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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Appellate Case No. 2012-207906

AnMed Health, ... Appellant,

v.

South Carolina Department of Employment and
Workforce and Pamela S. Crowe, ... Respondents.

RECORD ON APPEAL

Stuart M. Andrews, Jr.
E-Mail: stuart.andrews@nelsonmullins.com
Gary L. Capps
E-Mail: gary.capps@nelsonmullins.com
Nelson Mullins Riley & Scarborough LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Appellant

Debra S. Tedeschi
Legal Department
South Carolina Department of
Employment and Workforce
Post Office Box 995
Columbia, SC 29202
(803) 737-2666

Attorneys for Respondent South
Carolina Department of
Employment and Workforce

Alexander D. Paterra
The Paterra Law Firm, LLC
107 E. Park Avenue
Greenville, SC 29601
(864) 232-2776

Attorneys for Respondent Pamela S.
Crowe

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INDEX

Orders

1. S.C. Administrative Law Court Order, dated January 24, 2012 001

Transcripts

2. S.C. Department of Employment and Workforce Record on Appeal,
pages 1-110 006
- Index 007
- Appellate Panel Decision No. 2011-P-1238 009
- Letter of Transmittal of Appellate Panel Decision 011
- Request for Determination of Insured Status 012
- Employer's Statement 013
- Discharged for Cause Fact Finding 023
- Request for Separation Information 026
- Determination by Claims Adjudicator 036
- Claimant Appeal to Appeal Tribunal 037
- Notice of Appeal Tribunal Hearing 038
- Transcript of Testimony for Appeal Number 00936-14124 039
- Teresa Threlkeld 044
- Stephanie Collins 066
- Pamela Crowe 068
- Teresa Threlkeld 075
- Stephanie Collins 079
- Agency Exhibit 1 082
- Employer Exhibit 1 083
- Employer Exhibit 2 085
- Employer Exhibit 3 088
- Employer Exhibit 4 091
- Claimant Exhibit 1 096
- Appeal Tribunal Decision Number 2011-A-2754 101
- Employer Appeal to Appellate Panel 103
- Notice of Employer Appeal to Appellate Panel 105
- Notice of Hearing before the Appellate Panel 106
- Appellate Panel Decision No. 2011-P-990 107
- Letter of Transmittal of Appellate Panel Decision 109
- Letter Vacating Previous Decision 110
- Letter from Employer Attorney 111
- Letter from Claimant Attorney 112
- Letter from Employer Attorney 114

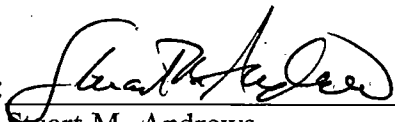
Letter from Claimant Attorney	116
Notice of Hearing before the Appellate Panel	118

Other

3. S.C. Administrative Law Court, Notice of Appeal, July 1, 2011	119
4. S.C. Administrative Law Court, Initial Brief of Appellant, August 18, 2011	123
5. S.C. Administrative Law Court, Brief of Respondent, September 12, 2011	133
6. S.C. Administrative Law Court, Reply Brief of Appellant, September 22, 2011	143
7. S.C. Administrative Law Court, Appellant's Response to Respondent's Proposed Order, January 23, 2012	149
8. S.C. Court of Appeals, Notice of Appeal, February 14, 2012	154

The undersigned hereby certifies the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

Respectfully submitted,

By: 
Stuart M. Andrews
stuart.andrews@nelsonmullins.com
Gary L. Capps
gary.capps@nelsonmullins.com
1320 Main Street – 17th Floor (29201)
Post Office Box 11070
Columbia, SC 29211-1070
(803) 799-2000

Attorneys for Appellant

Columbia, South Carolina

September 5, 2012

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

AnMed Health,
Appellant,

vs.

South Carolina Department of
Employment and Workforce and
Pamela S. Crowe,
Respondents.

Docket No. 11-ALJ-22-0354-AP

ORDER

STATEMENT OF THE CASE

AnMed Health (Appellant or Employer) appealed the decision of the South Carolina Department of Employment and Workforce (Department) on July 6, 2011. The Employer is appealing an Appellate Panel decision of the Department in which Respondent Crowe was found eligible for unemployment benefits without disqualification upon a finding that she was discharged without cause under S.C. Code Ann. § 41-35-120(2). The Administrative Law Court (ALC or Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2010). Upon consideration of the record and the briefs, this Court affirms the Department's decision.

BACKGROUND

Respondent Crowe worked for Appellant from August 27, 1984, through December 14, 2010, as a benefits coordinator. Crowe was terminated for violating Employer policy when she did not take the influenza vaccination. In September 2010, Appellant implemented a policy that required employees to take the influenza vaccine. Crowe was notified that compliance with the policy was required by December 15, 2010. There were provisions for exemptions if an employee believed they should not take the vaccine. Crowe had never before taken the flu vaccine and requested an exemption from the requirement on the advice of her personal physician. Crowe's exemption request was based on family medical history. A statement from Crowe's doctor indicated a "strong family history" of Guillain-Barre syndrome and Multiple

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SC ADMIN. LAW COURT

Sclerosis and that these conditions can be activated by the flu vaccine and "must be avoided". Crowe's daughter had taken the flu shot several years earlier. Within two weeks of the vaccination, her daughter was hospitalized. It was believed that the flu vaccine activated what was diagnosed as Guillain-Barre syndrome and later believed to be Multiple Sclerosis and eventually led to her daughter's death. Because of this history, Crowe requested an exemption. Crowe was not a caregiver for the Employer; she worked in Human Resources and had no patient contact. Crowe also offered to wear a mask, as provided by the policy, and remain at her desk. Employer denied the request because it did not meet the specific exceptions indicated by the Centers for Disease Control (CDC) guidelines. Employer indicated that exemptions were available for: severe egg allergy, severe allergy to any component of the vaccine, a severe reaction to influenza vaccine in the past or a history of Guillain-Barre syndrome. When Crowe had not taken the vaccination by midnight on December 14, 2010, she was discharged.

After a review of the initial statements from the parties, a claims adjudicator with the Department issued a determination holding Crowe disqualified from receiving benefits for ten weeks from December 12, 2010, through February 19, 2011, upon finding that she was discharged for cause connected with the employment. Crowe appealed that determination and a *de novo* evidentiary hearing was conducted on February 10, 2011, by the Department's Appeal Tribunal. The Appeal Tribunal found that Appellant terminated Crowe without cause and held her eligible for benefits. Appellant then appealed that decision to the Department's Appellate Panel which affirmed the decision and also held that Crowe was discharged without cause under S.C. Code Ann. § 41-35-120 (2). Appellant then filed an appeal to the ALC on July 1, 2011.

ISSUE ON APPEAL

1. Did the Department err in finding that Appellant terminated Crowe without cause under § 41-35-120 (2)?

STANDARD OF REVIEW

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) (finding that the Department's predecessor, the Employment Security Commission, was an agency within the

meaning of the APA). Accordingly, the APA's standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, -600 (D) (Supp. 2010); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment 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) (Supp. 2010) See § 1-23-600 (D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section 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.

S.C. Code Ann. § 1-23-380(5) (Supp. 2010).

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). "Substantial evidence is something less than the weight of the evidence." DeGroot v. Employment Security Commission, 285 S.C. 209, 328 S.E.2d 668, 669 (Ct. App. 1986) The fact that the record as a whole presents the possibility of drawing two inconsistent conclusions does not mean the agency's findings are not supported by substantial evidence. Waters v S.C. Land Resources 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 Assn'n for Prot. Of Wildlife, Inc. v. S.C. Dep't of Natural Res.,

345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

DISCUSSION

Appellant argues that the Department erred in finding that Crowe was terminated without cause. I disagree.

S.C. Code Ann. § 41-35-120 (2) (Supp. 2010) requires the Department to reduce the period in which a claimant is qualified for unemployment benefits when it determines that an employer has discharged the claimant "for cause" in connection with that claimant's most recent employment. A discharge for cause¹ is justified when, among other things, an employee disregards the standard of behavior than an employer can rightfully expect from the employee, such as when the employee refuses to comply with a reasonable request of the employer. Lee v. S.C. Employment Security Comm'n, 277 S.C. 586, 291 S.E.2d 378 (1982). Although a single instance of minor misconduct will not generally disqualify a claimant from receiving unemployment compensation benefits, recurrent violations of the standards of behavior which an employer has the right to expect of an employee constitutes misconduct warranting disqualification. 76 Am.Jur. 2d Unemployment Compensation 69 (updated Nov. 2010).

Here, I find that substantial evidence supports the Department's decision that Crowe was terminated without cause. Though Crowe did not follow Appellant's instructions which required that she take the influenza vaccine, the record as a whole supports the Appellate Panel's determination that Appellant's vaccination requirement was "unreasonable, particularly as applied to [Crowe's] unique circumstances". Again, in the Lee case, a finding that an employee disregarded the standard of behavior the employer can rightfully expect contemplates a "reasonable" request of the Employer.. Here, based on Crowe's family history and the information and advice of her physician, the requirement that Crowe take the influenza vaccination was not reasonable and her reason for non-compliance is reasonable. Evidence at the hearing before the Appeal Tribunal also established that Crowe was a twenty-six year employee whose job was not previously in jeopardy, and the sole reason for separation was her failure to

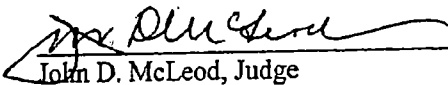
¹ The term "cause" was substituted for "misconduct" by 1985 Act No. 154, §6. The terms are synonymous. See also, Mickens v. Southland Exchange Joint Venture, 305 S.C. 127, 130, 406 S.E.2d 363, 365 (1991).

take the vaccination. Even if Crowe's refusal is considered misconduct, a single incident of misconduct will not generally disqualify a claimant. Accordingly, because there is substantial evidence to support the conclusion that Appellant terminated Crowe without cause, the Department's decision must be affirmed.

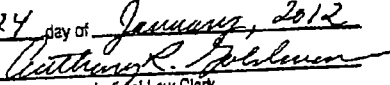
ORDER

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

January 24, 2012
Columbia, SC


John D. McLeod, Judge
S.C. Administrative Law Court

UNITED STATES OF AMERICA
This is to certify that the undersigned has this date
served this order in the above entitled action upon all
parties to this cause by depositing a copy hereof,
in the United States mail, postage paid, or in the Interagency
Mail Service addressed to the party(ies) or their attorney(s).

This 24 day of January, 2012
By: 
Judicial Law Clerk

AnMed Health,
Appellant,

vs.

SC Department of Employment and
Workforce and Pamela Crowe,
Respondent,

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Docket No. 11-ALJ-22-0354-AP

RECORD ON APPEAL

APPEAL FROM SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT
AND WORKFORCE APPELLATE
PANEL

Stuart M. Andrews, Esq.
1320 Main Street, 17th Floor
Columbia, SC 29201
Appellant Employer Attorney

INDEX

Appellate Panel Decision No. 2011-P-1238	1
Letter of Transmittal of Appellate Panel Decision	3
Request for Determination of Insured Status	4
Employer's Statement.....	5
Discharge for Cause Fact Finding.....	15
Request for Separation Information	18
Determination by Claims Adjudicator.....	28
Claimant Appeal to Appeal Tribunal.....	29
Notice of Appeal Tribunal Hearing.....	30
Transcript of Testimony for Appeal Number 00936-14124	31
Agency Exhibit 1	74
Employer Exhibit 1	75
Employer Exhibit 2	77
Employer Exhibit 3	80
Employer Exhibit 4	83
Claimant Exhibit 1.....	88
Appeal Tribunal Decision Number 2011-A-2754	93
Employer Appeal to Appellate Panel.....	95
Notice of Employer Appeal to Appellate Panel	97

Notice of Hearing before the Appellate Panel	98
Appellate Panel Decision No. 2011-P-990	99
Letter of Transmittal of Appellate Panel Decision	101
Letter Vacating Previous Decision.....	102
Letter from Employer Attorney	103
Letter from Claimant Attorney	104
Letter from Employer Attorney	106
Letter from Claimant Attorney	108
Notice of Hearing before the Appellate Panel	110

(II)

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Pamela S. Crowe)
307 Westwood Drive)
Anderson, South Carolina 29626)
Claimant SSN: [REDACTED])

APPELLATE PANEL
DECISION

Anmed Health)
Attn: Stephanie Collins, HR)
706 East Greenville Street)
Anderson, South Carolina 29621)
Liable Employer)

Appellant: Employer

The employer appealed Appeal Tribunal Decision 2011-A-2754 to the Appellate Panel. The Appeal Tribunal held the claimant eligible to receive benefits without disqualification, for having been discharged without cause. This decision reversed the claims adjudicator's determination.

After a hearing in this case, the Appellate Panel issued Appellate Panel Decision 2011-P-990, which was mailed on April 28, 2011. An administrative error affected proper notice of the Appellate Panel hearing, and Appellate Panel Decision 2011-P-990 was vacated. The Appellate Panel notified the parties of a new hearing to consider the appeal.

DECISION

Appeal Tribunal Decision 2011-A-2754 is affirmed. The claimant is eligible to receive benefits without disqualification effective December 12, 2010, upon finding she was discharged without cause connected with her employment.

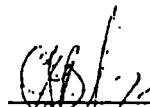
The claimant worked from August 27, 1984, through December 14, 2010, most recently as a benefits coordinator. The employer discharged the claimant for failing to get an influenza immunization. The employer informed the claimant that all employees had to get an influenza immunization. The employer had never before required the immunization. The claimant's position did not require her to interact

with patients, and the claimant presented medical documentation requiring an exemption from the new policy due to a family history of Guillain-Barre' Syndrome and Multiple Sclerosis. The employer denied the claimant's request because it believed that Centers for Disease Control exemption guidelines required a personal, rather than familial, history of those conditions.

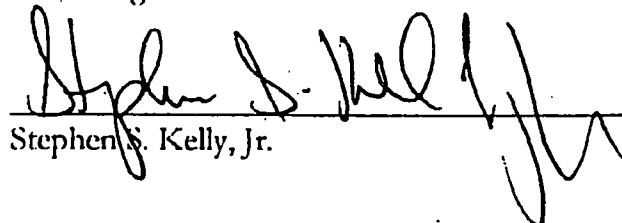
S.C. Code Ann. §41-35-120 (2) requires disqualification from between five and twenty-six weeks, with a corresponding monetary reduction, when the Department finds that a claimant has been discharged for cause connected with the employment. "Cause" is interpreted to mean conduct that shows disregard for the standard of behavior an employer has the right to expect of an employee.

The employer bears the burden of showing that it terminated the claimant for cause connected with the employment. The employer failed to meet its burden in this case. The employer's policy requiring immunization for continued employment was unreasonable, particularly as applied to the claimant's unique circumstances. The claimant worked for the employer for 26 years without an immunization requirement, did not have patient contact in the performance of her duties, and presented credible medical documentation that such an immunization would jeopardize her health. Therefore, we find the claimant was discharged without cause connected with her employment. The Appeal Tribunal decision is affirmed.

**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**



E.B. Ayers

Tim Dangerfield

Stephen S. Kelly, Jr.

Hearing Date: 05/31/11
Date Mailed: 06/02/11
Mailed by: _____

June 2, 2011

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
(SCDEW)
Columbia, South Carolina

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final agency decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. §41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the date of mailing of the agency's final decision (**see the mailing date above**).

Service of the Petition on SCDEW must be addressed and mailed to:

**Legal Department
S.C. Department of Employment and Workforce
Post Office Box 995
Columbia, SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice in South Carolina.

Form App-115
Rev. 4/27/11

NAME: PAMELA S CROWE		SSN: [REDACTED]	BYE: 12/11/11
CLAIMSTAKER ID: JAGRZ	LO #: 040	FILED: 12/14/10	EFF DATE: 12/12/10
MAILING ADDRESS: 307 WESTWOOD DR			
CITY: ANDERSON		STATE: SC	ZIP: 29626-1026
OTHER NAME:			

☒ 1-UI	☐ 4-UI/UCFE/UCX	☐ 7-UCX	☒ NEW	☐ TRANSITIONAL
☐ 2-UI/UCFE	☐ 5-UCFE	☐ 8-CW	☐ ADDITIONAL	☐ R-ADD
☐ 3-UI/UCX	☐ 6-UCFE/UCX	☐ OTHER	☐ CONTINUED	

BONA FIDE EMPLOYER NAME & PAYROLL ADDRESS INFORMATION:		DATES OF EMPLOYMENT:	
NAME: ANMED HEALTH			
STREET: ATTN STEPHANIE COLLINS HR, 706 E GREENVILLE ST		FROM:	TO:
		08/27/84	12/14/10
CITY: ANDERSON	ST: SC	ZIP: 29621-4837	EMP. ACCT. # 125226

BONA FIDE EMPLOYER LOCAL ADDRESS INFORMATION:	
STREET:	
CITY: ANDERSON	ST: SC ZIP: PHONE #:(864) 512-1162

SEPARATION REASON:	☐ LOW	☐ VQ	☒ DISCHARGE	☐ STILL WORKING
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ISSUE CODES: 01

LIABLE EMPLOYER INFORMATION:		DATES OF EMPLOYMENT:	
NAME:			
EMP. ACCT #		FROM:	TO:
JOB LOCATION (CITY/STATE):			

SEPARATION REASON:	☐ LOW	☐ VQ	☐ DISCHARGE	☐ STILL WORKING
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NARRATIVE REASON FOR SEPARATION FROM LIABLE EMPLOYER:

EMPLOYER'S STATEMENT

ANMED HEALTH
ATTN STEPHANIE COLLINS HR
706 E GREENVILLE ST

DATE OF NOTICE 12/14/10

CLAIMANT'S NAME PAMELA S CROWE
SOCIAL SECURITY NO [REDACTED]

ANDERSON SC 29621 E A NO- 125226

1 Reason for Separation (Explain Fully) Mrs. Crowe was terminated from employment with AnMed Health for failure to take the required flu vaccination by 12-14-10. The mandatory flu vaccination policy was communicated repeatedly. I have attached dated communications for your review.

2 Dates of Employment From 8-27-84 to 12-14-10 (Last Day Worked)

3 Enter the total amount of earnings which you paid the claimant during

a The current quarter \$ 11,261.70

b The last completed calendar quarter \$ 13,136.40

4 Date 12-20-10

Signed Stephanie Collins
Title Employment Manager

MAIL TO SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
POST OFFICE BOX 1477
COLUMBIA, S C 29202
FAX TO (803) 737-0499

UCB-214
Rev 7/10

①
2 pgs

From: John Miller
To: EVERYBODY
Date: 9/15/2010 11:00 AM
Subject: Required Influenza Vaccinations
Attachments: INFLUENZA IMMUNIZATION PROTOCOL.pdf

Required Influenza Vaccinations

Once again flu season has arrived and so has our annual process of providing flu vaccinations. Last year, thanks to your cooperation 81.3% of our employees received a flu shot. Your willingness to get a flu vaccination is greatly appreciated.

Because of the environment we work in, we are our community's greatest asset in protecting and caring for those that are facing illness. This responsibility means that we must take every conceivable step to make patient, employee, and community safety a priority. We've clearly demonstrated this capacity with our focus on hand-washing, surgical protocols, providing sterile environments, and investing in the best technology. This year we are going to take yet another step in making patient, employee, and community safety a priority, and this step involves every employee of AnMed Health. After reviewing the practices of some of the nation's leading health care networks and after presenting to and receiving approval from our AnMed Health Board of Trustees, this year flu vaccines will be required for all AnMed Health employees as a condition of hire and for continued employment. In addition, this requirement will be in place for all students, volunteers, contract workers, and temporary agency employees.

Attached is a list of protocols we will be following to implement the required flu vaccination policy. Employee Health will coordinate the distribution of the shots and will document any requests for exceptions based on set guidelines provided by the CDC. If you have questions about exemptions please call Dianne Linne at 512-2582.

Each year thousands of Americans die as a result of the flu and flu related illnesses. We must do our part to reduce the risk of infection and in turn help save the lives of those we care for and those we care about. Everyone's understanding is appreciated.

SO Employment Bamm.

DEC 22 2010

Received Benefits Div

Influenza Immunization Protocol

To protect patients, visitors, and other health care workers (HCW's), the influenza vaccination will be viewed as a health competency and patient safety requirement. Health Care Workers (HCW's) include, but are not limited to AnMed Health employees, students, volunteers, temporary agency staff, "travelers", and certain vendors. Unless an approved exemption is made (as described herein) the influenza vaccination will be a condition of initial and continued employment of all AnMed Health employees, and a condition of permissive entrance onto the premises of any AnMed Health service delivery site for all other HCW's, regardless of whether direct patient contact is expected.

- 1) AnMed Health's Employee Health department will administer, within annually proscribed deadlines, influenza immunizations
- 2) HCW's may request an exemption from vaccination based on guidelines from the Centers for Disease Control (CDC). Those CDC guidelines for exemptions currently include, severe egg allergy, severe allergy to any component of the vaccine, a past severe reaction to the influenza vaccine, or a history of Guillian-Barre syndrome. NO OTHER FORM OF OR REASON FOR EXEMPTION WILL BE MADE. The exemption request form will be available in Employee Health.
- 3) Employee Health will review each exemption request on a case by case basis, and if approved will develop a schedule and plan for an exempt HCW's use of a surgical mask. Any such schedule and plan will be based on risk factors associated with potential exposures to other HCW's, and to patients and visitors to AnMed Health.
- 4) The following restrictions will apply to HCW's who have received an exemption from vaccination:
 - (a) those with direct patient contact will wear a surgical mask while on duty, with the exception of breaks and lunch time
 - (b) those without direct patient contact will wear a surgical mask while on duty when in close contact with other individuals. Close contact is defined as a distance of six or fewer feet
 - (c) any additional restrictions or limitations consistent with CDC suggestions or guidelines
- 5) Employees without an approved exemption, who fail to timely take the vaccination, or who with an approved exemption fail to comply with any applicable restriction will be allowed to resign or will be terminated. Any other HCW without an approved exemption, who fails to timely take the vaccination, or who with an approved exemption fails to comply with any applicable restriction will be subject to loss of access privileges to any AnMed Health service delivery site.

HR Employment Comm.

DEC 22 2010

Received Benefits Div.

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2 pgs.

- 5 Comply with statutory and regulatory requirements
- 6 Respond to health questions from employees
- 7 Serve to promote good health among all staff

SERVICES:

PRE-PLACEMENT SCREENING: The screening consists of physical job demand screening (excluded are employees lifting 20 pounds or less and those who are sedentary), health history, vital signs, height, weight, color vision for nursing, lab and engineering, six-panel drug screen (DOT when indicated) and a two-step TST. Immunizations and titer screening include mumps and rubella, and varicella HBV series or titer as indicated by history.

ANNUAL HEALTH EVALUATION: As an optional employee benefit, employees may have a broader health evaluation periodically. The screen includes height, weight, blood pressure, CBC, TSH, SGOT, glucose, lipid profile and a PSA for men older than 50. This screen can be performed every five years for persons younger than 30, every two years for persons 30-40 and every year for persons older than 40. A personal wellness profile (PWP) will be available to all employees with a lipid profile and diabetes lab work regardless of age. If conditions are found that require follow-up, the employee will be referred to their primary physician for treatment and monitoring.

IMMUNIZATIONS. Tetanus/Diphtheria will be offered for post accident care as indicated and a TDaP offered as indicated. Hepatitis B, Varivax and Rubella will be offered, and may be required in job specific areas. A decline will be requested in writing.

Influenza Immunizations Protocol

To protect patients, visitors, and other health care workers (HCW's), the influenza vaccination will be viewed as a health competency and patient safety requirement. Health Care Workers (HCW's) include, but are not limited to AnMed Health employees, students, volunteers, temporary agency staff, "travelers", and certain vendors. Unless an approved exemption is made (as described herein) the influenza vaccination will be a condition of initial and continued employment of all AnMed Health employees, and a condition of permissive entrance onto the premises of any AnMed Health service delivery site for all other HCW's, regardless of whether direct patient contact is expected.

- 1) AnMed Health's Employee Health department will administer, within annually proscribed deadlines, influenza immunizations.
- 2) HCW's may request an exemption from vaccination based on guidelines from the Centers for Disease Control (CDC). Those CDC guidelines for exemptions currently include, severe egg allergy, severe allergy to any component of the vaccine, a past severe reaction to the influenza vaccine, or a history of Guillian-Barre' syndrome. NO OTHER FORM OF OR REASON FOR EXEMPTION WILL BE MADE. The exemption request form will be available in Employee Health.

AnMed Health Policy & Procedure Manual
Revised September, 2010

60

DEC 22 2010

Received Benefits Div.

- 3) Employee Health will review each exemption request on a case by case basis, and if approved will develop a schedule and plan for an exempt HCW's use of a surgical mask. Any such schedule and plan will be based on risk factors associated with potential exposures to other HCW's, and to patients and visitors to AnMed Health.
- 4) The following restrictions will apply to HCW's who have received an exemption from vaccination
 - (a) those with direct patient contact will wear a surgical mask while on duty, with the exception of breaks and lunch time
 - (b) those without direct patient contact will wear a surgical mask while on duty when in close contact with other individuals. Close contact is defined as a distance of six or fewer feet
 - (c) any additional restrictions or limitations consistent with CDC suggestions or guidelines
- 5) Employees without an approved exemption, who fail to timely take the vaccination, or who with an approved exemption fail to comply with any applicable restriction will be allowed to resign or will be terminated. Any other HCW without an approved exemption, who fails to timely take the vaccination, or who with an approved exemption fails to comply with any applicable restriction will be subject to loss of access privileges to any AnMed Health service delivery site.

RETURNING TO WORK: Following an absence of more than three (3) days, an employee may be required to submit a doctor's statement to the health nurse. This statement should confirm that the employee is able to return to his or her normal work duties. Employees returning to work from leave of absence for health reasons must bring a physician statement to Employee Health. If the employee has restrictions from a non-work-related injury or illness, the employee's supervisor will be consulted to see if the accommodations can be met. If the accommodations cannot be met, the employee may not return to work.

HEALTH PROMOTION: Offers informational and behavioral modification programs on health promotion, self-care and wellness topics.

DIRECT CARE:

- A Treatment of minor injury or illness care will be available to employees. A nurse practitioner and physician is available at both clinics. Treatment and referral of injured or ill employees will be directed by provider, including referral to Employee Assistance Program as needed.
- B Blood and body fluid exposure management, counseling, and follow-up.

ANMED HEALTH

VIA CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

November 12, 2010

(Employee's name/address)

RE AnMed Health Flu Vaccination Policy

Dear _____

Effective September 15, 2010 AnMed Health adopted a mandatory flu vaccination policy (attachment 1) for health care workers. As of today's date, more than 90% of our employees have acknowledged their commitment to improving community health by complying with this policy, but our records indicate that you have not yet received a flu vaccine. Compliance with the policy by December 15, 2010 may be accomplished in one of three ways: 1) obtaining the vaccine from an AnMed Health Employee Health representative, 2) obtaining the vaccine from any other medical provider and producing reasonably satisfactory evidence of such to Employee Health, or, 3) requesting and receiving an exemption from Employee Health.

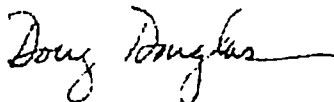
Employees who fail to comply with the policy by December 15 will be involuntarily terminated effective the same date. Employees who elect to voluntarily terminate must ensure that prior to their effective termination date (no later than December 14), they have worked a full adequate notice period (between 2 and 4 weeks, depending on position, and as defined by HR Policy). In accordance with existing AnMed Health HR policies and practices, employees who are involuntarily terminated OR who voluntarily terminate without providing adequate notice are ineligible for rehire and will forfeit unused paid time off benefits.

I have also attached Employee Health's November and December schedules (attachment 2) to help you fulfill this important patient safety interest and condition of employment. I encourage you to get your flu vaccine sooner rather than later.

