

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Patricia A. Crawford,

Appellant,

vs.

South Carolina Department of Employment  
and Workforce and Allserv Inc.,

Respondents.

Docket No. 16-ALJ-22-0380-AP

ORDER RECEIVED

MAR 16 2017

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Patricia Crawford (Appellant or Crawford). Appellant seeks review of the final decision of the South Carolina Department of Employment and Workforce (Department). The Department's Appellate Panel (Panel) found that Appellant voluntarily quit her employment with Allserv, Inc. (Employer) and indefinitely disqualified her from receiving unemployment benefits.

BACKGROUND

Crawford worked for Employer from November 9, 2014 until April 18, 2016 as a corporate secretary. Who initiated Appellant's separation from her employment was disputed before the agency. Employer alleges that Crawford "resigned" on Thursday, April 14th; that she subsequently cleaned out her desk; and that she did not come into work on Monday, April 18th, so the company "accepted" her resignation. Conversely, Appellant alleges that she was very frustrated by problems she was having with other employees and with company tax procedures; that she tried to address the issues multiple times to no avail; that a coworker told her to take Monday off to consider her options; that she worked over the weekend and had only taken home some, but not all, of her things; and that she had taken a day at home as advised by a company consultant on April 18th when she discovered that the company had shut down her email account. After conferring with her boss, Appellant did not return to work.

The Department's claims adjudicator concluded that Appellant left her employment voluntarily, without good cause. To resolve the issue of disqualification and determine the reason for separation from employment, a telephonic hearing was held by an Appeal Tribunal (Tribunal)

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hearing officer on July 6, 2016. The Tribunal issued an order on July 7, 2016, upholding the adjudicator's decision. The Panel's decision reached the same conclusion. Crawford subsequently appealed to the ALC.

### **ISSUES ON APPEAL**

1. Whether the hearing officer erred in denying Appellant the opportunity to submit rebuttal evidence after she experienced technical difficulties.
2. Whether Appellant was denied procedural due process because she did not receive notice of the Appellant Panel's hearing.
3. Whether the Department's decision is supported by substantial evidence in the record.

### **STANDARD OF REVIEW**

The ALC has jurisdiction to review this matter pursuant to South Carolina Code Section 41-35-750. 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 appellate standard governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380 & 1-23-600(D) (Supp. 2016). The Court's review in appellate cases is limited to the record. S.C. Code Ann. § 1-23-380(4) (Supp. 2016). Additionally, the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5) (Supp. 2016). Substantial rights of the appellant are prejudiced when the agency's decision, including the agency's findings, inferences, and conclusions, are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

### **DISCUSSION**

Appellant argues that substantial evidence on the record does not support the conclusion that the Department reached. The Court agrees and reverses the Appellate Panel's decision.

The Department concluded that Appellant voluntarily quit her employment without good cause. Leaving work voluntarily without good cause is grounds for disqualification from unemployment insurance benefits. S.C. Code Ann. § 41-35-120(1) (Supp. 2016). "An 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) (citation omitted); see also Greenray Indus. v. Unemployment Comp. Bd. of Review, 135 A.3d 1140, 1143 (Pa. Commw. Ct. 2016). “Whether an employee quits or is discharged may be determined by examining whether the employer or the employee committed the final act severing the employment relationship.” Cook v. Accord Bldg. Servs., LLC, 481 S.W.3d 893, 901 (Mo. Ct. App. 2016) (citation omitted). “An employee will not be held to have left voluntarily when the employer decides to end the employment relationship.” Id. “[I]nvoluntary separation of employment is a discharge under the unemployment-benefit statute[;] an employee’s choice to end the employee’s employment must be a free-will-choice for the employee to quit employment.” Posey v. Securitas Sec. Servs. USA, Inc., 879 N.W.2d 662, 665 (Minn. Ct. App. 2016). “An employee involuntarily leaves work ‘when the employer is the moving party in causing the unemployment of an employee at a time when the employee is able and willing to continue working.’” Kelley v. California Unemployment Ins. Appeals Bd., 223 Cal. App. 4th 1067, 1075–76, 167 Cal. Rptr. 3d 802, 808 (2014) (citation omitted). “Whether an employee leaves voluntarily or involuntarily depends on which party initiated the termination of employment.” Id.

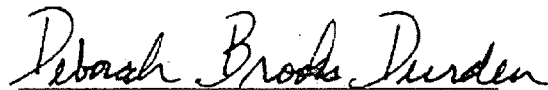
A review of the evidence in this case does not support a conclusion of voluntary quit. Indeed, the Department’s own findings show that the Employer took the action that resulted in the ending of Appellant’s employment. “Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency’s action.” Porter v. S.C. Public. Serv. Comm’n, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998). It is clear that Appellant was unhappy in her position due to a number of factors, including tax policy disagreements, foul language from coworkers, and long and weekend work hours. It is also clear that she had made her concerns clear to her employer and that the employer was aware that she was considering quitting. However, there is no evidence that she actually did quit. There is no evidence in the record of an action or inaction with unavoidable ramifications taken by Appellant. See Samuel, 285 S.C. at 477, 330 S.E.2d at 301 (1985). Employer attempts to combine threatening to quit and removing some personal items into a resignation, even though Appellant continued to work days past the alleged “resignation.” Employer took the action that terminated Appellant’s employment by deactivating her email account. Because the Department erred in reaching the conclusion that Appellant voluntarily quit, the Court reverses the Department’s decision.

Therefore, it is unnecessary to address Appellant's other arguments. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

**ORDER**

**THEREFORE, IT IS ORDERED** that the Department's decision is **REVERSED**, and this matter is **REMANDED** for the recalculation of benefits due the Appellant.

**AND IT IS SO ORDERED.**



Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

February 23, 2017  
Columbia, South Carolina