STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Adrian Wilson, Appellant, vs. South Carolina Department of Employment and Workforce and Wateree Community Actions, Inc., Respondents.	)	Docket No. 18-ALJ-22-0275-AP **FINAL ORDER**

STATEMENT OF THE CASE

Adrian Wilson (Appellant) appealed the decision of the South Carolina Department of Employment and Workforce (Department), which disqualified her from receiving unemployment benefits for sixteen (16) weeks upon finding that Appellant was discharged for cause other than misconduct connected with her employment with Wateree Community Actions, Inc. (Employer). The South Carolina Administrative Law Court (ALC or Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2017); *see also* S.C. Code Ann. § 1-23-600(D) (Supp. 2017).

Following her separation, Appellant filed for unemployment benefits. On February 23, 2018, the Department issued an initial determination holding Appellant eligible for benefits for having been separated because of a lack of work. Employer appealed on February 28, 2018. After an evidentiary hearing, the Appeal Tribunal, on May 17, 2018, reversed the initial determination and held that Appellant had been discharged for cause other than misconduct and imposed a disqualification from unemployment benefits for sixteen (16) weeks. Appellant sought review by the Department's Appellate Panel (Panel) on May 28, 2018. On July 2, 2018, the Panel affirmed the Appeal Tribunal decision.

Appellant filed a Notice of Appeal on August 2, 2018. The ALC issued a Notice of Assignment on August 10, 2018. The Department filed the Record on Appeal on August 30, 2018. Appellant

filed her brief on September 18, 2018.[1] The Department filed its brief on October 8, 2018. On October 17, 2018, Appellant submitted a reply brief reiterating her positions.

After considering the record and the briefs of the parties, the Court affirms the Panel's Decision.

BACKGROUND

Appellant worked for Employer approximately ten months, from March 6, 2017, until January 18, 2018, as Employer's human resources director.

Employer's Executive Director stated that Appellant had been warned for not discharging her duties as instructed by the Executive Director. Appellant admitted refusing to sign the warning and responded in an email. The Executive Director identified other disagreements that she had with Appellant. As Appellant's supervisor, the Executive Director thought that she should be able to tell Appellant what things to do and how to do them. Appellant continued to disagree with her. Finally, on January 17, 2018, Appellant responded with an email in which she stated that she would perform the work her way and did not believe the Executive Director was sufficiently qualified to tell her what to do.[2]

Although Appellant denied that she received warnings, she also stated that she responded to a warning and insisted that she completed her assigned tasks even if she did not agree with them. Further, she admitted that, in the January 17 email, she told the Executive Director that she did not need to be micromanaged. She denied saying that the Executive Director was not qualified but admitted saying that the Executive Director was not aware of "the requirements of HR" and that she was not a good source of information.

ISSUES ON APPEAL

1. Was Appellant afforded the opportunity to present evidence to refute the Employer's reasons for her discharge?

2 Did the Panel err in finding that Appellant was discharged for cause connected with the employment?

STANDARD OF REVIEW

[1] The Court granted the parties extensions on the filing dates following the Department's motion to amend the caption to identify the correct employer and update mailing addresses associated with the appeal.

[2] Neither party offered to enter the email into evidence, but both testified about its contents.

The Department is an "agency" under the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club,* 282 S.C. 384, 386, 318 S.E. 2d 365, 367 (1984) (determining that the Employment Security Commission, the Department's predecessor, was an "agency" within the meaning of the APA). Accordingly, the APA's standard of review governs appeals from the Panel's decisions. *See* S.C. Code Ann. §§ 1-23-380 (Supp. 2017), 1-23-600(D); *Gibson*, 282 S.C. at 386, 318 S.E.2d at 367; *McEachern v. S.C. Emp't Sec. Comm'n*, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). The standard used by appellate bodies to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5). *See* S.C. Code Ann. § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner proscribed in S.C. Code Ann. § 1-23-380(5)).

S.C. Code Ann. § 1-23-380(5) states:

> The court may 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.