Employee's who have requested a flu vaccine exemption from Employee Health will be notified on or about December 1, 2010 regarding exemption approval or denial.

Medical questions related to flu vaccines or exemption should be directed to Employee Health at 864/512-1306 or 4813. All other questions (including those related to termination of employment, HR policies, or mandatory flu policy enforcement) should be directed to Human Resources at 864/512-1162.

Sincerely,



James Douglas
VP of Human Resources

attachment 1/Mandatory Flu Vaccine Policy
attachment 2/Employee Health November & December Schedules

RECEIVED

DEC 22 2010

Received Benefits Div

800 North Fair Street • Anderson, South Carolina 29621 • 864 512 1000

From John Miller
To EVERYBODY
Date 9/15/2010 11:02:01 AM
Subject Required Influenza Vaccinations

Required Influenza Vaccinations

Once again flu season has arrived and so has our annual process of providing flu vaccinations. Last year, thanks to your cooperation 81.3% of our employees received a flu shot. Your willingness to get a flu vaccination is greatly appreciated.

Because of the environment we work in, we are our community's greatest asset in protecting and caring for those that are facing illness. This responsibility means that we must take every conceivable step to make patient, employee, and community safety a priority. We've clearly demonstrated this capacity with our focus on hand-washing, surgical protocols, providing sterile environments, and investing in the best technology. This year we are going to take yet another step in making patient, employee, and community safety a priority, and this step involves every employee of AnMed Health. After reviewing the practices of some of the nation's leading health care networks and after presenting to and receiving approval from our AnMed Health Board of Trustees, this year flu vaccines will be required for all AnMed Health employees as a condition of hire and for continued employment. In addition, this requirement will be in place for all students, volunteers, contract workers, and temporary agency employees.

Attached is a list of protocols we will be following to implement the required flu vaccination policy. Employee Health will coordinate the distribution of the shots and will document any requests for exceptions based on set guidelines provided by the CDC. If you have questions about exemptions, please call Diunne Linne at 512-2582.

Each year thousands of Americans die as a result of the flu and flu-related illnesses. We must do our part to reduce the risk of infection and in turn help save the lives of those we care for and those we care about. Everyone's understanding is appreciated.

SG Employment Comm.

DEC 22 2010

Received Benefits Div.

800 North Fant Street • Anderson, South Carolina 29621 • 864.512.1000

Influenza Immunization Protocol

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- 1) AnMed Health's Employee Health department will administer, within annually proscribed deadlines, influenza immunizations
- 2) HCW's may request an exemption from vaccination based on CDC guidelines. **NO OTHER FORM OF OR REASON FOR EXEMPTION WILL BE MADE.** Employee Health has available an exemption request form
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SG Employment Comm.

DEC 22 2010

Received Benefits Div.

**Employee Health (Medical Center and North Campus)
November and December Schedule Alert**

NOVEMBER -- regular office schedule observed, EXCEPT:

- ❖ November 22 - 30 -- **FLU SHOTS AVAILABLE**
11:30am - 1:30pm **ONLY!!**
 - ❖ Both Offices Closed November 25
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-

DECEMBER -- regular office schedule observed, EXCEPT:

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11:30AM - 1:30PM **ONLY!!**
- ❖ Both Offices Closed December 25

④
1pg

November 18, 2010

Pamela Crowe
307 Westwood Dr
Anderson, SC 29624

Dear Ms Crowe,

Employee Health has received your request for a medical exemption to taking the 2010-2011 seasonal influenza vaccination

After careful review your request has been **denied** because it does not meet the exemption guidelines specified by the Centers for Disease Control Please see #2 in the attached protocol

Compliance with the policy by December 15, 2010 may be accomplished in one of three ways 1) obtaining the vaccine from an AnMed Health Employee Health representative, 2) obtaining the vaccine from any other medical provider and producing reasonably satisfactory evidence of such to Employee Health, or, 3) requesting and receiving an exemption from Employee Health

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AnMed Health Employee Health

Attachments Influenza Immunization Protocol
Employee Health November/December Flu Schedule

SC Employment Comm

cc Linda McFall, Teresa Threlkeld

DEC 22 2010

Received Benefits Div.

UCB-102DC
8/99
08122

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
UNEMPLOYMENT INSURANCE DIVISION
DISCHARGED FOR CAUSE
FACT FINDING

Effective Date of Issue
12/12/2010

Type of Claim

New _____ Add _____

Trans _____ Reim _____

Cont _____

BYE 12/11/2011

L O No 040 _____

CLAIMANT'S

NAME Pamela S Crowe

SOCIAL

SECURITY NUMBER _____

1 Most recent BONA FIDE employer (Name of Company) Armed Health

Address of Company Attn Stephanie Collins 706 E Greenville St
Anderson, SC 29621

Telephone No of Company 864-512-1162

Name of individual at Company to contact for more information Stephanie Collins

2 Dates of employment with this company beginning 8/27/84 ending 12/14/10

Hours worked from 8 30am to 5 00pm or which shift _____ for 5 days per week

Ending salary \$ 25 per hr Occupation Benefits Coordinator

SC Employment Comm

JAN 67 2010

Received Benefits Div.

3 CLAIMANT'S STATEMENT

a I was discharged by (Name of Person) Teresa Threlkeld Title Director of Human Resources

because (Include reason for discharge on that particular day) As of October 2, 2010 it was made mandatory that all employees must take the flu shot. I had a medical statement from my physician that I provided for them that said that due to our family medical history, my physician strongly recommended that I not take the flu shot. My daughter died in 2007 from complications that began from her taking the flu shot in 2001, so I was not going to take the flu shot. Since I did not take the flu shot I was fired after working there for 26 years. My position is not even located inside the hospital. I had absolutely no patient contact. I told them that if they wanted me to wear a surgical mask while I was working I would be happy to do so, but they did not allow for that. So, I was terminated on December 14, 2010 for not getting the flu shot.

b If you were discharged for violation of a company rule, please explain rule and violation. I was discharged for failure to get the flu shot. It was made mandatory on October 2, 2010 that all employees get the flu shot. I had a statement from my physician stating that because of my family medical history which included my daughter passing away due to complications that began with her getting the flu shot, he strongly recommended that I not take the flu shot.

c Has your employer ever warned you about the condition causing your discharge? Yes ☐ No ☒
If "Yes," when were you warned (Dates) and by whom?

d Did you discuss your discharge with your employer? Yes ☒ No ☐ If "Yes," with whom Teresa Threlkeld
What were the results of this discussion? She said that I could either take the flu shot or I was going to be terminated. She was not ugly about it at all, we were both very upset because we had worked together for 26 years. But, she had to do what she had to do. I told her that after losing my daughter the way I did, there was no way I could take the flu shot and when my doctor verified that I did not have to take the shot, I thought I was safe.

4 CLAIMANT'S CERTIFICATION I certify that the information stated herein is true. I understand that the Law prescribes penalties for false statements for the purpose of securing benefits to which I am not entitled.

CLAIMANT'S SIGNATURE

Phone

DATE 1/6/2011

5 INTERVIEWER'S STATEMENT Employer Reply received? Yes ☒ No ☐ (If "Yes," all the employer's allegations not covered in claimant's initial statement must be presented to the claimant for rebuttal in item 7. If "No," or information was not adequate, was employer contacted to obtain adequate information?

Yes ☐ No ☐ If "No," give a date of attempt(s) to contact and explain.

INTERVIEWER'S SIGNATURE

Leanne Vaughn

DATE OF REPORT 1/6/2011

BENEFIT DEPARTMENT

SC EMPLOYMENT DIVISION

JAN 07 2010

Received Benefits Div.

NAME Pamela S Crowe

SOCIAL SECURITY [REDACTED]

6 EMPLOYER'S STATEMENT (ALSO USE FOR REBUTTAL OF CLAIMANT'S STATEMENT)
See attached employer reply

TELEPHONE _____

IN PERSON _____

EMPLOYER'S SIGNATURE OR NAME OF INDIVIDUAL CONTACTED _____

TITLE OF INDIVIDUAL CONTACTED _____

1/6/2011

DATE

7 REBUTTAL OF EMPLOYER REPLY I understood the reasoning for it, but if you have medical reasons for not being able to do something, it shouldn't be held against you My daughter was 25 years old when she died I just had a lot of convictions about it

Phone
CLAIMANT'S SIGNATURE

January 6, 2011

DATE

3a CLAIMANT'S STATEMENT CONTINUED (USE ONLY IF ADDITIONAL SPACE IS NEEDED FOR FACT-FINDING STATEMENTS)

CLAIMANT'S SIGNATURE

RS

5a INTERVIEWERS STATEMENT CONTINUED

SC Employment Comm.

JAN 07 2010

Received Benefits Div.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
REQUEST FOR INFORMATION
UNEMPLOYMENT INSURANCE BENEFITS

CLAIMANT'S NAME PAMELA S CROWE

SS# [REDACTED]

NAME WORKED UNDER

DATE MAILED 2010-12-15

EMPLOYER'S ACCOUNT # 125228

EMPLOYER'S NAME ANMED HEALTH
& ADDRESS ATTN STEPHANIE COLLINS HR
706 E GREENVILLE ST
ANDERSON, SC 29621-4837

RETURN WITHIN SCESC
12 DAYS OF THE 308 W Whitner Street
ABOVE DATE TO P O BOX 407
ANDERSON, SC 29622

FAX NUMBER 864-281-0489

This person has filed a claim for Unemployment Insurance Benefits and named you as a previous employer. Please explain the reason this person no longer works for you so that a determination can be made on eligibility for benefits. If you reply by letter, fax or email, you must include all information requested, as well as the claimant's name and social security number. For instructions about responding by email, please go to our agency website at www.dew.sc.gov. YOU WILL RECEIVE A DETERMINATION ON THIS CLAIM ONLY IF IT IS FOUND THAT YOU ARE THE BONA FIDE AND/OR LIABLE EMPLOYER.

☒ CLAIMANT'S Reason for Separation DISCHARGED/FIRED/TERMINATED

I WAS DISCHARGED BECAUSE I REFUSED TO TAKE THE FLU SHOT.

☐ A telephone interview has already been scheduled for the claimant on 01/08/2011 at 10:30 AM.
☐ Please respond by mail, fax, email, telephone or personal visit to the local ESC office above.

SEPARATION INFORMATION

☐ LACK OF WORK (No additional written explanation is necessary)

☒ DISCHARGED (Give specific reason) Mrs. Crowe was terminated for failure to take the required flu vaccination by 12-14-10. State company policy that claimant violated, if applicable, and describe the final incident leading to the separation. The mandatory flu vaccination policy was communicated repeatedly. See attached policy and other communications.

If discharged for absenteeism, list dates of absences

☐ VOLUNTARILY QUIT (Give specific reason)

☐ OTHER (Explain in detail)

Dates of Employment FROM 8-27-84 TO 12-14-10
During all terms of employment, have you paid this claimant as much as \$ 2808.00 ☒ YES ☐ NO

If NO, how much have you paid this claimant in all terms of employment? \$

Are you paying, or WILL YOU PAY, this claimant a pension or retirement pay? ☐ YES ☒ NO SC Employment Comm

If YES, what amount? \$ PER

Did claimant contribute to pension plan? ☐ YES ☒ NO If YES, what percent? JAN 7 2010

EMPLOYER NAME AnMed Health ACCOUNT NUMBER Received Benefits Div.

EMPLOYER SIGNATURE ** Stephanie Collins TITLE Employment Manager

TELEPHONE NUMBER 512-1162 DATE 12-17-10

**FORM MUST BE SIGNED IN ORDER FOR INFORMATION TO BE CONSIDERED

①
2 pgs

From: John Miller
To: EVERYBODY
Date: 9/15/2010 11:00 AM
Subject: Required Influenza Vaccinations
Attachments: INFLUENZA IMMUNIZATION PROTOCOL.pdf

Required Influenza Vaccinations

Once again flu season has arrived and so has our annual process of providing flu vaccinations. Last year, thanks to your cooperation 81.3% of our employees received a flu shot. Your willingness to get a flu vaccination is greatly appreciated.

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SC Employment Comm

JAN 07 2010

Received Benefits Div.

Influenza Immunization Protocol

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SC Employment Comm.

JAN 07 2010

Received Benefits Div.

- 5 Comply with statutory and regulatory requirements
- 6 Respond to health questions from employees
- 7 Serve to promote good health among all staff

SERVICES:

PRE-PLACEMENT SCREENING: The screening consists of physical job demand screening (excluded are employees lifting 20 pounds or less and those who are sedentary), health history, vital signs, height, weight, color vision for nursing, lab and engineering, six-panel drug screen (DOT when indicated) and a two-step TST. Immunizations and titer screening include mumps and rubella, and varicella HBV series or titer as indicated by history.

ANNUAL HEALTH EVALUATION. As an optional employee benefit, employees may have a broader health evaluation periodically. The screen includes height, weight, blood pressure, CBC, TSH, SGOT, glucose, lipid profile and a PSA for men older than 50. This screen can be performed every five years for persons younger than 30, every two years for persons 30-40 and every year for persons older than 40. A personal wellness profile (PWP) will be available to all employees with a lipid profile and diabetes lab work regardless of age. If conditions are found that require follow-up, the employee will be referred to their primary physician for treatment and monitoring.

IMMUNIZATIONS: Tetanus/Diphtheria will be offered for post accident care as indicated and a Tdap offered as indicated. Hepatitis B, Varivax and Rubella will be offered, and may be required in job specific areas. A decline will be requested in writing.

Influenza Immunizations Protocol

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RETURNING TO WORK: Following an absence of more than three (3) days, an employee may be required to submit a doctor's statement to the health nurse. This statement should confirm that the employee is able to return to his or her normal work duties. Employees returning to work from leave of absence for health reasons must bring a physician statement to Employee Health. If the employee has restrictions from a non-work-related injury or illness, the employee's supervisor will be consulted to see if the accommodations can be met. If the accommodations cannot be met, the employee may not return to work.

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DIRECT CARE:

- A Treatment of minor injury or illness care will be available to employees. A nurse practitioner and physician is available at both clinics. Treatment and referral of injured or ill employees will be directed by provider, including referral to Employee Assistance Program as needed.
- B Blood and body fluid exposure management, counseling, and follow-up.

SG Enrollment Form.

AnMed Health Policy & Procedure Manual
Revised September, 2010

61

JAN 07 2010

Received Benefits Div.

③
4 pgs

ANMED HEALTH

VIA CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

November 12, 2010

(Employee's name/address)

This letter was hand delivered to Mrs Crowe by Teresa Threlkeld; Director of Human Resources.

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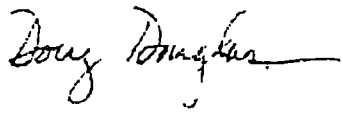
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Sincerely,



James Douglas
VP of Human Resources

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SG EQUIPMENT FORM.

JAN 07 2010

Received Benefits Div

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SP Enrollment Team

JAN 07 2010

Received Benefits Div

800 North Fant Street • Anderson, South Carolina 29621 • 864 512 1000

Influenza Immunization Protocol

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66 EMPLOYMENT BARR.

JAN 07 2010

Received Benefits Div

800 North East Street • Anderson, South Carolina 29621 • 864 512 1000

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RECEIVED HUMAN RESOURCES

JAN 07 2010

Received Benefits Div

800 North Fant Street • Anderson, South Carolina 29621 • 864 512 1000

④

1pg

November 18, 2010

Pamela Crowe
307 Westwood Dr
Anderson, SC 29624

Dear Ms. Crowe,

Employee Health has received your request for a medical exemption to taking the 2010-2011 seasonal influenza vaccination

After careful review your request has been **denied** because it does not meet the exemption guidelines specified by the Centers for Disease Control. Please see #2 in the attached protocol

Compliance with the policy by December 15, 2010 may be accomplished in one of three ways: 1) obtaining the vaccine from an AnMed Health Employee Health representative, 2) obtaining the vaccine from any other medical provider and producing reasonably satisfactory evidence of such to Employee Health, or, 3) requesting and receiving an exemption from Employee Health

Employees who fail to comply with the policy by December 15 will be involuntarily terminated effective the same date. Employees who elect to voluntarily terminate must ensure that prior to their effective termination date (no later than December 14), they have worked a full adequate notice period (between 2 and 4 weeks, depending on position, and as defined by HR Policy). In accordance with existing AnMed Health HR policies and practices, employees who are involuntarily terminated OR who voluntarily terminate without providing adequate notice are ineligible for rehire and will forfeit unused paid time off benefits.

I have also attached Employee Health's November and December schedules to help you fulfill this important patient safety interest and condition of employment. I encourage you to get your flu vaccine sooner rather than later. Medical questions related to flu vaccines or exemption should be directed to Employee Health at 864/512-1306 or 4813. All other questions (including those related to termination of employment, HR policies, or mandatory flu policy enforcement) should be directed to Human Resources at 864/512-1162.

AnMed Health Employee Health

Attachments: Influenza Immunization Protocol

Employee Health November/December Flu Schedule

cc: Linda McFall, Teresa Threlkeld

SC Employment Comm

JAN 07 2010

Received Benefits Div

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 995, COLUMBIA, S.C. 29202

1 ANMED HEALTH
1 ATTN STEPHANIE COLLINS HR
1 706 E GREENVILLE ST
1
1
1 ANDERSON SC 29621

DATE OF THIS NOTICE 01/19/11

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION REASONS		
PAMELA S CROWE				[REDACTED]	12/12/10	02/19/11		
LOI NO	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR END	
040	I	01	\$ 326.00	\$ 8476.00	\$ 3260.00	\$ 5216.00	12/11/11	

1
1 DETERMINATION BY CLAIMS ADJUDICATOR ON CLAIM FOR BENEFITS

- 1 _____ You are eligible for benefits from the above effective date.
- 1 X _____ You have been disqualified from receiving benefits or have been found to be ineligible for benefits for the following reason(s):

1 YOU WERE DISCHARGED FROM YOUR JOB WITH YOUR MOST RECENT BONA FIDE EMPLOYER FOR FAILING TO CARRY
1 OUT THE DIRECTIVES OF YOUR EMPLOYER. FAILURE TO CARRY OUT THE DIRECTIVE OF YOUR EMPLOYER IN A
1 MANNER THAT THE EMPLOYER HAS A REASONABLE RIGHT TO EXPECT CONSTITUTES DISCHARGE FOR CAUSE IN
1 CONNECTION WITH THE WORK UNDER THE SOUTH CAROLINA CODE, SECTION 41-35-120(2). YOU ARE
1 DISQUALIFIED FOR 10 WEEKS. YOUR MAXIMUM BENEFITS ARE ALSO REDUCED BY 10 TIMES YOUR WEEKLY
1 BENEFIT AMOUNT.

1 THE RECORD SHOWS YOU FAILED TO OBTAIN YOUR VACCINATION IN THE REQUIRED TIME ALLOWED.

1 _____ LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

1 MAILING DATE 01/20/2011

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE COMMISSION UNLESS YOU FILE AN APPEAL SETTING FORTH IN DETAIL THE GROUNDS FOR APPEAL WITHIN TEN (10) CALENDAR DAYS INCLUDING WEEKENDS AND HOLIDAYS FROM THE MAILING DATE SHOWN ABOVE. IF THE TENTH DAY FALLS ON A SATURDAY, SUNDAY OR HOLIDAY THE APPEAL PERIOD IS EXTENDED TO THE NEXT BUSINESS DAY. YOUR APPEAL MAY BE FILED IN PERSON AT ANY EMPLOYMENT SECURITY OFFICE OR BY MAIL ADDRESSED TO THE "APPEAL TRIBUNAL" P.O. BOX 995 COLUMBIA SOUTH CAROLINA 29202 FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL CONTACT YOUR LOCAL EMPLOYMENT SECURITY OFFICE.

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P. O. Box 995, Columbia, South Carolina 29202

Notice of Appeal to Appeal Tribunal

Claimant's Name: PAMELA S CROWE Social Security Number: [REDACTED]
Claimant's Address: 307 WESTWOOD DRIVE, ANDERSON, S.C. 29626
Date of Birth: 10/18/1954 Date of Initial Claim: 12/14/2010 Telephone: 864-260-9256
(Month/Day/Year) (Month/Day/Year)
Employer's Name: ANMED HEALTH Telephone: _____
Employer's Address: 706 EAST GREENVILLE ST, ANDERSON, S.C. 29621

On 1/22/2011 I received a claims examiner's determination mailed 1/20/2011 (ID. NO.01)
from (Date) (Date)

which I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons:
I DISAGREE WITH THE DECISION BECAUSE I WAS DISCHARGED UNFAIRLY. I PROVIDED A MEDICAL
STATEMENT. I WAS DENIED THE MEDICAL STATEMENT. MY DAUGHTER HAD DIED FROM THE FLU
SHOT. SHE PASSED AWAY IN 2007. SHE WAS AN EMPLOYEE OF ANMED HEALTH. SHE WAS FORCED TO
TAKE THE FLU SHOT AND HAD DEVELOPED COMPLICATIONS FROM RECEIVING THE FLU SHOT. I HAVE
THE SAME GENES AND DID NOT WANT TO SUFFER THE WAY MY DAUGHTER HAD. I THINK IT IS UNFAIR
TO DISQUALIFY ME FOR NOT TAKING THE FLU SHOT FOR MEDICAL REASONS AS IT DID NOT PERTAIN TO
MY JOB CONDITIONS OR MY JOB PERFORMANCE.

If appeal is untimely, state the reason: _____

I know that I must continue to file my claim for each week of unemployment until I receive the Appeal Tribunal's or Commission's
decision, until I return to work, or until my claim is exhausted. If I win the appeal, I know I can only be paid for those weeks that I
have claimed timely.

ASD
(Claimant's Initials)

Does claimant need an interpreter? ☐ YES ☒ NO What language/dialect? _____ Claimant is ☐ Deaf ☐ Mute

(If it appears necessary to subpoena witnesses or documents, the Workforce Center representative should use Form 107 and
attach them to this form at the time of transmittal to the Central Office.)

SUBPOENA ☐ YES ☒ NO

Appellant: CLAIMANT

Signed By: [Signature]

Title: CLAIMANT

Date: 1/24/2010

Date Determination Delivered
by Workforce Center: _____

(Date)

Signed: _____

(Workforce Center Representative)

Filed at: ANDERSON/00400
(Workforce Center Name and Number)

Date: JANUARY 24,
(Month) (Day)

2011
(Year)

APP-100...Revised 2/05
Catalog#: 05080

Received By: [Signature]

(Workforce Center Representative Benefits Div.)

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. Box 995, Columbia, South Carolina 29202

NOTICE OF HEARING BEFORE APPEAL TRIBUNAL

Claimant's Name: PAMELA S CROWE Social Security Number: [REDACTED]
Address: 307 WESTWOOD DR
ANDERSON SC 29626-1026

Employer's Name: ANMED HEALTH

Appeal Number: 1100936 Hearing Date: 02/10/11 Hearing Time: 2:00 PM
Month/Day/Year Hour/Minute

Hearing Location: SC EMPLOYMENT SECURITY COMMISSION
309 WEST WHITNER STREET ANDERSON SC 29621

Before: ERIKA S. DAVIS

IMPORTANT: IF YOU HAVE APPEALED AND FAIL TO APPEAR WITHIN TEN (10) MINUTES AFTER THE SCHEDULED TIME FOR THE HEARING TO BEGIN, YOUR APPEAL MAY BE DISMISSED. FAILURE OF EITHER PARTY TO PARTICIPATE MAY RESULT IN YOUR INTERESTS BEING ABANDONED.

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY. Contact a representative of the Department at (803) 737-2520, AT ONCE, if you cannot be present at the time scheduled and wish to request a postponement of the hearing. Also, if you require any special needs, such as an interpreter, please contact us prior to the hearing.

ISSUES

☒ Voluntary Quit	☐ Voluntary Retirement	☐ Timeliness of Appeal
☒ Discharge	☐ Absence from Hearing	☐ Fraud & Overpayment
☐ Availability	☐ Overpayment	☐ Job Offer & Referral
☐ Eligibility	☐ Other _____	

EVIDENCE: This hearing is your only chance to testify and present evidence. Sworn testimony is required from witnesses with first-hand knowledge. Any documents that you want considered must be submitted with an original and two copies. The original will be returned. No testimony or evidence can be considered from witnesses who are not present.

SUBPOENAS: If a witness is reluctant to appear, you may apply for a subpoena through the Workforce Center or the Appeal Tribunal at (803) 737-2520.

LEGAL REPRESENTATION: An attorney licensed to practice in South Carolina may represent you. It is your responsibility to obtain representation prior to the hearing. Fees charged to represent claimants are limited to the greater of \$125.00 or the claimant's weekly benefit amount per appearance.

BENEFITS: A claimant should continue to file for benefits during the appeal process. Weeks not claimed cannot be paid, even if the claimant is held eligible.

This notice supersedes any previous hearing notice you may have received. If the date on this notice is later than the date on any other notice, you should assume that the previous hearing has been postponed and follow the instructions on this notice.

Please note the hearing may result in an increase, decrease, or no change in the disqualification.

MAILING DATE: 02/01/2011

NO CELL PHONES OR CHILDREN ARE ALLOWED IN HEARINGS

GENERAL INFORMATION ON THE SOUTH CAROLINA CODE IS ON THE BACK OF THIS NOTICE.

**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT &
WORKFORCE**

Columbia, South Carolina

Transcript of Testimony

Before

Erika Davis, Administrative Hearing Officer

Pamela S. Crowe) CLAIMANT
307 Westwood Drive)
Anderson, SC 29626)
Claimant SSN: xxx-xx-9123)

Anmed Health) LIABLE EMPLOYER
Attn: Stephanie Collins, HR)
706 E. Greenville Street)
Anderson, SC 29621)

PLACE OF HEARING:

SC Dept of Employment & Workforce
309 W. Whitner Street
Anderson, SC 29624

DATE OF HEARING:

February 10, 2011

APPEARANCES:

For Claimant:

In Person

Attorney

For Employer:

Two Witnesses

TESTIFYING WITNESSES

CLAIMANT:

Pamela S. Crowe

Alex Paterra, Attorney

EMPLOYER WITNESSES:

Teresa Threlkeld, Human Resource Director

Stephanie Collins, Human Resource Manager

1 Before: Erika Davis, Administrative Hearing Officer

2 **HEARING OFFICER'S PREAMBLE.**

3 **ALL WITNESSES SWORN.**

4 HEARING OFFICER: Initially I will ask questions and you have the opportunity
5 to answer those questions, and to provide any additional testimony that is relevant
6 to this case. Since the initial determination was ruled a discharge we do begin
7 testimony with the Employer in the case. Therefore, I will start with the
8 spokesperson which is Ms. Threlkeld. I will initiate the questions; you'll have
9 opportunity to address those questions, and also provide any additional testimony
10 and evidence that is relevant to this case. At the conclusion of my testimony Mr.
11 Paterra will have the opportunity to cross-examine.

12 EMPLOYER WITNESS-1: Sure.

13 HEARING OFFICER: After I conclude with your testimony I will go to Ms.
14 Collins if there's any additional testimony that is needed, and we'll go through the
15 whole...then you'll have an opportunity Ms. Threlkeld, to ask any additional
16 questions of Ms. Collins that you feel is necessary, and Mr. Paterra will also have
17 the opportunity to cross-examine. Then we will take testimony from Ms. Crowe.

18 EMPLOYER WITNESS-1: Yes, [UNCLEAR].

19 HEARING OFFICER: I will begin with the questioning and at the conclusion of
20 my questioning your attorney will have the opportunity to ask any additional
21 questions that he feels is needed and necessary. And then Ms. Threlkeld will have
22 the opportunity to cross-examine you. Okay?

