

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Appellate Case No. 2014-001482

Case No: 14-ALJ-22-0015-AP

Gary W. Stokes Appellant

v.

South Carolina Department of
Employment and Workforce and
O'Charley's, LLC. Respondent,

RECORD ON APPEAL

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Holler, Garner, Corbett, Ormond,
Plante & Dunn
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Attorney for Appellant

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Columbia, SC 29202
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Attorney for Respondent

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DEC 18 2014
SC Court of Appeals

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Order of the Honorable John D. McLeod dated June 12, 2014	1
Administrative Law Court Notice of Assignment dated January 17, 2014	6
Letter dated March 4, 2014 to Honorable John D. McLeod regarding transcript corrections	7
To Whom It May Concern letter dated January 16, 2014.	9
Administrative Law Court Record on Appeal dated February 6, 2014.	10
Appellate Panel Decision dated December 17, 2013 (included in the ALJ Ct. Rec. App).	14
Decision of Appeals Tribunal dated November 14, 2013 (included in the ALJ Ct. Rec. App)	17
UI Claims Adjudicator's Determination dated July 31, 2013 (included in the ALJ Ct. Rec. App)	30
Notice of Appeal to the Appeal Tribunal dated August 12, 2013 (included in the ALJ Ct. Rec. App)	31
Transcript of testimony before the Administrative Hearing Officer dated October 22, 2013 (included in the ALJ Ct. Rec. App)	39

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gary W. Stokes,)
)
Appellant.)
)
vs.)
)
South Carolina Department of)
Employment Workforce and O'Charley's,)
LLC,)
)
Respondents.)

Docket No. 14-ALJ-22-0015-AP

ORDER

FILED

JUN 12 2014

SC ADMIN. LAW COURT

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to the Notice of Appeal filed by Gary W. Stokes ("Appellant"). Appellant appeals from an Appellate Panel Decision dated December 17, 2013, affirming the Appeal Tribunal decision finding Appellant was discharged for misconduct connected with his employment pursuant to S.C. Code Ann. § 41-35-120(2)(a)(Supp. 2013).

FACTUAL BACKGROUND

Respondent was disqualified from receiving benefits for a period of twenty (20) weeks by a South Carolina Department of Employment and Workforce claims adjudicator determination that found Respondent was discharged by his most recent bona fide employer for use of foul or profane language while on duty. The claims adjudicator concluded that such conduct was contrary to what the employer had a reasonable right to expect. Respondent appealed the determination for a hearing before the Appeal Tribunal ("Tribunal").

On October 22, 2013, an Administrative Hearing Officer for the Tribunal conducted a de novo hearing. Appellant was the only participant. Neither an attorney nor a representative of O'Charley's, LLC, ("Employer") was present. The hearing commenced with Appellant being duly sworn and informed that he would be asked some questions and would have the right to provide additional relevant information, including offering exhibits or documents.

Appellant admitted on the record that on July 6, 2014 he was discharged for cursing while talking to the General Manager of the restaurant where he was employed in the kitchen.

Upon arriving at work, Appellant's manager asked him to leave because Appellant did not have a doctor's note for a recent absence. Shortly after leaving work, Appellant called his manager at the restaurant. During the telephone call, Appellant used profanity to describe his coworkers while discussing work related matters. At no time during the hearing did Appellant make an objection regarding the procedure of the hearing or the evidence being presented.

The Decision of Appeal Tribunal upheld Appellant's disqualification, finding that an employer has the right to expect professional and respectful conduct from workers and that the use of profanity in conversation with a supervisor under these circumstances was a deliberate disregard of the standards of behavior an employer has the right to expect. Appellant appealed to the Appellate Panel, which affirmed the Tribunal decision. Appellant now appeals to this Court.

ISSUES PRESENTED

1. **Did the Respondent South Carolina Department of Employment and Workforce err in imposing an 20 week disqualification from benefits upon a finding that the Appellant was discharged for misconduct connected with his employment thus effectively shifting the burden of proof to the Appellant?**
2. **Did the Respondent South Carolina Department of Employment and Workforce err in the imposition of this disqualification constituting a denial of due process of law in shifting the burden of proof to the Appellant?**

STANDARD OF REVIEW

The Department is an "agency" under the Administrative Procedures Act (APA). See Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, the predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA's standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2013); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). Section 1-23-380(5) of the South Carolina Code (Supp. 2013) provides the standard used by appellate bodies to review agency decisions. See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section states:

The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2013).

A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 466 S.E.2d 357 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C 348, 461 S.E.2d 388 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 467 S.E.2d at 917.

LAW/ANALYSIS

Appellant contends in his brief on appeal that his employer had the burden to prove misconduct by a preponderance of the evidence and the employer's failure to participate in the hearing effectively shifted this burden in violation of all constitutional and statutory principles. Appellant asserts that shifting the burden was a violation of his due process rights under the Fifth Amendment and constitutes a "taking."

As a threshold matter, however, Appellant attempts to appeal an issue that has not been properly preserved for review by this Court. The South Carolina Supreme Court has stated the following regarding the preservation of an issue for appellate review:

It is axiomatic that an issue cannot be raised for the first time on appeal, but that must have been raised to and ruled upon by the trial judge to be preserved for appellate review. (Citation omitted). Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector.

Wilder Corporation v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). An issue is properly preserved by making a contemporaneous objection, which is at the time the testimony is offered into evidence and not at the close of testimony. State v. Simmons, 329 S.C. 154, 156, 494 S.E.2d 460, 461-2 (Ct. App. 1997). See State v. Sullivan, 310 S.C. 311, 426 S.E.2d 766 (1993) ("To preserve an issue for appellate review, an appellant must object at his first opportunity.").

Although the matter of issue preservation has not been raised by either party, this Court has the authority to do so *sua sponte*. Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285. As the South Carolina Supreme Court finds,

Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.

...
This is not a "gotcha" game aimed at embarrassing attorneys or harming litigants, but rather is an adherence to settled principles that serve an important function. While it may be good practice for us to reach the merits of an issue when error preservation is doubtful, we should follow our longstanding precedent and resolve the issue on preservation grounds when it clearly is unpreserved.

Atl. Coast Builders, 730 S.E.2d at 329-330.

Hearings before the Tribunal are "de novo in nature and conducted informally in conformity with the South Carolina Administrative Procedures Act." S.C. Code Ann. Regs. 47-51 (C). Specifically, Section 1-23-320(G)(4) of the Administrative Procedures Act ("APA") sets

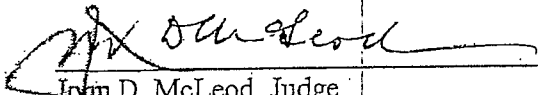
forth that the record in contested cases must include 'objections'. S.C. Code Ann. § 1-23-320 (2005 & Supp. 2013). See Gibson v. Florence Country Club, 282 S.C. 384, 318 S.E.2d 365 (finding that Section 1-23-320 of the Administrative Procedures Act applies to employment security cases.), citing Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

After reviewing the Record on Appeal, which includes a transcript of the Appeal Tribunal hearing from October 22, 2013, it is clear that Appellant failed to make any objections on the record that would preserve for appeal before this Court any of the issues contained in Appellant's brief. The Appeal Tribunal hearing was a de novo review of Appellant's appeal of the claims adjudicator determination. If Appellant had any objections that warranted review by this Court, then Appellant had an obligation to preserve those matters for review by placing his objections on the record.

IT IS HEREBY ORDERED that the Appellate Panel Decision appealed from is **AFFIRMED** and this appeal is dismissed.

AND IT IS SO ORDERED.

June 12, 2014
Columbia, SC

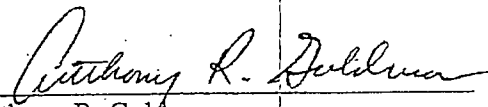


John D. McLeod, Judge
South Carolina Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

June 12, 2014
Columbia, S.C.



Anthony R. Goldman
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gary W. Stokes,

Appellant,

v.

South Carolina Department of
Employment and Workforce and
O'Charley's, LLC,

Respondents.

NOTICE OF ASSIGNMENT

DOCKET NO. 14-ALJ-22-0015-AP

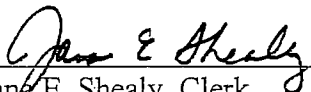
NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on January 16, 2014. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2013), the **Honorable John D. McLeod**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

The parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal.

This the seventeenth day of January, 2014.

Ralph King Anderson, III
Chief Administrative Law Judge

By: 
Jane E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

JAN 17 2014

SC ADMIN. LAW COURT

P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



Nikki R. Haley
Governor

Cheryl M. Stanton
Executive Director

Post Office Box 8597
Columbia, SC 29202
Telephone: (803) 737-0395
Fax: (803) 737-0124

March 4, 2014

The Honorable John McLeod
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: Transcript corrections Stokes v. SCDEW and O'Charley's LLC
Docket No. 14-ALJ-22-0015

Dear Judge McLeod:

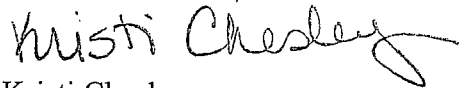
Mr. Stokes recently contacted the Department and informed the Office of General Counsel that he believed that there were inaccuracies in the transcript included in the Record on Appeal filed on February 6, 2014.

The recording of the Appeal Tribunal hearing was reviewed and corrections have been made to the transcript, a copy of which is enclosed. For your information, the changes occur at:

Transcript p. 5, lines 10-11
Transcript p. 6, line 23
Transcript p. 9, line 32
Transcript p. 11, line 11
Transcript p. 12, lines 2, 6, 7, 9, 13, 14, 18
Transcript p. 13, line 19
Transcript p. 15, lines 23, 24
Transcript p. 17, line 25

If you have any questions, please contact me at the number or address above.

Sincerely,

A handwritten signature in cursive script that reads "Kristi Chesley". The signature is written in black ink and is positioned above the typed name.

Kristi Chesley
Office Manager
Office of General Counsel
SC Dept. of Employment and Workforce

TO WHOM IT MAY CONCERN

1/16/2014

I Gary Wayne Stokes am hearby appealing to the South Carolina Administrative Law Court on the 16th day of January 2014 in Reference to my unemployment insurance claim with the South Carolina Unemployment Security Commission.

I am appealing the appellate panel decision concerning my unemployment benefits on the following grounds, there are to many discrepancies in the decision letters that I have received from the appeals tribunal and the appellate panel tribunal.

I feel that I have not received a fair hearing to present my case and have my accuser present to argue my case nor was I given the opportunity to have my witnesses subpoenaed in order to prove my case . I was also misled by the unemployment security commission when I called them about having my witnesses subpoenaed.

