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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge
Case No.: 14-ALJ-22-0597-AP

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SC Court of Appeals

Appellate Case No. 2015-001458

Cynthia L. Aviles,

Respondent,

v.

South Carolina Department of Employment
and Workforce, and Accusweep Services, Inc.,

Defendants,

of whom, South Carolina Department of Employment
and Workforce is

Appellant.

RECORD ON APPEAL

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INDEX

DECISIONS AND ORDERS

Order on Reconsideration of Administrative Law Court Reversing SCDEW Appellate Panel, dated June 10, 2015	2
Order of Administrative Law Court Reversing SCDEW Appellate Panel, dated April 29, 2015.....	8

APPEALS, TRANSCRIPTS AND PAPERS

SCDEW Record on Appeal to ALC (Case No. 14-ALJ-22-0597-AP)	14
ALC Record Index	16
Appellate Panel Decision No. 2014-P-1748	17
Initial Claims Application.....	20
Employer Response.....	30
Fact Finding.....	31
Discharge Report.....	33
Determination by Claims Adjudicator.....	34
Aviles Appeal to Appeal Tribunal.....	35
Notice of Appeal Tribunal Hearing	36
Transcript of Testimony	37
Agency Exhibits	67
Aviles Exhibits	75
Appeal Tribunal Decision No. 2014-A-13549.....	80
Notice of Claimant Appeal to the Appellate Panel (with appeal)	82
 Brief of Appellant (Case No. 14-ALJ-22-0597-AP)	 84
 SCDEW Brief of Respondent (Case No. 14-ALJ-22-0597-AP).....	 94
 SCDEW Motion for Rehearing/Reconsideration and Memorandum in Support, dated May 12, 2015 (Case No. 14-ALJ-22-0597-AP)	 103
 Certificate of Counsel	 113

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cynthia L. Aviles,

Docket No. 14-ALJ-22-0597-AP

Appellant,

vs.

South Carolina Department of Employment
and Workforce, and Accusweep Services,
Inc.,

Respondents.

**ORDER ON
RECONSIDERATION**

STATEMENT OF CASE

This matter is an appeal by Cynthia Aviles (Appellant) from a November 21, 2014 decision of the South Carolina Department of Employment and Workforce (Department) disqualifying Appellant from receiving unemployment benefits. The Department found that Appellant voluntarily left her employment without good cause attributable to the employment. On April 29, 2015, the Administrative Law Court (ALC or Court) issued an Order reversing the Department's decision. On May 12, 2015, the Department filed a Motion for Rehearing/Reconsideration and Memorandum in Support. The April 29, 2015 Order of this Court is hereby vacated and this Order is substituted therefor.

On appeal, Appellant argues that she never voluntarily quit her job. She was incarcerated and unable to contact her employer. Appellant further argues that even if she had contacted her employer, such an act would have been futile. The ALC has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2014). Upon consideration of the briefs and record, this Court reverses, finding that substantial evidence does not support the Department's decision.

BACKGROUND

Appellant worked at Accusweep Services, Inc. from August 12, 2013 to January 2, 2014, most recently as a street sweeper and blower. On January 3, 2014, Appellant called out of work. She was scheduled to work on January 4, 2014, but did not appear for that shift. On January 4, 2014, Appellant was arrested and charged with armed robbery. Appellant remained in jail until

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mid-May 2014, when the charges against her were dropped. Appellant asserts that while she was incarcerated her cell phone, which included Employer's contact information, was in police possession. Appellant testified that she was unable to contact anyone while she was in custody. She went on to explain that her family was not aware of her arrest or where she was working. Appellant testified that she contacted Employer immediately after she was released. Employer informed Appellant that her position had been filled, but encouraged her to reapply for any future openings. Appellant's testimony was corroborated by the Employer's testimony and the documentary evidence.

On August 5, 2014, Appellant filed a claim for unemployment benefits with the Department. On August 19, 2014, based upon reviewing the documentation submitted by the parties, the Department's Claims Adjudicator found Appellant left her employment without good cause and that she was therefore disqualified from receiving unemployment benefits under Section 41-35-120 of the South Carolina Code.

Appellant appealed the Claims Adjudicator's decision to the Department's Appeal Tribunal.¹ In a decision dated September 26, 2014, the Tribunal reversed the Claims Adjudicator's decision, finding that Appellant was separated from Employer for non-disqualifying reasons. Employer appealed the Tribunal's decision to the Department's Appellant Panel, which reversed the Tribunal's decision on November 21, 2014. In reversing the Tribunal's decision and agreeing with the Claims Adjudicator that Appellant voluntarily left without good cause, the Panel stated:

The record establishes that the claimant was separated after she failed to maintain contact with the employer. Contrary to the Appeal Tribunal, we do not find credible the claimant's assertion that she had no means of contacting the employer to notify them of her circumstances. We find the claimant abandoned her job when she missed multiple scheduled shifts without contacting the employer. Therefore, the claimant voluntarily quit without good cause attributable to the employment. The Appeal Tribunal decision is reversed.

This appeal followed.

¹ Despite its name, the Department's Appeal Tribunal actually functions as a trial tribunal, hearing testimony, taking evidence, and making findings of fact. See 24 S.C. Code Ann. Regs. 47-51(C)(1), (E)(1) (Supp. 2014). Hearings before the Tribunal are held *de novo*. Regs. 47-51(C)(1).

ISSUE ON APPEAL

1. Did the Appellate Panel err in determining that Appellant should be indefinitely disqualified from receiving unemployment benefits because she voluntarily quit without good cause due to her inability to work while she was incarcerated?

STANDARD OF REVIEW

The Department is an “agency” under the Administrative Procedures Act (APA). See Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA’s standard of review governs appeals from decisions of the Department. See, S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2014); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm’n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). The standard used by appellate bodies to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2014). See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380(5)). That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2014).

A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Comm’n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency’s findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm’n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

In applying the substantial evidence rule, “a reviewing court will not overturn a finding of fact by an administrative agency ‘unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.’” Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dept. of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

DISCUSSION

Appellant argues that the Appellate Panel’s finding that she voluntarily quit her most recent employment without good cause is erroneous in light of the evidence in the record. I agree.

Section 41-35-120 sets forth the eight specific grounds upon which an insured worker is ineligible for benefits. They include:

- Leaving work voluntarily;
- Discharge for misconduct connected with the employment;
- Discharge for cause, other than misconduct;
- Discharge for illegal drug use;
- Discharge for gross misconduct;
- Labor dispute;
- Receiving benefits elsewhere; or
- Voluntary retirement.

S.C. Code Ann. § 41-35-120 (Supp. 2014).

Here the Department’s decision, stating that Appellant “voluntarily quit without good cause attributable to the employment,” potentially implicates the first ground. There is no evidence in the record to support a finding that the employee left work voluntarily. The evidence is uncontroverted that the employee was prevented from attending work because she was imprisoned. A “voluntary” action is one “brought about by one’s own free choice; given or done of one’s own free will; freely chosen or undertaken.” Webster’s New World College Dictionary, 4th Ed. p. 1602. It is hard to imagine a situation in which an employee’s failure to appear for a scheduled shift would be less voluntary than when the individual is imprisoned. This court has recognized that “insurmountable commuting problems can constitute good cause where the problems are not due to any fault of the employee.” Ronnie Brunson v. SC Dept. of Employment and Workforce, 13-ALJ-22-0097-AP (Feb. 28, 2014) (citing 76 Am. Jur. 2d Unemployment Compensation § 118 (February 2015)). A more insurmountable commuting problem does not exist than being incarcerated for a crime one did not commit.

The evidence in this case shows that Appellant was discharged because she was unable to work due to her imprisonment. The substantial evidence on the whole record establishes the following undisputed facts: Appellant was arrested on January 4, 2014, the day that she was scheduled to work. Appellant provided an arrest warrant and other court documents to show her dates of incarceration, as well as the date the charges were dropped. She testified that she was unable to contact anyone while she was incarcerated for the next four months. Upon her release, Appellant immediately contacted Employer. There is no evidence in the record to contradict her testimony. At the Tribunal hearing, Employer's witness testified that Appellant was a good employee and that she had never missed a shift without contacting Employer. He went on to testify that, if a position became available, he would like to rehire Appellant.

The record does not contain any evidence that supports the Panel's finding that Appellant voluntarily abandoned her job. The Department argues that its finding that Aviles' testimony stating she was unable to contact her employer from prison was not credible is sufficient to support its decision. As discussed above, it is the Department's purview to make findings of fact, including determinations of witness credibility subject to this Court's review supported by "substantial evidence." In this case, even disbelieving that Appellant was unable to contact her employer from prison, a reasonable person could not conclude that Appellant voluntarily abandoned her job. Therefore, the undisputed facts of this case do not support a disqualification from benefits.

Appellant also argues that any efforts to communicate with her employer during her incarceration would have been futile because the employer would have replaced her before she could return to work with or without notice of Appellant's whereabouts. Because this issue was not raised before the Department it is not preserved for review. Brown v. S. Carolina Dept. of Health & Envtl. Control, 348 S.C. 507, 560 S.E.2d 410 (2002).

There is no evidence in the record in this case to show that Appellant voluntarily quit her employment. Rather, the evidence clearly shows that Employer discharged Appellant under circumstances that do not support a disqualification from benefits. Accordingly, the Court concludes that the Appellate Panel erred by determining that Appellant voluntarily quit her job without good cause. The Court finds that the Department's decision was clearly erroneous in light of the substantial evidence in the record.

ORDER

IT IS THEREFORE ORDERED that this Court's Order dated April 29, 2015 is **VACATED**.

IT IS ALSO ORDERED that the Appellate Panel's decision is **REVERSED**.

AND IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Deborah Brooks Durden", is written over a horizontal line.

Deborah Brooks Durden
Administrative Law Judge

June 10, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Cynthia L. Aviles,

Docket No. 14-ALJ-22-0597-AP

Appellant,

vs.

South Carolina Department of Employment
and Workforce, and Accusweep Services, Inc.,

Respondents.

ORDER

STATEMENT OF CASE

This matter is an appeal by Cynthia Aviles (Appellant) from a November 21, 2014 decision of the South Carolina Department of Employment and Workforce (Department) disqualifying Appellant from receiving unemployment benefits. The Department found that Appellant voluntarily left her employment without good cause attributable to the employment. On appeal, Appellant argues that she never voluntarily quit her job. She was incarcerated and unable to contact her employer. Appellant further argues that even if she had contacted her employer, such an act would have been futile. The Administrative Law Court (ALC or Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2014). Upon consideration of the briefs and record, this Court reverses, finding that substantial evidence does not support the Department's decision.

BACKGROUND

Appellant worked at Accusweep Services, Inc. from August 12, 2013 to January 2, 2014, most recently as a street sweeper and blower. On January 3, 2014, Appellant called out of work. She was scheduled to work on January 4, 2014, but did not appear for that shift. On January 4, 2014, Appellant was arrested and charged with armed robbery. Appellant remained in jail until mid-May 2014, when the charges against her were dropped. Appellant asserts that while she was incarcerated her cell phone, which included Employer's contact information, was in police possession. Appellant testified that she was unable to contact anyone while she was in custody. She went on to explain that her family was not aware of her arrest or where she was working. Appellant testified that she contacted Employer immediately after she was released. Employer informed Appellant that her position had been filled, but encouraged her to reapply for any future

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April 29, 2015

SC ADMIN. LAW COURT

openings. Appellant's testimony was corroborated by the Employer's testimony and the documentary evidence.

On August 5, 2014, Appellant filed a claim for unemployment benefits with the Department. On August 19, 2014, based upon reviewing the documentation submitted by the parties, the Department's Claims Adjudicator found Appellant left her employment without good cause and that she was therefore disqualified from receiving unemployment benefits under Section 41-35-120 of the South Carolina Code.

Appellant appealed the Claims Adjudicator's decision to the Department's Appeal Tribunal.¹ In a decision dated September 26, 2014, the Tribunal reversed the Claims Adjudicator's decision, finding that Appellant was separated from Employer for non-disqualifying reasons. Employer appealed the Tribunal's decision to the Department's Appellant Panel, which reversed the Tribunal's decision on November 21, 2014. In reversing the Tribunal's decision and agreeing with the Claims Adjudicator that Appellant voluntarily left without good cause, the Panel stated:

The record establishes that the claimant was separated after she failed to maintain contact with the employer. Contrary to the Appeal Tribunal, we do not find credible the claimant's assertion that she had no means of contacting the employer to notify them of her circumstances. We find the claimant abandoned her job when she missed multiple scheduled shifts without contacting the employer. Therefore, the claimant voluntarily quit without good cause attributable to the employment. The Appeal Tribunal decision is reversed.

This appeal followed.

ISSUE ON APPEAL

1. Did the Appellate Panel err in determining that Appellant should be indefinitely disqualified from receiving unemployment benefits because she voluntarily quit without good cause due to her inability to contact her employer or work while she was incarcerated?

STANDARD OF REVIEW

The Department is an "agency" under the Administrative Procedures Act (APA). See Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within

¹ Despite its name, the Department's Appeal Tribunal actually functions as a trial tribunal, hearing testimony, taking evidence, and making findings of fact. See 24 S.C. Code Ann. Regs. 47-51(C)(1), (E)(1) (Supp. 2014). Hearings before the Tribunal are held *de novo*. Regs. 47-51(C)(1).

the meaning of the APA). Accordingly, the APA's standard of review governs appeals from decisions of the Department. See, S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2014); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). The standard used by appellate bodies to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2014). See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380(5)). That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2014).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dept. of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

DISCUSSION

Appellant argues that the Appellate Panel's finding that she voluntarily quit her most recent employment without good cause is erroneous in light of the evidence in the record. I agree.

Section 41-35-120 sets forth the eight specific grounds upon which an insured worker is ineligible for benefits. They include:

- Leaving work voluntarily;
- Discharge for misconduct connected with the employment;
- Discharge for cause, other than misconduct;
- Discharge for illegal drug use;
- Discharge for gross misconduct;
- Labor dispute;
- Receiving benefits elsewhere; or
- Voluntary retirement.

S.C. Code Ann. § 41-35-120 (Supp. 2014).

Here the Department's decision, stating that Appellant "voluntarily quit without good cause attributable to the employment," potentially implicates the first, second, and third grounds. As to the first ground, there is no evidence in the record to support a finding that the employee left work voluntarily. The evidence is clear that the employee was prevented from attending work because she was imprisoned. A "voluntary" action is one "brought about by one's own free choice; given or done of one's own free will; freely chosen or undertaken." Webster's New World College Dictionary, 4th Ed. p. 1602. It is hard to imagine a situation in which an employee's failure to appear for a scheduled shift would be less voluntary than when the individual is imprisoned. This court has recognized that "insurmountable commuting problems can constitute good cause where the problems are not due to any fault of the employee." Ronnie Brunson v. SC Dept. of Employment and Workforce, 13-ALJ-22-0097-AP (Feb. 28, 2014) (citing 76 Am. Jur. 2d Unemployment Compensation § 118 (February 2015)). A more insurmountable commuting problem does not exist than being incarcerated for a crime one did not commit.

As to the second ground, discharge for misconduct connected with the employment, Subsection 120 (2)(a) defines misconduct as:

For the purposes of this item, "misconduct" is limited to conduct evincing such wilful and wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right

to expect of his employee, or in the carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his employer. **No finding of misconduct may be made for discharge resulting from an extreme hardship, emergency, sickness, or other extraordinary circumstance.**

S.C. Code Ann. § 41-35-120(2)(a)(Supp. 2014) (emphasis added). Discharge for misconduct includes the disregard of the standard of behavior which an employer can rightfully expect from an employee. Mickens v. Southland Exch.-Joint Venture, 305 S.C. 127, 130, 406 S.E.2d 363, 365 (1991) (citing Lee v. S.C. Emp. Sec. Comm'n, 277 S.C. 586, 588, 291 S.E.2d 279, 379 (1982)). What is reasonable will vary according to the circumstances of each case. Mickens, 305 S.C. at 130, 406 S.E.2d at 365. The third possible ground for finding Appellant ineligible for benefits is “discharge for cause other than misconduct.” S.C. Code Ann. § 41-35-120(2)(b) provides, “discharge resulting from substandard performance due to inefficiency, inability, or incapacity shall not serve as a basis for disqualification.”

