1D

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

James Robinson, Appellant, vs. South Carolina Department of Employment and Workforce and Guardian Industries Corp., Respondents.	Docket No. 14-ALJ-22-0118-AP **ORDER** **May 28, 2014**

STATEMENT OF THE CASE

James Robinson ("Appellant") appeals the decision of the South Carolina Department of Employment and Workforce ("DEW" or "Department"), which disqualified him from receiving unemployment benefits for sixteen weeks, with a corresponding reduction in the maximum potential benefit amount, upon finding that Appellant was discharged from Guardian Industries Corp. ("Employer") for cause, other than misconduct, in connection with employment pursuant to S.C. Code Ann. § 41-35-120(2)(b) (Supp. 2013). The South Carolina Administrative Law Court ("ALC") has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2013). Appellant filed his appeal before the ALC on February 11, 2014. The case was assigned on February 21, 2014. The ALC issued an Order Governing Procedure on February 24, 2014. DEW filed the Record on March 14, 2014. Appellant filed his brief on March 27, 2014. The ALC issued an Order for Respondent's brief on April 30, 2014, as DEW failed to timely file its brief. DEW filed Respondent's brief on May 7, 2014. Appellant filed his reply brief on May 13, 2014. Upon consideration of the record and the briefs of the parties, this Court affirms, finding that substantial evidence supports the Department's Appellate Panel decision.

BACKGROUND

Appellant worked as a maintenance mechanic for Employer from May 16, 2011 to September 30, 2013. According to the Employer, Appellant was discharged for conduct, as during a service call on August 7, 2013, Appellant was very agitated, started cursing loudly, and "took the seatbelt from the forklift and slammed it into the seat back several times." Appellant went on a leave of absence on August 8, 2013. Appellant returned from his leave of absence on

FILED
MAY 28 2014
SC ADMIN. LAW COURT

September 23, 2013 and was suspended that day pending a hearing to be held on September 30, 2013. The Appellant was terminated from his employment on September 30, 2013. Appellant filed for unemployment benefits with DEW on October 1, 2013. On October 15, 2013, DEW sent the Appellant a determination that he has been disqualified from receiving benefits for twenty weeks because he was terminated from employment for misconduct connected with employment pursuant to S.C. Code Ann. § 41-35-120(2)(a). The Appellant filed a Notice of Appeal to the Appeal Tribunal on October 21, 2013 contesting the DEW determination. A hearing was held before a Hearing Officer on November 26, 2013.

The Appellant and the Employer both participated at the hearing. Lance Clarke, Human Resources Manager for Employer, testified that Appellant was discharged for misconduct by cursing and displaying aggressive behavior in the workplace. Mr. Clarke told the hearing officer that Appellant was informed of company policies and also acknowledged company policies. Matthew Hall, Production Supervisor for Employer, testified that Appellant was very agitated and continue to get louder and started slamming the seatbelt against the seat. Mr. Hall stated that he continued "cussing and slammed the seatbelt against the back of the truck." Appellant testified that he was not being aggressive and that he had "done nothing and there's no just reason for them to terminate" Appellant. Appellant testified that he did not raise his voice nor say any expletives toward Mr. Hall. Appellant stated that he left for medical leave on August 8, 2013 "because of stress leave and Mr. Matt Hall had been aggravating me and had been not trying to help me in any kind of way, shape or form since I've been in this establishment."

After hearing the evidence presented, the Appeal Tribunal mailed a decision on December 5, 2013 modifying the DEW determination. The Appeal Tribunal found Appellant disqualified from receiving benefits for sixteen weeks upon finding Appellant was discharged for cause connected with employment. Specifically, the Appeal Tribunal determined:

> The record establishes claimant is at fault in the separation. Claimant was upset with the production supervisor and argued with him regarding his need to talk to the operator. While it was not his direct supervisor, claimant should not have argued with the production supervisor. Furthermore, claimant's insistence on talking to the operator was unfounded as he did not need to talk to the operator to fix the forklift. His actions were a disregard for the standards of behavior the employer has a right to expect. However, testimony did not establish claimant's actions were an intentional disregard. While claimant is responsible for the discharge, his actions do not rise to the level of misconduct. Therefore, the disqualification is modified accordingly.

Appellant filed an appeal to the Appellate Panel on December 9, 2013. The Appellate Panel affirmed the decision of the Appeal Tribunal on January 21, 2014. The Appellate Panel stated:

> The evidence establishes that the claimant displayed inappropriate conduct in the workplace and responded inappropriately to a supervisor. The claimant knew or should have known that his conduct and reaction in the workplace was inappropriate. While the claimant may not be disqualified from benefits for misconduct due to the extraordinary circumstances of this case, his conduct nonetheless warrants a significant disqualification. The claimant's inappropriate conduct and inappropriate response to a supervisor constituted a disregard for the reasonable standard of behavior the employer had a right to expect. Therefore, we find the claimant was discharged for cause connected with the employment.

The Appellant then commenced this action seeking judicial review of the Appellate Panel's decision.

ISSUE ON APPEAL

Did the Department err in finding that Appellant was discharged for cause, other than misconduct, connected with his employment?

