

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No.: 18-ALJ-30-0181-CC

Appellate Case No.: 2018-001740

Clara Lewis Brockington, Appellant,

vs

South Carolina Department of Employment
And Workforce, Respondents.

INITIAL BRIEF OF APPELLANT
(AMENDED MAY 20, 2019)

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Arguments:

1. BECAUSE **RESPONDENT REFUSED** TO PROVIDE PETITIONER WITH CHECK STUBS (BACK AND FRONT), DEDUCTING ANY AMOUNT THAT DID NOT CORRESPOND WITH THEIR PAPERWORK, RESPONDENT DOES NOT HAVE ANY LEGAL DOCUMENTS TO SHOW THAT **PETITIONER** IS GUILTY OF OWING RESPONDENTS ANY MONIES. THESE DOCUMENTS WERE REQUESTED ON NUMEROUS OCCASIONS AND NEVER PROVIDED BY THE RESPONDENTS.
2. PREHEARING STATEMENT WAS PREPARED BY PETITIONER TO THE ADMINISTRATIVE LAW COURT, WHICH WERE NOT RESPONDED TO BY THE COURT. THIS IS A LEGAL DOCUMENT WHICH WOULD HAVE SUPPORTED SUBJECT MATTER JURISDICTION AND DISCOVERY REQUESTED FROM RESPONDENTS THAT WERE NEVER RECEIVED FROM THE RESPONDENTS. PETITIONER CANNOT COMPLETE CASE FOR COURT WITHOUT THESE DOCUMENTS.
3. BECAUSE PETITIONER RECEIVED FUNDS FROM THE RESPONDENT WEEKLY AND WERE CONSIDERED ELIGIBLE BY THE RESPONDENTS, THIS CONFIRMS THAT PETITIONER WAS ELIGIBLE FOR WEEKLY BENEFITS DUE TO RESPONDENTS REFUSING TO CORRECT ANY ERRORS BY DISQUALIFYING THE PETITIONER FROM RECEIVING THE FUNDS.
4. BECAUSE THE PETITIONER NOTED ON THE "REQUEST FOR CONTESTED CASE HEARING FORM" THE DISAGREEMENT IN OWING MONIES TO THE RESPONDENTS, AS WELL AS REQUESTED CHECK STUBS (BACK AND FRONT), THIS IS PETITIONER'S RIGHT TO SEEK RELIEF FROM THIS COURT AND IS NOT RELITIGATING ISSUES THAT WERE ALREADY REQUESTED AND NEVER RECEIVED FROM THE RESPONDENTS. PETITIONER REQUESTED DOCUMENTS IN A TIMELY MANNER AND IS APPEALING AGAIN.

5. BECAUSE THE RESPONDENTS' FINDINGS ARE NOT PRECLUSIVE AND DID NOT MEET THE TRADITIONAL ELEMENTS OF *res judicata* and there exist countervailing consideration which necessitates relitigation. Therefore, these two parties may provide subsequent actions between the two parties if needed. Petitioner has established *res judicata* by: a/identity of the parties; b/identity of the subject matter; and c/adjudication of the issue in the former suit. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). SEVERAL OF THESE ELEMENTS WERE NOT MET IN THIS CASE. THE DETERMINATION THAT THE RESPONDENT REFUSED TO PROVIDE DISCOVERY FOR SUBJECT MATTER AND THE ADJUDICATION OF THE ISSUE IN THE FORMER MATTER WERE NEVER MET.

6. THE PETITIONER IS PROTESTING RIGHTS BE GRANTED BY S.C. Code 12-56-65 TO REVERSE A DECISION REGARDING ISSUES THAT WERE CHALLENGED BY PETITIONER AND WERE NOT CONSIDERED IN THE RULING OF THE CASE. PETITIONER IS REQUESTING THAT THE CASE IS DISMISSED BECAUSE THE PETITIONER DOES NOT OWE ANY MONIES TO RESPONDENTS. THERE WERE ERRONEOUS RETENTION OR SET OFF NOTED BY THE RESPONDENTS, *The New York Times*, 1975, USA, English.