There is no substantial evidence in the record to support a determination that Appellant was discharged for any misconduct or cause. Rather, the evidence in this case shows that Appellant was discharged because she was unable to work due to her imprisonment. The substantial evidence on the whole record establishes the following undisputed facts: Appellant was arrested on January 4, 2014, the day that she was scheduled to work. Appellant provided an arrest warrant and other court documents to show her dates of incarceration, as well as the date the charges were dropped. She testified that she was unable to contact anyone while she was incarcerated for the next four months. There is no evidence in the record to contradict her testimony. Upon her release, Appellant immediately contacted Employer. At the Tribunal hearing, Employer's witness testified that Appellant was a good employee and that she had never missed a shift without contacting Employer. He went on to testify that, if a position became available, he would like to rehire Appellant. The evidence in this case makes it clear that Appellant's discharge resulted from “extreme hardship, emergency, sickness, or other extraordinary circumstance,” Id at 130, 406 S.E.2d at 365, and, therefore, cannot rightly be considered misconduct or cause giving rise to the discharge. The record does not contain any evidence that supports the Panel's finding that Appellant abandoned her job. Based upon these facts, I find that a reasonable person could not conclude that Appellant engaged in misconduct

related to the employment or was discharged for cause. Therefore, the undisputed facts of this case do not support a disqualification from benefits.

Appellant also argues that any efforts to communicate with her employer during her incarceration would have been futile because the employer would have replaced her before she could return to work with or without notice of Appellant's whereabouts. At the hearing, Employer made it clear that Appellant's position had to be filled immediately. The Court agrees and finds that any efforts Appellant could have made to contact her employer would have been futile for purposes of holding the job open until her return.

There is no evidence in the record in this case to show that Appellant voluntarily quit her employment. Rather, the evidence clearly shows that Employer discharged Appellant under circumstances that do not support a disqualification from benefits.. Accordingly, the Court concludes that the Appellate Panel erred by determining that Appellant voluntarily quit her job without good cause. The Court finds that the Department's decision was clearly erroneous in light of the substantial evidence in the record.

ORDER

IT IS THEREFORE ORDERED that the Appellate Panel's decision is **REVERSED**.

AND IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Deborah Brooks Durden". The signature is written in dark ink and is positioned above a horizontal line.

Deborah Brooks Durden
Administrative Law Judge

April 29, 2015
Columbia, South Carolina

Cynthia L. Aviles,
Appellant,

SC Department of Employment and
Workforce and Accusweep Services,
Respondent,

RECORD ON APPEAL

APPEAL FROM SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT
AND WORKFORCE APPELLATE
PANEL

Accusweep Services Inc.
c/o Homer Mask Consultant Service
PO Box 21456
Columbia, SC 29221
Employer

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) CERTIFICATION

15

INDEX

Appellate Panel Decision No. 2014-P-1748	1
Initial Claims Application	4
Employer Response	14
Fact Finding	15
Discharge Report.....	17
Determination by Claims Adjudicator.....	18
Claimant Appeal to Appeal Tribunal.....	19
Notice of Appeal Tribunal Hearing	20
Transcript of Testimony	21
Appeal Tribunal Decision No. 2014-A-13549	64
Notice of Claimant Appeal to the Appellate Panel (with appeal)	66

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Cynthia L. Aviles

Accusweep Services, Inc.
c/o Homer Mask Consultant Service
PO Box 21456
Columbia, SC 29221
Liable Employer

Appellant: Employer

APPELLATE PANEL
DECISION

The employer appealed Appeal Tribunal Decision 2014-A-13549 to the Appellate Panel. The Tribunal held the claimant eligible for benefits upon finding the claimant was separated for non-disqualifying reasons. This decision reversed the claims adjudicator's determination.

The Appellate Panel issued its decision upon review of the record on appeal.

DECISION

Appeal Tribunal Decision 2014-A-13549 is reversed. The claimant is indefinitely disqualified from benefits effective August 3, 2014, upon finding she voluntarily quit without good cause attributable to the employment. **This decision may result in an overpayment in benefits to the claimant.**

The claimant worked from August 1, 2013, to January 2, 2014, most recently as a street sweeper and blower. She was separated after she was incarcerated and failed to contact the employer. The claimant called out of work on January 3, 2014. The claimant was scheduled to work on January 4, 2014, but did not report to that shift, and had not contacted the employer about her absence. The claimant was arrested and incarcerated on or about January 5, 2014, pending legal proceedings in a criminal court matter. According to documents submitted by the claimant, the charge was dismissed, nol prossed, or she was found not guilty on March 16, 2014. The claimant asserts the March 16, 2014 disposition date is a typographical error, and she remained in custody until late May 2014. The claimant states she did not contact the employer from her arrest on January 4, 2014, until after she was released in May 2014. She asserts her cell phone was in police custody and she could not contact the

employer without her cell phone. When the claimant contacted the employer following her release, her position had been filled.

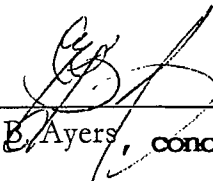
S.C. Code Ann. § 41-27-20 provides benefits for workers who are unemployed through no fault of their own.

S.C. Code Ann. § 41-35-120(1) requires an indefinite disqualification from benefits when the Department finds the claimant has voluntarily quit without good cause attributable to the employment. The disqualification continues until the claimant returns to work and earns eight times the weekly benefit amount of the claim in covered employment. "Good cause" refers to a material, substantial change in the conditions of employment, or other circumstances directly attributable to the employment, which would cause a reasonable person to become totally unemployed rather than continue working.

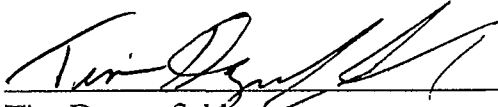
The record establishes the claimant was separated after she failed to maintain contact with the employer. Contrary to the Appeal Tribunal, we do not find credible the claimant's assertion that she had no means of contacting the employer to notify them of her circumstances. We find the claimant abandoned her job when she missed multiple scheduled shifts without contacting the employer. Therefore, the claimant voluntarily quit without good cause attributable to the employment. The Appeal Tribunal decision is reversed.

Ms. Ayers concurs

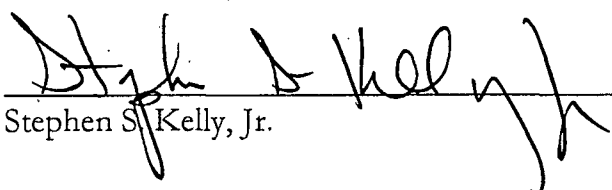
**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**



E. B. Ayers, concurring



Tim Dangerfield



Stephen S. Kelly, Jr.

Review Date: 11/18/14
Date Mailed: 11/21/14
Mailed By: AG

Mailing Date: November 20, 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.

Form App-115
Rev.8/12



SC Department of Employment and Workforce Initial Claims Application

Filing location: Home
Office location: COLUMBIA
Claim creator: Claimant
Worked under a different name: No

Ethnicity

Claimant Hispanic or Latino: Yes

Claimant

Claimant's name: Cynthia L Aviles
Date of birth:
Gender: Female
US citizen: Yes

Aliases

Alias type: SocialSecurityCard
Name: Cynthia Aviles
Alias type: Current
Name: Cynthia L Aviles

Race(s)

* White

Addresses

Address type: physical
Address:
United States address: Yes
Address type: mailing
Address:
United States address: Yes

Telephone Number

Telephone number type: Home
Telephone number: Ext:

Alien Information

Alien card number: None
Expiration date: No

Veteran Information

Service branch: Army

Date entered: 6/30/2008

Date released: 7/1/2009

Character of service: General - Under Honorable Conditions

Reason for separation: misconduct

Completed first full term of service: No

In the National Guard or a Reserve Unit and served on active duty during a period of war or in a campaign or expedition: No

Served on active duty in the military for a period of more than 180 days: Yes

Separated from military in the last 48 months: No

Accrued days lost: No

Accrued leave: 0

(Item #16 on DD-214)

Pay grade: e1

(Item #4b on DD-214)

Retired from military service: No

Have a service related disability: No

Percent disabled: 0%

Awarded a campaign badge or ribbon for service during a conflict: No

Badges and ribbons: None

Will receive pension: No

Worked in the last 18 months: Yes

Employer Name: ACCUSWEEP SERVICES INC

Employer delivery address: PO BOX 21456

Employer city: COLUMBIA

Employer state: SC

Employer zip code: 29221

Employer telephone number: 8037505747

Bonafide employer: Yes

Worked for this employer: Yes

Worked part-time only: No

Hire date: 8/1/2013

Termination date: 1/2/2014

Gross amount made during claim filing week: \$0.00

Type of work: GROUND MAINTENANCE WORKERS, ALL OTHER

Earned at least \$2,608.00: Yes

Occupational license required: No

Job city: columbia

Job state: South Carolina

Job duties: street sweeping proprieties

Child or spouse of employer: No

Owner or corporate officer of a business: No

Accepting all work offered by the employer: Yes

Initiated reduction in work hours: No

Discharge reason: Discharged

Discharge explanation: was considered a no-call no-show due to matters I could not control

Discharge

Discharge Reason: Other

Date of final incident: 1/2/2014

Final incident that caused discharge:

I was being detained by the SC investigation unit for something I had no hand or knowledge of which caused me to miss work for the next couple months all charges were dismissed

Discharge date: 1/2/2014

Discharged by: Fred McCaskill

Title of person who discharged you: Manager

Violated company policy: No

Final incident impacted employer's business: No

Received prior warnings: No

Federal employer: No

Received SF8 form: No

Payroll office address based on SF8: No

Employer Name: **THE PANTRY INC**

Employer delivery address: PO BOX 182366

Employer city: COLUMBUS

Employer state: OH

Employer zip code: 43218

Employer telephone number: 8003666660

Bonafide employer: No

Worked for this employer: Yes

Worked part-time only: No

Hire date: 1/1/2012

Termination date: 11/1/2013

Gross amount made during claim filing week: \$0.00

Type of work: FIRST-LINE SUPERVISORS/MANAGERS OF RETAIL SALES WO

Earned at least \$2,608.00: Yes

Occupational license required: Yes

Job city: irmo

Job state: South Carolina

Job duties: handling flammable materials, assisting the manager with all duties

Child or spouse of employer: No

Owner or corporate officer of a business: No

Accepting all work offered by the employer: Yes

Initiated reduction in work hours: Yes

Discharge reason: Voluntary Quit

Discharge explanation: new job offer with more pay and hours

Federal employer: No

Received SF8 form: No

Payroll office address based on SF8: No

Employer Name: A&J services

Employer delivery address: 4500 STUART AVE

Employer city: COLUMBIA

Employer state: SC

Employer zip code: 29207

Employer telephone number: (803) 751-2160 ext: _____

Bonafide employer: No

Worked for this employer: Yes

Worked part-time only: No

Hire date: 1/1/2011

Termination date: 3/1/2012

Gross amount made during claim filing week: \$0.00

Type of work: MAIDS AND HOUSEKEEPING CLEANERS

Earned at least \$2,608.00: Yes

Occupational license required: No

Job city: columbia

Job state: South Carolina

Job duties: cleaning hospital

Child or spouse of employer: No

Owner or corporate officer of a business: No

Accepting all work offered by the employer: Yes

Initiated reduction in work hours: No

Discharge reason: Discharged

Discharge explanation: stress from being overworked took on to much with no chance to progress
and new job that offered a management position

Federal employer: No

Received SF8 form: No

Payroll office address based on SF8: No

Job Registration

Spouse of a veteran: No
Spouse of a deceased veteran with a total disability rating: No
Spouse of a 100% total disabled veteran: No
Spouse of a veteran killed in the line of duty: No
Spouse of a MIA or POW: No
Worked on a farm: No
Worked in a food processing plant: No

Farm Worker Information

Earned at least half income performing farm work in the last 12 months: No
Employed all year in farm work: No
Traveled to perform farm work: No
Worked at least 25 days or parts of days during the last 12 months performing farm work: No

Food Processing Information

Earned at least half income performing food processing in the last 12 months: No
Employed all year in food processing: No
Traveled to perform food processing: No
Worked at least 25 days or parts of days during the last 12 months performing food processing: No
Do you have a valid driver's license: No

Additional Claim Information

Filed UI claim outside SC in the last 18 months: No
Worked in state outside SC in the last 18 months: No
Filed claim for Trade Readjustment Allowances(TRA): No
Filed claim for Disaster Unemployment Assistance(DUA): No
Receive or have received Federal-Funded assistance: No
Receive or have received retirement: No
Receive or have received federal civilian employee benefits: Yes
Receive or have received federal military employee benefits: Yes
Claimant wants taxes withheld from unemployment benefits: Yes

Extra Earned Income

Pension amount: \$0.00

Pension paid by:

Employer pension contribution percentage:

Pension effective date:

Retirement amount: \$0.00

Retirement paid by:

Employer retirement contribution percentage:

Retirement effective date:

Disability amount: \$0.00

Disability paid by:

Disability effective date:

Social security amount: \$0.00

Social security effective date:

Job Eligibility

Only available for part-time work: No

Part-time work explanation: None

Willing to relocate: No

Can begin work immediately: Yes

Children or dependants in household who require care during working hours: Not Applicable

Children or dependent care explanation: None

Self-Employed: No

Self-Employed job title:

Will be recalled to last job: No

Date of recall to last job:

Have a health condition that limits ability to accept full-time work now or in the future: No

Health status explanation: None

Willing to look for other types of work: Yes

Kind of Jobs Seeking

FIRST-LINE SUPERVISORS/MANAGERS OF RETAIL SALES WO

Years of experience: 1

Years of training: 1

BUILDING CLEANING WORKERS, ALL OTHER

Years of experience: 2

Years of training: 2

Last Job

Number of miles traveled to work on last job: Greater than 20

Rate of pay on last job: \$7.25

Unit of pay on last job: Hourly

Job Schedule Availability

Sunday

Start time: 8:00 PM

End time: 9:00 AM

Monday

Start time: 8:00 PM

End time: 9:00 AM

Tuesday

Start time: 8:00 PM

End time: 9:00 AM

Wednesday

Start time: 8:00 PM

End time: 6:00 AM

Thursday

Start time: 8:00 PM

End time: 9:00 AM

Friday

Start time: 8:00 PM

End time: 11:30 AM

Saturday

Start time: 8:00 PM

End time: 11:30 AM

New Job

Miles willing to travel to work: 5 - 10

Minimum wage you will accept on next job: \$7.25

Unit of pay on next job: Hourly

Job Schedule Availability

Sunday

Start time: 12:00 AM

End time: 12:00 AM

Monday

Start time: 12:00 AM

End time: 12:00 AM

Tuesday

Start time: 12:00 AM

End time: 12:00 AM

Wednesday

Start time: 12:00 AM

End time: 12:00 AM

Thursday

Start time: 12:00 AM

End time: 12:00 AM

Friday

Start time: 12:00 AM

End time: 12:00 AM

Saturday

Start time: 12:00 AM

End time: 12:00 AM

Work Counties

Richland

County FIPS: 79

Last grade completed: One Year of College or Vocational School

Currently attending school: No

Planning to attend school: No

Current School Information

Name of school: None

School location:

When did you start school:

School Schedule

Willing to change school/training schedule for a full-time job: No

Willing to quit school/training schedule for a full-time job: No

Future School Information

Name of school: None

Location of school:

When are you planning to attend school:

School Schedule

Willing to change school/training schedule for a full-time job: No

Willing to quit school/training schedule for a full-time job: No

Transportation Methods

* Bicycle

* Walk

* Other

Other transportation explanation: trying to get moped

Benefit Payment Method

: No

Direct deposit agreement accepted: Yes

MASK CONSULTANTS LLC
SPECIALISTS IN WAGE-HOUR PROBLEMS
HANDLING OF UNEMPLOYMENT CLAIMS
PERSONNEL POLICY AND PRACTICE
PHONE (803)354-9797 FAX (803)354-9796
P O BOX 21456
COLUMBIA, SC 29221
WWW.MASKCONSULTANTSSC.COM

August 12, 2014

RECEIVED

S C. Dept of Employment and Workforce
700 Taylor Street
P O Box 995
Columbia, SC 29202

AUG 12 2014

DEPT. OF UI

IN RE Cynthia L Aviles
SS NO

This is in reference to the claim filed at your local unemployment office on NET-101 dated 08-06-14.

The claimant was last employed from 08-12-13 to 01-02-14 and has earned at least \$2608

The claimant voluntarily quit available work with no notice given.

