

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

John Estep,)
Appellant,)
vs.)
South Carolina Department of)
Employment and Workforce and)
Greatwide Dedicated Transport III, LLC,)
Respondent,)
_____)

Docket No. 14-ALJ-22-0026-AP

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

BRIEF OF THE SOUTH CAROLINA
DEPARTMENT OF
EMPLOYMENT AND WORKFORCE

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he had been driving “seven, eight years, but I never looked into to see safe haven is a Belk’s thing, a Greatwide thing, or it’s DOT regulations.” (R.p.50, lines 15-16). He said the company offered safe havens to “all the drivers.” (R.p.51, lines 6-8).

Mr. Criscoe asked Appellant if he was aware of the DOT rule that allowed one time a week for a driver to have a return to duty station if the driver was within two hours. (R.p.51, lines 13-16). Appellant acknowledged that he was aware and made the distinction that it was for “going and reporting to the same terminal everyday, and I was never doing that. And then they would also allow me to have safe havens with I was without their [sic] being present.” (R.p.51, lines 17-19). However, when asked if he was aware that safe haven was only fifteen (15) minutes, he stated, “I never was aware of that and I’ve been working with the company for over about six months and we always...and always other drivers has been extending the safe haven rule for longer than 15 minutes. So no, I was not aware.” (R.p.51, lines 22-24).

Mr. Criscoe stated at the end of the hearing that he informs drivers during their orientation that if they are asked to do anything illegal, he needs “to know about it immediately.” (R.p.52, lines 7-8).

The claims adjudicator determined Appellant was discharged for misconduct in connection with the employment and was disqualified for twenty weeks. (R.p.54). The Appeal Tribunal affirmed the adjudicator’s determination. (R.p.5).

Appellant requested an appeal to the Appellate Panel. In his Application for Leave to the Appellate Panel, he noted four points: 1) Mr. Criscoe told him “to all ways [sic] say what my log book says not the way I drove the load...”; 2) Dean “all ways [sic] tell driver bring load back that are 30 min to 1 hr out,” 3) Mr. Criscoe was not the person who fired him; and 4) “I was doing what I was told to do – every day this is how the run.” (R.p.66).

The Appellate Panel made the following findings of fact:

On or about October 3, 2013, the log clerk discovered a discrepancy between the claimant's logbook and the vehicle's global positioning system. The claimant acknowledged he was 1½ hours over his allowable work time, but asserts he requested permission from a supervisor to return to the terminal. He further asserts the supervisor did not ask how many hours he had worked that day. Upon consideration of prior warnings for falsifying information, the employer discharged the claimant. The claimant stated it did not occur to him to advise the general manager upon his termination that he was granted permission to return to the terminal. The claimant asserts that drivers regularly violated employer policy and state regulations by driving extended hours.

(R.pp.1-2)

The Appellate Panel held that Appellant was discharged for misconduct, specifically stating as follows:

The record establishes the claimant falsified his driving time in violation of employer policy and state regulations. The claimant knew or should have known that falsifying his driving records would lead to his discharge. He was warned in the past for similar actions, but continued to falsify his records. The claimant's falsification of his driving records is a deliberate disregard of the standard of behavior the employer had the right to expect. Therefore, we find the claimant was discharged for misconduct connected with the employment. The Appeal Tribunal decision is affirmed.

(R.p.2).

ARGUMENT

Standard of Review

Respondent South Carolina Department of Employment and Workforce ("DEW") is an agency and subject to the Administrative Procedures Act. S.C. Code Ann. § 1-23-310. The administrative procedures of DEW include an appeal to the Appeal Tribunal and further appeal to the Appellate Panel. S.C. Code Ann. § 41-35-690. Once the administrative remedies available within an agency are exhausted, the aggrieved party is entitled to a judicial review.

S.C. Code Ann. § 1-23-380.

During the judicial review, the administrative law 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.

Unless there is a clearly erroneous application of the law, an agency's decision will be upheld if there is substantial evidence to support the agency's finding. Lark v. Bi-Lo, Inc., 276 S.C. 130, 135-36, 276 S.E.2d 304, 306-07 (1981). In Lark, the Court further noted, "[t]he substantial evidence rule, prescribed in the statute, means that we 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.'" Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981) (quoting Independent Stave Co. v. Fulton, 251 Ark. 1086, 476 S.W.2d 792, 793).

Substantial evidence has been defined as:

[N]ot a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow

reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.

Lark v. Bi-Lo, Inc., 276 S.C. at 135-36, 276 S.E.2d at 306-07 (internal citation omitted). In viewing the record as a whole, if reasonable minds can reach the same conclusion as the agency, the Administrative Law Court shall affirm. Houston v. Deloach & Deloach, 378 S.C. 543, 550-51, 663 S.E.2d 85, 89 (Ct. App. 2008) (internal citations omitted). The fact that reasonable minds may reach a separate and distinct conclusion does not prevent an agency's decision from being upheld by substantial evidence. Id.

DEW's decision that Appellant was discharged for misconduct connected with employment is supported by substantial evidence and should be affirmed.

DEW's decision that Appellant was disqualified for benefits due to a discharge for misconduct connected with employment is supported by substantial evidence.

The Court cannot replace the judgment of DEW unless there is no substantial evidence to support the DEW's ruling. Turner v. South Carolina Dept. Of Health and Environmental Control, 377 S.C. 540, 544, 661 S.E.2d 118, 120 (Ct. App. 2008). Under appellate review, the Court reviews the record to determine if there is evidence for DEW to reach its decision, not the weight of the evidence presented. Allstate Ins. Co. v. State Farm Mut. Auto. Ins. Co., 260 S.C. 350, 352, 195 S.E.2d 711, 712 (1973).

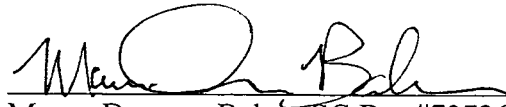
DEW made specific factual findings that Appellant did not accurately complete his log book. (R.p.2). In his application for unemployment insurance benefits, he even acknowledged that he "did not line it up right to the tee." (R.p.8). In his testimony, Appellant explained that he was an hour and a half out and he had "about 30 minutes" of driving time left when he asked for a safe haven. (R.p.45, lines 5-6, lines 9-10). Mr. Criscoe, the employer's witness, testified

CONCLUSION

DEW's holding that Appellant was discharged due to misconduct connected with work and disqualified from benefits is supported by substantial evidence.

Accordingly, this Court should affirm the Department's decision.

Respectfully submitted,



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April 7, 2014

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CERTIFICATE OF SERVICE

I certify that I am the Administrative Legal Assistant for the South Carolina Department of Employment and Workforce; and that I served by mail a copy of the Brief of the Respondent SCDEW in the above named action to the parties addressed to:

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that the postage was duly prepaid; and that it was deposited in the United States Mail to the parties on the 7th day of April, 2014.



Jessica Chesley