

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**SC ADMIN. LAW COURT**

Stephanie Stewart, )  
 )  
 Appellant, )  
 vs. )  
 )  
 South Carolina Department of )  
 Employment and Workforce and Oconee )  
 County, )  
 )  
 Respondents. )

Docket No. 13-ALJ-22-0555-AP

**ORDER**

**STATEMENT OF THE CASE**

This matter comes before the South Carolina Administrative Law Court (“ALC” or “the Court”) pursuant to an appeal by Stephanie Stewart (“Appellant”) from a decision of the South Carolina Department of Employment and Workforce’s (“the Department’s”) Appellate Panel, which held Appellant was disqualified from receiving unemployment benefits for twenty (20) weeks, with a corresponding monetary reduction, upon finding she was discharged for misconduct connected to her employment with Oconee County (“Employer”). The ALC has jurisdiction to hear this matter pursuant to section 41-35-750 of the South Carolina Code (Supp. 2013). Upon consideration of the briefs and the record, the Appellate Panel’s decision is affirmed.<sup>1</sup>

**BACKGROUND**

Appellant worked for Employer from January 10, 2011 to May 9, 2013, with the most recent job title of court clerk. Appellant was originally hired to be a court clerk at Employer’s Walhalla branch of Magistrate’s Court. Appellant received initial training at the Seneca branch under Chief Magistrate Judge M. Todd Simmons (“Judge Simmons”) before reporting to Walhalla under Magistrate Judge Blake Norton (“Judge Norton”). In September 2011, Judge Norton and Judge Simmons agreed to transfer Appellant to the Seneca branch for more training, and to address Appellant’s complaints about unprofessional and racially insensitive behavior at the Walhalla branch. Appellant remained at the Seneca branch until Friday, May 3, 2013. On May 3, Judge Simmons composed a memorandum for Appellant’s file indicating she was being

<sup>1</sup> This case was decided without oral argument pursuant to ALC Rule 39.

transferred back to the Walhalla branch. Approximately mid-day, Judge Simmons conducted a Human Resources ("HR") meeting, which included himself, the head Seneca clerk, Deborah Sheriff, and Appellant. Judge Simmons recorded the meeting. During the meeting, Appellant refused to accept the transfer back to Walhalla. Judge Simmons explained the workload at Walhalla necessitated three court clerks, Appellant was originally hired for the Walhalla Office, and Oconee County refused his request to hire another clerk for the Walhalla office. Judge Simmons also suggested that based on seniority and skill set, Appellant was the only current clerk he could transfer to the Walhalla branch. At the close of the meeting, Judge Simmons told Appellant she had three options: (1) transfer to the Walhalla branch and document any problems she has there; (2) resign; or (3) force him to terminate her for failing to comply with a directive. Judge Simmons instructed Appellant to take the rest of the day off with pay to think about it, and give him her decision before the conclusion of the work day.

At the conclusion of the HR meeting, Appellant requested to speak with Judge Simmons personally off the record. Judge Simmons agreed and asked Sheriff to leave the room. Appellant then spoke to Judge Simmons about a grievance she had initiated concerning an allegation that Sheriff was recording fraudulent over-time. Appellant asked whether Judge Simmons recalled a conversation with another employee about the issue, and Judge Simmons responded that he did not recall the alleged conversation. Judge Simmons claims Appellant then called him a "liar." Appellant insists she merely stated Judge Simmons's recollection was "inaccurate." Sheriff asserted Judge Simmons came into her office immediately after the incident and told her Appellant called him a liar in his own courtroom. Judge Simmons asserted that he did not immediately fire Appellant that day because he had an agreement with Employer to discuss all hiring and firing decisions with Employer first, and he was not sure of his authority to fire Appellant at that moment. Judge Simmons composed a memorandum of the meeting, but did not mention Appellant's insubordinate comment at the time.

Before the end of the workday, Appellant informed Judge Simmons she would accept the transfer to the Walhalla branch. On Monday, May 6, 2013, Appellant arrived for work at the Walhalla branch. On May 7, 2013, Judge Simmons wrote another memorandum for Appellant's file, which documented Appellant's initial refusal to accept the transfer, and her assertion that he was a liar. At the conclusion of the memorandum, Judge Simmons stated, "While I have reluctantly agreed to allow [Appellant] to continue her employment in Walhalla, I feel there are

sufficient grounds for immediate termination. I believe that no further incidents should be tolerated." Shortly thereafter, Judge Simmons was able to communicate with Employer, and determined he had the authority to fire Appellant for unprofessionalism and insubordination. Employer's policy specifically stated termination could result from insubordination.

