEFIT AMOUNT	\$0.00
MAXIMUM TOTAL BENEFITS	\$0.00
BENEFIT YEAR ENDS	05/01/2021

SEE ATTACHED FOR CLAIMANT INFORMATION

EMPLOYMENT RECORD		STANDARD BASE PERIOD QUARTERLY EARNINGS			
EMPLOYER	ACCOUNT NO.	*QTR / YEAR	*QTR / YEAR	*QTR / YEAR	*QTR / YEAR
BRADSHAW AUTOMOTIVE GROUP INC		1/2019	2/2019	3/2019	4/2019
		\$0.00	\$0.00	\$555.60	\$6,798.07
STANDARD BASE QUARTER TOTAL		\$0.00	\$0.00	\$555.60	\$6,798.07

We have received your application for unemployment and your claim is being processed.
If your weekly and maximum benefit amount indicates \$0.00, you are monetarily ineligible for state UI benefits. However, you may be eligible for federal Pandemic Unemployment Assistance (PUA). DEW will contact you directly when PUA benefits are available.

NOTE: The weekly benefit amount on this form reflects your **GROSS PAYMENT EACH WEEK BEFORE ANY DEDUCTIONS** are made. Possible deductions to this amount include, but are not limited to, tax withholding, pension, child support, offset of overpayment, and part-time earnings. **ALSO, YOUR FINAL PAYMENT MAY BE LESS THAN THE FULL WEEKLY BENEFIT AMOUNT BASED ON THE BALANCE REMAINING IN YOUR ACCOUNT.**

*QTR.

1. JAN, FEB, MAR 3. JULY, AUG, SEPT
2. APR, MAY, JUNE 4. OCT, NOV, DEC



South Carolina
Department of Employment and Workforce



8800591

INFORMATION FOR CLAIMANT

This is a monetary determination of your claim for benefits based on wages paid during your Base Period. This determination shows your Base Period Employment Record. It lists your covered employer(s) that paid you wages, their account number, and the wages paid to you by quarter and year during the base period of your claim. The total amount of wages paid to you by quarter in the base period is shown beside Base Quarter Total. This determination covers only the monetary portion of your claim. Another determination will be issued that states if you are eligible to receive benefits. It will be based on the reason for separation from your most recent bona fide employer.

Under Benefits You May Be Eligible For, your Weekly Benefit Amount, Maximum Benefit Amount, and the date your Benefit Year Ends are shown.

BASE PERIOD: The first four of the last five completed calendar quarters prior to the effective date of your initial claim. If you earned wages in covered employment not shown on this form, you may request a redetermination online or by contacting a claims representative by calling 1-866-831-1724.

If the monetary determination was invalid using base period wages, this determination may show wages and employment from an Alternate Base Period.

ALTERNATE BASE PERIOD: The first four most recently completed calendar quarters prior to the effective date of your initial claim. If you earned wages in covered employment not shown on the face of this form, contact the claims representative by calling 1-866-831-1724.

HIGH QUARTER: The quarter in your Base Period during which wages paid to you for insured were highest.

WEEKLY BENEFIT AMOUNT: The amount of benefits you may receive weekly, if unemployed and otherwise eligible, shall be one-half of the average weekly wage in the high quarter of your base period but shall not be less than \$42.00 nor greater than the maximum weekly benefit amount as determined by the Department or before June 30 of each year for benefit years on or after July 1 of such current calendar year, and prior to July 1 of the succeeding calendar year as provided in Section 41 - 35 - 40 of the Law.

MAXIMUM POTENTIAL BENEFITS: The greatest amount of compensation that you may receive during your benefit year.

BENEFIT YEAR: The one (1) year period following the effective date at your initial Claim. To establish a Benefit Year in accordance with the provisions of the Law, you must meet the following wage requirements:

1. You were paid at least \$1,092.00 for issued work during the high quarter of your alternate base period;
2. You were paid at least \$4,455.00 for issued work during your base period and
3. The total of your base period wages for issued work equal or exceeded one and one-half times the total of your high quarter wages.

AVERAGE WEEKLY WAGE: Shall be determined by dividing the high quarter wage earnings by 13 weeks.

REDETERMINATION RIGHTS: You have the right to request a correction if you do not agree that this determination is correct. Your request for redetermination may be made online by logging into your My Benefits portal account or by contacting a claims representative by phone by dialing 1-866-831-1724. No change can be made on this determination after one year from the date of this notice.

IF YOU NEED TO UPDATE YOUR ADDRESS OR TELEPHONE NUMBER, PLEASE VISIT dew.sc.gov.

EXAMPLE OF COMPUTATION OF BENEFITS

Maximum Potential Benefits:			
Your maximum total benefit amount for this benefit year is the lesser of			
Higher Quarter Wages	\$	1092.00	1. Twenty (20) times you Weekly Benefit Amount, or
Base Period Wages	\$	4455.00	2. One-third (1/3) of your total Base Period Wages as shown on this
Average Weekly Wage	\$1092.00 divided by 13 =	\$ 84.00	determination.
Weekly Benefit Amount	\$84.00 divided by 2 =	\$ 42.00	(1) 20 X \$42.00 = \$840.00 (2) 1/3 of \$4455.00 = \$1485.00
Maximum Benefits would be \$ since that amount is less than \$1485.00			



South Carolina
Department of Employment and Workforce



8770186

Claimant Name: JAMES M HARLEY

Employer Name: BRADSHAW AUTOMOTIVE
GROUP INC

Claimant Party ID: [REDACTED]

Issue ID: 6051174

User ID: I

Fact Finding Questions	Responses
I certify that the information I am submitting to the South Carolina Department of Employment and Workforce is true and accurate to the best of my knowledge. I understand any individual found to have submitted fraudulent information to obtain Unemployment Benefits may be subject to penalties of law - up to and including FELONY prosecution. I certify, understand, and acknowledge.	Yes
IMPORTANT INSTRUCTIONS: Please be prepared to provide the following information as part of the fact finding. This information and/or documentation will be used to make a determination for benefits on your claim. -Approximate dates of incidents and/or situations relating to the separation. -The name and job title of those individuals involved in the separation incident. -The name and job title of those individuals that you may have discussed the separation with. -Dates of employment, work schedule, and/or rate of pay. -Documentation relating to the separation. This could be doctor's notes, settlement agreements, hire agreements, PCS orders, etc. -You will be asked to provide information regarding your separation from BRADSHAW AUTOMOTIVE GROUP INC You	Yes

South Carolina
Department of Employment and Workforce

indicated that your separation from BRADSHAW AUTOMOTIVE GROUP INC was due to forced to retire. Is this the correct separation reason?		
What date was your first day of work?	08/26/2019	
What date was your last day of work?	04/01/2020	
What date did your retirement begin?	04/01/2020	
Who forced you to retire? Name:	Jeff Plunkett	
Job Title:	General Sales Manager	
Did your being forced to retire have a financial impact on the employer?	Yes	
What was the financial impact?	More sales available for other sales consultants	
Did you receive any warnings?	Yes	
How were you warned on 1/10/20?	Verbally	
Who warned you? Name:	Jefferey Plunkett	
Why were you warned?	While I met my minimum sales number he claimed I failed to meet some new metrics	
Did you violate any company policies?	No	

South Carolina
Department of Employment and Workforce

Was there a final incident that forced you to retire?	Yes	
What date was the final incident?	02/29/2020	
What was the final incident?	Mr. Plunkett asked that I leave the dealership and not return on this last Saturday but he paid me a salary through April 1st, 2020	
What is the reason for the two or more week delay between the date of final incident and being forced to retire?	A transition period	
What date were you informed of the forced retirement?	02/29/2020	
What date was the retirement originally planned to start?	12/31/2021	
Do you know why you ended up retiring earlier than the planned start date?	No	
How were you informed of the retirement?	Verbally	
Were you offered another position instead of having to retire?	No	
Do you know why you were forced to retire?	No	

By submitting this form, you confirm these are your own answers to the best of your knowledge.

Date Completed: May 04, 2020 03:43 PM



South Carolina
Department of Employment and Workforce



9218999

Claimant Name:

Employer Name: BRADSHAW AUTOMOTIVE
GROUP INC

Claimant Party ID: [REDACTED]

Issue ID: 6051174

User ID: B

Fact Finding Questions

Responses

I certify that the information I am submitting to the South Carolina Department of Employment and Workforce is true and accurate to the best of my knowledge. I understand any individual found to have submitted fraudulent information in regards to Unemployment Benefits may be subject to penalties of law - up to and including FELONY prosecution. I certify, understand, and acknowledge.

Yes

IMPORTANT INSTRUCTIONS:
Please be prepared to provide the following information as part of the fact finding. This information and/or documentation will be used to make a determination for benefits on this claim. The employer indicated the reason that the claimant separated was due to forced to retire. Is this the correct separation reason?

No

What is the reason the claimant separated?

Quit

What caused the claimant to quit?

General reasons, all other

Has the employer paid the claimant at least \$2,608.00 during all terms of employment?

Yes

South Carolina
Department of Employment and Workforce

Is the employer paying or will the employer pay the claimant a pension and/or retirement pay?	No	
Name:	Coleece Posey Cochran	
Job Title:	Human Resources Manager	
Phone Number:	(864) 527-2579	
Provide an e-mail address for the primary contact.	cpcochran@bradshawauto.com	
What date was the claimant's first day of work?	08/26/2019	
What date was the claimant's last day of work?	04/01/2020	
What date was the claimant's date of separation?	04/01/2020	
Is the employer aware of a final incident that caused the claimant to quit?	No	
Does the employer know why the claimant quit?	Yes	
Why did the claimant quit?	He tried to rescind his resignation but we did not accept the rescinded resignation; we accepted the resignation.	
Did the claimant contact the employer to find a better solution than quitting the job?	Yes	
What date was the contact?	02/05/2020	

South Carolina
Department of Employment and Workforce

What was the outcome of the contact?	We accepted his resignation	
Did the claimant give a resignation notice to the employer?	Yes	
What date did the claimant give notice to the employer?	01/31/2020	
What date did the claimant say the last day of work would be?	02/29/2020	
Was there a reason the claimant continued to work after the date given in the notice?	Yes	
Why did the claimant continue to work after last day given in the notice?	We actually paid him a severance for March 2020. His last day was 2/29/2020 and then he was paid for the month of March and termed 4/1/2020	
How did the claimant provide the notice?	In writing	
Did the claimant provide a reason for quitting in the notice?	Yes	
What reason did the claimant give the employer for quitting?	he wanted accommodation for his PTSD and health issues. He did not work to with a Manager and wanted to bring his own computer in. Neither of these request could be given	

By submitting this form, you confirm these are your own answers to the best of your knowledge.

Date Completed: May 13, 2020 12:48 PM

May. 7. 2020 4:26PM BRADSHAW AUTOMOTIVE No. 3659 P. 1/5

**BRADSHAW**
Automotive Companies**Bradshaw Automotive Companies**
14000 E. Wade Hampton Boulevard
Greer, SC 29651**To** SC DEW**Fax number** 864-370-1376**From:** Amy Kledzik**Fax number:** 864-662-4102**Date** 05/07/2020**Regarding:** James Harley/ Claimant ID [REDACTED]**Phone number for follow-up:** 864-662-4108**Number of Pages Including Cover** / 5

RE: James Harley

See attached Information

Thank you,

Amy Kledzik

HR Assistant

Bradshaw Automotive Companies



May. 7. 2020 4:26PM

BRADSHAW AUTOMOTIVE

South Carolina

Department of Employment and Workforce

No. 3659

P. 2/5

23254



Please return to:
SC DEW
PO BOX 1477
COLUMBIA SC 29202
Fax: 864-370-1376



8767851



Claimant's Name: JAMES M HARLEY

Name Worked Under:

Employer's Account #:

Employer's Name & Address:

BRADSHAW AUTOMOTIVE GROUP INC

P O BOX 2269

GREER SC 29652-2269

SS# [REDACTED] Claimant ID: [REDACTED]

Date Mailed: 05/05/2020

Return with in 10 days

of the above date to:

Fax Number: 864-370-1376

BYE: 05/01/2021

This person has filed a claim for Unemployment Insurance Benefits and named you as a previous employer. Please select the reason this person no longer works for you and answer the questions that follow so that a determination can be made on eligibility for benefits. If you reply by letter, fax, or email, you must include all information requested, as well as the claimant's name and social security number. For instructions about responding by email, please visit the agency website at www.dew.sc.gov. YOU WILL RECEIVE A DETERMINATION ON THIS CLAIM ONLY IF IT IS FOUND THAT YOU ARE THE BONA FIDE AND/OR CHARGEABLE EMPLOYER.

☒ CLAIMANT'S Reason for Separation: I was forced to retire

SEPARATION INFORMATION: Please check the explanation below that applies and answer the questions that are related to that section.

☐ LACK OF WORK: (NO ADDITIONAL WRITTEN EXPLANATION IS NECESSARY.)

☐ DISCHARGE:

When was the claimant discharged? _____

What was the reason for the discharge? _____

Does your company have a policy regarding this reason for discharge? ☐ Yes ☐ No

If Yes, what is your company policy? _____

May. 7. 2020 4:26PM BRADSHAW AUTOMOTIVE
South Carolina
Department of Employment and Workforce

No. 3659 P. 3/5

23285

Had the claimant been warned? ☐ Yes ☐ No

If Yes, provide dates, reasons for warnings, who gave the warnings, and how the warnings were communicated:
Please attach copies of any written warnings.

Date of the final incident:

What was the final incident that caused the discharge?

☒ VOLUNTARY QUIT/OTHER REASON:

Did the claimant quit in lieu of termination? ☐ Yes ☒ No

If Yes, please complete the discharge portion of the form.

If No, why did the claimant quit?

Mr Harley voluntarily quit. Please see
attached email. He did rescind his resignation.
However we accepted the resignation.

Explain the employer's understanding of the reason the claimant left: See attached email.

☐ STILL WORKING:

What were the hours agreed upon when the claimant was hired to work and why were the hours reduced?

May. 7. 2020 4:27PM

BRADSHAW AUTOMOTIVE

No. 3659 P. 4/5

23258

South Carolina

Department of Employment and Workforce

Has there been a reduction in the claimant hours worked? ☐ Yes ☐ No
If Yes, what are the hours the claimant is currently working?

Is the claimant accepting all work offered? ☐ Yes ☐ No

☐ VACATION SHUTDOWN:

What are the dates of your company's vacation policy?

☐ LAYOFF DUE TO CORONAVIRUS: (NO ADDITIONAL WRITTEN EXPLANATION IS NECESSARY.)☐ REDUCED HOURS DUE TO CORONAVIRUS: (NO ADDITIONAL WRITTEN EXPLANATION IS NECESSARY.)☐ OTHER SEPARATION DUE TO CORONAVIRUS:

Please explain below.

Information below required for all separations:

Dates of employment: From: 08-26-2019 To: 04-01-2020During all terms of employment, have you paid this claimant as much as: \$2,608.00 ☒ Yes ☐ No

If No, how much have you paid this claimant in all terms of employment? \$

Are you paying, or WILL YOU PAY, this claimant a pension or retirement pay? ☐ Yes ☒ No

If Yes, what amount? \$ PER

Did claimant contribute to pension plan? ☐ Yes ☒ No If Yes, what percent? %Is claimant receiving any paid leave? ☐ Yes ☒ NoEmployer name: BRADSHAW AUTOMOTIVE Account number: XXXXXXXXXX

GROUP INC

Employer Signature: *Amey D. [Signature]* Title: HR AssistantTelephone Number: 864-662-4108 Date: 05/07/2020

** FORM MUST BE SIGNED IN ORDER FOR INFORMATION TO BE CONSIDERED

May. 7. 2020 4:27PM BRADSHAW AUTOMOTIVE

No. 3659 P. 5/5

Coleece Posey Cochran

From: J Michael Harley <jmichaelharley@gmail.com>
Sent: Friday, January 31, 2020 7:46 AM
To: Coleece Posey Cochran
Subject: Resignation

January 31st, 2020

Dear Coleece,

After further thought and prayer, I would like to resign from my position in the Cadillac Showroom effective February 29th, 2020 conditional on an agreement allowing me to continue to work through February 29th, 2020 with full insurance benefits and to complete my SFE and VIN Solutions training. I love this work and hope that Bradshaw will support my desire to continue to work as a Sales Consultant. I would like to seek to continue this work at another dealership where I can have the issues addressed which are outlined below and in my discussions with Jeff Plunkett in the last two days. My son's lives have developed since joining you in a way compelling that I find work near them in the Midwest. I am praying my parents' lives will come under control in the meantime.

I do hope Bradshaw will honor this request to continue to work through February 29th, 2020 so I can deal with my Mother's major upcoming surgery on February 11th, 2020. I want to work to complete the many transactions I have under development with many sixty hours weeks of work or more at the dealership and at home since August 26th, 2020. Several of those transactions are up today including a CT5 test drive with a customer I have worked on for two months or more thus my request to delay our talk until next week. We should still have a talk.

Given the friendship, my Father and our family have with the Bradshaw family and the kindness offered to us over many years, I do not think it would be wise to do anything but resign. I hope that we can get to a position where we can part ways with no hard feelings on either side. This week I was personally dealing with two health issues: one urological and a root canal and need to focus on getting my work done so we do not lose the value put into numerous transactions. Please let me know if we can reschedule our meeting. You can reach me on my cellphone noted below.

Best regards,
Mike

J. Michael Harley
Cell: +1.847.809.9170



South Carolina
Department of Employment and Workforce



11522379

Original

JAMES M HARLEY
238 WOODS RD
GREER SC 29650-3238

Decision Date: 07/16/2020
Mailing Date: 07/16/2020
Effective Date: 05/03/2020
Type: QT02
Category: Relocation
Benefit Year Ends: 05/01/2021
RE: BRADSHAW
AUTOMOTIVE
GROUP INC
Claimant ID:
SSN: [REDACTED]
WBA: \$326.00
RBA: \$5,360.00

DECISION

You are held ineligible for benefits from 05/03/2020 .

DETERMINATION REASON

You left your most recent bona fide employer to relocate due to personal circumstances not attributable to the employer. Your reason for leaving was voluntary and without good cause under the South Carolina Code Section 41-35-120.

CONCLUSION

You have not met the eligibility requirements of the law, benefits are denied from 05/03/2020.

UI Claims Adjudicator

IMPORTANT: This determination will be the final decision of the Department unless you file an appeal setting forth in detail the grounds for appeal by 07/27/2020. Your appeal may be filed via the MyBenefits Portal, by mail addressed to the "Appeal Tribunal, Post Office Box 995, Columbia, SC 29202," or by fax to 803-737-0287. For additional information on filing an appeal, contact the Appeals Department at 803-737-2520 or visit our website at www.dew.sc.gov/individuals/manage-your-benefits/appeals.

SEE FURTHER EXPLANATIONS OF THE LAW ON PAGE TWO (2) OF THIS FORM

South Carolina
Department of Employment and Workforce

EXPLANATION OF DETERMINATION

South Carolina Employment and Workforce Law provides varying penalties for a claim that does not meet the requirements of the law.

The term "bona fide employer" means the employer with whom the claimant last earned at least eight (8) times the weekly benefit amount.

SECTION 41-35-110 provides that a claimant is eligible for benefits for any week only if the week is claimed according to the regulations, and the claimant has registered and continued to report to an employment office for work as required. Additionally, a claimant must be physically able to work at his usual occupation which prior training and experience show him to be qualified. Also, a claimant must be available for work, which means being ready, able, and willing to accept suitable work, and that personal circumstances would not prevent him from accepting such work.

No weeks of unemployment benefits will be paid for weeks for which the claimant is held to be unavailable. The claimant should call 1-866-831-1724 if the condition which caused the unavailability changes.

SECTION 41-35-120(1) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant left work without good cause connected with the employment. The disqualification shall begin on the effective date of the claim and shall continue until the claimant returns to work and earns at least eight times the weekly benefit of the claim.

SECTION 41-35-120(2)(a) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant was discharged for misconduct connected with the most recent work. The disqualification shall begin on the effective date of the claim and shall continue for twenty weeks, with a corresponding reduction of the claimant's benefits to be calculated by multiplying the weekly benefit amount by twenty. Misconduct includes deliberate violations or disregard of standards of behavior the employer has the right to expect, or carelessness or negligence of such degree or recurrence as to show an intentional and substantial disregard of the employer's interest or the claimant's duties and obligations to the employer.

SECTION 41-35-120(2)(b) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant was discharged for cause, other than misconduct, connected with the most recent work. The disqualification shall begin on the effective date of the claim and shall continue for not less than five nor more than nineteen weeks, with a corresponding reduction of the claimant's benefits to be calculated by multiplying the weekly benefit amount by the number of weeks of the disqualification.

SECTION 41-35-120(3) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant was discharged for illegal drug use. The disqualification shall begin on the effective date of the claim and shall continue until the claimant returns to work and earns at least eight times the weekly benefit amount of the claim.

SECTION 41-35-120(4) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant was discharged for gross misconduct. The disqualification shall begin on the effective date of the claim and shall continue until the claimant returns to work and earns at least eight times the weekly benefit amount of the claim.

SECTION 41-35-120(5) provides that a claimant shall be disqualified from benefits if the Department finds the claimant failed without cause to either apply for suitable work when directed by the Department or to accept available suitable work. The disqualification shall begin on the effective the week the failure occurs and shall continue until the claimant returns to work and earns at least eight times the weekly benefit amount of the claim.

SECTION 41-35-120(8) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant retired voluntarily from the most recent work. The disqualification shall begin on the effective date of the claim and shall continue until the claimant returns to work and earns at least eight times the weekly benefit amount of the claim.

If you are still unemployed at the end of a period of disqualification or believe you have met the requalification requirements imposed, you may reopen your claim by reporting to the local unemployment office on the earliest possible date following the end of the disqualification or after meeting the earnings requirement.

FOR ADDITIONAL INFORMATION OR QUESTIONS PLEASE CONTACT US AT 1-866-831-1724.

Appeal Filed Summary

Claimant Name HARLEY, JAMES M.

Claimant ID [REDACTED]

Claimants masked SSN [REDACTED]

Employer Name BRADSHAW AUTOMOTIVE GROUP INC

Employer Account # [REDACTED]

Issue ID 6051174

Issue Description Quit - Relocation

Date of Determination being appealed 07/16/2020 12:00 AM

Reason the appellant provided for the appeal When terminated, the Employer's HR attempted to get me to sign a resignation. I refused because I did not quit. They terminated me. Employer's HR department has indicated that I relocated. I remain a resident at 238 Woods Road, Greer, SC. I was terminated unlawfully in retaliation for seeking accommodations of my PTSD disability, and because of raising concerns about the hostile working environment, older sales consultants confronted at Bradshaw Automotive.

Appellant Claimant

Date and Time Stamp when appeal was filed 07/22/2020 04:07 PM



South Carolina
Department of Employment and Workforce



13811456

JAMES M HARLEY
238 Woods Rd
Greer SC 29650-3238





South Carolina
Department of Employment and Workforce
Appeal Tribunal
P.O. Box 995
Columbia SC 29202



13811456

NOTICE OF HEARING BEFORE APPEAL TRIBUNAL (TELEPHONE CONFERENCE)

Mail Date: 11/10/2020

Claimant Name: JAMES M HARLEY
Address: 238 WOODS RD
GREER SC 29650

Social Security Number: [REDACTED]
Claimant ID:
Appeal Number : 20-LA-041522
Phone: 864-877-7427

Employer name: BRADSHAW AUTOMOTIVE GROUP INC
Address: P O BOX 2269
GREER SC 29652-2269

Phone: 864-662-2230

An administrative hearing will be held **TELEPHONE CONFERENCE** on: 11/18/2020 from 11:15 AM to 12:00 PM, **Eastern Standard Time, BEFORE: VALERIE MCMELLAN**, Administrative Hearing Officer, for the SC Department of Employment and Workforce. The parties will be called by the hearing officer at the telephone numbers shown on this form. **IF THE TELEPHONE NUMBER IS INCORRECT OR NO TELEPHONE NUMBER IS SHOWN, YOU MUST CALL THIS TOLL-FREE NUMBER 866-269-5680 IMMEDIATELY TO INFORM US OF YOUR TELEPHONE NUMBER SO THAT YOU CAN PARTICIPATE IN THE HEARING.**

If you have not been called within 10 minutes after the scheduled time of the hearing, you must call 803-737-2520. Either another hearing is still in progress, or we are unable to contact you. Failure to call or participate in the hearing may result in your interests being considered abandoned.

The issue(s) for the hearing are:

- Voluntary Quit
- Discharge

SCHEDULE CONFLICTS: Hearing postponements are not ordinarily granted. However, if you have a justifiable conflict, notify the Department as soon as possible before your hearing. If you do not, a later request to reopen your hearing may be denied. Contact an appeals representative at 803-737-2520, AT ONCE, if you cannot be present at the time scheduled and wish to request a postponement of the hearing.

PURPOSE OF THE HEARING: The hearing is a fact-finding process that uses a question-and-answer method. Each side may present testimony, witnesses, and documents relevant to its case. The hearing officer will conduct a fair hearing, determine what is relevant, and make sure the record is complete. After the hearing, the officer will prepare a written decision based on the evidence. That decision will be mailed to you.

SPECIAL NOTE: The Appeal Tribunal may reverse, affirm, or modify the decision on appeal. **Be advised that if a disqualification is at issue, then the appeal may result in an increase or decrease of the disqualification.**



South Carolina
Department of Employment and Workforce
Appeal Tribunal
P.O. Box 995
Columbia SC 29202



13811456

WHAT HAPPENS AT A HEARING: This notice lists what issues the hearing will cover. The hearing is recorded and all proceedings are taken under oath. After explaining the law and procedures, the hearing officer will ask questions of each side and its witnesses in turn. After all testimony is taken from one side the same procedure is repeated for the other side. Wait your turn, as you may not interrupt while another person is testifying. The hearing officer will tell you when it's your turn to ask questions. Ask relevant questions that have not already been asked and answered. If you don't have any questions, let the hearing officer know.

EVIDENCE: Written evidence or documents such as letters timecards, or doctors' statements may help your case. Photos, maps, or charts may also help explain what happened. Be ready to tell who prepared the evidence and how it helps your case. Send legible copies of the documents to the hearing officer and the other side before the hearing. Do this even if you believe the Department or the other side already has them. **EVIDENCE MUST BE SUBMITTED TO THE APPEAL TRIBUNAL AND PROVIDED TO THE OPPOSING PARTY AT LEAST 24 HOURS PRIOR TO THE HEARING.** If you don't, the documents may not be considered as evidence. Include only evidence that relates directly to issues listed on the hearing notice.

Any evidence that you want to be considered in this hearing must be sent immediately to the Appeal Tribunal at the address shown on the top of this notice, or faxed to our number 803-737-0287, or uploaded through the claimant or employer self-service portal.

WITNESSES: You may present witnesses to support your case. Choose witnesses who actually saw or heard what happened. Those witnesses must be present at the time and location of the hearing.

DO I NEED A LAWYER? The unemployment appeal process is designed for claimants and employers who don't have attorneys. However, an attorney may represent you at your own expense. If you do choose to retain a lawyer, fees charged to represent claimants are limited to the greater of \$200 or a claimant's maximum weekly benefit amount for each proceeding.

SUBPOENAS: A subpoena is a legal document issued by the Department that orders an essential witness to testify or produce certain documents for the hearing. You may apply for a subpoena of witnesses and/or documents by downloading a form APP-107 under the Appeal Hearings heading at www.dew.sc.gov/individuals/tools/forms. The form must be completed, signed and sent to the Appeal Tribunal. It may be sent by mail to "Appeal Tribunal, P.O. Box 995, Columbia SC, 29202;" or by fax to 803-737-0287. **SUBPOENA APPLICATIONS MUST BE RECEIVED SIX (6) BUSINESS DAYS PRIOR TO THE HEARING DATE OR THE REQUEST MAY NOT BE CONSIDERED.**

INTERPRETERS: The Appeal Tribunal will provide qualified language interpreter or interpreter for the deaf when requested. If you or any of your witnesses need an interpreter and you have not previously requested one, contact the Tribunal immediately.



South Carolina
Department of Employment and Workforce
Appeal Tribunal
P.O. Box 995
Columbia SC 29202



13811456

WITHDRAWING AN APPEAL: Only the party who filed the appeal may withdraw it. If you wish to withdraw your appeal, please contact a Department representative at 803-737-2520 or mail your notice of withdrawal to "Appeal Tribunal P.O. Box 995, Columbia SC 29202".

TIME ZONES: If you call from a time zone other than Eastern Standard Time, be sure to properly calculate the time difference.

OVERPAYMENT OF BENEFITS: An adverse decision may result in an overpayment of benefits. In the event you are overpaid benefits, you will be required to repay those benefits to the Department.

DECISION: The Appeal Tribunal's written decision will resolve each issue, but it may not review in detail all testimony or documents given at the hearing. If you disagree with the decision, you may file a further appeal. The decision will explain how to file an appeal.

FILING FOR BENEFITS DURING APPEAL: A CLAIMANT MUST CONTINUE TO FILE WEEKLY CLAIMS FOR BENEFITS DURING THE APPEAL PROCESS, IF STILL UNEMPLOYED. Claim Weeks that are not timely filed cannot be paid, even if the claimant wins the appeal and is later held eligible. **CONTACT THE DEPARTMENT AT ONCE AT 1-866-831-1724** if there are any problems or questions when filing weekly claims.

THIS NOTICE SUPERSEDES ANY PREVIOUS HEARING NOTICE ON THIS ISSUE YOU MAY HAVE RECEIVED. IF THE DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD ASSUME THAT THE PREVIOUS HEARING HAS BEEN POSTPONED AND FOLLOW THE INSTRUCTIONS ON THIS NOTICE.

Selected Sections of the South Carolina Unemployment Law

VOLUNTARY QUIT: Section 41-35-120(1) provides that a claimant found to have left work voluntarily without good cause is indefinitely disqualified from receiving benefits until s/he returns to work and earn at least eight (8) times the weekly benefit amount. Good cause is a reason that is connected to employment and would justify a reasonable person leaving employment.

DISCHARGE FOR MISCONDUCT: Section 41-35-120(2)(a) provides that a claimant found to have been discharged for misconduct is disqualified for twenty (20) weeks. "Misconduct" includes conduct showing willful disregard of an employer's interests, such as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee. No finding of misconduct may be made for discharge resulting from an extreme hardship, emergency, sickness, or other extraordinary circumstance.

DISCHARGE FOR CAUSE: Section 41-35-120(2)(b) provides that a claimant found to have been discharged for cause (i.e., fault), other than misconduct, is partially disqualified from benefits from five (5) to nineteen (19) weeks, according to the seriousness of the cause for discharge.



South Carolina
Department of Employment and Workforce
Appeal Tribunal
P.O. Box 995
Columbia SC 29202



13811456

GROSS MISCONDUCT: Section 41-35-120(4) provides if a claimant is discharged for gross misconduct claimant is indefinitely disqualified from receiving benefits until s/he returns to work and earn at least eight (8) times the weekly benefit amount.

UNEMPLOYMENT DUE TO DOMESTIC ABUSE OR COMPELLING FAMILY CIRCUMSTANCES: Section 41-35-125 provides that a claimant may be found to be eligible for unemployment benefits if the separation from employment is attributable to domestic abuse or other compelling family circumstances. Compelling family circumstances may involve illness or disability of the claimant or an immediate family member and a required relocation for the claimant's spouse. The burden is on the claimant to show these circumstances exist. Where required by statute, the claimant must produce documentary evidence supporting the claim.

AVAILABILITY: Section 41-35-110 provides that a claimant is eligible for benefits for any week only if the week is claimed according to the regulations and the claimant has registered and maintained contact with the Department as required. Additionally, a claimant must be physically "able to work" at his/her usual occupation which prior training and experience shows him to be qualified. Also, a claimant must be "available for work," which means being ready, able and willing to accept suitable work, and that personal circumstances would not prevent him/her from accepting such work.

Unemployment benefits will not be paid for weeks in which the claimant is held to be unavailable. If the conditions which cause the unavailability change, the claimant may contact the Department to reopen his claim. The burden is on the claimant to show availability for work and reasonable effort to obtain work.

ONLINEWORK SEARCH REQUIREMENT: To be eligible for your weekly claim, you must perform at least two (2) job searches each week through the South Carolina Works Online Services (SCWOS) system. If you do not complete this requirement, you may not receive payment. The Department may waive this requirement to perform at least two (2) weekly job searches through SCWOS only for good cause. Good cause includes, but is not limited to, verifiable electronic access and/or language barriers, and is determined by the Department on a case-by-case basis and only after a claim has not been paid. See S.C. Code Ann. Regs. 47-104.

JOB OFFER AND REFERRAL: Section 41-35-120(5) provides that any claimant who has failed (1) without good cause to either apply for available suitable work, when so directed by the Department, or (2) to accept available suitable work when offered by the Department or an employer, shall be ineligible until the claimant furnishes satisfactory evidence of having been re employed and having earned at least eight (8) times the weekly benefit amount. The burden is on the claimant to show availability for work and reasonable effort to obtain work. See S.C. Code Ann. Regs. 47-23.

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT & WORKFORCE

Columbia, South Carolina

Transcript of Testimony
Before

Brynn DeHay, Administrative Hearing Officer

James M. Harley	)	CLAIMANT
238 Woods Road	)	
Greer, South Carolina 29650	)	
Claimant SSN: XXX-XX-████	)	

Bradshaw Automotive Group Inc	)	LIABLE EMPLOYER
P.O. Box 2269	)	
Greer, South Carolina 29652	)	

PLACE OF HEARING:	SC Department of Employment & Workforce
	Central Office Annex
	631 Hampton Street
	Columbia, SC 29201

DATE OF HEARING:	November 18, 2020
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APPEARANCES:

For Claimant:	Telephonic
For Employer:	Two Witnesses

TESTIFYING WITNESSES

CLAIMANT WITNESSES:

James M Harley

EMPLOYER WITNESSES:

Jeff Plunkett, General Sales Manager
Geoffrey Challenger, Chief Financial Officer

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JEFF PLUNKETT

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GEOFF CHALLENGER

Testimony of Geoff Challenger..... 78

EXHIBITS ENTERED

<u>Exhibit</u>	<u>Description</u>	<u>Page</u>
Agency Exhibit 1	Claims Adjudicator’s Determination	32
Claimant Exhibit 1	Emails, Agreement	37

1 Before Brynn DeHay, Administrative Hearing Officer

2 **HEARING OFFICER'S PREAMBLE**

3 **ALL WITNESSES SWORN**

4
5 [Recording started]

6 JACK COHOON: Jack Cohoon speaking.

7 HEARING OFFICER: Hi, Mr. Cohoon. This is Brynn DeHay from the
8 Department of Employment and Workforce. I'm calling
9 about the hearing scheduled for today regarding Mr.
10 James M. Harley.

11 JACK COHOON: Yes, ma'am. How are you doing today, Ms. DeHay?

12 HEARING OFFICER: I'm doing well, Mr. Cohoon. How about you?

13 JACK COHOON: Doing fine.

14 HEARING OFFICER: Good, good, good. All right. Mr. Cohoon, is Mr. Harley
15 there with you?

16 JACK COHOON: No. He's not.

17 HEARING OFFICER: Okay. But you are going to be representing him as
18 counsel, correct?

19 JACK COHOON: Yes.

20 HEARING OFFICER: All right. Thank you. I'm going to put you on hold for just
21 a moment while I try to get him on the phone. Thank you.

22 JACK COHOON: All right. Thanks.

23 [Phone rings]

24 JAMES M HARLEY: Mike Harley.

25 HEARING OFFICER: Hi. Is this Mr. James M Harley?

1 JAMES M HARLEY: Yes. This is he, James Michael Harley.

2 HEARING OFFICER: Hi, Mr. Harley. My name is Brynn DeHay. I'm calling
3 from the South Carolina Department of Employment and
4 Workforce about your hearing scheduled for today.

5 Are you ready to proceed at this time, sir?

6 JAMES M HARLEY: I am, but the phone I'm speaking to you on is an ancient
7 landline, and I was wondering if you could call my cell
8 phone because it's got better service and connects into my
9 speakerphone system.

10 Would that be possible?

11 HEARING OFFICER: That's fine. What number would you like me to call you
12 at?

13 JAMES M HARLEY: Sure, 864-567-7661, and then, you know, I'm also
14 working with Jack Cohoon.

15 HEARING OFFICER: Yes. I have him on the other line.

16 JAMES M HARLEY: Okay. Good. All right. So, if you could connect me into
17 that cell phone, it's 864-567-7661, I would really
18 appreciate it.

19 HEARING OFFICER: All right. Thank you, sir. I'm going to hang up with you
20 now and try you on that line.

21 JAMES M HARLEY: Thank you so much.

22 HEARING OFFICER: Uh-huh.

23 JAMES M HARLEY: Bye-bye.

24 HEARING OFFICER: Bye-bye.

25 [Call disconnected]

26 [Phone rings]

27 JAMES M HARLEY: Mike Harley.

1 HEARING OFFICER: Hi, Mr. Harley? Mr. Harley, can you hear me? Yes, Mr.
2 Harley.

3 JAMES M HARLEY: I can, yes, I can.

4 HEARING OFFICER: Okay.

5 JAMES M HARLEY: I can hear you great.

6 HEARING OFFICER: Okay. Good.

7 JAMES M HARLEY: Thank you.

8 HEARING OFFICER: All right. Let me conference you with Mr. Cohoon.

9 JAMES M HARLEY: All right. Thank you so much.

10 HEARING OFFICER: Thank you. Okay. Mr. Cohoon, are you still there?

11 JACK COHOON: Yes, ma'am.

12 HEARING OFFICER: Okay. Mr. Harley? Mr. Harley, are you there?

13 JAMES M HARLEY: I am, I'm here.

14 HEARING OFFICER: Okay.

15 JAMES M HARLEY: Can you hear me?

16 HEARING OFFICER: I can hear you fine, great. Okay. Okay. Good. All right. If
17 y'all will both hang on the line for me while I try to reach
18 the employer. Be aware, you can't hear each other. Thank
19 you.

