

STATE OF SOUTH CAROLINA,)
COUNTY OF Richland)

Adrian Wilson, Appellant)

Vs.)

South Carolina Administrative Law Court)

SC Employment and Workforce, WCAI,)

Respondents)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

**MOTION AND AFFIDAVIT TO
PROCEED IN FORMA PAUPERIS**

FILE NO. 18-ALJ-22-0275-AP

I, Adrian Wilson being duly sworn, state that I am the Appellant and that I do not have the funds available to pay the costs of filing and service in the present matter. I hereby request that the complaint be filed and service made without costs.

Sworn to and Subscribed before me)

This 26 day of 11, 2018)

[Signature])

Notary Public for South Carolina)

My Commission expires October 31, 2026)

DEMETRIA LATOYA SCOTT
Notary Public - State of South Carolina
My Commission Expires October 31, 2026

[Signature]

Signature of Appellant or Person

Filing appeal on behalf of the appellant

ORDER

- Leave is *granted* to proceed in forma pauperis without payment of the filing fee.
- Leave is granted to proceed in forma pauperis without payment of the service cost.
- Leave is *denied* to proceed in forma pauperis.

Dated: _____, 20____

JUDGE/CLERK OF COURT

_____, South Carolina

NOTICE TO APPELLANT: The Court may assess costs against either party at hearing.

RECEIVED

NOV 27 2018

SC Court of Appeals

FORM 8

LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL

November 26, 2018

The Honorable Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
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SC Court of Appeals

RE: Adrian Wilson, Appellant vs. SC Administrative Law Court, SC Employment and Workforce, Wateree Community Action Inc., Respondents, Case No: 18-ALJ-22-0275-AP

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the order[s] [judgment] which is [are] to be challenged on appeal, SCDEW Record on Appeal submitted to SC Administrative Law Court, and SCDEW Brief submitted to SC Administrative Law Court.
- (3) A motion and Affidavit to Proceed **IN FORMA PAUPERIS.**
- [(4) This appeal is being filed with the SC Court of appeals because

a. Substantial evidence exist to refute the allegations to support the for cause finding made by SCDEW that was not considered by the SC Administrative Court, or SCDEW's tribunal panel. SCDEW and not the employer contended that I was discharged for failing to complete task, and being insubordinate. In July of 2017 the ED did accuse me of being insubordinate, but she was never able to explain how I was insubordinate. I declined to sign the document and provided her with a detailed response that was a part of the Record on Appeal submitted by SCDEW. From this point in July 2017, I began to intensely document my communication with the ED. In doing so, I requested that she and I communicate via e-mail so that moving forward there would be no confusion regarding instructions she provided. I have email communications from her giving me specific task to complete, as well as, timeframes (in some instances) to get them done. All emails clearly show that I completed all task as requested and some were even completed ahead of schedule; however, this evidence was not considered in any previous review of the facts by SCALC or the Appeal Panel (Record on Appeal Pgs. 070 thru 112). Contrary to what is stated in the Final order from SCALC, I did object to the ED being able to reference the email during the evidentiary hearing on May 16, 2018. I objected two different times to evidence being referenced that was not submitted prior to the hearing as required during the May 16, 2018 evidentiary hearing (Record on Appeal Pg. 032 lines 2, 3 {objection of evidence January 17, 2018 email} and Pg. 42

objection of evidence lines 1-5). The Administrative Hearing Officer conducting the appeal tribunal is the authority during the evidentiary hearing. They have the authority to stop information that was not submitted as evidence to not be referenced. All evidence was sworn in at the beginning of the hearing and the January 17, 2018 email was not sworn in as evidence during this time (Record on Appeal Pgs. 031 lines 1-28 and 032 lines 1-27), nor was it submitted prior to the hearing as required based on the information outlined in the Notice of Hearing Before Appeal Tribunal Letter (Record on Appeal Pg. 022-025. Consequently, I contend that the decision of the SCALC, as well as the SCDEW panel were "...made upon unlawful procedure, and affected by other error of law..." SC Code Ann. 1-23-380(5) (Supp. 2017). When this occurs, the courts may reverse or modify the decision of the lower court.

b. Statements made specifically by the Wateree Community Action Inc.'s Executive Director on record supports that I should not have been disqualified from receiving unemployment benefits. Her statements do not coincide with the explanation provided by SCDEW to find that I was discharged for cause. SCDEW stated that I was terminated for cause other than misconduct for failing to complete task and being insubordinate. I contend that I followed all of the instructions of the ED and I was in no way insubordinate. The email I sent her on January 17, 2018 submitted with the Record on appeal Pg. 098 and 099, was me requesting to be allowed to do my job and function in the capacity, in which I was hired to function as the Director of Human Resources as outlined in my position description. Additionally, as noted below by ED I never received any warnings that my employment was in jeopardy nor was I insubordinate.