During her first week back at the Walhalla branch, Appellant began initialing her work so it could not be sabotaged by other employees. On the morning of May 9, 2013, Judge Norton sent Appellant an email instructing her not to place her initials on her work product because Judge Norton only wanted his signature on out-going orders and other related documents. That same morning, Appellant sent an email reply to Judge Norton explaining: "Given the harsh and hostile history of and racial overtones that have existed within this office, it is necessary that I have way to clearly distinguish my work from other employees." That afternoon, Judge Simmons informed Appellant she was terminated for lack of professionalism and insubordination; he specifically stated her termination was a result of the incident when she called him a liar. Judge Simmons explained in Appellant's termination letter that he did not immediately fire Appellant on May 3, 2013, when the incident of insubordination occurred because he had to first consult with Employer about his firing authority.

Following her termination, Appellant filed a timely claim for unemployment benefits with the Department. The Department conducted fact finding and, on May 24, 2013, a Department claims adjudicator determined Appellant was discharged due to improper action on the job, which constituted a discharge for misconduct under section 41-35-120(2)(a) of the South Carolina Code (Supp. 2012). The claims adjudicator further determined Appellant was disqualified from receiving benefit payments for twenty (20) weeks and Appellant's maximum benefits would be reduced by twenty (20) times Appellant's weekly benefit amount. On May 30, 2013, Appellant filed a Notice of Appeal with the Department's Appeal Tribunal seeking review of the claims adjudicator's decision.

An evidentiary hearing was scheduled for August 20, 2013. Prior to that, Appellant submitted a "Motion to Submit Declaration of Facts, Documentary Evidence, and Arguments into Tribunal Hearing Record with Brief in Support" ("Motion 1"). Motion 1 included thirty-one attached exhibits. The Hearing Officer did not rule on Motion 1 prior to the Hearing on August 2, 2013. At the hearing, Appellant, Judge Simmons, Judge Norton, and Sheriff testified. Appellant entered one exhibit into evidence, the audio recording of the HR meeting ("Claimant's

Exhibit 1”), which corresponded with Motion 1’s exhibit 1. Appellant referred to several of her other exhibits from Motion 1 during cross-examination and her testimony, but did not move for any of the other exhibits to be admitted as evidence.

On August 23, 2013, the Appeal Tribunal issued a decision affirming the claims adjudicator’s finding that Appellant was discharged for misconduct. On August 31, Appellant appealed to the Appellate Panel. Subsequently, on October 18, 2013, Appellant filed a motion entitled “Motion to Include Claimant’s Previously Submitted Motions and Documentary Evidence for the August 20, 2013 Tribunal Hearing as Part of the Appellate Panel Record” (“Motion 2”). In Motion 2, Appellant contested the record as submitted to the Appellate Panel, arguing it improperly omitted Motion 1 and its thirty-one exhibits. Appellant requested the Appellate Panel add Motion 1 and its exhibits to the record. On October 22, 2013, Appellant renewed Motion 2.

Following a hearing, the Appellate Panel affirmed the Appeal Tribunal’s decision to hold Appellant was terminated for misconduct and disqualified from receiving benefits for twenty (20) weeks with a corresponding monetary reduction. Specifically, the Appellate Panel found Judge Simmons’s testimony was credible. It further found the manner in which Appellant questioned Judge Simmons’s truthfulness disregarded the standard of behavior Employer had a right to expect from Appellant. Regarding Motion 2, the Appellate Panel denied the motion. The Appellate Panel determined Appellant never offered Motion 1 or its exhibits into evidence, except Claimant’s Exhibit 1. The Appellate Panel noted that although Motion 1 and its exhibits were not admitted into evidence, Appellant utilized them extensively during cross-examination and during her testimony. As a result, the Appellate Panel held Appellant “was afforded a full, fair, and meaningful opportunity to present her case.” Moreover, it determined:

The record was fully and fairly developed by the administrative hearing officer and is sufficient for us to render a fair decision. Reopening the record in order to admit additional evidence as described in the claimant’s written brief to the Appellate Panel is unnecessary and would not affect the outcome of this decision. Therefore, we find no cause to remand this case for further proceedings, and the claimant’s request is denied.”

On November 18, 2013, Appellant filed a Notice of Appeal with this Court challenging the Appellate Panel’s decision.

