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DEC 28 2016

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge  
Case No.: 14-ALJ-22-0405-AP

Billie D. Mueller,.....Appellant

v.

South Carolina Department of Employment and Workforce, and Ebtron, Inc. ....Respondent's

Appellate Case No.: 2014-002489

**FINAL BRIEF OF APPELLANT**

Billie D. Mueller  
PO Box 98  
Davis Station, SC 29041  
Telephone: 803-410-6935  
Appellant has no Attorney

Sandra Grooms  
Office of General Counsel  
SC Dept. of Employment and Workforce  
PO Box 8597  
Columbia, SC 29202  
(803) 737-2666  
Attorney for Respondent, SCDEW

Kristine L. Cato  
Blair Cato Pickens Casterline, LLC  
700 Huger Street, Suite 102  
Columbia, SC 29201  
(803) 400-8600  
Attorney for Respondent, Ebtron, Inc.

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1 **APPELLATE'S FINAL BRIEF**

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4 **STATEMENT OF THE CASE**

5 ***The Nature of the Proceeding and the Relief Sought***

6 This is a Petition for Review of a decision of the Administrative Law  
7 Court affirming the decision of a Court of Appeals Judge decision denying  
8 unemployment benefits to Appellate. Appellate requests that the decision be  
9 reversed.

10 **The Nature of the Decision To Be Reviewed**

11 A final decision made and entered on November 07, 2014 by the  
12 Administrative Law Court.

13 **Statement of the Statutory Basis for Appellate Jurisdiction**

14 This court has appellate jurisdiction over this matter pursuant to S.C.  
15 Code Ann. 41-35-750

16 **Statement of Appellate Jurisdiction**

17 The Administrative Law Court entered its decision on November 07,  
18 2014. The Petition for Judicial Review was filed on November 13, 2014.

19 **Questions Presented on Review**

- 20 A. Did the SCDEW Appellate Panel err in finding the  
21 Appellant's action constituted misconduct under S.C. Code 45-  
22 35-120(2)-(4) Act 247?
- 23 B. Did the SCDEW Appellate Panel err in finding that  
24 Appellant willfully failed to perform her duties under S.C. Act 247?  
25 (R. p. 105 & 106)

1 C. Did the SCDEW Appellate Panel err in allowing the testimony and  
2 the submission of the Request For Information from Greg  
3 McBride because of a Complete Conflict of Intrest.

4 ( R. p. 97 Footnote #1)

5 **Summary of Argument**

6 During the telephone hearing with the SCDEWS Appeal Tribunal the  
7 Appellant was not given any of the documents Exhibits 1 and 2 that are part  
8 of the Appellants unemployment file by SCDEWS or Ebtron so the  
9 Appellate could put on a proper defense. Appellant was also not given a  
10 copy of the telephone hearing regulations. Appellants Subpoenaed witnesses  
11 Greg McBride was to submit Personnel File only David Dougan who did not  
12 participate was to testify of what was said by him at the termination meeting  
13 at the telephone hearing. The Appellant had never seen any of the  
14 unemployment file documents till September 22, 2014.

15 ( R. p. 97 lines 20-26, p. 98 lines 1-26, p. 99 lines 1-17 )

16 1) *Never in over 20 years a formal letter or reprimand from*  
17 *management*

18 2) *Never in over 20 years a notice of warning or management's*  
19 *attention to variance*

20 3) *Approximately \$6,350.00 of unpaid commissions falling into*  
21 *the 3<sup>rd</sup> Quarter of the 2013 obligation was all I had in my*  
22 *possession from Sept. 9<sup>th</sup> 2013 till Jan. 20<sup>th</sup> 2014*

23 4) *There was absolutely no loss of revenue to Ebtron or the accuracy*  
24 *of the Invoicing to Daikin / McQuay.*

Dated this 24<sup>th</sup> day of December, 2016

Billie D. Mueller

PO Box 98  
Davis Station, SC 29041  
(803) 410-6935  
Appellant has no Attorney

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April 16, 2014

Bilhe Mueller Termination

Ms Mueller was terminated from Ebtron after repeated instances of insubordination, refusal to follow instructions, and failing to perform her duties properly, ultimately resulting in severe errors affecting sales associates' commissions, and errors in tax liability

Since 2012, her direct supervisor, Dick McKibben (Operations Manager) has experienced repeated issues of her failure to follow his instructions to perform her job, insubordination, poor attitude and mistakes

She was notified of these issues verbally by McKibben as they occurred, and he documented them at the same time. She was also notified of these problems officially at her 2013 performance review, held on February 5, 2014. She was placed on a 90-day probationary period (Performance Improvement Plan) at that time and was told she needed to improve immediately

On or around that time, the Company learned that she had failed to process paperwork since the middle of 2013 for certain sales associates' commissions and quarterly bonuses for the 4<sup>th</sup> quarter of 2013. This resulted in \$55,000 worth of errors affecting the sales associates, bonuses, and created substantial tax implications. She had concealed her failure to perform that work from the company for months, and others had to spend enormous amounts of time to correct those errors.

