

The South Carolina Court of Appeals

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4 Billie D. Mueller,

5 Appellate,

6 vs

7 South Carolina Dept. of Employment &
8 Workforce & Ebtron, Inc.,

9 Respondent

Appellate Case No.: 2014-002489

**APPELLANT'S ANSWER TO THE
SOUTH CAROLINA COURT OF
APPEALS ORDER**

RECEIVED
JUL 06 2015
SC Court of Appeals

10 PLEASE TAKE NOTICE that Appellant Billie D. Mueller respectfully answers the Court
11 on the Order dated June 25, 2015.

12 Appellant Billie D. Mueller states that the documents entered as Exhibit's 1 & 2 (packet
13 1) at the original telephone hearing were not sent to the Appellant before the hearing that was
14 held on May 27, 2014 by either the South Carolina Department of Employment & Workforce or
15 my former employer Ebtron, Inc..

16 Appellant Billie D. Mueller would like to ask the court to note the following;

17 Appellant believed that Ebtron, Inc. would advise & provide SCDEW a copy of the Separation
18 Agreement and the terms & conditions of the document. The separation Document made no
19 mention of failure to complete work assignments or any comment regarding performance related
20 to the Appellants position. The separation document does not suggest that Ebtron, Inc. would
21 challenge the unemployment benefits sought by the Appellant. The separation agreement
22 specifically comments that the parties have agreed to not making any disparaging commentary at
23 the time or in the future. The Appellant Billie D. Mueller was employed for over 25 years with
24 Ebtron, Inc., and was awarded expanded business assignments, during her tenure Ebtron, Inc. has
25 provided only a single instance of reprimand or career counseling.

1 That is why Appellant submitted the documents to the Appellate Panel (packet 2) and
2 the SC Administrative Law Court (packet 3) since they had been mentioned at the original
3 telephone hearing.

4 Ebtron Inc. and SCDEW intent was to marginalize to the court, information which was in
5 their power to provide to the Appellant at the time of the initial telephone hearing conducted by
6 the State of South Carolina Department of Employment and Workforce.

7
8 Dated this 29th day of June, 2015

9 Billie D. Mueller

10
11 Billie D. Mueller
12 1341 Rockfish Drive
13 Manning, SC 29102
14 Telephone: 803-410-6935
15 E-mail address: dinkerboy49@gmail.com
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23
24
25
Petitioner has no Attorney

1 UCB-103
REV. 7/10

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

1 BILLIE D MUELLER

DATE OF THIS NOTICE 04/21/14

1 [REDACTED]
1 [REDACTED]

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION ENDS		
BILLIE D MUELLER				[REDACTED]	03/30/14	08/16/14		
WFC NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS	
260	I	01	\$ 326.00	\$ 6520.00	\$ 6520.00	\$ 0.00	03/29/15	

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 FAILING TO
1 PERFORM ASSIGNED WORK TO THE SATISFACTION OF YOUR EMPLOYER. FAILURE TO PERFORM IN A MANNER THAT
1 YOUR EMPLOYER HAD A REASONABLE RIGHT TO EXPECT IS A DISCHARGE FOR MISCONDUCT IN CONNECTION WITH
1 THE WORK UNDER THE SOUTH CAROLINA CODE SECTION 41-35-120(2)(A). YOU ARE DISQUALIFIED FOR 20
1 WEEKS. YOUR MAXIMUM BENEFITS ARE ALSO REDUCED BY 20 TIMES YOUR WEEKLY BENEFIT AMOUNT.

1 THE SEPARATION WAS A RESULT OF FAILURE TO PROCESS PAPERWORK SINCE THE MIDDLE OF 2013.

1 LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

1 MAILING DATE 04/22/2014

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.

EXHIBIT

A# 1

FILE NO: 1408227

044

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

Claimant's Name: BILLIE D. MUELLER Social Security Number: [REDACTED]

Claimant's Telephone Number: (843) 756-1296

Employer's Name: EBTRON INC Telephone Number: (843) 756-1828

Appeal Number: 1408227 Hearing Date: 05/27/14 Hearing Time: 2:00 PM
Month/Day/Year Hour/Minute-Eastern Time

Administrative Hearing Officer: KENNEN L. SHORTT 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: 05/13/2014

REQUEST FOR INFORMATION UNEMPLOYMENT INSURANCE BENEFITS

CLAIMANT'S NAME BILLIE D MUELLER SS# [REDACTED]
NAME WORKED UNDER DATE MAILED 2014-04-07
EMPLOYER'S ACCOUNT # [REDACTED]
EMPLOYER'S NAME EBTRON, INC RETURN WITHIN SEVEN
& ADDRESS 1883 HIGHWAY 701 S 10 DAYS OF THE 200 A VICTORY LANE
LCRIS, SC 29589 ABOVE DATT TO P O BOX 1274
CONWAY SC 29528

FAX NUMBER 843-234-0352

ATTENTION FAILURE TO RESPOND TIMELY OR ADEQUATELY TO DEW'S REQUEST FOR INFORMATION MAY NEGATIVELY IMPACT YOUR UNEMPLOYMENT TAXES.

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 a 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.

[X] CLAIMANT'S Reason for Separation DISCHARGED/FIRED/TERMINATED MADE A MISTAKE

[X] Contact the local Dept of Employment & Workforce shown above by 04/17/2014 if you wish to appear or be represented at an interview regarding the reason for separation

SEPARATION INFORMATION

[] LACK OF WORK (No additional written explanation is necessary)

[X] DISCHARGED (Give specific reason) PLEASE SEE ATTACHMENTS FOR EXPLANATION, CHRONOLOGY, AND DOCUMENTATION. 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. PLEASE SEE ATTACHMENTS

If discharged for absenteeism list dates of absences. PLEASE SEE ATTACHMENTS

[] VOLUNTARILY QUIT (Give specific reason)

[] OTHER (Explain in detail)



Dates of Employment FROM 3/15/1988 TO 4/4/2014
During all terms of employment, have you paid this claimant as much as \$ 2808.00 [X] 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 [X] NO

If YES what amount? \$ PER

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

EMPLOYER NAME EBTRON, INC ACCOUNT NUMBER [REDACTED]

EMPLOYER SIGNATURE ** [Signature] TITLE HR MANAGER

TELEPHONE NUMBER (843) 756-1828 DATE 4/16/2014

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



Billie Mueller Termination

Ms Mueller was terminated from Ebtron after repeated instances of insubordination, refusal to follow instructions, and failing to perform her duties properly, ultimately resulting in severe errors affecting sales associates' commissions, and errors in tax liability

Since 2012, her direct supervisor, Dick McKibben (Operations Manager) has experienced repeated issues of her failure to follow his instructions to perform her job, insubordination, poor attitude and mistakes

She was notified of these issues verbally by McKibben as they occurred, and he documented them at the same time. She was also notified of these problems officially at her 2013 performance review, held on February 5, 2014. She was placed on a 90-day probationary period (Performance Improvement Plan) at that time and was told she needed to improve immediately

On or around that time, the Company learned that she had failed to process paperwork since the middle of 2013 for certain sales associates' commissions and quarterly bonuses for the 4th quarter of 2013. This resulted in \$55,000 worth of errors affecting the sales associates, bonuses, and created substantial tax implications. She had concealed her failure to perform that work from the company for months, and others had to spend enormous amounts of time to correct those errors.

That failure to perform her job, coupled with her concealment of it for months, on top of her other performance related issues, resulted in her termination.

These performance and attitude related issues violated numerous company policies contained in the employee handbook, which has been communicated to the Claimant. They are

Policy #200 14 Discipline and Rules of Conduct:

- 200 14.3 Unacceptable job performance
- 200 14 4 Not completing assignment up to the quality standards of the Company
- 200 14 5 Failure or inability to cooperate with others
- 200 14 8 Failure or refusal to follow instructions
- 200.14 20 Demonstration of lack of courtesy towards other employees
- 200.14.23 Insubordination
- 200.14.26 Concealing defective work

1663 Hwy 701 S • Lons, SC 29569 USA
Toll Free 800.2EBTRON (800.232.8768) • Local Phone: +1 843 756 1828 • Fax: +1 843 756 1838
Internet: www.ebtron.com • e-Mail gregm@ebtron.com
EBTRON, Inc. IS AN "AT-WILL," EQUAL OPPORTUNITY EMPLOYER

EXHIBIT

A# 2

FILE NO: 1408227

045



Policy #200.22 Customer and Fellow Employee Relations.

"Employees of the Company are expected to treat clients and fellow employees courteously and with the utmost respect at all times. Employees must attend to clients' questions and demands promptly and professionally .."

1663 Hwy. 701 S. • Loris, SC 29569 USA
Toll Free. 800.2EBTRON (800.232.8766) • Local Phone: +1.843.756.1828 • Fax +1 843 756.1838
Internet: www.ebtron.com • e-Mail: cream@ebtron.com

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040
A-2 p2

Performance Review Form - Salary - 2014

Employee Name: Billie Mueller Job Title: Sales Admin Supervisor
 Review Date: Supervisor: Dick McKibben
 Review Type: Annual Review Period: 01/01/13 to 12/31/13

Performance Rating Categories: Consider the employee's performance in each category and designate the level of performance that most accurately describes her/his job performance

- [O]utstanding: Employee constantly exceeds position expectations with virtually no detected preventable/avoidable errors, requiring little or no supervision
- [E]xceeds Expectation: Results clearly exceed position requirements on a regular basis. Performance is of high quality and is achieved on a consistent basis.
- [M]eets Expectation: Competent & dependable performance level. Meets the performance standards and objectives of the job without constant follow-up and/or direction
- [B]elow Expectation: Employee does not meet performance objectives on a regular basis and has difficulty following through with tasks. Requires constant follow-up and/or supervision
- [I]mmediate Improvement Needed: Employee must correct performance immediately

Part I: Major Job Responsibilities (No more than 5) (70% Weight)

The Employee and Manager list major job responsibilities in order of importance and identify how they will be measured. Assign a percentage value to each major job responsibility based on the percentage of job responsibility time (Total MUST equal 100%). At the end of the rating period, place a rating letter in the box. Record comments on a separate piece of paper, if necessary.

