THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2019-000995

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SEP 16 2019

SC Court of Appeals

Amber Geohaghan

Appellant

v.

South Carolina Department of Employment and Workforce and
South Carolina Department of Social Services,

Respondents.

INITIAL BRIEF OF APPELLANT

Adam Protheroe
S.C. APPLESEED LEGAL JUSTICE CENTER
P.O. Box 7187
Columbia, SC 29202
(803) 779-1113
S.C. Bar No. 78442

Attorney for Appellant Amber Geohaghan

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
STATEMENT OF ISSUES ON APPEAL 1
STATEMENT OF THE CASE 1
STANDARD OF REVIEW 3
FACTS 4
ARGUMENTS 8

I. THE ADMINISTRATIVE LAW COURT ERRED IN HOLDING THAT WHETHER APPELLANT HAD GOOD CAUSE TO RESIGN WAS A QUESTION OF FACT SUBJECT TO SUBSTANTIAL EVIDENCE REVIEW. 9

   a. Binding Precedent Holds that the Meaning of the term Good Cause in S.C. Code Ann. § 41-35-120(1) is a Question of Law. 10

   b. Appellate Decisions have not Defined Good Cause such that it has Become a Question of Fact for the Purposes of the Instant Case. 11

   c. South Carolina Appellate Courts have not Treated Whether an Employee has Good Cause to Resign as a Question of Fact. 12

   d. The Meaning of Good Cause as that Term is Used in S.C. Code Ann. § 41-35-120(1) is a Question of Law. 17

II. THE ADMINISTRATIVE LAW COURT ERRED IN AFFIRMING THE APPELLATE PANEL'S FINDING THAT APPELLANT RESIGNED WITHOUT GOOD CAUSE BECAUSE THAT FINDING WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE. 21

CONCLUSION 27

TABLE OF AUTHORITIES

Cases

Allison v. W.L. Gore & Assocs., 394 S.C. 185, 714 S.E.2d 547 (2011) 14
Alton Newton Evangelistic Asso. v. S.C. Emp't Sec. Com., 284 S.C. 302, 326 S.E.2d 165 (Ct. App. 1985) 9
Anderson v. Baptist Med. Ctr., 343 S.C. 487, 541 S.E.2d 526 (2001) 4, 21
Boggero v. S.C. Dep't of Revenue, 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015) 14, 18, 19
Bursey v. Dept. of Health & Envir. Control, 369 S.C. 176, 631 S.E.2d 899 (2006) 14
CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011) 3
Charleston County Parks & Rec. Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995) 14
Charleston County Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). 11
City of Columbia v. Am. Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 475 S.E.2d 747 (1996) 17
Condo v. Board of Review, Dept. of Labor and Industry, 385 A.2d 920 (N.J. Super. App. Div., 1978) 24
Ex Parte S.C. Emp't Sec. Comm'n, 332 S.C. 286, 504 S.E.2d 345 (Ct. App. 1998) 15
Gibson v. Florence Country Club, 282 S.C. 384, 318 S.E.2d 365 (1984) 16
Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995) 26
Hopper v. Terry Hunt Constr., 373 S.C. 475, 646 S.E.2d 162 (Ct. App. 2007) 11, 17
In re Vinson, 42 N.C. App. 28, 255 S.E.2d 644 (N.C. App. 1979) 20
Macarella v. Commonwealth, Unemployment Comp. Bd. of Review, 86 Pa. Commw. 176, 484 A.2d 213 (1984) 20
Nason v. La. Dep't of Emp't Sec., 475 So. 2d 85 (La. Ct. App. 1985) 20
Palmetto Net, Inc. v. S.C. Tax Comm'n, 318 S.C. 102, 456 S.E.2d 385 (1995) 19
Richey v. Riegel Textile Corp., 253 S.C. 59, 169 S.E.2d 101 (1969) 15
Rodney v. Michelin Tire Corp., 320 S.C. 515, 466 S.E.2d 357 (1996) 9
S.C. Dep't of Revenue v. Blue Moon of Newberry, Inc., 397 S.C. 256, 725 S.E.2d 480 (2012) ... 3
Scott v. Butler, 327 Ga. App. 457, 759 S.E.2d 545 (Ga. App. 2014) 20
Sierra Club v. S.C. Dep't of Health & Envtl. Control, 426 S.C. 236, 826 S.E.2d 595 (2019) 3, 9
Smith v. Johnson's Mill, 96 Idaho 760, 536 P.2d 755 (1975) 20
State v. Wallace, 269 S.C. 547, 238 S.E.2d 675 (1977) 17
Stone Mfg. v. S. C. Emp't Sec. Com., 219 S.C. 239, 64 S.E.2d 644 (1951) 9, 10, 11, 22
Sun Shipbuilding & Dry Dock Co. v. Unemployment Compensation Board of Review, 358 Pa. 224, 56 A.2d 254 (1948) 11
Sviland v. S.C. Emp't Sec. Com., 300 S.C. 305, 387 S.E.2d 688 (Ct. App. 1989) 12, 13
Wallace v. Owens-Illinois, Inc., 300 S.C. 518, 389 S.E.2d 155 (Ct. App. 1989) 17
Zorrero v. Unemployment Ins. Appeals Bd., 47 Cal. App. 3d 434, 120 Cal. Rptr. 855 (1975) ... 20

Statutes

S.C. Code Ann. § 1-23-610(B) (2019) 3
S.C. Code Ann. § 1-23-610(B)(e) (2019) 3, 21
S.C. Code Ann. § 41-35-120(1) (2019) 8
S.C. Code Ann. § 41-35-750 (2019) 26
S.C. Code Ann. §1-23-380(5) (2019) 26

STATEMENT OF ISSUES ON APPEAL

I. DID THE ADMINISTRATIVE LAW COURT ERR IN HOLDING THAT WHETHER APPELLANT HAD GOOD CAUSE TO RESIGN WAS A QUESTION OF FACT SUBJECT TO SUBSTANTIAL EVIDENCE REVIEW?