NAME AND PHONE NUMBERS OF PERSON TO BE CONTACTED FOR
ADDITIONAL INFORMATION

We are not and will not pay this claimant a pension or retirement pay

Contact Name Fred McCaskill
Telephone 803-201-1765
Employer Accusweep Services, Inc
Account #. 281669

Sincerely,



Mike Callins

MC/ct



SC Department of Employment and Workforce FFATNET Report

AVILES, CYNTHIA

Gender: F

cindyaviles1@hotmail.com

Date of Birth:

Claim Office: 400

Effective Date: 8/3/2014

Entered On: 8/5/2014

BYE: 8/2/2015

WBA: \$326.00

Interview Appointments:

Issues:

Employers:

Employer Name: ACCUSWEEP
SERVICES INC

Bonafide employer: Yes

Hire date: 8/12/2013

Termination date: 1/2/2014

Earned at least \$2,608.00: No

Owner or corporate officer of a business: No

Employer Acct Number: 281669

NAICS Code: 561720550

Claimant Separation Reason: Discharged

Employer Separation Reason: Voluntary Quit

Total Wages: \$11,705.34

Employer Issues:

Kind Description	Discharge		
Create Date	8/4/2014 12:00:00 AM		
Last Modified Time	8/14/2014 9:33:32 AM		
Attachment Info	Description	Created Time	Upload Date

Contact Attempts:

Claimant Rebuttals:

Employer Rebuttals:

History Events:

FactFindingIssueCreated at 8/4/2014 2:58:03 PM by Cynthia L Aviles
(PUBLIC\CynthiaAviles): Created 'Discharge' Fact Finding Issue for employer
'ACCUSWEEP SERVICES INC' with status Submitted as part of submit Claim
Application.

FactFindingCreated at 8/4/2014 2:58:03 PM by Cynthia L Aviles
(PUBLIC\CynthiaAviles): Fact Finding was created as part of submitting a Claim
Application by Cynthia L Aviles(PUBLIC\CynthiaAviles)

StatusChanged at 8/5/2014 12:54:53 PM by SCES\BBoston: Status changed from
Initial Claim to Review by the trigger Claim Submit to ABPS.

CheckOut at 8/14/2014 9:32:49 AM by SCES\JMcClary: Fact Finding checked out.

FactFindingIssueStatusChange at 8/14/2014 9:33:32 AM by SCES\JMcClary: Fact
Finding Issue " Status changed from 'Submitted' to 'Reviewed' by the trigger 'Review
Complete'. Employer Name: ACCUSWEEP SERVICES INC

Notes:



SC Department of Employment and Workforce Discharge Report

SSN:

Claimant's name: Cynthia L Aviles

Date of birth:

Local office: 400

Benefit year begin date: 8/3/2014

Benefit year end date: 8/2/2015

Claim type: New

Potentially Eligible: No

Employer name: ACCUSWEEP SERVICES INC

Employer Account #:

Hire date: 8/1/2013

Termination date: 1/2/2014

Discharge reason: Discharged

Earned at least \$2608: Yes

Bonafide: Yes

Discharge

Discharge Reason: Other

Date of final incident: 1/2/2014

Final incident that caused discharge:

I was being detained by the SC investigation unit for something I had no hand or knowledge of which caused me to miss work for the next couple months all charges were dismissed

Discharge date: 1/2/2014

Discharged by: Fred McCaskill

Title of person who discharged you: Manager

Violated company policy: No

Final incident impacted employer's business: No

Received prior warnings: No

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

1 ACCUSWEEP SERVICES INC
1 C/O HOMER MASK CONSULTANT SERVICE
1 PO BOX 21456
1
1
1 COLUMBIA SC 29221

DATE OF THIS NOTICE 08/18/14

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION ENDS		
CYNTHIA L AVILES					08/03/14	INDEF		
WFC. NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS	
400	I	01	\$ 326.00	\$ 6520.00	\$ 0.00	\$ 6520.00	08/02/15	

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 LEFT YOUR MOST RECENT BONA FIDE EMPLOYER DUE TO PERSONAL REASONS. YOUR LEAVING IS CONSIDERED
1 TO BE WITHOUT GOOD CAUSE UNDER THE SOUTH CAROLINA CODE SECTION 41-35-120. YOU ARE DISQUALIFIED
1 FROM 08/03/14 AND UNTIL YOU RETURN TO WORK AND EARN AT LEAST EIGHT TIMES YOUR WEEKLY BENEFIT
1 AMOUNT.

1 THE SEPARATION OCCURRED DUE TO CIRCUMSTANCES WHICH PREVENTED YOU FROM REPORTING TO WORK.

1 ☐ LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

1 MAILING DATE 08/19/2014

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.

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

Notice of Appeal to Appeal Tribunal

Claimant's Name Cynthia Aviles

Social Security Number _____

Claimant's Address 1 Cobb Hall Ct. Columbia, SC 29223

Telephone 803-447-6299

Employer's Name Accusweep Services

SCDEW
All. P.O. 2014
8/26 ES
Lower Authority Appeals

Telephone 803-771-2757

Employer's Address 2757 Rosewood Dr. Columbia, SC 29205

Please refer to Determination by Claims Adjudicator to complete section below

On 8/22/2014

(Date of receipt)

I received the determination mailed 8/19/2014

(Mailing date on Notice)

I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons:
I did not leave my most recent employer due to personal reasons

SCDEV

AUG 28 2014

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

Received Benefits D.

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

CA

(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 appeal.)

SUBPOENA ☐ YES ☒ NO

Who is filing appeal ☒ Claimant ☐ Employer

Signature _____

Title Claimant

Date Aug 26, 2014

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

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

NOTICE OF HEARING BEFORE APPEAL TRIBUNAL

Claimant's Name: CYNTHIA L AVILES Social Security _____
Address: _____

Employer's Name: ACCUSWEEP SERVIC

Appeal Number: 1414321 Hearing Date: 09/24/14 Hearing Time: 1:15 PM
Month/Day/Year Hour/Minute

Hearing Location: SC DEPARTMENT OF EMPLOYMENT & WORKFORCE
631 HAMPTON STREET COLUMBIA SC 29201

Before: CONNIE STREATER

NOTE: Contact (803) 737-2520 Option 2, immediately if you or any witness are unable to attend the hearing in person. In certain circumstances, you or your witness can participate by telephone instead of appearing in person. To ensure fairness to all parties, documentation of a conflict or issue preventing in-person participation may be required. Participation by telephone requires that you MUST provide copies of any documents you wish to enter into evidence to BOTH the Administrative Hearing Officer AND the opposing party prior to the hearing by mail or other delivery method. Copies must be submitted to the Administrative Hearing Officer listed above, by fax at (803) 737-0287; by mail to Appeal Tribunal, P.O. Box 995, Columbia, SC 29202; or by delivery to your local SC Works Center. You MUST include the appeal number on any documentation submitted for consideration prior to the hearing.

ISSUES

☒ Voluntary Quit	☐ Voluntary Retirement	☐ Timeliness of Appeal
☒ Discharge	☐ Absence from Hearing	☐ Fraud & Overpayment
☐ Availability	☐ Overpayment	☐ Job Offer & Referral
☐ Eligibility	☐ Other _____	

IMPORTANT: Failure to participate may result in your interest being abandoned. If you have appealed and fail to appear within ten (10) minutes after the scheduled time for the hearing to begin, your appeal may be dismissed.

EVIDENCE: This hearing is your only chance to testify and present evidence. Sworn testimony is required from witnesses with first-hand knowledge of the issues marked on this notice. You must bring the original and two copies of any documents you wish considered at the hearing. The original will be returned. No testimony or evidence can be considered from witnesses who are not present.

SUBPOENAS: If a witness is reluctant to appear or you need a document, you may apply for a subpoena through your local SC Works Center or the Appeal Tribunal at (803) 737-2520 and fax (803) 737-0287. At a minimum, you must provide specific information including: name, address, telephone number, and what the witness or document will offer in support of your case.

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 \$200.00 or the claimant's weekly benefit amount per appearance.

BENEFITS: A CLAIMANT SHOULD CONTINUE TO FILE FOR BENEFITS DURING THE APPEAL PROCESS. Weeks not claimed cannot be paid, even if the claimant is held eligible.

THIS NOTICE SUPERSEDES ANY PREVIOUS NOTICE YOU MAY HAVE RECEIVED. IF THE DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD FOLLOW THE INSTRUCTIONS ON THIS NOTICE.

MAILING DATE: 09/09/2014

SMALL CHILDREN, PETS, AND ELECTRONIC DEVICES ARE NOT ALLOWED IN HEARINGS

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

Transcript of Testimony

Before

Connie Streater, Administrative Hearing Officer

Cynthia L. Aviles	)	CLAIMANT
	)	
	)	
	)	

Accusweep Services, Incorporated	)	LIABLE EMPLOYER
c/o Homer Mask Consultants	)	
P. O. Box 21456	)	
Columbia, SC 29221	)	

PLACE OF HEARING: SC Department of Employment and
Workforce
631 Hampton Street
Columbia, SC 29201

DATE OF HEARING: September 24, 2014

APPEARANCES:

For Claimant: In person

For Employer: One witness

TESTIFYING WITNESSES

CLAIMANT:

Cynthia L. Aviles

EMPLOYER WITNESS:

Fredrick McCaskill, Manager

1 BEFORE: Connie Streater, Administrative Hearing Officer
2
3

4 **HEARING OFFICER'S PREAMBLE**
5
6

7 **ALL WITNESSES SWORN.**
8
9

10 I will initially ask questions of each party. Each party will have the
11 opportunity to answer and provide any additional testimony relevant to the
12 hearing today. You also have the opportunity to ask any questions of the
13 witnesses that are present as well. If you have any documents or exhibits
14 which you have faxed or mailed to the department prior to the start of this
15 hearing or any documents that you may have brought with you since this is
16 an in-person hearing, then please make me aware of those documents
17 during your individual testimony, okay. All right, notification of a decision
18 will be mailed as soon as possible to the most recent address of record.
19 The address that I have for the claimant is
20 , is that correct?
21
22

23 CLAIMANT: Yes ma'am.
24
25

26 HEARING OFFICER: And your telephone number is
27 , is that also correct Ms. Aviles?
28
29

30 CLAIMANT: Yes ma'am.
31
32

33 HEARING OFFICER: Thank you. And the address that I have
34 for the employer is the address of the third party company that handles
35 those issues, and that address is c/o Homer Mask Consultants, P. O. Box
36 21456, Columbia, SC, 29221, is that correct Mr. McCaskill?
37
38

39 EMPLOYER WITNESS: Yes ma'am.
40

1 HEARING OFFICER: And the telephone number is 803-750-
2 5747, is that also correct?

3
4
5 EMPLOYER WITNESS: Yes ma'am.

6
7
8 HEARING OFFICER: All right, thank you. Because this issue
9 was originally adjudicated as a voluntary quit, I will begin taking testimony
10 with the claimant; however, before doing so, does either party have any
11 questions regarding the issues or procedures of this hearing that I've just
12 explained today, Ms. Aviles?

13
14
15 CLAIMANT: No.

16
17
18 HEARING OFFICER: Okay, and if you have any questions as
19 we go through the course of this, if we have like a break you can ask me
20 questions, okay. But don't interrupt anyone else's testimony for questions.
21 Just wait until I come to you if you have some questions at that time I'll
22 allow you to ask them okay?

23
24
25 CLAIMANT: Yes ma'am.

26
27
28 HEARING OFFICER: All right Mr. McCaskill, do you have any
29 questions so far?

30
31 EMPLOYER WITNESS: No, no ma'am.

32
33
34 HEARING OFFICER: All right, very good, thank you. Okay,
35 Ms. Aviles, if you would please state and spell your first and last name for
36 the record please.

37
38
39 CLAIMANT: My first and last name?

1 HEARING OFFICER: First and last name, mmm hmm.

4 CLAIMANT: Cynthia C-y-n-t-h-i-a Aviles, A-v-i-l-e-s.

7 HEARING OFFICER: Thank you. Did you file an appeal of the
8 determination mailed August 19, 2014 holding you indefinitely disqualified
9 from receiving benefits effective August 3, 2014, upon a finding that you
10 voluntarily quit without good cause?

13 CLAIMANT: I did file an appeal.

16 HEARING OFFICER: And is that the determination that you
17 are appealing today?

20 CLAIMANT: Yes ma'am.

23 HEARING OFFICER: Are there any other decisions or
24 determinations that you are appealing at this time?

27 CLAIMANT: No ma'am.

30 HEARING OFFICER: All right, speak up.

33 CLAIMANT: No ma'am.

36 HEARING OFFICER: All right, very good, thank you. I do
37 have that determination letter here before me as described. It was mailed
38 from the department on August 19, 2014 and it notified all the parties of Ms.
39 Aviles' indefinite disqualification from receiving benefits. That is a one
40 page document. I also have the claimant's Notice of Appeal to the Appeal

Tribunal. The claimant completed the department provided form, gave her reasons for appealing and also her signature is located at the bottom of that document, and that is a one page document. I have the claimant's online initial claims application. That document was originally a total of ten pages, however I only included the first three of those ten pages because those are the pages that are relevant to this particular employer and these particular issues today. So there are just three pages. I have the department fact finding report. This report is generated based on the department's attempts to collect facts and information from the parties regarding the claimant's unemployment claim and her separation from the employer. That's a two page document. I have the department discharge report. This department report is generated based on the claimant's, your explanation of the separation from the employer, and that's a one page document. And I also have a document that was submitted by the employer. Once the claimant filed her claim for unemployment benefits the employer was notified by the department and given an opportunity to respond which the employer did, and I do have a statement here from their third party company, Mask Consultants about these unemployment issues and Ms. Aviles' separation from the employer, and that's a one page document. All the documents I've just described are a grand total of 9 pages. I would like to enter in these documents as previously described collectively, a total of 9 pages as Agency Exhibit #1. Ms. Aviles, do you have any objection to me entering these documents into the record?

CLAIMANT: No ma'am.

HEARING OFFICER: Mr. McCaskill, do you have any objection to me entering these documents into the record?

EMPLOYER WITNESS: No ma'am.

HEARING OFFICER: Since there are no objections I do hereby enter in the documents as previously described collectively a total of 9 pages as Agency Exhibit #1. Okay Ms. Aviles, what was your job title with the former employer?

1 CLAIMANT: A leaf blower, just a blower.

2
3
4 HEARING OFFICER: I'm sorry, can you speak up please?

5
6
7 CLAIMANT: Just a street sweeper, blower.

8
9
10 HEARING OFFICER: Okay. I have your dates of employment
11 as August 1, 2013 through January 2, 2014, is that correct?

12
13
14 CLAIMANT: Honestly I do not know.

15
16
17 HEARING OFFICER: Does that sound about right?

18
19
20 CLAIMANT: Sound about right.

21
22
23 HEARING OFFICER: Okay. What was the last day that you
24 were scheduled to work and you actually reported to work? If you don't
25 have an exact date, do you have an approximate date?

26
27
28 CLAIMANT: The last time I reported was, was it
29 Christmas?

30
31
32 HEARING OFFICER: Christmas of 2013?

33
34
35 CLAIMANT: Right.

36
37
38 HEARING OFFICER: Okay. Do you...

1 CLAIMANT: No it was, I think it was 1/03, it was 1/03
2 or 1/02.
3
4

5 HEARING OFFICER: Okay. Well I have your last date of
6 employment as January 2, 2014, so does that sound about right?
7

8
9 CLAIMANT: [Inaudible].
10

11
12 HEARING OFFICER: Okay. All right did you quit or were you
13 discharged?
14

15
16 CLAIMANT: I didn't quit and I wasn't discharged. It
17 was a situation that happened that I had no control of, and I have like
18 everything for that. (Unclear), you said to present something.
19

20
21 HEARING OFFICER: Yes, and we'll get into those details here
22 shortly. I'll let you explain those things. Okay, so you said you didn't quit.
23 You never notified the employer that you were quitting...
24

25
26 CLAIMANT: Right.
27

28
29 HEARING OFFICER: ...never gave them any advance notice
30 that you weren't returning...
31

32
33 CLAIMANT: Right.
34

35
36 HEARING OFFICER: And you weren't fired.
37

38
39 CLAIMANT: Right.
40

1 HEARING OFFICER:
2 not return to work?

Okay, so what happened? Why did you

3
4
5 CLAIMANT:

Honestly I was being detained.

6
7
8 HEARING OFFICER:

Okay, explain.

9
10
11 CLAIMANT:
12 paperwork for all of that...

Apparently, like I said I have all the

13
14
15 HEARING OFFICER:
16 words what happened?

