

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)
)
ARCHIE PATTERSON AND TAMMIE)
BOLLERMAN,)
)
PLAINTIFFS,)
)
v.)
)
SOUTH CAROLINA DEPARTMENT OF)
EMPLOYMENT AND WORK FORCE,)
)
DEFENDANT.)
_____)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Case No.: 2013-CP-06-00059

ORDER GRANTING
PLAINTIFFS' 59(e) MOTION

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SC Court of Appeals

Plaintiffs in their 59(e) motion challenge the provisions of the Court's February 15, 2019 Order which requires class members to present their record of work seeking activities, or recreate their record of work seeking activities, in order to make a claim for benefits. They assert the claims made procedure and altered class definition is not supported by the record in this case and is unfair and unnecessary. Citing *Hyman v. South Carolina Employment Sec. Commission*, 234 S.C. 369, 108 S.E.2d 554 (1959), SCDEW asserted, and this Court agreed, that a claims-made process was necessary, since class members were still required to prove their entitlement to benefits. However, after hearing the parties' respective positions and reviewing the record, I find class members met their required burden of proof, and Plaintiff's motion should be granted.

EVIDENCE PRESENTED

Eligibility Requirements for Unemployment Claims

At the October 31, 2019 hearing, SCDEW offered into evidence by way of affidavit the testimony of Kevin Cummings who serves as its Unemployment Insurance Benefits Manager. According to Paragraphs 5 and 6 of Cummings Second Affidavit dated March 3, 2014, claimants are required weekly to advise SCDEW whether they are able, available, and looking for work.

Exhibit F to this Affidavit, pages 12 and 13, describes the weekly filing process in detail. Claimants are required, either online or by telephone to certify they have met the eligibility requirements to collect benefits. This includes whether the claimant was able, available for and actively seeking work. Class members were not denied benefits for failing to make this certification.

Claimants are also required to document their work seeking activities on a UCB-303 form. Cummings 2d Affidavit, Para. 7. The Purpose of the form is to allow SCDEW to audit a claimant's work seeking activities. A sample copy of this form is attached to the affidavit as Exhibit A. The Form states: "This work search information is **subject to audit.**" (emphasis added) The form further states: "Bring this form each time you are called into the SC Works Center for an interview. Failure to provide this form **may** result in a denial of benefits." (capitalization omitted) Exhibit B to the Cummings affidavit tells claimants: "Your work searches and accompanying documentation are subject **to random audit** and verification.... Failure to adhere to this policy **could** result in a denial of benefits."

While the SCDEW documents refer to the audits as "random", Cummings in paragraph 10 of his Second Affidavit describes the audits as "periodic". Regardless of how they are characterized, it is undisputed the audits were not a weekly occurrence necessary for claimants to receive their benefits. Also, Exhibits A and B to the Affidavit indicate that failure to present the form does not automatically result in a denial of benefits, but "may" (or "could") result in a denial of benefits.

Denial of benefits to Class Members

This Court in its February 15, 2019 Order, has already found that each class member was denied because of their failure to conduct an online job search. Each class member received a

Work Search Verification Failure-Benefits Stopped notice informing them their benefits were stopped for failing to make at least one job contact online using the SC Works website. This notice directed them to report to their local SC works center immediately, along with their record of work seeking activities form UCB 303 if they would like to receive future benefits.¹

When class members appeared SCDEW completed an Availability Fact Finding (form UCB-102AV) inquiring whether class members were able to work, available to work, and seeking work.² SCDEW also required claimants to bring their record of work seeking activities form UCB-303 with them and would have had the opportunity to review this form. The UCB-102AV form also includes a statement regarding the online work search. Afterwards, SCDEW issues a determination denying benefits to the class member.³

CLASS MEMBERS HAVE SATISFIED THEIR BURDEN OF PROOF

Class members, like all claimants, were required to certify to SCDEW that they were able, available, and actively seeking work and would have received their benefit but for the illegal online job search requirement. After benefits were stopped for failing to conduct an online job search, class members were required to appear at an SCDEW office and were again required to certify they were able, available and actively seeking work. Class members were also required to bring their form UCB-303 record of work seeking activities to the meeting. The only plausible reason for requiring the class member to bring their form UCB 303 would be to verify past job contacts.

This same form, or a recreation of it, is what SCDEW wishes the class member to produce in

¹ While the notice references future benefits, Kevin Cummings in his 30(b)(6) deposition stated the reason for the notice was to get the claimant to come in and give a statement about why they did not conduct the online work search. 30 (b)(6) Deposition of Kevin Cummings, dated 10/27 14, pages 34-35.

² Bollerman and Patterson's UCB-102AV form is attached as part of Exhibit G and H, respectively, of the Second Cummings Affidavit.

