

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Case No. 18-ALJ022-0409-AP
Appellate Case No. 2019-001033

Cortez M. Jiles,

Respondent,

v.

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

Of which South Carolina
Department of Employment
and Workforce is the

Appellant.

RECEIVED

FEB 08 2020

SC Court of Appeals

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cortez M. Jiles,

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

Appellant,

vs.

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

**ORDER DENYING RESPONDENT'S
MOTION TO DISMISS
AND
SCHEDULING ORDER**

Respondents.

This matter is before the South Carolina Administrative Law Court (ALC) pursuant to the Notice of Appeal filed September 21, 2018 by Appellant Cortez M. Jiles (Inmate). The Notice of Assignment was filed with this Court on November 6, 2018. On November 19, 2018, Respondent South Carolina Department of Employment and Workforce (Respondent) filed a Motion to Dismiss this appeal stating that Appellant did not serve on Respondent his Notice of Appeal within 30 days of receiving the final agency decision from which he is appealing. Respondent included an affidavit with its motion stating that its Administrative Assistant has not received a notice of appeal from Appellant. The Court has in its file the Notice of Appeal, including the Certificate of Service, filed September 27, 2018, indicating it served Respondent with a copy, addressed to, "SCDEW, 1550 Gadsden Street, Columbia, S.C. 29201." A copy of the Notice of Appeal is attached for the convenience of the Respondent.

IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is **DENIED**.

IT IS FURTHER ORDERED that the Record shall be due thirty (20) days from the date of this order. Respondent shall have twenty days from the date the Record is filed to submit a brief. Any reply brief must be filed within ten days from the date Respondent's brief is filed.

AND IT IS SO ORDERED.

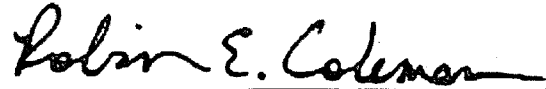


Deborah Brooks Durden, Judge
S.C. Administrative Law Court

December 5, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

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

A handwritten signature in black ink that reads "Robin E. Coleman". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

December 5, 2018
Columbia, South Carolina

FILED

December 5, 2018

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cortez M. Jiles,

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

Appellant,

vs.

ORDER

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

Respondents.

STATEMENT OF THE CASE

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

BACKGROUND

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

ISSUES ON APPEAL

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

FILED

May 21, 2019

SC ADMIN. LAW COURT

STANDARD OF REVIEW

The Department is an “agency” under the Administrative Procedures Act (APA). See Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA’s standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2018); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm’n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). The standard used by appellate bodies to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2018). See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section states:

The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2018).

A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub Serv. Comm’n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency’s findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm’n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, “a reviewing court will not overturn a finding of fact by an administrative agency ‘unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.’” Sea Pines Ass’n for

Prot. of Wildlife, Inc. v. S.C. Dept. of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

DISCUSSION

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

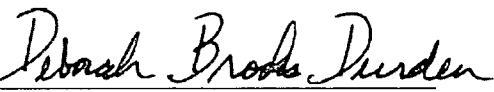
In its decision mailed on August 14, 2018, the Appellate Panel found that, “the Claimant contacted the Department approximately one hour and ten minutes after the scheduled hearing time.” The Appellate Panel further found that the claimant “indicated he had a scheduling conflict with a dental appointment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

ORDER

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

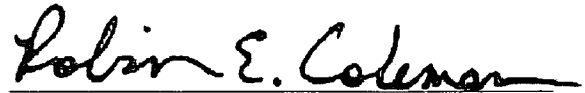
AND IT IS SO ORDERED.

May 21, 2019
Columbia, South Carolina


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

CERTIFICATE OF SERVICE

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



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

May 21, 2019
Columbia, South Carolina

FILED

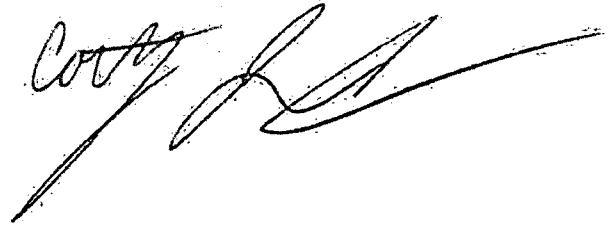
May 21, 2019

SC ADMIN. LAW COURT

18-42J22-0409-AP

9/21/2018

I would like to do an appeal
because I was falsely terminated
from my job (House Of Rector)!

