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.: 2014-001484

Stephanie Stewart,
Appellant,

v.

South Carolina Department of Employment & Workforce, and Oconee County, South Carolina,
Respondents.

APPELLANT'S RETURN IN OPPOSITION TO THE RESPONDENTS' JOINT MOTION TO DISMISS APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES OR, IN THE ALTERNATIVE, MOTION TO STRIKE

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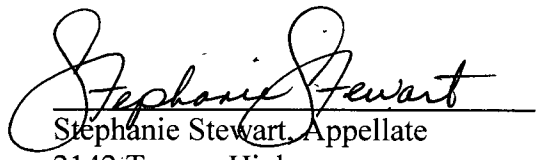
COMES NOW, Stephanie Stewart, (hereinafter, "Stewart"), Appellant, Pro-Se, in the above captioned case, moving this Honorable Court to **DENY** the Respondents', South Carolina Department of Employment & Workforce (hereinafter, "SCDEW") and Oconee County, (hereinafter, "Oconee"), Motion to Dismiss or Alternative Motion to Strike filed on November 4, 2014. Stewart posits the Respondents' Motion is severely misleading/inaccurate and serves now as the Respondents' **THIRD** pleading attempting to influence this Court to preclude Stewart from being heard based on meritless procedural grounds. Stewart shows good cause for **DENYING** Respondents' Motion as illuminated in the attached memorandum with citations in support.

Dated this 28th day of November 2014.

Respectfully Submitted,



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Stephanie Stewart, Appellant,	:	**MEMORANDUM IN SUPPORT OF APPELLANT'S RETURN IN OPPOSITION TO THE RESPONDENTS' JOINT MOTION TO DISMISS APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH THE SOUTH CAROLINA COURT RULES OR, IN THE ALTERNATIVE, MOTION TO STRIKE**
v.	:	
South Carolina Department of Employment & Workforce, and Oconee County, Respondents.	:	

COMES NOW, Stephanie Stewart, Appellant, (hereinafter, "Stewart"), Pro Se, submitting this Memorandum with relevant facts and citation of authorities in vehement opposition to the "Respondents' Joint Motion to Dismiss or in the Alternative Strike" the subject appeal or appeal brief. This is the Respondents' **THIRD** attempt to terminate this appeal based on procedural arguments. This third attempt contains purposely crafted vitriol language assailed to negatively characterize Stewart as an individual with disregard for 1) this Honorable Court, 2) the Rules of this Court and 3) the ALC and its rulings. The reasoning for such is simple. Stewart's underlying defense before the Panel, ALC, and this Court, is that the "employer (a chief magistrate judge) had no intent to terminate her employment, until she grievance concerns of racial overtones in an email (5) five hours prior to her termination and 48 hours after the employer documented, in an official memorandum, that her employment would continue, despite the alleged misconduct a week prior". Any adverse judgment by this Court against the Respondents' shall have collateral effects, though not dispositive, in future litigation in federal court. The Respondents' instant Pleading is one of many actions by the employer seeking to quash Stewart's voice, who has consistently maintained her termination originated from racial issues.

Stewart has consistently appealed her issues within the confines of applicable court rules. The collateral effects of such have resulted in the Respondents' advancing a multitude of procedural defenses and vitriolic language towards Stewart for raising a defense of racial discrimination.[1] Now, yet again, the Respondents' misleading/inaccurate facts have concocted an additional strategy to preclude Stewart from being heard on the merits. If this Court does decide to hear Stewart's merits, the Respondents' Pleading seeks to mischaracterize her "actual" arguments and denigrate her and her intent for advocating her issues. The veracity in which both Respondent Attorneys have "joined force" to preclude Stewart from being heard on the merits at every appellate stage is remarkable and unparalleled. Such demonstrates a concern that this Court, may in fact rule adversely against their position. Stewart moves this Honorable Court to preclude the Respondents' from prevailing by **DENYING** their Motion to Dismiss and Alternative Motion to Strike. In support of such, Stewart delineates with specificity the basis for such:

STEWART'S INITIAL APPEAL BRIEF SUBSTANTIALLY COMPLIES WITH THE SOUTH CAROLINA APPELLATE COURT RULES

Stewart submits, contrary to the Respondent's allegations, her initial brief substantially complies with the myriad of requirements set forth by Rule 208(b), SCACR. As demonstrated below, this Court should not dismiss or strike this appeal as inappropriately motioned for by the Respondents. "Dismissal is only appropriate when a brief is so inadequate that the Court cannot interpret it at all." *Bush v. Dictaphone Corp. 161 F.3d 6th Cir. 1998.* The Respondents' make no allegations that the "Arguments" Stewart submitted aggravated any SCACR Rules. The "Arguments" section of the Initial Brief comprises 34 of the 47 pages of the brief. As there are no specific allegations that any of the "Arguments" should be stricken, Stewart counters the Respondents' misleading and inaccurate factual assertions with the following contentions.

[1] The vitriolic advances against Stewart have primarily transpired within pleadings by Oconee County before the ALC and now the subject Joint Motion to Dismiss endorsed by Oconee.

A. Stewart Has Fully Complied With Rule 262(2)(b), SCACR, In Each Of Her Pleadings Before This Court And The Respondents' Allegations Of Non-Compliance Are Devoid Of Truth, Disregards This Court's Prior Ruling And Casts Unprofessional, Irresponsible Aspersions.

The Respondents initiate their "Motion to Dismiss" in Footnote 1, Pg. 2-3, after referencing Stewart's Designation of Matters, by stating:

> **Stewart has repeatedly failed to comply with the requirement to serve ALL documents on SCDEW and Respondent Oconee County beginning with the filing of the notice of appeal with this Honorable Court.**

This statement serves to "paint" Stewart in an unfavorable light before this Court as a repeat violator of this Court's rules. It serves no other purpose because it is definitively inaccurate. First, Stewart's Notice of Appeal, filed and served upon this Court and the Respondents, was deemed to be properly filed and served, by Order of this Court, dated September 18, 2014. See Court Order Exhibit 1. The Order explicitly denied the Respondents' first "Joint Motion to Dismiss" on this basis. It is the Respondents, not Stewart, denigrating this Court's decision by again frivolously stating to this Court "Stewart" failed to comply with the requirement to serve ... the Notice of Appeal ...". If such were in fact true, this Court rightfully would have dismissed this case in its September 18, 2014 Order.

The Respondents' continue casting false aspersions that Stewart also "failed to serve all documents" filed pursuant to Rule 262(2)(b). Such a contention is preposterous. In each of Stewart's three "Motions for Extension of Time", she served and certified service of each pleading to both the SCDEW and Oconee County. (See "Motions for Extension of Time" with "Certificates of Service", dated August 2nd & 29th, October 17th and November 7th, 2014. See also "Certificates of Service" attached to pleadings submitted to this Court dated September 10th and 16th, October 23rd & 29th, 2014.) As a pro se litigant, Stewart is fully aware a significant disadvantage exist before this Court in regard to credibility and court procedure. As such, Stewart has expended great effort to comply with the rules. The Certificate of Service exhibits show Stewart has consistently complied with Rule 262(2)(b). Essentially, the Respondents are attempting to cast Stewart as a "perjurer" to subsequently bring into question the remainder of her appellate issues. This Honorable Court should preclude that from occurring. The Respondents' footnote 1 continues

assailing Stewart through their inference that the Designation of Matters was not properly served pursuant to SCACR Rules. Further, the Respondents' state:

> **Upon review of the DOM [FOOTNOTE 1] ... The 245 pages of miscellaneous documents were no exception to her continued violations of the service rules despite certifying that she had complied with such rules.**

Rule 209(a) does not require the "245 pages of documents" listed in the Designation of Matters to be forwarded to the Respondents. Rule 209(a) requires the Appellant to "set forth with specificity those parts of transcripts, pleadings, orders exhibits, or other materials which [s]he proposes to include in the record on appeal." The Respondents' contentions are contrary to Rule 209(a)'s requirement to only "list" the matters to be designated. This is, yet, another misleading statement proffered to the Court by the Respondent. This serves no purpose other than to "paint" Stewart before this Court as a perjurer to collaterally "infect" this Court's impartiality with suspicion of Stewart's statements in her instant "Motion to Submit Additional Evidence", "Initial Appeal Brief" and subsequent pleadings. The Respondents continues its strategic assailment of Stewart through its admonishment of her in its next statement and quotations of its memorandum to the clerk of this Court on August 7, 2014:

> **This behavior continues despite DEW on August 7, 2014 informing the Court and Stewart that it had not received her *First Motion for Extension to File Stewart's Initial Brief* which led to the Court ruling on the Motion without DEW's knowledge. The letter stated:**
>
> > **The Department first received constructive notice of this motion through receipt of the Court's August 6, 2014, Order granting Stewart's request for extension. While the Department does not oppose any such extension, Rule 240(d), SCACR requires that with regard to any motions filed with the Court, 'a copy shall be served upon each party' in accordance with Rule 262(B), SCACR. The Department respectfully requests that Stewart comply with these rules of procedure for all future filings to avoid prejudice to the Department.**

Here the Respondents further allege Stewart's "behavior" was improper and attempt to offer proof of such although this Court has resolved the issue as cited above. The point here, is that in the Respondents' repetitive message of misconduct by Stewart, they propose this Court to adopt as

true, is a precipitous precursor to convince this Court Stewart's "Initial Appeal Brief" and "Motion For Additional Evidence" are not credible and should be rejected; though their briefs do not directly state such. So much so, the Respondents offered the Court the text of its memorandum to the Clerk of this Court as evidence to dismiss her appeal for disregarding the rules. This Court has repeatedly held that "statements of fact appearing only in argument of counsel will not be considered". *McManus v. Bank of Greenwood, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933)*. In fact, the ALC ordered the Respondents to adhere to Court rules for a multitude of administrative errors and ROA entries the Respondent has inexplicably "lost". Which Stewart contends has extended to their alleged non-receipt of her pleadings. See ALC Order, dated June 9, 2014, pg. 9-10, DOM 13. Stewart refuted these contentions by way of a memorandum submitted to the Clerk of this Court on August 25, 2014 stating:

> **In response to the respondent's letter dated August 07, 2014, I am formally informing the Court that Rule 262(B) has been adhered to in each of my pleadings submitted before the Court to date.**
>
> **Please be informed that the respondent in this case, as shall be briefed in the forthcoming initial brief, has repeatedly and procedurally failed to 1) file a complete Record on Appeal without court order, 2) remove my personal identifying information from upwards of three Records on Appeal filed with the ALC, 3) and has displaced numerous exhibits and pages of pleadings clearly numbered and filed with the SCDEW's Appeal Tribunal and Appellate Panel.**
>
> **Again, I have adhered to the mandates of Rule 262(B) as certified in the Certificate of Service attached to each of my pleadings thus far. However, the respondent's historical administrative errors within the ALC proceedings appear to persist.**

The Respondents should not be permitted in any degree to successfully "paint" Stewart as a "rogue" pro se litigant that has no regard for the rules of the Court, when such is simply untrue. If the Respondents truly seek disposition of this issue they should **argue against the merits of the appeal in their initial brief** and not argue frivolous denigration and mischaracterization of Stewart.

B. Respondents' Allegation Of Stewart's Violation of Rule 208(b) Is False As Evidenced By The Segmentation Of The Initial Brief.

The Respondents' motion pg. 3 alleges Stewart "... obviously prepared [her brief] with no regard for the rules of the Court. Her brief does not fully comply with Rule 208(b) 'Content of Brief' ... ". Rule 208(b), "Content" states initial briefs shall contain a (A)Table of Contents, (B) Statement of Issues on Appeal, (C) Statement of the Case, (D) Arguments, and (E) Conclusion. A close examination of Stewart's Initial Brief establishes search of the above subjects appear in segmentation. They each appear and are located in the initial Brief as indicated: (A) Table of Contents, Brief pg. i-ii, Table of Authorities, Brief page iii-iv, (B) Statement of the Issues on Appeal, Brief pg. v, (C) Statement of the Case, Brief pg. 1-2, Procedural History, Brief pg. 2-3, Statement of Facts, Brief pg. 4-13, (D) Arguments, Brief pg. 13-46, and (E) Conclusion, Brief pg. 47.[2] The Respondents' allegation on this point is clearly false based on the contents of the briefs as referenced.

C. Respondents' Allegation Of Stewart's Violation Of Rule 208(b)(5) Is An Embellishment With Misleading Allegations And Are Simply False

The Respondents' Motion pg. 3, alleges "the over fifty pages of Stewart's Initial Brief ... exceeds the page limit imposed by Rule 208(b)(5), SCACR, "Length of Brief". As recanted above, the Respondents' put forth this argument to characterize Stewart "prepar[ing] [her brief] with virtually no regard for the rules of this Court." This intentional denigration and mischaracterization of Stewart is false and extremely unprofessional. Although, a common lay person with no formalized legal training in advocating before a judiciary body, Stewart's prior occupation, for which she disputes the basis of her termination in the instant case, was as a Court Clerk. As such, she fully understands this Court does in fact have administrative rules of governance. So much so, prior to filing her Initial Appeal Brief and Designation of Matters, she

[2] Rule 208(b) mandates as a minimum segmentation for "Table of Contents", "Statement of Issues on Appeal", "Arguments" and "Conclusions". For the benefit of the Court, Stewart offered additional segmentation of "Table of Authorities", "Procedural History" and "Statement of Facts". Rule 208(b) does not explicitly preclude such. Stewart's Appeal Brief before this Court is essentially the same Initial Brief presented to the ALC, with virtually the same appeal issues with additional collateral issues, due to the ALC's judgment.

reviewed the Appellate Court rules and website. In reviewing the website (www.judicial.state.sc.us), Stewart downloaded Form 13, "Brief of Appellant", from PART II, APPENDIX C, FORMS "which may be used for Rules 201-241, SCACR". Moreover, PART II, APPENDIX C, FORMS states:

> **... these forms are in the nature of examples which can be modified to meet the needs of a particular case (Exhibit 2).**

In accordance with Rule 208(b)(5), Stewart downloaded Form 13, "Brief of Appellant", Exhibit 3. Stewart's Initial Appeal Brief designates roman numerals for numbering the preliminary sections of her Briefs ("Caption Cover Page" [i], "Table of Contents" [i-ii], "Table of Authorities" [iii-iv], and "Statement of the Issues on Appeal" [v-vi].). The actual page numbering of the contested matters within the Initial Brief starts with the "Statement of the Case", pg. 1, and extends through the "Conclusion", Pg. 47, and concludes with a "Certificate of Service" attached and unnumbered. This formatting with roman numerals of the preliminary sections "mirrors" this Court's Form 13, "Brief of Appellant" as exemplified. Comparing Stewart's Brief, this Court's example in Form 13 and Rule 208(b)(5) illustrates she has not "virtually [disregarded] ... the rules of this Court as the Respondent maliciously alleges.

Form 13, pages i-ii, illustrates the use of roman numerals for the preliminary sections of the "Brief of Appellant". Specifically, the roman numerals numbering of the pages in Form 13 starts with and covers the "Table of Contents" and "Table of Authorities", while the page numbering of the substantive claims begins with and covers "Statement of Issues on Appeal", "Statement of the Case", "Facts", "Arguments" and "Conclusion". Exhibit 3. In comparing Stewart's Initial Appeal Brief and Form 13 it is evident that Stewart complied with Rule 208(b)(5)'s 50 page limit for the contested matters and 2) her brief substantially "mirrors" the example set forth in Form 13 by this Court. In counting the total pages of the Initial Brief, the first 6 pages are numbered by roman numerals (Caption Cover Page, Table of Contents, Table of Authorities, and Statement of the Issues On Appeal). The following 47 pages encompass the merits of the appeal (Statement of the Case, Procedural History, Statement of the Facts, Arguments and Conclusion). The last page is the Certificate of Service. The pages allegedly exceeding the 50 page limit encompasses six (6) pages, this Court's Form 13 used roman numerals to count in

preparation of the Initial Appeal Brief's substantive claims. Stewart "mirrored" Form 13's format and counted the exact sections under roman numerals as well.

In reviewing prior briefs submitted before this Court, it is common place to utilize roman numerals to distinguish the preliminary sections of the Initial Appeal Brief and to separately count the remaining pages as the amount permitted by Rule 208(b)(5). Stewart submits she substantially adhered to Rule 208(b)(5) and the principal brief did not exceed the 50 page limitation. **Further, the fact the Respondents' raise an argument of such frivolity speaks of epic proportions to the extent the Respondents have reached to support their contentions.** In the alternative, if this Honorable Court deems this to be a violation of Rule 208(b)(5) that prejudices the Respondents' position, Stewart moves this Court pursuant to Rule 208(b)(5) for leave to exceed the page limitations by 5 additional pages. Considering the aforementioned, a total of 55 pages were submitted.

D. Respondents' Allegation Of Stewarts Intentional Violation Of Rule 208(B)(1)(C) is Misleading As Evidenced By Stewart's Initial Appeal Brief And The Respondents' Own Motion To Dismiss

The Respondents' opening complaint on page 3 of its Motion argues incorrectly that Stewart has placed "improper argument in the 'Statement of the Case'" in violation of Rule 208(B)(1)(C). The Respondents' incorrectly cite the beginning of Stewart's "Statement of the Case" as an example of "argumentative references and phrases":

> **On May 30, 2013, Stewart filed a timely Notice of Appeal of this determination contending the termination was retaliation for submission of "complaints of racial discrimination", amongst other cumulative reasons (AROA 2). On August 17, 2013, Stewart submitted a pleading with thirty-one evidentiary exhibits to the Appeal Tribunal in support of her impending defense (AROA 7-34). Stewart's Appeal Tribunal Hearing commenced on August 20, 2013 before Administrative Hearing Officer Lane K. Cook (hereinafter, "AHO"). During the Tribunal Hearing, Stewart informally moved the AHO to include pleadings with evidentiary exhibits as part of the record and subsequently cross-examined witnesses utilizing such (AROA 168). On August 23, 2013, the AHO mailed his decision that Stewart was discharged for misconduct based on her "acknowledg[ing] ... having told [her supervisor] that what he said about an earlier conversation was inaccurate" (ROA 3-4). Review of Stewart's**

pleading, exhibits, and defense by the AHO were excluded from the Record and not submitted to the Appellate Panel as part of the Record.

Respectfully, our great American Icon Stevie Wonder can "see" that each of the above statements are facts with specific dates and references to the record. This frivolous accusation and argument further evidences the Respondents' desperate attempt to influence this Court that Stewart has "virtually no regard for the rules of this Court". Obviously, the Respondents', particularly Oconee County, would desire nothing more than to quash or substantially limit Stewart's voice in every regard, in this appeal and other proceedings. In order to accomplish such, the Respondents' are attempting to identify a multitude of SCACR Rule violations to establish a basis to dismiss Stewart's appeal without being heard on the merits. Their argument here falls considerably short and Stewart moves this Honorable Court to not permit the Respondents' to successfully "paint" such a picture with frivolous arguments.