³ Bollerman and Patterson's Determination denying benefits for failing to conduct an online job search are also included in Exhibits G and H of Cummings Second Affidavit, respectively.

a claims process to be entitled to receive their benefit. Class members, however have already made this audit form available to SCDEW and have certified twice to SCDEW they were able, available, and actively seeking work. For claimants who are not class members, SCDEW did not conduct a weekly review of the UCB-303 form. In fact, Cummings in his Second Affidavit testified it was impractical for SCDEW to review these forms on a weekly basis.

While all unemployment insurance benefits claimants have a burden to show they are qualified to receive benefits, there is no rational basis to require a greater level of proof for class members who were wrongly denied benefits than from other claimants. Such a requirement would violate plaintiff's rights of equal protection. *Littlefield v. South Carolina Forestry Commission*, 337 S.C. 348, 523 S.E.2d 781 (1999). Class members by their initial certification to SCDEW that they were able, available, and actively seeking work have met the burden of proof required of other un employment insurance claimants to receive their benefits.

Moreover, it is unlikely that claimants would still have these forms or be able to recreate them with any accuracy, since many of the claims are more than six-years old. The delays in sending the notice caused by potential appeals, makes it more unlikely that class members could comply with the claims process.⁴

Since class members have already met their burden of proving entitlement to receive their benefit(s), there is no need for further proof from class members regarding their eligibility. While a claims-made process may not be inherently suspect, courts should avoid imposing unnecessary hurdles on potential claimants, since strict eligibility conditions and cumbersome claims are likely to deter class members from obtaining claim benefits. 4 *Newberg on Class*

⁴ The Court has already determined, SCDEW's procedure of stopping payment before a determination was made also violated S.C. Code Ann. 41-35-670 (requiring a redetermination or subsequent determination before payments are stopped). Further, SCDEW failed to promulgate any regulations establishing a mode of procedure adjudicate class members claims as required by Article I, Section 22 of the S.C. Constitution. Such structural defects in procedure violate due process and cannot be considered harmless. *McIntyre v. Securities Commissioner of South Carolina*, 2018 WL 5020070 __ S.C. __, __ S.E.2d __ (Ct. App. 2018)

Actions Section 12:21 ((5th ed.) Courts should... "[w]atch for situations where class members are required to produce documents or proof that they are unlikely to have access to or to have retained." DeLeon v. Bank of America, N.A. (USA) 2012 W.L. 2568142, Not Reported in F. Supp. 2d (2012). The goal is to get the relief into the hands of the class. Therefore, the process that requires the least of the class members should be first priority. The Court should first consider whether it is even necessary to file a claim. 4 Newberg on Class Actions. Section 12:18 (5th ed.)

I find a claims-made process is unnecessary, and the most practical way to get the wrongly denied benefits to the class members who do not opt out of the class is simply to mail it to them.

DEFINITION OF THE CLASS

Based upon my findings above, I find the class should be defined as originally set forth in the Class Certification Order, but modified to reflect an ending period for the class of July 1, 2016. Further Claims shall not be paid to persons who were paid the maximum amount of benefits they were entitled to receive on the week they were denied benefits. The Class shall be defined as all persons: (1) who were citizens and residents of South Carolina at the time the action was filed; (2) who were eligible to receive unemployment benefits, through SCDEW; (3) who made application through SCDEW to receive benefits; (4) who did not receive benefits for one or more weeks as a result of their failure to conduct an online job search between August 6, 2012, and July 1, 2016; and (5) who did not subsequently exhaust the full amount of benefit they were entitled to receive for the week(s) their benefits were denied.

Class membership can be easily determined in that each class member would have been mailed the "Work Search Verification Failure – Benefits Stopped" (UCM-15B) form notifying

them their benefits were stopped for failing to conduct the online work search. The amount of benefits SCDEW did not pay and the date they should have been paid can be determined by the "Determination by Claims Adjudicator on Claims for Benefits" (UCB 103) form or from other SCDEW Records.

NOTICE TO THE CLASS

In light of my rulings in this order, I find that the class notice originally submitted by the Plaintiff adequately informs the class of the pendency of the action, the nature of the action, the class member's rights to participate in the action and the class members rights to opt out of the action. While it may be necessary to make some modification to the Notice and this Order to reflect any subsequent appeals or developments, the general form of this notice is hereby approved. A copy of the approved notice (and opt out form) is attached to this Order.

It is Therefore Ordered my Order of February 15, 2019 is amended to conclude:

1. Class members have met their burden of proving they were otherwise entitled to receive unemployment benefits, and a claims-made process is unnecessary;
2. At the appropriate time, the class administrator shall simply mail settlement proceeds to each class member;
3. The class definition set forth above shall be utilized;
4. The Court adopts and approves the attached Class notice;

All other findings and conclusions of my February 15, 2019 Order which are not inconsistent with this Order shall remain in full force and effect.