A handwritten signature in black ink, appearing to be 'Cory' followed by a stylized surname.**FILED**

SEP 21 2018

SC ADMIN. LAW COURT

COA-008
COPY

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name:	First:	Middle:	☒ Mr. ☐ Miss ☐ Mrs. ☐ Ms.	Docket No. (To Be Completed by ALC)
Jiles	Cortez	M		
Mailing Address:		City:	State and Zip:	
733 Armour St		Columbia	SC 29203	
Home Number:	Work Number:	Cell Number:	E-Mail Address:	
(803) 546-3918	(803) 908-7477	(803) 908-7475	Cortez.Jiles@gmail.com	

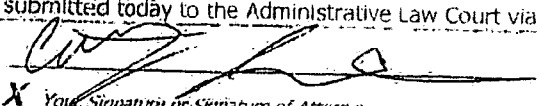
*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

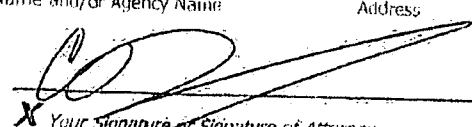
Are you representing yourself? ☒ Yes ☐ No		Name of Attorney:
Are you represented by an Attorney? ☐ Yes ☒ No		City, State and Zip:
Attorney Mailing Address:		
Attorney Work Number and Cell Number:		Attorney E-Mail Address:

CASE INFORMATION

Name of Agency that Issued the Decision: (Example - Dept. of Revenue, Dept. of Insurance, DHEC) South Carolina Department of Employment & Workf.	
In order to have your case processed, you must attach the agency decision. Is it attached?: ☒ Yes ☐ No	If no, please explain:
Date the decision was issued: 9/04/2018	Date the decision was received: 9/04/2018
Please provide a brief statement regarding why the hearing is being requested and the relief sought:	

Payment via ☐ Check ☐ Money Order ☐ Cash for \$ submitted today to the Administrative Law Court via	(applicable filing fee pursuant to ALC Rule 71) is being ☐ U.S. Postal Service ☐ Hand-delivery
 X Your Signature or Signature of Attorney	Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Cortez Jiles	Date: 9/21/2018	City: Columbia	State: SC
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):			
Cortez Jiles	733 Armour St	Columbia SC 29203	
Name and/or Agency Name	Address	City, State and Zip	
Name and/or Agency Name		City, State and Zip	
 X Your Signature or Signature of Attorney		Date: 9/21/2018	

FILED

SEP 21 2018

SC ADMIN LAW COURT

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

STATE OF SOUTH CAROLINA

Administrative Law Court

Ralph K. Anderson, III
Chief Judge

Jana E. Cox Shealy
Clerk



PHONE: (803) 734-0550
 FAX: (803) 734-6400
 WEB: WWW.SCALC.NET

Memorandum

To: Cortez M. Jiles, In-Re: Cortez M. Jiles v. South Carolina Department of
 Employment and Workforce and House of Raeford Farms, Inc.
From: Clerk's Office, Administrative Law Court
Date: September 21, 2018
Re: Compliance with ALC Rule 33

The Administrative Law Court received an incomplete request for appeal on September 21, 2018.

Accordingly, your case will not be assigned until the following information is received from you:

- ☒ The name, address and telephone number of the party requesting the appeal, and the name, address and telephone number of the attorney or other authorized representative, if any, representing that party
- ☒ A general statement of the grounds for appeal as provided in S.C. Code Ann. §1-23-380(A)(6). The grounds for appeal may be amended, supplemented or modified in the statement of issues in the brief required by Rule 37(B)(1)
- ☒ A copy of the entire decision issued by the Appellate Panel
- ☒ A proof of service showing you sent your request for hearing to all parties. (A proof of service form is enclosed, which you may use.)
- ☒ Other: Mr. Jiles, I am returning the Request for Contested Case Hearing Form that you completed on September 21, 2018. This case is an appeal before the South Carolina Administrative Law Court and I have enclosed a copy of instructions for filing this type of case.

Please return the appropriate information within 10 days of the date of this Memorandum or your case will be returned to you unprocessed.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Carter Jiles

Appellant/Petitioner,

vs.

SCDew

Respondent.

Docket No. -ALJ-

PROOF OF SERVICE

I hereby certify that I have served the SCDew
(Description of the document) in the above-captioned matter by depositing it in the
United State Mail, postage prepaid, on 9-27-2018 (Month/Day/Year) to the
below named parties at their address of record:

SCDew
Name
1550 Gardens St.
Address
Columbia SC 29701
City/State/Zip

Name
Address
City/State/Zip

Name
Address
City/State/Zip

Name
Address
City/State/Zip

FILED

SEP 27 2018

SC ADMIN LAW COURT

Carter Jiles
(Print Your Name)

[Signature]
(Your Signature)

733 Armour St
(Street)

Columbia SC 29703
(City, State, Zip Code)

NOA.AP.DEW
July 2016STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Cortez M. Jiles,

Appellant,

vs.

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

Respondents.

