

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEALS FROM THE
ADMINISTRATIVE LAW COURT

DEBORAH BROOKS DURDEN, ADMINSTRATIVE LAW JUDGE

CASE NO.: 16-ALJ-22-0380-AP

Patricia A. Crawford,

Respondent,

v.

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

Appellants,

Appellate Case No. 2017-000669

INITIAL BRIEF OF RESPONDENT

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Samuel v. S.C. Employment Sec. Comm'n, 285 S.C. 476, 477, 330 S.E.2d 300, 301 (1985)

Greenray Indus v. Unemployment Comp. Bd. Of Review, 135 A.3d 1140, 1143 (Pa. Commw. Ct 2016)

Accord Bldg. Servs. USA, Inc., 879 N.W. 2d 662, 665 (Minn. Ct. App. 2016)

Kelly v. California Unemployment Insurance Appeals Bd., 223 Cal. App. 4th 1067, 1075-1076, 167 Cal. Rptr. 3d 802, 808 (2014)

Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 20, 507 S.E. 2d, 328, 332 (1998)

A. RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

I. RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

COUNTER STATEMENT OF ISSUES ON APPEAL

I. RESPONDENT'S COUNTER STATEMENT OF ISSUES ON APPEAL

On February 23, 2017, The Honorable Judge Deborah Brooks Durden with SC Administrative Law Court ordered that the South Carolina Department of Employment and Workforce reverse their denial decision and that the matter be remanded for the recalculation of benefits due to the respondent. The appellants are appealing the final decision of the Administrative Law Court is not substantiated by evidence on the record. The Honorable Judge Deborah Brooks Durden cited specific case law and reviewed evidence provided to reach her final decision in the matter of appeal.

B. STATEMENT OF THE CASE

- I. Initial Determination
- II. Denial of Telephone Tribunal
- III. Denial of Appeal to Tribunal
- IV. Reversal of Agency Decision by Administrative Law Court

STATEMENT OF THE CASE

I. Initial Determination Statement

I, Patricia Crawford, was employed with Allserv, Inc. from November 9, 2014 through April 18th, 2016. The cause of my separation per Allserv, Inc. was my resignation. An apparent conversation took place on April 14th, 2016 where I told Tanya Calvin (Vice President, Allserv) that I was looking for another job. As indicated in the Tribunal records; this conversation didn't take place in the manner specified. I was speaking with Tanya Calvin on April 14th, 2016 about issues within our business that needed to be addressed because I felt that these issues could potentially lead to legal or ethical negative ramifications. The response I received from Tanya Calvin stated her own dissatisfaction about her Allserv, Inc. Vice President position and a desire to pursue her previous career in management within the banking industry; whereas my grievances were overlooked and not addressed.

Timeline:

April 14th, 2016: Conversation with Tanya Calvin; also indicated as day of my supposed verbal resignation.

April 15th, 2016: I readdressed one of my many concerns with Tanya Calvin regarding being directed to reimburse travel for an employee's spouse. I was told to process the reimbursement but that this would be the last time. I insisted that this could potentially get Allserv, Inc. into legal trouble. Tanya Calvin indicated that this would be discussed with the owner/her spouse, Jeffrey Calvin. Given various other ongoing issues including working in a hostile environment, knowingly not adhering to established tax and payroll laws, etc. hadn't been responded to by Tanya Calvin or acknowledged by Jeffrey Calvin (owner) or Kris Mitchell (business partner and consultant) to Jeffrey Calvin; I felt that I needed to speak to the owner (Jeff Calvin) myself. Due to my frustration, I did remove family pictures from the office on Friday, April 15th, 2016 but several other of my personal belongings remained there and are still at the Allserv, Inc. office that I wouldn't have left if my intent was to quit my job.

April 16th, 2016: While at the office, I knew by indicating my frustrations to one of our managers; it would immediately illicit a response from either Jeff Calvin (owner) or Kris Mitchell (business partner/consultant to Jeff Calvin). Within in minutes of my text, Kris Mitchell contacted me via text. He indicated the grievances I had would be addressed when the timing was right. He told me to take a day off to consider if I had the patience to wait for that to happen. I concurred and intended to return to work on April 18th, 2016. I have emails and texts indicating my return on Tuesday the 19th of April that were sent to vendors and employees; including Tanya Calvin.

April 18th, 2016: In an attempt to regroup on the day I was granted to take off; I received an alert on my cell phone that my Allserv, Inc. email account password was incorrect. I reached out to Kris Mitchell as well as Tanya Calvin to find out what was going on and what happened to my email access. I was sent a text by Tanya Calvin stating that I told her I was quitting on Thursday April 14th, 2016 and that she and Jeff Calvin accepted my resignation. I responded to her text and asked her how that was possible. There was no documentation or resignation letter, I worked Friday April 15th, 2016, Saturday April 16th, 2016, as well as Sunday April 17th, 2016. I have saved emails and texts- including business correspondences indicating that Tanya Calvin knew I was planning on taking Monday April 18th off.