When I called them concerning this they told me that they will not and do not subpoena witnesses and it was up to me to hire an attorney and have them subpoenaed.

I was told I could not hire an attorney until after I received their decision letter in the mail, I later found out none of this was true . Also in the initial appeals tribunal hearing my former employer did not participate in the hearing at all so how can a decision to deny me my benefits be made if there was no one there to give their sworn testimony under oath and to claim and argue otherwise .

SC UNEMPLOYMENT SECURITY COMMISSION

APPELLATE PANEL DECISION # 2013-P-1916

APPEAL # 15885-131534

SIGNATURE

Gary W Stokes 1-16-2014
GARY W STOKES

SIGN BEFORE ME ON THIS DAY 16th OF January 2014

IN THE STATE OF SOUTH CAROLINA.

NOTARY SIGNATURE

John M. DePaol COM EXP 1-6-2016

FILED

JAN 16 2014

P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



Nikki R. Haley
Governor

Cheryl M. Stanton
Executive Director

631 Hampton Street
P.O. Box 8597
Columbia, South Carolina 29202
(803) 737-0395
FAX (803) 737-0124
February 6, 2014

The Honorable John McLeod
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Gary W. Stokes v. SCDEW and O'Charley's, LLC
Docket Number: 14-ALJ-22-0015-AP

Dear Judge McLeod:

Enclosed are the original and one copy of the Record on Appeal in the above referenced case. Also enclosed is a certificate of service to the other parties.

If you have any questions, please contact me at the above number.

With kind regards, I am

Sincerely Yours,

A handwritten signature in cursive script that reads "Jessica Chesley".

Jessica Chesley
Administrative Legal Assistant for
Derrick McFarland
Attorney for SC DEW
Legal@dew.sc.gov

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gary W. Stokes,)
Appellant,)
vs.)
SC Department of Employment and)
Workforce and O'Charley's LLC)
Respondent,)
_____)

Docket No. 14-ALJ-22-0015-AP

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT
AND WORKFORCE APPELLATE
PANEL

Gary W. Stokes
148 Aiken Craft Rd.
Pelion, SC 29123
Claimant

Derrick McFarland
Office of General Counsel-SCDEW
PO Box 8597
Columbia, SC 29202
803-737-0395
legal@dew.sc.gov
Attorney for Respondent

O'Charley's, LLC
PO Box 346
Wakefield, MA 01880
Employer

INDEX

DECISIONS AND ORDERS

Appellate Panel Decision 1
Appeal Tribunal Decision 4

APPEALS, TRANSCRIPTS AND PAPERS

Request for Determination of Insured Status.....6
Initial Claims Application 7
Initial Determination of Status as an Insured Worker15
Determination by Claims Adjudicator17
Claimant Appeal to Appeal Tribunal.....18
Notice of Appeal Hearing19
Transcript of Testimony20
Claimant Appeal to Appellate Panel46

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Gary W. Stokes)
)
)
Claimant SSN:)
)
O'Charley's; LLC)
PO Box 346)
Wakefield, MA 01880)
Liable Employer)
_____)
Appellant: Claimant

APPELLATE PANEL
DECISION

The claimant appealed Appeal Tribunal Decision 2013-A-18491 to the Appellate Panel. The Tribunal held the claimant disqualified from benefits upon finding he was discharged for misconduct. This decision affirmed the claims adjudicator's determination.

The Appellate Panel issued its decision upon review of the record on appeal.

DECISION

Appeal Tribunal Decision 2013-A-18491 is affirmed. The claimant is disqualified from benefits for twenty (20) weeks, from July 7, 2013 to November 23, 2013, with a corresponding monetary reduction, upon finding he was discharged for misconduct connected with the employment.

The claimant worked from December 13, 2011 to July 4, 2013, most recently as a prep/line cook. He was discharged for his inappropriate behavior during a conversation with management. In the days leading up to the claimant's discharge, he was absent from work because of a dental issue. When the claimant tried to return to work, the general manager told him not to clock in until he had a doctor's note for his prior absence. At the end of this conversation, (the claimant turned to a co-worker who was nearby and used a profanity to describe how he thought he was being treated by the general manager.) Soon after, he telephoned the general manager to discuss the matter further. During this conversation, while arguing he was being treated unfairly, he used a profanity to describe his co-workers. On July 4, 2013, the general manager terminated the claimant's employment.

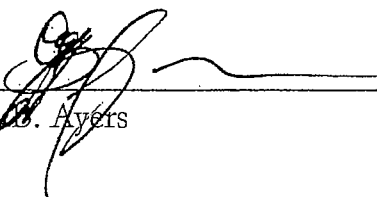
I was not arguing with her I was talking to her

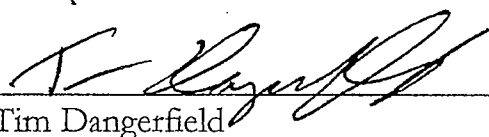
(This is not true He was outside in the parking lot! P14)

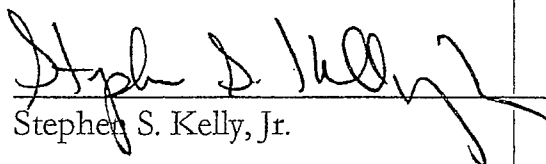
S.C. Code Ann. § 41-35-120(2)(a) requires disqualification from benefits for twenty weeks, with a corresponding monetary reduction, when the Department finds that a claimant has been discharged for misconduct connected with the employment. "Misconduct" includes deliberate violations or disregard of the standards of behavior which an employer has the right to expect of an employee, and carelessness or negligence of such a degree or frequency as to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

The record establishes the claimant used profanity in conversation with management to describe his co-workers and alleged unfair treatment. Although he was not clocked in when he did so, he was nevertheless discussing job-related matters. The employer acted reasonably in requesting a doctor's note for an unscheduled absence. The claimant then acted unprofessionally and inappropriately in using foul language. The claimant deliberately disregarded the standard of behavior the employer had the right to expect. Therefore, we find the claimant was discharged for misconduct connected with the employment. The Appeal Tribunal decision is affirmed.

**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**


E. G. Ayers


Tim Dangerfield


Stephen S. Kelly, Jr.

Review Date: 12/17/13
Date Mailed: 12/17/13
Mailed By: AG

Mailing Date: December 17, 2013

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
(SCDEW)
Columbia, South Carolina

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final agency decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the date of mailing of the agency's final decision (**see the mailing date above**).

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201**

Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice in South Carolina.

Form App-115
Rev.8/12

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

DECISION OF APPEAL TRIBUNAL

Hearing Date: October 22, 2013

GARY W. STOKES)
)
)
)

CLAIMANT

OCHARLEYS LLC)
C/O USC)
PO BOX 346)
WAKEFIELD, MA 01880)

EMPLOYER

APPELLANT: Claimant

SS NO:

APPEARANCES

FOR THE
CLAIMANT: Present

FOR THE
EMPLOYER: None

FINDINGS OF FACT

The issue in this case is whether the claimant was discharged for misconduct from the most recent employment.

Claimant appealed the determination mailed August 1, 2013, which held him disqualified twenty (20) weeks and twenty (20) times the weekly benefit amount from July 7, 2013, through November 23, 2013, upon finding he was discharged for misconduct connected with the employment.

Claimant worked with the employer from December 13, 2011, to July 4, 2013, most recently as a prep/line cook. The claimant was absent from work and told not to clock in until he had provided his employer with a doctor's excuse. He had not been to the doctor due to lack of funds. He was told to return and speak to a manager about whether he still had a job. He made a comment to a co-worker as he left. He called the manager that had told him to go home on the phone. The phone conversation was about his job status and that he felt he was being treated unfairly. He used profanity in the conversation when referring to his co-workers. He maintains he was not cursing at her, just in the conversation. He was discharged due to his interactions with the manager and his absence.

He was outside in the parking lot!

REASONS

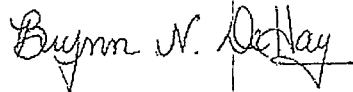
S.C. Code Ann. §41-35-120(2)(a) requires disqualification from benefits for twenty (20) weeks, with a corresponding monetary reduction, when the Department finds that a claimant has been discharged for misconduct connected with the employment. "Misconduct" includes deliberate violations or disregard of the standards of behavior which an employer has the right to expect of his employee, and carelessness or negligence of such a degree or frequency as to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

In this case, the claimant does admit to using profanity in a conversation with a member of management when referring to his co-workers. Though he was no longer on the premises he was still an employee and interacting with a supervisor about job related issues. He acted in a manner which he knew, or should have known would jeopardize his employment. Even though he was no longer on the premises and felt he was treated unfairly, such circumstances do not give the claimant license to act inappropriately and use profanity. It was reasonable of his employer to request a doctor's note regarding his absence. An employer has a right to expect professional and respectful conduct from workers in all of their dealings in order to operate effectively. The use of profanity in a conversation with a supervisor under these circumstances is a deliberate disregard of the standards of behavior an employer has the right to expect. Therefore, the Tribunal finds that the claimant was discharged for misconduct and the law requires a disqualification.

DECISION

The Tribunal holds the claimant disqualified from receiving benefits twenty (20) weeks and twenty (20) times the weekly benefit amount from July 7, 2013, through November 23, 2013, upon finding he was discharged for misconduct connected with the employment. This decision affirms the determination mailed August 1, 2013.

This will be the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed by mail addressed to "Appellate Panel, Post Office Box 1752, Columbia, South Carolina, 29202", or by fax at 803.737.3166. For additional information on filing an appeal, visit our web site at www.dew.sc.gov/appeals.asp.