% of Job	Job Responsibility	Rating
50%	Supervise and help perform daily sales administrative activities. Work to train and develop current and new administrative staff. Follow-up to assure all necessary tasks are completed correctly and on-time. Keep accurate records of admin errors for weekly review.	B
35%	Accept your role as Office Manager. Make decisions related to daily office events and problems. Establish guidelines for each office employee and hold them accountable for their job responsibility. Conduct necessary follow-ups and audits to assure jobs are being performed to our expectations. Hold regular meetings with the group to communicate information and convey instructions to them.	B
15%	Improve your relationships with others at Ebtron. Resist the temptation to comment on what others are not doing and focus on what you and your team can do. Treat all Reps and employees equally. Report failures of other departments and people directly to Dick.	M

SCDEW

APR 21 2014

Received Benefits Div

04213

Performance Review Form - Salary - 2014

Part II: General Employee Attributes

(30% Weight)

- 1. Rate employee's flexibility when given new assignments and/or responsibilities
- 2. Rate employee's adherence to policies and procedures.
- 3. Rate employee's overall communication skills.
- 4. Rate employee's judgment when making decisions and completing tasks:
- 5. Rate employee's ability to work well with colleagues and management.
- 6. Rate employee's attendance:

Rating

M

M

M

M

M

M

Accomplishments or new abilities demonstrated since last review:

Specific areas of needed improvement:

Billie has not accepted her role as supervisor. There has been little or no demonstrated leadership exhibited by her toward the Sales Admin group. Employee errors have neither been kept on a consistent basis nor have they been reviewed regularly as required. Greg McBride and I have been required to intervene with the staff to attempt to keep the group functioning properly. Probation action plan will be submitted

Employee Comments:

Did not get the help that was discussed at last review that is stated I needed it.

Date Discussed/Reviewed with employee 1/1

Follow-up required YES / NO

Employee Signature

Billie Mueller

Manager Signature

[Signature]

Mr. [Signature]

[Signature]

Date:

02/05/14

SCDEW

Date:

2/5/14 APR 21 2014

2/5/2014

Received Benefits Div

048204



**SC Department of Employment and Workforce
Discharge Report**

SSN: [REDACTED]
Claimant's name: BILLIE D MUELLER
Date of birth: [REDACTED]
Local office: 260
Benefit year begin date: 3/30/2014
Benefit year end date: 3/29/2015
Claim type: New
Potentially Eligible: No
Employer name: EBTRON, INC.
Employer Account #: 289798
Hire date: 9/26/1986
Termination date: 4/4/2014
Discharge reason: Discharged
Earned at least \$2608: Yes
Bonafide: Yes

Discharge

Discharge Reason: Other

Date of final incident: 2/20/2014
Final incident that caused discharge:
DID NOT WORK UP THE DISBURTION OF COMMISSIONS IN A TIMELY MANNER
Discharge date: 4/4/2014
Reason for delay between final incident and date of discharge: Other
Further details about delay between final incident and discharge date:
DO NOT KNOW FOR SURE
Discharged by: DAVID S. DOUGAN
Title of person who discharged you: PRESIDENT
Violated company policy: No
Final incident impacted employer's business: No
Received prior warnings: No

050 *A2pb*



SC Department of Employment and Workforce FFATNET Report

MUELLER, BILLIE

[Redacted]

[Redacted]

Gender: F

Date of Birth: [Redacted]

(843) 756-1296

dinker@sccoast.net

Claim Office: 260

Effective Date: 3/30/2014

Entered On: 4/4/2014

BYE: 3/29/2015

WBA: \$326.00

Interview Appointments:

issues:

Employers:

Employer Name: EBTRON, INC.

Bonafide employer: Yes

Hire date: 9/26/1986

Termination date: 4/4/2014

Earned at least \$2,608.00: No

Owner or corporate officer of a business: No

Employer Acct Number: 289798

NAICS Code: 334512550

Claimant Separation Reason: Discharged

Employer Separation Reason:

Total Wages: \$57,039.35

Employer Issues:

Kind Description	Description	Created Time	Upload Date
Discharge			
Create Date		4/4/2014 12:00:00 AM	
Last Modified Time		4/17/2014 10:54:57 AM	
Attachment Info	Description	Created Time	Upload Date

Contact Attempts:

A217

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

3291 2014 5114 JEC

SCDEW

Notice of Appeal to Appeal Tribunal

APR 29 2014

Lower Authority A

Claimant's Name BILLIE D MUELLER

Social Security Number [REDACTED]

Claimant's Address [REDACTED]

Telephone 843 756 1296

Employer's Name EBTRON, INC

Telephone 843 756 1828

Employer's Address 1663 HIGHWAY 701 SOUTH, LORIS, SC 29569

Please refer to Determination by Claims Adjudicator to complete section below

On 04/24/2014
(Date of receipt)

I received the determination mailed 4/21/2014
(Mailing date on Notice)

I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons
THE DATES ARE WRONG AND THERE WAS NEVER ANY DIRECTIVE FROM UPPER MANAGEMENT ON H
THIS PROJECT WAS TO BE HANDLED I WAS NOT THE ONLY PERSON THAT **SCDEW**

MAY 01 2014

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

Received Benefits Div

I must continue to file my claim for each week of unemployment until I receive the Appeal Tribunal or Appellate Panel decision, until I ret
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

[Signature]
(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 app

SUBPOENA YES NO

Who is filing appeal Claimant Employer

Signature Billie D. Mueller

Title _____ Date 4-28

Please submit form by fax to 803 737 0287 or by mail to "Appeal Tribunal, P O Box 995, Columbia, SC 29202 "

SUBPOENA

South Carolina Department of Employment and Workforce
Columbia, S.C.

To: David Dougan
1663 Hwy 701 South , Loris, SC 29569 Phone: 843-756-1828
County of Horry, State of South Carolina

GREETINGS:

YOU ARE HEREBY STRICTLY REQUIRED, and firmly enjoined That, all business being laid aside and excuses ceasing, you do, in your proper person, appear before Kennen L. Shortt Administrative Hearing Officer constituting an Appeal Tribunal at a hearing to be held at

SCDEW - by means of TELECONFERENCE Telephone
At 2:00 PM., on May 27, 2014

and from day to day thereafter, to give evidence of what you know regarding any and all matters relating to the dispute claim for benefits filed by one Billie D. Mueller - Claimant

under the SOUTH CAROLINA CODE, which evidence is deemed necessary in connection with the disputed claim, and to produce books, papers, correspondence,


memoranda or other records which are deemed necessary as evidence in connection with the disputed claim.

You will be called by the Administrative Hearing Officer, at the telephone number shown on this form. If no telephone number is shown or the number is incorrect, you must call 1-866-269-5680 immediately to inform us of your number so that we may include you in the hearing.

HEREIN FAIL NOT, under penalty of the punishment provided in the law.

Dated at Columbia, S.C., this 21st of May 2014.

Appeals Division

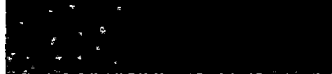
By: 
M.R. Thomas, UI Supervisor
Authorized Representative
803-737-2520

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

DECISION OF APPEAL TRIBUNAL

Hearing Date: May 27, 2014

BILLIE D. MUELLER



)
)
)

CLAIMANT

EBTRON, INC.
1663 HIGHWAY 701 S
LORIS, SC 29569

)
)
)
)
)

EMPLOYER

APPELLANT: Claimant

SS NO:

APPEARANCES

FOR THE
CLAIMANT: Present

FOR THE
EMPLOYER: One witness

FINDINGS OF FACT

The issue in this case is whether the claimant was discharged for misconduct.

The claimant appealed the claims adjudicator's determination mailed April 22, 2014, which held the claimant disqualified from receiving benefits for twenty (20) weeks, effective March 30, 2014 through August 16, 2014, along with a corresponding reduction in the maximum potential benefit amount upon a finding the claimant was discharged for misconduct.

The claimant worked from March 15, 1988 to April 4, 2014, with the subject employer, most recently as a sales administrative supervisor. The claimant was discharged for not performing job duties to the satisfaction of the employer. The last incident occurred when the claimant did not process paperwork pertaining to sales associates commissions since the middle of 2013. The employer stated this led to errors in the amount of \$55, 000. The employer also stated the claimant argued with superiors and had been previously placed on probation.

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.

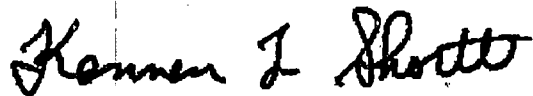
In this instance the Tribunal finds the claimant did not perform her duties to the best of her ability. By not processing the commission paperwork in a timely fashion after the claimant had already been previously suspended for work performance showed a disregard for the employer's reasonable expectation. As a result the Tribunal finds the claimant was discharged for misconduct.

DECISION

The Tribunal hereby holds the claimant disqualified from receiving benefits for twenty (20) weeks, effective, March 30, 2014 through August 16, 2014, along with a corresponding reduction in the maximum potential benefit amount, upon a finding the claimant was discharged for misconduct.

This decision affirms the determination mailed August 16, 2014.

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.



Kennen L. Shortt
Administrative Hearing Officer

KLS:cgm

Decision Mailed: 05/28/14

Mailed on the above Date By: cgm

Form App 11 NET Rev 2/13
Catalog#: 05172

Appeal No. 1408227

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P. O. BOX 1752, COLUMBIA, SC 29202

APP111

APPLICATION FOR LEAVE TO APPEAL TO THE APPELLATE PANEL

Claimant's Name Billie D. Mueller SSN [REDACTED]

Address [REDACTED]

Telephone Number 843-877-3226 (Cell)

Employer's Name EBTRON, INC Address 1663 Hwy 701 South
Loris, SC 29569

Please refer to Decision of Appeal Tribunal to complete section below.

