THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Administrative Law Judge

Docket No. 18-ALJ-22-0351-AP

Appellate Case No. 2019-000995

Amber Geohaghan, Appellant,

v.

South Carolina Department Of Employment and Workforce and South Carolina Department of Social Services Respondents.

BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

Benjamin T. Cook, Esquire
P.O. Box 8597
Columbia, SC 29202
(803) 737-0395
Attorney for Respondent South Carolina Department of Employment and Workforce

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 1

Facts 2

Standard of Review 6

Arguments

I. THE ALC DID NOT ERR BY APPLYING THE SUBSTANTIAL EVIDENCE STANDARD BECAUSE, WHILE DEFINING "GOOD CAUSE" UNDER S.C. CODE ANN. § 41-35-120(1) IS A QUESTION OF LAW, THIS COURT'S OWN PRECEDENT INDICATES THAT WHETHER GOOD CAUSE EXISTS FOR A SPECIFIC WORKER TO VOLUNTARILY QUIT THEIR JOB IS A QUESTION OF FACT 8

II. THE PANEL'S DECISION DISQUALIFYING APPELLANT FROM RECEIVING UNEMPLOYMENT COMPENSATION BECAUSE SHE VOLUNTARILY LEFT WORK WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE ALC'S ORDER AFFIRMING THAT DECISION IS, THEREFORE, CORRECT AS A MATTER OF LAW 14

III. THE ALC DID NOT ERR BY STATING FACTS WHICH WERE PRESENT IN THE RECORD ON APPEAL BUT NOT PRESENT IN THE PANEL'S DECISION 17

Conclusion 19

TABLE OF AUTHORITIES

CASES

Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) 7

Original Blue Ribbon Taxi Corp. v. S.C. Dept. of Motor Vehicles, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008).....8

Todd's Ice Cream, Inc., 281 S.C. 254, 258, 315 S.E.2d 373, 375 9

Sviland v. S.C. Emp't Sec. Comm'n, 300 S.C. 305, 308, 387 S.E.2d 688, 689 (Ct. App. 1989) 9, 10, 12

Ex parte S.C. Emp't Sec. Comm'n, 332 S.C. 286, 288, 504 S.E.2d 345, 346 (Ct. App. 1998) 9, 10

Stuchel v. S.C. Dep't of Emp't and Workforce, Docket No. 18-ALJ-22-0434-AP (ALC, Robinson 2019).....9

Coffey v. S.C. Dep't of Emp't and Workforce, Docket No. 13-ALJ-22-0586-AP (ALC, Durden 2013) 9

Insite Electronic Services, Inc. v. S.C. Dep't of Emp't and Workforce, Docket No. 14-ALJ-22-0389-AP (ALC, Anderson 2014).....9

Blank v. S.C. Dep't of Emp't and Workforce, Docket No. 13-ALJ-22-0556-AP (ALC, Lenski 2015) 9

Stills v. S.C. Dep't of Emp't and Workforce, Docket No. 19-ALJ-22-0140-AP (ALC, Funderburk 2019).....9

Wilson v. S.C. Dep't of Emp't and Workforce, Docket No. 18-ALJ-22-0102-AP (ALC, Kimpson 2018).....9

Stone Mfg. Co. v. S.C. Employment Sec. Comm'n, 219 S.C. 239, 247, 64 S.E.2d 644, 647.....10, 13, 14

Boggero v. S.C. Dept. of Revenue, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015) 10, 12

Matter of Baker (Hartnett), 147 A.D. 2d 790, 791 (N.Y. App. Div. 1989) 10

Mississippi Emp't Sec. Comm'n v. Fortenberry, 193 So.2d 142, 143 (Miss. 1966) 10

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419 (2000) 18

STATUTES

S.C. Code Ann. § 41-35-120(1) (Supp. 2019) 8, 9, 10, 11, 12, 13, 14, 18

S.C. Code Ann. § 1-23-380(5) (Supp. 2019) 9

OTHER AUTHORITIES

81 C.J.S. *Social Security and Public Welfare* § 417 .....13, 14

76 Am. Jur. 2d *Unemployment Compensation* § 104 (updated Nov. 2018) 13, 17

Rule 220(c), SCACR 19

Rule 40, SCALC 19

STATEMENT OF ISSUES ON APPEAL

I. DID THE ALC ERR IN APPLYING THE SUBSTANTIAL EVIDENCE STANDARD TO THE PANEL'S FINDING APPELLANT DID NOT HAVE GOOD CAUSE TO QUIT HER EMPLOYMENT?