23 CLAIMANT: Okay.

24 HEARING OFFICER: If either party has any documents or exhibits that they
25 feel should be considered in the case they need to be given to me during your
26 testimony as those documents or exhibits become relevant. I cannot accept any

1 documents, testimony, or evidence once I go off record. Okay? Are there any
2 questions regarding the issue or the procedure of this hearing before I go forward
3 with testimony Ms. Collins?

4 EMPLOYER WITNESS-2: No, ma'am.

5 HEARING OFFICER: Ms. Threlkeld?

6 EMPLOYER WITNESS-1: No, ma'am.

7 HEARING OFFICER: Ms. Crowe?

8 CLAIMANT: No, ma'am.

9 HEARING OFFICER: Mr. Pattera?

10 CLAIMANT ATTORNEY: No, ma'am.

11 HEARING OFFICER: All right. Both parties will be notified of the decision as
12 soon as possible. That decision is mailed to the address of record. Ms. Crowe, I'm
13 showing your address as 307 Westwood Drive, and that's in Anderson, South
14 Carolina, 29626. Is that correct?

15 CLAIMANT: Yes, ma'am.

16 HEARING OFFICER: And your telephone number, area code 864-260-9256?

17 CLAIMANT: Yes, ma'am.

18 HEARING OFFICER: Thank you. Mr. Pattera, you will also receive a...a copy
19 of the decision at 107 East Park Avenue, Greenville, South Carolina, 29601. Is
20 that correct?

21 CLAIMANT ATTORNEY: That is correct.

- 1 HEARING OFFICER: Telephone number is 864-387-6872?
- 2 CLAIMANT ATTORNEY: That's correct.
- 3 HEARING OFFICER: And you do not know what your fax number is. Is that
4 correct?
- 5 CLAIMANT ATTORNEY: That's correct.
- 6 HEARING OFFICER: Okay. Ms. Threlkeld, I'm showing the address of record
7 for Anmed Health, Attention: Stephanie Collins, Human Resources, 706 East
8 Greenville Street, Anderson, South Carolina, 29621. Is that correct?
- 9 EMPLOYER WITNESS-1: That's correct.
- 10 HEARING OFFICER: And the telephone number, area code 864-512-1162?
- 11 EMPLOYER WITNESS-1: That's correct.
- 12 HEARING OFFICER: Thank you. [CLEARS THROAT] Excuse me. Ms.
13 Crowe, I have in my hand the Determination which disqualified you from
14 receiving benefits for 10 weeks, also reducing your maximum benefits by 10 times
15 your weekly benefit amount. Is that the Determination that you have appealed in
16 this case?
- 17 CLAIMANT: Yes, it is.
- 18 HEARING OFFICER: And is that the only Determination that is under appeal?
- 19 CLAIMANT: Yes, ma'am.
- 20 HEARING OFFICER: Is there any objection Mr. Paterra to us entering that
21 document into the record?
- 22 CLAIMANT ATTORNEY: No.

Teresa Threlkeld

Direct Examination

by Hearing Officer.
Erika Davis

1 CLAIMANT: [UNCLEAR].

2 HEARING OFFICER: Thank you. Teresa Threlkeld, if you would please look
3 at that document and let me know if you have any objection to me entering that
4 document into the record...

5 EMPLOYER WITNESS-1: No...

6 HEARING OFFICER: ...for...

7 EMPLOYER WITNESS-1: ...I...

8 HEARING OFFICER: ...the...

9 EMPLOYER WITNESS-1: ...don't.

10 HEARING OFFICER: ...purpose of the appeal? Ma'am?

11 EMPLOYER WITNESS-1: No, I don't.

12 HEARING OFFICER: All right. Thank you. Then without objection I will
13 enter it as Agency Exhibit Number One. It is a one page Claims Adjudicator's
14 Determination holding the Claimant disqualified effective December the 12th, 2010
15 through February 19th of 2011, for a 10 week period, also reducing her maximum
16 benefits by 10 times her weekly benefit amount based upon a finding that she was
17 discharged for filling out...for failing to carry out a directive of the Employer. Ms.
18 Threlkeld, if you would, would you please state your name for the record, spelling
19 your first and last name?

20 EMPLOYER WITNESS-1: Teresa Threlkeld. T-E-R-E-S-A...T-H-R-E-L-K-
21 E-L-D.

22 HEARING OFFICER: And your job title Ms. Threlkeld?

23 EMPLOYER WITNESS-1: Director of HR.

Teresa Threlkeld

Direct Examination

by Hearing Officer
Erika Davis

1 HEARING OFFICER: Thank you. Ms. Threlkeld, I show that Ms. Crowe
2 worked for Anmed Health as a Benefits Coordinator. Is that correct?

3 EMPLOYER WITNESS-1: That's correct.

4 HEARING OFFICER: And she was employed with the company from August
5 27th, 1984 to December the 14th of 2010. Is that correct?

6 EMPLOYER WITNESS-1: That's correct.

7 HEARING OFFICER: On December the 14th of 2010, was Ms. Crowe
8 discharged from her job or did she voluntarily quit?

9 EMPLOYER WITNESS-1: She was discharged.

10 HEARING OFFICER: Did you yourself discharge her?

11 EMPLOYER WITNESS-1: Yes, ma'am.

12 HEARING OFFICER: And for what reason was Ms. Crowe discharged on that
13 day?

14 EMPLOYER WITNESS-1: Not taking the flu...the...the influenza vaccine. Not
15 following the policy.

16 HEARING OFFICER: Is the influenza vaccine a requirement?

17 EMPLOYER WITNESS-1: Yes. I have documentation here.

18 HEARING OFFICER: All right.

19 EMPLOYER WITNESS-1: In early...do you want me to...

20 HEARING OFFICER: Please go right ahead.

Teresa Threlkeld

Direct Examination

by Hearing Officer
Erika Davis

1 EMPLOYER WITNESS-1: ...explain as I...

2 HEARING OFFICER: Yes...

3 EMPLOYER WITNESS-1: ...go?

4 HEARING OFFICER: ...ma'am.

5 EMPLOYER WITNESS-1: In early...there's three of them. In early September
6 our CEO John Miller and our Board of Directors decided that we would put into
7 policy that it would be required that every employee of Anmed Health would be
8 required to take the influenza vaccination. We were following suit after
9 Georgetown Hospital did this in 2009, and also MUSC was doing it 2010 also. So
10 this was the first communication that was sent out from Mr. Miller to employees
11 letting them know, there's a statement in here, that, "This year flu vaccines
12 will...will be required for all Anmed Health employees as a condition of hire and
13 for continued employment." And then on the back it has our...the influenza
14 protocol stating that any...any employees that wanted to...you can file for an
15 exemption...

16 HEARING OFFICER: Mm-hm.

17 EMPLOYER WITNESS-1: ...if you didn't...could not feel that you could take
18 the flu shot then there are...there are reasons...the CDC guidelines here that we
19 would grant an exemption from taking it. "If you had a severe egg allergy, severe
20 allergy to any component of the vaccine, a past severe reaction, or a influenza
21 vaccine, or a history of Guillain-Barré Syndrome." And then in bold we have, "No
22 other form or reason for exemption will be made." So this was the first
23 communication to employees.

24 HEARING OFFICER: Okay. Mr. Paterra, do you have any objection to me
25 entering these documents into the record?

26 CLAIMANT ATTORNEY: No.

1 HEARING OFFICER: All right. Then without objection I will enter them as
2 Employer Exhibit Number One. It is a two page document. On Page One is
3 the...this was sent as an e-mail or as a memorandum?

4 EMPLOYER WITNESS-1: E-mail.

5 HEARING OFFICER: That's the e-mail?

6 EMPLOYER WITNESS-1: Mm-hm.

7 HEARING OFFICER: It is an e-mail from John Miller. And he is the
8 administrator of what...

9 EMPLOYER WITNESS-1: He's...

10 HEARING OFFICER: ...please?

11 EMPLOYER WITNESS-1: ...the CEO.

12 HEARING OFFICER: CEO. Thank you. And Page Two is the protocol for the
13 immune...influenza immunization. All right, you may go ahead Ms...

14 EMPLOYER WITNESS-1: Okay.

15 HEARING OFFICER: ...Threlkeld.

16 EMPLOYER WITNESS-1: And the next exhibit that I have is Pam's request
17 for an exemption from taking the influenza vaccination.

18 HEARING OFFICER: So she requested an exemption?

19 EMPLOYER WITNESS-1: Yes, ma'am she did.

20 HEARING OFFICER: Okay.

- 1 EMPLOYER WITNESS-1: And I have that here, and with her doctor's
2 statement as to why she should not take...
- 3 HEARING OFFICER: Do you have additional copies...
- 4 EMPLOYER WITNESS-1: Oh...
- 5 HEARING OFFICER: ...[UNCLEAR]...
- 6 EMPLOYER WITNESS-1: ...sure.
- 7 HEARING OFFICER: Thank you. So the employee had the right, according to
8 your protocol, to...
- 9 EMPLOYER WITNESS-1: Absolutely.
- 10 HEARING OFFICER: ...to request an exemption?
- 11 EMPLOYER WITNESS-1: Sure.
- 12 HEARING OFFICER: Okay. Who made the decision on whether...or who
13 makes the decision whether an exemption is granted or is not granted?
- 14 EMPLOYER WITNESS-1: It is our infectious disease doctor, Dr. David Potts
15 in addition to Diane [UNCLEAR]. She is the employee health manager over the
16 department that gives all of the...all the vaccinations.
- 17 HEARING OFFICER: Okay. Mr. Paterra, do you have any objection to these
18 documents being entered into the record?
- 19 CLAIMANT ATTORNEY: I don't have any objections but I do want to object
20 to any testimony as it relates to the decision made by the infectious disease doctor
21 as it is hearsay. He is not present to give a reason for his denial.

1 HEARING OFFICER: Mr. Pattera, in these hearings we do allow some hearsay
2 based on documentation, however; I will note your objection, and I am going to
3 overrule it and allow the documentation as Employer Exhibit Number Two. It is a
4 three page document as described, excuse me, by Ms. Threlkeld regarding the
5 request by Ms. Crowe to be exempt from the flu or influenza vaccination. When
6 an employee makes a request for an exempt...to be exempt from taking the
7 test...the...are those decisions shared with you as the director of human resources as
8 to whether an...an exemption is or is not granted?

9 EMPLOYER WITNESS-1: Right. It would be at the time. But we had to
10 know the ones that were not granted exemptions are the ones that were because a
11 lot of them were and...

12 HEARING OFFICER: Okay.

13 EMPLOYER WITNESS-1: ...the ones that were granted the exemptions did
14 have to wear a mask.

15 HEARING OFFICER: Okay.

16 EMPLOYER WITNESS-1: And that's in the protocol too.

17 HEARING OFFICER: Okay. So in Ms. Crowe's case was the reason for her
18 exemption being denied shared with you...

19 EMPLOYER WITNESS-1: Yes.

20 HEARING OFFICER: ...as the human...

21 EMPLOYER WITNESS-1: I...I would...

22 HEARING OFFICER: ...resources...

23 EMPLOYER WITNESS-1: ...discuss...

- 1 HEARING OFFICER: ...director?
- 2 EMPLOYER WITNESS-1: ...this next.
- 3 HEARING OFFICER: Okay. I'm sorry.
- 4 EMPLOYER WITNESS-1: [UNCLEAR...TALKING LOW]...
- 5 HEARING OFFICER: Go right...
- 6 EMPLOYER WITNESS-1: ...[UNCLEAR...TALKING LOW].
- 7 HEARING OFFICER: ...ahead. That's all right.
- 8 EMPLOYER WITNESS-1: Okay. The...the next communication was
9 November 12th. Pam was sent via certified mail...no, not Pam. I'm sorry, this was
10 before that. We sent another communication via certified mail to all employees
11 that had not taken the flu shot yet, because we're getting toward, you know, closer
12 to the December 15th, deadline. So November 12th, this was sent out to all
13 employees certified mail, and attachment on the back from Mr. Miller stating the
14 same policy, and then we made...did another attachment of dates and times that
15 you could get your flu shot. Still give you...and one more push trying to get these
16 people in and get their flu shots.
- 17 HEARING OFFICER: Okay. Do you have a copy for the...
- 18 EMPLOYER WITNESS-1: Right here.
- 19 HEARING OFFICER: Thank you. Mr. Pattera, do you have any objection to
20 these documents being entered into the record?
- 21 CLAIMANT ATTORNEY: No, other than my previously stated objection.
- 22 HEARING OFFICER: I'll note your objection again, and again will deny that...

Teresa Threlkeld

Direct Examination

by Hearing Officer
Erika Davis

1 CLAIMANT ATTORNEY: Okay.

2 HEARING OFFICER: ...at this time and enter the...enter the document as
3 Employer Exhibit Number Three. It is a three page document as described. Page
4 One being a certified letter sent to all employees November the 12th...or, I'm sorry,
5 dated November the 12th, 2010, with a copy of the same e-mail request from Mr.
6 Miller, as well as an attachment of the dates shots were to be given. Go ahead Ms.
7 Threlkeld.

8 EMPLOYER WITNESS-1: Okay. Now that letter was sent out to like the 300
9 that were left.

10 HEARING OFFICER: Okay. [UNCLEAR]...

11 EMPLOYER WITNESS-1: Of all...

12 HEARING OFFICER: ...[UNCLEAR].

13 EMPLOYER WITNESS-1: ...the employees that were left that had not taken...

14 HEARING OFFICER: Okay.

15 EMPLOYER WITNESS-1: ...the vaccination yet. We were...there was one
16 more push trying to get them in.

17 HEARING OFFICER: Yes, ma'am.

18 EMPLOYER WITNESS-1: And then on November 18th, Ms. Crowe was sent
19 the letter that she had been denied her request because it did not meet exemption
20 guidelines under the CDC. And it says, "Please see Number Two in the attached
21 protocol."

22 HEARING OFFICER: Mm-hm.

1 EMPLOYER WITNESS-1: And there's the...the protocol reads, "Healthcare
2 workers may request an exemption from vaccination based on guidelines from the
3 Centers of Disease Control. Those CDC guidelines for exemption currently
4 include severe egg allergy severe allergy to any component of the vaccine, a past
5 severe reaction to the influenza vaccine..."

6 HEARING OFFICER: Mm-hm.

7 EMPLOYER WITNESS-1: "...or a history of Guillain-Barré Syndrome. No
8 other form or reason for exemption will be made."

9 HEARING OFFICER: Is that the same document that was entered as Page Two
10 of Employer Exhibit Number One?

11 EMPLOYER WITNESS-1: Yes, I believe...

12 HEARING OFFICER: Okay.

13 EMPLOYER WITNESS-1: ...it is. I just had it on this document too...

14 HEARING OFFICER: Okay.

15 EMPLOYER WITNESS-1: ...[UNCLEAR].

16 HEARING OFFICER: I don't believe I need [UNCLEAR] of it, but since we
17 already have included it...and do you have a copy...

18 EMPLOYER WITNESS-2: That's the...

19 HEARING OFFICER: ...for...

20 EMPLOYER WITNESS-2: ...policy.

21 HEARING OFFICER: ...Mr...

Teresa Threlkeld

Direct Examination

by Hearing Officer
Erika Davis

- 1 EMPLOYER WITNESS-1: This is...
- 2 HEARING OFFICER: ...Pattera?
- 3 EMPLOYER WITNESS-1: ...more of a policy.
- 4 HEARING OFFICER: Okay. Do you have a copy for Mr. Pattera...
- 5 EMPLOYER WITNESS-1: Yes.
- 6 HEARING OFFICER: ...also? Okay. Thank you. Mr. Pattera?
- 7 CLAIMANT ATTORNEY: No objections.
- 8 HEARING OFFICER: All right. Then without objection I will enter...enter it as
9 Employer Exhibit Number Four. It is a five page document beginning with a letter
10 from November...dated November the 18th, 2010, to Ms. Crowe regarding her
11 denial of the exemption. Page Two and Three...is there...this is the same policy
12 that we included or is this a separate one, Ms. Threlkeld?
- 13 EMPLOYER WITNESS-1: That's the...
- 14 EMPLOYER WITNESS-2: This...it's a...I [UNCLEAR].
- 15 HEARING OFFICER: You can't answer Ms. Collins.
- 16 EMPLOYER WITNESS-1: I'm sorry. That...that's in our policy manual.
- 17 HEARING OFFICER: Okay. So this is not the same...the one that was given to
18 all...
- 19 EMPLOYER WITNESS-1: Right.
- 20 HEARING OFFICER: ...employees? Okay. And then Page Four and Five is the
21 influenza vaccine information sheet. Okay. You may go ahead Ms. Threlkeld.

Teresa Threlkeld

Direct Examination

by Hearing Officer
Erika Davis

1 EMPLOYER WITNESS-1: Okay. That was all of the communication, final
2 amount of communication in what, November...I don't remember the exact date,
3 18th when she got that.

4 HEARING OFFICER: Mm-hm.

5 EMPLOYER WITNESS-1: The policy...we still stand on policy. If you have
6 not received the flu vaccination by midnight of the 14th you will be terminated.
7 And Pam chose not to take the vaccination, and so she was therefore terminated.

8 HEARING OFFICER: Okay. And that was the 14th of December, is that
9 correct?

10 EMPLOYER WITNESS-1: Yes, ma'am.

11 HEARING OFFICER: [UNCLEAR] the 14th [UNCLEAR]. In the letter or in
12 the request that Ms. Crowe made requesting to be exempt, did she give any
13 indications as to why? I mean what was her reasoning that...that you're aware of?

14 EMPLOYER WITNESS-1: The reasonings that I'm aware of...

15 HEARING OFFICER: [UNCLEAR].

16 EMPLOYER WITNESS-1: ...are due to her...her child who had MS, which she
17 put...which is in her...

18 HEARING OFFICER: Mm-hm..

19 EMPLOYER WITNESS-1: ...was in her statement.

20 HEARING OFFICER: Yes, ma'am.

21 EMPLOYER WITNESS-1: And her child was admitted and I believe they
22 thought at first she had Guillain-Barré, but it ended up being Multiple Sclerosis.

Teresa Threlkeld

Direct Examination

by Hearing Officer
Erika Davis

1 And under CDC guidelines it says, "You have to have..." you, the person, has to
2 have had Guillain-Barré. Not a family member, it has to be you.

3 HEARING OFFICER: So you yourself have to have Guillain-Barré?

4 EMPLOYER WITNESS-1: Mm-hm.

5 HEARING OFFICER: Okay.

6 EMPLOYER WITNESS-1: Yes, ma'am.

7 HEARING OFFICER: Okay. And the decision to deny or...deny the request was
8 not done by yourself?

9 EMPLOYER WITNESS-1: No, ma'am.

10 HEARING OFFICER: Okay. All right. Thank you. I don't believe I have any
11 other questions at this time. Do you have anything else at this time?

12 EMPLOYER WITNESS-1: No, ma'am. Other than that she was not the only
13 person terminated. There were six terminated.

14 HEARING OFFICER: Thank you. Mr. Paterra, do you have any additional
15 questions for Ms. Threlkeld regarding Ms. Crowe's separation?

16 CLAIMANT ATTORNEY: I do.

17 HEARING OFFICER: You may ask her a question.

18 CLAIMANT ATTORNEY: First question I have is if you can look at
19 immunization...the influenza immunization protocol, I believe it was the e-mail
20 dated 9/15.

21 HEARING OFFICER: Employer Exhibit Number One?

1 CLAIMANT ATTORNEY: Yes.

2 HEARING OFFICER: Okay.

3 CLAIMANT ATTORNEY: Here it says under ".2..."

4 EMPLOYER WITNESS-1: Mm-hm.

5 CLAIMANT ATTORNEY: "...History of Guillain-Barré Syndrome," and...and
6 you just testified that the CDC says you must have a history or that...yours doesn't
7 say anything about the...your policy doesn't say anything regarding the individual
8 having to have a personal history. Correct?

9 EMPLOYER WITNESS-1: That's correct.

10 CLAIMANT ATTORNEY: So...but you guys knew that the CDC regulations
11 said that, and you just determined to not use that exact language where you used it
12 everywhere else?

13 EMPLOYER WITNESS-1: It is what it is. That's...

14 CLAIMANT ATTORNEY: Okay.

15 EMPLOYER WITNESS-1: ...what it reads.

16 CLAIMANT ATTORNEY: Okay. Let's look at the doctor's note attached to, I
17 believe it's...

18 EMPLOYER WITNESS-1: Mm-hm.

19 CLAIMANT ATTORNEY: ...Exhibit Three, the last page.

20 HEARING OFFICER: Exhibit Two? Employer...

21 CLAIMANT ATTORNEY: I'm...

- 1 HEARING OFFICER: ...Exhibit...
- 2 CLAIMANT ATTORNEY: ...sorry, Exhibit Two.
- 3 HEARING OFFICER: Yes, sir.
- 4 CLAIMANT ATTORNEY: This doctor's note indicates that there's a family
5 history of Guillain-Barré and her doctor said it must be avoided correct?
- 6 EMPLOYER WITNESS-1: That's correct.
- 7 CLAIMANT ATTORNEY: So technically she had Guillain-Barré and had a
8 doctor's note that should've exempted her under the policy correct; as it reads?
- 9 EMPLOYER WITNESS-1: I don't read that to say that she has it.
- 10 CLAIMANT ATTORNEY: Okay. But you had a doctor's...
- 11 EMPLOYER WITNESS-1: She...
- 12 CLAIMANT ATTORNEY: ...note...
- 13 EMPLOYER WITNESS-1: ...has a strong family history. It doesn't say she
14 has it.
- 15 CLAIMANT ATTORNEY: Okay. But if we're reading literally the policy of
16 the immunization protocol, there's nothing that says here that she has to have it. It
17 just says, "A history of the Guillain-Barré Syndrome," correct?
- 18 EMPLOYER WITNESS-1: That's...
- 19 CLAIMANT ATTORNEY: [UNCLEAR]...
- 20 EMPLOYER WITNESS-1: ...correct. That's the way it's read...

- 1 CLAIMANT ATTORNEY: Okay.
- 2 EMPLOYER WITNESS-1: ...the written rather, that's correct.
- 3 CLAIMANT ATTORNEY: Okay. How would she have known that it required
4 her specific history rather than a family history?
- 5 EMPLOYER WITNESS-1: I would've thought that would've been relayed to
6 her from the doctor. I don't know.
- 7 CLAIMANT ATTORNEY: Well, her doctor said it must be avoided...
- 8 EMPLOYER WITNESS-1: No...
- 9 CLAIMANT ATTORNEY: ...correct?
- 10 EMPLOYER WITNESS-1: ...Dr. Potts. Dr...
- 11 CLAIMANT ATTORNEY: Who is...
- 12 EMPLOYER WITNESS-1: ...Potts is the one that made the decisions.
- 13 CLAIMANT ATTORNEY: Who is Dr. Potts?
- 14 EMPLOYER WITNESS-1: He's in Infectious Disease...
- 15 CLAIMANT ATTORNEY: Okay.
- 16 EMPLOYER WITNESS-1: ...MD at Anmed Health.
- 17 CLAIMANT ATTORNEY: Okay. Did Dr. Potts ever have a discussion with
18 Ms. Crowe?

1 EMPLOYER WITNESS-1: He talked with her, yeah [UNCLEAR...TALKING
2 TOO LOW].

3 CLAIMANT ATTORNEY: Okay. I...I've got a question about...if you had a
4 doctor's note from...that told you not to do something, would you go against it?
5 Told you not to take a flu shot would you go against that doctor's note?

6 EMPLOYER WITNESS-1: If I had another doctor or another set of healthcare
7 workers telling me something different, I'd weigh it out.

8 CLAIMANT ATTORNEY: Okay. Did you have...

9 EMPLOYER WITNESS-1: Because...

10 CLAIMANT ATTORNEY: ...a...

11 EMPLOYER WITNESS-1: ...you...you can talk to six doctors and get six
12 different...

13 CLAIMANT ATTORNEY: I...I...I understand that. Did you have a doctor
14 examine her specifically?

15 EMPLOYER WITNESS-1: No. Not to...

16 CLAIMANT ATTORNEY: Okay.

17 EMPLOYER WITNESS-1: ...my knowledge.

18 CLAIMANT ATTORNEY: Okay. Could you have had a doctor examine her
19 specifically?

20 EMPLOYER WITNESS-1: If she had asked for one, yes sir.

21 CLAIMANT ATTORNEY: Did she have...would...let me back up. If she
22 asked for it...is there anything here that says that she was allowed to ask for it?

- 1 EMPLOYER WITNESS-1: I don't know that there's anything in this...
- 2 CLAIMANT ATTORNEY: Okay.
- 3 EMPLOYER WITNESS-1: ...communication.
- 4 CLAIMANT ATTORNEY: Okay. And...and you followed...you testified that
5 you followed policy, and policy only correct?
- 6 EMPLOYER WITNESS-1: Yes.
- 7 CLAIMANT ATTORNEY: Okay. And an employee that worked for 26 years
8 would know that you follow policy and only follow policy?
- 9 EMPLOYER WITNESS-1: Mm-hm.
- 10 CLAIMANT ATTORNEY: Okay.
- 11 HEARING OFFICER: Is that a yes, response?
- 12 EMPLOYER WITNESS-1: Yes.
- 13 HEARING OFFICER: Thank you.
- 14 CLAIMANT ATTORNEY: Did you have any genetic testing to determine that
15 she did not have a genetic makeup which would've caused her to become sick due
16 to the flu shot?
- 17 EMPLOYER WITNESS-1: No, we did not.
- 18 CLAIMANT ATTORNEY: Okay.
- 19 EMPLOYER WITNESS-1: Certain employees that said they had severe egg
20 reactions were sent for testing.

1 CLAIMANT ATTORNEY: Okay. But she had a doctor's note that seemed to
2 indicate that she had some potential...or she didn't have some potential, she should
3 avoid the...the flu shot correct?

4 EMPLOYER WITNESS-1: Correct.

5 CLAIMANT ATTORNEY: What did the other employees provide you as it
6 related to their exemption? Do you have that information with you?

7 EMPLOYER WITNESS-1: Not with me. No.

8 CLAIMANT ATTORNEY: Okay.

9 EMPLOYER WITNESS-1: I don't have it with me.

10 CLAIMANT ATTORNEY: Okay. But did they provide you a doctor's note?

11 EMPLOYER WITNESS-1: Yes.

12 CLAIMANT ATTORNEY: Okay. And you took their doctor's note but
13 wouldn't take...

14 EMPLOYER WITNESS-1: No, we would not grant exemptions. Some we did,
15 some we didn't.

16 CLAIMANT ATTORNEY: Okay. But when we had a doctor's note that
17 followed one of these exemptions on Paragraph Two, Exhibit One, we accepted it
18 correct?

19 EMPLOYER WITNESS-1: Now what? I'm not following you.

20 CLAIMANT ATTORNEY: Under Exhibit One there were exceptions that are
21 listed that you [UNCLEAR] list of exceptions under Paragraph Two of Exhibit
22 One, Page Two, and individuals who provided a doctor's note specifying one of
23 those [UNCLEAR] exceptions...

Teresa Threlkeld

Cross Examination

by Alex Pattera

- 1 EMPLOYER WITNESS-1: Mm-hm.
- 2 CLAIMANT ATTORNEY: ...were granted correct? So if they provided a
3 doctor's note...
- 4 HEARING OFFICER: So...
- 5 CLAIMANT ATTORNEY: ...that said severe...
- 6 HEARING OFFICER: ...[UNCLEAR]...
- 7 CLAIMANT ATTORNEY: ...egg allergy...
- 8 HEARING OFFICER: ...hold on. Just a minute Mr...
- 9 EMPLOYER WITNESS-1: If they...
- 10 HEARING OFFICER: ...Pattera.
- 11 EMPLOYER WITNESS-1: ...if they provided a doctor's note that...
- 12 HEARING OFFICER: [UNCLEAR]...
- 13 EMPLOYER WITNESS-1: ...said they had...
- 14 HEARING OFFICER: ...[UNCLEAR].
- 15 EMPLOYER WITNESS-1: ...an egg allergy we had them...we had them tested.
- 16 CLAIMANT ATTORNEY: Okay. They're all [UNCLEAR].
- 17 HEARING OFFICER: All right. Let me...let me stop you for just a moment.
18 The testimony given earlier Mr. Pattera was that Ms. Threlkeld did not make the
19 decision whether someone was or was...

