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

Amber Geohaghan,

Appellant,

v.

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

Respondents.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This appeal arises from the Appellant's failed petition for unemployment benefits submitted to the South Carolina Department of Employment and Workforce ("SCDEW"). The Appellant is a former employee of the South Carolina Department of Social Services ("SCDSS").

Appellant began working at SCDSS on March 4, 2013, most recently as a senior child welfare specialist. She alleges that she was forced to resign from her employment with SCDSS due to threats made by one of her clients at a meeting on January 31, 2018. In her Complaint, Appellant alleged that she felt threatened by the incident, and the incident was reported to SCDSS's central HR employee relations unit. At the Appellant's request, her supervisor sought to transfer the client to another case worker, but the case worker refused. In order to protect the Appellant, the client was issued a "no trespass" notice, and he had no further contact or interactions with Plaintiff after the meeting on January 31, 2018. Nevertheless, on or about March 2, 2018, Plaintiff submitted her resignation of her employment effective March 16, 2018.

Following her resignation, the Appellant applied to SCDEW for unemployment benefits. SCDEW denied those benefits, finding that the Appellant resigned voluntarily and without good cause under S.C. Code Ann. § 41-35-120(1).

The Appellant appealed the decision of SCDEW's claims adjudicator to SCDEW's Appeal Tribunal, which upheld SCDEW's initial decision.

The Appellant next appealed the decision of SCDEW's Appeal Tribunal to SCDEW's Appellate Panel, which also upheld SCDEW's initial decision.

The Appellant next appealed the decision of SCDEW's Appellate Panel to the South Carolina Administrative Law Court ("ALC"), which also upheld SCDEW's initial decision.

After the Appellant moved for reconsideration, the ALC denied her motion and issued an Amended Order on May 16, 2019. From that Amended Order, the Appellant has appealed to this Court.

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 statuory 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).

Questions of statutory interpretation are questions of law, which an appellate court may 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).

ARGUMENT

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

The Appellant's initial assignment of error confuses the nature of "questions of law" and "questions of fact." She argues that she had good cause to resign her employment "as a matter of law" because she was "unnecessarily exposed to the actual threat of violence due to circumstances beyond her control." (Motion for Rehearing, p. 1). She also criticizes the ALC treatment of the question of "good cause" as a question of fact rather than a question of law. Because the ALC properly found that the meaning of "good cause" under S.C. Code Ann. § 41-35-120(1) was settled, and properly applied that settled legal standard to the factual record before it, the Appellant's appeal must be dismissed.

Under S.C. Code Ann. § 41-35-120(1), a claimant who seeks unemployment compensation is indefinitely disqualified for benefits if the Department ""finds [s]he left voluntarily, without good cause, [her] most recent work..." 81 C.J.S. *Social Security and Public Welfare* § 417 (updated Dec. 2018). A claimant who terminates their employment voluntarily for good cause has the burden of proof on that issue. *Id.* Importantly, a 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). Therefore, the claimant who has voluntarily quit available work without good cause attributable to the employment is ineligible for benefits. *Hendricks v. Belcher Staffing*, 2005 WL 7082985, at *1 (S.C. App. Jan. 24, 2005); *Stone Mfg. Co. v. S.C. Emp't Sec. Comm'n.* 219 S.C. 239, 247, 64 S.E.2d 644, 647 (1951).

The Appellant's argument that she is entitled to unemployment benefits is apparently based on the quotation from *Stone Mfg.* that "the words 'good cause' as used in the context contemplate, ordinarily at least, a cause attributable to or connected with claimant's employment." 219 S.C. at 247, 64 S.E.2d at 647. In essence, the Appellant seeks to transform any cause connected to a claimant's prior employment into good cause merely because the claimant's reason for resigning was – in any way – "connected" to her employment.

This is simply not the law. As stated above, the ALC properly noted that the standard for a "good cause" resignation requires more than an employee's mere disagreement with her supervisors. Rather, as set forth by the ALC, the 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." 81 C.J.S. *Social Security and Public Welfare* § 417 (updated Dec. 2018). SCDEW is permitted – indeed required – to resolve questions of fact to determine whether the claimant can meet this standard. In this case, the answer was appropriately "no."

For this reason alone, the Appellant's appeal must be dismissed.

II. DID THE ADMINISTRATIVE LAW COURT ERR IN FINDING THAT THERE WAS SUBSTANTIVE EVIDENCE TO SUPPORT THE DEPARTMENT'S FINDING THAT APPELLANT RESIGNED WITHOUT GOOD CAUSE?

The Appellant also states, in conclusory fashion, that she had a "justified fear for [her] safety that [was] connected to [her] employment." (Appellant's Brief, p. 12). This is simply her conclusory resolution of a question of fact. It is unsurprising that a claimant's conclusions regarding factual issues are not dispositive. Rather, it was for SCDEW – not the claimant – to resolve factual questions. In this case, SCDEW resolved the factual issue against the Appellant, and the ALC found that there was "substantive evidence" to support SCDEW's decision. While the Appellant may disagree with SCDEW's findings, the ALC noted that there was ample evidence in the record to support the following factual findings:

- During the meeting on January 31, 2018, the client used profanity and threatening language.
- SCDSS's security personnel escorted the client out of the facility. SCDSS informed the Appellant that the client would not be allowed on the premises until further notice.
- On February 12, 2018, the Appellant sent an e-mail to SCDSS's Human Resource liaison.
- The Appellant also verbally complained to her supervisor.
- The Appellant had no further interactions with the client, and was not directed to have further interactions with the client.
- The Appellant's resignation letter stated that her resignation would be beneficial to her long-term career goals.
- The Appellant testified that there had been no recent changes to the terms and conditions of her employment, including hours, duties, or rates of pay.

(ALC Order, pp. 2-6).

In short, the ALC found that the record demonstrated that the Appellant "had not proven she made a reasonable attempt to correct the conditions she now claims justified her resignation, nor has she shown that such an attempt would have been futile." (ALC Order, p. 6). In so doing, the ALC implicitly acknowledged that the "substantive evidence" standard, in layman's terms, means that "a judgment upon which reasonable men might differ will not be set aside." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981).

Such is the case here. It is not enough that a reasonable person might second-guess the SCDEW's determination that, on the record before it, the Appellant failed to demonstrate that she quit her job with "good cause." While it is clear that the Appellant interprets the record differently from SCDEW, she has failed abjectly to demonstrate that a "reasonable person" could not agree under any circumstance to reach the same conclusion that SCDEW reached. For this reason alone, her appeal must be dismissed.

CONCLUSION

For the reasons set forth above, Respondents respectfully requests this Court affirm the Judgment of the Administrative Law Court.

Respectfully submitted this 16th day of October, 2019.

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CERTIFICATE OF SERVICE

I, the undersigned employee for Richardson Plowden & Robinson, P.A., counsel for the Respondents, do hereby certify that I have served a copy of the Respondents Initial Brief and Designation of Matter by causing a copy of the same to be personally deposited in a United States Postal mail box, postage prepaid, with the return address clearly visible, addressed to the counsel of record for Appellant as indicated below on this 16th day of October, 2019:

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Respectfully submitted,

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October 16, 2019

HAND DELIVERED

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

Dear Ms. Kitchings:

Enclosed herewith for filing is the original Initial Brief of Respondent and Designation of Matter concerning the above referenced matter, together with the Certificate of Service.

With kind regards, I am

Sincerely,

RICHARDSON PLOWDEN & ROBINSON, P.A.

Eugene H. Matthews

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