

FORM 13
BRIEF OF APPELLANT*

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

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Ralph King Anderson III, Administrative Law Judge

Case No. 2015-001865

The South Carolina Courts Of
Appeals
1220 Senate Street
Columbia, S.C. 29201

Respondent,

v.

Mary Spates
887 Gracelyn Circle.
Lake City S.C. 29560

Appellant.

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OCT 07 2015

SC Court of Appeals

Case No. 2015-001865 _____

[INITIAL] BRIEF OF APPELLANT

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Statement of Issues on Appeal

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STATEMENT OF THE CASE

I, Mary Spates (Appellant), was found by South Carolina Administrative Law Court to have left my employment with Palmetto Lake City and Prime Time Healthcare voluntarily without good cause. I did not voluntarily quit work nor was there available work at the end of my contract. Prior to taking the contract with Prime Time, during my interview process with Mrs. Amiee Franco (Employer witness #2), I explained to Mrs. Franco that I was employed with Palmetto Lake City as a Certified Nursing Assistant. My status was PRN WORK AS NEEDED. I informed Mrs. Franco that I was not receiving hours at Palmetto Lake City due to the fact Palmetto Lake City was over staff and Patient census was low. Mrs. Franco and I also discussed my school enrollment. I explained to Mrs. Franco that I was in a financial bind and I needed to work immediately. I took a leave of Absence from ECPI University to fulfill the contract. Dated from September 11, 2014 to November 24, 2014 (**Original Contract is included as Evidence**).

I was hired by Prime Time Healthcare agency to work at Glendive Medical Center in Glendive Montana. Three weeks into my contract I was called into the office by Vickie (Director of Nursing) and Jackie (CNA Coordinator) at Glendive Medical Center. I was asked to extend my contract. I asked the company how long they wanted me to extend; the company stated however long I could stay. My reason for asking the company this question was because I knew that I was still employed with Palmetto Lake City. I knew eventually the hours would pick up once the patient census increased. I have experienced this situation before with Palmetto Lake City.

I did not want to jeopardize my employment with Palmetto Lake City. I kept in contact with Tina (HR) at Palmetto Lake City about my schedule and continued to do my monthly training on line with the company, which is required by every employee to maintain employment. I also kept in contact with Co-workers about my schedule and they informed me in October 2014, November 2014, and December 2014 that I was not on the schedule and I also have copies of schedule showing that I was not scheduled during the following months at Palmetto Lake City. I also have phone records and written statement from Co-workers stating that I contacted them about my schedule. My past experiences are that, Palmetto Lake City usually had more work available during the holiday and around the first of the year.

At this point I agreed to extend my contract until December 6, 2014. Vickie (Director of Nursing) told me that she was going to call Mrs. Franco to let her know about the extension. Mrs. Franco called me on October 2, 2014 to confirm the extended date. (**Evidence can be found on page 108 of Record on Appeal Telephone notes to remind Mrs. Franco to call me to confirm date, which was submitted by Prime Time Healthcare**). This evidence showed that Mrs. Franco was not present nor was she aware of the December 6, 2014 date until Vickie (Director of Nursing) at Glendive Medical Center called her to inform Mrs. Franco of the agreement. Page 57 Line 16-18 on Record of Appeal states that when Chalee Utterback HR (Employer witness # 1) when questioned by Claimant Attorney Employer witness #1 agreed that I was to extend to December 7, 2014. Which Mrs. Franco explained that even though I agreed to December 6, 2014 the reason December 7, 2014 date came up was because the pay week ended on that date. (**Evidence can be found Page 63 Line 5**) Where Mrs. Franco stated “we try to end

things on Saturdays". Mrs. Franco stated that I wanted to end on December 3, 2014. When questioned by my Attorney, Mrs. Franco stated that I informed her on October 29, 2014 that I did not want to stay until December 7, 2014. Mrs. Franco failed to show call log stating that information. **(Evidence Pg. 63 Line 11-21)** Also if you look at evidence on Pg. 64 Line 14-17 Mrs. Franco **agreed that I wanted to stay until the December 6, 2014** and she also **agreed that she had no control of my schedule and that the company drew up the schedule.** Which brings me to the next issue at hand Employer witness #1 and # 2 admitted that they had no control over my work schedule; Glendive Medical Center was over staffing? Therefore, how can Prime Time Healthcare make the determination that I was offered a 12 week contract when they have no control over staffing and Glendive Medical Center Budget? **(Evidence found on Pg. 65 Lines 9-16)**

Mrs. Franco informed me during one of our telephone conversations to let her know two weeks in advance my last day of work so she can book my flight home. When I received my schedule in November 2014, I called Mrs. Franco to inform her that the company had my scheduled last day to work December 1, 2014 and the schedule reads **CONTRACT ENDED.** That was where the December 3, 2014 came from, this was the reason the contract dated December 3, 2014. Mrs. Franco said that she was going to check with the company just to confirm schedule and she would call me back. Mrs. Franco booked my flight on November 21, 2014 after confirming date with company. Mrs. Franco called me to let me know that she did book my flight and it was sent to me emailed. **(Evidence a Copy of Work Schedule and Email from Mrs. Franco showing Flight Booked).** I feel like Prime Time Healthcare should have turned in all telephone records between me and Mrs. Franco not just selective ones. The telephone records would have revealed the truth throughout this case.