On 6-4-2014, I received Appeal Tribunal Decision Number 2014-A-8136
(Date of Receipt)

mailed to me on 5-28-2014. I ask for review of the record on the following grounds:
(Mailing Date on Decision)

SEE ATTACHED EXHIBIT A, B, C

* If appeal is untimely, state the reason. If appellant failed to attend Appeal Tribunal hearing, state the reason and whether postponement was requested:

I must continue filing my claims for each week of unemployment while my appeal is pending; I can only be paid for those weeks that I have timely claimed. If I have received benefits and am ruled disqualified or ineligible, I will be required to repay the benefits I have received for that time period.

**As a Board of Review, the Appellate Panel is confined solely to the record submitted by the Appeal Tribunal and does not accept additional evidence or testimony in its consideration of the appeal. For this reason, subpoenas for appeals to the Appellate Panel will not be issued.

Who is filing appeal: Claimant Employer
Signature: Billie D. Mueller 6-5-14

Title: **RECEIVED** Date
JUN 10 2014
SCDEW
HIGHER AUTHORITY APPEALS

Does claimant need an interpreter? YES NO If yes, what language/dialect?

Claimant is Deaf Mute

Please submit form by fax to 803.737.3166 or by mail to "Appellate Panel, P.O. Box 1752, Columbia, SC 29202."

cgm 5/28 Shortt

**SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE
631 Hampton Street
P.O. Box 1752
Columbia, SC 29202**

NOTICE OF CLAIMANT APPEAL TO THE APPELLATE PANEL

DATE: June 11, 2014

APPEAL NO: 08227-140938

CLAIMANT:

Billie D. Mueller
[REDACTED]

SSN: [REDACTED]

LIABLE EMPLOYER:

Ebtron, Inc.
1663 Highway 701 S
Loris, SC 29569

SEPARATING EMPLOYER:

The claimant in this case appealed the Appeal Tribunal Decision to the Appellate Panel for review. A copy of the appeal is attached.

The Panel will review your case as soon as possible, and may issue a decision based solely on its review of the record on appeal or may schedule an in-person hearing. Hearings are conducted at the Appellate Panel offices in Columbia. You may request a hearing by calling (803) 737-0239 or by mailing a written request to the P.O. Box listed above. The Panel, at its sole discretion, may grant or deny the request. If a hearing is scheduled, a copy of the transcript and the hearing notice will be mailed to you at a later date.

SPECIAL NOTE: The Appellate Panel can make its own factual findings and may reverse, affirm, or modify the decision on appeal. Be advised that this may result in an increase or decrease of the disqualification.

Claimants must continue filing a weekly claim pending the appeal to receive benefits. Any benefits received by the claimant may be subject to recovery if the Appeal Tribunal Decision is reversed.

Higher Authority Appeals Department
Telephone: (803) 737-0239

cc: Liable Employer:
 Separating Employer:
 Claimant's Attorney:
 Employer's Attorney:
 Imaging
 File

rev. 11/13/12/adg

EXHIBIT "A"

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From the Personal File of Billie D. Mueller

Started at Ebtron	----	Sept. 1986
Written Warning	----	June 1988
Temp. Layoff	----	Jan. 1992 - (1 ½ Years to help company out)
1 st Review	----	Nov. 2006 – 5% increase (Given by B. Haddock)
2 nd Review	----	Dec. 2007 – 5% increase (Given by B. Haddock)
Sales Admin. Super.	----	Jun. 2009 - \$7103 Bonus (Given by David Dougan)
3 rd Review	----	Feb. 2010 – 5% increase Plus \$2,500. Bonus (Given by D. McKibben)
4 th Review	----	Feb. 2011 – 3% increase (Given by D. McKibben) He was suppose to work with me and help me to become a supervisor since I had never been in that kind of position before which he failed to help me with being a good supervisor.
5 th Review	----	Jan. 2012 – 4.25% increase (Given by D. McKibben) Still failing me by not helping me become a good supervisor.
6 th Review	----	Feb. 2013 – 2.75% increase (Given by D. McKibben) Still failing me by not helping me become a good supervisor.

We had gotten into a few verbal altercations but Mr. McKibben started yelling at me first so I in turn got a little loud with him. But he is the one that had to attend Anger Management Classes because of the way he yelled at me as well as other Ebtron Employees.

When I was called into the meeting after being there ½ a day by David Dougan, Brian Haddock and Greg McBride I was told by David Dougan that we were going to be parting company so this would be a good time for me to retire. I told him I did not want to retire and was informed again we were going to be parting company. That was the only explanation I was given of why we were parting company. It was a forced retirement since nothing else was ever mentioned on that day. Ebtron is in breach of the attached Agreement and Release by making derogatory and disparaging comments or remarks to a third person about the employee. I have attached a copy of the Severance Agreement (**Exhibit "B"**) that I signed which states no reason what so ever why we were parting company.

I have never receive a verbal warning or a written warning in all the time I had been at Ebtron that I was ever in jeopardy of losing my job in 28 years.

I have also attached a time line of the Daikin / McQuay issue (**Exhibit "C"**) that was brought up by Greg McBride at the appeal hearing. We were always waiting on someone else for some thing or some kind of direction on how to process this new customer deal which never happened.

The Appeal Hearing Officer I felt was inattentive to the testimony I gave during the hearing:

- 1) No formal letter of reprimand
- 2) No notice of warning or management attention leading to variance
- 3) \$53,000.00 of unpaid commission falling into 2013 obligation, no loss of revenue to Ebtron or the accuracy of the invoice to Daikin / McQuay

11
"EXHIBIT B"

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

AGREEMENT AND RELEASE

Billie Mueller (hereinafter referred to as "Employee") and Ebtron, Inc. (hereinafter referred to as "Employer"), for the purpose of effecting a complete accord and satisfaction of any and all claims that are or could be included within, or are in any manner related to the employment and severance of the Employee from the Employer until the date of execution of this Agreement, agree and covenant as follows:

1. In exchange and as consideration for the promises of Employee contained below and upon her execution of this Agreement and Release, the Employer promises and agrees:
 - a. To pay to Employee an amount equal to twenty-six weeks of her current regular rate of pay, with all required state and federal withholdings deducted, to be paid in two monthly payments with the first payment starting 15 days after her execution of this Agreement, with the successive payment to be made on June 1, 2014.

2. In exchange and as consideration for the promises of Employer contained in Paragraph 1 and upon execution of this Agreement and Release, the Employee promises and agrees:
 - a. That she irrevocably and unconditionally releases and agrees not to sue the Employer, and, as the case may be, all of its past and present parent corporations, subsidiaries, divisions, affiliates of the Employer including, but not limited, to, directors, trustees, officers, shareholders, employees, servants, agents, attorneys, from any and all past and present liabilities or claims of any kind whatsoever, whether legal, equitable, or otherwise, directly or indirectly arising out of or in any way connected with the employment and severance of Employee by the Employer until the date of execution of this Agreement and Release, and from all liability whatsoever, known or unknown, suspected or unsuspected, which arose prior to the signing of this Agreement and Release. Without limiting the foregoing in any way, this release and waiver includes, but is not limited to, claims related to Employee's hiring, employment, wages, compensation, benefits, resignation or any other term or condition of employment including, but not limited to, any claims under any federal statutory or common law cause of action and any state statutory or common law cause of action such as breach of contract, negligence, or intentional or negligent infliction of emotional distress, or any state or local rules, regulations, or ordinances. This includes, but is not limited to, any and all claims under Title VII of the Civil Rights Act, as amended; the Americans with Disabilities Act; the Family and Medical Leave Act; the

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Age Discrimination in Employment Act; the Employee Retirement Income Security Act; any executive order, law or ordinance, or any duty or other obligation arising out of common law, public policy, contract (express or implied), or tort. This includes any and all claims or potential claims for any injuries or illness alleged to have arisen out of and in the course of her employment with the Employer. Employee further waives any right that she may have to recover in any proceeding which results from a Charge or action filed on her behalf by a state or federal administrative agency;

- b. That her last day of employment with Employer will be April 4, 2014;
 - c. That she will keep the terms and conditions of this Agreement and Release confidential and that she will not, without compulsion of legal process, disclose, publish, or disseminate the terms and conditions of this Agreement and Release and any information about the Employer and its customers, shareholders, and employees to any person or any entity, except her family, financial advisers, attorneys, or any other agents, and then, only on a "need to know" basis, all of whom shall be advised of and bound by this confidentiality provision;
 - d. That she will not make any derogatory or disparaging comments or remarks to any third parties, including, but not limited to, Employer's clients, employees, and competitors, etc., regarding the Employer, its officers, employees, shareholders, information, clients, and business;
 - e. That she has been paid all wages due to her by Employer;
 - f. That if any part of this Agreement or the application of any part of this Agreement is found to be unenforceable or invalid, the remainder of the Agreement can be enforced.
3. Both parties understand and agree that their obligations to perform under the Agreement are conditioned on mutual agreements and promises as set forth herein. Employee acknowledges that Employer is not required, either by written policy or by practice, to pay her the consideration specified above. In the event Employee breaches any such covenant or promise, or causes any such agreement or promise to be breached, the other party's obligations to perform under this Agreement shall automatically terminate. In such event, that party may bring an action to recover any amounts paid hereunder and seek injunctive relief to enforce the provisions of this Agreement, and may recover the cost of any such action, including a reasonable attorney's fee. Any claim arising under this Agreement must be brought in a court of competent jurisdiction in Horry County, South Carolina.