II. DID THE ALC ERR IN FINDING SUBSTANTIAL EVIDENCE SUPPORTED THE PANEL'S FINDING THAT APPELLANT DID NOT HAVE GOOD CAUSE TO QUIT HER EMPLOYMENT?

III. DID THE ALC ERR BY STATING FACTS WHICH APPEARED IN THE RECORD BUT DID NOT APPEAR IN THE PANEL'S DECISION?

STATEMENT OF THE CASE

Appellant Amber Geohaghan worked for the South Carolina Department of Social Services (DSS) from March 4, 2013, through March 16, 2018. (ALC Record p.2, p.39). She filed for unemployment insurance benefits with Respondent the South Carolina Department of Employment and Workforce (DEW) on March 19, 2018. (ALC Record p.2). DEW's claims adjudicator issued a determination on March 30, 2018, holding Appellant indefinitely disqualified from receiving benefits, effective March 18, 2018, based on a finding she left work voluntarily without good cause. (ALC Record p.19).

Appellant appealed the claims adjudicator's decision to DEW's Appeal Tribunal (the Tribunal) on March 29, 2018. (ALC Record p.21). The Tribunal held a hearing June 8, 2018, and affirmed the claims adjudicator's determination Appellant voluntarily quit her employment without good cause. (ALC Record p.110-112). Appellant then appealed the Tribunal's decision to DEW's Appellate Panel (the Panel). (ALC Record pp.113-129). The Panel issued its decision on August 29, 2018, affirming the Tribunal's decision. (ALC Record pp.2-4, pp.154-156). Appellant subsequently appealed the Panel's decision to the

Administrative Law Court (ALC). The ALC affirmed the Panel's decision on March 7, 2019. (ALC Order). Appellant filed a motion for rehearing which the ALC denied by order dated May 16, 2019. (Order Denying Motion for Rehearing). The ALC also issued an amended order affirming the Panel's decision on May 16, 2019. (ALC Amended Order). Appellant then appealed to this Court.

FACTS

Appellant worked as a Senior Child Welfare Specialist with DSS from March 4, 2013, through March 16, 2018. (ALC Record p.39, lines 21-25). Appellant left employment voluntarily approximately a month and a half after a client made a statement Appellant perceived as threatening. (ALC Record p.40, line 6-20). During the Appeal Tribunal Hearing, Appellant testified on her own behalf. (ALC Record p.38, line 20-p.64, line 10). Cynthia Brown, Administrative Assistant and Human Resources Liaison for DSS, and Nicole Foulks, Regional Director for DSS, testified on behalf of DSS. (ALC Record p.64, line 22-p.74, line 15; p.74, line 18-p.87, line 8).

I. Documentary Evidence

During the initial claims process, DSS responded to DEW's request for separation information stating Appellant had resigned her position for personal reasons. (ALC Record p.96). During the hearing before the Tribunal, Appellant provided a copy of an email dated February 12, 2018, she had previously sent to Brown, her human resources liaison. (ALC Record p.103). In this email, Appellant described a meeting she had with a hostile client on January 31, 2018. *Id.* The email also informed Brown that Appellant had been told by other staff the hostile client made a comment about a gun before being escorted out of the

building. *Id.* Appellant had not had any further contact with that client and was requesting DSS assign a different case manager to that client. *Id.*

During the hearing, Appellant also proffered an exhibit for which she provided a handwritten explanation. (ALC Record p.104-108). In this handwritten explanation, Appellant listed six other individuals who were present during the January 31, 2018, meeting. (ALC Record p.105). Appellant also stated she had been told not to "follow the client up" after the incident on January 31, 2018. (ALC Record p.105). She further stated her supervisor told her the state office and the agency director would be informed of the incident, written statements from witnesses would be provided to the human resources liaison, and the supervisor would seek out another case manager for this particular client. *Id.*