Brynn N. DeHay
Administrative Hearing Officer

BND:alw

Decision Mailed: 11/14/13

Mailed on the above Date By: alw



SC Department of Employment and Workforce Initial Claims Application

Filing location: One Stop Center
Office location: LEXINGTON
Claim creator: Claimant
Worked under a different name: No

Ethnicity

Claimant Hispanic or Latino: No

Claimant

Claimant's name: Gary W Stokes
Date of birth: 3/8/1966
Gender: Male
US citizen: Yes

Aliases

Alias type: SocialSecurityCard
Name: Gary W Stokes

Alias type: Current
Name: Gary W Stokes

Race(s)

* White

Addresses

Address type: physical
Address:
United States address: Yes

Address type: mailing
Address:
United States address: Yes

Telephone Number

Telephone number type: Home
Telephone number: 615 2955927 Ext:

Alien Information

Alien card number: None
Expiration date: No

Veteran Information

Service branch: None

Date entered:

Date released:

Character of service: None

Reason for separation:

Completed first full term of service: No

In the National Guard or a Reserve Unit and served on active duty during a period of war or in a campaign or expedition: No

Served on active duty in the military for a period of more than 180 days: No

Separated from military in the last 48 months: No

Accrued days lost: No

Accrued leave: 0
(Item #16 on DD-214)

Pay grade:
(Item #4b on DD-214)

Retired from military service: No

Have a service related disability: No

Percent disabled: 0%

Awarded a campaign badge or ribbon for service during a conflict: No

Badges and ribbons: None

Will receive pension: No

Worked in the last 18 months: Yes

Employer Name: OCHARLEYS LLC

Employer delivery address: PO BOX 346

Employer city: WAKEFIELD

Employer state: MA

Employer zip code: 01880

Employer telephone number: 7812460262

Worked for this employer: Yes

Worked part-time only: No

Hire date: 12/13/2011

Termination date: 7/4/2013

Gross Claim Earnings: \$0.00

Type of work: Cooks, Restaurant

Earned at least \$2,608.00: Yes

Occupational license required: No

Job city: Lexington

Job state: South Carolina

Job duties: Line Cook

Discharge reason: Discharged

Discharge explanation: as they say i was talking back to the manager but I DID NOT!

Federal employer: No

Received SF8 form: No

Payroll office address based on SF8: No

Job Registration

Spouse of a veteran: No
Spouse of a deceased veteran with a total disability rating: No
Spouse of a 100% total disabled veteran: No
Spouse of a veteran killed in the line of duty: No
Spouse of a MIA or POW: No
Worked on a farm: No
Worked in a food processing plant: No

Farm Worker Information

Earned at least half income performing farm work in the last 12 months: No
Employed all year in farm work: No
Traveled to perform farm work: No
Worked at least 25 days or parts of days during the last 12 months performing farm work: No

Food Processing Information

Earned at least half income performing food processing in the last 12 months: No
Employed all year in food processing: No
Traveled to perform food processing: No
Worked at least 25 days or parts of days during the last 12 months performing food processing: No
Do you have a valid driver's license: Yes

Driver License Classes

* D Regular Operator's License

Commercial Driver License Classes

* Passenger

Commerical Driver License Restrictions

* None

Additional Claim Information

Filed UI claim outside SC in the last 18 months: No
Worked in state outside SC in the last 18 months: Yes
State(s) Worked In Outside SC
* TN
Filed claim for Trade Readjustment Allowances(TRA): No
Filed claim for Disaster Unemployment Assistance(DUA): No
Receive or have received Federal-Funded assistance: No
Receive or have received retirement: No
Receive or have received federal civilian employee benefits: No
Receive or have received federal military employee benefits: No
Claimant wants taxes withheld from unemployment benefits: No

Extra Earned Income

Pension amount: \$0.00

Pension paid by:

Employer pension contribution percentage:

Pension effective date:

Retirement amount: \$0.00

Retirement paid by:

Employer retirement contribution percentage:

Retirement effective date:

Disability amount: \$0.00

Disability paid by:

Disability effective date:

Social security amount: \$0.00

Social security effective date:

Job Eligibility

Only available for part-time work: No

Part-time work explanation: None

Willing to relocate: No

Can begin work immediately: Yes

Children or dependants in household who require care during working hours: No

Children or dependent care explanation: None

Self-Employed: No

Self-Employed job title:

Child or spouse of employer: No

Owner or corporate officer of a business: No

Will be recalled to last job: No

Date of recall to last job:

Have a health condition that limits ability to accept full-time work now or in the future: No

Health status explanation: None

Willing to look for other types of work: Yes

Kind of Jobs Seeking

Cooks, Restaurant

Years of experience: 28

Years of training: 28

Cooks, Restaurant

Years of experience: 28

Years of training: 28

Last Job

Number of miles traveled to work on last job: 10 - 20

Rate of pay on last job: \$11.00

Unit of pay on last job: Hourly

Job Schedule Availability

Sunday

Start time: 9:30 AM

End time: 11:00 PM

Monday

Start time: 9:30 AM

End time: 11:00 PM

Tuesday

Start time: 9:30 AM

End time: 11:00 PM

Thursday

Start time: 9:30 AM

End time: 11:00 PM

Friday

Start time: 9:30 AM

End time: 11:00 PM

Saturday

Start time: 9:30 AM

End time: 11:00 PM

New Job

Miles willing to travel to work: 10 - 20

Minimum wage you will accept on next job: \$11.00

Unit of pay on next job: Hourly

Job Schedule Availability

Sunday

Start time: 12:00 AM

End time: 12:00 AM

Monday

Start time: 12:00 AM

End time: 12:00 AM

Tuesday

Start time: 12:00 AM

End time: 12:00 AM

Wednesday

Start time: 12:00 AM

End time: 12:00 AM

Thursday

Start time: 12:00 AM

End time: 12:00 AM

Friday

Start time: 12:00 AM

End time: 12:00 AM

Saturday

Start time: 12:00 AM

End time: 12:00 AM

Work Counties

Lexington

County FIPS: 63

Richland

County FIPS: 79

Last grade completed: 11th Grade Completed

Currently attending school: No

Planning to attend school: No

Current School Information

Name of school: None

School location:

When did you start school:

School Schedule

Willing to change school/training schedule for a full-time job: No

Willing to quit school/training schedule for a full-time job: No

Future School Information

Name of school: None

Location of school:

When are you planning to attend school:

School Schedule

Willing to change school/training schedule for a full-time job: No

Willing to quit school/training schedule for a full-time job: No

Transportation Methods

* Automobile

Benefit Payment Method

Benefit payment type: Debit Card

Bank name:

Account type:

Account number:

Routing number:

Debit card agreement accepted: Yes

Direct deposit agreement accepted: No

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
INITIAL DETERMINATION OF STATUS AS AN INSURED WORKER

WORKFORCE CENTER 320

EFFECTIVE DATE 07/07/13

DATE FILED 07/11/13

DATE PREPARED 07/11/13

O

GARY W STOKES

*BENEFITS YOU MAY BE ELIGIBLE FOR:

MILITARY ASSIGNMENTS

WEEKLY BENEFIT AMOUNT 179.00

MAXIMUM TOTAL BENEFITS 3580.00

BENEFIT YEAR ENDS 07/06/14

* This statement establishes that you have the necessary wages to qualify for unemployment insurance. However, to receive benefits your job separation must also be considered. If you qualify, this is the maximum you may be entitled to receive.

SEE BACK FOR CLAIMANT INFORMATION

EMPLOYMENT RECORD		STANDARD BASE PERIOD QUARTERLY EARNINGS							
EMPLOYER	ACCOUNT NO.	YEAR	*QTR.	YEAR	*QTR.	YEAR	*QTR.	YEAR	*QTR.
TENNESSEE DEPARTMENT	000047	2012	02	2012	03	2012	04	2013	01
OCHARLEYS LLC	307994		.00		.00		.00		.00
			.00	4307.07		4190.27		4666.83	

STANDARD BASE QUARTER TOTAL .00 4307.07 4190.27 4666.83

*QTR.
1.-JAN.,FEB.,MAR. 3.-JULY,AUG.,SEPT.
2.-APR.,MAY,JUNE 4.-OCT.,NOV.,DEC.

UI-5
UCB104-S 20WK
Rev. 7/11

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. BOX 1477
COLUMBIA, S. C. 29202
OFFICIAL BUSINESS
UCB-104S

FORWARDING SERVICE REQUESTED

GARY W STOKES

INFORMATION FOR CLAIMANT

This is a monetary determination of your claim for benefits based on wages paid during your Base Period. This determination shows your Base Period Employment Record. It lists your covered employer(s) that paid you wages, their account number, and the wages paid to you by quarter and year during the base period of your claim. The total amount of wages paid to you by quarter in the base period is shown beside Base Quarter Total. This determination covers only the monetary portion of your claim. Another determination will be issued that states if you are eligible to receive benefits. It will be based on the reason for separation from your most recent bona fide employer.

Under Potential Benefits Established, your Weekly Benefit Amount, Maximum Benefit Amount, and the date your Benefit Year Ends are shown.

BASE PERIOD: The first four of the last five completed calendar quarters prior to the effective date of your initial claim. If you earned wages in covered employment not shown on the face of this form, give the information to your claimstaker at the local workforce center.

If the monetary determination was invalid using base period wages, this determination may show wages and employment from an Alternate Base Period.

ALTERNATE BASE PERIOD: The first four most recently completed calendar quarters prior to the effective date of your initial claim. If you earned wages in covered employment not shown on the face this form, give the information to your claimstaker at the workforce center.

HIGH QUARTER: The quarter in our Base Period during which wages paid to you for insured work were highest.

WEEKLY BENEFIT AMOUNT: The amount of benefits you may receive weekly, if unemployed and otherwise eligible, shall be one-half of the average weekly wage in the high quarter of your base period but shall not be less than \$42.00 nor greater than the maximum weekly benefit amount as determined by the Commission on or before June 30 of each year for benefit years on or after July 1 of such current calendar year, and prior to July 1 of the succeeding calendar year as provided in Section 41-35-40 of the Law.

MAXIMUM POTENTIAL BENEFITS: The greatest amount of compensation that you may receive during your benefit year.

BENEFIT YEAR: The one (1) year period following the effective date of your Initial Claim. To establish a Benefit Year in accordance with the provisions of the Law, you must meet the following wage requirements:

1. You were paid at least \$1,092.00 for insured work during the high quarter of your base period;
2. You were paid at least \$4,455.00 for insured work during your base period;
3. The total of your base period wages for insured work equaled or exceeded one and one-half times the total of your high quarter wages.

AVERAGE WEEKLY WAGE: Shall be determined by dividing the high quarter wages by 13 weeks.

REDETERMINATION RIGHTS: You have the right to request a correction if you do not agree that this determination is correct. Your request for redetermination may be made by letter or by personal visit to the office where your claim was filed and it should be made without delay. No change can be made on this determination after one year from the date of this notice.

BE SURE TO NOTIFY YOUR WORKFORCE CENTER ANYTIME YOUR MAILING ADDRESS CHANGES WHILE FILING A CLAIM FOR BENEFITS.