II. DID THE ADMINISTRATIVE LAW COURT ERR IN AFFIRMING THE DEPARTMENT'S FINDING THAT APPELLANT RESIGNED WITHOUT GOOD CAUSE WHERE THAT FINDING WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE?

STATEMENT OF THE CASE

Appellant was an employee of the South Carolina Department of Social Services ("DSS") from March 4, 2013 until March 16, 2018, most recently as a senior child welfare specialist. Amended Order, p. 1, filed May 16, 2019. Appellant resigned her position effective March 16, 2018 due to concerns for her safety after an incident in which a client became hostile and threatened Appellant. Order Denying Motion for Rehearing, p. 2, filed May 16, 2019; Amended Order, p. 6, filed May 16, 2019. This action was commenced on March 19, 2018 when Appellant applied for unemployment benefits with the South Carolina Department of Employment and Workforce ("the Department"). The Department's Claims Adjudicator determined that Appellant was ineligible for benefits effective March 18, 2018 because she resigned voluntarily and without good cause. Determination of Claims Adjudicator, mailed March 30, 2018. Appellant timely appealed the claims adjudicator's decision to the Department's Appeal Tribunal which held a telephone hearing on June 8, 2018. Transcript of

Testimony before Appeal Tribunal ("Transcript") p. 1. The Appeal Tribunal affirmed the Claims Adjudicator in a decision mailed July 6, 2018. Decision of Appeal Tribunal, mailed July 6, 2018. Appellant timely appealed to the Department's Appellate Panel, which affirmed the Appeal Tribunal in a decision mailed August 29, 2018. Appellate Panel Decision, mailed August 29, 2018.

On September 27, 2019, Appellant timely petitioned the Administrative Law Court ("ALC") for judicial review of the Department's decision. Appellant's Petition for Judicial Review to the Administrative Law Court, filed September 27, 2018. The ALC affirmed the Department without oral argument by decision filed March 7, 2019. Order Affirming Appellate Panel, filed March 7, 2019. On March 20, 2019, Appellant filed a motion for rehearing. Appellant's Motion for Rehearing, filed March 20, 2019. The ALC denied Appellant's motion by order filed May 16, 2019 and filed an Amended Order that same day. Order Denying Appellant's Motion for Rehearing, filed May 16, 2019; Amended Order Affirming Appellate Panel, filed May 16, 2019.

On June 18, 2019, Appellant timely appealed to this Court. Appellant's Notice of Appeal to the Court of Appeals, filed June 18, 2019. Appellant contends that the ALC erred in two respects. First, Appellant contends that the ALC erred treating the question of whether Appellant had good cause to resign as a question of law subject to substantial evidence review. Second, Appellant contends that the ALC erred in affirming the Department's decision that she is indefinitely qualified from receiving unemployment benefits because that finding is not supported by substantial evidence in the record.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act provides that the Court of Appeals may affirm the decision of an administrative law judge or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

> (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. § 1-23-610(B) (2019).

An appellate court "will correct the decision of the ALC if it is affected by an error of law, and questions of law are reviewed de novo." Sierra Club v. S.C. Dep't of Health & Envtl. Control, 426 S.C. 236, 247, 826 S.E.2d 595, 601 (2019) (*quoting* S.C. Dep't of Revenue v. Blue Moon of Newberry, Inc., 397 S.C. 256, 260, 725 S.E.2d 480, 483 (2012)). Questions of statutory interpretation are questions of law, which an appellate court is free to decide without any deference to the court below. CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). An appellate court may also overturn a decision of the ALC if it is unsupported by substantial evidence. S.C. Code Ann. § 1-23-610(B)(e) (2019). "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a

whole, would allow reasonable minds to reach the conclusion the agency reached." Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492, 541 S.E.2d 526, 528 (2001).

FACTS

Appellant Amber Geohaghan began working for DSS in March of 2013. Her most recent position was as a senior child welfare specialist. Amended Order, p.1, filed May 16, 2019. On January 26, 2018, Appellant spoke by phone with one of her clients. During that conversation the client, apparently unhappy that her child had been placed with her sibling and not in foster care, threatened to go to her sibling's house with a gun and remove her child. Transcript pp. 16:14-16; 18:10-11. Appellant was able to defuse the situation and secure the client's agreement not to follow through with her threat with the promise of an emergency family meeting. Transcript p. 16:30 – 17:5.

That emergency family meeting was held on January 31, 2018. During that meeting, the client shouted profanity at Appellant, said she wanted a different case worker, and told Appellant that she should be glad the client did not have a gun. Amended Order, p.1, filed May 16, 2019. Appellant's direct supervisor, performance coach, HR liaison, and security were all present at or around the time the client threatened Appellant. In response to the client's threat, Appellant's supervisor and security removed the client from the building. Transcript pp. 17:18-20; 40:5-18.

Immediately after the January 31st incident, the DSS Administrative Assistance/HR liaison, Cynthia Brown, indicated that she would be notifying the DSS county director of the incident and would request that anyone who witnessed the incident provide her with a written statement. Transcript pp. 18:18-26; 66:21-23. In addition, because the incident involved a threat

to an employee, the HR liaison reported the incident to DSS' central HR employer relations unit. In response to the HR liaison's report, the central HR employer relations unit provided the HR liaison with a contact person. Transcript pp. 40:26 – 41:3.

The week following the incident, Appellant met with her immediate supervisor and expressed her concerns about continuing to handle the client's case. Transcript p. 19:16-20. Appellant indicated that she did not feel safe continuing to work with that client and suggested that, since the client had requested a new caseworker, it may not be in the best interest of the case that she continue to serve as that client's caseworker. Transcript p. 19:19-23. Appellant offered to take another case or even two more cases in exchange. Transcript p. 20:11-14. Appellant's supervisor indicated that the client was "all bark and no bite" but said that she would see what she could do about transferring the case. Transcript p. 20:3-5 and 19-20. The record indicates that Appellant's supervisor sought to transfer the client's case to a caseworker who had worked with that client before, however, that caseworker refused to accept the case. Transcript p. 20:21-30. The record contains no evidence that DSS made any further effort to transfer that client's case or offer Appellant additional support in continuing to handle that client's case if it could not be transferred. Likewise, the record contains no evidence that DSS made any effort to ensure Appellant's safety. Critically, the Appellate Tribunal found that Appellant's concerns for her safety were justified. Appellate Tribunal Decision, p.2, mailed July 6, 2018. Neither the Appellate Panel nor the ALC took issue with this finding. Appellate Panel Decision, mailed August 29, 2018; Amended Order, filed May 16, 2019.

