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SC Court of Appeals

The South Carolina Court of Appeals

Appellate Case No.: 2014-002489

AMMENDED BRIEF of APPELLANT

Judicial Review from the decision
of the
State Of South Carolina
Administrative Law Court
dated November 07, 2014

1
2
3
4 Billie D. Mueller,

5 Appellant,

6 vs

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

9 Respondent

10
11 Billie D. Mueller

12 PO Box 98, Davis Station, SC 29041

13 Telephone: 803-410-6935 / E-mail address: dinkerboy49@gmail.com

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Petitioner has no Attorney

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APPELLATE'S BRIEF

STATEMENT OF THE CASE

The Nature of the Proceeding and the Relief Sought

This is a Petition for Review of a decision of the Administrative Law Court affirming the decision of a Court of Appeals Judge decision denying unemployment benefits to Appellate. Appellate requests that the decision be reversed.

The Nature of the Decision To Be Reviewed

A final decision made and entered on November 07, 2014 by the Administrative Law Court.

Statement of the Statutory Basis for Appellate Jurisdiction

This court has appellate jurisdiction over this matter pursuant to S.C. Code Ann. 41-35-750

Statement of Appellate Jurisdiction

The Administrative Law Court entered its decision on November 07, 2014. The Petition for Judicial Review was filed on November 13, 2014.

Questions Presented on Review

- A. Did the SCDEW Appellate Panel err in finding the Appellant's action constituted misconduct under S.C. Code 45-35-120(2)-(4) Act 247?
- B. Did the SCDEW Appellate Panel err in finding that Appellant willfully failed to perform her duties under S.C. Act 247?

1 C. Did the SCDEW Appellate Panel err in allowing the testimony and
2 the submission of the Request For Information from Greg
3 McBride because of a Complete Conflict of Interest.

4 **Summary of Argument**

5 During the telephone hearing with the SCDEWS Appeal Tribunal the
6 Appellant was not given any of the documents Exhibits 1 and 2 that are part
7 of the Appellants unemployment file by SCDEWS or Ebtron so the
8 Appellate could put on a proper defense. Appellant was also not given a
9 copy of the telephone hearing regulations. Appellants Subpoenaed witnesses
10 Greg McBride was to submit Personnel File only David Dougan who did not
11 participate was to testify of what was said by him at the termination meeting
12 at the telephone hearing. The Appellant had never seen any of the
13 unemployment file documents till September 22, 2014.

- 14 1) Never in over 20 years a formal letter or reprimand from
15 management
16 2) Never in over 20 years a notice of warning or management's
17 attention to variance
18 3) Approximately \$6,350.00 of unpaid commissions falling into
19 the 3rd Quarter of the 2013 obligation was all I had in my
20 possession from Sept. 9th 2013 till Jan. 20th 2014
21 4) There was absolutely no loss of revenue to Ebtron or the accuracy
22 of the Invoicing to Daikin / McQuay.

23 Dated this 30th day of November, 2015

24 Billie Mueller
25

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



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 .."

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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 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

SCDEW

APR 21 2014

Received Benefits Div

04203

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 I stated I needed B.M

Date Discussed/Reviewed with employee 1 / 1 /

Follow-up required YES / NO

Employee Signature

Billie Mueller

Date:

02/05/14 **SCDEW**

Manager Signature

[Signature]

Date:

2/5/14 APR 21 2014

HR Mgr

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



(843) 756-1296

Gender: F

dinker@sccoast.net

Date of Birth: [Redacted]

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	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:

A207

Contact Whom: Employer **Contact Outcome:** Left Voice Mail
Contact Type: Phone
Created Date: 4/15/2014 11:19:23 AM
Action Data: Called Phone Number 8437561828
Note: Made 48 hrs attempt to request employer. Lft message w/ Greg McBride in HR. Informed employer of 48 hr deadline. Due by 11:16am on 4/17/14.

Contact Whom: Claimant **Contact Outcome:** Contacted Successfully
Contact Type: Phone
Created Date: 4/17/2014 11:08:13 AM
Action Data: Called Phone Number 8437561296
Note:

Claimant Rebuttals:

Employer Name	Agree With Employer	Statement
EBTRON, INC.	False	If my work was so poor and unreliable, why are they offering me a severance package in which I have not signed yet. Nothing was stated at the time I was let go. I worked there 28 years and told that this would be a good time for me to retire. I was placed on a probationary period and was let go prior to the 90 days ending.

Employer Rebuttals:

History Events:

FactFindingIssueCreated at 4/4/2014 2:57:17 PM by BILLIE D MUELLER (PUBLIC\DINKER): Created 'Discharge' Fact Finding Issue for employer 'EBTRON, INC.' with status Submitted as part of submit Claim Application.

FactFindingCreated at 4/4/2014 2:57:17 PM by BILLIE D MUELLER (PUBLIC\DINKER): Fact Finding was created as part of submitting a Claim Application by BILLIE D MUELLER(PUBLIC\DINKER)

StatusChanged at 4/4/2014 3:05:48 PM by SCES\SMHarris: Status changed from Initial Claim to Review by the trigger Claim Submit to ABPS.

CheckOut at 4/15/2014 11:12:05 AM by SCES\NArmstrong: Fact Finding checked out.

FactFindingIssueStatusChange at 4/15/2014 11:13:13 AM by SCES\NArmstrong: Fact Finding Issue " Status changed from 'Submitted' to 'Reviewed' by the trigger 'Review Complete'. Employer Name: EBTRON, INC.

SuccessfulEmployerContact at 4/15/2014 11:19:23 AM by sces\narmstrong: Employer via Phone with outcome Left Voice Mail Notes:'new notetest': 'Made 48 hrs attempt to re...'

Handwritten initials: AEPB



Billie Mueller
PO Box 98
Davis Station, SC 29041

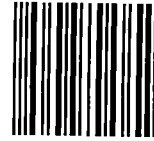


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