STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Michael Todd Parker, Appellant, v. South Carolina Department of Employment and Workforce and Cherokee County, Respondent.	)	Docket No. 12-ALJ-22-0567-AP **FINAL ORDER**

STATEMENT OF THE CASE

Michael Todd Parker (Appellant), appeals the decision of the South Carolina Department of Employment and Workforce (Department), which disqualified him from receiving unemployment benefits for a period of sixteen (16) weeks with a corresponding monetary reduction because his employer, Cherokee County, terminated the Appellant for cause. The Administrative Law Court (ALC or court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2011). Upon consideration of the record and the briefs, this court affirms the Department's decision.

PROCEDURAL BACKGROUND

The Appellant worked for Cherokee County from October 20, 1997 through August 8, 2012, most recently as a detective with the Cherokee County Sheriff's Office. The Sheriff's Office discharged the Appellant on August 8, 2012 after learning that the Appellant was under a criminal investigation by the South Carolina Law Enforcement Division (SLED). The Appellant filed for benefits with the Department on August 9, 2012. On September 9, 2012, the Department issued a determination finding that the Appellant was discharged for misconduct for violating company policy regarding unbecoming conduct and was disqualified from receiving unemployment benefits for a period of twenty weeks. The Appellant appealed to the Appeal Tribunal on September 25, 2012. An evidentiary hearing was held on October 25, 2012 in

which both the Appellant and the employer participated. The hearing officer at the Appeal Tribunal reversed the original Department determination of disqualification of benefits, holding that Cherokee County had failed to prove that the Appellant had been discharged for misconduct connected with his employment. Cherokee County appealed to the Appellate Panel (Panel) on October 31, 2012. The Appellate Panel reversed the Appeal Tribunal's decision, finding that while the evidence did not support a finding that the Appellant was discharged for misconduct, there was sufficient evidence to support a finding that the Appellant was discharged for cause, other than misconduct, connected with his employment and was disqualified from receiving benefits for a period of sixteen (16) weeks. As a basis for its determination, the Appellate Panel found that the Appellant was under criminal investigation which harmed the employer's reputation, prevented the Appellant from being able to reasonably perform his duties, and constituted an inadvertent violation of the employer's policy prohibiting criminal, dishonest, or improper conduct or any activity that might harm the employer's reputation. The Appellant sought review in this court on December 31, 2012.

FACTS

On August 8, 2012, SLED informed the Cherokee County Sheriff's Office that the Appellant was under criminal investigation. The investigation was instigated when the City of Gaffney discovered illegal poker machines during a burglary investigation and the persons in possession of the machines implicated the Appellant as the supplier of the machines. The Cherokee County Sheriff's Office immediately terminated the Appellant. The Appellant denies any wrongdoing. According to the testimony of Steven Mueller, the Sherriff of Cherokee County, the Appellant was an exemplary employee prior to August 8, 2012.

The Appellant applied to the Department for unemployment benefits. Upon review, the Department determined that the Appellant had been terminated for cause, other than misconduct, connected to his employment and determined that he should be disqualified from receiving benefits for 16 weeks. This appeal followed.

ISSUE ON APPEAL

Whether substantial evidence exists to support the Department's finding that the

Cherokee County Sheriff's Office terminated the Appellant for cause?

STANDARD OF REVIEW

The Department is an "agency" under the Administrative Procedures Act (APA). See Gibson v. Florence, 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, 1-23-600(D) (Supp. 2011); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm'n, 370 S.C. 533, 557 S.E.2d 644, 646-47 (Ct. App. 2006). Section 1-23-380(5) of the South Carolina Code (Supp. 2011) 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). That section states:

> The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (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.

§ 1-23-380(5).

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, 461 S.E.2d 388 (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, 467 S.E.2d at 917.

DISCUSSION

The Appellant argues that the Department erred in finding that Cherokee County terminated him for cause, other than misconduct, related to his employment. The court disagrees.

When the Department determines that an employer has discharged an employee for cause, other than misconduct, in connection with the worker's most recent employment, it must reduce the period in which the worker is qualified for unemployment benefits. S.C. Code Ann. § 41-35-120(2)(b) (Supp. 2012). An employee may be found to be discharged for cause, other than misconduct, when his actions do not rise to the level of misconduct but it cannot be said that the discharge is through no fault of his own. See S.C. Code Ann. §§ 41-35-110(5) and 51-34-120(2)(b). For the purposes of disqualification from benefits, misconduct is conduct "evincing such willful and wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his employer." § 41-35-120(2)(a). Upon finding that an employee has been discharged for cause, the Department determines the length of the employee's disqualification period based on the seriousness of the cause for discharge. § 41-35-

120(2)(b). The disqualification period can extend from a minimum of five weeks to a maximum of nineteen weeks. Id.

