

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Clara L. Brockington,)
)
Petitioner,)
)
v.)
)
South Carolina Department of Employment)
and Workforce,)
)
Respondent.)

Docket No. 18-ALJ-30-0181-CC

ORDER

RECEIVED
SEP 24 2018
SC Court of Appeals

STATEMENT OF THE CASE

This contested case arises from the April 20, 2018 decision of the South Carolina Department of Employment and Workforce (DEW or Department) finding the Petitioner owes a debt subject to the Setoff Debt Collection Act related to an unappealed Department decision issued after a hearing on March 21, 2017. The underlying decision found an overpayment of unemployment benefits of \$858.00 was made to the Petitioner as a result of the Petitioner's failure to correctly report the gross wages earned for each week she filed her claim. The Petitioner did not appeal the Tribunal decision, and therefore pursuant to S.C. Code Ann. § 41-35-740, it became the Department's final decision. The Department then initiated collection activities and in response to the Department's April 30, 2017, Demand For Refund Letter, the Petitioner remitted a payment of \$58.00 to the Department. On July 6, 2017, the Petitioner made an additional payment of \$48.00, bringing her outstanding overpayment balance down to \$752.00.

PROCEDURAL HISTORY

On February 12, 2018, in accordance with S.C. Code Ann. § 41-41-40(A)(3), the Department notified the Petitioner of its intention to set-off the Petitioner's state income tax refund to recover her outstanding debt of \$752.00. The Petitioner appealed the Notice to Debtor to the Appeal Tribunal and the Hearing Officer issued his decision on April 20, 2018 affirming that the amount of the debt originally submitted through the Setoff Debt Collection Act was correct and rightfully due from the Petitioner. On May 16, 2018, the Petitioner filed a request for a contested

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case hearing with the Administrative Law Court (ALC or court.) On June 19, 2018, the court issued an Order for Pre-Hearing Statements to the parties. On July 3, 2018, the Department filed its Pre-Hearing Statement and a Motion in Limine¹ arguing that the doctrine of *res judicata* prevents this court from relitigating issues that were finally decided in the unappealed Department decision from the March 21, 2017 hearing.

STANDARD OF REVIEW

Pursuant to ALC Rule 68, this court may apply South Carolina Rules of Civil Procedure (SCRCP) in contested case proceedings where no ALC rule applies and when practicable. Therefore, Rule 56(c), SCRCP applies in determining whether summary judgment is proper in this case. Summary judgment is proper when there is no issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000); Rule 56(c), SCRCP. Summary judgment should not be granted, even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusions or inferences to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000); *Fleming v. Rose*, 338 S.C. 524, 236 S.E.2d 732 (2000). To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable ambiguities and inferences in the light most favorable to the non-moving party. *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Trico Surveying, Inc. v. Godley Auction Co.*, 314 S.C. 542, 431 S.E.2d 565 (1993).

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 854, 856 (2001). One may not create a genuine issue of material fact and, thus, avoid summary judgment by asserting

¹ Although the Department filed its motion as a Motion in Limine, the court will treat it as a Motion for Summary Judgment.

that the trier of fact may disbelieve uncontradicted evidence. *Hoard ex rel. Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 694 S.E.2d 1 (2010).

DISCUSSION

The Department seeks to recover a debt owed to it by the Petitioner for overpayment of unemployment insurance benefits pursuant to the Setoff Debt Collection Act, S.C. Code Ann. § 12-56-10 *et seq.* The South Carolina Supreme Court held in *Gardner v. S. Carolina Dep't of Revenue*, 353 S.C. 1, 18, 577 S.E.2d 190, 199 (2003), that unemployment insurance overpayments could be recovered by the Department as a delinquent debt pursuant to the Setoff Debt Collection Act by intercepting a claimant's state income tax refund if the debt "accrued through contract, subrogation, tort, operation of law, or any other legal theory." *Id* at 17. A "delinquent debt" is defined as "a sum due and owing a claimant agency, including collection costs, court costs, fines, penalties, and interest which have accrued through contract, subrogation, tort, operation of law, or other legal theory..." S.C. Code Ann. § 12-56-20(4) (2014).

In this case, the Department relies on the operation of law as the basis for its claim to set off a delinquent debt owed by the Petitioner against tax refunds. A claimant who is found by the Department to have "received a sum as benefits under Chapters 27 through 41 while conditions for the receipt of benefits...were not fulfilled or while he was disqualified from receiving benefits...liable to repay [the Department]...a sum equal to the amount received by him. S.C. Code Ann. § 41-41-40(A)(1) (Supp. 2014). This section obligates the Petitioner to repay any benefits she received to which she was not entitled. The obligation arises by operation of law when a final decision as to eligibility is reached. A decision is final ten days after the date that decision is mailed, unless the decision is timely and properly appealed. S.C. Code Ann. § 41-35-740 (Supp. 2014). In this case, the Petitioner failed to appeal the Department's decision; therefore, it became a final decision as to the Petitioner's overpayment.