Okay, just describe to me in your own

17
18
19 CLAIMANT:
20 wrong time. That's all I can really say about that right now. How do I
21 explain it better?

Wrong place, wrong time. Wrong place,

22
23
24 HEARING OFFICER:

Were you arrested?

25
26
27 CLAIMANT:
28 I was arrested.

Well no, I was being detained, and then

29
30
31 HEARING OFFICER:

Okay, so you were arrested.

32
33
34 CLAIMANT:

Right.

35
36
37 HEARING OFFICER:

All right, what day did this occur?

38
39
40 CLAIMANT:

1/03/14?

1 HEARING OFFICER: Okay. All right, and we don't unless you
2 just want to share we won't get into all of the details of that if you've been
3 told by an attorney not to talk about that.
4

5
6 CLAIMANT: I have no problem, I mean...
7

8
9 HEARING OFFICER: Okay, well go ahead and explain what
10 happened.
11

12
13 CLAIMANT: Honestly I was out at 5:00 in the
14 morning getting ready to go somewhere and just trying to get my, I was
15 trying to go to the Post Office to my P O Box because I had just came from
16 the hospital, because that day before I had already called out of work
17 because my friend's mother was in the hospital, well you know, friend,
18 boyfriend, girlfriend all of that, you know.
19

20
21 HEARING OFFICER: Okay, we're all adults here.
22

23
24 CLAIMANT: was in the hospital, so it was an
25 emergency because she was on the verge of dying, so I had to take a day
26 off and we were in the hospital the whole time; get ready to go home and I
27 go to the gas station, I get a couple things, leave and come back for some
28 cigarettes and then leave and go home, and I get ready to go to the P O
29 Box where I was about to go to Two Notch and then I was gonna go see
30 my mother, and on the way out of my neighborhood there was cops
31 everywhere and the next thing I know they take me and my roommate that I
32 had with me, and apparently something happened, I have no clue and I
33 have proof and everything to show that it was completely dropped, and I
34 was detained for almost six months.
35

36
37 HEARING OFFICER: Okay, detained. Were you in jail for six
38 months?
39
40

1 CLAIMANT: Yes.

2
3
4 HEARING OFFICER: Okay.

5
6
7 CLAIMANT: And I have, like I said I have the
8 expungement and everything showing that they completely dropped all of
9 the charges because there was no cause for them to even arrest me.

10
11
12 HEARING OFFICER: Okay. What were the charges?

13
14
15 CLAIMANT: Armed robbery.

16
17
18 HEARING OFFICER: All right. And was this a robbery that
19 occurred in the area where you were?

20
21
22 CLAIMANT: I live behind a store, and apparently
23 what they think, which I have no clue because like I said I had nothing to do
24 with it and I don't know anything about it, because I didn't know anything
25 about it. But they said that he had robbed the store or something.

26
27
28 HEARING OFFICER: So who is he?

29
30
31 CLAIMANT: It's my roommate.

32
33
34 HEARING OFFICER: Your roommate, okay.

35
36
37 CLAIMANT: My roommate, right. And like my other
38 roommate she's still at the hospital with her mother. So it's like was just
39 caught up in a whole bunch of crap. All I know is I was just being
40 surrounded.

1 HEARING OFFICER: So was your roommate later charged?

2
3
4 CLAIMANT: Right. Apparently, while we were,
5 because we were arrested at 5, we were held until about 2 before they told
6 us what was happening. Apparently during the whole thing he said he did it
7 or something. I'm like okay, like I had no clue about any of this because
8 when I got home he was sleep. So I woke him up because, you know, I'm
9 getting ready to go somewhere, let's go, because he doesn't work, you
10 know, he sleeps all day and he's depressed so I just wake him up, and let's
11 go, let's do something.

12
13
14 HEARING OFFICER: So were you then, okay he was charged
15 and you continued to be jailed and he was convicted of the crime?

16
17
18 CLAIMANT: Right.

19
20
21 HEARING OFFICER: And then you were later released
22 because you had no involvement, is that what you're telling me?

23
24
25 CLAIMANT: None at all.

26
27
28 HEARING OFFICER: Okay.

29
30
31 CLAIMANT: And like I said I have all of that and I
32 even have the whole thing going on against the county for that because it
33 was just not cool.

34
35
36 HEARING OFFICER: Okay, during this process did you
37 contact your employer?

38
39
40 CLAIMANT: I could not get in touch with anybody.

1 HEARING OFFICER: Were you in contact with family or
2 friends that could have sent a message to your employer?

3
4
5 CLAIMANT: Honestly, my family didn't know where I
6 lived and they didn't know anything about my jobs to be honest with you.

7
8
9 HEARING OFFICER: So you didn't make any efforts to
10 contact your employer in any way?

11
12
13 CLAIMANT: I didn't even know how to get a hold of
14 them except through my cell phone, which my cell phone is still actually at
15 this time still being held by the investigation, investigators (Unclear).

16
17
18 HEARING OFFICER: Okay. You said you were in jail for six
19 months, what date did you get out?

20
21
22 CLAIMANT: It was almost six months. It was about
23 May, almost mid-May maybe.

24
25
26 HEARING OFFICER: Mid-May 2014?

27
28
29 CLAIMANT: Right.

30
31
32 HEARING OFFICER: Okay. Did you contact your employer at
33 that time?

34
35
36 CLAIMANT: When I got out I did, and I told them, I
37 didn't tell them everything that was going on, but you know I told them a
38 little bit and I was still trying to work again and he told me it was okay to
39 come down and try to apply but they didn't have no spots open, but I told

1 him that, you know, that's the first thing I did was I contacted them when I
2 got out.

3
4
5 HEARING OFFICER: Okay, and at the time they didn't have
6 any available spots for you.

7
8
9 CLAIMANT: Right.

10
11
12 HEARING OFFICER: They had already replaced I guess your
13 position because you weren't available.

14
15
16 CLAIMANT: Right.

17
18
19 HEARING OFFICER: Okay, all right. And since then has you
20 worked with this employer?

21
22
23 CLAIMANT: No.

24
25
26 HEARING OFFICER: Okay. Have you had any further contact
27 with the employer at all, other than today?

28
29
30 CLAIMANT: No.

31
32
33 HEARING OFFICER: Okay. All right, did you request any sort
34 of leave of absence, paid or unpaid for these issues? I know you already
35 said that you didn't have any contact with them, but I'm just confirming that
36 for the record.

37
38
39 CLAIMANT: Okay. No.

1 HEARING OFFICER: Okay. Had you not been detained or
2 unavailable due to these issues would there have been continuing work
3 available for you?
4

5
6 CLAIMANT: Yes.
7

8
9 HEARING OFFICER: Had your hours been cut in any way?
10

11
12 CLAIMANT: No. Actually I was given more hours.
13

14
15 HEARING OFFICER: And when you contacted the employer
16 in mid-May would did you speak with?
17

18
19 CLAIMANT: I think it was Fred McCaskill.
20

21
22 HEARING OFFICER: Okay. And was that by telephone?
23

24
25 CLAIMANT: Yes. I had no transportation to get to
26 talk to him face to face.
27

28
29 HEARING OFFICER: Okay. I understand. All right Ms. Aviles
30 I don't think I have any further questions for you. Is there anything else
31 you'd like to share with me that you feel is important that you haven't
32 already told me?
33

34
35 CLAIMANT: Yeah, like I said they disqualified me I
36 guess for code was it 35, 41-35-120...
37

38
39 HEARING OFFICER: Mmm hmm.
40

1 CLAIMANT: And I had looked it up and the only that I
2 could see what they would even think about disqualifying me for will be
3 culpability, that's how you pronounce it?
4

5
6 HEARING OFFICER: Mmm hmm.
7

8
9 CLAIMANT: And it says that I would have to have
10 done something willfully or wanton disregard of anything (unclear). I put
11 myself in this place, and I did not put myself in this place. I believe I did not
12 put myself in this place, in this position willfully or recklessly in any type of
13 way.
14

15
16 HEARING OFFICER: Okay. Do you have some
17 documentation about your release, information for your case?
18

19
20 CLAIMANT: Yes.
21

22
23 HEARING OFFICER: Did you ever go to trial or anything like
24 that?
25

26
27 CLAIMANT: I didn't even have to go to trial. They
28 completely (unclear) it because they had no reasonable cause. Here's the
29 lawsuit against the county that this is what, no that's a different one. This is
30 what they charged me with. This is, those were the only numbers they
31 were able to let me get.
32

33
34 HEARING OFFICER: So these are telephone numbers of your
35 friends or witnesses?
36

37
38 CLAIMANT: Just of my family members that they
39 wouldn't let me get no phone numbers or anything out my phone.
40

1 HEARING OFFICER: Okay.

2
3
4 CLAIMANT: And this is the, to show that...

5
6
7 HEARING OFFICER: I'm going to allow, since you haven't
8 sent us copies of this prior to the hearing I am going to allow the employer
9 to review this information.

10
11
12 CLAIMANT: Okay.

13
14
15 HEARING OFFICER: Pass it to me and I'm gonna pass it
16 back. If there's something I need to make a copy of I'm gonna make a
17 copy of it.

18
19
20 CLAIMANT: Yeah, if you open it it tells you what it
21 was about and all of that.

22
23
24 HEARING OFFICER: Okay.

25
26
27 CLAIMANT: I know it's a little bad...I held on to it for
28 a long time.

29
30
31 HEARING OFFICER: Ah, okay, I should've opened it.

32
33
34 CLAIMANT: I held on to it a long time.

35
36
37 HEARING OFFICER: Okay, let me see that for a second.

1 CLAIMANT: That's the warrant. This is to show that
2 they completely did drop it. And I had already spoke to my attorney about
3 these dates right here, saying when I was found not guilty because that
4 date was completely wrong.

5
6
7 HEARING OFFICER: Okay.

8
9
10 CLAIMANT: Right there.

11
12
13 HEARING OFFICER: Here you go, if you'll look at that.

14
15
16 CLAIMANT: The first one. If you want I got another
17 copy right there. The date is completely...

18
19
20 HEARING OFFICER: It only shows...

21
22
23 CLAIMANT: I know, I contacted my lawyer about that
24 because I'm like, it says I was found not guilty on 3-16-2014 why was I held
25 so long, and he believes that it could've been possibly a typo.

26
27
28 HEARING OFFICER: Oh, and it maybe should say June 16th?

29
30
31 CLAIMANT: Right. And I told them I'm like...

32
33
34 HEARING OFFICER: May?

35
36
37 CLAIMANT: ...I'm like I got two different ones and
38 they're both stamped to show that I was found not guilty (unclear). Right,
39 because they tried to tell me that I drove my vehicle willfully and unlawfully,
40 and I'm like, "No, I did not do anything. I was alone.

1 HEARING OFFICER: So they were alleging that you were
2 maybe the getaway car.

3
4
5 CLAIMANT: But from everything that they see
6 everything was I guess by foot. I don't know it wasn't for like stuff all in the
7 woods or something, but that's what they were trying to do.

8
9
10 HEARING OFFICER: Okay. All right, give me the one with the
11 arrest back if you would. Do you have anything else, I'm gonna make
12 copies of these and give you back the originals. Do you have any other
13 relevant documents?

14
15
16 CLAIMANT: Not at this point because actually it's
17 still, it's an open case.

18
19
20 HEARING OFFICER: Okay. Well how is it, what do you
21 mean? I thought it was dismissed against you.

22
23
24 CLAIMANT: I'm talking about with the rest of the not
25 guilty stuff with me (unclear) it's over, but now I'm pressing against them...

26
27
28 HEARING OFFICER: Right, so you're filing a suit against the
29 county for unlawful detainment or something like that.

30
31
32 CLAIMANT: Right.

33
34
35 HEARING OFFICER: Okay. All right, I got you. Well I can
36 make a copy of at least the cover page of the lawsuit against the county.

37
38
39 CLAIMANT: Okay, this one is for, actually I was
40 attacked while I was in there so this is for the COs.

1 HEARING OFFICER: Okay, so that's something else.

2
3
4 CLAIMANT: Yes.

5
6
7 HEARING OFFICER: Do you have something showing that
8 you're now filing a suit against the county?
9

10
11 CLAIMANT: I don't. That's the one that's filing after
12 this one.
13

14
15 HEARING OFFICER: Okay, all right well that's fine. We have
16 your testimony about that. All right, everyone I'm going to take a moment
17 just to run right down the hallway to make copies of these documents. I am
18 going to keep the recorder running. While I am away there is to be
19 complete silent, no discussion amongst anyone in here, if there is it will be
20 caught on my recording here. All right, so this just to make it fair because
21 I'm not here to hear any of that testimony at this time, all right, thank you. I
22 will return and will I do I'm going to confirm that there was no discussion, all
23 right.
24

25
26 CLAIMANT: Yes ma'am.
27

28
29 HEARING OFFICER: Okay, I have returned. I would just like
30 to confirm with the parties that while I was away for that brief time that there
31 was not a discussion about any of the issues in my absences. Ms. Aviles,
32 do you confirm that?
33

34
35 CLAIMANT: Yes ma'am.
36

37
38 HEARING OFFICER: Please speak up.
39
40

1 CLAIMANT: Yes ma'am.

2
3
4 HEARING OFFICER: And Mr. McCaskill, do you confirm that
5 as well?
6

7
8 CLAIMANT: Yes ma'am.
9

10
11 HEARING OFFICER: All right, very good. All right, did you
12 have good opportunity to review everything?
13

14
15 EMPLOYER WITNESS: Yes ma'am.
16

17
18 HEARING OFFICER: Okay. All right, so I now have copies of
19 these documents that Ms. Aviles has just described to us on the record.
20 Those documents include her arrest warrant that she's already described
21 as well as her offense descriptions, as well as another county document
22 regarding the dismissal of her charges and the fact that she was found not
23 guilty for those charges and as well as expungement, a Statement of Offer
24 Expungment Order as well. All right, these documents are a total of 4
25 pages. I'd like to enter in these documents as previously described
26 collectively a total of 4 pages as Agency Exhibit #1. Ms. Aviles, do you
27 have any objection to me entering these documents into the record?
28

29
30 CLAIMANT: No ma'am.
31

32
33 HEARING OFFICER: Mr. McCaskill, do you have any
34 objections to me entering these documents into the record?
35

36
37 EMPLOYER WITNESS: No ma'am.
38
39

1 HEARING OFFICER: All right, since there are no objections I
2 do hereby enter in the document as previously described collectively a total
3 of 4 pages as Agency Exhibit #2, I'm sorry, Claimant Exhibit #1, I'm sorry.
4 All right, anything else you'd like to share with me Ms. Aviles?

