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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

APPEAL FROM THE DARLINGTON COUNTY COURT OF COMMON PLEAS
J. Michael Baxley, Circuit Court Judge

Unpublished Op. No. 2015-UP-402 (S.C. Ct. App. filed August 12, 2015)
Appellate Case No. 2013-002356

Appellate Case No. 2015-002389

Fritz Timmons,

Petitioner,

v.

South Carolina
Employment Security
Commission and
Browns A/S RV and
Campers,

Respondents.

RETURN IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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PETITIONER'S QUESTIONS PRESENTED:¹

- I. Can this Court justify the decisions of the SCESC in which violations of Fed Code is not considered "good cause" for an employee to quit and that an employee considered as quitting when an employer terminates a hire for work contract?
- II. Can this Court justify the failure of the SCESC to produce the record for appeal to the circuit court and apply SC Codes § 41-35-720 and § 41-35-750 without considered as fraud?
- III. Does this Court considers a judge to commite perjury by producing a court order over a hearing of which he was not present nor presiding over and basing the decision upon ex-party communications, also to violate the rights to due process by the failure to produce a decision over a different hearing?
- IV. Does this Court considers a hearing in which a party is awarded a case in which the party fails to have representation and fails to provide any evidence in accordance to state Codes § 41-35-720, § 41-35-750, § 1-23-380 to be a shame legal process and fraud?
- V. Can this Court justify the refusal, of the 3 concerned appeals court judges, to take appropriet disaplinary actions?

RESPONDENT'S COUNTER-STATEMENT OF QUESTIONS PRESENTED:

- I. Did the Court of Appeals correctly find that substantial evidence supports the ESC's decision that Petitioner voluntarily quit without good cause connected with his work?
- II. Did the Court of Appeals correctly find that all remaining issues are unpreserved for appellate review?

¹ Petitioner's Questions are taken verbatim from the Petition, pp.2-3.

INTRODUCTION

Respondent, the South Carolina Department of Employment and Workforce (DEW), formerly the South Carolina Employment Security Commission (the ESC), opposes Petitioner Fritz Timmons' Petition for a Writ of Certiorari from the Court of Appeals' Unpublished Opinion, *Fritz Timmons v. S.C. Emp. Sec. Comm'n and Brown A/S RV and Campers*, 2015-UP-402 (S.C. Ct. App. filed August 12, 2015). In its Unpublished Opinion, the Court of Appeals affirmed a circuit court Order, which in turn affirmed a denial of unemployment insurance (UI) benefits to Petitioner by the ESC.

No "special or important reasons" exist to support granting the Petition for a Writ of Certiorari. Rule 242(b), SCACR. The Court of Appeals addressed the questions raised by Petitioner and, most significantly, held that there was substantial evidence to support the ESC's decision that Petitioner voluntarily quit his work without good cause. The issues now raised by Petitioner fail to meet the standards for granting a Writ of Certiorari pursuant to Rule 242(b), SCACR, to wit, there is no: novel question of law; dissent in the decision of the Court of Appeals; conflict with a prior decision of the Supreme Court; or substantial constitutional issue directly involved in this case. *Id.*

Both the circuit court and the Court of Appeals correctly ruled that the agency's decision is supported by substantial evidence and there are no errors of law. Therefore, this Court should deny the Petition for a Writ of Certiorari.

COUNTER-STATEMENT OF THE CASE

On April 3, 2009, the ESC found Petitioner left his employment voluntarily without good cause, which resulted in Petitioner being indefinitely disqualified from receiving UI benefits. (R.p.21). Petitioner appealed that decision to the ESC's Appeal Tribunal, which affirmed the initial determination. On July 2, 2009, the ESC affirmed the Appeal Tribunal and, thus, the ESC's final decision was that Petitioner was indefinitely disqualified from receiving UI benefits, effective March 15, 2009, because he "voluntarily quit without good cause connected with the work." (R.pp.7-8, Decision No: 09-C-1233).

Petitioner then filed a copy of the Letter of Transmittal and a Motion Information Form and Cover Sheet with the Darlington County Court of Common Pleas on July 24, 2009.² On October 8, 2013, the Honorable J. Michael Baxley affirmed the ESC's decision stating: "Appeal from decision of SCESC denied. Court affirms Agency finding of voluntary quit per 41-34-120(1). Also, failure to properly file appeal." (R.p.4, Judgment In A Civil Case, No: 2009CP1600540).