- 1 CLAIMANT ATTORNEY: Okay.
- 2 HEARING OFFICER: ...not granted...
- 3 EMPLOYER WITNESS-1: No.
- 4 HEARING OFFICER: ...an...
- 5 CLAIMANT ATTORNEY: Okay.
- 6 HEARING OFFICER: ...exception.
- 7 EMPLOYER WITNESS-1: I don't...
- 8 HEARING OFFICER: Okay?
- 9 EMPLOYER WITNESS-1: ...have that...
- 10 HEARING OFFICER: [UNCLEAR]...
- 11 EMPLOYER WITNESS-1: ...expertise...
- 12 CLAIMANT ATTORNEY: Okay. Well...
- 13 EMPLOYER WITNESS-1: ...to do that.
- 14 CLAIMANT ATTORNEY: Okay.
- 15 EMPLOYER WITNESS-1: That was done by a...
- 16 HEARING OFFICER: So [UNCLEAR]...
- 17 CLAIMANT ATTORNEY: ...doctor.

- 1 HEARING OFFICER: ...reframe from asking those kinds of questions of her
2 since she was not the individual who made that decision.
- 3 CLAIMANT ATTORNEY: Okay.
- 4 HEARING OFFICER: You may...
- 5 CLAIMANT ATTORNEY: Why didn't...
- 6 HEARING OFFICER: ...[UNCLEAR].
- 7 CLAIMANT ATTORNEY: ...you bring the individual here today that made
8 those decisions? That seems to be crucial that he would testify correct?
- 9 EMPLOYER WITNESS-1: I was instructed to bring myself and Stephanie.
- 10 CLAIMANT ATTORNEY: Okay. How many people were given the
11 exception? Do you have that information?
- 12 EMPLOYER WITNESS-1: Yes. Fifteen were given approval.
- 13 CLAIMANT ATTORNEY: And I guess can we have that submitted into
14 evidence; what she's reading off of?
- 15 HEARING OFFICER: No...no, sir, I don't...
- 16 CLAIMANT ATTORNEY: All right.
- 17 HEARING OFFICER: ...believe that's...
- 18 EMPLOYER WITNESS-1: I can't.
- 19 HEARING OFFICER: ...necessary because of the...those people...

Teresa Threlkeld.

Redirect Examination

by Hearing Officer
Erika Davis

1 CLAIMANT ATTORNEY: Okay.

2 HEARING OFFICER: ...it has no bearing on why Ms...

3 CLAIMANT ATTORNEY: Okay.

4 HEARING OFFICER: ...Crowe was separated from her employment.

5 CLAIMANT ATTORNEY: Okay. Ms. Crowe didn't have any...that...that's all
6 the questions I have.

7 HEARING OFFICER: All right. Thank you. I do have one additional question
8 Ms. Threlkeld before I go to Ms. Collins. Other than Ms. Crowe not taking
9 the...the influenza shot, had she...was her job in jeopardy prior to this
10 [UNCLEAR]...

11 EMPLOYER WITNESS-1: No...

12 HEARING OFFICER: ...[UNCLEAR]...

13 EMPLOYER WITNESS-1: ...ma'am.

14 HEARING OFFICER: ...policy?

15 EMPLOYER WITNESS-1: No, ma'am.

16 HEARING OFFICER: Okay. So the sole reason for her separation was for
17 failing to take the influenza...

18 EMPLOYER WITNESS-1: Sole...

19 HEARING OFFICER: ...shot?

20 EMPLOYER WITNESS-1: ...sole reason.

Stephanie Collins
TUPA - LEVCO

Direct Examination

by Hearing Officer
Erika Davis

1 HEARING OFFICER: Thank you. Ms. Collins, if you would, would you please
2 state your name for the record, spelling your first and last name?

3 EMPLOYER WITNESS-2: Stephanie Collins, S-T-E-P-H-A-N-I-E...C-O-L-L-
4 I-N-S.

5 HEARING OFFICER: And your job title Ms. Collins?

6 EMPLOYER WITNESS-2: Human Resources Manager.

7 HEARING OFFICER: Thank you, Mrs. Collins, were you involved in the...the
8 separation of Ms. Crowe?

9 EMPLOYER WITNESS-2: I was not involved in the decision making, but
10 Teresa did inform me that Ms. Crowe did not take the vaccination and, therefore,
11 would be terminated from employment.

12 HEARING OFFICER: Were you involved in the handling of the
13 policy...the...the new policy that was coming into place?

14 EMPLOYER WITNESS-2: I was just responsible for...for making sure that
15 it...it got put into our policies and procedures manual. The protocol was...was sent
16 out, and then we made sure that that was backed up by the policies and procedures
17 manual; that information. You've got both a copy of the...the verbiage from the
18 policies and procedures manual which also mirrors the...the protocol that was sent
19 out by Mr. Miller.

20 HEARING OFFICER: Okay. All right, thank you. I don't believe I have any
21 additional questions Ms. Collins. Do you have anything else regarding Ms.
22 Crowe's separation that has not been discussed?

23 EMPLOYER WITNESS-2: I do not have any additional testimony at this time.

24 HEARING OFFICER: Thank you.

Stephanie Collins

Cross Examination

by Alex Patteranatic

1 EMPLOYER WITNESS-2: You're welcome.

2 HEARING OFFICER: Ms. Threlkeld, do you have any questions for Ms.
3 Collins?

4 EMPLOYER WITNESS-1: No.

5 HEARING OFFICER: Mr. Pattera, any questions for Ms. Collins?

6 CLAIMANT ATTORNEY: I just have one.

7 HEARING OFFICER: You may ask her.

8 CLAIMANT ATTORNEY: If a doctor provide you with a note saying not to
9 take something that would end up causing you harm, would you still do it?

10 EMPLOYER WITNESS-2: I...

11 CLAIMANT ATTORNEY: To keep your job? I'm...I'm sorry, I didn't finish,
12 to keep your job?

13 EMPLOYER WITNESS-2: Well, Number One, I would probably ask for
14 another opinion.

15 CLAIMANT ATTORNEY: Okay.

16 EMPLOYER WITNESS-2: And then I would have to weigh that out.

17 CLAIMANT ATTORNEY: Okay.

18 HEARING OFFICER: [UNCLEAR...TALKING TOO LOW].

19 CLAIMANT ATTORNEY: That's all the questions I have.

Pamela Crowe

Direct Examination

by Hearing Officer
Erika Davis

- 1 HEARING OFFICER: Thank you. Ms. Crowe?
- 2 CLAIMANT: Yes...
- 3 HEARING OFFICER: If you...
- 4 CLAIMANT: ...ma'am.
- 5 HEARING OFFICER: ...would, would you please state your name for the
6 record, spelling your first and last name?
- 7 CLAIMANT: Pamela Crowe. P-A-M-E-L-A...C-R-O-W-E.
- 8 HEARING OFFICER: Thank you, Ms. Crowe. On the 15th of September of
9 2010 or thereabouts...
- 10 CLAIMANT: Mm-hm.
- 11 HEARING OFFICER: ...did you receive the communication from Mr. Miller
12 regarding the influenza immunization protocol?
- 13 CLAIMANT: That was the e-mail?
- 14 HEARING OFFICER: Yes, ma'am.
- 15 CLAIMANT: Yes, I did.
- 16 HEARING OFFICER: With the protocol attached to it?
- 17 CLAIMANT: Yes, I...
- 18 HEARING OFFICER: Is that...
- 19 CLAIMANT: ...did.

1 HEARING OFFICER: ...correct? When did you...the testimony that was given,
2 was that you requested an exemption...

3 CLAIMANT: Yes.

4 HEARING OFFICER: ...from that...from that influenza immunization correct?

5 CLAIMANT: Yes.

6 HEARING OFFICER: When did you submit that request for the exemption?

7 CLAIMANT: A day or so after September 20th. I don't have the exact
8 day here in front of me. I apologize.

9 HEARING OFFICER: So it was around September the 20th?

10 CLAIMANT: Uh-huh.

11 HEARING OFFICER: Is that a yes...yes, please.

12 CLAIMANT: Yes, ma'am.

13 HEARING OFFICER: Now what was your...and I know I have a...a statement
14 submitted, what was your reasonings for requesting that exemption?

15 CLAIMANT: My reasoning for putting in that exemption was my 25
16 year old daughter who is also employed with Anmed Health at this time. She
17 worked in urgent care. And her manager at that time strongly urged each
18 employee to take the flu shot.

19 HEARING OFFICER: Mm-hm.

20 CLAIMANT: At that time it was not the policy of Anmed Health to be
21 mandatorily vaccinated. She took the shot anyway, and within two weeks after

1 taking that shot in 2001, she was admitted into Anmed Health as a patient with
2 what the neurologist thought was Guillain-Barré Syndrome...

3 HEARING OFFICER: All right.

4 CLAIMANT: ...because of the numbness that slowly crept up her body
5 beginning in her feet, and within just a few days completely crept up to her chest
6 and caused difficulty in breathing. The neurologist suggested if that happened get
7 her by ambulance to the hospital, which is what we did; because he suspected
8 Guillain-Barré. She's in the hospital for a number of days. I'm thinking 10, but a
9 number of days. And when she was discharged her neurologist said, "We don't
10 believe it's Guillain-Barré, we believe it is Multiple Sclerosis." And at her
11 bedside, with her in the bed numb to...everything, and very much in shock; at that
12 time she would've been 19 years old, he asked her, "What have you done in the
13 past couple of weeks that could have caused a reaction or...or something to...to
14 admit you like this?" She was in shock, and again, still a kid, 19, and we looked at
15 each other, my daughter and I did, and I said, "You took the flu shot." And her
16 neurologist turned and looked at me and he said, "That very well could have
17 activated what's happening here."

18 HEARING OFFICER: Mm-hm.

19 CLAIMANT: To make a long story and a very painful story short, on
20 April the 4th, 2007, she died at the age of 25 because of something that started with
21 a flu shot. I nursed her. She's got my genes. Any mother would hate to bury their
22 child, and I hated it severely. She suffered immensely, but she continued to work
23 for Anmed Health and was employed up until the day she died. She was not
24 working the day she died. She was home because she was having an attack and
25 could not walk.

26 HEARING OFFICER: Was that the reason you chose not to take the shot?

27 CLAIMANT: Yes, ma'am. That is why I chose not to take the shot.

Pamela Crowe
JAN 13 2015

Direct Examination-

by Hearing Officer
Erika Davis

1 HEARING OFFICER: I see. Did your doctor...in...in Employer Exhibit Number
2 Two, with the...I believe that's the page...has the doctor's statement that says that
3 there is a family history of Guillain-Barré, had the doctor tested you to see if you
4 were actually a carrier of this disease?

5 CLAIMANT: No.

6 HEARING OFFICER: Were you aware that you yourself had to have this
7 disease or...or one of the other components of the protocol in order...

8 CLAIMANT: I was...

9 HEARING OFFICER: ...to be exempt from the...

10 CLAIMANT: ...I was aware...

11 HEARING OFFICER: ...immunization?

12 CLAIMANT: ...that it gave the exemptions and it said, "A history of..."

13 HEARING OFFICER: Mm-hm.

14 CLAIMANT: ...Guillain-Barré, which my daughter had a history of.
15 History...I didn't know how to read history. Did it mean me? Did it mean...

16 HEARING OFFICER: Mm-hm.

17 CLAIMANT: ...family history? Which my doctor, when she read it,
18 read, "History...family history of..."

19 HEARING OFFICER: Mm-hm.

20 CLAIMANT: "...Guillain-Barré and Multiple Sclerosis, or MS" as she
21 abbreviated. So, therefore, that...that...I went with the doctor's advice because if I
22 birth this child and she died, she had my genes, so why? I...I was employed with

Pamela Crowe, Office
Erika Davis

Direct Examination

by Hearing Officer:
Erika Davis

1 Anmed Health for 26 years and I never took a flu shot, never. So why would I
2 want to put something in my system, even if it meant me being able to keep my
3 job...

4 HEARING OFFICER: Mm-hm.

5 CLAIMANT: ...that eventually killed my child when we have the same
6 genes.

7 HEARING OFFICER: Did you request to be seen by another doctor when you
8 were denied the...the request?

9 CLAIMANT: No, I would...I did not see another doctor.

10 HEARING OFFICER: Okay. You were aware that by failing to take this test it
11 could result in your separation. Is that correct?

12 CLAIMANT: Yes. Fully aware.

13 HEARING OFFICER: Did you ask if there was any way or anything else that
14 could be done without taking the flu shot in order to remain employed?

15 CLAIMANT: I did put that in my appeal to my employer...

16 HEARING OFFICER: Mm-hm.

17 CLAIMANT: ...that I would be willing to...that I wasn't afraid of a
18 needle as some people had said, and I would be more than willing to wear a mask
19 and sit at my desk because I had no patient contact.

20 HEARING OFFICER: Mm-hm.

21 CLAIMANT: I was not even in the hospital building. I was in a
22 separate, off site building with no patient contact. But I would still have sat at my

Pamela Crowe
Entire Duty

Cross Examination

by Alex Pattera

1 desk where I had sat for 26 years with a mask on to be able to keep my job. And I
2 did put that in...in my letter.

3 HEARING OFFICER: And what were you told when you...

4 CLAIMANT: I received my certified letter of denial from Anmed
5 Health, which has been submitted already; that they denied my medical statement
6 and that I would be terminated.

7 HEARING OFFICER: All right. Thank you. I don't believe I have any other
8 questions Ms. Crowe. Do you have anything else at this time regarding your
9 separation from Anmed Health?

10 CLAIMANT: Not that I'm aware of.

11 HEARING OFFICER: Okay. Thank you. Mr. Pattera, do you have any
12 additional questions for Ms. Crowe?

13 CLAIMANT ATTORNEY: Just a few.

14 HEARING OFFICER: Mm-hm.

15 CLAIMANT ATTORNEY: Ms. Crowe, the reason that you didn't take the shot
16 was because you were afraid that the same situation would occur that happened to
17 your daughter?

18 CLAIMANT: Yes, sir.

19 CLAIMANT ATTORNEY: Okay. Did anyone ever...did Anmed or anyone at
20 Anmed ever give you the option to see another doctor?

21 CLAIMANT: No, sir.

22 CLAIMANT ATTORNEY: How many doctors worked at Anmed?

Pamela Crowe
Exhibit 1000

Cross Examination

by Alex Pattera

1 CLAIMANT: I have no idea.

2 CLAIMANT ATTORNEY: They could've offered one up for free probably,
3 correct?

4 CLAIMANT: Probably.

5 CLAIMANT ATTORNEY: Okay. Do you always try to act in the best interest
6 of Anmed when you were employed?

7 CLAIMANT: I always did.

8 CLAIMANT ATTORNEY: Okay. Have you ever taking a flu shot in your
9 entire life?

10 CLAIMANT: I've never taken a flu shot in my entire life.

11 CLAIMANT ATTORNEY: Did you have any idea that you really thought you
12 needed to talk to another doctor after talking to Dr. Cooksey?

13 CLAIMANT: I thought my doctor, who knows me better than anyone,
14 would be all of...that...that she would be all I would need.

15 CLAIMANT ATTORNEY: Okay.

16 CLAIMANT: I had no idea I would need more.

17 CLAIMANT ATTORNEY: Did you think you violated the policy by any
18 means that they're saying you did?

19 CLAIMANT: I thought that I had complied with what they asked; that I
20 needed to provide a medical statement stating that there was a history in the family
21 of Guillain-Barré that turned out to be Multiple Sclerosis; and they are very, very
22 closely related. And I also, myself, am diagnosed with Fibromyalgia, which is also
23 in my written statement that I gave to Anmed Health. And Fibromyalgia, Multiple

Teresa Threlkeld

Redirect Examination

by Hearing Officer
Erika Davis

1 Sclerosis, and Lupus are all cousins. They're all in the same auto immune disease.
2 So I thought I had provided enough, but it wasn't what Anmed thought, so.

3 CLAIMANT ATTORNEY: Did you believe that you were trying to act in the
4 best interest of your employer by giving them options other than...

5 CLAIMANT: Yes.

6 CLAIMANT ATTORNEY: Okay.

7 CLAIMANT: By wearing a mask. I would've gladly.

8 CLAIMANT ATTORNEY: That's all the questions I have.

9 HEARING OFFICER: Thank you. Ms. Threlkeld, do you have any additional
10 questions for Ms. Crowe?

11 EMPLOYER WITNESS-1: No, I do not.

12 HEARING OFFICER: Okay. Do you have any additional testimony, any
13 rebuttal to any of the testimony that's been given?

14 EMPLOYER WITNESS-1: No, I do not.

15 HEARING OFFICER: I have one other question. And I don't believe this was
16 answered earlier. What's the reason for the change in the protocol? I mean do you
17 know what the reason was? I assume...

18 EMPLOYER WITNESS-1: No...

19 HEARING OFFICER: ...that's going...

20 EMPLOYER WITNESS-1: ...I ...

21 HEARING OFFICER: ...to be a better...

1 EMPLOYER WITNESS-1: ...don't.

2 HEARING OFFICER: ...better question as to what was the reason for the
3 change.

4 EMPLOYER WITNESS-1: They had [UNCLEAR]...in the end it was decided
5 that we would follow to the letter the CDC guidelines, as to make any decisions on
6 exemptions could be followed to the letter of the CDC guidelines.

7 HEARING OFFICER: And who made the decision to implement this policy into
8 Anmed Health? Would that have been by yourself or by Mr. Miller?

9 EMPLOYER WITNESS-1: Mr. Miller and our Board of Directors.

10 HEARING OFFICER: Were you involved in that decision making?

11 EMPLOYER WITNESS-1: No.

12 HEARING OFFICER: Okay. Thank you. I don't believe I have any other
13 questions.

14 CLAIMANT ATTORNEY: I...

15 HEARING OFFICER: Mr...

16 CLAIMANT ATTORNEY: ...have.

17 HEARING OFFICER: You have a...

18 CLAIMANT ATTORNEY: I have a...well, I have one thing I'd like to submit
19 into evidence. It's an order from the court of your county, and...and I think that the
20 standard of viewing this is...is similar enough that the Tribunal should take into
21 consideration specifically that the court should...or the Tribunal...well, Tribunal
22 should take into consideration the reasonableness of the facts, and of the
23 circumstances, and also this case looks specifically at a policy in the [UNCLEAR]

1 language that the court found that the Employer acted in a manner that was outside
2 the [UNCLEAR] of the policy; and I think that's kind of what has happened here;
3 is they wrote a [UNCLEAR] policy and then varied from it by requiring it to
4 [UNCLEAR] that only personal and not family history as well as I believe it's not
5 reasonable for an employee to have to take a shot that may eventually cause or
6 could cause death [UNCLEAR].

7 HEARING OFFICER: This is...this...what you've handed me Mr. Pattera is
8 regarding a drug test.

9 CLAIMANT ATTORNEY: That is true, but it's a policy, it is an interpretation
10 of a policy, and meeting the obligations of one policy...

11 HEARING OFFICER: Mm-hm.

12 CLAIMANT ATTORNEY: ...and...and that's where I believe that it is
13 pertinent. If we look on Page Four, the second to the last paragraph, whether
14 applying to statute or the Employer's policy a standard of reasonableness should be
15 applied to the analysis of the facts and circumstances of each case. I think that it's
16 pertinent on this Tribunal's decision today as..as well as if we look at the facts of
17 this scenario, the situation was the policy indicated that...the drug policy that was
18 in place in this incident said, "Fail or refuse." The individual was unable to
19 provide a substantial amount of urine at her time of collection, and...

20 HEARING OFFICER: [UNCLEAR].

21 CLAIMANT ATTORNEY: ...and they terminated her and her for...for cause.
22 And the court found that the language was unreasonable to read it, so
23 [UNCLEAR]. And...and that's why I think reading a policy such as this so
24 [UNCLEAR] and not expanding it, is...is an issue.

25 HEARING OFFICER: Okay. Ms. Threlkeld, do you have any objection to me
26 entering this document into the record?

1 EMPLOYER WITNESS-1: I don't have a clue as to what it is, so I...I guess
2 not.

3 HEARING OFFICER: All right. What this is, is the findings in the...in the Court
4 of Common Pleas, regarding...or this is an order from the Court of Common Pleas
5 regarding a...a...a separate case of an employee; specifically Mr. Paterra's referring
6 to Page Four, Paragraph Four is that correct?

7 CLAIMANT ATTORNEY: I'm sorry. I...I handed both of my...I have another
8 copy here at the bottom.

9 EMPLOYER WITNESS-1: Is this a case involving Anmed Health?

10 HEARING OFFICER: No, sir. No...

11 CLAIMANT ATTORNEY: It...

12 HEARING OFFICER: ...ma'am.

13 CLAIMANT ATTORNEY: ...is not.

14 HEARING OFFICER: No, ma'am.

15 CLAIMANT ATTORNEY: And...and it isn't meant to be involving Anmed
16 Health. What it is being used for is what I believe is the standard the court should
17 take into consideration in reviewing the policies in general when they are asked to
18 do so. And that is Page Four, Paragraph Four, correct...

19 HEARING OFFICER: Okay.

20 CLAIMANT ATTORNEY: ...or Four.

21 EMPLOYER WITNESS-1: Hospitals are doing this all over the State.

22 HEARING OFFICER: Do you have any objection to the document being...

1 EMPLOYER WITNESS-1: No.

2 HEARING OFFICER: ...entered? Okay. Then without objection I will enter it
3 as Employer...excuse me, as Claimant Exhibit One. It is a five page order from the
4 16th Judicial Circuit in the Court of Common Pleas regarding the case of Susan
5 Garrett vs. the South Carolina Department of Employment and Workforce. All
6 right, anything else, Mr. Pattera?

7 CLAIMANT ATTORNEY: I...I do not have anything else.

8 HEARING OFFICER: Ms. Crowe?

9 CLAIMANT: I have nothing else.

10 HEARING OFFICER: Ms. Threlkeld?

11 EMPLOYER WITNESS-1: No, ma'am.

12 HEARING OFFICER: Ms. Collins?

13 EMPLOYER WITNESS-2: I would like to say something if you don't mind.

14 HEARING OFFICER: Mm-hm.

15 EMPLOYER WITNESS-2: I would just like to add that there...per Ms.
16 Crowe's statement there was no scientific evidence that there was a correlation
17 between taking the flu shot and having...activating Multiple Sclerosis, and that
18 there...as Ms. Crowe said Nicole did not have Guillain-Barré. She had Multiple
19 Sclerosis. That's what she was discharged from the hospital with. So based on her
20 information there is no Guillain-Barré. She had MS. And that Pam did not ask to
21 see another physician. And we weren't going to force her to see one. So I just
22 want that added into testimony that, you know, had she requested to see another
23 physician, we would've done what we could to accommodate you to do that.

24 HEARING OFFICER: All right.

1 EMPLOYER WITNESS-2: But she didn't request that. So, you know, we
2 weren't going to force that upon her.

3 HEARING OFFICER: All right. Thank you.

4 EMPLOYER WITNESS-2: You're welcome.

5 HEARING OFFICER: There being no further questions and no further
6 testimony I declare this hearing closed.

7 **HEARING CLOSED.**

STATE OF NEW JERSEY)
)
COUNTY OF MIDDLESEX)

This is to certify that the above is a true and correct transcript of recorded testimony transcribed to the best of my ability


Christine M. Beluch

SWORN to before me this the

25th day of May, 2011

Mary Farley (LS)

Mary Farley
Notary Public
New Jersey
My Commission Expires 11/05/2012

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 995, COLUMBIA, S.C. 29202

1 PAMELA S CROWE

DATE OF THIS NOTICE 01/19/11

1 307 WESTWOOD DR

1 ANDERSON SC 29626

EXHIBIT
102

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION REASONS		
PAMELA S CROWE				[REDACTED]	12/12/10	02/19/11		
LD NO	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS	
040	I	01	\$ 326.00	\$ 8476.00	\$ 3260.00	\$ 5216.00	12/11/11	

DETERMINATION BY CLAIMS ADJUDICATOR ON CLAIM FOR BENEFITS

1 You are eligible for benefits from the above effective date.

1 ☒ You have been disqualified from receiving benefits or have been found to be ineligible for benefits for the following reason(s).

1 YOU WERE DISCHARGED FROM YOUR JOB WITH YOUR MOST RECENT BONA FIDE EMPLOYER FOR FAILING TO CARRY
1 OUT THE DIRECTIVES OF YOUR EMPLOYER. FAILURE TO CARRY OUT THE DIRECTIVE OF YOUR EMPLOYER IN A
1 MANNER THAT THE EMPLOYER HAS A REASONABLE RIGHT TO EXPECT CONSTITUTES DISCHARGE FOR CAUSE IN
1 CONNECTION WITH THE WORK UNDER THE SOUTH CAROLINA CODE, SECTION 41-35-120(2). YOU ARE
1 DISQUALIFIED FOR 10 WEEKS. YOUR MAXIMUM BENEFITS ARE ALSO REDUCED BY 10 TIMES YOUR WEEKLY
1 BENEFIT AMOUNT.

1 THE RECORD SHOWS YOU FAILED TO OBTAIN YOUR VACCINATION IN THE REQUIRED TIME ALLOWED.

1 LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

MAILING DATE 01/20/2011

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE COMMISSION UNLESS YOU FILE AN APPEAL SETTING FORTH IN DETAIL THE GROUNDS FOR APPEAL WITHIN TEN (10) CALENDAR DAYS, INCLUDING WEEKENDS AND HOLIDAYS, FROM THE MAILING DATE SHOWN ABOVE IF THE TENTH DAY FALLS ON A SATURDAY, SUNDAY OR HOLIDAY. THE APPEAL PERIOD IS EXTENDED TO THE NEXT BUSINESS DAY YOUR APPEAL MAY BE FILED IN PERSON AT ANY EMPLOYMENT SECURITY OFFICE, OR BY MAIL ADDRESSED TO THE "APPEAL TRIBUNAL," P.O. BOX 995, COLUMBIA, SOUTH CAROLINA 29202 FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, CONTACT YOUR LOCAL EMPLOYMENT SECURITY OFFICE

From: John Miller
To: EVERYBODY
Date: 9/15/2010 11:00 AM
Subject: Required Influenza Vaccinations
Attachments: INFLUENZA IMMUNIZATION PROTOCOL.pdf

EXHIBIT
227 E# 1
FILE NO: 1100936

①
2 pgs.

Required Influenza Vaccinations

Once again flu season has arrived and so has our annual process of providing flu vaccinations. Last year, thanks to your cooperation 81.3% of our employees received a flu shot. Your willingness to get a flu vaccination is greatly appreciated.

Because of the environment we work in, we are our community's greatest asset in protecting and caring for those that are facing illness. This responsibility means that we must take every conceivable step to make patient, employee, and community safety a priority. We've clearly demonstrated this capacity with our focus on hand-washing, surgical protocols, providing sterile environments, and investing in the best technology. This year we are going to take yet another step in making patient, employee, and community safety a priority, and this step involves every employee of AnMed Health. After reviewing the practices of some of the nations' leading health care networks and after presenting to and receiving approval from our AnMed Health Board of Trustees, this year flu vaccines will be required for all AnMed Health employees as a condition of hire and for continued employment. In addition, this requirement will be in place for all students, volunteers, contract workers, and temporary agency employees.

Attached is a list of protocols we will be following to implement the required flu vaccination policy. Employee Health will coordinate the distribution of the shots and will document any requests for exceptions based on set guidelines provided by the CDC. If you have questions about exemptions please call Dianne Linne at 512-2582.