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4. Employee makes the following assurances:

- a. That she has carefully read the Agreement and that the Agreement is written in language that is understandable to her;
- b. That she has been advised of her right to consult with legal counsel before signing this document, and has been encouraged to consult with counsel;
- c. That she understands that this Agreement is a full release and a waiver of any and all rights she may have against the Employer to recover in any proceeding which results from a charge or action filed on her behalf by federal or state administrative agency, including any and all rights under all statutes;
- d. That she has been given a period of twenty-one (21) calendar days to review and consider this Agreement. This twenty-one (21) calendar day period has provided her with sufficient time to consider her options and seek the advice of legal counsel, tax or financial advisors, family members, and anyone else whose advice she values. If she signs this Agreement prior to the expiration of the twenty-one (21) day period, she does so voluntarily and warrants that she has used as much of that period as needed to make a decision about signing this Agreement. If she does not return this release within twenty-one (21) calendar days, signed and dated, then she shall not be eligible for the benefits identified;
- e. That after signing this Agreement, she has a period of seven (7) calendar days to revoke. She can revoke this Agreement by notifying the Employer in writing of her wish to do so within the seven (7) calendar day period. In fact, this Agreement is not effective until the eighth (8th) calendar day after it is signed;
- f. That the terms that she has agreed to herein are made knowingly, consciously, and with full appreciation that she is forever foreclosed from pursuing any rights so waived and released;
- g. That she understands that this Agreement is a contract. As such, she understands that it may be enforced by either party; and
- h. This Agreement does not purport to waive rights or claims that arise after its execution.

5. It is understood and agreed by the parties hereto that this Agreement and Release does not constitute and shall not be construed as an admission by the Employer of any liability whatsoever, the same being expressly denied.

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HIGHER AUTHORITY APPEALS

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6. Employee warrants that she owns each and every claim being released herein and that she has not assigned any interest therein or otherwise encumbered such claim. She declares that she intelligently exercised her own judgment in deciding whether to execute this Agreement and Release, and that her decision to do so is not predicated or influenced by any declarations and representations of the persons or entities released, or any predecessors-in-interest, successors, assigns, officers, directors, employees, or agents of said entities other than as contained in this Agreement and Release.
7. Employee understands and agrees the covenants she makes in this Agreement are binding upon her successors, assigns, heirs, attorneys, agents, executors and administrators.
8. This Agreement and Release contains the entire understanding of the parties. It may not be changed orally, but only by Agreement in writing signed by the parties against whom enforcement of any waiver, change, modification, extension or discharge is sought.
9. No provision of this Agreement shall be interpreted against any party because such party or its legal representative drafted such provision.

~~10.~~ This Agreement shall be governed by the laws of the State of South Carolina.

11. The undersigned, as evidenced by their signatures below, acknowledge that they fully understand the terms and conditions of this Agreement and Release, and that the parties voluntarily agree to be bound by the terms and conditions contained in this Agreement and Release.

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JUN 10 2014
SODEW
HIGHER AUTHORITY APPEALS

(Signatures on following page)

SWORN to before me this the 22nd
day of April, 2014

Rosemarie Ferrell
Notary Public for Horry Cnty, SC
My Commission Expires: 2/01/2015

SWORN to before me this the 22nd
day of April, 2014

Rosemarie Ferrell
Notary Public for Horry Cnty, SC
My Commission Expires: 2/01/2015

Billie Mueller
Billie Mueller

Date: 4-22-14



[Signature]
Eptron, Inc.

Date: 22 APRIL 2014

By: GREG MURPHY
Its: HUMAN RESOURCES MANAGER



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JUN 10 2014
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HIGHER AUTHORITY APPEALS

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"EXHIBIT C"

EST. DATE	EXPLANATION
Jun-13	David Dougan, Brian Haddock, Dan Bruck and Danny Stevens worked up deal with McQuay/Daikin for there Rebel and Maverick Air Handlers to supply Ebtrons for stock.
Jul-13	Sales Admin started processing Rebel and Maverick Air Handler projects the beginning of July. There was never any kind of a meeting with Sales Admin Group to discuss the directive on how to fill out the Tracking Page in the OM program or how to process the commission papers when they were invoiced. Sales Admin handled them the same as all other OEM's we do
Sep-13	Received the 1st report from Dan Bruck the directive in weekly meeting was to give to Billie she will figure it out. I seperated it by the zip codes for the destination Rep. emailed the report to Nancy Y. and copied Danny Stevens. Danny did not have any on the report and Bill Jones had one which he received the answer from his rep firm with in a couple of hours of me asking him. Asked Nancy Y. in an email to find out from her Destnation Rep firms if there was a Spec on any of these projects. Never received the report back from Nancy. Dan Bruck was to forward the reports to Sales Admin(Billie Mueller) by the 1st of every month.
Oct-13	There were about 2 or 3 projects on the report that had the same name as a few projects we had processed at the beginning of July with project names associated with them. Asked Dan Bruck if these were the same that we had already paid the commissions on to the Spec and Dest Reps. I was told by Dan Brtuck who the hell cares. After the Oct. Bring A Guest Brian Haddock, Dick McKibben, Danny Stevens, Nancy Y., Len Damiano and myself has a short meeting. It was either Nancy Y. or Len Damiano that was suppose to come up with a letter/form to the Dest. Reps inquiring about the Spec. of these projects which was never done until the end of March 2014.
Oct,Nov Dec,& first part of Jan 2014	Never received another report from Dan Bruck so I inquired to Brian Haddock where he in turn emailed Dan Bruck. I was asked if any lights had went off by not receiving these reports I said no because I was not sure if McQuay/Daikin had sold any of these specific Air Handlers because we were still processing the regular air handlers for McQuay/Daikin.
Jan-14	Jan. 20th received another report so I started processing it and done up in excess of 80 folders because there was still no direction or directive on how they were to be removed from the PO's from McQuay/Daikin. There was still no letter/form to send to the Dest. Reps about if there was a Spec on any of these project names that were in their area of responsibility.
Feb-14	Was having considerable trouble trying to reconcile the qtys. and dollars. Finally received some direction and directive from Brian Haddock to remove units from each PO until that PO had nothing left on it or at least minus out the dollars for the units I had removed.
Feb-14	Feb. 28th I reworked all the files down to about 42 files did up a spread sheet with the removals and the leftovers that McQuay/ Daikin had in stock and all projects that had not shipped from Ebtron as of yet. I sent this report to Dick McKibben and expressed to him that the qtys and the dollars were right on and worked out. Never heard back from Dick McKibben as to if he had even looked at the spreadsheet.
Mar-14	Since I had not heard anything back from Dick McKibben I inturn sent the spreadsheet to Brian Haddock and asked him what was going on with McQuay/Daikin. In the mean time Kim had been working with Dick Mc and she had expressed to me that he would be in to talk to me and explain it all to me about McQuay/ Daikin. Was called into a meeting so I asked Dick if he was going to talk to me and explain about what was going on with McQuay/Daikin and was told abruptly by Dick that "I DO NOT NEED TO TALK TO YOU" I was also instructed by Dick and Brian that I was never to touch another McQuay/Daikin file. Finally the Letter / Form was done by Nancy Y.
Jul 2013 through April 2014	I never hid these files I was just waiting on other people to complete there parts of the process. I was aware of where the files were and what needed to be done on them. It seems like if there had been a meeting with the Sales Admin Group from the beginning to hash out several different issues these problems would not have happened.
Apr-14	There is some directive on what to enter on the Tracking Page in OM but there is still no direction or directive on how to process the commission paperwork when the original projects are invoiced. Up until the day I was terminated for according to Dave Dougan that I was holding the invoicing to close. I only invoice less than 1% of projects that are processed through Sales Admin Group. The only ones I invoice are (1) Rep/TAMCO Projects, (2) Some Service, (3) International Projects and (4) Revised Invoices for different reasons. I do not or have not invoiced any of the McQuay / Daikin Stock Projects
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	JUN 10 2014
	SCDEW HIGHER AUTHORITY APPEALS

Mailing Date: July 2, 2014

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.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Billie D. Mueller)

[REDACTED])

Claimant SSN: [REDACTED])

Ebtron, Inc.)

1663 Highway 701 South)

Loris, SC 29569)

Liabe Employer)

_____)

Appellant: Claimant

APPELLATE PANEL
DECISION

The claimant appealed Appeal Tribunal Decision 2014-A-8136 to the Appellate Panel. The Tribunal held the claimant disqualified from benefits upon finding she 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 2014-A-8136 is affirmed. The claimant is disqualified from benefits for twenty (20) weeks, from March 30, 2014, to August 16, 2014, with a corresponding monetary reduction, upon finding she was discharged for misconduct connected with the employment.

The claimant worked from March 15, 1988, to April 4, 2014, most recently as a sales administrative supervisor. She was discharged for failing to properly perform her job duties. The claimant's performance had fallen below the employer's expectations in 2012. She was warned about her performance during her 2013 performance review, held in February 2014. The claimant was placed on a performance improvement plan and was told any further failure to complete required job duties would result in termination. The employer witness states the claimant was required to process bonuses for sales employees during 2013. After a new project began in the middle of 2013, the claimant did not process any bonuses associated with that project.

The employer discovered over \$55,000.00 in unpaid bonuses after the performance review held in February 2014, and the claimant was terminated. The claimant asserts her supervisor yelled at her and she yelled back, but states she did nothing for which she should have been terminated. She acknowledges she was not proactive in dealing with the bonuses, and states that project fell by the wayside. She asserts the February performance review was not a warning, contending her only performance warning was from 1988.

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.