I. The Procedural History and Statement of Facts

The Respondents' further their proposition that Stewart has violated Rule 208(b)(1) at page 4 of their motion stating the "Procedural History" is "the second section of the 'Statement of the Case'". This is, yet again, another circumstance where the Respondents are mischaracterizing Stewart's Pleading to be "what they desire it to be" versus what it actually is and states. **Fact: No aspect of Stewart's Initial Brief identified the "Procedural History" as the "second section" of the "Statement of the Case".** This is an example of the Respondents' attempting to mislead the Court. The "Procedural History" provides a summarized history of the course of the proceedings' pleadings before the ALC for this Court's benefit. "The procedural history of a brief is not the same as the facts underlying the substantive legal claims, facts which this court needs to decide the case properly". *Slack v. St. Louis County Gov't. 919 F.2d 98 8th Cir.(1990).*

First, Rule 208(b)(1)(C) does not explicitly delineate a preliminary section for "Statement of Facts" though it does not explicitly preclude such. As recanted above, such section was set forth to provide this Court with the relevant facts of the case for efficient adjudication. Thus, the reference of citation Rule 208(b)(1)(C) and its preclusion of argumentative statements material matters are set forth for the "Statement of the Case" and not the "Statement of Facts" Stewart has provided for the Court's benefit. In a vague manner, the Respondents' allege "almost every

paragraph ... uses argumentative and inappropriate phrases" and even states "there are no cites". Again, this is misleading and false. The "Statement of the Case" extends from pages 4-11 with 22 numbered paragraphs that "cite" to multiple aspects of SCDEW's various Records on Appeal. Further, the Respondents' identify no specifics of 1) what it deems to be evidence argued outside the Record, 2) what the "argumentative phrases or arguments" actually are, and 3) when the Respondent's state "where there is citation to the record, Stewart insert overt argument" they don't identify which citations. Rule 240(b) SCACR, mandates "all motions ... shall state the grounds thereof" for the relief requested. Clearly, the Respondents did not accomplish such here pursuant to Court rules. Stewart cannot adequately refute or correct purported allegations that have not been identified with specificity as the basis to dismiss her appeal. Even more problematic, this results in this Court not having sufficient specificity to address the Respondents' assertions in this matter. Similar to an objection the Respondents' contentions "must be sufficiently specific to inform the ... court of the point being urged by the objector". *Wilder Corp. v. Wilke 330 S.C. 71,76, 497 S.E. 2d 731, 733 (1998).*

As recanted above, each statement the Respondents' refer to as argumentative are facts to which the Respondents' cannot contest with contradicting facts. Stewart did in fact submit each of the pleadings listed in the "Procedural History" to the ALC that the Respondents wrongly deem as "arguments". See Designation of Matters para. no. 8,11,14, and 15 and ALC Order dated, June 9, 2014. No matter the Respondents mischaracterization, the facts remains that the documents referenced were factually filed before the ALC for the stated reasons.[3]

II. Designation of Matters

The Respondents' essentially raise two (2) arguments in opposition to Stewart's DOM. First, Stewart allegedly seeks to include in the Record on Appeal that which was not presented to

[3] In its attempt to discredit Stewart before this Court the Respondents state Stewart actually denigrates the ALC by stating the denial of one of her motions may have occurred prior to receipt of a Traverse Return mailed a day prior to the ALC's Order. Such an assailment on Stewart is vociferous in nature and inherently improper. Such cannot be permitted to go without redress. Stewart's credibility and right to speak before this Court in advocating her cause is no less significant than the Respondent Attorneys. This statement serves actually to "denigrate" Stewart before "this Court". **Fact: The subject Motion denied by the ALC the Respondents refer to assailed by way of U.S. Postal Service first-class mail on March, 17, 2014 by physical deposit in Westminster, SC 29693. On March 18, 2014, the ALC issued its denial Order (Exhibit 4). Exhibit 5, attached, establishes that USPS first-class mail delivery time from zip code 29693 to zip code 29201 is two days.** Though trivial for the Respondents to argue, Stewart offers this evidence and response to curtail the Respondents' attempt to cast Stewart's respect for this or any Court negatively as casually inferred.

the lower court [ALC] which violates Rule 210(c) and (h), SCACR. Second, Stewart has included matters not relevant to the appeal in violation of 209(b), SCACR.

First and foremost, each item listed in Stewart's DOM, were in fact matters before the lower court [ALC] or an Order thereof. A close reading of Rule 210(c) states, "The record [Court of Appeals Record] shall not ... include matter which was not presented to the lower court [ALC] ...". The DOM lists pleadings before the ALC and its various orders. Rule 210(c) lists, "orders pleadings, transcripts, documents and other material" can be part of the Appellate Court Record on Appeal as long as they were submitted to the lower court. The Respondents falsely state that the issues listed in the DOM "were not presented to the lower court" (Respondents' Motion pg. 6). Such a proposition is not credible and essentially states Stewart can't appeal the rulings of the ALC before this Court. "All ... papers and exhibits filed before the Court are part of the record on appeal ...". *Chapman v. Rudd paint Varnish Co. 409 F.2d 635 9th Cir. (1969).* All matters before the ALC and ruled upon, are subject to review by this Honorable Court. The DOM only lists items presented to the ALC, Appellate Panel, and Appeal Tribunal whether the pleadings were denied or granted. As the Supreme Court held in *Powers v City of Aiken: 225 S.C. 115, 177 S.E. 2d 370 (1970)*:

> **This [Court of Appeals] is a court of review. The purpose of an appeal under our procedure is to determine if the lower court [ALC] did something it should not have done, or omitted doing something it should have done.**

The only way for such to be accomplished is for Stewart to submit the issues that were appealed before the **Panel and the ALC** to this Court in her appeal brief.

Second, the Respondents seek dismissal because the alleged matters in the DOM are not relevant to the appeal. The Respondents lists three (3) matters they deem not relevant. However, only one is potentially listed with enough specificity for this Court to address the merits and for Stewart to offer a rebuttal. They are "1) the thirty-one (31) documents the Panel did not consider; 2) the various motions not relevant to the appeal and 3) the factual assertions found in Stewart's motions to the Tribunal Panel and ALC located throughout Stewart's brief". Items 2 and 3 are very generic and the Respondents do not state with specificity the assertions within which they refer, to afford Stewart an opportunity to rebut or afford a meaningful review by this Court to adjudicate the pleading. "... [I]ssues must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge." *Hennon v Century BMW,*

395 S.C. 461, 466,719 S.E. 2d 640, 642 (2011). The Respondents' contentions are neither "precise" or "direct" on the various motions not relevant to the appeal or the factual assertions before the Tribunal, Panel, and ALC in Stewart's Initial

The remaining issue, item 1, is negated by Stewart's Initial Appeal Brief before the ALC, (Exhibit 6), and Stewart's Initial Appeal Brief before this Court. Both briefs are virtually identical, with the exception of collateral issues appealed before this Court as a result of the ALC's rulings. Stewart's Brief before the ALC specifically appealed to the ALC the use of the 31 Exhibits attached to the "Evidence Motion" as being part of the Tribunal Record and cited the transcripts citation where the exhibits were utilized during testimony and cross- examination. The ALC rendered rulings on such, and Stewart is collaterally entitled to appeal the ALC's judgment, which encompasses the thirty-one (31) exhibits the Respondents wrongly state were not before the lower court, panel, or tribunal. "To bring grounds for relief to the attention of an appellate tribunal, the rule[s] oblige [Stewart] to offer a written argument containing her contentions with respect to the reasons presented". *Rosenberger v. Rector & Visitors of the University of Virginia, 18 f.3d 269 4th Cir. (1992).* "All issues in dispute should be raised before the Administrative Law Judge or else, they may be lost on appeal." *Trinity Industries, Inc. v. Occupational Safety and Health Review Comm., 206 F.3d 539 5th Cir. (2000).* "It is well established that an aggrieved party desiring to preserve issues for judicial review must raise them before the administrative law judge, offer them clearly in a party's petition for review, and offer a modicum argumentation in support of review." *Am. Jur. 2d Section 108 Preservation of Issues For Appeal 2014, Gioioso & Sons, Inc. v. Occupational Safety and Health Review Comm. 115 F.3d 100 1st Cir. (1997).* Stewart's Initial appeal brief before the ALC clearly preserved her issues presented within her appeal brief before this Court. Pursuant to Rule 210(b) materials filed with the ALC are in the appellate record and Stewart may rely on those materials furnished for appellate review.

E. Henning v. Kaye Does Not Mandate The Dismissal Of Stewart's Initial Appeal Brief Due To A Rule Violation

Closer examination of our state's Supreme Court decision in *Henning v. Kaye 307 S.C. 436, 415 S.E. 2d 794 (1992)* establishes a minimum of ten (10) rule violations transpired with the Appellant's brief. The DOM was insufficient. "1) The components of the brief [were] incorrectly

organized, and 2) labeled, 3) the issues were not distinctively headed, 4) the table of authorities were not alphabetized, or 5) and no reference to the body of the brief, 6) the statement of the case contained contested matters, 7) and omitted required information, and 8) the arguments contain no citations to the record, 9) or the cases listed in the table of authorities". *Henning*, Id. In this instance dismissal would have been appropriate "when the brief [was] so inadequate that the Court [could] not interpret it at all". *Bush*, supra. Contrary to the Appellant's in *Henning*, Stewart has only been alleged to have violated a maximum of three (3) rules. Though, Stewart maintains she has submitted a proper brief pursuant to SCACR.

In *Henning*, even after our Supreme Court deemed that the Appellant Counsel's brief failed to comply with the rules, the Court stated:

> **We decline to do so and deny the motion to dismiss as to the Hennings**

Our Supreme Court simply ordered:

> **... [A]appellant shall ... serve and file an initial brief that fully comply with Rule 207, [SCACR].**

Though the Respondents cite *Henning* as guidance to dismiss Stewart's appeal, the Supreme Court's actions direct lower court's to order parties to amend their briefs and resubmit them in compliance with SCACR rules. Though Stewart maintains her brief is properly submitted, if the court deems otherwise, the "nuclear option" the Respondent's request, is unreasonable and desperate.

F. The Respondents Falsely Argue They Cannot Respond To Stewart's Appeal Brief As Filed Inferring Prejudice

The Respondents' Motion page. 5 states, "the entire 'Statement of the Case' and 'Statement of the Facts' are replete with improper and unacceptable argument making impossible for DEW and Oconee to address ...". Consistent with the theme of their pleading, this assertion is also false and misleading.

First, as recanted repeatedly above, the Respondents do not identify with any modicum of specificity the "improper and unacceptable" arguments. Such does not "sufficiently inform the

court of the point being urged." *Wilder*, supra. In addition, Stewart cannot redress the Respondent's contentions in any form of rebuttal, because they are vague and generic.

Next, the Respondents' proposition that they cannot respond to Stewart's Appeal Brief, inferring prejudice, is patently false. As recanted above, Stewart filed virtually the same appeal brief with this Court as was filed with the ALC. Such contained the same "Statement of Facts" and "Statement of the Case". See and Compare the instant Initial Appeal Brief and ALC Initial Appeal Brief, Exhibit 6.

The Respondents are fully capable of responding to Stewart's Initial Appeal Brief as filed and their Motion should be denied. Exhibit 6 establishes their contentions are simply false.

CONCLUSION

For the reasons stated above, Stewart moves this Honorable Court to DENY the Respondents' assailment of Stewart presented through its Motion to Dismiss and Alternatively Strike. In the alternative, if this Court deems any portion of Stewart's appeal "substantially" to violate the SCACR, Stewart moves to resubmit her entire brief "anew" in accordance with SCACR without prejudice or limitation to her prior filing.

Dated this 28th day of November 2014.

Respectfully Submitted,

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2142 Toccoa Highway
Westminster, South Carolina 29693
864-647-2216
stephstewart77@yahoo.com
Pro-Se

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

SWORN AFFADAVIT

PERSONALLY came and appeared before me, the undersigned Notary, the within named Stephanie Stewart, who is a resident of Oconee County, 2142 Toccoa Highway, State of South Carolina, 29693, and makes her statement and Sworn Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts set forth within her pleading styled Appellant's Return in Opposition to the Respondents' Joint Motion to Dismiss Appellant's Appeal for Failure to Comply with the South Carolina Appellate Court Rules or, In the Alternative, Motion to Strike dated November 28, 2014, is true and correct to the best of her knowledge.

Stephanie Stewart
Affiant

Dated and sworn to before me this the
28TH day of NOVEMBER 2014.

Notary Public of South Carolina
My Commission Expires: 6/16/20

BRIAN MCGHEE
Notary Public - State of South Carolina
My Commission Expires June 16, 2020

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.: 2014-001484

Stephanie Stewart,
Appellant,

v.

South Carolina Department of Employment & Workforce, and Oconee County, South Carolina,
Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the above "Appellant's Return in Opposition to the Respondents' Joint Motion to Dismiss Appellant's Appeal for Failure to Comply with the South Carolina Appellate Court Rules or, In the Alternative, Motion to Strike", by depositing the same in the United States mail, postage prepaid, on December 1, 2014 to each parties' address of record listed in the above captioned case.

SCDEW
Office of General Counsel
Attn: Attorney E.B. Trey McLeod, III
Post Office Box 8597
Columbia, South Carolina 29202

Oconee County
c/o: McNair Law Firm
Attn: Attorney Reginald Gay
Post Office Box 447
Greenville, South Carolina, 29602

Dated this 1st day of December 2014.

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

EXHIBIT
tabbies
1

The South Carolina Court of Appeals

Stephanie Stewart, Appellant,

v.

South Carolina Department of Employment & Workforce, and Oconee County, SC, Respondents.

Appellate Case No. 2014-001484

ORDER

Because Appellant's proof of service certifies she timely served Respondents with the notice of appeal, Respondents' motion to dismiss is denied.

Appellant's request for a thirty-day extension to serve and file her initial brief and designation of matter is granted.

John Cannon Fleming

FOR THE COURT

Columbia, South Carolina

cc:
Stephanie Stewart
Eugene Belton McLeod, III, Esquire

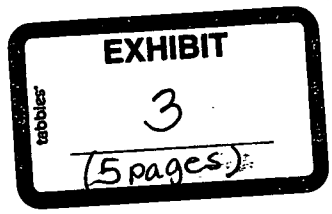
FILED
1/8/14

PART II
APPENDIX C

FORMS

This Appendix contains forms which may be used for Rules 201-241, SCACR. These forms are in the nature of examples which can be modified to meet the needs of a particular case. In the forms, optional language is shown in brackets.

File Type		
Acrobat	Word	Form 1 - Notice of Appeal in a Civil Case
Acrobat	Word	Form 2 - Notice of Appeal for a Cross Appeal in a Civil Case
Acrobat	Word	Form 3 - Notice of Appeal from Common Pleas Regarding a Conviction in Magistrates or Municipal Court
Acrobat	Word	Form 4 - Notice of Appeal from a Sentence Imposed by the Court of General Sessions
Acrobat	Word	Form 5 - Notice of Appeal from the Family Court in a Juvenile Delinquency Matter
Acrobat	Word	Form 6 - Notice of Appeal from Administrative Tribunal
Acrobat	Word	Form 7 - Proof of Service of a Notice of Appeal
Acrobat	Word	Form 8 - Letter to the Appellate Court Clerk Filing the Notice of Appeal
Acrobat	Word	Form 9 - Letter to Clerk of Lower Court Filing Notice of Appeal
Acrobat	Word	Form 10 - Agreement to Order Less Than the Entire Transcript
Acrobat	Word	Form 11 - Letter Ordering Transcript from Court Reporter
Acrobat	Word	Form 12 - Notice That Transcript Has Not Been Timely Received
Acrobat	Word	Form 13 - Brief of Appellent
Acrobat	Word	Form 14 - Designation of Matter to be Included in the Record on Appeal
Acrobat	Word	Form 15 - Record on Appeal
Acrobat	Word	Form 16 - Certificate of Counsel in Final Brief
Acrobat	Word	Form 17 - Itemized Statement of Costs
Acrobat	Word	Form 18 - Petition for a Writ of Certiorari to the Court of Appeals
Acrobat	Word	Form 19 - Petition for a Writ of Certiorari in Post-Conviction Relief Actions
Acrobat	Word	Form 20 - Appendix in Post-Conviction Relief Actions
Acrobat	Word	Form 21 - Confidential Reference List of Redacted Identifiers



FORM 13
BRIEF OF APPELLANT*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

George E. Brown, Circuit Court Judge

Case No. 2000-CP-00-0000

Stephen L. Doe, as Personal Representative of the Estate of John B. Doe, Respondent,

v.

Jane C. Roe, Appellant.

[INITIAL] BRIEF OF APPELLANT

John E. Smith
Post Office Box 123
Greenville, South Carolina 29000
(864) 000-0000
Attorney for Appellant

* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

TABLE OF CONTENTS

TABLE OF AUTHORITIES*

CASES

STATUTES

OTHER AUTHORITIES

*The authorities cited are fictitious and intended to show the form of citation only.

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND THIS ACTION IS BARRED BY RES JUDICATA?

2. DID THE TRIAL COURT ERR IN CHARGING THE JURY THAT FRAUD MUST BE PROVED BY A PREPONDERANCE OF THE EVIDENCE?

STATEMENT OF THE CASE

On February 1, 2000, John B. Doe brought this action alleging fraud against Jane C. Roe. Roe answered alleging Doe's claim was precluded by judgment in a prior contract action between the parties. The contract action was tried on November 15, 1990, and judgment was entered on December 1, 1990.

Doe died before the trial of this case. By order of the court dated February 15, 2000, Stephen L. Doe, as personal representative, was substituted as plaintiff.

On August 15, 2000, the case was tried by a jury which found for Doe and awarded him $10,000.00 in damages. On September 15, 2000, Roe served the Notice of Appeal on Doe.

FACTS

[Counsel may wish to set out the facts relevant to the arguments at this point in the brief. This, however, is optional, and the relevant facts may be included in the discussion of each argument. In either case, the brief must contain references to where the salient facts can be found in the Record on Appeal. In Initial Briefs, these references shall be made in the manner specified by Rule 208(b)(4), SCACR. In the Final Briefs, these references shall be to the page and line number of the Record on Appeal (i.e., R.p. 37, lines 7-8). Rules 211(b)(1), SCACR.]

ARGUMENTS

I. BECAUSE RESPONDENT COULD HAVE RAISED FRAUD IN HIS PRIOR BREACH OF CONTRACT SUIT AGAINST APPELLANT, HE IS BARRED BY RES JUDICATA FROM BRINGING THIS SUIT.

[Set out discussion and citations of authority.]

II. BECAUSE FRAUD MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE, THE TRIAL COURT ERRED WHEN IT CHARGED THE JURY THAT THE RESPONDENT MUST PROVE FRAUD BY A PREPONDERANCE OF THE EVIDENCE.

[Set out discussion and citations of authority.]