5
6
7 CLAIMANT: No ma'am.
8
9

10 HEARING OFFICER: All right, thank you. All right, I don't
11 have any further questions for you. Mr. McCaskill you just heard the
12 testimony of Ms. Aviles. You now have an opportunity to ask her direct
13 questions about her testimony. I do want you to understand this is not your
14 time to give statements or testimony. You'll have an opportunity to do that
15 later just as she did earlier, okay. So do you have any direct questions
16 about anything she's just testified to you may ask her direct questions right
17 now.
18
19

20 EMPLOYER WITNESS: I don't have any questions.
21
22

23 HEARING OFFICER: Okay, very good. All right Mr.
24 McCaskill, please state and spell your first and last name for the record.
25
26

27 EMPLOYER WITNESS: Fredrick F-r-e-d-r-i-c-k McCaskill M-c-C-
28 a-s-k-i-l-l.
29
30

31 HEARING OFFICER: All right Mr. McCaskill if you would
32 please state your job title.
33
34

35 EMPLOYER WITNESS: Manager.
36
37

38 HEARING OFFICER: Are you familiar with the circumstances
39 regarding Ms. Aviles' separation from the employer?
40

1 EMPLOYER WITNESS: Yes ma'am.

2
3
4 HEARING OFFICER: I have her dates of employment as
5 August 1, 2014 through January 2, 2014, is that correct?
6

7
8 EMPLOYER WITNESS: No ma'am, I believe I have August 12,
9 '13 through January 2, 2014.
10

11
12 HEARING OFFICER: Okay.
13

14
15 EMPLOYER WITNESS: Her last day that she physically was at
16 work was on the 2nd, and the date that the paperwork, the separation notice
17 in her file was on the 6th.
18

19
20 HEARING OFFICER: All right. I guess tell me what
21 knowledge you have about these issues.
22

23
24 EMPLOYER WITNESS: On the, after the second I guess the
25 next day she was supposed to come into work, didn't hear anything from
26 her. I'd asked my night shift supervisor if he'd heard anything. Nobody
27 seemed to know where she was. Not the first time I've had an employee
28 just not come back. So I've had that happen before. I waited a couple
29 days to see if she would contact me. I asked on a regular basis had
30 anybody heard from her and nobody had. So on the 6th I sent in the
31 Employee Separation Notice for failed to return, no contact, which we
32 considered a voluntary resignation.
33

34
35 HEARING OFFICER: All right. So other than her not reporting
36 to work was she a good employee?
37

38
39 EMPLOYER WITNESS: Oh absolutely.
40

1 HEARING OFFICER: Okay. Have you had any contact with her
2 since January?
3

4
5 EMPLOYER WITNESS: She did contact me shortly after. She told me
6 she had been detained and she contacted me after she got out, after she
7 was released and told me every circumstance behind it, just told me why
8 she hadn't been to work and I explained to her that I had to replace her,
9 and to reply and if I had anything come open I'd give her an opportunity to
10 work for us.
11

12
13 HEARING OFFICER: Okay. So you happen to remember the
14 month and year when she contacted you again?
15

16
17 EMPLOYER WITNESS: No ma'am.
18

19
20 HEARING OFFICER: Does May, mid-May 2014 sound about
21 right?
22

23
24 EMPLOYER WITNESS: That's probably close.
25

26
27 HEARING OFFICER: Okay. All right, and has she since
28 reapplied?
29

30
31 EMPLOYER WITNESS: I'm not a 100% sure if she turned in her
32 application or not.
33

34
35 HEARING OFFICER: And if she does reapply do you have
36 positions available for her?
37

38
39 EMPLOYER WITNESS: At this time I do not.
40

1 HEARING OFFICER: Okay. Once you do have some
2 positions available would you be willing to hire her back?

3
4
5 EMPLOYER WITNESS: Oh yeah.

6
7
8 HEARING OFFICER: Okay. All right, did she ever request
9 any sort of leave of absence?

10
11
12 EMPLOYER WITNESS: No ma'am.

13
14
15 HEARING OFFICER: And did you all discharge her in any
16 way? I mean I realize that you all had to remove her from your schedule
17 and things like that because you had not heard from her, but did you all
18 discharge her for any cause or misconduct or wrongdoing or anything like
19 that?

20
21
22 EMPLOYER WITNESS: No ma'am.

23
24
25 HEARING OFFICER: Okay. And had she returned to work for
26 her I guess scheduled shifts would there have been continued work
27 available for her?

28
29
30 EMPLOYER WITNESS: Yes ma'am.

31
32
33 HEARING OFFICER: All right. Okay Mr. McCaskill, I don't
34 think I have any further questions for you. Is there anything else that you
35 would like to share with me that you feel is important that you haven't
36 already told me today?

37
38
39 EMPLOYER WITNESS: No.

1 HEARING OFFICER: All right, thank you. Ms. Aviles, do you
2 have any direct questions for Mr. McCaskill regarding his testimony?

3
4
5 CLAIMANT: For the record...

6
7
8 HEARING OFFICER: Just...

9
10
11 CLAIMANT: I know you said you had people...

12
13
14 HEARING OFFICER: Ms. Aviles...

15
16
17 CLAIMANT: You said I could ask him a question.

18
19
20 HEARING OFFICER: Yes, but I have some rules for your
21 questions.

22
23
24 CLAIMANT: Okay.

25
26
27 HEARING OFFICER: All right now...

28
29
30 CLAIMANT: Well then there's no point of asking a
31 question then.

32
33
34 HEARING OFFICER: If you would (unclear) allow me to give
35 you some rules for the questions okay. Okay now questions must be in
36 question form. You cannot make any statements or testimony because
37 you've already had an opportunity to make your statements and testimony
38 during your own testimony, okay. Questions must be in question form and
39 you must only ask him one question at a time and give him full opportunity
40 to answer the question. You can only ask him questions about things that

1 he actually discussed in his testimony. You cannot go outside of that. If
2 there's something person that you'd like to discuss with Mr. McCaskill
3 outside of this hearing that is fine, but it must relate to what he actually
4 discussed in his testimony. All right, if you need some guidance with
5 asking questions, questions begin with who, what, when, where, why,
6 which, how is, did, do. You can start with one of those question words and
7 it in that way. But you cannot make any further statements, okay. All right,
8 so if you would you may go ahead and ask a question using those rules,
9 okay.

10
11
12 CLAIMANT: I'm good.

13
14
15 HEARING OFFICER: Are you sure, because I want you to
16 have an opportunity to ask questions for the record if you'd like.

17
18
19 CLAIMANT: I was just gonna say the same thing that
20 he said in his statement. He said that he had people who have not showed
21 up before and I was gonna ask him have I ever been one of those people
22 that has never showed up before?

23
24
25 HEARING OFFICER: Okay, well go ahead and ask the
26 question that's fine. That's okay, I understand that, you know, for claimants
27 and employers alike sometimes this can be a difficult time, okay I do
28 understand, but we're here to try to, you know, assist all the parties if
29 possible, all right. So ahead and ask your question if you would to Mr...

30
31
32 CLAIMANT: I have no more questions.

33
34
35 HEARING OFFICER: Do you hear the question Mr.
36 McCaskill?

37
38
39 EMPLOYER WITNESS: Yes I did.

1 HEARING OFFICER: Okay, would you go ahead and answer
2 if you don't mind?

3
4
5 EMPLOYER WITNESS: I have, she is not the type person who
6 would just or lay out of work. She had never just not come into to work
7 before.

8
9
10 HEARING OFFICER: Okay.

11
12
13 EMPLOYER WITNESS: ...have to say no in answer to the
14 question that was not one of those types of people.

15
16
17 HEARING OFFICER: All right, thank you. Do you have any
18 further questions Ms. Aviles?

19
20
21 CLAIMANT: [Inaudible].

22
23
24 HEARING OFFICER: Are you sure?

25
26
27 CLAIMANT: I'm sure.

28
29
30 HEARING OFFICER: All right, very good. Okay Mr.
31 McCaskill, any further statements you'd like to make?

32
33
34 EMPLOYER WITNESS: No ma'am.

35
36
37 HEARING OFFICER: All right. And Ms. Aviles if you have
38 some further statements you'd like to make at this time I'll allow you to do
39 so.
40

1 CLAIMANT:

No ma'am.

2
3
4 HEARING OFFICER:

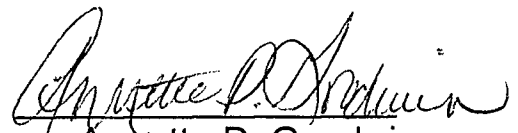
All right. Since there are no further
5 questions and no additional testimony I hereby declare this hearing closed.
6
7

8 **HEARING CLOSED.**
9
10

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

This is to certify that the following is a true and correct copy of transcript of testimony transcribed to the best of my ability.


Annette D. Goodwin

SWORN to before me this the

12th day of January, 2015

Brenda Spires

Notary Public for South Carolina

My Commission Expires: March 12, 2019

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

1 CYNTHIA L AVILES

DATE OF THIS NOTICE 08/18/14

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION ENDS	
CYNTHIA L AVILES					08/03/14	INDEF	
WFC. NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS
400	I	01	\$ 326.00	\$ 6520.00	\$ 0.00	\$ 6520.00	08/02/15

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 LEFT YOUR MOST RECENT BONA FIDE EMPLOYER DUE TO PERSONAL REASONS. YOUR LEAVING IS CONSIDERED
1 TO BE WITHOUT GOOD CAUSE UNDER THE SOUTH CAROLINA CODE SECTION 41-35-120. YOU ARE DISQUALIFIED
1 FROM 08/03/14 AND UNTIL YOU RETURN TO WORK AND EARN AT LEAST EIGHT TIMES YOUR WEEKLY BENEFIT
1 AMOUNT.

1 THE SEPARATION OCCURRED DUE TO CIRCUMSTANCES WHICH PREVENTED YOU FROM REPORTING TO WORK.

EXHIBIT

A# 1

FILE NO: 1414321

1 _____ LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

1 MAILING DATE 08/19/2014

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.

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

Notice of Appeal to Appeal Tribunal

Claimant's Name Cynthia Aviles Social Security Number _____

Claimant's Address _____

Telephone _____

Employer's Name Accusweep Services Telephone 803-771-2757

Employer's Address 2757 Rosewood Dr Columbia SC 29205

Please refer to Determination by Claims Adjudicator to complete section below

On 8/22/2014 I received the determination mailed 8/19/2014
(Date of receipt) (Mailing date on Notice)

I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons
I did not leave my most recent employer due to personal reasons

AUG 28 2014

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

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

CA
(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 appeal.)

SUBPOENA ☐ YES ☒ NO Who is filing appeal ☒ Claimant ☐ Employer

Signature _____

Title Claimant

Date Aug 26 2014

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



SC Department of Employment and Workforce Initial Claims Application

Filing location: Home
Office location: COLUMBIA
Claim creator: Claimant
Worked under a different name: No

Ethnicity

Claimant Hispanic or Latino: Yes

Claimant

Claimant's name: Cynthia L Aviles
Date of birth:
Gender: Female
US citizen: Yes

Aliases

Alias type: SocialSecurityCard
Name: Cynthia Aviles
Alias type: Current
Name: Cynthia L Aviles

Race(s)

* White

Addresses

Address type: physical
Address:
United States address: Yes

Address type: mailing
Address:
United States address: Yes

Telephone Number

Telephone number type: Home
Telephone number: 803-447-6299 Ext:

Alien Information

Alien card number: None
Expiration date: No

Veteran Information

Service branch: Army

Date entered: 6/30/2008

Date released: 7/1/2009

Character of service: General - Under Honorable Conditions

Reason for separation: misconduct

Completed first full term of service: No

In the National Guard or a Reserve Unit and served on active No
duty during a period of war or in a campaign or expedition:

Served on active duty in the military for a period of more than 180 days: Yes

Separated from military in the last 48 months: No

Accrued days lost: No

Accrued leave: 0

(Item #16 on DD-214)

Pay grade: e1

(Item #4b on DD-214)

Retired from military service: No

Have a service related disability: No

Percent disabled: 0%

Awarded a campaign badge or ribbon for service during a conflict: No

Badges and ribbons: None

Will receive pension: No

Worked in the last 18 months: Yes

Employer Name: ACCUSWEEP SERVICES INC

Employer delivery address: PO BOX 21456

Employer city: COLUMBIA

Employer state: SC

Employer zip code: 29221

Employer telephone number: 8037505747

Bona fide employer: Yes

Worked for this employer: Yes

Worked part-time only: No

Hire date: 8/1/2013

Termination date: 1/2/2014

Gross amount made during claim filing week: \$0.00

Type of work: GROUND MAINTENANCE WORKERS, ALL OTHER

Earned at least \$2,608.00: Yes

Occupational license required: No

Job city: columbia

Job state: South Carolina

Job duties: street sweeping proprieties

Child or spouse of employer: No

Owner or corporate officer of a business: No

Accepting all work offered by the employer: Yes

Initiated reduction in work hours: No

Discharge reason: Discharged

Discharge explanation: was considered a no-call no-show due to matters I could not control

Discharge

Discharge Reason: Other

Date of final incident: 1/2/2014

Final incident that caused discharge:

I was being detained by the SC investigation unit for something I had no hand or knowledge of which caused me to miss work for the next couple months all charges were dismissed

Discharge date: 1/2/2014

Discharged by: Fred McCaskill

Title of person who discharged you: Manager

Violated company policy: No

Final incident impacted employer's business: No

Received prior warnings: No

Federal employer: No

Received SF8 form: No

Payroll office address based on SF8: No



SC Department of Employment and Workforce FFATNET Report

AVILES, CYNTHIA

Gender: F

cindyaviles1@hotmail.com

Date of Birth:

Claim Office: 400

Effective Date: 8/3/2014

Entered On: 8/5/2014

BYE: 8/2/2015

WBA: \$326.00

Interview Appointments:

Issues:

Employers:

Employer Name: ACCUSWEEP
SERVICES INC

Bonafide employer: Yes

Hire date: 8/12/2013

Termination date: 1/2/2014

Earned at least \$2,608.00: No

Owner or corporate officer of a business: No

Employer Acct Number: 281669

NAICS Code: 561720550

Claimant Separation Reason: Discharged

Employer Separation Reason: Voluntary Quit

Total Wages: \$11,705.34

Employer Issues:

Kind Description

Discharge

Create Date

8/4/2014 12:00:00 AM

Last Modified Time

8/14/2014 9:33:32 AM

Attachment Info

Description

Created Time

Upload Date

Contact Attempts:

Claimant Rebuttals:

Employer Rebuttals:

History Events:

FactFindingIssueCreated at 8/4/2014 2:58:03 PM by Cynthia L Aviles
(PUBLIC\CynthiaAviles): Created 'Discharge' Fact Finding Issue for employer
'ACCUSWEEP SERVICES INC' with status Submitted as part of submit Claim
Application.

FactFindingCreated at 8/4/2014 2:58:03 PM by Cynthia L Aviles
(PUBLIC\CynthiaAviles): Fact Finding was created as part of submitting a Claim
Application by Cynthia L Aviles(PUBLIC\CynthiaAviles)

StatusChanged at 8/5/2014 12:54:53 PM by SCES\BBoston: Status changed from
Initial Claim to Review by the trigger Claim Submit to ABPS.

CheckOut at 8/14/2014 9:32:49 AM by SCES\JMcClary: Fact Finding checked out.

FactFindingIssueStatusChange at 8/14/2014 9:33:32 AM by SCES\JMcClary: Fact
Finding Issue " Status changed from 'Submitted' to 'Reviewed' by the trigger 'Review
Complete'. Employer Name: ACCUSWEEP SERVICES INC

Notes:



SC Department of Employment and Workforce Discharge Report

SSN:

Claimant's name: Cynthia L Aviles

Date of birth:

Local office: 400

Benefit year begin date: 8/3/2014

Benefit year end date: 8/2/2015

Claim type: New

Potentially Eligible: No

Employer name: ACCUSWEEP SERVICES INC

Employer Account #:

Hire date: 8/1/2013

Termination date: 1/2/2014

Discharge reason: Discharged

Earned at least \$2608: Yes

Bona fide: Yes

Discharge

Discharge Reason: Other

Date of final incident: 1/2/2014

Final incident that caused discharge:

I was being detained by the SC investigation unit for something I had no hand or knowledge of which caused me to miss work for the next couple months all charges were dismissed

Discharge date: 1/2/2014

Discharged by: Fred McCaskill

Title of person who discharged you: Manager

Violated company policy: No

Final incident impacted employer's business: No

Received prior warnings: No

08/12/2014 09:14

8033549796

PAGE 02/02

37/T/02
By 8/2/15

MASK CONSULTANTS LLC
SPECIALISTS IN WAGE-HOUR PROBLEMS
HANDLING OF UNEMPLOYMENT CLAIMS
PERSONNEL POLICY AND PRACTICE
PHONE (803)354-9797 FAX (803)354-9796
P O BOX 21436
COLUMBIA, SC 29221
WWW.MASKCONSULTANTSSC.COM

August 12, 2014

RECEIVED

S C. Dept of Employment and Workforce
700 Taylor Street
P O Box 995
Columbia, SC 29202

AUG 12 2014

DEPT. OF UI

IN RE Cynthia L Aviles
SS NO

This is in reference to the claim filed at your local unemployment office on NET-101 dated 08-06-14

The claimant was last employed from 08-12-13 to 01-02-14 and has earned at least \$2608

The claimant voluntarily quit available work with no notice given.

NAME AND PHONE NUMBERS OF PERSON TO BE CONTACTED FOR
ADDITIONAL INFORMATION

We are not and will not pay this claimant a pension or retirement pay

Contact Name Fred McCaskill
Telephone 803-201-1765
Employer Accusweep Services, Inc
Account #. 281669

Sincerely,

Mike

Mike Calkins

MC/ct

ARREST WARRANT

2014A4010200050

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

1401010504 R4

against

Cynthia Lynn Aviles

Address: 2123 Bentley Ct

Columbia, SC 29210-

Phone: SSN: Sex: F Race: W Height: 5 7 Weight: 120

DL State: SC DL #: ID NO DL

DOB: Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Holly Wagner - 1209

Offense: Armed Robbery

Offense Code: 0026

Code/Ordinance Sec: 16-11-0330(B)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Cynthia Aviles

on January 5 2014

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions

1701 Main Street

P O Box 192

Columbia, SC 29202

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant Holly Wagner

being duly sworn deposes and says that defendant Cynthia Lynn Aviles

did within this county and state on or about 1/4/2014

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE: Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 1/4/2014 while at 806 Broad River Rd in the Dutch Fork Magisterial District of Richland County, it is believed that the defendant did commit the crime of Armed Robbery because she willfully and unlawfully drove a 1989 four door Buick (SC tag IHZ-327 while her co-defendant armed with a silver and black semi-auto handgun robbed the victim of several thousand dollars in currency. The defendant and co-defendant were apprehended a short time later and the defendant was identified by the victim. Affiant and others are witness to prove the same.