TABLE OF AUTHORITIES

CASES

Cal. Unemp. Ins. Code § 2601 et seq., Unemployment Coverage.....	2
Hawaii Rev. Stat., Ch. 392-1 to 392-91, Unemployment Coverage.....	2
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STATUTES

Mizrahi Case, 320 Mass. 733, 71 N.E.2d 383 (1947).....	2
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STATEMENT OF ISSUES ON APPEAL

- 1/ DID THE COURTS REFUSED TO ADDRESS THE FACTS THAT THE PETITIONER NEVER RECEIVED DISCOVERY REQUESTED AND ERRED IN MAKING A DECISION THAT THE CASE COULD NOT PROCEED WITHOUT DISCOVERY?
- 2/ DID THE COURTS ERRED IN FAILING TO REVIEW THE PREHEARING STATEMENT PREPARED BY THE PETITIONER TO SUPPORT SUBJECT MATTER JURISDICTION AND SUMMARY JUDGMENT?
- 3/ DID THE COURTS ERRED IN NOTICING THAT NO DOCUMENTATION WAS SUBMITTED BY THE RESPONDENTS NOTIFYING THE PETITIONER DISQUALIFIED THE PETITIONER FROM RECEIVING FUNDS AT ANY TIME?
- 4/ DID THE COURTS ERRED IN FAILING TO SEE THAT CHECK STUBS (BACK AND FRONT) WERE REQUESTED BY THE PETITIONER, BUT NEVER RECEIVED FROM THE RESPONDENTS?
- 5/ DID THE COURT ERRED IN GRANTING A REVERSED DECISION IN S.C. CODE 12-56-65 IN FAVOR OF THE PETITIONER BECAUSE ALL EVIDENCE SUPPORTED BY PETITIONER DOES NOT SHOW PETITIONER OWES MONIES TO RESPONDENTS? ALSO, THE RESPONDENTS DOES NOT PROVIDE CHECK STUBS, ETC., SHOWING THE PETITIONER RECEIVED MONIES AFTER BEING DISQUALIFIED BY RESPONDENTS.

STATEMENT OF THE CASE

On May 9, 2018, Petitioner filed a "Request for Contested Case Hearing Form" appealing the decision of the Respondents. Petitioner stated that she did not agree in owing the Respondents any monies. Petitioner, again, requested copies of checks (back and front) that were never submitted in Discovery by Respondents.

On April 20, 2018, Respondent mailed unsigned documents (which are not legal Documents) to Petitioner, which should have been signed by an Administrative Hearing Officer. Case should be dismissed due to document is NOT legal and in error.

On July 18, 2018, Petitioner requested on numerous occasions (from Kristi Chelsey, Legal Assistant to the Respondents) a correct copy of the CD that was mailed to Petitioner that

would NOT open the document. Petitioner motion to the Administrative Law Court, which erred in granting the motion. Case should be dismissed due to this and numerous other errors by the Respondents.

On February 28, 2019, Respondents confirmed that they have been in error from the beginning of this case to the end on providing documents, sending illegal documents not signed, refusing to abide by Motion for Discovery and refusing to send documents that are readable, etc. Due to numerous errors by the Respondents and the courts, Petitioner is requesting that this case is granted in favor of the Petitioner.

STATEMENT OF FACTS

Approximately September or October 2014, I applied for employment with Richland County Department of Social Services in Columbia, South Carolina.

Approximately, December 2014, I received a group interview with approximately 25 to 30 candidates with only approximately 3 interviewers in the room. The second interview process was narrowed down to approximately 10 candidates that were interviewed individually by approximately 3 interviewers in the room. Numerous questions were asked by me such as:

A/Job Vacancy Title; B/Salary for the Job; C/Location I will be working; D/Name of Supervisor; E/Starting Date; F/Materials Needed for work; G/Required Trainings for Job; H/Education requirements; I/Benefits; J/Sick Leave, Annual Leave, Leave of Absence with and without pay; K/Dress Code; L/Utilization of company cars, etc. There was nothing in the two interviews stating that the job is contingent upon taking and passing a Child Welfare test.