EXAMPLE OF COMPUTATION OF BENEFITS:		Maximum Potential Benefits:
High Quarter Wages	\$1092.00	Your maximum total benefit amount for this benefit year is the lesser of:
Base Period Wages	\$4455.00	1. Twenty (20) times your Weekly Benefit Amount, or
Average Weekly Wage	\$1092.00 divided by 13 = \$ 84.00	2. One-third (1/3) of your total Base Period Wages as shown on this determination.
Weekly Benefit Amount	84.00 divided by 2 = \$ 42.00	(1) $20 \times \$42.00 = \840.00 (2) $1/3$ of $\$4455.00 = \1485.00 .
		Maximum Benefits would be \$840.00 since that amount is less than \$1485.00.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. BOX 995, COLUMBIA, S.C. 29202

1 OCHARLEYS LLC
1 C/O USC
1 PO BOX 346
1
1

DATE OF THIS NOTICE 07/31/13

1 WAKEFIELD MA 01880

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION ENDS		
GARY W STOKES					07/07/13	11/23/13		
WFC. NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS	
320	I	01	\$ 179.00	\$ 3580.00	\$ 3580.00	\$ 0.00	07/06/14	

1 DETERMINATION BY CLAIMS ADJUDICATOR ON CLAIM FOR BENEFITS

1 You are eligible for benefits from the above effective date.

1 You have been disqualified from receiving benefits or have been found to be ineligible for benefits for the following reason(s).

1 YOU WERE DISCHARGED FROM YOUR JOB WITH YOUR MOST RECENT BONA FIDE EMPLOYER FOR USE OF FOUL OR
1 PROFANE LANGUAGE WHILE ON DUTY. SUCH CONDUCT IS CONTRARY TO WHAT THE EMPLOYER HAS A REASONABLE
1 RIGHT TO EXPECT AND IS A DISCHARGE FOR MISCONDUCT IN CONNECTION WITH THE EMPLOYMENT UNDER THE
1 SOUTH CAROLINA CODE SECTION 41-35-120(2)(A). YOU ARE DISQUALIFIED FOR 20 WEEKS. YOUR MAXIMUM
1 BENEFITS ARE ALSO REDUCED BY 20 TIMES YOUR WEEKLY BENEFIT AMOUNT.
1
1
1
1
1
1
1
1
1
1

1 _____ LAST SEPARATION FROM NON-LIABLE EMPLOYER

1 _____ UI CLAIMS ADJUDICATOR

1 MAILING DATE 08/01/2013

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE DEPARTMENT UNLESS YOU FILE AN APPEAL SETTING FORTH IN DETAIL THE GROUNDS FOR APPEAL WITHIN TEN (10) CALENDAR DAYS, INCLUDING WEEKENDS AND HOLIDAYS, FROM THE MAILING DATE SHOWN ABOVE. IF THE TENTH DAY FALLS ON A SATURDAY, SUNDAY, OR HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT BUSINESS DAY. YOUR APPEAL MAY BE FILED IN PERSON AT ANY WORKFORCE CENTER, BY MAIL, ADDRESSED TO THE "APPEAL TRIBUNAL," P.O. BOX 995, COLUMBIA, SOUTH CAROLINA 29202, OR BY FAX (803) 737-0287. FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, CONTACT YOUR LOCAL WORKFORCE CENTER OR THE APPEALS DEPARTMENT AT (803) 737-2520.

APP-100 NET... Rev. 7/13
Catalog# 05082

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P. O. Box 995, Columbia, South Carolina 29202

RECEIVED
AUG 09 2013
Lower Authority Appeals

Notice of Appeal to Appeal Tribunal

Claimant's Name: Gary Wayne Stokes Social Security Number _____

Claimant's Address: _____

Telephone: 803 583-4057

Employer's Name: O'Charley's Telephone: 356-4220

Employer's Address: Sunset Blvd Lexington SC 29072

Please refer to Determination by Claims Adjudicator to complete section below.

On 8-1-2013 I received the determination mailed 7-31-2013
(Date of receipt) (Mailing date on Notice)

SC Dept. of
Employment & Workforce
AUG 12 2013

I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons:

I did not curse at Country Brown and at the time I was not on the clock! I was to be at work at 10AM I got there at 9:35 and this went down time I got there so I was not on duty at the time

I must continue to file my claim for each week of unemployment until I receive the Appeal Tribunal or Appellate Panel decision, until I return to work, or until my claim is exhausted. If I win the appeal, I know I can only be paid for those weeks I have timely claimed.

(Claimant's Initials) AS
SC Dept. of
Employment & Workforce
AUG 12 2013

Does claimant need an interpreter? YES NO What language/dialect? _____ Claimant is Disabled Not Disabled

(If it appears necessary to subpoena witnesses or documents, please complete Form APP-107 and attach it when you submit your appeal.)

SUBPOENA YES NO Who is filing appeal: Claimant Employer

Signature: Gary W Stokes
Title: _____ Date: _____

Please submit form by fax to 803.737.0287 or by mail to: "Appeal Tribunal, P.O. Box 995, Columbia, SC 29202."

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. Box 995, Columbia, South Carolina 29202
NOTICE OF TELEPHONE HEARING

Claimant's Name: GARY W STOKES Social Security Number: _____

Claimant's Telephone Number: (803) 509-2338

Employer's Name: OCHARLEY'S LLC Telephone Number: (781) 246-0262

Appeal Number: 1315885 Hearing Date: 10/22/13 Hearing Time: 3:00 PM
Month/Day/Year Hour/Minute-Eastern Time

Administrative Hearing Officer: BRYNN N. DEHAY for the South Carolina Department of Employment and Workforce will conduct this hearing by means of a **TELEPHONE CONFERENCE**. The parties will be called by the Administrative Hearing Officer at the telephone numbers shown on this form. **IF NO TELEPHONE NUMBER IS SHOWN OR THE NUMBER IS INCORRECT, YOU MUST CALL THIS TOLL FREE NUMBER (866) 269-5680 IMMEDIATELY TO INFORM US OF YOUR NUMBER SO THAT WE MAY INCLUDE YOU IN THE HEARING.**

IF YOU HAVE NOT BEEN CALLED WITHIN 10 MINUTES AFTER THE SCHEDULED TIME OF THE HEARING, YOU MUST CALL (803) 737-2520. EITHER ANOTHER HEARING IS STILL IN PROGRESS OR WE ARE UNABLE TO CONTACT YOU. FAILURE TO CALL PROMPTLY OR PARTICIPATE IN THE HEARING MAY RESULT IN YOUR INTERESTS BEING CONSIDERED ABANDONED.

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY. Contact a representative of the Department at (803) 737-2520, AT ONCE, if you cannot be present at the time scheduled and wish to request a postponement of the hearing. Also, if you require any special needs, such as an interpreter, please contact us prior to the hearing.

ISSUES

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> Voluntary Quit | <input type="checkbox"/> Voluntary Retirement | <input type="checkbox"/> Timeliness of Appeal |
| <input checked="" type="checkbox"/> Discharge | <input type="checkbox"/> Absence from Hearing | <input type="checkbox"/> Fraud & Overpayment |
| <input type="checkbox"/> Availability | <input type="checkbox"/> Overpayment | <input type="checkbox"/> Job Offer & Referral |
| <input type="checkbox"/> Eligibility | <input type="checkbox"/> Other _____ | |

EVIDENCE: This hearing is your only chance to testify and present evidence. Sworn testimony is required from witnesses with first-hand knowledge. Any documents that you want considered in this hearing must be mailed to the Appeal Tribunal at the address above, or faxed to (803) 737-0287. In addition to the copy sent to the Appeal Tribunal, you must mail or fax copies to the opposing party. No testimony or evidence can be considered from witnesses who are not present. Documents sent to another address or fax number may not be considered.

SUBPOENAS: If a witness is reluctant to appear, you may apply for a subpoena through the Department's local office or the Appeal Tribunal at (803) 737-2520.

LEGAL REPRESENTATION: An attorney licensed to practice in South Carolina may represent you. It is your responsibility to obtain representation prior to the hearing. Fees charged to represent claimants are limited to the greater of \$125.00 or the claimant's weekly benefit amount per appearance.

IMPORTANT: A claimant must continue to file for benefits during the appeal process if totally or partially unemployed. Weeks not claimed cannot be paid, even if the claimant is held eligible.

This notice supersedes any previous hearing notice you may have received. If the date on this notice is later than the date on any other notice, you should assume that the previous hearing has been postponed and follow the instructions on this notice.

Please note the hearing may result in an increase, decrease, or no change in the disqualification.

MAILING DATE: 10/15/2013

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

NAME: GARY W STOKES		SSN:	BYE: 07/06/14	
CLAIMSTAKER ID:	WFC #: 320	FILED: 07/11/13	EFF DATE: 07/07/13	
MAILING ADDRESS:				
CITY:		STATE:	ZIP: ?	
OTHER NAME: GARY W STOKES				
<input type="checkbox"/> 1-UI	<input type="checkbox"/> 4-UI/UCFE/UCX	<input type="checkbox"/> 7-UCX	<input checked="" type="checkbox"/> NEW	<input type="checkbox"/> TRANSITIONAL
<input type="checkbox"/> 2-UI/UCFE	<input type="checkbox"/> 5-UCFE	<input type="checkbox"/> 8-CW	<input type="checkbox"/> ADDITIONAL	<input type="checkbox"/> R-ADD
<input type="checkbox"/> 3-UI/UCX	<input type="checkbox"/> 6-UCFE/UCX	<input checked="" type="checkbox"/> OTHER	<input type="checkbox"/> CONTINUED	
BONA FIDE EMPLOYER NAME & PAYROLL ADDRESS INFORMATION:			DATES OF EMPLOYMENT:	
NAME: OCHARLEYS LLC				
STREET: PO BOX 346			FROM:	TO:
CITY: WAKEFIELD			12/13/11	07/04/13
ST: MA			EMP. ACCT. # 307994	
ZIP: 01880				
BONA FIDE EMPLOYER LOCAL ADDRESS INFORMATION:				
STREET:				
CITY: LEXINGTON				
ST: SC				
ZIP:				
PHONE #: (781) 246-0262				
SEPARATION REASON: <input type="checkbox"/> LOW <input type="checkbox"/> VQ <input checked="" type="checkbox"/> DISCHARGE <input type="checkbox"/> STILL WORKING				
ISSUE CODES: 01				
LIABLE EMPLOYER INFORMATION:			DATES OF EMPLOYMENT:	
NAME: OCHARLEYS LLC				
EMP. ACCT # 307994			FROM:	TO:
JOB LOCATION (CITY/STATE): WAKEFIELD, MA			12/13/11	07/04/13
SEPARATION REASON: <input type="checkbox"/> LOW <input type="checkbox"/> VQ <input type="checkbox"/> DISCHARGE <input type="checkbox"/> STILL WORKING				
NARRATIVE REASON FOR SEPARATION FROM LIABLE EMPLOYER:				



South Carolina Department of Employment and Workforce
Unemployment Insurance Benefits
Claimant Fact Finding Interview
Discharge -- Insubordination

WFC# 400

Effective Date of Issue 7/7/13

Type of Claim

New Add Cont Trans

BYE 7/6/14

Claimant's Name GARY STOKES

SS# _____

Bona Fide Employer (Name of Company) OCHARLEY'S

Employer Address P O BOX 346

Employer Telephone # 781-246-0262x234

WAKEFIELD MA 01880

Employer Account# 307994

Employer Contact Person M CAMUSO

Dates of Employment Beginning 12/13/11

and Ending 7/4/13

Hours worked From _____ To _____

or which shift SPLIT for 6 days per week

Ending salary \$11 per HR

Occupation LINE COOK

All Questions Must Be Answered.