Each year thousands of Americans die as a result of the flu and flu related illnesses. We must do our part to reduce the risk of infection and in turn help save the lives of those we care for and those we care about. Everyone's understanding is appreciated.

Influenza Immunization Protocol

To protect patients, visitors, and other health care workers (HCW's), the influenza vaccination will be viewed as a health competency and patient safety requirement. Health Care Workers (HCW's) include, but are not limited to AnMed Health employees, students, volunteers, temporary agency staff, "travelers", and certain vendors. **Unless an approved exemption is made (as described herein) the influenza vaccination will be a condition of initial and continued employment of all AnMed Health employees, and a condition of permissive entrance onto the premises of any AnMed Health service delivery site for all other HCW's, regardless of whether direct patient contact is expected.**

- 1) AnMed Health's Employee Health department will administer, within annually proscribed deadlines, influenza immunizations.
- 2) HCW's may request an exemption from vaccination based on guidelines from the Centers for Disease Control (CDC). Those CDC guidelines for exemptions currently include; severe egg allergy, severe allergy to any component of the vaccine, a past severe reaction to the influenza vaccine, or a history of Guillian-Barre' syndrome. **NO OTHER FORM OR REASON FOR EXEMPTION WILL BE MADE.** The exemption request form will be available in Employee Health..
- 3) Employee Health will review each exemption request on a case by case basis, and if approved will develop a schedule and plan for an exempt HCW's use of a surgical mask. Any such schedule and plan will be based on risk factors associated with potential exposures to other HCW's, and to patients and visitors to AnMed Health.
- 4) The following restrictions will apply to HCW's who have received an exemption from vaccination:
 - (a) those with direct patient contact will wear a surgical mask while on duty, with the exception of breaks and lunch time.
 - (b) those without direct patient contact will wear a surgical mask while on duty when in close contact with other individuals. Close contact is defined as a distance of six or fewer feet.
 - (c) any additional restrictions or limitations consistent with CDC suggestions or guidelines.
- 5) Employees without an approved exemption, who fail to timely take the vaccination, or who with an approved exemption fail to comply with any applicable restriction will be allowed to resign or will be terminated. Any other HCW without an approved exemption, who fails to timely take the vaccination, or who with an approved exemption fails to comply with any applicable restriction will be subject to loss of access privileges to any AnMed Health service delivery site.

Please accept this as my written appeal of the Mandatory flu shot policy.

A little background first, I am Pam Crowe in Human Resources. I have been employed with AnMed Health for 26 years. My whole family has been employed with AnMed Health at one time or another: my husband, Julien Crowe, retired here with 29 years of service; my parents, Frances and John Stones, Mom worked for Mark Cromer in Purchasing and my Dad worked in Security after retiring from the US Postal service with 30 years of service; my daughter Kendall worked here for 10 years and is an RN and my daughter, Nicole Brooks-Cruz worked in Urgent Care for 10 years until her death in April 2007.

My life changed in so many ways when Nicole died due to drug toxicity from treatment of Multiple Sclerosis (MS). She was 25 years old at the time of her death. The medications used to treat the MS caused liver failure and death.

This is the basis for my plea. Nicole took the flu shot in 2001 after her manager pressured the staff to do so. Within two (2) weeks, Nicole began to have numbness in her feet. This numbness crept up her legs to her knees. At this time our chiropractor saw her and urgently contacted me. He said she needed a neurologist immediately! I quickly got an appointment as the numbness continued to creep up her body. Long story short, she was admitted to AnMed Health through the Emergency Room when the numbness reached her chest and affected her ability to breath. The neurologist thought it was Gillian-Barre Syndrome but after many tests, blood work, MRI, spinal tap, etc... she was diagnosed with Multiple Sclerosis. The neurologist asked what she had done within the last two weeks that could have activated the MS gene, that ALL humans carry and she replied, "I took the flu shot". He said that could be what activated the MS. Nicole continued to work for AnMed Health with intermittent FMLA due to exasperations with MS until 4/4/07, the date of her death. My daughter's is one case where the flu shot started a *domino effect* that led to her death and she was my child!

I currently have fibromyalgia (which is a cousin to MS), I also have Irritable Bowel Syndrome (IBS) and Restless Leg Syndrome (RLS), therefore, for genetic and medical reasons I don't want to put the flu shot into my body and possibly activate the same gene that could eventually cause death! I have never taken the flu shot in the 26 years I have been employed with AnMed Health. I have no patient contact in my position of Benefits Coordinator.

My reason is medically based and personal, I am not afraid of needles and I have a clear understanding of AnMed Health's stand but I respectfully request to sign a declination of the flu shot due to the direct family history. Please accept my earnest request.

ANMED HEALTH

HR - Linda McFall
Theresa Threlkeld

Exemption Request--Flu Vaccination

9-21-10
Date

Pamela S. Crowe
Employee or HCW Name

307 Westwood Dr
Anderson SC 29624

Form to be completed by your physician and must be documented in your medical record.

The above named AnMed Health employee or health care worker (HCW), is unable to take the influenza vaccine for the following reason(s); listed below per CDC guidelines.

- ☐ Severe egg allergy. Please supply supporting documentation.
- ☐ Severe allergy to any component of the vaccine (Employee Health uses thimerosal free vaccine.)
- ☐ Had a severe reaction after a dose of influenza vaccine in the past
Please provide date and details of reaction:

- ☐ History of Gillian- Barré syndrome
List date of GBS: _____

Erin L. Cocksey, MD (see back)
Print Physician Name

Physician Signature (Office staff signature or Physician stamp not accepted)

Date

To be completed by Employee Health

Request received on: 9/23/2010

☐ This exemption has been approved.

☒ This exemption has been denied.

Information regarding denial has been forwarded to the Human Resources Department.

Doug Douglas
Employee Health Director or Manager Signature

11/12/10
Date

ERIN L. COOKSEY, M.D.
2000 EAST GREENVILLE STREET, SUITE 1600
ANDERSON, SC 29621

(R64) 226-9193

DEA#

NAME: Pamela Crow AGE: 46
ADDRESS: _____ DATE: 9/20/10
Rx ILLEGAL IF NOT SAFETY BLUE BACKGROUND

R
This patient must be
medically exempt from the
flu shot. She has a strong
family history of Guillain-Barre
and MS. The flu shot
can activate those processes
and must be avoided!

Refill _____ times

☐ Label

DISPENSE AS WRITTEN
F-106

SUBSTITUTION PERMITTED

ANMED HEALTH

3P
EXHIBIT
E# 3
FILE NO: 1100936

VIA CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

November 12, 2010

(Employee's name/address)

RE: AnMed Health Flu Vaccination Policy

Dear _____:

Effective September 15, 2010 AnMed Health adopted a mandatory flu vaccination policy (attachment 1) for health care workers. As of today's date, more than 90% of our employees have acknowledged their commitment to improving community health by complying with this policy, but our records indicate that you have not yet received a flu vaccine. Compliance with the policy by December 15, 2010 may be accomplished in one of three ways: 1) obtaining the vaccine from an AnMed Health Employee Health representative; 2) obtaining the vaccine from any other medical provider and producing reasonably satisfactory evidence of such to Employee Health, or; 3) requesting and receiving an exemption from Employee Health.

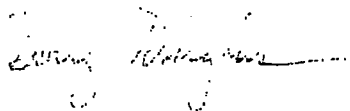
Employees who fail to comply with the policy by December 15 will be involuntarily terminated effective the same date. Employees who elect to voluntarily terminate must ensure that prior to their effective termination date (no later than December 14), they have worked a full adequate notice period (between 2 and 4 weeks, depending on position, and as defined by HR Policy). In accordance with existing AnMed Health HR policies and practices, employees who are involuntarily terminated OR who voluntarily terminate without providing adequate notice are ineligible for rehire and will forfeit unused paid time off benefits.

I have also attached Employee Health's November and December schedules (attachment 2) to help you fulfill this important patient safety interest and condition of employment. I encourage you to get your flu vaccine sooner rather than later.

Employee's who have requested a flu vaccine exemption from Employee Health will be notified on or about December 1, 2010 regarding exemption approval or denial.

Medical questions related to flu vaccines or exemption should be directed to Employee Health at 864/512-1306 or 4813. All other questions (including those related to termination of employment, HR policies, or mandatory flu policy enforcement) should be directed to Human Resources at 864/512-1162.

Sincerely,



James Douglas
VP of Human Resources

attachment 1/Mandatory Flu Vaccine Policy
attachment 2/Employee Health November & December Schedules

From: John Miller
To: EVERYBODY
Date: 9/15/2010 11:02:01 AM
Subject: Required Influenza Vaccinations

Required Influenza Vaccinations

Once again flu season has arrived and so has our annual process of providing flu vaccinations. Last year, thanks to your cooperation 81.3% of our employees received a flu shot. Your willingness to get a flu vaccination is greatly appreciated.

Because of the environment we work in, we are our community's greatest asset in protecting and caring for those that are facing illness. This responsibility means that we must take every conceivable step to make patient, employee, and community safety a priority. We've clearly demonstrated this capacity with our focus on hand-washing, surgical protocols, providing sterile environments, and investing in the best technology. This year we are going to take yet another step in making patient, employee, and community safety a priority, and this step involves every employee of AnMed Health. After reviewing the practices of some of the nation's leading health care networks and after presenting to and receiving approval from our AnMed Health Board of Trustees, this year flu vaccines will be required for all AnMed Health employees as a condition of hire and for continued employment. In addition, this requirement will be in place for all students, volunteers, contract workers, and temporary agency employees.

Attached is a list of protocols we will be following to implement the required flu vaccination policy. Employee Health will coordinate the distribution of the shots and will document any requests for exceptions based on set guidelines provided by the CDC. If you have questions about exemptions please call Dianne Linne at 512-2582.

Each year thousands of Americans die as a result of the flu and flu related illnesses. We must do our part to reduce the risk of infection and in turn help save the lives of those we care for and those we care about. Everyone's understanding is appreciated.

**Employee Health (Medical Center and North Campus)
November and December Schedule Alert**

NOVEMBER -- regular office schedule observed, EXCEPT:

- ❖ November 22 - 30 -- **FLU SHOTS AVAILABLE**
11:30am - 1:30pm ONLY!!
 - ❖ Both Offices Closed November 25
 - ❖ North Campus Office Closed November 26
-

DECEMBER -- regular office schedule observed, EXCEPT:

- ❖ December 1 - 15 -- **FLU SHOTS AVAILABLE**
11:30AM - 1:30PM ONLY!!
- ❖ Both Offices Closed December 25

5/2/11
EXHIBIT
E# 4
FILE NO: 1100936

November 18, 2010

Pamela Crowe
307 Westwood Dr.
Anderson, SC 29624

Dear Ms. Crowe,

Employee Health has received your request for a medical exemption to taking the 2010-2011 seasonal influenza vaccination.

After careful review your request has been **denied** because it does not meet the exemption guidelines specified by the Centers for Disease Control. Please see #2 in the attached protocol.

Compliance with the policy by December 15, 2010 may be accomplished in one of three ways: 1) obtaining the vaccine from an AnMed Health Employee Health representative; 2) obtaining the vaccine from any other medical provider and producing reasonably satisfactory evidence of such to Employee Health, or; 3) requesting and receiving an exemption from Employee Health.

Employees who fail to comply with the policy by December 15 will be involuntarily terminated effective the same date. Employees who elect to voluntarily terminate must ensure that prior to their effective termination date (no later than December 14), they have worked a full adequate notice period (between 2 and 4 weeks, depending on position, and as defined by HR Policy). In accordance with existing AnMed Health HR policies and practices, employees who are involuntarily terminated OR who voluntarily terminate without providing adequate notice are ineligible for rehire and will forfeit unused paid time off benefits.

I have also attached Employee Health's November and December schedules to help you fulfill this important patient safety interest and condition of employment. I encourage you to get your flu vaccine sooner rather than later. Medical questions related to flu vaccines or exemption should be directed to Employee Health at 864/512-1306 or 4813. All other questions (including those related to termination of employment, HR policies, or mandatory flu policy enforcement) should be directed to Human Resources at 864/512-1162.

AnMed Health Employee Health

Attachments: Influenza Immunization Protocol
Employee Health November/December Flu Schedule

cc: Linda McFall, Teresa Threlkeld

5. Comply with statutory and regulatory requirements.
6. Respond to health questions from employees.
7. Serve to promote good health among all staff.

SERVICES:

PRE-PLACEMENT SCREENING: The screening consists of: physical job demand screening (excluded are employees lifting 20 pounds or less and those who are sedentary), health history, vital signs, height, weight, color vision for nursing, lab and engineering, six-panel drug screen (DOT when indicated) and a two-step TST. Immunizations and titer screening include mumps and rubella, and varicella. HBV series or titer as indicated by history.

ANNUAL HEALTH EVALUATION: As an optional employee benefit, employees may have a broader health evaluation periodically. The screen includes height, weight, blood pressure, CBC< TSH< SGOT, glucose, lipid profile and a PSA for men older than 50. This screen can be performed every five years for persons younger than 30, every two years for persons 30-40 and every year for persons older than 40. A personal wellness profile (PWP) will be available to all employees with a lipid profile and diabetes lab work regardless of age. If conditions are found that require follow-up, the employee will be referred to their primary physician for treatment and monitoring.

IMMUNIZATIONS: Tetanus/Diphtheria will be offered for post accident care as indicated and a TDaP offered as indicated. Hepatitis B, Varivax and Rubella will be offered, and may be required in job specific areas. A decline will be requested in writing.

Influenza Immunizations Protocol:

To protect patients, visitors, and other health care workers (HCW's), the influenza vaccination will be viewed as a health competency and patient safety requirement. Health Care Workers (HCW's) include, but are not limited to AnMed Health employees, students, volunteers, temporary agency staff, "travelers", and certain vendors. **Unless an approved exemption is made (as described herein) the influenza vaccination will be a condition of initial and continued employment of all AnMed Health employees, and a condition of permissive entrance onto the premises of any AnMed Health service delivery site for all other HCW's, regardless of whether direct patient contact is expected.**

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- 3) Employee Health will review each exemption request on a case by case basis, and if approved will develop a schedule and plan for an exempt HCW's use of a surgical mask. Any such schedule and plan will be based on risk factors associated with potential exposures to other HCW's, and to patients and visitors to AnMed Health.
- 4) The following restrictions will apply to HCW's who have received an exemption from vaccination:
 - (a) those with direct patient contact will wear a surgical mask while on duty, with the exception of breaks and lunch time.
 - (b) those without direct patient contact will wear a surgical mask while on duty when in close contact with other individuals. Close contact is defined as a distance of six or fewer feet.
 - (c) any additional restrictions or limitations consistent with CDC suggestions or guidelines.
- 5) Employees without an approved exemption, who fail to timely take the vaccination, or who with an approved exemption fail to comply with any applicable restriction will be allowed to resign or will be terminated. Any other HCW without an approved exemption, who fails to timely take the vaccination, or who with an approved exemption fails to comply with any applicable restriction will be subject to loss of access privileges to any AnMed Health service delivery site.

RETURNING TO WORK: Following an absence of more than three (3) days, an employee may be required to submit a doctor's statement to the health nurse. This statement should confirm that the employee is able to return to his or her normal work duties. Employees returning to work from leave of absence for health reasons must bring a physician statement to Employee Health. If the employee has restrictions from a non-work-related injury or illness, the employee's supervisor will be consulted to see if the accommodations can be met. If the accommodations cannot be met, the employee may not return to work.

HEALTH PROMOTION: Offers informational and behavioral modification programs on health promotion, self-care and wellness topics.

DIRECT CARE:

- A. Treatment of minor injury or illness care will be available to employees. A nurse practitioner and physician is available at both clinics. Treatment and referral of injured or ill employees will be directed by provider, including referral to Employee Assistance Program as needed.
- B. Blood and body fluid exposure management, counseling, and follow-up.

INACTIVATED INFLUENZA VACCINE

WHAT YOU NEED TO KNOW 2010-11

Many Vaccine Information Statements are available in Spanish and other languages. See <http://www.immunize.org/vis>
Hojas de Información Sobre Vacunas están disponibles en Español y en muchos otros idiomas. Visite <http://www.immunize.org/vis>

1 Why get vaccinated?

Influenza ("flu") is a contagious disease.

It is caused by the influenza virus, which can be spread by coughing, sneezing, or nasal secretions.

Anyone can get influenza, but rates of infection are highest among children. For most people, symptoms last only a few days. They include:

- fever
- sore throat
- chills
- fatigue
- cough
- headache
- muscle aches

Other illnesses can have the same symptoms and are often mistaken for influenza.

Infants, the elderly, pregnant women, and people with certain health conditions -- such as heart, lung or kidney disease or a weakened immune system -- can get much sicker. Flu can cause high fever and pneumonia, and make existing medical conditions worse. It can cause diarrhea and seizures in children. Each year thousands of people die from seasonal influenza and even more require hospitalization.

By getting vaccinated you can protect yourself from influenza and may also avoid spreading influenza to others.

2 Inactivated influenza vaccine

There are two types of influenza vaccine:

1. **Inactivated** (killed) vaccine, or the "flu shot" is given by injection into the muscle.

2. **Live, attenuated** (weakened) influenza vaccine is sprayed into the nostrils. *This vaccine is described in a separate Vaccine Information Statement.*

A "high-dose" inactivated influenza vaccine is available for people 65 years of age and older. Ask your healthcare provider for more information.

Influenza viruses are always changing, so annual vaccination is recommended. Each year scientists try to match the viruses in the vaccine to those most likely to cause flu that year.

The 2010-2011 vaccine provides protection against A/H1N1 (pandemic) influenza and two other influenza viruses -- influenza A/H3N2 and influenza B. It will not prevent illness caused by other viruses.

It takes up to 2 weeks for protection to develop after the shot. Protection lasts about a year.

Some inactivated influenza vaccine contains a preservative called thimerosal. Thimerosal-free influenza vaccine is available. Ask your healthcare provider for more information.

3 Who should get inactivated influenza vaccine and when?

WHO

All people **6 months of age and older** should get flu vaccine.

Vaccination is especially important for people at higher risk of severe influenza and their close contacts, including healthcare personnel and close contacts of children younger than 6 months.

People who got the 2009 H1N1 (pandemic) influenza vaccine, or had pandemic flu in 2009, should still get the 2010-2011 seasonal influenza vaccine.

WHEN

Getting the vaccine as soon as it is available will provide protection if the flu season comes early. You can get the vaccine as long as illness is occurring in your community.

Influenza can occur at any time, but most influenza occurs from November through May. In recent seasons, most infections have occurred in January and February. Getting vaccinated in December, or even later, will still be beneficial in most years.

Adults and older children need one dose of influenza vaccine each year. But some children younger than 9 years of age need two doses to be protected. Ask your healthcare provider.

Influenza vaccine may be given at the same time as other vaccines, including pneumococcal vaccine.

4 Some people should not get inactivated influenza vaccine or should wait

- Tell your healthcare provider if you have any severe (life-threatening) allergies. Allergic reactions to influenza vaccine are rare.

- Influenza vaccine virus is grown in eggs. People with a **severe egg allergy** should not get influenza vaccine.
- A severe allergy to any vaccine component is also a reason not to get the vaccine.
- If you ever had a severe reaction after a dose of influenza vaccine, tell your healthcare provider.

- Tell your healthcare provider if you ever had Guillain-Barré Syndrome (a severe paralytic illness, also called GBS). Your provider will help you decide whether the vaccine is recommended for you.
- People who are moderately or severely ill should usually wait until they recover before getting flu vaccine. If you are ill, talk to your healthcare provider about whether to reschedule the vaccination. People with a mild illness can usually get the vaccine.

5 What are the risks from inactivated influenza vaccine?

A vaccine, like any medicine, could possibly cause serious problems, such as severe allergic reactions. The risk of a vaccine causing serious harm, or death, is extremely small.

Serious problems from inactivated influenza vaccine are very rare. The viruses in inactivated influenza vaccine have been killed, so you cannot get influenza from the vaccine.

Mild problems:

- soreness, redness, or swelling where the shot was given
- hoarseness; sore, red or itchy eyes; cough
- fever • aches

If these problems occur, they usually begin soon after the shot and last 1-2 days.

Severe problems:

- Life-threatening allergic reactions from vaccines are very rare. If they do occur, it is usually within a few minutes to a few hours after the shot.
- In 1976, a type of inactivated influenza (swine flu) vaccine was associated with Guillain-Barré Syndrome (GBS). Since then, flu vaccines have not been clearly linked to GBS. However, if there is a risk of GBS from current flu vaccines, it would be no more than 1 or 2 cases per million people vaccinated. This is much lower than the risk of severe influenza, which can be prevented by vaccination.

One brand of inactivated flu vaccine, called **Afluria**, **should not be given** to children 8 years of age or younger, except in special circumstances. A related vaccine was associated with fevers and fever-related seizures in young children in Australia. Ask your healthcare provider for more information.

The safety of vaccines is always being monitored. For more information, visit:
http://www.cdc.gov/vaccinesafety/Vaccine_Monitoring/Index.html
 and
http://www.cdc.gov/vaccinesafety/Activities/Activities_Index.html

6 What if there is a severe reaction?

What should I look for?

Any unusual condition, such as a high fever or behavior changes. Signs of a severe allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

- Call a doctor, or get the person to a doctor right away.
- Tell the doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your healthcare provider to report the reaction by filing a Vaccine Adverse Event Reporting System (VAERS) form. Or you can file this report through the VAERS website at <http://www.vaers.hhs.gov>, or by calling 1-800-822-7967.

VAERS does not provide medical advice.

7 The National Vaccine Injury Compensation Program

The National Vaccine Injury Compensation Program (VICP) was created in 1986.

People who believe they may have been injured by a vaccine can learn about the program and about filing a claim by calling 1-800-338-2382, or visiting the VICP website at <http://www.hrsa.gov/vaccinecompensation>.

8 How can I learn more?

- Ask your healthcare provider. They can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department.
- Contact the Centers for Disease Control and Prevention (CDC):
 - Call 1-800-232-4636 (1-800-CDC-INFO) or
 - Visit CDC's website at <http://www.cdc.gov/flu>



DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION



Vaccine Information Statement (Interim)
Inactivated Influenza Vaccine (8/10/10) 42 U.S.C. §300aa-26

488 EXHIBIT
C#: 1

FILE NO: 1100936

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
Susan I. Garrett,)
Petitioner,)
vs.)
South Carolina Department of Employment)
and Workforce¹ and Kenneth O. Lester Co.,)
Inc.,)
Respondents.)

ORDER

CASE NO. 2010-CP-46-00936

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY

2010 SEP 28 PM 2:53

FILED-RECEIVED

This matter came before me on September 16, 2010, upon appeal from a Final Decision of the South Carolina Employment Security Commission ("Commission"). Present for the Petitioner were Susan I. Garrett, Petitioner, and Jack E. Cohoon, her attorney. Present for the Respondents were Romi Y. Robinson, attorney for Respondent Commission, and William K. Brumbach, III, attorney for Respondent Employer.

STATEMENT OF CASE

Petitioner appeals a ruling of the Commission dated February 19, 2010, imposing a twelve-week disqualification from benefits based upon a finding of discharge for cause connected with her employment. The "cause" of her discharge was the assertion that she failed to comply with the employer's drug testing policy, and specifically, that she failed to provide a sufficient urine sample to the testing medical clinic.

Petitioner timely filed and served a Petition for Judicial Review. Respondents timely filed and served an Answer, and Respondent and Petitioner submitted legal authority in support of their respective positions.

STANDARD OF REVIEW

The court's review of the Commission's decision is limited to consideration of whether the decision is either clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or affected by error of law. See S.C. Code Ann. § 41-35-750 (1976, as amended)(governing judicial review of decisions of the Employment Security Commission), and

¹ The caption is amended to reflect the renaming of the Respondent to the Department of Employment and Workforce. See Act 146 of 2010 Sec. 5 (amending S.C. Code Ann. § 41-29-20(1986)). For clarity, this Order will refer to the entity under its previous name.

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S.C. Code Ann. § 1-23-310 (1976, as amended) (governing appeals of agency decisions pursuant to the Administrative Procedures Act ("A.P.A.")).

The "substantial evidence" standard governs factual findings under the A.P.A. *See. e.g., Hall v. United Rentals*, 636 S.E.2d 876, 882 (S.C. Ct. App. 2006) (Worker's Compensation case), *McEachem v. S.C. Employment Security Comm.*, 635 SE.2d 644 (S.C. Ct. App. 2006). Substantial evidence requires a showing of more than a "mere scintilla of evidence." *Houston v. DeLoach & DeLoach*, 663 S.E.2d 85, 89 (S.C. Ct. App. 2008). To be substantial, evidence must be such that reasonable minds can reach the same conclusion that the agency reached. *Merck v. S.C. Employment Security Comm.*, 290 S.C. 459, 461, 351 S.E.2d 338 (1986). An appellate court, including this court, hearing an appeal from an agency decision may "freely and absolutely" review a trial court's or agency's error of law. *Houston v. DeLoach & DeLoach*, 378 S.C. 543, 552, 663 S.E.2d 85, 90 (Ct.App. 2008), *citing Lizee v. S.C. Dep't of Mental Health*, 367 S.C. 122, 126, 623 S.E.2d 860, 863 (Ct. App. 2005).

DISCUSSION

In its decision, the Commission referenced S.C. Code Ann. § 41-35-120(2) for the proposition that a disqualification of between five and twenty-six weeks is imposed if a claimant is found to have been discharged for cause connected with the employment. The Commission elaborated that "cause" is interpreted as a disregard for the standard of behavior an employer has a right to expect of an employee. In this connection, the Commission found that the Petitioner did not comply with the employer's drug testing policy, and noted that while she tried to provide an adequate urine sample for testing, she left the testing facility before doing so.

Petitioner sustained an on-the-job injury on September 13, 2009, and Employer was so advised. Petitioner did not seek, and was not ordered to seek, immediate medical attention. Thereafter, on her day off and on her own time, she went to Riverview Medical Center ("Clinic"), a medical clinic that handles Employer's worker's compensation cases, at approximately 5:45 p.m. on September 15, 2009, for an x-ray. After the Clinic called Employer to advise that Petitioner had sought medical attention regarding the injury, Employer's staff person had Clinic personnel advise Petitioner that she would have to submit to a urinalysis drug test. Petitioner provided three urine specimens, each of which was of insufficient volume to satisfy the testing center's requirements, even after drinking substantial amounts of water. Employer communicated to the Clinic staff that Petitioner was to remain "as long as it takes" to provide a sufficient sample without regard to any specific time limitation. When she was unable

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to comply by providing a sufficient specimen, Petitioner left the Clinic at approximately 8:00 p.m. Because she did not remain until she had given a usable sample, Employer deemed that she had violated the company's substance abuse policy, and discharged her from her job on September 17, 2009.

The drug use policy relied upon by Employer requires a drug test when an employee is involved in a job-related accident or sustains a reportable workers compensation injury. It states that "[a] *refusal* to take a drug test will have the same effect as a positive test under this policy and will be grounds for discharge." (Emphasis added.) There is no evidence in the record that Petitioner refused to be tested. She voluntarily submitted to the test and provided multiple specimens over a substantial period time. The Commission acknowledges in its order that Petitioner attempted to comply. The Petitioner met her obligations under any reasonable reading of this policy. This is particularly relevant where, as here, she was not being paid for her time, and had no prior notice that she would be required to remain at the Clinic indefinitely in order to complete the unscheduled test.