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

January 20, 2001

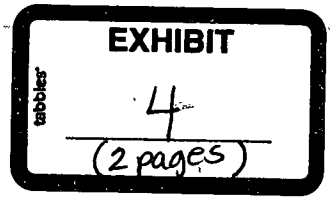
/s/ John E. Smith
John E. Smith
Post Office Box 123
Greenville, South Carolina 29000
(864) 000-0000
Attorney for Appellant

Subject: Staggers-Stewart v. SCDEW and Oconee County 13A0555 Court's Order on Motion for Sanctions and Record on Appeal Issues

From: Teckla Henderson (thenderson@scalc.net)

To: stephstewart77@yahoo.com; TMcLeod@dew.sc.gov; rgay@mcnair.net;

Date: Tuesday, March 18, 2014 3:55 PM



Dear Parties:

The Court is in receipt of the Appellant's Motion for Sanctions filed March 3, 2014 and the Department's Response filed March 12, 2014. Having thoroughly considered the parties' arguments, the Court has decided to **DENY the Appellant's Motion for Sanctions**.

In regards to the Appellant's concerns with the Amended Record on Appeal filed February 19, 2014, the Court has ruled that:

1. The Appellant's Exhibits 11-20 and 30 of the pleading provided to the Appeal Tribunal shall be filed by the Department as a **Supplement to the Amended Record on Appeal** and served upon the other parties **no later than Monday, March 24, 2014**.
2. The audio version of Claimant's Exhibit 1 submitted into evidence before the Appeal Tribunal would be duplicative as a transcribed version of the same is included in the Amended Record on Appeal at pages 107-124 with an Affidavit signed by the Appellant included on page 125 attesting to the truth and accuracy of the transcript.
3. Pages 21-23 of the Appellant's Written Arguments to the Appellate Panel are not considered evidence, and therefore, do not need to be included in the Amended Record on Appeal. Moreover, the Department has stated that it is not in possession of pages 21 and 22, and 23 is a Certificate of Service page.
4. According to the Department, a transcript of the Appellate Panel hearing does not exist, and thus, cannot be made part of the Amended Record on Appeal.
5. Page 66 of the Amended Record on Appeal reveals the Appellant's personal identifying information. The Court will redact this information from both of the filed copies of the Amended Record on Appeal today.

In regards to the briefing schedule, the Court is requiring that the Brief of Appellant be filed with the Court and served on the opposing parties within fifteen (15) days from the filing of the Supplement to the Amended Record on Appeal. The Respondents' briefs shall be due twenty (20) days after the filing of the Brief of Appellant. The Appellant may file a Reply brief ten (10) days after the filing of the Brief of Respondents, if she chooses to do so.

Should there be any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Teckla S. Henderson

Judicial Law Clerk to The Honorable Shirley C. Robinson

South Carolina Administrative Law Court

Edgar Brown Building

1205 Pendleton Street, Suite 224

Columbia, South Carolina 29201

(803) 734- 6402 Chambers

(803) 734- 6400 Fax

United States Postal Service

Postage Price Calculator

Domestic Services

EXHIBIT tabbies 5 (2 pages)

* See next page, showing expected delivery date of ~~AND~~ Dec 3 if mailed Dec 1 (2days)

Letter, weight 0 lb 1.0 oz (0.028 kg), mailed on December 1 after 2:00 PM, from WESTMINSTER SC 29693 to COLUMBIA SC 29201

Priority Mail Express™ Options - Money Back Guarantee	Scheduled Delivery Day	Price	Online Price
Priority Mail Express 1-Day™	Tue, Dec 2 by 12:00 PM	$16.95	$13.09
Priority Mail Express 1-Day™ Flat Rate Envelope USPS-Produced Envelope: 12-1/2" x 9-1/2"	Tue, Dec 2 by 12:00 PM	$19.99	$18.11
Priority Mail Express 1-Day™ Legal Flat Rate Envelope USPS-Produced Envelope: 15" x 9-1/2"	Tue, Dec 2 by 12:00 PM	$19.99	$18.11
Priority Mail Express 1-Day™ Padded Flat Rate Envelope USPS-Produced Envelope: 12-1/2" x 9-1/2"	Tue, Dec 2 by 12:00 PM	$19.99	$18.11

Priority Mail Express™ Hold For Pickup Options - Money Back Guarantee	Scheduled Delivery Day	Price	Online Price
Priority Mail Express 1-Day™ Hold For Pickup	Tue, Dec 2 by 3:00 PM	$16.95	$13.09
Priority Mail Express 1-Day™ Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 12-1/2" x 9-1/2"	Tue, Dec 2 by 3:00 PM	$19.99	$18.11
Priority Mail Express 1-Day™ Legal Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 15" x 9-1/2"	Tue, Dec 2 by 3:00 PM	$19.99	$18.11
Priority Mail Express 1-Day™ Padded Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 12-1/2" x 9-1/2"	Tue, Dec 2 by 3:00 PM	$19.99	$18.11

Priority Mail® Options	Expected Delivery Day	Price	Online Price
Priority Mail 2-Day™	Thu, Dec 4	$5.75	$5.05
Priority Mail 2-Day™ Flat Rate Envelope USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, Dec 4	$5.75	$5.05
Priority Mail 2-Day™ Legal Flat Rate Envelope USPS-Produced Envelope: 15" x 9-1/2"	Thu, Dec 4	$5.90	$5.25
Priority Mail 2-Day™ Padded Flat Rate Envelope USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, Dec 4	$6.10	$5.70
Priority Mail 2-Day™ Gift Card Flat Rate Envelope USPS-Produced Envelope: 10" x 7"	Thu, Dec 4	$5.75	$5.05
Priority Mail 2-Day™ Small Flat Rate Envelope USPS-Produced Envelope: 10" x 6"	Thu, Dec 4	$5.75	$5.05
Priority Mail 2-Day™ Window Flat Rate Envelope USPS-Produced Envelope: 10" x 5"	Thu, Dec 4	$5.75	$5.05

Priority Mail® Hold For Pickup Options	Expected Delivery Day	Price	Online Price
Priority Mail 2-Day™ Hold For Pickup	Thu, Dec 4	Not available	$5.05
Priority Mail 2-Day™ Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, Dec 4	Not available	$5.05
Priority Mail 2-Day™ Legal Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 15" x 9-1/2"	Thu, Dec 4	Not available	$5.25
Priority Mail 2-Day™ Padded Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 12-1/2" x 9-1/2"	Thu, Dec 4	Not available	$5.70
Priority Mail 2-Day™ Gift Card Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 10" x 7"	Thu, Dec 4	Not available	$5.05
Priority Mail 2-Day™ Small Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 10" x 6"	Thu, Dec 4	Not available	$5.05
Priority Mail 2-Day™ Window Flat Rate Envelope Hold For Pickup USPS-Produced Envelope: 10" x 5"	Thu, Dec 4	Not available	$5.05

First-Class Mail® Options	Expected Delivery Day	Price	Online Price
First-Class Mail® Stamped Letter	Wed, Dec 3	$0.49	Not available
First-Class Mail® Metered Letter	Wed, Dec 3	$0.48	Not available

Priority Mail Express Service Commitments

Product	Drop-Off By	Facility Type	Address
Priority Mail 2-Day™	Mon, Dec 1 by 4:30 PM	POST OFFICE	800 E MAIN ST WESTMINSTER SC 29693
Priority Mail 2-Day™ Hold For Pickup	Mon, Dec 1 by 4:30 PM	POST OFFICE	800 E MAIN ST WESTMINSTER SC 29693
Priority Mail Express 1-Day™	Mon, Dec 1 by 4:30 PM	POST OFFICE	800 E MAIN ST WESTMINSTER SC 29693
Priority Mail Express 1-Day™ Hold For Pickup	Mon, Dec 1 by 4:30 PM	POST OFFICE	800 E MAIN ST WESTMINSTER SC 29693

Priority Mail Express Items need to be mailed by a certain time for us to meet our delivery commitment.

Use the Service Commitment Lookup Tool for service commitments and for Priority Mail Express drop-off times and locations.

IN THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Appeal from a Decision of the Appellate Panel of the South Carolina Department of Employment and Workforce

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

STEPHANIE C. STAGGERS STEWART,
Appellant,

vs.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE AND OCONEE COUNTY, SOUTH CAROLINA
Respondents.

INITIAL APPEAL BRIEF OF APPELLANT
April 8, 2014

Stephanie C. Staggers Stewart
2142 Toccoa Highway
Westminster, South Carolina 29693
864-647-2216
stephstewart77@yahoo.com

Appellant, Pro-Se

TABLE OF CONTENTS

AUTHORITIES

United States Constitution and South Carolina Constitution

1. U.S. Cont. Amend. V
2. U.S. Cont. Amend. XIV
3. S. C. Cont. Art. I § 22

Statutes and Regulations

1. S. C. Code Ann. 41-35-750
2. S. C. Code Ann. 1-23-310
3. S. C. Code Ann. 1-23-380 (A) (5)
4. S. C. Code Ann. 1-23-610 (D) (e)
5. S. C. Code Ann. 1-23-380 (3)
6. S. C. Code Ann. 41-35-120 (2) (a)
7. S. C. Code Ann. Reg. Article 3
8. S. C. Code Ann. Reg. § 47-52 (B) (1)
9. S. C. Code Ann. Reg. § 47-51 (C) (1)

Court Rules

1. SCALC Rule 36 (B) (1)

Court Decision Citations

1. Barton v. SCDEW, Docket No.: 10-AW-30-0438-AP
2. Baxter v. Martin Bros., Inc., 630 S.E. 2d 42, 43 (2006)
3. Boynton v. Neubeck 296 N.W. 636, 642 (Wis. 1941)
4. Deese v. State Bd. Of Dentistry, 332 S.E. 2d 539, 541 (Ct. App. 1985)
5. Friends of the Earth v. Pub Serv. Comm'n of S.C. 692 S.E. 2d 910, 913 (2010)
6. Lee v. S.C. Employment Sec. Comm'n 291 S.E.2d 378, 379 (S.C. 1982)
7. Leventis v. S.C. Dep't. of Health and Envt. Control, 590 S.E. 2d 643, 650 (Ct. App. 2000)
8. Liberty Mutual Ins. Co. v. S.C. Second Injury Fund, 611 S.E. 2d 297 (Ct. App. 2005)
9. Merck v. South Carolina Employment Sec. Comm'n, 351 S.E. 2d 338, 339 (1986)
10. Ogburn-Matthews v Loblolly Partners, 505 S.E. 2d, 598, 603 (Ct. App. 1998)
11. Payne v. Antoine's Restaurant, 217 So. 2d 514 (La. App 1969)
12. Pickering v. Bd. of Edu, 157 F3d 271, 277, 278 (4th Cir. 1994)
13. Porter v. South Carolina Pub. Serv. Comm'n. 507 S.E. 2d 328, 332 (1998)
14. Randle v. Administrator, La. Office of Employment Sec., 496 So. 2d 488, 492 (La Ct. App. 1986)
15. Rankin v. McPherson, 483 U.S. 378, 97 L. Ed. 2d 315 U.S. Supreme Court (1987)
16. S.C. Dep't. of Corrections v. Bryant, Docket No.: 12-ALJ-30-0014-AP (2013)
17. Schwan's Home Services, Inc. v. SCDEW, Docket No.: 11-ALJ-22-0317-AD
18. Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 550 S.E. 2d 287, 292 (2001)
19. Shealy v. Aiken, 535 S.E. 2d 438, 442 (2000)
20. Sheff v. Board of Review Illinois, 470 N.E. 2d 1044 (Ct. App. IL 1984)
21. Sparks v. SCDEW and Newark Electronics Corp., Docket No.: 10-ALJ-22-0953-AP (2011)
22. State v. Allen, 634 S.E. 653, 656 (2006)
23. Todd's Ice Cream, Inc. v. S.C. Dept. of Emp. Sec. Comm., 315 S.E. 2d 373, 375 (Ct. App. 1984)
24. Urofsky v. Gilmore, 216 F.3d 401, 406 4th Circuit Court of Appeals (2000)

Law Reviews

1. 76 Am. Jur. 2d Unemployment Compensation 71 (Nov. 2010)
2. 76 Am. Jur. 2d Unemployment Compensation 69 (Nov. 2010)

STATEMENT OF THE ISSUES ON APPEAL

I. STEWART REQUESTS THE COURT GRANT HER MOTION FOR LEAVE TO PRESENT ADDITIONAL EVIDENCE AND ORDER THAT THE ADDITIONAL EVIDENCE BE TAKEN BEFORE THE SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

II. WHETHER THIS COURT'S APPELLATE REVIEW OF A VARIANT RECORD ON APPEAL VIOLATES STEWART'S APPELLATE DUE PROCESS RIGHTS BECAUSE THE CURRENT RECORD ON APPEAL WAS NOT SUBMITTED TO OR CONSIDERED BY THE LOWER APPELLATE PANEL AND WHETHER SUCH REQUIRES A REMAND FOR FURTHER PROCEEDINGS DUE TO ERROR OF LAW, ABUSE OF DISCRETION, UNLAWFUL PROCEDURE AND/OR VIOLATION OF CONSTITUTIONAL AND STATUTORY PROVISIONS

III. WHETHER THE APPELLATE PANEL ERRED OR ABUSED ITS DISCRETION IN REFUSING TO CONSIDER AND ENTER INTO THE HEARING RECORD STEWART'S PLEADINGS WITH DOCUMENTARY EVIDENCE CONTRARY TO S.C. CODE ANN. REGS. § 47-52 B (1) STATUTORY PROVISIONS AND DID SUCH VIOLATE STEWART'S PROCEDURAL AND SUBSTANTIVE CONSTITUTIONAL DUE PROCESS RIGHTS RESULTING IN SUBSTANTIAL PREJUDICE?

IV. WHETHER THE APPEAL TRIBUNAL ERRED OR ABUSED ITS DISCRETION IN SUBMITTING AN INCOMPLETE RECORD OF APPEAL TO THE APPELLATE PANEL CONTRARY TO S.C. CODE ANN. REGS. § 47-52 (B) (1) STATUTORY PROVISIONS AND DID SUCH VIOLATE STEWART'S PROCEDURAL AND SUBSTANTIVE CONSTITUTIONAL DUE PROCESS APPEAL RIGHTS REQUIRING REMAND FOR FURTHER PROCEEDINGS?

V. WHETHER THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD ESTABLISH THE APPELLATE PANEL'S RULING THAT STEWART WAS TERMINATED FOR EMPLOYEE MISCONDUCT OR FOR E-MAILING CONCERNS OF RACIAL OVERTONES AND WHETHER THE AGENCY ERRED AS A MATTER OF FACT AND CONCLUSION OF LAW?

VI. WHETHER AS A MATTER OF FACT AND CONCLUSION OF LAW STEWART'S ALLEGED MISCONDUCT MET THE STANDARD OF CAUSE FOR TERMINATION AS DELINEATED IN THE EMPLOYER'S EMPLOYEE HANDBOOK'S POLICY FOR EMPLOYEE CODE OF CONDUCT AND DISCIPLINE?

VII. WHETHER STEWART, AS A PUBLIC EMPLOYEE, EXERCISING HER FIRST AMENDMENT CONSTITUTIONAL RIGHT TO PURSUE A GRIEVANCE, PURSUANT TO THE EMPLOYER'S EMPLOYEE HANDBOOK, DISPLAYED MISCONDUCT BY VERBALLY DISAGREEING WITH THE ACCURACY OF THE EMPLOYER'S RECOLLECTION OF FACTS SURROUNDING HER GRIEVANCE AS A MATTER OF LAW?

VIII. WHETHER SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE APPELLLATE PANEL'S FINDINGS THAT STEWART COMMITTED MISCONDUCT WERE CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD?

STATEMENT OF CASE

This matter is before the Administrative Law Court, (hereinafter, "ALC" and/or "Court"), pursuant to *S.C. Code Ann. § 41-35-750*. This appeal arises from the decision of the South Carolina Department of Employment and Workforce (hereinafter, "Respondent" or "SCDEW", through its Appellant Panel, which found Appellant (hereinafter, "Stewart") was disqualified from unemployment benefits compensation for twenty weeks effective May 9, 2013 through September 21, 2013 with a corresponding monetary reduction upon finding she was discharged for misconduct. (Amended Record on Appeal 60, hereinafter "AROA" and "SROA" for Supplement to Amended Record on Appeal). The Appellate Panel decision affirmed the Appeal Tribunal decision and Claim Adjudicator's decision.

On May 23, 2013, the Claims Adjudicator mailed a decision to Stewart stating that she was discharged from her position with the Oconee County Summary Court as a result of misconduct for allegedly calling her supervisor "a liar". Specifically, the Claims Adjudicator determined the separation was a result of improper actions and improper behavior. (AROA 60). On May 30, 2013, Stewart filed a timely Notice of Appeal of this determination contending the termination was retaliation for submission of "complaints of racial discrimination", amongst other cumulative reasons. (AROA 2). On August 17, 2013, Stewart submitted a pleading with thirty-one evidentiary exhibits to the Appeal Tribunal in support of her impending defense. (AROA 7-34). Stewart's Appeal Tribunal Hearing commenced on August 20, 2013 before Administrative Hearing Officer Lane K. Cook, (hereinafter, "AHO") who, on August 23, 2013 mailed his decision that Stewart was discharged for misconduct based on her "acknowledg[ing] ... having told [her supervisor] that what he said about an earlier conversation was inaccurate." (ROA 3-4). Review of Stewart's pleading, exhibits, and defense by the AHO were excluded from the Record and not submitted to the Appellate Panel as part of the Record. On August 31, 2013, Stewart filed a Notice of Appeal. On October 13, 2013 Stewart received a copy of the Record on Appeal before the Appellate Pane and in-turn on October 18, 2013 submitted a pleading moving the Appellate Panel to include her previously proffered motion and exhibits. (AROA 36-39). Stewart renewed her motion on October 22, 2013 during the Appellate Panel Hearing through submission of written arguments and testimony on the Record (AROA 40-59). On October 25, 2013 the Appellate Panel held, "We find credible the testimony of the employer-witness judge particularly since he immediately reported the claimant's disrespectful comments to the lead court clerk. Therefore, we find the claimant was discharged for misconduct connected with employment". (AROA 149-153).

