

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

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SC Court of Appeals

Case No.: 16-ALJ-22-0380-AP
Appellate Case No. 2017-000669

Patricia Crawford,

Respondent,

v.

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

Appellants.

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STATEMENT OF ISSUE ON APPEAL

An employee who voluntarily leaves work, without good cause, is disqualified from receiving unemployment insurance benefits. A resignation letter is not needed to show an employee voluntarily left – she may be charged with voluntarily leaving by action or inaction with unavoidable ramifications. Patricia Crawford threatened to quit, removed her belongings, and did not report to work. Does substantial evidence support the Department of Employment and Workforce's finding that Crawford voluntarily left work?

STATEMENT OF THE CASE

After separating from her employment with Appellant Allserv Inc. (“Allserv”), Respondent Patricia Crawford filed a claim for unemployment insurance (“UI”) benefits with Appellant South Carolina Department of Employment and Workforce (“DEW,” together with Allserv, “Appellants”) on April 22, 2016. (ALC R. pp. 6-13.)¹ On June 2, 2016, a DEW claims adjudicator determined Crawford voluntarily left employment without good cause and, consequently, disqualified her from receiving benefits under S.C. Code § 41-35-120(1). (ALC R. p. 37.)

Crawford appealed the adjudicator’s determination to DEW’s Appeal Tribunal (“Tribunal”), which held a hearing on Crawford’s claim on July 6, 2016. (ALC R. pp. 38-216.) The Tribunal affirmed the determination, finding Crawford disqualified from receiving UI benefits because she voluntarily left employment without good cause. (ALC R. pp. 217-18.)

Crawford appealed to DEW’s Appellate Panel (“Panel”). (ALC R. pp. 219-221.) On August 27, 2016, the Panel mailed a “Notice of Hearing before the Appellate Panel” to Crawford and Allserv informing the parties of the hearing for September 6, 2016. (ALC R. pp. 22-23.) Allserv’s counsel attended the hearing, but Crawford did not appear. On September 8, 2016, the Panel issued Decision No. 2016-P-10234, affirming the Tribunal’s finding and the resulting disqualification. (ALC R. pp. 1-5.) On September 27, 2016, the Panel received a “Request for Appeal Reconsideration” from Crawford. (ALC R. pp. 224-26.)

¹ Appellants have used the abbreviation “ALC R. p. ___” to reference page numbers of the Record on Appeal before the Administrative Law Court.

On October 6, 2016, Crawford appealed the Panel's decision to the Administrative Law Court ("ALC"), and on February 23, 2017, the ALC issued an Order reversing the Panel's decision. (ALC Order pp. 3-4.) DEW timely filed a Notice of Appeal from the ALC's decision on March 14, 2017.

STATEMENT OF FACTS

I. Background

Crawford worked for Allserv as a Corporate Secretary from November 9, 2014, through April 18, 2016. (ALC R. p. 58, lines 2-3; ALC R. p. 151, lines 12-17.) Allserv stated in response to Crawford's application for UI benefits that she verbally resigned:

[Crawford] verbally stated on 4/14/2016 that she was going to find another job and that she no longer could work here if other employees were not being disciplined. On 4/17/2016 [Crawford] worked and sent text message to a manager she packed her things. She also sent a text message to her supervisor that she had completed tasks and she would not be in on Monday. Upon arrival on Monday 4/18/2016 [Crawford]'s desk had been cleaned out of all personal effects.

(ALC R. p. 19.)

Crawford, on the other hand, denied resigning:

. . . I was told to take a day off to think about whether I wanted to continue working so I did. When I asked to schedule a meeting with owner and VP . . . , I received a text from VP Tanya Calvin which indicated I had resigned which is not true and I have text documentation of this event.

(ALC R. p. 8.)

At the hearing, the hearing officer entered into the record Agency Exhibit 1, which included, a two-page statement and text messages submitted by Crawford during fact-finding. (ALC R. p. 55, lines 1-30.) Allserv introduced 18 pages of

additional text messages as Employer Exhibit 1. (ALC R. p. 115, line 8 – ALC R. p. 116, line 14.) Employer also introduced a one-page email from Crawford as Employer Exhibit 2. (ALC R. p. 140, line 10 – ALR R. p. 143, line 7.)

