

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Michael Baxley, Circuit Court Judge

Appellate Case No. 2013-002356

RECEIVED

JUN 30 2014

Fritz Allen Timmons,

Appellant,

SC Court of Appeals

v.

South Carolina Department of
Employment and Workforce
and Browns A/S RV and
Campers,

Respondent.

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

DID THE SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE ERR IN FINDING APPELLANT INDEFINITELY DISQUALIFIED FROM UNEMPLOYMENT BENEFITS BECAUSE HE VOLUNTARILY QUIT WITHOUT GOOD CAUSE?

- I. HEARING WAS HELD WITHOUT REPRESENTATION OF EITHER PARTY NOR COMPLETE RECORD TO SUPPORT SUBSTANTIAL EVIDENCE.
- II. HEARING WAS HELD WITHOUT THE DECISION OF THE MOTION TO DISMISS HEARING, WITHOUT FULL RECORD, AND PLACED ON COURT ROSTER PRIOR TO A MOTION TO AMEND ORDER FILED.
- III. WITH THE APPEAL PROCESS BEGINNING ON , 2009 AND ENDING ON OCTOBER 3, 2013 DUE TO THE LACK OF DECISION FROM THE MOTION TO DISMISS HEARING ON JAN. 10, 2010 WITH JUDGE BURCH AS PRESIDING AND THE MOTION TO AMEND HEARING HELD ON MAY 25, 2011 AND DECISION (DENIED) SIGNED BY NON-PRESIDING JUDGE BURCH ON SEP 11, 2013.
- IV. SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION TOTALLY IGNORED COURT RULES, FEDERAL AND STATE CODES.
- V. AN EMPLOYEE CAN BE TERMINATED WITHOUT VERBALLY BEING TOLD THAT THEY ARE "FIRED" OR "TERMINATED" BY BREACH OF CONTRACT OF HIRE.
- VI. EMPLOYEES THAT HAS OR DOES WORK UNDER THESE CONDITIONS ARE REQUIRED TO BE PAID FOR THE OVERTIME AND NON-PRODUCTIVE WORKING HOURS PER FEDERAL AND STATE CODES.
- VII. BROWN'S RV'S CONTRACT OF HIRE CLEARLY VIOLATES THE FAIR LABOR STANDARD ACT (FLSA) AND CODE OF FEDERAL REGULATIONS (CFR)
- VIII. THE APPELLANT WAS WRONGFULLY TERMINATED, QUIT WITH GOOD CAUSE, OR IS STILL EMPLOYED WITH BROWN'S RVS

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

DID THE SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
ERR IN FINDING APPELLANT INDEFINITELY DISQUALIFIED FROM
UNEMPLOYMENT BENEFITS BECAUSE HE VOLUNTARILY QUIT WITHOUT GOOD
CAUSE?

STATEMENT OF THE CASE

Appellant Fritz Timmons (Appellant) filed for unemployment insurance benefits with the South Carolina Employment Security Commission (currently the Department of Employment and Workforce (Agency) on or about March 20, 2009. (UCB1011). The claims adjudicator determined on or about April 3, 2009, that Appellant was “disqualified from 03/15/09 and until you return to work and earn at least eight times your weekly benefit amount.” (UCB-103)

Appellant filed a request for appeal on or about April 8, 2009. (Notice of Appeal to Appeal Tribunal). The Appeal Tribunal scheduled a hearing on April 21, 2009, to consider the issues of “Voluntary Quit” and “Discharge.” (Appeal No:0906675). The Appeal Tribunal found that Appellant was “disqualified from receiving benefits effective March 15, 2009, until requalification, upon a finding the claimant voluntarily quit employment without good cause.” (Decision of Appeal Tribunal).

Appellant filed an appeal on or about May 1, 2009. (Application For Leave To Appeal To Commission). On July 2, 2009, the South Carolina Employment Security Commission affirmed the Appeal Tribunal and found Appellant “voluntarily quit without good cause connected with the work.” (Decision No: 09-C-1233). Appellant then filed a copy of the Letter of Transmittal and a Motion Information Form and Cover Sheet with Darlington County Court of Common Pleas on July 24, 2009. On August 25, 2009, the Agency filed a Motion to Dismiss based on the filing did not state grounds for judicial review and the Agency was not named as a party to the proceedings. On October 7, 2013, the Honorable J. Michael Baxley affirmed the Agency decision stating: “Appeal from decision of SCESC denied. Court affirms Agency finding of voluntary quit per 41-34-120(1). Also, failure to properly file appeal.” (Judgment In A Civil

Case, No: 2009CP1600540). The Judgment indicates a copy was mailed, first class, to appellant on October 7, 2013.

Appellant now seeks judicial review of the Circuit Court's decision in the South Carolina Court of Appeals.

