STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Amber Geohaghan, Appellant, vs. South Carolina Department of Employment and Workforce and South Carolina Department of Social Services, Respondents.	Docket No. 18-ALJ-22-0351-AP **ORDER DENYING MOTION FOR REHEARING**

This matter came before the South Carolina Administrative Law Court pursuant to Amber Geohaghan's ("Appellant") appeal of a decision issued by the South Carolina Department of Employment and Workforce's Appellate Panel ("Panel"). The Panel indefinitely disqualified Appellant from receiving unemployment benefits due to her voluntary separation from employment with the South Carolina Department of Social Services ("Employer"), without good cause pursuant to S.C. Code Ann. § 41-35-120(1)(Supp. 2018). On March 7, 2019, this Court affirmed the Panel's decision. On March 20, 2019, Appellant filed a Petition for Rehearing.

To begin, Appellant reasserts her argument that whether she maintained good cause to resign from employment is a matter of law. Appellant, citing a case from the Georgia Court of Appeals, criticizes this Court's treatment of the issue as one of fact. *Scott v. Butler*, 759 S.E.2d 545, 546 (Ga. Ct. App. 2014)(stating whether good cause exists "more often requires a legal conclusion."). Further, and in conformity with issues of law, Appellant complains that this Court erred in failing to employ a de novo standard of review. This Court refrained from addressing Appellant's argument in the underlying decision because Appellant's argument is without merit. *See* SCALC Rule 40. The meaning of good cause, as contemplated in § 41-35-120(1), has already been established. *See Stone Mfg. Co. v. S.C. Employment Sec. Comm'n*, 219 S.C. 239, 247, 64 S.E.2d 644, 647 (1951); 81 C.J.S. *Social Security and Public Welfare* § 417. The Panel, therefore, was solely tasked with making factual findings regarding the existence of good cause. Indeed, South Carolina Appellate Courts have consistently treated the question of whether an employee

has good cause to voluntarily separate from employment as an issue of fact. *See, e.g., Sviland v. S.C. Employ. Sec. Comm'n*, 300 S.C. 305, 308, 387 S.E.2d 688, 689 (1989). Rehearing on this ground is unnecessary.

Appellant also seeks rehearing based on perceived errors in the Court's factual recitation. Appellant believes the Court improperly substituted its judgments for that of the Panels on questions of fact. First, Appellant complains of the following portion of Court's decision: "It was relayed to Appellant by other staff that the client stated, 'You better be glad I don't have my gun.' The Client reportedly was not in Appellant's presence, and did not refer to Appellant by name, when making the statement." This Court will modify its order to reflect that Appellant was present when the threatening statement was made. However, this change does not warrant rehearing, as this fact is immaterial to the Court's ultimate conclusion. Second, Appellant points to the Court's statement that the "Employer's policy does not require its case workers to conduct monthly visits with clients if they feel threatened." Appellant is correct that the Panel made no such finding. However, testimony from Employer's witnesses supports the Court's statement. When affirming an appealed decision, SCALC Rule 40 allows this Court to rely on any evidence in the record.

IT IS THEREFORE ORDERED that Appellant's Motion for Rehearing of this Court's Order dated March 7, 2019, is **DENIED**.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

May 16th, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or in the Interagency Mail Service, addressed to the party(ies) or their attorney(s).
This 16 day of May, 2019
By: Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Amber Geohaghan, Appellant, vs. South Carolina Department of Employment and Workforce and South Carolina Department of Social Services, Respondents.	)	Docket No. 18-ALJ-22-0351-AP **AMENDED ORDER**

STATEMENT OF CASE

This matter comes before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Notice of Appeal filed by Amber Geohaghan ("Appellant"). Appellant seeks judicial review of the South Carolina Department of Employment and Workforce ("Department") Appellate Panel's ("Panel") final decision. The Panel held Appellant voluntarily left employment without good cause attributable to her employment pursuant to S.C. Code Ann. § 41-35-120(1). The Court has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750. After reviewing the Record on Appeal [Record] and filings from the parties, the Panel's decision is affirmed.[1]