## ISSUES ON APPEAL<sup>2</sup>

1. Did the Appeal Tribunal err or abuse its discretion in submitting an incomplete record to the Appellate Panel? Further, did the Appellate Panel err in denying Motion 2; and specifically, did the Appellate Panel's denial of Motion 2 result in a violation of Appellant's procedural or substantive due process rights?<sup>3</sup>
2. Does this Court's review of the record as it has been submitted to this Court violate Appellant's due process rights and/or other constitutional and statutory rights considering the Appellate Panel reviewed a different version of the record? As a result of the variation in the records, should this Court remand the case?
3. Whether the reliable, probative, and substantial evidence on the whole record support the Appellate Panel's ruling that Appellant was terminated for misconduct? Specifically, was Appellant's alleged infraction cause for termination pursuant to Employer's Employee Handbook? Moreover, did Appellant's infraction constitute misconduct when she was exercising her first amendment constitutional right to pursue a grievance and verbally disagreed with the accuracy of Employer's recollection of facts surrounding the grievance?<sup>4</sup>

## 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, 1-23-600(D) (Supp. 2013); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Emp't Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). Section 1-23-380(5) of the South Carolina Code (Supp. 2013) 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 section 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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<sup>2</sup> Appellant's first listed issue essentially renews her request that this Court grant her motion to present newly discovered evidence and remand this case to the Appellate Panel to review her case with the newly discovered evidence. This court already denied Appellant's motion to present the newly discovered evidence in an order issued May 8, 2014. To the extent Appellant renews the motion in her appeal, the motion is denied for the same reasons as stated in the May 8, 2014, order.

<sup>3</sup> This issue combines Appellant's stated issues three and four for the purpose of efficiency.

<sup>4</sup> Appellant's issues five through eight were combined for the purposes of this appeal because they all relate to whether substantial evidence supports the Appellate Panel's decision.

- (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.

§ 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, 519, 466 S.E.2d 357, 359 (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

**1. Did the Appeal Tribunal err or abuse its discretion in submitting an incomplete record to the Appellate Panel? Further, did the Appellate Panel err in denying Motion 2? Specifically, did the Appellate Panel’s denial of Motion 2 result in a violation of Appellant’s procedural or substantive due process rights?**

Pursuant to South Carolina Regulation 47-51:

The Appeal Tribunal shall include in the record and consider as evidence *all records of the Agency that are material to the issues*. All issues relevant to the appeal shall be considered and passed upon. Any party to the appeal may present such testimony as may be pertinent to the appeal. . . . The Appeal Tribunal with or without notice to any of the parties, *may take such additional evidence at the hearing as it deems necessary*.

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The parties to an appeal, with the consent of the Appeal Tribunal, may stipulate the facts involved in writing. The stipulations agreed upon shall be included in the record of the case.

(emphasis added).

Under this regulation, the Appeal Tribunal is only required to include in the record and consider as evidence the *Agency's* records that are material to the issue. For the claimant's records to be included in the record and considered as evidence, the claimant must enter them in evidence at the hearing. See Rule 103, SCRE (implicitly providing a party must admit evidence to the record before it can be reviewed on appeal as part of the record); S.C. Code Ann. § 1-23-330 ("Except in proceedings before the Industrial Commission the rules of evidence as applied in civil cases in the court of common pleas shall be followed."). In Roberts v. Roberts, the supreme court held "[f]undamental principles of evidentiary procedure dictate evidence must be offered before an opposing party may object to its introduction or its admissibility may be ruled upon by a trial court judge." 299 S.C. 315, 319, 384 S.E.2d 719, 721 (1989). The supreme court went on to state: "To hold evidence to which reference is made, but which is not offered into evidence, is admissible would severely prejudice the party opposing its introduction by virtually precluding the party from placing the grounds for his objection on the record." Id.

Here, Appellant argues her reference to Motion 1 and its attached exhibits during the hearing was sufficient to move Motion 1 and its exhibits into evidence. However, a reference alone is insufficient; a party must offer the evidence and the hearing officer must rule on its admission. Because Appellant never offered Motion 1 and its exhibits into evidence with the exception of Claimant's Exhibit 1, Motion 1 and its exhibits, with the noted exception, were not part of the evidence in front of the Appeal Tribunal. Accordingly, I find the Appeal Tribunal did not err in submitting the record to the Appellate Panel without these documents.

