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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE

ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Case No.: 12-ALJ-22-0439-AP

Marcus Wider,

v.

Respondent,

South Carolina Department of Employment
and Workforce and K B Enterprises, Inc.,

Defendants,

Of whom South Carolina Department of Employment
and Workforce is

Appellant.

RECORD ON APPEAL

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RECEIVED

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SC Court of Appeals

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Marcus Wider,

Appellant,

vs.

South Carolina Department of Employment
and Workforce, and K B Enterprises, Inc.,

Respondents.

Docket No. 12-ALJ-22-0439-AP

**ORDER DENYING
RESPONDENT SCDEW'S
MOTION FOR REHEARING**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the motion of Respondent South Carolina Department of Employment and Workforce (SCDEW or Department), seeking a rehearing of the Court's February 27, 2013 Order. On March 22, 2013, counsel for Appellant filed its Return to Respondent SCDEW's Motion for Rehearing. The motion and response has been carefully considered and I find there is no evidence in the record to support a finding that Appellant was discharged for cause. In the Department's motion they do not point out any such evidence that had been overlooked. The motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore,

IT IS HEREBY ORDERED that Respondent SCDEW's Motion for Rehearing is **DENIED**.

AND IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

March 25, 2013
Columbia, South Carolina

FILED

March 25, 2013

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Marcus Wider,

Appellant,

vs.

South Carolina Department of Employment
and Workforce, and K B Enterprises, Inc.,

Respondents.

Docket No. 12-ALJ-22-0439-AP

ORDER

STATEMENT OF THE CASE

The Appellant, Marcus Wider, appealed the decision of the South Carolina Department of Employment and Workforce (Department), which disqualified him from receiving unemployment benefits for a period of twenty weeks because his employer, K B Enterprises, Inc. (Employer), terminated his employment for cause connected with work. The Administrative Law Court (ALC or Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2012). Upon consideration of the record and the briefs, this court reverses the Department's decision, finding that substantial evidence does not support the finding that the Appellant was discharged for cause.

BACKGROUND

Appellant worked for Employer from August 4, 2011 until May 24, 2012, most recently as a loader. Appellant's primary job duties required him to move furniture in and out of customers' homes. On or about May 23, 2012, a customer contacted employer stating that Appellant and two other employees had caused significant damage while moving in furniture. Appellant maintained that his two co-workers and the customer's father caused most of the alleged damage. He was terminated on May 24, 2012.

Appellant filed for benefits with the Department on May 27, 2012. On June 25, 2012, the Department mailed a determination that found Appellant disqualified from receiving benefits upon finding that Employer terminated Appellant for cause. Appellant appealed to the Appeal

FILED

February 27, 2013

SC ADMIN. LAW COURT

Tribunal on July 2, 2012. The Appeal Tribunal conducted an evidentiary hearing on August 6, 2012, and both parties participated.

Mary Oliver, Operations Specialist, was the Employer witness. She testified that Appellant was terminated after the Employer learned that Appellant would no longer be covered on its motor vehicle insurance policy. Oliver also testified that Appellant had several incidents of damage to customers' property, and that the "big damage claim" on May 23, 2012, was the "final straw." Appellant testified that he did not actually cause the damage, but instead witnessed his two co-workers and the customer's father cause significant damage. On August 9, 2012, the Appeal Tribunal issued a decision affirming the Claims Adjudicator determination that Appellant was discharged for cause and therefore he was disqualified from receiving benefits for a period of twenty (20) weeks.

Appellant appealed to the Appellate Panel, and on September 11, 2012, the Appellate Panel affirmed the Appeal Tribunal's determination that Appellant was disqualified from receiving benefits for twenty (20) weeks because Employer discharged Appellant for cause. Appellant sought review in this Court on October 11, 2012.

ISSUES ON APPEAL

Did the Department err in finding that Appellant was terminated for cause?

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 Employment Security Commission, a predecessor of the Department, 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, 1-23-600(D) (Supp. 2012); 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. 2012). See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380(5)). 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 [of an agency] 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. 2012).

A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency’s findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm’n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, “a reviewing court will not overturn a finding of fact by an administrative agency ‘unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.’” Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dept. 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

The Appellant argues that the Department erred in finding that Employer terminated him for cause, because there were no specific findings of facts relating to who caused the damage in question and there was no substantial evidence presented to support a finding that Appellant caused the damage. The Court agrees.

When the Department determines that an employer has discharged an employee for cause in connection with the worker’s most recent employment, it must reduce the period in which the worker is qualified for unemployment benefits. S.C. Code Ann. § 41-35-120(2) (Supp. 2012). A discharge for cause is justified when, among other things, an employee disregards the standard of behavior that an employer can rightfully expect from the employee, such as when the employee

refuses to comply with a reasonable request of the employer. Mickens v. Southland Exch.-Joint Venture, 305 S.C. 127, 130, 406 S.E.2d 363, 365 (1991), citing Lee v. S.C. Employment Security Comm'n, 277 S.C. 586, 291 S.E.2d 378 (1982). South Carolina courts have equated for cause in the current version of the statute with the term misconduct in the predecessor statute. Id. A finding of misconduct does not mandate some willful or deliberate act on the part of the employee. Lee, 277 S.C. at 588, 291 S.E.2d at 379. Upon finding that an employee has been discharged for cause, the Department determines the length of the employee's disqualification period based on the seriousness of the cause for discharge. § 41-35-120(2). The disqualification period can extend from a minimum of five weeks to a maximum of twenty-six weeks. Id.

Appellant asserts that the Appellate Panel decision was clearly erroneous due to the failure of the Department to make a finding of fact that Appellant actually caused the damage in question. Instead, the Appellate Panel merely states that "[t]he record establishes the [Appellant] was involved [in] numerous incidents involving damage to customer's property, including a final incident resulting in significant damage." The APA requires a final order in an agency adjudication of a contested case to include "findings of facts and conclusions of law separately stated. Findings of fact...shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." S.C. Code Ann. § 1-23-350. Implicit findings of fact are not sufficient. Furthermore, when material facts are in dispute, the Department must make specific, express findings of fact. Heater of Seabrook, Inc. v. Public Serv. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (1998). An agency decision may be overturned where an agency fails to "clearly set forth the underlying facts upon which it relied to support its conclusion. By simply repeating the statute's language, with little else, the [agency] fail[s] to comply with this requirement." Grant v. Grant Textiles, 372 S.C. 196, 203 (S.C. Ct. App. 2007).

In the present case, the Department's decision fails to address the dispute that exists in the material facts. The Employer contends that the Appellant caused the damage in question, and the Appellant asserts, as he has from his initial statement, that his two co-workers and the customer's father caused the damage. The Department's decision makes no finding that the Appellant caused the damage.

Appellant also argues that the decision of the Appellate Panel should be reversed, because no substantial evidence was presented that Appellant caused damage to the customer's property. An employer who alleges that a claimant is ineligible for unemployment compensation

by reason of misconduct bears the burden of proof on that issue. 76 Am. Jur. 2d Unemployment Compensation § 71 (updated Nov. 2012). “An employer’s burden of proof with regard to misconduct includes the burden to prove that the alleged misconduct **was in fact the reason for the employee’s discharge.**” Id. (emphasis added). Importantly, “[t]his burden is not satisfied by showing incidents of misconduct during the course of employment if the employee was not discharged because of those incidents.” Id.

Furthermore, the Department has established that the employer bears the burden of proving that a claimant was terminated for cause through competent evidence. In a January 4, 2012 decision the Appellate Panel held:

“The employer bears the burden of proving that an employee is discharged for cause. In this case, the employer has not met this burden. The employer witness did not have firsthand knowledge of the final incident, and the employer did not present as witnesses the current employees who were involved in the incident.” Hollis v. Wade’s Restaurant, Final Decision, Department of Employment and Workforce, Decision No. 2012-P-5, Appeal No. 16490-16491 (Jan. 4, 2012).

The record does not include evidence to support a finding that the Appellant caused the damage. Notably, the Employer failed to provide any competent documentation with the exact extent of the damage or evidence determining who caused the damage. The Appellate Panel decision only includes a statement of the statutory language requiring a disqualification, but includes no explicit finding of fact to support the finding of a disqualification period. A review of the hearing transcript reveals that the Employer’s witness had no firsthand knowledge of the events that led to Appellant’s termination.

The Employer failed to provide any competent evidence that the Appellant caused any of the damage at issue. The Department asserts that Appellant was counseled that he would be terminated if he continued to cause property damage; however, Oliver had no firsthand knowledge of any such advice. Instead, she assumed that Appellant was likely counseled, but had no documentation of such sessions. The documentation presented by Oliver included damage charges for all employees from the dates of August 2011 through March 26, 2012. Notably missing from this detailed report is the damage claim at issue. Furthermore, it appears from the report itself that at least two pages are missing. The page count at the top of the document indicates that the last submitted page is actually page 34 of 36. Oliver indicated that the Employer maintains diligent records regarding damages assessed to each employee; however,

this report ends two months prior to the claim in question. This report also indicates that Appellant is not the only employee with multiple claims for various amounts of money.

The court finds that the agency's decision was clearly erroneous in light of the lack of substantial evidence in the record to support the finding that Appellant was fired for cause.

ORDER

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

Deborah Brooks Durden
Administrative Law Judge

February 27, 2013
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

K B Enterprises, Inc.
2006 Rockland Road
Columbia, SC 29210
Liabe Employer

Appellant: Claimant

APPELLATE PANEL
DECISION

The claimant appealed Appeal Tribunal Decision 2012-A-12861 to the Appellate Panel. The Tribunal held the claimant disqualified from benefits, upon finding he was discharged for cause. This decision affirmed the claims adjudicator's determination.

The Appellate Panel issued its decision upon review of the record on appeal.

DÉCISION

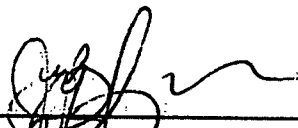
Appeal Tribunal Decision 2012-A-12861 is affirmed. The claimant is disqualified from benefits for twenty (20) weeks, from May 27, 2012, to October 13, 2012, with a corresponding monetary reduction, upon finding he was discharged for cause connected with the employment.

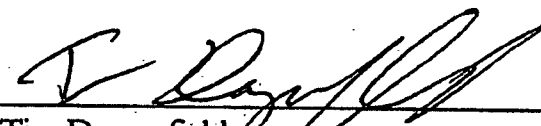
The claimant worked from August 4, 2011, to May 24, 2012, most recently as a loader. The employer terminated the claimant for damaging customers' property. The employer maintained the claimant worked on multiple teams that caused damage to customers' property, and submitted a record detailing the cost of the damage caused by the claimant. The employer terminated the claimant after the claimant's team caused approximately \$8,000.00 in damage to a customer's home. The claimant alleged the customer's father caused most of the damage, and that his coworkers were responsible for any damage caused by his team.

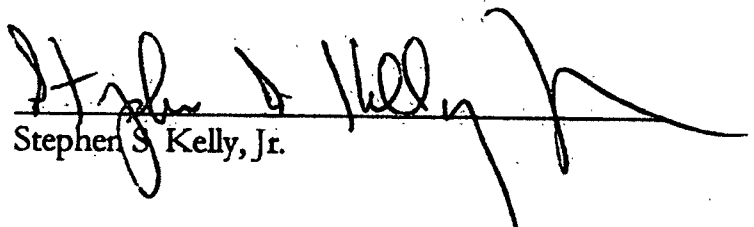
S.C. Code Ann. § 41-35-120 (2) requires disqualification from benefits for five to twenty-six weeks, with a corresponding monetary reduction, when the Department finds that a claimant has been discharged for cause connected with the employment. "Cause" is interpreted as disregard for the standard of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

The record establishes the claimant was involved of numerous incidents involving damage to customer's property, including a final incident resulting in significant damage. The claimant bears responsibility due to the frequency of the incidents and the severity of the final incident. The claimant's actions demonstrated a disregard for the standard of behavior the employer had the right to expect of the claimant. Therefore, we find the claimant was discharged for cause connected with the employment. The Appeal Tribunal decision is affirmed.

**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**



E. B. Ayers

Tim Dangerfield

Stephen S. Kelly, Jr.

Review Date: 09/11/12
Date Mailed: 09/13/12
Mailed By: AG

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

DECISION OF APPEAL TRIBUNAL

Hearing Date: August 06, 2012

MARCUS O. WIDER

CLAIMANT

K B ENTERPRISES INC
2006 ROCKLAND RD
COLUMBIA, SC 29210

EMPLOYER

APPELLANT: Claimant

SS NO: 3726

APPEARANCES

FOR THE Present
CLAIMANT:

FOR THE 1 witness
EMPLOYER:

FINDINGS OF FACT

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

The claimant appealed the determination mailed June 25, 2012, which held the claimant disqualified from receiving benefits for twenty weeks, effective May 27, 2012, through October 13, 2012, upon a finding the claimant was discharged for cause.

The claimant worked from August 4, 2011, to May 24, 2012, with the subject employer, most recently as a loader. He was discharged for causing extensive damage to a customer's home while performing his job. The employer spent approximately \$8,000.00 repairing the damage. The claimant asserts that his co-workers and the customer were responsible for causing the damage. The employer had also cited the claimant numerous times previously for accidentally causing damage to customers' property. The claimant had been warned to be more careful when carrying out his job duties. The claimant was also aware that he could be discharged for causing damage to customers' homes or property.

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.

An employer has the right to expect its employees to perform their work without causing financial harm to the employer. In this case, the employer asserts that the claimant caused substantial damage to a customer's home that the employer ultimately had to pay for. Although he denied these allegations, the Tribunal finds substantial documentary evidence to support the employer's assertion. While the employer witness had limited first hand knowledge of the final incident resulting in discharge, the Tribunal finds the documentary evidence sufficient to carry the burden of proof necessary for a finding of discharge for cause. Therefore, the Tribunal finds the claimant was discharged for cause.

DECISION

The Tribunal hereby holds the claimant disqualified from receiving benefits for twenty weeks, effective May 27, 2012, through October 13, 2012, along with a corresponding reduction in the claimant's maximum potential benefit amount upon a finding the claimant was discharged for cause. This decision affirms the determination mailed June 25, 2012.

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 SC Works Center, by mail, addressed to "Appellate Panel," Post Office Box 1752, Columbia, South Carolina 29202, or by Fax at (803) 737-3166. For additional information or assistance in filing an appeal, contact your local SC Works Center or visit our web site. www.dew.sc.gov

Lane K. Cook

Lane K. Cook
Administrative Hearing Officer

LKGTDD

Decision Mailed: 8/9/12

Mailed on the above Date By: TD

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. BOX 995, COLUMBIA, S.C. 29202

1 MARCUS O WIDER

DATE OF THIS NOTICE 06/22/12

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION ENDS	
MARCUS O WIDER				-3726	05/27/12	10/13/12	
WFC. NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS
320	I	01	\$ 167.00	\$ 3340.00	\$ 3340.00	\$ 0.00	05/26/13

1 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
1 PERFORM ASSIGNED WORK TO THE SATISFACTION OF THE EMPLOYER. FAILURE TO PERFORM IN A MANNER THAT
1 YOUR EMPLOYER HAD A RIGHT TO EXPECT CONSTITUTES DISCHARGE FOR CAUSE IN CONNECTION WITH THE WORK
1 UNDER THE SOUTH CAROLINA CODE, SECTION 41-35-120(2). YOU ARE DISQUALIFIED FOR 20 WEEKS. YOUR
1 MAXIMUM BENEFITS ARE ALSO REDUCED BY 20 TIMES YOUR WEEKLY BENEFIT AMOUNT.