BACKGROUND

Appellant worked for the South Carolina Department of Social Services ("Employer") from March 4, 2013 to March 16, 2018, most recently as a senior child welfare specialist. Appellant contends she voluntarily resigned her position on March 16, 2018 due to her concerns for her personal safety arising out of an incident occurring on January 31, 2018 during an emergency family meeting with a hostile client. During this meeting, the client used profanity and described Appellant using derogatory terms. The client then demanded Employer assign a new

[1] This case was decided without oral argument pursuant to SCALC Rule 39. Additionally, pursuant to SCALC Rule 36(G) documents submitted by Appellant that were not placed in evidence during the evidentiary hearing and that do not appear in the Record on Appeal will not be considered.

case worker and walked out of the meeting. Following the incident, security escorted the client out of Employer's facility and the client left the premises.

On February 12, 2018, Appellant submitted an e-mail describing the incident to Cynthia Brown, Employer's Human Resources Liaison. In her e-mail, Appellant informed Ms. Brown the client verbally assaulted her during the January 31st meeting. Appellant also advised in her e-mail, according to information relayed to her by other staff, the client made a statement referencing a gun prior to being escorted out of Employer's facility. Ms. Brown responded by directing witnesses to submit statements as to their observations of the incident, and once the statements were collected, she forwarded them to Employer's critical response unit as part of an investigation into the matter. Employer informed Appellant the hostile client would not be allowed on the premises until further notice.

Appellant also verbally complained of the incident to her direct supervisor, Ms. Gwendolyn Breeland. In response, Ms. Breeland agreed to see if another case worker would take over the hostile client's case. Ms. Breeland asked another case worker to take on the client, but that case worker declined, and the client was not re-assigned. While the client remained assigned to Appellant's caseload, Appellant had no further contact or interactions with the client following the January 31st meeting. On or about March 2, 2018, Appellant submitted a letter of resignation, effective March 16, 2018, stating she felt her resignation would be beneficial to her long-term career goals.

Appellant filed for unemployment benefits with the Department on March 19, 2018. Following a review of her claim a claims adjudicator issued a determination on March 30, 2018 holding Appellant indefinitely ineligible for receipt of unemployment benefits, effective March 18, 2018, based upon a finding she left work voluntarily without good cause. Appellant appealed this decision to the Department's Appeal Tribunal ("Tribunal") on March 29, 2018 and filed a written statement with the Tribunal on June 5, 2018. The Tribunal held a telephonic evidentiary hearing on June 8, 2018 before a Tribunal hearing officer.

Appellant and Employer's witnesses, Cynthia Brown and Nicole Foulks, testified during the June 8, 2018 hearing. No witnesses other than Appellant testified on Appellant's behalf. Appellant testified the January 31, 2018 incident was the sole reason for quitting her job and that she quit voluntarily. She testified she was concerned for her safety after discovering news of three employees killed at Employer's facility in Aiken, South Carolina in 1996 as well as the general

trend of gun violence in the country. Appellant also stated she became fearful due to the nature of her job, but also admitted she knew from the time she began working with Employer in 2013 that she would be interacting with individuals going through difficult times who might occasionally exhibit hostility. Other than e-mailing Ms. Brown, Appellant testified she did not report her concerns about the January 31st incident beyond her immediate supervisor. She additionally testified that prior to her resignation there had been no recent changes to the terms or conditions of her employment, including hours, duties or rate of pay. Appellant further testified that, had she not resigned, she would still have a job.