II. Appellant's Testimony

Appellant testified she quit her position due to an incident which occurred on January 31, 2018. (ALC Record p.40, line 6-p.41, line 4). She admitted there was continuing work available to her and she would still be employed if she had not resigned. (ALC Record p.63, lines 3-18). She stated she conducted an emergency family meeting at a DSS facility on January 31, 2018, in response to a threat a client made against that client's sister during a phone conversation several days previously. (ALC Record p.41, lines 4-7; p.42, lines 11-23). Appellant stated these sorts of meetings and any encounters with a client can be tense and fraught with difficulty. (ALC Record p.41, lines 12-16). DSS security was informed about the client prior to the meeting and continually monitored the situation throughout the meeting. (ALC Record p.41, lines 17-26). Appellant had previously

informed law enforcement about this particular individual. (ALC Record p.42, line 30-p.43, line 8). DSS also had several other representatives in the meeting, including Appellant's direct supervisor. (ALC Record p.43, lines 18-20). Brown was also involved in the immediate aftermath of the meeting. (ALC Record p.43, lines 18-19). During the meeting, the client called Appellant rude names, demanded a new case worker, and walked out of the meeting. (ALC Record p.42, lines 2-6; p.43, line 26). Appellant then left the area. (ALC Record p.42, lines 7-8). While the client was in the hallway with several other members of DSS, including security, and Appellant was not present, the client reportedly stated "You better be glad I don't have my gun." (ALC Record p.44, lines 2-4; p.125). The client was then escorted out of the building by security. (ALC Record p.42, lines 9-10; p.43, line 26-p.44, line 4). The client's statement referring to a gun was later reported to Appellant by other staff. (ALC Record pp.103, 125). Although the client and Appellant were not in the same room at the time the client made the statement, and the client did not mention Appellant in the statement, Appellant testified she took it as a direct threat towards her. (ALC Record p.44, lines 2-16).

Following the client's departure, she and the witnesses to the event were brought into the management offices by Brown and informed the county director and state offices would be notified. (ALC Record p.44, lines 18-29). She was further informed witness statements would be taken from everyone who witnessed the event and DSS would make a decision whether to allow the client back on the premises. *Id.* After speaking with human resources, Appellant spoke with security who informed her the client would not be allowed back on the premises for the time being. (ALC Record p.45, lines 8-15). Appellant then

stated she made a request to her direct supervisor to be removed as the client's case manager and her supervisor agreed to try and find a different case manager. (ALC Record p.46, lines 10-20). Following this request, Appellant states another coworker approached Appellant and stated she did not want to take the case. (ALC Record p.46, lines 21-30). Appellant took that single refusal to mean nobody else wanted the case and "that was the end of it." (ALC Record p.46, line 21-p.47, line 3). Appellant was not directed by anyone in DSS to have any further contact with the client and Appellant did not have any further contact with the client. (ALC Record p.48, lines 17-22; R.p.54, lines 14-17). Appellant admitted her supervisor was aware she had no contact with the client after the incident and she had not been penalized for that lack of contact. (ALC Record p.54, lines 19-22). Appellant then stated she ultimately quit her job because of the general trend of gun violence in the nation and an internet story regarding the 2008 execution of an inmate who had been convicted for an incident of gun violence in 1996. (ALC Record p.54, line 27-p.57, line 5). Appellant also stated she was aware she would be dealing with difficult situations including issues of violence when she began working for DSS in 2013. (ALC Record p.57, lines 13-27). Appellant admitted she did not contact anyone from the state office to address her concerns even though she "probably should have reached out to the state office to see what the process was or what the time frame was...." (ALC Record p.60, line 15-p.61, line 7). There were no further incidents with the client. (ALC Record p.58, 8-12). Appellant submitted her resignation March 2, 2018, stating she was still "on the edge and fearful..." about the January 31, 2018, meeting. (ALC Record p.58, line 26-p.59, line 5).

III. Brown's Testimony

Brown testified Appellant submitted a letter of resignation on February 23, 2018, which stated she felt her resignation would be more beneficial for her long-term career goals and objectives. (ALC Record p.65, lines 16-23). Brown was not present for the emergency family meeting of January 31, 2018; however, her office was located nearby and she overheard much of the incident. (ALC Record p.65, line 24-p.66, line 7). Brown arrived on the scene just after the client referenced a gun and Brown witnessed security and the performance coach escort the client from the premises. (ALC Record p.66, lines 12-18). Brown directed the witnesses from the event to write statements of what happened during the incident and return them to her. (ALC Record p.66, lines 20-24). Brown then forwarded the statements to the critical response unit within DSS and DSS sent the client a no trespassing notice. (ALC Record p.66, line 26-p.67, line 23). DSS did not allow the client back into the building during this process. (ALC Record p.67, line 29-p.68, line 1). Additionally, based on Brown's experience as a supervisor, case workers are not required to conduct monthly visits if there is a threat of harm. (ALC Record p.73, lines 10-20).