Petitioner sought further appeal in the Court of Appeals. In a *per curiam* unpublished decision, the Court of Appeals affirmed the circuit court's decision. *Timmons v. S.C. Emp. Sec. Comm'n*, 2015-UP-402 (S.C. Ct. App. filed August 12, 2015). Thereafter, the Court of Appeals denied Petitioner's Motion for Rehearing on October 23, 2015. Now, Petitioner seeks certiorari from this Court. For the reasons that follow, the Court should deny the petition.

² On August 25, 2009, the ESC filed a Motion to Dismiss because this filing did not state grounds for judicial review, and the ESC was not named as a party to the proceedings. The Motion was summarily denied due to the ESC's failure to appear, which was caused by the inadvertent error of the circuit court in failing to mail notice of hearing to the ESC. (R.pp.1, 25). Thereafter, ESC filed a second Motion to Dismiss, which was taken under advisement. (R.p.2).

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY FOUND THAT THE CIRCUIT COURT PROPERLY AFFIRMED THE ESC'S DECISION BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING THE DECISION THAT PETITIONER VOLUNTARILY QUIT WITHOUT GOOD CAUSE CONNECTED WITH HIS WORK.

The ESC (now known as DEW) is an agency governed by the Administrative Procedures Act (APA). *McEachern v. S.C. Emp. Sec. Comm'n*, 370 S.C. 553, 557, 635 S.E.2d 644, 646 (Ct. App. 2006). Under the APA, “[r]eviewing courts apply the substantial evidence rule, under which the agency's decision is upheld unless it is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. *Id.* at 557, 635 S.E.2d at 646-47 (internal quotation marks and citation omitted).

Substantial evidence is “evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency.” *Friends of Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). Under this standard of review, the ESC's findings “are presumed correct and will be set aside only if unsupported by substantial evidence.” *Kearse v. State Health & Human Services Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995). The possibility of drawing two inconsistent conclusions from the evidence does not mean the ESC's conclusion is unsupported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

Here, the evidence is clear that Petitioner voluntarily quit his job without good cause. Pursuant to statute, an unemployment claimant is only eligible for benefits if the agency finds he was “separated, through no fault of his own” from his most recent employer. S.C. Code Ann. § 41-35-110(5) (Supp. 2014). Furthermore, S.C. Code Ann. § 41-35-120(1) provides that an insured worker is ineligible for benefits if the department finds he left work “voluntarily, without

good cause.” *Accord Ex parte S.C. Emp. Sec. Com’n*, 332 S.C. 286, 288, 504 S.E.2d 345, 346 (1998) (“An employee who voluntarily resigns from employment without good cause is ineligible for unemployment benefits.”).

An employee who voluntarily leaves employment has the burden of showing good cause for leaving. 76 Am. Jur. 2d *Unemployment Compensation* § 104. “To constitute good cause, the circumstances which lead an employee to leave the job must be such as would cause a reasonable person to leave.” 76 Am Jur. 2d *Unemployment Compensation* § 102. Moreover, an “employee may be charged with quitting a job by action or inaction with unavoidable ramifications.” *Samuel v. S.C. Emp. Sec. Comm’n*, 285 S.C. 476, 477, 330 S.E.2d 300, 301 (1985).

Here, the Record on Appeal³ establishes there is substantial evidence to support the ESC’s decision Petitioner left work voluntarily, **without good cause**.

Petitioner himself testified at the ESC hearing that his employer changed the compensation structure from an hourly rate to a flat rate, which he “would not accept.” (R.p.13). Petitioner explained that when he did not accept the flat rate of pay, and his employer “refused to accept [Petitioner’s] terms in order for [him] to continue work there under the flat rate,” Petitioner’s employment ended. (R.p.13, lines 111-20). There was no material dispute on these facts, and the ESC specifically found that Petitioner did not want to accept a change to his pay structure, and this change in pay was “not so substantial as to justify the claimant’s quitting his employment.” (R.p.8).

³ Petitioner complains about the lack of Record provided by the ESC. (Petition, pp.12-15). Given that the circuit court effectively granted the ESC’s motion to dismiss and dismissed Petitioner’s appeal, the ESC did not compile and file the record on appeal to the circuit court. Nonetheless, the Record on Appeal to the Court of Appeals is sufficient for appellate review.