That failure to perform her job, coupled with her concealment of it for months, on top of her other performance related issues, resulted in her termination.

These performance and attitude related issues violated numerous company policies contained in the employee handbook, which has been communicated to the Claimant. They are

Policy #200.14 Discipline and Rules of Conduct:

- 200.14.3 Unacceptable job performance
- 200.14.4 Not completing assignment up to the quality standards of the Company
- 200.14.5 Failure or inability to cooperate with others
- 200.14.8 Failure or refusal to follow instructions
- 200.14.20 Demonstration of lack of courtesy towards other employees
- 200.14.23 Insubordination
- 200.14.26 Concealing defective work

1663 Hwy 701 S • Lons, SC 29569 USA  
 Toll Free 800.2EBTRON (800.232.8768) • Local Phone. +1 843 756 1828 • Fax: +1 843 756 1838  
 Internet: www.ebtron.com • e-Mail [gram@ebtron.com](mailto:gram@ebtron.com)

EBTRON, Inc. IS AN "AT-WILL," EQUAL OPPORTUNITY EMPLOYER



Policy #200.22 Customer and Fellow Employee Relations.

"Employees of the Company are expected to treat clients and fellow employees courteously and with the utmost respect at all times. Employees must attend to clients' questions and demands promptly and professionally ..."

1663 Hwy. 701 S. • Loris, SC 29569 USA  
Toll Free. 800.2EBTRON (800.232.8766) • Local Phone: +1.843.756.1828 • Fax +1 843 756.1838  
Internet: [www.ebtron.com](http://www.ebtron.com) • e-Mail: [aream@ebtron.com](mailto:aream@ebtron.com)  
**EBTRON, Inc. IS AN "AT-WILL," EQUAL OPPORTUNITY EMPLOYER**

**Performance Review Form - Salary - 2014**

Employee Name: Billie Mueller Job Title: Sales Admin Supervisor  
 Review Date:                      Supervisor: Dick McGibben  
 Review Type: Annual Review Period: 01/01/13 to 12/31/13

Performance Rating Categories: Consider the employee's performance in each category and designate the level of performance that most accurately describes her/his job performance

- [O]utstanding: Employee consistently exceeds position expectations with virtually no detected preventable/avoidable errors, requiring little or no supervision
- [E]xceeds Expectation: Results clearly exceed position requirements on a regular basis. Performance is of high quality and is achieved on a consistent basis.
- [M]eets Expectation: Competent & dependable performance level. Meets the performance standards and objectives of the job without constant follow-up and/or direction
- [B]elow Expectation: Employee does not meet performance objectives on a regular basis and has difficulty following through with tasks. Requires constant follow-up and/or supervision
- [I]mmediate Improvement Needed: Employee must correct performance immediately

**Part I: Major Job Responsibilities (No more than 5) (70% Weight)**

The Employee and Manager list major job responsibilities in order of importance and identify how they will be measured. Assign a percentage value to each major job responsibility based on the percentage of job responsibility time (Total MUST equal 100%). At the end of the rating period, place a rating letter in the box. Record comments on a separate piece of paper, if necessary.

% of Job	Job Responsibility	Rating
50%	Supervise and help perform daily sales administrative activities. Work to train and develop current and new administrative staff. Follow-up to assure all necessary tasks are completed correctly and on-time. Keep accurate records of admin errors for weekly review.	B
35%	Accept your role as Office Manager. Make decisions related to daily office events and problems. Establish guidelines for each office employee and hold them accountable for their job responsibility. Conduct necessary follow-ups and audits to assure jobs are being performed to our expectations. Hold regular meetings with the group to communicate information and convey instructions to them.	B
15%	Improve your relationships with others at Ebtron. Resist the temptation to comment on what others are not doing and focus on what you and your team can do. Treat all Reps and employees equally. Report failures of other departments and people directly to Dick.	M

**SCDEW**

APR 21 2014

Received Benefits Div

### Performance Review Form - Salary - 2014

#### Part II: General Employee Attributes

(30% Weight)

- 1. Rate employee's flexibility when given new assignments and/or responsibilities
- 2. Rate employee's adherence to policies and procedures.
- 3. Rate employee's overall communication skills.
- 4. Rate employee's judgment when making decisions and completing tasks.
- 5. Rate employee's ability to work well with colleagues and management.
- 6. Rate employee's attendance:

Rating

M

M

M

M

M

M

Accomplishments or new abilities demonstrated since last review:

Specific areas of needed improvement:

Billie has not accepted her role as supervisor. There has been little or no demonstrated leadership exhibited by her toward the Sales Admin group. Employee errors have neither been kept on a constant basis nor have they been reviewed regularly as required. Greg McBride and I have been required to intervene with the staff to attempt to keep the group functioning properly. Probation action plan will be submitted.