IV. Foulks's Testimony

Foulks testified that, as interim county director for DSS, she was part of Appellant's chain of command at the time of the incident. (ALC Record p.75, lines 17-20). Appellant did not contact Foulks with her specific concerns prior to her resignation. (ALC Record p.75, lines 13-16). Foulks also noted these sorts of difficult and potentially dangerous situations are dealt with by case workers on a regular basis and that DSS had multiple strategies they could have used to address Appellant's concerns had Appellant sought them

out. (ALC Record p.75, line 21-p.79, line 10). Foulks stated the sort of incident Appellant was involved in is "an unfortunate normal part of what we experience with our families."(ALC Record p.77, lines 10-11). Foulks also confirmed the standing no trespass order which DSS put in place against the client. (ALC Record p.79, lines 16-19).

V. Panel Decision

In its decision, the Panel found:

> The record establishes [Appellant] voluntarily severed the employer/employee relationship by submitting a letter of resignation. The nature of the job and the Claimant's duties had not changed, and her job was not in jeopardy. [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 [Appellant] and ensure her safety, but she did not avail herself of those additional resources. [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 [Appellant] voluntarily left work without good cause attributable to the employment.

(ALC Record p.3).

STANDARD OF REVIEW

DEW is an agency governed by the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding DEW's predecessor, the Employment Security Commission, subject to the APA). Under the APA:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgement for the judgement of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision 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(C) (Supp. 2018).

"The decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue Ribbon Taxi Corp. v. S.C. Dept. of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008). "The ALC judge's order should be affirmed if supported by substantial evidence in the record." *Id.* "Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the Administrative Law Court and is more than a scintilla of evidence." *Id.* at 605, 670 S.E.2d at 676. "The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence." *Id.* at 605, 670 S.E.2d at 677.

ARGUMENTS

I. The ALC did not err by applying the substantial evidence standard because, while defining "good cause" under S.C. Code Ann. § 41-35-120(1) is a question of law, this Court's own precedent indicates that whether good cause exists for a specific worker to voluntarily quit their job is a question of fact.

S.C. Code Ann. § 41-35-120(1) requires disqualification from benefits until the employee has secured employment and earned at least eight times the weekly benefit

amount when DEW finds that an employee "left voluntarily, without good cause, his most recent work . . ." Because DEW is governed by the APA, reviewing courts apply the substantial evidence standard of review to findings of the agency on questions of fact. S.C. Code Ann. § 1-23-380(5); *Todd's Ice Cream, Inc.*, 281 S.C. 254, 258, 315 S.E.2d 373, 375.

This Court, as the ALC noted in its Order Denying Motion for Rehearing, has routinely applied the substantial evidence standard to the question of whether an employee left work voluntarily with good cause under § 41-35-120(1). *Sviland v. S.C. Emp't Sec. Comm'n*, 300 S.C. 305, 308, 387 S.E.2d 688, 689 (Ct. App. 1989) ("Accordingly, we hold the Commission's finding that [the employee] voluntarily separated from her employment without good cause is supported by substantial evidence."); *Ex parte S.C. Emp't Sec. Comm'n*, 332 S.C. 286, 288, 504 S.E.2d 345, 346 (Ct. App. 1998) (applying the substantial evidence standard to the issue of whether an employee had good cause to resign). [1]

Appellant, however, argues that the Administrative Law Court erred in applying the substantial evidence standard to her case. Appellant contends "binding precedent holds that

---

[1] Not only has this Court previously treated the question of whether a worker had good cause to quit their employment as being subject to the substantial evidence standard, every single currently-serving judge at the ALC has also treated it as being subject to the substantial evidence standard. *See Stuchel v. S.C. Dep't of Emp't and Workforce*, Docket No. 18-ALJ-22-0434-AP (ALC, Robinson 2019); *see also Coffey v. S.C. Dep't of Emp't and Workforce*, Docket No. 13-ALJ-22-0586-AP (ALC, Durden 2013); *see also Insite Electronic Services, Inc. v. S.C. Dep't of Emp't and Workforce*, Docket No. 14-ALJ-22-0389-AP (ALC, Anderson 2014); *Blank v. S.C. Dep't of Emp't and Workforce,* Docket No. 13-ALJ-22-0556-AP (ALC, Lenski 2015); *see also Stills v. S.C. Dep't of Emp't and Workforce,* Docket No. 19-ALJ-22-0140-AP (ALC, Funderburk 2019); *see also Wilson v. S.C. Dep't of Emp't and Workforce,* Docket No. 18-ALJ-22-0102-AP (ALC, Kimpson 2018). Although these cases are not precedential, their consistent treatment of the issue serves to illustrate the uniform understanding of the ALC on this matter.

the meaning of the term 'good cause' is a question of law," an argument which does not withstand scrutiny for several reasons.