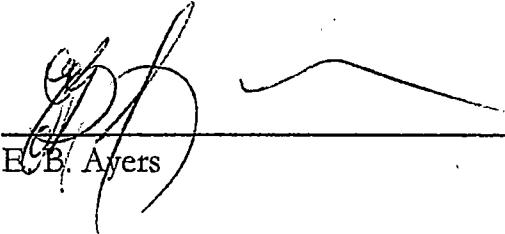
The record establishes the claimant failed to complete her job duties to the employer's satisfaction. The claimant knew or should have known she was required to complete her tasks related to disbursing the bonuses in an expeditious manner. The six (6) month delay in bonuses was unreasonable, and the employer's requirement to have all employee bonus related tasks completed more efficiently was reasonable. 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.

In her appeal to the Appellate Panel, the claimant attempted to present additional statements and documents pertaining to her separation.¹ As a board of review, the Appellate Panel is confined to the record developed by the Appeal Tribunal, and cannot consider additional information which was not previously presented in the evidentiary hearing before the Tribunal. To the extent that the submission of additional statements and documents can be construed as a request for remand, we find the parties were provided with proper notice of the Appeal Tribunal hearing and the record was fully developed by the hearing officer. Further, the claimant asserts the hearing officer was inattentive to the facts during the hearing. After a careful review of the record, we find the hearing officer fully developed all issues related to the

¹ The claimant submitted an Agreement and Release signed by both the claimant and the employer, which states the claimant will be paid a severance. We find this Agreement and Release deals primarily with post separation litigation, and is therefore not a settlement agreement for the purposes of determining the claimant's eligibility for unemployment benefits.

claimant's separation. She was given the opportunity to present additional evidence before the record was closed and declined the opportunity. Therefore, we find no cause to remand this case for further proceedings.

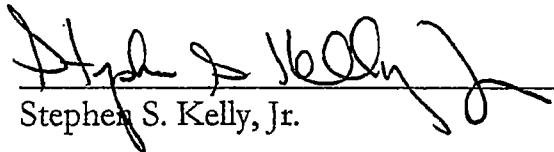
**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**



E.B. Ayers



Tim Dangerfield



Stephen S. Kelly, Jr.

Review Date: 07/02/14
Date Mailed: 07/02/14
Mailed By: AG

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 22nd day of September, 2014

By: Jessica Chesley

Title: Administrative Legal Assistant, Legal Department

South Carolina Administrative Law Court

1
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3
4 Billie D. Mueller,
5 Petitioner,
6
7 vs
8 South Carolina Department of
9 Employment and Workforce and
10 Ebtron, Inc.,
11 Respondent

Case No.: No. 14-ALJ-22-0405-AP
 PETITIONER'S OPENING BRIEF
 Judicial Review from the decision
 of the
 Employment Appellate Panel
 dated July 02, 2014

12 Billie D. Mueller
 13 PO Box 98, Davis Station, SC 29041
 14 Telephone: 803-236-2775 / E-mail address: dinker@sccoast.net
 Petitioner has no Attorney

15 Office of General Counsel-SCDEW
 16 Sandra Grooms
 17 PO Box 8597
 18 Columbia, SC 29202
 Telephone: 803-737-0395 / E-mail: legal@dew.sc.gov

19 Rogers Townsend & Thomas, PC
 20 Kris Cato
 21 220 Executive Center Drive, Columbia, SC 29210
 Telephone: 803-771-7900 / E-mail address: kris.cato@rtt-law.com
 22 Attorney for Respondent Ebtron, Inc.
 23
 24
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1 **Summary of Argument**

2 During the first 2 interviews with the SCDEWS (Appeal & Appellate
3 Divisions) I was not at liberty to make any disparaging remarks about my
4 former employer Ebtron. At that time I was constrained by the Separation
5 Agreement. (“EXIBIT A”) I am submitting the Agreement because of my
6 financial burden. According to a remark and an email (“EXIBIT D”) Ebtron
7 would not stop my unemployment benefits. The Agreement (“EXIBIT A”)
8 demonstrates my separation from Ebtron but nowhere in the Agreement
9 (“EXIBIT A”) is my work performance in question either positively or
10 negatively.

11 We had gotten into a few verbal altercations but Mr. McKibben started
12 yelling at me first so I in turn got a little loud with him. One time he burst
13 out of his office and almost broke my arm trying to get out the door. Mr.
14 McKibben is the one that was instructed by Ebtron that he was to attend
15 Anger Management Classes because of the way he has yelled at me as well
16 as other Ebtron employees.

17 I had weekly meetings with Mr. Greg McBride in hopes he could help me
18 with the situation I was having with Mr. McKibben. I tried several things he
19 had suggested but nothing seemed to work. Mr. McKibben was always on
20 the offensive with me about everything I had to say. When he made
21 derogatory and disparaging comments and remarks to a third party he had
22 violated my confidence and the Agreement. (“EXIBIT A”) I never asked
23 that Mr. McBride give any testimony only to submit my personnel file which
24 is in such disarray that it is hard to make heads or tails of the file. Mr.
25 McBride has no idea when I even started working for Ebtron his date is off

1 by about a year and a half. (Sept. 26, 1986 my start date Mr. McBride has
2 Mar. 15, 1988 as my start date)

3 The Performance Review ("**EXHIBIT C**") and the 90 Day Probation
4 ("**EXHIBIT B**") stated nowhere in either document that I was ever in
5 jeopardy of losing my job. Brian Hadsock and Dick McKibben were aware
6 of the McQuay / Daikin ("**EXHIBIT E**") issue around mid to late January but
7 they did not even mention it in either of the 2 documents.

8 I was called into a meeting after being there 5½ hrs. that day by David
9 Dougan, Brian Hadsock and Greg McBride I was told by David Dougan that
10 we were going to be parting company so this would be a good time for me to
11 retire. I told him I did not want to retire and was informed again we were
12 going to be parting company. That was the only explanation I was given of
13 why we were parting company. It was a forced retirement since nothing else
14 was ever mentioned on that day. Mr. Dougan also stated that with Social
15 Security and the Unemployment Benefits (email from Mr. Dougan)
16 ("**EXHIBIT D**") I should be okay. Ebtron is in breach of the attached
17 Agreement and Release ("**EXHIBIT A**") by making derogatory and
18 disparaging comments or remarks to a third person about the employee. I
19 have attached a copy of the Severance Agreement that I signed which states
20 no reason what so ever why we were parting company. Ebtron has gone on
21 to tell the other employees and customers that my leaving was a mutual
22 agreement between myself and Ebtron
23 I have receive no verbal warning 1 written warning (06/1988) in all the time
24 I had been at Ebtron. And it never stated that I was ever in jeopardy of losing
25 my job in 28 years ("**EXHIBIT J**").

1 I felt the Appeal Hearing Officer and the Appellate Panel were inattentive,
2 biased and prejudiced to the testimony I gave during the hearing:

- 3 1) Never a formal letter or reprimand
- 4 2) Never a notice of warning or management's attention to variance
- 5 3) Approximately \$24,000.00 to \$30,000.00 of unpaid commissions
6 falling into the 3rd and 4th Quarter of the 2013 obligation, there
7 was absolutely no loss of revenue to Ebtron or the accuracy of
8 the Invoicing to Daikin / McQuay.

9 **Documents of Material Facts**

- 10 1. Exhibit "A"
- 11 2. Exhibit "B"
- 12 3. Exhibit "C"
- 13 4. Exhibit "D"
- 14 5. Exhibit "E"
- 15 6. Exhibit "F"
- 16 7. Exhibit "G"
- 17 8. Exhibit "H"
- 18 9. Exhibit "I"
- 19 10. Exhibit "J"

20
21
22 Dated this 29th day of September, 2014
23
24
25

“EXHIBIT A”

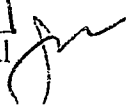
STATE OF SOUTH CAROLINA

COUNTY OF HORRY

AGREEMENT AND RELEASE

Billie Mueller (hereinafter referred to as “Employee”) and Ebtron, Inc. (hereinafter referred to as “Employer”), for the purpose of effecting a complete accord and satisfaction of any and all claims that are or could be included within, or are in any manner related to the employment and severance of the Employee from the Employer until the date of execution of this Agreement, agree and covenant as follows:

1. In exchange and as consideration for the promises of Employee contained below and upon her execution of this Agreement and Release, the Employer promises and agrees:
 - a. To pay to Employee an amount equal to twenty-six weeks of her current regular rate of pay, with all required state and federal withholdings deducted, to be paid in two monthly payments with the first payment starting 15 days after her execution of this Agreement, with the successive payment to be made on June 1, 2014.
2. In exchange and as consideration for the promises of Employer contained in Paragraph 1 and upon execution of this Agreement and Release, the Employee promises and agrees:
 - a. That she irrevocably and unconditionally releases and agrees not to sue the Employer, and, as the case may be, all of its past and present parent corporations, subsidiaries, divisions, affiliates of the Employer including, but not limited, to, directors, trustees, officers, shareholders, employees, servants, agents, attorneys, from any and all past and present liabilities or claims of any kind whatsoever, whether legal, equitable, or otherwise, directly or indirectly arising out of or in any way connected with the employment and severance of Employee by the Employer until the date of execution of this Agreement and Release, and from all liability whatsoever, known or unknown, suspected or unsuspected, which arose prior to the signing of this Agreement and Release. Without limiting the foregoing in any way, this release and waiver includes, but is not limited to, claims related to Employee’s hiring, employment, wages, compensation, benefits, resignation or any other term or condition of employment including, but not limited to, any claims under any federal statutory or common law cause of action and any state statutory or common law cause of action such as breach of contract, negligence, or intentional or negligent infliction of emotional distress, or any state or local rules, regulations, or ordinances. This includes, but is not limited to, any and all claims under Title VII of the Civil Rights Act, as amended; the Americans with Disabilities Act; the Family and Medical Leave Act; the