Employee Comments:

*Did not get the help that was discussed at last review that I stated I needed.*

Date Discussed/Reviewed with employee      /      /     

Follow-up required YES / NO

Employee Signature

*Billie Mueller*

Manager Signature

*[Signature]*

*HR Mgr [Signature]*

Date:

*02/05/14* **SCDEW**

Date:

*2/5/14* APR 21 2014

*2/5/2014* **Employee Benefits Div**

UCB1017  
REV. 07/92

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

NAME: BILLIE D MUELLER		SSN: [REDACTED]	BYE: 03/29/15
CLAIMSTAKER ID:	WFC #: 260	FILED: 04/04/14	EFF DATE: 03/30/14
MAILING ADDRESS: [REDACTED]			
CITY: [REDACTED]	STATE: [REDACTED]	ZIP: [REDACTED]	
OTHER NAME: BILLIE D MUELLER			

<input checked="" type="checkbox"/> 1-UI	<input type="checkbox"/> 4-UI/UCFE/UCX	<input type="checkbox"/> 7-UCX	<input checked="" type="checkbox"/> NEW	<input type="checkbox"/> TRANSITIONAL
<input type="checkbox"/> 2-UI/UCFE	<input type="checkbox"/> 5-UCFE	<input type="checkbox"/> 8-CW	<input type="checkbox"/> ADDITIONAL	<input type="checkbox"/> R-ADD
<input type="checkbox"/> 3-UI/UCX	<input type="checkbox"/> 6-UCFE/UCX	<input type="checkbox"/> OTHER	<input type="checkbox"/> CONTINUED	

BONA FIDE EMPLOYER NAME & PAYROLL ADDRESS INFORMATION:		DATES OF EMPLOYMENT:	
NAME: EBTRON, INC.		FROM:	TO:
STREET: 1663 HIGHWAY 701 S		09/26/86	04/04/14
CITY: LORIS	ST: SC	ZIP: 29569	EMP. ACCT. # [REDACTED]

BONA FIDE EMPLOYER LOCAL ADDRESS INFORMATION:			
STREET:			
CITY: LORIS	ST: SC	ZIP:	PHONE #:(908) 359-7960

SEPARATION REASON:	<input type="checkbox"/> LOW	<input type="checkbox"/> VQ	<input checked="" type="checkbox"/> DISCHARGE	<input type="checkbox"/> STILL WORKING
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ISSUE CODES: 01
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LIABLE EMPLOYER INFORMATION:		DATES OF EMPLOYMENT:	
NAME: EBTRON, INC.		FROM:	TO:
EMP. ACCT # [REDACTED]		09/26/86	04/04/14
JOB LOCATION (CITY/STATE): LORIS, SC			

SEPARATION REASON:	<input type="checkbox"/> LOW	<input type="checkbox"/> VQ	<input type="checkbox"/> DISCHARGE	<input type="checkbox"/> STILL WORKING
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NARRATIVE REASON FOR SEPARATION FROM LIABLE EMPLOYER:
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## SC Department of Employment and Workforce Discharge Report

SSN: [REDACTED]  
 Claimant's name: BILLIE D MUELLER  
 Date of birth: [REDACTED]  
 Local office: 260  
 Benefit year begin date: 3/30/2014  
 Benefit year end date: 3/29/2015  
 Claim type: New  
 Potentially Eligible: No  
 Employer name: EBTRON, INC.  
 Employer Account #: 289798  
 Hire date: 9/26/1986  
 Termination date: 4/4/2014  
 Discharge reason: Discharged  
 Earned at least \$2608: Yes  
 Bonafide: Yes

### **Discharge**

Discharge Reason: Other

Date of final incident: 2/20/2014  
 Final incident that caused discharge:  
DID NOT WORK UP THE DISBURTION OF COMMISSIONS IN A TIMELY MANNER  
 Discharge date: 4/4/2014  
 Reason for delay between final incident and date of discharge: Other  
 Further details about delay between final incident and discharge date:  
DO NOT KNOW FOR SURE  
 Discharged by: DAVID S. DOUGAN  
 Title of person who discharged you: PRESIDENT  
 Violated company policy: No  
 Final incident impacted employer's business: No  
 Received prior warnings: No

4/21/2014 8:37:48 AM



**SC Department of Employment and Workforce FFATNET Report**

**MUELLER, BILLIE**



Gender: F

Date of Birth:

(843) 756-1296

dinker@sccoast.net

Claim Office: 260

Effective Date: 3/30/2014

BYE: 3/29/2015

Interview Appointments:

Issues:

Employers:

Employer Name: EBTRON, INC.