First, the precedent Appellant deems "binding" is *Stone Mfg.*, which was decided before the enactment of the APA and interpreted an altogether different statute than Section 41-25-120(1). *See Stone Mfg. Co. v. S.C. Employment Sec. Comm'n,* 219 S.C. 239, 247, 64 S.E.2d 644, 647. It simply does not inform, much less bind, the Court's analysis here.[2]

Second, while Appellant correctly cites *Boggero* for the legal truism that "[s]tatutory interpretation is a question of law," it is equally true that "whether the facts of a case were correctly applied to a statute is a question of fact, subject to the substantial evidence standard." *Boggero v. S.C. Dept. of Revenue*, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015). *Id.* "Likewise, whether an agency applied the facts of a case to a statute is a question of fact." *Id.* (internal citations omitted).

Here, both the Panel and the ALC define "good cause" as it is used in § 41-35-120(1). The Panel stated, "'Good cause' refers to a material, substantial change in the conditions of employment, or other circumstances directly attributable to the employment,

---

[2] Appellant also cites several out-of-state cases in support of this proposition, none of which hold precedential value here. Further, although the undersigned has admittedly not reviewed case law in all fifty states, there are other jurisdictions that, like this Court did in *Sviland*, have held the question of whether an employee had good cause for quitting work is factual. *See, e.g., Matter of Baker (Hartnett)*, 147 A.D. 2d 790, 791 (N.Y. App. Div. 1989) ("Clearly, whether a claimant has voluntarily left his employment without good cause is a question of fact to be resolved by the Board, and its determination, if supported by substantial evidence, will not be disturbed.") (internal citations and quotations omitted); *Mississippi Emp't Sec. Comm'n v. Fortenberry*, 193 So.2d 142, 143 (Miss. 1966) (noting factual determinations in a voluntary quit case are "conclusive upon the [court] on review").

which would cause a reasonable person to become totally unemployed rather than continue working." (ALC Record pp. 3, 153). The ALC, in more extensive fashion, stated:

> Good cause means attributable to or connected with the employment. A claimant who terminates their employment voluntarily for good cause has the burden of proof on that issue. The claimant must show that the reason for voluntary termination must be real, substantial, and reasonable, and which would compel a reasonable person under similar circumstances to act in the same manner. For example, intentional harassment by a supervisor may constitute good cause to voluntarily leave employment. However, a claimant must take measures to resolve the problem before quitting, unless such measures would only be futile gesture. The claimant has the burden of proving a reasonable attempt to correct those conditions of employment which she now claims justified her leaving the employment, unless she can show that such an attempt would have been futile.

(ALC Amended Order pp.5-6) (internal citations and quotation marks omitted). Appellant does not argue either of these interpretations of the law are somehow incorrect or contrary to the legislature's intent. In fact, she frames the issue much as the ALC and the Panel did:

> An employee who leaves employment voluntarily and without good cause is disqualified from receiving unemployment benefits. To constitute good cause, the circumstances which lead an employee to leave the job must be such as would cause a reasonable person to leave. Good cause to leave must, generally, be attributable to or connected with claimant's employment.
>
> Here, it is undisputed that the events which caused Appellant to resign were attributable to or connected with her employment at DSS. Therefore, the question presented in this case is whether Appellant's decision to resign in lieu of placing her life in jeopardy was reasonable.

(App. ALC Br. p.6). Here, the Panel, the ALC, Appellant, and DEW are all in agreement on the law to be applied. Appellant takes issue with the application of the specific facts of this case, developed through testimony and evidence, to the statute. The application of the facts to the statute is a question of fact and, as such, the APA requires any reviewing court to grant deference to DEW's application of the testimony and evidence to § 41-35-120(1).

See Boggero at 280 ("But whether the facts of a case were correctly applied to a statute is a question of fact, subject to the substantial evidence standard . . . . Likewise, whether an agency correctly applied the facts of a case to a statute is a question of fact.").