The Petitioner's right to seek relief from this court pursuant to the Setoff Debt Collection Act does not include a right to relitigate issues which should have been presented to the Department's Appellate Panel. With respect to the Department's decisions, "judicial review is permitted only after a party claiming to be aggrieved by it has exhausted his administrative remedies as provided by Chapters 27 through 41 of [Title 41]." S.C. Code Ann. § 41-35-740 (Supp. 2014.) Because the Petitioner did not timely appeal the underlying decision, she is barred

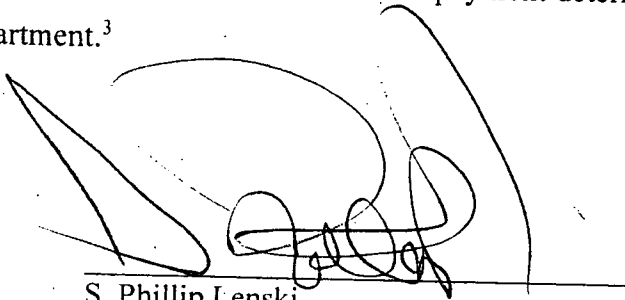
from relitigating issues that she failed to appeal at the proper time. The doctrine of *res judicata* applies to the decisions of state agencies, barring the relitigation of issues which were or could have been raised before the administrative hearing body. *S. Carolina Dep't of Soc. Servs. v. Winyah Nursing Homes, Inc.*, 282 S.C. 556, 563, 320 S.E.2d 464, 468 (Ct. App. 1984). The Department's factual findings are preclusive if they meet the traditional elements of *res judicata* and there exists no countervailing consideration which necessitates relitigation². *Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 417 S.E.2d 569 (1992). The doctrine of *res judicata* bars a litigant from raising any issues that were adjudicated in the former suit and any issues which might have been raised in the former suit. To establish *res judicata*, a party must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). All of these elements are met in this case. The determination that the Petitioner was overpaid benefits to which she was not entitled to and the amount of the overpayment due to the Department was the subject adjudicated between the parties in the Department's decision issued after the March 21, 2017 hearing.

The Petitioner cannot use the protest rights granted by S.C. Code Ann. § 12-56-65 to reverse a decision regarding issues which are soundly the law of the case. "An unchallenged ruling, right or wrong, is the law of the case and requires affirmance." *First Union Nat. Bank of S. Carolina v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998). Therefore, because the Petitioner did not appeal the Department's decision that she owed the overpayment nor the amount due, the Department's decision became the law of the case. The only issue raised by the Petitioner in her Request for Contested Case Hearing is that she is "...not in agreement that I owe the agency any monies." That issue falls squarely within the matters decided after the Department's March 21, 2017 hearing and relitigation of that issue is barred by *res judicata*.

² The South Carolina Supreme Court held in *Shelton v. Oscar Mayer Foods Corp.*, 325 S.C. 248, 252, 481 S.E.2d 706, 708 (1991), that the doctrine of collateral estoppel does not apply to bar relitigation of issues decided by the Department in subsequent litigation. That decision was based on the Court's conclusion that "the narrow issue the [Department] decides is simply whether the claimant is qualified to receive unemployment benefits. That case is distinguishable from the circumstances of the present case because of the differences between the doctrines of collateral estoppel and *res judicata*. See *Béall v. Doe*, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 190 (Ct. App. 1984) "The doctrines of *res judicata* and collateral estoppel are, of course, two different concepts.")

IT IS THEREFORE ORDERED that the South Carolina Department of Employment and Workforce is entitled to receive a debt set-off in the amount of \$752.00 from Petitioner's 2019 tax return for credit on the delinquent amount owed related to the overpayment determined after the March 21, 2017 hearing of the Department.³

AND IT IS SO ORDERED.



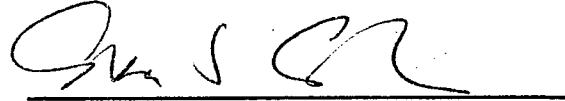
S. Phillip Lenski
Administrative Law Judge

August 21, 2018
Columbia, South Carolina

³ All other motions not addressed in this Order are deemed denied.

CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler
Judicial Law Clerk

August 21, 2018
Columbia, South Carolina