20 JAMES M HARLEY: Thank you.

21 [Phone rings]

22 JEFF PLUNKETT: Jeff Plunkett.

23 HEARING OFFICER: Hi. Is this Bradshaw Automotive Group?

24 JEFF PLUNKETT: Yes, yes, yes, let me do this, we didn't know which phone
25 you were going to be calling, either this one or so-- and
26 our HR director Kalise is recently out on maternity leave

1 just a couple days ago, so just bear with me one second.
2 We were waiting in two rooms, so I'm going to go get the
3 other gentleman to join us in here. Just give me one
4 second. Okay?

5 HEARING OFFICER: Okay.

6 GEOFF CHALLENGER: This is Geoff Challenger.

7 HEARING OFFICER: Hi. Yes, are you who I need to be speaking to regarding
8 the hearing today?

9 GEOFF CHALLENGER: Yes.

10 HEARING OFFICER: Okay. Thank you, and Mr. Challenger, what is your job
11 title?

12 GEOFF CHALLENGER: CFO.

13 HEARING OFFICER: Okay. And who are the other witnesses going to be or are
14 there going to be other witnesses?

15 JEFF PLUNKETT: Yes, it's Jeff Plunkett, and I'm the general sales manager.

16 HEARING OFFICER: Okay. Any other witnesses?

17 GEOFF CHALLENGER: No. That's all that-- the primary witness would've been our
18 HR manager, but she's out on maternity leave.

19 HEARING OFFICER: Okay. And so in that event, which of you is going to be
20 the primary spokesperson today?

21 GEOFF CHALLENGER: I will, Geoff Challenger.

22 HEARING OFFICER: All right. Thank you, Mr. Challenger. Let me conference
23 you in with Mr. Harley and his attorney.

24 GEOFF CHALLENGER: Thank you.

25 HEARING OFFICER: Uh-huh. Okay. Mr. Harley, are you there? Mr. Harley, are
26 you there? Can you hear me? Mr. Cohoon, are you there?
27 Mr. Challenger, are y'all there? Okay. It's showing

1 everyone is connected. Hold on. Okay. I'm not sure if
2 anyone can hear me or not. Mr. Harley, are you there?

3 JAMES M HARLEY: I am, I'm here.

4 HEARING OFFICER: Okay. Great. Mr. Cohoon, are you there?

5 JACK COHOON: Yes, ma'am.

6 HEARING OFFICER: Great, and Mr. Challenger, are y'all there?

7 GEOFF CHALLENGER: Yes.

8 HEARING OFFICER: Okay. Great. Okay. It sounds like we do have everyone on
9 the line. Thank you all very much for your participation in
10 the hearing today. My name is Brynn DeHay. I'm going to
11 be conducting the hearing. A few quick things before we
12 get started. I'm going to be asking everybody a series of
13 questions. Please, if I ask you a yes-or-no question, do say
14 yes or no for me, not uh-huh, uh-uh, yeah, yep or ya or
15 anything else along those lines, just yes or no.

16 Additionally, please be respectful of each other and of me.
17 If someone else is talking, please do not interrupt or
18 interject. Just make me aware of your disagreements when
19 I come to you for your testimony. If you have a legal
20 objection, such as relevance or hearsay, for example, you
21 can voice that at any point, but it does need to be a legal
22 objection and not just a factual disagreement. Mr.
23 Challenger, as the employer's primary spokesperson, you
24 will be in charge of making all legal objections and
25 offering all documents on behalf of the employer.

26 Mr. Cohoon, of course, will be in charge of doing that for
27 the claimant. Hopefully, my preamble should explain all
28 the issues and procedures of the hearing, but if it does not,
29 feel free to ask me questions about the issues or
30 procedures at any time. If anyone is on a cell phone or
31 blue tooth device, try and remain in one area where you

1 get good service. That way, we don't have to worry about
2 becoming disconnected. If we do get disconnected for any
3 reason, I will immediately call you back.

4 If, for some reason, it's been longer than a few minutes,
5 and I have not called you back, you can call in and let
6 someone know what has occurred. All right, and give me
7 one moment, and then we'll get started, and do make sure
8 you make me aware if either party has documents that you
9 wish to have entered or considered, that you let me know
10 that at a pertinent and relevant point during the testimony.

11 Thank you. All right. We are now on the record. This is a
12 hearing on Appeal Number 20-LA-041522 in the case of
13 the claimant James M Harley and the employer Bradshaw
14 Automotive Group Incorporated. The claimant appealed
15 the determination mailed July 16, 2020 whereby he was
16 found ineligible to receive benefits indefinitely effective
17 May 3, 2020 upon a finding he voluntarily quit
18 employment without good cause.

19 The issues in this hearing are whether the claimant
20 voluntarily quit with or without good cause or was
21 discharged for cause or misconduct within the meaning of
22 the law. This hearing is being recorded today in
23 accordance with state law. This hearing is being
24 conducted on November 18, 2020 in Columbia, South
25 Carolina via teleconference before Brynn N. DeHay, an
26 administrative hearing officer with the South Carolina
27 Department of Employment and Workforce. The claimant,
28 Mr. James M Harley, is present today, and he is also
29 represented by counsel, Mr. Jack Cohoon.

30 Mr. Cohoon, will anyone else be participating on your
31 client's behalf in the hearing today?

32 JACK COHOON: No, ma'am.

1 HEARING OFFICER: Thank you. The employer, Bradshaw Automotive Group
2 Incorporated, is also present today represented by two
3 witnesses, Geoff Challenger, the CFO, and Jeff Plunkett,
4 the general sales manager. We have established that Mr.
5 Challenger will be the employer's primary spokesperson
6 today.
7
8 Mr. Challenger, will anyone else be participating on
behalf of the employer in the hearing today?
9 GEOFF CHALLENGER: No.
10 HEARING OFFICER: Thank you, and the employer's not represented by counsel
11 in this matter. All testimony in this proceeding must be
12 taken under oath or affirmation, so at this time, I am going
13 to go ahead and swear in all the testifying parties.
14
15 Do you solemnly swear or affirm that the testimony you
16 are about to give is the truth, the whole truth and nothing
but the truth, so help you God, Mr. Harley?
17 JAMES M HARLEY: I do, yes.
18 HEARING OFFICER: Mr. Challenger?
19 GEOFF CHALLENGER: I do.
20 HEARING OFFICER: And Mr. Plunkett?
21 JEFF PLUNKETT: Yes. I do.
22 HEARING OFFICER: Sorry, a little louder for me, Mr. Plunkett.
23 JEFF PLUNKETT: I do.
24 HEARING OFFICER: Thank you. Please let the record reflect that all the
25 witnesses have answered in the affirmative and thus been
26 duly sworn in. I'm going to ask questions of each party.
27 Each party or their representative will then have an
28 opportunity to ask questions of their own witnesses, as
29 well as to cross-examine the opposing party's witnesses.

1 You will also have an opportunity to provide any
2 additional relevant information you believe needs to be
3 brought to the attention of the Appeal Tribunal today.

4 If you have submitted either documents or evidence that
5 you wish to have considered, they should already have
6 been faxed or mailed to my attention, as well as the
7 opposing party. Please be aware it is your responsibility to
8 bring those items to my attention when they become
9 relevant to your testimony.

10 They will not be automatically entered into the record, so
11 you must present those items and indicate you wish to
12 have them entered as evidence. Notification of a decision
13 will be mailed to each party at their address of record just
14 as soon as possible. Counsel will also receive a copy.

15 Mr. Harley, we have your copy of the decision going to
16 238 Woods Road, Greer, South Carolina 29650. Is that
17 correct?

18 JAMES M HARLEY: Yes. It is.

19 HEARING OFFICER: Thank you, and we have your contact phone number listed
20 as 864-877-7427. Is that correct?

21 JAMES M HARLEY: That's the landline, but I prefer that all contacts be made
22 on my cellphone which is 864-567-7661.

23 HEARING OFFICER: Okay. I will note that number for our records, Mr. Harley,
24 but just be advised that is not going to change or update
25 the number we have on file for anything other than this
26 particular appeal and this particular appeal hearing. If you
27 do wish to have your phone number of record permanently
28 updated or changed, you can do that by going online
29 USCSS portal and updating it in the contact section there,
30 so you can do that, but just be advised this is not going to
31 update or change it for anything else. Okay?

1 JAMES M HARLEY: Will do, thank you.

2 HEARING OFFICER: Thank you. All right. And Mr. Cohoon, you will also
3 receive a copy of the decision. We've got that going to
4 P.O. Box 1929, Columbia, South Carolina-- give me one
5 moment to pull up your address of record that we have
6 here, I do apologize-- it looks like 29202.

7 Is that correct, Mr. Cohoon?

8 JACK COHOON: Yes, ma'am. That's correct.

9 HEARING OFFICER: Thank you, and we have your contact phone number listed
10 as 803-904-7914. Is that correct?

11 JACK COHOON: Yes, ma'am.

12 HEARING OFFICER: Thank you, and Mr. Challenger, we have the employer's
13 copy of the decision going to P.O. 2269, Greer, South
14 Carolina 29652.

15 Is that correct?

16 GEOFF CHALLENGER: Yes.

17 HEARING OFFICER: Thank you, and we have your contact phone number listed
18 as 864-662-2230. Is that correct?

19 GEOFF CHALLENGER: Yes.

20 HEARING OFFICER: Thank you. Thank you all again for your participation in
21 the hearing today. As this issue was originally adjudicated
22 as a voluntary quit, I will begin taking testimony with the
23 claimant today.

24 Are there any questions about the issues or procedures
25 before we go any further?

26 Mr. Harley, any questions?

27 JAMES M HARLEY: I defer to Mr. Cohoon.

1 HEARING OFFICER: I'll ask him in a moment, but do you have any questions
2 for me?

3 JAMES M HARLEY: No.

4 HEARING OFFICER: Okay. And Mr. Cohoon, any questions?

5 JACK COHOON: No, ma'am.

6 HEARING OFFICER: All right. And Mr. Challenger, any questions?

7 GEOFF CHALLENGER: No.

8 HEARING OFFICER: Thank you. All right. Mr. Harley, can you please state and
9 spell your first and last name for the record, please?

10 JAMES M HARLEY: Sure, my first name is James J-A-M-E-S. I go by my
11 middle name Michael M-I-C-H-A-E-L, and my last name
12 is Harley H-A-R-L-E-Y.

13 HEARING OFFICER: Thank you, Mr. Harley. Mr. Harley, what I have here is a
14 one-page determination that was mailed to you on July 16,
15 2020 holding you indefinitely disqualified from receiving
16 benefits effective May 3, 2020 upon a finding you
17 voluntarily quit employment without good cause.

18 Mr. Harley, is that the determination you are appealing
19 today?

20 JAMES M HARLEY: Yes. It is.

21 HEARING OFFICER: Thank you. Is that the only determination you are
22 appealing today?

23 JAMES M HARLEY: I think so, but once again, I defer to my legal counsel, Mr.
24 Cohoon, on that legal issue.

25 HEARING OFFICER: Okay. Mr. Cohoon, will you confirm this is the only
26 determination that was the claimant's intent to contest?

27 JACK COHOON: I believe that's the case. Mr. Harley, have you received
28 any determination of overpayment, remind me?

1 JAMES M HARLEY: No.

2 JACK COHOON: I don't believe he has.

3 JAMES M HARLEY: No. I haven't received any payment.

4 HEARING OFFICER: Okay.

5 JACK COHOON: Yes. This is our only determination we're appealing.

6 Thank you.

7 HEARING OFFICER: Okay. Thank you. All right. At this time, I would like to

8 enter into the record as Agency Exhibit 1 this one-page

9 determination. I would also like to include as part of

10 Agency Exhibit 1 the claimant's initial claim summary or

11 application for unemployment benefits which is six pages.

12 I would also like to include the fact-finding completed by

13 the claimant which is three pages, and it looks like it was

14 completed on May 4, 2020.

15 I'd also like to include the fact-finding conducted by the

16 employer. Completed by the employer, it was completed

17 on May 13, 2020. It is also three pages, as well as the

18 supplemental information the employer sent in which is

19 looks like five pages in response to the agency's request

20 for information. I'd like to enter these 18 pages into the

21 record as Agency Exhibit 1.

22 Any objection, Mr. Challenger?

23 GEOFF CHALLENGER: No.

24 HEARING OFFICER: Any objection, Mr. Cohoon?

25 JACK COHOON: I requested a claims file, and I don't have those, I don't

26 think, those five additional pages, the employer's that

27 you're referring to. I only have the first three pages of the

28 fact-finding--

29 HEARING OFFICER: Okay.

1 JACK COHOON: --of their fact finding.

2 HEARING OFFICER: Do you have access to e-mail, Mr. Cohoon?

3 JACK COHOON: Yes, ma'am.

4 HEARING OFFICER: Okay. What is your e-mail address?

5 JACK COHOON: It's jcohoon J-C-O-H-O-O-N@burnetteshutt.law.

6 HEARING OFFICER: Can you spell Burnette Shutt for me?

7 JACK COHOON: Yes, ma'am. It's B-U-R-N-E-T-T-E S-H-U-T-T.

8 HEARING OFFICER: Okay. You said jcohoon@burnetteshutt dot-- sorry, what
9 was after the dot?

10 JACK COHOON: L-A-W.

11 HEARING OFFICER: Dot law.

12 JACK COHOON: Law.

13 HEARING OFFICER: Dot law. Okay. Give me one moment, everyone, while I
14 see if we can get all these sent over so you have them, Mr.
15 Cohoon. Hold on. And while I'm working on that because
16 I know-- it looks like both parties have sent in documents.

17 Mr. Cohoon, did y'all send a copy of your documents to
18 the employer?

19 JACK COHOON: Yes, ma'am.

20 HEARING OFFICER: Okay. And Mr. Challenger, did y'all receive those
21 documents?

22 GEOFF CHALLENGER: Yes.

23 HEARING OFFICER: Okay. And Mr. Challenger, it looks like the employer also
24 sent in some additional documents.

25 Did y'all send those to Mr. Cohoon or Mr. Harley?

26 GEOFF CHALLENGER: I'm not sure what our HR manager did with that. I know
27 she sent them to you, but I'm not sure about anything else.

1 HEARING OFFICER: Okay. Mr. Cohoon, did you receive any documents from
2 the employer?

3 JACK COHOON: We did not.

4 HEARING OFFICER: Okay. Mr. Harley, did you receive any documents from
5 the employer?

6 JAMES M HARLEY: I only received the documents that were loaded into the
7 portal which I provided to my attorney, so--

8 HEARING OFFICER: Okay.

9 JAMES M HARLEY: --if he says no, then--

10 HEARING OFFICER: All right. Give me-- and Mr. Cohoon, I'm going to attach
11 both sets of documents, so you'll get them both at one
12 time. Give me one moment, please.

13 JACK COHOON: All right.

14 HEARING OFFICER: Okay. Sorry, everyone. Give me just one moment to
15 confirm someone can get these to Mr. Cohoon. Hold on.
16 Okay. It looks like they've-- okay. That should be coming
17 to you shortly, Mr. Cohoon. At this point, let's go ahead
18 and move forward. We'll circle back to--

19 JACK COHOON: All right. Yes. I'm sorry. I would like to go ahead and
20 object to these documents, all the documents based on due
21 process and failure of the employer to comply with the
22 basic requirement of the agency's--

23 HEARING OFFICER: Okay.

24 JACK COHOON: I noted--

25 HEARING OFFICER: All right. The--

26 JACK COHOON: --physically note that-- I would specifically note that we
27 complied, you know. We followed the rules. We sent in
28 their documents over 24 hours in advance of the hearing.
29 The employers deriving an unfair strategic advantage by

1 now showing those documents that were-- I haven't even
2 had a chance to talk to Mr. Harley about and I have not
3 yet even seen.

4 HEARING OFFICER: Okay. I'm going to overrule your objection, Mr. Cohoon,
5 as the employer is not actually proffered any of these
6 documents at this time. We've just acknowledged that they
7 sent us some, and I have sent them-- and I included them
8 since we were already e-mailing you the rest of Agency 1,
9 so I will note your objection, but I'm going to overrule it
10 as at this time, the documents have not been proffered.

11 If there is additional time needed for review or if we have
12 other objections when they are actually proffered, I'll let
13 you respond to that at that time, and again, we'll circle
14 back to Agency 1 in just a few moments, but I do want to
15 go ahead and go forward, but Mr. Cohoon, do let me
16 know when you get that e-mail. Okay?

17 JACK COHOON: Yes, ma'am.

18 HEARING OFFICER: All right. So, we'll circle back to Agency 1 in a moment,
19 but we are going to go ahead and go forward with the
20 claimant's testimony at this time.

21 Okay. Mr. Harley, what was your most recent position or
22 job title?

23 JAMES M HARLEY: My most recent position, you mean as of now?

24 HEARING OFFICER: With the employer, the Bradshaw Automotive Company.

25 JAMES M HARLEY: Yes, so sales consultant, and that's my position now, as
26 well. I just recently took a new position at a different
27 employer.

28 HEARING OFFICER: Okay. You did not have any intervening employment after
29 Bradshaw before you filed for benefits, though, correct?

30 JAMES M HARLEY: Correct.

1 HEARING OFFICER: Okay. And Mr. Harley, can you briefly describe the nature
2 of the employer's business? What does Bradshaw
3 Automotive Group do?

4 JAMES M HARLEY: Yes. It is a GM General Motors dealership that sells
5 Chevrolets, GMC, Buicks and Cadillacs, as well as pre-
6 owned automobiles and trucks.

7 HEARING OFFICER: And would you agree with your dates of employment as
8 being August 26, 2019 through April 1, 2020?

9 JAMES M HARLEY: Give me the first date.

10 HEARING OFFICER: August 26, 2019.

11 JAMES M HARLEY: Through April 1, 2020, yes. I agree.

12 HEARING OFFICER: Okay. All right, and how did you become separated from
13 employment with Bradshaw Automotive Group? Did you
14 voluntarily quit, were you discharged or were you
15 separated due to a lack of work?

16 JAMES M HARLEY: At the final moment, I was terminated on February 29 but
17 I, you know, was asked to leave the premises and effective
18 April 1. I was paid through April 1.

19 HEARING OFFICER: Sorry, so you said you were discharged?

20 JAMES M HARLEY: Yes.

21 HEARING OFFICER: Okay. And who informed you of your discharge?

22 JAMES M HARLEY: Jeff Plunkett on Saturday, February 29 in my office.

23 HEARING OFFICER: Okay. Can you describe that--

24 JAMES M HARLEY: There were other facts and steps along the way which I
25 know we'll get into in this hearing, but yes, I can describe
26 that discussion.

27 HEARING OFFICER: Okay. Please go ahead and describe that discussion for
28 me.

1 JAMES M HARLEY: So, Mr. Plunkett came into my office on the 29th. I very
2 much wanted to continue working at Bradshaw
3 Automotive, and he indicated, "No, we want you to leave
4 today," and then we had a discussion about all the
5 customers that I had pending which was quite extensive
6 and that I was going to be losing a lot of income because
7 of that departure in the middle of all of those pending
8 customer transactions and relationships.

9 HEARING OFFICER: Okay. We may have to--

10 JAMES M HARLEY: But I complied, of course, and left.

11 HEARING OFFICER: Okay. We may have to go back a couple of steps, but just
12 so I'm clear, when you say you told him you wanted to
13 continue working, why was that brought up or why was
14 that a point of concern or contention at that point?

15 JAMES M HARLEY: Well, he came into my office and said, you know, "Today
16 is your last day."

17 HEARING OFFICER: Okay.

18 JAMES M HARLEY: And I made clear and had been making clear with
19 correspondence regarding my disability issues that, you
20 know, I wanted to continue to work there. Mr. Bradshaw
21 is my dad's [UNCLEAR].and I'd very much like to be
22 with the team but for the issues that I'm sure we'll be
23 discussing today regarding my PTSD.

24 HEARING OFFICER: Okay. So--

25 JAMES M HARLEY: And their failure to accommodate those in part.

26 HEARING OFFICER: So, did someone at some earlier point tell you you were
27 going to be discharged or had you previously offered a
28 resignation? What had happened to make your
29 employment status so in flux?

1 JACK COHOON: Madame Hearing Officer, I hate to interrupt, but I just
2 wanted you to know I did receive those e-mails.

3 HEARING OFFICER: Okay. At current, I'll come back to those in a little bit if
4 you'll just look for the A1 documents and the other
5 documents, as well, but I'll circle back to entering A1 after
6 you've had a couple minutes to review. Okay. So, thank
7 you, Mr. Cohoon. All right. So, Mr. Harley, back to my
8 question, so I guess how did your employment status get
9 in flux to begin with? Was it something you brought up,
10 the employer brought up? What happened?

11 JAMES M HARLEY: Well, I mean, the starting in September of 2019, I began
12 asking for some very simple, reasonable accommodations
13 of PTSD which was the ability to use my personal laptop.
14 It's got software on it, and it operates, you know, in a
15 manner to accommodate my issues that I was having
16 problems with the PC on my desk, and you know, I
17 conveyed that to Marty Gaddis, my trainer, on the earliest
18 space, and Marty was hired by Jeff to train me and other
19 employees in his team in the sales force.

20 HEARING OFFICER: Okay. And did the employer accommodate that request or
21 not?

22 JAMES M HARLEY: No, no, they didn't.

23 HEARING OFFICER: Okay. Did you talk to anyone else about that
24 accommodation?

25 JAMES M HARLEY: Yes, so I had further discussion a week or ten days later
26 when Marty came back from my, you know, second or
27 third training session. He inspected my PC and I mean, the
28 whole thing including the server, and he said, you know,
29 "This is, you know, updated, up to date technology. It's
30 fine. It should work," and they basically disregarded my
31 request for an accommodation.

1 HEARING OFFICER: Okay. And--

2 JAMES M HARLEY: And then at the time, I said, "Well, you know, I may be
3 okay because I'm using my laptop, too," and at that time, I
4 was able to get into the-- you know, and work with that,
5 but within days of that, Jeff, our general sales manager,
6 Mr. Plunkett, was on the phone, you know, letting me
7 know that I could not use my laptop.

8 HEARING OFFICER: Okay.

9 JAMES M HARLEY: So, I was denied.

10 HEARING OFFICER: Okay. So, did you talk to human resources or anyone else
11 about your request for accommodation at that time? Mr.
12 Harley? Mr. Harley, are you still on the line? Mr. Cohoon,
13 are you there?

14 JACK COHOON: I'm still here.

15 HEARING OFFICER: Okay. Mr. Challenger, are y'all there?

16 GEOFF CHALLENGER: Yes.

17 HEARING OFFICER: Okay. Mr. Harley, are you there? Okay. I think we may
18 lost Mr. Harley. If everybody will just sit tight for me
19 while I try to get him back on the line, please. Thank you.

20 [Phone rings]

21 JAMES M HARLEY: Hello?

22 HEARING OFFICER: Hi, Mr. Harley?

23 JAMES M HARLEY: Yes.

24 HEARING OFFICER: Okay. Let me--

25 JAMES M HARLEY: I'm here, sorry.

26 HEARING OFFICER: Okay. Let me conference you back in.

27 JAMES M HARLEY: All right. Thank you.

1 HEARING OFFICER: Okay. Mr. Harley, are you there? Okay. Mr. Harley, are
2 you there?

3 JAMES M HARLEY: I am.

4 HEARING OFFICER: Okay. Mr. Cohoon?

5 JACK COHOON: Yes, ma'am.

6 HEARING OFFICER: And Mr. Challenger?

7 GEOFF CHALLENGER: Yes.

8 HEARING OFFICER: Okay. Great. Thank you. Okay. So, Mr. Harley, my
9 question to you was did you reach out to human resources
10 or anyone else about the accommodations at that time?

11 JAMES M HARLEY: Well, I'd spoken with my trainer, Marty Gaddis, who, you
12 know, met with me during that time every two weeks,
13 later down to maybe once a month, and then, you know, I
14 communicated my request to use the laptop to Mr.
15 Plunkett, and then I don't remember the date.

16 I think it's established in the record and the exhibits that
17 will be submitted, but I also had conversations with Kalise
18 who is the head of HR at Bradshaw Automotive
19 requesting the accommodations, and I think Marty before
20 had had IT look at it before, and you know, his conclusion
21 that this was up-to-date technology that was all I was
22 going to get and the decision in early October of 2019 that
23 I couldn't use my laptop.

24 But I did also-- so I discussed it and asked for it, and you
25 can see in the letters from Marty Gaddis, my trainer, I had
26 dialog about the use of the laptop. I don't know how much
27 detail got out other than just the use of the laptop, but the
28 decision that I could not use the laptop was communicated
29 to me in October of 2019 by Jeff.

1 And then after that, I had ongoing discussions, you know,
2 later with Kalise, and I think we can figure out in the
3 record the exact dates of those, and you know, made that
4 request in writing and in person and then maybe seven
5 days prior to Jeff's request that I leave the premise on
6 February 29, she let me know that they had looked at my
7 PC again and that, you know, nothing additional would be
8 done.

9 And at that time, you know, I had been asked not to use
10 my laptop on the sales floor, and at that time, any access I
11 had by the laptop was cut off by the IT team. I had been
12 doing some training in the back office on my laptop
13 because I couldn't do the training on the PC, so I did it off
14 the sales floor. Also, yes, I mean, I talked to-- I mean, the
15 only person I could've gone to about it other than Jeff and
16 Kalise would've been the Bradshaws, and you know, there
17 wasn't time to do that.

18 I guess I did go to the Bradshaws after that because I
19 requested to be reinstated with Mr. Bradshaw, so yes, I've
20 exhausted everyone in the chain. You know, I spoke to my
21 trainer first and got an answer of no, no use of the laptop,
22 you know, to accommodate your situation and age, and
23 then I talked to Jeff, not in as much detail as Marty.

24 Then I spoke to Kalise in very excruciating detail as
25 evidenced by letters in the file, and then after, you know, I
26 was asked to leave, you know, we had the pandemic come
27 on which is a major issue in this situation, and you know,
28 I was basically quarantined at home for a while but
29 looking for other employment.

30 HEARING OFFICER: All right. Let's--

31 JAMES M HARLEY: I did ask for reinstatement.

1 HEARING OFFICER: Okay. So, let's get back to your employment at the
2 Bradshaw Automotive Group now, Mr. Harley. So, Mr.
3 Harley, so after they did not accommodate-- so they
4 originally told you they weren't going to accommodate
5 your request in October, but you were still allowed to use
6 your personal laptop just not on the sales floor until
7 February of 2020.

8 Is that all accurate? Am I understanding that correctly?

9 JAMES M HARLEY: Well, I mean, I would have to go in the back room which
10 would take me out of network from the sales floor from
11 9:00 in the morning until 8:00 o'clock at night, so I mean,
12 it was just lunchtime, you know, that I would try to do
13 some training, and you know, lunchtime was when you
14 didn't have customers basically which--

15 HEARING OFFICER: Okay. Did you at some point indicate to the employer it
16 was your intention to quit your job?

17 JAMES M HARLEY: Like I said, I have PTSD. I felt like I was being bullied by
18 some of the younger employees and [UNCLEAR] but
19 frustrating moment, you know, we submitted the letter on
20 January 31. Once again, Mr. Bradshaw is a family friend.
21 I didn't want to cause any difficulties, but I rescinded it
22 because it was made aware to me that two or three days
23 after I submitted it and just as I submitted it that, you
24 know, even after that that I was going to be bullied.

25 I was bullied in front of an elementary friend, his name is
26 Ernest Jones, came into my sales cubicle and, you know,
27 told my elementary school and her name was Winelle
28 Baldwin, elementary and middle school alumni friend that
29 I was a terrible salesman and I wasn't doing what you--
30 and she was totally baffled because, you know, we were
31 getting along quite well, and I was hoping to get
32 customers from all the friends that we had mutually.

1 HEARING OFFICER: Let's go back a step. So, did you submit something? You
2 referenced a letter on January 31, 2020, so did you submit
3 a letter indicating you were resigning on that day?

4 JAMES M HARLEY: I mean, the letter speaks for itself, just going to submit
5 into-- or will be submitted by my attorney and then the
6 rescission of it days later, whatever the content was.

7 HEARING OFFICER: Okay. So, you sent a letter saying you were resigning, and
8 then did anyone respond to your resignation at that time
9 before you did--

10 JAMES M HARLEY: No.

11 HEARING OFFICER: --the rescission? Okay.

12 JAMES M HARLEY: No, absolutely not, no response whatsoever.

13 HEARING OFFICER: Okay.

14 JAMES M HARLEY: You know, just like the request for the laptop, it was
15 lingering.

16 HEARING OFFICER: Okay. So, when did you send the request indicating you
17 wanted to rescind your resignation?

18 JAMES M HARLEY: February 5.

19 HEARING OFFICER: Okay.

20 JAMES M HARLEY: And that's submitted as an exhibit, as well, by my attorney
21 who's on the phone.

22 HEARING OFFICER: All right. And just to be clear, we haven't actually entered
23 anything including Agency 1 into the record at this point,
24 so again, just be mindful of that. You can refer to
25 documents, but you understand they've not been entered
26 into the record. I'll come to Mr. Cohoon in a moment to
27 get him to proffer any documents, so just be advised that
28 nothing currently has been entered into the record. Okay.

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1 JAMES M HARLEY: Well, they did inspect my-- and further considered my
2 reasonable accommodation request and sent IT in. I think
3 it was a week to ten days after those discussions, and then
4 I had further conversations with Kalise that, you know,
5 they didn't think there was anything they could do to
6 accommodate my issues with technology, you know,
7 including using my laptop on the sales force floor.

8 HEARING OFFICER: All right. So--

9 JAMES M HARLEY: And--

10 HEARING OFFICER: That's not the question I--

11 JAMES M HARLEY: --you know, to me that was, you know, by operation an
12 expression of continued employment.

13 HEARING OFFICER: That's not my question, Mr. Harley. My question for you
14 is did they ever explicitly say, yes, we will allow you to
15 rescind your resignation or something along those lines?

16 JAMES M HARLEY: I don't recall.

17 HEARING OFFICER: Okay. And you said during the conversation on February
18 5, Kalise said that they were accepting your resignation?

19 JAMES M HARLEY: Correct, and I, you know, made clear to her that it couldn't
20 be accepted then because it had been rescinded.

21 HEARING OFFICER: Okay. And what was her response to that?

22 JAMES M HARLEY: No comment, there was no comment.

23 HEARING OFFICER: Okay. And then on February 29, Mr.-- okay. So, did y'all
24 talk about your resignation anymore between February 5
25 and February 29?

26 JAMES M HARLEY: I don't recall fully, but I don't believe so.

27 HEARING OFFICER: Okay. So, the next conversation you had about your
28 resignation was with Mr. Plunkett on the 29th, and you

1 said you wanted to continue working, and he said, "No."
2 Am I understanding that correctly?

3 JAMES M HARLEY: Correct, and I said, "So, are you terminating me?" And
4 you know, he didn't answer.

5 HEARING OFFICER: Okay. So, let's go back a few steps. All right. So, you
6 mentioned what prompted you to resign on January 31,
7 was somebody bullying you? Is that correct?

8 JAMES M HARLEY: Correct, I mean, I'm very thankful for the position and the
9 training and the things that the Bradshaws did for me and
10 Mr. Plunkett, but the whole time I was there, I guess I
11 must've looked like a sore thumb in some way, but I was
12 being bullied the whole time I was there by younger
13 employees, and you know, the most outrageous of the
14 bullying was Kerry who is the Corvette salesman there,
15 and his buddy would regularly steal my dealer tags, so
16 when I was calling on a customer, you know, for
17 insurance purposes and the law, at the time anyway, we
18 were required to use a dealer tag to go on any test drive.

19 And so my dealer tag was constantly being taken from me,
20 and you know, at one point, John Carvellas who was not
21 my general trainer like Marty, but my sort of more
22 focused trainer on how to make sales calls, you know, had
23 to call Kerry down and said, "You got to stop doing this.
24 You know, this is wrong." At one point, he found it-- it's a
25 magnet-based tag-- on a light pole out on the lot, you
26 know, probably where nobody could see it except for him.

27 He's kind of a tall guy, and you know, Kerry and my
28 manager Frenchie would sit in his office-- by the way, all
29 of our officers were glass cubicles so we could, you know,
30 very nicely see the customers and work well, but you
31 know, they would sit back. They made fun of other older
32 employees including Mr. Carvellas.

1 They would sit back and joke and make fun. You know,
2 one day, they made fun of the appointments I had,
3 whether they would show up or not. They did, but you
4 know, it just went on and on, and my manager also bullied
5 me and my customers.

6 HEARING OFFICER: Okay. Now so--

7 JAMES M HARLEY: Also, with regard to the conversation I had with Marty
8 Gaddis that I had PTSD--

9 HEARING OFFICER: So, was there any specific incident or issue that happened
10 before you submitted that resignation on January 31?

11 JAMES M HARLEY: I mean, how long do we have, I mean, because the
12 bullying started the moment I was employed, and I
13 submitted a list of customers and incidents where I was
14 bullied when I sent in the February 5 letter.

15 HEARING OFFICER: Okay. So, just so I'm clear, though, sir, what happened on
16 or about January 31 that made you decide to quit on that
17 day? Was there a particular incident or issue that occurred
18 at that time?

19 JAMES M HARLEY: I mean, I couldn't take it anymore. The failure to
20 reasonably accommodate and the continued bullying, you
21 know, I knew that in order to take it to the next step, I
22 would have to do what we did from February 5 onward,
23 but the answer continued to always be no, no laptop, no
24 accommodation, and you know, I had also made Mr.
25 Plunkett and Kalise aware of the bullying, and they chose
26 not to do anything about it.

27 HEARING OFFICER: Okay. In that letter from January 31, you mentioned some
28 other issues, relocating and some other things. Is there a
29 reason you mentioned those issues and not the work
30 environment in your resignation letter?

1 JAMES M HARLEY: So, you know, the way it's played out, I was looking for a
2 place where I could be accommodated with my PTSD and
3 not be bullied, and I found that now. I'm working at a new
4 dealership in town, new in the sense of new to me, and
5 you know, they have other employees that have PTSD.
6 One of them even has--

7 HEARING OFFICER: Sir, sir, sir. Okay, sir. Your new employment is not
8 relevant. Let's focus back on this and this separation. So,
9 Mr. Harley, okay, just to be clear, the letter I'm looking at
10 dated January 31, 2020, it begins, "Dear Kalise, after
11 further thought and prayer, I would like to resign from my
12 position in Cadillac showroom effective February 29,
13 2020 conditional on an agreement allowing me to
14 continue to work through February 29, 2020 with full
15 insurance benefits and to complete my SSE and solutions
16 training," and then continues on. That is the letter you
17 submitted on that day, correct?

18 JAMES M HARLEY: Yes.

19 HEARING OFFICER: Okay. In this letter that I'm looking at, do you have a copy
20 of that handy with you?

21 JAMES M HARLEY: I'm trying to find it.

22 HEARING OFFICER: Okay. In the letter, you mentioned saying, "My sons' lives
23 have developed since joining you in a way compelling that
24 I find work near them in the Midwest. I'm praying my
25 parents' lives with come under control in the meantime. I
26 do hope Bradshaw will honor this request to continue
27 working through February 29, so I can deal with my
28 mother's major upcoming surgery on February 11," and
29 then sort of continues on. This letter seems to mostly talk
30 about you relocating and your personal circumstance with
31 your parents. Is that right?

1 JAMES M HARLEY: Yes. I live above my parents' house, and I'm their security
2 guard, basically.

3 HEARING OFFICER: Okay. So, I guess my question for you is if according to
4 your testimony today, you said the real reason you were
5 quitting was because of the work environment and they
6 were not meeting your accommodations, and you felt you
7 were being bullied, correct?

8 JAMES M HARLEY: And I have PTSD. You know, I can't stress that enough,
9 and to make matters worse, after that letter was submitted,
10 you know, Frenchie went outside my door, and he sent
11 Ernest in to bully me again in front of one of my
12 customers--

13 HEARING OFFICER: Right, but let's--

14 JAMES M HARLEY: --telling my customer that I was not a good salesman and
15 sorry she had to wait so long, because--

16 HEARING OFFICER: All right.

17 JAMES M HARLEY: --[UNCLEAR].

18 HEARING OFFICER: Okay. Mr. Harley, let's go back to the letter and before the
19 letter first, so my question again for you is why does the
20 letter talk just about sort of your personal circumstance
21 and not the work environment if that's really why you
22 were quitting?

23 JAMES M HARLEY: I'm trying to find the letter. I maybe submitted it into
24 evidence and then someone could question me from the
25 letter so I can see it. I'm in the file that Bradshaw just
26 submitted like two minutes ago. I'm trying to find that,
27 you know, and reiterate my attorney's issues, but we
28 weren't able to see their massive file.

29 HEARING OFFICER: Okay. Again, Mr. Harley, Mr. Cohoon will handle any
30 legal objections, and again, those have not been entered
31 into the record or even proffered at this point, so okay, but

1 maybe this might be a good time since we are sort of
2 talking about some documents at this point to at least get
3 Agency 1 into the record, and I'll see if Mr. Cohoon has
4 any proffers based on the testimony to this point, and then
5 we'll maybe come back to some further exploration. Okay.
6 I do want to get back to Agency 1. I'll note the employer
7 had no objection to its admission. It is 18 pages. Mr.
8 Cohoon, you have all those 18 pages now, correct?

9 JACK COHOON: I do have 18 pages, yes, ma'am.

10 HEARING OFFICER: Okay. Okay. Any objection to the entrance of these 18
11 pages as Agency 1, Mr. Cohoon?

12 JACK COHOON: We object to the employer's submissions based on hearsay
13 and off indication.

14 HEARING OFFICER: All right. Thank you. I will note your objections--

15 JACK COHOON: And then--

16 HEARING OFFICER: Go ahead, sir.

17 JACK COHOON: I was going to say I just renew the process objection
18 because even now I haven't had a chance to talk over
19 Agency Exhibit 1 with my client.

20 HEARING OFFICER: Okay. So, I'm clear, though, specifically, y'all did have the
21 January 31 letter that the employer had sent in, correct,
22 Mr. Cohoon? Y'all had that previously?