Ms. Brown, Employer's HR Liaison, proffered testimony as to her observations of the incident on January 31, 2018. Ms. Brown testified she overheard loud talking and profane language, but did not observe the hostile client make any statement regarding a gun. According to Ms. Brown, she asked all witnesses to provide statements of their observations of the incident, and that confirmed the client was prohibited from coming onto the premises while the matter was being investigated. Ms. Brown testified she forwarded the witness statements to Employer's Critical Response Unit in April 2018, and later met with the Unit's program coordinator who advised her the matter would be handled by the Critical Response Unit going forward. She further testified the hostile client was sent a formal notice of no trespassing after she was provided with the client's mailing address in April 2018. Ms. Brown stated she was aware the client was still assigned to Appellant; however, Employer has a process in place whereby employees can circumvent their direct supervisors with case reassignment requests. According to Ms. Brown, if Appellant felt her supervisor was not sufficiently responsive, Appellant could have come to her or the director. Furthermore, Ms. Brown testified staff are not required to conduct monthly visits with clients when there is a threat of harm, and she was not aware of any issues with the client after the January 31st incident. Finally, she testified she was not aware of any recent changes to the terms or conditions of Appellant's employment at or near the time of Appellant's resignation.

Ms. Foulks, Employee's Regional Director, was the Interim Orangeburg County Director at the time of the incident. She testified she did not witness the incident with the client on January 31st, but was made aware of the encounter shortly thereafter. Ms. Foulks also could not recall whether Appellant expressed concern about her assignment as the client's case manager. Had she been aware, Ms. Foulks stated she could have attempted multiple measures beginning with de-escalation training or pairing Appellant with another case manager; however, because of her lack

of involvement, she did not know what plan, if any, was put in place to address Appellant's concerns. Ms. Foulks stated that Appellant's direct supervisor, Ms. Breeland, would have been responsible for implementing a plan to address the matter. However, Ms. Foulks explained she considered the January 31st incident to be a critical incident for which the Employer's no-trespassing protocol was implemented.

Following the hearing, the Tribunal affirmed the claims adjudicator's decision and held Appellant voluntarily quit without good cause. In its decision, the Tribunal found "[Appellant's] concern was justified . . . However, the [Appellant] was not in imminent jeopardy at the time she resigned." More specifically, the Tribunal found:

> "There were no material changes to the terms or conditions of the [Appellant's] employment. The circumstances would not cause a reasonable person to become totally unemployed rather than continue working, given the time and distance from the precipitating incident and the additional options available to the [Appellant] to have the employer further address her concerns."

Appellant sought review of the Tribunal's decision by filing a Notice of Appeal with the Appellate Panel on July 17, 2018. Upon review of the record, the Panel affirmed the Tribunal finding "... [Appellant] voluntarily left work without good cause attributable to the employment." In its decision, the Panel commented that Appellant attempted to introduce additional evidence pertaining to her separation, which it could not consider because its review was confined to the record developed by the Tribunal. The Appellant filed an appeal of the Panel's decision with the ALC on September 27, 2018.

ISSUE ON APPEAL

> Whether there is substantial evidence in the Record supporting the Panel's finding that Appellant voluntarily left employment without good cause attributable to the employment.

STANDARD OF REVIEW

The ALC has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750. In addition, the Department is considered an "agency" under the Administrative Procedures Act. *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984). In reviewing an appeal of a Department decision, this Court "may modify or reverse the decision . . . when substantial rights of the appellant have been prejudiced" in one or more of the following ways:

> [T]he administrative findings, inferences conclusions, or decisions are [found to be] (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.

§ 1-23-380(5).

This Court will regard the Department's findings of fact as conclusive if supported by substantial evidence. *See* S.C. Code Ann. § 41-35-750; *See also Rodney v. Michelin Tire Co.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing *Kearse v. State Health & Human Servs. Fin. Comm'n*, 318 S.C. 198, 456 S.E.2d 892 (1995)). 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). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney*, 320 S.C. 515 at 519, 466 S.E.2d 357 at 359. Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996)