1 THE RECORD SHOWS THAT THE TERMINATION OCCURRED DUE TO IMPROPERLY MOVING ITEMS IN A CUSTOMER'S
1 HOME AND CAUSING DAMAGE.

1 _____ LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

1 MAILING DATE 06/25/2012

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE DEPARTMENT 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 WORKFORCE CENTER, BY MAIL, ADDRESSED TO THE "APPEAL TRIBUNAL," P.O. BOX 995, COLUMBIA, SOUTH CAROLINA 29202, OR BY FAX (803) 737-0287. FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, CONTACT YOUR LOCAL WORKFORCE CENTER OR THE APPEALS DEPARTMENT AT (803) 737-2520.

THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

Appeal from
South Carolina Department of Employment and Workforce
Deborah Brooks Durden, Administrative Law Judge

Case No. 12-ALT-22-0439-AP

Marcus Wider,

Appellant,

vs.

South Carolina Department of
Employment and Workforce
and KB Enterprises, Inc.

Respondents

BRIEF OF APPELLANT

December 11, 2012

SOUTH CAROLINA
LEGAL SERVICES

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FILED

DEC 11 2012

SC ADMIN LAW COURT

STATEMENT OF ISSUES ON APPEAL

1. **Did the Department err by finding that Wider was discharged for cause due to damage to a customer's property when it failed to make any finding that he caused the damage?**
2. **Did the Department err by finding that Wider was discharged for cause when there was no substantial evidence presented that he caused damage to a customer's property?**

INTRODUCTION

Marcus Wider, a loader for K B Enterprises, Inc., a moving company, was completely denied unemployment benefits due to the Employer's unsupported claim that the moving team he was on damaged a customer's property. The Department of Employment and Workforce based its decision upon a theory of collective guilt and without supporting evidence that Wider caused the damage. Wider seeks an Order of this Court reversing the Department's erroneous decision and restoring his full benefits without disqualification.

STATEMENT OF THE CASE

This is an appeal from a final decision of Respondent South Carolina Department of Employment and Workforce ("the Department") finding Appellant Marcus Wider discharged for cause and disqualifying him from receiving unemployment benefits for twenty weeks. Record on Appeal (hereinafter "ROA") 1 to 2. Wider worked for Respondent K. B. Enterprises, Inc. ("the Employer") from August 4, 2011 to May 24, 2012 as a loader. *Id.* at 1. The Employer discharged Wider and he applied to the Department for unemployment benefits. The Department found him discharged for cause for failing to perform assigned work to the satisfaction of the employer and imposed a full twenty-week disqualification. *Id.* at 25. Wider appealed to the Department's Appeal Tribunal, and on August 6, 2012, a hearing was conducted before Hearing Officer Lane K. Cook. The Appeal Tribunal found Wider discharged for cause and upheld the twenty-week disqualification. *Id.* at 68 to 69.

Wider then appealed to the Department's Appellate Panel. In a decision mailed on September 13, 2012, the Panel upheld both the finding of discharge for cause and the twenty-week disqualification. *Id.* at 1 to 2. The Panel found that the Employer discharged Wider due to his team causing approximately \$8,000 in damage to a customer's home. The Panel acknowledged that Wider had testified that the customer's father caused most of the damage, and that his coworkers were responsible for any damage caused by the team. The sole basis for the Panel's decision, such as it is, is that "[t]he record establishes the claimant was involved of [*sic*] numerous incidents involving damage to customer's property, including final incident resulting in significant damage." *Id.* at 2. The Panel made no finding that Wider caused the damage in question, yet it determined that he was discharged for cause and disqualified from receiving benefits for twenty weeks. Wider timely appealed the Appellate

Panel decision to the Administrative Law Court and this appeal proceeds therefrom.

FACTS

The Employer, a moving service, discharged Wider due to a "big damage claim." ROA 32, ln. 18 to 19. On May 24, 2012, the employer sent Marcus Wider as a member of a three-man team to move a customer's furniture into a new home. The customer's father moved items on the home's hardwood floor, causing damage. ROA 38, ln. 7 to 9. The customer and his father forced a treadmill through a doorway, causing damage. *Id.* at 38, ln. 11 to 13. Wider testified that other team members caused damage to a wall and stair rails. *Id.* at 38, ln. 15 to 19. Wider was clear that he did not cause any damage:

HEARING OFFICER: Was there any damage that you personally caused?

CLAIMANT: No, sir.

HEARING OFFICER: None at all?

CLAIMANT: None.

HEARING OFFICER: So...so you said most of the damage was caused by the customer's father, is that right?

CLAIMANT: Yes, sir.

HEARING OFFICER: Then there was some damage caused by...

CLAIMANT: By the other two guys, they damaged the wall [UNCLEAR] they was going up the stairs. And then the rails on...when you go upstairs, the side rails that you hold on to. I knew that was scratched up. But that was by the guy Wilber and Jamie.
Id. at 38, ln. 20 to ROA 39, ln. 3.

Wider testified that he attempted to involve a manager when he observed the damage that his coworkers were causing but that the manager told him to complete the move:

"I did the best I could to help the customers out. I even called the manager

that night when we was moving to let them know what was going on with the situation with the job. He told me to continue to do the job and we'll look over tomorrow. And I felt like I should have been approached a different way about the job after the fact because I worked the next day after the job and I complained them about the worker I was working with." ROA 44, ln. 16 to 22.

The Employer's representative and sole witness had no personal knowledge nor any substantiating documentation of the damage or its cause.

STANDARD OF REVIEW

S.C. Code Ann. § 41-35-750 provides that “[i]n a judicial proceeding under [Title 41, Chapter 35], the findings of the department as to the facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the court must be confined to questions of law.” The Administrative Procedures Act (A.P.A.) sets forth the bases upon which a court of appellate review may act on an administrative finding, inference, conclusion or decision of an agency. S.C. Code Ann. § 1-23-310 *et seq.* The South Carolina Department of Employment and Workforce is an “agency” within the scope of the A.P.A. S.C. Code Ann. § 1-23-310(2). An appellate court may affirm or remand an agency decision. S.C. Code Ann. § 1-23-380(A). Otherwise, it 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(A)(5).

The “substantial evidence” standard governs factual findings under the A.P.A. *See e.g. Hall v. United Rentals*, 371 S.C. 69, 79, 636 SE.2d 876; 882 (S.C. Ct. App. 2006) (Worker's Compensation case), *McEachern v. S.C. Emp. Sec. Comm.*, 370 S.C. 553, 635 SE.2d 644 (S.C. Ct. App. 2006). An appellate court may not overturn an agency's finding of fact, when it is supported by substantial evidence. Substantial evidence requires a showing of more than a “mere scintilla of evidence.” *Houston v. DeLoach & DeLoach*, 378 S.C. 543,

550, 663 SE.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. Emp. Sec. Comm.*, 290 S.C. 459, 461, 351 SE.2d 338 (1986).

The appellant court's review is "plenary" when the agency's decision is controlled by an error of law. *Lizee v. S.C. Dep't of Mental Health*, 367 S.C. 122, 126; 623 S.E.2d 860, 863 (S.C. Ct. App. 2005). An appellate court 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 SE.2d 85, 90 (S.C. Ct. App. 2008) (citing *Lizee v. S.C. Dep't of Mental Health*, 367 S.C. 122, 126, 623 S.E.2d 860, 863 (S.C. Ct. App. 2005)).

An error of law is present when the agency's decision is based upon:

[A]pplication of the wrong legal principle; or when based upon factual conclusions, the ruling is without evidentiary support; or when the trial court is vested, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. *State v. Allen*, 370 S.C. 88, 94; 634 S.E.2d 653, 656 (2006).

A decision is considered arbitrary "if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment . . . or is governed by no fixed rules or standards." *Deese v. State Bd. Of Dentistry*, 286 S.C. 182, 184-85; 332 S.E.2d 539, 541 (1985).

ARGUMENTS

1. **The Department erred by finding Wider was discharged for cause due to damage to a customer's property when it failed to make any finding that he caused the damage.**

The Department's imposition of a twenty-week disqualification must be reversed because there it made no finding that Wider damaged the customer's property. In order to impose a disqualification from receiving unemployment benefits, the Department must find that a claimant was discharged "for cause connected with his most recent work." S.C. Code Ann. § 41-35-120(2)(a). A finding of discharge for cause may be justified for an employee's disregard of the standard of behavior which an employer can rightfully expect from him or her employee. *Lee v. S.C. Employment Security Comm'n*, 277 S.C. 586, 291 S.E.2d 378 (1982). The Appellate Panel concluded that "the record establishes the claimant was involved of [sic] numerous incidents involving damage to customer's property, including a final incident resulting in significant damage." The Panel made no finding of fact that Wider caused any of the damage at issue but rather imposed a theory of collective punishment: because Wider was present for the incident, he is guilty, regardless of whether he contributed to or attempted to mitigate the damage. Collective punishment is a theory one would expect to see in medieval Crusades, not administrative adjudications under this nation's system of laws.¹

Moreover, the Department cannot read into the Appellate Panel's decision an implication that Wider caused the damage at issue. The Administrative Procedures Act sets

¹ According to Wikipedia, "Arnaud (or Arnau) Amalric (died 1225) was a Cistercian church leader who took a prominent role in the Albigensian Crusade. He is remembered for allegedly giving advice to a soldier wondering how to distinguish the Catholic friendlies from the Cathar enemies to just 'Kill them all. For the Lord knows them that are His.'" http://en.wikipedia.org/wiki/Arnaud_Amalric (Accessed December 4, 2012).

out the requirements for a final order in an agency adjudication of a contested case.

... A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings... S.C. Code Ann. § 1-23-350.

Implicit findings of fact are not sufficient, and where material facts are in dispute, the administrative body must make specific, express findings of fact. *Heater of Seabrook Inc., v. Public Serv. Comm'n*, 332 S.C. 20, 503 S.E.2d 739 (1998). The findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings. *Able Communications, Inc. v. South Carolina Public Serv. Comm'n*, 290 S.C. 409, 351 S.E.2d 151 (1986). In *Grant v. Grant Textiles*, the Court overturned a decision of the Worker's Compensation Commission and the Court of Appeals because the Commission had failed to "clearly set forth the underlying facts upon which it relied to support its conclusion. By simply repeating the statute's language, with little else, the full commission's decision failed to comply with this requirement." 372 S.C. 196, 203 (S.C. 2007).

It is a clear error of law, freely reviewable by this Court, for the Appellate Panel to impose a full disqualification from benefits in the absence of any specific finding that Wider caused the damage at issue. *Houston v. DeLoach & DeLoach*, 378 S.C. 543, 552, 663 S.E.2d 85, 90 (S.C. Ct. App. 2008). Moreover, because the decision rests upon the faulty logic of collective punishment with no finding of wrongdoing on Wider's part, the decision is arbitrary and capricious. *Deese v. State Bd. Of Dentistry*, 286 S.C. 182, 184-85; 332 S.E.2d 539, 541 (1985).

2. **The Department erred by finding that Wider was discharged for cause when there was no substantial evidence presented that he caused damage to the customer's property.**

The Department has long recognized that the Employer bears the burden of proving that a claimant was discharged for cause and that it must do so through competent evidence.

In a January 4, 2012 decision the Department's Appellate Panel held:

The employer bears the burden of proving that an employee is discharged for cause. In this case, the employer has not met this burden. The employer witness did not have firsthand knowledge of the final incident, and the employer did not present as witnesses the current employees who were involved in the incident." *Hollis v. Wade's Restaurant*, Final Decision, Department of Employment and Workforce, Decision No. 2012-P-5, Appeal No. 16490-16491 (Jan. 4, 2012).

The Department's own hearing notice informed the Employer of the requirement to present competent evidence. It states, in relevant part: "EVIDENCE: This hearing is your only chance to testify and present evidence. Sworn testimony is required from witnesses with first-hand knowledge." ROA 27. The Appeal Tribunal found that "the employer witness had limited first hand knowledge of the final incident resulting in discharge" ROA 69. A review of the transcript establishes that the Employer witness had no firsthand knowledge of the damage or its cause. The Employer presented no evidence that Wider caused the damage at issue. Moreover, the Employer presented no documentary evidence of the damage or its cause. As a result, the Employer abdicated all responsibility to prove its allegations. The only first-hand witness was Wider, who testified that he did not cause the damage. Neither the Appeal Tribunal nor the Appellate Panel made any finding regarding Wider's credibility and provided no justification for ignoring his testimony as the only witness with personal knowledge.

Substantial evidence requires a showing of more than a "mere scintilla of evidence."

Houston v. DeLoach & DeLoach, 378 S.C. 543, 550, 663 SE.2d 85, 89 (S.C. Ct. App. 2008).

The Ninth Circuit United States Court of Appeals, considering the requirements for a showing of substantial evidence, explained that:

Since "substantial evidence" includes more than "uncorroborated hearsay" and "more than a mere scintilla," the findings, to be valid, cannot be based upon hearsay alone, nor upon hearsay corroborated by a mere scintilla. Founded upon these requirements, the test whether, in the individual case before the court, there is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Willapoint Oysters, Inc. v. Ewing*, 174 F.2d 676, 691 (9th Cir. 1949).

Because the Employer presented no first-hand evidence to support its allegations against Wider, nor any other corroborating evidence, the Department's decision finding him discharged for cause is not supported by substantial evidence.

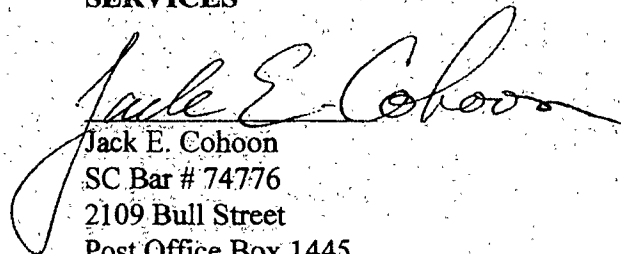
Finally, this case should be considered in the context of the General Assembly's stated public policy goal of alleviating the burden of unemployment "which so often falls with crushing force upon the unemployed worker and his family" through implementation of a system of unemployment insurance. S.C. Code Ann. § 41-27-20. The South Carolina Supreme Court has held that the Unemployment Compensation Law is remedial in nature and should be liberally construed to give effect to its beneficent purposes. *Hartsville Cotton Mill v. S.C. Emp. Sec. Comm.*, 79 S.E.2d 381, 224 S.C. 407 (1953). To deny an unemployed worker the protection afforded by this important benefit program based upon the Employer's mere, uncorroborated allegations frustrates the General Assembly's purpose in enacting this important program.

CONCLUSION

The Department denied Marcus Wider his unemployment benefits without any finding that he caused the damage at issue or did anything wrong that would merit a finding of discharge for cause. Moreover, Department denied Wider his benefits based upon mere allegations unsupported by substantial evidence. For these reasons this Court should reverse the Department's decision and find Wider eligible for unemployment benefits without disqualification.

Respectfully submitted,

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December 11, 2012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Marous Wilder

Appellant

vs.