23 JACK COHOON: Yes, ma'am.

24 HEARING OFFICER: Okay. So, then the employer's response-- and you had the
25 fact finding from the employer?

26 JACK COHOON: I did so, yes.

27 HEARING OFFICER: Yes. So, then the only part that you did not have or see
28 before would be the portion where they filled out that said
29 Mr. Harley voluntarily quit, please see attached e-mail. He

1 did rescind his resignation; however, we accepted the
2 resignation?

3 JACK COHOON: Yes. I don't believe we had that in the previous version,
4 but that's--

5 HEARING OFFICER: Okay. Okay. Any other objections, Mr. Cohoon?

6 JACK COHOON: No, ma'am.

7 HEARING OFFICER: Okay. Thank you. All right. I'll note your objection for the
8 record. I'm going to overrule it at this time. South Carolina
9 Code of Regulations 4751C1 requires the Appeal Tribunal
10 to include in the record and consider as evidence all
11 department records, material to the appeal, therefore, the
12 objection is noted and overruled.

13 I will also note that the counsel has acknowledged the
14 claimant has all the pertinent information other than the
15 filled out form which contains two sentences of
16 substantive information, so I do not feel there is a due
17 process issue by the claimant not being able to discuss that
18 with his counsel since it's two sentences and does not
19 appear to be material or something beyond the scope of
20 what was already in the fact finding or the resignation
21 letter itself.

22 So, the objections are noted and overruled over the
23 claimant's counsel's objection. These 18 pages will be
24 entered into the record as Agency 1 as previously
25 described.

26 **AGENCY EXHIBIT NUMBER 1**

27 **IS HEREBY ENTERED**

28 HEARING OFFICER: Okay. So, Mr. Cohoon, the claimant has also mentioned
29 several documents he wished to proffer. Are there any
30 documents that you wish to go ahead and proffer?
31 Understand I am not done with questioning the claimant,

1 but since he's referenced documents, any documents you
2 wish to go ahead and proffer at this time?

3 JACK COHOON: Yes, ma'am. Would it be all right for me to go through our
4 proposed exhibits and go ahead and try to get them
5 entered which are questionable, and then I can question on
6 them?

7 HEARING OFFICER: That's fine. Again, we don't need to go into too much
8 detail about substantive because you'll get questions later,
9 but yes, go ahead and proffer any documents so we can
10 have those.

11 JACK COHOON: Okay. Thank you. Mr. Harley, I'm looking at a letter on
12 University of Chicago letterhead from Shinesa one. Are
13 you familiar with that document?

14 JAMES M HARLEY: Yes, I am. Yes. Yes, I am.

15 JACK COHOON: Okay. And that's regarding accommodations that you were
16 seeking and that were approved?

17 JAMES M HARLEY: Correct. Now University of Chicago is a school where I
18 studied '96 to 1999 and then again 2016 to '18.

19 JACK COHOON: Okay.

20 JAMES M HARLEY: And then I worked there, as well, and they accommodated
21 me.

22 JACK COHOON: I'm looking-- okay. We'll come back to the details. I just
23 want to get document entered at the moment. So, you have
24 an e-mail exchange involving Dr. Abossy which I believe
25 is page three. The first document, that letter has an
26 attachment with the definitions of accommodations and
27 processes, but then we go to page three and four and five
28 and six and seven is what appears to be an e-mail
29 exchange regarding Dr. Abossy. Who is Dr. Abossy?

1 JAMES M HARLEY: Yes, Dr. Abossy is a psychiatrist. He diagnosed me with
2 PTSD.

3 JACK COHOON: All right. And did he direct certain accommodations to be
4 provided in your work and your school?

5 JAMES M HARLEY: Yes. Prior to Dr. Abossy, I had other medical practitioners
6 that worked with me at the university, and obviously, the
7 accommodation of using the laptop and, you know, then
8 he requested others, and you can see those details in that
9 letter.

10 JACK COHOON: I guess, Madame Hearing Officer, can I just keep going
11 and--

12 HEARING OFFICER: Yes. Just--

13 JACK COHOON: --get them all as one exhibit?

14 HEARING OFFICER: That's fine if you want to go ahead and do that. If we have
15 objections from the opposing party, we may break them
16 up a bit, but for now, just keep going for what the
17 documents are that you wish to proffer.

18 JACK COHOON: Okay. All right. Mr. Harley, I'm looking at an e-mail, and
19 this is page eight of this e-mail, and it's a forwarded e-mail
20 dated Thursday, January 30, 2020 at 6:33 p.m. from you
21 to Kalise talking, and it contains information about a
22 request for accommodations. Are you familiar with that
23 document?

24 JAMES M HARLEY: Yes. I mean, for the record, my laptop just died, but can
25 you read it, the first sentences, to me?

26 JACK COHOON: Sure. It says, "Dear Kalise, I look forward to our
27 discussion. The purpose of my raising the issue is not to
28 cause problems. Disappointingly, I was told that my issues
29 were a waste of time again." That's the first little portion
30 of it. Do you recall that one?

1 JAMES M HARLEY: Yes. Read just a little bit more. I mean, there were a lot of
2 e-mails on that day.

3 JACK COHOON: "I simply seek a reasonable accommodation of my
4 disability. I just simply want to be treated like the other
5 workers of the Cadillac showroom team, nothing more."
6 That e-mail goes on till page 11. Do you recall that e-mail
7 and word author that e-mail?

8 JAMES M HARLEY: Yes.

9 JACK COHOON: Okay. Now the next document I'm looking at is page 12,
10 and it includes the forwarded e-mail dated Wednesday
11 February 5, and it includes the first couple sentences. It
12 says, "Dear Kalise, I look forward to our meeting today at
13 11:00 a.m. My request for accommodation for my
14 condition is simply a follow-up. There was no harm on
15 anyone. I simply want to make a living with sales and
16 consulting and continue on with what these requests are.
17 Below that, it-- this one is dated February 5--

18 JAMES M HARLEY: Okay.

19 JACK COHOON: --2020.

20 JAMES M HARLEY: All right. So, the January 30 letter was all about my
21 request for accommodations.

22 JACK COHOON: Okay. And this one is-- do you recall this February 5 e-
23 mail also?

24 JAMES M HARLEY: Yes.

25 JACK COHOON: Okay. And then it continues on to page 17 of the pdf, and
26 this is slightly out of order, but page 17 is an e-mail,
27 subject line CRN and data analysis dated Friday, January
28 31 from Mr. Harley, J.M. Harley to Kalise talking and
29 closed the night of the e-mail the day before on the 30th
30 from you to Marty Gaddis, your trainer.

1 JAMES M HARLEY: Yes.

2 JACK COHOON: Okay. All right. Now I'm looking now at page 20 which
3 references a subject line cohort agreement dated July 27,
4 2020 at 9:17 a.m., see below. This is from J Michael
5 Harley to-- let me go down further-- the actual portion is
6 from Kalise Cochrane to J Michael Harley dated Monday,
7 March 2 and--

8 JAMES M HARLEY: Okay.

9 JACK COHOON: --things are attached. Let me know if you have any
10 questions. Do you recall that e-mail?

11 JAMES M HARLEY: Yes. I do.

12 JACK COHOON: Okay. And beginning on page 23 continuing through to
13 Page 24 is a two-page unsigned legal document,
14 resignation and severance agreement. Do you recall that
15 document?

16 JAMES M HARLEY: Yes. I do.

17 JACK COHOON: Okay. And then finally leading on page 25 and continuing
18 on page 26, the e-mail subject line testimonial today with
19 [UNCLEAR] to Jeff Plunkett dated Monday February 23.
20 Do you recall that e-mail?

21 JAMES M HARLEY: Yes.

22 JACK COHOON: Okay. Madame Hearing Officer, I'd like to move all these
23 documents into evidence as a part.

24 HEARING OFFICER: Okay. It's 26 pages in total, correct, sir?

25 JACK COHOON: Yes, ma'am.

26 HEARING OFFICER: Okay. Mr. Challenger, any objection to the entrance of
27 these 26 pages as Claimant's Exhibit 1?

28 GEOFF CHALLENGER: No.

1 HEARING OFFICER: There being no objection, these 26 pages will be entered
2 into the record as Claimant's Exhibit 1 as previously
3 described.

4 **CLAIMANT EXHIBIT NUMBER 1**

5 **IS HEREBY ENTERED**

6 HEARING OFFICER: Okay. What I want to talk to you a little bit more about,
7 Mr. Harley, at this time, though, is the January 31
8 resignation letter. I'm going to read you a portion of it
9 since you said you don't have it handy with you. It says,
10 "My sons' lives have developed since joining you in a way
11 compelling that I find work near them in the Midwest. I
12 am praying my parents' lives with come under control in
13 the meantime," and then it says, "I do hope Bradshaw will
14 honor this request to work through February 29 so I can
15 deal with my mother's major upcoming surgery on
16 February 11, 2020.

17 I want to work to complete the many transactions I have
18 under development with many 60-hour weeks of work or
19 more at the dealership and at home since August 26, 2020.
20 Several of those transactions are up to date including a
21 CT5 test drive with a customer I have worked on for two
22 months or more and thus my request to delay our talk until
23 next week. We should still have a talk.

24 Given the friendship my father and our family have with
25 the Bradshaw family and the kindness offered to us over
26 many years, I do not think it would be wise to do anything
27 but resign. I hope that we can get to a position where we
28 can part ways with no hard feelings on either side. This
29 week, I was personally dealing with two health issues, one
30 urological and a root canal and need to focus on getting
31 my work done so we do not lose the value to put into
32 numerous transactions.

1 Please let me know if we can rescheduled our meeting.
2 You can reach me at my cell phone noted below." I'll not
3 edit and read the first part as I think we've read all that
4 previously. This is the e-mail you sent to Kalise Cochrane
5 proffering your resignation, correct, Mr. Harley?

6 JAMES M HARLEY: Yes, that letter speaks for itself as does the letter on the
7 previous day where he never kind of responds to
8 consistent, would stick to the month of January 30 where
9 it has, you know, detailed my continued concern of not
10 being accommodated.

11 HEARING OFFICER: Uh-huh. Okay. So, I guess to go back to my earlier
12 question, this letter talks about you moving, and it talks
13 about your personal health and your parents. Is there a
14 reason that you did not talk about the working conditions,
15 their failure to meet your accommodations, and things like
16 that in this letter since that's why you were resigning?

17 JAMES M HARLEY: I think that the reason I think I even forwarded the
18 previous e-mail from January 30 or go into excruciating
19 detail on the, you know, PTSD and reasonable
20 accommodations, and Mr. Cohoon just proffered that into
21 evidence as an exhibit.

22 HEARING OFFICER: Right, and we do have that, and that's part of the record,
23 but my question is when you were actually writing this
24 resignation letter, why did you just write in personal terms
25 if that wasn't really why you were leaving?

26 JAMES M HARLEY: I don't recall.

27 HEARING OFFICER: Okay. Also, you mentioned relocating in this letter. Did
28 you relocate?

29 JAMES M HARLEY: No. I was basically searching for employment where I
30 would be-- a situation where I could be accommodated
31 and treated like a human being as required by the law.

1 HEARING OFFICER: Okay. But you did not actually relocate or move to the
2 Midwest?

3 JAMES M HARLEY: No.

4 HEARING OFFICER: Okay.

5 JACK COHOON: Madame Hearing Officer, you dropped that little bit on
6 our end, so that may be hesitation for Mr. Harley to
7 answer is only because I don't think he heard your whole
8 question.

9 HEARING OFFICER: Okay. All right. Thank you. Okay. So--

10 JAMES M HARLEY: I still live in Greer, South Carolina and work in Greer,
11 South Carolina.

12 HEARING OFFICER: So, why did you even bring up relocation in this letter if
13 that-- was that something you were looking at doing or
14 planning to do or not really or how did that even get
15 brought up or enough to include in the letter?

16 JAMES M HARLEY: I was struggling personally being bullied at work, having
17 my dealer tag taken from me on light poles, interrupted by
18 a manager that reports to Jeff who on a regular basis
19 would interrupt my meetings with customers, bully me
20 and my customers, making it difficult for me to close
21 deals, and worse, you know, disturbing my reputation, you
22 know, and my mother was at the point of death, and my
23 brother who was an alcoholic was going, as well, so the
24 combination of everything, I was just searching, and I
25 found it finally post-pandemic on October 1--

26 HEARING OFFICER: Okay.

27 JAMES M HARLEY: --at a dealership right down the street.

28 HEARING OFFICER: All right. But, Mr. Harley, again, so were you actually
29 planning to relocate or no?

1 JAMES M HARLEY: No. I was-- the letter speaks for itself along with the e-
2 mail before January 30. You know, Bradshaw Automotive
3 was not going to treat me like a human being.

4 HEARING OFFICER: Okay.

5 JAMES M HARLEY: And it got worse. It got worse.

6 HEARING OFFICER: Let's focus on the period before January 31 for right now,
7 so we'll move onto what happened after in a moment, so
8 your e-mail that you sent that we've got in as part of
9 Claimant's 1 on January 30, the e-mail you sent to Kalise,
10 did Kalise respond to that e-mail before you sent that e-
11 mail-- the next e-mail on January 31?

12 JAMES M HARLEY: I don't recall definitively, but I don't think so.

13 HEARING OFFICER: Okay. Did she respond at any point to that January 30 e-
14 mail?

15 JAMES M HARLEY: Yes, finally on or about February 19, she responded and
16 said that they had investigated my PC situation and that
17 there was nothing to accommodate, I mean, you know,
18 and that I could not use my laptop, and they took further
19 actions after that to make it impossible for me to use my
20 laptop anywhere for training or for anything.

21 HEARING OFFICER: Okay. All right.

22 JAMES M HARLEY: This letter, you know, which I believe I forwarded with
23 the January 31 letter was summarized as if, you know, the
24 way I was treated the whole time by the sales management
25 team. I outline the issues of bullying, but Jeff Plunkett the
26 night before in his answer was this is a waste of time.

27 And then I said, you know, "I'm not trying to cause
28 problems. I simply think there are reasonable
29 accommodation of my visibility and health issues and
30 simply to be treated like the other members of the Cadillac
31 showroom team or the super store team, you know,

1 Chevrolet Buick. For some reason, I'm being held to a
2 higher standard than other employees, new car sales
3 including other new hires, specifically Dylan Carnes, Rick
4 Humills and perhaps others, John Carvellas."

5 HEARING OFFICER: With regard to the--

6 JAMES M HARLEY: Then I submitted this data, and I made clear that some of
7 those employees were situations where I had been bullied
8 by my manager Frenchie Wyles in front of my customers,
9 and you know, the facts speak for itself, but nothing was
10 ever done.

11 HEARING OFFICER: When was the last time someone bullied you before the
12 January 30, January 31 e-mail? What was the last incident
13 that happened regarding that or the most recent one, too,
14 then? Do you recall? Did you hear me, sir? Can you hear
15 me? Mr. Harley? Okay. Mr. Cohoon, are you there?

16 JACK COHOON: I am still here.

17 HEARING OFFICER: Okay. Mr. Challenger?

18 GEOFF CHALLENGER: I'm here.

19 HEARING OFFICER: Okay. I think we lost Mr. Harley again. Hold on while I
20 try and get him back on the phone. Thank you.

21 RECORDING: Reached the voice mailbox of the office of Mike Harley.
22 At the tone, please record your voice message. When you
23 are finished recording, you may hang up or press pound
24 for more options.

25 [Beep]

26 HEARING OFFICER: Mr. Harley, I'm trying to get back on the line. Please
27 answer the phone.

28 [Phone rings]

29 JAMES M HARLEY: Mike Harley.

1 HEARING OFFICER: Okay. Mr. Harley?

2 JAMES M HARLEY: Yes, sorry. I've got another phone if this continues to go
3 out. I don't know what's going on, but the back-up phone I
4 can give you if this goes out again. I apologize--

5 HEARING OFFICER: Okay.

6 JAMES M HARLEY: --profusely.

7 HEARING OFFICER: All right. So, what's the other number?

8 JAMES M HARLEY: It's an old cell, but 847-809-9170. You're coming through
9 very clear now, but 847-809-9170.

10 HEARING OFFICER: All right. Thank you. Let me conference you back in with
11 everybody.

12 JAMES M HARLEY: Okay.

13 HEARING OFFICER: All right. Okay. I have Mr. Harley back on the line. Mr.
14 Harley, are you there? Mr. Harley, are you there?

15 JAMES M HARLEY: Yes. I'm here.

16 HEARING OFFICER: Okay.

17 JAMES M HARLEY: Apologies again.

18 HEARING OFFICER: Okay. Thank you. Mr. Harley gave me an alternate
19 number if this happens again where he can reached, so if it
20 does, we'll try that phone number. Now, Mr. Cohoon, are
21 you still there?

22 JACK COHOON: Yes. I am.

23 HEARING OFFICER: And Mr. Challenger?

24 GEOFF CHALLENGER: Yes.

25 HEARING OFFICER: Thank you. Okay. So, Mr. Harley, again my question for
26 you before we lost you was what was the last date and
27 incident that occurred prior to this January 30, January 31

1 timeframe regarding the bullying? Do you recall the date
2 and what the actual incident was, the one most recent to
3 that?

4 JAMES M HARLEY: Yes. I think the last incident of bullying because Kalise
5 made a big issue of it was when Ernest came into my sales
6 cubicle and embarrassed me profusely in front of
7 Winnelle Baldwin.

8 HEARING OFFICER: Okay. You earlier told me that was after January 31,
9 correct?

10 JAMES M HARLEY: Well, it was in the timeframe. It was, you know, right in
11 the middle of it, but I mean, it was a constant beat of the
12 drum of, you know, bullying machinated by Kerry and
13 Frenchie the whole time I worked there, and I guess, you
14 know, the biggest issue I was having in the last three
15 weeks not only was I not being accommodated, but you
16 know, I was being undermined--

17 HEARING OFFICER: Okay. Sorry. When you say last three--

18 JAMES M HARLEY: I was asked by--

19 HEARING OFFICER: Okay. Mr. Harley, let me stop you. Mr. Harley, when you
20 say the last three weeks, are you talking about February?

21 JAMES M HARLEY: The last three weeks until the incident with Ernest.

22 HEARING OFFICER: Okay. And when was that--

23 JAMES M HARLEY: That would've been sort of the 1st of January, maybe the
24 second week of January through the first week of
25 February, and you know, I was asked to work more
26 closely with Frenchie which I welcomed and agreed
27 because really what I needed was to be able to get trained
28 by him, you know, more closely, and I wanted to do that.

29 But he would basically-- even though Jeff instructed the
30 two of us to work together, every time I would approach

1 him, he would walk away and, you know, it was so bad
2 that some of the other salesmen were noticing on the floor
3 that Frenchie is never on sales floor, and so he would walk
4 away, and if he wasn't there, so I couldn't get my deals
5 done or work with him like Jeff had asked us to do sort of
6 at the beginning of the new year, you know, I would text
7 him.

8 And he would respond by a non-response, and you know,
9 so that continued even within the professional practice of
10 selling cars and trucks and more intensely during that
11 timeframe of January and February of 2020.

12 HEARING OFFICER: Okay. And from your e-mail from January 30, you
13 mentioned having a conversation with Mr. Plunkett last
14 night, so I'm assuming that's January 29. Can you describe
15 that conversation for me and what was said during that
16 conversation?

17 JAMES M HARLEY: I think that conversation was the one responding to yet
18 another of many text messages and leeching out on my
19 part both in person and otherwise to try to get deals done
20 through Frenchie and work with him, you know, in team
21 with him like I do now in my current job, and--

22 HEARING OFFICER: Mr. Harley, your current job is not relevant. Okay? So, I
23 really need us to focus on your prior separation. So, to go
24 back to this, so did you bring up any specific concerns or
25 issues in that conversation with Mr. Plunkett on the 29th?

26 JAMES M HARLEY: Yes, the one I just mentioned to you.

27 HEARING OFFICER: Okay. So, Frenchie.

28 JAMES M HARLEY: Yes, it's relative because it's comparative. You know, I
29 was basically asking him to comply with Jeff's request to
30 both of us to work together, and he wasn't doing it. He
31 was walking away from me. There was a point on the

1 Saturday before the 29th where he was absent from the
2 floor which is their busiest day for a total of four hours,
3 and that had been the case for several days on and off, but
4 Saturdays is the worst so much so that one of the other
5 senior sales employees said, you know, "What is going
6 on? You know, where is Frenchie?"

7 HEARING OFFICER: And what was--

8 JAMES M HARLEY: And then, you know, the other part of the conversation-- I
9 don't recall the exact date, but just prior to the January 30
10 e-mail by a few days-- was, you know, a text message
11 where Jeff could see it himself that Frenchie, you know,
12 didn't want to work out a deal with me, and a deal being,
13 you know, for a customer, and that was just reflective of,
14 you know, tens of twenties of deals where he would just
15 walk away.

16 HEARING OFFICER: Okay. And what was Mr. Plunkett's response on the 29th?

17 JAMES M HARLEY: This is a dialog that's a waste of time. It's documented in
18 the January 30 e-mail.

19 HEARING OFFICER: Okay. Did he say anything else or was that the only thing
20 he said?

21 JAMES M HARLEY: You know, I don't recall everything that's lay based but I
22 was trying to get my disability accommodated and be
23 treated like other employees and have my deals looked at
24 by, you know, one of the managers or other managers that
25 I did work with, but one of the managers he'd asked me to
26 work closely with, and he was refusing.

27 HEARING OFFICER: Okay.

28 JAMES M HARLEY: Perhaps in retaliation for my disability issue.

29 HEARING OFFICER: Were there any recent changes to the terms of conditions
30 of your employment, your hours, rate of pay, duties,
31 anything like that?

1 JAMES M HARLEY: I don't think so. You know, I mean, once again, I haven't
2 had a chance to fully examine the massive amount of
3 documents that-- if there were, I don't recall being told
4 about them other than to work closely with Frenchie
5 which I was trying to do and wanted to do.

6 HEARING OFFICER: Did anyone from the employer ever give you any sort of
7 formal warnings or disciplinary action taken with your
8 employment?

9 JAMES M HARLEY: Well, Marty Gaddis, you know, from the beginning made
10 very clear that we needed to get eight car sales a month,
11 and you know, I was working to try to do that, and I did
12 get to that point after finishing the three months of paid
13 training, and then I think in January, I was trying to get to
14 it again, but was asked to work with Frenchie by Jeff
15 which I was trying to do and what I did. You know, he
16 walked away. He was--

17 HEARING OFFICER: Okay. Mr. Harley, Mr. Harley, if you've told me
18 something once, you don't have to tell me again, so just so
19 I'm clear, though, did anyone ever give you any sort of
20 formal warning or disciplinary action like a write-up,
21 anything like that?

22 JAMES M HARLEY: Not that I recall.

23 HEARING OFFICER: Okay. Did anyone ever tell you if your performance
24 doesn't improve or something else doesn't change, you're
25 going to be fired, anything like that?

26 JAMES M HARLEY: Not that I recall, you know, other than the standard that
27 was communicated constantly by Marty, you know, you
28 needed to get to eight or more above.

29 HEARING OFFICER: Okay. Did anyone ever say you've not met our
30 expectations, so we're going to let you go if you don't do

1 something or if you don't hit over eight or anything like
2 that that you can recall?

3 JAMES M HARLEY: Yes, Marty said that if I didn't get over eight sales a
4 month, you know, on a regular average basis that I would
5 be terminated, but that would be implied to all employees.

6 HEARING OFFICER: Okay. Were you making over eight sales a month?

7 JAMES M HARLEY: My recollection is that at the end of the three-month
8 period, that first month after it, I hit that number.

9 HEARING OFFICER: Okay.

10 JAMES M HARLEY: And, you know, we were trying to get to a higher level,
11 but eight is just the national average of sales by employee,
12 by sales consultants across, you know, all dealerships. It's
13 the mean, it's the average, and you know, obviously, we
14 were trying to work to get above that, but that was going
15 to require reasonable accommodation of my issues with
16 the laptop and my PTSD and an end to the bullying.

17 HEARING OFFICER: Okay. Any other specific incidents or issues that we have
18 not discussed that happened after January 31 and before
19 your last day that you want to bring to my attention that
20 we've not already discussed?

21 JAMES M HARLEY: After January 31, the same behavior of not being present,
22 not working with me continued on Frenchie's part. There
23 was an incident where once again, Kerry, the gentleman
24 who continually stole my dealer tag making my sales calls
25 elongated because I didn't have a dealer tag to take them
26 on a test drive, you know, once again, sat in the office,
27 Frenchie's office and were making fun of the appointment
28 schedule where I had two or three appointments.

29 And there was customers right outside his office, but it
30 seemed to calm down a bit, but after this incident with
31 Ernest coming on February 7 and embarrassing me and

1 bullying me in front of my elementary school and middle
2 school colleague.

3 HEARING OFFICER: Okay. You also mentioned earlier your testimony that the
4 human resources representative had made a big deal or
5 said something about the bullying at one point. When was
6 that?

7 JAMES M HARLEY: Well, after that incident with Ernest, she asked Ernest to
8 come in and apologize to me, and he did. He came in and
9 apologized to me, I think, around the middle of February,
10 February 15 which, you know, liking to believe the same
11 store, wanted to get corrected, but then a few days later,
12 they let me know they weren't going to accommodate any
13 of the IT issues, but she corrected that.

14 She also corrected one of the other major issues that I was
15 concerned about which was I wasn't able to do training,
16 and you know, I was being pressed to do training because
17 of my technology issues and what I did go back to the
18 backroom. I got interrupted by Dylan Carnes, one of the
19 two guys that would steal my dealer tag and said, "Mike,
20 you don't need to worry about training. Just pay me \$200
21 and I'll do the training for you," and I said, "Dylan, no, I'm
22 not. That's unethical by the rules and regulations."

23 I made Kalise aware of this, by the way, and Frenchie
24 Wyles, he paid me \$200 and took the training and just do
25 the same thing he did, and so I was flabbergasted
26 particularly from my understanding of the ethics of the
27 Bradshaw family, and you know, I was totally
28 flabbergasted at that. So, she, at that point, intervened.

29 You know, I saw Dylan and Frenchie actually taking the
30 training, and Ernest came in and apologized to me, so I
31 thought things were to answer one of your other questions
32 now that I'm sort of refreshing my memory since I haven't

0 JAMES M HARLEY: Okay.

1 HEARING OFFICER: Did the employer ever indicate why they were not willing
2 to grant your request for accommodation? I know you
3 mentioned earlier that IT had deemed your computer
4 sufficient or sufficiently up to date, but did they ever say
5 any other reason as to why they were not going to
6 accommodate that?

7 JAMES M HARLEY: Yes. Their argument, I guess, was that the system they had
8 which was very slow and also didn't have a printer
9 because IT just never paid attention to any of us, but you
10 know, that it was adequate to accommodate my PTSD,
11 and that was finally communicated to me on or about
12 February 19.

13 You know, I was going to be a team player and, you
14 know, like I tried to do with Frenchie, work with him and
15 welcome working with him, but he walked away, you
16 know, constantly and worse, you know, blasted me on text
17 when I asked for follow-up, but yes, I think as I indicated
18 that the reason was the systems they had were adequate to
19 accommodate anyone, you know, including my situation.

20 HEARING OFFICER: Okay. And also, you mentioned you said you spoke to
21 your trainer, human resources and Mr. Plunkett about your
22 concerns.

23 JAMES M HARLEY: Yes, I know Mr. Gaddis denies that. I saw the exhibit, but
24 it's just not true. I mean, I spoke with him from the very
25 beginning, and he was very explicit and said, "Well, does
26 your PTSD prevent you from performing your job?" And I
27 said, "No, it won't if I'm reasonably accommodated like
28 I've been at other jobs specifically the University of
29 Chicago who accommodated me.

30 Now did they accommodate me at the level, at ultimate
31 levels? No, they came up with a tailored situation that was
32 not extensive as software. They provided the laptop at

1 total cost. I guess it was \$300 for the software and \$1500
2 for the laptop.

3 HEARING OFFICER: Okay.

4 JAMES M HARLEY: So, yes, I mean, we had that conversation, and no, he
5 denies that I did, you know, use my laptop. I did see that
6 one early page where he denied it. I'm sure there are other
7 documents that I have not been able to--

8 HEARING OFFICER: Again, none of those documents are in the record at this
9 point, Mr. Harley, so let's move back to you and your
10 testimony. So, Mr. Harley, you said the Bradshaws were
11 friends of your parents?

12 JAMES M HARLEY: Yes. They are.

13 HEARING OFFICER: Okay. And the Bradshaws are the owners of the
14 employer?

15 JAMES M HARLEY: That's my understanding. I'm not privy to their corporate
16 structure, but then, you know, it's called Bradshaw
17 Automotive, and I'm not sure of the owner structure but I
18 have reason to believe that they own the dealership or at
19 least part of it.

20 HEARING OFFICER: When you felt that you were not-- the bullying and issues
21 with accommodation were not being addressed
22 appropriately by the employer, did you ever go to the
23 Bradshaws with your concerns before your separation?

24 JAMES M HARLEY: You know, a long time has passed since then, but I don't
25 know for sure, but my dad had coffee prior to the
26 pandemic with Mr. Bradshaw on a regular basis. He's my
27 dad's friend. My dad knew fully what was going on
28 because I told him, and I don't know whether he
29 communicated that to them, but you know, they're up a
30 floor and don't come down onto the sales floor. If they
31 come down on the sales floor, there's a serious problem as

1 Marty Gaddis told me, and so no, I never communicated it
2 prior to May 12, 2020.

3 HEARING OFFICER: Okay.

4 JAMES M HARLEY: But my dad did. My dad might have.

5 HEARING OFFICER: Okay. But you don't actually know one way or another
6 what your father told him?

7 JAMES M HARLEY: I don't, I don't.

8 HEARING OFFICER: All right.

9 JAMES M HARLEY: No. I don't know.

10 HEARING OFFICER: Okay. All right. Is there any reason you didn't go to them
11 before your separation particularly giving your close
12 familiar relationship?

13 JAMES M HARLEY: Well, once again, it's not my close relationship. It's my
14 dad and my mother's close relationship, and by the way,
15 they're also a customer of-- you know, they've purchased
16 15 cars from them over 25 years, cars and trucks. No, this
17 wasn't the chain of command, and you know, honestly--
18 and I apologize if I seem-- because I do have PTSD-- a
19 little agitated.

20 I don't really like this situation, but you know, I also want
21 to get unemployment because I was unemployed. I
22 thought things were working out, you know, because
23 Ernest apologized to me after the February 5. You know,
24 Frenchie continued to walk away from me and bowed me
25 in that last incident that I described to you where they
26 were making fun of the appointment schedule which were
27 all mine at the time because I was trying to meet my
28 number in February.

29 And I mean, I will say Jeff and his sons Jordan and Tyler,
30 who by the way use laptops, very much helped mitigate

1 that. They're a long walk for a 60-year-old man, but I
2 would go to the other ends of the super store. They would
3 accommodate me when, you know, Frenchie didn't. It
4 would be interesting to look at the data, but you know, the
5 bulk of my sales were through Jordan and Tyler who were
6 good guys and helped with people, and Jeff knows how
7 high I think of Tyler and Jordan.

8 But I thought things were going to work out and then I
9 was shocked on February 29 but I was also, you know,
10 just numb from the whole situation of, you know, the
11 dealer tag being constantly stolen, the bullying of me and
12 worse my customers, and despite that, we got
13 unbelievable dealer reviews.

14 Every single dealer review that I got posted on
15 dealerrater.com was a 5.0, so at the time, I just
16 communicated to my dad. I knew he had coffee with Mr.
17 Bradshaw from time to time, you know, so I assumed that
18 they'd have a conversation, but I have no proof that they
19 did, and so, you know, the message was what it was.

20 HEARING OFFICER: All right. Thank you. Thank you, Mr. Harley. Mr. Harley,
21 I don't have any more questions for you at this time. Is
22 there anything else we have not already discussed that you
23 wish to tell me or clarify?

24 JAMES M HARLEY: I'll leave that to my attorney.

25 HEARING OFFICER: Okay. Yes. Okay. Mr. Cohoon, do you have any questions
26 for Mr. Harley?

27 JACK COHOON: Yes. Mr. Harley, can you explain the significance of the
28 accommodations? Like specifically what accommodations
29 were you seeking?

30 JAMES M HARLEY: For example, I mean, I wanted to use my laptop that
31 would allow me to not get flustered with my PTSD and

1 use of technology, and then you know, I wanted to stop
2 [UNCLEAR]. I mean, that's really irregardless of-- but,
3 you know, when you have PTSD, it just makes it
4 unbearable, you know, so I guess use of the laptop and
5 then please stop the bullying of me and my customers.

6 JACK COHOON: With regard to the laptop, was there a text to speech or a
7 speech to text component of your accommodation you're
8 seeking?

9 JAMES M HARLEY: Yes. Yes, so the speed of the laptop, I think, you know,
10 Jeff's sons could testify if we called them that, you know,
11 their laptops enabled them to work much more efficiently,
12 so that and the accommodation of the speech, the ability to
13 speak commands and, you know, get things expedited was
14 what the University of Chicago developed, you know.

15 My counselors are all University of Chicago medical
16 employees and the disability office came up with the
17 system. It's really [UNCLEAR] package.

18 JACK COHOON: Sorry, there's a little delay on the line. The package, was it
19 Dragon Seeking that you're referring to that you wanted
20 on your laptop?

21 JAMES M HARLEY: Correct.

22 JACK COHOON: All right. And was that the accommodation you were
23 seeking back in September 2019 or when you said you
24 had begun seeking reasonable accommodations?

25 JAMES M HARLEY: Correct. You know, I let Marty know that I had my own
26 laptop. At the time, you know, Marty's initial reaction
27 was, you know, just do what you're doing, keep using it.
28 Ten days later, Jeff came in and said, "You can't use a
29 laptop on the sales floor."

30 JACK COHOON: Okay. In a sense, that particular accommodation was
31 withdrawn?

1 JAMES M HARLEY: Yes, and Marty is a consultant trainer, a former general
2 sales manager of the company, and you know, he works, I
3 assume, for Jeff.

4 JACK COHOON: Okay. All right. Now with regard to your request for
5 reasonable accommodations, to your knowledge, did you
6 comply with the proper procedure for how to make that
7 request?

8 JAMES M HARLEY: Yes, absolutely.

9 JACK COHOON: Okay. I mean, has anyone ever told you that there was
10 someone that that request should go to?

11 JAMES M HARLEY: No, no one at all. I assume I exhausted through Kalise
12 who had extensive ability.

13 JACK COHOON: There was no other steps that you were aware of in which
14 to take your request?

15 JAMES M HARLEY: Correct, correct. Yes, my understanding is I had raised it
16 with, you know, everybody that I needed to.

17 JACK COHOON: Did Kalise indicate there was someone else you should
18 talk to regarding your request?

19 JAMES M HARLEY: Never.

20 JACK COHOON: In all these communications that you had with the various
21 people involved, Mr. Plunkett, Kalise and anyone else,
22 had anyone ever told you you needed to go talk to Mr.
23 Bradshaw regarding your request for reasonable
24 accommodation?

25 JAMES M HARLEY: No, absolutely not, and in fact, you know, on other issues,
26 it was made clear to me that I shouldn't talk to the
27 Bradshaws, so I had customer, John Koswin who was
28 looking at Cadillac CT5 who was a friend of mine and he
29 was on the board of trustees at [UNCLEAR] where I went
30 to school, and also friend of the Bradshaws, and you

1 know, this was in the middle of all this, and you know, he
2 said that he'd gotten an accommodation from Wes.

3 It was Wes who was Mr. Bradshaw's son-in-law, not Wes
4 Bradshaw, that he would be treated in a special way. You
5 know, it was made clear to me in no uncertain terms that I
6 shouldn't approach the Bradshaws, that you know, he was
7 running the business, and I totally appreciate that.

8 I mean, I used to be a general manager myself but not in
9 the car business, so I fully appreciated that and respected
10 that boundary, and you know, so the answer, the judge's
11 questions weren't explicitly. That's why I exhausted it
12 through the non-process, talked to the head of HR finally.

13 JACK COHOON: All right. Now with the date of February 5, 2020, you
14 gave the evidence from you to Ms. Cochrane. Was that the
15 letter where you rescinded your resignation?

16 JAMES M HARLEY: Yes.

17 JACK COHOON: Okay. So, between that January 31 e-mail regarding the
18 resignation and then you're rescinding the resignation, had
19 there been any communication between anyone at the
20 dealership and you? Had anyone ever communicated to
21 you that they had accepted your resignation in that period
22 of time?

23 JAMES M HARLEY: No, and like I said in my last testimony with the judge,
24 you know, except for the issue of accommodation of the
25 laptop, things began to look up. You know, I mean, Ernest
26 apologized to me. It seemed like they were understanding
27 that training wasn't occurring like it should be because,
28 you know, employees including Frenchie Wyles were
29 required to take the training. I saw them actually doing it,
30 and so I thought things were looking up except for where
31 we agreed to disagree that, you know, I wouldn't be

1 accommodated and allowed to use the laptop and the
2 software that would help manage my PTSD.

3 JACK COHOON: Okay. So the day after you sent this e-mail to Kalise on
4 February 6, 2020, did you think at that point that you were
5 going to continue to have the opportunity to work for the
6 company?

7 JAMES M HARLEY: It might've been the 7th, but Ernest apologized to me after
8 that, and I was waiting to hear about Kalise's
9 determination after my request for reasonable
10 accommodation from the IT department and from her
11 more importantly because she understood what PTSD
12 accommodations were reasonable under the law and from
13 the work that the IT guys are doing, and I finally heard
14 from that on-- you know, I don't know the exact date but
15 on or about February 19, 20, 21.

16 JACK COHOON: Okay.

17 JAMES M HARLEY: So, things are getting better, and I was working my deals
18 much more aggressively through Jordan and Tyler and,
19 you know, Frenchie had a chip on his shoulder because of
20 the training I think and my concerns that are raised there
21 by ethics, but I thought things were getting better.

22 JACK COHOON: Monday, March 2 e-mail from Kalise to you which is I
23 think page 21 of our exhibit that attached the proposed
24 resignation severance agreement, had you heard anything
25 else from Kalise by that point regarding whether your
26 resignation was accepted, the rescinding of your
27 resignation was accepted? Had you heard anything from
28 Kalise by then?