The issue presented mirrors the one this Court examined in *Sviland* under the substantial evidence standard of review. There, the context was a resignation over alleged unethical business practices. Here, the context is a resignation over a perceived lack of action by an employer to address safety concerns. The Court should decline Appellant's invitation to analyze these two scenarios differently, i.e., finding the first to be a factual question and the second to be a legal one. The legislature empowered DEW to "find" whether an employee left work voluntarily without good cause. This is a factual inquiry, and consistent with that reality, this Court has consistently reviewed DEW's findings under § 41-35-120(1) under the substantial evidence standard of review. The Court should do so in this case as well.

Appellant's argument seems to be based on an improper conflation of two different things: 1) the meaning of "good cause" under § 41-35-120, and 2) the question of whether Appellant had "good cause" to voluntarily leave her employment. The determination of the meaning of "good cause" represents an interpretation of a statute and is, therefore, a matter of law; however, the question of whether Appellant, under the specific circumstances applicable to Appellant's case, had good cause to voluntarily leave her employment represents an application of the facts of the case to the statute and is, therefore, a question of fact. *See Boggero* at 280. Appellant incorrectly states "the [ALC] held that the meaning of the term 'good cause' in S.C. Code Ann. 41-35-120(1) was a question of fact. . . ." (App.

Br. 9). At no time has the ALC ever found that the interpretation of the meaning of "good cause" is a question of fact. The ALC itself interprets the meaning of "good cause" in exhaustive fashion, as has been previously shown. (Amended Order pp.5-6). The ALC found "the meaning of good cause, as contemplated in § 41-35-120(1), has already been established. The Panel, therefore, was solely tasked with making factual findings regarding the existence of good cause." (Order Denying Motion for Rehearing, p.1) (internal citations omitted).

Further, the ALC relied heavily on secondary sources in defining the term "good cause." The ALC made extensive reference to 81 C.J.S. *Social Security and Public Welfare* § 417 in both the Amended Order and the Order Denying Motion for Rehearing. (Amended Order pp.5-6; Order Denying Motion for Rehearing p.1). Additionally, the ALC referred to 76 Am. Jur. 2d *Unemployment Compensation* § 104 (updated Nov. 2018) as additional support for its interpretation of the meaning of "good cause." (Amended Order p.6). Yet, no mention is made of these sources by Appellant. Appellant does not even cite them in her Table of Authorities. Appellant goes so far as to omit the sources when citing a portion of the ALC Order. Appellant states:

> 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. . .

(App. Br. p.11). Appellant then goes on to argue how *Stone* does not cover the instant case because the issue in *Stone* was limited to whether the reason for the separation was

connected to the claimant's employment. However, in support of the cited passage, the ALC does not merely cite *Stone*. The Order also cites C.J.S.:

> 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.

(Order Denying Motion for Rehearing, p.1). The referenced section of C.J.S. is an exhaustive analysis of the meaning of the term "good cause" which the ALC cited for specific passages in its Amended Order. Appellant's failure to even mention C.J.S. is confusing in light of the ALC's heavy reliance on that source to conduct the very sort of statutory interpretation Appellant seems to be seeking.[3]

Both the Panel and the ALC properly interpreted the meaning of § 41-35-120(1) and also properly treated the application of the facts of Appellant's case to the statute as a question of fact subject to the substantial evidence standard of review. As a result, the ALC committed no error in affirming the Panel's decision and this Court should similarly affirm.

II. The Panel's decision disqualifying Appellant from receiving unemployment compensation because she voluntarily left work without good cause attributable to the employment is supported by substantial evidence and the ALC's order affirming that decision is, therefore, correct as a matter of law.

[3] While Respondent freely acknowledges secondary sources are not binding precedent, the ALC's use and citation of specific passages from those secondary sources make the cited passages the interpretation of the statute Appellant should be addressing. Respondent further notes that a published opinion from this Court formally adopting the generally accepted definition of "good cause" would be extremely helpful to both the bar and the bench in avoiding similar confusion in the future.