The specific questions asked to ED regarding my separation and her responses are as follows:

1. The hearing officer asked, "All right. And Ms. Tucker, did you tell Ms. Wilson why she was terminated? Annette Tucker: I told Ms. Wilson that she-it is best that we depart our ways because she and I don't agree as to how the HR Director is supposed to be worked-This is not a good working relationship here, so that's why we are departing" (Record on Appeal Pg. 054 lines 12-19). When the ED is asked specifically the reason for discharge, she makes no mention of me failing to complete task or being insubordinate.
2. Hearing officer asked, "All right, thank you. I do have one final question for you, Ms. Tucker. Did you ever tell Ms. Wilson her job was in jeopardy? Annette Tucker: No ma'am. Hearing Officer: Based on your verbal communication to Ms. Wilson did you share with her that you were not happy with her responses to you. Annette Tucker: Yes, ma'am I have (Record on Appeal Pg. 54 lines 23-30). ED never shared that she did not like the email communication. My employment was terminated on January 19, 2018, and the explanation she provided was that we did not see eye-to-eye on how HR should be ran. I was not really clear about her explanation, and requested that she explain what she meant, and I was informed that I would receive a letter in the mail. I never received any form of communication and only learned of her discontent with the email, as well as further explanation as to what she meant by us not seeing eye-to-eye on May 16, 2018 during the evidentiary hearing.

As a result, I was not able to provide the evidence later submitted to SCDEW's appellate panel (Record on appeal Pgs. 070 thru 112).

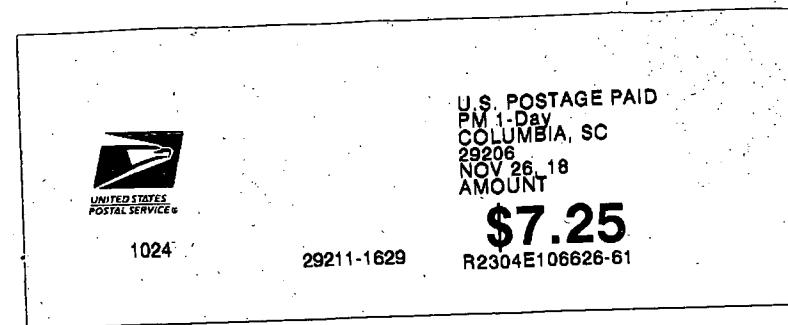
3. Hearing officer asked "Okay. And can you tell me this, Ms. Tucker? Was there any certain company policy that was violated related to her separation January 18th of 18? Annette Tucker: Company policy, no being we didn't-It was not-She was insubordinate when she was written up. But was that-had anything to do with the decision-making? Yes. But did I fire her for being insubordinate at that particular time on the 19th? I would have to say-honestly say no." Contrary to SCDEW's statement, the ED admits that I was not terminated for being insubordinate. (Record on Appeal Pg. 053 lines 20 thru 24).

The ED statements on record directly relate to the reason for separation was completely disregarded by SCALC, SCDEW Panel (Brief of Respondent Pg. 10 Roman Number II), and SCDEW Appeal Tribunal. The employer's explanation for termination does not line up with SCDEW's explanation. In addition, the employer's explanation for termination does not line up with reasons for disqualification of unemployment benefits as outlined in SC Code of Law 41-35-120. Not seeing eye-to-eye on how a department should be ran is not a legitimate disqualifying reason. The SC Administrative Law Court, and SCDEW-Appeal Panel disregarded direct evidence from WCAI refuting the claim that I was discharged for failure to complete task, and insubordination. The aforementioned parties clearly abused their discretion, and the final judgement is clearly an unwarranted exercise of discretion as outlined in S.C. Code Ann. 1-23-380 (5) (Supp. 2017). It should be noted that the SC Administrative Judge is the Judge from the area in which the Executive Director resides or is from Camden, SC.

c. The original reason for the evidentiary hearing was to determine if I was discharged, lay-off, or voluntarily resigned (Record on Appeal Pg. 022-025). Another employee Kelsey Edwards was laid-off on December 28, 2017 due to budgetary issues, and I was let go on January 19, 2018. I learned from the Director of Finance that the budget, in which I was paid from was functioning in the red since WCAI lost up-front funding for the Weatherization program. Employees from the Weatherization program were being paid out of the administration budget. The administration budget is typically the budget used to finance those employees who provide services to program areas throughout the organization. Paying the weatherization group out of this budget caused it to be in the red as of January 2018, and this is why I thought that my departure was really due to budget cuts. When I was employed with WCAI, the ED had a history of requiring me to object to unemployment of teaching staff because she felt that we were paying out too much money in unemployment. After conducting some research, it was determined that the employees were entitled to the unemployment benefits. I contend that the organization was in financial distress in January 2018, and the ED attempted to get the administration budget out the red by letting me go. To date the Director of HR position has not been filled, and my former subordinate employee (who was already paid out of administration budget) and the ED Executive assistant is acting as HR Director; however,

no one has fully occupied the position since my departure on January 19, 2018. Consequently, my original position that I was laid-off due to budgetary issues holds some truth, and the reason provided by WCAI ED is a smoke screen to cover up the fact that she did not want to pay me unemployment benefits because of the amount already being paid to teaching staff.]

Adrian Wilson
3739 Oakleaf Rd. Apt. B
Columbia SC 29206



Attn: Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia SC 29211



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