BM
Initial 

Age Discrimination in Employment Act; the Employee Retirement Income Security Act; any executive order, law or ordinance, or any duty or other obligation arising out of common law, public policy, contract (express or implied), or tort. This includes any and all claims or potential claims for any injuries or illness alleged to have arisen out of and in the course of her employment with the Employer. Employee further waives any right that she may have to recover in any proceeding which results from a Charge or action filed on her behalf by a state or federal administrative agency;

- b. That her last day of employment with Employer will be April 4, 2014;
 - c. That she will keep the terms and conditions of this Agreement and Release confidential and that she will not, without compulsion of legal process, disclose, publish, or disseminate the terms and conditions of this Agreement and Release and any information about the Employer and its customers, shareholders, and employees to any person or any entity, except her family, financial advisers, attorneys, or any other agents, and then, only on a "need to know" basis, all of whom shall be advised of and bound by this confidentiality provision;
 - d. That she will not make any derogatory or disparaging comments or remarks to any third parties, including, but not limited to, Employer's clients, employees, and competitors, etc., regarding the Employer, its officers, employees, shareholders, information, clients, and business;
 - e. That she has been paid all wages due to her by Employer;
 - f. That if any part of this Agreement or the application of any part of this Agreement is found to be unenforceable or invalid, the remainder of the Agreement can be enforced.
3. Both parties understand and agree that their obligations to perform under the Agreement are conditioned on mutual agreements and promises as set forth herein. Employee acknowledges that Employer is not required, either by written policy or by practice, to pay her the consideration specified above. In the event Employee breaches any such covenant or promise, or causes any such agreement or promise to be breached, the other party's obligations to perform under this Agreement shall automatically terminate. In such event, that party may bring an action to recover any amounts paid hereunder and seek injunctive relief to enforce the provisions of this Agreement, and may recover the cost of any such action, including a reasonable attorney's fee. Any claim arising under this Agreement must be brought in a court of competent jurisdiction in Horry County, South Carolina.

4. Employee makes the following assurances:

- a. **That she has carefully read the Agreement and that the Agreement is written in language that is understandable to her;**
- b. **That she has been advised of her right to consult with legal counsel before signing this document, and has been encouraged to consult with counsel;**
- c. **That she understands that this Agreement is a full release and a waiver of any and all rights she may have against the Employer to recover in any proceeding which results from a charge or action filed on her behalf by federal or state administrative agency, including any and all rights under all statutes;**
- d. **That she has been given a period of twenty-one (21) calendar days to review and consider this Agreement. This twenty-one (21) calendar day period has provided her with sufficient time to consider her options and seek the advice of legal counsel, tax or financial advisors, family members, and anyone else whose advice she values. If she signs this Agreement prior to the expiration of the twenty-one (21) day period, she does so voluntarily and warrants that she has used as much of that period as needed to make a decision about signing this Agreement. If she does not return this release within twenty-one (21) calendar days, signed and dated, then she shall not be eligible for the benefits identified;**
- e. **That after signing this Agreement, she has a period of seven (7) calendar days to revoke. She can revoke this Agreement by notifying the Employer in writing of her wish to do so within the seven (7) calendar day period. In fact, this Agreement is not effective until the eighth (8th) calendar day after it is signed;**
- f. **That the terms that she has agreed to herein are made knowingly, consciously, and with full appreciation that she is forever foreclosed from pursuing any rights so waived and released;**
- g. **That she understands that this Agreement is a contract. As such, she understands that it may be enforced by either party; and**
- h. **This Agreement does not purport to waive rights or claims that arise after its execution.**

5. It is understood and agreed by the parties hereto that this Agreement and Release does not constitute and shall not be construed as an admission by the Employer of any liability whatsoever, the same being expressly denied.

6. Employee warrants that she owns each and every claim being released herein and that she has not assigned any interest therein or otherwise encumbered such claim. She declares that she intelligently exercised her own judgment in deciding whether to execute this Agreement and Release, and that her decision to do so is not predicated or influenced by any declarations and representations of the persons or entities released, or any predecessors-in-interest, successors, assigns, officers, directors, employees, or agents of said entities other than as contained in this Agreement and Release.
7. Employee understands and agrees the covenants she makes in this Agreement are binding upon her successors, assigns, heirs, attorneys, agents, executors and administrators.
8. This Agreement and Release contains the entire understanding of the parties. It may not be changed orally, but only by Agreement in writing signed by the parties against whom enforcement of any waiver, change, modification, extension or discharge is sought.
9. No provision of this Agreement shall be interpreted against any party because such party or its legal representative drafted such provision.
10. This Agreement shall be governed by the laws of the State of South Carolina.
11. The undersigned, as evidenced by their signatures below, acknowledge that they fully understand the terms and conditions of this Agreement and Release, and that the parties voluntarily agree to be bound by the terms and conditions contained in this Agreement and Release.

(Signatures on following page)

SWORN to before me this the 22nd
day of April, 2014

Deanna Ferrell
Notary Public for Henric Cty, SC
My Commission Expires: 2/01/2015

Billie Mueller
Billie Mueller

Date: 4-22-14

SWORN to before me this the 22nd
day of April, 2014

Deanna Ferrell
Notary Public for Henric Cty, SC
My Commission Expires: 2/01/2015

[Signature]
Ebtron, Inc.

Date: 22 APRIL 2014

By: GARY MURPHY
Its: HUMAN ASSOCIATES MANAGER

BSM
Initial [Signature]



"EXHIBIT B"

Billie Mueller Probation

A mandatory Probation period is required as a result of your 2013 Performance Review score. This probation period is not designed to be punitive in nature but is more importantly intended to formalize the individual problem identification and planned action steps to correct the problem(s).

The probation period will be for 90 days:

The following action items must be completed at the duration of the 90 day period:

1. A morning meeting will be held at 8:15 each workday with the entire Sales Admin. Group in the conference room, when available, or Billie's office. During this meeting Billie will determine workload distribution based on group discussion and assessment of any new overnight work or remaining work from yesterday. Billie is to conduct the meeting and make any necessary adjustments to the group's work schedule for that day if necessary. Consideration during this meeting should be give to:
 - a. Getting PO's entered and distributed to Inside Sales as early as possible.
 - b. Distributing the workload evenly.
 - c. Making sure that the individual has the skills necessary to complete the assignment.
2. Record all errors from the group that are brought to your attention either by your discovery or someone else pointing them out to you.
3. Schedule and conduct a weekly review meeting with the group to review all errors made during the past week. Try to schedule this meeting on the same date and time each week if possible. Schedule the meeting through Outlook and invite Dick McKibben and Greg McBride to attend.
4. Keep Dick McKibben informed of all issues/problems you are having as they occur. Effectively communicate to him pertinent issues and events as needed. Do not allow events to occur for a period of time before you tell someone about them.
5. Communicate with your group, superiors and colleagues in a manner expected of an Ebtron department group leader. Discuss issues with them keeping in mind everyone's right to be treated with respect.

There will be periodic reviews of your progress during this time period by Dick and/or Greg to assist you in obtaining the goals outlined above. If you encounter any issues or problems related to what is outlined above, it is your responsibility to discuss them immediately with Dick.

----- Billie Mueller

----- Dick Mckibben

----- Greg McBride

"EXHIBIT C"

Performance Review Form - Salary - 2014

Employee Name:

Job Title:

Review Date:

Supervisor:

Review Type:

Review Period: to

Performance Rating Categories: Consider the employee's performance in each category and designate the level of performance that most accurately describes her/his job performance.

[O]utstanding: Employee consistently exceeds position expectations with virtually no detected preventable/avoidable errors, requiring little or no supervision.

[E]xceeds Expectation: Results clearly exceed position requirements on a regular basis. Performance is of high quality and is achieved on a consistent basis.

[M]eets Expectation: Competent & dependable performance level. Meets the performance standards and objectives of the job without constant follow-up and/or direction.

[B]elow Expectation: Employee does not meet performance objectives on a regular basis and has difficulty following through with tasks. Requires constant follow-up and/or supervision.

[I]mmediate Improvement Needed: Employee must correct performance immediately.

Part I: Major Job Responsibilities (No more than 5) (70% Weight)

The Employee and Manager list major job responsibilities in order of importance and identify how they will be measured. Assign a percentage value to each major job responsibility based on the percentage of job responsibility time (Total MUST equal 100%). At the end of the rating period, place a rating letter in the box. Record comments on a separate piece of paper, if necessary.

% of Job	Job Responsibility	Rating
50%	Supervise and help perform daily sales administrative activities. Work to train and develop current and new administrative staff. Follow-up to assure all necessary tasks are completed correctly and on-time. Keep accurate records of admin errors for weekly review.	B
35%	Accept your role as Office Manager. Make decisions related to daily office events and problems. Establish guidelines for each office employee and hold them accountable for their job responsibility. Conduct necessary follow-ups and audits to assure jobs are being performed to our expectations. Hold regular meetings with the group to communicate information and convey instructions to them.	B
15%	Improve your relationships with others at Ebtron. Resist the temptation to comment on what others are not doing and focus on what you and your team can do. Treat all Reps and employees equally. Report failures of other departments and people directly to Dick.	M

Performance Review Form - Salary - 2014

Part II General Employee Attributes

(30% Weight)

- | | |
|--|--|
| 1 Rate employee's flexibility when given new assignments and/or responsibilities | Rating
<input type="text" value="M"/> |
| 2 Rate employee's adherence to policies and procedures | <input type="text" value="M"/> |
| 3 Rate employee's overall communication skills | <input type="text" value="M"/> |
| 4 Rate employee's judgment when making decisions and completing tasks | <input type="text" value="M"/> |
| 5 Rate employee's ability to work well with colleagues and management | <input type="text" value="M"/> |
| 6 Rate employee's attendance | <input type="text" value="M"/> |

Accomplishments or new abilities demonstrated since last review

7.2014

Specific areas of needed improvement

Billie has not accepted her role as supervisor. There has been little or no demonstrated leadership exhibited by her toward the Sales Admin group. Employee errors have neither been kept on a consistent basis nor have they been reviewed regularly as required. Greg McBride and I have been required to intervene with the staff to attempt to keep the group functioning properly. Probation action plan will be submitted.