South Carolina Department of
Employment and Workforce and KB
Enterprises, Inc.,

Respondent

Docket No. 12-AJ-22-0439-CF

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

BRIEF OF THE SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT
AND WORKFORCE

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STATEMENT OF THE ISSUES ON APPEAL

- I. DOES THE FINAL DECISION OF THE DEPARTMENT CONTAIN EXPLICIT FINDINGS OF FACT SUFFICIENT FOR THE COURT TO REVIEW THE ORDER FOR ERROR?**
- II. IS THE DECISION OF THE DEPARTMENT FINDING EMPLOYER DISCHARGED APPELLANT FOR CAUSE PURSUANT TO S.C. CODE ANN. § 41-35-120(2)¹ SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AS A WHOLE?**

STATEMENT OF THE CASE

KB Enterprises, Inc., (hereinafter "Employer") discharged Marcus O. Wider (hereinafter "Appellant") from his position as a loader on May 24, 2012. (R. 34:21-22; 37:23-24.) On May 27, 2012, Appellant filed for benefits with the South Carolina Department of Employment and Workforce. (hereinafter "SCDEW," "the Department," or "Respondent.") (R. 12.) A SCDEW claims adjudicator determination held Appellant disqualified from receiving benefits, mailed June 25, 2012, upon finding Employer discharged Appellant for cause pursuant to S.C. Code Ann. § 41-35-120(2) (R. 25.) Appellant appealed the determination to the Appeal Tribunal on July 2, 2012. (R. 10.) The Appeal Tribunal conducted an evidentiary hearing on August 6, 2012. Both Employer and Appellant participated in this hearing. (R. 27-28.) The resulting decision issued on August 9, 2012, affirmed the initial determination finding Appellant was discharged for cause. (R. 69.) Appellant appealed the Appeal Tribunal decision to the Appellate Panel on August 14, 2012. (R. 70-71.) The Appellate Panel issued the Department's final decision on September 11, 2012, which affirmed the Appeal Tribunal decision finding Appellant discharged for cause and the imposition of the corresponding disqualification. (R. 1-2.) Appellant commenced this action seeking judicial review of SCDEW's final administrative decision.

¹ S.C. Code Ann. § 41-35-120 was amended by the 2012 South Carolina Laws Act 247 (S.B. 1125) therefore any reference to this section is under the former statute.

FACTS

Appellant worked for Employer as a loader from August 4, 2011, to May 24, 2012. (R. 34:21-22; 37:23-24.) Appellant's primary job duties were moving furniture in and out of customer homes. Prior to the event which caused separation, Employer had determined Appellant responsible for repeated damage to customers' property and warned him of impending termination if the conduct did not cease. (R. 36:9-15.) Employer's standard practice was to question employees about any alleged damage. If they accepted responsibility for such damage the employee would sign a form and have the cost of the damages deducted from their paycheck. (R. 36: 16-20.) Employer provided several instances of damage which Appellant accepted responsibility for by having the costs of the damage deducted from his paycheck. Such instances include:

- March 5, 2012, Damage to china cabinet and chair \$150;
- March 9, 2012, Damage to leather sofa \$200. (R. 34:25-28; 35:1-3)

After each incident, Employer informed Appellant that if damages continued to accrue that he would be in danger of termination. (R. 37:8-11.)

On May 22, 2012, Appellant and his co-workers were moving furniture for a customer. (R. 38:2.) After the conclusion of the move, the customer contacted Employer and stated that the crew had caused over \$8,000 in damage to the home. (R. 32:18-20.) Employer felt Appellant's actions were costing Employer too much money and damaging its reputation as competent movers. (R. 33:6-8; 44:5-8.) As a result, Employer terminated Appellant on May 24, 2012.

ARGUMENT(S)

Standard of Review

Appellant argues the record as a whole does not support, by substantial evidence, the Department's final decision that Employer discharged Appellant for cause. (App. Brief 9.) Appellant further argues the Department's final decision is controlled by an error of law because it fails to make an explicit finding of fact stating Appellant damaged the customer's property. (App. Brief 11.)

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 (as amended, 2010). The standard for judicial review for decisions of the SCDEW is whether the agency's decision is clearly unsupported by substantial evidence or controlled by an error 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 (S.C. App. 1986). The burden is on the Appellant to show convincingly that the Appellate Panel's decision is without evidentiary support as a matter of law. See Hamm v. Am. Telephone & Telegraph Co., 315 S.C. 119, 432 S.E.2d 454 (1993); Hamm v. Pub. Serv. Comm'n of S.C.,

310 S.C. 13, 425 S.E.2d 28 (1992). The Court has held "in analyzing whether a decision is arbitrary, the Court has often reviewed whether the decision is supported by 'substantial evidence' to determine if 'there is evidence that would allow reasonable minds to reach the conclusion the administrative agency reached.'" Ruocco v. South Carolina State Bd. of Registration for Professional Engineers and Land Surveyors, 314 S.C. 111, 114, 441 S.E.2d 829, 831 (1994).

In Lark, 276 S.E.2d at 307, the Supreme Court held that the substantial evidence rule means "we 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."

I. THE FINAL DECISION OF THE DEPARTMENT CONTAINS EXPLICIT FINDINGS OF FACT SUFFICIENT FOR THE COURT TO REVIEW THE ORDER FOR ERROR.

Appellant first argues that the Department's final decision violates S.C. Code Ann. § 1-23-350 because it fails to make an explicit finding of fact stating Appellant damaged the customer's property. Appellant's argument is without merit and should be rejected.

S.C. Code Ann. § 1-23-350 states in relevant part:

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings...

Accordingly, the Department's final decision "must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings." Porter v. Labor Depot, 372 S.C. 560, 568-69, 643 S.E.2d 96, 100-01 (Ct. App. 2007) quoting Heater of Seabrook, Inc. v. Pub. Serv. Comm'n

of S.C., 332 S.C. 20, 26, 503 S.E.2d 739, 742 (1998). The Court has held, in making such findings, the Department is not required to present its findings of fact and reasoning in any particular format. Porter v. S. Carolina Pub. Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Additionally, Courts reviewing the decisions of administrative agencies may look to written documents as well as records of proceedings as sufficient formats for final decisions. Porter, supra.

The Department's final decision contains explicit findings of fact that establish Appellant was "discharged for cause connected with his most recent work." See S.C. Code Ann. § 41-35-120(2). Based upon the record as a whole, the Department found "[Appellant] was *involved* [in] numerous incidents involving damage to customer's property, including a final incident resulting in significant damage." (emphasis added)(R. 2.) Merriam Webster Dictionary defines "involve" to mean "to engage as a participant," therefore the finding of fact referenced above specifically states Appellant caused damage to the customer's property (whether in whole or in part, or in concert or alone). Such a finding is sufficient to allow this Court to properly determine whether that finding of fact supports the Department's conclusion that the direct consequences of Appellant's acts or omissions resulted in the disregard of the standard of behavior which an employer can rightfully expect from an employee. (R. 2.) See Also Lee v. S. Carolina Employment Sec. Comm'n, 277 S.C. 586, 589, 291 S.E.2d 378, 379 (1982).

The Panel's findings of fact are sufficient to allow the Court to determine whether those findings are supported by the evidence and whether the law was properly applied to those findings. The Department's final decision, together with the record of the proceedings, adequately enables the reviewing Court to perform its designated duty. Porter at 372 S.C. at 571, 643 S.E.2d at 102. Accordingly, Appellant's argument should be rejected.

II. THE FINAL DECISION OF THE DEPARTMENT FINDING EMPLOYER DISCHARGED APPELLANT FOR CAUSE PURSUANT TO S.C. CODE ANN. § 41-35-120(2) IS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AS A WHOLE.

Appellant further argues the final decision is not supported by substantial evidence in the record as a whole. (App. Brief 11.) Appellant argues Employer did not meet its burden of proof showing discharge for cause because Employer witnesses had no first-hand knowledge of the events in question. Secondly, Appellant argues that any evidence relied on as "competent evidence" is inadmissible hearsay. Finally, Appellant argues that this case should be governed by a "liberal" standard of review rather than the well established substantial evidence standard. (App Brief 12.)

Under S.C. Code Ann. § 41-35-120(2), an individual is disqualified from benefits if the Department "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 twenty weeks, with a corresponding reduction in the maximum potential benefit amount. The term "cause"² 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 employer's interests, duties or obligations. Lee, 277 S.C. 586, 291 S.E.2d 378, 379. (S.C. 1982)(emphasis added.)

As in Lee, the record in this case supports the conclusion that "the direct consequences of [A]ppellant's acts or omissions were causing losses to Employer..." The Court in that case held "there was no error in the [Department]'s application of "[cause]." Lee, 277 S.C. at 589, 291 S.E.2d at 379. Furthermore the Court held:

² The term "cause" was substituted for "misconduct" by 1985 Act No. 154, §6. The terms are synonymous. See Mickens v. Southland Exch.-Joint Venture, 305 S.C. 127, 135, 406 S.E.2d 363, 368 (1991)

An examination of the statute shows '[cause]' includes aggravated misconduct and 'wilful failure or neglect of duty.' Further the statute infers degrees of [cause] by providing for discretionary lengths of ineligibility to be imposed based upon whether or not the "[cause] ... was aggravated." Thus, we conclude the general assembly did not intend the "[cause]" mandated an aggravated or wilful failure.

In determining the meaning of the term "[cause]" we must look to the general purpose of the act. [Citation omitted].

In Stone, supra, we held the term 'fault' is not limited to something that is blameworthy, culpable of wrong and that 'fault' must be construed as meaning failure or volition." [Citation omitted] Lee, 277 S.C. at 587-88, 291 S.E.2d at 379 (1982)(emphasis added.)

South Carolina Courts have not had opportunity to specifically discuss which party bears the burden of proof with regard to showing "discharge for cause." However, the Court has held that as a general rule, "the burden of proof is upon the party who by the pleadings has the affirmative on the issue." Baker v. Mut. Loan & Inv. Co., 218 S.C. 47, 53, 61 S.E.2d 387, 389 (1950). Other states, Pennsylvania for example, have provided a general rule which the Department has chosen to adopt. See Brown v. South Carolina Dep't of Health and Envtl. Control, 348 S.C. 507, 560 S.E.2d 410 (2002): (The Court generally gives deference to an administrative agency's interpretation of an applicable statute or its own regulation.) In Walker v. Unemployment Comp. Bd. of Review, 27 Pa. Cmwlth. 522, 367 A.2d 366 (1976), the court held:

As general rule, in unemployment compensation case involving claimant who has voluntarily left his employment, burden of proving right to unemployment compensation rests with claimant; by contrast, in discharge case based upon [cause], burden is placed upon employer to prove [cause].

Assuming *arguendo* "that Employer bears the burden of proving that a claimant was discharged for cause and must do so through competent evidence," (App. Brief 11), there is substantial competent evidence to prove Employer discharged Appellant for cause.

Employer testified that it had received information from its customer that Appellant had caused severe damage to its property for which Employer was liable to repair. Employer discharged Appellant based on this information and Appellant's previous conduct. Appellant's argument that no competent evidence exists to substantiate Employer's decision is incorrect. Appellant's denial of the

allegations was evaluated by the Panel. The Panel also properly considered evidence in the record which specifically contradicts Appellant's denial. Appellant testified:

And like I stated to Joe, it was impossible that we damaged *that much* because we didn't really damage. (R. 38:15-16)(emphasis added)

Documentary evidence in the record also conflicts with Appellant's testimony. Upon an initial request for information regarding his separation, Appellant stated:

We damaged a customer's home on May 24th, but I think the repairs were minor. He did not tell me the cost of the repairs. We caused a little bit of damage but not as much as he said. My coworkers and I tried to explain what happened but he took the customer's word over ours. Jose said we scratched a wall, damaged a treadmill, and a couch. He said we messed up the tiles on the floor. I know we damaged the floor and put a few scratches on the wall while we were installing the refrigerator. I also tried to explain that the father caused some damages but he would not listen. The damage we caused may have been more than \$50.00 because they may have to replace some tiles on the floor. Jose thought the entire floor needed to be replaced but I have not talked to him since he fired me. (emphasis added) (R. 47.)

The Panel as the ultimate finder of fact considered all the evidence as well as the credibility of the witnesses; specifically, the Appellant's conflicting evidence to the effect that he did not cause any damage. The dispute is one of witness credibility. The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. See Smith v. NCCL, Inc., 369 S.C. 236, 631 S.E.2d 268 (Ct. App. 2006)(discussing Appellate Panel of the Workers' Compensation Commission having the final decision on witness credibility); See Also Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942)(The Unemployment Compensation Commission, in its statutory authority to hear and determine cases arising under the Unemployment Compensation Law, is analogous to the Industrial Commission in its right to hear and determine matters arising under the Compensation Act.)

Substantial competent evidence exists in the record corroborating Employer's assertion it discharged Appellant for cause. As such, Employer has satisfied its burden of proof. The

Department concedes that conflicting evidence exists in the record. However, the Court has stated "a decision will not be set aside simply because reasonable minds may differ on the judgment." Lark, 276 S.C. at 136, 276 S.E.2d at 307. The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being 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); Grant v. S.C. Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995).

Appellant's final argument would have the Court review this case in a "liberal" manner in order to effectuate the Employment and Workforce Law's "beneficent purposes." (App. Brief 12 quoting Hartsville Cotton Mill v. S.C. Emp. Sec. Comm., 79 S.E.2d 381, 224 S.C. 407 (1953).) Appellant fails to mention that the underlying rationale stated by the legislature is to provide unemployment benefits "to be used for the benefit of persons unemployed through *no fault of their own*." (emphasis added) S.C. Code Ann. § 41-27-20. As one court has stated:

Although the Unemployment Compensation Act is to be liberally construed in favor of claimants to effectuate its remedial purposes, it is also important to preserve the unemployment insurance trust fund against claims by those not intended to share in its benefits; basic policy of the law is advanced as well when benefits are denied in improper cases as when they are allowed in proper cases. Brady v. Bd. of Review, 152 N.J. 197, 704 A.2d 547 (1997).

Substantial evidence in the record as a whole supports a finding Appellant was "discharged for cause connected with his employment" and therefore not unemployed "through no fault of his own." As such, the public policy is served by denying him benefits.

CONCLUSION

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

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

Appeal from
South Carolina Department of Employment and Workforce

Deborah Brooks Durden, Administrative Law Judge

Case No. 12-ALJ-22-0439-AP

Marcus Wider,

Appellant,

vs.

South Carolina Department of
Employment and Workforce,
and KB Enterprises, Inc.

Respondents.

REPLY BRIEF OF APPELLANT

January 9, 2013

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STATEMENT OF ISSUES ON APPEAL

Can the South Carolina Department of Employment and Workforce rely upon an unsworn, unsigned, uncertified statement taken by a non-testifying Agency employee as substantial evidence?

ARGUMENT

The South Carolina Department of Employment and Workforce cannot rely upon an unsworn, unsigned, uncertified statement taken by a non-testifying Agency employee as substantial evidence.

The Department of Employment and Workforce asserts in its brief that an agency document, written by an agency employee as part of a telephone conversation with Marcus Wider, constitutes substantial evidence to support the Department's decision finding of discharge for cause. Respondent's Brief at 8. The Fact Finding document purports to have been generated on June 18, 2012 based upon a telephone conversation with Wider and purports to reference damage cause to a customer's home by the team. Record on Appeal (ROA) at 47. This document cannot serve as a basis to disqualify Wider. Substantial evidence requires a showing of more than a "mere scintilla of evidence." *Houston v. DeLoach & DeLoach*, 378 S.C. 543, 550, 663 SE.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. Emp. Sec. Comm.*, 290 S.C. 459, 461, 351 SE.2d 338 (1986).