Both the Employer and the Commission assert that a disqualification for benefits is required under S.C. Code Ann. § 41-35-120(2)(b)(ii), which deals with drug testing. Under this provision, an insured worker is considered to have been discharged for cause if the worker "... *fails or refuses* to provide a specimen pursuant to a request from the employer, or otherwise fails or refuses to cooperate by providing an adulterated specimen." *Id.* (Emphasis added.) The Respondents assert that both the first and second clauses of this provision apply to the present case. Regarding the first clause, there is no evidence of record to indicate that the Petitioner refused to provide a specimen. She provided multiple specimens. Indeed, the Commission's decision acknowledges that the Petitioner "attempted to comply." By its own terms, the second clause only applies to an insured worker who provides "an adulterated specimen." *Id.* Thus, the second clause is inapplicable to the present case, as there is no evidence that any of the three samples provided by the Petitioner was adulterated.

Further, neither Employer's policy, nor the governing statute specifies any particular protocol for conducting the drug test or collecting samples of body fluids for testing. In particular, Employer's policy does not contain expressly or by implication any mandate that an employee must remain indefinitely at a testing facility until a usable test sample can be obtained.

"The issue of interpretation of a statute is a question of law for the court." *Bostic v. American Home Mortg. Servicing, Inc.*, 375 S.C. 143, 147, 650 S.E.2d 479, 481 (Ct.App. 2007).

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"The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. *Daisy Outdoor Adver. Co. v. S.C. Dep't of Transp.*, 352 S.C. 113, 120, 572 S.E.2d 462, 466 (Ct.App. 2002).

In regard to Employer's policy, which is part of the employment contract between Employer and Petitioner, the content of the policy must be construed and interpreted like any other contract, using the normal rules of construction and interpretation.

As in all cases, the Court is required to review the contract and interpret its meaning in accordance with established standards for judicial review of contracts. One of the fundamental axioms to be followed is to "... enforce, not write, contracts ... and ... give ... language its plain, ordinary and popular meaning." *Gambrell v. Travelers Insurance Company*, 280 S.C. 69, 71, 310 S.E.2d 814, 816 (1983). Further, the language of a contract is to be construed liberally in favor of the non-drafting party, Petitioner in this case. *Bazzle v. Green Tree Financial Corp.*, 351 S.C. 244, 569 S.E.2d 349 (2002).

By its terms, the sanction of discharge in Employer's drug testing policy is applicable only upon an employee's "refusal to take a drug test." It is undisputed that Petitioner did not refuse to be tested; rather, she attempted to comply with the testing requirement. Employer's attempt to impose requirements not stated, and not reasonably inferable, from the plain language of the drug policy cannot be sustained.

In summary, whether applying the statute or Employer's policy, a standard of reasonableness should be applied to an analysis of the facts and circumstances of each case, including this one. The standard sought to be applied to Petitioner in this case is unreasonable under the circumstances, and cannot be used to deprive her of benefits.

The Employer also cites a regulation of the federal Department of Transportation (D.O.T.) which it claims applied to the Petitioner either directly or by reference in the Employer's substance abuse policy. This regulation requires that employees unable to provide a sufficient amount of urine for a test to remain for a period of three hours, during which time they are urged to drink up to 40 ounces of fluid. 49 CFR 40.193(b)(2). It also imposes an affirmative duty on the tester to document the beginning and end times of the three-hour period on the Custody and Control Form (C.C.F.), and to inform the employee of these times. *Id.* The

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Employer presented the C.C.F. as an exhibit at the Appeal Tribunal hearing.

Employer's argument based on this regulation fails. It is apparent on the face of that document that the testing facility failed to comply with its obligations under the D.O.T. regulation. There is no start or end time noted on the C.C.F., and therefore, there is no evidence that Petitioner was on notice of the three-hour requirement. Moreover, Employer's employee who was Petitioner's supervisor, testified that he was unaware of any such requirement prior to the day of the Petitioner's drug test. Employer seeks to implement the requirement as a bar to Petitioner's claim, when the requirement was not implemented in Petitioner's case in the first place. Thus, there is no substantial evidence that Petitioner failed or refused to comply with the three-hour requirement. Further, it would be an error of law to apply the regulation's three-hour requirement in order to penalize the Petitioner, while ignoring that part of the regulation mandating that she be given notice of the requirement.

Based on the discussion herein, I find and conclude that the decision of Respondent Employment Security Commission is clearly erroneous in view of the reliable, probative, and substantial evidence in the record as a whole, and is affected by an error of law. I further find and conclude that Respondent Kenneth O. Lester Co., Inc., discharged Petitioner Susan I. Garrett without cause as defined by S.C. Code Ann. § 41-35-120.

Therefore, it is ordered that the Final Decision of the Employment Security Commission be reversed, and that Petitioner Garrett be granted full unemployment benefits, without disqualification.

AND IT IS SO ORDERED.

September 21, 2010.


S. Jackson Kimball
Special Circuit Judge
York County

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SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

DECISION OF APPEAL TRIBUNAL

Hearing Date: February 10, 2011

PAMELA S. CROWE
307 WESTWOOD DR
ANDERSON, SC 29626

CLAIMANT

ANMED HEALTH
ATTN STEPHANIE COLLINS HR
706 E GREENVILLE ST
ANDERSON, SC 29621

EMPLOYER

APPELLANT: Claimant

SS NO: [REDACTED]

APPEARANCES

FOR THE Present with
CLAIMANT: Attorney

FOR THE
EMPLOYER: Two Witnesses

FINDINGS OF FACT

The issue in this case is whether the claimant was discharged for "cause."

The claimant appealed the determination mailed January 20, 2011, which held the claimant disqualified from receiving benefits for ten (10) weeks, effective December 12, 2010, through February 19, 2011, along with a corresponding reduction in the maximum potential benefit amount, upon a finding the claimant was discharged for cause.

The claimant worked from August 27, 1984, to December 14, 2010, with the subject employer, most recently as a benefits coordinator. The claimant was discharged for failing to take the influenza immunization. On September 15, 2010, all employees were notified that they would be required to be vaccinated by December 15, 2010, unless they were granted an exemption based on guidelines from the Centers for Disease Control (CDC). One criteria listed for exemption was a history of Guillian-Barre' syndrome. The claimant requested an exemption and presented a note from her doctor that recommended the claimant be exempt due to a strong family history of Guillian-Barre' and MS. The claimant's request was denied as it was found the reason did not meet the exemption specified. She was discharged on December 15, 2010, when she failed to take the influenza vaccine.

REASONS

South Carolina Code provides in §41-35-120(2) for a disqualification of from five (5) to twenty-six (26) weeks, with a corresponding monetary reduction, if the Agency finds the claimant was discharged for "cause" connected with the most recent bona fide employment.

"Cause" includes, but is not limited to, a violation of the employer's reasonable rules or regulations, or a disregard for the standards of behavior that an employer has a right to expect of an employee.

In this case, the claimant provided evidence to the employer from her physician when requesting exemption to a new policy being implemented as required by the employer. The specific reason for the denial was unclear as the claimant had medical documentation as required which would exempt her under the new policy. Therefore, the Tribunal finds that discharge for cause has not been established and no disqualification shall be imposed.

DECISION

The Tribunal hereby holds the claimant eligible to receive benefits effective December 12, 2010, upon a finding the claimant was discharged without cause. This decision reverses the determination mailed January 20, 2011.

This will be the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed in person at any Workforce Center, or by mail, addressed to "Appellate Panel," Post Office Box 995, Columbia, South Carolina 29202. For additional information or assistance in filing an appeal, contact your local Workforce Center.



Erika S. Davis
Administrative Hearing Officer

FSD: alw

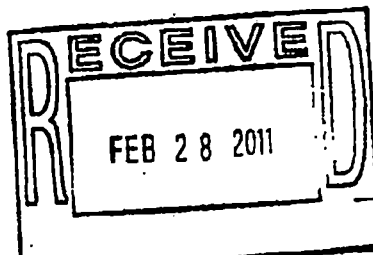
Decision Mailed: 02/17/11

Mailed on the above Date By: alw

APP
111

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5164
www.nelsonmullins.com



Stuart M. Andrews
Tel: 803.255.9461
Fax: 803.255.5506
stuart.andrews@nelsonmullins.com

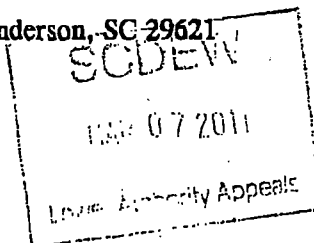
February 28, 2011

Hand Delivered & U.S. Mail

South Carolina Department of Employment and
Workforce Appellate Panel
1550 Gadsden Street
Post Office Box 995
Columbia, SC 29202

RE: REQUEST FOR APPEAL BEFORE THE APPELLATE PANEL

Claimant: Pamela S. Crowe
Claimant Address: 307 Westwood Drive, Anderson, SC 29626
Claimant SS No.: [REDACTED]
Employer and Appellant: AnMed Health
Employer Address: 706 E. Greenville St., Anderson, SC 29621
Appeal No.: 1100936
Decision No.: 2011-A-2754
Hearing Date: February 10, 2011



Dear Sir/Madam:

On February 21, 2011, my client, AnMed Health, received Appeal Tribunal Decision Number 1100936 ("Decision") which according to the Decision was mailed on February 17, 2011. A copy of the Decision is attached hereto as Exhibit A.

According to S.C. Code Ann. § 41-35-710, "[t]he appellate panel must permit further appeals by a party to a decision of an appeal tribunal and by the examiner whose decision has been overruled or modified by an appeal tribunal." In this case, the Claims Adjudicator's decision in favor of AnMed Health was overruled by the Administrative Hearing Officer. Accordingly, on behalf of AnMed Health, please accept this as a request for an appeal before the Appellate Panel of this Decision for the following reasons:

- Claimant presented insufficient evidence that would qualify her for an exemption under AnMed Health's mandatory flu shot policy.

SC DEPARTMENT COMM.

With twelve office locations in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, and West Virginia

FEB 03 2011

South Carolina Department of Employment and
Workforce Appellate Panel
February 28, 2011
Page 2

- Without such evidence, AnMed Health had a right to expect Claimant to comply with its mandatory policy.

It is my understanding from the Department's legal counsel that a transcript will be sent along with a hearing notice in this case. Upon receipt of the transcript, AnMed Health will more specifically set forth its positions regarding the grounds for this appeal.

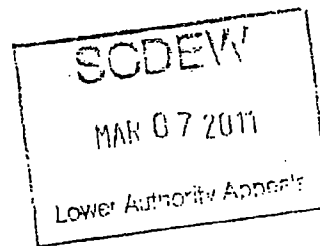
If you should have any questions, please do not hesitate to contact me.

Very truly yours,



Stuart M. Andrews

SMA:HGG:cks
Enclosures



RECEIVED
MAR 03 2011
Received By: [illegible]

**SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE
631 Hampton Street
P.O. Box 995
Columbia, SC 29202**

NOTICE OF EMPLOYER APPEAL TO THE APPELLATE PANEL

DATE: March 11, 2011

APPEAL NO: 00936-14124

CLAIMANT:

Pamela S. Crowe
307 Westwood Drive
Anderson, SC 29626
SSN: [REDACTED]

LIABLE EMPLOYER:

Anmed Health
Attn: Stephanie Collins, HR
706 E. Greenville Street
Anderson, SC 29621

SEPARATING EMPLOYER:

The employer in this case appealed the Appeal Tribunal Decision to the Appellate Panel for review. A copy of the appeal is attached.

The Panel will review your case as soon as possible. If a hearing is scheduled, a copy of the transcript and the hearing notice will be mailed to you at a later date.

Any benefits received by the claimant might be subject to recovery if the Appeal Tribunal Decision is reversed. The claimants must continue filing a weekly claim pending the appeal in order to receive benefits.

Legal Department
Telephone: (803) 737-1105

cc: Claimant:
Liabe Employer:
Separating Employer:
Local Office: Anderson
Claimant's Attorney: Alex Paterra, Esquire
Employer's Attorney:
Imaging
File

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Post Office Box 995
Columbia, South Carolina 29202

NOTICE OF HEARING BEFORE THE APPELLATE PANEL

DATE: April 12, 2011

CLAIMANT:

SSN: 9123

APPEAL NO: 14124

PAMELA S. CROWE
307 WESTWOOD DR
ANDERSON, SC 296261026

LIABLE EMPLOYER:

ANMED HEALTH
ATTN STEPHANIE COLLINS HR
706 E GREENVILLE ST
ANDERSON, SC 29621

SEPARATING EMPLOYER:

A hearing has been scheduled in this matter for **2:00 p.m. on WEDNESDAY, APRIL 27, 2011.** All hearings are held in Columbia, S.C. at this location:

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
C. LEM HARPER, CENTRAL OFFICE ANNEX BUILDING
631 HAMPTON STREET, ROOM 350, COLUMBIA, SC

NO CELL PHONES OR SMALL CHILDREN
ARE PERMITTED IN THE HEARING ROOM

The Appellate Panel is a Board of Review, and hearings are limited to the record on appeal. As such, **no new evidence is admissible.** Parties may appear in person or be represented by counsel. Parties may also submit written arguments.

SPECIAL NOTICE: The Appellate Panel can make its own factual findings and may reverse, affirm or modify the decision on appeal. **If the final decision is modified, it may result in an increase or a decrease of the disqualification.**

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY. Contact a representative of the Department at 803-737-2663 **AT ONCE**, if you cannot be present at the time scheduled and wish to request a postponement of the hearing.

Legal Department
(803) 737-2666
(803) 737-0124 FAX

CC: Claimant
Claimant Attorney ALEX PATERRA, ESQUIRE
Liable Employer
Separating Employer
Employer Attorney
Legal Office ANDERSON

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Pamela S. Crowe)
307 Westwood Drive)
Anderson, South Carolina 29626)
Claimant SSN: [REDACTED])

APPELLATE PANEL
DECISION

Anmed Health)
Attn: Stephanie Collins, HR)
706 East Greenville Street)
Anderson, South Carolina 29621)
Liable Employer)

Appellant: Employer

The employer appealed Appeal Tribunal Decision 2011-A-2754 to the Appellate Panel. The Appeal Tribunal held the claimant eligible to receive benefits without disqualification, for having been discharged without cause. This decision reversed the claims adjudicator's determination.

The Appellate Panel notified the parties of its hearing to consider the appeal.

DECISION

Appeal Tribunal Decision 2011-A-2754 is affirmed. The claimant is eligible to receive benefits without disqualification effective December 12, 2010, for having been discharged without cause connected with her employment.

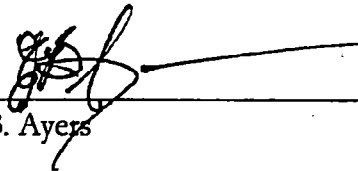
The claimant worked from August 27, 1984, through December 14, 2010, most recently as a benefits coordinator. The claimant was discharged for failing to take an influenza immunization. All employees were notified that they were required to be vaccinated, unless they were granted an exemption based on guidelines from the Centers for Disease Control (CDC). One of the criteria listed for exemption was a history of Guillain-Barre' Syndrome. The claimant requested an exemption and presented a note from her doctor. The doctor required a medical exemption for the claimant because of a strong family history of Guillain-Barre' and Multiple Sclerosis.

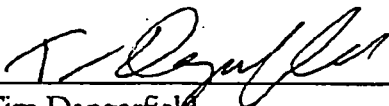
The claimant's request was denied because her reason did not meet the employer's interpretation of the CDC exemption criteria. In the 26 years the claimant had worked for the employer, she had never received the flu vaccination. In her position as Benefits Coordinator, she had no direct patient contact.

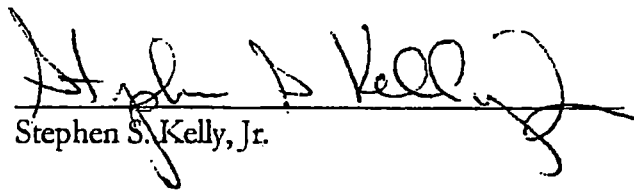
S.C. Code Ann. §41-35-120 (2) requires disqualification from between five and twenty-six weeks, with a corresponding monetary reduction, when the Department finds that a claimant has been discharged for cause connected with the employment. "Cause" is interpreted to mean conduct that shows disregard for the standard of behavior an employer has the right to expect of an employee.

The claimant provided documentation informing the employer that she should not take the influenza vaccine due to a medical condition. The claimant was discharged for following her physician's advice, even though she had worked for the employer for 26 years without receiving the flu vaccine. Therefore, we find the claimant was discharged without cause connected with her employment. The Appeal Tribunal decision is affirmed.

**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**



E. B. Ayers

Tim Dangerfield

Stephen S. Kelly, Jr.

Hearing Date: 04/27/11
Date Mailed: 04/28/11
Mailed By: _____

April 28, 2011

**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
(SCDEW)
Columbia, South Carolina**

LETTER OF TRANSMITTAL OF APPELLATE PANEL DECISION

Attached is a copy of the Appellate Panel Decision in your case. If you have questions about the effect of the decision, you may consult an agency representative at the local SCDEW office in your area or at the Benefits Division at the central office in Columbia, S.C.

If you wish to obtain judicial review of the decision, you must comply with the requirements of S.C. Code Ann. §41-35-750 and the Rules of Procedure for the Administrative Law Court.

The law requires that a Petition for Judicial Review must be filed and served within thirty (30) days after the agency's final decision (**see the mailing date above**). The Court may require a filing fee.

The Petition must be filed in the S.C. Administrative Law Court in Columbia, South Carolina:

**Jana E. Shealy, Clerk of Court
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201
803.734.0550 (phone)**

You must name the SCDEW and any other party in the case as defendants in the action and you must serve a copy of the Petition for Judicial Review at the following address:

**Legal Department
S.C. Department of Employment and Workforce
Post Office Box 995
Columbia, SC 29202**

For assistance or guidance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice in South Carolina.

Form App-115
Rev. 6/25/10

PO Box 995
1550 Gadsden Street
Columbia, SC 29202
www.dew.sc.gov



Nikki R. Haley
Governor

John L. Finan
Executive Director

P. O. Box 995
631 Hampton Street
Columbia, SC 29202

May 5, 2011

Stuart M. Andrews, Esquire
Nelson, Mullins, Riley & Scarborough LP
1320 Main Street, 17th Floor
Columbia, SC 29201

Re: Pamela S. Crowe
Claimant SSN: [REDACTED]
Appeal Number: 00936-14124

Dear Mr. Andrews:

Due to Agency error you were omitted from the hearing notice information. Therefore, the previous decision regarding this case has been vacated.

Notice of the new hearing will be issued in the near future.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ronnie H. Hoover".

Ronnie H. Hoover, Director
Higher Authority Appeals
(803) 737-2663

cc: Imaging
Claimant
Claimant's Attorney - Alex Paterra, Esquire
Local Office -Anderson
Employer
File

ads

MAY 11 2011

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5506
www.nelsonmullins.com

HIGHER AUTHORITY APPEALS

Stuart M. Andrews, Jr.
Tel: 803.255.9461
Fax: 803.255.5506
stuart.andrews@nelsonmullins.com

May 6, 2011

Via Facsimile

Ronnie H. Hoover, Director
Higher Authority Appeals
South Carolina Department of
Employment and Workforce
1550 Gadsden Street
Post Office Box 995
Columbia, SC 29202

RE: Pamela S. Crowe
Claimant SSN: [REDACTED]
Appeal No. 00936-14124

Dear Mr. Hoover:

Thank you for your letter of May 5, 2011 vacating the previous decision in this case. I will be out of the country during the week of May 16, 2011 and have limited availability the week of May 23, 2011. I would appreciate it if the Department would schedule the new hearing during the week of May 30, 2011, if at all possible.

Thank you for your consideration.

Very truly yours,



Stuart M. Andrews, Jr.

SMA:cks

cc: Alexander D. Paterra, Esq.

With twelve office locations in the District of Columbia, Florida, Georgia, Massachusetts, North Carolina, South Carolina, and West Virginia

The Paterra Law Firm, LLC
Attorney at Law

107 E. Park Ave.
alex.pattera@paterrallaw.com

Greenville S.C. 29601
864.232.2776

May 19, 2011

Ronnie H. Hoover, Director
Higher Authority Appeals
P.O. Box 995
631 Hampton Street
Columbia, S.C. 29202

Re: Pam Crowe
Claimant SSN: [REDACTED]
Appeal No.: 00936-14124

Dear Mr. Hoover,

I have received your May 5, 2011, letter vacating the Appeal Panel's previous decision. I object to your decision to vacate the Appeal Panel's decision. Your decision to vacate, due to an Agency error, greatly prejudices my client. My client has already expended her limited funds to have me present for the first hearing in Columbia. To now require her to have to do so again will cause her even greater financial hardship.

Additionally, a second hearing is not appropriate in this matter because the Agency's error is harmless. The Panel has already reviewed the entire record and found my client's discharge was without cause. A second hearing to review the entire record would be redundant and would not result in a different decision, as the facts and evidence are clear. *See Edson v. Astrue*, 2008 WL 2596167, 6 (W.D. Va. 2008) (errors are harmless when it is inconceivable that a different administrative conclusion would have been reached absent the error.)) (citing *Camacho v. Massanari*, 2001 WL 1658913 (4th Cir. Dec. 27, 2001)) (citing *Newton v. Apfel*, 209 F.3d 448, 458 (5th Cir.2000)); *see also Fisher v. Bowen*, 869 F.2d 1055, 1057 (7th Cir.1989) ("No principle of administrative law or common sense requires us to remand a case in quest of a perfect opinion unless there is reason to believe that the remand might lead to a different result.")

Finally, the error committed by the Agency is not fatal and does not require the Panel's early decision to be vacated. The Employer's HR Representative was

SCDEW

MAY 24 2011

JB

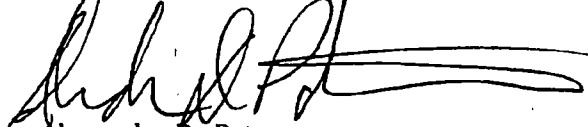
notified of the hearing by the Agency. She was aware that a representative of the Employer needed to be present at the Appeal Panel's hearing as she was one of the Employer's representatives at the Appeal Tribunal's hearing in Anderson in February, 2011. Ultimately, it is the Employer's duty to notify its attorney of any hearing date and the Employer had the opportunity to do so and failed. Thus, if any party in this matter should be burden by the error of the Agency it should be the employer because it failed to notify its attorney of the previous hearing. *See Inter-City Prods. Corp. v. Willey*, 149 F.R.D. 563 (M.D.Tenn.1993) (no error in not setting aside default judgment based on filing or clerical error that resulted in failure of in-house counsel to discover service of process and make appearance on behalf of corporation when principal of corporation received notice).

I hope that you will reconsider your decision to vacate the Panel's original opinion and reinstate the opinion. In the alternative, I request the Agency conduct the appeal telephonically as to help alleviate some of the financial burden on my client.

If you have any questions or would like to discuss this matter further do not hesitate to contact me.

Very truly yours,

The Paterra Law Firm, LLC



Alexander D. Paterra

Cc: Stuart M. Andrews, Esquire
Meridian, 17th Floor
1320 Main Street
Columbia, SC 29201

SCDEW

MAY 24 2011

Lower Authority Appeal

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5164
www.nelsonmullins.com

Stuart M. Andrews
Tel: 803.255.9461
Fax: 803.255.5926
stuart.andrews@nelsonmullins.com

May 25, 2011

Via Facsimile & US Mail

Ronnie H. Hoover, Director
Higher Authority Appeals
South Carolina Department of Employment
and Workforce
631 Hampton Street
Post Office Box 995
Columbia, SC 29202

RE: Pamela S. Crowe
Appeal Number: 00936-14124

Dear Mr. Hoover:

I am writing in response to Mr. Paterra's letter dated May 19, 2011, and in support of your letter dated May 5, 2011, vacating the Appellate Panel's decision and ordering a new hearing.

Two fundamental requirements of due process are adequate notice and adequate opportunity for a hearing. *Moore v. Moore*, 376 S.C. 467, 472, 657 S.E.2d 743, 746 (2008). The Agency is required to give parties notice prior to a hearing before an appeal tribunal. S.C. Code Ann. § 41-35-680 ("Unless an appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for a fair hearing, after notice of not less than seven days. . ."). Under the South Carolina Rules of Civil Procedure, when a party is represented by an attorney, as AnMed is in this case, notice shall be served upon the attorney. See Rule 5(b)(1) SCRPC ("Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court."). In other cases, South Carolina courts have held that administrative agencies should provide notice in the same manner as provided for in the South Carolina Rules of Civil Procedure. See *Trowell v. S.C. Dep't of Public Safety*, 384 S.C. 232, 681 S.E.2d 893 (holding that service by facsimile to a party's attorney was ineffective because facsimiles are not "ordinarily used to accomplish notice of a decision by any department, agency, or court" citing Rule 5(b)(1)); *Johnston v. S.C. Dep't of Labor*,

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Ronnie H. Hoover
May 25, 2011
Page 2

Licensing, and Reg., 365 S.C. 293, 617 S.E.2d 363 (2005) (holding that notice by the Board was sufficient under Rule 5(b)(1)).

In this case, the Agency was aware that I represented AnMed Health based on the Request for Appeal filed on February 28, 2011, but it is undisputed that due to Agency oversight I did not receive notice of the hearing before the Appellate Panel. Whether my client received notice is irrelevant since the Rules provide otherwise. Because I did not receive notice on behalf of my client, I was unaware of the hearing and did not appear.

Finally, AnMed Health objects to Mr. Paterra's request for conducting the hearing before the Appellate Panel solely by telephone. I respectfully request the opportunity to appear in person before the Panel. AnMed Health has no objection, however, if Mr. Paterra and his client wish to appear telephonically.

For all of the reasons set forth above, I ask that you uphold your decision to vacate the Appellate Panel's decision and order a new hearing. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Stuart M. Andrews, Jr.

SMA:HGG:cks

cc: Alexander D. Paterra, Esq.

Cmt Stmt CRowe
5/31 @ 2:30

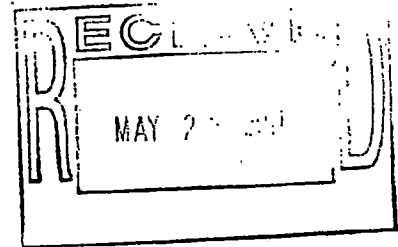
The Paterra Law Firm, LLC

107 E. Park Ave.
 alex.paterra@paterralaw.com

Greenville, SC 29601
 864.232.2776

May 25, 2011

Ronnie H. Hoover, Director
 Higher Authority Appeals
 P.O. Box 995
 631 Hampton Street
 Columbia, SC 29202



Re: Pam Crowe
 Claimant SSN: [REDACTED]
 Appeal No.: 00936-14124

Honorable Judges Ayers, Dangerfield, and Kelly,

I again raise my objections to the Agency's rehearing of this matter, as stated in my May 19, 2011, letter to the Agency regarding its decision to vacate the Appeal Panel's decision due to an Agency error.

Here, absent my previous objections, I request the appeal panel affirm Appeal Tribunal Decision 2011-A-2754, which found that Mrs. Crowe is eligible to receive benefits without disqualification.

The facts in this matter are not disputed. Mrs. Crowe was an exemplary employee throughout her 26 years with AnMed Health (AnMed). In September 2010, AnMed implemented a new policy requiring all employees, except doctors, to be vaccinated for influenza, unless they were granted an exemption based on guidelines from the Center for Disease Control (CDC).

One of the criteria listed by the CDC for an exemption is a history of Guillain-Barré Syndrome. (See exhibit #4, pg. 2.) Mrs. Crowe requested an exemption and presented her employer with a note from her doctor. (See exhibit #2 pg. 3.) The doctor's note indicated that Mrs. Crowe's medical history met the criteria of the CDC exemption because Mrs. Crowe has a strong family history of Guillain-Barré Syndrome and Multiple Sclerosis and the flu shot can trigger these diseases. People with this type of medical history must avoid the flu shot.