II. Employer Witness Testimony before the Tribunal

Vice President Tanya Calvin testified for Allserv at the Tribunal hearing. Calvin explained she had a conversation with Crawford at work on Thursday, April 14, 2016, at which time Crawford stated, “I’ve had enough of this, I don’t need this job, this isn’t worth it to me, I’m going to find somewhere else to work.” (ALC R. p. 152, lines 1-15.)

After the April 14th conversation, Crawford worked at least part of the day on Friday, April 15th, Saturday, April 16th, and Sunday, April 17th. Over the weekend, Crawford sent Calvin over twenty (20) texts laced with profanity and expressing dissatisfaction over work matters, to which Calvin responded: “Go spend the day with your family. Quit working.” (ALC R. p. 205-13.)

Calvin testified that on Sunday, April, 17th, she received a text from Crawford stating she would not be in Monday. (ALC R. p. 152, lines 1-15.) Specifically, Crawford texted: “All my paperwork is caught up, I’ve filed and will do checks in just a minute after Kris is done with my computer. I will not be in tomorrow.” (ALC R. p. 212.)

The following day (Monday morning), Calvin learned Crawford had cleaned out her desk and removed her personal belongings. (ALC R. p. 152, lines 1-15.) Calvin explained that because of this and Crawford’s repeated threats to quit, most

recently on April 14th, she considered Crawford's declaration that she would "not be in tomorrow" to be a resignation:

On Thursday, . . . she had gotten upset about something one of the managers had not done for her, she rant[ed] and raved her hands up in the air as she's done before, stating I've had enough of this, I don't need this job, this isn't worth it to me, I'm going to find somewhere else to work. So, when I came into the office on that Monday, I took that she actually did quit, that she abandoned her job.

(Id.)

III. Crawford's Testimony before the Tribunal

Crawford testified she was "burnt out," her frustration was at its "all time high," she was tired of working weekends, she felt underappreciated, and the workplace "would push any reasonable person out of the door." (ALC R. p. 137, lines 4-16; ALC R. p. 143, line 20 – ALC R. p. 147, line 3.) Text messages show Crawford had previously threatened to quit if she did not get what she wanted:

FYI . . . if I don't get everything I've asked for from the managers . . . I won't be there Monday Tuesday or ever again . . . I have no intention of doing my job half ass and these asswipes will not lazily force me into doing their jobs for them. Hahaha this is no April fools joke.

(ALC R. p. 198.)

Crawford also texted with Allserv's business consultant Kris Mitchell during the time period in question. (ALC R. pp. 184-86.) Although Crawford testified Mitchell told her, "You should take Monday off to consider if you can continue working here with what's going on" (ALC R. p. 68, line 19 – ALC R. p. 69, line 2), the text message shows Mitchell actually texted: "Should take a day away without answering phone and think it through. Make sure it is what you want to do." (ALC

R. p. 184.) Mitchell is not an Allserv employee and, according to Calvin, did not have authority to grant leave requests. (ALC R. p. 108, lines 1-12; ALC R. p. 156, line 22 – ALC R. p. 157, line 3.) Crawford texted back that she enjoyed her job but that she “really need[s] to think about whether or not I can learn how to deal with [the work environment].” (ALC R. p. 185.) She continued, “. . . Chances are I’ll be back on Tuesday or whenever but I need to make sure my family is in agreement. Some of the bs [sic] has taken a toll on them as well.” (*Id.*)

Despite the above evidence, notably the text reading, “if I don’t get everything I’ve asked for . . . I won’t be there Monday Tuesday or ever again . . .,” Crawford insisted at the Tribunal hearing that she never said she was quitting or looking for work elsewhere. (ALC R. p. 66, lines 16-19; ALC R. p. 110, lines 9-11.) According to Crawford, Calvin brought up her own aggravations with the company and she (Crawford) merely concurred with that sentiment. (ALC R. p. 66, lines 1-9.)

However, Crawford admitted that, over the weekend, she cleaned out her desk and took home her pictures, pens, and her daughter’s drawing. (ALC R. p. 79, line 19 – ALC R. p. 80, line 27.) She testified she did this to “declutter” and update her personal photographs. (*Id.*) Yet she revealed in her Notice of Appeal to the ALC that she actually removed belongings “out of frustration” and “to let Allserv know that I had concerns that needed immediate attention.” (ALC Notice of Appeal 1.)