AND IT IS SO ORDERED.

Honorable Doyet A. Early, III
Judge of the Second Circuit

_____, South Carolina
March _____, 2019



Barnwell Common Pleas

Case Caption: Lorenda A Robinson, et al , plaintiff, et al VS SC Department of
Employment & Work Force
Case Number: 2013CP0600059
Type: Order/Other

So Ordered

s/D.A. Early III 2136

COURT OF COMMON PLEAS FOR BARNWELL COUNTY,
SOUTH CAROLINA

*THIS IS A COURT-AUTHORIZED NOTICE.
THIS IS NOT A SOLICIATION FROM A LAWYER.*

- The purpose of this Notice is to inform you of a class action lawsuit that is now pending in the Court of Common Pleas for Barnwell County, South Carolina. This Notice is intended to advise you of the lawsuit and of your rights with respect to the lawsuit. The Notice is not, and should not be understood as, an expression of opinion by the Court concerning the merits of the lawsuit or the defenses to the lawsuit.
- **Read this Notice carefully and in its entirety. Your legal rights will be affected by proceedings in this lawsuit.**
- Your rights, and the deadlines to exercise them, are explained in this Notice.
- While the Court in charge of this case has issued an order in favor of the Plaintiffs, appeals are also expected and this court still has to decide other issues, such as the award of attorney fees. Payments will be made after the Court issues its final rulings, unless those rulings are reversed on appeal. Please be patient.

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BASIC INFORMATION

1. Why is there a notice?

You have a right to know about this class action lawsuit and about your options. This notice explains this lawsuit to you and explains how you can participate or exclude yourself from the lawsuit. Please read it carefully.

The Court in charge of this case is the Court of Common Pleas for Barnwell County, South Carolina, and the case is called Lorinda A. Robinson, et al. v. South Carolina Department of Employment & Work Force, Case No. 2013-CP-06-00059 (the "Lawsuit"). The people who sued are called the "Plaintiffs," and the state agency they sued, the South Carolina Department of Employment and Workforce (SCDEW), is called the "Defendant".

2. What is this Lawsuit about?

Plaintiffs seek to recover money for class members who they allege were wrongfully denied unemployment benefits as a result of the Defendant's failure to comply with South Carolina law.

Plaintiffs assert as of August 6, 2012, SCDEW, without first promulgating regulations, began to require claimants to file at least one online application seeking employment. The named Plaintiffs were denied benefits because of their inability or failure to apply online for employment. Plaintiffs assert that SCDEW is required by Statute to implement regulations to establish policies to pay claims for unemployment benefits in particular S.C. Code Ann. §41-27-510, §41-29-110, §41-35-610, and §1-23-10 et. seq. Alternatively, Plaintiffs assert the new policy constitutes a binding norm which must be implemented by regulation.

The Defendant denies all claims made against it, denies that its practices violated any laws, and denies that the Plaintiffs are entitled to any relief.

3. What is the status of the Lawsuit?

By Order dated April 29, 2016, the Court ruled that the Lawsuit should be maintained as a class action. A merits hearing was held on October 31, 2018. After the hearing the Court issued its Order finding SCDEW was required to promulgate regulations before implementing its online requirement and each class member is entitled to receive the benefits denied as a result of the online requirement.

4. Why is this a class action?

In a class action, one or more people, called "class representatives," sue on behalf of people who have similar claims. All these people are a "Class" or "Class Members," except for those who exclude themselves from the Class.

To certify a class, a Court must find there are numerous people who have common legal or factual issues to be resolved, and that the class representative has similar claims and will adequately represent the interest of the class. Usually, class actions involve numerous small claims which might not be economical for the class members to file and maintain as individual suits.

WHO IS IN THE CLASS?

5. How do I know if I am part of the Class?

If you receive this Notice in the mail, the Court believes you are a member of the Class.

The Court has defined the Class as “all persons: (1) who were citizens and residents of South Carolina at the time this action was filed; (2) who were eligible to receive unemployment benefits, through SCDEW; (3) who made application through SCDEW to receive benefits; (4) who did not receive benefits for one or more weeks as a result of their failure to conduct an online job search between August 6, 2012 and July 1, 2016; and (5) and who did not subsequently exhaust the full amount of benefits they were entitled to receive for the week(s) their benefits were denied.”

CLASS BENEFITS

6. What will I get if I stay in the Class?

If you stay in the Class and the Plaintiffs prevail, you will receive the benefit amount you would have received had your benefit not been denied for failing to comply with the online work search requirement. Plaintiffs are also seeking interest on this amount.