Although Ms. Crowe followed the policy of her employer, by providing the doctor's note, AnMed denied her request because it did not believe her Doctor's note met AnMed's interpretation of the CDC exemption criteria. (See exhibit #4.) During the 26 years she was with AnMed, Mrs. Crowe never had a flu shot and had no direct patient contact. (See Transcript Pg. 34)

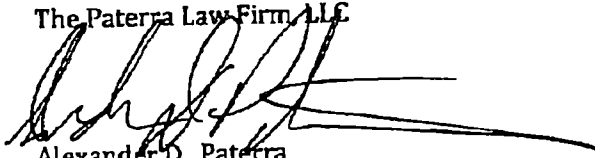
South Carolina Courts have held that the contents of an employer's policies must be construed and interpreted like any other contract, using the normal rules of construction and interpretation. *Gambrell v. Travelers' Insurance Company*, 280 S.C. 69, 71; 310 S.E.2d 814, 816 (1983). The language of an employer's policy therefore is to be construed liberally and in favor of the non-drafting party—Mrs. Crowe in this case. *Bazzle v. Green Tree Financial Corp.*, 351 S.C. 244; 569 S.E. 2d 349 (2002).

Reading this contract then, the AnMed influenza policy is applicable only upon an employee's refusal to take the shot without providing a doctor's note setting forth one of the CDC criteria. It is undisputed Mrs. Crowe provided a doctor's note indicating she had a strong family history of Guillain-Barré Syndrome. Therefore, AnMed should not be able to impose a requirement not stated in its policy¹ and not reasonably inferable from the plain language of the policy. The standard AnMed wants to apply to Mrs. Crowe in this case is unreasonable—it could not have been inferred under the circumstances—and it should not be used to deprive her of unemployment benefits.

I respectfully request the Appeal Panel affirm Appeal Tribunal Decision 2011-A-2754 finding Mrs. Crowe is eligible to receive benefits without disqualification.

Very truly yours,

The Pattera Law Firm, LLC



Alexander D. Pattera

Cc: Stuart M. Andrews, Esquire
Meridian, 17th Floor
1320 Main Street
Columbia, SC 29201

¹ The employee must have Guillain-Barré Syndrome rather than a family history of Guillain-Barré Syndrome.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Post Office Box 995
Columbia, South Carolina 29202

NOTICE OF HEARING BEFORE THE APPELLATE PANEL

DATE: May 17, 2011

CLAIMANT:

SSN: 9123

APPEAL NO: 14124

PAMELA S. CROWE
307 WESTWOOD DRIVE
ANDERSON, SC 29626

LIABLE EMPLOYER:

ANMED HEALTH
ATTN: STEPHANIE COLLINS,,HR
706 EAST GREENVILLE STREET
ANDERSON, SC 29621

SEPARATING EMPLOYER:

A hearing has been scheduled in this matter for **2:30 p.m. on Tuesday, May 31, 2011**. All hearings are held in Columbia, S.C. at this location:

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
C. LEM HARPER, CENTRAL OFFICE ANNEX BUILDING
631 HAMPTON STREET, ROOM 350, COLUMBIA, SC

NO CELL PHONES OR SMALL CHILDREN
ARE PERMITTED IN THE HEARING ROOM

The Appellate Panel is a Board of Review, and hearings are limited to the record on appeal. As such, **no new evidence is admissible**. Parties may appear in person or be represented by counsel. Parties may also submit written arguments.

SPECIAL NOTICE: The Appellate Panel can make its own factual findings and may reverse, affirm or modify the decision on appeal. **If the final decision is modified, it may result in an increase or a decrease of the disqualification.**

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY. Contact a representative of the Department at 803-737-2663 **AT ONCE**, if you cannot be present at the time scheduled and wish to request a postponement of the hearing.

Higher Authority Appeals
(803) 737-2663
(803) 737-0124 FAX

CC: Claimant
Claimant Attorney ALEX PATERRA, ESQUIRE
Liable Employer
Separating Employer
Employer Attorney- STUART M. ANDREWS, ESQUIRE
Local Office - ANDERSON

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

AnMed Health,

Appellant,

vs.

South Carolina Department of
Employment and Workforce and
Pamela S. Crowe,

Respondents.

Case No. 11-ALJ- 22-0354-AP

NOTICE OF APPEAL

Appellant AnMed Health submits the following Notice of Appeal appealing a final agency decision by Respondent South Carolina Department of Employment and Workforce ("SCDEW") dated June 2, 2011. Appellate Panel Decision (attached as Ex. A).

Appellant AnMed Health asserts the following grounds in support of its appeal:

1. On December 15, 2010, Respondent Pamela S. Crowe ("Ms. Crowe") was discharged from employment with AnMed Health for failure to comply with AnMed Health's mandatory flu shot policy. Ms. Crowe applied for an exemption from the policy based on a family history of Guillian-Barre, but her exemption was denied because she failed to establish a personal or a family history of Guillian-Barre.

2. On January 20, 2011, the UI Claim Adjudicator ("Adjudicator") sent Respondent Ms. Crowe a Notice informing her that she had been disqualified from receiving benefits for ten weeks, effective December 12, 2010, through February 19, 2011, along with a corresponding reduction in the maximum potential benefit amount. This decision was based on the finding that Ms. Crowe was discharged for cause for failure to comply with AnMed Health's mandatory flu shot policy.

3. Ms. Crowe appealed the Adjudicator's decision to the Appeal Tribunal ("Tribunal") which overturned the Adjudicator's decision finding that discharge for cause had

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SC ADMIN. LAW COURT

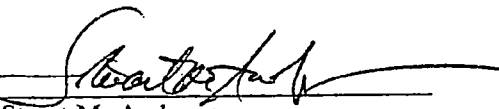
not been established as Ms. Crowe "had medical documentation as required which would exempt her under the new policy."

4. AnMed Health appealed the Tribunal's decision to the Appellate Panel ("Panel"). The Panel upheld the Tribunal's decision based on its finding that AnMed Health's policy "was unreasonable, particularly as applied to the claimant's unique circumstances. . . [Ms. Crowe] presented credible medical documentation that such an immunization would jeopardize her health."

5. AnMed Health appeals two findings: 1) that its mandatory flu shot policy is unreasonable, and 2) that Ms. Crowe provided credible evidence that would have exempted her from the mandatory policy. Both of these findings ignore, and are not supported by, the reliable, probative, and substantial evidence on the whole record.

Pursuant to the grounds set forth above and any additional grounds that may be set forth in AnMed Health's forthcoming brief in support of its appeal, AnMed Health respectfully requests that the Administrative Law Court reverse the final decision of the SCDEW. AnMed Health has attached hereto as Exhibit B its request for the Appellate Panel hearing transcript.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By 
Stuart M. Andrews
stuart.andrews@nelsonmullins.com
Alice V. Harris
alice.harris@nelsonmullins.com
1320 Main Street - 17th Floor (29201)
Post Office Box 11070
Columbia, SC 29211-1070
(803) 799-2000

Attorneys for Appellant

Columbia, South Carolina
July 1, 2011

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Pamela S. Crowe)
307 Westwood Drive)
Anderson, South Carolina 29626)
Claimant SSN: 247-80-9123)

APPELLATE PANEL
DECISION

Armed Health)
Attn: Stephanie Collins, HR)
706 East Greenville Street)
Anderson, South Carolina 29621)
Liable Employer)

Appellant: Employer

The employer appealed Appeal Tribunal Decision 2011-A-2754 to the Appellate Panel. The Appeal Tribunal held the claimant eligible to receive benefits without disqualification, for having been discharged without cause. This decision reversed the claims adjudicator's determination.

After a hearing in this case, the Appellate Panel issued Appellate Panel Decision 2011-P-990, which was mailed on April 28, 2011. An administrative error affected proper notice of the Appellate Panel hearing, and Appellate Panel Decision 2011-P-990 was vacated. The Appellate Panel notified the parties of a new hearing to consider the appeal.

DECISION

Appeal Tribunal Decision 2011-A-2754 is affirmed. The claimant is eligible to receive benefits without disqualification effective December 12, 2010, upon finding she was discharged without cause connected with her employment.

The claimant worked from August 27, 1984, through December 14, 2010, most recently as a benefits coordinator. The employer discharged the claimant for failing to get an influenza immunization. The employer informed the claimant that all employees had to get an influenza immunization. The employer had never before required the immunization. The claimant's position did not require her to interact

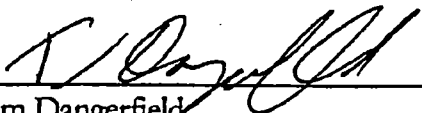
with patients, and the claimant presented medical documentation requiring an exemption from the new policy due to a family history of Guillain-Barre' Syndrome and Multiple Sclerosis. The employer denied the claimant's request because it believed that Centers for Disease Control exemption guidelines required a personal, rather than familial, history of those conditions.

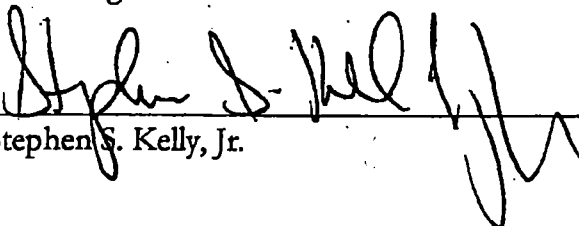
S.C. Code Ann. §41-35-120 (2) requires disqualification from between five and twenty-six weeks, with a corresponding monetary reduction, when the Department finds that a claimant has been discharged for cause connected with the employment. "Cause" is interpreted to mean conduct that shows disregard for the standard of behavior an employer has the right to expect of an employee.

The employer bears the burden of showing that it terminated the claimant for cause connected with the employment. The employer failed to meet its burden in this case. The employer's policy requiring immunization for continued employment was unreasonable, particularly as applied to the claimant's unique circumstances. The claimant worked for the employer for 26 years without an immunization requirement, did not have patient contact in the performance of her duties, and presented credible medical documentation that such an immunization would jeopardize her health. Therefore, we find the claimant was discharged without cause connected with her employment. The Appeal Tribunal decision is affirmed.

**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**



E.C.B. Ayers

Tim Dangerfield

Stephen S. Kelly, Jr.

Hearing Date: 05/31/11
Date Mailed: 06/02/11
Mailed by: _____

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL FROM THE
SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT
AND WORKFORCE

Case No. 11-ALJ-22-0354-AP

AnMed Health, ... Appellant,

v.

South Carolina Department of Employment and
Workforce and Pamela S. Crowe, ... Respondents.

BRIEF OF APPELLANT

Stuart M. Andrews, Jr.
E-Mail: Stuart.Andrews@nelsonmullins.com
Jennifer I. Cooke
E-Mail: Jennifer.Cooke@nelsonmullins.com
Nelson Mullins Riley & Scarborough LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Appellant

Romi Y. Robinson
Legal Department
South Carolina Department of
Employment and Workforce
Post Office Box 995
Columbia, SC 29202
(803) 737-2666

Attorneys for Respondent South
Carolina Department of
Employment and Workforce

Alexander D. Paterra
The Paterra Law Firm, LLC
107 E. Park Avenue
Greenville, SC 29601
(864) 232-2776

Attorneys for Respondent Pamela S.
Crowe

FILED

AUG 18 2011

SC ADMIN. LAW COURT

TABLE OF CONTENTS

STATEMENT OF THE ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	1
STANDARD OF REVIEW.....	3
ARGUMENT	5
I. Based upon the reliable, probative and substantial evidence on the whole record, Ms. Crowe failed to present evidence to exempt her from AnMed Health's mandatory flu shot policy.....	5
A. Ms. Crowe failed to present evidence of a personal history of Guillain-Barre syndrome.....	5
B. Ms. Crowe failed to present evidence of a family history of Guillain- Barre Syndrome.	6
CONCLUSION	8

STATEMENT OF THE ISSUE ON APPEAL

Based upon the reliable, probative and substantial evidence on the whole record did the Department err in finding that Ms. Crowe presented evidence to exempt her from AnMed Health's mandatory flu shot policy when her own testimony in the record repeatedly demonstrated that she did not meet the exemption standard?

STATEMENT OF THE CASE

In September 2010, AnMed Health instituted a mandatory flu shot policy to protect its patients, visitors, employees, volunteers, and the community. R. pp. 75, 76 ("Influenza Immunization Protocol"). AnMed Health decided to institute the mandatory policy "[a]fter reviewing the practices of some of the nations' leading health care networks and after presenting to and receiving approval from [the] AnMed Board of Trustees." R. p. 75. AnMed Health's mandatory policy is similar to policies of other leading health care networks, including two South Carolina hospitals – Georgetown Hospital and the Medical University of South Carolina. R. p. 38, lines 5-15; *id.* at 75.

Under the policy, employees can request an exemption "based on set guidelines provided by the CDC." R. pp. 75, 76. The "Influenza Immunization Protocol" states as follows:

[Health care workers] may request exemption from vaccination based on guidelines from the Centers of Disease Control (CDC). Those CDC guidelines for exemptions currently include: severe egg allergy, severe allergy to any component of the vaccine, a past severe reaction to the influenza vaccine, or a history of Gillian-Barre syndrome. NO OTHER FORM OF OR REASON FOR EXEMPTION WILL BE MADE.

R. p. 76 (emphasis in original). The "Influenza Immunization Protocol" explains that "[u]nless an approved exemption is made (as described herein) the influenza vaccination will be a condition of initial and continued employment of all AnMed Health

employees, and a condition of permissive entrance onto the premises of any AnMed Health service delivery site for all other [Health Care workers] regardless of whether direct patient contact is expected." *Id.* The Protocol further stresses that "[e]mployees without an approved exemption, who fail to timely take the vaccination, or who with an approved exemption fail to comply with any applicable restriction will be allowed to resign or will be terminated." *Id.*

On December 14, 2010, Respondent Pamela S. Crowe ("Ms. Crowe") was discharged from employment with AnMed Health for failure to comply with AnMed Health's mandatory flu shot policy. R. p. 37, lines 7-17. In order to request an exemption from the mandatory flu shot policy, employees were required to have a physician complete an "Exemption Request – Flu Vaccination" form. R. p. 78. Ms. Crowe did not have her physician complete or sign the required form, but instead, submitted a physician statement referencing an unverified family history of Guillain-Barre syndrome. R. pp. 78-79. AnMed Health infectious disease physician, Dr. David Potts, made the decisions as to whether to grant or deny exemption requests. R. p. 40, lines 12-16, p. 50, lines 10-16. Dr. Potts had a discussion with Ms. Crowe regarding her exemption request. R. p. 50, lines 17-18 – p. 51, line 1. Ms. Crowe's reasoning for her request was based on her daughter's medical history of what was first thought to be Guillain-Barre syndrome, but was ultimately diagnosed with Multiple Sclerosis. R. p. 46, lines 11-22, p. 62, lines 9-27, p. 66, lines 19-21, p. 77. Ms. Crowe's request for medical exemption from the mandatory flu policy was "denied because it [did] not meet the exemption guidelines specified by the Centers for Disease Control." R. pp. 14, 78.

On January 20, 2011, the UI Claim Adjudicator ("Adjudicator") sent Respondent Ms. Crowe a Notice informing her that she had been disqualified from receiving benefits for ten weeks, effective December 12, 2010, through February 19, 2011, along with a corresponding reduction in the maximum potential benefit amount. R. pp. 28, 74. This decision was based on the finding that Ms. Crowe was discharged for cause for failure to comply with AnMed Health's mandatory flu shot policy. *Id.*

Ms. Crowe appealed the Adjudicator's decision to the Appeal Tribunal ("Tribunal"). The Tribunal overturned the Adjudicator's decision finding that discharge for cause had not been established because Ms. Crowe "had medical documentation as required which would exempt her under the new policy." R. p. 94.

AnMed Health appealed the Tribunal's decision to the Appellate Panel ("Panel"). The Panel upheld the Tribunal's decision based on its finding that AnMed Health's policy "was unreasonable, particularly as applied to the claimant's unique circumstances. . . [Ms. Crowe] presented credible medical documentation that such an immunization would jeopardize her health." R. p. 2. On July 1, 2011, Appellant AnMed Health filed a Notice of Appeal with the Administrative Law Court.

STANDARD OF REVIEW

The Administrative Procedures Act ("APA") sets forth the standard of review for appeals of South Carolina Department of Employment and Workforce ("SCDEW") final decisions. *Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984); *McEachern v. S. C. Employ. Security Comm.*, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006); *Todd's Ice Cream, Inc. v. S.C. Employ. Security Comm.*, 281 S.C. 254, 257-58, 315 S.E.2d 373, 375 (Ct. App. 1984). The

SCDEW (formerly known as the Employment Security Commission) "is an agency governed by the [APA]." *Gibson*, 282 S.C. at 386, 318 S.E.2d at 367; *McEachern*, 370 S.C. at 557, 635 S.E.2d at 646. Therefore,

[u]nder the APA, a reviewing tribunal may reverse or modify the decision of the agency where it is arbitrary or capricious or constitutes an abuse of discretion. Reviewing courts apply the substantial evidence rule, under which the agency's decision is upheld unless it is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record."

McEachern, 370 at 557, 635 S.E.2d at 646-47; *see also* S.C. Code Ann. § 1-23-380

(5)(e) ("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: . . . (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.").

Substantial evidence has been interpreted to mean as follows:

Substantial evidence is something less than the weight of the evidence; it is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action. The substantial evidence rule does not allow judicial fact-finding, or the substitution of judicial judgment for agency judgment. A judgment upon which reasonable men might differ will not be set aside.

Todd's Ice Cream, 281 S.C. at 258, 315 S.E.2d at 375; *see also McEachern*, 370 S.C. at 557, 635 S.E.2d at 646-47 (applying the substantial evidence standard in an Employment Security Commission case); *Gibson*, 282 S.C. at 386, 318 S.E.2d at 367 (applying the substantial evidence standard in an Employment Security Commission case). Thus, to be successful AnMed Health must show that considering the record as a whole, reasonable minds would not have reached the conclusion that the Panel reached.

ARGUMENT

- I. **Based upon the reliable, probative and substantial evidence on the whole record, Ms. Crowe failed to present evidence to exempt her from AnMed Health's mandatory flu shot policy.**

"A finding is supported by substantial evidence unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." *Sanders v. Meadwestvaco Corp.*, 371 S.C. 284, 289, 638 S.E.2d 66, 69 (Ct. App. 2006).

Both the Tribunal and the Panel relied solely on a statement from Ms. Crowe's personal physician to support the finding that she should be excused from AnMed Health's policy. However, Ms. Crowe was unable to present any evidence in support of her physician's statement of fact or otherwise to show that she did indeed qualify for an approved exemption under the "Influenza Immunization Protocol."

- A. **Ms. Crowe failed to present evidence of a personal history of Guillain-Barre syndrome.**

In order to qualify for an exemption from the Influenza Immunization Protocol, Ms. Crowe had to provide evidence of a "severe egg allergy, severe allergy to any component of the vaccine, a past severe reaction to the influenza vaccine, or a history of Gillian-Barre syndrome." R. p. 76. Nowhere in the record, including the statement of Ms. Crowe's physician, does Ms. Crowe present evidence of a personal history of Guillain-Barre syndrome. R. pp. 79, 77, p. 61, line 15 – p. 62, line 27. Furthermore, Ms. Crowe does not allege that she has ever had, or even has been tested for, Guillain-Barre syndrome. R. p. 63, lines 2-5.

B. Ms. Crowe failed to present evidence of a family history of Guillain-Barre Syndrome.

The CDC guidelines setting forth the approved exemptions from the mandatory flu policy refer to the medical history of the individual health care worker. In addition, the AnMed exemption request form seeks information regarding the employee's medical condition and history. R. p. 78. Nowhere in the Influenza Immunization Protocol does it refer to the health care worker's family medical history. R. p. 76.

Nevertheless, even if the protocol is read to include family medical history, Ms. Crowe failed to present any evidence of a family history of Guillain-Barre syndrome. Although Ms. Crowe's physician's note stated that she has "a strong family history of Guillian-Barr [sic]¹ and MS," the physician's statement of fact is directly contradicted by Ms. Crowe herself. R. p. 79. It is important to note that Ms. Crowe's physician does not offer a medical opinion concerning Ms. Crowe's family history of Guillain-Barre. As Ms. Crowe admitted, the physician conducted no test nor performed any assessment to verify the reported family history. Instead, her doctor's handwritten note reported an unconfirmed statement of fact - an inaccurate statement of fact flatly contradicted on the record by Ms. Crowe herself.

In her written appeal of AnMed Health's denial of her request for an exemption pursuant to the Protocol, Ms. Crowe explained that "[t]he neurologist thought [her daughter had] Gillian-Barre syndrome but after many tests, blood work, MRI, spinal tap, etc....she was diagnosed with Multiple Sclerosis." R. p. 77. Likewise, Ms. Crowe testified before the Department that when her daughter was discharged from the

¹ The correct spelling of the condition is "Guillain-Barre," although in the AnMed Health Influenza Immunization Protocol it is spelled as "Gillian-Barre."

hospital "her neurologist said, 'We don't believe it's Guillain-Barre, we believe it is Multiple Sclerosis.'" R. p. 62, lines 9-10. Ms. Crowe further explained to the Hearing Officer, "I thought I had complied with what they asked; that I needed to provide a medical statement stating there was a history in the family of Guillain-Barre *that turned out to be Multiple Sclerosis. . .*" R. p. 66, lines 19-21 (emphasis added).

Therefore, the repeated and uncontradicted testimony of the claimant herself leaves no doubt that Ms. Crowe has no personal or family history of Guillain-Barre syndrome. Therefore, the physician's statement of fact that Ms. Crowe has a family history of Guillain-Barre is inaccurate, unreliable, and contradicted entirely by three unambiguous statements from the claimant herself. It cannot stand as the basis for the Department's action.

Based on the record as a whole, Ms. Crowe failed to present any evidence of a personal or family history of Guillain-Barre syndrome; and as a result, she failed to provide any evidence to qualify for an exemption under AnMed Health's mandatory flu policy. Therefore, the decision of the Department of Employment and Workforce is not supported by the reliable, probative, and substantial evidence on the whole record. The decision was clearly erroneous and should be reversed.

CONCLUSION

Pursuant to the grounds set forth above, AnMed Health respectfully requests that the Administrative Law Court reverse the final decision of the SCDEW.

NELSON MULLINS RILEY & SCAROBOROUGH LLP

By: 
Stuart M. Andrews
stuart.andrews@nelsonmullins.com
Jennifer I. Cooke
jennifer.cooke@nelsonmullins.com
1320 Main Street – 17th Floor (29201)
Post Office Box 11070
Columbia, SC 29211-1070
(803) 799-2000

Attorneys for Appellant

Columbia, South Carolina

August 18, 2011

**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**

AnMed Health,)
Appellant,)
)
vs.)
)
South Carolina Department of)
Employment and Workforce and Pamela)
Crowe,)
Respondent,)
_____)

Docket No. 11-ALJ-22-0354-AP

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

BRIEF OF THE SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT
AND WORKFORCE

Stuart M. Anderson, Esquire
1320 Main Street, 17th Floor
Columbia, SC 29201
Employer Attorney

Romi Y. Robinson, Esquire
Legal Department-Dept. of Employment and Workforce
PO Box 8597
Columbia, SC 29202
(803)737-2666
legal@dew.sc.gov
Attorney for Respondent

Alexander Pattera, Esquire
107 E. Park Avenue
Greenville, SC 29601
Claimant Attorney

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of Issue on Appeal.....	1
Statement of the Case	1
Facts.....	2
Arguments	
I. THE DECISION OF THE APPELLATE PANEL FINDING THE EMPLOYER DISCHARGED CROWE WITHOUT CAUSE IS CLEARLY SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AS A WHOLE AND IS BINDING ON THE COURT.....	4
Conclusion.....	7

TABLE OF AUTHORITIES

<i>Todd's Ice Cream v. South Carolina Employment Security Commission</i> , 281 S.C. 254, 315 S.E.2d 373 (Ct.App. 1984)	4
<i>Lark v. Bi-Lo, Inc.</i> , 276 S.C. 130, 276 S.E.2d 304 (1981)	4
<i>DeGroot v. Employment Security Commission</i> , 285 S.C. 209, 328 S.E.2d 668 (Ct. App. 1996)	4
<i>Waters v. S.C. Land Resources Conservation Commission</i> , 321 S.C. 219, 467 S.E.2d 913 (1996)	4-5
<i>Lee v. S.C. Employment Security Commission</i> , 277 S.C. 586, 291 S.E.2d 378 (1982)	5
<i>Mickens v. Southland Exchange Joint Venture</i> , 305 S.C. 127, 406 S.E.2d 363 (1991)	5, 6

STATUTES

S.C. Code Ann. § 41-35-120 (2)	1, 5
S.C. Code Ann. § 41-35-750 (Supp. 2010)	4
Act 154 of 1985, §6	5

STATEMENT OF THE ISSUES ON APPEAL

- I. IS THE DECISION OF THE APPELLATE PANEL FINDING THE EMPLOYER DISCHARGED CROWE WITHOUT CAUSE SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AS A WHOLE?

STATEMENT OF THE CASE

Pamela Crowe (Crowe) filed a claim for unemployment benefits on December 14, 2010, with the South Carolina Department of Employment and Workforce (SCDEW), after being discharged from her job with AnMed Health (Employer or Appellant). (R. p. 4) SCDEW initially held Crowe disqualified from receiving benefits for ten weeks by claims adjudicator's determination mailed January 20, 2011, upon finding she was discharged for cause connected with the employment pursuant to S.C. Code Ann. § 41-35-120 (2). (R. p. 28) Crowe appealed the initial determination to the Appeal Tribunal on January 24, 2011. (R. p. 29) The Appeal Tribunal conducted an evidentiary hearing and both parties participated. (R. pp. 31-92) The resulting decision issued on February 17, 2011, reversed the determination and held Crowe eligible for benefits without disqualification for having been discharged without cause. (R. pp. 93-94) Employer appealed the Appeal Tribunal decision to the Appellate Panel on February 28, 2011. (R. pp. 95-96) The Appellate Panel notified the parties of oral argument scheduled for April 27, 2011. The Appellate Panel issued the agency's final decision on April 28, 2011, which affirmed the Appeal Tribunal decision and

held Crowe eligible for benefits. (R. pp. 1-2)

Appellant sought judicial review of SCDEW's final administrative decision by filing with this court on July 6, 2011.

FACTS

Crowe worked for the Employer, most recently as a benefits coordinator, from August 27, 1984, through December 14, 2010. (R. pp. 4, 18, 37) Teresa Threlkeld (Threlkeld), the Director of Human Resources, testified that Appellant terminated Crowe because she violated Employer policy when she did not take the influenza vaccination. (R. p. 37) Crowe's employment was not previously in jeopardy and there were no other issues that factored into the decision to terminate her. (R. p. 57) In September 2010, Appellant implemented a policy that required employees to take the influenza vaccine as a condition of hire or for continued employment. (R. pp. 38, 75) Employees were notified that compliance with the policy was required by December 15, 2010. (R. pp. 42, 80) Threlkeld testified that there were provisions for exemptions to the vaccination requirement if an employee believed they should not take the vaccine based on guidelines issued by the Centers for Disease Control (CDC).