Wider did not create this document. It was generated by an Agency employee from a telephone "factfinding." The form clearly contemplates a claimant reviewing the document for accuracy and signing to indicate that "I certify that the information stated herein is true." However, the agency never sought Wider's signature and there is no record that he even saw this document during the claims process. Moreover, he directly refuted any allegation that he caused the damage in his unambiguous testimony before the Appeal Tribunal:

HEARING OFFICER:

Was there any damage that you personally caused?

CLAIMANT: No, sir.

HEARING OFFICER: None at all?

CLAIMANT: None..

HEARING OFFICER: So...so you said most of the damage was caused by the customer's father, is that right?

CLAIMANT: Yes, sir.

HEARING OFFICER: Then there was some damage caused by...

CLAIMANT: By the other two guys, they damaged the wall [UNCLEAR] they was going up the stairs. And then the rails on...when you go upstairs, the side rails that you hold on to. I knew that was scratched up. But that was by the guy Wilber and Jamie.
Id. at 38, ln. 20 to ROA 39, ln. 3.

An unsworn, uncertified, unsubstantiated statement taken by a Department employee who was not presented to testify is not substantial evidence. A reasonable person could not rely upon such flimsy "evidence" in the face of direct and unambiguous testimony by the only first-hand witness to the contrary.

Even assuming, for the purposes of argument, that the statement contained in the fact finding accurately reflects Wider's statement to a Department employee, it does not constitute evidence that he, himself, caused any of the alleged damage. The statement refers to "we," meaning the team, causing damage but does not state that Wider was responsible for any of the damage in question.

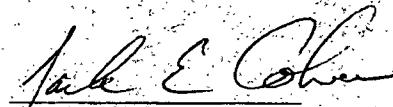
CONCLUSION

The Department denied Marcus Wider his unemployment benefits without any finding that he caused the damage at issue or did anything wrong that would merit a finding

of discharge for cause. Moreover, Department denied Wider his benefits based upon mere allegations unsupported by substantial evidence. For these reasons this Court should reverse the Department's decision and find Wider eligible for unemployment benefits without disqualification.

Respectfully submitted,

**SOUTH CAROLINA LEGAL
SERVICES**



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Attorney for Appellant

Columbia, South Carolina

January 9, 2013

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

Notice of Appeal to Appeal Tribunal

Claimant's Name: Marcus Winer Social Security Number: 3726
Claimant's Address: 1012
Date of Birth: 01/17/83 Date of Initial Claim: 05/29/12 Telephone: (803) 466-2221
(Month/Day/Year) (Month/Day/Year)
Employer's Name: K & B Enterprises Inc Telephone: _____
Employer's Address: _____

On 6/27/12 I received a claims examiner's determination mailed 06/25/12 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 because I Didn't Damage the house as
the Job say I Did I was set-up by the working in
the office to fail, because of a new worker that they
Didn't Need
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 Appellate Panel's decision, 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.

Ymow
(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: Marcus Winer
SC Designated By: _____
Employment & Workforce _____
Date: _____

Date Determination Delivered
by Workforce Center: _____

JUL 03 2012

(Date) Received Benefits Div. _____

Signed: [Signature]
(Workforce Center Representative)

Filed at: Lexington - 320
(Workforce Center Name and Number)

Date: 07 02 20 12
(Month) (Day) (Year)

Received By: [Signature]
(Workforce Center Representative)

Appeal No. 1212553

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. Box 1752, Columbia, South Carolina 29202

APPLICATION FOR LEAVE TO APPEAL TO THE APPELLATE PANEL

Claimant's Name: MARCUS WIDER

SSN: 3726

Address: _____

Date of Initial Claim: 5-27-12

Telephone Number: _____

(803)

Employer's Name: _____

Address: _____

THE OREM ANCH TACK

2006 Rockland Rd
COLUMBIA, SC 29210

Party Appealing: Claimant

On Aug 14, 2012

I received Appeal Tribunal Decision Number 1212553

mailed to me on July 28, 2012

and ask for review of the record on the following grounds:

I Don't Agress with the Decision, because they
Didn't show that I Damages \$,000 Dollars worth
of the custome houses No money was taking out
my Check at all.

* If appeal is untimely, state the reason. If appellant failed to attend Appeal Tribunal hearing, state the reason and whether postponement was requested:

I know that I must continue to file my claims for each week of unemployment during the pendency of this appeal, I know that I can only be paid for those weeks that I have timely claimed. If I have received benefits and am ruled disqualified or ineligible, I know that I will be required to repay the benefits I have received for that time period.

SC Dept. of
Employment & Workforce

AUG 15 2012

Received Benefits Div.

****As a Board of Review, the Appellate Panel is confined solely to the record submitted by the Appeal Tribunal and does not accept additional evidence or testimony in its consideration of the appeal.**

Appellant: Claimant

Signed by: Marcus W. Dell

Title: _____ Date: 8-14-12

Does claimant need an interpreter? ☐ YES ☒ NO

What language/dialect? _____

Claimant is ☐ Deaf ☐ Mute

(For Workforce Center Use Only)

Filed at: Lipington
(Workforce Center Name and Number)

Date: 8-14-12

Received by: Joan Atkinson
(Workforce Center Representative)

10-11-12

I Didn't Deserve to get fired, because I told the Offices worker that the co-worker was causing alot of Damaged and they still continued to send me out with him. When I got fired it was three guy on the job but only two of us got laid-off. I Didn't Damaged Nothing that the Job say I Did I tryed my best to help the Job go better but I still got fired. They Didn't take No money out ~~for~~ my checks for any Damages. Also I felt like they fired my because I were no longer useful to the company because they Didn't read the driving record Marcus ~~Did~~ I gave them and later found out their Insurance company wouldn't cover me no more after 9 months working there I witness several worker damaged thing and they were never fired

FILED

OCT 11 2012

SC ADMIN. LAW COURT

Marcus ~~Did~~

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT & WORKFORCE

Columbia, South Carolina

Transcript of Testimony

Before

Lane Cook, Administrative Hearing Officer

Marcus Wider

CLAIMANT

**K B Enterprises Inc.
2006 Rockland Road
Columbia, SC 29210**

LIABLE EMPLOYER

PLACE OF HEARING:

**SC Department of Employment & Workforce
714 S. Lake Drive, Suite 140
Lexington, South Carolina**

DATE OF HEARING:

August 6, 2012

APPEARANCES:

For Claimant:

In Person

For Employer:

One Witness

TESTIFYING WITNESSES

CLAIMANT:

Marcus Wider

EMPLOYER WITNESSES:

Mary Oliver, Operations Specialist

1 Before: Lane Cook, Administrative Hearing Officer

2 **HEARING OFFICER'S PREAMBLE.**

3 **ALL WITNESSES SWORN.**

4 HEARING OFFICER: Okay, let the record show that both parties have answered in the
5 affirmative and are therefore duly sworn in. I will initially ask each of you some questions and
6 give you a chance to answer. After that you'll have a chance to present any additional relevant
7 information on the issues that are in front of us. Each party will have a chance to cross examine
8 the opposing party. Also, I'll say, please present any documents or exhibits during your
9 testimony that you feel should be considered in this case. And finally, you will be notified of a
10 decision as soon as possible after the hearing, and that will be sent to your address of record.
11 Which for Mr. Wider I have as 5324 Bush River Road, Apartment G-7, Columbia, South
12 Carolina 29212. Is that correct?

13 CLAIMANT: Yes, sir.

14 HEARING OFFICER: Okay. For the employer I have, 2006 Rockland Road, Columbia,
15 South Carolina 29210. Is that correct?

16 EMPLOYER WITNESS: Yes, sir.

17 HEARING OFFICER: Okay. Are there any questions about the issues or the procedures
18 of this hearing before we begin?

19 CLAIMANT: No, sir.

20 EMPLOYER WITNESS: No, sir.

21 HEARING OFFICER: Mr. Wider, did you receive the determination that was mailed on
22 June 25, 2012, which held you disqualified 20 weeks?

23 CLAIMANT: Yes, sir.

24 HEARING OFFICER: And is that the only determination you are appealing here today?

25 CLAIMANT: Yes, sir.

1 HEARING OFFICER: Okay. At this time I have that one page determination that I just
2 mentioned. I also have a two page discharge for cause fact finding statement that was taken on
3 June 18, 2012. I have a one page fact finding attachment claimant statement, dated June 18,
4 2012. I have a one page fact finding... another one page fact finding attachment with the
5 claimant's statement, also dated June 18, 2012. Then there is an employer statement on a fact
6 finding attachment that's one page and dated June 18... that's two pages dated June 18, 2012.
7 And then I have a NET-101 that's dated June... excuse me; that's an employer response dated
8 June 12, 2012. Then I have a series of employer submitted documents, looks like... looks like
9 one page email. Then there's actually one page following that, it appears to be blank. And then
10 there is a... looks like a one page excerpt from the employer's policy, that's also followed by a
11 blank page.

12 EMPLOYER WITNESS: Okay. We have our copies of all of that so, just in case.

13 HEARING OFFICER: Okay. Then it looks like that goes on two... there's actually two
14 pages I have here of the employer's policy. So, Mr. Wider, I'll show you those documents that I
15 just mentioned, let you take a look at those, and I'll ask you when you finish looking at that if
16 you have any objection to me entering those documents into the record.

17 CLAIMANT: (Reads documents)

18 HEARING OFFICER: You can hand those to Ms. Oliver. You can look at those as well,
19 Ms. Oliver. Mr. Wider, do you have any objection to me entering those documents into the
20 record?

21 CLAIMANT: The day that we supposedly gone to the house, wasn't the day I got
22 fired. I got fired the next day. On the paperwork it said I got fired the same day.

23 HEARING OFFICER: Okay, I'll make note of that. I'll encourage you to testify, provide
24 that kind of testimony during your... during your opportunity to testify. Do you have any other
25 objections at this time?

26 CLAIMANT: No, sir.

27 HEARING OFFICER: Speak up just a little bit.

28 CLAIMANT: No, sir.

- 1 HEARING OFFICER: Okay. I will...I will overrule that one objection, but I will note
2 that for the record. And, again, I'll say just to...I want to encourage you to tell those facts during
3 your testimony.
- 4 CLAIMANT: Okay.
- 5 HEARING OFFICER: Okay, Ms. Oliver, do you have any objection?
- 6 EMPLOYER WITNESS: No, sir.
- 7 HEARING OFFICER: I'm going to mark those 14 pages as Agency Exhibit Number One,
8 and I'll enter those into the record as such. Since this was an issue adjudicated as a discharge,
9 we will begin testimony with the employer. So, Ms. Oliver, if you'll go ahead and state and spell
10 your first and last name please, for the record.
- 11 EMPLOYER WITNESS: Mary Oliver; O-L-I-V-E-R.
- 12 HEARING OFFICER: And what is your position with the employer?
- 13 EMPLOYER WITNESS: Operation Specialist.
- 14 HEARING OFFICER: And do you have firsthand knowledge as to the events resulting in
15 Mr. Wider's discharge?
- 16 EMPLOYER WITNESS: Yes, sir.
- 17 HEARING OFFICER: Okay, what happened to cause his discharge?
- 18 EMPLOYER WITNESS: The main thing was the day of...the day of the acc...the big
19 damage claim; he went out there, he did his job. There was like...now that we're finished
20 everything, totaling everything up, there's like \$8,000 worth of damages to this home. Between
21 we're having to buy a new treadmill for them, we've had to buy a new \$300 stroller. We had to
22 replace their hardwood floors in one room. That was the final straw. There's been things
23 leading up, several damages. He had an accident with one of our trucks which, of course,
24 definitely wasn't his fault. But, I mean, you know, he didn't set out to do that but had a damage
25 to that. And then in the last year it ended up costing us, when we have all the claims of all the
26 damages that have occurred on jobs he's been on.

1 HEARING OFFICER: Well, what was the thing that...that...what was the thing that
2 happened to cause the employer to discharge him?

3 EMPLOYER WITNESS: The final day that he worked for us, the major issues were the...the
4 job the customer refused to pay on, said that it was not a, you know, not handled very well by
5 any of the three employees that were there. One of them we discharged right away; he charged
6 at the customer. The next day we talked to Marcus and got his side. And just with all of the
7 damages leading up to this day, we just felt he was costing the company more money than he
8 was making the company.

9 HEARING OFFICER: Was Mr. Wider trained in moving?

10 EMPLOYER WITNESS: Yes. He's been with...he's been with the company probably about
11 six to nine months.

12 HEARING OFFICER: What kind of training would he have received?

13 EMPLOYER WITNESS: He worked with different crews, you know. When he first started
14 he went with certain main crews, with Jesse probably and Rob. I think he worked with Jeremy a
15 few times. You know, for a while it would be really good and then it just would get...there
16 was...there was lots of things leading up, damage wise, up to this.

17 HEARING OFFICER: Did he receive any warnings prior to this incident?

18 EMPLOYER WITNESS: I'm sure that Jeremy...I know that we had talked to him several
19 times about the damages, and he got better for a while. And then I...I read on the thing that
20 he...he said that he heard that we put him with...with the new guy to get him fired, which we did
21 not. He had to be demoted from a driver because he failed to tell us that there was an accident
22 after hours in his own vehicle, and that's what that other article is about. So, we had to demote
23 him from driving, and I just couldn't find another driver to put him with at the time.

24 HEARING OFFICER: Was Mr. Wider ever told that...that if he...if he caused damage to
25 a customer's property he could be discharged?

26 EMPLOYER WITNESS: They have a...a thing, paperwork that they sign when they hire,
27 you know, that so many damages result, you know, we have the right to terminate.

28 HEARING OFFICER: Is there a hard and fast rule the employer has, or is it just general?

1 EMPLOYER WITNESS: Just general; we take it case by case. You know, if you have an
2 occasional \$20 damage here, or \$20 damage there we... we, you know, work with it. But in the
3 last year there was probably...he probably had to pay back about close to \$800 worth of
4 damages. And then we only charge 25 percent. For the rest of the other 75 percent the company
5 pays it.

6 HEARING OFFICER: When he was approached about the final incident, what was his
7 response?

8 EMPLOYER WITNESS: He...he was very...I mean, very calm. He just...he said that he
9 didn't feel he did the damages, you know. He was on the job with...with Jeremy but, I mean, he
10 understood. I mean, we've given several chances and, you know, he just accepted and left.

11 HEARING OFFICER: Did he indicate to you that it was other people on the job who had
12 done the damage?

13 EMPLOYER WITNESS: He did. He said that he...that the other guys did the damage but
14 there was three guys out there, there all three gone. We tried to give each one of them, you
15 know, as an individual case by case. But, like I said, he had more damage than the others. And
16 the third guy there only lasted another two days after that, and he had more damages, he had to
17 go too.

18 HEARING OFFICER: Do you know what day the incident occurred on?

19 EMPLOYER WITNESS: (Looking through paperwork) It was...like it was about June the
20 5th

21 HEARING OFFICER: Was his job title loader?

22 EMPLOYER WITNESS: Yes.

23 HEARING OFFICER: What was the...the most recent previous incident of damage before
24 this final incident?

25 EMPLOYER WITNESS: On March the 9th we had a large sofa that we had to repair. A
26 leather sofa that cost \$200 to repair. They...instead of shrink wrapping it and trying not to get it
27 through the door, it looked like it was jammed in and out until it got stuck and it...it did major
28 damage to the leather sofa.