What is the name and title of the person who discharged you? JACOB (LAST?), KITCHEN MGR

What reason did your employer give for discharge? SAID I CURSED AT COURTNEY BROWN 7/5/13

What was the date of the discharge? 7/8/13

What was the date of the final incident that caused the discharge? 7/6/13 COUNSELED 7/8

What was the final incident that caused the discharge? I CALLED IN THAT DAY ABOUT 4 HRS BEFORE

MY SHIFT I SPOKE TO COURTNEY BROWN, GEN MGR.

Was there a delay (two weeks or more) between the final incident and the date of discharge? Yes No

If the claimant states there was a delay due to suspension, pending investigation, or other reasons, document the specific details related to the scenario _____

SCDEW

JUL 30 2013

Received Benefits Div

3

Were you discharged for violation of a company policy? Yes No

If Yes, what company policy was violated? _____

How were you made aware of the company policy (Orientation, Handbook, etc)? _____

Did you receive any warnings? Yes No

If Yes, list

Dates of warnings _____

Reason _____

Name and title of the person who gave the warnings? _____

How were the warnings given (Oral, Written, etc)? _____

How did the final incident have an impact on the employer's business? I CALLED IN ON 7/6 AND ASKED COURTNEY TO FIND SOMEONE TO COVER MY SHIFT BECAUSE I HAD A TOOTH ABCESS. I WOKE IN PAIN AND HAD NO MEDICATION. SHE TOLD ME SHE WOULD TRY BUT I WOULD NEED AN EXCUSE. I TOLD HER I WAS BROKE I TOLD HER I WOULD SEE. SHE NEVER CALLED ME BACK TO TELL ME SHE FOUND SOMEONE

Did you fail to comply with an order of a supervisor? Yes No I Told Her i would see what i could Do!

Was the order related to a written job description of your position? Yes No

What action did the employer say was insubordinate? I WALKED IN SAT MORNING. COURTNEY ASKED FOR MY EXCUSE. I TOLD HER I DID HAVE IT I DIDN'T HAVE THE MONEY. SHE SAID NOT TO CLOCK IN UNTIL I GOT THE EXCUSE I SAID FINE SHE HOLLERED OUT DONT COME BACK UNTIL MONDAY AND TALK TO JACOB AND SEE IF YOU HAVE A JOB I TOLD RONNIE (COWORKER) THIS IS BS I WENT TO MY MOM FOR THE MONEY I CALLED COURTNEY BACK. I TOLD HER I WAS NOT LIKE THE REST OF THE SH** ON

Were there any witnesses? Yes No If Yes, please specify the names and titles _____

This is not what was said This is wrong

Wrong

THE FLOOR. I WAS REFERRING TO THE OTHER KITCHEN STAFF.

Employer's Statement (Also use for rebuttal of claimant's statement)

SEE EMPLOYER REPLY

Where is my copy of this?

I want to see it I have that right!

Employer's Signature or Name of Individual Contacted

Title of Individual Contacted

Telephone In Person Fax/Email Date

Rebuttal of Employer Reply

Claimant's Signature PHONE

Date 7/24/13

Interviewer's Signature Ruth Wood

Date 7/24/13

Interviewer's Printed Name RUTH WOOD

Date 7/24/13

Reviewed By

Date

Use attached sheet for additional comments.

SCDEW

JUL 30 2013

Received Benefits Div

Rev 3/11

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
REQUEST FOR INFORMATION
UNEMPLOYMENT INSURANCE BENEFITS

7/26

CLAIMANT'S NAME Gary W Stokes

SS#

NAME WORKED UNDER

DATE MAILED 2013-07-18

EMPLOYER'S ACCOUNT # 307994

EMPLOYER'S NAME & ADDRESS

CHARLEYS LLC
PO BOX 348
WAKEFIELD, MA 01880

315

RETURN WITHIN SCDEW
10 DAYS OF THE ABOVE DATE TO
700 TAYLOR ST
PO BOX 995
COLUMBIA, SC 29202

FAX NUMBER 803-737-0821

This person has filed a claim for Unemployment Insurance Benefits and named you as a previous employer. Please explain the reason this person no longer works for you so that a determination can be made on eligibility for benefits. If you reply by letter, fax, or email, you must include all information requested, as well as the claimant's name and social security number. For instructions about responding by email, please go to our agency website at www.dew.sc.gov. YOU WILL RECEIVE A DETERMINATION ON THIS CLAIM ONLY IF IT IS FOUND THAT YOU ARE THE BONA FIDE AND/OR LIABLE EMPLOYER.

CLAIMANT'S Reason for Separation DISCHARGED/FIRED/TERMINATED

In 7/8/2013 when I came in to work kitchen manager Jacob and store Manager Courtney Brown sat down w

A telephone interview has already been scheduled for the claimant on 07/26/2013 at 02 00 PM
Please respond by mail, fax, email, telephone, or personal visit to the SC Works Center

SEPARATION INFORMATION

LACK OF WORK (No additional written explanation is necessary)

DISCHARGED (Give specific reason)

failed to recognize mgmt authority

State company policy that claimant violated, if applicable, and describe the final incident leading to the separation

List any warnings, note if verbal or written and give dates

If discharged for absenteeism, list dates of absences

This would be considered Incabordantion Not misconduct AS

VOLUNTARILY QUIT (Give specific reason)

OTHER (Explain in detail)

Dates of Employment FROM 9-11-98 TO 7-12-13
During all terms of employment, have you paid this claimant as much as \$ 1432.00 YES NO

If NO, how much have you paid this claimant in all terms of employment? \$

Are you paying, or WILL YOU PAY, this claimant a pension or retirement pay? YES NO

If YES, what amount? \$ PER

Did claimant contribute to pension plan? YES NO If YES, what percent? %

EMPLOYER NAME USC - Agent ACCOUNT NUMBER

EMPLOYER SIGNATURE ** M Camuso TITLE

TELEPHONE NUMBER 81 246 0262 DATE 7-26-13

**FORM MUST BE SIGNED IN ORDER FOR INFORMATION TO BE CONSIDERED

lc

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT & WORKFORCE

Columbia, South Carolina

Transcript of Testimony

Before

Brynn N. DeHay, Administrative Hearing Officer

Gary W. Stokes) **CLAIMANT**

Claimant SSN:)

O'Charley's LLC) **LIABLE EMPLOYER**
P. O. Box 346)
Wakefield, MA 01880)

PLACE OF HEARING: SC Department of Employment & Workforce
Central Office Annex
631 Hampton Street
Columbia, South Carolina

DATE OF HEARING: October 22, 2013

APPEARANCES:

For Claimant: Participated

For Employer: None

TESTIFYING WITNESSES

CLAIMANT:

Gary W. Stokes

EMPLOYER WITNESSES:

1 Before: Brynn N. DeHay, Administrative Hearing Officer

2 **HEARING OFFICER'S PREAMBLE.**

3 **ALL WITNESSES SWORN.**

4 HEARING OFFICER: Please let the record reflect that the witness has answered in the
5 affirmative and thus been duly sworn in. I'm initially going to ask you questions, Mr. Stokes.
6 You'll have an opportunity to respond to my questions, as well as to provide any additional
7 relevant information you believe needs to be brought to the attention of the Appeals Tribunal
8 today. If you have any exhibits or documents, please make me aware of those during the course
9 of your hearing as they become relevant to the issues at hand. Notification of a decision will be
10 mailed to you at your address of record just as soon as possible. Mr. Stokes, we have your
11 decision going to Is that correct?

12 CLAIMANT: Yes, ma'am. The street, Pelion, is spelled P-E-L-I-O-N, South
13 Carolina.

14 HEARING OFFICER: And we have your contact phone number listed as 843-583-4057.
15 Is that correct?

16 CLAIMANT: My contact number, my...my...I got my cell phone now and it's
17 615-295-5927 ✓

18 HEARING OFFICER: Sorry; 615-295? ✓

19 CLAIMANT: 5927, yes, ma'am, 615-295-5927. ✓

20 HEARING OFFICER: Okay, thank you. All right, I'll notate that change for our records,
21 however this is only gonna change the number we have on file for the purposes of...of this
22 appeal. If you wish to change the permanent number on file with the Agency, you will need to
23 contact...go online and change that in the My Benefits portal.

24 CLAIMANT: Yes, ma'am. ✓

25 HEARING OFFICER: All right, thank you. All right, Mr. Stokes, can you state and spell
26 your name for the record please? ✓

27 CLAIMANT: Gary Stokes, that's G-A-R-Y S-T-O-K-E-S. ✓

1 HEARING OFFICER: And, Mr. Stokes, what I have here is a one page determination that
2 was mailed to you August 1, 2013 holding you disqualified from receiving benefits for 20 weeks
3 effective July 7, 2013 through November 23, 2013. Mr. Stokes, is this the determination you are
4 appealing today?

5 CLAIMANT: Yes, ma'am, but the letter I got said that I was using foul and
6 profane language while on duty.

7 HEARING OFFICER: Okay, sir, we're not getting into that now. Just, "yes," or "no," is
8 this the determination you are appealing?

9 CLAIMANT: Yes, ma'am.

10 HEARING OFFICER: Is this the only determination you are appealing?

11 CLAIMANT: Yes, ma'am.

12 HEARING OFFICER: Okay, thank you. At this time I'd like to enter into the record as
13 Agency Exhibit One, this one page determination. I'd also like to include as part of Agency
14 Exhibit One the claimant's initial request for determination of status as an insured worker, this is
15 a one page document, as well as the claimant's initial discharge insubordination fact finding
16 conducted on July 24, 2013, which is three pages, and the one page employer response to the
17 Agency's request for information which is one page. I'd like to enter these six pages into the
18 record as Agency Exhibit One. Any objection, Mr. Stokes?