On February 12, 2018, almost two weeks after the incident, Appellant sent an e-mail to the DSS HR liaison regarding the incident. E-Mail from Amber Geohaghan to Cynthia Brown, dated February 12, 2018. In this e-mail, Appellant again indicated that she did not feel that it was safe for her to have contact with the client in the client's home or face to face and again recommended that a new case manager be assigned. *Id.* There is no evidence that DSS took any action in response to Appellant's email. In fact, between the time that Appellant was threatened and the time she resigned, there is no evidence that DSS took any action in response to the threat other than to solicit statements from those who had witnessed it, and make one failed attempt to transfer the case to another caseworker. Transcript pp. 40:20 – 41:25 and 20:21-30. DSS regional director, Nicole Foulks, testified that some sort of plan should have been put in place to address the threat to Appellant's safety, but admitted that she had no knowledge that any such plan was developed and that it was Appellant's supervisor's responsibility to put such a plan in place. Transcript pp. 81:1-6 and 86:18. There is no evidence in the record that such a plan was ever developed.

On March 2, 2018, with DSS having taken no further action in response to the January 31st incident or in response to Appellant's multiple requests for action, Appellant, due to concerns for her safety, submitted her letter of resignation on March 2, 2018 effective March 16, 2018. Amended Order p.2, filed May 16, 2019. In the beginning of April 2018, more than two months after Appellant was threatened and approximately one month after she submitted her letter of resignation, the HR liaison forwarded the documentation she had collected regarding the incident to what she termed "critical response" and sent a "no-trespassing" letter to the client who threatened Appellant. Transcript p. 41:7-11 and 22-25.

On March 19, 2018, shortly after the effective date of her resignation, Appellant applied for unemployment benefits with the Department. Amended Order p.2, filed May 16, 2019. The Department's Claims Adjudicator initially determined Appellant to be ineligible for benefits effective March 18, 2018 finding that she left her most recent bona fide employer because she was dissatisfied with her work environment and that her resignation was voluntary and without good cause. Determination of Claims Adjudicator, mailed March 30, 2018. Appellant timely appealed the Claims Adjudicator's decision to the Department's Appeal Tribunal which held a telephone hearing on June 8, 2018. Transcript p. 1. By decision mailed July 6, 2018, the Appeal Tribunal affirmed the Claims Adjudicator's decision disqualifying Appellant from receiving benefits indefinitely effective March 18, 2018. Decision of Appeal Tribunal, mailed July 6, 2018. Appellant timely appealed the Appeal Tribunal's decision to the Department's Appellate Panel, which affirmed the Appeal Tribunal. Appellate Panel Decision, mailed August 29, 2018.

Appellant then timely petitioned the Administrative Law Court ("ALC") for judicial review of the Appellate Tribunal's decision. Appellant's Petition for Judicial Review to the Administrative Law Court, filed September 27, 2018. After receiving briefs from the parties, and without oral argument, the ALC issued an order affirming the Appellate Panel's decision disqualifying Appellant. Order Affirming Appellate Panel, filed March 7, 2019. Appellant timely moved for rehearing on two grounds. First, Appellant contended that the ALC failed to rule on her argument that she had good cause to resign as a matter of law and applied the incorrect standard of review. Second, Appellant argued that the ALC improperly substituted its judgment for that of the Department on questions of fact. Appellant's Motion for Rehearing, filed March 20, 2019. The Administrative Law Court denied Appellant's motion, but issued an

amended order affirming the Appellate Panel, holding that whether Appellant had good cause to resign was a question of fact subject to substantial evidence review, and issuing a revised finding of fact. Order Denying Appellant's Motion for Rehearing, filed May 16, 2019; Amended Order Affirming Appellate Panel, filed May 16, 2019. This appeal timely followed. Appellant's Notice of Appeal to the Court of Appeals, filed June 18, 2019.

ARGUMENTS

Appellant's entitlement to unemployment benefits turns on whether she had good cause to resign her position with DSS. *See* S.C. Code Ann. § 41-35-120(1) (2019). The ALC affirmed the Department's finding that she resigned voluntarily without good cause and that, as a result, she was indefinitely disqualified from receiving unemployment benefits. In so holding, the ALC erred in two respects. First, the ALC erred in holding that the question of whether Appellant had good cause to resign was entirely a question of fact that could not be disturbed on appeal if it was supported by substantial evidence. Second, the ALC erred in affirming the Department's finding that Appellant resigned without good cause where that finding was not supported by substantial evidence. For these reasons, the ALC's finding that Appellant is indefinitely disqualified from receiving unemployment benefits should be reversed. In the alternative, this case should be remanded for further proceedings applying the correct *de novo* standard of review on the question of whether Appellant had good cause to resign.

I. THE ADMINISTRATIVE LAW COURT ERRED IN HOLDING THAT WHETHER APPELLANT HAD GOOD CAUSE TO RESIGN WAS A QUESTION OF FACT SUBJECT TO SUBSTANTIAL EVIDENCE REVIEW.

An employee is ineligible for unemployment benefits if they left work voluntarily and without good cause. S.C. Code Ann. § 41-35-120(1). At the heart of this case is the meaning of this statute which, "[a]s social legislation . . . should be construed to provide protection to as many employees as possible." Alton Newton Evangelistic Asso. v. S.C. Emp't Sec. Com., 284 S.C. 302, 305, 326 S.E.2d 165, 167 (Ct. App. 1985) (citing Stone Mfg. v. S. C. Emp't Sec. Com., 219 S.C. 239, 64 S.E.2d 644 (1951)). Key in this inquiry is whether the meaning of the term "good cause" in this statute is a question of law or one of fact. If this is a question of law, it receives *de novo* review on appeal. Sierra Club, 426 S.C. 236 (holding that, on appeal from an order of the ALC, questions of law are reviewed *de novo*). If good cause is a question of fact, it is subject to a significantly more deferential substantial evidence standard of review. Rodney v. Michelin Tire Corp., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) ("A court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agency's findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.") Here, the Administrative Law Court ("ALC") held that the meaning of the term "good cause" in S.C. Code Ann. § 41-35-120(1) was a question of fact and affirmed the Department's finding that Appellant resigned without good cause employing the deferential substantial evidence standard of review. Order Denying Motion for Rehearing, p. 2, filed May 16, 2019; Amended Order, p. 5, filed May 16, 2019.