- 1 HEARING OFFICER: Was there anything prior to that?
- 2 EMPLOYER WITNESS: And then on March the... March the 5th, there was a china cabinet.
3 and an upholstered chair that cost us \$150 to repair.
- 4 HEARING OFFICER: And what happened with those?
- 5 EMPLOYER WITNESS: It just...I'm guessing the cabinet I think got scratched, and the
6 upholstery just had a tear on it.
- 7 HEARING OFFICER: Okay, is there anything else?
- 8 EMPLOYER WITNESS: February the 13th, there was another sofa incident. But that one
9 cost us \$100 to fix so we didn't charge him on that one to repair it.
- 10 HEARING OFFICER: Were there any more?
- 11 EMPLOYER WITNESS: December the 29th, a wood piece of furniture.
- 12 HEARING OFFICER: What was the cost on that?
- 13 EMPLOYER WITNESS: That one, actually, our manager repaired it so there was no damage
14 cost on that one.
- 15 HEARING OFFICER: Anything else?
- 16 EMPLOYER WITNESS: December 15th, was a chair, it cost \$50 to repair.
- 17 HEARING OFFICER: Okay, any others?
- 18 EMPLOYER WITNESS: October the 4th, a piece of wood furniture that cost \$200 to repair.
- 19 HEARING OFFICER: Anything else?
- 20 EMPLOYER WITNESS: November the 11th, were two pieces of wood furniture, totaling
21 \$140.

- 1 HEARING OFFICER: Anything else?
- 2 EMPLOYER WITNESS: October the 4th, another piece of wood furniture, totaling \$50.
- 3 HEARING OFFICER: How often does the...does the average employee have an incident
4 that leads to repairs being necessary?
- 5 EMPLOYER WITNESS: We...we generally get about maybe four damage reports a week.
6 But we have now 20 crews. Some weeks we'll go no weeks with any, you know, and some
7 weeks we'll have four.
- 8 HEARING OFFICER: How much is...is one employee expected to have?
- 9 EMPLOYER WITNESS: We try not to let them have...I mean, we would prefer them not to
10 have more than three a year, you know, just I mean we do know accidents happen. We do know
11 that heavy pieces of furniture sometime hit a wall or something. But any wall repairs we do our
12 self because our manager can sheet rock, so we don't charge the guys for that. We charge them
13 like for wood damage where we have to pay an outside source to come in and repair.
- 14 HEARING OFFICER: After each of these incidents, how did the employer determine that
15 Mr. Wider was responsible?
- 16 EMPLOYER WITNESS: They sign a piece of paper with the...they sign the damage report.
17 And before Theo takes deductions out of their check, he sits down with them and feel...you
18 know, talks to them. If they feel that it wasn't all them, you know, it's case by case. If he feels
19 that Marcus wasn't the one that did it, he would charge the other guy. But we always talk to
20 them beforehand, and they sign the paperwork.
- 21 HEARING OFFICER: Would they also be counseled at that time to try to prevent them
22 from causing more damage?
- 23 EMPLOYER WITNESS: Yes, yes.
- 24 HEARING OFFICER: So how are you involved in the decision to...to discharge Mr.
25 Wider?
- 26 EMPLOYER WITNESS: At that point they came to me and they just had me do all the fact
27 finding and gathering of the paperwork. Now that I'm the Operation Specialist, I handle
28 discharge and the workers comp...I mean, the unemployment claims. And we just...we just kind

1 of have the way whether he was helping the company or hurting the company. With that last big
2 claim, they were never gonna use us again, and pass the word to everybody because of how our
3 employees acted. We had to choose to make money for our company and the other 40
4 employees.

5 HEARING OFFICER: At the time that Mr. Wider began his employment was he...was he
6 given any expectations as to causing damage, and what could happen to him if he did cause
7 damage?

8 EMPLOYER WITNESS: Every...every time we have a meeting we go over, you know,
9 damages. We need to keep them lower. Too many damages we will terminate. You know, and
10 they work really hard on trying not to get them, but it just continually happened on his...his crew
11 and his jobs.

12 HEARING OFFICER: Okay, is there anything else to add at this time, Ms. Oliver...yeah,
13 Ms. Oliver?

14 EMPLOYER WITNESS: No, thank you.

15 HEARING OFFICER: Okay. Mr. Wider, I'm going to get your testimony in just a
16 second. But before we do that, do you have any questions for Ms. Oliver?

17 CLAIMANT: No, sir.

18 HEARING OFFICER: Okay. You can go ahead and state and spell your first and last
19 name please.

20 CLAIMANT: Marcus Wider, M-A-R-C-U-S W-I-D-E-R.

21 HEARING OFFICER: And were you last employed as a loader?

22 CLAIMANT: Yes, sir.

23 HEARING OFFICER: I have your dates of employment here as August 4, 2011 to May
24 24, 2012. Is that correct?

25 CLAIMANT: Yes, sir.

1 HEARING OFFICER: And what happened to cause your discharge?

2 CLAIMANT: The last job I done was the [UNCLEAR] job was on May 22nd
3 And Mr. Jones informed me May 24th, that I was gonna be discharged because of a situation at
4 Vantage.

5 HEARING OFFICER: And what happened on that job, did you cause damage?

6 CLAIMANT: No, sir. I called up the manager, Mr. Jones, to let him know what
7 was going on with the job. And I stated to him that the damage, most of the damage that they
8 said we done, we didn't do because the guy's father, he was moving stuff around at the
9 hardwood floor that went in the laundry room. He pushed the refrigerator and...and scratched
10 the floor. And clear when we got to that...before we moved, clearly there wasn't no damage on
11 it. When we got back we unloaded to the house, there wasn't no damage on it. I knew about the
12 treadmill because the guy who owned the house, him and his father helped push the treadmill
13 through the doorway. It wouldn't go in. And me and the other workers we stopped because it
14 wouldn't go in. So we wouldn't have to get the damage. And after the job was over Joe let me
15 know the next day that we had damage 75 [UNCLEAR] house. And like I stated to Joe, it was
16 impossible that we damaged that much because we didn't really damage. I remember damage
17 the wall because the guy hit the wall. But as I stated to Miss Mary Jo and the owner, Roger, that
18 the guy that I was working with, he didn't have no experience and I couldn't control him, how he
19 handle the furniture, and control my end of the furniture.

20 HEARING OFFICER: Was there any damage that you personally caused?

21 CLAIMANT: No, sir.

22 HEARING OFFICER: None at all?

23 CLAIMANT: None.

24 HEARING OFFICER: So...so you said most of the damage was caused by the customer's
25 father, is that right?

26 CLAIMANT: Yes, sir.

27 HEARING OFFICER: Then there was some damage that was caused by...

1 CLAIMANT: By the other two guys, they damaged the wall [UNCLEAR] they
2 was going up the stairs. And then the rails on... when you go upstairs, the side rails that you hold
3 on to, I knew that was scratched up. But that was by the guy Wilber and Jamie.

4 HEARING OFFICER: The... the previous damage amounts and... and causes of damage
5 that Ms. Oliver listed, do you deny those damages?

6 CLAIMANT: Yes, sir, because the damage could happen as in me and my... me
7 and a partner can go out and he could do the damage, but I still have to sign the paperwork and
8 both of us get charged for it.

9 HEARING OFFICER: So do you...

10 CLAIMANT: The couch... the couch, yeah [UNCLEAR] trying to put it through
11 [UNCLEAR] other damage that... causing damage.

12 HEARING OFFICER: So, the other ones that Ms. Oliver listed, the only one that you...
13 that you recall personally being responsible for is the leather couch, is that right?

14 CLAIMANT: Yes, sir.

15 HEARING OFFICER: Do you have any sense as to whether you were having more or less
16 instances of damage than anyone else that you worked with?

17 CLAIMANT: I wasn't getting damages like how she stated, because I talked to a
18 couple other guys; they had way more damage than I had and them guys didn't get fired. I
19 [UNCLEAR] on a job to come help some guys after they had damage the lady house real bad,
20 worse than what they said we had did, and them guys didn't get fired for that.

21 HEARING OFFICER: Did you... did you tell the employer what you told me about the
22 customer's father doing the damage?

23 CLAIMANT: Yes, I told Mr. Joe that.

24 HEARING OFFICER: What was his response?

25 CLAIMANT: He gave no response. He... I told him several times and he asked
26 me was I sure. And he said he's gonna contact me when they... when they contact the customer,

1 let them know about the damages that the father did it. I never heard a word from him. And I
2 told the owner too, Mr. Riley, that too.

3 HEARING OFFICER: Did you...did you always do the best you could to minimize
4 damage?

5 CLAIMANT: Every time I worked.

6 HEARING OFFICER: Were you told when you started that it was important to keep your
7 amount of damage cost as low as possible?

8 CLAIMANT: Yes, sir.

9 HEARING OFFICER: And were you...were you trained?

10 CLAIMANT: You got to train yourself.

11 HEARING OFFICER: So you received like...what do you say you received, on the job
12 training?

13 CLAIMANT: Yes, sir. Like, see, you got some big crews and some crews that...
14 that didn't know too much as you did. So, basically you be training yourself. I never went out
15 with no...I went out with a couple experienced guys but it wasn't like they took me hand for
16 hand and trained me about it. I had to learn [UNCLEAR].

17 HEARING OFFICER: You said earlier that when there was damage caused, all of the
18 workers on that job signed the paperwork, is that right?

19 CLAIMANT: Yes, sir. If you the driver, the driver has to sign that paper. And I
20 was the driver for...for a while before I became a loader. She informed me that my license
21 [UNCLEAR] Before I got the job I gave [UNCLEAR] driver record. And I stated to Miss Mary
22 Jo and Roger that I have a suspension before I even got the job. So, it was on my driving record.
23 I don't know how they didn't see it.

24 HEARING OFFICER: When did you stop driving for the employer?

25 CLAIMANT: It was like the beginning of May 2012.

1 HEARING OFFICER: Okay, is there anything else you'd like to add at this time Mr.
2 Wider?

3 CLAIMANT: No, sir.

4 HEARING OFFICER: Speak up just a little bit for the...

5 CLAIMANT: No, sir.

6 HEARING OFFICER: Okay Ms. Oliver, do you have any questions for Mr. Wider?

7 EMPLOYER WITNESS: Yeah. You know whenever we did the...the you signed off on
8 these. If you didn't do it, you know you could have...you...you...when you went to Theo, he
9 didn't make you pay for it if you didn't sign off on it. So, you knew ahead of time that you were
10 agreeing to sign...if you signed it, you were agreeing to pay your half, so then you had to take
11 credit for it. There is times...like there was one where you were just a hundred percent at fault
12 because the other guy refused to pay, because he said he didn't do the damage. So, you had the
13 right to fight each time you went. Theo called you in there. So, if you signed it and were
14 willing to let us take it out of your check, it had to be damage you'd known about and, you
15 know. And the...the driving record...

16 HEARING OFFICER: Well, let him respond to that first. I guess I'll put it into a question
17 for Mr. Wider. Did you know that you had the right to not sign those documents if you...if you
18 felt that you were not responsible?

19 CLAIMANT: Yes, sir. I thought I had one damage taken out my check the whole
20 time.

21 HEARING OFFICER: Did you sign any...did you sign the other documents where you
22 felt that you weren't responsible but you still signed it?

23 CLAIMANT: No. No, sir, not at all. If I felt like I was at fault, I signed it.
24 [UNCLEAR] told me I only had one damage taken out of my check.

25 HEARING OFFICER: Ms. Oliver, do you have any...do you have his signed copies of
26 those documents?

- 1 EMPLOYER WITNESS: I do not. I just have the list that they get where it comes out of the
2 check, the deductions where they come out of the checks, where a percentage comes out and
3 everything.
- 4 HEARING OFFICER: Could I see that?
- 5 EMPLOYER WITNESS: Sure. I made a copy in case you needed it. It would be the end
6 ones where the highlighted...
- 7 HEARING OFFICER: Take a look at those if you would Mr. Wider.
- 8 CLAIMANT: Okay.
- 9 HEARING OFFICER: Ms. Oliver, do you want to submit those documents that...take a
10 look at...
- 11 EMPLOYER WITNESS: Yes, sir.
- 12 HEARING OFFICER: ...for the record?
- 13 EMPLOYER WITNESS: Yes, sir.
- 14 HEARING OFFICER: Just for the record, those are the pages showing amount of
15 damages and signing responsibility for the damages, along with the dates. Mr. Wider, do you
16 have any objection to the employer submitting those documents?
- 17 CLAIMANT: I have [UNCLEAR] like I stated, we could be on a job or the...or
18 the... another guy and he can do the damages but both of ya'll have to sign the paperwork stating
19 that it was a damage. The only time when you get [UNCLEAR] when you talk to Mr. Theo and
20 he has you sign something stating that you did the damage, they gonna deduct out of your check.
21 I only recall signing that one time through Mr. Theo. Most of that time I was the driver, so I had
22 to sign the paperwork [UNCLEAR] damage, until Mr. Riley not...notified the workers that if
23 you didn't do it, you didn't have to sign it.
- 24 HEARING OFFICER: Well when was that?
- 25 CLAIMANT: That was right before I got fired that he stated that.

1 HEARING OFFICER: Ms. Oliver, would...would the...would every instance here where
2 Mr. Wider's name appeared, would that be an instance where he was charged for damages?

3 EMPLOYER WITNESS: As long as you see a total beside it, yes, sir. There's like one or
4 two like this. There's one or two that if you see [UNCLEAR] we fixed it in-house and didn't
5 charge them. If we could fix it, we never charged the employees. And then we...we try to be
6 fair. Like, there was one back on November the 11th, he was with like six people, so we did 16
7 percent of the damage per person. They knew...everybody knew if you didn't do the damage,
8 don't sign the paperwork. You know, it did have to be signed for it to go into our office,
9 they...they knew that. He...he may not have heard that but we always stated, "If you feel you
10 didn't do the damage..." But most pieces carry...take two people to carry, so two people do the
11 damage normally.

12 HEARING OFFICER: Okay. I'm gonna overrule the objection and go ahead and mark
13 those ten pages as Employer's Exhibit Number One. I'll enter those into the record as such. Ms.
14 Oliver, do you have any more questions for Mr. Wider?

15 EMPLOYER WITNESS: No. Just a statement about the driving. I did submit your driving
16 record to the...to our insurance, and it was fine. But every three months they pull another MVR,
17 so something happened in that period that made you ineligible to drive. Because we did submit
18 your beginning [UNCLEAR] so it was not whatever was on there beginning. Something
19 evidently happened, either a speeding ticket or a failure to pay something that...that caused you
20 to be excluded for the driver. Because when you first got hired your driving record was good to
21 be a driver. So whatever happened later on...every three months our insurance company pulls
22 the new MVR for us, and that's why you were found excluded.

23 HEARING OFFICER: Okay. Well, do you have any more questions for Mr. Wider at this
24 time?

25 EMPLOYER WITNESS: No, sir.

26 HEARING OFFICER: Okay, then before I close the hearing I'm gonna go back to each
27 witness for a final opportunity to add anything additional. So, since we started with you Ms.
28 Oliver, is there anything you'd like to add before I close the hearing?

29 EMPLOYER WITNESS: No, sir.

30 HEARING OFFICER: Do you recall hearing Mr. Wider say around the time that he was
31 discharged that the damage was caused by the customer's father?