After being notified of the policy, Crowe requested an exemption from the vaccination requirement based on information from her physician. (R. pp. 39, 40, 77-79) Crowe had never before taken the flu vaccine. (R. pp. 64, 66) Crowe requested an exemption because of her family medical history. Crowe's doctor provided a statement that indicated a "strong family history" of Guillain-Barre

syndrome and Multiple Sclerosis and that these conditions can be activated by the flu vaccine and **“must be avoided”**. (Emphasis added.) (R. p. 79) Crowe’s daughter, who had also worked for Employer, took the flu shot several years earlier. Within two weeks of the vaccination, Crowe’s daughter was hospitalized. (R. pp. 61-62) Crowe testified it was believed that the flu vaccine activated what was diagnosed as Guillain-Barre syndrome and later believed to be Multiple Sclerosis, and which eventually led to her daughter’s death. (R. pp. 62, 77) Because of their genetic link, Crowe made the request for exemption. Crowe worked in Human Resources and had no patient contact but offered to wear a mask, as provided by the policy, and remain at her desk in order to keep her job. (R. pp. 64-65) Appellant notified Crowe that her exemption request had been denied because it did not meet the specific exceptions indicated in the CDC guidelines. (R. pp. 43, 83) Employer’s documentation indicated that exemptions may be made for: severe egg allergy, severe allergy to any component of the vaccine, a severe reaction to influenza vaccine in the past or a “history of Gillain-Barre (sic) syndrome”. (R. p. 78) Threlkeld testified that since Crowe had not taken the vaccination by midnight on December 14, 2010, she was discharged. (R. p. 46)

ARGUMENTS

- I. THE DECISION OF THE APPELLATE PANEL FINDING THE EMPLOYER DISCHARGED CROWE WITHOUT CAUSE IS CLEARLY SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AS A WHOLE AND IS BINDING ON THE COURT.

In considering an appeal from the Appellate Panel, “the findings of the department regarding facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the administrative law court must be confined to questions of law.” S.C. Code Ann. § 41-35-750 (Supp. 2010). However, the Administrative Procedures Act (APA) sets forth the standard for judicial review of decisions of the SCDEW; the standard is whether the agency’s decision is clearly unsupported by substantial evidence, characterized by an abuse of discretion or affected by errors of law. *Todd’s Ice Cream v. South Carolina Employment Security Commission*, 281 S.C. 254, 315 S.E.2d 373 (Ct. App. 1984). “Substantial evidence” has been defined as “evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304, 306 (1981). The Court cannot substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. *Id.* at 307. “Substantial evidence is something less than the weight of the evidence.” *DeGroot v. Employment Security Commission*, 285 S.C. 209, 328 S.E.2d 668, 669 (Ct.App. 1986) The fact that the record as a whole

presents the possibility of drawing two inconsistent conclusions does not mean the agency's findings are not supported by substantial evidence. *Waters v S.C. Land Resources Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). The burden is on appellants to prove convincingly that the agency's decision is unsupported by the evidence. *Id.*

Under S.C. Code Ann. § 41-35-120 (2), an individual is ineligible for benefits if SCDEW "finds that he has been discharged for cause connected with his most recent work". A person found to have been discharged for cause is disqualified from receiving unemployment benefits for not less than five, nor more than the next twenty-six weeks, with a corresponding reduction in the maximum potential benefit amount. The term "misconduct"¹ has been defined to include:

(1) the wanton and wilful disregard of the employer's interests; (2) the deliberate violation of rules; (3) the disregard of the standard of behavior which an employer can rightfully expect from an employee; or (4) intentional and substantial negligent disregard for the employee's interests, duties or obligations. *Lee v. South Carolina Employment Security Commission*, 277 S.C. 586, 291 S.E.2d 378, 379. (1982)

In this case, the Appellate Panel interpreted "cause" for discharge as a disregard for the standard of behavior the employer has a right to expect, but found that cause for discharge had not been established. The Appellate Panel found that "[t]he employer's policy requiring immunization . . . was unreasonable, particularly as applied to the claimant's unique circumstances". (R. p. 2)

¹ The term "cause" was substituted for "misconduct" by 1985 Act No. 154, §6. The terms are synonymous. See also, *Mickens v. Southland Exchange Joint Venture*, 305 S.C. 127, 130, 406 S.E.2d 363, 365 (1991).

The physician's statement presented indicated that Crowe must be medically exempt from the flu shot because of her family history of Guillain-Barre and Multiple Sclerosis. (R. p. 79) The medical statement expressed that the vaccination could activate these conditions. Crowe testified that because of her family history and on her doctor's medical advice she decided not to take the vaccination. Crowe also indicated did not know how to read "history" in Employer's documentation and did not know whether it meant her personally. (R. p. 63)

Appellant argues Crowe's reasons and medical documentation are insufficient because they did not meet the specific reasons for an exemption under its policy. Even if, *arguendo*, Crowe's reason for refusal of the vaccination did not meet the requirements for an exemption under the policy, the question is whether Crowe disregarded the standard of behavior the Employer could *rightfully* expect. The S.C. Supreme Court has determined that "where the employer's request is *reasonable*, a refusal to comply will constitute misconduct, justifying a discharge for cause". *Mickens* at 365. However, "not only must the reasonableness of the employer's request be evaluated, but also the employee's reason for non-compliance." *Id.* Though the Employer's resolve to arrest the spread of influenza is understandable, the vaccination is simply not a reasonable requirement in Crowe's situation. Also, Crowe's explanation for non-compliance was reasonable. Crowe did not have any contact with patients where influenza might more easily spread, she was willing to wear a mask like those whom Employer considered

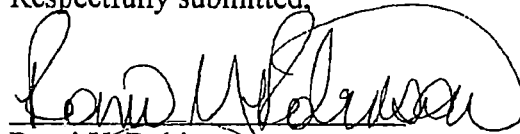
exempt from the requirement, and she had medical advice and documentation from her physician specifically stating that she must avoid a flu vaccination because of her particular situation.

The SCDEW Appellate Panel, after reviewing the record, found that the Employer failed to meet its burden to show Crowe was discharged for cause under the circumstances presented. Reasonable men could reach the same findings and conclusions based on the record as a whole. Thus, these findings and conclusions are supported by substantial evidence and are binding on the court.

CONCLUSION

Since the decision of the Appellate Panel is supported by substantial evidence in the record as a whole and is in accord with applicable law, the findings are binding on the court and the decision should be affirmed.

Respectfully submitted,



Romi Y. Robinson
S.C. Department of Employment
and Workforce
Post Office Box 995
Columbia, South Carolina 29202
(803) 737-2666
legal@dew.sc.gov

September 12, 2011

Attorney for Respondent SCDEW

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL FROM THE
SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT
AND WORKFORCE

Case No. 11-ALJ-22-0354-AP

AnMed Health, ... Appellant,

v.

South Carolina Department of Employment and
Workforce and Pamela S. Crowe, ... Respondents.

REPLY BRIEF OF APPELLANT

Stuart M. Andrews, Jr.
E-Mail: Stuart.Andrews@nelsonmullins.com
Jennifer I. Cooke
E-Mail: Jennifer.Cooke@nelsonmullins.com
Nelson Mullins Riley & Scarborough LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Appellant

Romi Y. Robinson
Legal Department
South Carolina Department of
Employment and Workforce
Post Office Box 995
Columbia, SC 29202
(803) 737-2666

Attorneys for Respondent South
Carolina Department of
Employment and Workforce

Alexander D. Paterra
The Paterra Law Firm, LLC
107 E. Park Avenue
Greenville, SC 29601
(864) 232-2776

Attorneys for Respondent Pamela S.
Crowe

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SC ADMIN. LAW COURT

TABLE OF CONTENTS

	<u>Page</u>
ARGUMENT	1
I.. Ms. Crowe failed to present evidence to exempt her from AnMed Health's mandatory flu shot policy.	1
II.. AnMed Health's mandatory flu shot policy is reasonable based on AnMed Health's interest in protecting its patients, employees, and the public:	1
CONCLUSION	4

Appellant AnMed Health offers this brief in reply to the brief filed on September 12, 2011 by Respondent Pamela S. Crowe ("Respondent").

ARGUMENT

I. Ms. Crowe failed to present evidence to exempt her from AnMed Health's mandatory flu shot policy.

Respondent relies solely on a statement from her personal physician to support the finding that she should be excused from AnMed Health's mandatory flu shot policy. Although Respondent's physician note stated that she has "a strong family history of Guillian-Barr [sic]¹ and MS," the physician's statement of fact is unreliable, unverified and directly contradicted by Ms. Crowe herself. As argued in Appellant's initial brief, this unreliable, contradictory evidence cannot stand as the basis for the Department's action. Thus, the decision of the Department of Employment and Workforce is not supported by the reliable, probative, and substantial evidence on the whole record, and therefore, should be reversed.

II. AnMed Health's mandatory flu shot policy is reasonable based on AnMed Health's interest in protecting its patients, employees, and the public.

AnMed Health's mandatory flu shot policy is a reasonable employment requirement, and Respondent failed to provide evidence of reasonable noncompliance. As discussed in Respondent's brief, the general rule is that, where the employer's request is reasonable, a refusal to comply will constitute misconduct, justifying a discharge for cause. *Mickens v. Southland Exch.-Joint Venture*, 305 S.C. 127, 130, 406 S.E.2d 363, 365 (1991). What is reasonable will vary according to the circumstances of each case. *Id.* Not only must the

¹ The correct spelling of the condition is "Guillain-Barre," although in the AnMed Health Influenza Immunization Protocol it is spelled as "Gillian-Barre."

reasonableness of the employer's request be evaluated, but also the employee's reason for noncompliance. *Id.* *American Jurisprudence* explains:

an employee will not be found guilty of misconduct disqualifying him or her from receiving unemployment compensation for violation of a rule unless: (1) the employee knew or should have known the rule; (2) the rule was lawful and reasonably related to the job environment and job performance; and (3) the rule is fairly and consistently enforced.

76 Am. Jur.2d *Unemployment Compensation* § 72 (2005).

In the present case, it is clear that Respondent knew about the mandatory flu shot policy. In addition, AnMed Health's policy is lawful and reasonably related to AnMed Health's interest in protecting its patients, employees, and the public.² Lastly, the policy is fairly and consistently enforced. Importantly, the policy provides for clear exemptions "based on set guidelines provided by the [Centers for Disease Control]." R. pp. 75, 76; Appellant's Initial Brief at 1.

In mitigating an employee's noncompliance with an employer's rule, *American Jurisprudence* provides that relevant considerations include "the importance of the business interest at risk, the nature and purpose of the rule, prior enforcement of the rule, good cause to justify the violation, and consistency with other rules," 76 Am. Jur.2d *Unemployment Compensation* § 72 (2005). Here, the only credible evidence in the record concerning the purpose of AnMed Health's mandatory flu shot policy is that noncompliance could put at risk the healthcare system's patients and co-workers. In fact, Respondent concedes in her initial brief that AnMed Health's "resolve to arrest the spread of influenza is understandable."

² As discussed in Appellant's initial brief, AnMed Health decided to institute the mandatory policy "[a]fter reviewing the practices of some of the nations' leading health care networks and after presenting to and receiving approval from [the] AnMed Board of Trustees." R. p. 75; Appellant's Initial Brief at 1. In addition, AnMed Health's mandatory policy is similar to policies of other leading health care networks, including two South Carolina hospitals – Georgetown Hospital and the Medical University of South Carolina. R. p. 38, lines 5-15; *id.* at 75; Appellant's Initial Brief at 1.

Respondent's Brief at 6. Regardless, Respondent argues that her "explanation for noncompliance was reasonable." *Id.* Respondent offers only an unverified physician statement and the fact that she did not have direct contact with patients as evidence in support of her noncompliance. An unverified physician statement and a subjective concern regarding the flu shot vaccine, however, do not amount to good cause for noncompliance of a reasonable healthcare policy, particularly one advanced by the federal Centers for Disease Control and leading healthcare institutions in the state.

Although there are no South Carolina cases on point, a Pennsylvania unemployment compensation case, *Dougherty v. Unemployment Compensation Board of Review*, 686 A.2d 53 (Pa. Commw. Ct. 1996), addresses the issue of a subjective explanation offered by an employee to justify noncompliance. In *Dougherty*, a certified nursing assistant ("Claimant") was discharged by his employer (a geriatric care center) for refusing to work with Acquired Immunodeficiency Syndrome ("AIDS") patients. *Dougherty*, 686 A.2d at 54. Claimant contended that "he had good cause to refuse Employer's directive [to provide services on a unit where three AIDS patients were being treated] because he believed working with AIDS patients threatened his health and welfare." *Id.* After concluding that Claimant had been adequately trained to work with AIDS patients, the court held as follows:

Our careful review of the record reveals solely that Claimant, despite his training, harbored unnecessary fears and misconceptions concerning AIDS. Claimant has only demonstrated to this Court that he had *subjective* beliefs that these patients posed a special risk to him and that Employer had inadequately equipped him to deal with those risks. *A subjective belief alone does not constitute good cause for actions that would otherwise disqualify a claimant from benefits.*

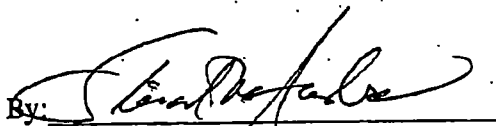
Id. at 55 (emphasis added). Likewise, in the present case, Respondent has only presented subjective reasons for her noncompliance with AnMed Health's mandatory flu shot policy.

While Respondent clearly has fears concerning the flu vaccine, these fears have not been supported by objective evidence. The inaccurate statement from the Respondent's physician, contradicted on multiple occasions in the record by Respondent herself, cannot satisfy the showing Respondent must make to prevail. Respondent is unable to present reliable evidence to exempt her from AnMed Health's mandatory flu shot policy. As such, the decision of the Department of Employment and Workforce is not supported by the reliable, probative, and substantial evidence on the whole record, and therefore, should be reversed.

CONCLUSION

Pursuant to the grounds set forth above, AnMed Health respectfully requests that the Administrative Law Court reverse the final decision of the SCDEW.

NELSON MULLINS RILEY & SCAROBOROUGH LLP

By: 

Stuart M. Andrews
stuart.andrews@nelsonmullins.com
Jennifer I. Cooke
jennifer.cooke@nelsonmullins.com
1320 Main Street - 17th Floor (29201)
Post Office Box 11070
Columbia, SC 29211-1070
(803) 799-2000

Attorneys for Appellant

Columbia, South Carolina

September 22, 2011

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

APPEAL FROM THE
SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT
AND WORKFORCE

Case No. 11-ALJ-22-0354-AP

AnMed Health, ... Appellant,

v.

South Carolina Department of Employment and
Workforce and Pamela S. Crowe, ... Respondents.

APPELLANT'S RESPONSE TO
RESPONDENT'S PROPOSED ORDER

Appellant AnMed Health offers this response to Respondent's Proposed Order filed on January 19, 2012. Appellant submits this response to provide a more complete representation of the statements of fact contained in the Record on Appeal.

1. The Proposed Order is correct in stating that in September 2010, AnMed Health instituted a mandatory flu shot policy. Proposed Order at 1. It is important to note, however, that AnMed Health instituted this policy to protect its patients, visitors, employees, volunteers, and the community. R. pp. 75, 76 ("Influenza Immunization Protocol"). Furthermore, AnMed Health decided to institute the mandatory policy "[a]fter reviewing the practices of some of the nations' leading health care networks and after presenting to and receiving approval from [the] AnMed Board of Trustees." R. p. 75. Moreover, AnMed Health's

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SC ADMIN. LAW COURT

mandatory policy is similar to policies of other leading health care networks, including two South Carolina hospitals – Georgetown Hospital and the Medical University of South Carolina.

R. p. 38, lines 5-15; *id.* at 75.

2. The Proposed Order states that "[t]here were provisions [in AnMed Health's mandatory flu shot policy] for exemptions if an employee believed they should not take the vaccine." Proposed Order at 1. This statement suggests that employees could exempt themselves from having the vaccine if they "believed" they should be exempt. This, however, is incorrect. As set forth in Appellant's initial and reply briefs, the exemptions to AnMed Health's mandatory flu shot policy are "based on set guidelines provided by the CDC." R. pp. 75, 76. The "Influenza Immunization Protocol" states as follows:

[Health care workers] may request exemption from vaccination based on guidelines from the Centers of Disease Control (CDC). Those CDC guidelines for exemptions currently include: severe egg allergy, severe allergy to any component of the vaccine, a past severe reaction to the influenza vaccine, or a history of Gillian-Barre syndrome. NO OTHER FORM OF OR REASON FOR EXEMPTION WILL BE MADE.

R. p. 76 (emphasis in original). The "Influenza Immunization Protocol" explains that "[u]nless an approved exemption is made (as described herein) the influenza vaccination will be a condition of initial and continued employment of all AnMed Health employees, and a condition of permissive entrance onto the premises of any AnMed Health service delivery site for all other [Health Care workers] regardless of whether direct patient contact is expected." *Id.* The Protocol further stresses that "[e]mployees without an approved exemption, who fail to timely take the vaccination, or who with an approved exemption fail to comply with any applicable restriction will be allowed to resign or will be terminated." *Id.* Finally, in order to request an

exemption from the mandatory flu shot policy, employees were required to have a physician complete an "Exemption Request - Flu Vaccination" form. R. p. 78.

3. The Proposed Order states that "Crowe's exemption request was based on family medical history." Proposed Order at 1. The Proposed Order continues by stating that "Crowe's doctor indicated a 'strong family history' of Guillain-Barre syndrome and Multiple Sclerosis and that these conditions can be activated by the flu vaccine and 'must be avoided.'" In addition, the Proposed Order states that Respondent's daughter was "diagnosed" with Guillain-Barre syndrome and died as a result of what was "believed to be Multiple Sclerosis." These statements misrepresent the Record.

First, in her written appeal of AnMed Health's denial of her request for an exemption pursuant to the Protocol, Ms. Crowe explained that "[t]he neurologist thought [her daughter had] Gillian-Barre syndrome but after many tests, blood work, MRI, spinal tap, etc...she was diagnosed with Multiple Sclerosis." R. p. 77. Likewise, Ms. Crowe testified before the Department that when her daughter was discharged from the hospital "her neurologist said, 'We don't believe it's Guillain-Barre, we believe it is Multiple Sclerosis.'" R. p. 62, lines 9-10.

Second, although Ms. Crowe's physician note does report a strong history of Guillain-Barre and MS, her physician did not offer a medical opinion concerning her medical history, nor did he perform any tests or assessments to verify any reported family history of Guillain-Barre. Furthermore, Ms. Crowe's physician did not complete or sign the required "Exemption Request - Flu Vaccination" form required by the AnMed Health policy. R. p. 78. Therefore, Respondent failed to present any reliable evidence support a personal or family history of Guillain-Barre.

4. AnMed Health's mandatory flu shot policy is lawful and reasonably related to AnMed Health's interest in protecting its patients, employees, and the public. The general rule is that, where the employer's request is reasonable, a refusal to comply will constitute misconduct, justifying a discharge for cause. *Mickens v. Southland Exch.-Joint Venture*, 305 S.C. 127, 130, 406 S.E.2d 363, 365 (1991). What is reasonable will vary according to the circumstances of each case. *Id.* Not only must the reasonableness of the employer's request be evaluated, but also the employee's reason for noncompliance. *Id.* *American Jurisprudence* explains:

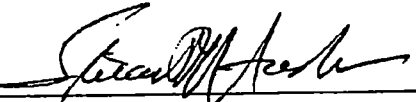
an employee will not be found guilty of misconduct disqualifying him or her from receiving unemployment compensation for violation of a rule unless: (1) the employee knew or should have known the rule; (2) the rule was lawful and reasonably related to the job environment and job performance; and (3) the rule is fairly and consistently enforced.

76 Am. Jur.2d *Unemployment Compensation* § 72 (2005). In mitigating an employee's noncompliance with an employer's rule, *American Jurisprudence* provides that relevant considerations include "the importance of the business interest at risk, the nature and purpose of the rule, prior enforcement of the rule, good cause to justify the violation, and consistency with other rules." 76 Am. Jur.2d *Unemployment Compensation* § 72 (2005). "A subjective belief alone does not constitute good cause for actions that would otherwise disqualify a claimant from benefits." *Dougherty v. Unemployment Compensation Board of Review*, 686 A.2d 53, 55 (Pa. Commw. Ct. 1996).

CONCLUSION

AnMed Health respectfully requests that the Administrative Law Court consider the above when issuing its Final Order.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Stuart M. Andrews
stuart.andrews@nelsonmullins.com
Jennifer I. Cooke
jennifer.cooke@nelsonmullins.com
1320 Main Street - 17th Floor (29201)
Post Office Box 11070
Columbia, SC 29211-1070
(803) 799-2000

Attorneys for Appellant

Columbia, South Carolina

January 23, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-22-0354-AP

South Carolina Department of Employment and
Workforce and Pamela S. Crowe, ...

Respondent,

v.

AnMed Health, ...

Appellant,

NOTICE OF APPEAL

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, AnMed Health hereby timely appeals from the following Order of the Honorable John D. McLeod: Order affirming the decision of the South Carolina Department Employment and Workforce, dated January 24, 2012 (Ex. A). Judge McLeod's Order is attached as Exhibit A. Appellant received written notice of Judge McLeod's January 24, 2012

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FEB 14 2012

SC Court of Appeals

Order affirming the decision of the South Carolina Department Employment and Workforce on January 24, 2012.

Respectfully submitted.

By: Stuart M. Andrews, Jr.
Stuart M. Andrews, Jr.
Jennifer I. Cooke
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Appellant

Columbia, South Carolina

February 14, 2012

Other Counsel of Record:

Romi Y. Robinson, Esquire
Legal Department - Dept. of Employment and Workforce
P.O. Box 8597
Columbia, SC 29202
(803)737-2666
Attorney for Respondent

Alexander Paterra, Esquire
107 E. Park Avenue
Greenville, SC 29601
Claimant Attorney

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

AnMed Health,
Appellant,

vs.

South Carolina Department of
Employment and Workforce and
Pamela S. Crowe,
Respondents.

Docket No. 11-ALJ-22-0354-AP

ORDER

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SC Court of Appeals

STATEMENT OF THE CASE

AnMed Health (Appellant or Employer) appealed the decision of the South Carolina Department of Employment and Workforce (Department) on July 6, 2011. The Employer is appealing an Appellate Panel decision of the Department in which Respondent Crowe was found eligible for unemployment benefits without disqualification upon a finding that she was discharged without cause under S.C. Code Ann. § 41-35-120(2). The Administrative Law Court (ALC or Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2010). Upon consideration of the record and the briefs, this Court affirms the Department's decision.

BACKGROUND

Respondent Crowe worked for Appellant from August 27, 1984, through December 14, 2010, as a benefits coordinator. Crowe was terminated for violating Employer policy when she did not take the influenza vaccination. In September 2010, Appellant implemented a policy that required employees to take the influenza vaccine. Crowe was notified that compliance with the policy was required by December 15, 2010. There were provisions for exemptions if an employee believed they should not take the vaccine. Crowe had never before taken the flu vaccine and requested an exemption from the requirement on the advice of her personal physician. Crowe's exemption request was based on family medical history. A statement from Crowe's doctor indicated a "strong family history" of Guillain-Barre syndrome and Multiple

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SC ADMIN. LAW COURT

Sclerosis and that these conditions can be activated by the flu vaccine and “must be avoided”. Crowe’s daughter had taken the flu shot several years earlier. Within two weeks of the vaccination, her daughter was hospitalized. It was believed that the flu vaccine activated what was diagnosed as Guillain-Barre syndrome and later believed to be Multiple Sclerosis and eventually led to her daughter’s death. Because of this history, Crowe requested an exemption. Crowe was not a caregiver for the Employer; she worked in Human Resources and had no patient contact. Crowe also offered to wear a mask, as provided by the policy, and remain at her desk. Employer denied the request because it did not meet the specific exceptions indicated by the Centers for Disease Control (CDC) guidelines. Employer indicated that exemptions were available for: severe egg allergy, severe allergy to any component of the vaccine, a severe reaction to influenza vaccine in the past or a history of Guillain-Barre syndrome. When Crowe had not taken the vaccination by midnight on December 14, 2010, she was discharged.

After a review of the initial statements from the parties, a claims adjudicator with the Department issued a determination holding Crowe disqualified from receiving benefits for ten weeks from December 12, 2010, through February 19, 2011, upon finding that she was discharged for cause connected with the employment. Crowe appealed that determination and a *de novo* evidentiary hearing was conducted on February 10, 2011, by the Department’s Appeal Tribunal. The Appeal Tribunal found that Appellant terminated Crowe without cause and held her eligible for benefits. Appellant then appealed that decision to the Department’s Appellate Panel which affirmed the decision and also held that Crowe was discharged without cause under S.C. Code Ann. § 41-35-120 (2). Appellant then filed an appeal to the ALC on July 1, 2011.

ISSUE ON APPEAL

1. Did the Department err in finding that Appellant terminated Crowe without cause under § 41-35-120 (2)?

STANDARD OF REVIEW

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) (finding that the Department’s predecessor, the Employment Security Commission, was an agency within the

meaning of the APA). Accordingly, the APA's standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, -600 (D) (Supp. 2010); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment 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) (Supp. 2010) See § 1-23-600 (D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section 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.

S.C. Code Ann. § 1-23-380(5) (Supp. 2010).

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). "Substantial evidence is something less than the weight of the evidence." DeGroot v. Employment Security Commission, 285 S.C. 209, 328 S.E.2d 668, 669 (Ct. App. 1986) The fact that the record as a whole presents the possibility of drawing two inconsistent conclusions does not mean the agency's findings are not supported by substantial evidence. Waters v. S.C. Land Resources 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 Assn'n for Prot. Of Wildlife, Inc. v. S.C. Dep't of Natural Res.,

345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

DISCUSSION

Appellant argues that the Department erred in finding that Crowe was terminated without cause. I disagree.

S.C. Code Ann. § 41-35-120 (2) (Supp. 2010) requires the Department to reduce the period in which a claimant is qualified for unemployment benefits when it determines that an employer has discharged the claimant "for cause" in connection with that claimant's most recent employment. A discharge for cause¹ is justified when, among other things, an employee disregards the standard of behavior than an employer can rightfully expect from the employee, such as when the employee refuses to comply with a reasonable request of the employer. Lee v. S.C. Employment Security Comm'n, 277 S.C. 586, 291 S.E.2d 378 (1982). Although a single instance of minor misconduct will not generally disqualify a claimant from receiving unemployment compensation benefits, recurrent violations of the standards of behavior which an employer has the right to expect of an employee constitutes misconduct warranting disqualification. 76 Am.Jur. 2d Unemployment Compensation 69 (updated Nov. 2010).

Here, I find that substantial evidence supports the Department's decision that Crowe was terminated without cause. Though Crowe did not follow Appellant's instructions which required that she take the influenza vaccine, the record as a whole supports the Appellate Panel's determination that Appellant's vaccination requirement was "unreasonable, particularly as applied to [Crowe's] unique circumstances". Again, in the Lee case, a finding that an employee disregarded the standard of behavior the employer can rightfully expect contemplates a "reasonable" request of the Employer. Here, based on Crowe's family history and the information and advice of her physician, the requirement that Crowe take the influenza vaccination was not reasonable and her reason for non-compliance is reasonable. Evidence at the hearing before the Appeal Tribunal also established that Crowe was a twenty-six year employee whose job was not previously in jeopardy, and the sole reason for separation was her failure to

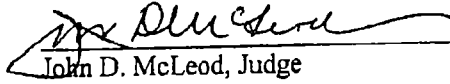
¹ The term "cause" was substituted for "misconduct" by 1985 Act No. 154, §6. The terms are synonymous. See also, Mickens v. Southland Exchange Joint Venture, 305 S.C. 127, 130, 406 S.E.2d 363, 365 (1991).

take the vaccination. Even if Crowe's refusal is considered misconduct, a single incident of misconduct will not generally disqualify a claimant. Accordingly, because there is substantial evidence to support the conclusion that Appellant terminated Crowe without cause, the Department's decision must be affirmed.

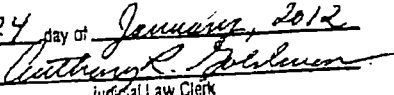
ORDER

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

January 24, 2012
Columbia, SC


John D. McLeod, Judge
S.C. Administrative Law Court

UNITED STATES COURT OF APPEALS
This is to certify that the undersigned has this date
served this order in the above entitled action upon all
parties to this cause by depositing a copy hereof,
in the United States mail, postage paid, or in the Interagency
Mail Service addressed to the party(ies) or their attorney(s).

This 24 day of January, 2012
By: 
Jonathan R. Polk
Judicial Law Clerk