PROCEDURAL HISTORY

On December 11, 2013, the SCDEW filed the initial Record on Appeal. Subsequently, on December 20, 2013 Stewart filed four motions styled: (1) Motion to Compel the Respondent to Correct and Resubmit the Entire Record on Appeal, (2) Motion for Consent to File an Enlarged Initial and Reply Brief, (3) Motion for Enlargement of Time to File Initial and Reply Brief, and (4) Motion to Compel Respondent to Redact Appellant's Personal Identification Information from Record on Appeal. On January 6, 2014, the Respondent filed a response in opposition to Stewart's motion to file an enlarged initial and reply briefs contending Stewart sought to raise a filing of racial grievances defense not raised in the lower Appellate Panel. Stewart filed a reply in opposition on January 17, 2014 arguing such enlarged petition was to only present the facts and established the racial grievance defense was raised to the lower Appellate Panel. On January 22, 2014, the Respondent filed a Notice of Consent and Motion to Supplement the Record on Appeal and included a

Supplemental Record on Appeal as an attachment. On January 31, 2014, Stewart submitted a response in opposition to Respondent's motion arguing the Supplemental Record on Appeal further excluded Appellate Panel Transcripts and evidence submitted during the Appeal Tribunal. On February 4, 2014, this Court issued an Order directing the Respondent to resubmit the Record on Appeal and all other information not properly included in the original Record on Appeal filed on December 11, 2014. On February 17, 2014, the Respondent filed the Record on Appeal and again excluded Appellate Panel Transcripts, Evidentiary Exhibits before the Appeal Tribunal, and included Stewart's personal social security number in the Record[1]. On March 3, 2014, Stewart filed a motion for sanctions, correction of Record on Appeal and that the briefing deadline be held in abeyance due to an incomplete Record on Appeal filed by the Respondent for the third time. On March 12, 2014, the Respondent filed a response conceding some proffered evidence was missing and refusing to provide Appellate Panel Transcripts reasoning they are not evidence. On March 17, 2014, Stewart mailed a traverse to the Respondent's reply to her sanctions motion. On March 18, 2014, the Judicial Clerk of the Honorable Administrative Law Judge Shirley C. Robinson, Ms. Teckla Henderson forwarded an email denying Stewart's Sanction Motion and request for Appellate Panel Transcripts. The email, absent a signed Order from the Judge, stated only the Appellant's Motion and Respondent's Response were considered, presumably because the Judge's decision was made prior to receiving Stewart's Traverse. As a result, Stewart filed a Motion for Reconsideration on March 19, 2014 and Ms. Henderson forwarded an email absent a signed Order by the Judge, denying Stewart's Motion. As a result, this Initial Brief follows:

STATEMENT OF FACTS

From a reasonable fact finder's perspective, the facts are simple and straightforward. On May 3, 2013, Stewart was involuntarily transferred to a work location for which she was previously reassigned as a remedy for racial animus grievances nearly two years prior. On April 30, 2013, prior to the involuntary transfer, Stewart emailed a grievance to her employer refuting alleged theft accusations by a senior co-worker and raised a whistleblower complaint of fraudulent overtime reporting by the subject co-worker. As a result, forty-eight hours later, during an unusual "audio-recorded" closed-door Human Resource Meeting, the employer and senior co-worker directed Stewart to transfer the next business day, back to the office whereby she experienced racial animus. Initially, Stewart declined to transfer back into what she knew to be a racially insensitive and hostile environment. Subsequently, Stewart entered into an agreement with her employer to exercise administrative leave for the remaining portion of the day to reach a definitive decision by close of business on May 3, 2013. Prior to the close of the meeting, Stewart moved to personally converse with the employer in the co-worker's absence to discuss facts surrounding her grievance. In recollection of facts surrounding Stewart's grievance, Stewart queried the employer on events involving the employer and an additional co-worker concerning payroll reporting documents and previous complaints of the same nature that supported the validity of her grievance. (ROA 41-42). During the discussion of the subject grievance, Stewart replied to the employer's non-recollection "that's inaccurate" and the employer characterized such as calling him a liar. (ROA 41-42). The employer ended the discussion perceiving to be called "a liar" in a circumstance where the employee's recollection of facts concerning her grievance

[1] The Court's February 4, 2014 Order granted Stewart's Motion to compel the Respondent to redact her social security number from the entire Record on Appeal pursuant to SCALC Rule 36 (B).

differed from his perspective. Immediately thereafter Stewart was directed to depart the office on administrative decision-making leave for the remainder of the day. No discussion of her being terminated was discussed or mentioned by the employer.

After notifying the employer of her intent to transfer, Stewart complied with the employer's directives and timely reported to her reassignment on May 6, 2013. After three hours and one day of authorized vacation leave commencing the latter portion of May 6, 2013 through May 7, 2013, Stewart, on May 9, 2013 forwarded a grievance by email, citing prior history of racial overtones as a basis for documenting her written products within the office. Five hours later Stewart returned from lunch and was subsequently terminated by her employer for lack of professionalism and insubordination; allegedly exhibited approximately one week prior, on May 3, 2013. Specifically, the employer cited the Oconee County Policy and Procedure Manual, (hereinafter, "Employee Handbook") as the basis for Stewart's termination.

Stewart, from the inception of this case, vehemently denied committing the misconduct as recanted by the employer and contended her termination was actually retaliation for emailing a racial overtone grievance. (ROA 7). As a result, of the exclusion of Stewart's pleading's from the Record by the Appeal Tribunal and Appellate Panel, marshalling of the facts embedded within the Record is necessary as the recital of the facts by both lower authorities are not accurately recanted in their perspective opinions.

Notwithstanding the procedural appellate issue to follow, Stewart's question of "epic proportion" is did substantial evidence establish that she was terminated for alleged misconduct or whether substantial documentary and testimonial evidence proves Stewart was actually terminated for emailing a grievance five hours immediately before her termination. Stewart submits the facts and documentary evidence within the Record establishes she was in fact terminated for submission of a grievance and the employer, contrary to testimony, had no intent to terminate her employment for any alleged misconduct and the Record reflects such in a manner synonymous to a "shining star". The statement of facts are as follows:

1. Stewart, an African-American female, was employed as a Court Clerk within the Oconee County Summary Court Magistrate Department beginning January 10, 2011 through May 9, 2013 and was the only employee of minority descent. (AROA 16).

2. Stewart was assigned to the Walhalla, SC office location and the Magistrate Judge Blake A. Norton, (hereinafter, "Norton"), was her immediate supervisor. Chief Magistrate Judge Michael Todd Simmons, (hereinafter, "Simmons"), retained managerial authority over all Magistrate Department Personnel. (AROA 16).

3. On September 19, 2011, as a remedy to issues of racial animus, among others, Stewart was reassigned to the Seneca, SC location as a member of Simmons' staff. Stewart performed her duties exemplary with no documented disciplinary issues – resulting in multiple consecutive performance reviews and corresponding merit raises. (AROA 97-99).

4. On April 30, 2013, Stewart forwarded an email to Simmons refuting theft accusations by co-worker Deborah Sheriff, (hereinafter, "Sheriff"), and presented a whistleblower complaint regarding Sheriff's reporting of payroll hours. In-turn, **48-hours later, absent any remarkable event**, on May 2, 2013, Simmons directed Stewart and Sheriff to attend a Human Resource Meeting, (hereinafter, "HR Meeting"), with himself on May 3, 2013. Simmons did not disclose the

purpose of the HR Meeting to Stewart prior to its commencement. Stewart believed the purpose of the meeting was to address her whistleblower grievance concerning Sheriff. (AROA 105 & 193).

5. On May 3, 2013, the HR Meeting between Simmons, Sheriff, and Stewart convened. In an unusual measure, Simmons documented the meeting by way of audio recording. (AROA 75 & 107-125). During the meeting, Simmons informed Stewart he decided to reassign her back to the Walhalla location due to workforce demands. In furtherance of documenting the HR meeting, Simmons presented an HR Memorandum dated May 3, 2013, (hereinafter, "HR Memo"), addressed to HR Manager Kay Olbon, (hereinafter, "Olbon"). The HR Memo detailed Simmon's alleged basis for transfer and exclaimed Stewart's "substantial experience and [that she] does a great job". Stewart, flabbergasted, believed the HR Meeting's purpose was to address her grievance and declined Simmon's request to sign the HR Memo in disagreement. (AROA 123 Ln. 1-9).

6. Due to the prior racial animus issues in Walhalla, Stewart declined to transfer but subsequently entered into an agreement with Simmons to adhere to "administrative decision-making leave" the remainder of the work day to reach a definitive decision by the end of the day. During the HR Meeting, on multiple instances Simmons commended Stewart's work performance and repeatedly assured Stewart of his desire to retain her as an employee. (AROA (AROA 114 Ln. 13-14 and 22-24, 115 Ln. 12-17, 117 Ln. 21, 123 Ln. 11-19 and 124 Ln. 6-9).

7. At the conclusion of the HR Meeting, Stewart requested to speak with Simmons "personally", absent Sheriff's presence, to address her grievance concerning Sheriff because Simmons, contrary to county policy, did not formally resolve her grievance pursuant to policy.

8. During the discussion, Stewart attempted to discuss with Simmons events surrounding her complaint which included an additional co-worker's acts that involved Simmons but addressed Sheriff's actions. Simmons, in response to Stewart's comments, casually commented his non-recollections of events and Stewart casually commented the total non-recollection of their conversation was inaccurate. Simmons interpreted Stewart's statement as calling him a liar. Stewart refuted Simmons' interpretation by stating, "I did not call you a liar, I said what you said can't be accurate" and Simmons directed Stewart to start disciplinary "decision-making leave" as a result.

9. Consistent with his pattern of behavior to immediately memorialize events of significance, Simmons prepared an additional HR Memorandum dated, May 3, 2013 (hereinafter, "Post HR Memo"), addressed to HR Manager Olbon. The Post HR Memo documented the course of events for the HR Meeting and was absent any allegations of misconduct or intent to seek Stewart's termination for such as recanted by Simmons.

10. By close of business May 3, 2013, Stewart notified Simmons of her intent to transfer and Simmons informed Stewart she made the right decision and she would see a difference in Walhalla. Stewart timely reported to Walhalla on May 6, 2013. In-turn, Simmons reported Stewart's absence on May 3, 2013 as administrative leave. (SROA 5).

11. On Monday, May 6, 2013, Stewart reported to Walhalla, on time, without incident. Upon reporting, Stewart requested three hours of vacation leave for the afternoon of May 6, 2013 and a full day of leave on May 7, 2013. (AROA 11, 2nd para.). The leave was approved by Norton, concluding a meeting in which he made unprofessional and demeaning comments to Stewart, within minutes of her first day in Walhalla.

12. Simmons allegedly authored the Post HR Memorandum dated, May 7, 2013 and titled, "Transfer" to document

Stewart's May 3, 2013 alleged misconduct. This Memorandum appeared to serve as a "letter of reprimand" of sorts to document the alleged misconduct in the event of future similar behavior. However, Simmons definitively stated, he "...reluctantly agreed to allow Mrs. Stewart to continue her employment in Walhalla" and "[he] believ[ed] that no further incidents should be tolerated".[2] (AROA 90). Simmons equated Stewart's employment to that of a "court proceeding" and viewed Stewart to be no more than a guilty criminal defendant in "his" courtroom and he a "credible" judge versus serving in his official capacity as an employer when he compares Stewart to such in this Memorandum.

13. On May 8, 2013, Simmons, based on his testimony, allegedly hand-delivered the May 7, 2013 HR Memorandum to Human Resources Manager Kay Olbon. (AROA 173 Ln. 6-7).

14. On May 8, 2013, Stewart returned from leave for her first full work day since transferring. Stewart processed and prepared documents, but was prohibited by Norton from placing her initials on her work product, as routinely accomplished in office settings. Stewart adhered to Norton's instructions and documented his directive in an email at the end of the business day. (SROA 11).

15. Stewart also documented the subject matter of the May 6, 2013 meeting with Norton, in an email as a summary. Stewart, accomplished the email due to unprofessional and demeaning statements, made by Norton to her. (AROA 126-127). **NOTE, during the May 3, 2013 HR Meeting, in Simmons attempt to influence Stewart to transfer to Walhalla, he gave her three options. He stated, "...[T]here's three choices, you can go [to Walhalla] and document things if you see that things are happening that shouldn't be happening, you can resign or you can force me to fire you ... I don't want to do the last one".** ***Reference, [HR Tr., p.18, Lines 4-8].*** In accordance with Simmons' options, and coupled with Stewart's previous history of racial animus within Walhalla, Stewart documented the May 6, 2013 meeting and other material events for future reference. In response to Stewart's email summation, Norton responded the summary of events by Stewart was "fairly accurate". (AROA 128).

16. On May 9, 2013, Norton, by email, responded to Stewart's May 8, 2013, 4:16 PM email, courtesy copying Simmons, and the entire Walhalla Staff, expressing his disagreement of Stewart's initialing any internal documents. (AROA 129).

17. On May 9, 2013 at 8:44 AM, Stewart responded to Norton, courtesy copied Simmons, and provided a distinct grievance reason for the need to distinguish her work product. Stewart stated, **"Given the harsh and hostile history of racial overtones that have existed within this office, it is necessary that I have a way to clearly distinguish my work from other employees."** (AROA 130).

18. Five hours later on May 09, 2013, Stewart returned from lunch at 2:00 PM and observed Simmons' vehicle parked outside. Stewart entered, observed Norton and Simmons in a closed-door conference, began to work, and was rudely directed by Simmons to come into the courtroom where Norton and Bracket were seated at a conference table. Simmons proceeded to inform Stewart that he had been in discussions with both county administration and the county attorney and discovered that he could exercise his authority to terminate Stewart's employment for insubordination, when he said Stewart refused to transfer, and called him a liar on May 3, 2013. Stewart restated that she did report to Walhalla and did

[2] Simmons used multiple references to what's permitted in "his courtroom" and went so far as to enter a Supreme Court Order of Appointment as a Magistrate Judge as the first document forwarded to the Administrative Hearing Officer for entry into the Tribunal Hearing Record. This action, successfully, served to bolster his credibility before the Appeal Tribunal and subsequently the Appellate Panel.

not call him [Simmons] a liar, and requested to review the recording. Simmons stated that he did not have a recording, because the recorder was turned off and it was his word, as a judge against Stewart. Simmons affirmatively stated that Stewart had called him a liar. Stewart then requested a signed copy of the Termination Notice, but Simmons refused. Simmons, instead stated, he would provide Stewart with a copy of the termination notice, when she signed it. Stewart refused, in disagreement and proceeded to phone the Department of Labor, because she believed the Employer, was mandated, to furnish a written reason for termination. Stewart proceeded to her desk, began to dial the Department of Labor's number, when Brackett, ran to the copier, copied Simmons' Termination Notice, and provided the copy to Stewart. (AROA 9).

19. On May 10, 2013, Stewart applied for unemployment compensation benefits (hereinafter, "UCB"). On May 24, 2013, Stewart received a UCB-103 Form dated May 23, 2013 from the SCDEW Claims Adjudicator disqualifying her for 20 weeks pursuant to *S.C. Ann § 41-35-120 (2) (A)*. On May 30, 2013, Stewart timely filed the Form App. 100-Net "Notice of Appeal to Appeal Tribunal" seeking review of the Claims Adjudicator's determination.

20. On August 17, 2013, Stewart filed a pleading styled, "Motion to Submit Declaration of Facts, Documentary Evidence, and Arguments into Tribunal Hearing Record with Brief in Support". The Appeal Tribunal Hearing convened on August 20, 2013 and the Tribunal's adverse decision was rendered on August 23, 2013. A timely Form App-111 NET "Application for Leave to Appeal to the Appellate Panel" was filed August 31, 2013.

21. On October 18, 2013, Stewart filed a pleading styled, "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". The Appellate Panel convened on October 22, 2013 and Stewart hand-submitted written arguments styled, "Written Arguments in Support of Granting Unemployment Compensation with Renewed Motion to Include Previously Submitted Tribunal Hearing Arguments and Documentary Evidence as Part of the Appellate Record". On October 25, 2013, the Appellate Panel issued a decision adversely against Stewart.

Nature of Stewart's Defense and Response

Stewarts submits Simmons terminated her employment as retaliation for submission of grievances as a pre-textual basis of her transfer. Her subsequent racial grievance was the actual basis of her termination. Stewart's position is that the Record establishes the employer had no intent prior to the HR Meeting or afterwards to terminate her until after she grievanced concerns of racial overtones, the day of her termination, a week after the alleged misconduct. In addition, Stewart contended disagreeing with an employer and communicating such, while addressing a grievance in accordance with the employer's grievance policy, is not misconduct. Stewart states that her pleadings and documentary evidence submitted to both the Appeal Tribunal and Appellate Panel were erroneously excluded from the Record, although she adhered to the directive of the SCDEW to forward evidentiary documents to the opposing party and SCDEW prior to the Hearing. Stewart contends such prejudiced her case before the Appeal Tribunal and Appellate Panel because her excluded documentary evidence, if reviewed as a whole, would have proven her case. Simply, at the Appeal Tribunal, Stewart put forth evidence that she was not in fact terminated for misconduct but for emailing a concern of racial overtone and evidence shows that the alleged misconduct did not occur.

This appeal followed.

STANDARD OF REVIEW

Effective March 30, 2010 the ALC was granted jurisdiction to review appeals from the SCDEW through *Act 146 of 2010 sections 1 and 98*. As a result, Appeal decisions of the former South Carolina Employment Security Commission by our Circuit Courts are respectfully offered as the standard of review, precedent and to provide persuasive authority of the issues before this Court.

The *Administrative Procedures Act* (hereinafter, "APA"), *S.C. Code Ann § 1-23-310* governs appellate review of a final decision from an agency. *Shealy v. Aiken, 535 S.E. 2d 438, 442 (2000)*. Under the APA, this Court must determine whether the findings of fact of the Agency's Appellate Panel are supported by substantial evidence in the Record and whether the Panel's decision is affected by an error of law. *S.C. Code Ann. § 1-23-380 (A) (5)*; *Baxter v. Martin Bros., Inc., 630 S.E. 2d 42, 43 (2006)*. "Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the Administrative agency reached". *Merck v. South Carolina Employment Sec. Comm'n, 351 S.E. 2d 338, 339 (1986)*. "It is more *than a mere scintilla of evidence*, but is something less than the weight of the evidence." *Porter v. South Carolina Pub. Serv. Comm'n*. 507 S.E. 2d 328, 332 (1998).

In matters of an appeal of an agency decision, pursuant to *S.C. Code Ann. § 1-23-610 (D) (E)*, this Court shall not substitute its judgment for that of the agency as the weight of the evidence on questions of fact. The Court may affirm the decision or, as Stewart seeks, remand the case for further proceedings; the Court may reverse or modify the decision if submission 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 an 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.

Respondent's decision to disqualify Stewart from Unemployment Benefits Compensation for twenty weeks with a corresponding monetary reduction was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole Record and in violation of constitutional and statutory provisions. In addition, Respondent's erroneous findings of fact to support its erroneous conclusions are unsupported by "substantial" evidence, which demonstrates that the Respondent's decision is arbitrary or capricious and characterized by an abuse of discretion.

ARGUMENTS

I. STEWART REQUESTS THE COURT GRANT HER MOTION FOR LEAVE TO PRESENT ADDITIONAL EVIDENCE AND ORDER THAT THE ADDITIONAL EVIDENCE BE TAKEN BEFORE THE SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

On March 10, 2014, Stewart filed the aforementioned Motion. As the outcome of Court's decision on that Motion may affect arguments within this Brief, Stewart requests that the Court first grant this Motion and order, as it has discretion to do pursuant to *SC Code Ann. § 1-23-380 (3)*, that the additional evidence be taken before the SCDEW upon such conditions as determined by this Court, Stewart moves the Court to only address the arguments below should it deny Stewart's Request for Leave to Present Additional Evidence.