In this case, the court finds substantial evidence supporting the Department's determination that the Cherokee County Sheriff's Office terminated the Appellant for cause, other than misconduct. Although the details regarding the investigation which prompted the Appellant's termination are sparse, it is undisputed that the Appellant was under SLED investigation at the time of his termination. The fact that the Appellant, a detective for the Cherokee County Sheriff's Office, was under criminal investigation allows reasonable minds to reach the same conclusion as the Department that the Appellant's actions harmed the reputation of his employer, the Cherokee County Sheriff's Office, prevented the Appellant from being able to reasonably perform his duties, and constituted an inadvertent violation of the employer's policy prohibiting criminal, dishonest, or improper conduct. As such, the Department's decision is supported by substantial evidence. See Friends of the Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). Although the Appellant's actions did not rise to the level of misconduct, neither was the Appellant discharged through no fault of his own, thus requiring the Department to determine the length of his partial disqualification from receiving benefits. § 41-35-120(2)(b).

The Appellant argues that because he was merely accused of misconduct but not yet convicted of any crime, his termination was not for cause. Although the Appellant is correct that an allegation of misconduct does not make one guilty, the Appellate Panel's determination was not based on the Appellant's guilt or innocence. Rather, the Appellant Panel found that the mere fact that the Appellant was under SLED investigation was sufficient to harm the Cherokee County Sheriff's reputation and prevent the Appellant from reasonably performing his duties. Although it is possible that a different conclusion could have been drawn from these facts, the Appellate Panel's conclusions are not unreasonable, and therefore are 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).

The Appellant further argues that the Cherokee County Sheriff's Office should not be able to use the argument that the SLED investigation of the Appellant is harmful to its reputation

because the investigation was not known to the public until the Sheriff's Office announced the investigation as well as the Appellant's termination. However, simply because the investigation was not public knowledge at the time of the Appellant's termination does not mean that it would never become public knowledge. It is reasonable to assume that had the Cherokee County Sheriff's Office continued to employee the Appellant while he was under SLED investigation, its reputation would suffer. Furthermore, harm to the Sheriff's reputation was not the only grounds that the Appellate Panel found for determining that the Appellant was terminated for cause, other than misconduct, relating to his employment.

The Department's second basis for determining that he was partially ineligible for unemployment benefits was that the criminal investigation of the Appellant would prevent the Appellant from being able to reasonably perform his duties as a detective for the Cherokee County Sheriff's Office. The Appellant does not dispute the Appellate Panel's finding in this regard, and the court finds this determination to be reasonable as well.

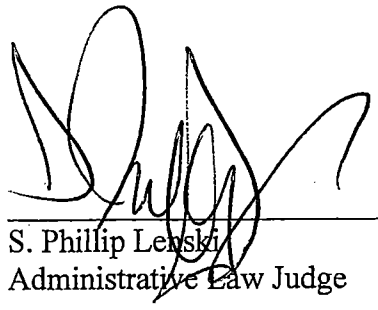
Finally, the Appellant argues that he did not inadvertently violate Cherokee County Sheriff's policy prohibiting criminal, dishonest, or improper conduct. The record supports a finding that at the time of the Appellant's employment with the Cherokee County Sheriff's Office, there was a written policy that prohibited conduct unbecoming an officer, which included criminal, dishonest, or improper conduct. A copy of the policy was distributed to all deputies of the Sheriff's Office upon becoming employed. (R. 9-10). The Appellant was discharged because he was under a SLED investigation for an alleged criminal act. The court finds that the Appellate Panel's determination that the criminal investigation into the Appellant's conduct involving illegal gambling machines constituted an inadvertent violation of the unbecoming conduct policy of the Sheriff's Office was supported by substantial evidence.

The court finds that the Department's decision was not clearly erroneous in light of the substantial evidence in the record, and that the record supports the decision. The court further finds that the Department's decision was not arbitrary, capricious, an abuse of discretion, or a clearly unwarranted exercise of discretion.

ORDER

IT IS THEREFORE ORDERED that the Appellate Panel's decision is **AFFIRMED.**

AND IT IS SO ORDERED.



April 29, 2014
Columbia, South Carolina

S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Leah E. Garland, 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, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Leah Garland

Leah E. Garland
Judicial Law Clerk

April 29, 2014
Columbia, South Carolina