I filed for unemployment through SCDEW. I indicated during my initial filing of unemployment claim that I felt I was wrongfully terminated. I received my initial determination on June 3rd, 2016 with Allserv, Inc. claiming on left for reasons unknown to them. I received a notice disqualifying because of my earnings. I contacted the SCDEW monetary until where it was discovered my wages were incorrectly reported twice to SCDEW by Allserv, Inc. It was eventually corrected. Additionally, I received another notice from SCDEW fraud department indicating that I was currently reported as actively working. This was inaccurately reported by Oasis-Allserv, Inc. PEO Company. This was corrected after numerous attempts to have it corrected.

II. DENIAL OF TELEPHONE TRIBUNAL

I, Patricia Crawford, appealed the decision of the *initial determination* on SCDEW Form APP 100 along with documentation to the SCDEW Appeal Tribunal via email to Michelle Adams. Her email address is m.adams@dew.sc.gov. The notarized appeal form was submitted to SCDEW on June 6, 2016. I received an acknowledgement from Michelle Adams indicating the request for appeal form and additional supporting documentation for my case were received and submitted to the Appeal Tribunal on June 7, 2016. My Appeal Tribunal phone conference was scheduled for July 6, 2016. I received the Appeal Tribunal Disqualifying Decision on July 8th, 2016.

The denial *determination* for Tribunal Appeal No. 1607595:

“The Tribunal holds the claimant disqualified from receiving benefits indefinitely, effective April 17th, 2016 until requalification, upon a finding the claimant voluntarily quit the most recent bona fide employment without good cause. The decision affirms the determination mailed on June 3, 2016.”

I received the first determination letter and chose to appeal it. I had my telephone tribunal on July 6th, 2016. The cutoff for providing additional information was July 5th at 12:00 pm. I received an email from my former employer’s attorney with what had been provided to unemployment. This email was sent at 9:13 am and I received/read it at 10:22 am. Upon review of the items sent, I noticed discrepancies with text messages missing responses, false statements, etc. I promptly pulled my phone record and screen shots of the same time period that was submitted by employer and they didn’t match. In addition, I received a message from a current employee that stated she was asked to lie by my former employer in regards to my situation. I have a screenshot of that correspondence. I also provided previously and attempted to provide again other correspondence between myself and other Allserv employees as well as vendors indicating my return Tuesday the 19th of April. I attempted to upload this to the SCDEW claimant site but received an error stating the file was too large. I did it page by page; it still gave me the same error message. I have a screenshot of this error message as well.

I contacted the main number for SCDEW and they suggested that I fax it instead. While my additional documents were being faxed, I also sent an email to Mr. Thomas in Columbia and Michelle Adams explaining my situation and attached the documents as well. I never heard back from either Mr., Thomas or Ms. Adams regarding my emails that were sent. At this point the deadline was missed.

After receiving the tribunal disqualification notification, I proceeded to file an Appeal to the Tribunal.

III. DENIAL OF APPEAL TO TRIBUNAL

September 9, 2016 I received an Appellate Panel Decision letter that upheld the disqualification determination decision; however prior to this, I was given the impression that I would be notified

of a hearing. After filing my tribunal appeal, I received a letter from SCDEW letting me know the next steps of the process. I called on Monday, September 12th and was told by your office that a hearing was scheduled for Tuesday September 6th, 2016. I was unaware of this. Annette, at SCDEW, stated that I should've received a package with this information detailed in it but this was package was never received. I've fought this long and hard while trying to look for work that there's no way that I wouldn't have shown up. This also wasn't the first time that I didn't receive correspondence from SCDEW. She suggested that I send a request for reconsideration of my appeal as well as file with the administrative law court as indicated on the appeal decisions letter I received.

IV. REVERSAL OF AGENCY DECISION

February 23, 2017, The Honorable Deborah Brooks Durden with the South Carolina Administrative Law Court reversed the South Carolina Department of Employment and Workforce's denial decision and ordered that the matter be **remanded** for the recalculation of benefits due. This was based on evidence provided by myself, Patricia Crawford; as well as case law. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2s 591, 598 (1999), Samuel v. S.C. Employment Sec. Comm'n, 285 S.C. 476, 477, 330 S.E.2d 300, 301 (1985) (citation omitted); See Greenray Indus v. Unemployment Comp. Bd. Of Review, 135 A.3d 1140, 1143 (Pa. Commw. Ct. 2016) See v. Accord Bldg. Servs., LLC, 481 S.W. 3d 893, 901 (Mo. Ct. App. 2016) (citation omitted), See Posey v. Securitas Sec. Servs. USA, Inc., 879 N. W. 2d 662, 665 (Minn. Ct. App. 2016), See Kelly v. California Unemployment Insurance Appeals Bd., 223 Cal. App. 4th 1067, 1075-76, 167 Cal. Rptr. 3d 802, 808 (2014) (citation omitted), See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 20, 507 S.E. 2d, 328, 332 (1998)