II. WHETHER THIS COURT'S APPELLATE REVIEW OF A VARIANT RECORD ON APPEAL VIOLATES STEWART'S APPELLATE DUE PROCESS RIGHTS BECAUSE THE CURRENT RECORD ON APPEAL WAS NOT SUBMITTED TO OR CONSIDERED BY THE LOWER APPELLATE

PANEL AND WHETHER SUCH REQUIRES A REMAND FOR FURTHER PROCEEDINGS DUE TO ERROR OF LAW, ABUSE OF DISCRETION, UNLAWFUL PROCEDURE AND/OR VIOLATION OF CONSTITUTIONAL AND STATUTORY PROVISIONS

The Record on Appeal on this issue is clear and unambiguous. On August 17, 2013, Stewart in accordance with SCDEW policy filed a pleading styled, "Motion to Submit Declaration of Factual Points with Documentary Evidence into Tribunal Hearing Record in Support of Appellant's Petition for Unemployment Compensation" in preparation of her August 20, 2013 Appeal Tribunal Hearing (hereinafter, "Evidence Motion"). (AROA7-34)[3]. The "Evidence Motion" had attached thirty-one exhibits supporting and evidencing Stewart's defense. (AROA 9-13). Such was submitted to the AHO prior to the Tribunal Hearing as instructed by the SCDEW's "Notice of Telephone Hearing" with a mailing date of August 7, 2013. (Initial ROA 29). Such explicitly directed: "Evidence: This is your only chance to testify and present evidence ... any documents that you want considered in this hearing must be mailed to the Appeal Tribunal ... or ... faxed. In addition ..., you must mail or fax copies to the opposing party". In compliance to this SCDEW directive, Stewart submitted her "Evidence Motion" to the AHO and Respondent prior to the commencement of the Tribunal Hearing. During the Appeal Tribunal Hearing Stewart, on the Record moved for entry of her pleading into the Record on three separate instances, twice within the "Evidence Motion", (AROA 16 and page 29 Exhibit 1) and a third request was accomplished verbally on the Record. (AROA 168 Ln. 11-16). Correspondingly, Stewart used multiple exhibits from her "Evidence Motion" to cross-examine three of the Respondent's witnesses. (AROA 171,172, 173, 180, 184,185,186 and 187). As such, the AROA is replete with instances of the materiality of Stewart's "Evidence Motion" during the Tribunal Hearing. After the Appeal Tribunals' denial of Stewart's petition and her filing of an appeal to the Appellate Panel, Stewart received the Record on Appeal on October 9, 2013. (AROA 38). The entire record consisted of 1.) A transcript of the August 20, 2013 Tribunal Hearing; 2.) SCDEW UCB 103 Form dated May 23, 2013; 3.) SCDEW UCB-102 Form dated May 21, 2013; 4.) SCBOS NET101 Form dated May 14, 2013; 5.) Employer Termination Notice, dated May 9, 2013, 6.) Employer Policy Manual 7-2, 7.) Employer Exhibit 1 submitted on August 20, 2013 and 8) Claimant Exhibit # 1 HR Meeting Compact Disc Recording dated May3, 2013. (AROA 38).

Stewart moved the Appellate Panel in two pleadings to enter her previously submitted evidence into the Record for Appellate consideration. (AROA 36-39 and 40-59). On October 25, 2013, the Panel issued its decision denying entry of Stewart's pleading and evidence into the Record. Specifically, the Panel deemed Stewart's evidence previously submitted to the Appeal Tribunal, as "Additional Evidence" after fully acknowledging the evidence was used to cross-examine witnesses.

Stewart, in-turn appealed to this Court and the Record on Appeal initially forwarded to this Court on December 11, 2013, significantly differed from the eight documents on appeal before the Panel. In addition to the eight

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[3] The Respondent inexplicably excluded pages 29 and 30 of this Motion from the Record and they are attached as Exhibits 6 and 7. These missing pages of the pleading were proffered to the Appeal Tribunal and to the Appellate Panel in a written argument and attached in its entirely as Exhibit 1 on October 18, 2013 but excluded by the Respondent. (AROA 38-39). See (1/21/14 Supp. ROA.) The Respondent repeated this error again and excluded pages 21 and 22 of Stewart's October 22, 2013 Pleading before the Appellate Panel. (AROA 59-60). Such are attached as Exhibits 8 and 9. The submission of an incomplete Record on Appeal is a consistent "theme" by the Respondent in the instant case. Stewart noticed this Court of this issue and Exhibit on page 3 and 4 of her December 20, 2013 Motion styled, "Application for an Order to Compel the SCDEW to Correct and Resubmit the Entire Record on Appeal". This Notice is part of the ROA, p. 29, released on December 11, 2013.

aforementioned documents and Appellate Panel Decision, the ROA now included the Employers proffered evidence not provided to Stewart during the Tribunal Hearing. (12/11/13 ROA 30-43). Exhibits of Stewart's "Evidence Motion" were absent as well as the two aforementioned Appellate Panel Motions. (12/11/13 ROA 45-100). After the multiple pre-hearing motions listed above, this Court ordered the missing Pleadings and Evidence to be included as part of the ROA as outlined above in this cases' procedural history.

A. **Stewart's substantial rights have been prejudiced because of the Appellate Panel's Decision not to review the whole record.**

The *S.C. Const. Art I § 22* provides "No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice, and opportunity to be heard". The Department's Appeals Regulations accord the process that is due and the Record reflects the AHO failed to follow that process – its own regulations. *S.C. Code Ann. Reg. Article 3, "Appeals Regulations", 47-51 Appeals to Appeal Tribunal, C. Hearing of Appeals, paragraph 1* states;

> All Appeal Tribunal hearings shall be ... conducted informally in conformity with the S.C. Administrative Procedures Act and in a manner as to ascertain the substantial rights of the parties ... all issues relevant to the appeal shall be considered and passed upon.

In submitting her "Evidence Motion", Stewart by asking the AHO if he was in receipt of such for entry into the Record, utilizing the "Evidence Motion" Exhibits for cross-examination of witnesses and the explicit request within the Motion to be included as part of the Record, "required the AHO to consider it and pass upon its request". Contrary to this requirement, the AHO did not render any ruling pursuant to Department Regulations. By failing to accomplish this requirement and subsequently not including the "Evidence Motion" as part of the Record on Appeal, the AHO adversely affected Stewart's appeal right's at the appellate panel level. Specifically, this action prevented Stewart from having any opportunity for her defense, supported by the "Evidence Motion", to be heard on appeal because the Appellate Panel was limited to the Record on Appeal submitted by the AHO. See *S.C. Ann. Reg § 47-52, B. Hearings on Appeal, Para.1*, "Appeals to the Appellate Panel shall be heard solely upon the evidence in the Record before the Appeal Tribunal". In-turn, judicial review of Stewart's claims were denied by the Panel effectively precluding judicial review of her purported defense and claims. (AROA 40-59 and 151). Stewart recognizes "the requirement of due process includes notice, an opportunity to be heard in a meaningful way and judicial review." *Ogburn-Matthews v Loblolly Partners, 505 S.E. 2d, 598, 603 (Ct. App. 1998)*. Certainly, that did not occur here. The *Administrative Procedures Act 1-23-380* states, as a matter of entitlement that Stewart as "a party who has exhausted all administrative remedies available within the agency ... aggrieved by a final decision is entitled to judicial review". Paragraph four states, "the review ... conducted by the court must be confined to the record". *SCALC Rule 36, Record on Appeal (B) (1) and (2)* promulgated by Administrative Procedures Act § 1-23-600, "Hearings and Proceedings", (G) provides a "party ... may apply ... for relief ... as provided in the Rules of the Administrative Law Court." Specifically, *SCALC Rule 36 (B) (1) (2)* defines the Record as "all pleadings, motions, and intermediate rulings" and "all evidence received or considered". The AHO did not conform to the *S.C. Administrative Procedures Act* in a manner ascertaining Stewart's substantial right to a meaningful appeal and judicial review. The procedural protections this particular situation demanded was forwarding of the complete Record on appeal by the AHO and review by the Appellate Panel. *Ogburn-Matthews at 603*. As a result, Stewart's ability to obtain

a meaningful review was substantially hindered and prejudiced by a denial of the issues prevented from review due to an absence of the entire evidence and issues presented at the Tribunal Level. "To prove the denial of due process in an administrative proceeding, a party must show that it was substantially prejudiced by the administrative process", *Leventis v. S.C. Dep't. of Health and Envt. Control, 590 S.E. 2d 643, 650 (Ct. App. 2000).*

Now this Court is charged with performing appellate review of a Record the Appellate Panel clearly did not review as a lower court. On its face, this Court should remand this case to the Appellate Panel for action the Court deems appropriate for substantial violations of Stewart's constitutional rights and the aforementioned statutory provisions. Alternatively, Stewart moves this Court, pursuant to the AHO's failure to submit the entire Record to the Appellate Panel as procedurally required under its own regulations.

III. WHETHER THE APPELLATE PANEL ERRED OR ABUSED ITS DISCRETION IN REFUSING TO CONSIDER AND ENTER INTO THE HEARING RECORD STEWART'S PLEADINGS WITH DOCUMENTARY EVIDENCE CONTRARY TO S.C. CODE ANN. REGS. § 47-52 B (1) STATUTORY PROVISIONS AND DID SUCH VIOLATE STEWART'S PROCEDURAL AND SUBSTANTIVE CONSTITUTIONAL DUE PROCESS RIGHTS RESULTING IN SUBSTANTIAL PREJUDICE?

It goes without being said that the Appellate Panel's role in reviewing the decisions of the Appeal Tribunal are synonymous to that of an appeal court. That similarity also comes with other comparable responsibilities. *S.C. Code Ann. Reg. 47-52 (B) (1)* provides that "all appeals to the Appellate Panel shall be heard solely upon the evidence in the record before the Appeal Tribunal." The record as recanted above, without dispute, reveals Stewart's "Evidence Motion" is in fact part of the Tribunal Hearing Record because it was; 1) submitted timely to the Tribunal for consideration on August 17, 2013; prior to the Tribunal Hearing date of August 20, 2013. (1/21/14 Supp. ROA 29-30). 2) Stewart moved for entry of such into the Record and 3.) cross-examined witnesses with the attached documentary exhibits. (AROA 16, 168 Ln. 11-16, 171-173, 180, 184-187). The "Evidence Motion" an attached exhibits were used by Stewart to put forth her defense that she was terminated for reasons other than misconduct and no misconduct actually transpired, as factually articulated above. *S.C. Code Ann. Regs. 47-52 (B) (1)* mandates that, "all appeals to the Appellate Panel shall be heard solely upon the evidence in the record before the Appeal Tribunal". The "Evidence Motion" was "in the Record". (AROA 168 Ln. 11-16, 171-173, 180, 184-187). It was not forwarded to the Appellate Panel by the AHO. Further, Stewart noticed to the Appellate Panel by moving for the "Evidence Motion" to be included in the Appellate Panel Record through a written pleading filed on October 18, 2013. (AROA 36-39). On October 22, 2013, Stewart renewed the subject Motion with written arguments preserving the issue for appellate review. (AROA 40-59). The Appellate Panel decision deemed Stewart's "Evidence Motion" to be "Additional Evidence" and denied Stewart's Motions. (AROA 149-152). The Panel reasoned that Stewart "did not request specific documents to be entered as exhibits during the presentation of her case". Such was stated after acknowledging "[Stewart's] documents were not formally entered into evidence by the hearing officer" but "[Stewart] made several references to the documents during the Hearing and she was permitted to testify and ask questions of the witnesses from the documents." After stating such, Stewart submits that the Panel's opinion effectively acknowledges the "Evidence Motion" was not "additional evidence".

The Appellate Panel in denying Stewart's Motions "hung their hat" on the fact that the AHO did not formally enter the "Evidence Motion" into the Record because Stewart did not request specific documents to be entered as exhibits". *S.C. Code Ann. Reg. "47-51 Appeals to the Appeal Tribunal" C.* Hearing Appeals, *Para.1,* states, "all appeal

Tribunal Hearings shall be conducted informally in conformity with the S.C. Administrative Procedures Act ...". The *S.C. Administrative Procedures Act § 1-23-600, "Hearings and Proceedings", (G)* states, "A party aggrieved by and administrative process issued by the department ... may apply for the Administrative Law Court". *SCALC Rule 36, Record on Appeal, B. Content, Para. (1) (2)*, states "The Record shall consist of the following: (1) All pleadings, motions, and intermediate rulings; (2) all evidence received or considered.

First the Panel erred in deeming Stewart's "Evidence Motion", squarely submitted to the Appeal Tribunal, as "additional evidence". The *Administrative Procedures Act § 1-23-380 (3)* indirectly defines additional evidence as "material" and "failure to present it in the proceeding before the agency". In the instant case, the "Evidence Motion's" exhibits were material to Stewart's defense that she committed no misconduct and was terminated for reasons other than misconduct. Stewart did not fail to present the evidence to the Tribunal. As delineated above, she filed such in accordance with SCDEW Rules and Instructions pursuant to the "Notice of Appeal Hearing by Telephone". (12/11/13 ROA 29).

Second, Tribunal Hearings are to be conducted informally in conformity with the *APA*. Stewart, in writing, formally asked the "Evidence Motion" to be entered into the Record and again verbally. Reiterated, Stewart moved for her entire Pleading, not "specific documents" to be entered into the Record. Pursuant to the *APA* and *S.C. Code Ann. Reg. 47-51 C (1)* "all issues relevant to the appeal shall be considered and passed upon". As an appellate authority, the Panel was required to review the decision of the Appeal Tribunal "on the basis of evidence previously submitted in the case". *Sparks v. SCDEW and Newark Electronics Corp., Docket No.: 10-ALJ-22-0953-AP (2011)*. Further, in reviewing the Appeal Tribunal's decision pursuant to SCALC Rules, the Panel was required to review and to take notice of and consider all pleadings, motions, and intermediate rulings, to include all Evidence received or considered. *SCALC Rule 36 B (1) and (2)*. The Panel's decision to not consider Stewart's "Evidence Motion" and deemed as "additional evidence" is clear on its face that equitable review of the entire Record did not occur.

The Panel applied an improper standard of review in this case, in that it considered Stewart's "Evidence Motion" with documentary evidence as "additional evidence". The "additional evidence" defined by the Panel was previously proffered to the Tribunal by Stewart and subsequently submitted as Exhibit 1 with her written arguments to the Panel as well. "An abuse of discretion occurs when a decision is based upon an error of law such as application of the wrong legal principle ..." *Deese, 332 S.E. 2d 541*. For this reason, the Court should reverse the decision of the SCDEW.

IV. WHETHER THE APPEAL TRIBUNAL ERRED OR ABUSED ITS DISCRETION IN SUBMITTING AN INCOMPLETE RECORD OF APPEAL TO THE APPELLATE PANEL CONTRARY TO S.C. CODE ANN. REGS. § 47-52 (B) (1) STATUTORY PROVISIONS AND DID SUCH VIOLATE STEWART'S PROCEDURAL AND SUBSTANTIVE CONSTITUTIONAL DUE PROCESS APPEAL RIGHTS REQUIRING REMAND FOR FURTHER PROCEEDINGS?

The ROA straightforwardly resolves this issue on its face. Stewart contends the AHO abused his discretion in failing to include Stewart's "Evidence Motion" with exhibits as part of the ROA forwarded to the Appellate Panel. As recanted above, Stewart filed her "Evidence Motion" to the Appeal Tribunal on August 17, 2013. (1/21/14 Supp. ROA 29-30).[4] During the Tribunal Hearing Stewart implicitly moved for entry of the "Evidence Motion" into the Record when

[4] Pages 29-30 of this Pleading are missing from the Amended Record on Appeal filed 2/19/14.

she specifically asked the AHO if he in fact was in possession of her Pleading before she utilized such for cross-examination of three of the employer's witnesses. (AROA 168 Ln. 11-16, AROA 16, 1/21/14 Supp. ROA 30), and AROA 171, 172, 173, 180, 184-187. The Record is silent on the AHO Ruling on Stewart's Motion, specifically addressing the evidence attached or even simply stating such was admissible or inadmissible. However, what is certain is that Stewart explicitly in writing and on the Record verbally moved to enter her Pleading into the Record. The AHO exercised no discretion on the issue on the Record bit administratively exercised his discretion by excluding Stewart's Pleading entirely from the ROA. Recently, this Court in *S.C. Dep't. of Corrections v. Bryant, Docket No.: 12-ALJ-30-0014-AP (2013)*, stated, "an abuse of discretion occurs when an administrative agency's ruling is based upon an error of law, such as application of the wrong legal principle or, when based upon factual conclusions, the ruling is without evidentiary support; or when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or, when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be arbitrary and capricious", citing *State v. Allen, 634 S.E. 653, 656 (2006)*. "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment is made of pleasure, without adequate determining principles, or is governed by no fixed rules or standards", citing *Deese v. State Bd. Of Dentistry, 332 S.E. 2d 539, 541 (Ct. App. 1985)*.

The AHO's failure to consider Stewart's "Evidence Motion" and subsequently enter it into the Record directly conflicts with S.C. Code Ann. Regs. 47-51 (C) (1) which mandates that "all issues relevant to the appeal shall be considered and passed upon." The Appeal Tribunal Transcripts and Decision are utterly silent to this issue. Yet, in silence the AHO contemporaneously failed to exercise his discretion by issuing a ruling and without a rational basis totally excluded Stewart's Evidence and Pleading from the entire Record. On this basis alone the instant case should be remanded to Appeal Tribunal for further proceedings. Such violated Stewart's rights to a meaningful judicial review on appeal.

V. WHETHER THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD ESTABLISH THE APPELLATE PANEL'S RULING THAT STEWART WAS TERMINATED FOR EMPLOYEE MISCONDUCT OR FOR E-MAILING CONCERNS OF RACIAL OVERTONES AND WHETHER THE AGENCY ERRED AS A MATTER OF FACT AND CONCLUSION OF LAW?

During the Appeal Tribunal Hearing, Simmons testified that from the conclusion of the May 3, 2013 HR Meeting his intent was to immediately seek Stewart's termination with county administration for allegedly calling him a liar and subsequently terminated Stewart's employment for such a week later on May 9, 2013. (AROA 160 Ln. 10-13 and AROA 91). However, a closer examination of the documentary and testimonial evidence reveals Simmons in fact did not terminate Stewart for the reasons recanted during the Appeal Tribunal Hearing or Termination Notice entered into the AROA. In fact, the employer, Simmons, served as Stewart's star witness actually proving her case.

In the case at bar the AROA is replete with substantial direct documentary evidence and testimony presented to the Appeal Tribunal by the employer and Stewart that reflects first-hand that Simmons prior to the HR Meeting had no intent to terminate Stewart due to her stellar work performance. (AROA 88, 110 Ln. 12-22, 114 Ln. 22-23, 117 Ln. 21, 124 Ln.6-9). Though she initially refused to transfer, Simmons' actions and his own documentation established he actually made an affirmative decision not to terminate Stewart. Also, his actions subsequent to the HR Meeting, were

contrary to the actions of an employer so offended by an employee's unprofessionalism that he would pursue immediate termination. The Record provided substantial corroborative evidence supporting Stewart's position. A close examination of the facts embedded within the Record reveals what the Appeal Tribunal and Appellate Panel refused to consider:

1.) During the HR Meeting Simmons, after Stewart's refusal to transfer placed Stewart on "decision-making administrative leave"[5] for her to decide whether to transfer, resign or be terminated for refusing to transfer and to notify him by close of business of her intent. (AROA 122 Ln. 16-23, AROA 159 Ln. 4-8 and SROA 89, para. 1).