29 JAMES M HARLEY: Yes, on February 29 and after, I never heard anything
30 further from Kalise. My conversations were entirely with
31 Jeff Plunkett and her HR assistant, you know, so yes, I did
32 not hear from Kalise after that e-mail transmission of

1 March 2, but I spoke with Jeff about that, but you know, I
2 didn't think that agreement was reflective of the facts and
3 the truth, and so I wasn't going to mention it.

4 JACK COHOON: Okay. And regarding laptop accommodation, why do you
5 think it didn't reflect that in the truth?

6 JAMES M HARLEY: Because there was no resignation on the table to accept. It
7 had been fully and legally rescinded.

8 JACK COHOON: Okay. I think we've covered everything at this point,
9 Madame Hearing Officer, that I can think of.

10 HEARING OFFICER: All right. Thank you, Mr. Cohoon. Mr. Challenger, do you
11 have any questions for Mr. Harley?

12 GEOFF CHALLENGER: No.

13 HEARING OFFICER: Okay. Thank you. All right. Mr. Challenger, would you
14 like for me to start with your testimony or with Mr.
15 Plunkett's today?

16 GEOFF CHALLENGER: I'm sorry. Could you repeat that, please?

17 HEARING OFFICER: Yes, would it be best-- who has the most knowledge about
18 the situation? Would it be better for me to start with your
19 testimony or with Mr. Plunkett's?

20 GEOFF CHALLENGER: Mr. Plunkett.

21 HEARING OFFICER: All right. Mr. Plunkett, can you please state and spell your
22 first and last name for the record, please?

23 JEFF PLUNKETT: It's Jeffrey J-E-F-F-R-E-Y Plunkett P-L-U-N-K-E-T-T.

24 HEARING OFFICER: Thank you. Mr. Plunkett, if you can just move a little
25 closer to the phone, you're awfully faint. Okay?

26 JEFF PLUNKETT: Okay.

27 HEARING OFFICER: All right. Mr. Plunkett, what is your job title with the
28 employer?

1 JEFF PLUNKETT: I'm a general sales manager.

2 HEARING OFFICER: And what was the claimant Mr. Harley's last position or
3 job title?

4 JEFF PLUNKETT: He was a sales consultant in the Cadillac Buick GMC
5 showroom.

6 HEARING OFFICER: And would you agree with his dates of employment as
7 being August 26, 2019 through April 1, 2020?

8 JEFF PLUNKETT: Yes.

9 HEARING OFFICER: And how did he become separated from employment? Did
10 he voluntarily quit, was he discharged or was he separated
11 due to a lack of work?

12 JEFF PLUNKETT: He resigned.

13 HEARING OFFICER: And how did he offer his resignation, by letter, by talking
14 to someone, some other way?

15 JEFF PLUNKETT: Letter.

16 HEARING OFFICER: Okay. Is that the January 31 letter or a different letter?

17 JEFF PLUNKETT: Yes, the 31st.

18 HEARING OFFICER: Uh-huh. So, when he sent that letter in, do you know what
19 prompted him to do so?

20 JEFF PLUNKETT: No.

21 HEARING OFFICER: Okay. Had he brought any concerns to your attention
22 before that point about needing accommodations?

23 JEFF PLUNKETT: He had asked to use his laptop, and then Kalise and I
24 explained to me that you can't use your personal laptop,
25 and a side note about laptops, the one that one of my sons
26 uses is a company-issued laptop to purchase cars online,
27 so no one here has a personal laptop that they use at the
28 dealership.

1 HEARING OFFICER: Okay. Did Mr. Harley explain that he had PTSD and
2 needed some features on his laptop like text to speech and
3 things like that?

4 JEFF PLUNKETT: Never to me. The entire time, that never came up.

5 HEARING OFFICER: That he needed text to speech or that he had PTSD or
6 both?

7 JEFF PLUNKETT: The PTSD and then then there was no specifics of the text.
8 That never came up to me. It was just that he wanted to
9 use his personal laptop to correspond with customers from
10 home.

11 HEARING OFFICER: Okay. Did he ever indicate to you that he wanted to use
12 that laptop in the workplace to facilitate or just from
13 home?

14 JEFF PLUNKETT: Yes, he wanted to use it in the workplace to do, like,
15 testing. That thing was just for testing, and we have a
16 CRN tool on there to communicate with customers is what
17 I recall.

18 HEARING OFFICER: If Mr. Harley needed an accommodation due to a medical
19 issue, would you have been the appropriate person to
20 bring that up to or someone else?

21 JEFF PLUNKETT: Yes, it'll need to be brought to me, and then we would
22 consult with Kalise in HR.

23 HEARING OFFICER: Okay. Do you know whether or not Mr. Harley discussed
24 his need for accommodation with Kalise?

25 JEFF PLUNKETT: No.

26 HEARING OFFICER: You don't know?

27 JEFF PLUNKETT: No.

1 HEARING OFFICER: Okay. All right. Regarding the bullying that Mr. Harley
2 had mentioned, were you aware that there were ongoing
3 issues between him and his coworkers?

4 JEFF PLUNKETT: Yes, he brought that attention to me and then to Kalise,
5 and we investigated it thoroughly and found that there was
6 no bullying.

7 HEARING OFFICER: Okay. So, were people taking his dealer tags? Was that
8 happening?

9 JEFF PLUNKETT: I've never heard that until today. That's the first I ever
10 heard that.

11 HEARING OFFICER: Did he give you specifics about what the bullying was that
12 he was experiencing?

13 JEFF PLUNKETT: That he felt like Frenchie was not working on deals with
14 him. I think that was the main one, and we were caught
15 off guard with the word bullying. That was the next thing
16 that he'd use after Frenchie not being available. I did let
17 him know at that time that at all times at the dealership, if
18 Frenchie's not available, then Tyler is available. If
19 Frenchie's not available and Tyler's off, then I am
20 available. There is a manager available at all times.

21 HEARING OFFICER: Okay. Are you aware of instances where Frenchie would
22 just walk off from Mr. Harley or anything like that?

23 JEFF PLUNKETT: No.

24 HEARING OFFICER: Were there any other specific allegations regarding
25 working with the coworkers that were brought up to you?

26 JEFF PLUNKETT: I don't recall any specifics right now.

27 HEARING OFFICER: So, just to be clear, it was deemed that what Frenchie was
28 doing was not bullying, but he was just provided an
29 alternate chain of command. Am I understanding that
30 correctly in terms of the employer's response?

1 JEFF PLUNKETT: Yes, I did let him know on multiple occasions if Frenchie
2 wasn't available that there's always-- we sell a lot of cars.
3 There's always somebody available to help whether it be
4 Tyler in the new car or myself or-- and we have pre-own
5 manager Marvin. There's always somebody that can help
6 facilitate a deal.

7 HEARING OFFICER: Were there any recent changes to the terms or conditions
8 of his employment prior to him submitting that letter of
9 resignation?

10 JEFF PLUNKETT: No.

11 HEARING OFFICER: At the time he submitted that letter of resignation, was his
12 job in jeopardy?

13 JEFF PLUNKETT: Kalise and I had reviewed with him his numbers that he
14 counted as sales didn't correspond with what was actually
15 being sold, and so we had a detailed conversation with
16 him, and we went over month by month. We went over
17 every month that he had been employed here and what he
18 had actually sold versus what he had written down that he
19 had sold, and we went through every single month with
20 him.

21 HEARING OFFICER: Okay. So, was he told that he was going to be discharged
22 because of that or anything like that?

23 JEFF PLUNKETT: No.

24 HEARING OFFICER: Was he given any sort of, like, final warning or told if you
25 meet quota next month, you'll be discharged? Anything
26 specific like that at any point?

27 JEFF PLUNKETT: No.

28 HEARING OFFICER: Do you know if the computers the employer has on the
29 premises has text to speech capabilities?

30 JEFF PLUNKETT: They do not.

1

2 HEARING OFFICER: Would Kalise be an appropriate person to go to to request
3 accommodations if those were needed?

4 JEFF PLUNKETT: Yes.

5 HEARING OFFICER: Okay. So, after the resignation letter on January 31, was
6 there a subsequent conversation with Mr. Harley about his
7 job status on February the 5th?

8 JEFF PLUNKETT: Multiple times between the 31st and his last day, on more
9 than one occasion, it was at least every week, I had let him
10 know personally that we were accepting his resignation,
11 and we were not accepting the rescission.

12 HEARING OFFICER: Those conversations, was that in writing or was that a
13 verbal conversation?

14 JEFF PLUNKETT: Verbal.

15 HEARING OFFICER: Did he submit something in writing indicating he wished
16 to rescind his resignation?

17 JEFF PLUNKETT: No, not to me, no.

18 HEARING OFFICER: Did he to anyone with the employer that you're aware of?

19 JEFF PLUNKETT: Yes, to Kalise.

20 HEARING OFFICER: Okay. And just so I'm clear, did the employer ever accept
21 that rescission of his resignation?

22 JEFF PLUNKETT: Never.

23 HEARING OFFICER: Did the employer ever communicate that to Mr. Harley
24 that they were, in fact, accepting the rescission of the
25 resignation?

26 JEFF PLUNKETT: No.

27 HEARING OFFICER: Tell me about the conversation y'all had on February the
28 29th.

1 JEFF PLUNKETT: I let him know that we had accepted his resignation and
2 that, you know, he would not be employed here, you
3 know, after that-- you know, that was the last day of the
4 month, that he would no longer be employed here after
5 that date.

6 HEARING OFFICER: So, did he actually work after February 29 for the
7 employer?

8 JEFF PLUNKETT: Not to my knowledge at all.

9 HEARING OFFICER: Okay. He indicated that he did do work and, like,
10 continued to help people transition with his files through
11 April the 1st. Is that accurate?

12 JEFF PLUNKETT: Not to my knowledge at all, no.

13 HEARING OFFICER: Was he paid for any time between February 29 and April
14 the 1st?

15 JEFF PLUNKETT: Just severance only, no commission.

16 HEARING OFFICER: And was his salary commission only?

17 JEFF PLUNKETT: Yes, we're on 100 percent commission.

18 HEARING OFFICER: Okay. So, even if he work but did not do any sales, he
19 would not have received any wages from February 29
20 through April the 1st?

21 JEFF PLUNKETT: Correct.

22 HEARING OFFICER: Okay. So, just so I'm clear, on February the 29th, did you
23 tell him that was going to be his last day or that he just
24 wasn't allowed to be on the premises anymore while he
25 continued working?

26 JEFF PLUNKETT: Last day.

27 HEARING OFFICER: And what was his response to that?

1 JEFF PLUNKETT: I'm trying to think. It wasn't combative or saying he was
2 staying or anything. I let him know, and oh, that was the
3 conversation when he let me know he was going to be
4 headed to Chicago to patch his relationship up with his
5 kids, that he felt like being away from them, that he
6 needed to spend more time with them and that he was
7 going to seek employment there. That was our final
8 conversation that day.

9 HEARING OFFICER: You said you sort of mentioned to him weekly that
10 February 29 was going to be the last day and the employer
11 did not accept the rescission. What was his response when
12 you brought that up or said that on those prior occasions?
13 Do you recall?

14 JEFF PLUNKETT: No. I think it was more me just letting him know, you
15 know, that's where we were heading and that we were here
16 to help him sell cars between now and that time. It was
17 very helpful. It was just letting him know that we're
18 staying with the resignation, but I was always there to help
19 him, to help him sell cars between that time and the last
20 day of February.

21 HEARING OFFICER: Okay. So, if an employee needs an accommodation, and
22 human resources does not accommodate their requests, is
23 there anyone else they can go to with their concerns?

24 JEFF PLUNKETT: Yes, Wes Bradshaw. He's the general manager.

25 HEARING OFFICER: Okay. Are employees advised that if they go through the
26 chain of command if they're supposed to, and everyone is
27 unresponsive that Mr. Bradshaw is available to be part of
28 that?

29 JEFF PLUNKETT: Yes, it's in our employee handbook.

30 HEARING OFFICER: What did it say?

31 JACK COHOON: Objection, hearsay and [UNCLEAR] evidence.

1 HEARING OFFICER: Okay. I'll note the objection. I'm going to overrule it at
2 this time. We do allow hearsay, and again, I will let him
3 testify to what his knowledge of the handbook is, so
4 objection's noted and overruled. So, what does the
5 handbook say about that?

6 JEFF PLUNKETT: Just that, you know, go through the chain of command, so
7 you know, like, I will be the general sales manager, and
8 then Wes would be the general manager, and then his
9 father, William, is the owner of all the dealerships.

10 HEARING OFFICER: So, is, like, the chain of command spelled out in the
11 handbook or does it just say there is a chain of command?

12 JEFF PLUNKETT: It's all spelled out.

13 HEARING OFFICER: Do employees get a copy of the handbook?

14 JEFF PLUNKETT: Yes.

15 HEARING OFFICER: When do they get that?

16 JEFF PLUNKETT: During their orientation.

17 HEARING OFFICER: Okay. Do you know whether or not--

18 JACK COHOON: I object based on personal knowledge.

19 HEARING OFFICER: Okay. As a general business practice, do employees get
20 handbooks during orientation, Mr. Plunkett?

21 JEFF PLUNKETT: Yes. It's available online.

22 HEARING OFFICER: Okay. Sorry, so just so I'm clear, do they get a copy or are
23 they just told where it is?

24 JEFF PLUNKETT: It's all online, and they've already signed that they've read
25 it.

26 HEARING OFFICER: So, they sign off that they've read it during orientation as a
27 general business practice or no?

28 JEFF PLUNKETT: Yes.

1 HEARING OFFICER: Okay. I'll note counsel's objection for the record. I'm
2 going to overrule it as I find Mr. Plunkett has knowledge
3 regarding the general business practices. Okay. Do you
4 know whether or not Mr. Harley specifically got a copy or
5 was told where that handbook was?

6 JEFF PLUNKETT: Yes, I believe so. It's part of our orientation process which
7 is extremely thorough.

8 HEARING OFFICER: Do you do any of the orientation or who does that?

9 JEFF PLUNKETT: Kalise and Amy who is the assistant HR.

10 HEARING OFFICER: Okay. And is Kalise still employed with the employer?

11 JEFF PLUNKETT: Yes.

12 HEARING OFFICER: Okay. Is there any reason she could not be here today?

13 JEFF PLUNKETT: Yes, maternity leave. Her baby came before the due date--

14 HEARING OFFICER: Okay. Give me a moment.

15 JEFF PLUNKETT: --which was Tuesday, Monday night.

16 HEARING OFFICER: Okay. Okay. Monday night, thank you, but just to be
17 clear, just Mr. Plunkett right now. No one else can prompt
18 with his sworn testimony. I understand that's sort of a
19 tangential issue, but still it's Mr. Plunkett's sworn
20 testimony. Nobody else can be interrupting or prompting
21 him. Just be mindful of that. Okay. So, did you ever
22 witness anyone bully or harass Mr. Harley personally, Mr.
23 Plunkett?

24 JEFF PLUNKETT: No.

25 HEARING OFFICER: Things like stealing dealer tags, is that something that
26 goes on at the dealerships sometimes?

27 JEFF PLUNKETT: No. I guess you would borrow someone's dealer tag for a
28 test drive, but as far as stealing dealer tags, no. Today was
29 the first time I've ever heard him bringing that up.

1 JEFF PLUNKETT: He probably said what they-- we met with him on the
2 issue, and we met with Ernest, and we met with Frenchie
3 on the issue thoroughly, but as far as the exact words that
4 he said, I don't recall right now. I know we thoroughly met
5 with them and investigated all of it.

6 HEARING OFFICER: Okay. Do you remember when that conversation with
7 Ernest happened? Do you remember when that
8 conversation or incident occurred?

9 JEFF PLUNKETT: Not right off, but I do know that none of ever said,
10 "Ernest, you need to apologize to Mike." That was on the
11 men to make.

12 HEARING OFFICER: Do you know whether or not it happened before or after
13 he submitted the letter of resignation?

14 JEFF PLUNKETT: I think it was after. I think Mike had indicated it was
15 afterwards. I think it's indicated somewhere afterwards. t's
16 not, like, hand-on in front of me.

17 HEARING OFFICER: Okay. But to the best of your recollection, does the way
18 Mr. Harley characterized it as happening on or about
19 February 5, does that sound right?

20 JEFF PLUNKETT: Yes, that sounds right, yes.

21 HEARING OFFICER: So, if someone needs an accommodation, what is the
22 process that they need to go through to accommodate that?
23 Can you just sort of walk me through that, please?

24 JEFF PLUNKETT: They would go to their immediate manager. Then their
25 immediate manager would go to his-- I'm just giving you
26 an example of the sales department-- then that manager
27 would come to me, and then I would go to HR, and then if
28 we needed to get the general manager involved, we would.

29 HEARING OFFICER: And, Mr. Plunkett, y'all have the documents that have
30 been entered in as Claimant's 1, correct?

1 JEFF PLUNKETT: Yes.

2 HEARING OFFICER: Okay. The January 30 e-mail that Mr. Harley sent to
3 Kalise indicating he had PTSD asking for reasonable
4 accommodation, were you aware of that e-mail prior to it
5 being submitted into-- or proffered for evidence in this
6 hearing or when you got it for the hearing?

7 JEFF PLUNKETT: Yes, she had brought that to my attention, yes.

8 HEARING OFFICER: Okay. When was that?

9 JEFF PLUNKETT: The day that he sent it.

10 HEARING OFFICER: Okay. Sorry, so I thought you told me earlier you were
11 unaware of his PTSD issues?

12 JEFF PLUNKETT: I was. The only time I was aware of it was, you know, at
13 that same time, the 30th, the 31st, all during those days.
14 Prior to that, when he's talking about bringing it up to
15 Marty who was a consultant who actually was physically
16 here some months one day a month and other days two
17 days a month, so prior to that, I had never known anything
18 about PTSD.

19 HEARING OFFICER: Okay. But you saw this e-mail on or about January 30?

20 JEFF PLUNKETT: Yes, I think so. Let me see. Yes, yes.

21 HEARING OFFICER: Okay. So, in the letter, he does mentioned his PTSD and
22 that he's requesting reasonable accommodations. What
23 actions do you take, if any, after being advised of this e-
24 mail and his request for reasonable accommodations?

25 JEFF PLUNKETT: Kalise checked with IT, and we deemed as a group that
26 there was no need to have access to all of our information,
27 you know, from your house and on your personal laptop.

28 HEARING OFFICER: Okay. To your knowledge, was the text to speech
29 component ever brought up?

1 the dealership. There are a couple of company-owned
2 laptops and company-owned hotheads that are used for
3 Cadillac and other deliveries when you sell a car.

4 JACK COHOON: Okay. So, now both of your sons use laptops, right?

5 JEFF PLUNKETT: No, that's incorrect. I clarified that with her right off.
6 Jordan has a company-owned laptop, okay, and he uses it
7 to purchase cars, and he doesn't take it home or anything.
8 It stays here at the dealership.

9 JACK COHOON: I guess my questions not necessarily for personal laptops
10 but also just laptops generally. Now a Corvette salesman
11 named Kerry uses his personal laptop?

12 JEFF PLUNKETT: No, I'm unaware of that.

13 JACK COHOON: Now access to a computer and then entering data is a
14 significant part of the job, correct?

15 JEFF PLUNKETT: Yes, every salesperson has their computer in their office.

16 JACK COHOON: So, for example, this TRM tool and access to records
17 through CRM?

18 JEFF PLUNKETT: Yes.

19 JACK COHOON: Okay. Now the text to speech function was never installed
20 on or Dragon Speaks was never installed on Mr. Harley's
21 computer, was it?

22 JEFF PLUNKETT: No.

23 JACK COHOON: Okay.

24 JEFF PLUNKETT: The text to speech thing was never brought to my
25 attention, you know, until the end of January.

26 JACK COHOON: Now you mentioned these weekly conversations you say
27 you had with Mr. Harley. Like what days were these
28 conversations on?

1 JEFF PLUNKETT: I don't have the exact day, but Mike could tell you that I
2 go around with a game sheet at least three times a day to
3 see what people have working, in the mornings, in the
4 afternoons and in the evenings to see what they have
5 working and what appointments they have for the
6 following day, what I can help with, and I know there
7 was, you know, at least on a weekly occurrence that I was
8 letting him know that we were proceeding with the
9 resignation.

10 JACK COHOON: Now there was no written notice of you proceeding with
11 the resignation or refusing to accept his rescission, was
12 there?

13 JEFF PLUNKETT: No.

14 JACK COHOON: Okay. Now weren't you aware as early as September or
15 October 2019 that Mr. Harley had PTSD?

16 JEFF PLUNKETT: No.

17 JACK COHOON: Now would it be appropriate for Mr. Harley to raise these
18 issues regarding PTSD or accommodations with HR?
19 Would that be a proper channel for him to go to if he had
20 these concerns?

21 JEFF PLUNKETT: Yes.

22 JACK COHOON: And would that be a proper place to go with concerns
23 about bullying?

24 JEFF PLUNKETT: Yes.

25 JACK COHOON: So, his communications he had with Kalise, that would be
26 the proper person for him to talk to or at least one proper
27 person to talk to about those concerns, right?

28 JEFF PLUNKETT: Yes.

29 JACK COHOON: Okay.

1 JEFF PLUNKETT: I was with him and Kalise on multiple occasions regarding
2 his accusations of bullying with Frenchie.

3 JACK COHOON: Yes. And during those conversations about bullying, did
4 he bring up the PTSD?

5 JEFF PLUNKETT: No, not to my knowledge.

6 JACK COHOON: What were the dates of conversations about bullying? Is it
7 recorded in some sort of a log or memo?

8 JEFF PLUNKETT: I'm not sure.

9 JACK COHOON: Now you agree that the employer, that Bradshaw, was
10 aware that the issue of the PTSD and the failure to
11 accommodate was a reason that Mr. Harley provided for
12 his first expressing his desire to resign, correct?

13 JEFF PLUNKETT: No.

14 JACK COHOON: Okay. Now are you familiar with the employer fact
15 finding that was provided to the department?

16 JEFF PLUNKETT: No.

17 JACK COHOON: Okay. It's a part of Agency Exhibit 1. I'm looking at it
18 specifically page 13 of Agency Exhibit 1, and I believe it
19 was submitted by Kalise Cochrane, right--

20 JAMES M HARLEY: Yes.

21 JACK COHOON: --on behalf of the employer. You see what reason did the
22 claimant give the employer for quitting? Do you have it in
23 front of you?

24 JEFF PLUNKETT: No.

25 JACK COHOON: No. It says he wanted accommodation for his PTSD and
26 health issues. He would not work with a manager and
27 wanted to bring his own computer in. Neither of these
28 requests could be given. That's apparently what the

1 employer's position was at the time of the filing of his
2 claim. Do you agree with that?

3 JEFF PLUNKETT: I mean, I don't see it. I'll look through--

4 JACK COHOON: All right. It's on the employer fact finding, the number
5 document.

6 JEFF PLUNKETT: I'll tell you what I do recall, you know, that immediately I
7 reached out and I got it in text format that I immediately
8 reached out to Marty Gaddis when all this came up, and
9 he let me know that he did not know, he was unaware--

10 JACK COHOON: No, I just object again based on hearsay.

11 HEARING OFFICER: Okay. I'll note the objection. I would overrule on the
12 grounds of hearsay, and I'm also going to say that it's not
13 relevant in really answering counsel's question, so maybe
14 to just sort of clarify and speed things along, Mr. Plunkett,
15 do y'all have a copy of what the employer submitted in the
16 fact findings or not?

17 JEFF PLUNKETT: No.

18 HEARING OFFICER: Okay. All right. I'll let you go back to questioning.

19 JACK COHOON: Okay.

20 HEARING OFFICER: Uh-huh.

21 JACK COHOON: So, look, I think I'm almost done. There's a couple other
22 things real quick. When Mr. Harley was requesting to use
23 his laptop-- and I understand you're saying that the
24 employee shouldn't use a personal laptop-- did the
25 employer ever offer to provide a company laptop for his
26 use?

27 JEFF PLUNKETT: No.

28 JACK COHOON: Okay. Didn't Mr. Gaddis let you know about Mr. Harley's
29 PTSD?

1 JEFF PLUNKETT: No, never.

2 JACK COHOON: Didn't Mr. Gaddis inform you of Mr. Harley's request to
3 use a laptop loaded with software for text to speech?

4 JEFF PLUNKETT: With text to speech, no.

5 JACK COHOON: Okay. All right. But he did inform you of the request to
6 use his personal laptop?

7 JEFF PLUNKETT: Yes. Every salesman got everything they need on their
8 computer to facilitate a deal or facilitate a transaction or
9 any communications with a customer through e-mail.

10 JACK COHOON: Now didn't Mr. Harley testify that IT had been involved
11 with trying to resolve an issue with the slowness of the
12 software that Mr. Harley needed but was not successful? I
13 mean, do you recall any kind of communications with IT
14 that you were a party to regarding Mr. Harley's computer?

15 JEFF PLUNKETT: No, but if there ever is, you could go to another computer
16 in need of testing. There's multiple computers that are
17 available.

18 JACK COHOON: Okay. All right. Let's see. Did Mr. Harley provide
19 customers in February to give testimonials for marketing?

20 JEFF PLUNKETT: I'm not sure. Yes, I'm not sure.

21 JACK COHOON: Okay. So, let me see, I'm going to ask one. I think we're
22 about done. I don't believe I have any more questions for
23 this witness at this time.

24 HEARING OFFICER: All right. Thank you, Mr. Cohoon. Mr. Challenger, any
25 questions for Mr. Plunkett on redirect?

26 GEOFF CHALLENGER: No.

27 HEARING OFFICER: Okay. Mr. Challenger, Mr. Cohoon has asked for a five-
28 minute restroom break. Do you have any objection to
29 that?

1 GEOFF CHALLENGER: Okay.

2 HEARING OFFICER: What I'm going to do, I'm going to leave the lines open,
3 and so I'm not going to hang up with anybody, but I'll give
4 everybody five minutes, and it is going to be just five
5 minutes because we're into my next scheduled hearing at
6 this point, so five minutes, and then we will resume
7 testimony with Mr. Challenger at that time, so I'm going
8 to hop back on here at 2:04. If anybody's not on the line,
9 we'll try and conference them back in. All right. So, a
10 five-minute recess.

11 JACK COHOON: Thank you.

12 HEARING OFFICER: Uh-huh. Okay. It is 2:04. Mr. Cohoon, are you there? Mr.
13 Cohoon?

14 JACK COHOON: I am. I am here.

15 HEARING OFFICER: Great. Mr. Harley? Mr. Harley? Mr. Challenger?

16 GEOFF CHALLENGER: Yes.

17 HEARING OFFICER: Okay. I think we may have lost Mr. Harley again.

18 JACK COHOON: No.

19 HEARING OFFICER: Pardon? So, let me just try to get him back on the line.
20 Everybody, sit tight for me for one moment, please. Thank
21 you.

22 [Phone rings]

23 JAMES M HARLEY: Mike Harley.

24 HEARING OFFICER: Okay. Mr. Harley, let me conference you back in with
25 everybody.

26 JAMES M HARLEY: All right. Thank you.

27 HEARING OFFICER: Uh-huh. Okay. Mr. Cohoon, are you there?

28 JACK COHOON: I am.

1 HEARING OFFICER: Mr. Harley?
2 JAMES M HARLEY: I am.
3 HEARING OFFICER: And Mr. Challenger?
4 GEOFF CHALLENGER: Yes.
5 HEARING OFFICER: Okay. Thank you. All right. I'm just going to come to
6 counsel and the employer and just want to confirm that we
7 did not discuss the case during the break while we were
8 briefly off record. Mr. Cohoon, will you confirm that we
9 did not discuss the case?
10 JACK COHOON: Correct.
11 HEARING OFFICER: Okay. And Mr. Challenger?
12 GEOFF CHALLENGER: Yes.
13 HEARING OFFICER: Okay. Thank you. All right. Mr. Challenger, can you
14 please state and spell your name for the record, please?
15 GEOFF CHALLENGER: Geoffrey Challenger, G-E-O-F-F-R-E-Y C-H-A-L-L-E-N-
16 G-E-R.
17 HEARING OFFICER: Thank you, Mr. Challenger, and your position with the
18 employer?
19 GEOFF CHALLENGER: Chief financial officer.
20 HEARING OFFICER: Okay. And Mr. Challenger, were you involved in any of
21 the circumstances surrounding Mr. Harley's separation?
22 GEOFF CHALLENGER: No.
23 HEARING OFFICER: Do you have knowledge of any of his conversations with
24 either human resources or Mr. Plunkett or anyone else
25 about any of these issues we've discussed today?
26 GEOFF CHALLENGER: None.

1 HEARING OFFICER: Is there anything you want to add or clarify or tell me
2 regarding Mr. Harley's separation, the business practices
3 of the employer or anything else?

4 GEOFF CHALLENGER: No.

5 HEARING OFFICER: Okay. All right. And Mr. Challenger, did the employer
6 have any evidence to proffer or is the employer not going
7 to proffer any documents?

8 GEOFF CHALLENGER: No documents.

9 HEARING OFFICER: Okay. Mr. Cohoon, any questions for Mr. Challenger?

10 JACK COHOON: None.

11 HEARING OFFICER: Okay. All right. I do have a couple of quick follow-up
12 questions for Mr. Harley, so I'm going to come back to
13 you very briefly, Mr. Harley, before we close the hearing.
14 Okay. Mr. Harley, just so I want to make sure I'm clear on
15 this, Mr. Harley, the accommodation you needed was that
16 you needed the text to speech function on a computer,
17 correct?

18 JAMES M HARLEY: And a laptop of a speed that could handle it all.

19 HEARING OFFICER: Okay.

20 JAMES M HARLEY: It could've been my laptop which I was willing to provide
21 or it could've been one provided by the employer. Like I
22 said, my previous employer just prior to working at
23 Bradshaw had provided a \$1500 laptop with the \$249
24 software.

25 HEARING OFFICER: Okay. But essentially the functionality you needed was the
26 text to speech, and then you just needed it to be at
27 operable speeds, correct?

28 JAMES M HARLEY: And I mean, the issue with PTSD, things have to operate
29 on a speed seamlessly and the PCs at Bradshaw didn't.

1 You know, they were extremely slow, and I would
2 consider them almost non-operable.

3 HEARING OFFICER: Okay. So the speed and the text to speech were what you
4 needed?

5 JAMES M HARLEY: Correct.

6 HEARING OFFICER: Okay. Going back through the documents now, I know in
7 the January 30 letter, you mentioned reasonable
8 accommodation anywhere in your e-mails or written
9 correspondence with anyone with the employer, did you
10 specify that those were the two things you needed for
11 reasonable accommodation?

12 JAMES M HARLEY: I didn't hear that question.

13 HEARING OFFICER: Yes.

14 JAMES M HARLEY: Go ahead.

15 HEARING OFFICER: Yes. So, my question was in any of the documents that we
16 have entered in as evidence or writing at any point, did
17 you clarify that to the employer that that was the
18 accommodation that you needed?

19 JAMES M HARLEY: I mean, in the exhibits, it's very clear that that's-- in
20 writing and in person, that was made clear.

21 HEARING OFFICER: Let's do the in writing first. I might go to counsel to see if
22 he can direct me. Counsel, Mr. Cohoon, is there a specific
23 page in the documents where it mentions the specific text
24 to speech and the speed? Do you know what page that's on
25 if that is in the documents?

26 JACK COHOON: It would either the January 30 or the February 5 e-mail I'm
27 looking for now. That would be here probably one of
28 these.

29 HEARING OFFICER: Okay. All right.

1 JACK COHOON: It was 12 or 13. I'm looking right at it as we speak.

2 HEARING OFFICER: Okay.

3 JACK COHOON: Yes, it's February 5 in the second paragraph on the
4 mission on page 12.

5 HEARING OFFICER: Okay. Thank you. Give me one second.

6 JACK COHOON: Or third paragraph, it's going to be.

7 HEARING OFFICER: All right. Okay. And you said you also had this discussion
8 in person with someone, Mr. Harley?

9 JAMES M HARLEY: Yes. As I testified before, I mean, I had conversations
10 with Marty Gaddis, I had conversations with Kalise, and
11 she had conversations with IT about, you know, what I
12 was recollecting, and I had conversations with Kerry, the
13 guy who used his own personal laptop, and you know, I
14 told him that I needed to use mine, and Kerry's advice
15 was, well, just use it.

16 And I said, "Well, I can't because, you know, Jeff came
17 into my office--" this was just a few weeks before-- "and
18 told me that I couldn't be seen with my laptop by him in
19 the sales area," and you know, by the way, the CRM Jeff
20 referenced, all of our work was done in the CRM.

21 So, you know, if you can't access the CRM well with
22 whatever issues you're facing whether it's general
23 operational or PTSD disability, you know, you're highly
24 disabled if not, you know, made unable to do your job,
25 and Kerry, basically he used his through his personal
26 laptop, and he just kept it underneath his desk, and I
27 wasn't willing to do that ethically.

28 HEARING OFFICER: Okay. Okay. All right. And I'm looking at the February 5
29 pointed out by counsel on page 12, and I see Section 1, the
30 second paragraph, it talks about needing a laptop with
31 speed. I don't see any mention of text to speech. Do you

1 recall, is there somewhere in this e-mail that references
2 text to speech?

3 JAMES M HARLEY: I don't, but if Kalise were here, she would be able to
4 corroborate that we had conversations about why I needed
5 to use my personal laptop or a laptop, and it was two-
6 pronged-- the speed and the operation issues with the PC
7 at the desk and the use of the software.

8 HEARING OFFICER: Okay. Also, Mr. Plunkett indicated in his testimony that
9 he would have a weekly conversation or weekly bring up
10 to you the fact that February the 29th would be your last
11 day. Did y'all have those conversations or did he make
12 those statements to you?

13 JAMES M HARLEY: I don't recall those statements. February, I wasn't there
14 every day because of my mother's surgery, so I find it
15 difficult to believe it occurred as he said, but I don't recall
16 any discussion like that. As I've said, I thought things
17 were improving because Ernest came in and apologized to
18 me or you know, what he did on the direction of Frenchie
19 Lyles to bully me in front of my customer.

20 Second, Jeff didn't remember it, but I brought in my father
21 who bought a car while I was employed there jointly with
22 me, the one I'm in right now, and the Buick sales floor, I
23 brought in Miss Tutts T-U-T-T-S who's a dealer rater--

24 HEARING OFFICER: Okay. Sir, is this relevant, Mr. Harley?

25 JAMES M HARLEY: Yes, it's relevant to your question, so I thought things
26 were working out, and there was no conversation of well,
27 you're out of here on the 29th threatened on a weekly basis
28 in February. So, there was a lot going on in February
29 because of my mother's, you know, life-threatening
30 surgery which everyone was aware of including
31 Bradshaws and, you know, I was trying to make sales and
32 increase sales and grow my business, and I brought, you

1 know, three customers in to do marketing television deals
2 including my father, one of the three, so Miss Tutts and
3 Mr. Witherspoon, I think.

4 HEARING OFFICER: Okay. All right. I don't have any more questions for you,
5 Mr. Harley. Mr. Cohoon, any clarifying questions for Mr.
6 Harley?

7 JACK COHOON: Just regarding that February 5 e-mail, I just want to have a
8 question about the second paragraph there. It says I
9 request-- I should be permitted to use my laptop at my
10 sales showroom guests so I can use the software provided
11 by my former employer and school. What software, is that
12 the text to speech software you're referencing in that e-
13 mail?

14 JAMES M HARLEY: Yes, it is. I mean, it's unfortunate these hearings are not in
15 person because the document's in front of me, so yes, that
16 explicitly-- you know, I thought I knew it earlier but you
17 just read where it was explicitly requested, so I mean, I
18 thought I had done everything I could possibly do, and
19 Kalise was just communicating the final decision on the
20 laptop, you know, from my dialog from September of '19
21 till February 19-ish, 20th maybe or 21st of 2020 to try to
22 get an accommodation where I could work effectively.

23 HEARING OFFICER: Anything else, Mr. Cohoon?

24 JACK COHOON: All right. And so, you reference on here previous e-mails.
25 It says I've noted in previous e-mails. Were those previous
26 e-mails to whom? Who did you send those previous e-
27 mails to regarding the software and the accommodation?

28 JAMES M HARLEY: You know, my previous communications both written and
29 oral were with Marty Gaddis, Kalise, her HR assistant,
30 Jeff Plunkett and text, as well, with Frenchie Lyles. Then
31 conversations with other managers and employees

1 including Tyler and Jordan Plunkett and then Kerry who
2 is, I think, a [UNCLEAR] manager.

3 JACK COHOON: So, this isn't even the first e-mail in which you brought up
4 the need for accommodation. Is that correct?

5 JAMES M HARLEY: Correct.

6 JACK COHOON: Okay. I don't have any more questions for Mr. Harley.

7 HEARING OFFICER: Okay. Mr. Challenger, any questions?

8 GEOFF CHALLENGER: No.

9 HEARING OFFICER: Okay. Give me one moment just to go back through my
10 notes and before I come to everybody for any final
11 statements unless do you have something further, Mr.
12 Cohoon?

13 JACK COHOON: Honestly, I know this is somewhat unusual, but I mean,
14 Kalise Cochrane is a key witness in this. Is it possible to
15 adjourn and reconvene once she's able to participate, to
16 testify. I can tell her testimony would be important.

17 HEARING OFFICER: Okay.

18 JACK COHOON: [UNCLEAR] concerns already.

19 HEARING OFFICER: You did not request a subpoena for her, correct, before the
20 hearing?

21 JACK COHOON: We did not. We also did not know that there was going to
22 be so many denials on the part of the employer to things
23 that were pretty well-established and to documents and
24 other things.

25 HEARING OFFICER: Okay. I mean, Mr. Plunkett indicated that she was
26 unavailable as she's on maternity leave. Do you have a
27 return date for her yet at this time or not really?