C. ARGUMENT

The focus of my argument is that I didn't resign from my position with Allserv, Inc. The timeline of events provides proof of that statement. I asked that certain improper activities be addressed. Including: illegal reimbursement practices-this was discussed with management on 3 different occasions over the course of my employment, not wanting to partake in the activity of rubbing my breasts on business proposals for "good luck", suggesting that the reason I'm not eligible for a bonus or a raise is because I'm a woman working in a male dominant industry, being coerced into not going to doctor appointments for PTSD therapy (underhanded threats from Tanya Calvin but held no substance when discussing flexibility with owner, Jeff Calvin, working in a hostile environment where I've been subjected to screaming, having objects thrown and other various abusive behavior that no reasonable person would find acceptable. Each of these issues were discussed during Appeal Tribunal telephone hearing. Tanya Calvin admitted knowledge of some of the issues listed however Jeff Calvin (owner) and his business partner/consultant (Kris Mitchell) were made aware of the volatility of her behavior on numerous occasions to other employees, vendors and subcontractors without any resolution.

Until April 18th, 2016, I had a tolerable working relationship with Tanya Calvin. We worked directly in close quarters together for the length of my employment. As agreed to and verified by Tanya Calvin, I was a good employee without any disciplinary occurrences. I had excellent relationships with all of the employees as well as managers and vendors.

Because of our continued growth I felt it was time to finally take care of the issues at hand so they no longer a distraction to the growth of our company. When Tanya Calvin realized that I was going to continue to pursue doing the right thing, she took the opportunity to manipulate the situation by saying I resigned. Tensions were high the week of April 11, 2016 and frustration flamed the hostility. I knew that my complaints would not be taken seriously. They hadn't been on the numerous times I brought it up before or when other employees brought the same issues to Allserv's attention; particularly to Tanya Calvin. On Friday, I brought my personal family pictures and personal office supplies home (office supplies wasn't unusual. It was done on a weekly basis over the weekend because I needed items while working remotely) Tanya Calvin was aware of this and my frustration. I returned to work on Saturday, April 16, 2016 for over 5 hours and Sunday, April 17, 2016 for 2 hours. While working on Saturday, I voiced my frustration to a manager with close personal ties to the owner: Jeff Calvin and business partner/consultant: Kris Mitchell to illicit a response. Within 5 minutes, Kris Mitchell contacted me via text. He promised to address all of the issues at hand and that they would finally be taken seriously but he couldn't right at that moment because he didn't want to upset anyone. He suggested that I take Monday April 18th, 2016 as a personal day to collect my thoughts and determine whether or not I would be able to continue working for Allserv. I concurred and decided to use Monday the 18th as a personal day. Kris Mitchell's authority was to be taken seriously as all Allserv employees have been advised to contact him in regards to situations Jeff Calvin or Tanya Calvin couldn't handle themselves. It was up to Kris Mitchell to make Tanya Calvin aware of our conversation. She stated that she never heard from him. However; I did send her a text message letting her know of my absence on Monday. She continued to correspond with me as if I were still an employee up until the evening of Sunday April 17th, 2016 including processing of a bank transfer.

Monday April 18th, 2016, I received numerous error messages that my Allserv email address password was incorrect. I attempted to call and text Tanya Calvin and Kris Mitchell and didn't receive a response until the afternoon from Tanya Calvin stating that they accept my resignation effective Thursday April 14th, 2016. I never resigned. There was no written resignation letter nor were there any emails or texts that validated my resignation ever occurring. I questioned her on how that was even possible considering I worked April 15th, 16th, 17th, early a.m. on the 18th. I have emails and texts that made it clear Monday was a personal day that were provided to SCDEW upon initially filing my claim. Below is a timeline of what and when documents were submitted.

April 29th, 2016-I submitted screenshots as well as emails, texts, etc. that substantiate my position regarding my separation to the attention of Shanelle at the following email address.

shanelle@scdew.gov

May 3rd, 2016-I received a letter from the SCDEW stating my disqualification of benefits was due to not making enough money during the quarters reported. I contacted SCDEW monetary until to have this corrected as I had worked the full calendar year prior to filing claim. SCDEW asserted that Allserv, Inc. was responsible for reporting my wages. I provided my W2 and paystubs for all quarters in question. Allserv, Inc. again attempted to report my wages but they were still incorrect. 1st occurrence: 1 QTR of wages 2nd occurrence: 2 QTRS of wages. This should have shown 4 QTRS. SCDEW made the correction based on the information I provided to them on May 10th, 2016 to Demetriss Haynes via email DemetrissHaynes@dew.sc.gov as opposed to the incorrect reporting of wages provided by Allserv. This discrepancy on Allserv's part caused a delay with the unemployment claims process.