Employee Comments

Did not get the help that was discussed at last review that I stated I needed.

Date Discussed/Reviewed with employee / /

Follow-up required YES / NO

Employee Signature Billie Mueller

Date 02/05/14

Manager Signature [Signature]

Date 2/5/14

HR MNGR [Signature]

2/5/2014

“EXIBIT D”

From: David Dougan [DavidD@ebtron.com]
Sent: Friday, May 02, 2014 6:21 PM
To: Billie Mueller
Subject: RE: FINANCIAL RUIN THANK YOU

Follow Up Flag: Follow up

Flag Status: Green

Not true. Call me some time. We do not do that. State may but not us. Billie u r friend. State makes rules on that.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Billie Mueller
Date: 05/02/2014 11:04 AM (GMT-05:00)
To: 'David Dougan'
Subject: RE: FINANCIAL RUIN THANK YOU

You all stopped my unemployment and the social security will not come in till the end of May so you think \$700.00 is going to make my payments for the beginning of May. I am still paying out for my husband and of course Jason did me know favors. Thank you for your concern but I knew when I had to have the money and Ebtron did not think so, I have the explanation I promised you done up just not sure when I am going to send it to you. I always thought you were my friend not just my employer.

Billie Mueller

dinker@sccoast.net

843.756.1296

From: Billie Mueller [dinker@sccoast.net]
Sent: Saturday, May 31, 2014 11:32 AM
To: 'David Dougan'
Cc: 'DINKERBOY49@GMAIL.COM'
Subject: HOW YOU LET ME DOWN AND YOU PROVED YOU WERE NOT THE PERSON I ALWAYS THOUGHT YOU WERE

David,

I never thought that especially you or Ebtron would stoop so low to have to lie about the separation. What you said in the meeting that day was with my S/S and unemployment I should be okay it was nothing to the effect that was ultimately reported to the unemployment office which disqualified me from collecting the unemployment for misconduct and not having the best interest of Ebtron in mind. It was also stated that I had been suspended from work prior to our separation technically Mr. McBride should have excused himself from the unemployment hearing because we had been having meetings to help me with the problems I was having with Mr. McKibben and I was working hard on the issues that were stated on the 90 day probation paper that I was given on Feb. 5th 2014. My yearly review or the probation paper stated nothing about the McQuay / Daikin Program or that I would loose my job if I did not comply. Mr. McKibben stated I would become a worker bee but he had failed me by not giving me the help he had promised me in the beginning as I had written on my review for 2013 and stated at my review for 2012.

What you did not want to know and nobody told you is that I only had possession of about 8 projects from Sept. 8, 2013 to Jan. 20, 2014 which was approx. \$21,163.00 List and \$15,512.00 Net Selling Price and the Net to Ebtron is approx. \$9163.00 and the Commissions were approx. \$6349.00 from the July and August report. I would have processed these if one of your inside sales people Nancy Yannuzzi had answered me on the spec issue and had done up the letter as it was requested to be done in late October by Brian Haddock but was not done until March 2014. I never received another report from Dan Bruck until

January 20th 2014 so you thought I was at fault for \$53,000.00 in unpaid commissions which I am not it was your OEM National Sales Manager that did not send in the reports like he was suppose to do every month. It was also yourself, the General Manager, and Danny Stevens that never included myself or any of the Sales Admin personal to discuss any directives on how to handle anything with this new program from the tracking page to how to run the commission papers at invoice and it had still not been done by the time we parted company. You believed everybody else and never gave me a chance to defend myself to you like I had requested for us to have lunch.

Billie Mueller

dinker@sccoast.net

dinkerboy49@gmail.com

803.225.3132 Cell

803.410.6935 Phone

“EXHIBIT E”

EST. DATE	EXPLANATION
Jun-13	David Dougan, Brian Hadsock, Dan Bruck and Danny Stevens worked up deal with McQuay/Daikin for there Rebel and Maverick Air Handlers to supply Ebtrons for stock.
Jul-13	Sales Admin started processing Rebel and Maverick Air Handler projects the beginning of July. There was never any kind of a meeting with myself and Sales Admin Group to discuss the directive on how to fill out the Tracking Page in the OM program or how to process the commission papers when they were invoiced. Sales Admin. inturn handled them the same as all other OEM projects we do
Sep-13	Received the 1st report from Dan Bruck the directive in weekly meeting was to give to Billie she will figure it out. I seperated it by the zip codes for the destination Rep. emailed the report to Nancy Y. ("EXHIBIT F") and copied Danny Stevens ("EXHIBIT G"). Danny did not have any on the report and Bill Jones had one which he received the answer from his rep firm with in a couple of hours of me asking him. Asked Nancy Y. in an email to find out from her Destnation Rep firms if there was a Spec on any of these projects. Never received the report back from Nancy. Dan Bruck was to forward the reports to Sales Admin(Billie Mueller) by the 1st of every month.
Oct-13	There were about 2 or 3 projects on the report that had the same name as a few projects we had processed at the beginning of July with project names associated with them. Asked Dan Bruck if these were the same that we had already paid the commissions on to the Spec and Dest Reps. I was told by Dan Bruck who the hell cares. After the Oct. Bring A Guest Brian Hadsock, Dick McKibben, Danny Stevens, Nancy Y., Len Damiano and myself has a short meeting. It was either Nancy Y. or Len Damiano that was suppose to come up with a letter/form to the Dest. Reps inquiring about the Spec. of these projects which was never done until the end of March 2014.

EST. DATE	EXPLANATION
Oct, Nov Dec, & first part of Jan 2014	Never received another report from Dan Bruck so I inquired to Brian Hadsock where he in turn emailed Dan Bruck. I was asked if any lights had went off by not receiving these reports I said no because I was not sure if McQuay/Daikin had sold any of these specific Air Handlers because we were still processing the regular air handlers for McQuay/Daikin.
Jan-14	Jan. 20th received another report so I started processing it and done up in excess of 80 folders because there was still no direction or directive on how they were to be removed from the PO's from McQuay/Daikin. There was still no letter/form to send to the Dest. Reps about if there was a Spec on any of these project names that were in their area of responsibility.
Feb-14	Was having considerable trouble trying to reconcile the qtys. and dollars. Finally received some direction and directive from Brian Hadsock to remove units from each PO until that PO had nothing left on it or at least minus out the dollars for the units I had removed.
Feb-14	Feb. 28th I reworked all the files down to about 42 files did up a spread sheet with the removals and the leftovers that McQuay/ Daikin had in stock and all projects that had not shipped from Ebtron as of yet. I sent this report to Dick McKibben (" EXIBIT H ") and expressed to him that the qtys and the dollars were right on and worked out. Never heard back from Dick McKibben as to if he had even looked at the spreadsheet.

EST. DATE	EXPLANATION
Mar-14	<p>Since I had not heard anything back from Dick McKibben I inturn sent the spreadsheet to Brian Hadsock ("EXIBIT H") and asked him what was going on with McQuay/Daikin. In the mean time Kim had been working with Dick Mc and she had expressed to me that he would be in to talk to me and explain it all to me about McQuay/ Daikin. Was called into a meeting so I asked Dick if he was going to talk to me and explain about what was going on with McQuay/Daikin and was told abruptly by Dick that "I DO NOT NEED TO TALK TO YOU" I was also instructed by Dick and Brian that I was never to touch another McQuay/Daikin file. Finally the Letter / Form was done by Nancy Y.</p>
Jul 2013 through April 2014	<p>I never hid these files I was just waiting on other people to complete there parts of the process. I was aware of where the files were and what needed to be done on them. It seems like if there had been a meeting with myself and the Sales Admin Group from the beginning to hash out several different issues these problems would not have happened.</p>
Apr-14	<p>There is some directive on what to enter on the Tracking Page in OM but there is still no direction or directive on how to process the commission paperwork when the original projects are invoiced. Up until April 4, 2014 for according to Dave Dougan that I was holding the invoicing to close and we were parting company. I only invoice less than 1% of projects that are processed through Sales Admin Group. The only ones I invoice are (1) Rep/TAMCO Projects, (2) Some Service, (3) International Projects and (4) Revised Invoices for different reasons. I do not or have not invoiced any of the McQuay / Daikin Stock Projects</p>

“EXHIBIT F”

Billie Mueller

From: Billie Mueller
Sent: Tuesday, September 10, 2013 9:57 AM
To: Nancy Yannuzzi
Subject: McQuay Breakdown for Maverick & Rebel
Attachments: MCQUAY_0729_0819_2013.xlsx

Tracking:	Recipient	Delivery
	Nancy Yannuzzi	Delivered: 9/10/2013 9:58 AM

' Had to redo spreadsheet. Need to know about spec credit?