Thus, the Court of Appeals did not err in affirming the circuit court's decision, which in turn, upheld the ESC's decision to indefinitely disqualify Petitioner from unemployment benefits, until he returned to work and earns eight times his weekly benefit amount. (R.p.8).

Petitioner appears to assert the argument that his employer's change in pay rate structure somehow violated federal law. In *Svidland v. S.C. Emp. Sec. Com'n*, the Court, in finding the claimant voluntarily quit without good cause, noted that without showing any illegality, the claimant may have "considered the employer's business practices improper and immoral, such is personal judgment which amounts to nothing more than a disagreement with management decisions." *Id.* 300 S.C. 305, 308, 308 S.E.2d 688, 689 (1998). With only Petitioner's bare assertion that his employer's new pay rate was somehow unlawful,⁴ there is insufficient evidence of any illegality, and therefore the ESC's decision of voluntary quit without good cause should be upheld. *See id.*

In sum, the Court of Appeals correctly ruled there is substantial evidence to support the ESC's finding that Petitioner voluntarily left his work. Therefore, there is no reason for this Court to also review this case. In other words, no "special or important reasons" exist to support granting the Petition for a Writ of Certiorari. Rule 242(b), SCACR. Certiorari should not be granted solely for the purpose of reviewing the sufficiency of the evidence yet again.

Accordingly, the Court should deny Petitioner's request for a writ of certiorari.

⁴ Upon questioning at the hearing before the circuit court, Petitioner told the circuit court that he "was the only one that refused the new terms. The other ones stayed." (R.p.10, lines 10-15).

II. THE COURT OF APPEALS CORRECTLY RULED THAT THE PETITIONER'S REMAINING ISSUES ARE NOT PRESERVED FOR APPELLATE REVIEW.

The record clearly reflects that the only issue reviewed and ruled upon by the ESC was whether Petitioner had voluntarily quit his job and, thus, was disqualified from receiving UI benefits. In its appellate capacity, the circuit court affirmed DEW's finding of that Petitioner voluntarily quit without good cause, under Section 41-34-120(1). A circuit court sitting in its appellate capacity cannot consider any issues which were not raised to and ruled upon by the agency. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 624 503 S.E.2d 471, 478 (1998). Further, "[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but that must it must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Wilder Corporation v. Wilke* 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

Accordingly, the Court of Appeals correctly held that Petitioner failed to preserve for review the remaining issues he raised on appeal.

Finally, Petitioner also argues the following issues to this Court:

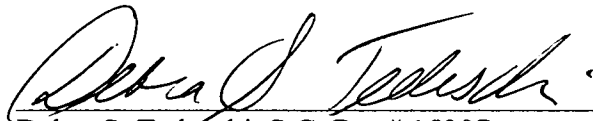
- The ESC failed to produce a record for appeal to the circuit court;
- Petitioner's due process rights were violated based upon *ex parte* communications;
- The circuit court committed fraud by failing to grant a default judgment in Petitioner's favor; and,
- The Court of Appeals violated the Code of Ethics, "committed conspiracy after the fact" in failing to take disciplinary action.

In order to review an issue on appeal, it must have been raised to and ruled upon by the agency to be preserved for appellate review. *See Wilder Corporation, supra; TNS Mills, supra.* It is clear that Petitioner's additional issues raised to this court are unpreserved for review on certiorari. Accordingly, this Court should deny the Petition.

CONCLUSION

The Court of Appeals and circuit court both have provided judicial review to Petitioner and have found substantial evidence supports the ESC's decision that Petitioner voluntarily quit his work, without good cause. Petitioner has raised no issue to this Court that warrants granting his request for a writ of certiorari. Accordingly, the Court should deny Petitioner's request for a writ of certiorari.

Respectfully submitted,



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December 21, 2015

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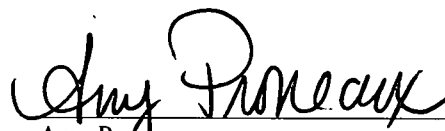
PROOF OF SERVICE

I certify that I have served the Return in Opposition to Petition for a Writ of Certiorari of the Respondent on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on December 21, 2015, addressed to the parties at their addresses of record:

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December 21, 2015



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