7. What am I giving up to stay in the Class?

If you remain in the class, you can't sue the Defendant, continue to sue, or be part of any other lawsuit against the Defendant about the issues in this case and you will be bound by the Court's decision in this case.

8. How can I get a payment?

If you decide to remain in the Class and the case results in an award of monies to the class, you do not have to do anything to get a payment. Payments will automatically be mailed if the Court's decisions are not reversed after any appeals.

9. When will I get my payment?

If the Court awards monies to the Plaintiffs, this case will not be over. The Defendant has the right to appeal. No payments will be made until all appeals have been resolved, and only if those appeals are resolved in the Plaintiffs' favor. It is not possible to predict what the appellate

courts will decide. Resolving appeals can take time, and its uncertain how long that process will take. Please be patient.

EXCLUDING YOURSELF FROM THE CLASS

If you don't want a payment and you want to keep the right to sue or continue to sue the Defendant on your own about the issues in this Lawsuit, then you must take steps to get out of this lawsuit. This is called excluding yourself, or it is sometimes referred to as "opting out" of the Class.

10. How do I get out of the Class?

To exclude yourself from or "opt out" of the Class, complete the attached "Election to Opt out of Class Action" form, and mail it to the Class Administrator at:

{insert Class Administrator's address}

The form must be postmarked no later than _____. If your form is not postmarked by _____, you will remain a member of the Class and you will be bound by the Court's orders. You will also give up your right to sue the Defendant for the claims that this Lawsuit resolves.

11. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up the right to sue the Defendant for the claims that this Lawsuit resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue your own lawsuit.

12. If I exclude myself from the Class, can I still get a payment if the class is awarded money?

No. You will not get any money from this class action if you exclude yourself from the Class.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in the case?

The Court has appointed these lawyers and firms as "Class Counsel," meaning that they were appointed to represent the interests of all class members through the class representative(s): C. Bradley Hutto of Williams & Williams, Daniel W. Williams of Bedingfield & Williams, LLC, Alex Paterra of The Paterra Law Firm, LLC, and Adam Protheroe of S.C. Appleseed Legal Justice Center. Their addresses appear on the last page of this Notice.

You will not be charged separately for these lawyers' services to the class. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Depending on the outcome of the case, the lawyers will be paid in one of two ways: 1) from the common fund created by the Court to pay the judgment it entered; 2) from statutory provisions which allow recovery of attorney's fees, if the Court finds these provisions are applicable. The attorneys will not seek payment from class members individually.

IF YOU DO NOTHING

15. What happens if I do nothing at all?

Unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendant about the issues in this case in the future and you will be bound by the decision of the Court in this case.

GETTING MORE INFORMATION

16. What should I do if I have moved or if my situation has changed?

If you have moved, or if your situation has changed because of death or divorce, please contact the Class Administrator:

{Class Administrator Contact Information}

17. How do I get more information?

This Notice summarizes the Lawsuit. The pleadings and other papers filed in the Lawsuit are available for inspection in the Office of the Clerk of Court in the Barnwell County Courthouse in Barnwell, South Carolina.

Please do not call the Court or the Clerk of Court's office. If you have questions, or if you need to update your address or other information, you should call Class Counsel or contact them at:

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BY ORDER OF THE COURT.

Doyet A. Early, III
Presiding Judge
Second Judicial Circuit

_____, South Carolina

Dated: _____

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ELECTION TO OPT OUT OF CLASS ACTION

Lorinda A. Robinson, et al. v. SC Department of Employment & Workforce
Barnwell County, South Carolina Court of Common Pleas
Civil Action No. 2013-CP-06-00059

INSTRUCTIONS:

Only complete this opt-out form if you want to opt out of the class in the action known as **Lorinda A. Robinson, et al. vs. SC Department of Employment & Workforce**, pending in the Barnwell County, South Carolina Court of Common Pleas, Civil Action No. **2013-CP-06-00059**. **If you opt out, you will not receive a payment from this lawsuit if one is made.**

If you do not want to opt out and you want to receive a payment, **DO NOT** complete this form.

I want to opt out of the class in the matter known as *Lorinda A. Robinson, et al. v. SC Department of Employment & Workforce*. I do not wish to participate in this action.

Date: _____ Signature _____

Please type or print the following information:

Name: _____
FIRST MIDDLE LAST

Former Name(s) (if any): _____

Mailing Address: _____
NUMBER STREET APT. #
CITY STATE ZIP

Telephone Number: _____

Mail the completed form to: {Insert Class Administrator's Address}

IMPORTANT! THIS FORM MUST BE POSTMARKED BY
OR ELSE YOU WILL LOSE YOUR RIGHT TO OPT OUT OF THE CLASS.