28 GEOFF CHALLENGER: We don't. She would've been here, but the baby came
29 early. We do not know when her return is.

1 HEARING OFFICER: Okay. You said she had her baby on Monday.
2 GEOFF CHALLENGER: Monday night.
3 HEARING OFFICER: Yes. At this time, I'm going to deny your request, Mr.
4 Cohoon, as we have no inkling of when she would be
5 available to testify as she's out on maternity leave, and I
6 do believe we have sufficient testimony and evidence to
7 render a fair and just decision based on what's been given
8 in the hearing today, so I will note the request to adjourn
9 and allow her to testify. I'm going to deny that request at
10 this time. Anything further, Mr. Cohoon?
11 JACK COHOON: I'll just that Mr. Harley did not quit. He had rescinded his
12 resignation, and even if it was established that he quit, he
13 had good cause due to employer's failure to provide
14 reasonable accommodation or even engage in any sort of
15 [UNCLEAR] to help him resolve this PTSD issue. Thank
16 you.
17 HEARING OFFICER: Okay. Thank you, Mr. Cohoon. Mr. Harley, anything
18 further?
19 JAMES M HARLEY: No, Mr. Cohoon speaks for me.
20 HEARING OFFICER: Okay. And Mr. Challenger, anything further?
21 GEOFF CHALLENGER: No.
22 HEARING OFFICER: And Mr. Plunkett, anything further?
23 JEFF PLUNKETT: No.
24 HEARING OFFICER: Okay. Thank you. All right. Give me just one second. I do
25 apologize. Give me one moment to just go back over my
26 notes. All right. I think that's it. As I have no more
27 questions, and there is no more testimony being offered, I
28 declare this hearing closed. Okay. Thank you all very
29 much. What's going to happen now, the Tribunal is going
30 to take the documents that have been entered into the

1 record, as well as your testimony and render a decision.
2 Both parties, as well as counsel, will receive a copy of that
3 in the mail just as soon as possible. Thank you all very
4 much. Have a great day.

5 JAMES M HARLEY: Thank you.

6 JACK COHOON: Thank you.

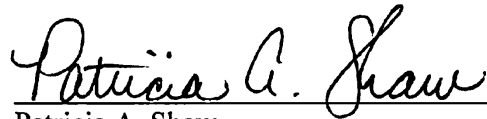
7 HEARING OFFICER: Thanks. Bye-bye.

8 [Recording ended]

9 **HEARING CLOSED**
10
11

CERTIFICATE

This is to certify that this is a copy of the proceedings held in a hearing before Brynn DeHay, Administrative Hearing Officer, for the South Carolina Department of Employment Workforce, in the matter of James M Harley, Claimant and Bradshaw Automotive Group Inc, Employer on November 18, 2020, which proceedings were phonographically recorded, transcribed by me, and herein appear.



Patricia A. Shaw
Transcriptionist
Williams & Associates

Richmond, Virginia

March 11, 2021

CERTIFICATE

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This is to certify that this is a copy of the proceedings held in a hearing before Brynn DeHay, Administrative Hearing Officer, for the South Carolina Department of Employment Workforce, in the matter of James M Harley, Claimant and Bradshaw Automotive Group Inc, Employer on November 18, 2020, which proceedings were phonographically recorded, proofread by me, and herein appear.


Linda A. Williams
Proofreader
Williams & Associates

Richmond, Virginia
March 12, 2021



Agency 1
South Carolina
Department of Employment and Workforce



11522379

Original

JAMES M HARLEY
238 WOODS RD
GREER SC 29650-3238

Decision Date: 07/16/2020
Mailing Date: 07/16/2020
Effective Date: 05/03/2020
Type: QT02
Category: Relocation
Benefit Year Ends: 05/01/2021
RE: BRADSHAW
AUTOMOTIVE
GROUP INC
Claimant ID:
SSN: [REDACTED]
WBA: \$326.00
RBA: \$5,360.00

DECISION

You are held ineligible for benefits from 05/03/2020 .

DETERMINATION REASON

You left your most recent bona fide employer to relocate due to personal circumstances not attributable to the employer. Your reason for leaving was voluntary and without good cause under the South Carolina Code Section 41-35-120.

CONCLUSION

You have not met the eligibility requirements of the law, benefits are denied from 05/03/2020.

UI Claims Adjudicator

IMPORTANT: This determination will be the final decision of the Department unless you file an appeal setting forth in detail the grounds for appeal by 07/27/2020. Your appeal may be filed via the MyBenefits Portal, by mail addressed to the "Appeal Tribunal, Post Office Box 995, Columbia, SC 29202," or by fax to 803-737-0287. For additional information on filing an appeal, contact the Appeals Department at 803-737-2520 or visit our website at www.dew.sc.gov/individuals/manage-your-benefits/appeals.

SEE FURTHER EXPLANATIONS OF THE LAW ON PAGE TWO (2) OF THIS FORM

Personal Information

Claimant ID:

First Name:	JAMES
--------------------	-------

Last Name: HARLEY

Middle Initial: M

Suffix:

Preferred Payment Method: Direct Deposit

Other Last Name Used (1):

Other Last Name Used (2):

Other Last Name Used (3):

Gender:

Mother's Maiden Name:

HUDSONHUDSON

Address information

Country: USA

Mailing Address, if different from residential: 238 WOODS RD

Mailing Address State: South Carolina

Residential Address Country: USA

Residential Address: 238 WOODS RD

Residential Address State: SC

Closest Employment Services Office: Greenville

Mailing Address City: Greer

Mailing Address Zip: 29650

Residential Address
City: Greer

Residential Address Zip: 29650

Commuter:

Contact Information

Primary Phone:

864-877-7427 Ext:

Alternate Phone: Ext:

Cell Phone:

864-567-7661

Fax

E-mail Address:

Contact E-mail: jmichaelharley@gmail.com
Method:

I wish to receive text alerts on important information on my unemployment claim:No

Demographic information

Country	Year	Value	Unit
Australia	2007	1.8	% of GDP
Brazil	2006	1.9	% of GDP
Canada	2006	1.9	% of GDP
China	2006	1.9	% of GDP
France	2006	1.9	% of GDP
Germany	2006	1.9	% of GDP
India	2006	1.9	% of GDP
Italy	2006	1.9	% of GDP
Japan	2006	1.9	% of GDP
South Korea	2006	1.9	% of GDP
Russia	2006	1.9	% of GDP
Spain	2006	1.9	% of GDP
Sweden	2006	1.9	% of GDP
Taiwan	2006	1.9	% of GDP
United Kingdom	2006	1.9	% of GDP
United States	2006	1.9	% of GDP

[REDACTED]

[REDACTED]

[REDACTED]

Downloaded At: 11:53 11 September 2009

Has all of your employment been in a state other than SC since 05/17/2019	No
Has any of your employment been in a state other than SC since 05/17/2019	Yes
Have you served in the Military since 11/17/2018	No
Have you been employed as a civilian by the Federal Government since 11/17/2018	No
Have you worked for a school or educational institution since 05/17/2019	Yes
Have you worked for a professional athletics organization since 05/17/2019	No
Are you an elected official	No

Employability Questions

Are you currently self-employed or do you earn income on a commission basis	No
Do you have plans to become self-employed or earn income on a commission basis	No
Are you currently able to look for, accept, and perform full time work for which you have training or experience	Yes
Are you currently enrolled in school or in training	Yes
Are you available for full-time work	
Are you available for part-time work	No

SIDI/IBIQ Response

The claimant indicated the follow states where they may have reportable wages:

ILLINOIS

SOUTH CAROLINA

The states listed below have indicated claim/wage information on file

State	State Minimum Weekly Benefit Rate	State Maximum Weekly Benefit Rate
ILLINOIS	51.00	569.00
SOUTH CAROLINA	42.00	326.00

Claimant Selection

I wish to combine my wages from all states into a single Combined claim

Employers - Regular

Employer Name	Address	Dates of Employment	Type of Employment
P O BOX 2269 GREER SC, 29652		08/26/2019 - 04/01/2020	Full Time

Separation - Regular

Employer Name

Reason employment ended:

I was forced to retire

If Quit or Discharge select the reason why:

Will you be returning to work for this employer?

No

If yes, please enter your return to work date:

State where work was performed:

South Carolina

City where work was performed:

Greer

Primary Occupation with this employer:

Are you an owner, corporate officer, or stakeholder of this employer?

No

What were your total earnings with this employer from through

17500.0

Employers - Out of State

Employer Name	Address	Dates of Employment	Type of Employment
UNIVERSITY OF CHICAGO, DBA UNIVERSITY OF CHICAGO	5801 S ELLIS AVE CHICAGO IL, 60637	05/23/2018 - 06/30/2019	

Separation - Out of State

Employer Name	UNIVERSITY OF CHICAGO, DBA UNIVERSITY OF CHICAGO
Reason employment ended:	I was forced to retire
If Quit or Discharge select the reason why:	
Will you be returning to work for this employer?	No
If yes, please enter your return to work date:	
What are your gross earnings for your last week of work?	\$5,600.00

Employers - Out of State

Employer Name	Address	Dates of Employment	Type of Employment
UNIVERSITY OF CHICAGO, DBA UNIVERSITY OF CHICAGO	5801 S ELLIS AVE CHICAGO IL, 60637	05/23/2018 - 06/30/2019	

Separation - Out of State**Employer Name****UNIVERSITY OF CHICAGO, DBA
UNIVERSITY OF CHICAGO**

Reason employment ended:

I was forced to retire

If Quit or Discharge select the reason why:

Will you be returning to work for this employer?

No

If yes, please enter your return to work date:

What are your gross earnings for your last week of work?

\$5,600.00

Other Separation

Have you applied for Workers' Compensation benefits within the last year or are you receiving Workers' Compensation benefits at this time? No

Are you or will you receive pension or retirement pay (other than Social Security)? No

Are you or will you receive vacation pay, severance pay, military accrued leave pay or other separation pay? No

Have you applied for or are you receiving any type of disability pay?

If you are eligible to receive benefits, would you like Federal Income Tax withheld from your benefits? No

If you are eligible to receive benefits, would you like State Income Tax withheld from your benefits? No

Do you have a definite return to work date or will start a new job for an employer you have not told us about? No

If yes, what is the name of the employer?

If yes, what is your return to work or start date?

Work Search

What is your lowest Rate of Pay you will accept for the type of work you are seeking? \$10.00 per Hour

Are tool, licenses, or permits required for the work you are seeking? No

If yes, do you have the required tools, licenses, or permits to perform the work you are seeking?

Benefits Payment Method

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Military/Veteran Information

Are you a veteran?	No
Is your spouse a veteran?	No
Is your spouse a veteran killed in active duty?	No
Is your spouse a deceased veteran who had a total disability?	No
Is your spouse a service member who is a MIA or POW?	No
Is your spouse a veteran who had a total (100%) disability rating from the VA?	
Were you awarded any campaign badges, ribbons or decorations?	
If yes, please mention	
Have you worked on a farm?	No
Did you earn at least half of your last 12 months income on a farm?	
Were you employed all year on a farm?	
Did you travel to work?	
Did you work at least 25 days on a farm?	
Have you worked in a food processing plant?	No
Did you earn at least half of your last 12 months income in food processing?	
Were you employed all year in food processing?	
Did you travel to work?	
Did you work at least 25 days in food processing?	
Do you have a valid SC driver's license?	Yes
Please provide your driver's license number as it appears on your driver's license	105514847
Please provide your weight as it appears on your driver's license	230
Driver's license class	D Regular Operator License
Commercial driver's license classes	None
Commercial driver's license restrictions	None
Do you have State Identification Card issued by SCDMV?	No
If yes, Please Provide you State Identification number	

Job Eligibility Counties

Select upto 6 counties where you are willing to work :

ANDERSON

GREENVILLE

LAURENS

OCONEE

PICKENS

SPARTANBURG

Job Eligibility Experience**Primary Choice**

Kinds of Jobs Seeking / ONET?:

Sales Managers

Years of experience:

Greater than one year

Years of Training:

Secondary Choice

Kinds of Jobs Seeking / ONET?:

Sales Representatives, Wholesale and Manufacturing,
Technical and Scientific Products

Years of experience:

Years of Training:

Last Job Information

How much did you earn on your last job?:

2500.0

Unit of pay:

Month

Travel Miles:

0-5

Location

Are you willing to relocate?:

Yes

Are you willing to travel at least the same distance as you last traveled to your last job?:

Yes

Your transportation methods:

Automobile Public Transportation

If offered a job, or if recalled from a layoff, are you available for work?

Yes

If offered a job, or if recalled from a layoff, would the lack of childcare or dependent care make you unable to work?:

No

Job And Availability Schedule**Available Time (Start Time - End Time)**

9:00 - 20:00

Available DaysSunday
Monday
Tuesday
Wednesday
Thursday
Friday
Saturday

Are you willing to work the same hours/shifts/days you worked on your last job?

Yes



Agency 1
South Carolina
Department of Employment and Workforce



8770186

Claimant Name: JAMES M HARLEY

Employer Name: BRADSHAW AUTOMOTIVE
GROUP INC

Claimant Party ID: [REDACTED]

Issue ID: 6051174

User ID: I

Fact Finding Questions	Responses	
I certify that the information I am submitting to the South Carolina Department of Employment and Workforce is true and accurate to the best of my knowledge. I understand any individual found to have submitted fraudulent information to obtain Unemployment Benefits may be subject to penalties of law - up to and including FELONY prosecution. I certify, understand, and acknowledge.	Yes	
IMPORTANT INSTRUCTIONS: Please be prepared to provide the following information as part of the fact finding. This information and/or documentation will be used to make a determination for benefits on your claim. -Approximate dates of incidents and/or situations relating to the separation. -The name and job title of those individuals involved in the separation incident. -The name and job title of those individuals that you may have discussed the separation with. -Dates of employment, work schedule, and/or rate of pay. -Documentation relating to the separation. This could be doctor's notes, settlement agreements, hire agreements, PCS orders, etc. -You will be asked to provide information regarding your separation from BRADSHAW AUTOMOTIVE GROUP INC You	Yes	

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indicated that your separation from BRADSHAW AUTOMOTIVE GROUP INC was due to forced to retire. Is this the correct separation reason?		
What date was your first day of work?	08/26/2019	
What date was your last day of work?	04/01/2020	
What date did your retirement begin?	04/01/2020	
Who forced you to retire? Name:	Jeff Plunkett	
Job Title:	General Sales Manager	
Did your being forced to retire have a financial impact on the employer?	Yes	
What was the financial impact?	More sales available for other sales consultants	
Did you receive any warnings?	Yes	
How were you warned on 1/10/20?	Verbally	
Who warned you? Name:	Jefferey Plunkett	
Why were you warned?	While I met my minimum sales number he claimed I failed to meet some new metrics	
Did you violate any company policies?	No	

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Department of Employment and Workforce

Was there a final incident that forced you to retire?	Yes	
What date was the final incident?	02/29/2020	
What was the final incident?	Mr. Plunkett asked that I leave the dealership and not return on this last Saturday but he paid me a salary through April 1st, 2020	
What is the reason for the two or more week delay between the date of final incident and being forced to retire?	A transition period	
What date were you informed of the forced retirement?	02/29/2020	
What date was the retirement originally planned to start?	12/31/2021	
Do you know why you ended up retiring earlier than the planned start date?	No	
How were you informed of the retirement?	Verbally	
Were you offered another position instead of having to retire?	No	
Do you know why you were forced to retire?	No	

By submitting this form, you confirm these are your own answers to the best of your knowledge.

Date Completed: May 04, 2020 03:43 PM



Agency 1
South Carolina
Department of Employment and Workforce



9218999

Claimant Name:

Employer Name: BRADSHAW AUTOMOTIVE
GROUP INC

Claimant Party ID: [REDACTED]

Issue ID: 6051174

User ID: B

Fact Finding Questions

Responses

I certify that the information I am submitting to the South Carolina Department of Employment and Workforce is true and accurate to the best of my knowledge. I understand any individual found to have submitted fraudulent information in regards to Unemployment Benefits may be subject to penalties of law - up to and including FELONY prosecution. I certify, understand, and acknowledge.	Yes	
IMPORTANT INSTRUCTIONS: Please be prepared to provide the following information as part of the fact finding. This information and/or documentation will be used to make a determination for benefits on this claim. The employer indicated the reason that the claimant separated was due to forced to retire. Is this the correct separation reason?	No	
What is the reason the claimant separated?	Quit	
What caused the claimant to quit?	General reasons, all other	
Has the employer paid the claimant at least \$2,608.00 during all terms of employment?	Yes	

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Is the employer paying or will the employer pay the claimant a pension and/or retirement pay?	No	
Name:	Coleece Posey Cochran	
Job Title:	Human Resources Manager	
Phone Number:	(864) 527-2579	
Provide an e-mail address for the primary contact.	cpcochran@bradshawauto.com	
What date was the claimant's first day of work?	08/26/2019	
What date was the claimant's last day of work?	04/01/2020	
What date was the claimant's date of separation?	04/01/2020	
Is the employer aware of a final incident that caused the claimant to quit?	No	
Does the employer know why the claimant quit?	Yes	
Why did the claimant quit?	He tried to rescind his resignation but we did not accept the rescinded resignation; we accepted the resignation.	
Did the claimant contact the employer to find a better solution than quitting the job?	Yes	
What date was the contact?	02/05/2020	

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What was the outcome of the contact?	We accepted his resignation	
Did the claimant give a resignation notice to the employer?	Yes	
What date did the claimant give notice to the employer?	01/31/2020	
What date did the claimant say the last day of work would be?	02/29/2020	
Was there a reason the claimant continued to work after the date given in the notice?	Yes	
Why did the claimant continue to work after last day given in the notice?	We actually paid him a severance for March 2020. His last day was 2/29/2020 and then he was paid for the month of March and termed 4/1/2020	
How did the claimant provide the notice?	In writing	
Did the claimant provide a reason for quitting in the notice?	Yes	
What reason did the claimant give the employer for quitting?	he wanted accommodation for his PTSD and health issues. He did not work to with a Manager and wanted to bring his own computer in. Neither of these request could be given	

By submitting this form, you confirm these are your own answers to the best of your knowledge.

Date Completed: May 13, 2020 12:48 PM

Agency 1

May. 7. 2020 4:26PM BRADSHAW AUTOMOTIVE No. 3659 P. 1/5



Bradshaw Automotive Companies
14000 E. Wade Hampton Boulevard
Greer, SC 29651

To SC DEW
Fax number 864-370-1376

From: Amy Kledzik
Fax number: 864-662-4102

Date 05/07/2020

Regarding: James Harley/ Claimant ID [REDACTED]

Phone number for follow-up: 864-662-4108

Number of Pages Including Cover / 5

RE: James Harley

See attached Information
Thank you,

Amy Kledzik
HR Assistant
Bradshaw Automotive Companies



May, 7, 2020 4:26PM

BRADSHAW AUTOMOTIVE

South Carolina

Department of Employment and Workforce



Please return to:
SC DEW
PO BOX 1477
COLUMBIA SC 29202
Fax: 864-370-1376

No. 3659

P. 2/5

23254



8767851



Claimant's Name: JAMES M HARLEY
Name Worked Under:
Employer's Account #:

Employer's Name & Address:
BRADSHAW AUTOMOTIVE GROUP INC
P O BOX 2269
GREER SC 29652-2269

SS#:
Date Mailed: 05/05/2020
Return with in 10 days
of the above date to:
Fax Number: 864-370-1376
BYE: 05/01/2021

This person has filed a claim for Unemployment Insurance Benefits and named you as a previous employer. Please select the reason this person no longer works for you and answer the questions that follow so that a determination can be made on eligibility for benefits. If you reply by letter, fax, or email, you must include all information requested, as well as the claimant's name and social security number. For instructions about responding by email, please visit the agency website at www.dew.sc.gov. YOU WILL RECEIVE A DETERMINATION ON THIS CLAIM ONLY IF IT IS FOUND THAT YOU ARE THE BONA FIDE AND/OR CHARGEABLE EMPLOYER.

☒ CLAIMANT'S Reason for Separation: I was forced to retire

SEPARATION INFORMATION: Please check the explanation below that applies and answer the questions that are related to that section.

☐ LACK OF WORK: (NO ADDITIONAL WRITTEN EXPLANATION IS NECESSARY.)

☐ DISCHARGE:

When was the claimant discharged? _____

What was the reason for the discharge? _____

Does your company have a policy regarding this reason for discharge? ☐ Yes ☐ No
If Yes, what is your company policy? _____

May. 7. 2020 4:26 PM

BRADSHAW AUTOMOTIVE

No. 3659 P. 3/5

23255

South Carolina

Department of Employment and Workforce

Had the claimant been warned? ☐ Yes ☐ No

If Yes, provide dates, reasons for warnings, who gave the warnings, and how the warnings were communicated:

Please attach copies of any written warnings.

Date of the final incident:

What was the final incident that caused the discharge?

☒ VOLUNTARY QUIT/OTHER REASON:

Did the claimant quit in lieu of termination? ☐ Yes ☒ No

If Yes, please complete the discharge portion of the form.

If No, why did the claimant quit?

Mr Harley voluntarily quit. Please see attached email. He did rescind his resignation, however we accepted the resignation.

Explain the employer's understanding of the reason the claimant left: See attached email.

☐ STILL WORKING:

What were the hours agreed upon when the claimant was hired to work and why were the hours reduced?

May. 7. 2020 4:27PM

BRADSHAW AUTOMOTIVE

No. 3659 P. 4/5

23256

South Carolina
Department of Employment and WorkforceHas there been a reduction in the claimant hours worked? ☐ Yes ☐ No

If Yes, what are the hours the claimant is currently working?

Is the claimant accepting all work offered? ☐ Yes ☐ No☐ VACATION SHUTDOWN:

What are the dates of your company's vacation policy?

☐ LAYOFF DUE TO CORONAVIRUS: (NO ADDITIONAL WRITTEN EXPLANATION IS NECESSARY.)☐ REDUCED HOURS DUE TO CORONAVIRUS: (NO ADDITIONAL WRITTEN EXPLANATION IS NECESSARY.)☐ OTHER SEPARATION DUE TO CORONAVIRUS:

Please explain below.

Information below required for all separations:

Dates of employment: From: 08-26-2019 To: 04-01-2020During all terms of employment, have you paid this claimant as much as: \$2,608.00 ☒ Yes ☐ No

If No, how much have you paid this claimant in all terms of employment? \$

Are you paying, or WILL YOU PAY, this claimant a pension or retirement pay? ☐ Yes ☒ No

If Yes, what amount? \$ PER

Did claimant contribute to pension plan? ☐ Yes ☒ No If Yes, what percent? %Is claimant receiving any paid leave? ☐ Yes ☒ NoEmployer name: BRADSHAW AUTOMOTIVE Account number: XXXXXXXXXX

GROUP INC

Employer Signature: *Amy D. [Signature]* Title: HR AssistantTelephone Number: 864-662-4108 Date: 05/07/2020

** FORM MUST BE SIGNED IN ORDER FOR INFORMATION TO BE CONSIDERED

May. 7. 2020 4:27PM BRADSHAW AUTOMOTIVE

No. 3659 P. 5/5

Coleece Posey Cochran

From: J Michael Harley <jmichaelharley@gmail.com>
Sent: Friday, January 31, 2020 7:46 AM
To: Coleece Posey Cochran
Subject: Resignation

January 31st, 2020

Dear Coleece,

After further thought and prayer, I would like to resign from my position in the Cadillac Showroom effective February 29th, 2020 conditional on an agreement allowing me to continue to work through February 29th, 2020 with full insurance benefits and to complete my SFE and VIN Solutions training. I love this work and hope that Bradshaw will support my desire to continue to work as a Sales Consultant. I would like to seek to continue this work at another dealership where I can have the issues addressed which are outlined below and in my discussions with Jeff Plunkett in the last two days. My son's lives have developed since joining you in a way compelling that I find work near them in the Midwest. I am praying my parents' lives will come under control in the meantime.

I do hope Bradshaw will honor this request to continue to work through February 29th, 2020 so I can deal with my Mother's major upcoming surgery on February 11th, 2020. I want to work to complete the many transactions I have under development with many sixty hours weeks of work or more at the dealership and at home since August 26th, 2020. Several of those transactions are up today including a CT5 test drive with a customer I have worked on for two months or more thus my request to delay our talk until next week. We should still have a talk.

Given the friendship, my Father and our family have with the Bradshaw family and the kindness offered to us over many years, I do not think it would be wise to do anything but resign. I hope that we can get to a position where we can part ways with no hard feelings on either side. This week I was personally dealing with two health issues: one urological and a root canal and need to focus on getting my work done so we do not lose the value put into numerous transactions. Please let me know if we can reschedule our meeting. You can reach me on my cellphone noted below.

Best regards,

Mike

J. Michael Harley
Cell:+1.847.809.9170



THE UNIVERSITY OF
CHICAGO

Claimant 1

Campus & Student Life
Student Disability Services

5501 S. Ellis Avenue, Chicago, IL 60637 • 773.702.6000 • disabilities.uchicago.edu

CONFIDENTIAL

June 8, 2018

James Michael Harley
6053 South Drexel Ave
Chicago, IL 60637

Dear James:

Based on our review of the documentation you provided, Student Disability Services at The University of Chicago has approved the following accommodations for the duration of your studies in the Graham School:

- Alternative to computer-based exams and quizzes.

You should present this letter to your Instructors and/or Dean of Students as soon as possible to help facilitate implementation or to avoid delayed implementation of your approved accommodations. For further information regarding your rights and responsibilities, please refer to the *Handbook for Students with Disabilities*, which can be found on our website at disabilities.uchicago.edu.

If you or your professors have questions about the contents of this letter, you should feel free to contact me at any time. I also urge you to contact me if you have concerns about the effectiveness of these accommodations, if you wish to request additional accommodations, or if your condition changes in any way.

Sincerely,

Charnessa Warren
Director of Student Disability Services

cc: Jarquetta Egeston, Assistant Dean of Students in the Graham School

Claimant 1

Accommodating Students with Disabilities: An Overview

1. **Legal Background.** Qualified students with disabilities are entitled to accommodations that enable equal educational opportunities in accordance with federal laws entitled Section 504 of the Rehabilitation Act of 1973 and Title III of the Americans with Disabilities Act of 1990, as well as applicable state laws and the University's own Policy on Unlawful Discrimination and Harassment.

2. **Confidentiality.** Information about this student's disability is confidential and may only be disclosed to other University officials who need to know the information to do their jobs. Please take care not to discuss this student's disability, except with staff or faculty involved in providing services or accommodations to the student. Please do not make announcements in class or take other actions which would have the effect of disclosing that this or any other student has a disability (e.g., "All students who need special testing, please come to the front after the lecture.").

3. **Eligibility.** The University has established guidelines requiring students who request accommodations on the basis of disability to provide specific information from an appropriate professional (e.g. doctor, psychologist, learning specialist). You have received this notice specifying appropriate accommodations for this student because (a) the student has provided verification, which conforms to the University's guidelines; and (b) after evaluating the documentation and any other germane information, the University has determined that the student is entitled to the specified accommodations. The underlying documentation is confidential; therefore, you may not require either the student or the staff person with whom it is on file to share the documentation with you. In addition, you should not accept disability documentation directly from this or any other student; rather, you should direct the student to submit the information to Student Disability Services.

4. **Accommodations.** Please refer to our website for specific examples of various accommodations that your student may be entitled to receive.

5. **Contacts.** Specific questions about the content of the accommodation letter should be directed to the SDS Director or Associate Director who authored it. General questions about students with disabilities may be directed to:

Student Disability Services
5501 S. Ellis Avenue, Chicago, IL 60637
Phone: (773) 702-6000
Email: disabilities@uchicago.edu
For more information please visit our website: disabilities.uchicago.edu

Claimant 1

Jack Cohoon

To: J Michael Harley
Subject: RE: [EXT]Re: Letter from Dr. Abassi: Reasonable Accommodations Follow Up

From: J Michael Harley <jmichaelharley@gmail.com>
Sent: Wednesday, July 29, 2020 12:13 AM
To: Jack Cohoon <jcohoon@burnetteshutt.law>
Subject: [EXT]Re: Letter from Dr. Abassi: Reasonable Accommodations Follow Up

See below letter from Dr. Abassi re: Diagnosis of PTSD.

J. Michael Harley
General Manager & Consultant
Opus Arbiter SM & GrowthPhases, LLC
712 H Street, Suite 1142, Washington, D.C. 20002 and
238 Woods Road, Greer, South Carolina 29650
| www.OpusArbiter.com | www.GrowthPhases.com |

Senior Lecturer, Blogger & Teaching Assistant
Kendall College, Business School, Business Law, Business Etiquette, Theory of the Firm & Marketing (2007-2008)
The University of Chicago, The College, Civic Engagement (2017)
The University of Chicago Booth School, Masters of Business Administration, Business Ethics (2018-2020)
The University of Chicago Graham School, Masters of Liberal Arts, Ethics & Leadership Concentration (2018)
| <https://grahamschool.uchicago.edu/master-liberal-arts/mla-ethics-and-leadership-concentration> |

| Direct: +1.864.567.7661 | Cell: +1.847.809.9170 |
| JMichaelHarley@GMail.com | JHarley@UChicago.edu |
----- Forwarded message -----
From: Faisal Kiyani <faisal@psychwebmd.com>
Date: Mon, Apr 20, 2020 at 5:07 PM
Subject: Letter from Dr. Abassi
To: J Michael Harley <jmichaelharley@gmail.com>

To whom it may concern

1

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Claimant 1

James Harley has been under my care since 2018 for problems with PTSD, anxiety and sleep disturbances.

He has made progress in being able to retain work and make academic progress partly because of the accommodations made in his academics and his work environment.

It is kindly requested that he should continue to have the following modifications

1- Be allowed to continue to receive a laptop with software to assist with speech to text software 2- Extended time for assignments and tests.

Thank you for considering these recommendations.

Israr Abbasi MD
Attending Psychiatrist
Friends Health Center
4/20/20

Faisal Kiyani

Virtual Assistant/EMR Specialist | Clinical Team | APS
Psychiatry "Any One - Any Where - Any Time"
T: (224) 655 2487 ext 211
F: (716) 526-4161 | W: www.psychwebmd.co

[m](#)

On Wed, Apr 22, 2020 at 1:55 PM Charnessa Warren <charnessa@uchicago.edu> wrote:

Hi Mr. Harley,

2

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Claimant 1

Attached is a copy of your accommodation letter from SDS which is still valid. You may contact Jarquetta to discuss how the letter will be shared with your instructors and how the accommodation will be implemented this quarter.

However, if you are requesting different accommodation other than what is listed on this letter, you must follow the accommodation process that I outlined in my previous email to you. You have not been determined eligible for the accommodations that were outlined in the letter from Dr. Abassi. Please refer to my previous email regarding instructions for submitting additional accommodation requests, and please refer to the [SDS website](#) regarding the updated guidelines regarding acceptable documentation. I am happy to address any questions you may have during an intake meeting if you would like to pursue additional accommodations. I look forward to your reply.

Kindly,

Charnessa Warren

Student Disability Services Director
The University of Chicago | Campus & Student Life
5501 South Ellis Avenue | Chicago, Illinois 60637
Office: 773.702.6000 | Fax: 773.926.0996
Schedule a [meeting/appointment](#) with Charnessa

Please Note: Student Disability Services hours are Monday through Friday 8:30a-5pm

From: J Michael Harley <jmichaelharley@gmail.com>
Sent: Wednesday, April 22, 2020 1:39 PM

Claimant 1

To: Jarquetta Egerton <jarquetta@uchicago.edu>; Charnessa Warren <charnessa@uchicago.edu>
Subject: Letter from Dr. Abassi: Reasonable Accommodations Follow Up

Dear Charness & Jarquetta,

Thanks to both of you for reaching out to me on receipt of the update letter sent by Dr. Abassi of Friend Family Clinic on 55th Street in Hyde Park. It is much appreciated.

As discussed with Jarquetta a few minutes ago, I will speak with Bill Eicher at the IT Tech Bar in the Regenstein Library. I will ask him if anything needs to be done to update and renew the use of the technology they have so nicely provided to date. After my discussion with Bill, I will update you both. I can't thank both of you and the full team involved at the Graham School enough for securing the technology we have been using.

I did not think of this issue when Jarquetta called but it would be helpful if you let my professors and writing instructor know about the accommodations noted in Dr. Abassi's letter. My professors are Dr. Martin, Dr. Ebeling, and a professor to be determined for completion of a Special Project on Persian Ghazal Poetry converting Haiku Poetry previously written (my recommendation is Dr. Franklin but we will see if he agrees and is approved). Millie Rey is my writing instructor for the Special Project.

Otherwise, I will keep you both updated as issues arise if any. Thanks again.

Stay safe & well!

Best regards,

Claimant 1

Mike

J. Michael Harley

General Manager, Teaching Assistant & Student

General Manager, GrowthPhases, LLC

Teaching Assistant, University of Chicago Booth School, Masters of Business Administration, Ethics

Student, University of Chicago Graham School, Masters of Liberal Arts, Ethics & Leadership

| <https://grahamschool.uchicago.edu/master-liberal-arts/mla-ethics-and-leadership-concentration> |

| Direct: +1.864.567.7661 | Cell: +1.847.809.9170 |

| JMichaelHarley@GMail.com | JHarley@UChicago.edu |

5

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Claimant 1

Jack Cohoon

From: J Michael Harley <jmichaelharley@gmail.com>
Sent: Tuesday, November 17, 2020 12:33 AM
To: Jack Cohoon
Subject: [EXT]Fwd: Meeting Re: Requests for Reasonable Accommodations

See below. Note reasonable accommodation requests documented

J. Michael Harley

| Direct: +1.864.567.7661 | Cell: +1.847.809.9170 |
| JMH Harley@OpusArbiter.com | JMichaelHarley@GMail.com | JHarley@UChicago.edu |

----- Forwarded message -----

From: J Michael Harley <jmichaelharley@gmail.com>
Date: Thu, Jan 30, 2020 at 6:33 PM
Subject: Meeting Re: Requests for Reasonable Accommodations
To: Coleece Posey Cochran <cpcochran@bradshawauto.com>

CONFIDENTIAL

January 30th, 2020

Dear Coleece,

I look forward to our discussions.

The purpose of my raising the issues as outlined to Jeff Plunkett last night and today is not to cause problems as it was perceived by him. Disappointingly, I was told that my issues were a "waste of time" today.

I simply seek a reasonable accommodation of my disability and health issues and simply to be treated like the other members of the Cadillac Showroom team nothing more. For some reason, I am being held to a standard higher than those applied to other employees in New Car Sales including other New Hires (Specifically, Dylan Carnes, Richard Mills and perhaps others). John Karvelas sales also were at about the same pace of Richard and myself when he started assuming I have seen the correct data. I do not seek to do anything to upset members of the team including Frenchie Lyles or anyone else.

I have been diagnosed as having PTSD and Frenchie's approach with me which I can detail has caused issues for me. I am 59 years old going on 60 years old and simply seek to make a living selling Cadillacs, GMC, Buick, Chevrolet and

Claimant 1

Preowned vehicles. I have received excellent training from John Karvelas and Marty Gaddis and I think with good results (see below). I discussed the diagnosis of PTSD with Marty Gaddis when I started my training back in September.

I have raised my concerns previously in writing to Frenchie Lyles and Jeff Plunkett on treatment of me and customers I was handling by Frenchie Lyles some time ago. But did not receive a response or given any time for a discussion until this morning.

We can discuss it further but Frenchie is rarely available or present on my deals and then gets confrontational when he is there with my customers and with me both on the lot and on phone ups. I have been included in only two (2) internet opportunities (as per VIN Solutions). I would welcome Frenchie's being present to be clear just not confrontational.

I very much appreciate this job as it is a life saver allowing me to be present here in Greer with my parents as they face significant health issues including major intestinal surgery coming up on February 11th. But, I do not think it is unreasonable or unfair to be reasonably accommodated and treated at least by the same standard of other New Hires given the issues outlined above.

I will forward an email detailing my sales and some of the data gathering issues. One key issue of concern is given the higher standard Frenchie is holding me to as compared to other employees I hope that we could reschedule our discussion to next week. I would like to focus tomorrow on completing deals I have underway seeking to close them in January including a test drive of the new CT-5 Cadillac that just arrived last night. One of my customers has been waiting since January 9th for a test drive.

Best regards,
Mike

J. Michael Harley
Sales Consultant
Bradshaw Automotive Group
www.BradshawGreer.com
JMichaelHarley@GMail.com
14000 East Wade Hampton Blvd., Greer, South Carolina 29651
Cell:+1.847.809.9170 | Direct: +1.864.879.7111 x1153 | JMichaelHarley@GMail.com |



Jan 30, 2020

paulaputts "Very satisfied with your employees "



VERIFIED CUSTOMER

Very friendly and helpful staff. All extremely polite. Will probably return in about a week to get more assistance in the technical part of car

REPORT

Mike Harley

Reason for Visit

Sales (New)

Claimant 1

Customer Service
Quality of Work

Friendliness

Pricing

Overall Experience

Recommended

Yes

[HIDE DETAILS](#)



Dec 29, 2019

Tsantopi "Satisfied "



VERIFIED CUSTOMER

For the first time in 50 years buying a car was a pleasant experience. Mike Harley was especially knowledgeable and helpful and a pleasure to work with

REPORT

Randy Cagle
Mike Harley
Ed Donald

Reason for Visit

Sales (New)

Customer Service
Quality of Work

Friendliness

Pricing

Overall Experience

Recommended

Yes

[HIDE DETAILS](#)



Dec 13, 2019

Claimant 1

dwithered "Satisfied "



VERIFIED CUSTOMER

Mike Harley super sales guy followed thru on everything and a very personable guy. I would recommend him to anyone. I will recommend him to my friends

REPORT

Mike Harley
Frenchie Lyles

Reason for Visit

Sales (Used)

Customer Service
Quality of Work

Friendliness

Pricing

Overall Experience

Recommended

Yes

Claimant 1

Jack Cohoon

From: J Michael Harley <jmichaelharley@gmail.com>
Sent: Tuesday, November 17, 2020 1:49 AM
To: Jack Cohoon
Subject: [EXT]Recisicion is Contained in this Letter Dated February 5th, 2020 But is Entitled Reasonable Accommodations which is what these dialogue were all about.....

----- Forwarded message -----

From: J Michael Harley <jmichaelharley@gmail.com>
Date: Wed, Feb 5, 2020 at 8:06 AM
Subject: Today's Meeting Re: Reasonable Accommodations
To: Coleece Posey Cochran <cpcochran@bradshawauto.com>

February 5th, 2020
CONFIDENTIAL & PERSONAL

Dear Coleece,

I look forward to our meeting today at 11:00 a.m.