Crawford further testified that on Monday, April 18th, she received electronic notification that Allserv deactivated her network access. (ALC R. p. 69, lines 19-25.) She then texted Calvin and the ensuing text message exchange is in the record.

(ALC R. pp. 182-83; ALC R. pp. 213-15.) Notably, though, Calvin texted Crawford the following:

You told me on Thursday that you had enough and you were [quitting] and finding another job. You have said this before but this time I took you seriously when I came in this morning and found you had removed all of your personal things over the weekend. Jeff and I have accepted your resignation.

(ALC R. p. 182; ALC R. p. 214.)

In response, Crawford texted that Mitchell gave her permission to take “a few days off” and that she could not have resigned Thursday because she worked three more days. (ALC R. pp. 182-83; 214.) At the hearing, she testified she also texted Calvin to “question[] what resignation she was referring to because that never happened.” (ALC R. p. 66, line 24 – ALC R. p. 67, line 2.) But the text messages in the Record do not contain any such message. (ALC R. pp. 182-83; ALC R. p. 214.)

IV. The Tribunal and Panel Decisions

The Tribunal found Crawford voluntarily left employment without good cause. (ALC R. pp. 78-79.) Crawford appealed and the Panel unanimously affirmed the Tribunal’s decision. (ALC R. pp. 1-3.) The Panel explained the basis for its decision as follows:

Given [Crawford’s] comments about looking for work elsewhere, her continued complaining about the work environment, and the removal of her personal belongings from her desk, it was not unreasonable for the employer to assume [Crawford] had followed through on her threat to quit her job. Although [Crawford] maintains she was merely taking a day off to regroup, she did not request that day off from someone who had the authority to grant it, nor did she confirm . . . that she was going to return to work on April 19, 2016. . . . [Crawford] was frustrated with her work environment and with what she perceived as a lack of action from management to resolve the issues which were

making her job difficult. Although [Crawford's] dissatisfaction may have been justified, she had been told the issues would be resolved in the near future when the owner returned. As such, [Crawford] has not presented circumstances which would cause a reasonable person to become totally unemployed rather than continue working. Therefore, we find [Crawford] voluntarily quit without good cause

(ALC R. p. 5.)

V. The ALC Order

Crawford appealed the Panel's decision to the ALC. The ALC agreed with Crawford's position that substantial evidence did not support the Panel's decision. (Order p. 2) Specifically, the ALC found that a review of the evidence in the case did not support the Panel's conclusion that Appellant voluntarily quit. (Order p. 2). The ALC determined that while it was clear that Crawford was dissatisfied with her position and that her employer was aware she was considering quitting, there was no evidence that Crawford actually quit. (Order p. 3). Citing *Samuel v. S.C. Employment Sec. Comm'n.*, 285 S.C. 476, 477, 300 S.E.2d 300, 301 (1985), the ALC determined that the Record was devoid of evidence of an "action or inaction with unavoidable ramifications taken by [Crawford]." (Order p. 3). The ALC found that it was Allserv, not Crawford, who took the action that terminated Crawford's employment – namely deactivating her email account. (Order p. 3). Accordingly, the ALC reversed the Panel's decision. (Order p. 4). This Appeal follows.

ARGUMENT

I. Substantial Evidence Supports DEW's Decision that Crawford Voluntarily Left Work, Without Good Cause.

The ALC re-weighted the evidence in this case, overturned the Panel's holding that Crawford voluntarily left employment, and replaced it with a new factual finding that Allserv ended the employment relationship by deactivating Crawford's network access. However, the "[t]he substantial evidence rule does not allow judicial fact-finding, or the substitution of judicial judgment for agency judgment." *Todd's Ice Cream, Inc. v. S.C. Emp. Sec. Comm'n*, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984). Thus, because there is substantial evidence to support DEW's finding, this Court should reverse.

A. Standard of Review

SCDEW is an agency governed by the Administrative Procedures Act (APA). See *Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding SCDEW's predecessor, the Employment Security Commission, subject to the APA). Under the APA, a reviewing court:

[M]ay 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 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).

This standard of review is commonly referred to as the “substantial evidence” rule:

“Substantial evidence” is something less than the weight of the evidence; it is evidence which . . . would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action.

Todd's Ice Cream, Inc., 281 S.C. at 258, 315 S.E.2d at 375. The possibility of drawing different conclusions from the evidence does not mean the agency's conclusion is unsupported by substantial evidence. *Waters v. S.C. Land Resources Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) (stating the party challenging an agency action bears the burden “to prove convincingly that the agency's decision is unsupported by the evidence.”).