DISCUSSION

Voluntary Quit

Under S.C. Code Ann. § 41-35-120(1), a claimant for unemployment compensation is indefinitely disqualified for benefits if the Department "finds [s]he left voluntarily, without good cause, [her] most recent work..." Good cause means "attributable to or connected with the employment." *Stone Mfg. Co. v. S.C. Emp't Sec. Comm'n*, 219 S.C. 239, 247, 64 S.E.2d 644, 647 (1951). A claimant who terminates their employment voluntarily for good cause has the burden of proof on that issue. 81 C.J.S. *Social Security and Public Welfare* § 417 (updated Dec. 2018). The claimant must show that the reason for voluntary termination was of a necessitous and compelling nature. *Id.* Basically, circumstances causing the voluntary termination must be "real, substantial, and reasonable, and which would compel a reasonable person under similar circumstances to act in the same manner." *Id.* For example, "intentional harassment by a supervisor may constitute good cause" to voluntarily leave employment. *Kowalski v. Dir. of Div.*

of Employment Sec., 391 Mass. 1005, 1005, 460 N.E.2d 1042, 1043 (1984). However, a claimant must take measures to resolve the problem before quitting, unless such measures would only be futile gesture. *See Id.* ("[T]he claimant has the burden of proving a reasonable attempt to correct those conditions of employment which [s]he now claims justified [her] leaving [the] employment, unless [s]he can show that such an attempt would have been futile."); *See also* 76 Am. Jur. 2d *Unemployment Compensation* § 104 (updated Nov. 2018).

In this case, Appellant testified she quit her position because of the incident that occurred on January 31, 2018 when a client became hostile during a meeting. Appellant heard the client say, "You better be glad I don't have my gun." The Client did not refer to Appellant by name when making the statement. Nevertheless, Appellant asserts she faced a threat of lethal physical violence which was not addressed by Employer for more than six weeks. However, Employer's witness testified that the client was escorted from the premises by security and was prohibited from entering upon the premises pending completion of an investigation. Ms. Brown, Employer's HR Liason, testified she collected statements from witnesses immediately following the incident, and sent the offending client a no-trespassing letter. Although Appellant's supervisor wasn't successful in having the client's case transferred to another case worker, Appellant acknowledged she had no further contact with the client and Employer did not instruct Appellant to contact the client. Furthermore, Employer's policy does not require its case workers to conduct monthly visits with clients if they feel threatened.

Additionally, while Appellant now complains that Employer was not assertive in addressing her safety concerns, other than the contact with her immediate supervisor, Appellant did not avail herself of other measures available to address her concerns. In this case, Appellant has not proven she made a reasonable attempt to correct the conditions which she now claims justified her resignation, nor has she shown that such an attempt would have been futile. *See Id.* Citing *Ex parte S.C. Employment Sec. Comm'n* [2] and *Stone Mfg. Co. v. S.C. Emp't Sec. Comm'n*,[3] the Department and Employer contend there is substantial evidence in the record to find Appellant voluntarily left employment without good cause. I agree.

[2] 332 S.C. 286, 288, 504 S.E.2d 345, 346 (Ct. App. 1998).
[3] 219 S.C. 239, 257, 64 S.E.2d 644, 647 (1951).

Substantial Evidence

This Court will not overturn the Panel's findings "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 Protection of Wildlife, Inc. v. S.C. Dep't of Nat. 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)). In its decision, the Panel found:

> "The record establishes the [Appellant] voluntarily severed the employer/employee relationship by submitting a letter of resignation. The nature of the job and the [Appellant's] duties had not changed, and her job was not in jeopardy. The [Appellant] was upset after receiving a threat; however, she had no further interaction with the client and she waited a month to resign. Although she maintained the Employer was not responding to her concerns, she did not report her fears up the chain of command in order to seek a quicker resolution. The Employer had measures to put in place to support the [Appellant] and ensure her safety, but she did not avail herself of these additional resources. The [Appellant] has not presented specific credible evidence of circumstances directly attributable to the employment which would cause a reasonable person to become totally unemployed rather than continue working. Therefore, we find the [Appellant] voluntarily left work without good cause attributable to the employment.

Following a careful review of the entire record, I find there is substantial evidence in the record to support the Panel's finding that Appellant is disqualified from receiving unemployment benefits because she voluntarily quit her employment without good cause, pursuant to S.C. Code Ann. § 41-35-120(1). *See Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) (holding the fact that the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence).

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Panel's Decision is **AFFIRMED**.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

May 16, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned [illegible] served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, postage prepaid, [illegible] Mail Service addressed to the party(ies) [illegible]