2.) Conforming to the directives of her employer at 4:37 PM Stewart contacted Simmons by cellular telephone call and SMS text messaging of her intent to transfer to her reassignment. (SROA 7, AROA 159 Ln. 4-8, AROA 159 12-23. Affirming Stewart's continued employment, at 5:21 PM Simmons responded in a SMS text message stating "I have made all the arrangements for your transfer. I believe you made the right choice and believe you will see a difference in Walhalla". (SROA 8, AROA 159 Ln. 14-23). Such does not draw an inference of the mindset of an employer so disrespected by unprofessionalism that immediate termination was being pursued. In fact, Simmons statement that he made all the arrangements for Stewart's transfer confirms additional steps taken by him for Stewart to work effectively from her new Walhalla location. The HR Meeting identifies the SMS text message "arrangements" taken by Simmons for Stewart's transfer. (AROA 120). A reasonable mind surely would not conclude that transferring IT access and physically transporting Stewart's new office chairs for her comfort in his personally owned vehicle as actions conducive to seeking an immediate termination of an employee. To the contrary, this supports Simmons preparing Stewart for continued employment. As an employer, a judge, he is fully aware South Carolina is an employment at will state permitting termination with or without cause at anytime.

3.) With respect to the circumstances surrounding Simmons' "You made the right decision" comment, when asked by the AHO why would he communicate such to Stewart when he was allegedly seeking termination, Simmons seemed dumbfounded in his reply. Simmons, unknowingly as Stewart's star witness, replied, "I can't explain that other than I wanted her to feel comfortable ... I can't tell you why just words of comfort for lack of a better explanation." (AROA 161 Ln. 21-26). Though, this as well isn't conducive with immediately seeking termination, it does establish Simmons' intent to "comfort" Stewart in her transition to Walhalla just as he "comforted" her by personally transporting her "new" presumably comfortable, office chairs. Generally, employers seeking immediate termination do not cajole, delay or "comfort" soon to be ex-employees – they terminate or suspend them until such termination can be permanently effectuated.

4.) Further, evidence that Simmons, as Stewart's star witness, had no intent and did not terminate Stewart for the alleged misconduct, is a Post HR Memorandum dated May 3, 2013, authored and signed by Simmons. (SROA 9). This Memorandum provided a single paragraph summary of the events of the May 3, 2013 HR Meeting. Interestingly, the

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[5] Pursuant to the *Oconee County Personnel and Policy and Procedure Manual*, dated September 2012, *Policy Number 7-2, "Employee Code of Conduct and Discipline", Positive Discipline Examples*, Simmons in taking this action instituted Oconee County's Policy, "that allows an employee every opportunity to meet the requirements, policies, rules and regulations necessary for continued employment. (AROA 141-142). In taking this action, Simmons immediately applied "Positive Discipline" to Stewart's alleged misconduct verses delayed cumulative "Termination" discipline a week later on May 6, 2013. This action inferred his intent to continue Stewart's employment.

Memorandum, produced immediately after the meeting, did not memorialize any alleged misconduct or any subsequent immediate intent to seek Stewart's termination as a result. This action isn't characteristic of Simmons behavior to document, document and document. Consider Simmons' "documentary behavior". 1) The HR Meeting on May 3, 2013 was, though unusual, was documented by way of audio recording (AROA 75, 107 Ln. 7-8); 2) Simmons prepared a Pre-HR Memorandum prior to the HR Meeting on May 3, 2013 to document Stewart's transfer (AROA 87); 3) After the HR Meeting Simmons documented such by preparing a Post HR Memorandum dated May 3, 2013; and 4) Four days later on May 7, 2013, Simmons prepared an additional HR Memorandum purportedly documenting the events of May 3, 2013 more adversely to Stewart for her HR file (AROA 89). The Post HR Memorandum on May 3, 2013 provides an immediate insight into the mindset of Simmons immediately after the HR Meeting on May 3, 2013. If this Court were to believe Simmons' words in his official Memorandum, he stated, "she [Stewart] was ... asked to contact ... Simmons by the end of the day to relay her decision for further employment with Oconee County". Simmons' mindset here was not as he testified, to seek immediate termination. Why did Simmons not document the misconduct and his intent to terminate? A reasonable objective fact finder can draw an inference from Simmons' words that his intent was not terminated but a determination from Stewart on her decision to continue her employment and documenting the events leading up to the incidents of May 3, 2013. However, the alleged decision to seek termination and the alleged liar comment were of no significance based on Simmons' Memorandum. Even Simmons' trusted "right-hand" Sheriff, did not testify and confirm that Simmons sought Stewart's immediate termination. When asked for her hearsay of what Simmons says transpired, she could only say that Simmons said, "she just called me a liar". With no additional details provided, when pressed further, Sheriff only confirmed that Stewart would make a decision by close of business. (AROA 178, Ln. 16-24).

5.) Simmons decision to place Stewart on "administrative decision-making leave" further illustrates Simmons non-intent to seek Stewart's immediate termination. Prior to the alleged "liar" statement and after informing Stewart of his decision to transfer her, Simmons stated to Stewart, "This is heavy this is significant ... so ... take the rest of the day off okay ... and please let me know by the end of the day what your intent is ..." (AROA 122, Ln. 16-20). Is this Simmons, again, "comforting" Stewart? Interestingly, here Simmons' position does not change even after the alleged misconduct. During the timeframe Simmons testified he was purportedly seeking Stewart's immediate termination. However, on Monday, May 6, 2013, Simmons emailed Kim Hopkins of Oconee County Payroll and directed Stewart's "administrative leave" would be with pay. (SROA 5 and AROA 89). Yet, another action by Simmons that appears contrary to the mindset of an employer seeking to terminate a disrespectful employee. Simply, as stated above, this action was more aligned to "Positive" discipline for Stewart's decision to not transfer as directed in the HR Meeting. Employers rarely to "compensate" an employee it intends to terminate with hours of unearned wages.

6.) On May 7, 2013, Simmons allegedly prepared another HR Memorandum detailing Stewart's misconduct. (AROA 89-90). Here, Stewart truly views Simmons as her star witness. A Close examination of the Memorandum provides direct unequivocal substantial evidence Simmons had no intent to, as he testified, immediately terminate Stewart's employment. Simmons testified that on Friday, May 3, 2013 at the time he informed Stewart she made the right decision to transfer, he planned to seek her termination. (AROA 160, Ln. 10-13). Simmons specifically testified, "... [I]t was my intent at that time to go straight to the County Administration ... it was Friday afternoon through Monday morning, it was that time that

I made the decision to ask for permission to terminate "her employment". (AROA 161, Ln. 15-20). Notwithstanding the above facts and those to follow below, this testimony contradicts Simmons' May 7, 2013 HR Memorandum which states in no uncertain terms:

> While I have reluctantly agreed to allow Mrs. Stewart to continue her employment in Walhalla, I feel there are sufficient grounds for termination. I believe no further incidents should be tolerated.

The aforementioned HR Memorandum was written by Simmons to document with Human Resources Stewart's alleged behavior as a possible terminal offense for recording in her HR Record for zero tolerance of any similar future incident. This Memorandum served more as a letter of reprimand than a pre-cursor to termination. Simmons, four days after the alleged incident, specifically identifies his reluctance to allow Stewart to continue her employment. However, his sworn testimony states that he sought to immediately terminate her on May 2, 2013. Which Simmons is this Court to believe? The aforementioned facts and Simmons' own Memorandum has a "tale of two cities". In the "first tale" Simmons is doing whatever is reasonably necessary to retain Stewart before and after the alleged liar incident up through the May 7, 2013 HR Memorandum. In the "second tale", after May 7, 2013, Simmons cannot terminate Stewart quick enough. Why? Before Stewart uses the Record to materialize the why in the "second tale", she points to additional relevant facts. The Record clearly establishes that the conduct Stewart was alleged to have committed has never transpired within her work environment. (AROA 163, Ln 23-26, 172 Ln. 3-24 & 177 Ln. 19-21). "A single instance of minor misconduct will not generally disqualify a claimant from receiving unemployment compensation benefits, but recurrent violations of the standards of behavior which an employer has the right to expect of an employee constitutes misconduct warranting disqualification. *Schwan's Home Services, Inc. v. SCDEW, Docket No.: 11-ALJ-22-0317-AD* citing *76 Am. Jur. 2d Unemployment Compensation 69 (Nov. 2010)*. The Record clearly establishes Simmons acknowledges Stewart has never committed the alleged misconduct previously and no prior disciplinary recording of such exists. (AROA 164, Ln. 1-3).

7.) In the "second tale", Simmons actions are revealing. As recanted above and as the Record reflects, Stewart's SMS text message receipt was the last interaction or direct communication between Stewart and Simmons. (SROA 8). On May 9, 2013 at 8:44 AM Stewart forwarded an email to Simmons documenting concerns of racial overtones as a basis to document her work product. (AROA 130). At approximately 2:00 PM on May 9, 2013, Stewart was terminated by Simmons for alleged misconduct on May 3, 2013. (AROA 131 and 173, Ln. 11-17). The only intervening "incident" since Simmons May 7, 2013 HR Memorandum that seemingly qualifies as an "intolerable incident" pursuant to the Memorandum appears to in fact be this email.

8.) Simmons' testimony infers why he would immediately terminate Stewart after this email. Simmons testified that the racial incidents Stewart identified in grievances that transpired in Walhalla, (AROA 94), were not inappropriate in his opinion. He further stated, "Ms. Staggers construed some incidents in an exaggerated and embellished manner". Simmons further opinioned, "I would not classify it as anything significant and certainly would not classify it as harsh hostile or racist". He further describes the incidents Stewart reported but clearly omits Stewart's grievance of the use of the term "Nigger" with her within the Walhalla office setting. (AROA 162, Ln. 12-29 and 94). Exhibits 5, 6, 7 and 8, as referenced at AROA 94 shows what Simmons deems as embellished and exaggerated. Further, Simmons also opined "[t]here was nothing that took place from my staff in my office that would be grounds to refuse to go back to that office considering that I had made great strides with the personnel in that office to hopefully polish their image …". (Exhibits 1,

2, 3,4) shows his staff, forwarding a racially insensitive inner office email concerning minorities and internal office racial jokes posted on the employee bulletin board by "his staff". The rapper Simmons references, "Lil Kim", is known to be sexually explicit and raunchy. This for Stewart is a racial insult.[6] Simmons makes much of his corrective actions, however, a close review of the Record does not identify any corrective action on racial sensitivity. How does Simmons, as a white Caucasian male insensitively say an "African-American" female in an all Caucasian majority workplace, is exaggerating and terminates her when she raises concerns of racial overtones due to the aforementioned office history? His words on the Record establishes his disagreement with Stewart's perspective.

9.) Though Simmons testifies that he immediately sought Stewart's termination with county administration as of May 3, 2013, the Record actually betrays his contentions. First and foremost, in this "second tale" Simmons testified that the decision to terminate Stewart was ultimately made on Thursday, May 9, 2013 after conferencing with the county administrator. (AROA 160, Ln 15-26).[7] Simmons attempts to explain the failed attempts to contact the administrator from Monday, May 6 through Thursday May 9, 2013. Though he falsely testified he prepared the May 7, 2013 Memorandum on Wednesday, May 8, 2013, Simmons, in our age of digital communication, provided no evidence of any conversations or attempts of communication with the county administrator prior to Stewart forwarding the racial overtone email. This is uncharacteristic of Simmons' document, document and document persona. Even more damaging , Assistant County Administrator Glenn Breed, (hereinafter, "Breed"), testified he initially was directed by the county administrator to address the issue with Simmons May9, 2013. (AROA 189, Ln. 13-16). Ever more damaging the AHO questioned Breed about is involvement in discussions to terminate Stewart from May 3rd to May 9th and Breed could only testify he was only involved after May 9th. Further, the AHO specifically asked whether Breed spoke to Simmons concerning Stewart's discharge prior to May 9th and Breed answered "No", but proceeded to explain how Simmons was attempting to talk with the administrator for an excess of 4 days. Again, no corroborating evidence of such in the Record. (AROA 190, Ln. 5-14). This is significant on its face, substantial evidence shows Simmons proceeded to terminate Stewart, in fact, on May 9th, no evidence in the Record establishes such occurred prior to her emailing the racial overtone statement and the Assistant County Administrator admits no discussions transpired surrounding Stewart's alleged termination until after Stewart forwarded her racial overtone email. Simmons confirmed receipt of such email on May 9, 2013 at 8:44 AM, a minimal of 14 minutes after office hours commenced. (AROA 173, Ln. 11-24). In turn, Simmons also confirmed he terminated Stewart's employment on May 9th at 2:00 PM – five hours after receipt of the email and after meeting with County Administration. It is here that the Record further reveals the "why" of Stewart's termination and the "second tale" of Simmons' story. The facts in the Record establishes Stewart was retained for continued employment by Simmons, and subsequently terminated after Simmons received Stewart's email, and subsequently meet with County Administrators on May 9, 2013. This is the "second tale" of Simmons story that the Record reveals as a result of Simmons' persistent documenting coupled with Stewart's placing documentary evidence into the Record for subsequent appellate review by this Court.

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[6] Stewart is a graduate of the University of South Carolina with two bachelor degrees, is a hardworking professional and nothing synonymous to the stereotype of a "African-American" sexually promiscuous women depicted in Exhibit 5, "Lil' Kim".

[7] All of Oconee County Court personnel, to include Simmons, hours are 8:30 AM to 5:00 PM according to Simmons. (AROA 90 and 106). This meeting transpired after the 8:44 AM racial overtone email forwarded to Simmons from Stewart.

In applying the "substantial evidence" standard of review, Stewart understands this Court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact but may reverse where the decision is affected by an error of law. *Liberty Mutual Ins. Co. v. S.C. Second Injury Fund, 611 S.E. 2d 297 (Ct. App. 2005).* However, this Court has the authority to reject the findings of fact of the Appellate Panel when those findings are "clearly erroneous in view of reliable, probative, and substantial evidence on the whole Record" under the same "substantial evidence" rule. *Todd's Ice Cream, Inc. v. S.C. Dept. of Emp. Sec. Comm., 315 S.E. 2d 373, 375 (Ct. App. 1984).* Stewart disputed every allegation of the alleged basis for her termination and has offered substantial unrebutted evidence to contradict the bare, unsupported allegations made by Simmons with no evidence to support his claims of terminating Stewart for misconduct. Considering the aforementioned fact, "considering the record as a whole" no reasonable fact finder's objective review of the Record could come to the conclusion that Stewart's alleged misconduct was the cause of her termination. *Merck at 339.* And employer who alleges that a claimant is ineligible for unemployment compensation by reason of misconduct bears the burden of proof on that issue. *76 Am. Jur. 2d Unemployment Compensation § 71 (Nov. 2010).* "An employer's burden of proof with regard to misconduct includes the burden to prove that the alleged misconduct was in fact the reason for the employees discharge". Here, the Appellate Panel affirmed the Appeal Tribunal because it determined "[Stewart] was discharged for misconduct connected with the employment". (AROA 149). However, the Record, which the Tribunal and Panel did not consider as a whole, shows that Stewart was not discharged for misconduct but rather was terminated for emailing concerns of racial overtones. Simmons' May 7, 2013 HR Memorandum expressly stated, "... I have reluctantly agreed to allow Mrs. Stewart to continue her employment in Walhalla ...". Then, Simmons reverses on May 9, 2013 and terminated Stewart five hours after emailing concerns of racial overtones. A denial of unemployment benefits may not be based upon "the reasons why a claimant might have been discharged" but rather must be based upon "the reason or reasons why [she] was discharged", *Barton v. SCDEW, Docket No.: 10-AW-30-0438-AP* citing *Randle v. Administrator, La. Office of Employment Sec., 496 So. 2d 488, 492 (La Ct. App. 1986).*

The South Carolina Supreme Court in *Porter* stated, the "'substantial evidence' standard of review does not mean the Court will accept an ... agency's decision at face value" and the agency "must fully document its findings of fact and base it decision on reliable, probative, and substantial evidence on the whole record". *Porter* further stated, "an administrative body must make findings, which are sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings". Moreover, "if material facts are in dispute, the administrative body must make specific, express findings of fact". The Appellate Panel did not accomplish the mandates of *Porter* and in fact refused to include Stewart's evidence and pleadings at the tribunal level as part of the Appellate Panel Hearing. (AROA 7-34, 36-59, and 149-152). Given that the Panel did not rule on the above issues the case should be remanded. In order for the ALC to perform the necessary review under the "substantial evidence" standard, the lower Appellate Panel must have performed the same review. More importantly, the Appellate Panel opinion is entitled to no deference because it did not consider the Record as a whole. There was no meaningful analysis of the evidence on the Record as a whole under the "substantial evidence" standard as statutorily required. As such, Stewart moves this Court to modify, reverse, or remand the decision in this as the Court deems appropriate.

VI. WHETHER AS A MATTER OF FACT AND CONCLUSION OF LAW STEWART'S ALLEGED MISCONDUCT MET THE STANDARD OF CAUSE FOR TERMINATION AS DELINEATED IN THE EMPLOYER'S EMPLOYEE HANDBOOK'S POLICY FOR EMPLOYEE CODE OF CONDUCT AND DISCIPLINE?

Simmons' Termination Notice, AROA 131, specifically alleged Stewart displayed a lack of professionalism and insubordination for stating to him, "You're a liar" following a refusal to be transferred. To which, Simmons alleges this statement was made by Stewart while disagreeing with Simmons' response to questions pertaining to her whistleblower complaint emailed on April 30, 2013. (AROA 102). Whereas, Stewart reasserts Simmons' allegations are inaccurate, misleading, and an over-simplified mischaracterization of content surrounding the May 3, 2013 HR Meeting. The Employee Handbook's, *Policy Number 7-2, "Employee Code of Conduct and Discipline, Termination Examples,"* dated, September 2012, exemplifies termination for insubordination as "refusal to perform assigned work". (AROA 142). Thus, Stewart's actual adherence, transferring to Walhalla, as per the Employer's instruction, is not analogous to criteria satisfying elements of insubordination contained within the Employee Handbook and was not the basis for her termination.

