

Initial Brief

Issues on Appeal:

1. Did the Administrative Law Judge err by not properly admit for review issue #1 and affirming the Appellate Panels decision by upholding the denial of benefits where the employer and the adjudicator knowingly made false statements to prevent the Claimant (Appellant) from receiving benefits?
2. Did the Administrative Law Judge err by not properly admitting for review issue #2 and Appellate Panels decision when upholding the denial of benefits where the hearing officer improperly ruled upon the employers argument that Claimant was properly discharged where that argument was not set forth in the notice before the hearing?
3. Did the Administrative Law Judge err affirming the Appellate Panels decision when upholding the denial of benefits where the hearing officer improperly relied on hearsay evidence as the only evidence supporting the employer's position?

Statement of the case

Bobby Smith (Claimant) worked 2nd shift from 4pm to midnight for Greenwood Mills Inc. (GWM). from July 28, 2014 to November 30, 2014 as an Electrical E&I Technician. Mr. Smith reported to work on 12/01/14 at 4pm and learned that his co-worker had just been terminated, he and Mr. Smith were sharing a cubby hole locked box together (sharing the drills) that where being occupied in that space. Another employee claimed that space after the co-worker removed his belongings and placed their new lock on the box taken from Mr. Smith. At that time, Mr. Smith expressed to his two managers Brian Hardman and James Nicholson it was not correct for the other employee to have taken his cubby hole lock box space, and insisted he wanted it back. Mr. Nicholson replied 1st come 1st gets, Mr. Smith began to get upset, he felt bullied and disrespected at that time. The more and more Mr. Smith thought about it the more he became upset. After a few minutes he proceeded to Mr. Nicholson's office and handed him the cell phone and told him he was upset and was leaving, Mr. Nicholson shouted at Mr. Smith and said "don't do this" Mr. Smith replied that he was leaving and going to see a Doctor, Mr. Nicholson shouted again "I'm warning you, Do not do this" Mr. Smith told Mr. Nicholson he was not mentally capacitate and was leaving. Mr. Smith immediately, went to speak with HR manage (Warren Moore). Mr. Smith briefed the matter about the cubby hole locker space and his mental incapacity state of mind being upset to Mr. Moore and asked for permission to leave. Mr. Moore acknowledged his mental state and allowed allow Mr. Smith to leave. Mr.

Smith replied to Mr. Moore he would have to think about it if he were to return to work the next day. Mr. Moore then, instructed Mr. Smith to call Brian Hardman by 10am only if he was not coming in at 4pm. So that way Mr. Hardman would have time to have a replacement. Mr. Smith confirmed with Mr. Moore he would call only if he was not going to report for work by Mr. Moore's clear instructions to him because he was already scheduled to work that day, it was understood he would be coming in unless he made the call.

The next day on 12/02/14, at 1:35pm prior to Mr. Smith's 4pm work shift he called Mr. Hardman to explain in more details as to why he was upset about the drills missing and his personal cubby hole lock box space being invaded and stripped from him with an indication that he would be reporting to work that day. At that time Mr. Hardman told Mr. Smith he was informed by Mr. Moore to meet him at the front gate and allow him to get his tools and he was terminated for not calling in at 10am. Mr. Smith explained to Mr. Hardman according to the instruction given by Mr. Moore he was not required to call if he were going to report for work that day at 4pm his regular work shift. Mr. Smith was Terminated 2hrs and 25 minutes before his shift started.

On 12/5/14 Mr. Smith filed a claim with South Carolina Department of Employment Workforce (SCDEW) with his statement of the matters asserted. (He asserted he was terminated). On 12/10/14 Greenwood Mills responded to SCDEW with their statement of the matters asserted. (They asserted he quit).

On 12/12/14 Mr. Smith contacted SCDEW to check on the status of his case at 10:11am and that is when the SCDEW officer began a Fact finding over the phone. The Fact Finding Officer told Mr. Smith that Greenwood Mills stated on the record he had VOLUNTARYQUIT his job. Mr. Smith Disagreed with the employer's statement so with Mr. Smith still on the Phone, at 10:15 the Officer attempts to contact the employer for a rebuttal statement. The employer did not respond and the Officer left a voice mail to return call by 12/16/14 at 10:12am or the claim will be processed and a decision made based on available information. Claim was finalized without employer's rebuttal statement.

On 12/31/2014 SCDEW adjudicator hearing officer determined the claimant was disqualified by a Letter of Determination from receiving benefits for the following reasons; **RULING** Mr. Smith had; LEFT HIS MOST BONA FIDE EMPLOYER DURING HIS SHIFT WITHOUT OBTAINING THE EMPLOYER'S CONSENT. SINCE HE COULD HAVE CONTINUED IN THIS EMPLOYMENT BUT DID NOT DO SO. IT IS DETERMINED THAT HE ABANDONDED HIS JOB. IT IS DETERMINED THAT HE VOLUNTARILY LEFT WITHOUT GOOD CAUSE UNDER THE SOUTH CAROLINA CODE **SECTION 41-35-120(1)**. *Note: the ruling did not state any issues determining he had been discharged for disqualifying cause. Mr. Smith was ruled that he quit his job by the*

SCDEW according to the assertions made by the employer (this was the 30 day notice assertion before the hearing as required by law) and was the only assertion made before the hearing.