19 CLAIMANT: No, ma'am.

20 HEARING OFFICER: There being no objection these six pages will be entered in as
21 Agency Exhibit One, they are as previously described. Mr. Stokes, what was your last position
22 with the employer, O'Charley's?

23 CLAIMANT: I was a line cook.

24 HEARING OFFICER: And would you...

25 CLAIMANT: ^{prep}
(both speaking) slash line cook.

26 HEARING OFFICER: I'm sorry; what slash line cook?

1 CLAIMANT: I was a prep; I did prepping in the morning. I also worked on the
2 cook line.

3 HEARING OFFICER: And would you agree with your dates of employment as being
4 December 13, 2011 through July 4, 2013?

5 CLAIMANT: Yes, ma'am.

6 HEARING OFFICER: Then how did you become separated from employment, did you
7 voluntarily quit or were you discharged?

8 CLAIMANT: I was discharged.

9 HEARING OFFICER: And who informed you of your discharge?

10 CLAIMANT: Jacob, I don't know his last name. He...he's my...he's the
11 manager, but it was through Courtney Brown that was the manager that told Jacob to terminate
12 me.

13 HEARING OFFICER: Okay, but...but Jacob is the one that actually told you of your
14 discharge?

15 CLAIMANT: Yes, ma'am.

16 HEARING OFFICER: Okay, and why were you discharged, what occurred?

17 CLAIMANT: I was presently discharged for cursing at Courtney Brown on July
18 the 6th, Saturday July the 6th.

19 HEARING OFFICER: Okay, did you and Ms. Brown have an altercation on July the 6th?

20 CLAIMANT: No, ma'am, it was no altercation. I spoke with her nicely. I was
21 very polite to her.

22 HEARING OFFICER: Okay, did...so ya'll didn't have an argument of any sort?

23 CLAIMANT: No, there was no argument involved.

- 1 HEARING OFFICER: Okay, did you at any point use profanity? ✓
- 2 CLAIMANT: No, ma'am, I sure didn't. ✓
- 3 HEARING OFFICER: Did you have any discussions with her where you used profanity? ✓
- 4 CLAIMANT: No, ma'am, I sure didn't. ✓
- 5 HEARING OFFICER: Okay, did...did you...do you remember having a fact finding with ✓
6 someone from our Agency where they asked you what happened?
- 7 CLAIMANT: Yes, ma'am. ✓
- 8 HEARING OFFICER: Okay, I'm gonna read you a portion of that fact finding. It says, "I
9 walked in Saturday morning. Courtney asked for my excuse. I told her I did not have it. I didn't
10 have the money. She said not to clock in until I got the excuse. I said, 'Fine.' She hollered out,
11 'Don't come back until Monday and talk to Jacob and see if you have a job.' (I told Ron, a co-
12 worker, 'This is bs. I went to my mom for the money.'" Do you remember saying that to one of
13 our representatives? *This is not what was said this was said But I saw I walk outside and Ronnie was out there when it was said*
- 14 CLAIMANT: Yes. Yes, ma'am. ✓
- 15 HEARING OFFICER: Okay, so did that happen? ✓
- 16 CLAIMANT: Yes, ma'am, but it was not an argument. I spoke with her nicely
17 and told her I didn't have...I did not have the money to go to the doctor. She told me that I
18 could not clock in until I have a doctor's excuse. And I told Courtney I said, "Well, Courtney,
19 I...I don't have the money. I put my last 43.50 in gas." And I said, "You know, if you pay for
20 my doctor's excuse, I'll go get one." I was very polite about it. And I did have a witness on line
21 but she will not come forth due to afraid of losing her job. ✓
- 22 HEARING OFFICER: Okay, did you turn to a co-worker and say, "This is bs?" ✓
- 23 CLAIMANT: I turned...has was on the outside. Yes, ma'am, he was...he was
24 outside. Courtney was still on line up front. But that was after I walked out. I was headed to my
25 car. He was out there smoking a cigarette, and I did turn towards Ronnie and say, "Yes, this is a
26 bunch of bs." ✓
- 27 HEARING OFFICER: Okay, and did you actually say... ✓

1 CLAIMANT: But it was not threatening at Courtney and it was not said to
2 Courtney.

3 HEARING OFFICER: Okay. All right, did you say, "BS," or did you use profanity?

4 CLAIMANT: I said...I said, "BS. It was a bunch of BS."

5 HEARING OFFICER: Okay, so you didn't actually use...you didn't actually...what I
6 want to know is did you say, "Bull shit," or did you say, "BS?"

7 CLAIMANT: I...I said, "BS."

8 HEARING OFFICER: Okay.

9 CLAIMANT: To Ronnie, it was not said to Courtney.

10 HEARING OFFICER: I'm not asking who you said it to. I'm asking what you said. So, I
11 just want to know what you said, irrespective of who you said it to. So...

12 CLAIMANT: Yes, ma'am, that's what I said,

13 HEARING OFFICER: Okay.


14 CLAIMANT: "Ronnie, this is BS."

15 HEARING OFFICER: Okay, and was...was anyone else present when you said that?

16 CLAIMANT: No, ma'am.

17 HEARING OFFICER: Okay, and so was Ronnie outside the...outside the restaurant, or
18 where was he exactly?

19 CLAIMANT: He was outside the restaurant out in the back door. The back door
20 was closed and I walked out the back door and Ronnie was standing out smoking a cigarette. I
21 had already shut the door and I was walking to my car. Ronnie asked me he said, "What's
22 wrong?" Because he could tell something was wrong, because I was upset when I walked
23 around the corner. ~~She said,~~ "Don't come back till Monday and find out from Jacob if you got a
24 job or not." And, you know, I was like, "What, where did that come from?" Because I don't


That's just it she said

1 know why she got, you know, told me that because I didn't say anything wrong to her. I was
2 being polite. And I turned to Ronnie and I said, "Ronnie, man, this is a bunch of bs."

3 ~~HEARING OFFICER:~~ ~~Okay.~~

4 CLAIMANT: And Ronnie said, "Don't worry about it, just go try to get a doctors
5 excuse. Let Courtney calm...cool down and come back here with your doctors excuse."

6 ~~HEARING OFFICER:~~ ~~Okay, did you...~~

7 CLAIMANT: And that's what I did. And when I called, Cortney said I would
8 have to come back and talk to her later because she was busy. I handed her my doctor excuse. I
9 called her back at 4:30 that afternoon. I said, "Courtney, you got my doctors excuse, what
10 gives?" She said, "Like I said, come back Monday and you can talk to Jacob and find out if you
11 got a job or not."

12 HEARING OFFICER: Okay, and then what happened next?

13 CLAIMANT: After that I went home and that was it. When I came back on...on
14 Monday to talk to Jacob, I always carry the tape recorder with me because some of the guys on
15 the line at night Jacob...Jacob, the kitchen manager, is not there at night so he's not aware of
16 what goes on, on the line. And every time a little mishap happens it's, "Gary this, Gary that."
17 So I said, "Well, I'll start carrying a tape recorder with me, a tape recorder, and I'll record it so
18 I'll have proof to Jacob that what they're saying is...is not true." So I had the tape recorder on
19 me that Saturday...that Monday when I came in to talk to Jacob. And when I sat down with
20 Courtney and Jacob I turned it on and recorded that. And I got Brenda Cooper to come out...out
21 there and tell Jacob, you know, what she heard because she was the only one standing on the
22 cook line. She was standing right beside Courtney when I talked with Courtney. I was very
23 polite. I...I did not...I did not get ugly with Courtney, and ~~I didn't really say it.~~ I didn't have
24 the money for a doctor's excuse, you know. And for her to say, "Come back Monday and find
25 out if you got a job or not." I mean, I'm like...you know, that would kind of upset anybody. So
26 that's how...how the whole situation evolved.

I just

stated ←

27 HEARING OFFICER: Okay, so in this...was...was there a point where you told Courtney
28 or you called Courtney and you told her... "I told her I was not..." I'm gonna read this in
29 another part of your fact finding statement. It says, "I called Courtney back, I told her I was not
30 like the rest of the...shit...shit on...on the floor. I was referring to the other kitchen staff." Did
31 you make that comment to Courtney?

1 CLAIMANT: Well, I made a comment I said, "Courtney..." I said, "Why... why
2 are you acting like this?" I said, "I come in," and I did say, "I spend..." but I was on my way
3 home to my mother's house to borrow the money from my mother. I said, "Courtney, you know
4 I'm not...I...I come in there and I bust my ass for you and Jacob all the time. I'm there all the
5 time. I'm not..." and I did say, "I'm not like the rest of these little shits on the line that...that
6 always calling out of work left and right." I did say that but it was not a curse word directed at
7 Courtney.

8 HEARING OFFICER: Okay, but you did...you did use profanity in a conversation with
9 Courtney though, correct?

10 CLAIMANT: On...on the phone on the way to my mothers.

11 HEARING OFFICER: Okay. So when did this phone call...call take place?

12 CLAIMANT: This took place when I left the restaurant after she said, "Come
13 back when you got a doctor's excuse." And then when I went to walk off she says...she said,
14 "Just don't come back till Monday and find out from Jacob if you got a job or not." You know,
15 and after I talked to Ronnie out back Ronnie said, "Well, go get a doctor's excuse and do what
16 you can to let Courtney cool down." So that's when I left and was headed to my mother's house
17 to borrow the money. And I tried to call Courtney back and reason with Courtney, you know,
18 and I said, "Courtney, you know I don't have the money, you know, for a doctor's excuse."
19 Well, she wasn't happy. So I went and got the money from my mother and I went to the doctor,
20 and that's how I got the doctor's excuse. *→ having it*

21 HEARING OFFICER: Okay. So is the only time you used profanity in this phone
22 conversation?

23 CLAIMANT: Yes, ma'am. The only time I used any profanity was in the phone
24 conversation going to my mother's house.

25 HEARING OFFICER: Okay, and you were speaking to Courtney. What...what exactly is
26 Courtney's title within the organization?

27 CLAIMANT: Courtney is the general manager of the store. That's why I don't
28 understand if she was wanting to fire me, why didn't she just tell me right then and there,
29 "You're fired. Get out of here." Why do I have to come back and talk to Jacob if I got a job or
30 not? She's the general manager. She's the one that makes the decisions. She's the one that
31 told...told Jacob to fire me, you know. And Brenda even told me Jacob didn't want to fire me
32 because I'm a good employee. He didn't want to fire me. Courtney made him fire me. But in

1 our conversation when I...when I was terminated Courtney sat there and would not say a word.
2 She didn't speak up or anything. She left it all to Jacob to do, which I think was wrong too on
3 her behalf. She should have been the one to terminate me if she wanted me terminated. She was
4 the general manager.