B. Crawford's statements and actions show she resigned.

S.C. Code Ann. § 41-35-120(1) requires disqualification from benefits until the employee has secured employment and earned at least eight times the weekly benefit amount when DEW finds that an employee left work voluntarily, without good cause. A resignation letter is not a prerequisite for a voluntary quit finding because “[a]n employee may be charged with quitting a job **by action or inaction with unavoidable ramifications.**” *Samuel v. S.C. Emp. Sec. Comm'n*, 285 S.C. 476, 477, 330 S.E.2d 300, 301 (1985) (upholding a voluntary quit finding where a claimant did not respond to a letter from her employer stating claimant would be terminated if she did not apply for a leave of absence) (emphasis added). “To constitute good cause, the

circumstances which lead an employee to leave the job must be such as would cause a reasonable person to leave.” 76 Am. Jur. 2d *Unemployment Compensation* § 102.

Whether an employee voluntarily quit employment or was discharged is a factual issue to be determined by DEW. S.C. Code Ann. § 41-35-120(1) (stating “an insured worker is ineligible for benefits . . . [i]f [DEW] finds he left voluntarily, without good cause”). Thus, the Legislature did not intend for reviewing courts to make new factual findings as to whether a claimant voluntarily left or was discharged because “this right is patently given to [DEW], whose duty it is to determine by the testimony and the evidence in each case whether certain facts existed.” *Johnson v. Pratt*, 200 S.C. 315, 20 S.E. 2d 865, 871 (1942) (analyzing similar language in subsection (6) of Section 41-35-120 concerning labor disputes).

This is a well-established principle equally expressed in many jurisdictions. *See, e.g., Matter of Baker*, 147 A.D. 2d 790, 781 (N.Y. App. Div. 1989) (“Clearly, whether a claimant has voluntarily left employment without good cause is a question of fact to be resolved by the Board, and its determination, if supported by substantial evidence, will not be disturbed.”) (internal citations and quotations omitted); *Mississippi Emp’t Sec. Comm’n v. Fortenberry*, 193 So.2d 142, 143 (Miss. 1966) (noting factual determinations in a voluntary quit case are “conclusive upon the [court] on review”). Indeed, the ALC recently rejected a UI claimant’s argument that her returning to the workplace showed the Panel erred in finding she voluntarily quit. *Toney v. South Carolina Dep’t of Emp’t and Workforce and McLeod Reg’l Med. Ct of the Pee Dee, Inc.*, Docket No. 15-ALJ-22-0498-AP (Mar. 23, 2016). In that case, Chief

Administrative Law Judge Anderson reiterated that drawing fact-based inferences such as whether an employee intended to resign or not is “the province of the Panel, as a finder of fact”²

Here, the Panel applied Section 41-35-120(1) and unanimously concluded that Crawford threatened to resign if other employees were not disciplined, then later removed her personal belongings from the workplace. In the Panel’s judgment, these facts demonstrated Crawford left work voluntarily without good cause, notwithstanding the fact that she now claims she did not intend to resign. There is ample evidence in the record to support that conclusion.

First, the Record on Appeal contains evidence that Crawford threatened to quit multiple times and issued ultimatums to Allserv. Calvin testified Crawford said, “I don’t need this job, this isn’t worth it to me, I’m going to find somewhere else to work.” (ALC R. p. 15, lines 2-15.) Crawford texted Calvin: “. . . if I don’t get everything I’ve asked for . . . I won’t be there Monday Tuesday or ever again” (ALC R. p. 198) Although Crawford denied making certain statements, the Panel was, of course, within its discretion to credit Calvin over Crawford.³

² Though not binding precedent, this case confirms the ALC has, in a case involving comparable facts, affirmed the principle that the Panel has discretion to weigh facts and determine whether they meet the voluntary quit definition set forth in Section 41-35-120(1) and informed by *Samuel, supra*.

