

APR 06 2015

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Gerald L. Gantt,

Petitioner,

vs.

South Carolina Department of Employment  
and Workforce.

Respondent.

Docket No.: 15-ALJ-30-0018-CC

FINAL DECISION AND ORDER

RECEIVED

MAY 26 2015

SC Court of Appeals

APPEARANCES: For the Petitioner: Gerald L. Gantt, Pro Se  
For the Respondent: E.B. "Trey" McLeod, III, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to a Request for Contested Case Hearing filed by Gerald L. Gantt ("Petitioner") on January 7, 2015. Petitioner is challenging the setoff of his South Carolina Income Tax Refund, at the request of the South Carolina Department of Employment and Workforce ("Respondent" or "the Department"), to recover an overpayment of unemployment benefits pursuant to sections §2-56-10 et seq. of the South Carolina Code ("the Setoff Debt Collection Act"). Specifically, the Department seeks to recoup an overpayment of \$1,232.00 by having this amount deducted from any state tax refund to which Petitioner may be entitled.

Following proper and timely notice to the parties, a hearing in the matter was held on March 18, 2015, at the South Carolina Administrative Law Court in Columbia, South Carolina. At the close of the hearing, the Court ordered the Record remain open for ten (10) days to allow Petitioner to submit supplemental documents supporting his claim that he did not owe the alleged debt. Petitioner filed supplemental documents with the Court on March 30, 2015. The sole issue before this Court is whether Petitioner is entitled to relief from the Department hearing officer's determination that the debt submitted for set off is correct and is rightfully due from Petitioner.

## FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing upon their credibility, and taking into consideration the burden of persuasion by the parties, the Court makes the following Findings of Fact by a preponderance of the evidence:

1. Sometime prior to October 2013, Petitioner's employment ceased and he filed for unemployment with the Department. Petitioner was originally granted unemployment benefits; however, on March 3, 2014, the Department notified Petitioner he was indefinitely disqualified from receiving unemployment benefits effective October 20, 2013, upon finding he voluntarily quit employment without good cause.

2. Also on March 3, 2014, the Department mailed Petitioner a notice of Determination of Overpayment. Specifically, the Department determined Petitioner received fourteen weeks of unemployment benefits at \$89.00 per week for a total of \$1,232.00 in between October 26, 2013 and January 25, 2014. Petitioner contested the Department's finding that he voluntarily quit and its overpayment determination.

3. On July 15, 2014, a Department Appeal Tribunal Hearing Officer conducted an evidentiary hearing on the matter. In a decision mailed to the Petitioner on July 21, 2014, the Tribunal Hearing Officer affirmed the Department's determination that Petitioner voluntarily quit his employment without good cause and it affirmed the overpayment determination. The Petitioner did not appeal the decision of the Appeal Tribunal, which became the final agency decision.

4. On October 4, 2014, the Department notified Petitioner of its intent to recoup the debt resulting from the overpayment from Petitioner's tax refund pursuant to the Setoff Debt Collection Act. The Setoff Debt Collection Act allows the Department of Revenue to deduct the amount of the debt from any state tax refund claimed by the Petitioner until the debt is paid in full.

5. Petitioner protested the debt and was granted an informal hearing on the matter. In a decision dated December 8, 2014, the administrative hearing officer found the overpayment amount of \$1,232.00 was correct and rightfully due from Petitioner. Thereafter, Petitioner filed a Request for Contested Case Hearing with this Court on January 7, 2015.

6. At the hearing before this Court, Petitioner testified he never received "a cent" from the Department during the period of disqualification between October 26, 2013, and

January 25, 2014. Petitioner brought bank records to support his testimony, but the records were from the wrong time period. To allow Petitioner to submit records from the correct time period, this Court held the Record open for ten (10) days.

7. During the ten day period when the Record was held open, Petitioner submitted Department documents showing his benefit payment history, which includes the dates of the payments to Petitioner and the amount of the payments. The Department's benefit payment history shows fourteen debit card payments for \$88.00 to Petitioner for the time period of October 23, 2013 through January 26, 2014, which corresponds with the Department's disqualification period. Therefore, Petitioner received a total of \$1,232.00 from the Department during the disqualification period.

#### LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law:

1. Jurisdiction over this matter is vested with the South Carolina Administrative Law Court pursuant to sections 1-23-310 et seq. of the South Carolina Code (Sunn. 2014), section 1-23-600(A) of the South Carolina Code (Supp. 2014), and section 12-56-650(C) of the South Carolina Code (Supp. 2014). The Department is a proper "claimant agency" and Petitioner is a "debtor" as defined by subsections 12-56-20(1) and (3) of the South Carolina Code (Supp. 2012).
2. As the moving party in this matter, Petitioner bears the burden of establishing by a preponderance of the evidence that he is not responsible for the debt, and the requirements of the "Act" do not apply. See Leventis v. S.C. Dep't of Health & Envtl. Control, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2000) (holding the burden of proof in administrative proceedings generally rests upon the party asserting the affirmative of an issue); see also 73A C.J.S. Public Administrative Law and Procedure § 128, at 35 (1983) ("In administrative proceedings, the general rule is that an applicant for relief, benefits, or privilege has the burden of proof, and the burden of proof rests upon one who files a claim with an administrative agency to establish that required conditions of eligibility have been met.").
3. The weight and credibility assigned to evidence presented at the hearing is within the province of the trier of fact. S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and to evaluate the credibility of

his testimony/ See, e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

4. S.C. Code Ann. § 41-41-40(A)(1) provides:

A person who has received a sum as benefits under Chapters 27 through 41 while conditions for the receipt of benefits imposed by these chapters were not fulfilled or while he was disqualified from receiving benefits is liable to repay the department to the unemployment compensation fund a sum equal to the amount received by him.

5. The questions presented in this matter are whether the debt being pursued by the Department under the provisions of the Setoff Debt Collection Act is a valid debt, and whether Petitioner is responsible for payment of the debt. See S.C. Code Ann. §§ 15-56-10. In this instance, the Department asserts Petitioner owes an overpayment of \$1,232.00 for the period October 26, 2013, through January 25, 2014. Although Petitioner claims he did not receive any money from the Department during this period, the Department documents submitted by Petitioner show he received fourteen payments from the Department during this period totaling \$1,232.00.

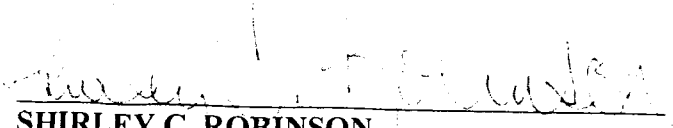
6. Therefore, this Court finds Petitioner did not carry his burden to show the debt being pursued by the Department is not a valid debt. Accordingly, the Department is entitled to recover the \$1,232.00 overpayment through the setoff of any state tax refund due to Petitioner.

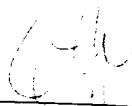
#### ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

**IT IS HEREBY ORDERED** Petitioner's challenge to the setoff by the South Carolina Department of Revenue of any refund due Petitioner, until such time as the debt owed to the Department is satisfied in full, is denied.

**AND IT IS SO ORDERED.**

  
SHIRLEY C. ROBINSON  
South Carolina Administrative Law Judge

  
April 2015  
Columbia, South Carolina

Thank's a lot Beautiful

6 - April 2015  