The ALC erred in these findings for three reasons. First, binding precedent holds that the meaning of the term "good cause" in the predecessor statute to S.C. Code Ann. § 41-35-120(1) is a question of law and, as a result, is subject to a *de novo* standard of review. Second, even if the meaning of that term has been defined by case law such that it has become a question of fact requiring no legal judgment, this is true only in a limited context not applicable to the instant case. Finally, contrary to the ALC's holding, South Carolina appellate courts have not consistently treated the meaning of good cause as a question of fact. Instead, they have treated only two related issues as questions of fact – first, whether an employee's resignation was voluntary and, second, whether the employee's cause for resignation was attributable to or connected with their employment. Neither of these issues is implicated here. Because the ALC erred in these respects, its decision should be reversed.

a. Binding Precedent Holds that the Meaning of the term Good Cause in S.C. Code Ann. § 41-35-120(1) is a Question of Law.

In Stone Mfg. Co. v. S. C. Emp't Sec. Com., 219 S.C. 239, 64 S.E. 2d 644 (1951), the South Carolina Supreme Court addressed whether an employee who resigned voluntarily, and for reasons unconnected with her employment, did so with good cause as that term was used in Section 5 (a) of the South Carolina Unemployment Compensation Law Section 7035-85 (a), Code of 1942, the predecessor to S.C. Code Ann. § 41-35-120(1). There, the employee left her employment to be with her husband after his transfer during military service. Turning to the meaning of "good cause", the Stone Court held "[w]e think the words 'good cause' as used in the context contemplate, ordinarily at least, a cause attributable to or connected with claimant's

employment." Stone, 219 S.C. at 247, 64 S.E.2d at 647 (1951). Applying this understanding of good cause, the court held that the employee was not entitled to benefits because, though her decision was readily understandable and not to be condemned, her reason for resigning was purely personal and not attributable to or connected with her employment. Stone, 219 S.C. at 247, 64 S.E.2d at 647 (1951) (citing Sun Shipbuilding & Dry Dock Co. v. Unemployment Compensation Board of Review, 358 Pa. 224, 56 A.2d 254 (1948)).

It is significant that the Stone Court, in seeking to determine the meaning of good cause, immediately resorted "the cardinal rule of statutory construction", that is, "determining and giving effect to the intent of the legislature." Stone, 219 S.C. at 244, 64 S.E.2d at 645 (1951); Charleston County Sch. Dist. v. State Budget & Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993) ("The cardinal rule of statutory construction is to determine and give effect to the intent of the legislature."). Statutory construction is a question of law. *See e.g.* Hopper v. Terry Hunt Constr., 373 S.C. 475, 479, 646 S.E.2d 162, 165 (Ct. App. 2007). Thus, in treating the meaning of good cause as a question of statutory construction, the Stone court implicitly held that it was a question of law. As a result, the ALC erred when it held otherwise.

b. Appellate Decisions have not Defined Good Cause such that it has Become a Question of Fact for the Purposes of the Instant Case.

The ALC, citing Stone, held that "[t]he meaning of good cause, as contemplated in [S.C. Code Ann.] § 41-35-120(1), has already been established" and that, as a result, the Department "was solely tasked with making factual findings regarding the existence of good cause." Order Denying Motion for Rehearing, p. 1, filed May 16, 2019. Yet, Stone offers no guidance as to the

meaning of good cause in the instant case because neither the Department nor the ALC found that Appellant to resigned for reasons which were purely personal or entirely unrelated to her employment. Indeed, if Stone establishes the meaning of good cause for the purposes of this case as the ALC held, then Appellant is plainly entitled to benefits because her reason for resigning was attributable to or connected with her employment. The question here is not the one that Stone answered, that is, whether Appellant's reason for resigning was connected with her employment. The question here is whether the legislature intended the meaning of good cause in S.C. Code Ann. § 41-35-120(1) to include a justified fear for one's safety that is connected with one's employment. Thus, to the extent that Stone may have transformed the meaning of good cause from a question of law into one of fact by defining the term in light of legislative intent, as the ALC implicitly held, it cannot have done so in the context of this case because Stone did not answer the question presented here.

c. South Carolina Appellate Courts have not Treated Whether an Employee has Good Cause to Resign as a Question of Fact.

In the instant case, the ALC relied on Sviland v. S.C. Emp't Sec. Com., 300 S.C. 305, 387 S.E.2d 688 (Ct. App. 1989), in holding that "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." Order Denying Motion for Rehearing, pp. 1-2, filed May 16, 2019. The employee in Sviland resigned based on alleged "unethical business practices" by her employer and thereafter sought unemployment benefits. Sviland, 300 S.C. at 306, 387 S.E.2d at 688. The Employment Security Commission, predecessor to the Department, disqualified her

from receiving benefits under S.C. Code Ann. § 41-35-120(1) finding that she "quit her employment for personal reasons rather than reasons that could be attributed to the employer." Sviland, 300 S.C. at 307, 387 S.E.2d at 689. The employee then petitioned the circuit court for review of the Commission's decision and the circuit court reversed finding that "it was clearly erroneous in light of this reliable, probative and substantial evidence for the [Commission] to hold that [Sviland] voluntarily separated from her employment with the [employer] and did so without good cause." Sviland, 300 S.C. at 307-08, 387 S.E.2d at 689.