5 HEARING OFFICER: So do you think it was appropriate to use profanity in this phone
6 conversation with your supervisor?

7 CLAIMANT: Well, on the way home on the phone I was not on the clock. I was
8 not...I was not as you would say on duty at work, and wasn't directing the profanity at her. I
9 was just merely stating my case that, you know, I'm not like the guys on the line, and they are
10 what I said. I mean, they don't work. They lazy. They call out all the time and...

~~11 HEARING OFFICER: But you were...~~

12 CLAIMANT: ~~But you were...~~ you know, Courtney curses...

13 HEARING OFFICER: But you were...

14 CLAIMANT: Courtney has cursed me out many times.

~~15 HEARING OFFICER: But you were...~~

16 CLAIMANT: I mean, literally cursed me out.

17 HEARING OFFICER: But you were...

18 CLAIMANT: You know?

19 HEARING OFFICER: But you were talking to your supervisor about work related matters
20 and your co-workers, correct?

21 CLAIMANT: Yes, I was.

22 HEARING OFFICER: Okay. So does the...does the employer have a code of conduct or
23 any sort of handbook with policies and procedures about how you're supposed to act or behave
24 or anything like that?

1 CLAIMANT: Yes, ma'am, and the actual behavior is at work while on duty. ✓

2 HEARING OFFICER: So...

3 CLAIMANT: (both speaking)

4 HEARING OFFICER: ...so if you call your manager after work and you can say anything ✓
5 you want and that doesn't matter?

6 CLAIMANT: (Well, if she...ma'am, if I was cursing directly to her like cursing ✓
7 her out, yeah, I think, it would matter. I think it would, and she would have every right to fire ✓
8 me, but I was not cursing at her.)

9 HEARING OFFICER: Okay, but...

10 CLAIMANT: I was just cursing myself because I was upset. I was not directing ✓
11 the curse words to her. I was not calling her [UNCLEAR]. I was not, you know, calling her this, ✓
12 and blank this, and blank that. I was not being rude to her. I was cursing myself and it was not ✓
13 directed to her.

14 HEARING OFFICER: Okay. a-B-----

15 CLAIMANT: (It was not directed to her one bit and she knows that, she knows ✓
16 that.)

17 HEARING OFFICER: All right. So it was not directed to her but you were on the phone ✓
18 with her and she was...was she at work when this phone call happened?

19 CLAIMANT: Ma'am?

20 HEARING OFFICER: Do you know if she was at work when this phone call happened? ✓

21 CLAIMANT: Yes, ma'am. I...I called her back to...to ask her to reason with her ✓
22 because I told her I didn't have the money for a doctors excuse. And I was gonna have to go to ✓
23 my mother, which she's on a fixed income, to borrow money from my mother just to go to the ✓
24 doctor to get a doctor's excuse just so I would have a job. I mean, which is I think a little ✓
25 unreasonable. I mean, she knew...Courtney knew for three months that I...that I had a wisdom ✓
26 tooth that was abscessed. I had blood...infection in my blood, toxins in my blood. I was under a ✓
27 doctor's care. I brought the note to her stating I was under a doctor's care. I had appointment on

Line 1
out of medication

Line 1
From way out
in Pelion

This is wrong

Line 4
In Pain

From way out in
Pelion

and
my
Biscu

at

a Bajangles Biscu

1 August the 15th, to have the tooth extracted. She knew all this, you know, she knew it wasn't...it
 2 was a holiday. She knew my doctor was closed. (She knew I was out on vacation.) She knew
 3 everything. They were well aware of my situation. And for me to come in after having to be out
 4 on the 5th, I came to work on the 4th. I worked Fourth of July and I called out on the 5th. You
 5 know, and for me to have to bring a doctor's excuse after being already aware that I'm under a
 6 doctor's care, you know, and I don't have the money on top of it. I'm struggling to get back to
 7 work from when [UNCLEAR]. You know, it takes everything I got to put in gas to get back and
 8 forth to work, you know. And, you know, the...the thing I would like...like to state is, I mean, I
 9 can understand like...I was on duty. Just like my determination letter said, I was disqualified for
 10 using foul and profane language while on duty...while on duty. I was not on duty. When I
 11 walked in the building I was 30 minutes early for work, approximately 30 minutes. I was due in
 12 at ten o'clock Saturday morning. I came in at 9:35...9:39...35, somewhere around there, which I
 13 had [UNCLEAR] because I went to the drink machine to get some water so that I...I got there
 14 early so that I could sit down and take my medication because it messes with my stomach. It
 15 was then when she approached me about the doctor's excuse. So I was actually not even on
 16 duty. Just because I walked in that door doesn't make me on duty. It does not put me on the
 17 clock. When I (get) that clock, when I punch that clock, from that point on I'm on duty. You
 18 know, this is something that took place while I was not...while I was not even to work, basically.
 19 I was there but I wasn't on the clock.

20 HEARING OFFICER: Okay, but you were...okay, when you were at work though you
 21 were on the employer's premises, correct?

22 CLAIMANT: I was on the employer's premises when I spoke with her, and I was
 23 very polite to her, and I had a witness to that.

24 HEARING OFFICER: Okay, then the phone call...

25 CLAIMANT: (both speaking)

26 HEARING OFFICER: ...and the phone call that happened later, you were calling your
 27 general manager about a work related issue, correct?

28 CLAIMANT: Yes, ma'am. I was telling her about my...my doctors excuse, yes,
 29 I was.

30 HEARING OFFICER: All right. So the phone call, it wasn't a personal call or anything
 31 like that. You were calling because you wanted to get this bit with the doctors excuse
 32 straightened out?

1 CLAIMANT: Yes, ma'am. ✓

2 HEARING OFFICER: Okay. All right, thank you. All right, and what was your response ✓
3 when you were advised of your discharge?

4 CLAIMANT: When I was advised of my discharge, I...I...when you told me that ^{He}
5 I was discharged I explained to Jacob what all was going on, you know, with my tooth and, you
6 know, everything that arise. And I told him straight to his face in front of Courtney, "I did not
7 curse at Courtney." When I came in she had already made her decision to terminate me before I
8 walked out that door. You know, so then when my phone call to her on the way to my mother's,
9 you know, didn't mean anything because she had already made her decision that I was
10 terminated as of Monday.

11 HEARING OFFICER: Okay, had you... ✓

12 CLAIMANT: Come in Monday and find out if you got a job or not. ✓

13 HEARING OFFICER: Okay, but she hadn't told you, "You're fired." She said, "Come in ✓
14 and see if you have a job," correct?

15 CLAIMANT: "Now from Jacob if you still have a job or not," that was her exact ✓
16 words.

17 HEARING OFFICER: All right, and you just... ✓

18 CLAIMANT: And... ✓

19 HEARING OFFICER: ...you inferred from that that she intended to...to discharge? ✓

20 CLAIMANT: Oh, yes...yes, she...she intended to discharge me. She...she had
21 made comments before that when I was talking to another manager from another store about
22 coming over there and working with him while they remodeled our store, she looked at me and
23 laughed. She said, "And you still...you think you're still gonna have a job by then?" So, you
24 know, I already knew Courtney had it in for me from day one. I mean, it was obvious.
25 Everybody in the store knew that.

26 HEARING OFFICER: Okay, thank you. And have you ever received any warnings in
27 conjunction with your employment?

1 CLAIMANT: The only...only one that I received, Courtney and I did have a
2 confrontation on the line but there was no cursing involved. And it really wasn't a con...
3 confrontation, as far as I was concerned because I merely asked her a question, and she flipped
4 her lid and told me to clock out and go home. I got wrote up for that.

~~5 HEARING OFFICER: When...when...~~

6 CLAIMANT: The only other write up because I was an hour late for work one
7 time, and that was on Mother's Day. And Eddy was there then, and that was a write up from
8 back when Eddy was there. But the confrontation on the line at that point was Courtney...
9 Courtney kept coming back and telling me, "Get off my clock. Get off my clock. You got to go.
10 You got to go." You know, because they're trying to cut...cut labor costs; we slowed down.
11 And she said, "Clean your salad sauté and get off my clock. Clean; get off my clock." And I
12 was cleaning it then they got a small clock down on fry and she told me, "Go down and work on
13 fry." And I merely asked her, I was like, "Well, Courtney, you want me off your clock. If I go
14 down on fry who is gonna clean my station?" And she looked at me and she says, "I will close
15 the blank...blank...blank thing down. Clock out and go home." I came in the next morning; I
16 had a write up.

17 HEARING OFFICER: *Pop* And when did that occur?

18 CLAIMANT: That occurred, Oh God, months and months ago. That was a good
19 while back.

20 HEARING OFFICER: Okay, do you remember what month it happened in?

21 CLAIMANT: That was on the line in front of everybody like I was a dog.

22 HEARING OFFICER: Do you remember...

23 CLAIMANT: (both speaking)

24 HEARING OFFICER: ...do you remember what month that happened in?

25 CLAIMANT: No, ma'am. You can...you can request all the write...my three
26 write ups. I only have three write ups with them. You can request them from Jacob and
27 Courtney if you would like to. It was noted the actual day. I can't really remember, it's been a
28 while back. But, you know, she cursed me. I mean, all the employees heard her. Several of the
29 servers heard her and walked over to me and said, "What in the world is wrong with her?" I

** it code of conduct **

*** 1 said, "I don't know." And, you know, a couple times... and that goes for management, and that ***
2 goes for...for employees too.

3 HEARING OFFICER: Okay.

4 CLAIMANT: You know.

5 HEARING OFFICER: All right, let me...let me sort of try to get you back. This isn't
6 about what the manager did or did not do. If we need to describe that in order to develop the
7 circumstances as to what happened, that's fine. But we really...I really want to focus on you and
8 what happened with you. And also in terms of requesting documents; we're not going to be
9 doing any of that. The only things that are going to be considered are gonna be the testimony
10 and...and exhibits, and documents presented in the hearing today. This...this hearing is gonna
11 be it in terms of what is considered by the Tribunal in rendering their decision. So...

12 CLAIMANT: ~~Right.~~ *ok*

13 HEARING OFFICER: All right, so to sort of to...to go back to it do you remember...so
14 you just know it was a few months ago but you're not sure when?