In the Termination Notice, AROA 13, Simmons purports to terminate Stewart for stating to him supervisor, "You're a liar", which Simmons described as a lack of professionalism. Simmons alleges, this statement was made by Stewart while disagreeing with his response to questions pertaining to her grievance. The characterization by Simmons of the alleged statement is not conducive to the Employee Handbook's description of employee misconduct. The alleged statement does not constitute a "refusal by Stewart to perform assigned work". Though the "termination examples" contained within the Employee Handbook, are not all-inclusive but illustrative, the basis for immediate termination provided by them, such as fighting, theft, refusal to perform assigned work, harassment, are not found in the present facts. (AROA 142). Simmons' termination of Stewart was dissembled for reasons extrinsic of misconduct. Specifically, as argued and proven above Simmons effectuated this termination on May 9, 2013, five hours after an email by Stewart for concerns of racial overtones. Stewart stating to Simmons "that can't be accurate", (or as Simmons alleges "You're a liar"), surrounding a difference in recollection of events pertaining to her whistleblower complaint of fraudulent overtime reporting, is not a lack of professionalism or a known and deliberate act, committed by Stewart, harming Simmons' operation objectives. Stewart's demeanor and communication during the HR Meeting was a calm expression of concern, absent any offensive language or unprofessionalism. This is strong evidence that such continued during the unrecorded portion of the HR Meeting in which the alleged misconduct transpired. On the contrary, there is a strong inference the close temporal proximity in time "before" Stewart's whistleblower complaint that the complaint triggered her involuntary transfer back to Walhalla, where racial animus occurred. Merely, informing Simmons of inaccuracies, after an Employer's denial of facts surrounding her whistleblower complaint, is not employee misconduct, within the meaning of the Employee Handbook, or *S.C. Ann § 41-35-120 (2) (a)*. Disagreeing with an employer on his participation and recollection of events which he was involved in a grievance isn't [c]onduct evincing such willful and wanton disregard of an employer's interest or disregard of standards of behavior the employer has a right to expect from his employee". Even assuming Stewart was, which she was not, "being merely argumentative, [as Simmons interprets] it is not sufficient for discharge for misconduct." *Payne v. Antoine's Restaurant, 217 So. 2d 514 (La. App 1969)*. Even assuming, arguendo,

that Stewart was argumentative, the alleged comment transpired privately, did not threaten management's authority over co-workers, there were no threats physically or verbally and there was no abusive language or vilification of Simmons. *Sheff v. Board of Review Illinois, 470 N.E. 2d 1044 (Ct. App. IL 1984).* Rather, in the context of Stewart's professionally courteous response and demeanor, her communication during the HR Meeting was a calm expression of concern absent any offensive language or unprofessionalism.[8] (AROA 75 and 107-125).

VII. WHETHER STEWART, AS A PUBLIC EMPLOYEE, EXERCISING HER FIRST AMENDMENT CONSTITUTIONAL RIGHT TO PURSUE A GRIEVANCE, PURSUANT TO THE EMPLOYER'S EMPLOYEE HANDBOOK, DISPLAYED MISCONDUCT BY VERBALLY DISAGREEING WITH THE ACCURACY OF THE EMPLOYER'S RECOLLECTION OF FACTS SURROUNDING HER GRIEVANCE AS A MATTER OF LAW?

In the capacity of a public employee and as a private citizen, Stewart possessed the Constitutionally Protected Right in Freedom of Speech, which precludes her employer from discharging her, when presenting complaints of public concern such as misappropriation of county payroll funds. See *Rankin v. McPherson, 483 U.S. 378, 97 L. Ed. 2d 315 U.S. Supreme Court (1987)* and *Urofsky v. Gilmore, 216 F.3d 401, 406 4th Circuit Court of Appeals (2000).* In accordance with the Employee Handbook, the lack of professionalism proclaimed by the employer alone, is not an identifiable act that would have provided sufficient notice of immediate termination to Stewart.

As a threshold matter, constitutional protections for freedom of expression for public employees is protected under the First Amendment of the United States and Article 1 and Section 2 of the South Carolina Constitution. Our U.S. Supreme Court has held that protection of such expression must 1) relate to a matter of public concern, 2) must balance the competing interests of the employee's rights and employer's interest in the efficient operation of government. *Pickering v. Bd. of Edu, 157 F3d 271, 277, 278 (4th Cir. 1994)*, freedom of expression was deemed a "public concern" in grievances attacking the school's use of funds. Our 4th Circuit Court of Appeals has also held that "public employees do not forfeit the protection of free expression simply because they decide to express their views privately rather than publicly" as Stewart accomplished with Simmons during the HR Meeting on May 3, 2013. Stewart's grievances on the Misappropriation of overtime and payroll funds by Sheriff and her subsequent discussion and disagreement of the facts by Simmons was constitutionally protected free speech. For the above stated reasons, Stewart submits she was terminated for exercising her right to freedom of expression in a manner of "public concern" when she utilized the employer's grievance process. The Appellant Panel's decision should be reversed and/or modified for failure to address the issues raised and error in law.

Stewart, through her pleading the AHO excluded from the record, submitted a grievance dated, April 30, 2013, AROA 102 & 135-142,[9] Employee Handbook to the Appeal Tribunal to become part of the Record. In the Employee

[8] Claimant's exhibit 1, AROA 75, was excluded from the Record by this Court and deemed duplicative by this Court. Such precluded Stewart from establishing she did not communicate in a disrespectful tone during the HR meeting or afterwards. "Actually" listening to the audio recording, as opposed to reading from a cold record, reveals the tone and mannerism of communications between both parties.

[9] The Respondent again excluded from the Record on Appeal relevant documents. AROA 13 lists Exhibit 29 of the "Evidence Motion" as Employee Handbook" pgs. 53-60. The AROA 135-142 omits pg. 56 of the "Employee Handbook" attached to this brief as Exhibit 10.

Handbook, *Policy Number 7-1, "Employee Grievance and Appeal Procedure Step One: Discussion Between Employee & Immediate Supervisor"* states:

> The Employee should first DISCUSS the problem or grievance with [her] immediate supervisor. The supervisor will investigate the matter and seek an appropriate solution to the situation. A written response to the employee will be provided within three working days.

In conversing with Simmons after the May 3, 2013 HR Meeting, Stewart was simply exercising her right to seek resolution of a grievance submitted three days prior to the HR meeting. Further, the discipline policy does not preclude an employee, such as Stewart, from impugning or rather "challenging" the accuracy of information pertaining to a grievance with her Employer. It is unreasonable to classify Stewart's disagreement with Simmons' recollection or version of facts as misconduct because Stewart states what is being stated is inaccurate or allegedly untruthful. Such, nullifies the employers' grievance process as ineffective. Stewart submits that in actuality the standard of behavior, which the Employer had the right to expect, was in fact what Stewart exhibited in reporting what she believed to be misappropriations of payroll funds by Sheriff and communicating disagreement of what she believed to be inaccurate surrounding Simmons' version of events. The Decision of the Appellate Panel effectively states that an employee exercising the employee grievance procedures and verbally disagreeing with an Employer's statements within that process is effectively misconduct. It further conveys Stewart had no right to verbally disagree with Simmons' recollection of facts surrounding the grievance, which is opposite of the Employee Handbook that MANDATES discussing problems or grievances with the supervisor.

VIII. WHETHER SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE APPELLLATE PANEL'S FINDINGS THAT STEWART COMMITTED MISCONDUCT WERE CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD?

A decision of the administrative department or agency "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. 692 S.E. 2d 910, 913 (2010).* In applying this 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., 550 S.E. 2d 287, 292 (2001).*

As recanted in the above statement of facts, on May 9, 2013, Stewart was terminated for allegedly calling her employer, Simmons, a "liar" after an HR Meeting on May 3, 2013. During the Tribunal Hearing Stewart refuted those allegations. In a "nutshell" the Appellate Panel made additional findings of fact and ruled, "we find credible the testimony of [Simmons], particularly since he immediately reported the claimant's disrespectful comments to [Sheriff]". AROA 151. Simply, the Panel's decision was based on uncorroborated hearsay testimony of Sheriff, AROA 178, Ln. 16-24, whom Stewart filed a grievance against forty-eight hours before the alleged final incident. Interestingly, Sheriff's testimony on this matter was extremely brief not detailed. More importantly, Stewart provided direct proof that "there is no reasonable probability that the facts could be as related by Sheriff or Simmons upon whose testimony the finding was based". Simmons testified to Sheriff being his offices' "right hand" to an array of issues within the county's magistrate department and deemed her his "senior or lead court clerk". (AROA 167 Ln. 9-13). A close examination of the Record establishes Sheriff and Simmons both produced documentary evidence prior to Stewart's termination and Appeal Tribunal Hearing that expressively documents the significant events of May3, 2013. After the "HR Meeting", Simmons and

Sheriff prepared a Post HR Memorandum dated, May 3, 2013 that explicitly outlined events that transpired during and after the HR Meeting. (SROA 9) As have been noted previously, the Post HR Memorandum documented no misconduct or details of any incident in which Stewart allegedly called Simmons "a liar". The Post HR Memorandum was prepared by both Simmons and Sheriff. Both are listed as the preparers and communicators of the HR Memorandum as documented in the lower left corner with the initials of "MTS/das". (SROA 9). Both Sheriff and Simmons identified themselves within the Record upon their initial testimony and provided their full names corresponding with the aforementioned initials. (AROA 158, Ln. 1-2 and 176 Ln. 8-9). Here, both prior to any termination or the instant litigation, arrested in their official employment capacities what transpired during and after the "HR Meeting" for formal documentation in Stewarts personnel Record. However, now the tale of both has shifted. Sheriff further evidences a "shift" in her testimony on the Record and establishes she did not know what was discussed between Stewart and Simmons. (AROA 177, Ln. 8-14). Immediately thereafter she testifies that she knows what happened because Simmons told her that Stewart said that he was "a liar". (AROA 178, Ln. 16-24). This statement is uncorroborated hearsay that contradicts Simmons' and Sheriff's Post HR Memorandum on May 3, 2013. Based upon the Appellate Panel's decision, the testimony of Simmons' as a judge and Sheriff's uncorroborated hearsay was the sole basis for its decision to determine Stewart committed misconduct.[10]

Our Supreme Court in *Porter* stated, "substantial evidence is more than a mere scintilla of evidence" *507 S.E. 2d at 332*. Here, the evidence relied upon by the Panel is solely unreliable and the Panel did not sufficiently detail why Stewart's documentary evidence, the May 3, 2013 Post HR Memorandum, was not sufficient evidence for Stewart's defense. The Panel "must fully document its findings of fact and base its decision on reliable, probative, and substantial evidence on the *whole* Record". *Id.* Here, the Panel was silent on Stewart's entire "Evidence Motion" that contained material facts in dispute supporting her defense. To this regard the Panel "must make specific, express findings of fact". Here, the Appellate Panel did not weigh the evidence submitted by Stewart but moved to resolve the factual disputes in favor of the employer. Simmons to this end presented personnel to show that Stewart did call him "a liar" and utilized uncorroborated hearsay testimony of Sheriff in an attempt to prove his claim. Stewart directly refuted such with her own sworn testimony and direct documentary evidence, the Post HR Memorandum of May 3, 2013, which establishes Simmons' and Sheriff's attestation that no misconduct or "liar" comment transpired. (AROA 194 Ln. 17-23, 195 Ln. 10-20, and SROA 9). Further, there was also ample evidence in the Record that Stewart never exhibited any propensity to communicate in a disrespectful or insubordinate manner leading up to her termination. In fact, Simmons and Sheriff says as much on the Record. Simmons after being asked by the AHO if Stewart had ever communicated inappropriately in a similar manner stated, "with me personally, no". (AROA 163 Ln. 23-26). When Sheriff was questioned by the AHO whether she knew of any unprofessional communication she responded, "No". (AROA 177 Ln. 19-21). Simmons actually rated and praised Stewart as recently as January 10, 2013 in her latest Employee Performance Evaluation described her communication as "dealing tactfully with associates expresses with clear statements and handles her affairs

[10] The Panel made a material statement that Stewart used poor judgment in questioning Simmons' honesty. (AROA 151). Pursuant to *Boynton v. Neubeck 296 N.W. 636, 642 (Wis. 1941)* adopted by *Lee v. S.C. Employment Sec. Comm'n 291 S.E.2d 378, 379 (S.C. 1982)*, errors in judgment or discretion are not to be deemed misconduct.

professionally". (AROA 97). As of May 3, 2013, Simmons retained this perspective when he stated in the Pre-HR Memorandum of May 3, 2013, "... [S]tephanie ... does a great job. She has received good reviews from me ...". (AROA 88).

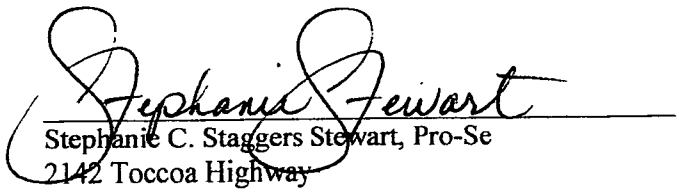
The Record is absent any substantial evidence that Stewart met the statutory definition of misconduct pursuant to S.C. Code Ann. § 41-35-120 (2) (a). In fact there is substantial evidence in the Record that Stewart did not engage in any inappropriate workplace misconduct. More importantly, the Record establishes the Panel failed to consider the "record as a whole" and this case should be remanded for further proceedings, or modify the Panel's ruling. The evidence "as a whole", particularly Simmons' and Sheriff's attestations in the Post HR Memorandum, established there is no reasonable probability the facts could be related by [Simmons or Sheriff] upon whom the testimony the finding was based". *Sea Pines 550 S.E. 2d at 292.*

CONCLUSION

For the above stated reasons, Stewart respectfully requests that the Court remand this case to the Appeal Tribunal so, 1.) the SCDEW can consider the "previously submitted" evidence not considered or ruled upon by the Appeal Tribunal and Appellate Panel; 2.) so Stewart can introduce the "additional evidence", as briefed in her attached Motion, for further fact-finding proceedings consistent with this Court's opinion, or in the alternative; 3.) find the decision of the Appellate Panel should be reversed for the aforementioned reasons with a corresponding adjustment to the 20 week unemployment benefits disqualification period and amount of benefits affected by the SCDEW's error in law.

Dated this 8th day of April 2014.

Respectfully Submitted,



Stephanie C. Staggers Stewart, Pro-Se
2142 Toccoa Highway
Westminster, South Carolina 29693
864-647-2216
stephstewart77@yahoo.com

CERTIFICATE OF SERVICE

I, Stephanie C. Staggers Stewart hereby certify that in Docket No.: 13-ALJ-22-0555-AP, a copy of the attached, "Initial Appeal Brief of Appellant", was forwarded to the below listed parties by way of U.S. Postal Service First Class Mail with sufficient postage affixed for delivery:

South Carolina Administrative Law Court
The Honorable Shirley C. Robinson, Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
Sent via U.S. Postal Service Certified Mail Receipt No.: 7010 1870 0003 6804 2678

Office of General Counsel
Attn: E.B. Trey McLeod, III
South Carolina Department of Employment and Workforce
Post Office Box 8597
Columbia, South Carolina 29202

Oconee County
c/o: McNair Law Firm
Attn: Reginald Gay, Attorney for Employer
Post Office Box 447
Greenville, South Carolina, 29602

Dated this 8th day of April, 2014

Respectfully Submitted,

Stephanie Stewart

Stephanie Stewart, Pro Se

CERTIFICATE OF DATE OF MAILING

I, Stephanie C. Staggers Stewart hereby certify that in Docket No.: 13-ALJ-22-0555-AP, a copy of the attached "Initial Appeal Brief of Appellant" was deposited in the U.S. Postal Service First Class Mail with sufficient postage affixed for delivery on April 8, 2014, to the below listed parties:

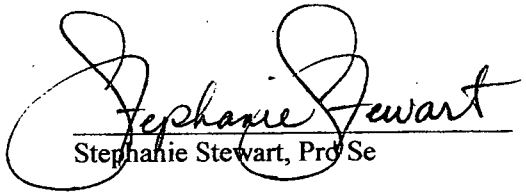
South Carolina Administrative Law Court
The Honorable Shirley C. Robinson, Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
Sent via U.S. Postal Service Certified Mail Receipt No.: 7010 1870 0003 6804 2678

Office of General Counsel
Attn: E.B. Trey McLeod, III
South Carolina Department of Employment and Workforce
Post Office Box 8597
Columbia, South Carolina 29202

Oconee County
c/o: McNair Law Firm
Attn: Reginald Gay, Attorney for Employer
Post Office Box 447
Greenville, South Carolina, 29602

Dated this 8th day of April, 2014

Respectfully Submitted,



Stephanie Stewart, Pro Se

EXHIBIT
1

Stephanie Stewart

From: Elizabeth Brackett
Sent: Wednesday, March 16, 2011 9:57 AM
To: Connie Weaver; Stephanie Stewart; William Derrick; 'Rhonda K. Morgan'
Subject: FW: The Magic Green Hat
Attachments: image001.jpg

From: Dallas Shirley [mailto:dshirley@oconeelaw.com]
Sent: Wednesday, March 16, 2011 9:40 AM
To: amy.norris418@yahoo.com; Betty Winchester; Blake Norton; Cole Shirley; Cynthia Lyda; Casey Bowling; dsingleton@seneca.sc.us; David R. McMahan; devfel68@aol.com; Elizabeth Brackett; Francoise Fussell; Ginger Reid; Jo Anna White; J. Murray; John Vickery; Jim Stokes; Jeff Underwood; Kathy Frederick; Lisa Willis; Lynda Partin; Maryln Milson; Mikal Fostervold; Nita Galloway; Neal F. Brown; Patrick Merck; Rebecca Queen; Roberta Williams; Rick Martin; Sherry L. Bryson; Stephen B. Jenkins; sannsone@gmail.com; Toni Chaney- Becker; terrycissy@gmail.com; Tammy Lawing; Tonya Massey; Travis Tilson; Vickie Bottoms
Subject: The Magic Green Hat

The Magic Green Hat

The other day I needed to go to the emergency room. Not wanting to sit there for 7 hours, I put on my MAGIC GREEN HAT.
When I went into the E.R., I noticed that 3/4 of the people got up and left.

I guess they decided they weren't that sick after all. Cut at least 5 hours off my waiting time.

Here's the hat.

EXHIBIT
tabbies
2

It also works at the DMV. It saved me 5 hours.

At the Laundromat, three minutes after entering, I had my choice of any washing machine, most still running.

But don't try it at McDonald's. The whole crew got up and left and I never got my order.

INTRODUCING

JOSEPH "JIHAD JOE" HAMILTON

EXHIBIT
3

THE LATEST IN A LONG LINE OF IRAQI ACTION FIGURES!

BASED ON THE HOST OF IRAQI IDOL, "JIHAD JOE", IS ALLAH'S BRAVEST HERO AND COMES IN CAMEL COMMANDO STYLE, COMPLETE WITH MISSILE LAUNCHER, I. E. D., COMBAT GRIP AND REMOVABLE TURBAN.

SUICIDE KNAPSACK SOLD SEPARATELY!


Help.org/SC
ReedFellas
A GREG REED PICTURE
INTRO
JOSEPH "JIHAD
THE LATEST IN A LONG LINE OF IRAQI ACTION FIGURES!
WANTED
THROWING ROCKS
ERNEST T. BASS
EXHIBIT
4

lil kim album covers

+Steph...

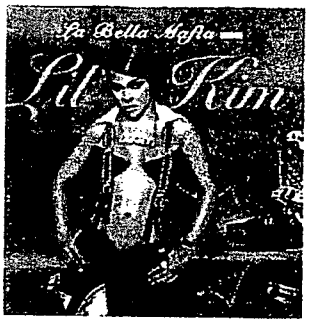
EXHIBIT 5

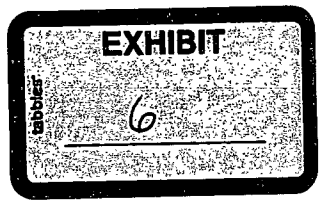
Nicki Minaj

Download Album Cover

Foxy Brown Album Covers

Before and





SUMMARY AND CONCLUSION

Stewart, by clear and convincing evidence, has established she has not committed any act of employee misconduct as alleged by the Employer and was in compliance with the Employer's directive to transfer. In fact, the Employer retaliated against Stewart by way of involuntary transfer and subsequent termination immediately after submitting grievances. Thus, the Employer discharged Stewart WITHOUT CAUSE. Furthermore, and in accordance with *S.C. Code Ann. Sec. 41-25-120 (2)(a)*, generally the burden to show misconduct rests upon the Employer. Stewart submits that the Employer cannot meet this burden.