Ron Spencer (Employer witness #3) I have never heard of nor spoke with this witness during my employment with Prime Time Healthcare. Mr. Spencer told South Carolina Department of Employment and Workforce he stated **"On 11/20/2014 Mary Spates was offered an extension on her contract. She turned it down stating she got into nursing school so can not work any longer"** Mr. Spencer also stated that I quit. (Evidence on Pg. 99 Employee Agreement) On the Employee agreement first paragraph title Back-Out Clause/Termination states that **"In event I do not fulfill the contract stop for any reason, I will be responsible for any charges incurred to Prime time Healthcare. Example of expenses includes but not limited to Drug Test, Background check Immunization, Flight, Mileage, or any other applicable reimbursements that Prime Time Healthcare has paid for on your behalf for this agreement"**. My question is why would Prime Time Healthcare booked my flight on 11/21/2014 if I quit my job?? Mrs. Franco called to make sure I got the email with flight information and Mrs. Franco Stated **"At this point your tickets are booked You're good"** **(Evidence found on Pg. 72 Lines 4-5 and Line 23).** Mrs. Franco and Mr. Spencer both contradicted themselves, Mrs. Franco with the call log stated confirm extended date 12/7/2014 and Mr. Spencer stated that I was offered a contract on 11/20/14.

I agreed to extend until December 6, 2014, at this point Glendive Medical was fully staff and patient census was low. Some days they would send staff members home due to over staff.

My point is if I agreed to stay, why didn't Glendive Medical Center schedule me to work up until December 6, 2014? Prime Time Healthcare nor SC Department of Employment and Workforce can answer that question, they can only assume. I returned home on December 2, 2014 only to find out that Palmetto Lake City took me out of there system. Tina (HR) stated that "I was taking out of the system because I voluntarily resign". I filed an unemployment claim at that time. I spoke with a Lady (Claim Representative) SC DEW on January 12, 2015 to do a fact finding. Claim representative told me that Palmetto Lake City Tina (HR) stated that "My last day of work was on 11/14/2014 then I walked into her office on 11/20/14 to resign to return back to school".

I explained to the SC Dew Claim Representative that I was in Glendive, Montana during that time, so that was impossible for me to be in two different states at the same time. Then on January 15, 2015, Mr. Roger Moore (Claim Representative) SC DEW called me to do a fact finder about my employment with Prime Time Healthcare. Mr. Moore explained to me what Prime Time stated, that I voluntarily quit returning to school. I tried to explain to Mr. Moore that I was obligated to Palmetto Lake City; work was slow at the time. That was my reasons for taking the contract with Prime Time Healthcare. I told Mr. Moore that I had spoken with a claim representative three days prior to his call. Mr. Moore told me that there were no records in the system that referenced that. I asked Mr. Moore if SC DEW normally record telephone conversation and he told me no not all the time but sometimes they do. At this point I did not trust anything that Mr. Moore was telling me so I asked him to record our conversation. Mr. Moore never agreed to record conversation. Mr. Moore did not submit my exact statement to SC Dew he also falsified the date on the Fact Finder; he back dated the statement, I spoke with Mr. Roger on January 15, 2015 not January 12, 2015. **(Evidence found on Pg. 100)**

I was scheduled for an appeal hearing on February 17, 2015. I received two different notices in the mail. One stated that Prime Time Healthcare would be attending the hearing, and the other stated that Palmetto Lake City would be attending. When I got to the hearing, Erika Davis (Hearing Officer) told Palmetto that they were dismissed to leave and that Prime Time Healthcare would be attending the hearing. Mrs. Davis erred concluding that I voluntarily quit my job to return to school. There was no evidence provided to show proof of a written contract nor it was never stated who offered me the contract verbally to extend for additional 12 weeks. Hearing officer erred in finding that I requested to leave early, through Testimony and Evidence proves that I agreed to stay until December 6, 2014 and that Prime Time Healthcare had no control over the schedule nor does SC DEW. Hearing officer erred in admitting inadmissible hearsay in the form of emails from Bev Hellman and Jessica Johnson, neither whom were present at the hearing. Hearing officer erred by admitting into evidence a telephone conversation between me and Mrs. Franco. Hearing officer did not let the recording play to the end and the only thing that was transcribe was what was said on the recording at that time. Employer witness # 3 stated to hearing officer "Would you like to continue to hear it?" Hearing officer stated "No". **(Evidence found on Pg. 73 Lines 15-16)**