15 CLAIMANT: No, ma'am. It was...it was probably about...it had to been around
16 about six months ago.

~~17 HEARING OFFICER: Okay.~~

18 CLAIMANT: It was a good while back.

19 HEARING OFFICER: All right, you said you had three write ups total during the course
20 of your employment?

21 CLAIMANT: Three write ups, yes, ma'am, and they...they were...in Columbia.
22 I was at Nashville. I never had a write up in Nashville. I was with Nashville at ~~Huntersville~~ *Bell*
23 Road in ~~Anok~~ (phonetic) at the ~~Anok~~ store. I was there almost a year and I transferred down
24 here because my father is elderly and my stepmother actually...just heart failure and was dying.

Antioch *Antioch*
25 HEARING OFFICER: Okay, so the...

26 CLAIMANT: (both speaking)

- 1 HEARING OFFICER: ...the other write ups, let's get back to those. The other write ups,
2 you said one was when you were an hour late, is that correct?
- 3 CLAIMANT: Yes, ma'am.
- 4 HEARING OFFICER: Do you remember when you got that write up?
- 5 CLAIMANT: That was...that was last Mother's Day.
- 6 HEARING OFFICER: Okay.
- 7 CLAIMANT: I believe it was last Mother's Day.
- 8 HEARING OFFICER: So Mother's Day, 2013, or 2012?
- 9 CLAIMANT: 2000...I think it was Mother's Day's 2012.
- 10 HEARING OFFICER: Okay, and you said there was another write up that you got?
- 11 CLAIMANT: The write up, the other write up that I got was the one where, you
12 know, I told Courtney asked her if I go down on fry station and run fry, who's gonna clean my
13 station.
- 14 HEARING OFFICER: Right, that...
- 15 CLAIMANT: That's that write up.
- 16 HEARING OFFICER: ...that's on...
- 17 CLAIMANT: The last write up is just write up ^{this} ~~hearing~~ ^{here} that I was terminated for.
- 18 HEARING OFFICER: Okay, so you're just referring...you were just referring to this
19 additional...to the separating incident as the third one? Okay.
- 20 CLAIMANT: Yes, ma'am.

1 HEARING OFFICER: All right, thank you. Okay, is there anything you want to tell me
2 about the circumstances that led to your discharge?

3 CLAIMANT: That...that's...that's about it. I mean, the fact that, you know, I
4 walked in there, she approached me, you know, what I told you. And I told her I didn't have a
5 doctors excuse. She said, "You're not clocking in..."

6 HEARING OFFICER: Okay, let me stop you...let me stop you. I don't need you to
7 rehash it. Just anything we have not already discussed?

8 CLAIMANT: No, ma'am.

9 HEARING OFFICER: Okay, thank you. And you have sent in a copy of...of that...of a
10 sound recording. And what exactly...one; did you want to proffer it as an exhibit and two; what
11 is on this recording?

12 CLAIMANT: The fact that...that Brenda was the only witness on that line and
13 she will not come forth because she's afraid she's gonna lose her job because that's how
14 underhanded they are. But, and she...she said she'll lose her job that's why she won't come
15 forward. And you have her on there at the first segment of the tape when Jacob terminated me,
16 where I went out there and asked Courtney and come out...I mean, Brenda, to come out there
17 and tell Jacob that she was on the line and she's the only one there at the time and she heard
18 everything. And she told Courtney straight to her face, "Gary did not curse you." That's, you
19 know, that's what I want submitted into evidence.

20 HEARING OFFICER: Okay, so...so what's on...so what's...so what's on...you said it's
21 a...is it a 29 minute recording or a 39 minute?

22 CLAIMANT: It's...it's...well, it's about 30 minutes long because...39 minutes
23 long because it's not only that I recorded that but I recorded my phone conversation with Brenda
24 when I asked her if she would please go up there and be my witness and she said, "I can't do
25 that. I'm not getting involved. You know, I wouldn't do that to you, I would do that for Ronnie,
26 and I wouldn't do it for the President of the United States." She's scared she's gonna lose her
27 job.

for

28 HEARING OFFICER: Okay, so essentially what's on here is the meeting where you were
29 told of your discharge, when you went back there and talked to Brenda and told her and she said
30 that she told Courtney she was...you didn't curse her out. And...and then there was another
31 ...and then when you called and asked for Brenda to participate in the hearing, and that...and
32 that...those are all the conversations that are on this recording?

1 CLAIMANT: Yeah, and when...when I spoke with Jacob too because there was
2 an incident where I did call the area supervisor. I called when I left work that day, Monday, after
3 I got terminated I went to my mother's and I called Chester, he's the area supervisor, and spoke
4 with Chester. And I explained to Chester what happened and he said, "Yes, that's exactly what
5 was told to me, is that you cursed at Courtney on the cook line, and that's why you were
6 terminated." Then after I asked him if ^{he} they would meet with me on Thursday, he agreed. I went
7 to the store and I sat down and had my meeting with...with Chester. And then Chester after I
8 told him I had everything on tape and this and that, then he wanted to change the story around
9 and said, "Oh, well, you weren't fired for cursing at Courtney, and you weren't fired for your
10 doctors excuse. You were fired for the way you approached Courtney, and your temper, and
11 your demeanor." And I called Jacob back and I recorded the conversation with Jacob, asking
12 Jacob, "I want to know why I was terminated because now Chester is saying one thing, you're
13 saying one thing. I want to get to the bottom of it." And I have that on that tape too.

14 HEARING OFFICER: Okay, and what was his final statement in terms of why you were
15 discharged?

16 CLAIMANT: The final...final reason I was discharged is what Jacob told me,
17 and that's what Jacob told me, I cursed at Courtney when I came in that morning on the cook
18 line. That's exactly what he told me, I cursed at Courtney and was arguing with Courtney. And
19 there was no argument involved and Brenda summed that up herself, there's no argument
20 involved.

21 HEARING OFFICER: Okay, this one audio CD will be entered in as Claimant Exhibit
22 One, and it's noted 39 minutes in length and it's the conversations on it are as described by the
23 claimant. All right, anything else you want to tell me at this time, Mr. Stokes?

24 CLAIMANT: No, I would just like to ask you a question if possible.

25 HEARING OFFICER: Sure, go right ahead.

26 CLAIMANT: What's the stipulation when the employer...when the employer
27 doesn't...doesn't consent to the Administrative Hearing?

28 HEARING OFFICER: It's we went forward with the hearing.

29 CLAIMANT: Okay.

30 HEARING OFFICER: They were...they...they received notice of the hearing and were
31 given the option to attend, and no one was available to do so when I contacted them, so that's we

1 went forward. And a decision will be made based upon the testimony and evidence presented in
2 the hearing today.

3 CLAIMANT: Well, ^{do} did they... ^{do} did they take into consideration that the
4 employ...also that the employer did not participate?

5 HEARING OFFICER: As I said the decision will be made based upon the testimony and
6 evidence presented in the hearing today.

7 CLAIMANT: Okay.

8 HEARING OFFICER: ^{Claimant} All right, anything...anything additional at this time?
^{is that it?}

9 CLAIMANT: No, ma'am, there's nothing else, that...that's it.

10 HEARING OFFICER: All right, thank you very much, Mr. Stokes. That being the case as
11 I have no more questions and there is no more testimony being offered, I declare this hearing
12 closed.

13 **HEARING CLOSED.**

APP-100 NET... Rev. 7/13
Catalog#: 05082

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P. O. Box 995, Columbia, South Carolina 29202

APP 111

Notice of Appeal to Appeal Tribunal

Claimant's Name: GARY W Stokes Social Security Number: _____

Claimant's Address: _____
Telephone: 803-509-2338 cell 615-295-5927

Employer's Name: O'Charley's Telephone: 803-356-4220

Employer's Address: 5595 Sunset Blvd Lexington SC 29072

Please refer to Determination by Claims Adjudicator to complete section below.

On 11-15-13 I received the determination mailed 11-14-13
(Date of receipt) (Mailing date on Notice)

I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons:

I Do Not Agree with this Decision or any of the content in it that anything was done Deliberate

If appeal is untimely or you were absent from a prior hearing, state the reason: _____

I must continue to file my claim for each week of unemployment until I receive the Appeal Tribunal or Appellate Panel decision, until I return to work, or until my claim is exhausted. If I win the appeal, I know I can only be paid for those weeks that I have timely claimed.

GW
(Claimant's Initials)

Does claimant need an interpreter? YES NO What language/dialect? _____

Claimant is Deaf Mute

(If it appears necessary to subpoena witnesses or documents, please complete Form APP-107 and attach it when you submit your appeal.)

SUBPOENA YES NO

Who is filing appeal: Claimant Employer

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Signature: Gary W Stokes

NOV 18 2013

Title: _____ Date: 11-18-13

SCDEW
HIGHER AUTHORITY APPEALS

Please submit form by fax to 803.737.0287 or by mail to: "Appeal Tribunal, P.O. Box 995, Columbia, SC 29202."

alw 11/14 DeHay

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this Record on Appeal in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service address to the party(ies) or their attorney(s).

This 6th day of February, 2014

By: Jessica Chesley

Title: Administrative Legal Assistant, Legal Department

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DEC 18 2014

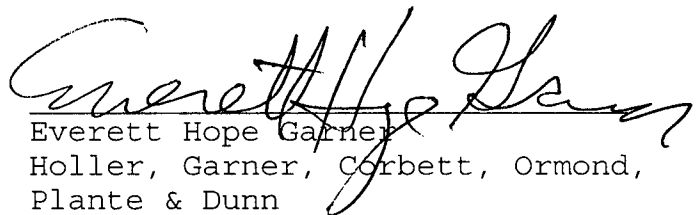
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: _____

12/17/14



Everett Hope Garner
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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DEC 18 2014

APPEAL FROM THE ADMINISTRATIVE LAW COURT

SC Court of Appeals

John D. McLeod, Administrative Law Judge

Case No: 14-ALJ-22-0015-AP

Gary W. Stokes Appellant

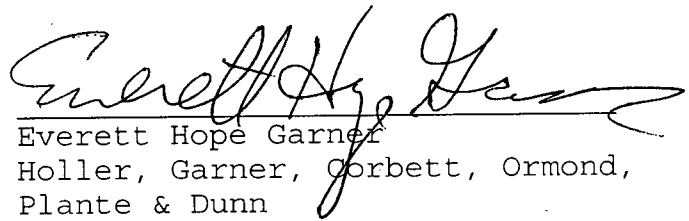
v.

South Carolina Department of
Employment and Workforce and
O'Charley's, LLC. Respondent,

PROOF OF SERVICE

I certify that I have served the Record on Appeal on South Carolina Department of Employment and Workforce by depositing a copy of it in the United States mail, postage prepaid on December 18, 2014, addressed to its attorney of record, Derrick McFarland, Esquire, Office of General Counsel, Post Office Box 8597, Columbia, South Carolina 29202.

December 18, 2014



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