

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cortez M. Jiles,

Docket No. 18-ALJ-22-0409-AP

Appellant,

vs.

South Carolina Department of Employment
and Workforce and House of Raeford Farms,
Inc.,

Respondents.

ORDER RECEIVED
JUN 25 2019
SC Court of Appeals

STATEMENT OF THE CASE

The Appellant, Cortez M. Jiles, (Jiles or Appellant) appealed the decision of the South Carolina Department of Employment and Workforce's (DEW or Department) Appellate Panel (Panel), holding he was absent from the Appeal Tribunal hearing on April 12, 2018, without good cause. The Administrative Law Court (ALC) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2018). Upon consideration of the record and the briefs, this court reverses, finding that substantial evidence does not support the decision of the Panel.

BACKGROUND

The Department issued an initial determination on March 8, 2018, finding Jiles discharged for misconduct. Jiles filed a timely appeal on March 13, 2018 and a telephone hearing was set for April 12, 2018 at 9:30 a.m. The appeal Tribunal dismissed the appeal based upon a finding that Jiles had failed to participate in the hearing. Jiles appealed to the Appellate Panel, which remanded the case back to the Appeal Tribunal for an evidentiary hearing on Jiles' absence from the previous hearing. The Appeal Tribunal hearing was conducted on May 31, 2018. On June 28, 2018, the Appeal Tribunal found that Jiles had not shown good cause for his absence. Jiles then appealed to the Appellate Panel, which affirmed the Appeal Tribunal's decision on August 14, 2018. Appellant filed a Notice of Appeal with the ALC on September 21, 2018.

ISSUES ON APPEAL

1. Did the Department err in holding Appellant was absent from the Appeal Tribunal hearing on April 12, 2018, without good cause?

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May 21, 2019

SC ADMIN. LAW COURT

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. 2018); 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. 2018). See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section states:

The court may 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. 2018).

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

Appellant asserts that the Department erred in holding he was absent from the Appeal Tribunal hearing on April 12, 2018, without good cause. I agree.


In its decision mailed on August 14, 2018, the Appellate Panel found that, “the Claimant contacted the Department approximately one hour and ten minutes after the scheduled hearing time.” The Appellate Panel further found that the claimant “indicated he had a scheduling conflict with a dental appointment for his son at 10:00 a.m. on the same day.” These are the factual findings upon which the Appellate Panel’s conclusion that Appellant was absent from the appeal hearing without good cause rests. However, neither of these findings of fact are supported by the substantial evidence in the record. Appellant testified that he began calling the Department twenty minutes after the scheduled hearing time, as soon as he realized he had missed the call while his telephone was charging. He testified that it took until approximately 10:30, or one hour after the scheduled time, for his call to be put through to the right number at the Department. His testimony regarding his son’s dental appointment was that the appointment was for 12:15 that day, not at 10 a.m., which would have conflicted with the scheduled hearing time. Because there is no evidence he had a conflict with the scheduled hearing time, the Appellate Panel’s conclusions and findings concerning his failure to reschedule the hearing prior to the scheduled time are, likewise, unsupported by the substantial evidence in the record. The Court finds that the Department’s decision holding he was absent from the Appeal Tribunal hearing on April 12, 2018, without good cause, as reflected in the determination of the Appellate Panel is not supported by the substantial evidence in the record.

ORDER

IT IS THEREFORE ORDERED that the Department’s decision holding he was absent from the Appeal Tribunal hearing on April 12, 2018, without good cause, is **REVERSED**.

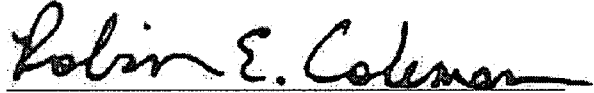
AND IT IS SO ORDERED.

May 21, 2019
Columbia, South Carolina


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

May 21, 2019
Columbia, South Carolina

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