1 EMPLOYER WITNESS: I didn't hear that but he had spoken to [UNCLEAR] on the
2 telephone. So, that I...I...that would be hearsay. I don't know. But the customer, you know, of
3 course, they gave their side and they...they are saying we did it all. They didn't say they were
4 having any...anybody moving stuff. I just know the husband had to walk off and leave because
5 of all the damages, you know. And they called the office straight afterward and said, you know,
6 they saved years for this house and we damaged just about every piece, or every wall, or the
7 banister, the floor, that we touched. We just can't have that, you know, on our reputation as
8 being sloppy movers.

9 HEARING OFFICER: Okay. Is there anything else you'd like to add at this time?

10 EMPLOYER WITNESS: No.

11 HEARING OFFICER: Excuse me; before I close the hearing is there anything you'd like
12 to add?

13 EMPLOYER WITNESS: No. I'm good, thank you.

14 HEARING OFFICER: Okay. Mr. Wider, is there anything you'd like to add before I
15 close the hearing?

16 CLAIMANT: That I didn't damage their house, have the customers say I did. I
17 felt like the customers go around us, on me especially, because I didn't. I did the best I could to
18 help the customers out. I even called the manager that night when we was moving to let them
19 know what was going on with the situation with the job. He told me to continue to do the job
20 and we'll look over tomorrow. And I felt like I should have been approached a different way
21 about the job after the fact because I worked the next day after the job and I complained to them
22 about the worker I was working with. That's about it.

23 HEARING OFFICER: Okay, anything else before I close the hearing?

24 CLAIMANT: No, sir.

25 HEARING OFFICER: Then there being no further questions and no further testimony, I
26 declare this hearing adjourned.

27 HEARING CLOSED.

Appeal No. 12553-18908

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.

Lois Szirko
Lois Szirko

SWORN to before me this the

20th day of *October*, 2012

Mary Farley (LS)

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

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Marcus Wider,

Appellant,

v.

South Carolina Department of Employment
and Workforce and K B Enterprises, Inc.,

Respondent.

Docket No: 12-ALJ-22-0439-AP

MOTION FOR REHEARING

TO: Jack E. Cohoon, Attorney for Appellant

Respondent, the South Carolina Department of Employment and Workforce, (hereinafter "Respondent" or "the Department.") moves the Court for rehearing of its Order issued February 27, 2013, pursuant to ALC Rule 40. In support thereof, Respondent states:

ARGUMENT

GIVEN THE COURT'S RULING THAT THE APPELLATE PANEL FAILED TO MAKE A FACTUAL FINDING ON A MATERIAL DISPUTE OF FACT, THE PROPER REMEDY IS TO REMAND THIS MATTER TO THE APPELLATE PANEL.

In Baldwin v. James River Corp., 304 S.C. 485, 405 S.E.2d 421 (Ct. App. 1991), a case analogous to the present one, the Court of Appeals reversed and remanded a circuit court's order reversing the finding of the full workers' compensation commission. In doing so the Court reasoned:

Rather than reinstate the single commissioner's award after finding the panel's findings of fact conclusory and thus insufficient, the circuit court *should have remanded the case to the commission* for the commission to make definite and detailed findings of fact upon the evidence sufficient to enable a reviewing court to determine whether its findings of fact are supported by the evidence and whether it has properly applied the law to them. *In effect, what the circuit court did here in reinstating the single commissioner's award was to determine the facts from conflicting evidence.* Only the commission is authorized to do this. [internal citations omitted] (emphasis added)

Id. at 487, 405 S.E.2d at 422 This Court, in its Order issued February 27, 2013, found "the Department's decision fails to address the dispute that exists in the material facts." and "when material facts are in dispute, the Department must make specific, express findings of fact." See

Heater of Seabrook, Inc. v. Public Serv. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (1998); S.C. Code Ann. § 1-23-350 (Supp. 2012) (Order p. 4). By acknowledging the existence of a factual dispute, the Court should properly have remanded the case back to the Panel because “only the [Panel] is authorized to pass upon the weight of the evidence ...and it is proper to remand a case to it for required findings where the record contains evidence from which such findings may be made.” Shealy v. Algernon Blair, Inc., 250 S.C. 106, 110, 156 S.E.2d 646, 648 (1967)

In the present case the Court held “the Appellate Panel decision only includes a statement of the statutory language requiring a disqualification, but includes no explicit finding of fact to support the finding of a disqualification period.” (Order p. 5) The Court can not accept such a decision at face value without requiring the Panel to explain its reasoning. See Kiawah Prop. Owners Group v. Pub. Serv. Comm'n of S. Carolina, 338 S.C. 92, 525 S.E.2d 863 (1999) Furthermore, the Court cannot sufficiently address the issues on appeal because a “recital of conflicting testimony followed by a general conclusion is patently insufficient to enable a reviewing court to address the issues.” Id.

By holding that the Department made no explicit findings as to whether Appellant caused the damage, the Court “speculates” that the controlling factor for the Panel’s decision is Appellant’s culpability in damaging customer property. The Court has held an appellate court cannot sufficiently review an order for error when the reasons underlying the decision are left to speculation. Able Communications, Inc. v. S. Carolina Pub. Serv. Comm'n, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986)

The Court in this case impermissibly reevaluated the facts and inferred from the face of the decision that the Panel reached its decision based on a finding where the Court found no evidence existed in the record to support such a finding. As was the case in Able, the Court here speculates as to the reasons underlying the decision. See Spartanburg Reg'l Med. Ctr. v. Oncology & Hematology Associates of S. Carolina, LLC, 387 S.C. 79, 92, 690 S.E.2d 783, 789 (2010) In doing so the Court has determined the facts from conflicting evidence; a duty delegated solely to the Panel as the

ultimate finder of fact. See Merck v. S. Carolina Employment Sec. Comm'n, 290 S.C. 459, 460, 351 S.E.2d 338, 339 (1986)

For these reasons, the Order of the Court should be vacated and the matter remanded to the Department for compliance with Section 1-23-350. See Hamm v. S. Carolina Pub. Serv. Comm'n, 295 S.C. 429, 431, 368 S.E.2d 911, 913 (1988)

CONCLUSION

The Order of the Court issued on February 27, 2013, should be vacated and the matter remanded to the Department for compliance with Section 1-23-350.

WHEREFORE, Respondent prays that the motion be granted and that all time requirements and deadlines be held in abeyance pending resolution of this motion.

Pursuant to ALC Rule 40, the time for further appeal is stayed by the filing of this motion, and runs from receipt of an order granting or denying the motion.

Respectfully submitted,



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Attorney for Respondent SCDEW

March 8, 2013

support a finding of discharge for cause and based upon the Department's failure to make any finding that he caused the damage. (Appellants Brief p. 13). At no point in its brief did the Department claim that remand, and not reversal, would be the proper remedy should Wider prevail. If a respondent fails to respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct. *First Union Nat. Bank v. FCVS Communications*, 321 S.C. 496 469 S.E.2d 613 (Ct. App. 1996). By failing to make its argument regarding remand in its brief, the Department admitted to the correctness of Wider's position and waived this issue.

Moreover, a motion for rehearing is not a vehicle to allow aggrieved parties to make new arguments and get a second bite at the apple. The Appellate Court Rules concisely explain the purpose and format of a petition or motion for rehearing, which is to "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221, SCACR. Because the Department never previously argued that remand, and not reversal, was the proper remedy, the Department cannot now claim that the Court "overlooked or misapprehended" this issue. Likewise, the courts have recognized that a party may not raise an issue for the first time in a post-trial motion which could have been raised at trial. *Mail Source, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370., 374, 588 S.E.2d 639, 641 (Ct. App. 2003)(holding that a party cannot raise an issue for the first time in a Rule 59(e), SCRCP motion which could have been raised at trial.) Because the Department declined to address the proper remedy in the briefing of this matter, it did not preserve this issue for review in its motion for rehearing and the motion should be denied.

2. The Department's Motion for Rehearing should be denied because it is pointless to remand a case for reconsideration when the record on appeal does not contain substantial evidence to support a finding that Wider was discharged for cause.

The Court properly found that the "the agency's decision was clearly erroneous in light of the lack of substantial evidence in the record to support the finding that Appellant was fired for cause." (Order p. 6). The Order reflects that after carefully reviewing the record on appeal, the Court concluded that

"[t]he record does not include evidence to support a finding that the Appellant caused the damage. Notably, the Employer failed to provide any competent documentation with the exact extent of the damage or evidence determining who caused the damage." (Order, p. 5).

It is entirely appropriate for the Court to reverse an agency decision unsupported by substantial evidence. *See* S.C. Code Ann. § 1-23-380(5) (Supp. 2012). "Substantial evidence" is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is 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. *Gattis v. Murrells Inlet VFW # 10420*, 353 S.C. 100, 576 S.E.2d 191, 2003 S.C. App. LEXIS 11 (S.C. Ct. App. 2003). Here, due to the paucity of evidence in the record, including a lack of witnesses with first-hand knowledge and documentation of the incident leading to Wider's discharge, reasonable minds considering the evidence before the Department could not reach the conclusion that the Department reached. Remand is improper because, since the Employer failed to meet its burden of proof, there is no evidence in the record on appeal upon which a reasonable person could find that Wider was discharged for cause.

The Respondent's reliance upon *Baldwin v. James River Corp.* is misplaced. 304 S.C. 485, 405 S.E.2d 421 (Ct. App. 1991). In *Baldwin*, the Court of Appeals found the circuit court had erred by reinstating a workers compensation award by a single commissioner due to a

conclusory and incomplete decision by the three-member panel because doing so amounted to determining the facts from conflicting evidence, which only the commission is authorized to do. Unlike *Baldwin*, in the present case there is no conflicting evidence which would necessitate the Court remanding the case to the Department to weigh and rule upon. The Employer failed to present substantial evidence of its supposed cause for discharge, and therefore nothing could be gained by remanding the case.

Shealy v. Algernon Blair, Inc., the other principle authority cited by the Department in its motion, in fact undermines the Department's argument for a remand. In *Shealy*, the South Carolina Supreme Court held that "[o]nly the Commission is authorized to pass upon the weight of the evidence in a workmen's compensation case, and it is proper to remand a case to it for required findings where the record contains evidence from which such findings may be made." 250 S.C. 106, 110 (S.C. 1967)(emphasis added). Applying the converse of this holding, it logically follows that when the record is lacking in evidence from which a finding of discharge for cause may be made, it is improper to remand the case. This makes sense, as it is contrary to judicial and administrative economy to remand a case for reconsideration when the facts admit of only one logical conclusion.

Finally, it violates the public policy undergirding the unemployment benefits system for adjudication of a worker's claim to be further delayed for needless remands. The General Assembly's public policy in passing the Unemployment Benefits Law is to combat the many ills of unemployment on society:

[t]he public policy of this State is declared to be as follows: Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this State; involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family; the achievement of social

security requires protection against this greatest hazard of our economic life; this can be provided by encouraging the employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. S.C. Code Ann. § 41-27-20.

To accomplish these clearly-stated goals, it is essential that unemployment benefits cases be adjudicated quickly, a fact recognized in the statutory provision granting jurisdiction of appeals to the Court, which states that "[t]hese actions...must be heard in a summary manner and must be given precedence over other cases." S.C. Code Ann. § 41-35-750. The General Assembly's effort to combat unemployment's "crushing" burden is undermined by needless delays and remands. Wider and his family should not face further delays and hardship waiting for a remand and reconsideration when there is no substantial evidence in the record to support a finding he was discharged for cause.

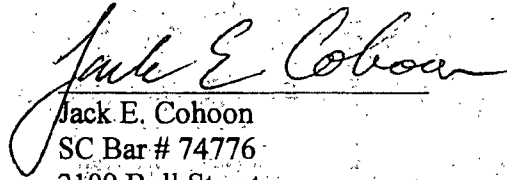
CONCLUSION

This Court's Order is sound. The Department's argument for remand was not timely made and therefore was not preserved. Even if it the Department's argument was preserved, it is without merit due to the lack of substantial evidence in the record to support a finding of discharge for cause. Moreover, a remand under these circumstances would needlessly delay the already protracted consideration of Wider's unemployment benefits claim contrary to the General Assembly's public policy that these claims be handled quickly in order to combat the crushing and corrosive effects of unemployment. This delay would inflict further hardship on Wider and his family.

WHEREFORE, Appellant prays that the motion by the Respondents be denied.

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES



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Attorney for Appellant

Columbia, South Carolina

March 22, 2013

14th EXHIBIT

A#: 1

FILE NO: 171 2553

1 UCB-103
REV. 7/10

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND
P.O. BOX 995, COLUMBIA, S.C. 29202

1 MARCUS O WIDER

DATE OF THIS NOTICE 06/22/12

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION ENDS	
1 MARCUS O WIDER				-3726	05/27/12	10/13/12	
WFC NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS
1 320	I	01	\$ 167.00	\$ 3340.00	\$ 3340.00	\$ 0.00	05/26/13

1 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
1 PERFORM ASSIGNED WORK TO THE SATISFACTION OF THE EMPLOYER. FAILURE TO PERFORM IN A MANNER THAT
1 YOUR EMPLOYER HAD A RIGHT TO EXPECT CONSTITUTES DISCHARGE FOR CAUSE IN CONNECTION WITH THE WORK
1 UNDER THE SOUTH CAROLINA CODE, SECTION 41-35-120(2). YOU ARE DISQUALIFIED FOR 20 WEEKS. YOUR
1 MAXIMUM BENEFITS ARE ALSO REDUCED BY 20 TIMES YOUR WEEKLY BENEFIT AMOUNT.

1 THE RECORD SHOWS THAT THE TERMINATION OCCURRED DUE TO IMPROPERLY MOVING ITEMS IN A CUSTOMER'S
1 HOME AND CAUSING DAMAGE.

1 LAST SEPARATION FROM NON-LIABLE EMPLOYER

1 UI CLAIMS ADJUDICATOR

1 MAILING DATE 06/25/2012

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE DEPARTMENT 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 WORKFORCE CENTER BY MAIL, ADDRESSED TO THE "APPEAL TRIBUNAL," P.O. BOX 995, COLUMBIA, SOUTH CAROLINA 29202, OR BY FAX (803) 737-0287. FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, CONTACT YOUR LOCAL WORKFORCE CENTER OR THE APPEALS DEPARTMENT AT (803) 737-2520.