The Commission appealed and the Court of Appeals reversed holding that the Commission's finding was supported by substantial evidence. Sviland, 300 S.C. at 308, 387 S.E.2d at 689. In so holding, the Sviland Court did indeed apply the substantial evidence standard of review applicable to findings of fact. In this context, the application of the substantial evidence standard of review was correct for two reasons, neither of which is applicable to the instant case.

First, the Commission's determined that the employee resigned "for personal reasons rather than reasons that could be attributed to the employer." Sviland, 300 S.C. at 307, 387 S.E.2d at 689. The Court of Appeals affirmed this finding holding that "[a]lthough Sviland may have considered the employer's business practices improper and immoral, such is a personal judgment which amounts to nothing more than a disagreement with management decisions. Her fears the company engaged in conduct of questionable legality are insufficient in light of the fact no such illegality was shown." Sviland, 300 S.C. at 308, 387 S.E.2d at 689. These findings were a determination that the reasons Sviland gave for her resignation were not attributable to her

employment. They were properly subject to substantial evidence review because they applied the facts of the case to a statute which, for the purposes of that case, Stone had defined. *See e.g.* Bursey v. Dept. of Health & Envir. Control, 369 S.C. 176, 631 S.E.2d 899 (2006), *overruled on other grounds by* Allison v. W.L. Gore & Assocs., 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) (recognizing that the meaning of a statutory term is a question of law, but whether a company's activities met that definition was a question of fact); Boggero v. S.C. Dep't of Revenue, 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015) (finding that whether the facts of a case were correctly applied to a statute is a question of fact).

Here, however, Stone's clarification of the meaning of good cause offers no guidance. As discussed above, there is nothing in the record to suggest that Appellant resigned for purely personal reasons and neither the Department nor the ALC made any such finding. As a result, Stone does not establish the meaning of good cause for purposes of this case. In order to determine whether Appellant had good cause to resign in the instant case, it is necessary to further determine the meaning of good cause as that term is used in S.C. Code Ann. § 41-35-120(1). Determining the meaning of a statutory term is a question of law. *See e.g.* Bursey, 369 S.C. at 184, 631 S.E.2d at 904 (2006); Charleston County Parks & Rec. Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995) (determination of legislative intent is a matter of law). For these reasons, Sviland does not support the proposition that good cause is a question of fact subject to substantial evidence review for the purposes of this case.

South Carolina appellate courts have addressed arguments concerning whether an employee voluntarily resigned with good cause in several other cases. However, none have

defined good cause in a way that is meaningful to the instant case. For example, in Richey v. Riegel Textile Corp., 253 S.C. 59, 169 S.E.2d 101 (1969) the South Carolina Supreme Court sought to determine whether an employee's resignation was voluntary when he was discharged at age 65 after agreeing to a retirement plan that required separation at that age. In determining that the employee's resignation was voluntary, the Richey Court treated the question as one of fact and utilized the then-applicable "any evidence" standard of review. Richey, 253 S.C. at 63, 169 S.E.2d at 103. However, Richey is not controlling here because the instant case does not involve a question as to whether Appellant's resignation was voluntary.

Similarly, in Ex Parte S.C. Emp't Sec. Comm'n, 332 S.C. 286, 504 S.E.2d 345 (Ct. App. 1998), the employee's supervisor indicated that he was not happy with the programs the employee was in charge of and suggested that the employee resign. The employee retained counsel and ultimately entered into a separation agreement which provided for, *inter alia*, an $80,000 severance package. The employee then sought unemployment benefits, which the Commission granted. The circuit court, finding that the record contained no evidence that the employee was actually discharged from her job, reversed the Commission's award of benefits. The Court of Appeals affirmed holding that the employee was not discharged from her position, thus addressing only the question of whether her resignation was voluntary. Ex Parte S.C. Emp't Sec. Comm'n, 332 S.C. at 290, 504 S.E.2d at 347. As with Richey, Ex parte S.C. Emp't Sec. Comm'n is not controlling here because it addresses only whether the employee's resignation was voluntary and not whether the employee had good cause to resign.

Finally, in Gibson v. Florence Country Club, 282 S.C. 384, 318 S.E.2d 365 (1984) , the South Carolina Supreme Court addressed whether an employee who resigned after a change to her salary structure did so with good cause. The Employment Security Commission found that the employee had not resigned voluntarily for good cause attributable to her employment because there had been no material change in her working conditions that justified her resignation. Gibson, 282 S.C. at 385, 318 S.E.2d at 366. The employee appealed to the circuit court, which reversed. The employer then appealed to the Supreme Court which noted that "the only issue in this case concerns whether Gibson was informed of the specifics of the new system, which apparently would have had a negligible effect on her 'takehome' salary." Gibson, 282 S.C. at 385, 318 S.E.2d at 366. The Court went on to apply a substantial evidence standard of review to this clearly factual question and hold that there was substantial evidence in the record to support the Commission's finding that the employee "resigned with notice of the effects of the new salary procedure." Gibson, 282 S.C. at 387, 318 S.E.2d at 367. Thus, the application of a substantial evidence standard of review in Gibson offers no guidance here because the court was presented with a pure question of fact: whether the employee resigned with notice of the effects of the new salary procedure.

The ALC erred when it held that South Carolina appellate courts have consistently treated good cause as a question of fact. Instead, our appellate courts have only treated two aspects of that inquiry as questions of fact. The first, whether the employee's reasons for resigning were attributable to or connected with their employment, was established by Stone and that Court's divination of legislative intent. The second, whether the employee's resignation was voluntary, is contained within the statutory language and is a quintessential question of fact. *See*

e.g. State v. Wallace, 269 S.C. 547, 238 S.E.2d 675 (1977) (Holding that whether a consent to search was voluntary is a question of fact); Wallace v. Owens-Illinois, Inc., 300 S.C. 518, 389 S.E.2d 155 (Ct. App. 1989) (Holding that the affirmative defense of assumption of risk, which requires a voluntary choice to assume a known risk, ordinarily presents a question of fact for the jury.) Neither of these issues is presented in the instant case. As a result, the ALC erred in holding that appellate courts have consistently treated good cause as a question of fact.

d. The Meaning of Good Cause as that Term is Used in S.C. Code Ann. § 41-35-120(1) is a Question of Law.