STATEMENT OF THE FACTS

Appellant worked for Brown's RV's & Campers (Brown's) from July 15, 1998 to March 4, 2009 as a technician. (UCB 101I; Tr. p.4, lines 15-16).

In his Initial Claims Application, Appellant's lists his reason for discharge as "lack of work." However, during the fact finding, Appellant indicated he quit because Brown's changed the method of compensation from an hourly rate to flat rate for each assignment. Appellant flatly refused to work under a flat rate compensation method, and voluntarily resigned after Brown's efforts to "negotiate" with Appellant failed. (Tr. p.17, line 16 – p.18, line 12).

The claims adjudicator determined "you left your most recent bona fide employer because you did not like your working hours and/or pay. A review of the records shows no unreasonable change in the original conditions of hire. You left voluntarily without good cause under . . . 41-35-120(1)." (UCB-103). In his Notice of Appeal to Appeal Tribunal, Appellant indicated that converting from an hourly rate to a flat rate constituted unreasonable conditions.

The Appeal Tribunal Hearing was held on April 21, 2009. During his testimony before of the Administrative Hearing Officer, Appellant testified he was discharged on March 4, 2009. He further testified concerning his separation:

HEARING OFFICER: Okay. But did they tell you that you were being discharged or that they were just changing your pay?

CLAIMANT: They said they was changing the flat rate from hourly over to a flat rate and which I would not accept their flat rate under the conditions, and they refused to accept my terms in order for me to continue to work there under the flat rate.

HEARING OFFICER: . . . Did you leave because they changed the pay or did . . . were you told that because you would not accept the conditions, that you were being discharged from your job?

CLAIMANT: No one came out right, rightly and told me I was fired.

HEARING OFFICER: So nobody told you that you were being discharged, correct?

CLAIMANT: I was told I would no longer be paid hourly.

HEARING OFFICER: Okay. When you were told that you were no longer going to be paid hourly, you said that you had given some...

CLAIMANT: I would not work there under their conditions for flat rate and they would not accept my terms for me to continue working under flat rate.

(Tr. p.5, line 11 – p.6, line 10).

The Appeal Tribunal found:

“Good cause” for quitting within the meaning of the law refers to a substantial, material change in the terms or conditions of employment, or any circumstances that would cause a reasonable and prudent person to become totally unemployed rather than continue working.

In this case, the testimony shows that the claimant voluntarily quit and was not discharged. The claimant has the burden of proving that he voluntarily quit . . . That burden was not met. Although the employer had made a change in the terms of employment, it was not unreasonable to the point that would cause a reasonable or prudent person to become totally unemployed rather than continue working.

(Decision of Appeal Tribunal).

After appeal, the Commission found:

We find that the claimant quit because he did not want to accept a change to a flat rate of pay. However, the general manager testified that the claimant would not have made less money and had the opportunity to earn more. Further, the change was not so substantial as to justify the claimant’s quitting his employment. Therefore, the Appeal Tribunal decision is affirmed. The claimant is indefinitely qualified from benefits effective March 15, 2009, for having voluntarily quit without good cause connected with the work.

(Decision No. 09-C-1233).

ARGUMENT

Standard of Review

DEW is an agency and subject to the Administrative Procedures Act. South Carolina Code § 1-23-310 (Supp. 2013). The administrative procedures of the agency include an appeal to the Appeal Tribunal and further appeal to the Appellate Panel. S.C. Code Ann. § 41-35-680 (Supp. 2013); S.C. Code Ann. §41-35-710 (Supp. 2013). 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 (Supp. 2013); S.C. Code Ann. §41-35-740 (Supp. 2013). A notice of appeal must be filed and served “as provided in the South Carolina Appellate Court Rules.” S.C. Code Ann. §1-23-380 (Supp. 2013).

The South Carolina Court of Appeals has found “[t]he decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law.” *Original Blue Ribbon Taxi Corp. v. S. Carolina Dep't of Motor Vehicles*, 380 S.C. 600, 604-05, 670 S.E.2d 674, 676 (Ct. App. 2008). This Court has noted that it can only reverse the ALC “if the findings are affected by error of law, are not supported by substantial evidence, or are characterized by abuse of discretion or clearly unwarranted exercise of discretion.”) *Olson v. South Carolina Dep't. of Health and Envtl. Control*, 379 S.C. 57, 63, 663 S.E.2d 497, 501 (Ct. App. 2008.)

Unless there is a clearly erroneous application of the law, the ALC’s decision will be upheld if there is substantial evidence to support its finding. 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. 130, 135-36, 276 S.E.2d 304, 306-07 (1981).

The Circuit Court's decision should be affirmed because substantial evidence supports the Court's finding that Appellant voluntarily quit without good cause.