UCB-102DC
8/99
08122

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

UNEMPLOYMENT INSURANCE DIVISION
DISCHARGED FOR CAUSE
FACT FINDING

Effective Date of Issue 05/27/12	
Type of Claim	
New ☒	Add ☐
Trans ☐	Rein ☐
Cont. ☐	
BYE 05/26/13	

L O No 3200

CLAIMANT'S

NAME MARCUS O WIDER

SOCIAL

SECURITY NUMBER

3726

1 Most recent BONA FIDE employer (Name of Company) K B ENTERPRISES INC

Address of Company 2006 ROCKLAND RD COLUMBIA SC 29210

Telephone No of Company 731-7775

Name of individual at Company to contact for more information

2 Dates of employment with this company beginning 08/04/11 ending 05/24/11

Hours worked from 7 30 to 7 00 or which shift for 6-7 days per week

Ending salary \$ 11 00 per HR Occupation DRIVER\ LOADER

3 CLAIMANT'S STATEMENT

a I was discharged by (Name of Person) JOBE Title MANAGER

because (Include reason for discharge on that particular day.) WE DAMAGED A CUSTOMER'S HOME ON MAY 24TH, BUT I THINK THE REPAIRS WERE MINOR HE DID NOT TELL ME THE COST OF THE REPAIRS WE CAUSED ALITTLE BIT OF DAMAGE BUT NOT AS MUCH AS HE SAID MY CO-WORKERS AND I TRIED TO EXPLAIN WHAT HAPPENED BUT HE TOOK THE CUSTOMERS'S WORD OVER OURS JOBE SAID WE SCRATCHED A WALL, DAMAGED A TREADMILL, AND A COUCH HE SAID WE MESSED UP THE TILES ON THE FLOOR I KNOW WE DAMAGED THE FLOOR AND PUT A FEW SCRATCHES ON THE WALL WHILE WE WERE INSTALLING THE REFRIGERATOR I ALSO TRIED TO EXPLAIN THAT THE FATHER CAUSED SOME DAMAGES BUT HE WOULD NOT LISTEN THE DAMAGE WE CAUSED MAY HAVE BEEN MORE THAN \$50.00 BECAUSE THEY MAY HAVE TO REPLACE SOME TILES ON THE FLOOR JOBE THOUGHT THE ENTIRE FLOOR NEEDED TO BE REPLACED BUT I HAVE NOT TALKED TO HIM SINCE HE FIRED ME
REBUTTAL NO REBUTTAL

b If you were discharged for violation of a company rule, please explain rule and violation NO POLICY VIOLATION

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 JOBE AND THE OWNER MR ROGERS

What were the results of this discussion? THEY SAID THEY WOULD CALL BACK, BUT THEY NEVER DID

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

SC Dept. of
Employment & Workforce
DATE 06/18/2012

JUN 22 2012

Received Benefits Div

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

[Handwritten Signature]

DATE OF REPORT 06/18/2012

BENEFIT DEPARTMENT

South Carolina Department of Employment and Workforce

Fact Finding Attachment

☐ Employer Statement

Employer Name K B ENTERPRISES INC

Claimant Name MARCUS O WIDER

☒ Claimant Statement

Social Security Number 3726

Date 06/18/2012

Time 3:12

Telephone Number Called 803 466

Person Contacted or Left Message With MARCUS O WIDER
CLAIMANT

Title _____

Left Message With Above to Have _____

(Name/Title)

Call By _____

(Time/Date)

Leave your name, title, agency name, claimant's name, time, date, and reason called

Statement of Rebuttal THEY ARE LYING

Final Incident/Date _____

Company Policy _____

Dates Absent/Tardy/Early Departures _____

Warnings/Dates/Written or Verbal/Reasons _____

Other Comments _____

South Carolina Department of Employment and Workforce

Fact Finding Attachment

☐ Employer Statement

Employer Name K. B. ENTERPRISES INC.

☒ Claimant Statement

Claimant Name MARCUS O WIDER

Social Security Number 3726

Date 06/18/2012

Time 3:28

Telephone Number Called CLAIMANT CALL

Person Contacted or Left Message With MARCUS O WIDER

Title CLAIMANT

Left Message With Above to Have

(Name/Title)

Call By

(Time/Date)

Leave your name, title, agency name, claimant's name, time, date, and reason called.

Statement of Rebuttal: ONE OF THE GUYS THAT WAS WORKING WITH US WILBERT HE DID NOT GET FIRED HE SAID HE OVERHEARD JOBE AND MARY TALKING AND THEY SAID I WAS PUT WITH JEREMY SO WE COULD MESS THINGS UP AND GET FIRED

Final Incident/Date

Company Policy

Dates Absent/Tardy/Early Departures

Warnings/Dates/Written or Verbal/Reasons

Other Comments: CLAIMANT CALLED BACK AND WANTED TO GIVE ADD'L STATEMENT

South Carolina Department of Employment and Workforce

Fact Finding Attachment

☒ Employer Statement

Employer Name K B ENTERPRISES INC

☐ Claimant Statement

Claimant Name MARCUS O WIDER

Social Security Number 3726

Date 06/18/2012

Time 9:33

Telephone Number Called 731-7775

Person Contacted or Left Message With MARY

Title OPERATIONS SPECIALIST

Left Message With Above to Have

(Name/Title)

Call By

06/18 @ 9:33
(Time/Date)

Leave your name, title, agency name, claimant's name, time, date, and reason called

Statement of Rebuttal THIS WAS A BRAND NEW HOUSE AND HIM TWO OTHER WORKERS CAUSED \$7,000 WORTH OF DAMAGE WE ARE WAITING ON PAPERWORK FROM THE CONTRACTORS THERE WAS DAMAGE TO THE HARDWOOD FLOORS, WALLS, BAINSTER ON THE STAIRS, TREADMILL AND THE DOOR CASING THIS HAPPENED ON 05/24 AND HE WAS DISMISSED THE SAME AFTERNOON

Final Incident/Date

Company Policy GROUND FOR TERMINATION

Dates Absent/Tardy/Early Departures

Warnings/Dates/Written or Verbal/Reasons

Other Comments EMPLOYER WILL FAX OVER DAMAGE REPORTS THAT THE CLAIMANT HAD TO
PAY BACK ALSO REQUESTED WARNINGS

FFAT-1 June 2010
Catalog# 08120

NET-101
Rev VIISOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
REQUEST FOR INFORMATION
UNEMPLOYMENT INSURANCE BENEFITSCLAIMANT'S NAME Barbara O. Widen

SS #

NAME WORKED UNDER

DATE MAILED 2012-06-05EMPLOYER'S ACCOUNT # 284788EMPLOYER'S NAME K & ENTERPRISES, INC
& ADDRESS 2008 ROCKLAND RD
COLUMBIA SC 29210RETURN WITHIN SCDW
10 DAYS OF THE 201 Outfile Drive
ABOVE DATE TO LEXINGTON, SC 29072FAX NUMBER 803-258-8839

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

CUSTOMER SAID WE DAMAGED THEIR HOUSE, BUT I DID NOT DO IT

☐ A telephone interview has already been scheduled for the claimant on 06/18/2012 at 09:00 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) Customer Complaint & Several Damages

State company policy that claimant violated, if applicable, and describe the final incident leading to the separation.

No Policy. He simply cost the company more
than he was making
the company

If discharged for absenteeism, list dates of absences

RECEIVED

☐ VOLUNTARILY QUIT (Give specific reason)

JUN 13 2012

☐ OTHER (Explain in detail)
b7-D-1
Lexington Workforce Center

Date of Employment

FROM

8/19/11

TO

5/29/12EMPLOYER NAME KB Enterprises, IncACCOUNT NUMBER 284788EMPLOYER SIGNATURE [Signature]TITLE ManagerTELEPHONE NUMBER (803) 731-7775DATE 6/12/12

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

Fwd: Marcus Wider

Roger Boyer

Sent: Monday, June 18, 2012 12:29 PM
To: Mary Oliver
Attachments: Attachment.pdf (37 KB); ATTD0001.htm (156 B)

Roger Boyer

President/ Two Men And A Truck
Columbia, SC

"Voted Best Moving Company by the readers of Columbia Metropolitan Magazine 14 years"

Rogerboyer@gmail.com
(803) 731-7775 office
(803) 622-7783 cell

Dot # 1713552
ORC# 9494-B

Begin forwarded message

From: "Doane, Lorretta" <LDoane@smithlanier.com>
Date: June 18, 2012 10:39:47 AM EDT
To: "Roger Boyer (Roger.Boyer@twomen.com)" <Roger.Boyer@twomen.com>
Subject: Marcus Wider

Roger, here is the driver exclusion that is a part of your policy showing Marcus is an excluded driver. This is due to his motor vehicle drivers record report. Sign this and email back to me please. This should suffice to show the employment commission. I will add the new truck and send you an ID card. Many thanks

Lorretta L. Doane, AAI, CPIW, CISR
Commercial Lines
Senior Account Manager
J Smith Lanier of Augusta
PO Box 120320
Augusta, GA 30912
706-737-0811 ext 1000

This e-mail and any files transmitted with it are confidential. If you are not the intended addressee, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake. If you are not the intended addressee/recipient, you are hereby notified that any use of, disclosure, copying, distribution, or reliance on the contents of this information is strictly prohibited and could result in legal action against you. Please reply to the sender advising of the error in transmission and immediately delete/destroy the message and any accompanying documents.

If an Employee applicant is to be a "Driver", the Safety Manager will obtain a completed "Driver History Form" (see Appendix B) from the applicant, which will be used to obtain an MVR for evaluation.

In the event an employee applicant is hired and must begin driving on company business prior to the receipt of the MVR, the safety manager must, as a minimum, carefully review the applicant's driver history form before granting driving privileges.

Existing Employees

If an existing employee is changing from a non-driving position to a position requiring driving on company business, the employee must complete and sign a "Driver History Form".

The Safety Manager will order an MVR so it can be evaluated for "High Risk Driver" status prior to granting a change in job status.

Periodic MVR Checks

The Safety Manager is to obtain MVRs every year for existing Drivers to examine any change in "Qualified Driver" status.

In addition, the company maintains the right to conduct periodic and random review of MVRs at its discretion.

The Safety Manager will file MVR reports in Employee's file.

IDENTIFICATION OF HIGH RISK DRIVERS

A Driver will be classified as a High Risk Driver if the MVR check so indicates or if it is otherwise determined, that the Driver has one or more of the following violations:

1. Conviction for an alcohol and/or drug-related driving offense.

2. Refusal to submit to a Blood Alcohol Test.

6. Suspension or administrative restriction within the last three years.

- 7 Leaving the scene of an accident as defined by state laws
- 8 At fault in a fatal accident
- 9 Felony committed involving a vehicle
- 10 Two or more company vehicle physical damage claims in any twelve month period
- 11 Following too close

If an employee is identified as a "High Risk Driver", the Safety Manager must immediately suspend all driving privileges. The "High Risk Driver" will not be authorized to drive a motor vehicle at any time on company business.

This action may result in the Safety Manager either transferring the employee to a non-driving position, or the employee may be subject to dismissal procedures.

The employee may reapply for a driving position once he/she can show an MVR which indicates that he/she is no longer a "High Risk Driver".

ACCIDENT AND VIOLATION REPORTING

Supervisor Notification

The Driver is required to notify his/her immediate supervisor of any accident or moving violation on company business or otherwise by the beginning of the following workday.

Plus

Company vehicles- the Driver should call the company's automobile insurance carrier as outlined in the accident reporting kit.

Non-Company vehicles- the Driver should call his/her personal automobile insurance carrier.

Daily Rental Vehicles- the Driver should notify the rental company.

The Driver should give the complete accident reporting kit to their supervisor.

EXHIBIT

E# 1

FILE NO: 1712553

Two Men and a Truck/ Greater Columbia
Damages Activity Report

This is my last year

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Customer				Job		Damage Amount	
				Date	Number	Estimate	Actual
Item	Open Date	Close Date	Estimate Amt Date	Actual Amount Date	Insurance Claim Date	Vendor Est Date	Vendor Actual Date
		Team Member		% Resp.			
Contact Date	Contact Note						

Kline, Katherine

Furniture - Wood	22-Aug-2011	15-Sep-2011	22-Aug-2011	15-Sep-2011	08-Aug-2011	43096	\$50.00	\$40.00
	Clark, Larry		50.00%					
	Wider, Marcus		50.00%					

Kurz, Annika

				09-Aug-2011	43122	\$50.00	\$40.00
Dining Table	22-Aug-2011	22-Aug-2011	22-Aug-2011	22-Aug-2011			
	Young, Amos D		100.00%				

Coffey, Michelle

Furniture - Wood	22-Aug-2011	11-Oct-2011	22-Aug-2011	11-Oct-2011	10-Aug-2011	43132	\$300.00	\$670.00
	Taylor, Marcus		50.00%					
	Bethea, Tyron		50.00%					

Ward, Allison

				11-Aug-2011	43172	\$10.00	\$10.00
Wall	22-Aug-2011	22-Aug-2011	22-Aug-2011	22-Aug-2011			
	Guess, Leon		50.00%				
	Smith, Lemuel E		50.00%				

Barringer, Brad

Furniture - Wood	22-Aug-2011	02-Sep-2011	22-Aug-2011	02-Sep-2011	12-Aug-2011	43178	\$50.00	\$50.00
	Clark, Larry		50.00%					
	Wider, Marcus		50.00%					

Locklair, Kay

				13-Aug-2011	43204	\$50.00	\$22.50
Picture	22-Aug-2011	30-Aug-2011	22-Aug-2011	30-Aug-2011			
	Good, Dennis R		50.00%				
	Wilson, Alzo T		50.00%				

Danford, Don

Furniture - Wood	22-Aug-2011	07-Dec-2011	22-Aug-2011	16-Aug-2011	43243	\$50.00	\$0.00
	McCrea, Crinshaw			50.00%			
	Brown, Robert			50.00%			

Wyatt, Mike

Lamp	22-Aug-2011	08-Sep-2011	22-Aug-2011	08-Sep-2011	18-Aug-2011	43275	\$20.00	\$20.00
	Young, Amos D		100.00%					

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Customer				Job		Damage Amount	
Item	Open Date	Close Date	Estimate Amt Date	Date Actual Amount Date	Number Insurance Claim Date	Estimate Vendor Est Date	Actual Vendor Actual Date
	Team Member		% Resp.				
Contact Date	Contact Note						
Ringer, Marion							
Door	07-Sep-2011	04-Oct-2011	07-Sep-2011	26-Aug-2011 04-Oct-2011	43395	\$30.00	\$50.00
	Berry, Ronald		50.00%				
	Leaphart, Tellas		50.00%				
Steele, Jeff & Ami							
Furniture - Wood	07-Sep-2011		07-Sep-2011	26-Aug-2011	43408	\$200.00	\$0.00
	DeAgüero, Gary		25.00%				
	Harris, Thomas R		25.00%				
	Sedlak, Robert		25.00%				
	Azukas, Jessie J		25.00%				
Libke, Jan							
Furniture - Wood	07-Sep-2011	12-Sep-2011	07-Sep-2011	29-Aug-2011 12-Sep-2011	43422	\$150.00	\$150.00
	Wilson, Alzo T		50.00%				
	Brown, Robert		50.00%				
Davis, Georgette							
Furniture - Wood	07-Sep-2011	16-Dec-2011	07-Sep-2011	31-Aug-2011 16-Dec-2011	43466	\$300.00	\$100.00
	Wider, Marcus		25.00%				
	Berry, Ronald		25.00%				
	Grant, Eric J		25.00%				
	Leaphart, Tellas		25.00%				
Kyzer, Jacob							
Wall	04-Oct-2011	04-Oct-2011	04-Oct-2011	01-Sep-2011 04-Oct-2011	43494	\$50.00	\$20.00
	McCrea, Crinshaw		50.00%				
	Wider, Marcus		50.00%				
Godshall, Cathy							
Glass	15-Sep-2011	11-Oct-2011	15-Sep-2011	02-Sep-2011 11-Oct-2011	43503	\$50.00	\$40.00
	Irick, Donald A		100.00%				
Lowery, Michelle							
Glass	29-Sep-2011	29-Sep-2011	29-Sep-2011	02-Sep-2011 29-Sep-2011	43500	\$20.00	\$20.00
	Sedlak, Robert		50.00%				
	Harris, Thomas R		50.00%				

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Customer				Job		Damage Amount	
				Date	Number	Estimate	Actual
Item	Open Date	Close Date	Estimate Amt Date	Actual Amount Date	Insurance Claim Date	Vendor Est Date	Vendor Actual Date
	Team Member		% Resp.				
	Contact Date	Contact Note					