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record allows the possibility of drawing inconsistent conclusions from the evidence does not mean the agency's findings are not supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 267 S.C. 130, 136, 276 S.E.2d 304,

307 (1981)). The ALC may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995); *see also* S.C. Code Ann. §1-23-380(5). The party challenging an agency action bears the burden "to prove convincingly that the agency's decision is unsupported by the evidence." *Waters*, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

Appellant argues that she was not allowed to submit evidence to refute the Employer's reasons for her discharge. In support of this argument, Appellant points out that she submitted some forty-five (45) pages of documents to the Appellate Panel. The Panel refused to consider any evidence not presented to the Appeal Tribunal.

The record shows that Appellant disagreed with the testimony of Employer's witness, but it does not show that she offered the documents in question to support her position nor did she object to the evidence admitted or the testimony given.

The Appeal Tribunal hearing is the Department's evidentiary proceeding. The Appellate Panel has wide latitude to affirm, modify, or reverse an appeal tribunal decision "on the basis of evidence **previously submitted in the case**." S.C. Code Ann. § 41-35-710 (Supp. 2017) (emphasis added); *see also* S.C. Code Reg. 47-52(B)(1) ("[A]ll appeals to the Appellate Panel shall be heard **solely upon the evidence in the record before the Appeal Tribunal.**") (emphasis added). Evidence not presented at the hearing and objections not made to evidence offered at that hearing cannot be considered by the Appellate Panel or by the ALC. *Id.*; *see also State v. Lawhorn*, 254 S.C. 275, 277, 175 S.E.2d 233, 234 (1970) ("It is well settled in this State that if objections are not interposed to the introduction of evidence, such questions or objections cannot be raised for the first time on appeal."). Accordingly, the Appellate Panel properly refused to consider additional evidence "not previously presented in the evidentiary hearing before the Tribunal." In addition, Section 1-23-380(4) provides that the Court's review "must be confined to the record." Therefore, this Court cannot consider on appeal evidence not presented or offered at the evidentiary hearing.

Appellant also argues that the Department erred in finding that she was discharged for cause connected with the employment. On appeal, this Court's review is limited to determining whether the Panel's decision is supported by substantial evidence in the record.

The Panel is the final finder of fact in unemployment benefit cases. S.C. Code Ann. § 41-35-710 (Supp. 2017); *Merck v. S.C. Emp't Sec. Comm'n*, 290 S.C. 459,460, 352 S.E.2d 338, 339 (1986) ("The Commission [(Panel's statutory predecessor)] has the authority to make its own findings of fact consistent with or inconsistent with those of the appeal tribunal."). Moreover, as the ultimate factfinder, the Panel can choose to believe one witness over multiple witnesses or to find some witnesses more credible than others. *Milliken & Co. v. S.C. Employment Sec. Comm'n*, 321 S.C. 349, 350 468 S.E.2d 638, 639 (1996) ("On questions of witness credibility, [reviewing courts] defer to the judgment of the agency."); *see also, e.g., Gowdy v. Gibson*, 391 S.C. 374, 385, 706 S.E.2d 495, 501 (2011) (recognizing that the fact finder "heard [and saw] the witnesses, [and] is in a better position to evaluate their credibility and assign comparative weight to their testimony.").

In this case, the Panel could and did choose to believe the employer's witness augmented by Appellant's admission that she disagreed with her supervisor and believed that her knowledge of human resources was superior to that of her supervisor. Appellant, therefore, failed or refused to comply with the instructions given by her supervisor. Accordingly, the Panel found that Appellant's conduct showed disregard for the Employer's reasonable requirements and expectations.

Thus, the Panel's decision is supported by substantial evidence in the record and is not characterized or controlled by an error of law or an abuse of discretion. Therefore,

IT IS ORDERED that the Department's decision is **AFFIRMED.**

AND IT IS SO ORDERED.

October 24, 2018
Columbia, South Carolina

H.W. Funderburk, Jr.
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Julia M. Miller, 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).

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Julia M. Miller
Judicial Law Clerk

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I hereby certify that I have served the Brief of Respondent DEW in the above-captioned matter by depositing it in the United State Mail, postage prepaid, on October 8, 2018 to the below named parties at their addresses of record:

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October 8, 2018

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