Next, regarding the Appellate Panel's review of the record, section 41-35-710 of the South Carolina Code states the Appellate Panel may review a decision of an appeal tribunal "on

the basis of evidence previously submitted in the case” or it may “direct the taking of additional evidence.” Importantly, the Appellate Panel “has the authority to make its own findings of fact consistent with or inconsistent with those of the appeal tribunal.” Merck v. S.C. Emp’t Sec. Comm’n, 290 S.C. 459, 460, 460-61, 351 S.E.2d 338, 339 (1986) (interpreting a prior, but substantially similar, version of section 41-35-710). Further Regulation 47-52(B) provides “all appeals to the Appellate Panel shall be heard solely upon the evidence in the record before the Appeal Tribunal.” Accordingly, because Motion 1 and its exhibits with the noted exception were not part of the evidence before the Appeal Tribunal, they were properly excluded from the record before the Appellate Panel.

Nevertheless, Appellant contends the Appellate Panel erred when it denied her motion to include Motion 1 and its exhibits in the record. Specifically, Appellant claims the Appellate Panel’s denial of Motion 2 resulted in a violation of her due process rights. The Department and Employer argue Appellant received due process, and Appellant’s allegations of an incomplete record are the result of her own failure to enter certain items into evidence at the hearing. I agree with the Department and Employer.

Our courts have held “[p]rocedural due process requirements are not technical, and no particular form of procedure is necessary.” Olson v. S.C. Dep’t of Health & Envtl. Control, 379 S.C. 57, 69, 663 S.E.2d 497, 503-04 (Ct. App. 2008). Due process requirements are “flexible” and “cal[1] for such procedural protections as the particular situation demands.” Id. at 69, 663 S.E.2d at 504. At a minimum, due process requires “the opportunity to be heard at a meaningful time and in a meaningful manner.” Id. “To prevail on a claim of denial of due process, there must be a showing of substantial prejudice.” Id.

Here, the Appellate Panel considered Appellant’s Motion 2, but denied her motion, finding:

The record was fully and fairly developed by the administrative hearing officer and is sufficient for us to render a fair decision. Reopening the record in order to admit additional evidence as described in the claimant’s written brief to the Appellate Panel is unnecessary and would not affect the outcome of this decision. Therefore, we find no cause to remand this case for further proceedings, and the claimant’s request is denied.

The Appellate Panel’s decision not to take additional evidence in the form of Appellant’s Motion 1 and attached exhibits was within its discretion. See § 41-35-710 (holding the Appellate Panel may review a decision of an appeal tribunal “on the basis of evidence previously submitted in the

case” or it may “direct the taking of additional evidence”). Its denial was based on its determination that the additional evidence was not necessary to determine the narrow issue at hand: whether a preponderance of the evidence supported the Department’s finding that Appellant was terminated for misconduct. Because the Appellate Panel fully considered Appellant’s motion, I find Appellant was afforded meaningful review in accordance with due process. Further, I believe the Appellate Panel’s consideration and denial of Motion 2 on the aforementioned grounds precludes Appellant from showing prejudice as a result of any purported deficiency in the record before the Appellate Panel. See Olson, 379 S.C. at 69, 663 S.E.2d at 504 (“To prevail on a claim of denial of due process, there must be a showing of substantial prejudice.”); cf. Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Office, 346 S.C. 158, 174, 551 S.E.2d 263, 272 (2001) (“An adequate *de novo* review renders harmless a procedural due process violation based on the insufficiency of the lower administrative body.”).

**2. Does this Court’s review of the record as it has been submitted to this Court violate Appellant’s due process rights and/or other constitutional and statutory rights considering the Appellate Panel reviewed a different version of the record? As a result of the variation in the records, should this Court remand the case?**

Regarding the submission of the record to this court, section 1-23-380(4) of the South Carolina Code provides:

The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.

Additionally, ALC Rule 36(B) requires the record on appeal to this Court contain: (1) all pleadings, motions, and intermediate rulings; (2) all evidence received or considered; (3) a statement of matter judicially noticed; (4) all proffers of proof of excluded evidence; (5) the final order or decision which is subject to review; and (6) the transcript of the testimony taken during the proceeding.