Therefore, and based upon the above facts and substantive documentary evidence, Stewart moves for entry of this Pleading and the Supporting Documentary Evidence into the Tribunal Record. Further, Stewart moves that based upon the evidence, Employer's lack of proof both direct and circumstantial, that the decision of the Claim Adjudicator be reversed and Stewart be granted unemployment compensation. Forthwith, Stewart has clearly established that the Employer's cause of employment termination was not insubordination or employee misconduct as alleged.

WHEREFORE, Stewart moves this Appeal Tribunal to **GRANT** her motion for entry of this Pleading and Exhibits into the record and **GRANT** unemployment compensation benefits in accordance with statute.

On this _____ day of August 2013.

---

[1] Even assuming the Employer's allegations are accurate, the misconduct charged is more similar to the *Employee Handbook's* "Positive Discipline Example". The Employer's decision to issue a half-day of decision making leave to decide whether to resign, transfer, of receive involuntary termination strongly infers the Employer's use and knowledge of such. Last, *Section 7-2*, specifically provides, "any action which .... places an individual's job in jeopardy must ordinarily be ... approved by the County Administrator" and mandates review under the grievance process. Both were declined and deemed inapplicable in the instant case contrary to the *Employee Handbook.*

CERTIFICATE OF SERVICE

I, Stephanie C. Stewart hereby certify a copy of the attached Pleading with Exhibits forwarded to the below listed by way of Certified Mail with sufficient postage attached for delivery:

South Carolina Department
of Employment and Workforce
Attn: Appeal Tribunal
c/o: Lane K. Cook, AHO
Post Office Box 995
Columbia, South Carolina 29202
Via Certified Mail No: 7009 2820 0002 7554 4032

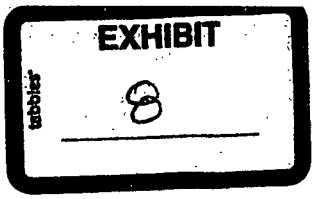
Oconee County
415 South Pine Street
Walhalla, South Carolina 29691
Via Certified Mail No.: 7009 2820 0002 7554 4056

On this 17th day of August 2013.

Respectfully Submitted,

Stephanie Stewart

STEPHANIE C. STEWART, PRO-SE
2142 TOCCOA HWY
WESTMINSTER, SOUTH CAROLINA 29693

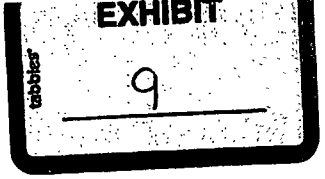


Grievance and Appeal Procedure Step One: Discussion Between Employee & Immediate Supervisor" states:

> The Employee should first DISCUSS the problem or grievance with [her] immediate supervisor. The supervisor will investigate the matter and seek an appropriate solution to the situation. A written response to the employee will be provided within three working days.

In conversing with the Employer after the May 3, 2013 HR Meeting, Stewart was simply exercising her right to seek resolution of a grievance submitted (3) three days prior to the HR meeting and not addressed by the Employer according to policy. Further, the discipline policy does not preclude an employee, such as Stewart, from impugning or rather "challenging" the accuracy of information pertaining to a grievance with her Employer. It is unreasonable to classify an employee's disagreement with an employer's recollection or version of facts as misconduct because the employee states what is being stated is inaccurate. Such, nullifies the employers' grievance process as ineffective. Stewart submits that in actuality the standard of behavior, which the Employer had the right to expect, was in fact what Stewart exhibited in reporting what she believed to be misappropriations of payroll funds by a co-worker and communicating disagreement of what she believed to be inaccurate surrounding the Employer's version of events. The Decision of the Appeal Tribunal effectively states that an employee exercising the employee grievance procedures and verbally disagreeing with an Employer's statements within that process is effectively misconduct. It further conveys Stewart had no right to disagree with the Employer's accuracy of facts surrounding the grievance, which is opposite of the Employer's Employee Handbook that MANDATES discussing problems or grievances with the supervisor.

In this very argument, Stewart submits the AHO is inaccurate in his findings of fact and failed to properly enter documents into the record. If this Panel rules the AHO was accurate, an appeal shall be pursued presumably stating this Panel was inaccurate for using inaccurate



information from the AHO. In doing so, does this Appeal Panel interpret Stewart as calling the AHO a liar or challenging his honesty because she is in fact impugning the accuracy of the facts as "recollected" in the Appeal Tribunal Decision? If in fact this Panel rules in favor of the AHO's conclusions and Stewart pursues an appeal to the Administrative Law Court raising further inaccuracies, would this Panel perceive Stewart to be "impugning" it's honesty? Or, would this Panel understand that she is actually exercising her right to seek redress for a matter of disagreement as she did with the Employer pursuant to the Employer's policy?

CONCLUSION

Stewart concludes the events leading to her termination do not meet the standards for termination as detailed in the Employer's Employee Handbook, *Discipline and Code of Conduct*. In fact, the alleged conduct is not listed as a violation of the Employer's policy. In addition, the alleged misconduct did not reach the definition of misconduct or insubordination as defined by the South Carolina Supreme Court in *Lee v. South Carolina Employment Sec. Comm. 277 S.C. 586 (1982)*.

As such and pursuant to its statutory authority, Stewart requests that this Appeal Panel: 1.) Consider Stewart's previously submitted Pleadings/Documentary Evidence; 2.) Make its own findings of fact; and, 3.) Subsequently reverse the Decision of the Appeal Tribunal GRANTING Stewart unemployment compensation for the period of disqualification.

Dated this 22nd day of October 2013.

EXHIBIT
tabbies
10

OCONEE COUNTY PERSONNEL POLICY AND PROCEDURE MANUAL

SEPTEMBER 2012

SECTION 6
PERSONNEL ACTIONS

OCONEE COUNTY PERSONNEL MANUAL
Policy Number 6-1

SUBJECT: Termination Of Employment

The County recognizes that conditions may develop which require the termination of an employee or a reduction in staff.

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 CIRCUMSTANCES 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 CONTAINS GUIDELINES FOR DETERMINING PROPER DISPOSITION OF DISCIPLINE, INCLUDING SITUATIONS WHICH MAY RESULT IN THE TERMINATION OF EMPLOYMENT. THESE PRACTICES DO NOT NECESSARILY ADDRESS ALL CIRCUMSTANCES WHICH MAY RESULT IN TERMINATION OF EMPLOYMENT.

Termination Of Temporary And Introductory Employees

Due to the nature of the employment relationship, individuals in this status may be terminated at any time without the provision of a due process hearing. As much advance notice as possible will be provided.

Voluntary Terminations

A voluntary termination is a separation from the organization at the expressed or implied desire of the employee.

- Resignation.

Employees who resign are requested to provide two weeks' notice of their intention and to provide a written notice of such intention. Employees are asked to furnish reasons for their resignation. Failure to provide two weeks' notice may affect future re-employment. A failure to provide appropriate notice will result in the forfeiture of accrued, but unused, vacation.

- Retirement.

- Not returning within the specified time period after a leave of absence. Written notice of separation will be mailed to the employee's last known address.
- Missing work for three consecutive days without notification or after a threat to quit will be considered a voluntary termination. Written notice of separation will be mailed to the employee's last known address.

Involuntary Terminations

An involuntary termination is a separation from the organization at the initiation of management. They are classified as follows:

- Release.

Separation due to the inability to perform job assignments in an appropriate and satisfactory manner. A release, although involuntary, does not always reflect negatively toward the individual.

- Layoff.

Separation resulting from a reduction in the work force, either permanent or indefinite. Paid notice is provided to the employee as soon as possible and will be at least two weeks.

- Dismissal.

Separation resulting from the performance, conduct, or behavior of an employee, without regard to whether prior warnings have been issued concerning the employee's performance, conduct, or behavior.

- Medical Disability Separation.

Substantial medical evidence demonstrating that an employee cannot perform the essential functions of his/her assigned job in a satisfactory manner, with or without accommodation, and cannot accept a similar position within the organization.

- The County Administrator reserves the right to offer a minimal severance package, if in the best interest of the County.

Administrative Review Of Terminations

Except in the case of resignations, the County Administrator or his/her designee will make a final "administrative review" of each separation, before it is implemented.

References For Former Employees

When an employee is separated by resignation, layoff, release, retirement, or lack of work for temporary positions, the Human Resources Department, with the assistance of the former employee's supervisor, will provide letters of reference to help him/her obtain future employment.

All inquiries from prospective employers or their agents will be referred to the

Human Resources Department. No one else is authorized to release any information about a former employee. The release of unauthorized information can jeopardize the former employee's right to privacy and may subject this jurisdiction to legal action.

The Human Resources Department will not release any information, except for confirming the dates of employment, without the former employee's written consent or request which must be provided.

Exit Interviews

Sufficient notice is requested of those employees planning to leave employment with the County. Additionally, employees are requested to discuss their employment with the County, as well as their reasons for leaving, in an exit interview conducted by the Human Resources Department.

At the exit interview, all of the County's property should be returned, and matters such as final pay, continuation or termination of benefits, and other personnel matters will be arranged. Please remember that it is important to keep a current address on file with the County to maintain communication concerning post-termination benefits.

OCONEE COUNTY PERSONNEL MANUAL
Policy Number 6-2

SUBJECT: Layoffs

If it becomes necessary to reduce the work force, consideration for retention will be based on the following priorities:

- Those employees who possess skills and abilities that are desired by the County.
- Those employees with the best records of performance.
- Those employees with the greatest seniority.

The County Council and AA/EO Coordinator will review the impact of the layoff on the organization's Affirmative Action Plan.

Recall

Employees who have been separated as a result of layoffs are eligible for reinstatement to future vacancies for one year after separation. Priority consideration will be given in the order specified above.

Written Notification

The County Administrator or his designee is responsible for preparing written notification of separation. If the employee is not available at the workplace, the notification will be forwarded to the last-known address by certified mail.

SECTION 7
RULES OF CONDUCT, DISCIPLINE AND GRIEVANCE PROCEDURES

OCONEE COUNTY PERSONNEL MANUAL
Policy Number 7-1

SUBJECT: Employee Grievance And Appeal Procedure

It is the County's policy to provide a means to resolve work situations or problems that may arise from the employment relationship. All regular employees who feel they have been treated improperly are entitled to present a grievance or appeal without fear of recrimination. Any employee may avail themselves of the first two steps in this process. Employees may avail themselves of Step 3 in this process only if they have successfully completed their introductory period.

Step One - Discussion Between Employee and Immediate Supervisor.

- The employee should first discuss the problem or grievance with his/her immediate supervisor, unless the situation concerns the employee's immediate supervisor. In this case, the employee may go directly to their department head at Step 2.
- The supervisor will investigate the matter and seek an appropriate solution to the situation. The supervisor may seek advice and counsel from higher levels of management. A written response to the employee will be provided within three working days.

Step Two - Discussion Between Employee and Department Head.

- If the supervisor is unable to resolve the situation, or if the employee is not satisfied with the solution, he/she may present the matter, in writing, to the department head within five working days. If the situation concerns the employee's department head, the employee may go directly to the County Administrator at step 3 by presenting the matter, in writing, within five working days.
- The Department Head will investigate the problem, collecting all relevant facts and provide the employee with a written response within three working days.

Step Three - Five-Member Panel.

If a satisfactory resolution of the grievance is not reached at Step 1 or 2, the employee may request that the grievance be processed for review at Step 3. The grievance must be submitted in writing to the County Administrator within five working days of the decision at Step 2. The County Administrator shall notify the Grievance Committee and facilitate the hearing before the Grievance Committee.

In the event that an employee is terminated thereby making Steps 1 and 2 inapplicable, the employee may, within fifteen (15) days of termination, file a grievance under Step 3.
Step 3 of the grievance procedure is available for resolution of employment issues concerning the following: dismissal, suspension, involuntary transfers, promotions and demotions. Compensation is not deemed to be a proper subject for consideration under the grievance procedure except as it may apply to alleged inequities within a department of the County. In addition, verbal warnings/oral counseling or written reprimands shall not be deemed a proper subject for consideration under the grievance procedure.

The County Administrator shall appoint a Committee composed of five members to be known as the Grievance Committee. The Committee shall be appointed so that it will produce a cross-section of the County's employees. The Committee members shall serve terms of office of three years, except that of the members initially appointed, one shall serve for one year, two shall serve for two years, and two shall serve for three years. Positions that become vacant shall be filled on an interim basis for the remainder of the unexpired term. Whenever a grievance comes before the Committee initiated by or involving an employee of a department of which a Committee member also is an employee, such member shall be disqualified from participating in the hearing.

The Committee shall select a Chairman from among its own members. The Chairman shall serve as the presiding officer at all meetings unless he/she designates another Committee member to act in his/her absence.

A quorum shall consist of at least three members, and no hearing shall be held without a quorum.

In most instances, the employee (Claimant) will present to the Committee testimony regarding his/her grievance and what remedy claimant seeks, as well as any additional relevant testimony or witness.

The presiding officer will have control of the proceedings. He/she shall take whatever action is necessary to ensure an equitable, orderly, and expeditious hearing. Parties shall abide by his/her rulings concerning conduct of the hearing, except when a Committee member objects to a decision to accept evidence, in which case the majority vote of the Committee will govern. The Committee shall have the authority to call for files, records, and papers pertinent to any investigation; to determine the order of the testimony and the appearance of witnesses; to call additional witnesses; and to secure the services of a recording secretary.

The Chairman of the Grievance Committee will, within five working days after completion of the hearing, submit a written report and recommendation of the hearing to the County Administrator or the elected official with hiring and firing authority. If the County Administrator or elected official approves the report and recommendation of the Grievance Committee, the decision of the Committee shall be final and a copy of the decision shall be sent to the affected employee and the appropriate Supervisor/Department Head. If, however, the County Administrator or elected official rejects the decision of the Grievance Committee, the County Administrator or elected official shall conduct any further investigation he/she deems necessary and render his/her own written decision within seven working days. The decision of the County Administrator or elected official shall be final.

Grievance Hearing and Order of Proceedings

Grievance Hearing Proceedings (to be held in Council Chambers)

The Chairperson will call the meeting to order (proceedings shall be recorded as a matter of record,) and read a statement of the matter to be heard; and

When applicable appropriate the County's legal counsel or a representative from the human resources department will present the timeline of events as the County understands them; and

The Claimant requesting the grievance shall be granted a maximum of twenty (20) minutes to present their case before the Committee, specifically stating what they desire to be the outcome of the proceedings; and

Once the Claimant has finished his or her presentation, the supervising employee or Department Head shall be granted a maximum of twenty (20) minutes to present their case before the Committee; and

At this time any additional witnesses shall be called and given not more than a total of (20) minutes to speak; time shall be evenly divided amongst those present to speak. A general statement of relevancy shall be asked for by the Chairperson prior to each submittal; and

a. The Claimant shall call or present any additional testimony and/or evidence; and
b. The County shall call or present any additional testimony and/or evidence; and

Once all parties have presented their concerns to the Committee, Committee Members may ask questions pertaining to the issue at hand; and

The claimant requesting the grievance shall be granted a maximum of five (5) minutes for a closing statement; and

The Chairperson shall adjourn the hearing.

Grievance Committee Deliberations (Closed Session, limited to Committee Members)

The Committee shall meet in closed sessions to discuss the issues and evidence presented; and

The committee shall render a decision in writing as outlined in the Oconee County Personnel Policy and Procedure Manual

General Guidelines

Human Resources shall be responsible for organizing and scheduling the hearing, to include all contact and notifications for the hearing with all hearing participants; and

Grievance Hearings shall be closed hearings restricted to only those parties directly involved, which may include any legal representation as outlined in the Oconee County Personnel Policy and Procedure Manual, and

Grievance Committee members shall have no contact pertaining to the matter at hand with any of the parties to the hearing prior to the formal hearing; and

Discussions relating to the matter shall not be entertained by the Committee outside of the hearing proceedings, and

Only evidence and testimony directly pertaining to the grievance will be considered by the Committee, and

No debate shall occur between the party requesting the grievance, the human resource department, or the supervising employee; and

The Chairperson, for good cause shown, may extend the time limits set out in this section

OCONEE COUNTY PERSONNEL MANUAL
Policy Number 7-2

SUBJECT: Employee Code of Conduct And Discipline

Intent

Positive discipline is the preferred means to resolve problems related to conduct and performance However, situations may occur which require a different course of action

THIS POLICY IN NO WAY INFERS A CONTRACTUAL OBLIGATION TO FOLLOW ANY CERTAIN PROCEDURE THE COUNTY RETAINS THE RIGHT TO UTILIZE ANY FORM OF DISCIPLINE IT DEEMS APPROPRIATE

General

This jurisdiction has adopted a positive discipline policy that allows an employee every opportunity to meet the requirements, policies, rules, and regulations necessary

for continued employment. At the same time, the jurisdiction recognizes that some violations are of such a serious nature that immediate discharge is appropriate. Any action which will result in loss of pay, reduction in grade, or which places an individual's job in jeopardy must ordinarily be reviewed by the Human Resources Director and approved by the County Administrator.

Positive Discipline Examples

Examples of conduct calling for the: appropriate use of positive discipline include, but are not limited to: tardiness; unauthorized absences; failure to follow instructions, procedures, or standards; improper care, use or abuse of organizational property and equipment; abusive, vulgar, or threatening language; disregard of safety rules; and others of a similar nature. Examples of discipline that may be utilized by the County include an oral counseling, a written counseling, a written reprimand, and/or a short, paid, (maximum of one week) decision-making leave. The decision making leave gives the employee time off to think about the situation.

Termination Examples

There may be occasions where an employee's performance, behavior, or conduct leads the County to conclude, in its sole discretion, that termination is appropriate. Examples of the type of conduct that may lead to termination include, but are not limited to: theft; intoxication on duty; use, possession or sale of narcotics or other controlled or dangerous substances; fighting on duty; any form of harassment; insubordination; refusal to perform assigned work;" falsification of records; sleeping on the job; and unauthorized possession of firearms or other weapons; or reckless endangerment through actions or operations of equipment or machinery. This list is not all-inclusive but rather is illustrative of the type of conduct that may lead to termination.

Acknowledgement of Signature

The County may periodically conduct oral or written evaluations of employees' performance. Employees must sign written evaluations. The employee's signature does not necessarily indicate agreement with the contents of the evaluation; only that he/she has been made aware of the document. While favorable performance evaluations may be a factor in determining wage increase, no employee is entitled to a wage increase because he/she receives a favorable evaluation.

Employees must sign disciplinary notices, counseling memoranda, performance appraisals and similar documents. The employee's signature indicates only that the employee is aware of the action taken and does not indicate whether or not the employee agrees with the action. An employee who refuses to sign such a document will be relieved of all duty until the document is signed. If the document has not been signed and returned by the end of the employee's next scheduled work day, the County will consider the employee to have resigned.