Bonafide employer: Yes

Hire date: 9/26/1986

Termination date: 4/4/2014

Earned at least \$2,608.00: No

Owner or corporate officer of a business: No

Employer Acct Number: 289798

NAICS Code: 334512550

Claimant Separation Reason: Discharged

Employer Separation Reason:

Total Wages: \$57,039.35

Employer Issues:

Kind Description	Discharge
Create Date	4/4/2014 12:00:00 AM
Last Modified Time	4/17/2014 10:54:57 AM
Attachment Info	Description

Created Time	Upload Date
--------------	-------------

Contact Attempts:

✓

**Contact Whom:** Employer **Contact Outcome:** Left Voice Mail  
**Contact Type** Phone  
**Created Date** 4/15/2014 11:19:23 AM  
**Action Data:** Called Phone Number 8437561828  
**Note** Made 48 hrs attempt to request employer. Lft message w/ Greg McBride in HR. Informed employer of 48 hr deadline. Due by 11:16am on 4/17/14.

**Contact Whom:** Claimant **Contact Outcome:** Contacted Successfully  
**Contact Type** Phone  
**Created Date** 4/17/2014 11:08:13 AM  
**Action Data:** Called Phone Number 8437561296  
**Note**

**Claimant Rebuttals:**

Employer Name	Agree With Employer	Statement
EBTRON, INC.	False	If my work was so poor and unreliable, why are they offering me a severance package in which I have not signed yet. Nothing was stated at the time I was let go. I worked there 28 years and told that this would be a good time for me to retire. I was placed on a probationary period and was let go prior to the 90 days ending.

**Employer Rebuttals:**

**History Events:**

FactFindingIssueCreated at 4/4/2014 2:57:17 PM by BILLIE D MUELLER (PUBLIC\DINKER): Created 'Discharge' Fact Finding Issue for employer 'EBTRON, INC.' with status Submitted as part of submit Claim Application.

---

FactFindingCreated at 4/4/2014 2:57:17 PM by BILLIE D MUELLER (PUBLIC\DINKER): Fact Finding was created as part of submitting a Claim Application by BILLIE D MUELLER(PUBLIC\DINKER)

---

StatusChanged at 4/4/2014 3:05:48 PM by SCES\SMHarris: Status changed from *Initial Claim to Review* by the trigger Claim Submit to ABPS.

---

CheckOut at 4/15/2014 11:12:05 AM by SCES\NArmstrong: Fact Finding checked out.

---

FactFindingIssueStatusChange at 4/15/2014 11:13:13 AM by SCES\NArmstrong: *Fact Finding Issue " Status changed from 'Submitted' to 'Reviewed' by the trigger 'Review Complete'. Employer Name: EBTRON, INC.*

---

SuccessfulEmployerContact at 4/15/2014 11:19:23 AM by sces\narmstrong: Employer via Phone with outcome Left Voice Mail Notes:'new notetest': 'Made 48 hrs attempt to re...'

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A. P. B

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DEC 28 2016  
DEC 28 2016

SC Court of Appeals  
SC Court of Appeals

Certificate of Appellant

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The undersigned hereby certifies that the Final Brief of Appellant contains all material proposed to be included by any of the parties and not any other material.

December 24, 2016

*Billie D. Mueller*

Billie D. Mueller  
PO Box 98  
Davis Station, SC 29041  
(803) 410-6935  
Appellant has no Attorney

PROOF OF SERVICE OF FINAL BRIEF

**RECEIVED**

DEC 28 2016

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

SC Court of Appeals

[In The Supreme Court]

APPEAL THE ORDER FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2014-002489

Billie Mueller

Appellant

v.

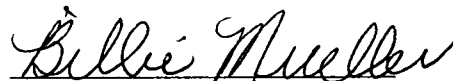
South Carolina Department of Employment  
and Workforce. And Ebtron, Inc.,

Respondent's,

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant to the South Carolina Court of Appeals on Sandra Grooms by depositing a copy of it in the United States Mail, postage paid, on December 24, 2016 addressed to the Office of General Counsel-SCDEW, PO Box 8597, Columbia, SC 29202

December 24, 2016



Billie Mueller  
PO Box 98  
Davis Station, SC 29041  
Appellant Has No Attorney