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) (determining that the Employment Security Commission, a 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 DEW. See S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2013); 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). The standard used by appellate bodies to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2013). See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner proscribed in § 1-23-380(5)). Section 1-23-380(5) reads:

> The court may 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:

4D

(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. 2013).

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., 267 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). The ALC 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); see also S.C. Code Ann. §1-23-380(5). The party challenging an agency action bears the burden "to prove convincingly that the agency's decision is unsupported by the evidence." Waters, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

The Appellant argues that the Department erred in finding that Appellant was discharged for cause, other than misconduct, connected with his employment. The Court disagrees.

Pursuant to S.C. Code Ann. § 41-35-120(2)(b):

> If the department finds that he has been discharged for cause, other than misconduct as defined in item (2)(a), connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, then the department must find him partially ineligible. The ineligibility must begin with the effective date of the request, and continuing not less than five nor more than the next nineteen weeks, in addition to the waiting period. A corresponding and mandatory reduction of the insured worker's benefits, to be calculated by multiplying his weekly benefit amount by the number of weeks of his disqualification, must be made. The ineligibility period must be determined by the department in each case according to the seriousness of the cause for discharge. Discharge resulting from substandard performance due to inefficiency, inability, or incapacity shall not serve as a basis for disqualification under either subitem (a) or (b) of this item.

The statute defines "misconduct" as:

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

S.C. Code Ann. § 41-35-120 (2)(a) (Supp. 2013).

A condition for eligibility for unemployment benefits is that the claimant must have been "separated, through no fault of his own." S.C. Code Ann. § 41-35-110(5) (Supp. 2013).

In determining whether a claimant was discharged for cause, the South Carolina Court of Appeals, in AnMed Health v. S.C. Dep't of Employment & Workforce, 404 S.C. 224, 743 S.E.2d 854 (2013), followed the reasonableness determination outlined by the South Carolina Supreme Court in Mickens v. Southland Exch. – Joint Venture, 305 S.C. 127, 406 S.E.2d 363 (1991). The South Carolina Supreme Court stated that "[w]hat is reasonable will vary according to the circumstances of each case… [n]ot only must the reasonableness of the employer's request be evaluated, but also the employee's reason for noncompliance." Mickens, 305 S.C. at 130, 406

S.E.2d at 363 (citations omitted).

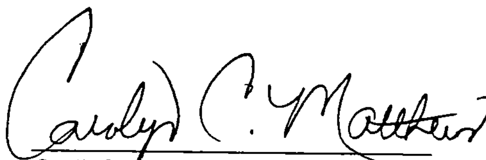
Appellant claims that he did not act in an aggressive manner and that he never threw a seatbelt. Appellant, in his brief, stated that he had never had a problem with another employee and has never been written up by the Employer for behavior problems. However, Mr. Hall, Production Supervisor for Employer, testified that Appellant was very agitated and continued to get louder and started slamming the seatbelt against the seat. Based on the testimony, the Appellate Panel found that Appellant's "inappropriate conduct and inappropriate response to a supervisor constituted a disregard for the reasonable standard of behavior the employer had a right to expect." The South Carolina Supreme Court has stated that witness credibility should be deferred to the judgment of the agency. Milliken & Co. v. S.C. Employment Sec. Comm'n, 321 S.C. 349, 350, 468 S.E.2d 638, 639 (1996) (citing Parsons v. Georgetown Steel, 318 S.C. 63, 456 S.E.2d 366 (1995)). The ALC cannot substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. See Sea Pines Ass'n for Prot. of Wildlife, Inc., 345 S.C. at 604, 550 S.E.2d at 292; see also Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981). The Employer has a right to expect an employee will not use profanities and act inappropriately toward a supervisor. Therefore, the Employer was reasonable in requiring an employee to follow that standard. The Appellant's noncompliance with the Employer's standard was not reasonable, as the Appellate Panel found that Appellant did act in an inappropriate manner.

In the case before the ALC, there is substantial evidence in the record to find that Appellant was discharged for cause, other than misconduct, connected with his employment pursuant to S.C. Code Ann. § 41-35-120(2)(b). Appellant had acted in an inappropriate manner to a supervisor which constituted a disregard of the reasonable standard of behavior the Employer had a right to expect. While the Appellant presented personal testimony to show that he should not have been discharged for cause as he was not acting in an inappropriate manner, the Court finds that the Department's decision was not erroneous in light of the substantial evidence in the record, and that the record supports the decision.

ORDER

IT IS ORDERED that the Department's decision is **AFFIRMED**.

AND IT IS SO ORDERED.

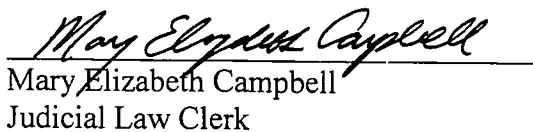


CAROLYN C. MATTHEWS
S.C. Administrative Law Judge

May 28, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



Mary Elizabeth Campbell
Judicial Law Clerk

May 28, 2014
Columbia, South Carolina