EXHIBIT

C#: 1

FILE NO: 1414321

Signature of Affiant

Holly Wagner

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address

5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone

(803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/4/2014

defendant Cynthia Lynn Aviles

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE: Armed Robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 1/5/2014

Signature of Issuing Judge

M R Metts

Judge Code: 7221

(L.S.)

Judge's Address

Judge's Telephone

(803)576-3284

Issuing Court:

☐ Magistrate☐ Municipal☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

CHECKLIST

TRIAL COURT: GENERAL SESSIONS

Cynthia L. Smith
Name of Defendant

CASE NUMBER(S)

OFFENSE DESCRIPTION(S)

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must be provided a completed copy of this form. ☐ BAIL PROCEEDING/☐ FIRST APPEARANCE (NON-BAILABLE OFFENSES)

1. Form used at bail proceeding
☐ a. Bond Form I (personal recognizance) ☒ b. Bond Form II (surety, cash, percentage) ☐ c. None (Non-Bailable Offense)
2. For cases in which bond is set, defendant was informed:
☒ a. Warrant for arrest will be issued for violation of any condition of bail bond order
☒ b. His right and obligation to be present at a trial and that trial will proceed in his absence if he fails to attend
☒ c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days
☒ a. Orally ☒ b. In writing [NOTE: Defendant must be informed of right both orally and in writing]
4. ☒ a. Defendant was informed of the right to trial by jury
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate and municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
☒ a. Charges against defendant and nature of the charges
☒ b. Right to counsel and right to court appointed counsel if financially unable to employ counsel
☐ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before the Richland County Clerk of Court's Office located at 1701 Main Street, Room 205, Columbia, S.C. for indigency screening. Defendant is responsible for a statutory fee of \$ 40.00 for indigency screening.
6. ☒ a. In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
7. ☒ a. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

Sunday, January 05, 2014
Bond Hearing Date

CS
JUDGE

K.R. Melts

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS
ORDER FOR DESTRUCTION OF ARREST RECORDS

THE STATE OF SOUTH CAROLINA

vs.

JEANETTE W. McBRIDE
C.C.P. & G.S.

CYNTHIA LYNN AVILES
Defendant

Race W Sex F Age 24
DOB SSN

SID # 2085158

Charges were disposed of in the court indicated below:

☐ Magistrate ☐ Municipal ☒ General Sessions

Basel Court / Prelims

AKA

IT APPEARS that the defendant is entitled to have all records relating to this offense expunged and destroyed according to the applicable section of the South Carolina Code of Laws indicated below:

Warrant/GS No. 2014A4010200050 Date of Arrest 01/05/2014 Place of Arrest RICHLAND County, S.C.

Arrest Charge Armed Robbery

- ☒ § 17-1-40. The charge was dismissed, *not prossed* or the defendant was found not guilty on 03/16/2014.
- ☐ § 17-22-150(a). The charge was *not prossed* on by the Solicitor because the defendant successfully completed the Pre-Trial Intervention Program. (*PTI Director must attest to eligibility for expungement*).
- ☐ § 17-22-330(A). The charge was *not prossed* on by the Solicitor because the defendant successfully completed the Traffic Education Program. (*TEP Director must attest to eligibility for expungement*).
- ☐ § 17-22-530(A). The charge was *not prossed* on by the Solicitor because the defendant successfully completed the Alcohol Education Program. (*AEP Director must attest to eligibility for expungement*).
- ☐ § 34-11-90(e). The defendant was convicted of a first offense misdemeanor under the Fraudulent Check Law on and no additional criminal conviction as defined by § 34-11-90(e) has taken place in one year from date of conviction.
- ☐ § 44-53-450(b). The defendant was charged with first offense simple possession of marijuana or hashish on , received a conditional discharge and has successfully complied with the terms as set forth by the court.
- ☐ § 22-5-910. The defendant was convicted of a first offense in magistrate, municipal or general sessions court for a crime carrying a penalty of not more than 30 days imprisonment or a fine of \$1,000, or both, on , that offense did not involve the exceptions enumerated in § 22-5-910, and no additional criminal conviction as defined by § 22-5-910 has taken place within three years from date of conviction or five years from the date of conviction for criminal domestic violence. (*Summary Court Judge must attest to eligibility*).
- ☐ § 22-5-920. The defendant was convicted of a first offense as a youthful offender on , that offense did not involve the exceptions enumerated in § 22-5-920, and no additional criminal conviction as defined by § 22-5-920 has taken place during a five-year period following completion of his sentence, including probation and parole as a youthful offender.
- ☐ § 56-5-750(F). The defendant was convicted of a misdemeanor first offense failure to stop motor vehicle on and no additional criminal conviction has taken place for three years after completion of the sentence.

SLED verifies the offense listed above is eligible for expungement: ☐ Yes ☐ No SLED Date

IT IS ORDERED that all records relating to such arrest and subsequent discharge pursuant to the above-referenced section be dismissed, expunged and immediately destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except nonpublic information retained on each person accepted for Pre-Trial Intervention pursuant to § 17-22-130, nonpublic information retained by SC Law Enforcement Division (SLED) pursuant to § 34-11-90(e), nonpublic information retained by the Department of Narcotic and Dangerous Drugs Under SLED pursuant to § 44-53-450, nonpublic information retained by SLED pursuant to § 22-5-910 and § 22-5-920, and nonpublic information retained by SLED and Department of Public Safety/Department of Motor Vehicles pursuant to § 56-5-750 (F), § 17-22-330(A) and § 17-22-530(A), as well as any nonpublic records retained by SC Prosecution Coordination Commission as required by law.

Solicitor: ☒ Consents

☐ Declines to Consent

☐ Determined ineligible for expungement

Circuit Solicitor

Signed this 9th day of June, 2014

Re Hood

CERTIFIED TRUE COPY
Circuit Court Judge

I attest that the defendant is eligible for expungement pursuant to S.C. Code §17-22-150(a) (successful completion of PTI), §17-22-330(A) (successful completion of TEP), §17-22-530(A) (successful completion of AEP), § 22-5-910 (summary court conviction) or § 44-53-450(b) (conditional discharge).

Director PTI / Director TEP / Director AEP / Summary Court Judge (circle one)

Defendant / Attorney for Defendant (circle one)

The State of South Carolina

Dan Johnson
Solicitor

Paulette Edwards
Deputy Solicitor



Daniel R. Goldberg
Deputy Solicitor

Brett Perry
Deputy Solicitor

SOLICITOR'S OFFICE
Fifth Judicial Circuit

DIVERSION PROGRAMS & COMMUNITY SERVICES

Alcohol Education Program (AEP) • Expungement • Juvenile Court Alternative Program (JCAP) •
Juvenile Pretrial Intervention (JPTI) • Pretrial Intervention (PTI) • Traffic Education Program (TEP) • Worthless Check Program

Dear Expungement Division Applicant:

Thank you for allowing us the opportunity to serve you. Enclosed please find a certified and true copy of your Expungement Order(s) titled Order for Destruction of Arrest Records. Expungement is the court-ordered removal of the record of a charge, arrest, conviction and/or disposition from an individual's criminal record. It is also the destruction of all legal records related to such charge, arrest, conviction or disposition.

The enclosed Order has been filed and provided to any municipal, county and/or state entity or individual which created and/or is in possession of any evidence of, or record related to your arrest, charge, conviction and/or disposition. We have now closed your file in the Solicitor's Office – Expungement Division.

Please allow at least four (4) weeks from the date that you receive this letter and then check the Public Index [www.richlandonline.com; click on Public Index Search] and your SLED Report to ensure that all charges/convictions listed in your Order(s) have been removed. To access your SLED report online, go to www.sled.sc.gov, click on Criminal Records Check and follow the directions to pay \$25 via credit card. You may also obtain this report via mail by sending your request to SLED at PO Box 21398, Columbia, SC 29221. Your request must include your name, date of birth, social security number, a money order for \$25 payable to SLED, and a stamped, self-addressed envelope that SLED will use to return your report to you.

Sincerely,

Lisa Coleman

Lisa Coleman
Expungement Director
Fifth Judicial Circuit

Enc:

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

DECISION OF APPEAL TRIBUNAL

Hearing Date: September 24, 2014

CYNTHIA L. AVILES

)
)
)
)

CLAIMANT

ACCUSWEEP SERVICES INC)
C/O HOMER MASK CONSULTANT SERVICE))
PO BOX 21456)
COLUMBIA, SC 29221)

EMPLOYER

APPELLANT: Claimant

SS NO:

APPEARANCES

FOR THE Present
CLAIMANT:

FOR THE Present
EMPLOYER: 1 Witness

FINDINGS OF FACT

The issue in this case is whether the claimant voluntarily quit employment with good cause.

The claimant appealed the determination mailed August 19, 2014, which held her indefinitely disqualified from receiving benefits effective August 3, 2014, upon a finding she voluntarily quit employment without good cause.

The claimant worked with the employer from August 1, 2013, to January 2, 2014, most recently as a street sweeper and blower. The claimant last reported to work for the employer on January 2, 2014. On or about January 3, 2014, the claimant failed to report for her scheduled shift and failed to call in. After several days of not hearing from the claimant, the employer determined that she had abandoned her job and replaced her position. The claimant failed to report to work because she was detained, arrested, and jailed for a crime that she did not commit. She was unable to contact her employer because she did not have access to her cell phone or her employer's phone number after her phone and other belongings were taken into custody by law enforcement. After months in the county detention center, she was finally exonerated of all charges, and her case was dismissed on or about June 19, 2014. The claimant then contacted her employer and explained the reasons for her prolonged absence. The employer informed her that her position had been refilled, but she could re-apply for available positions in the future. The employer did not have any available positions at the time of the claimant's inquiry. The employer acknowledged that the claimant was a good employee and was sympathetic towards her unfortunate circumstances.

REASONS

S.C. Code Ann. §41-27-20 requires that unemployment benefits to be set aside for persons unemployed through no fault of their own.

S.C. Code Ann. § 41-35-120(1) requires an indefinite disqualification from benefits when the Department finds the claimant has voluntarily quit without good cause attributable to the employment. The disqualification continues until the claimant returns to work and earns eight times the weekly benefit amount of the claim in covered employment.

“Good cause” refers to a material, substantial change in the conditions of employment, or other circumstances directly attributable to the employment, which would cause a reasonable person to become totally unemployed rather than continue working.

The claimant is not at fault in her separation. The record establishes that the claimant failed to report for work as a result of a situation that was completely outside of her control. The claimant's substantive testimony and documented evidence reveals that her extended absence from work was not due to a voluntary resignation or any wrongdoing on her part. Therefore, the Tribunal finds that the claimant was separated from the employer for non-disqualifying reasons, and she will be eligible to receive benefits.

DECISION

The Tribunal holds the claimant eligible for benefits without disqualification effective August 3, 2014, upon finding she was separated from the employer for non-disqualifying reasons. This decision reverses the determination mailed August 19, 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.

Connie Streater

Connie Streater
Administrative Hearing Officer

CS : vlr

Decision Mailed: September 26, 2014 

Mailed on the above Date By: _____

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

NOTICE OF EMPLOYER APPEAL TO THE APPELLATE PANEL

DATE: October 8, 2014

APPEAL NO: 14321-141640

CLAIMANT: Cynthia L. Aviles

LIABLE EMPLOYER: Accusweep Services, Inc.
c/o Homer Mask Consultant Service
P.O. Box 21456
Columbia, SC 29221

SEPARATING EMPLOYER:

The employer 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

Form App-111 NET Rev 2/13
Catalog#: 05172Appeal No. 14/14321**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE**
P. O. BOX 1752, COLUMBIA, SC 29202**APPLICATION FOR LEAVE TO APPEAL TO THE APPELLATE PANEL**Claimant's Name Cynthia L. Aviles

SSN _____

Address _____

Telephone Number _____

Employer's Name Accusweep Services, Inc.Address P. O. Drawer 211789 Cola, SC

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

On 09-29-14, I received Appeal Tribunal Decision Number 2014-A-13549

(Date of Receipt)

mailed to me on 09-26-14

(Mailing Date on Decision)

I ask for review of the record on the following grounds:

The claimant did not report for work or contact us regarding her absence from work for 5 months. Although the claimant contends that she was falsely arrested, the company is not at fault, she failed to report for work or call for five months and we had to replace her as we have a business to run.

* 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: _____

Title: OwnerDate 10/1/14

SCDEW

OCT 02

SCDEW

Does claimant need an interpreter? ☐ YES ☐ NO If yes, what language/dialect?Claimant is ☐ Deaf ☐ Mute

HIGHER AUTHORITY APPEALS

OCT 02 2014

HIGHER AUTHORITY APPEALS

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

THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

APPEAL FROM
South Carolina Department of Employment and Workforce
Deborah Brooks Durden, Administrative Law Judge

Docket No. 14-ALJ-22-0597-AP

Cynthia L. Aviles, ... Appellant,

v.

South Carolina Department of Employment and
Workforce and Accusweep Services Respondent.

BRIEF OF APPELLANT

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ATTORNEY FOR THE APPELLANT

TABLE OF CONTENTS

Table of Authorities	3
Statement of Issue on Appeal	4
Statement of the Case	5
Statement of the Facts	6
Arguments	7
I. T	
HE DEPARTMENT ERRED IN FINDING THAT AVILES VOLUNTARILY QUIT WHEN SHE WAS ARRESTED WITHOUT PROBABLE CAUSE AND UNABLE TO COMMUNICATE WITH HER EMPLOYER.	7
Conclusion	10

TABLE OF AUTHORITIES

Case law

Friends of the Earth v. PSC of S.C., 387 S.C. 360, 366 (S.C. 2010)..... 8

Lark v. Bi-Lo, Inc., 276 S.C. 130 (1981)..... 8

Renney v. Dobbs House, Inc., 275 S.C. 562 (1981)..... 9

*Ronnie Brunson v. South Carolina Department of Employment and Workforce and
New Generations Home Care, Inc.* Docket No. 13-ALJ-22-0097-AP (Feb. 28, 2014)
..... 9

*Rosenberger v. South Carolina Department of Employment and Wordforce and Corey
Hinson & Associates, LLC.* Docket No. 13-ALJ-22-0429-AP (March 20, 2014)... 9

South Carolina Dep't of Mental Retardation v. Glenn, 291 S.C. 279, 281 (1987).. 9

STATEMENT OF ISSUE ON APPEAL

- I. THE DEPARTMENT ERRED IN FINDING THAT CYNTHIA AVILES VOLUNTARILY QUIT WHEN SHE WAS ARRESTED WITHOUT PROBABLE CAUSE AND UNABLE TO COMMUNICATE WITH HER EMPLOYER.

STATEMENT OF THE CASE

Cynthia Aviles, a street sweeper for Accusweep Services, Inc., was arrested without probable cause and held in the county detention center for six months. Cynthia was unable to communicate with her employer while being detained. The Department of Employment and Workforce found she voluntarily quit her job because of her failure to communicate with her employer despite a lack of any evidence supporting the failure was voluntarily.

This appeal timely follows.

STATEMENT OF THE FACTS

On August 1, 2013, Cynthia Aviles began her job with Accusweep Services, Incorporated. On January 4, 2014, Cynthia was arrested in Richland County on a charge of Armed Robbery. Because of the arrest, Cynthia was transported to the Richland County Detention Center where she remained until the case was dismissed for lack of probable cause against her in May.

While Cynthia was detained, she was unable to access her cell phone which contained the number for Accusweep. Nor was she in communication with family who could have called Accusweep on her behalf. When Cynthia did not show up for work for a couple of shifts, Accusweep assumed she had quit and filed termination papers.

Accusweep Services, Inc. confirmed at the Appeal Tribunal Hearing the only reason Cynthia no longer worked for them was because she did not show up for work after she was arrested.