Mr. Smith did not agree with the decision and on 01/09/15 filed an appeal with the SCDEW Appeal Tribunal on the grounds that he did not leave his job without consent, quit, and abandoned his job based on the ruling from the determination letter. Mr. Smith filed his Issues on appeal: **Issue.** (1) Mr. Smith stated he was not mentally capacitated to work and the employer recognized his mental state and allowed him to leave the job. **Issue.** (2) Mr. Smith stated he did not quit his job and the employer accused him of abandoning the job. *Note: At this time, Mr. Smith or the employer did not state there was an issue on appeal for Discharge (for disqualifying cause).*

*At the SCDEW Appeal Mr. Smith defended his case to prove he did not quit and was expecting a decision base solely on that, because that was the only assertion made before the hearing by Notice.

*The employer argued that Mr. Smith was terminated and he did not object to that because in fact it proved he did not quit as accused by the employer before the hearing by Notice.

*The hearing office gave their decision that Mr. Smith was discharged for cause, in which was never set forth by notice before the hearing.

*Mr. Smith then raised the issue to the Appellant Panel and to the ALC. The ALC claims the issue cannot be raised upon even though the err was performed after the hearing was over. Mr. Smith could not possibly raise the issue because he would not know it until the decision of the err was made by the hearing officer by their decision.

ARGUMENT from issue #1

Greenwood Mills Incorporation (employer) falsified documentation when responding to the South Carolina Department of Employment and Work Force (SCDEW) by filing a statement of matter asserting Mr. Bobby Smith (Claimant) voluntarily quit and abandoned his job. On the day of the hearing the employer changed their story and asserted he was terminated. By tainting the case, this false statement was made to keep the employee from receiving benefits.

The SCDEW adjudicator fact finding officer falsified their findings by falsely stating the appellant left his shift without obtaining the employers consent therefore, disqualified him of benefits when in fact the very document before them stated by the employer clearly asserts the appellant was granted consent to leave during his shift. This false statement was used to disqualify the appellant from benefits.

Both employer and SCDEW adjudicator instituted a criminal act by violating **SC CODE SECTION 41-41-30**. *False statements or representations, or failures to disclose material facts, to prevent or reduce payment of benefits or contributions.* Any officer or employing unit who makes a false statement knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject thereto or other payment required from any employing unit under Chapters 27 through 41 of this Title shall be punished by imprisonment for not longer than thirty days, and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

HISTORY: 1962 Code Section 68-402; 1952 Code Section 68-402; 1949 (46) 262.

The adjudicator must have reasonably known the employer did in fact give the employee consent to leave his shift.... The employee had consent... The adjudicator and employer both should be held in contempt for falsifying the record against Mr. Smith. The Hearing Officer and Appellant Panel erred their discretion in recognizing the law was in violation of **SC CODE SECTION 41-41-30**.

ARGUMENT from issue#2

The hearing officer err when she ruled the claimant was disqualified for being discharge for cause, only after that time it was possible the claimant could raise the issue to be on appeal. This was in part because the claimant could not know that the ruling would not be based on anything other than what was asserted from the notice before the hearing and that notice only asserted the claimant had quit his job. The claimant could only expect to have a ruling base on whether the claimant quit or did not quit, and that's what the claimant defended himself on during the hearing based on the assertions from the notice before the hearing. The ruling did not have supporting evidence the claimant being notified not less than 30 days based on the ruling made. The employer did not provide assertions the claimant were discharged for cause. The hearing office based their decision the claimant was discharge for cause without having a notice of assertions to support the findings. The employer did in fact assert the claimant voluntarily quit his job and later changed their story during the hearing. It did not matter if the employer accused him for being discharged for cause or not because there was not a notice in place to support the argument or the findings. In fact it supported the claimant did not quit as initially accused of. The nature of this case was unbelievable!!! There was no way to object on the violation of **SC CODE SECTION 1-23-320** until after the decision of the case was made and after that, it was evident the violation was committed and therefor was appealed on to the ALC and denied on, therefor the ALC has prejudiced .

The Hearing Officer further erred by not following as required, the **SC CODE SECTION 1-23-320**. Notice and hearing in contested case; depositions; subpoenas; informal disposition; content of

record.

(A) In a contested case, all parties must be afforded an opportunity for hearing after notice of not less than thirty days, except in proceedings before the Department of Employment and Workforce, which are governed by the provisions of Section 41-35-680.