Thank you

Billie Mueller
Ebtron, Inc
1663 Hwy 701 South
Loris, SC 29569
Ph: (843) 756-1828 X224
billiem@ebtron.com

“EXIBIT G”

Billie Mueller

From: Billie Mueller
Sent: Tuesday, September 10, 2013 9:57 AM
To: Danny Stevens
Subject: McQuay Breakdown for Maverick & Rebel
Attachments: MCQUAY_0729_0819_2013.xlsx

Tracking:

Recipient
Danny Stevens

Delivery

Delivered: 9/10/2013 9:57 AM

Had to redo spreadsheet

Thank you

Billie Mueller
Ebtron, Inc
1663 Hwy 701 South
Loris, SC 29569
Ph: (843) 756-1828 X224
billiem@ebtron.com

“EXIBIT H”

APPROX. DATE	POSITION	SUPERVISOR	DETAILS
Sep-86	PRODUCTION	KEN ARNOLD	Worked in production
Jan-91	PRODUCTION	DAVE DOUGAN	Took a voluntary 2 year layoff
MID 1993	PRODUCTION	DAVE DOUGAN	Talked to him about coming back said he would call me first but called a male counterpart first
Aug-94	PRODUCTION	DAVE DOUGAN	Moved to SC from NJ
SOMETIME 1997	SALES ADMIN	DAVE DOUGAN	Started working in sales admin
SOMETIME 1998 TO 2009	SALES ADMIN	DAVE DOUGAN, BRIAN HADSOCK, CHRIS HIPPI, DICK McKIBBEN	Took over quoting, releasing proj. to production, answering phones, general office duties. Also took over invoicing, FWP, B/W, graphs, rep contracts, and rep data bases.
SOMETIME 2009 TO 2010	SALES ADMIN MGR	DICK McKIBBEN	Was given supervisor duties even though I had never been in that kind of position before. I was promised by Mr. McKibben that he would train and help me.

APPROX. DATE	POSITION	SUPERVISOR	DETAILS
2010 TO 2014	SALES ADMIN MGR	DICK McKIBBEN	<p>The help I have received from Dick McKibben has been limited compared to the male counterparts, he spends 3 to 4 hrs. per day with the male counterparts and maybe spends 1 to 2 hrs. every week or two with me. I have told him after my reviews for the last 3 years that he is failing me with the help he said he would give me. The review I received in Feb. 2014 I wrote on it that he had failed me again. I had a gut feeling he was trying to get rid of me.</p>
09/13 TO 04/14	SALES ADMIN MGR	DICK McKIBBEN	<p>Sometime in Jun. 2013 a deal was set with Daikin/McQuay. I was never given a directive on how to handle from day one. Sales Admin. or myself were not included in any meetings about the deal. When the first usage report came in Sept. I was informed in the weekly meeting give it to Billie she will figure it out still no directive or follow up from the deal makers. Sent usage report to inside sales (see attached email) and asked them to find out about spec. Never recieved a response except that Dave Dougan was not withholding spec. from N. Yannuzzi. We did not get a report in Oct., Nov., or Dec., asked if it set off any lights I said no because I was not really informed on the frequency of the reports. Finally received a report in Mid-Jan. After I went and asked Brian Haddock about these reports. Did up projects by how units were to come off the PO's 80+ projects. Then received some directive after my review and went and reworked every file down to 40+ projects. Emailed a spreadsheet to Mr. McKibben ("Exhibit I") and told him all my counts, dollars were</p>

			<p>working out and it would only take 1 or 2 days on the next report to do up the projects. A letter was to be done up to send to Dest. Reps so they could tell us about the spec which was never done. While on PTO my Mr. McKibben took 1 of the other girls to work on the Daikin/McQuay projects and he told her he would explain to me about why. He never came to me to explain so I asked him why he had not come to explain and he said "He did not have to talk to me!!!!" Was also informed at that time I was never to touch another Daikin/McQuay folder. I had went to Dave Dougan and had apologized to him and said this was not all my fault but I was blamed for the whole incident. I also texted Dave and asked him to have lunch with me and he said he would be out of town and we would get together on his return. I was out sick the first 4 days of his return so when I returned to work after a webinar that is when I was told in a meeting we were parting company and this would be a good time for me to retire so from Jan. to Apr. nothing was ever said and I was never given a verbal warning or even written up.</p>
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“EXHIBIT I”

NET TO EBTRON	NET SELLING PRICE	COMMISSION
\$ 1,783.87	\$ 2,972.98	\$ 1,189.11
\$ 772.18	\$ 1,286.91	\$ 514.73
\$ 641.52	\$ 1,069.15	\$ 427.63
\$ 772.18	\$ 1,286.91	\$ 514.73
\$ 1,077.91	\$ 1,796.44	\$ 718.53
\$ 2,322.82	\$ 3,871.19	\$ 1,548.37
\$ 891.93	\$ 1,486.48	\$ 594.55
\$ 772.18	\$ 1,286.91	\$ 514.73
\$ 891.93	\$ 1,486.48	\$ 594.55
\$ 1,544.36	\$ 2,573.82	\$ 1,029.46
\$ 772.18	\$ 1,286.91	\$ 514.73
\$ 891.93	\$ 1,486.48	\$ 594.55
\$ 891.93	\$ 1,486.48	\$ 594.55
\$ 891.93	\$ 1,486.48	\$ 594.55
\$ 772.18	\$ 1,286.91	\$ 514.73
\$ 2,113.74	\$ 3,522.74	\$ 1,409.00
\$ 772.18	\$ 1,286.91	\$ 514.73
\$ 3,730.25	\$ 6,216.80	\$ 2,486.55
\$ 641.52	\$ 1,069.15	\$ 427.63
\$ 10,680.09	\$ 17,799.34	\$ 7,119.25
\$ 1,430.89	\$ 2,384.71	\$ 953.82
\$ 1,544.36	\$ 2,573.82	\$ 1,029.46
\$ 6,818.98	\$ 8,775.05	\$ 1,956.07
\$ 772.18	\$ 1,286.91	\$ 514.73
\$ 1,783.87	\$ 2,972.98	\$ 1,189.11
\$ 6,190.01	\$ 10,316.21	\$ 4,126.20
\$ 705.95	\$ 1,176.53	\$ 470.58
\$ 1,544.36	\$ 2,573.82	\$ 1,029.46
\$ 772.18	\$ 1,286.91	\$ 514.73
\$ 1,430.89	\$ 2,384.71	\$ 953.82
\$ 2,322.82	\$ 3,871.19	\$ 1,548.37
\$ 1,413.70	\$ 2,356.06	\$ 942.36
\$ 1,430.89	\$ 2,384.71	\$ 953.82
\$ 3,616.77	\$ 6,027.68	\$ 2,410.91
\$ 352.98	\$ 588.27	\$ 235.29
\$ 2,316.55	\$ 3,860.73	\$ 1,544.18
\$ 1,544.36	\$ 2,573.82	\$ 1,029.46
\$ 772.18	\$ 1,286.91	\$ 514.73
\$ 3,358.65	\$ 5,597.49	\$ 2,238.84
\$ 1,430.89	\$ 2,384.71	\$ 953.82
\$ 641.52	\$ 1,069.15	\$ 427.63
\$ 772.18	\$ 1,286.91	\$ 514.73
\$ 352.98	\$ 588.27	\$ 235.29
\$ 2,316.55	\$ 3,860.73	\$ 1,544.18
\$ 5,484.06	\$ 9,139.68	\$ 3,655.62
\$ 84,749.56	\$ 138,653.43	\$ 53,903.87

“EXHIBIT J”

From the Personal File of Billie D. Mueller

Started at Ebtron ---- Sept. 1986
Written Warning ---- June 1988
Temp. Layoff ---- Jan. 1992 - (1 ½ Years to help company out)
1st Review ---- Nov. 2006 – 5% increase (Given by B. Haddock)
2nd Review ---- Dec. 2007 – 5% increase (Given by B. Haddock)
Sales Admin. Super. ---- Jun. 2009 - \$7103 Bonus (Given by David Dougan)
3rd Review ---- Feb. 2010 – 5% increase Plus \$2,500. Bonus (Given by D. McKibben)
4th Review ---- Feb. 2011 – 3% increase (Given by D. McKibben) He was suppose to work with me and help me to become a supervisor since I had never been in that kind of position before which he failed to help me with being a good supervisor.
5th Review ---- Jan. 2012 – 4.25% increase (Given by D. McKibben) Still failing me by not helping me become a good supervisor.
6th Review ---- Feb. 2013 – 2.75% increase (Given by D. McKibben) Still failing me by not helping me become a good supervisor.
7th Review ---- Feb. 2014 – 1.3% increase (Given by D. McKibben) Still failing me by not helping me become a good supervisor. Written on the Review by me. Nothing in review states I would be losing my job.
90 Day Probation ---- Mid-Feb. I was given a Letter of Probation to work on correcting certain issues which I was working very hard to correct. Nothing in the letter states I would be losing my job.

The South Carolina Court of Appeals

Billie Mueller, Appellant,

v.

South Carolina Department of Employment and
Workforce, and Ebtron, Inc., Respondents.

Appellate Case No. 2014-002489

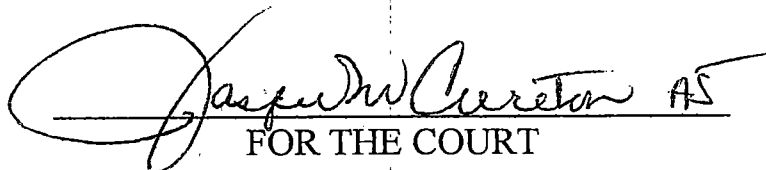
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SC Court of Appeals

Respondents' motion to dismiss is denied. Furthermore, Appellant's motion to strike and to remove Respondents' motion to dismiss is denied. In the motion to dismiss, Respondents contend several documents designated by Appellant to be included in the record on appeal were not presented to the lower court. Within ten days of the date of this order, Appellant shall provide this Court with proof the documents designated for inclusion in the record on appeal were presented to the lower court. Failure of Appellant to provide sufficient proof will result in those documents being stricken from the record.


FOR THE COURT

Columbia, South Carolina

cc:

Billie Mueller

Sandra Bell Grooms, Esquire

Kristine Louise Cato, Esquire

FILED

6/25/15

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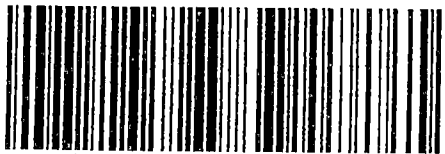
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FROM:



Billie Mueller
PO Box 98
Davis Station, SC 29041

TO:

SOUTH CAROLINA COURT OF APPEALS
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