If the language in the statute is plain and unambiguous, there is no need to resort to the rules of statutory interpretation. City of Columbia v. Am. Civil Liberties Union of South Carolina, Inc., 323 S.C. 384, 387, 475 S.E.2d 747, 749 (1996). However, a term is ambiguous where it is susceptible to at least two different meanings and it becomes necessary to resort to the rules of statutory construction in order to ascertain its meaning. Hopper, 373 S.C. at 481, 646 S.E.2d at 165. Statutory interpretation is a question of law. *See e.g.* Hopper, 373 S.C. at 479, 646 S.E.2d at 165. Here, because the term "good cause" in S.C. Code Ann. § 41-35-120(1) is susceptible to a multitude of interpretations, it is necessary to resort to rules of statutory construction to ascertain whether the circumstances presented here fall within its bounds. As a result, determining whether an employee had good cause to resign is a question of law.

The Stone Court's treatment of this question as one of law could end the inquiry. However, there is other South Carolina authority to support this proposition as well. In differentiating between questions of law and fact, the South Carolina Court of Appeals' analysis

in Boggero, 414 S.C. 277, 777 S.E.2d 842, is helpful because it provides a contrast to the instant case. There, the South Carolina Department of Revenue imposed sales and use taxes on the gross proceeds of Boggero's business. Boggero appealed this determination arguing that the "true object" of her business was a service and, as a result, was not subject to sales and use taxes. On appeal, the parties did not dispute the meaning of any terms in the applicable taxing statutes, rather, they disputed whether the "true object" of Boggero's business was a rental or a service. Boggero, 414 S.C. at 283, 777 S.E.2d at 845. Recognizing the lack of any dispute about the meaning of the statutory terms, the Court of Appeals held that the issue presented was a question of fact subject to a substantial evidence standard of review. Boggero, 414 S.C. at 284, 777 S.E.2d at 845.

Here, the parties disagree on whether the facts of this case constitute "good cause" as that term is used in S.C. Code Ann. § 41-35-120(1). In order to resolve this dispute, it is necessary to determine the meaning of the statutory term "good cause". This is the opposite scenario to that presented in Boggero and should lead to the opposite conclusion, that is, that whether Appellant had good cause to resign is a question of law.

In addition, the Boggero Court engaged in a separate analysis of whether the true object test constituted a question of law or one of fact. This analysis is also instructive here, again because it provides a contrast to the instant case. Boggero, 414 S.C. at 284, 777 S.E.2d at 845. In determining that the true object test was a question of fact, the Court relied on two factors which are not present here. First, the Boggero Court noted that the South Carolina Supreme Court had previously deferred to the trial court's findings of fact when determining whether a

transaction was subject to a particular tax. Boggero, 414 S.C. at 285, 777 S.E.2d at 846 (*citing* Palmetto Net, Inc. v. S.C. Tax Comm'n, 318 S.C. 102, 105, 456 S.E.2d 385, 387 (1995)). While the Supreme Court did not explicitly hold that the question presented was one of fact, the Boggero Court took note of its deference to the trial court's findings of fact in ultimately holding that the true object test was a question of fact. As discussed above, no such guidance is available here and, in fact, the Stone Court's analysis of legislative intent in determining the meaning of good cause militates in favor of the opposite conclusion.

Second, the Boggero Court noted that the analysis under the true object test focused on factual questions; in particular whether the customer's purpose for entering into the transaction was to obtain a good or a service. Boggero, 414 S.C. at 285, 777 S.E.2d at 846. In contrast to the true object test and its focus on the customer's intent, a patently factual question, the question of whether an employee has good cause to resign involves an entirely different judgment. As the Stone Court's analysis shows, it is necessary to ascertain legislative intent to determine the meaning of good cause as that term is used in S.C. Code Ann. § 41-35-120(1). Rather than the quintessentially factual question at the heart of the true object test, determining whether an employee had good cause to resign requires resort to legislative intent, the principal object of statutory interpretation which requires the exercise of legal judgment.

Cases from other jurisdictions also support the proposition that whether an employee has good cause to resign is a question of law. For example, the Georgia Court of Appeals recently held that "[w]hether or not an employee voluntarily leaves employment is usually a question of fact, but whether there existed *good cause* for his voluntary termination more often requires a

legal conclusion." Scott v. Butler, 327 Ga. App. 457, 457, 759 S.E.2d 545, 546 (Ga. App. 2014) (emphasis in original). Scott is consistent with both the South Carolina Supreme Court's decision in Richey and this Court's decision in Ex Parte S.C. Emp't Sec. Comm'n insofar as it those cases held that whether an employee's resignation was voluntary was a question of fact. While neither Richey nor Ex Parte S.C. Emp't Sec. Comm'n addressed the element of good cause, the Scott Court's analysis is consistent with the South Carolina Supreme Court's treatment of good cause in Stone, that is, as a question of law.

Similarly, the North Carolina Court of Appeals noted in an unemployment benefits appeal that the sole question before it was whether the findings of fact and evidence in the record supported the legal conclusion that an employee "left work voluntarily *with good cause attributable to his employer* (emphasis ours)." In re Vinson, 42 N.C. App. 28, 29, 255 S.E.2d 644, 645 (N.C. App. 1979). Numerous other courts have treated the good cause element as a question of law. *See e.g.* Nason v. La. Dep't of Emp't Sec., 475 So. 2d 85, 87 (La. Ct. App. 1985) ("The seminal issue in this case is whether the reduction in pay is so substantial a change in wages as a matter of law as to constitute "good cause" for appellant's resignation."); Smith v. Johnson's Mill, 96 Idaho 760, 761, 536 P.2d 755, 756 (1975) (finding that an employee "had good cause as a matter of law for leaving his employment."); Macarella v. Commonwealth, Unemployment Comp. Bd. of Review, 86 Pa. Commw. 176, 484 A.2d 213 (1984) (finding that an employee lacked good cause to resign as a matter of law); Zorrero v. Unemployment Ins. Appeals Bd., 47 Cal. App. 3d 434, 439, 120 Cal. Rptr. 855, 858 (1975) ("'Good cause' cannot be determined in the abstract any more than can any other legal conclusion."). Such treatment is

consistent with the South Carolina Supreme Court's approach in Stone. As a result, the ALC erred when it treated the question of good cause as one of fact.