The Tribunal held Cynthia was eligible for benefits finding Cynthia was separated for non-disqualifying reasons. Accusweep Services, Inc. appealed the Tribunal decision. The Appellate Panel reversed the Tribunal's decision finding Cynthia was not credible when she claimed she was unable to maintain contact with her employer.

ARGUMENT

I. THE DEPARTMENT ERRED IN FINDING THAT CYNTHIA VOLUNTARILY QUIT WHEN SHE WAS ARRESTED WITHOUT PROBABLE CAUSE AND UNABLE TO COMMUNICATE WITH HER EMPLOYER.

It is the declared public policy of South Carolina that a worker is eligible for unemployment benefits when the person is unemployed through no fault of their own. S.C. Code 41-27-20. However, if the Department finds a worker "left voluntarily, without good cause," the worker is ineligible for benefits.

Cynthia Aviles did not voluntarily leave her position at Accusweep Services, Inc. Cynthia was arrested without probable cause. She was handcuffed by the police, questioned and finally detained in connection with an armed robbery. Cynthia maintained her innocence throughout the entire process. Cynthia was held in the Richland County Detention Center for four and a half months on an unreachable \$100,000 bond. While being detained she was beaten up and assaulted by a correctional officer.

It is common knowledge that during the arrest process, a person's personal property is taken by the arresting officer. Cynthia's personal property contained her cell phone which included her employer's contact information. Cynthia was unable to call her boss. In fact she "could not get in touch with anyone." (p. 32, line 40). Her family was unaware of her situation, nor were they aware she was working at Accusweep Services, Inc. (p. 33, line 5-6). Not until after the indictment was "No-Billed" and Cynthia was released, was she able to contact her boss, which was the "first thing" she did when she got out of jail. (p. 34, line 1). When Cynthia was finally released and able to

communicate with her boss, she was informed her position had been filled. (p. 34, line 9).

At the Tribunal Hearing, Fred McCaskill, manager of Accusweep Services, Inc., confirmed the only reason Cynthia no longer worked for him was because she failed to show up for work after her arrest. When asked if she was otherwise a good employee, McCaskill responded "oh absolutely." (p. 43, line 39). McCaskill also confirmed Cynthia contacted him after she was released, told him about the arrest, and that he informed her the position was already filled. (p. 44, lines 5-10). McCaskill told the Hearing Officer that if he had a position available he would be willing to hire her back. (p. 45, lines 1-5). Finally, McCaskill confirmed that Cynthia "had never just not come into work before." (p. 48, lines 6-7).

The Appellate Panel found Cynthia's testimony not to be credible that she was unable to communicate with Accusweep Services. The Appellate Panel did not disclose why Cynthia's uncontradicted testimony was unbelievable, nor was there any reference to the transcript to support the position.

In applying a substantial evidence test, an appellate court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, unless its findings or conclusions are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. *Friends of the Earth v. PSC of S.C.*, 387 S.C. 360, 366 (S.C. 2010). Under the substantial evidence rule, a reviewing court will not overturn a finding of fact by an administrative agency "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130 (1981).

There is nothing in the record containing "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" that Cynthia could have communicated with her employer. *South Carolina Dep't of Mental Retardation v. Glenn*, 291 S.C. 279, 281 (1987). Further, there is no evidence in the record to attack Cynthia's credibility as a witness. Nearly every aspect of her testimony was supported and confirmed either by documentation or testimony from McCaskill, nothing was contradicted. Even the Hearing Officer who had the direct ability to view Cynthia determined her testimony to be truthful.

The Appellate Panel's decision should be reversed due to either a lack of substantial evidence supporting the decision or for an abuse of discretion. An abuse of discretion occurs when the judge's ruling ... is without evidentiary support. *Renney v. Dobbs House, Inc.*, 275 S.C. 562 (1981).

Alternatively the decision of the Appellate Panel should be reversed because it is also futile. Even had Cynthia been physically able to communicate her situation to her employer, it is unlikely there would have been much difference in outcome. Cynthia was detained for four and a half months; Accusweep made it clear the position needed to be filled. This Court has noted that "insurmountable commuting problems can constitute good cause where the problems are not due to any fault of the employee." *Ronnie Brunson v. South Carolina Department of Employment and Workforce and New Generations Home Care, Inc.* Docket No. 13-ALJ-22-0097-AP (Feb. 28, 2014). It is harder to imagine a more insurmountable commuting problem than being held in jail without probable cause. (See also *Rosenberger v. South Carolina Department of Employment and Workforce and Corey Hinson & Associates, LLC*. Docket No. 13-ALJ-22-0429-AP (March 20, 2014)) ("A claimant must ... prove that she made a good faith

effort to avoid having to quit a job, i.e., that the claimant acted with ordinary common sense in quitting and made a reasonable effort to preserve the employment relationship." Nevertheless, the claimant "is not required to take measures to resolve a problem with an employer before quitting if such measures would constitute nothing more than a futile gesture").

CONCLUSION

Respectfully, Cynthia asks this Court to reverse her denial of benefits and instead find she was separated from employment either involuntarily or for good cause.

Respectfully submitted,



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February 15, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Cynthia L. Aviles,
Appellant,

Docket No. 14-ALJ-22-0597-AP

vs.

South Carolina Department of
Employment and Workforce and
Accusweep Services Inc.,
Respondent,

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

BRIEF OF THE SOUTH CAROLINA
DEPARTMENT OF
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STATEMENT OF THE ISSUE ON APPEAL

- I. IS THE DECISION OF THE APPELLATE PANEL FINDING APPELLANT LEFT VOLUNTARILY, WITHOUT GOOD CAUSE, HIS MOST RECENT WORK PURSUANT TO S.C. CODE ANN. § 41-35-120(1) UNSUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AS A WHOLE OR CONTROLLED BY AN ERROR OF LAW?**

STATEMENT OF THE CASE

Cynthia Aviles, (Appellant) separated from her position with Acusweep (Employer). Subsequently, Appellant filed for unemployment insurance (UI) benefits with the South Carolina Department of Employment and Workforce (Department or DEW). A DEW claims adjudicator determined her disqualified as of August 3, 2014, until she returned to work and earned at least eight times her weekly benefit amount upon a finding she voluntarily quit her employment without good cause pursuant to S.C. Code Ann. § 41-35-120(1). (R. p. 18.)

DEW mailed notice of this determination on August 18, 2014. Appellant appealed to DEW's Appeal Tribunal (Tribunal) on August 26, 2014. (R. p. 19.) The Tribunal conducted an evidentiary hearing on September 24, 2014 where both Employer and Appellant participated. The resulting decision, issued on September 26, 2012, reversed the claims adjudicator's determination and held Appellant eligible for benefits without disqualification effective August 3, 2014. (R. p. 64-65.)

Employer appealed the Tribunal decision to the Department's Appellate Panel (Panel) on October 1, 2014. (R. p. 67.) Upon review of the record, the Panel issued its final decision on November 21, 2014, reversing the Tribunal decision and reinstating the indefinite disqualification upon a finding Appellant voluntarily quit without good cause attributable to the employment. (R. pp. 2-3.)

Appellant commenced action seeking judicial review of the Panel's final administrative decision in this Court.

STATEMENT OF THE FACTS

The record reveals that Appellant had worked for Employer for less than a year, from August 12, 2013, to January 2, 2014 and that on January 5, 2014 she was arrested on the charge of armed robbery and subsequently incarcerated for approximately four (4) months. (R. pp. 43-lines 4-9, 29-lines 37-40, 30-lines 32-40, 31-line 1.) Appellant never asserts she made any attempts to contact Employer while incarcerated nor does she assert that she did not have means by which to contact Employer while incarcerated. After Appellant's release from jail, she called Employer in May of 2014. At that time, Employer informed her that the position has been filled and it had no present openings for her.

Thereafter, Appellant applied for UI benefits with the Department.

Standard of Review

In considering an appeal from the Panel, "the findings of the department regarding facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the administrative law court must be confined to questions of law." S.C. Code Ann. § 41-35-750. The standard for judicial review for decisions of the Department is whether the agency's decision is clearly unsupported by substantial evidence or controlled by an error of law. Todd's Ice Cream v. South Carolina Employment Security Comm'n, 281 S.C. 254, 315 S.E.2d 373 (Ct. App. 1984). "Substantial evidence" has been defined as "evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action." Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304, 306 (1981). The Court cannot substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Id. at 307. "Substantial evidence is something less than the weight of the evidence." DeGroot v. Employment Security Comm'n, 285 S.C. 209, 328 S.E.2d

668, 669 (S.C. App. 1986). The burden is on the Appellant to show convincingly that the Appellate Panel's decision is without evidentiary support as a matter of law. See Hamm v. Am. Telephone & Telegraph Co., 315 S.C. 119, 432 S.E.2d 454 (1993); Hamm v. Pub. Serv. Comm'n of S.C., 310 S.C. 13, 425 S.E.2d 28 (1992).

I. THE DECISION OF THE APPELLATE PANEL FINDING APPELLANT LEFT VOLUNTARILY, WITHOUT GOOD CAUSE, HER MOST RECENT WORK PURSUANT TO S.C. CODE ANN. § 41-35-120(1) IS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AS A WHOLE AND IN COMPLIANCE WITH APPLICABLE LAW.

Appellant asserts that the Panel's decision is wrong because she did not voluntarily quit her job. Appellant contends the Panel erred in finding that Appellant's failure to contact her Employer during her incarceration was due to her own "fault." Appellant further asserts that even if she had contacted Employer, such an act would have been futile. These arguments are without merit and should be rejected.

Section 41-35-120(1) provides, in relevant part, that any insured worker shall be ineligible for benefits:

If the department finds he left voluntarily, without good cause, his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim.

Appellant specifically argues that the Panel erred in making a credibility determination against Appellant in finding "we do not find credible the claimant's assertion that she had no means of contacting the employer to notify them of her circumstances." The record supports this finding.

In Appellant's initial application for UI benefits, she provided as her reason for separation:

[I] was considered a no-call no-show due to matters I could not control...I was being detained by the SC investigation unit for something I had no hand or knowledge of which caused me to miss work for the next couple months all charges were dismissed[.]

(R. p. 6.). After the Department initially disqualified her as voluntarily quitting, Appellant stated in her appeal to the Tribunal, "I did not leave my most recent employer due to personal reasons".

(R. p. 19.)

In the hearing before the Tribunal, Appellant testified to the following facts:

Appellant: I didn't quit and I wasn't discharged. It was a situation that happened that I had no control of... (R. p. 28-lines 116-17.)

Hearing Officer: Okay, during this process did you contact your employer?

Appellant: I could not get in touch with anybody. (R. p. 32-lines 36-40.)

Hearing Officer: Were you in contact with family or friends that could have sent a message to your employer?

Appellant: Honestly, my family didn't know where I lived and they didn't know anything about my jobs to be honest with you.

Hearing Officer: So you didn't make any efforts to contact your employer in any way?

Appellant: I didn't even know how to get a hold of them except through my cell phone. (R. p. 33-lines 1-14.)

The testimony and statements above do not affirmatively state that Appellant had no means by which to contact the Employer. Furthermore, these statements fail to assert that Appellant was prohibited from access to a telephone or persons within or outside of jail who could contact Employer on her behalf. Accordingly, reasonable minds could reject Appellant's implication that she had no means to contact the Employer and find the cause of Appellant's separation was due to her own "fault".

In the case of Samuel v. S.C. Employment Sec. Comm'n, 285 S.C. 476, 330 S.E.2d 300 (1985)), the South Carolina Supreme Court held that:

[a]n employee may be charged with quitting a job by action or inaction with unavoidable ramifications. Though not affirmatively quitting, it is clear appellant's own conduct caused her termination. [internal citations omitted] She fully understood the consequences of her failure to act after...but did nothing to save her job. Therefore, we hold, by her own inaction, appellant voluntarily quit within the meaning of S.C. Code Ann. § 41-35-120 (1976).

Id. 285 S.C. at 477-78, 330 S.E.2d at 301. The facts in the present case call for the same result.

The evidence in the record supports a finding that Appellant made no affirmative effort to inform Employer of her incarceration until her release.

The Panel determined upon reviewing the record as a whole that:

[W]e do not find credible the claimant's assertion that she had no means of contacting the employer to notify them of her circumstances. We find the claimant abandoned her job when she missed multiple scheduled shifts without contacting the employer. Therefore, the claimant voluntarily quit without good cause attributable to the employment.

(R. p. 2.) Since the record contains facts and inferences which could lead to at least two different conclusions, both reasonable, the question is one of fact for the Panel. See Todd's Ice Cream, Inc. v. S. Carolina Employment Sec. Comm'n, 281 S.C. 254, 259, 315 S.E.2d 373, 376 (Ct. App. 1984)("Where the evidence...is conflicting or where more than one inference can be derived therefrom, the question is one of fact.") "Fact-finding is a matter exclusively within the province

of the [Panel]”. W. v. Alliance Capital, 368 S.C. 246, 253, 628 S.E.2d 279, 283 n. 2 (Ct. App. 2006) citing Kennedy v. Williamsburg County, 242 S.C. 477, 480, 131 S.E.2d 512, 513 (1963); see also Milliken & Co. v. S.C. Emp. Sec. Comm'n, 321 S.C. 349, 350, 468 S.E.2d 638, 639 (1996)(“[O]n questions of witness credibility we defer to the judgment of the agency.”) Therefore, this Court does not have authority to decide credibility issues or to resolve conflicts in the testimony and evidence. Accordingly, the Panel’s decision is not controlled by an error of law and is supported by substantial evidence.

In her alternative argument, Appellant asserts the decision of the Panel should be reversed because contacting her Employer would have been futile. This argument was not raised to the Panel either initially or in a timely post-hearing motion. See Rule 59(e), SCRCP. Accordingly, these issues are not preserved for appeal and must be rejected. Only issues raised and ruled upon by the Panel are cognizable on appeal. See Carson v. South Carolina Dep’t of Natural Res., 371 S.C. 114, 120, 638 S.E.2d 45, 48 (2002) (court sitting in appellate capacity may not consider issues not raised or ruled on by administrative agency); see also Home Med. Sys., Inc. v. S. Carolina Dep’t of Revenue, 382 S.C. 556, 562, 677 S.E.2d 582, 586 (2009)(“As in other appellate matters, [the court] require[s] issue preservation in administrative appeals”). A Rule 59(e) “type of motion is often required for issue preservation purposes.” Id. at 562-63, 677 S.E.2d at 586. As the court explained in Elam v. South Carolina Dep’t of Transp., a “party must file [a Rule 59(e), SCRCP] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” 361 S.C. 9, 24, 602 S.E.2d 772,780 (2004).

In I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000), the South Carolina Supreme Court discussed the policy underlying the issue preservation rule:

If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to

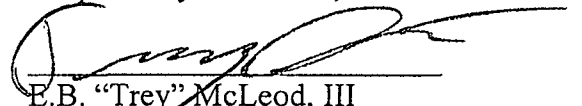
preserve the issue for appellate review. Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.

(citations omitted).“Put simply, Rule 59(e) motions serve a vital purpose for proper issue preservation. As in other appellate matters, we require issue preservation in administrative appeals.” Home Med. Systems, 382 S.C. at 562; see also Risher v. S. Carolina Dep't of Health & Env'tl. Control, 393 S.C. 198, 208, 712 S.E.2d 428, 433 n. 5 (2011)(“[The South Carolina Supreme] Court has long enforced and relied upon issue preservation rules in administrative appeals.”) Therefore, the ALC must not reach this issue.

CONCLUSION

The decision of the Panel is in accord with applicable law, therefore, the findings are binding on the Court and the decision should be affirmed.

Respectfully submitted,



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March 10, 2015

Attorney for Respondent DEW

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cynthia L. Aviles,

Appellant,

v.

South Carolina Department of
Employment and Workforce
and Accusweep Services, Inc.,

Respondents.