The Panel found: (1) Appellant voluntarily left her position, (2) Appellant's job and job duties had not changed, (3) Appellant was in no danger of being discharged, (4) Appellant had no further interaction with the client following the incident on January 31, 2018, (5) Appellant waited a month before resigning, (6) Appellant failed to report her concerns up her chain of command prior to resigning, (7) DSS had other measures to put in place to address Appellant's concerns but Appellant failed to sufficiently seek them out, and (8) Appellant failed to show a reasonable person would have become totally unemployed rather than continue working. (R.p.3). The Panel therefore concluded she voluntarily left employment without good cause. *Id.* Substantial evidence supports the Panel's findings and conclusion, and thus, the ALC properly affirmed the Panel's decision.

It is undisputed Appellant left her job voluntarily. (R.p.40, lines 12-17; p.63, lines 12-14). There were no changes to the terms or conditions of Appellant's employment and she was not in imminent danger of being discharged.[4] (R.p.63, lines 3-18). In fact, Appellant specifically testified "If I would not have resigned, I still would have been employed. I wasn't terminated. I didn't have any issues with work at that time."[5] (R.p.63,

---

[4] Appellant disputes the relevance of the Panel's finding that the terms and conditions of Appellant's job had not changed. (App. Br. 22). Contrary to Appellant's argument that Appellant "was not required to demonstrate a change in the nature of her job or duties in order to show entitlement to benefits", neither the Panel nor the ALC ever indicated that was a requirement for eligibility. *Id.* This finding was merely one of many factual elements which contributed to the ultimate factual determination that Appellant voluntarily quit her position without good cause because it tended to show that Appellant lacked good cause for quitting, not because it was determinative alone.

[5] Appellant has asserted the Panel's finding that her job was not in jeopardy is irrelevant and unsupported by the record. (App. Br. 22). However, Appellant has clearly and unambiguously admitted she would still have been employed had she not resigned. Thus,

lines 16-18). It is further undisputed Appellant's date of separation was March 16, 2018, well over a month after the incident. (R.p.39, lines 22-25).[6] Appellant admits interacting with difficult people and dealing with difficult issues up to and including violence had been part of her job since she started working for DSS in 2013. (R.p.41, lines 12-16; p.57, lines 13-27). Appellant also indicates there had been previous incidents which had been reported to and handled by the state human resources office. (R.p.60, line 26-p.61, line 3). Based on Appellant's own testimony, she had been assured by security personnel the client would not be allowed back in the building. (R.p.45, lines 8-15). No one from DSS directed Appellant to have any further contact with the client and Appellant's direct supervisor specifically told her not to "follow the client up." (p.48, lines 17-20; R.p.105). Appellant had not faced any disciplinary consequences for failing to maintain contact with her client and DSS would not have expected her to continue making monthly visits with the client due to the threat of violence. (R.p.73, lines 10-20). Appellant further admits she did not exhaust all reasonable remedies within DSS before resigning.[7] (R.p.59, line 16-p.61, line

---

the Panel's finding is supported by the record. The finding in question is relevant because it supports the finding she left her job voluntarily.

[6] Appellant argues the finding that Appellant waited a month to resign mischaracterizes the record. (App. Br. 23). However, the dates are undisputed and Appellant's protestations about what she was doing in the intervening time are irrelevant to the finding. The finding only serves to show that there was no further contact or incident between Appellant and the client for an extended period of time before her separation, as is shown by the actual context of the finding: "The claimant was upset after receiving a threat; however, she had no further interaction with the client and she waited a month to resign." (R.p.3).

[7] Appellant argues the Panel's finding she did not report her fears up the chain of command is unsupported by the record. (App. Br. 23). However, Appellant admitted during her testimony she was aware of a contact at the state office, she should have reached out to the state office, and she did not do so. (R.p.60, line 15-p.61, line 13).

13). "To be entitled to unemployment compensation benefits for voluntarily quitting a job for good cause, the claimant must have explored all viable options before making the decision to quit." 76 Am. Jur. 2d *Unemployment Compensation* § 104 (2018). Based on the security precautions put in place and the passage of six weeks without incident, Appellant had no reasonable fear for her own safety. The client was being excluded from the building and Appellant had been directed not to follow up with that client. Appellant knew there were other options she could have pursued to preserve her position but chose to resign instead. A reasonable case worker, having dealt with difficult clients and issues of violence for approximately five years, would not have quit her job based on a single instance of threatening language. Further, Appellant failed to explore all viable options before making the decision to quit. For the foregoing reasons, the Panel's conclusion that Appellant's voluntary departure from her position was without good cause is supported by substantial evidence. As such, the ALC's order affirming the Panel's decision is correct as a matter of law and should be affirmed.