II. THE ADMINISTRATIVE LAW COURT ERRED IN AFFIRMING THE DEPARTMENT'S FINDING THAT APPELLANT RESIGNED WITHOUT GOOD CAUSE BECAUSE THAT FINDING WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

While Appellant contends that whether she had good cause to resign is a question of law subject to *de novo* review and that the decision below should be reversed on that basis, the judgment of the ALC should be reversed even if subject only to a substantial evidence standard of review. An appellate court may overturn a decision of the ALC if it is unsupported by substantial evidence. S.C. Code Ann. § 1-23-610(B)(e) (2019). "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." Anderson, 343 S.C. at 492, 541 S.E.2d at 528.

In its decision denying Appellant unemployment benefits, the Department made five findings. Each of these findings was either irrelevant to the determination of Appellant's eligibility under the circumstances or was not supported by substantial evidence in the record. The ALC erred in affirming these findings for the reasons below, but also in two additional important respects.

First, the Department found that the nature of the job and Appellant's duties had not changed. Appellate Panel Decision, p. 2, mailed August 29, 2018. This finding is irrelevant. It is not necessary for Appellant to demonstrate a change in the nature of her job or duties in order to show entitlement to benefits. Instead, good cause to resign need only be directly attributable to employment. Stone, 219 S.C. at 247, 64 S.E.2d at 647. In addition, this finding does not address the question presented in this case, that is, whether Appellant had good cause to resign when faced with legitimate fear of physical violence coupled with her employer's inaction.

Second, the Department found that Appellant's job was not in jeopardy. Appellate Panel Decision, p. 2, mailed August 29, 2018. This finding is both irrelevant and unsupported by the record. It was not jeopardy to Appellant's job that drove her resignation, rather, it was jeopardy to her safety. Appellate Panel Decision, p. 2, mailed August 29, 2018. Regardless, it is also clear from the record that Appellant remained responsible for meetings and home visits with the client who had threatened her. In response to the Hearing Officer's question "was [Appellant] going to be held accountable for not meeting with this client in this particular situation?", DSS regional director answered "yes". Transcript p. 53:30 – p. 80:3 DSS' position seems clear – that Appellant, by failing to meet with the client who had threatened her life, was failing to perform her job duties. The Department seems to take the position that Appellant should have waited for DSS to take an adverse action against her, while continuing to suffer threats to her life, in order to be eligible for unemployment benefits. It would have been plainly unreasonable for Appellant to do so and the Department's finding that Appellant's job was not in jeopardy is both irrelevant and not supported by the record.

Third, the Department found that Appellant had no further interaction with the client who had threatened her and that she waited a month to resign after the threat was made. Appellate Panel Decision, p. 2, mailed August 29, 2018. It is fortuitous under the circumstances that Appellant was not again confronted by the client who had threatened her life. However, as discussed above, it is also clear that Appellant remained responsible for this client's case with no additional support or assurances of safety due DSS' inaction. Further, to say that Appellant "waited a month to resign" mischaracterizes the record. It is not as though Appellant did nothing during the month between the threat to her life and her resignation. Appellant ensured that the HR liaison, her immediate supervisor, the program coordinator, and her performance coach were all aware of the threat. Appellant met with her immediate supervisor and expressed her concerns the week following the threat. Transcript p. 19:16-20. Appellant then followed up with the HR liaison by e-mail approximately two weeks after the incident relaying her concerns and requesting that the case be reassigned. E-Mail from Amber Geohaghan to Cynthia Brown, dated February 12, 2018. DSS simply failed to respond as it admits it should have. The Department's position would place Appellant in an untenable Catch-22. If Appellant resigns immediately, then she will be denied benefits because she did not give DSS the opportunity to respond. If Appellant gives DSS the opportunity to respond to the incident, then she has waited too long to resign and will be denied benefits on this basis.

Fourth, the Department held that Appellant did not report her fears up the chain of command in order to seek a quicker resolution. Appellate Panel Decision, p. 2, mailed August 29, 2018. This finding is unsupported by the record. It is undisputed that Appellant's HR Liaison, direct supervisor, performance coach, and program coordinator were all aware of the

incident. It is undisputed that Appellant discussed the incident with her direct supervisor the following week and that this person was also the next person in Appellant's chain of command due to vacancies. Transcript, p. 61:4-6. It is also undisputed that, almost two weeks after the threat, Appellant followed up by e-mail with the HR liaison relaying her concerns and asking that the case be reassigned. Further, when faced with a credible threat of lethal violence, it is unreasonable to require Appellant or anyone in her situation to navigate levels of unresponsive bureaucracy while that threat continues. As one New Jersey court has held, an unemployment benefits claimant "did not have to do everything possible to maintain intact the employer-employee relationship, including continuing to expose himself to the risk of bodily harm" in order to receive unemployment benefits. *See* Condo v. Board of Review, Dept. of Labor and Industry, 158 N.J. Super. 172, 175-76, 385 A.2d 920, 922 (N.J. Super. App. Div., 1978). It would not be reasonable to do so.

Finally, the Department found that DSS had measures to put in place to support Appellant, but that she did not avail herself of these. DSS regional director did testify that "there are multiple things we could have tried. . ." to assist Appellant including "just some training" or "one on one time with the actual performance coach to talk about de-escalation." Transcript p. 49:26-30. DSS' regional director testified that she "would hope that there was a plan put in place" in response to the threat to Appellant. Transcript p. 55:2-3. But she admitted that she had no idea whether one was put in place, though it was part of her job to be involved in and notified of all "critical incidents" like the threat to Appellant. Transcript pp. 55:1-6 and 56:1-4. The record reflects that the only action DSS took in response to the threat to Appellant's life was to collect statements from those who had witnessed it, a process which took more than two months

to complete. Transcript p. 41:7-11. Thus, it is clear that, while DSS may have had measures to put in place to protect Appellant and while DSS admittedly should have employed those measures, DSS failed to do so despite a number of employees with responsibilities concerning such incidents having notice of the threat to Appellant and despite having ample time to put such measures in place.