There is substantial evidence for the lower court to find Appellant voluntarily quit his job without good cause. DEW found the record established that Appellant "initiated the separation" and "did not return to work" after refusing to accept a different compensation structure. DEW also found that the evidence is insufficient to show the conditions of his employment would cause a reasonable person to leave available work to become totally unemployment" and "there was no substantial change in the claimant's condition of employment.

Further, Appellant failed in his burden of showing he is eligible for benefits under S.C. Code Ann. §41-35-110. *McEachern v. S. Carolina Employment Sec. Comm'n*, 370 S.C. 553, 558, 635 S.E.2d 644, 647 (Ct. App. 2006) (internal citation omitted).

Pursuant to S.C. Code Ann. § 41-35-120(1) "An insured worker is ineligible for benefits for: (1) Leaving work voluntarily. If the department finds he left voluntarily, without good cause, 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...."

"An employee who voluntarily resigns from employment without good cause is ineligible for unemployment benefits." *Ex parte South Carolina Employment Sec. Com'n*, 332 S.C. 286, 288, 504 S.E.2d 345, 346 (1998) (citing S.C. Code Ann. 41-35-120 (1) (1986)). An employee who voluntarily leaves employment has the burden of showing good cause for leaving. 76 Am. Jur. 2d *Unemployment Compensation* § 104. "To constitute good cause, the circumstances which lead an employee to leave the job must be such as would cause a reasonable person to leave." 76 Am Jur. 2d *Unemployment Compensation* § 102. A claimant is not entitled

to unemployment compensation benefits for voluntarily quitting a job for cause unless he “explored all viable options before making the decision to quit.” *Id.*

Appellant testified that he refused to work under a flat pay structure. However, the Commission found Appellant did not present sufficient evidence that the conditions would cause a reasonable person to leave his employment. In *Svidland v. S.C. Employment Sec. Com’n*, the Court, in finding the claimant voluntarily quit without good cause, noted that without showing any illegality, the claimant may have “considered the employer’s business practices improper and immoral, such is personal judgment which amounts to nothing more than a disagreement with management decisions.” *Id.* 300 S.C. 305, 308, 308 S.E.2d 688, 689 (1998). Appellant’s concerns about to a similar disagreement with management.

Appellant expressed concern with his pay, however the employer testified before the Appeals Tribunal that technician’s pay has risen since switching to flat rate. (Tr. p. 21-22). Appellant did not stay in the position to verify the legitimacy of his concerns and clearly did not explore all viable options to ease his concerns.

Even if Appellant never stated that he quit, by failing to return to work he initiated the separation. “An employee may be charged with quitting a job by action or inaction with unavoidable ramifications.” *Samuel v. S.C. Employment Security Commission*, 285 S.C. 476, 477, 330 S.E.2d 300, 301 (1985). In *Samuel*, the claimant did not follow the directions provided by the employer to apply for a leave of absence or she would be removed from the employer’s payroll. The claimant in *Samuel* did not “nothing to save her job” and the Court found by “her own inaction” she “voluntarily quit within the meaning of S.C. Code Ann. § 41-35-120.” *Id.* at 478, and 330 S.E.2d at 301. By failing to return to work, Appellant similarly quit.

In this matter, Appellant decided he was not interested in a position with Brown's unless he was paid hourly. Appellant presented no evidence below that the flat pay compensation method violated the law in any manner. Instead, Brown's General Manager testified the rate used is determined by the reference guide of a particular manufacturer's product. (Tr. pp.19-20).

Even if reasonable minds differed on how Appellant handled his concerns, he did not return to work. His action initiated the separation. DEW's decision must stand as there was no clearly erroneous application of the law to the facts that were presented.

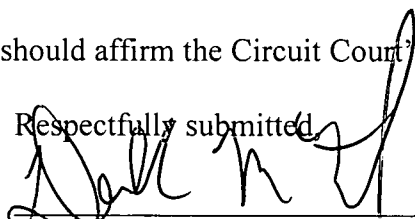
There is substantial evidence in the record supporting the finding that Appellant voluntarily left his position with Brown's good cause. Accordingly, this Court should affirm the lower court's decision that Appellant voluntarily quit without good cause.

Finally, Appellant consistently stated below his separation was solely based on his refusal to work on a flat rate basis. He now raises other issues for which he failed to make any objections on the record that would preserve for appeal before this Court any of these issues. These issues, which Appellant did not present as his "good cause" for quitting below, are not properly before the court. *See State v. Sullivan*, 310 S.C. 311, 426 S.E.2d 766 (1993)(To preserve an issue for appellate review, an appellant must object at his first opportunity).

CONCLUSION

For the reasons discussed above, this Court should affirm the Circuit Court's decision.

Respectfully submitted,



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