³ Even in reversing the Panel’s voluntary quit finding, the ALC did not credit Crawford’s claim that she never threatened to seek work elsewhere: “It is also clear that [Crawford] made her concerns clear to [Allserv] and that [Allserv] was aware that she was considering quitting.” (ALC Order 3.) If nothing else, it is beyond dispute Crawford told Mitchell, a consultant working for Allserv, she wanted to resign. Otherwise, Mitchell would have no reason to text back, “Make sure it is what you want to do.” (ALC R. p. 184.) This evidence bolsters the reliability of Calvin’s

Second, after working over the weekend without being asked to do so, Crawford texted Calvin that she “won’t be in Monday” and then cleaned out her desk. Crawford claimed at the hearing that she did this to “update” the photographs as a part of her “spring cleaning,” presumably to suggest the removal of her belongings was unrelated to her conversation with Calvin that Thursday. (ALC R. p. 80.) But, in her appeal to the ALC, Crawford concedes she removed her belongings out of frustration to send a message to Allserv: “I did remove some but not all of my personal belongings from the office out of frustration. It was a measure taken to let Allserv know that I had concerns that needed immediate attention.” (Notice of Appeal 1.) Crawford testified that this “measure” led her to conclude Crawford had finally followed through on her threats to quit, which, of course, is a logical conclusion to draw. (ALR R. p. 152, lines 1-15) (Calvin saying she felt Crawford “actually did quit, that she abandoned her job”).

Third, Crawford’s communications after not showing up for work Monday morning are further evidence of a voluntary quit. Crawford texted Calvin saying, “All I wanted was a thank you.” (ALC R. p. 154, lines 13-21; ALC R. p. 189.) Contrary to her testimony before the Tribunal, she did not deny saying she was quitting and looking for work elsewhere. Similarly, Crawford later emailed Calvin saying she “could no longer handle it” and was pushed “over the edge,” but again did not deny saying she was quitting and looking for work elsewhere. (ALC R. p. 216.)

testimony that, on April 14th, Crawford said to her, “I’m going to find somewhere else to work.” (R. 152, lines 1-15.)

In sum, (1) Crawford's threats to resign, (2) the clearing of her desk in order to "send a message," (3) her terse announcement that she "won't be in Monday," and (4) her communications to Calvin upon learning Allserv accepted her resignation all support the Panel's finding that Crawford voluntarily left employment without good cause.

B. The ALC Exceeded Its Authority in Overturning a Factual Finding of the Panel that was Supported by Substantial Evidence.

Despite the above evidence, the ALC found "there is no evidence in the record of an action or inaction with unavoidable ramifications taken by [Crawford]." (ALC Order p. 3) (quoting *Samuel*, 285 S.C. at 477, 330 S.E.2d at 301). The Court excused all of Crawford's behavior calculated to have Allserv believe she quit and found "Allserv took the action that terminated [Crawford]'s employment by deactivating her email account." For that reason, the ALC reasoned, DEW erred in deciding Crawford voluntarily left work, without good cause.

Admittedly, a reasonable person could have found the employment relationship did not end until Crawford's network access was deactivated. But it is equally plausible to conclude, as the Panel did, Crawford's actions caused the employment separation and the deactivation of network access does not indicate which party initiated the employment separation. Since the APA requires courts to defer to administrative entities "even though reasonable men might draw two

inconsistent conclusions from the evidence presented,”⁴ the ALC exceeded its authority in reversing the Panel’s decision on this basis.

CONCLUSION

In a recent ALC case concerning whether an employee voluntarily quit or was discharged, Chief Administrative Law Judge Anderson, put it well:

“ . . . [W]ords have consequences. [The employer] should not be expected to read [the employee’s] mind, if she was not serious about the statements she made. In light of [the employee]’s conduct surrounding her statements, the Panel properly found that [the employer’s] interpretation of her statements as a verbal resignation was reasonable.”

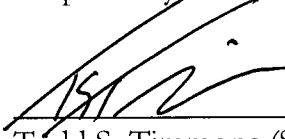
Here, the Panel reasonably concluded Crawford’s actions in clearing her desk and texting her supervisor that she would not be in, combined with prior statements about quitting and looking for work elsewhere, amount to leaving work voluntarily, without good cause, under S.C. Code Ann. § 41-35-120(1).

Accordingly, Appellants respectfully request this Court reverse the ALC’s order and reinstate Panel Decision No. 2016-P-10234 disqualifying Crawford for unemployment benefits for having left work voluntarily, without good cause.

[signatures on following page]

⁴ See *Todd’s Ice Cream*, 281 S.C. at 259, 315 S.E. 2d at 376 (applying S.C. Code Ann. § 1-23-380).

Respectfully Submitted,



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