The ALC affirmed the Department using a substantial evidence standard of review. Amended Order, p. 4, filed May 16, 2019. In so holding, the ALC erred in the same respects that the Department did by finding that Appellant resigned without good cause where that finding was not supported by substantial evidence in the record. The ALC also made two additional findings in support of its decision which are unsupported by the record.

First, after noting that "Appellant asserts she faced a threat of lethal physical violence which was not addressed by [DSS] for more than six weeks", the ALC found that DSS' HR Liaison "testified she collected statements from witnesses immediately following the incident, and sent the offending client a no-trespassing letter." Amended Order, p. 6, filed May 16, 2019. However, what seems to be an assertion by the ALC that DSS took measures to ensure Appellant's safety is not supported by the record. Rather, DSS collection of witness statements took more than two months to complete and was not forwarded to "critical response" at DSS until April 2018. Transcript p. 41:ln 7-11. The "no-trespassing" letter was also not sent to the offending client until April 2018. Transcript p. 41:ln. 22-25. DSS took approximately two months to take even these inadequate precautions and only did so well after Appellant resigned

due to ongoing and justified fear for her safety. Thus, any suggestion that DSS took meaningful or timely steps to ensure Appellant's safety is unsupported by the record.

Second, the ALC found that DSS' "policy does not require its case workers to conduct monthly visits with clients if they feel threatened." Order, p.6, filed May 16, 2019. Neither the Appellate Panel nor the Appellate Tribunal made such a finding. Appellate Panel Decision, mailed August 29, 2018; Decision of Appeal Tribunal, mailed July 6, 2018. Whether Appellant was required to conduct monthly visits with the client who threatened her was a disputed question of fact and the testimony presented was in conflict. For example, DSS' Regional Director Nicole Foulks testified to Appellant's and DSS' ongoing responsibility to the client who threatened Appellant. Transcript p.52: ln. 15 – p. 53, ln. 10. Yet, DDS' Administrative Assistant and HR Liaison, Cynthia Brown, testified that she would not expect her staff to conduct monthly visits if there was a threat of harm. Transcript. p. 47:ln. 10 – 20. Appellant testified that she believed she was still responsible for the client's case and would be held accountable for it. Transcript. p. 22:ln. 24 – 30. The ALC "may not substitute its judgment for the judgment 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); S.C. Code Ann. § 1-23-380(5) (2019); *see also* S.C. Code Ann. § 41-35-750 (2019) ("the findings of the [D]epartment regarding facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the [ALC] must be confined to questions of law"). As a result, the ALC erred in making factual findings which were in addition to or at odds with those made by the Department.

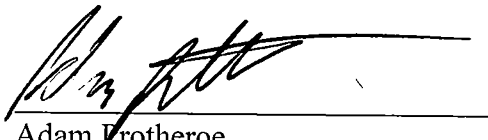
The Department based its decision that Appellant resigned without good cause upon erroneous and irrelevant findings and the ALC erred in affirming this decision. In addition, the ALC erred in making findings which were in addition to or at odds with those made by the Department and were not supported by the record. For these reasons, the ALC's decision that Appellant resigned without good cause should be reversed.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the Administrative Law Court and find that Appellant is entitled to unemployment benefits without disqualification. In the alternative, this Court should remand this case to the Administrative Law Court because that court erroneously applied a substantial evidence standard of review to the question of whether Appellant had good cause to resign.

Respectfully submitted,

September 16, 2019



Adam Protheroe
S.C. APPLESEED LEGAL JUSTICE CENTER
P.O. Box 7187
Columbia, SC 29202
(803) 779-1113
S.C. Bar No. 78442

Attorney for Appellant

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2019-000995

RECEIVED
SEP 16 2019
SC Court of Appeals

Amber Geohaghan

Appellant

v.

South Carolina Department of Employment and Workforce and
South Carolina Department of Social Services,

Respondents

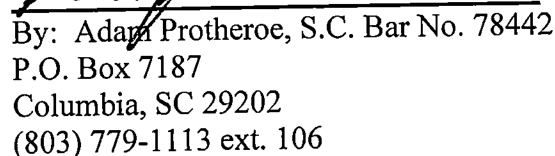
CERTIFICATE OF SERVICE

I certify that I have served the **INITIAL BRIEF OF APPELLANT** and **APPELLANT's DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on the date below addressed to their attorneys of record:

Benjamin T. Cook
Todd Timmons
S.C.D.E.W.
P.O. Box 8597
Columbia, SC 29202

Anthony S.H. Catone
Office of General Counsel
S.C. Dep't of Social Services
P.O. Box 1520
Columbia, SC 29202-1520

S. C. APPLESEED LEGAL JUSTICE CENTER



September 16, 2019

By: Adam Protheroe, S.C. Bar No. 78442
P.O. Box 7187
Columbia, SC 29202
(803) 779-1113 ext. 106

SOUTH CAROLINA appleseed LEGAL JUSTICE CENTER

September 16, 2019

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

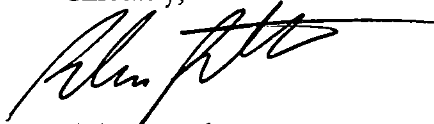
RE: Amber Geohaghan v. SC Dept. of Soc. Serv. and S.C.D.E.W.
Appellate Case No. 2019-000995

Dear Ms. Kitchings:

Please find enclosed Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal. Please file the original and return one clocked copy to me. By copy of this letter I am serving these documents upon the parties or counsel listed below.

With kind regards, I am

Sincerely,



Adam Protheroe
Attorney for Appellant

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AP/

CC:

Benjamin T. Cook, Esquire
Todd Timmons, Esquire
S.C. Department of Employment and Workforce
P.O. Box 8597
Columbia, SC 29202

Anthony S. H. Catone, Esquire
South Carolina Department of Social Services
P.O. Box 1520
Columbia, SC 29202-1520

P.O. BOX 7187
COLUMBIA, SC 29202
803.779.1113
www.scjustice.org