My request for reasonable accommodations for my conditions is simply as follows. I wish no harm on anyone and simply seek to make a living as a Sales Consultant in the Bradshaw Automotive Group but it needs to be enough of a living so I can travel to see my sons in the Midwest from time to time on my two days off a week (Sunday and one weekday).

(1) I will be permitted to use my laptop at my Sales Showroom desk so I can use the software provided by my former employer and school, the University of Chicago, where I am an alumnus but have one degree still underway. The software was provided following treatment at the University of Chicago Medical Center. Using my laptop and software will enable me to complete the VIN Solutions and SFE training I have noted in my previous emails. I have been unable to complete the training on the PC provided on my desk because of the lack of software noted above and because the bandwidth of the PC is inadequate to run VIN Solutions and GM Connect at the same time.

(2) I will be permitted to be managed by a manager who is fully trained on Bradshaw's products and on VIN Solutions and who will be accommodating to my conditions. Perhaps I need a manager who has had training in dealing with a diverse workforce. Frenchie Lyles visibly has some of the same issues I have using VIN Solutions as evidenced as recently as yesterday's transaction with a customer I went to Nicholtown Elementary and Beck Middle School with in the 1970s, Wynell Baldwin. On information and belief from Dylan Carnes, I don't believe Frenchie has completed any of that training.

Claimant 1

(3) Other sales consultants and managers are asked not to approach my customers when I am working with them. First, it is upsetting to me given my condition. Second, it's just unprofessional and leaves a bad feeling with our good customers.

Yesterday's session with Wynell Baldwin was an unbelievable situation where Ernest Jones came into my office interrupting my dialogue with a customer on the instruction of Frenchie Lyles. He accused me of causing her long wait. This was just not the case. We can discuss it when we meet. Wynell Baldwin is friends with many of my classmates from growing up in Greenville from 1967 until 1976. Her experience will get back to them and can affect my ability to pull them in as Customers of the Bradshaw Group. I do request that Frenchie Lyles be instructed to honor the offer he made to Dr. Phillip and Mrs. Wynell Baldwin yesterday rather than pulling it off the table as he did embarrassingly after Dr. Baldwin left Wynell at the dealership. Dr. Baldwin is the Senior Minister at Bethlehem Baptist Church in Simpsonville, SC.

Tom Leopard has interrupted three or four of my customer sessions on the lot and one phone in. This is just unacceptable in my view and needs to stop. There has been a culture of training me by hazing and in a hostile work environment. Hazing does not work as a way of training at any age and certainly not at my age of 59 and with my conditions to manage. It started with my first customer, Robert Wade and unbelievably by Patrick Clayton with my second customer, my Father. My Father has purchased around 15 vehicles from Bradshaw Group and more if you include the ones he arranged for family members. He still has a great opinion of Bradshaw Group and came in and gave a testimonial on Monday. We can discuss those instances where it has occurred tied to specific customer relationships if you like but I would prefer that we put in place the reasonable accommodations outlined above and focus on making this work.

This week's incidents have firmed my position to continue with Bradshaw Automotive Group seeking the reasonable accommodations outlined above and to make it work. Going forward and if the reasonable accommodations are provided, I will offer a Letter of Resignation to you for your acceptance or rejection in any month where my rolling average of sales is not 8 or greater. But, I believe that same process which I believe Marty Gaddis was pressing me to do starting at the end of January 2020, be applied equally to all Sales Consultants, not just me. Given this week's incident and my clear request for accommodation above, I rescind the Resignation Letter I provided dated February 29th, 2020.

I have been told that my approach to Sales is like "Smoking Joe" formerly of Sittion Buick now of Kevin Whittaker Cadillac. My preference in approach is not to rush or provoke customers to make decisions based on emotions. Relaxed environments yield happy customers. Applying the Golden Rule does it? I have been an automotive customer too since 1976 and am fully empathetic with them. All of the customers noted below were willing to come in and give testimonials in Bradshaw Group's favor. Two made it in while the others had scheduling issues but are open to coming in later.

Best regards,
Mike

CONFIDENTIAL

January 30th, 2020

Dear Coleece,

Claimant 1

I look forward to our discussions.

The purpose of my raising the issues as outlined to Jeff Plunkett last night and today is not to cause problems as it was perceived by him. Disappointingly, I was told that my issues were a "waste of time" today.

I simply seek a reasonable accommodation of my disability and health issues and simply to be treated like the other members of the Cadillac Showroom team nothing more. For some reason, I am being held to a standard higher than those applied to other employees in New Car Sales including other New Hires (Specifically, Dylan Carnes, Richard Mills and perhaps others). John Karvelas sales also were at about the same pace of Richard and myself when he started assuming I have seen the correct data. I do not seek to do anything to upset members of the team including Frenchie Lyles or anyone else.

I have been diagnosed as having PTSD and Frenchie's approach with me which I can detail has caused issues for me. I am 59 years old going on 60 years old and simply seek to make a living selling Cadillacs, GMC, Buick, Chevrolet and Preowned vehicles. I have received excellent training from John Karvelas and Marty Gaddis and I think with good results (see below). I discussed the diagnosis of PTSD with Marty Gaddis when I started my training back in September.

I have raised my concerns previously in writing to Frenchie Lyles and Jeff Plunkett on treatment of me and customers I was handling by Frenchie Lyles some time ago. But did not receive a response or given any time for a discussion until this morning.

We can discuss it further but Frenchie is rarely available or present on my deals and then gets confrontational when he is there with my customers and with me both on the lot and on phone ups. I have been included in only two (2) internet opportunities (as per VIN Solutions). I would welcome Frenchie's being present to be clear just not confrontational.

I very much appreciate this job as it is a life saver allowing me to be present here in Greer with my parents as they face significant health issues including major intestinal surgery coming up on February 11th. But, I do not think it is unreasonable or unfair to be reasonably accommodated and treated at least by the same standard of other New Hires given the issues outlined above.

I will forward an email detailing my sales and some of the data gathering issues. One key issue of concern is given the higher standard Frenchie is holding me to as compared to other employees I hope that we could reschedule our discussion to next week. I would like to focus tomorrow on completing deals I have underway seeking to close them in January including a test drive of the new CT-5 Cadillac that just arrived last night. One of my customers has been waiting since January 9th for a test drive.

Best regards,
Mike

J. Michael Harley
Sales Consultant
Bradshaw Automotive Group
www.BradshawGreer.com
JMichaelHarley@GMail.com
14000 East Wade Hampton Blvd., Greer, South Carolina 29651
Cell: +1.847.809.9170 | Direct: +1.864.879.7111 x1153 | JMichaelHarley@GMail.com

Claimant 1



Jan 30, 2020

paulaputts "Very satisfied with your employees "



VERIFIED CUSTOMER

Very friendly and helpful staff. All extremely polite. Will probably return in about a week to get more assistance in the technical part of car

REPORT

Mike Harley

Reason for Visit

Sales (New)

Customer Service
Quality of Work

Friendliness

Pricing

Overall Experience

Recommended

Yes

[HIDE DETAILS](#)



Dec 29, 2019

Tsantopi "Satisfied "



VERIFIED CUSTOMER

For the first time in 50 years buying a car was a pleasant experience. Mike Harley was especially knowledgeable and helpful and a pleasure to work with

REPORT

Randy Cagle
Mike Harley
Ed Donald

Claimant 1

Reason for Visit

Sales (New)

Customer Service

Quality of Work

Friendliness

Pricing

Overall Experience

Recommended

Yes

[HIDE DETAILS](#)



Dec 13, 2019

dwithered "Satisfied "



VERIFIED CUSTOMER

Mike Harley super sales guy followed thru on everything and a very personable guy. I would recommend him to anyone. I will recommend him to my friends

Claimant 1

Jack Cohoon

From: J Michael Harley <jmichaelharley@gmail.com>
Sent: Tuesday, November 17, 2020 12:11 AM
To: Jack Cohoon
Subject: [EXT]Fwd: CRM & Data Analysis

See below.

| Direct: +1.864.567.7661 | Cell: +1.847.809.9170 |
| JMH Harley@OpusArbiter.com | JMichaelHarley@GMail.com | JHarley@UChicago.edu |

----- Forwarded message -----

From: **J Michael Harley** <jmichaelharley@gmail.com>
Date: Fri, Jan 31, 2020 at 9:13 AM
Subject: Fwd: CRM & Data Analysis
To: Coleece Posey Cochran <cpcochran@bradshawauto.com>

I had promised to send the data issues memo. It is below. It is only an attempt on my part to pull the data from the CRM. It is not complete.

The latest numbers Jeff and Frenchie put in front of me yesterday was 23 sales to date. This is an incorrect number in my view. They continue to take into account that I have put in a large number of friends and family into VIN Solutions so I can communicate with them about their vehicle needs using the inventory on the suggestion of John Karvelas (see below). With my resignation effective February 29th, 2020, this is a mute issue. But, I am open to a discussion with you hopefully in the near future as the numbers and the data reveal much.

Best regards,
Mike

----- Forwarded message -----

From: **J Michael Harley** <jmichaelharley@gmail.com>
Date: Thu, Jan 30, 2020 at 9:41 AM
Subject: CRM & Data Analysis
To: Marty Gaddis <martygaddis1@gmail.com>
Cc: Jeff Plunkett <jplunkett@bradshawauto.com>, Frenchie Lyles <flyles@bradshawauto.com>

Claimant 1

January 30th, 2020

Dear Marty,

First and foremost, I applaud now and in every business, I have worked with in the past the use of data to understand a business and its performance. I enthusiastically support the use of data to drive continual business performance improvement.

It was great to meet yesterday and discuss in detail the CRM and Other Source Data which reported then that I have had only 14 sales since joining Bradshaw of Greer. I have seen other data reports that indicate I have only sold 9 vehicles as we discussed since joining Bradshaw. This morning when I did an analytics report on VIN Solutions it reported that since joining Bradshaw I have had only 10 sales. As discussed with you, Kayla, Jeff Plunkett, Frenchie Lyles, and others this data is entirely inaccurate. This incorrect data then is an incorrect denominator or variable in all the ratios where number of sales is used to measure my performance.

Below is a draft listing of the sales I have made to date. From August 26th, 2019 to September 28th, 2019 I did not call on customers and shadowed John Karvelas who was an extremely good trainer. My probationary training lasted through the first three months here from August 26th, 2019 until November 26, 2019. I am checking this list further as we speak to test that data. I live by the VIN Solutions CRM as you can see by examining my input into it. I welcome such an examination and learning. Eager to also have my calls monitored to received coaching on phone ups. Given the fact that we were not able to take any phone ups in November and part of December and as noted in discussion yesterday my sample size of phone ups is very small compared to the data from walk ins and from contacts in my friends and family network. I have also input at John Karvelas suggestion many "training" entries of friends and family to do test runs with customers who will ultimately buy from us but they will be long term calls.

Sold Customers as of January 29th, 2020 (Even with this list of 28 Sales, I believe there is some missing data and I am checking on it).

Paula Putts (1/28/2020) Buick Envision
Ashley Dempsey (1/28/2020) GMC Terrain Black Edition
Southern Port-A-John (1/13/2020) Chevrolet Silverado 3500 HD (This one handled is listed as sold in the data base and is a Phone Up and then Sale & Delivery
Bryan Lawson (1/04/2020) GMC Sierra 1500 AT4
Travelen Wilkins (1/9/2020) Chevrolet Express
Kathryn Owens (1/2020) Chevrolet Traverse (Split with Joe Johnson) (0.5)
(More to Come for January, 2020, of course)
Sergey Zaytsev (12/31/2020) GMC Sierra 1500 SLE
Wanda Hawthorne (12/30/2020) Cadillac XT4 Luxury Edition
Thomas & Alexandra Santropietro (12/28/2020) GMC Acadia SLT
Curtis "Garrett" Edens (12/17/2020) GMC Acadia Denali
Bob Babcock (12/14/2020) Chevrolet Silverado LT
Edward & Pamela Davis (12/14/2020) GMC Sierra 1500 SCA Performance Black Widow Edition
Ronald & Joy Kennedy (12/9/2020) GMC Acadia SLT
Dennis Withered (12/06/2020) Cadillac CT6 Premium Luxury
Mrs Thomas Bragg (12/01/2020) Buick Envision (Split with Mike Wehunt as he did the delivery on this file) (0.5)
Emilie Cantrell (11/29/2020) Cadillac XT4 Sport Edition
Larry Medlock (11/02/2020) Buick Envision Essence
Bruce Jacobson (11/01/2019) GMC Sierra 1500 Denali
Ernest & Patricia Howard (11/14/2019) GMC Acadia (This one is listed as sold in the data base by Jeff Plunkett but is a Phone Up and then Sale & Delivery Here to Couple from Warner Robbins, GA)
Wayne & Joan Martin (11/8/2019) Chevrolet Equinox (Split with Joe Johnson as he did the delivery on this file)
Sarah Wingo (10/26/2020) Cadillac XT4 Luxury

Claimant 1

Scott Martin (10/24/2020) Cadillac XT4 (This one pops in and out of being listed as sold by Jeff Plunkett in the data base and is a Phone Up and Sale & Delivery here)

Richard St. Pierre (10/15/2020) Cadillac XT6 (Phone Up)

Jean Newitt (10/10/2020) Cadillac XT5 Phone Up

Ricky Algood (10/08/2020) Chevrolet Trax

Robert Wade (9/29/2020) GMC Sierra Elevation)

Thanks, Mike

J. Michael Harley

Sales Consultant

Bradshaw Automotive Group

www.BradshawGreer.com

JMichaelHarley@GMail.com

14000 East Wade Hampton Blvd., Greer, South Carolina 29651

Cell:+1.847.809.9170 | Direct: +1.864.879.7111 x1153 | JMichaelHarley@GMail.com |

Claimant 1

Jack Cohoon

From: J Michael Harley <jmichaelharley@gmail.com>
Sent: Tuesday, November 17, 2020 2:51 AM
To: Jack Cohoon
Subject: [EXT]Fwd: Agreement
Attachments: Scan0008.pdf

See below as the only written response I received in response to my resignation of January 31st, 2020 and subsequent rescission dated February 5th, 2020. As you know, I refused to sign the letter attached below.

Thanks,
Mike

J. Michael Harley

| Direct: +1.864.567.7661 | Cell: +1.847.809.9170 |
| JMHarley@OpusArbiter.com | JMichaelHarley@GMail.com | JHarley@UChicago.edu |

----- Forwarded message -----

From: **J Michael Harley** <jmichaelharley@gmail.com>
Date: Mon, Jul 27, 2020 at 9:17 AM
Subject: Fwd: Agreement
To: BSM Intake <bsmintake@burnetteshutt.law>

ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT

See below. It should be noted that I refused to sign this agreement as I did not resign. But, I was paid through the end of March 30th, 2020.

Best regards,
Mike

J. Michael Harley
General Manager, Consultant
Opus Arbiter SM & GrowthPhases, LLC
712 H Street, Suite 1142, Washington, D.C. 20002 and
238 Woods Road, Greer, South Carolina 29650
| www.OpusArbiter.com | www.GrowthPhases.com |

Senior Lecturer, Blogger & Teaching Assistant
Kendall College, Business School, Business Law, Business Etiquette, Theory of the Firm & Marketing (2007-2

Claimant 1

The University of Chicago, The College, Civic Engagement (2017)
The University of Chicago Booth School, Masters of Business Administration, Business Ethics (2018-2020)
The University of Chicago Graham School, Masters of Liberal Arts, Ethics & Leadership Concentration (2018)
[| https://grahamschool.uchicago.edu/master-liberal-arts/mla-ethics-and-leadership-concentration](https://grahamschool.uchicago.edu/master-liberal-arts/mla-ethics-and-leadership-concentration) |

| Direct: +1.864.567.7661 | Cell: +1.847.809.9170 |
| JMichaelHarley@GMail.com | JHarley@UChicago.edu |

----- Forwarded message -----

From: Coleece Posey Cochran <cpcochran@bradshawauto.com>

Date: Mon, Mar 2, 2020 at 12:07 PM

Subject: Agreement

To: J Michael Harley <jmichaelharley@gmail.com>

Good Afternoon,

Please see the attached and let me know if you have any questions.

Thank you,

C. Coleece Posey Cochran

Human Resources Manager

Bradshaw Automotive Companies

14000 E. Wade Hampton Blvd

Greer, SC 29651

PO Box 2269 Greer, SC 29652

Direct 864.662.2230

Fax 864.662.2270

330 Woodruff Road

Claimant 1

Greenville, SC 29607

PO Box 17829 Greenville, SC 29606

Direct 864.527.2579

Fax 864.527.2663



This email may contain confidential or legally privileged information that is intended only for the individual or entity named as the recipient. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or reliance upon the contents of this e-mail is strictly prohibited. If you received this email in error, please contact the sender in order for the Bradshaw Automotive Companies to arrange for proper delivery, and then please delete this message. Thank you.

Claimant 1

RESIGNATION AND SEVERANCE AGREEMENT

J. Michael Harley (Mr. Harley) resigned his employment with Bradshaw Automotive ("Company") effective February 29, 2020. To resolve any remaining disputes between Mr. Harley and the Company and exchange for the promises set forth below, the Company has agreed to provide Mr. Harley with severance pay. As used herein, the term "Company" includes any or all current or former affiliated corporations, divisions, owners, officers, directors, shareholders, employees, agents, successors and assigns.

Mr. Harley agrees to release the Company of liability for all rights and claims, whether or not they are presently known to exist, that he has or might allege he has against the Company as of the effective date of this Agreement, relating in any way to his employment with and separation from the Company.

The rights and claims which Mr. Harley waives and releases in this Agreement include, to every extent allowed by law, based on discrimination on the basis of race, color, religion, sex, national origin, age, handicap, disability, or any other category protected by any local, state or federal law, including but not limited to the Alaska State Law Against Discrimination, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, 42 USC § 1981, Executive Order 11246, the Equal Pay Act, the Age Discrimination in Employment Act, the Older Workers' Benefit Protection Act, the Americans With Disabilities Act, the Rehabilitation Act of 1973, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Family and Medical Leave Act, the Fair Credit Reporting Act, the Fair Labor Standards Act, the Genetic Information Non-Disclosure Act, (as any of these laws may have been amended) or any other similar federal, state and local labor, employment, or anti-discrimination laws. This is not a complete list, and Mr. Harley waives and releases all similar rights and claims he might allege under all other federal, state and local discrimination provisions and all other statutory and common law causes of action.

In compliance with the requirements of the Age Discrimination in Employment Act (ADEA), as amended by the Older Workers' Benefit Protection Act (OWBPA), Mr. Harley acknowledges that, with respect to the rights and claims waived and released under the ADEA and OWBPA:

- a. he was given at least 21 days from the date he received this Agreement to review and consider before signing and he further acknowledges that he voluntarily may waive his right to take the full 21 day consideration period and may sign this Agreement at any time before the 21 day period elapses;
- b. he was advised in writing, via this Agreement, to consult with an attorney before signing this Agreement and Mr. Harley had an opportunity to consult with an attorney before signing this Agreement;
- c. he is releasing the Company from, among other things, any claims of age discrimination under the ADEA or OWBPA; and
- d. he understands that the release of age discrimination claims contained in this Agreement does not cover any rights or claims against the Company that may arise after the date of this Agreement.

Mr. Harley may revoke his acceptance of this Agreement by delivering written notice of his revocation to C. Coleece Posey Cochran, Human Resources Manager, Bradshaw Automotive Companies, 14000 E. Wade Hampton Blvd., Greer, SC 29651, within seven

Claimant 1

(7) calendar days after he signs it. Revocation can be made by hand delivery, telegram, facsimile, or postmarking before the expiration date of this seven (7) day period.

The Company promises that in exchange for Mr. Harley's promises and his execution of this Agreement, the Company will pay him the gross amount of Two Thousand Five Hundred Dollars (\$2500) less applicable and required deductions. The Company will extend insurance benefits for Mr. Harley through March 31, 2020.

If any part of this Agreement is found to be unenforceable, it shall be severed and the remaining parts enforced to effectuate the purposes of this Agreement.

Mr. Harley acknowledges and agrees that once he receives the consideration described in this Agreement, the Company will owe him no other additional compensation or remuneration of any kind.

Mr. Harley acknowledges his understanding that he is knowingly and voluntarily executing this Agreement after due consideration, and that he has had an opportunity to consider its contents and ask any questions regarding this Agreement.

On March 2, 2020, the Company gave Mr. Harley an unsigned copy of this Agreement and informed him that he has (but is not required to take) 21 days from that date to consider it before signing.

This Agreement shall be effective on the date it is executed by Mr. Harley.

J. MICHAEL HARLEY

Date

COMPANY REPRESENTATIVE

Date

Claimant 1

Jack Cohoon

From: J Michael Harley <jmichaelharley@gmail.com>
Sent: Tuesday, November 17, 2020 12:17 AM
To: Jack Cohoon
Subject: [EXT]Fwd: Testimonials Today from 4:00 p.m. to 7:00 p.m.

See below.

J. Michael Harley

| Direct: +1.864.567.7661 | Cell: +1.847.809.9170 |
| JMH Harley@OpusArbiter.com | JMichaelHarley@GMail.com | JHarley@UChicago.edu |

----- Forwarded message -----

From: J Michael Harley <jmichaelharley@gmail.com>
Date: Mon, Feb 3, 2020 at 10:49 AM
Subject: Testimonials Today from 4:00 p.m. to 7:00 p.m.
To: Jeff Plunkett <jplunkett@bradshawauto.com>

February 3rd, 2020

Dear Jeff,

I have four or five customers who would like to give testimonials on the topics you identified today and one on Saturday. Came by to discuss with you but you were on a conference call.

The Customers are:

(1) Dennis Withered who purchased the 2019 CT-6 from us in December and gave us an incredible rating and review on DealerRater.com would be able to come in after a Church meeting tonight in Simpsonville so close to 7:00 p.m. Perhaps your coordinator could contact him at 864-616-1033 (cell);

(2) Paula Putts who purchased a 2020 Buick Envision from us and has been extremely happy with her new vehicle and the great service she received here from the full team. She also gave us a great review on DealerRater.com;

(3) Edward Davis who purchased a 2020 GMC Sierra Black Widow edition from us and has been extremely happy with it and our service. He can come in only on Saturday, however. Needs to come in for more training then;

(4) Jimmie E. Harley who has purchased a 2019 Buick Encore in October, 2019 (and many other vehicles over 20 years); and

(5) Either Sergey Zaytsev who purchased a 2020 GMC Sierra SLE, Ron & Joy Kennedy who purchases a 2019 GMC Acadia or Richard St. Pierre who purchased a 2020 XT-6 from us.

Claimant 1

Call me when you can to coordinate.

Best regards,
Mike



South Carolina
Department of Employment and Workforce



14056767

11/30/2020

JAMES M HARLEY
238 Woods Rd
Greer SC 29650-3238



South Carolina
Department of Employment and Workforce



14056767

DECISION OF APPEAL TRIBUNAL

Hearing Date: November 18, 2020

Appeal Number: 20-LA-041522

JAMES M HARLEY
238 WOODS RD
GREER SC 29650

CLAIMANT

BRADSHAW AUTOMOTIVE GROUP INC
P O BOX 2269
GREER SC 29652-2269

EMPLOYER

APPELLANT: Claimant

SSN: XXX-XX-XXXX

CLAIMANT ID: XXXXXXXX

APPEARANCES

FOR THE CLAIMANT: Participated with Counsel

FOR THE EMPLOYER: Two Witnesses

ISSUE STATEMENT

The issue in this case is whether the claimant voluntarily quit with good cause.

FINDINGS OF FACT

The claimant appealed the determination mailed July 16, 2020, which held him indefinitely disqualified from receiving benefits effective May 3, 2020, upon a finding he voluntarily quit employment without good cause.

The claimant worked with the employer from August 26, 2019, to February 29, 2020, most recently as a sales consultant. The claimant asserts he was bullied by his co-workers and the employer would not accommodate his requests to allow him to work from his own laptop with sufficient speeds and text to speech software. The claimant has a medical condition which prompted his request for accommodation. The claimant alerted human resources (HR) of his requests for accommodation on January 30, 2020. He asserts prior to that point he had made requests from his trainer and management. He indicated in the email that he had spoken with management about his concerns the evening before. The following day, January 31, 2020, the

South Carolina
Department of Employment and Workforce

claimant submitted a letter of resignation. The letter indicated he was going to relocate to the Midwest to be near family and requested to be allowed to work out a period of notice until February 29, 2020.

The claimant submitted another letter on February 5, 2020, indicating his intent to rescind his resignation and reiterating he wanted to continue his employment. He was told in a meeting that same day with HR that the employer accepted his resignation. The employer contends they periodically reminded the claimant his resignation had been accepted after that point during the notice period. The claimant denies those reminders occurred. He argues that by allowing him to continue working and bringing in business for the employer, that the employer implicitly agreed to allow him to rescind his resignation. The claimant acknowledges he was never explicitly told that the employer would allow him to rescind his resignation. The claimant was told on February 29, 2020, that it was his last day and he needed to leave the premises.

The claimant asserts the employer never accommodated his requests for reasonable accommodation due to his medical condition. However, he asserts he believed that the bullying aspects were getting better during his notice period. He maintains his co-workers would speak disparagingly and take his dealer tags. He maintains a manger was not sufficiently responsive. The claimant discussed his concerns about the employees with HR in the February 5, 2020, email. He asserts he also expressed his concerns to the general sales manager. The general sales manager asserts he was not informed of harassment or specifics regarding the bullying.

The employer contends if the claimant was dissatisfied with the steps taken by management and HR regarding his accommodation requests or the issues with his co-workers he could have followed the chain of command and taken his concern higher to the owner. The owner is a personal friend of the claimant's father.

There was continuing work available for the claimant at the time he offered his resignation.

REASONS

S.C. Code Ann. § 41-35-120(1) requires an indefinite disqualification from benefits when the Department finds the claimant has voluntarily quit without good cause attributable to the employment. The disqualification continues until the claimant returns to work and earns eight times the weekly benefit amount of the claim in covered employment.

"Good cause" refers to a material, substantial change in the conditions of employment, or other circumstances directly attributable to the employment, which would cause a reasonable person to become totally unemployed rather than continue working.

In this case the claimant initially offered his resignation which initiated the severing of the employment relationship. Though he later sent a letter attempting to rescind his resignation, contrary to the claimant's assertion, the Tribunal finds the employer was not bound to allow him to rescind the resignation once he offered it. Further, he was explicitly told the same day

South Carolina
Department of Employment and Workforce

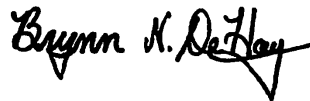
he attempted to rescind the resignation that the employer intended to accept his resignation. Therefore, the Tribunal finds the claimant voluntarily quit available employment.

Though the testimony is disputed as to when and from whom the claimant initially requested accommodation and assistance with the issues with his co-workers, the record indicates he mentioned his concerns to the sales manager at least by January 29, 2020, and in writing to HR on January 30, 2020. He then proceeded to offer his resignation the following day. The Tribunal finds he did not allow the employer a reasonable opportunity to address his concerns and his request for reasonable accommodation before he offered his resignation the next day. Additionally, he could have followed the chain of command and addressed his concerns to the owner if he felt that HR and management were not being sufficiently responsive. Given his failure to take reasonable steps to remain job attached before offering his resignation, and not allowing the employer a reasonable opportunity to address his concerns, the Tribunal does not find the circumstances rise to a level that a reasonable person would become totally unemployed rather than continue working. Further, the fact that he tried to rescind his resignation and continue his employment is further evidence that the circumstances did not rise to the level to warrant a finding of good cause for quitting available employment. Therefore, the Tribunal finds the claimant voluntarily quit available employment without good cause and a disqualification must be imposed.

DECISION

The Tribunal holds the claimant disqualified from receiving benefits indefinitely effective May 3, 2020, until requalification, upon a finding he voluntarily quit the most recent bona fide employment without good cause. This decision affirms the determination mailed July 16, 2020.

This will be the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed by mail addressed to "**Appellate Panel, Post Office Box 1752, Columbia South Carolina, 29202**", or by fax at **803-737-3166**. For additional information on filing an appeal, visit our web site at <https://dew.sc.gov/individuals/manage-your-benefits/appeals>.



Brynn N. DeHay
Administrative Hearing Officer

Decision Mailed: November 30, 2020



BURNETTE SHUTT MCDANIEL
Moving law forward.

BURNETTE SHUTT & MCDANIEL, PA
912 Lady Street | PO Box 1929 | Columbia, SC 29202
O: 803.850.0912 F: 803.904.7910
burnetteshutt.law

Jack E. Cohoon – Special Counsel
803.904.7914
jcohoon@burnetteshutt.law

December 10, 2020

VIA FACSIMILE (803-737-3166) AND U.S. MAIL

Appellate Panel
S.C. Department of Employment and Workforce
P.O. Box 1752
Columbia, SC 29202

RE: James M. Harley v. Bradshaw Automotive Group, Inc.
Claimant ID: [REDACTED]; Appeal No.: 20-LA-041522
BSM File No.: 20280.001

Dear Honorable Members of the Appellate Panel:

This law firm represents James M. Harley, in the above-referenced matter. Please direct all correspondence to me. By this letter, Mr. Harley appeals a November 30, 2020 decision of the Appeal Tribunal erroneously finding him to have voluntarily quit without good cause.

The basis for the appeal is as follows and will be more fully set forth in written argument to be submitted:

1. The greater weight of the evidence establishes that Mr. Harley was involuntarily separated from his job without cause and did not quit.
2. The Appeal Tribunal committed an error of law when it found that Mr. Harley had voluntarily quit without good cause, as under Mr. Harley had revoked his resignation before Bradshaw Automotive Group, Inc. had accepted it.
3. Mr. Harley should have been found fully eligible for unemployment benefits under the “compelling family circumstances” provision of the Unemployment Compensation Law. S.C. Code Ann. § 41-35-125.
4. Even if it is accepted that Mr. Harley quit, he had good cause to do so due to the Employer’s failure to accommodate his disability as required by the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, and the Employer’s failure to address the bullying Mr. Harley endured from coworkers.
5. Mr. Harley was denied a fair hearing before the Appeal Tribunal due to the Administrative Hearing Officer aiding the Employer’s witnesses through leading questions, taking on a prosecutorial tone that she directed toward Mr. Harley rather than the Employer—triggering his disability—and exhibiting apparent bias in the manner in which she conducted the hearing. 20 CFR § 650.1(b); S.C. Code Ann. § 41-35-680.

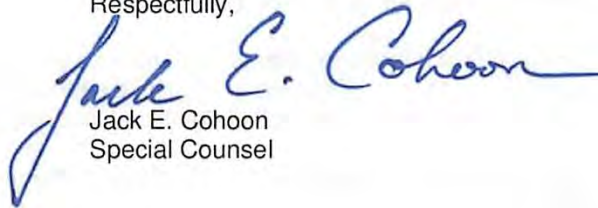
- 6. Mr. Harley was denied a fair hearing by the Administrative Hearing Officer's admission of the Employer's 11th hour submission of evidence without sufficient notice to permit Mr. Harley and his counsel to review and respond to the evidence.**

For the reasons set forth above, the Appellate Panel should reverse the previous decision and find Mr. Harley fully eligible for unemployment benefits, or in the alternative, set aside the decision of the Appeal Tribunal and order a new hearing pursuant to S.C. Code Ann. § 41-35-710. We reserve the right to supplement these grounds for appeal in a written argument and the hearing.

Mr. Harley requests a copy the transcript of the previous proceedings and the scheduling of a hearing before the Appellate Panel at the earliest opportunity.

Please do not hesitate to contact me at (803) 904-7914 or via email at jcohoon@burnetteshutt.law if you have any questions.

Respectfully,



Jack E. Cohoon
Special Counsel

JEC

cc: James M. Harley



South Carolina
Department of Employment and Workforce



14275372

12/11/2020

Claimant SSN: XXX-XX-
Claimant ID:

JAMES M HARLEY
238 Woods Rd
Greer SC 29650-3238

NOTICE OF APPEAL TO THE APPELLATE PANEL

APPEAL NO: 20-HA-001715

LIABLE EMPLOYER:

BRADSHAW AUTOMOTIVE GROUP INC
P O BOX 2269
GREER SC 29652-2269

The Claimant in this case appealed the Appeal Tribunal Decision to the Appellate Panel for review.

The Panel will review your case as soon as possible and generally will issue a decision based solely on its review of the record on appeal. However, any party may request an in-person hearing, also known as an oral argument. Oral arguments are conducted only at the Appellate Panel office in Columbia, South Carolina. No additional evidence is permitted to be introduced at the oral argument. If you would like to request an oral argument, you must mail a written request to the Panel at P.O. Box 1752, Columbia, SC 29202, within seven (7) calendar days of the above date. The Panel, at its sole discretion, may grant or deny the request. If an oral argument is scheduled, a copy of the transcript from the Appeal Tribunal hearing and an Appellate Panel hearing notice will be mailed to you at a later date.

SPECIAL NOTE: The Appellate Panel can make its own factual findings and may reverse, affirm, or modify the decision on appeal. **Be advised that this may result in an increase or decrease of the disqualification.**

Claimants must continue filing a weekly claim pending the appeal to receive benefits. Any benefits received by the claimant may be subject to recovery if the Appeal Tribunal decision is reversed.

Higher Authority Appeals
803-737-0239

JAMES M HARLEY
238 Woods Rd
Greer, SC 29650-3238

Recipient List



BURNETTE SHUTT MCDANIEL

Moving law forward.

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Jack E. Cohoon - Special Counsel

803.904.7914

jcohoon@burnetteshutt.law

December 23, 2020

VIA FACSIMILE (803-737-3166) AND U.S. MAIL

Appellate Panel

S.C. Department of Employment and Workforce

P.O. Box 1752

Columbia, SC 29202

RE: James M. Harley v. Bradshaw Automotive Group, Inc.

Claimant ID: [REDACTED] Appeal No.: 20-LA-041522

BSM File No.: 20280.001

Dear Honorable Members of the Appellate Panel:

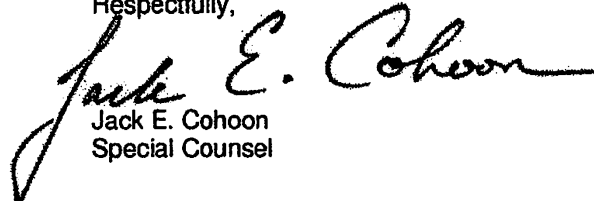
This law firm represents James M. Harley. in the above-referenced matter. We previously filed an appeal to the Appellate Panel.

The purposes of this letter is to renew our request for a copy of the transcript to allow Mr. Harley and me to prepare a written argument in this case, and to request a hearing. A hearing in this matter will be useful in addressing legal issues surrounding Mr. Harley's separation of employment, as well as the impact of his disability on both his separation and his opportunity for a fair hearing.

Please let me know the date that the Panel will be deciding this appeal so that we can provide a written argument in advance.

Do not hesitate to contact me at (803) 904-7914 or via email at jcohoon@burnetteshutt.law if you have any questions.

Respectfully,



Jack E. Cohoon
Special Counsel

JEC

cc: James M. Harley



South Carolina
Department of Employment and Workforce



14511759

12/29/2020

JAMES M HARLEY
238 Woods Rd
Greer SC 29650-3238

Claimant : JAMES M HARLEY
Employer: BRADSHAW
AUTOMOTIVE GROUP INC
Claimant ID: [REDACTED]

Re: Appeal No. 20-HA-001715

Request for In-person Hearing

Dear Mr. Cohoon:

Your hearing request was received, however in light of the COVID-19 pandemic and pursuant to S.C. Code Ann. § 41-35-710, the Appellate Panel will review the record on appeal without oral argument. **In lieu of in-person oral argument, the Appellate Panel will allow written argument by the parties to this case on the record under appeal. No new evidence can be accepted by the Appellate Panel.** A copy of the audio or a transcript of the hearing may be provided upon the request of the parties in this case. **Arguments must be submitted no later than seven (7) calendar days from the date of this letter.** Requests for copies of the recording, the transcript, and written arguments may be submitted by mail addressed to "Appellate Panel, Post Office Box 1752, Columbia South Carolina, 29202" or by fax at 803-737-3166. The Appellate Panel will then review your case as soon as possible and render a decision which will be mailed to all parties.

Please contact us if you have any further concerns.

Higher Authority Appeals

cc: File

Claimant/Employer

FAX COVER SHEET

To: Appellate Panel

From: Jack E. Cohoon

Company: SCDEW

Date: January 14, 2021 10:53

Fax Number: 18037373166

Pages (Including cover): 6

Re: James M. Harley v. Bradshaw Automotive Group, Inc. Claimant ID: [REDACTED]
Appeal No.: 20-HA-001715

Notes:



BURNETTE SHUTT MCDANIEL

Moving law forward.

BURNETTE SHUTT & MCDANIEL, PA
912 Lady Street | PO Box 1929 | Columbia, SC 29202
O: 803.850.0912 F: 803.904.7910
burnetteshutt.law

Jack E. Cohoon – Special Counsel
803.904.7914
jcohoon@burnetteshutt.law

January 14, 2021

VIA FACSIMILE (803-737-3166) AND U.S. MAIL

Appellate Panel
S.C. Department of Employment and Workforce
P.O. Box 1752
Columbia, SC 29202

RE: James M. Harley v. Bradshaw Automotive Group, Inc.
Claimant ID: [REDACTED] Appeal No.: 20-HA-001715
BSM File No.: 20280.001

Dear Honorable Members of the Appellate Panel:

This law firm represents James M. Harley in the above-referenced matter. This letter constitutes Mr. Harley's written argument in the above-referenced case.

Statement of Facts

Claimant James M. Harley is 60 years old and has a diagnosis of Post-Traumatic Stress Disorder (PTSD). Mr. Harley's condition and need for accommodation are documented in correspondence from Israr Abbasi, M.D., which indicated a need to be allowed to continue to receive a laptop with speech to text software. Mr. Harley began working as a sales consultant for Bradshaw Automotive Group, Inc. (Bradshaw) on August 26, 2019. He disclosed his disability to Bradshaw at the time of his hire.

