

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

RECEIVED

MAR 28 2017

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.

Motion to Publish Opinion

COMES NOW THE APPELLANT, the South Carolina Department of Employment and Workforce (Department or DEW), and moves this Court to publish Opinion 2017-UP-120, issued by the Court on March 15, 2017. DEW believes that holdings in this unpublished Opinion – if published – would be highly useful to the bench, bar, and litigants. These holdings apply generally to administrative hearings, as well as specifically to unemployment matters.

For example, the Court specifically held that Respondent's "failure to notify her employer of her whereabouts and her desire to remain employed was an 'inaction with unavoidable ramifications,' which amounted to a voluntary quit." (Citation omitted). The Court also stated:

We do not believe an employer should be expected to hold open a position for an employee without any indication of whether the employee plans to return. Accordingly, we find the Appellate Panel's determination that Aviles voluntarily quit her job without good cause based on her failure to contact Accusweep during

her incarceration was not clearly erroneous and should not have been reversed by the ALC.

Here, the Court's opinion establishes that an employee's "failure to contact" an employer may be a determining factor regardless of that employee's subjective desire to remain employed.

Finally, the Court's opinion establishes that an administrative agency has the authority to make a credibility finding based on the "inherent probability" of a witness's testimony, even if that testimony is not contradicted in the contested case proceeding.

Publishing the Court's opinion will provide important and needed guidance in this area of administrative law, and therefore, publication will strongly serve the public interest. Accordingly, Appellant respectfully requests the Court grant its motion and publish Opinion No. 2017-UP-120, issued on March 15, 2017.



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March 27, 2017

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PROOF OF SERVICE

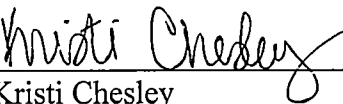
I certify that I have served Appellant's Motion to Publish Opinion on all parties in this action by depositing a copy of it in the United States Mail, first class postage prepaid, on _____, to the following addresses:

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March 27, 2017

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Cynthia Aviles v. SC DEW and Accusweep Services Inc.
Appellate Case No: 2015-001458

Dear Ms. Kitchings:

Enclosed are the original and six copies of the Motion to Publish Opinion in the above case with a Certificate of Service to the other parties.

Please let me know if you have any questions.

Sincerely,

Kristi Chesley
Administrative Legal Assistant for
Trey McLeod
Attorney for Respondent SCDEW

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