Approximately, January 28, 2015, I received an Offer Letter from Reese L. Palmer, County Director, naming only the position, where the job was located, salary of the job and the effective date to begin work. There was nothing in the offer letter stating that the job is contingent with taking and passing a Child Welfare test. Numerous questions were asked about requirements for the job from interviews, supervisor, etc. However, **ALL** of the employers at

Richland County Department of Social Services Failed to be Truthful and state the job are contingent with taking and passing a Child Welfare test.

I begin work approximately February 9th or February 16, 2015 as Foster Care Manager. I was never called in by any Superiors to be counseled about not performing my job. However, when I was told in May 2015 that I had to take a Child Welfare Test and pass it to retain my employment with Department of Social Services (DSS), I begin to question my superiors and other co-workers. We all felt disappointed because no one was **Professional** in being truthful to the new hires.

Numerous employees begin taking the tests and numerous employees failed the test and were given two or more chances to retake the test. However, when myself and several others took the test, numerous employees failed the test given by **unqualified contract workers with the University of South Carolina** (my alumnus where I taught intern students in the College of Social Work Program with the University of South Carolina). I called and discussed the matter with several of my **Professors** who informed me that the Trainers were **not qualified** to give or monitor tests because they were **not properly degreed nor licensed**.

When several of us were set up to retake the Child Welfare test again, I inquired from the Monitor in the class on the degrees and licenses of the Trainers and explained that they were not qualified to give anyone a test and that I had contacted the University of South Carolina Professors, who validated the information.

When I returned to work, I was informed that Mr. Palmer, County Director was informed that I contacted USC concerning the qualifications of the Trainers, etc. I explained to those individuals that I have that right to inquire to my graduate university if I needed their assistance for clarification.

Several weeks later when I returned back to the office from working in the field, approximately, June 24, 2015, Ms. Roshawnda Gooden, my supervisor, informed me that Mr. Palmer wants to see me in his office. I inquired from Ms. Gooden if she knew why Mr. Palmer wanted to see me and she answered, "No". I proceeded to go to Mr. Palmer's office approximately 5:00pm and departed from his office to my supervisor's desk and showed her the "termination letter" from Mr. Palmer. I inquired from my supervisor, Ms. Gooden, if I never

received a write up, etc., why was I terminated immediately? I further inquired why I was terminated after contacting USC Professors about the Monitors and Teachers that were not qualified to give tests. Ms. Gooden stated she was not aware of anything that was happening.

I started packing all of my belongings and Ms. Gooden stated that she will assist me in taking my belongings to my car. When we departed to take the belongings to the car, I fell as soon as I stepped out the office door with my belongings **before reaching the parking lot**. My fall was witnessed by Ms. Gooden, supervisor, Ms. Alysha Jackson and her supervisor and several other co-workers and their clients. I was informed by Ms. Jackson to go to the hospital for observation of my fall and call her to let her know what the Emergency Room Physicians findings and their recommendations.

I called Ms. Gooden approximately the next day and gave her my diagnosis and that I needed to see an Orthopedic Physician and my Family Physician due to my stress and depression from the fall, and possibly other medical problems. I followed the physician's recommendation and made contact with the necessary physicians. I also asked Ms. Gooden for the Worker's Compensation and Medical Forms per the hospital and doctors' offices and she asked that I contact the State Office.

I contacted Glenise Elmore approximately June 26, 2015 and Angela Payne approximately June 26 and June 29, 2015. I never received any paperwork from these two individuals from the State Office.

I was later to contact Lindsay Sadler and Jim Crosby at the State Accident Fund concerning workers compensation paperwork. I contacted these two individuals approximately July 20th, 21st and 22nd, 2015 and no one returned my call.