Here, the Department filed an initial copy of the record on December 11, 2013. Subsequently, on December 20, 2013, Appellant filed four motions, including a motion entitled “Application for an Order to Compel the South Carolina Department of Employment and Workforce to Correct and Resubmit the Entire Record on Appeal and Motion to Reset the Brief

Filing Schedule Deadline” (“Motion 3”). In Motion 3, Appellant alleged the record on appeal was deficient because it failed to include: Motion 1 and its exhibits (specifically exhibits 12-15, 17-20 and 30); Motion 2 and its renewal; the transcript of the Appellate Panel hearing; and the audio recording of Claimant’s Exhibit 1. On January 21, 2014, the Department consented to supplementing the record with Appellant’s requests and, on February 4, 2014, this Court issued an order directing the Department to file a supplemental record in accordance with ALC Rule 36(B). The Department submitted an amended record on February 19, 2014, but neglected to include all the supplemental documents Appellant requested in Motion 3. Thereafter, the Department submitted another supplement to the record on March 12, 2014. This supplemental record again failed to include all the missing documents. As a result, this Court issued another order on March 18, 2014, commanding the Department to submit a supplement to the record to include exhibits 11-20, and 30 from Motion 1.<sup>5</sup> Subsequently, the Department finally submitted a completed record and supplemental record, which is the record now before this Court.

In ordering the Department to supplement the record with Appellant’s requested documents pursuant to Motion 3, this Court ensured the record complied with ALC Rule 36(B), which is more specific and inclusive in its requirements than the statutory and regulatory law governing the composition of the record below. Specifically, ALC Rule 36(B) requires the record before this court include “all pleadings, motions, and intermediate rulings” and “all evidence received or considered,” which encompasses the documents Appellant requested be included in the record in Motion 3. Therefore, I find the current record is in compliance with statutory and regulatory law.

Furthermore, pursuant to section 1-23-380(4), this Court considered whether Appellant’s “alleged irregularities in procedure” required this Court to remand the case to the agency for further action as this court considers appropriate. I find this is not necessary because, as previously noted, Appellant was not denied due process or prejudiced as a result of the Appellate Panel’s review of the record before it. Therefore, although the record before this court differs

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<sup>5</sup> One of the issues with the Department’s previous filing was the omission of pages 21-23 of Motion 2, which the Department claimed to have lost. In its March 18, 2014, order the Court ruled the pages were not considered evidence, and did not need to be included in the record. Additionally, Appellant continued to complain that the transcript of the Appellate Panel hearing was not included in the record. The Appellate Panel hearing was not transcribed and is not part of the body of evidence before this Court; therefore, it was properly omitted from the record. Also, an audio copy of Claimant’s Exhibit 1 was not included in the record because a transcript of the recording was already included.

from the record before the Appellate Panel, I find no impropriety in this Court's review based on the current record and supplemental record before it.

Regarding Appellant's other statutory and/or constitutional arguments, I find these arguments were not raised to or ruled upon by the Appeal Tribunal or the Appellate Panel. Consequently, they are not preserved for this Court's review. See In re Care & Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled on by the trial court to be preserved for appeal.").

**3. Whether the reliable, probative, and substantial evidence on the whole record supports the Appellate Panel's ruling that Appellate was terminated for misconduct? Specifically, was Appellant's alleged infraction cause for termination pursuant to Employer's Employee Handbook? Moreover, did Appellant's infraction constitute misconduct when she was exercising her first amendment constitutional right to pursue a grievance and verbally disagreed with the accuracy of Employer's recollection of facts surrounding the grievance?**

Appellant argues the Appellate Panel erred because the reliable, probative, and substantial evidence in the record as a whole does not support the Appellate Panel's finding of misconduct. I disagree.

Under section 41-35-120(2)(a) of the South Carolina Code, a claimant is disqualified from receiving benefits for twenty (20) weeks with a corresponding monetary reduction when the Department finds the claimant has been discharged for misconduct. Section 41-35-120(2)(a) defines "misconduct" as

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 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.

Id. Here, Appellant's version of events and Employer's version of events are in conflict. Employer asserts Appellant initially refused a transfer directive and then called Judge Simmons a liar to his face in his courtroom. Appellant maintains she merely stated Judge Simmons's recollection of an alleged event was inaccurate. The Appellate Panel found Judge Simmons was credible. See Milliken & Co. v. S.C. Emp't Sec. Comm'n, 321 S.C. 349, 350, 468 S.E.2d 638, 639 (1996) ("[O]n questions of witness credibility we defer to the judgment of the agency."). This Court find the manner in which Appellant addressed Judge Simmons constituted insubordination and a disregard for the standard of behavior Employer had a right to expect from

Appellant. See § 41-35-120(2)(a (defining “misconduct” as disregard of standards of behavior which the employer has the right to expect of his employee”).

Appellant further contends her actions did not meet the requirements for termination under Employer’s personnel manual (“the Manual”) and, therefore, the Appellate Panel erred in finding she engaged in misconduct. The Manual provides, in part:

Employment with the county is terminable at the will of either the employee or the organization at any time. This jurisdiction reserves the right to determine what grounds or reasons constitute sufficient justification for termination of employment. While the circumstance of a particular case may result in termination for the first offense, other cases may result in other forms of disciplinary action.