Docket No: 14-ALJ-22-0597-AP

**MOTION FOR
REHEARING/RECONSIDERATION AND
MEMORANDUM IN SUPPORT
(ALC Rule 40)**

Respondent, the South Carolina Department of Employment and Workforce (Respondent or the Department), respectfully moves the Court for reconsideration/rehearing of the decision entered by this Court on April 29, 2015, (Order) pursuant to ALC Rule 40 and South Carolina Appellate Court Rule (SCACR) 221. In support of this motion, Respondent submits the following memorandum and points of authority:

ARGUMENTS

1. The Appellate Panel is the Ultimate Finder of Fact

When moving for rehearing, a party must state with particularity the points supposed to have been overlooked or misapprehended by the court. Rule 221(a), SCACR. A Court should grant a Motion for Rehearing (or reconsideration) when it appears a "material fact or principle of law has been either overlooked or disregarded." Dutch Fork Dev. Grp. II, LLC v. SEL Properties, LLC, 406 S.C. 596, 598, 753 S.E.2d 840, 841 (2012)

The Department's Appellate Panel (Panel) based its conclusion that Appellant left her job without good cause on the following findings:

[Appellant] was separated after she failed to maintain contact with [Employer]...we do not find credible [Appellant's] assertion that she had no means of contacting the employer to notify them of her circumstances. We find [Appellant] abandoned her job when she missed multiple scheduled shifts without contacting [Employer].

(R. p. 2.) In reversing the factual determination made by the Panel on this issue, the Court misapprehended or disregarded the limits imposed on an appellate court's ability to reweigh facts or determine credibility. Here the Panel made a specific credibility determination that this Court disregarded when it found "no evidence in the record in this case to show that Appellant voluntarily quit her employment." (Order p. 6.) Appellant's credibility pertaining to her testimony that she could not contact her employer for a period of five months is a question of fact for the Panel to decide. See Milliken & Co. v. S. Carolina Employment Sec. Comm'n, 321 S.C. 349, 350, 468 S.E.2d 638, 639 (1996) (It well settled in South Carolina that the final determination of witness credibility and the weight to be accorded evidence is reserved to the Panel.); see also Merck v. S. Carolina Employment Sec. Comm'n, 290 S.C. 459, 460, 351 S.E.2d 338, 339 (1986) (the Panel "has the authority to make its own findings of fact consistent with or inconsistent with those of the appeal tribunal."). The Court invaded the province of the Panel when it chose to disregard the Panel's finding that Appellant lacked credibility in her assertions that she could not contact the employer during her incarceration. See, cf., Bass v. Kenco Grp., 366 S.C. 450, 458-59, 622 S.E.2d 577, 581 (Ct. App. 2005) ("It is not within [an appellate court's] province to reverse findings of the appellate panel which are supported by substantial evidence."). The Panel, as the trier of fact, is not required to accept testimony as true simply based on the fact that it may be uncontradicted in the record. See Black v. Hodge, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991) ("[T]rier of fact is not required to believe uncontradicted testimony, since there remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation.").

The record contains substantial evidence to show that Employer never fired Appellant; Appellant did not appear for work and failed to contact her employer for five (5) months. The Panel ostensibly found that Appellant had the ability to contact Employer, and therefore, it was

her fault when she failed to do so.¹ For unemployment insurance purposes, “[a]n employee may be charged with quitting a job by action or inaction with unavoidable ramifications.” Samuel v. S.C. Employment Sec. Comm’n, 285 S.C. 476, 477, 330 S.E.2d 300, 301 (1985) (emphasis added). Furthermore, The South Carolina Supreme Court has stated the unemployment law contains “no intent to provide [benefits] for persons who quit their jobs because of a change in their personal circumstances.” Faile v. S. Carolina Employment Sec. Comm’n, 267 S.C. 536, 542, 230 S.E.2d 219, 222-23 (1976) (emphasis added.).

The undisputed facts of this case establish that Appellant remained absent from work for nearly five months without contacting her employer. This failure to communicate with Employer and resulting absence without leave clearly constitutes job abandonment, which is tantamount to quitting employment within the contemplation of the statute. See Samuel, 285 S.C. at 477, 330 S.E.2d at 301 (unavoidable ramification of claimant’s inaction may result in a finding that claimant left work voluntarily). In short, there is substantial evidence in the record to support the Panel’s conclusion that Appellant voluntarily quit her job because her separation from employment was an “unavoidable ramification” caused by her failure to contact Employer while absent from her job for an extended period of time. Id. The reasons for Appellant’s extended absence were not attributable to Employer and were directly due to a change in her own personal circumstances. See Faile, *supra*.

2. Any Futility Argument Is Unpreserved and/or Unsupported in the Record.

The Order states:

Appellant also argues that any efforts to communicate with her employer during her incarceration would have been futile because the employer would have replaced her before she could return to work with or without notice of Appellant’s

¹ Stated differently, the Panel was “not required to believe [Appellant’s] uncontradicted testimony;” instead, the Panel was able to determine whether Appellant’s assertions about her ability to contact her employer was inherently probable given both Appellant’s credibility and her personal interests at issue (i.e., claiming unemployment benefits). Black v. Hodge, *supra*.

whereabouts. At the hearing, Employer made it clear that Appellant's position had to be filled immediately.

The issue of futility was neither raised to nor ruled on by the Panel. Therefore, the Court should revisit its order and decline to address this issue. Cudd v. John Hancock Mut. Life Ins. Co., 279 S.C. 623, 629, 310 S.E.2d 830, 833 (Ct. App. 1983) ("An issue not raised in the lower court cannot be presented for the first time on appeal; hence, it may not be properly before [this Court] for decision."); see also Elam v. S. Carolina Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("South Carolina appellate courts do not recognize the "plain error rule," under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party.")

Even if applicable and properly preserved, no judicial or quasi-judicial body -- not the Tribunal, the Panel, nor this Court -- has analyzed any of the factors listed in the referenced ALC case² pertaining to futility or how the facts in that case are similar to those in the present case.

In rejecting a similar futility argument, Pennsylvania's Supreme Court required more than the simple assertion that an action not taken would be futile: "When it is considered that this entire controversy could have been avoided [by] a bona fide effort..., this Court will not allow such a question to go unasked, or such action to go untaken, without a clear showing that a request...would actually have been futile." Philco Corp. v. Unemployment Comp. Bd. of Review, 430 Pa. 101, 110, 242 A.2d 454, 459 (1968).³ In the instant case, the record is devoid of

² Rosenberger v. DEW and Corey Hinson & Associates, LLC. Docket No: 13-ALJ-22-0429-AP (March 20, 2014) citing 76 Am. Jur. 2d Unemployment Compensation § 102.

³ South Carolina Courts have looked to the Pennsylvania courts for guidance in interpreting UI law on many occasions. See Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 254, 481 S.E.2d 706, 709 (1997) citing Case v. Lower Saucon Township, 654 A.2d 57 (Pa. 1995); Ex parte S. Carolina Employment Sec. Comm'n, 332 S.C. 286, 289, 504 S.E.2d 345, 347 (Ct. App. 1998) ("We find the reasoning of the Pennsylvania court to be sound.") citing Goffi v. Unemployment Compensation Bd. of Review, 58 Pa.Cmwlth. 422, 427 A.2d 1273 (1981); Lee v. S. Carolina Employment Sec. Comm'n, 277 S.C. 586, 588, 291 S.E.2d 378, 379 (1982) citing Petty v. Unemployment Compensation Board of Review, 15 Pa.Cmwlth. 157, 325 A.2d 642 (1974).

evidence that would constitute a “clear showing” of futility. According to Employer’s witness, she waited as many as four (4) days before forming the opinion that Appellant had resigned. (R. p. 43-lines 15-17). Employer’s witness testified:

[A]fter the second [day] I guess the next day she was supposed to come into work, didn’t hear anything from her. I’d asked my night shift supervisor if he’d heard anything. Nobody seemed to know where she was. Not the first time I’ve had an employee just not come back. So I’ve had that happen before. I waited a couple days to see if she would contact me. I asked on a regular basis had anybody heard from her and nobody had. So on the 6th [day] I sent in the Employee Separation Notice for failed to return, no contact, which we considered a **voluntary resignation**.

(R. p. 43-lines 24-32) (emphasis added.). Employer’s witness then testified that she received no word from Appellant from January 3, 2014, to May 2014. (R. p. 44-lines 20-24.) When Appellant finally chose to contact Employer, Employer’s witness “explained to her that [Employer] had to replace her.” (*Id.* at lines 5-10). There is no evidence in the Record on Appeal to support this Court’s conclusion that “Employer made it clear that Appellant’s position had to be filled immediately” or the implication that Appellant would have been separated whether she had called in or not. Further, Appellant presented no evidence that she ever attempted to make contact or that she forwent such attempts because she felt they would be futile. See Kowalski v. Dir. of Div. of Employment Sec., 391 Mass. 1005, 1005, 460 N.E.2d 1042, 1043 (1984)(A claimant has the burden of proving reasonable attempts to preserve his or her employment, unless he can show that such an attempt would have been futile.) Therefore, there simply was no basis in evidence for the Court to rely upon a futility argument, which was neither raised nor ruled on by the Department, in order to overturn the Panel’s decision.

3. The Intent and Purpose Behind the Employment and Workforce Law Requires a Disqualification in the Present Case.

The South Carolina Supreme Court has articulated its opinion that the case of Judson Mills v. South Carolina Unemployment Compensation Commission, 204 S.C. 37, 28 S.E.2d 535 (1944), “sets forth the basic and fundamental purpose of the [Unemployment] Act and the evil sought to be remedied.” Stone Mfg. Co. v. S. Carolina Employment Sec. Comm'n, 219 S.C. 239, 246, 64 S.E.2d 644, 646 (1951). In Judson Mills, the South Carolina Supreme Court stated:

[N]othing in the act itself or in the circumstances surrounding its passage to indicate an intention on the part of the Legislature to provide benefits for a worker compelled to give up his job **solely because of a change in his personal circumstances**....The primary purpose of [UI benefits] would be greatly impaired, if not completely defeated, if benefits were paid to persons who became unemployed, not because the employer could no longer provide them with work but solely because of changes in their personal circumstances.

Judson Mills, 204 S.C. at 37, 28 S.E.2d at 536 (emphasis added); accord Faile, 267 S.C. at 542, 230 S.E.2d at 222-23 (unemployment benefits are not intended “for persons who quit their jobs because of a change in their personal circumstances”). Appellant’s incarceration was clearly a change in personal circumstances unassociated with her employment. While such a personal reason may have caused Appellant to separate from her employment, the separation resulted not “from a failure of industry to provide stable employment.” Stone Mfg. Co., 219 S.C. at 247, 64 S.E.2d at 647.

When an individual is found to have left a job “without good cause,” such a finding implicitly places the fault for the separation on the individual rather than the employer. However such fault “does not [necessarily] contemplate fault in the sense of blame.” State-Record Pub. Co. v. S. Carolina Employment Sec. Comm'n, 254 S.C. 1, 7, 173 S.E.2d 144, 146 (1970). The phrase “without good cause” simply means “a cause [not] attributable to or connected with claimant's employment.” Stone Mfg. Co. 219 S.C. at 247, 64 S.E.2d at 647. Here, the reason Appellant is no longer employed is undeniably not attributable or connected to the employment.

To the extent this matter could be construed as one involving a question of statutory interpretation, the Department acted within its authority to correctly implement the legislative intent of the law which requires a disqualification from receipt of UI benefits when the facts indicate the job separation was attributable to the claimant's personal circumstances. See generally Friends of Earth v. Pub. Serv. Comm'n of S. Carolina, 387 S.C. 360, 371, 692 S.E.2d 910, 916 (2010) ("In reviewing the decision of the [Department] under a statute for which it is charged with the administration, the [Department] is the 'expert' designated by the legislature to make policy determinations...thus, the role of a court reviewing such decisions is very limited."); Faile, 267 S.C. at 540, 230 S.E.2d at 221-22 ("The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons."). Accordingly, it is not proper for this Court to judicially amend the statute to alter the disqualifications fixed by the legislature; whether one in Appellant's situation **should** be disqualified is a question of policy, rather than a judicial question. See State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008) aff'd as modified, 386 S.C. 339, 688 S.E.2d 569 (2010) ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers."). Thus, the Panel properly applied the law to the facts of this case in disqualifying Appellant from receiving UI benefits.

4. The *Only* Matter Before this Court is Whether Substantial Evidence Supports a Finding that Appellant is Disqualified from Receiving Benefits Pursuant to § 41-35-120(1).

In the present case, the Order concludes that "the evidence clearly shows that Employer discharged Appellant under circumstances that do not support a disqualification from benefits." (Order p. 6.) This conclusion disregards the Panel's factual finding that Appellant "abandoned her job" and "[t]herefore...voluntarily quit without good cause attributable to the employment." (R. p. 1.) The Panel specifically stated (and there is no dispute in the record) that the sole issue in

this case is whether Appellant “left voluntarily, without good cause, h[er] most recent work.” S.C. Code Ann. § 41-35-120(1). No other sections of S.C. Code Ann. § 41-35-120 are implicated because both Appellant and Employer testified that Appellant **was not discharged**. See (R. pp. 28-lines 16-40; 45-lines 15-22.)

At no point in this case has either party argued that this case should be viewed as a discharge rather than a quit. Appellant’s *Statement of the Issue on Appeal* was simply:

THE DEPARTMENT ERRED IN FINDING THAT CYNTHIA AVILES
VOLUNTARILY QUIT WHEN SHE WAS ARRESTED WITHOUT
PROBABLE CAUSE AND UNABLE TO COMMUNICATE WITH HER
EMPLOYER

(App. Br’f p. 3). Furthermore, Appellant, in her brief acknowledged, that Employer “assumed she had quit.” (App Br’f p. 6.) In its Order, this Court improperly interjected into this case an issue not raised before either the Court or the Department. See Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (Supreme Court holding that that Court of Appeals erred in reaching an issue which “was thus not properly before the Court of Appeals and should not have been addressed.”); see also Carson v. S.C. Dep’t of Natural Res., 371 S.C. 114, 120, 638 S.E.2d 45, 48 (2002) (ruling that a court sitting in appellate capacity may not consider issues not raised or ruled on by an administrative agency).

Assuming, *arguendo*, that S.C. Code Ann. § 41-35-120(2) applies to the instant case, substantial evidence still supports a finding of disqualification upon a review of the record as a whole. See 76 Am. Jur. 2d Unemployment Compensation § 102 (“When determining whether a claimant is disqualified from unemployment benefits, [the Department] must first determine if the employee quit or was fired, which is a factual decision.”)

The legislative intent behind the law does not change whether the separation is labelled a discharge or a quit. The inquiry remains: Does Appellant’s unemployment “result[] from a failure of industry to provide stable employment”? Hartsville Cotton Mill v. S. Carolina

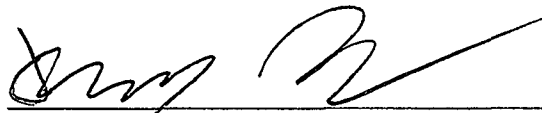
Employment Sec. Comm'n, 224 S.C. 407, 414, 79 S.E.2d 381, 384 (1953). If the answer to this question is 'No, then it was not the intention of the legislature to provide benefits. Id. The correctness in the Panel's decision to disqualify Appellant is apparent from the record. Appellant concedes that the reason she "no longer worked for [Employer] was because she did not show up for work," therefore, the basis for her separation is that she was absent from work without leave for a substantial period which is disqualifying. (App. Br'f p. 6.). The record as a whole provides no evidence that Employer separated Appellant from her position as a direct result of her incarceration. See, e.g., Kentucky Unemp. Ins. Comm'n v. Stirrat, 688 S.W.2d 750, 752 (Ky. Ct. App. 1984) ("It is well-settled that where someone is terminated not as a result of his incarceration, but because of his resulting absence from work, this supports a finding of discharge due to cause connected with employment.").

Similarly, in Hartsville Cotton Mill, it was undisputed that the claimant's "unemployment did not result from the failure of her employer to provide stable employment, but arose out of a change in her domestic circumstances." Hartsville Cotton Mill, 224 S.C. at 414, 79 S.E.2d at 384. Therefore, in the present case, "it must follow that while [Appellant was] unavailable for work due to her own personal circumstances, she falls outside the class which the Act was intended to benefit." Id.

CONCLUSION

Based on the foregoing, this Court should reconsider its Order issued April 29, 2015, and

affirm the Panel decision as being supported by substantial evidence and in accord with applicable law.



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May 12, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge
Case No.: 14-ALJ-22-0597-AP

Appellate Case No. 2015-001458

RECEIVED
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SC Court of Appeals

Cynthia L. Aviles,

Respondent,

v.

South Carolina Department of Employment
and Workforce, and Accusweep Services, Inc.,

Defendants,

of whom, South Carolina Department of Employment
and Workforce is

Appellant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210 (g), SCACR, Appellant's counsel hereby certifies that this Record contains all material proposed to be included by any of the parties and not any other material.

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