III. The ALC did not err by stating facts which were present in the record on appeal but not present in the Panel's decision.

Appellant asserts the ALC erred by making findings of fact which were unsupported by the record and which were not explicitly found by the Panel. The ALC, in its May 16, 2019, Amended Order, does not make independent findings of fact. The ALC's factual narrative and discussion merely serve to sum up the substantial evidence in the Record on Appeal, which supported the Panel's findings and decision. The Court concludes its Order by citing the Panel's findings and stating that the findings are supported by substantial

evidence. (Amended Order p.7). The ALC's discussion of the case illustrates how the information in the record ultimately supports the findings made by the Panel and also provides a coherent narrative for the events described by the information in the record. Ultimately, the ALC's decision properly relies on its analysis of whether the Panel's findings are supported by substantial evidence and not on its own application of the facts to the law. (Amended Order p.7) ("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)").

Moreover, even if the ALC had relied upon different reasons from those relied upon by the Panel to affirm the Panel's decision, it was well within its rights to do so as the ALC noted. (Order Denying Motion for Rehearing, p.2) ("When affirming an appealed decision, SCALC Rule 40 allows this Court to rely on any evidence in the record."). The Supreme Court of South Carolina has addressed this point of law in detail:

> A respondent...may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court....The basis for respondent's additional sustaining grounds must appear in the record on appeal....The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment.

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419 (2000).[8] The ALC did not make findings which were unsupported by the record and did not improperly substitute its judgment for the judgment of the Panel and, therefore, the ALC's decision should be affirmed.

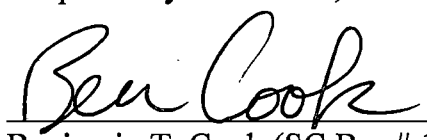
CONCLUSION

The question of whether an employee, under a specific set of circumstances, had good cause to voluntarily quit her employment is a question of fact and, as this Court's precedent has shown, the Panel's finding that she did not have good cause is subject to a substantial evidence standard of review. Substantial evidence supports the Panel's finding Appellant voluntarily quit her most recent employment without good cause and the ALC's order affirming the Panel's decision is correct as a matter of law. Despite Appellant's assertions to the contrary, the record is clear that she was in no imminent danger, as evidenced by her month-and-a-half delay in resigning her position without further incident or contact with the client, and she failed to take the necessary steps a reasonable person in her position would have taken to address her concerns prior to resigning. Based on all the foregoing, DEW respectfully submits this Court should affirm the ALC's order.

[Signature on Following Page]

[8] Although *I'On* addresses SCACR Rule 220(c), that rule is virtually identical to the relevant portion of SCALC Rule 40. "The administrative law judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record...." SCALC Rule 40. "The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." SCACR Rule 220(c).

Respectfully Submitted,



Benjamin T. Cook (SC Bar # 102216)
SC Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202
803.737.0395 (phone)
803.737.0124 (fax)
Legal@dew.sc.gov

Attorney for Respondent SC Department of Employment and Workforce

December 16, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Case No: 18-ALJ-22-0351-AP

Appellate Case No. 2019-000995

Amber Geohaghan,

Appellant,

v.

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

Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter of Respondent South Carolina Department of Employment and Workforce on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on December 16 2019, addressed to the parties at their addresses of record:

Adam Protheroe
PO Box 7187
Columbia SC 29202

Eugene Matthews
PO Drawer 7788
Columbia SC 29202

December 16, 2019

Kristi Chesley
Administrative Legal Assistant
South Carolina Department of Employment and Workforce
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-0395

P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov

Henry McMaster
Governor

G. Daniel Ellzey
Executive Director

Post Office Box 8597
Columbia, SC 29202
Telephone: (803) 737-2666
Fax: (803) 737-0124

December 16, 2019

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

RE: Amber Geohaghan v. South Carolina Department of Employment and Workforce and South Carolina Department of Social Services
Appellate Case No: 2019-000995

Dear Ms. Kitchings:

Enclosed are the original and one copy of the Initial Brief and Designation of Matter of Respondent South Carolina Department of Employment and Workforce. A Proof of Service is also included in this packet.

Please let me know if you have any questions.

Sincerely,

Kristi Chesley

Kristi Chesley
Administrative Legal Assistant for
Benjamin Cook
Attorney for Respondent South Carolina
Department of Employment and Workforce

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. BOX 995
COLUMBIA, S.C., 29202

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

KAH2SMP

10