In September 2019, Mr. Harley began seeking a reasonable accommodation for his PTSD. Specifically, he sought the ability to use his personal laptop for work. His laptop had dictation software necessitated by his condition. It also functioned better than his desktop computer, which had serious performance issues. Mr. Harley made his request to Marty Gattis, his trainer. Mr. Gattis refused to accommodate that request. He made his request to Mr. Gattis again a week later, who again said that the desktop computer was up to date and should work.

In October 2019, Jeff Plunkett, the General Manager, told Mr. Harley that he could not use his personal laptop. Mr. Harley continued to seek this accommodation. He had conversations with Coleece Cochran in Human Resources about his need for an accommodation throughout his employment. He again made his request for accommodation in an email to Ms. Cochran on January 30, 2020. Bradshaw confirmed Mr. Harley's account in its Factfinding Responses, stating that Mr. Harley "wanted accommodation for his PTSD and health issues. He did not work to [sic] with a Manager and wanted to bring his own computer in. Neither of these requests could be given."

In addition to Bradshaw's failure to provide a reasonable accommodation to Mr. Harley, his manager and some coworkers subjected him to severe bullying in the workplace. Two coworkers regularly stole Mr. Harley's dealer tags, which prevented him from being able to take customers on test drives. On one occasion, he found his dealer tag high on a light pole, where no

SCDEW Appellate Panel

January 14, 2021

James M. Harley v. Bradshaw; Claimant ID: [REDACTED] Appeal No.: 20-HA-001715

Page 2

one could see it. On other occasions, these coworkers made fun of Mr. Harley's appointments. His manager also bullied him in front of his customers, stating, falsely, that he was not a good salesman. This treatment aggravated his PTSD and negatively impacted his wellbeing.

On January 31, 2020, having been repeatedly denied a reasonable accommodation and having and having his concerns of bullying ignored, Mr. Harley could take no more. He sent an email expressing his intent to resign with an effective date of February 29, 2020.

On February 5, 2020, Mr. Harley had a long conversation with Ms. Cochran and Mr. Plunkett. They refused to provide the requested accommodation. Bullying by coworkers continued, unaddressed by Bradshaw management. Still, Mr. Harley hoped to preserve his employment, as he described in an email to Ms. Cochran that day. He rescinded his letter of resignation. Mr. Harley continued to work in his position until February 29, 2019, when Mr. Plunkett came into Mr. Harley's office and told him it would be his last day. Mr. Harley expressed that he wished to remain working for Bradshaw, but Mr. Plunkett refused to back down. Bradshaw offered Mr. Harley a severance agreement, but he declined it because he had already revoked his resignation.

Standard of Review

The Appellate Panel's scope of review is *de novo*. It may on its own motion affirm, modify, or set aside a decision of an appeal tribunal based on evidence previously submitted in the case; direct the taking of additional evidence; or permit a party to the decision to initiate further appeals before it. S.C. Code § 41-35-710.

Arguments

1. The greater weight of the evidence establishes that Mr. Harley was involuntarily separated from his job without cause and did not quit without good cause.

Mr. Harley did not voluntarily quit without good cause. Rather, he was constructively discharged. South Carolina courts have long recognized constructive discharge when an "employer deliberately makes the working conditions intolerable in an effort to induce the employee to quit." *Graves v. Horry-Georgetown Tech. College*, 391 S.C. 1, 9-10, 704 S.E.2d 350, 355 (Ct. App. 2010), quoting *Honor v. Booz-Allen & Hamilton, Inc.*, 383 F.3d 180, 186 (4th Cir. 2004).

There is ample evidence that the Employer endeavored to constructively Mr. Harley by refusing, without good reason, a simple accommodation that would allow him to do his job and by subjecting him to cruel and callous bullying. The record establishes that Mr. Harley had acted reasonably in attempting to correct these conditions, but Mr. Plunkett, the General Manager, and other management refused to help him. A reasonable person would not continue to work in the conditions that Mr. Harley was subject to. The failure to address the conditions that Mr. Harley repeatedly identified and alerted Bradshaw forced him out of the job.

SCDEW Appellate Panel

January 14, 2021

James M. Harley v. Bradshaw; Claimant ID: [REDACTED]; Appeal No.: 20-HA-001715

Page 3

- 2. The Appeal Tribunal committed an error of law when it found that Mr. Harley had voluntarily quit without good cause, as under Mr. Harley had revoked his resignation before Bradshaw Automotive Group, Inc. had accepted it.**

It is axiomatic in contract law that an offer may be withdrawn at any time before its acceptance, by notice given to that effect to the other party. *Masonic Temple, Inc. v. Ebert*, 199 S.C. 5, 12, 18 S.E.2d 584, 587 (1942). This principle is applicable to Mr. Harley's at-will employment directly, and if not directly, at by analogy. Mr. Harley revoked his resignation before receiving any confirmation that it had been accepted. The record is devoid of any documentation indicating that the Employer accepted his resignation prior to his rescinding it. With Mr. Harley having rescinded his resignation, Bradshaw's decision to separate Mr. Harley from employment was a termination and not a voluntary quit.

- 3. Mr. Harley should have been found fully eligible for unemployment benefits under the "compelling family circumstances" provision of the Unemployment Compensation Law. S.C. Code Ann. § 41-35-125.**

S.C. Code Ann. § 41-35-125(b) provides for eligibility for benefits for claimants who are separated from employment with the employer because of the illness or disability of the claimant when it was medically necessary for the claimant to stop working or change occupations. The record establishes that Mr. Harley has a verified disability. Due to the work conditions that Mr. Harley was subject to—the refusal to allow the use of text-to-speech on Mr. Harley's laptop, and the severe bullying—it was medically necessary for Mr. Harley to change jobs. The Appeal Tribunal erred by failing to consider Mr. Harley's eligibility for benefits pursuant to this provision of law.

- 4. Even if it is accepted that Mr. Harley quit, he had good cause to do so due to the Employer's failure to accommodate his disability as required by the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., and the Employer's failure to address the bullying Mr. Harley endured from coworkers.**

Mr. Harley had good cause to quit, pursuant to S.C. Code § 41-35-120(1), and therefore should have been determined eligible for unemployment benefits. The Employer was subject to the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and was therefore required to provide reasonable accommodations to disabled employees. Mr. Harley's request to use text-to-speech software on his laptop was reasonable and imposed no significant burden on the Employer. Despite this reasonable request, the Employer refused to offer an accommodation. The Employer confirms this refusal as the basis for the separation of employment in its Fact-Finding Questionnaire, stating Mr. Harley "wanted accommodation for his PTSD and health issues. He did not work to [sic] with a Manager and wanted to bring his own computer in. Neither of these requests could be given."

Moreover, the Employer failed to engage in an interactive process. If there was some reason why the Employer could not permit Mr. Harley to use his personal laptop, it was incumbent upon the Employer to communicate with Mr. Harley to identify alternative accommodations that would permit him to work. This process did not occur. Moreover, the Employer failed to address the bullying that Mr. Harley brought to its attention. Mr. Harley acted reasonably in communicating with both Human Resources and General Manager about his concerns. The Employer's failure to

SCDEW Appellate Panel

January 14, 2021

James M. Harley v. Bradshaw; Claimant ID: [REDACTED]; Appeal No.: 20-HA-001715

Page 4

address these issues constituted good cause for Mr. Harley to leave this position and seek other employment.

5. **Mr. Harley was denied a fair hearing before the Appeal Tribunal due to the Administrative Hearing Officer aiding the Employer's witnesses through leading questions, taking on a prosecutorial tone that she directed toward Mr. Harley rather than the Employer—triggering his disability—and exhibiting apparent bias in the way she conducted the hearing. 20 CFR § 650.1(b); S.C. Code Ann. § 41-35-680.**

The Hearing Officer showed a lack of objectivity in her hearing of this case. Rather than letting the parties present their cases, she took on the role of prosecutor, hounded Mr. Harley, and frequently cut him off from testifying. She did not exhibit the same conduct toward the Employer. Moreover, she allowed the Employer's sole witness to testify from documents that he had never moved into evidence and that Mr. Harley and his attorney never had the opportunity to review, such as the Employer's supposed policies. The Hearing Officer acted annoyed with Mr. Harley. This treatment triggered Mr. Harley's PTSD, which interfered with his ability to testify and fully respond to questions. As a result, Mr. Harley was denied a fair hearing.

6. **Mr. Harley was denied a fair hearing by the Administrative Hearing Officer's admission of the Employer's 11th hour submission of evidence without sufficient notice to permit Mr. Harley and his counsel to review and respond to the evidence.**

The Department's Appeal Tribunal hearing notice specifically directed both parties to provide their documentary evidence to the other party at least 24 hours in advance. Mr. Harley and his counsel complied with this admonition and provided their evidence to the Employer within the deadline. The Employer sprung its evidence on Mr. Harley and his counsel during the hearing, depriving them of the opportunity to fully review the documents and prepare a response. This denied Mr. Harley due process and a fair hearing.

Conclusion

The Unemployment Compensation Law is remedial in nature and should be liberally construed to give effect to its beneficent purposes. *Hatsville Cotton Mill v. South Carolina Employment Sec. Com.*, 224 S.C. 407, 414, 79 S.E.2d 381, 384 (1953). The record establishes that Mr. Harley was confronted with an impossible situation—he had a disability which his Employer refused to accommodate, and he was subject to bullying that his Employer refused to correct. He had acted reasonably in raising these issues through the proper channels. The Department should not disqualify Mr. Harley from receiving unemployment benefits due to his disability and his Employer's failure to adequately address it. The Employer separated Mr. Harley from employment under nondisqualifying circumstances.

For all these reasons, we respectfully request that the Appellate Panel reverse the Appeal Tribunal's decision and find Mr. Harley fully eligible for unemployment benefits.

Please do not hesitate to contact me at (803) 904-7914 or via email at jcohoon@burnetteshutt.law if you have any questions.

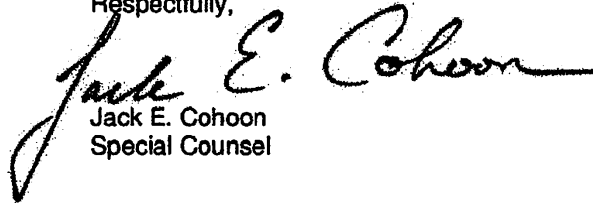
SCDEW Appellate Panel

January 14, 2021

James M. Harley v. Bradshaw; Claimant ID: [REDACTED] Appeal No.: 20-HA-001715

Page 5

Respectfully,

A handwritten signature in black ink, reading "Jack E. Cohoon". The signature is fluid and cursive, with the first name "Jack" being particularly prominent.

Jack E. Cohoon
Special Counsel

JEC

cc: James M. Harley



South Carolina
Department of Employment and Workforce



15141032

01/20/2021

JAMES M HARLEY
238 Woods Rd
Greer SC 29650-3238

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the mailing date of SCDEW's final decision (**see the mailing date above**).

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia SC 29201**

Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice law in South Carolina.

South Carolina
Department of Employment and Workforce



15141032

Office of Appellate Panel

JAMES M HARLEY)
238 WOODS RD)
GREER SC 29650)
Claimant SSN: XXX-XX-XXXX)
Claimant ID: XXXXXXXX)

APPELLATE PANEL
DECISION

BRADSHAW AUTOMOTIVE GROUP)
INC)
P O BOX 2269)
GREER SC 29652-2269)

Appellant: JAMES M HARLEY

Appeal Number:20-HA-001715

Appellant: Claimant

The Claimant filed for unemployment benefits on May 4, 2020. The claims adjudicator's determination mailed July 16, 2020, held the Claimant indefinitely disqualified from benefits, upon finding he voluntarily left work without good cause attributable to the employment. The Claimant appealed to the Appeal Tribunal. After an evidentiary hearing, the Appeal Tribunal affirmed the determination. The Claimant appealed the Appeal Tribunal decision on December 10, 2020 to the Appellate Panel.

In light of the COVID-19 pandemic and pursuant to S.C. Code Ann. § 41-35-710, the Appellate Panel issued this decision upon review of the record on appeal without oral argument. We affirm the Appeal Tribunal decision. The Claimant is indefinitely disqualified from receiving benefits effective May 3, 2020, upon finding he voluntarily left employment without good cause attributable to the employment.

BACKGROUND

The Claimant worked for the Employer from August 26, 2019, through February 29, 2020, most recently as a sales consultant. The Claimant was separated from employment because he submitted a resignation notice to be effective February 29, 2020. At the evidentiary hearing before the Appeal Tribunal the Claimant cited concerns over the Employer's denial of his workplace accommodations and the working environment as the reasons why he submitted the resignation

South Carolina
Department of Employment and Workforce

notice on January 31, 2020. With regard to the workplace accommodations, the Claimant has a medical condition and he had requested to use his personal laptop to complete his work duties. The Claimant noted he had raised this issue with his trainer and management as early as October 2019, but his request was denied. The Claimant renewed this concern with the human resources manager (HR manager) on January 30, 2020, by letter. With regard to the working environment, the Claimant asserted there were co-workers who would bully him or harass him in front of customers. The Claimant noted he had ongoing concerns about the working environment, and in the January 30, 2020 letter to the HR manager he referenced concerns with a particular employee. The following day, the Claimant submitted his letter of resignation. In the Claimant's resignation letter, he noted a personal desire to relocate to the Midwest to be near family and he referenced his discussions in the previous two days with the general sales manager as the reason for his resignation. In the notice, the Claimant agreed to work until February 29, 2020.

On February 5, 2020, the Claimant submitted another letter to the HR manager which indicated his intent to rescind his resignation notice. In the letter the Claimant also referenced his accommodation request to use his personal laptop and software to complete some of his work duties. In a meeting with the Claimant on February 5, 2020, the HR manager told the Claimant the Employer was accepting the resignation as final. The Claimant believed the Employer could not accept the resignation notice after he attempted to rescind the notice, and assumed since he continued working through the notice period, the Employer had implicitly agreed to allow him to rescind the resignation notice. The Claimant noted he wanted to continue his employment even though the Employer continued to deny his request for accommodations. The general sales manager noted he regularly reminded the Claimant the Employer was moving forward with the separation and the Claimant's last day would be February 29, 2020. The Employer allowed the Claimant to continue working through February 29, 2020, and paid the Claimant severance through April 1, 2020.

The general sales manager was aware of the Claimant's accommodation request, but noted as a general business practice the Employer did not allow employees to have access to business software on their personal laptops. The general sales manager was not aware of any specific request from the Claimant regarding specific computer software or features the Claimant was requesting to help him complete his work duties. The general sales manager also noted the Claimant had not addressed any concerns about the working environment until around the time of the resignation notice. The Employer conducted an investigation and determined the Claimant had not been bullied or harassed. The general sales manager noted if the Claimant was dissatisfied with the response from management and HR regarding his accommodation requests or the issues with the co-workers, he could have addressed his concerns up the chain of command which included the general manager and the owner. There was continuing work available to the Claimant when he submitted his resignation notice.

FINDINGS

S.C. Code Ann. § 41-35-120(1) requires an indefinite disqualification from benefits when the Department finds the claimant left work voluntarily without good cause. The disqualification

South Carolina
Department of Employment and Workforce

continues until the claimant returns to work and earns eight times the weekly benefit amount of the claim in covered employment.

“Good cause” refers to a material, substantial change in the conditions of employment, or other circumstances directly attributable to the employment, which would cause a reasonable person to become totally unemployed rather than continue working.

The record establishes the Claimant voluntarily resigned his employment when he initially offered his resignation notice on January 31, 2020. By doing so, the Claimant initiated the severing of the employment relationship. Although the Claimant later attempted to rescind his resignation notice, the Employer was under no obligation to allow him to rescind the notice or continue the employment relationship. Moreover, he had received specific communication from the HR manager the resignation notice was accepted as final. Regarding the Claimant’s concerns related to the accommodation request and working environment, the record indicates the Claimant had only escalated his concerns to HR on January 30, 2020, one day before submitting his resignation notice. The Claimant did not allow the Employer an adequate opportunity to address his working environment concerns and his request for reasonable workplace accommodations before he offered his resignation notice. Furthermore, when the Claimant desired to continue his employment and attempted to rescind his resignation notice, there had been no change to management’s denial of the Claimant’s request to use his personal laptop for his work duties. Yet the Claimant was willing to continue working, had the Employer rescinded the resignation notice. Given the totality of the situation at the time of the Claimant’s separation, we do not find the circumstances rise to the level that a reasonable person would become totally unemployed rather than continue working. Therefore, we find the Claimant voluntarily left work without good cause attributable to the employment.

The Claimant’s counsel argues the hearing officer’s conduct was unprofessional and biased. Upon careful review of the record, we find the hearing officer allowed the Claimant a full and fair opportunity to present his case, and conducted the hearing with impartiality. We further find the hearing officer appropriately questioned the parties on the specific details of the Claimant’s separation and did not err in the administration of the case. Counsel further contends he was denied an opportunity to review physical copies of the evidence submitted by the Employer in connection with this claim for benefits; however, the Employer did not proffer any exhibits into the record. As such, counsel’s evidentiary argument is moot.

South Carolina
Department of Employment and Workforce

DECISION

The Appeal Tribunal decision mailed November 30, 2020, is affirmed. The Claimant is indefinitely disqualified from receiving benefits effective May 3, 2020, upon finding he voluntarily left work without good cause attributable to the employment.

**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE
APPELLATE PANEL**



E.B. AYERS



TIM DANGERFIELD



STEPHEN S. KELLY, JR.

Date Mailed: 01/20/2021



BURNETTE SHUTT MCDANIEL

Moving law forward.

BURNETTE SHUTT & MCDANIEL, PA

912 Lady Street | PO Box 1929 | Columbia, SC 29202

O: 803.850.0912 F: 803.904.7910

burnetteshutt.law

Jack Cohoon - Attorney
803.904.7914
jcohoon@burnetteshutt.law

February 19, 2021

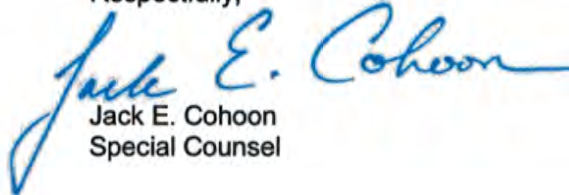
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

**RE: James M. Harley vs. South Carolina Department of Employment and
Workforce and Bradshaw Automotive Group, Inc.**
Docket No.:
BSM File No.: 20280.002

Dear Sir/Madam:

Enclosed please find Appellant's Petition for Judicial Review of the Final Decision of the South Carolina Department of Employment and Workforce on the above-referenced case.

Respectfully,



Jack E. Cohoon
Special Counsel

JEC

Enclosures

Cc: SC Department of Employment and Workforce
Bradshaw Automotive Group, Inc.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

James M. Harley,

Appellant,

vs.

South Carolina Department of
Employment and Workforce and
Bradshaw Automotive Group, Inc.

Respondents,

Docket No.:

**PETITION FOR JUDICIAL REVIEW OF
THE FINAL DECISION OF THE SOUTH
CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**

Now comes the Appellant, James M. Harley, complaining of the Respondents herein, and respectfully shows this Court that:

1. This action for judicial review of the Final Decision of the South Carolina Department of Employment and Workforce is brought pursuant to S.C. Code Ann. §§ 1-23-380 and 41-35-750.

2. Appellant James M. Harley is a claimant for unemployment benefits.

3. Respondent South Carolina Department of Employment and Workforce (hereinafter referred to as "the Department") is an administrative agency of the State of South Carolina as defined in S.C. Code Ann. § 1-23-310(1) and is authorized by § 41-35-710 to hear and decide appeals of awards or denials of unemployment benefits.

4. Appellant was separated from his job with Respondent Bradshaw Automotive Group, Inc. (hereinafter referred to as "Employer") and applied for unemployment benefits.

5. Respondent Department denied Appellant's claim. Appellant filed a timely appeal to the Appeal Tribunal and then to the Appellate Panel, which mailed a final

agency decision to the Appellant on January 20, 2021 and which was received by counsel for Mr. Harley on January 22, 2021.

6. Appellant asserts that his substantial rights were prejudiced because:
 - a. The Department's Appellate Panel decision finding that Appellant quit without good cause is not supported by substantial evidence of the whole record.
 - b. The Department's Appellate Panel committed an error of law when it found that Mr. Harley had voluntarily quit without good cause, as under Mr. Harley had revoked his resignation before Bradshaw Automotive Group, Inc. had accepted it.
 - c. The Department committed an error of law by failing to find Mr. Harley eligible for unemployment benefits under the "compelling family circumstances" provision of the Unemployment Compensation Law. S.C. Code Ann. § 41-35-125.
 - d. The Department committed an error of law by disqualifying Mr. Harley from receiving benefits when, even if it is accepted that Mr. Harley quit, he had good cause to do so due to the Employer's failure to accommodate his disability as required by the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., and the Employer's failure to address the bullying Mr. Harley endured from coworkers.
 - e. Mr. Harley was denied a fair hearing before the Appeal Tribunal due to the Administrative Hearing Officer aiding the Employer's witnesses through leading questions, taking on a prosecutorial tone that she

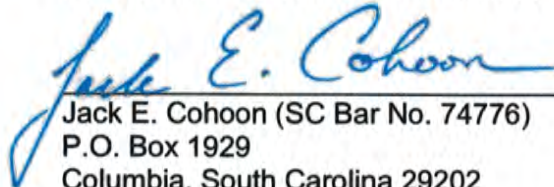
directed toward Mr. Harley rather than the Employer-triggering his disability-and exhibiting apparent bias in the manner in which she conducted the hearing. 20 CFR § 650.1(b); S.C. Code Ann. § 41-35-680.

7. Appellant reserves the right to modify and supplement these bases for appeal.

WHEREFORE, Appellant prays that this Court, pursuant to S.C. Code Ann. §§ 1-23-380, reverse the Respondent Department's decision and hold that he is entitled to full unemployment compensation benefits with no disqualification.

Respectfully,

BURNETTE SHUTT MCDANIEL, PA



Jack E. Cohoon (SC Bar No. 74776)
P.O. Box 1929
Columbia, South Carolina 29202
Tel. (803) 904-7914
Fax. (803) 904-7910
jcohoon@burnetteshutt.law

ATTORNEY FOR APPELLANT

Columbia, South Carolina

February 19, 2021

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

James M. Harley

Appellant,

vs.

South Carolina Department of
Employment and Workforce and
Bradshaw Automotive Group, Inc.

Respondents,

Docket No.:

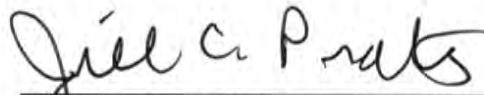
CERTIFICATE OF SERVICE

I certify that I have served a copy of the *Petition for Judicial Review of the Final Decision of the South Carolina Department of Employment and Workforce* upon all parties by causing a copy of the same to be deposited into the United States Mail, first-class, postage prepaid, and addressing to the following:

PARTIES SERVED:

SC Department of Employment and Workforce
P.O. Box 8597
Columbia, SC 29202

Bradshaw Automotive Group, Inc.
P.O. Box 2269
Greer, SC 29652-2269



Jill C. Prater, Legal Assistant
Burnette Shutt & McDaniel, PA

Columbia, South Carolina

February 19, 2021



South Carolina
Department of Employment and Workforce



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RECEIVED

01/20/2021

663 2 AB 0.416 APP360
P:063 / T:5 / S:
JACK COHOON
PO BOX 1929
COLUMBIA SC 29202-1929

JAN 22 2021

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the mailing date of SCDEW's final decision (see the mailing date above).

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia SC 29201**

Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice law in South Carolina.

South Carolina
Department of Employment and Workforce



15141035

Office of Appellate Panel

JAMES M HARLEY)
238 WOODS RD)
GREER SC 29650)
Claimant SSN: XXX-XX-3485
Claimant ID: 11003556

**APPELLATE PANEL
DECISION**

BRADSHAW AUTOMOTIVE GROUP)
INC)
P O BOX 2269)
GREER SC 29652-2269)

Appellant: JAMES M HARLEY

Appeal Number: 20-HA-001715

Appellant: Claimant

The Claimant filed for unemployment benefits on May 4, 2020. The claims adjudicator's determination mailed July 16, 2020, held the Claimant indefinitely disqualified from benefits, upon finding he voluntarily left work without good cause attributable to the employment. The Claimant appealed to the Appeal Tribunal. After an evidentiary hearing, the Appeal Tribunal affirmed the determination. The Claimant appealed the Appeal Tribunal decision on December 10, 2020 to the Appellate Panel.

In light of the COVID-19 pandemic and pursuant to S.C. Code Ann. § 41-35-710, the Appellate Panel issued this decision upon review of the record on appeal without oral argument. We affirm the Appeal Tribunal decision. The Claimant is indefinitely disqualified from receiving benefits effective May 3, 2020, upon finding he voluntarily left employment without good cause attributable to the employment.

BACKGROUND

The Claimant worked for the Employer from August 26, 2019, through February 29, 2020, most recently as a sales consultant. The Claimant was separated from employment because he submitted a resignation notice to be effective February 29, 2020. At the evidentiary hearing before the Appeal Tribunal the Claimant cited concerns over the Employer's denial of his workplace accommodations and the working environment as the reasons why he submitted the resignation

1645

**South Carolina
Department of Employment and Workforce**



notice on January 31, 2020. With regard to the workplace accommodations, the Claimant has a medical condition and he had requested to use his personal laptop to complete his work duties. The Claimant noted he had raised this issue with his trainer and management as early as October 2019, but his request was denied. The Claimant renewed this concern with the human resources manager (HR manager) on January 30, 2020, by letter. With regard to the working environment, the Claimant asserted there were co-workers who would bully him or harass him in front of customers. The Claimant noted he had ongoing concerns about the working environment, and in the January 30, 2020 letter to the HR manager he referenced concerns with a particular employee. The following day, the Claimant submitted his letter of resignation. In the Claimant's resignation letter, he noted a personal desire to relocate to the Midwest to be near family and he referenced his discussions in the previous two days with the general sales manager as the reason for his resignation. In the notice, the Claimant agreed to work until February 29, 2020.

On February 5, 2020, the Claimant submitted another letter to the HR manager which indicated his intent to rescind his resignation notice. In the letter the Claimant also referenced his accommodation request to use his personal laptop and software to complete some of his work duties. In a meeting with the Claimant on February 5, 2020, the HR manager told the Claimant the Employer was accepting the resignation as final. The Claimant believed the Employer could not accept the resignation notice after he attempted to rescind the notice, and assumed since he continued working through the notice period, the Employer had implicitly agreed to allow him to rescind the resignation notice. The Claimant noted he wanted to continue his employment even though the Employer continued to deny his request for accommodations. The general sales manager noted he regularly reminded the Claimant the Employer was moving forward with the separation and the Claimant's last day would be February 29, 2020. The Employer allowed the Claimant to continue working through February 29, 2020, and paid the Claimant severance through April 1, 2020.

The general sales manager was aware of the Claimant's accommodation request, but noted as a general business practice the Employer did not allow employees to have access to business software on their personal laptops. The general sales manager was not aware of any specific request from the Claimant regarding specific computer software or features the Claimant was requesting to help him complete his work duties. The general sales manager also noted the Claimant had not addressed any concerns about the working environment until around the time of the resignation notice. The Employer conducted an investigation and determined the Claimant had not been bullied or harassed. The general sales manager noted if the Claimant was dissatisfied with the response from management and HR regarding his accommodation requests or the issues with the co-workers, he could have addressed his concerns up the chain of command which included the general manager and the owner. There was continuing work available to the Claimant when he submitted his resignation notice.

FINDINGS

S.C. Code Ann. § 41-35-120(1) requires an indefinite disqualification from benefits when the Department finds the claimant left work voluntarily without good cause. The disqualification

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South Carolina
Department of Employment and Workforce

continues until the claimant returns to work and earns eight times the weekly benefit amount of the claim in covered employment.

"Good cause" refers to a material, substantial change in the conditions of employment, or other circumstances directly attributable to the employment, which would cause a reasonable person to become totally unemployed rather than continue working.

The record establishes the Claimant voluntarily resigned his employment when he initially offered his resignation notice on January 31, 2020. By doing so, the Claimant initiated the severing of the employment relationship. Although the Claimant later attempted to rescind his resignation notice, the Employer was under no obligation to allow him to rescind the notice or continue the employment relationship. Moreover, he had received specific communication from the HR manager the resignation notice was accepted as final. Regarding the Claimant's concerns related to the accommodation request and working environment, the record indicates the Claimant had only escalated his concerns to HR on January 30, 2020, one day before submitting his resignation notice. The Claimant did not allow the Employer an adequate opportunity to address his working environment concerns and his request for reasonable workplace accommodations before he offered his resignation notice. Furthermore, when the Claimant desired to continue his employment and attempted to rescind his resignation notice, there had been no change to management's denial of the Claimant's request to use his personal laptop for his work duties. Yet the Claimant was willing to continue working, had the Employer rescinded the resignation notice. Given the totality of the situation at the time of the Claimant's separation, we do not find the circumstances rise to the level that a reasonable person would become totally unemployed rather than continue working. Therefore, we find the Claimant voluntarily left work without good cause attributable to the employment.

The Claimant's counsel argues the hearing officer's conduct was unprofessional and biased. Upon careful review of the record, we find the hearing officer allowed the Claimant a full and fair opportunity to present his case, and conducted the hearing with impartiality. We further find the hearing officer appropriately questioned the parties on the specific details of the Claimant's separation and did not err in the administration of the case. Counsel further contends he was denied an opportunity to review physical copies of the evidence submitted by the Employer in connection with this claim for benefits; however, the Employer did not proffer any exhibits into the record. As such, counsel's evidentiary argument is moot.

South Carolina
Department of Employment and Workforce

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DECISION

The Appeal Tribunal decision mailed November 30, 2020, is affirmed. The Claimant is indefinitely disqualified from receiving benefits effective May 3, 2020, upon finding he voluntarily left work without good cause attributable to the employment.



**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE
APPELLATE PANEL**

A handwritten signature in black ink, appearing to read "E.B. Ayers", positioned above a horizontal line.

E.B. AYERS

A handwritten signature in black ink, appearing to read "Tim Dangerfield", positioned above a horizontal line.

TIM DANGERFIELD

A handwritten signature in black ink, appearing to read "Stephen S. Kelly, Jr.", positioned above a horizontal line.

STEPHEN S. KELLY, JR.

Date Mailed: 01/20/2021

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James M. Harley,

Appellant,

vs.

South Carolina Department of Employment
and Workforce and Bradshaw Automotive
Group, Inc.,

Respondents.

NOTICE OF ASSIGNMENT

DOCKET NO. 21-ALJ-22-0047-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on February 22, 2021. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2020), the **Honorable Milton G. Kimpson**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

FURTHER, NOTICE IS GIVEN that the parties are required to meet the following deadlines, unless otherwise ordered by the assigned Administrative Law Judge:

Record on Appeal	Due within twenty (20) days of the date of this Notice (to be filed by the agency)
Appellant's Brief	Due within twenty (20) days after the Record on Appeal is filed
Respondent's Brief	Due within twenty (20) days after the Appellant's Brief is filed
Reply Brief	Due within ten (10) days after the Respondent's Brief is filed

The parties are directed to the relevant provisions of the Rules of Procedure regarding these deadlines and other requirements applicable to the appeal process. Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scale.net.

This the twenty-fourth day of February 2021.

Ralph King Anderson, III
Chief Administrative Law Judge

By:


Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

FEB 24 2021

SC ADMIN. LAW COURT

STATEMENT OF ISSUES ON APPEAL

- 1. Is the Department's Appellate Panel decision finding that Appellant quit without good cause unsupported by substantial evidence of the whole record and affected by an error of law?**
- 2. Did the Department's Appellate Panel commit an error of law when it found that Appellant had voluntarily quit without good cause when Appellant had revoked his resignation before Bradshaw Automotive Group, Inc. had accepted it?**
- 3. Did the Department committed an error of law by failing to find Appellant eligible for unemployment benefits under the "compelling family circumstances" provision of the Unemployment Compensation Law. S.C. Code Ann. § 41-35-125?**
- 4. Did the Department commit an error of law by disqualifying Appellant from receiving benefits when, even if is accepted that Appellant quit, he had good cause to do so due to the Employer's failure to accommodate his disability as required by the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, and the Employer's failure to address the bullying Appellant endured from coworkers?**
- 5. Did the Department create improper and unnecessary hurdles to Appellant's eligibility for unemployment benefits in violation of the Social Security Act?**

STATEMENT OF THE CASE

Procedural History

This case is before the Administrative Law Court on appeal of a final decision of the Respondent South Carolina Department of Employment and Workforce (hereinafter "the Department"). Appellant James M. Harley applied to the Department for unemployment benefits following the loss of his job following his separation from employment from his job at Respondent Bradshaw Automotive Group, Inc. (hereinafter "Bradshaw" or "the Employer"). In response to Harley's application, Bradshaw reported that Harley quit because "he wanted accommodation for his PTSD and health issues. He did not work to [sic] with a Manager and wanted to bring his own computer in. Neither of these request [sic] could be given." *Id.* at 13.

The Department issued its determination on July 18, 2020 finding Harley to have left his most recent bonafide employer to relocate due to personal circumstances not attributable to the employer. *Id.* at 19. Harley filed a timely appeal stating that "the Employer's HR attempted to get me to sign a resignation. I refused because I did not quit. They terminated me." *Id.* at 21. He noted that his address had not changed and that he remained a resident where he had lived before his separation from employment. He stated, "I was terminated unlawfully in retaliation for seeking accommodations of my PTSD disability, and because of raising concerns about the hostile working environment older sales consultants confronted at Bradshaw Automotive." *Id.* at 21.

The Department's Appeal Tribunal conducted a hearing by telephone on

November 18, 2020 before Administrative Hearing Officer Brynn DeHay. *Id.* at 27 *et seq.* In its November 30, 2020 decision the Appeal Tribunal found Harley to have voluntarily quit without good cause and therefore ineligible for benefits. *Id.* at 160 to 162. Harley appealed to the Department's Appellate Panel on December 10, 2020. *Id.* at 163 to 164. He requested oral argument in the case by letter dated December 23, 2020. *Id.* at 167. The Appellate Panel denied this request, instead requiring Harley to submit a written argument in lieu of an in-person appearance. *Id.* at 168. Harley submitted the requested written argument. The Appellate Panel issued a decision affirming the disqualification on January 20, 2020. *Id.* at 176 to 179. This is the Department's final agency decision regarding eligibility for unemployment insurance benefits. Appellant then filed this appeal.

The Court issued a Notice of Assignment on February 24, 2021. Harley requested and was granted an extension to May 17, 2021 to file his brief. On April 7, 2021, The Department issued a determination claiming, falsely, that Harley had requested to withdraw his claim for benefits in South Carolina. Harley filed a timely appeal on April 19, 2021. The Department has never provided Appellant an Appeal Tribunal hearing on the issue of this supposed withdrawal of his claim for benefits.

On April 27, 2021, the Department's counsel contacted Appellant's counsel and raised an issue that he claimed rendered Appellant ineligible for benefits in South Carolina. Specifically, he asserted that, because Appellant had at one time filed a claim in Illinois (for which he had not received any benefits), Harley was disqualified from eligibility in South Carolina. The Department's counsel advised that it would be necessary for Harley to pursue benefits in Illinois. Harley did not

concede that he was in any way ineligible for benefits in South Carolina, however, at the Department's direction, Harley agreed to stay proceedings in this appeal to provide an opportunity to contact the Department's counterpart in Illinois regarding eligibility there. This Court granted Appellant an indefinite stay to do so. Harley did as instructed and contacted representatives of the Illinois Department of Employment Security who were confused by Appellant's inquiry and indicated that it would not be possible to pursue any claim for benefits in that state. The Department issued a letter to Appellant's counsel regarding this issue.

In conjunction with the appeal of the issue of separation as it pertains to eligibility for unemployment benefits, Harley continued to navigate the Department's labyrinthine appellate process for other issues, including the issue of eligibility for Pandemic Unemployment Assistance ("PUA"). On December 7, 2020, The Department issued a determination denying Appellant's claim for PUA. Harley timely appealed by letter dated December 11, 2020. On February 19, 2021, the Appeal Tribunal found Harley eligible for PUA benefits effective July 26, 2020 through October 3, 2020 due to the necessity for Harley to self-quarantine for an extended period due to both his and his elderly parents' health conditions. As a result of this finding, Harley received approximately \$957 in benefits.

At some point, the Department changed its mind again regarding Harley's eligibility for PUA, claiming he owed back the \$957 it had paid him. It is unclear specifically what administrative determination triggered this reversal. Harley filed a written protest of a notice indicating that the Department intended to intercept this amount from his tax refund. He also filed an application for waiver. The Department

denied both the written protest and the application for waiver, necessitating Harley appealing those issues. The Appeal Tribunal conducted a hearing on the issue of debt setoff and denial of waiver on August 15, 2022. The Appeal Tribunal reversed the waiver denial in a decision issued on August 23, 2022, finding Harley eligible for a waiver. Notably, the hearing officer found that Harley had contacted Illinois' unemployment benefits agency on "multiple occasions," and that "Illinois refused to open the claim."

The Evidence Presented

The facts regarding Harley's separation from employment were developed in a telephone hearing before the Appeal Tribunal on November 18, 2020.

Harley began working for Bradshaw as a sales consultant on August 26, 2019. *Id.* at 43, lines 7-11. Harley has a diagnosis of Post-Traumatic Stress Disorder (PTSD). He disclosed his disability to Bradshaw at the time of his hire. Harley's condition and need for accommodation are documented in correspondence from Israr Abbasi, M.D. *Id.* at 135-136. Dr. Abbasi indicated that Harley need to be allowed to continue to receive a laptop with speech to text software. *Id.*

Harley began working as a sales consultant for Bradshaw on August 26, 2019. In September 2019, Harley began seeking a reasonable accommodation for his PTSD. *Id.* at 45-46. Specifically, he sought the ability to use his personal laptop for work. *Id.* His laptop had dictation software necessitated by his condition. *Id.* It also functioned better than his desktop computer, which had significant performance issues. *Id.* at 107, lines 21 to 27. Harley made his request to Marty

Gattis, his trainer. *Id.* Gattis refused to accommodate Harley's request. Harley made his request to Gattis again a week later, who again said that the desktop computer was up to date and should work. *Id.* at 47.