May 13th, 2016- I received a letter from SCDEW fraud department stating that I was recently reported as working for Oasis. This was submitted by Allserv and Oasis as part of new hire reporting. I contacted SCDEW and provided employee record and paycheck information to prove that I wasn't employed by Oasis-Allserv, Inc. PEO. This discrepancy on Allserv's part caused a delay with the unemployment claims process.

June 6th, 2016-SCDEW Form APP-100 along with documentation to the SCDEW Appeal Tribunal via email to Michelle Adams. Her email address is madams@dew.sc.gov. The notarized appeal form was submitted to SCDEW on June 6, 2016. I received an acknowledgement from Michelle Adams indicating the request for appeal form and additional supporting documentation for my case were received and submitted to the Appeal Tribunal on June 7, 2016. My Appeal Tribunal phone conference was scheduled for July 6, 2016.

I received the first determination letter and chose to appeal it. I had my telephone tribunal on July 6th, 2016. The cutoff for providing additional information was July 5th at 12:00 pm. I received an email from my former employer's attorney with what had been provided to unemployment. This email was sent at 9:13 am and I received/read it at 10:22 am. Upon review of the items sent, I noticed discrepancies with text messages missing responses, false statements, etc. I promptly pulled my phone record and screen shots of the same time period that was submitted by employer and they didn't match. In addition, I received a message from a current employee that stated she was asked to lie by my former employer in regards to my unemployment situation. I attempted to upload this to the SCDEW claimant site but received an error stating the file was too large. I did it page by page; it still gave me the same error message.

I contacted the main number for SCDEW and they suggested that I fax it instead. While my additional documents were being faxed, I also sent an email to SCDEW to the attention of Mr. Thomas in Columbia and Michelle Adams (Upstate Office) explaining my situation and attached the documents as well. I never heard back from either one. I explained this to tribunal officer but she refused it stating that I had time to provide the information prior to the hearing. Given the timeline above and circumstances, I politely disagreed but she wouldn't allow the additional information.

Final argument; Regarding the denial of Appeal to Tribunal:

September 9, 2016: I received an Appellate Panel Decision letter that upheld the disqualification determination decision; however prior to this, I was given the impression that I would be notified of a hearing. After filing my tribunal appeal, I received a letter from SCDEW letting me know the next steps of the process. I called on Monday, September 12th and was told by Annette, an employee of the Tribunals office with SCDEW, office that a hearing was scheduled for Tuesday September 6th, 2016. I was unaware of this. Annette stated that I should've received a package with this information detailed in it but this was package was never received. I asked if it was sent certified and she said that it was sent via regular mail. I've fought for this claim for too long and hard while trying to look for work that there's not any way that I wouldn't have shown up to the scheduled hearing had I been aware of it. This also wasn't the first time that I didn't receive correspondence from SCDEW. She suggested that I send a request for reconsideration of my appeal as well as file with the administrative law court as indicated on the appeal decisions letter I received. I believe that I should have been given another opportunity within SCDEW to reschedule a meeting that I was unaware of.

The South Carolina Administrative Law Court came to their decision based on the evidence provided by myself as well as case law to substantiate their order to reverse the determination made by the South Carolina Department of Employment and Workforce.

D. CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the order of the administrative law court should be affirmed.

Respectfully submitted,

Patricia Crawford
Respondent

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and Workforce, and Allserv, Inc.....Appellants,

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Respondent proposes the following be included in the Record on Appeal:

1. Order of February 23rd, 2017;
2. Transcripts of Proceedings

I certify that this designation contains no matter which is irrelevant to this appeal.

April 28, 2017

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PROOF OF SERVICE

I certify that I, Patricia A. Crawford, have served the Amended (specifically; cover sheet and designation of matter) Brief of Respondent upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, on April 28, 2017, addressed to the parties or their attorneys.


April 11, 2017
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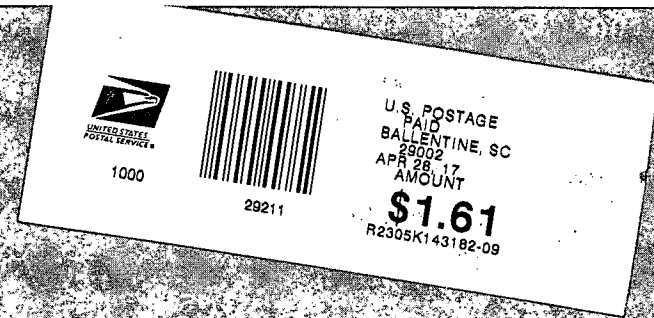
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