Roth, Becky

Furniture - Wood	04-Oct-2011	04-Oct-2011	02-Sep-2011	43508	\$100.00	\$0.00
	DeAgüero, Gary	50.00%				
	Azukas, Jessie J	50.00%				

Vernon, Elaine

Dining Table	04-Oct-2011	04-Oct-2011	02-Sep-2011	43499	\$300.00	\$485.00
	Berry, Ronald	50.00%	04-Oct-2011			
	Leaphart, Tallas	50.00%				

Glenn, Nancy

Wall	04-Oct-2011	16-Dec-2011	03-Sep-2011	43528	\$20.00	\$0.00
	Bethea, Tyron	50.00%	04-Oct-2011			
	Martin, Jamie D	50.00%				

Tolson, Penny

Furniture - Wood	04-Oct-2011	04-Oct-2011	06-Sep-2011	43530	\$50.00	\$50.00
	Wider, Marcus	50.00%	04-Oct-2011			
	Berglund, Noah	50.00%				

Sprinkle, Derrick

Wall	04-Oct-2011	11-Nov-2011	09-Sep-2011	43581	\$20.00	\$0.00
	Hagler, Derrick D	50.00%	04-Oct-2011			
	Grant, Eric J	50.00%				

Ball, Sara & Michael

Furniture - Wood	04-Oct-2011	04-Oct-2011	10-Sep-2011	43590	\$50.00	\$50.00
	Berglund, Noah	16.60%	04-Oct-2011			
	Bethea, Tyron	16.60%				
	McGee, Louis	16.60%				
	Young, Amos D	16.60%				
	Martin, Jamie D	16.60%				
	Peebles, Marcus Fitzgerald	16.60%				

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Customer				Job		Damage Amount	
				Date	Number	Estimate	Actual
Item	Open Date	Close Date	Estimate Amt Date	Actual Amount Date	Insurance Claim Date	Vendor Est Date	Vendor Actual Date
		Team Member	% Resp.				
Contact Date	Contact Note						

Banda, Armando

Wall	04-Oct-2011	07-Dec-2011	04-Oct-2011	12-Sep-2011	43595	\$20.00	\$0.00
	Davis, Cedric		20.00%				
	Chappell, Cornelius J.		20.00%				
	Berglund, Noah		20.00%				
	Irick, Donald A		20.00%				
	Sedlak, Robert		20.00%				

Hinson, Tim

Chair	04-Oct-2011		04-Oct-2011	13-Sep-2011	43603	\$100.00	\$0.00
	Taylor, Damion		50.00%				
	Lee, Jeremy		50.00%				

Connelly, Paula

Glass	04-Oct-2011	04-Oct-2011	04-Oct-2011	14-Sep-2011	43612	\$60.00	\$60.00
	Harris, Thomas R		100.00%				

Panessa, Rich

Furniture - Wood	11-Nov-2011	11-Nov-2011	11-Nov-2011	16-Sep-2011	43651	\$50.00	\$50.00
	McCrea, Crinshaw		50.00%				
	Wider, Marcus		50.00%				
Furniture - Wood	11-Nov-2011	11-Nov-2011	11-Nov-2011	16-Sep-2011	43651	\$50.00	\$90.00
	Grant, Eric J.		16.60%				
	Good, Dennis R		16.60%				
	Wider, Marcus		16.60%				
	McCrea, Crinshaw		16.60%				
	Berry, Ronald		16.60%				
	Leaphart, Tellas		16.60%				

Chock, Siya

Wall	04-Oct-2011		04-Oct-2011	17-Sep-2011	43657	\$200.00	\$0.00
	Jones, Nathaniel		33.00%				
	Berglund, Noah		33.00%				
	Young, Amos D		33.00%				

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Customer				Job		Damage Amount	
				Date	Number	Estimate	Actual
Item	Open Date	Close Date	Estimate Amt Date	Actual Amount Date	Insurance Claim Date	Vendor Est Date	Vendor Actual Date
Team Member			% Resp.				
Contact Date	Contact Note						

Hunsucker, Tania				23-Sep-2011	43717	\$500.00	\$850.00
Flooring - Wood	04-Oct-2011	19-Oct-2011	04-Oct-2011	19-Oct-2011			
	Vasquez, Eddie		33.00%				
	Martin, Jamie D		33.00%				
	Bethea, Tyron		33.00%				
Rockman, Meshekka				23-Sep-2011	43725	\$100.00	\$395.00
Wall	04-Oct-2011	04-Oct-2011	04-Oct-2011	04-Oct-2011			
	Vasquez, Eddie		33.00%				
	Bethea, Tyron		33.00%				
	Martin, Jamie D		33.00%				
Connor, Cynthia				24-Sep-2011	43727	\$20.00	\$10.00
Wall	04-Oct-2011	16-Dec-2011	04-Oct-2011	16-Dec-2011			
	Martin, Jamie D		50.00%				
	McCrea, Crinshaw		50.00%				
Taylor, Seth				26-Sep-2011	43743	\$20.00	\$10.00
Wall	04-Oct-2011	04-Oct-2011	04-Oct-2011	04-Oct-2011			
	Leaphart, Tellas		50.00%				
	Berry, Ronald		50.00%				
Cloud, Steve				27-Sep-2011	43762	\$20.00	\$10.00
Wall	04-Oct-2011	04-Oct-2011	04-Oct-2011	04-Oct-2011			
	Clark, Larry		50.00%				
	McGee, Louis		50.00%				
Montello, Leanne				28-Sep-2011	43790	\$50.00	\$50.00
Furniture - Wood	04-Oct-2011	11-Oct-2011	04-Oct-2011	11-Oct-2011			
	Martin, Jamie D		50.00%				
	Bethea, Tyron		50.00%				
Rodgers				28-Sep-2011	43772	\$20.00	\$200.00
Furniture - Wood	04-Oct-2011	11-Oct-2011	04-Oct-2011	11-Oct-2011			
	Peebles, Marcus Fitzgerald		33.00%				
	Wider, Marcus		33.00%				
	Holmes, Phillip		33.00%				

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Customer				Job		Damage Amount	
Item	Open Date	Close Date	Estimate Amt Date	Actual Amount Date	Insurance Claim Date	Estimate Vendor Est Date	Actual Vendor Actual Date
	Team Member		% Resp.				
Contact Date	Contact Note						

Fisher, Wayne				21-Nov-2011	44403	\$0.00	\$0.00
Wall	15-Dec-2011						
	Garvin, Eric		50.00%				
	Young, Amos D		50.00%				
Crosby, Donna				22-Nov-2011	44407	\$20.00	\$30.00
Wall	15-Dec-2011	15-Dec-2011	15-Dec-2011	15-Dec-2011			
	McGee, Louis		50.00%				
	Berglund, Noah		50.00%				
Villas Construction				22-Nov-2011	44421	\$50.00	\$100.00
Yard	23-Nov-2011	23-Nov-2011	23-Nov-2011	23-Nov-2011			
	Garvin, Eric		100.00%				
Hunter, Karen				26-Nov-2011	44462	\$50.00	\$0.00
Chair	15-Dec-2011		15-Dec-2011				
	Wider, Marcus		100.00%				
Barr, John				28-Nov-2011	44476	\$200.00	\$0.00
Sofa	15-Dec-2011		15-Dec-2011				
	Young, Amos D		33.00%				
	Davis, Cedric		33.00%				
	Chappell, Cornelius J.		33.00%				
Thomas, Dan				29-Nov-2011	44488	\$240.00	\$240.00
Furniture - Wood	15-Dec-2011	15-Dec-2011	15-Dec-2011	15-Dec-2011			
	Taylor, Damion		50.00%				
	Irick, Donald A		50.00%				
Dunavant, Mellisa				30-Nov-2011	44514	\$20.00	\$20.00
Wall	15-Dec-2011	15-Dec-2011	15-Dec-2011	15-Dec-2011			
	Berry, Ronald		50.00%				
	Leaphart, Tellas		50.00%				

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Customer				Job		Damage Amount	
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Item	Open Date	Close Date	Estimate Amt Date	Actual Amount Date	Insurance Claim Date	Vendor Est Date	Vendor Actual Date
	Team Member		% Resp.				
Contact Date	Contact Note						

Thur, Jessica				09-Dec-2011	44599	\$0.00	\$0.00
Door	02-Jan-2012						
Wall	02-Jan-2012			09-Dec-2011	44599	\$0.00	\$0.00
	Deredita, Randy		0.00%				
	Wider, Marcus		0.00%				
	Forotto, Alex		0.00%				
Powers, Megan				10-Dec-2011	44614	\$225.00	\$225.00
Other	15-Dec-2011	15-Dec-2011	15-Dec-2011	15-Dec-2011			
	Martinez, Joshua		100.00%				
Arndt, David				19-Dec-2011	44717	\$60.00	\$0.00
Dresser	27-Dec-2011		27-Dec-2011				
	Vasquez, Eddie		50.00%				
	Palmer, Eric J		50.00%				
Locke, Matt				21-Dec-2011	44731	\$0.00	\$100.00
Wall	27-Dec-2011			27-Dec-2011			
	27-Dec-2011 Ryan Responsible						
Pavlick, Crystal				28-Dec-2011	44795	\$0.00	\$0.00
Furniture - Wood	29-Dec-2011						
	Wider, Marcus		0.00%				
	Bethea, Tyron		0.00%				
USC Schol of Medicine - Pulmonary				29-Dec-2011	44818	\$0.00	\$0.00
Glass	29-Dec-2011						
	Berglund, Noah		0.00%				
Other	29-Dec-2011			29-Dec-2011	44818	\$0.00	\$0.00

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Customer				Job		Damage Amount	
				Date	Number	Estimate	Actual
Item	Open Date	Close Date	Estimate Amt Date	Actual Amount Date	Insurance Claim Date	Vendor Est Date	Vendor Actual Date
	Team Member		% Resp.				
Contact Date	Contact Note						

Staley, Kevin							
Television	23-Jan-2012	09-Feb-2012	23-Jan-2012	16-Jan-2012 23-Jan-2012	44982	\$150.00	\$149.00
				0.00%			
Simmons, Rhoda							
Chair	23-Jan-2012	09-Feb-2012	23-Jan-2012	21-Jan-2012 09-Feb-2012	45019	\$50.00	\$30.00
	Mines, Rodderick			100.00%			
Hill, Kristin							
Wall	09-Feb-2012		09-Feb-2012	02-Feb-2012 09-Feb-2012	45126	\$80.00	\$130.00
	Leaphart, Tella			50.00%			
	Berry, Ronald			50.00%			
Sasko, Jeff							
Furniture - Wood	09-Feb-2012		09-Feb-2012	02-Feb-2012	45124	\$80.00	\$0.00
	Chappell, Cornelius J.			33.00%			
	Young, Amos D			33.00%			
	Russell, William			33.00%			
Behrens, Rose							
Furniture - Wood	05-Mar-2012	27-Mar-2012	05-Mar-2012	06-Feb-2012 27-Mar-2012	45167	\$50.00	\$265.00
	Guess, Leon			50.00%			
	Smith, Lemuel E			50.00%			
Shaw, Troy							
China Cabinet	09-Feb-2012	09-Feb-2012	09-Feb-2012	06-Feb-2012 09-Feb-2012	45164	\$50.00	\$50.00
	Johnson, Rodnell			0.00%			
	Palmer, Eric J			0.00%			
Weck, Margaret							
Sofa	13-Feb-2012		13-Feb-2012	07-Feb-2012	45176	\$100.00	\$0.00
	McCrea, Crinshaw			50.00%			
	Wider, Marcus			50.00%			

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				Date	Number	Estimate	Actual
Item	Open Date	Close Date	Estimate Amt Date	Actual Amount Date	Insurance Claim Date	Vendor Est Date	Vendor Actual Date
	Team Member		% Resp				
Contact Date	Contact Note						

Raber, Kimberly

Furniture - Wood	13-Feb-2012	13-Feb-2012	09-Feb-2012	45193	\$50.00	\$0.00
	Berglund, Noah	50.00%				
	Davis, Cedric	50.00%				

Ready, Gene

Door	13-Feb-2012	13-Feb-2012	09-Feb-2012	45196	\$50.00	\$0.00
	Guess, Leon	100.00%				

Holiday Builders

Flooring - Wood	05-Mar-2012	05-Mar-2012	10-Feb-2012	45210	\$100.00	\$0.00
	McCrea, Crinshaw	50.00%				
	McGee, Louis	50.00%				

Renfro, Katy

Television	05-Mar-2012	05-Mar-2012	11-Feb-2012	45225	\$100.00	\$100.00
	Johnson, Rodnell	50.00%				
	Palmer, Eric J	50.00%				

Halkowitz, Chris

Dining Table	05-Mar-2012	05-Mar-2012	17-Feb-2012	45267	\$200.00	\$0.00
	Smith, Lemuel E	33.00%				
	Guess, Leon	33.00%				
	Hinnant, Raymond R	33.00%				

Whan, George

Furniture - Upholstery	05-Mar-2012	05-Mar-2012	17-Feb-2012	45272	\$100.00	\$100.00
	Wider, Marcus	50.00%				
	Cason, Frederick A	50.00%				

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Two Men and a Truck/ Greater Columbia Damages Activity Report

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Beginning Date: Wednesday June 1, 2011
Ending Date: Monday June 18, 2012

Printed: June 18, 2012 at 10:52

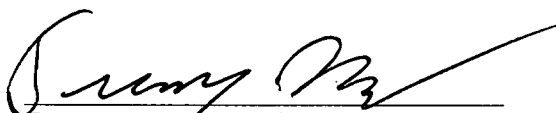
Customer				Job		Damage Amount	
Item	Open Date	Close Date	Estimate Amt Date	Date	Number	Estimate	Actual
				Actual Amount Date	Insurance Claim Date	Vendor Est Date	Vendor Actual Date
Team Member			% Resp.				
Contact Date	Contact Note						
Park, Nina							
Other	05-Mar-2012			01-Mar-2012	45414	\$0.00	\$0.00
	Smith, Lemuel E		0.00%				
Scheatzle, Thomas							
Glass	05-Mar-2012	26-Mar-2012	05-Mar-2012	01-Mar-2012	45404	\$300.00	\$300.00
	Deredita, Randy		100.00%				
Mobley, John							
Ceiling	05-Mar-2012		05-Mar-2012	02-Mar-2012	45422	\$50.00	\$0.00
	Azukas, Jessie J		0.00%				
	Sedlak, Robert		0.00%				
	McGee, Louis		0.00%				
Mack, Gelisa							
Sofa	09-Mar-2012	26-Mar-2012	09-Mar-2012	07-Mar-2012	45465	\$200.00	\$60.00
	Wider, Marcus		50.00%				
	Cason, Frederick A		50.00%				
Drayer, Robert & Jennifer							
Furniture - Upholstery	26-Mar-2012		26-Mar-2012	10-Mar-2012	45504	\$150.00	\$0.00
	Berry, Christopher Lee		33.00%				
	Berry, Ronald		33.00%				
	Leaphart, Tellas		33.00%				
Nicholl, Kelly							
Flooring - Vinyl	26-Mar-2012		26-Mar-2012	10-Mar-2012	45510	\$100.00	\$0.00
	Irick, Donald A		50.00%				
	Taylor, Damion		50.00%				
Parham, Katie							
Other	26-Mar-2012	26-Mar-2012	26-Mar-2012	12-Mar-2012	45522	\$600.00	\$300.00
	Guess, Leon		50.00%				
	Rountree, Kevin T		50.00%				

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Certificate of Counsel

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

July 9, 2013



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