In October 2019, Jeff Plunkett, the General Manager, told Harley that he could not use his personal laptop. *Id.* Harley continued to seek this accommodation. He had conversations with Kalise Cochran in Human Resources about his need for an accommodation throughout his employment. *Id.* at 48. He again made his request for accommodation in an email to Cochran on January 30, 2020. *Id.* at 140-141. Harley sent Cochran yet another email seeking accommodations on February 5, 2020. *Id.* at 144. Bradshaw confirmed Harley's account in its Factfinding Responses, stating that Harley "wanted accommodation for his PTSD and health issues. He did not work to [sic] with a Manager and wanted to bring his own computer in. Neither of these requests could be given." *Id.* at 13.

In addition to Bradshaw's failure to provide a reasonable accommodation to Harley, his manager and some coworkers subjected him to severe bullying in the workplace. *Id.* at 49 to 50. Two coworkers regularly stole Harley's dealer tags, which prevented him from being able to take customers on test drives. *Id.* at 53. On one occasion, he found his dealer tag high on a light pole, where no one could see it. *Id.* On other occasions, these coworkers made fun of Harley's appointments. *Id.* at 54, lines 1 to 5. His manager also bullied him in front of his customers, stating, falsely, that he was not a good salesman. *Id.* This treatment aggravated his PTSD and negatively impacted his wellbeing. *Id.*

On January 31, 2020, having been repeatedly denied a reasonable

accommodation and having his concerns of bullying ignored, Harley could take no more. *Id.* at 54, lines 19-26. He sent Cochran an email expressing his intent to resign with an effective date of February 29, 2020. *Id.* at 131. Neither Cochran nor anyone else at Bradshaw indicated they would agree to any accommodation for his PTSD and health issues. Nor did they accept Harley's offer to resign at that time.

On February 5, 2020, Harley had a long conversation with Cochran and Plunkett. They refused to provide the requested accommodation. Bullying by coworkers continued, unaddressed by Bradshaw management. Still, Harley hoped to preserve his employment, as he described in an email to Cochran that day. He rescinded his letter of resignation. *Id.* at 145. The Employer did not communicate to Harley whether his resignation was accepted or denied. *Id.* at 82-83.

Harley continued to work in his position until February 29, 2020, when Plunkett came into Harley's office and told him it would be his last day. *Id.* at 43, lines 1-10. Harley expressed that he wished to remain working for Bradshaw, but Plunkett refused to back down. *Id.* Bradshaw offered Harley a severance agreement, but he declined it because he had already revoked his resignation. *Id.*

STANDARD OF REVIEW

S.C. Code Ann. § 41-35-750 provides that “[i]n a judicial proceeding under [Title 41, Chapter 35], the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the court must be confined to questions of law.” The Administrative Procedures Act (A.P.A.) sets forth the bases upon which a court of appellate review may act on an administrative finding, inference, conclusion, or decision of an agency. S.C. Code Ann. § 1-23-310 *et. seq.* The South Carolina Employment Security Commission is an “agency” within the scope of the A.P.A. S.C. Code Ann. § 1-23-310(2). An appellate court may affirm or remand an agency decision. S.C. Code Ann. § 1-23-380(A). Otherwise, it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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. S.C. Code Ann. § 1-23-380(A)(5).

The “substantial evidence” standard governs factual findings under the A.P.A. See *e.g. Hall v. United Rentals*, 371 S.C. 69, 79, 636 SE.2d 876, 882 (S.C. Ct. App. 2006) (Worker’s Compensation case), *McEachern v. South Carolina Emp. Sec. Commission*, 370 S.C. 553, 635 SE.2d 644 (S.C. Ct. App. 2006). An appellate court may not overturn an agency’s finding of fact when it is supported by

substantial evidence. Substantial evidence requires a showing of more than a "mere scintilla of evidence." *Houston v. DeLoach & DeLoach*, 378 S.C. 543, 550, 663 SE.2d 85, 89 (S.C. Ct. App. 2008). To be substantial, evidence must be such that reasonable minds can reach the same conclusion that the agency reached. *Merck v. factual findings under the A.P.A.* See e.g. *Hall v. United Rentals*, 371 S.C. 69, 79, 636 SE.2d 876, 882 (S.C. Ct. App. 2006) (Worker's Compensation case), *McEachern v. South Carolina Emp. Sec. Commission*, 290 S.C. 459, 461, 351 SE.2d 338 (1986).

The appellant court's review is "plenary" when the agency's decision is controlled by an error of law. *Lizee v. S.C. Dep't of Mental Health*, 367 S.C. 122, 126; 623 S.E.2d 860, 863 (S.C. Ct. App. 2005). An appellate court may "freely and absolutely" review a trial court's or agency's error of law. *Houston v. DeLoach & DeLoach*, 378 S.C. 543, 552, 663 SE.2d 85, 90 (S.C. Ct. App. 2008) (citing *Lizee v. S.C. Dep't of Mental Health*, 367 S.C. 122, 126, 623 S.E.2d 860, 863 (S.C. Ct. App. 2005)).

An error of law is present when the agency's decision is based upon:

[A]pplication of the wrong legal principle; or when based upon factual conclusions, the ruling is without evidentiary support; or when the trial court is vested, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. *State v. Allen*, 370 S.C. 88, 94; 634 S.E.2d 653, 656 (2006).

A decision is considered 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 . . . or is governed by no fixed rules or standards." *Deese v. State Bd. Of Dentistry*, 286

S.C. 182, 184-85; 332 S.E.2d 539, 541 (1985).

ARGUMENTS

1. **The Department's Appellate Panel decision finding that Appellant quit without good cause is not supported by substantial evidence of the whole record and is affected by an error of law.**

Harley did not voluntarily quit without good cause. Rather, he was constructively discharged. South Carolina courts have long recognized constructive discharge when an "employer deliberately makes the working conditions intolerable in an effort to induce the employee to quit." *Graves v. Horry-Georgetown Tech. College*, 391 S.C. 1, 9-10, 704 S.E.2d 350, 355 (Ct. App. 2010), quoting *Honor v. Booz-Allen & Hamilton, Inc.*, 383 F.3d 180, 186 (4th Cir. 2004).

There is ample evidence that the Employer endeavored to constructively discharge Harley by refusing, without good reason, a simple accommodation that would allow him to do his job and by subjecting him to cruel and callous bullying. The record establishes that Harley had acted reasonably in attempting to correct these conditions, but Plunkett, the General Manager, and other management, refused to help him. The Employer admits that Harley wanted "accommodation for his PTSD and health issues" and the Employer refused to accommodate him. *Id.* at 13. It is undisputed that Harley raised the issue of his disability and his request for accommodations repeatedly and with multiple members of management. A reasonable person would not continue to work in the conditions that Harley was subject to. The failure to address the conditions that Harley repeatedly identified and alerted Bradshaw to forced him out of the job. The Appellate Panel speculates that Harley should have spoken to the owners of the company, but there is no basis for such a requirement. The Employer has not presented any policy requiring that

reasonable accommodation requests must be escalated to the owners. Nor is there any evidence that such a request would likely have been approved, if it had been made. Thus, this *ex post* requirement that the Department has unilaterally imposed cannot properly be a bar to Harley's eligibility for benefits.

Moreover, in considering a claimant's eligibility for benefits, the Department must do so in a manner which recognizes that "[t]he Unemployment Compensation Law is remedial in nature and should be liberally construed to give effect to its beneficent purposes. *Hartsville Cotton Mill v. S.C. Employment Sec. Com.*, 224 S.C. 407, 414, 79 S.E.2d 381, 384 (1953). In other words, the Department should interpret its statutory provisions in such a way as to carry out the purposes of the law which include combatting the effects of unemployment. An interpretation of the law that imposes additional hurdles and expectations not specifically required in the law or any employer policy is violative of this principle and undermines the purposes of the law.

- 2. The Department's Appellate Panel committed an error of law when it found that Appellant had voluntarily quit without good cause, as Appellant had revoked his resignation before Bradshaw Automotive Group, Inc. had accepted it.**

The South Carolina Supreme Court has applied general contract law to determine whether contracts exist in the employment context. *Hall v. UBS Fin. Servs.*, 435 S.C. 75, 79, 866 S.E.2d 337, 338 (2021). The Court found that employment agreements are contractual:

This Court has applied general contract law in determining whether contracts exist in the employment context. See *Prescott*, 335 S.C. at 336, 516 S.E.2d at 926 ("[T]o prove the existence of a definite contract of employment, the employee must establish all of the elements of a contract."). The *Prescott* Court also noted "[m]ost

employment agreements are unilateral," and explained the elements of a unilateral contract are: "(1) a specific offer, (2) communication of the offer to the employee, and (3) performance of job duties in reliance on the offer." *Id.* (footnote omitted). We agree with the majority of jurisdictions that have addressed this issue, and we hold those elements are present in every at-will employment arrangement. *Hall v. UBS Fin. Servs.*, 435 S.C. 75, 83-84, 866 S.E.2d 337, 340-41 (2021)

It is axiomatic in contract law that an offer may be withdrawn at any time before its acceptance, by notice given to that effect to the other party. *Masonic Temple, Inc. v. Ebert*, 199 S.C. 5, 12, 18 S.E.2d 584, 587 (1942). This principle is applicable to Harley's at-will employment.

Harley, after the Employer repeatedly denied him reasonable accommodations and failing to address his concerns of bullying, expressed his intent to resign in an email on January 31, with the effective date being February 29, 2020. *Id.* at 54, lines 19-26; *Id.* at 131. Neither Cochran nor anyone else at Bradshaw indicated they accepted Harley's offer to resign at that time. On February 5, 2020, Harley rescinded his offer of resignation *Id.* at 145. The record is devoid of any documentation indicating that the Employer accepted his resignation prior to his rescinding it. *Id.* at 145. Since Harley had rescinded his resignation, Bradshaw's decision to separate him from employment was a discharge and not a voluntary quit. Bradshaw failed to present any evidence to support a discharge for cause or misconduct or for any other disqualifying circumstances, so Harley should have been found fully eligible for benefits with no disqualification.

- 3. The Department committed an error of law by failing to find Appellant eligible for unemployment benefits under the "compelling family**

**circumstances" provision of the Unemployment Compensation Law.
S.C. Code Ann. § 41-35-125.**

S.C. Code Ann. § 41-35-125(b) provides for eligibility for benefits for claimants who are separated from employment with the employer because of the illness or disability of the claimant when it was medically necessary for the claimant to stop working or change occupations. The Employer is not charged for the claim in cases in which workers are found eligible under this provision. *Id.* at 41-35-130(K).

The record establishes that Harley has a disability verified by his medical providers. *Id.* at 135-136. The Employer did not dispute this at any stage of the administrative process. Moreover, the Employer conceded in its response to Harley's claim for benefits that he had raised his disability prior to his separation from employment and that he sought accommodations which the Employer refused. *Id.* at 13. Due to the work conditions that Harley was subject to—the refusal to allow the use of text-to-speech on his laptop, and the severe bullying—it was medically necessary for Harley to stop working at Bradshaw and change jobs. Pursuant to the compelling family circumstances provisions of S.C. Code Ann. § 41-35-125(b), Harley should have been found fully eligible for benefits with no disqualification. This provision was part of a revision to the unemployment benefits system that provides a "no fault" basis for eligibility, even when the reason for the separation is personal and not work-related. As noted, *supra*, the Department was obligated to construe this statutory provision liberally and failed to do so. *Hartsville Cotton Mill* at 224 S.C. 414, 79 S.E.2d at 384 (1953). This constitutes an error of law.

4. The Department committed an error of law by disqualifying Appellant from receiving benefits when, even if it is accepted that Appellant quit, he had good cause to do so due to the Employer's failure to accommodate his disability as required by the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, and the Employer's failure to address the bullying Appellant endured from coworkers.

Harley had good cause to quit, pursuant to S.C. Code § 41-35-120(1), and therefore should have been determined eligible for unemployment benefits. Good cause must generally be "connected with the work," *Id.* While the appellate courts of this state have not considered the issue, other courts have held that discrimination can constitute a good reason to quit caused by the employer. See *Marz v. Dep't of Emp't Servs.*, 256 N.W.2d 287, 289 (Minn. 1977). ("The burden then shifts to the employee to show good cause attributable to the employer for leaving the employment. Racial discrimination is such a cause.").

In the present case, the Employer was subject to the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, and was therefore required to provide reasonable accommodations to disabled employees. The ADA requires employers to provide reasonable accommodations to persons with disabilities unless doing so would impose an undue hardship or pose a direct threat to the safety of the employee or others. ADA regulations provide that in order to determine an appropriate reasonable accommodation, it may be necessary for the employer "to initiate an informal, interactive process with the individual with a disability in need of the accommodation." 29 C.F.R. § 1630.2(o)(3). Under the regulations, the interactive process obligation is triggered by knowledge of the need for an accommodation.

Harley's request to use text-to-speech software on his laptop was

reasonable and imposed no significant burden on the Employer. Despite this reasonable request, the Employer refused to offer an accommodation. The Employer confirms this refusal as the basis for the separation of employment in its Fact-Finding Questionnaire. *Id.* at 13. Moreover, the Employer failed to engage in an interactive process. If there was some reason why the Employer could not permit Harley to use his personal laptop, it was incumbent upon the Employer to communicate with Harley to identify alternative accommodations that would permit him to work. This process did not occur. Moreover, the Employer failed to address the bullying that Harley brought to its attention. Harley acted reasonably in communicating with both human resources and his general manager about his concerns. The Employer's failure to address these issues constituted good cause for Harley to leave his position and seek other employment.

5. The Department has created improper and unnecessary hurdles to Appellant's eligibility for unemployment benefits in violation of the Social Security Act.

Section 303(a)(1) of the Social Security Act, 42 U.S.C.S. § 503(a)(1), provides that benefits must be paid "when due." *Cal. Dep't of Human Res. Dev. v. Java*, 402 U.S. 121, 122, 91 S. Ct. 1347, 1349 (1971). Claimants are entitled to a fair hearing regarding their eligibility for benefits. 20 CFR § 650.1(b); S.C. Code Ann. § 41-35-680. The Department issued a determination claiming, falsely, that Harley had requested to withdraw his claim for benefits in South Carolina. Harley filed a timely appeal on April 19, 2021. The Department has never provided Appellant an Appeal Tribunal hearing on the issue of this supposed withdrawal of his claim for benefits. By doing so, the Department has created an impossible

procedural morass. Moreover, the Department has subjected Harley to a seemingly inexhaustible series of baseless determinations to appeal. For example, the Department found Harley eligible for Pandemic Unemployment Assistance (PUA) for the time period from July 26, 2020 through October 3, 2020 pursuant to an Appeal Tribunal hearing dated February 19, 2021, yet the Department subsequently and arbitrarily determined he was ineligible, apparently denying his claim without any formal determination or opportunity for hearing.

Moreover, the Hearing Officer showed a lack of objectivity in her hearing of this case. Rather than letting the parties present their cases, she took on the role of prosecutor, hounded Harley, and frequently cut him off from testifying. She did not exhibit the same conduct toward the Employer. This treatment triggered Harley's PTSD, which interfered with his ability to testify and fully respond to questions. As a result, Harley was denied a fair hearing.

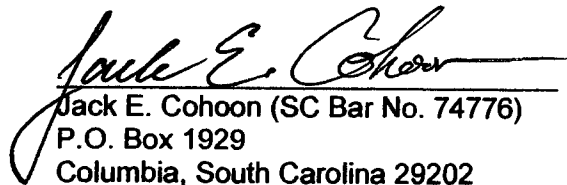
CONCLUSION

Unemployment insurance benefits are a vital safety net for South Carolina workers to combat economic insecurity and lighten the burden of job loss. S.C. Code Ann. § 41-27-20. The Department erred by denying Appellant James M. Harley access to this vital safety net following his rescinding his offer to resign and his Employer's refusal to reasonably accommodate his disability. Moreover, the Department has failed to give effect to provisions of the law specifically designed to provide for benefits for individuals in with disabilities. Finally, the Department has denied Harley due process and a fair hearing regarding both his claims for unemployment insurance benefits and PUA benefits. For all these reasons, the

Department's previous decision denying Harley's claim for benefits should be reversed and she should be found fully eligible for benefits.

Respectfully,

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February 22, 2023

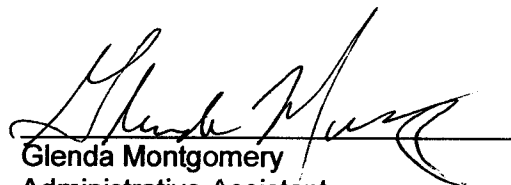
Columbia, S.C.

CERTIFICATE OF SERVICE

I certify that I have served the *Brief of Appellant* on South Carolina Department of Employment and Workforce and on Bradshaw Automotive Group by U.S. Mail, Postage Paid on February 22, 2023 to the following addresses:

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February 22, 2023

Columbia, S.C.



Statement of the Issues on Appeal

- I. Does substantial evidence support the Appellate Panel's finding that Appellant voluntarily quit his employment without good cause, where he submitted a resignation on January 31, 2020, indicating that he planned to relocate to the Midwest?
- II. Did the Appellate Panel commit an error of law by finding Appellant voluntary quit his employment without good cause, where the Employer did not accept Appellant's attempt to withdraw his resignation?
- III. Did the Appellate Panel commit an error of law by not finding Appellant eligible due to "compelling family circumstances" under S.C. Code Ann. § 41-35-125 when Appellant provided no evidence that it was medically necessary for him to resign.
- IV. Did the Appellate Panel commit an error of law in finding Appellant voluntarily quit without good cause where there is no evidence in the record that the employer violated the Americans with Disabilities Act?
- V. Were the Appellant's Due Process rights violated where Appellant was provided a reasonable notice and opportunity for a fair hearing?
- VI. Should this Court disregard arguments on determinations that are not properly before this Court?

Statement of the Case

Appellant James Harley worked for Bradshaw Automotive Group (the Employer) from August 26, 2019, through a last day worked of February 29, 2020. (R.p.43 line 7 through p.44 line 10). He filed for unemployment insurance benefits with Respondent the South Carolina Department of Employment and Workforce (the Department) on May 4, 2020. (R.pp.8-10). The Department's claims adjudicator issued a determination dated July 16, 2020, holding Appellant indefinitely disqualified from receiving benefits, effective May 3, 2020, based on a finding he left work voluntarily without good cause. (R.p.19).

On July 22, 2020, Appellant appealed the claims adjudicator's decision to the Department's Appeal Tribunal (the Tribunal). (R.p.21). The Tribunal held a hearing on November 18, 2020 and, by decision dated November 30, 2020, affirmed the claims adjudicator's determination that Appellant voluntarily quit his employment without good cause. (R.pp.27-162). Appellant then appealed the Tribunal's decision to the Department's Appellate Panel (the Panel) on December 10, 2020. (R.pp.163-164). The Panel issued its decision on January 20, 2021, affirming the Tribunal's decision. (R.pp.176-179). Appellant subsequently appealed the Panel's decision to this Court.

Facts

I. Appellant's Employment

Appellant worked with the Employer from August 26, 2019, through a last day worked of February 29, 2020, as a sales consultant. (R.p.42 line 18 through p.44 line 10). Appellant was paid through April 1, 2020. *Id.* Appellant attested that he resigned his employment on January 31, 2020, due to an alleged lack of accommodation and bullying in the workplace. (R.p.53 line 5-p.54 line 26). Appellant contends he requested to use his personal laptop at work and the employer denied allowing him to use his personal laptop on the sales floor. (R.p.48 lines 11-14). He did not bring his request to human resources until January 30, 2020, and he testified that he did not hear back from human resources until around February 19, 2020, after he had already submitted his resignation on January 31, 2020. (R.p.83 lines 7-15). He also asserted a few days after submitting his resignation that he tried to withdraw it because he felt like he was going to be bullied. (R.p.49 lines 21-24).

On January 30, 2020, at 6:33 PM, Appellant sent an email to human resources regarding an accommodation and to raise concerns about other employees. (R.pp.140-141). On January 31, 2020, at 7:46 AM Appellant emailed the same human resources representative and resigned his position effective February 29, 2020. (R.p.132). Appellant stated in his resignation email that he needed to find work near his son in the Midwest, but he wanted to continue working through February 29, 2020, in order to complete training. *Id.* There had been no changes to the terms of his employment. (R.p.71 line 29 – p.72 line 5). On February 5, 2020, Appellant sent another email to the same human resources

representative acknowledging their scheduled meeting later that day, outlining his concerns and other request, attempting to rescind his resignation, and stating he would submit another letter of resignation if he did not average a certain number of sales per month. (R.pp.144-145). On that same day, Appellant was informed that the Employer had accepted his resignation. (R.p.52 lines 13-19). In neither the January 30, 2020, nor February 5, 2020 correspondence, did Appellant specify that his request regarding his laptop was for specific software. (R.p.140-141; p.144-145).

Appellant's manager testified that while Appellant requested to use his personal laptop, that it was for general correspondence with customers and testing, and that the manager was not advised of any medically related condition or speech to text software. (R.p.86 lines 1-17). It was not until the end of January that speech to text software was raised. (R.p.98 lines 21-25). The Employer witness also advised that the alleged bullying Appellant mentioned was about one of the other employees not being available to the Appellant to assist with sales. (R.p.87 lines 13-26). The Employer witness could not recall any other instances of alleged bullying being reported. *Id.* Appellant was provided two alternative resources when the employee was not available. *Id.* Additionally, an investigation was conducted in which the employer determined there was no bullying. (R.p.87 lines 1-6). Appellant performed no additional work for the employer after February 29, 2020, and was paid a severance. (R.p.90 lines 6-21). Had Appellant not resigned on January 31, 2020, there still would have been continuing work available for him. (R.p. 97 lines 2-5).

II. The Panel Decision

In its decision the Panel found:

The record establishes the [Appellant] voluntarily resigned his employment when he initially offered his resignation notice on January 31, 2020. By doing so, the [Appellant] initiated the severing of the employment relationship. Although the [Appellant] later attempted to rescind his resignation notice, the Employer was under no obligation to allow him to rescind the notice or continue the employment relationship. Moreover, he had received specific communication from the HR manager the resignation notice was accepted as final. Regarding the [Appellant's] concerns related to the accommodation request and working environment, the record indicates the [Appellant] had only escalated his concerns to HR on January 30, 2020, one day before submitting his resignation notice. The [Appellant] did not allow the Employer an adequate opportunity to address his working environment concerns and his request for reasonable workplace accommodations before he offered his resignation notice. Furthermore, when the [Appellant] desired to continue his employment and attempted to rescind his resignation notice, there had been no change to management's denial of the [Appellant's] request to use his personal laptop for his work duties. Yet the [Appellant] was willing to continue working, had the Employer rescinded the resignation notice. Given the totality of the situation at the time of the [Appellant's] separation, we do not find the circumstances to rise to the level that a reasonable person would become totally unemployed rather than continue working. Therefore, we find the [Appellant] voluntarily left work without good cause attributable to the employment.

(R.p.4)

Argument

I. Standard of Review

The Department 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 the Department's predecessor, the Employment Security Commission, subject to the APA). Under the APA, a reviewing court:

[M]ay not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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.

S.C. Code Ann. § 1-23-380(5) (Supp. 2021).

Regarding factual issues, this Court's review is limited to determining whether the Panel's decision was "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *Id.*

"Substantial evidence" is something 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't. 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."). Further, "[t]he findings of the agency are presumed correct and will be set aside only if unsupported by substantial evidence." *Kearse v. State Health & Human Serv. 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.*

II. Substantial evidence supports the Panel's finding that Appellant voluntarily quit his employment without good cause attributable to the employment when he voluntarily submitted a notice of resignation on January 31, 2020.

The Court should affirm because substantial evidence supports the Panel's finding Appellant voluntarily left employment with Employer without good cause. An insured worker is eligible to receive benefits only if the Department finds he "has separated, through no fault of his own, from his most recent bona fide employer." S.C. Code Ann. § 41-35-110(5) (2021). Fault in this context "is not limited to something that is blameworthy, culpable or wrong," but rather "must be construed as meaning failure or volition." *Stone Mfg. Co. v. S.C. Emp't Sec. Comm'n*, 219 S.C. 239, 246-47, 64 S.E.2d 644, 646 (1951) (citations omitted). Further, an insured worker is ineligible for UI benefits if he "left [his

employment] voluntarily, without good cause." S.C. Code Ann. § 41-35-120(1) (2021); see *Ex parte S.C. Emp't Sec. Comm'n*, 332 S.C. 286, 288, 504 S.E.2d 345, 346 (Ct. App. 1998) ("An employee who voluntarily resigns from employment without good cause is ineligible for unemployment benefits."). The South Carolina Supreme Court has held that "good cause" means cause "attributable to or connected with" the employment. *Faile v. S.C. Emp't Sec. Comm'n*, 267 S.C. 536, 541, 230 S.E.2d 219, 222 (1976). Importantly, when a claimant attempts to show he had good cause to quit his employment, he must show there was something attributable to the job or workplace itself that made it unreasonable for the claimant to continue working. Attributable to the employer means "that it must be the work or the employer himself that creates the condition making it unreasonable to expect this employee to continue to work." *Ewing v. SSM Health Care*, 265 S.W.3d 882, 887 (Mo. Ct. App. 2008) (citing *Mena v. Cosentino Grp., Inc.*, 233 S.W.3d 800, 804 (Mo. Ct. App. 2007)). Good cause also means that the circumstances attributable to the employer "would cause a reasonable person in a similar situation to leave employment rather than continue working..." 76 Am.Jur.2d *Unemployment Compensation* §105. Additionally, "[t]o 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.

Here, substantial evidence supports the Panel's finding that Appellant voluntarily quit his employment without good cause when he submitted a resignation on January 31, 2020, citing his desire to move to the Midwest for personal reasons. (R.p.132). In Appellant's fact-finding questionnaire he completed with the Department on May 4, 2020,

he indicated he was forced to retire from employment earlier than anticipated for unknown reasons. (R.pp.8-10). Later, during testimony before the Tribunal, Appellant asserted his reasons for quitting were due to alleged bullying and lack of accommodation. However, he had only sent these concerns to human resources the evening prior to—or approximately 13 hours before—his resignation. (R.pp.132, 140-141). Additionally, all parties agree that after Appellant submitted his resignation that he attempted to rescind his resignation. There was no indication in testimony or other submitted evidence that any change in his employment had occurred. (R.p. 71 line 29 – p. 72 line 5). As such, the alleged issues relied on by the Appellant would not have caused a reasonable person to quit employment rather than continue working. Indeed, Appellant wanted to continue working a one-month notice period (until February 29, 2020) after he submitted his resignation on January 31, 2020, and then he later attempted to rescind his resignation. In both of those scenarios, Appellant sought to continue working under the same circumstances. Accordingly, substantial evidence supports the Panel’s finding that Appellant voluntarily quit his employment without good cause attributable to his employment. The Court should affirm.

III. The Panel did not commit an error of law when it found Appellant had voluntarily quit without good cause when Appellant attempted to withdraw his resignation prior to his resignation’s effective date and the employer did not consent to the withdrawal of the resignation.

In South Carolina, there is no precedent that an employer must accept an at-will employee’s withdrawal of their resignation. Additionally, while Appellant’s argument that Appellant’s resignation of his at-will employment is equivalent to an offer in contract under South Carolina case law is creative, it is also inaccurate.

The doctrine of employment at-will in South Carolina treats employment as a contract with no additional consideration that is terminable by either party at any time. *Shealy v. Fowler*, 182 S.C. 81, 87, 188 S.E. 499, 502 (1936). Our courts have recognized, applying general contract principles, that in certain circumstances an employee's at-will status may be altered. *Prescott v. Farmers Telephone Co-op, Inc.*, 335 S.C.330, 336, 516 S.E.2d 923, 926 (1999). Under general contract principles, an offer is a bargained-for exchange that "creates a power of acceptance in the offeree." *Carolina Amusement Co., Inc. v. Connecticut Life Ins.* 313 S.C. 215, 220, 437 S.E.2d 122,125 (Ct.App.1993) (internal citations omitted).

A resignation, by its very nature, does not change the at-will status of an employee's employment. Particularly, in this matter, there was no bargained-for exchange in the "offer" of resignation. Rather, Appellant's resignation was an execution of the doctrine of employment at-will, to terminate one's employment. This initiation of the separation process did not and should not be considered by this Court to have transmuted Appellant's employment into some contract of definite employment.

Further, "[a]n 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. Additionally, this Court has found that an employer is not obligated to accept a rescission of a voluntary resignation. See *Burroughs v. S.C. Dep't of Emp't & Workforce*, Docket No. 20-ALJ-22-0270-AP (ALC 2021) (finding "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 his or her employment voluntarily if the employer does not consent to the withdrawal of the resignation.”). Here, Appellant was advised on February 5, 2020, that his resignation was accepted. There was no indication that the employer consented to the withdrawal of Appellant’s resignation. Accordingly, the Panel did not commit any error of law in finding Appellant voluntarily quit his employment without good cause attributable to the employer, and this Court should affirm.

IV. The Panel did not commit an error of law by failing to find Appellant eligible for benefits due to “compelling family circumstances” under S.C. Code Ann. § 41-35-125.

For the purpose of determining a claimant’s eligibility for benefits, “compelling family circumstances” means “that a claimant was separated from employment with the employer because of the illness or disability of the claimant and based upon the available information, the department finds that it was medically necessary for the claimant to stop working or change occupations.” S.C. Code Ann. §41-35-125(B)(2)(d)(emphasis added). The statute further defines disability as “a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant paid or unpaid leave.” S.C. Code Ann. §41-35-125(B)(2)(c).

Here, during the course of his claim, the Appellant has provided multiple reasons for his separation from employment to both the Employer and the Department: 1) that he was forced to retire early for unknown reasons, 2) that he quit his employment to move to the Midwest, 3) that he was allegedly bullied, and 4) that he was not allowed to use his

personal computer for work as an alleged accommodation. Retiring early, moving to the Midwest, and purportedly being bullied are not medical reasons. Further, denying a request to use a personal computer at work does not equate to a medical necessity for a claimant to stop working. Appellant himself made that clear by seeking to withdraw his resignation and continue working even if his requests were denied. Additionally, he worked for months without use of a personal computer at work and there is no evidence that he requested leave, nor is there any other evidence that would indicate that his condition changed or was otherwise exacerbated such that he was unable to work. While Appellant appears to argue in his brief that the Department erred because they did not liberally construe the existence of a disability and request for accommodation as a compelling family circumstance under the statute, that argument boldly ignores the plain language of the statute which requires it must be "medically necessary for the [Appellant] to stop working." S.C. Code Ann. §41-35-125(B)(2)(d). Appellant, at no point, submitted documentation that indicated he was unable to work for medical reasons, and Appellant's own actions, working in what Appellant submits were the same terms and conditions of employment and attempting to withdraw his resignation without any indication that his request to use a personal computer would be approved, all reflect it was not medically necessary for him to stop working. As such, the Panel did not err, and this Court should affirm.

- V. The Panel did not commit an error of law in finding Appellant voluntarily quit employment without good cause, and was therefore ineligible for unemployment insurance benefits, where there is no evidence in the record that the employer violated the Americans with Disabilities Act.**

Appellant appears to misapprehend the scope and authority of the Department of Employment and Workforce. First, as argued above, when an individual voluntarily quits their employment, an analysis must take place to reflect that the circumstances were such that a reasonable person would quit their available employment rather than continue working. That analysis would necessarily consider both any alleged discrimination or bullying. Second, there is no evidence in the record to reflect a finding that the Employer violated the Americans with Disabilities Act.

- a. Substantial evidence exists in the record to support a finding Appellant quit his employment without providing the Employer an opportunity to address his accommodation request.**

The Panel's finding that Appellant did not provide the Employer an opportunity to address his accommodation request before quitting his employment is supported by Appellant's own testimony and documents Appellant submitted to the Employer. Appellant testified that he brought the issue up to human resources in writing. (R.p.48 lines 1-4). Appellant's submitted exhibit reflects that a request for accommodation was made via email at 6:33 PM on January 30, 2020. (R.pp.140-141). And then Appellant resigned by email the following morning at 7:46 AM on January 31, 2020. (R.p.132). Here, where Appellant had raised the issue to human resources in the evening and resigned his employment the following morning, there would not have been sufficient time for human resources to look into and respond to his request for accommodation. Additionally, Appellant cited his personal desire to relocate to the Midwest as the reason for quitting, so there is no indication that he resigned because he was not permitted to use his personal

computer at work as an accommodation. As such, substantial evidence in the record exists to support the Panel's finding and this Court should affirm.

- b. There is no evidence in the record that the South Carolina Human Affairs Commission made a finding of disability discrimination under the Americans with Disabilities Act, and therefore the Department did not commit any error.**

The South Carolina Human Affairs Commission (SCHAC) has the legislative authority to hear complaints regarding discrimination, including disability discrimination as outlined in the Americans with Disabilities Act and the South Carolina Human Affairs Law. S.C. Code Ann. §1-13-30(N); S.C. Code Ann. §1-13-70(o); S.C. Code Ann. §1-13-90. Nothing in the record reflects a finding by SCHAC, or any other agency, of disability discrimination or that a complaint was ever filed.¹ Rather, Appellant appears to make an unsupported conclusory statement that the Employer violated disability discrimination laws, which the Employer vehemently denies. There is a process set forth by this State's legislature to manage such complaints of alleged discrimination, and it is improper for Appellant to insinuate that the Department of Employment and Workforce should make such a determination when it has no authority to do so.

Because there has been no finding that the Employer violated, in any way, the Americans with Disabilities Act or the South Carolina Human Affairs Law, and assertions of discrimination and bullying were clearly considered as part of the Panel's analysis, in

¹ A complaint must be filed with the South Carolina Human Affairs Commission "within one hundred eighty days after the alleged discriminatory practice occurred." S.C. Code Ann. § 1-13-90(a). Given that Appellant voluntarily resigned from his employment with the Employer on January 31, 2020, over three years (and more than 1,000 days) ago, Appellant would be precluded from doing so now.

meaningful way, and judicial review.” *Id.* at 562, 505 S.E.2d at 603. To prove the denial of due process in an administrative proceeding, a party must show that it was substantially prejudiced by the administrative process.” *Id.* at 561, 505 S.E.2d at 603; *Leventis v. S.C. Dep’t of Health and Envt. Control*, 340 S.C. 118, 131-32, 590 S.E.2d 643, 650 (Ct. App. 2000).

Here, Appellant was provided proper notice and a hearing before the Tribunal. The Appellant appeared at the hearing with counsel and provided testimony, submitted evidence, and had an opportunity to cross-examine the Employer’s witnesses. (R.pp.27-158). Appellant asserts in his brief that his PTSD was triggered by the questioning of the Tribunal’s hearing officer. However, this issue does not appear to have been raised during the course of that hearing. *Id.* Additionally, Appellant’s counsel was provided an opportunity to question Appellant to ensure Appellant fully testified to his version of events and Appellant was also provided an opportunity, as were all witnesses, for any last statements. Further, Appellant had the opportunity to submit written arguments to the Panel and did so. (R.pp.168-174). All of this reflects that Appellant was provided a meaningful opportunity to be heard and does not show that Appellant was substantially prejudiced by the administrative process. In other words, Appellant was provided a reasonable opportunity for a fair hearing. As such, this Court should affirm.

VII. This Court should disregard Appellant’s argument regarding determinations that are not properly before this Court.

Appellant makes incorrect conclusory assertions that the Department acted arbitrarily, or otherwise incorrectly, in issuing determinations regarding his claims for

unemployment insurance and pandemic unemployment assistance.² However, none of those other issues are before this Court, and therefore this Court may not grant relief on those matters.

“Courts sitting in an appellate capacity may not consider issues not raised or ruled on by [an] administrative agency.” *Carson v. South Carolina Dep’t of Natural Res.*, 371 S.C. 114, 120, 638 S.E.2d 45, 48 (2002). Because this Court sits in an appellate capacity, its review is limited to the Panel’s decision on appeal to this Court. *See Timms v. Timms*, 286 S.C. 291, 294, 333 S.E.2d 74, 75 (Ct.App. 1985). (“We are confined to the record in deciding issues on appeal.”). The issues before and ruled upon by the Panel were whether the Appellant voluntarily quit his available employment without good cause attributable to the employment and whether the Tribunal hearing officer erred in the administration of the case, and therefore this Court is limited to a review of those issues. As such, the Court should disregard Appellant’s arguments regarding any determinations not addressed by the Panel and affirm.

Conclusion

The party challenging the ruling bears the burden of proving that the Panel’s decision is unsupported by the evidence. *Waters, supra*. The only Department decision that is properly before this Court is the decision affirming Appellant voluntarily quit his

² All determinations of eligibility are based upon the requirements set forth in the State’s Employment and Labor Laws regarding unemployment insurance, the federal CARES Act regarding pandemic unemployment assistance, and guidance issued in the Department of Labor’s Unemployment Insurance Program Letters. While it is understandable that such a voluminous area of law may result in multiple determinations being issued, that does not mean those determinations are baseless as they are rooted in law.

employment without good cause attributable to the employment. The decision of the Panel is supported by substantial evidence in the record as a whole, is in accordance with applicable law, and is not arbitrary, capricious or characterized by abuse of discretion, or controlled by an error of law. Therefore, the Panel's decision should be affirmed.

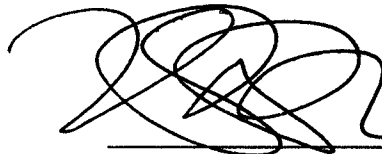
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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

James M. Harley,
Appellant,

vs.

SC Department of Employment and
Workforce and Bradshaw Automotive
Group,
Respondent (s).

DOCKET No: 21-ALJ-22-0047-AP

PROOF OF SERVICE

I hereby certify that I have served the Joint Brief of Respondents in the above-captioned matter by depositing it in the United States Mail, postage prepaid, on March 14, 2023 to the below named parties at their addresses of record:

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**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 condition¹ 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 rescission 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:

- (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 rescission of his resignation retroactively nullified Employer's acceptance of his resignation. South Carolina appellate courts have not adjudicated the issue of whether the attempted rescission 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.

A handwritten signature in black ink, reading "Deborah Brooks Durden". The signature is fluid and cursive, with the first name "Deborah" being the most prominent.

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