This personnel manual contain guidelines for determining proper disposition of discipline, including situation which may result in the termination of employment. These practices do not necessarily address all circumstances which may result in the termination of employment.

Furthermore, the Manual provides that termination can occur “whether prior warnings have been issued” for improper behavior or not, and specifically states “insubordination” is grounds for termination. Because Appellant engaged in insubordination, which is specifically delineated as an appropriate reason to terminate employment, this Court finds Appellant’s argument that her actions were not appropriate grounds for termination under Employer’s policy to be without merit. Additionally, Employer had no obligation under its policy to issue a warning prior to termination.

Next, Appellant contends the Appellate Panel erred in finding she was terminated for misconduct when she was exercising her First Amendment right to free speech when she engaged in insubordination. This constitutional argument was not raised to or ruled upon by the Appellate Panel. Consequently, it is not preserved for this Court’s review. See In re Care & Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) (“Constitutional issues, like most others, must be raised to and ruled on by the trial court to be preserved for appeal.”).

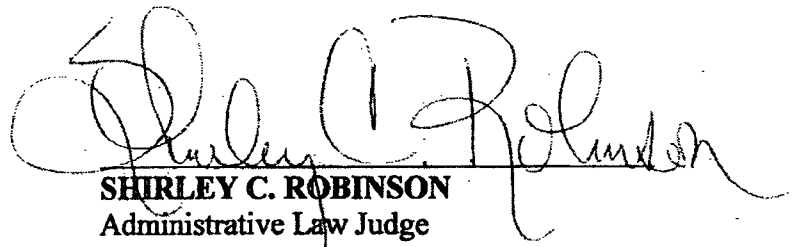
Overall, I find substantial evidence in the record supports the Appellate Panel’s finding because reasonable minds could have reached the same conclusion that Appellant was discharged for misconduct connected to her employment. See Friends of the Earth, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion as the agency); Waters,

321 S.C. at 226, 467 S.E.2d at 917 (holding 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). Accordingly, the Appellate Panel's decision should be affirmed.

**ORDER**

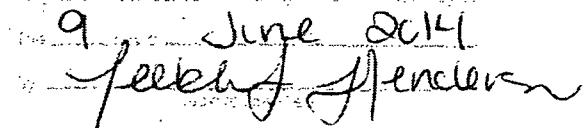
Based upon the foregoing, **IT IS HEREBY ORDERED** that the Appellate Panel Decision shall be and hereby is **AFFIRMED**.

**AND IT IS SO ORDERED.**

  
**SHIRLEY C. ROBINSON**  
Administrative Law Judge

June 9, 2014  
Columbia, South Carolina

Administrative Law Judge  
Shirley C. Robinson  
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9 June 2014  


IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

Appeal from the Administrative Law Court

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No.: 13-ALJ-22-0555-AP

Stephanie Stewart,  
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South Carolina Department of Employment & Workforce,  
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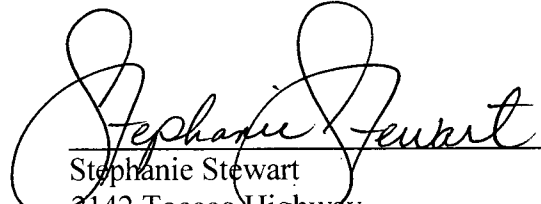
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**MOTION AND AFFADAVIT TO PROCEED IN FORMA PAUPERIS**

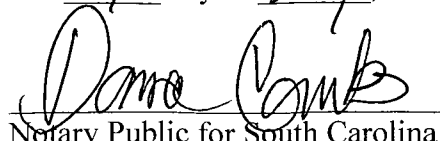
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I, Stephanie Stewart, being duly sworn state that I am the Appellant and that I do not have the funds available to pay the costs of filing in the present matter. I hereby request that the Appeal be filed without any costs.

Dated this 7<sup>th</sup> day, July, 2014.

  
Stephanie Stewart  
2142 Toccoa Highway  
Westminster, South Carolina 29693  
Phone: 864-647-2216  
Pro-Se

Sworn to and subscribed before me  
this 7 day of July, 2014.

  
Notary Public for South Carolina

My Commission expires \_\_\_\_\_

**My Commission Expires July 17th 2016**

**RECEIVED**

JUL 11 2014

**SC Court of Appeals**