(B) The notice must include a:

- (1) statement of the time, place, and nature of the hearing;
- (2) statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) reference to the particular sections of the statutes and rules involved;
- (4) short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

Mr. Smith was provided a Notice of the *statement of the matters asserted* that he was accused of quitting his job before the hearing...Mr. Smith was not provided a Notice of the *statement of the matters asserted* that he was accused of discharged for cause from his job before the hearing began, both are two separate distinct allegations. **SC CODE OF REGULATIONS: Chapter 47, Article 3, 47-51(C)(1),** All Appeal Tribunal hearings shall be in conformity with the South Carolina Administrative Procedures Act and in such manner as to ascertain the substantial rights of the parties. **SC CODE SECTION 1-23-320.** Provides (A) in a contested case, all parties must be afforded an opportunity for hearing after notice. (B) The notice must include a: (4) *short and plain statement of the matters asserted.* If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished. The hearing Officer nor the SCDEW did not provide a NOTICE of the short plain statement of the matters asserting the employee Mr. Smith was discharged. It is conclusive the hearing Officer erred by not following the law procedures when making their final decision therefore, the substantial rights of Mr. Smith have been prejudiced by ruling thereof.

ARGUMENT From issue #3

The argument in this case is hearsay, hearsay and 100%pure hearsay. The only people with knowledge of what Mr. Moore requested Mr. Smith to do are only, Mr. Moore and, Mr. Smith.

Mr. Moore did not testify at the hearing. Therefore, the hearing officer erred by relying on Mr. Moore's subordinates' testimony regarding what his instructions were because this testimony was pure hearsay and unreliable, second-hand evidence.

Mr. Moore requested Mr. Smith to call in the next morning at 10am (only) if he wasn't going to come into work that day so they could cover his shift. The purpose of the call was to ensure a replacement if needed. Brian Hardman testified consistently with these instructions at the hearing (ROA) pg 57, lines, 10 thru 21. Since Mr. Smith was planning to report for work, he didn't call

at 10am because the request given did not require him to. At 1:30pm Mr. Smith made a call to Mr. Hardman for other reasons and indicated he was going to report to work. Mr. Hardman told him he was supposed to call at 10am and since he didn't he terminated Mr. Smith over the phone before his shift started. Mr. Smith replied and said he didn't need to call because he was reporting in at 4pm and was his understanding he only had to call if he was not going to return.

Mr. Smith acknowledges his testimony was a bit ambiguous when asked by the officer about the exact words of Mr. Moore's request. Mr. Smith further acknowledges, if an answer is not clear, ambiguous or unintentionally said wrong a witness has the right to clear up their testimony and Mr. Smith did just that, at the very end of his testimony as he did, see (ROA)pg. 74, line 12, 13, (note: line 7 is in err, should be label claimant). Mr. Smith contentiously asserts from his first statement to his last words of testimony what Mr. Moore clearly instructed him and Mr. Moore never testified.

The Hearing Officers findings relied solely on 100% pure hearsay concerning the requested instructions given to Mr. Smith. Hearsay should not have been allowed because it is not a fair procedure as required by **SC CODE SECTION 41-35-720** must promulgate regulations establishing rules of procedure for proceedings and must adhering to **RULE 602 LACK OF PERSONAL KNOWLEDGE** A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. See Gentry v. Watkins-Carolina Trucking Co., 249 S.C. 316, 154 S.E.2d 112 (1967); Wilson v. Clary, 212 S.C. 250, 47 S.E.2d 618 (1948). **SECTION 1-23-330**. Evidentiary matters in contested cases, agencies shall give effect to the rules of privilege recognized by law.

*Mr. Smith's first hand primary evidence was not acknowledged by the Hearing Officer despite his last words in his testimony to clear the record the instructions only required him to call if he wasn't to return.

*All the witnesses' second-hand evidence was acknowledged by the Hearing Officer despite Mr. Smith's first hand.

*Mr. Moore never testified, despite his accusations were allowed as evidence by err.

CONCLUSION:

The ALC erred by affirming the decision where the appellate panel erred in upholding the denial of benefits where the hearing officer improperly allowed the employer to argue the Claimant was properly discharged where that argument was not set forth in the notice of the hearing. The hearing officer improperly relied on hearsay evidence as the only evidence supporting the employer's position.. I am asking this court as officers of the Judicial branch to hold accountable for not only the employer but both employer and the SCDEW adjudicator be held responsible for their actions of the false statements made against Mr. Smith standing in violation of **SC CODE SECTION 41-41-30** thus, forwarding them to the proper investigating authorities. And finally, the Officers erred in finding the employer dismissed me for cause and then disqualified me from benefits. The Administrative Law Court should, thus, overturn the Appellant Panels decision and grant me full unemployment benefits under no fault and require the employer to reverse me all expenses involved in the entire process of these cases. I humbly thank you!

PRO SE/APEALANT:



Date:

March 22, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case Docket No. 15-ALJ-22-0204-AP

Appellate Case No. 2015-002631

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MAR 29 2016

SC Court of Appeals

Bobby Smith

Appellant,

v.

CERTIFICATE PROOF OF SERVICE

South Carolina Department of
Employment and Workforce
and Greenwood Mills Inc.


Respondents,

I hereby certify that I am the Appellant (Bobby Smith) in the above-captioned matter and that on the 23rd day of March, 2016, in Greenville, South Carolina, I served a copy of the forgoing **Initial Brief** on the following person(s) by depositing the same in the United States Mail, postage paid, and addressed as follows:

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March 23rd, 2016


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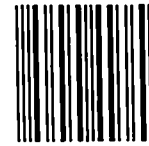
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