I later received a copy of a Subpoena from Elaine S. McKnight, Claims Technician from the State Accident Fund that was mailed to Dr. Rodney K. Alan, one of my treating physicians. I attempted to reach Jim Crosby again with State Accident Fund approximately August 10th and 11th, 2015 with no success. Sharon Roberts, Human Resources Manager with DSS, sent me a letter with a Long Term Disability Benefits application attached for me to have my physician complete, which was completed and returned to DSS Human Resources Manager.

I received a letter from McKay, Cauthen, Settana & Stublely, PA Law firm to do a deposition on October 1, 2015 at 11:00 a.m. However, this deposition was cancelled and rescheduled due to my health problems.

I contacted and mailed Reese Palmer my flex time forms and received a call from Beverly Peele, Leave Administrator, who refused to reimburse me for my Comp Time.

After being terminated, I filed for unemployment compensation with South Carolina Department of Employment and Workforce. After a telephone conference, I was eligible to receive unemployment because the Staff stated that an employee **cannot be terminated for failing a test.**

Summary of Argument

After discussing my DSS case with numerous agencies, I was informed to file actions with South Carolina Department of Labor, S. C. Human Affairs Commission, Equal Employment Opportunity Commission, etc. After filing with S. C. Human Affairs Commission, I was awarded a "Notice of Right To Sue Letter" for wrongdoings of DSS to me as an employee.

I have never received my short term and long term disability benefits. I have never received continued insurance benefits to cover all of my healthcare visits and treatments. I continue to receive delinquent bills that were sent to DSS by Medical Professionals and DSS has refuse to pay and causing my credit report to show a **POOR RATING.**

I have filed Worker's Compensation and have been following up on the status of this case as a Pro Se Indigent Plaintiff and do not know the status at this time.

Worker's Compensation has failed me as a citizen of the United States.

South Carolina Department of Social Services has failed me as a hard-working professional with credentials and being over-qualified for the job as Foster Care Manager. South Carolina Department of Social Services has also caused my medical condition to deteriorate, depression, stress and anxiety, as well as unable to continue working due to fall.

Motion for Prehearing Statement was not included as evidence that case should be reversed.

South Carolina Department of Employment and Workforce have given me the monies I deserve due to unemployment and never attempted to disqualify me when I receive the required payment for the questionable payment cycle.

South Carolina Department of Labor has been helpful in referring me to the appropriate agencies that could assist me through the unemployment process.

South Carolina Human Affairs Commission completed a thorough assessment and evaluation of my case with DSS and gave me the right to sue for damages caused by DSS.

Other State Representatives, national organizations, local organizations, paralegals, etc. have been very instrumental in confirming that South Carolina Department of Social Services have been very unprofessional for the termination and how they have not supported my medical condition after termination.

CONCLUSION

The decision to repay South Carolina Department of Employment and Workforce is not even to be discussed further after reading this entire brief. This brief confirms that the decision should be reversed and case dismissed. When South Carolina Department of Employment and Workforce confirmed that there are no laws stating that an employer can terminate an employee for not passing a test, this showed that DSS has committed many wrongdoings and this case should be dismissed and Petitioner's motion should be granted to reverse the decision of South Carolina Department of Employment and Workforce. Documents needed to proceed with case was never were received by Petitioner so case became null and void at that time. Prehearing Statement prepared by Petitioner supported Subject Matter Jurisdiction as well as Discovery and was never answered by Respondents or the Courts.

Petitioner is requesting that the Motion to Reverse Decision is granted on behalf of the Petitioner and case is dismissed with prejudice.

Respectfully Submitted,

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AMENDED, May 20, 2019

PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter by depositing copies of each in the United States Mail, postage prepaid, on May 20, 2019, addressed to S. Phillip Lenski, Administrative Law Judge, 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201 and to Attorney Paul Famolari, Post Office Box 8597, Columbia, South Carolina 29202.

Amended May 20, 2019

s/ Clara Lewis Brockington
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