I filed my appeal with State of South Carolina Administrative Law Court on April 2015. A decision was made on July 31, 2015 finding that I left my employment with Palmetto Lake City and Prime Time Healthcare voluntarily without good cause. I'm puzzled at this point, I

thought that SC DEW is to remain neutral between the Employer and Employee. I started my appeal against Palmetto Lake City to argue with Prime Time Healthcare not SC DEW. Only to find out that in this last appeal action Palmetto Lake City and Prime Time Healthcare did not appeal at this level. But SC DEW did. My question is if the Employer's is not appealing the case at this point why is SC DEW appealing it? The courts have already admitted that SC Dew and Appellant Panel allowed inadmissible hearsay evidence to be submitted. SC Dew was not present during my employment with Prime Time Healthcare; they are only going on the testimony. What makes Prime Time Healthcare Testimony truthful over my testimony? My attorney asked for an in person hearing I was denied due to the fact that Prime Time was located in Nebraska that was not fair to me. But, once again it just proved that SC Dew is not neutral when it comes down to their employment cases.

Prime Time Healthcare has showed through testimony and paperwork to be unprofessional and would say or do anything to keep their employee from receiving benefits. Not only receiving benefits but job reference as well. I've been denied jobs due to Prime Time giving me a bad reference even after receiving a good evaluation. So can the courts please tell me what I am I to do? I was also told by Erika Davis that I could not bring up any information on Palmetto Lake City; we were only going to discuss what took place during my Employment with Prime Time Healthcare. Based on the instruction given to me by SC Dew not to mention Palmetto Lake City, how does the State of South Carolina Administrative Law Court deny me benefits due to the accusation that I left my employment with Palmetto Lake City and Prime Time without good cause? I feel like a Chapter of my life that plays a big factor on my case should have been heard so the courts can make a fair decision. I made a big sacrifice to leave my family, to take a leave of absence from school to keep my online training with Palmetto Lake City while working in Montana. All of that proves is that I am a very resolute person always have and always will, I don't let anything stop me or get me down; I just find a solution to my problems.

I am asking and praying that the courts overturn the decision, also asking that the courts do an investigation into SC DEW staff members Erika Davis and Roger Moore. If I have to hold certain standards on a job, Mrs. Davis and Mr. Moore should be held to the same standards. They should be held accountable for their wrong actions. SC DEW staff plays an important role into everyday lives and they should take their job seriously instead, they work harder than the Employer trying to keep people from receiving benefits. There are many more questionable incidents that have taken place during this appeal process.

Arguments

1. The Courts finding that the Appellant refused to extension contract, left voluntarily, and left available work. I did not voluntarily quit work nor was there available work at the end of my contract. Through Testimony and Physical evidence it will show that I did not quit work, voluntarily leave work, or was verbally asked to extend my contract for 13 weeks. The Departments Finding is not supported by Substantial Evidence.

2. SCDEW Erred in admitting and Relying on Inadmissible hearsay evidence. Emails and Telephone Recording. The courts have already agreed the SCDEW violated the law by submitting the Emails. The Issues is the Telephone Recording, SCDEW allowed the recording to be enter as evidence without letting the recording play to the end. It is my right to know what is going to be added to file as evidence.

3. The Courts Introduce Palmetto Lake City into the case. I was instructed by SCDEW that I was only allowed to discuss my Employment with Prime Time Healthcare. The Courts made their decision without evidence being submitted by Claimant and Palmetto Lake City.

4. Did I Have a Fair Trial?? The Courts and SCDEW Failed to review all evidence submitted. The Appellate Panel denied me an in person Hearing, after admitting that the testimony was a conflict to them. If they felt like it was a conflict in the Testimonies, then they should have allowed an in person hearing to take place.

Conclusion

The Courts finding that I left Palmetto Lake City and Prime Time Healthcare voluntarily and without good cause. There is no evidence to support the finding. There is no evidence in the records that were submitted mentions anything about my Employment with Palmetto Lake City. There is no finding in the evidence that states who, when, and where I was offered a verbally extension to my contract. The SCDEW Hearing Officer allowed a Telephone Recording to be added as part of the evidence, without allowing me a chance to listen to the complete recording. SCDEW Claim Representative Roger Moore falsify the date on the Fact Finder he back dated this statement and he also did not documented my statement correctly as to what I stated to him. The Appellate Panel denied me an in person hearing. My case has been through three levels of Appeals and at each level it shows that mistakes have been made on behalf of the Departments. But yet SCDEW wants to inforce Unemployment Laws, but who is there when SCDEW breaks the laws against everyday people. I'm asking the courts to reverse the decision and that I be found fully eligible for benefits without disqualification. Asking that the courts do an investigation on SCDEW staff members Erika Davis and Roger Moore. If I have to hold to certain standards on a job SCDEW staff should be hold to the same standards. They should be held accountable for their wrong actions. SCDEW staff plays an important role into everyday people lives and should take their job seriously.

I certify that I have served a copy of my Brief on The South Carolina Department of Employment and Workforce and The South Carolina Administrative Law Court. By U.S. Mail, Postage Paid October 3, 2015. To the following address. SCDEW P.O. Box 8597 Columbia, S.C. 29202, SC Administrative Court Of Law Edgar A. Pendleton Street, Suite 224 Columbia, S.C. 29201.

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