NOTICE OF ASSIGNMENT

DOCKET NO. 18-ALJ-22-0409-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on September 21, 2018. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2017), the **Honorable Deborah Brooks Durden**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

FURTHER, NOTICE IS GIVEN that the parties are required to meet the following deadlines, unless otherwise ordered by the assigned Administrative Law Judge:

Record on Appeal	Due within twenty (20) days of the date of this Notice (to be filed by the agency)
Appellant's Brief	Due within twenty (20) days after the Record on Appeal is filed
Respondent's Brief	Due within twenty (20) days after the Appellant's Brief is filed
Reply Brief	Due within ten (10) days after the Respondent's Brief is filed

The parties are directed to the relevant provisions of the Rules of Procedure regarding these deadlines and other requirements applicable to the appeal process. Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

This the sixth day of November 2018.

Ralph King Anderson, III
Chief Administrative Law Judge

By:

Jana E. Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

NOV 06 2018

SC ADMIN. LAW COURT

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



Henry McMaster
Governor

Cheryl M. Stanton
Executive Director

P.O. Box 8597
Columbia, South Carolina 29202
(803) 737-2666
FAX (803) 737-0124

November 19, 2018

The Honorable Deborah Brooks Durden
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Crotez M. Jiles v. South Carolina Department of
Employment and Workforce and House of Raeford Farms Inc.
Docket Number: 18-ALJ-22-0409-AP

Dear Judge Durden:

Enclosed is the Motion to Dismiss for Lack of Jurisdiction in the above referenced case. Also enclosed is a Proof of Service to the other parties.

With kind regards, I am

Sincerely Yours,

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

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cortez M. Jiles,	)	Docket No. 18-ALJ-22-0409-AP
	)	
Appellant,	)	
	)	
v.	)	
	)	
	)	MOTION TO DISMISS
	)	FOR
South Carolina Department of	)	LACK OF JURISDICTION
Employment and Workforce, and	)	
House of Raeford Farms Inc.,	)	
	)	
Respondents.	)	
	)	

Respondent, South Carolina Department of Employment and Workforce (“the Department”), through its undersigned attorney, moves this Court to dismiss, for lack of jurisdiction, Appellant Cortez M. Jiles’s appeal, which seeks judicial review of a final administrative decision of the Department. This Motion is made on the following grounds:

LACK OF JURISDICTION

Failure of Appellant to Serve Appeal upon the Department

1. This is an action seeking judicial review by the Administrative Law Court (ALC) of a final Department decision on a claim for unemployment insurance (UI) benefits, and is governed by S.C. Code Ann. § 41-35-750 (Supp. 2017). For the Court to review this appeal, its appellate jurisdiction must be properly invoked.
2. S. C. Code Ann. § 41-35-750 requires that an appeal requesting judicial review must state the grounds on which a review is sought, and must be filed to the ALC **and served upon the Department within thirty (30) days of the date of mailing of the final decision of the Department.** (Emphasis added)

3. Furthermore, SCALC Rule 33 requires that a notice of appeal must be filed with the Court and served on each party and the agency whose final decision is the subject of the appeal within thirty (30) days of the date of mailing of the decision of the Department, and that a notice of appeal must contain a general statement of the grounds for appeal as provided in S.C. Code Ann. §1-23-380(5).
4. The Department mailed its final decision to Appellant in Appeal Number 18-HA-001083 on August 14, 2018. (Exhibit A). Attached to the Department's final decision was a Notice advising Appellant that any further appeal must be filed in the ALC and **served on all parties** and SCDEW within thirty (30) days from the mailing date on the decision. (Exhibit B). (emphasis added).
5. Following a timely request for reconsideration, the Department mailed a denial letter on September 4, 2018. (Exhibit C). The denial letter included a specific notice advising Appellant that he had thirty (30) days from the mailing date of the denial letter to file a Petition for Judicial Review with the ALC **and serve that Petition on the Department.** (*Id.*) (emphasis added). Thus, Appellant's thirty-day deadline to file and serve his appeal upon the Department was October 4, 2018.
6. The Court has issued a Notice of Assignment, dated November 6, 2018, to the parties, indicating Appellant filed a notice of appeal with the Court on September 21, 2018.
7. However, as of the date of this Motion, the Department has not been served with Appellant's appeal. (*See Exhibit D, Affidavit of Kristi Chesley*).
8. Although Appellant may have filed an appeal with the Court, Appellant has failed to serve DEW with the appeal as required by statute and ALC Rules, and the statutory thirty-day deadline for Appellant to serve his appeal on the Department has expired.

9. “The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction.” *Allison v. W.L. Gore & Assoc.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011).
10. Consequently, the timely filing and service of the notice of appeal are jurisdictional requirements under S.C. Code Ann. § 41-35-750, and the Court has no authority to extend the time in which the notice of appeal must be served. *See generally Elam v. Dep’t of Trans.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”); *Southbridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d 535 (1987) (finding the court must dismiss an appeal when the appellant fails to file an appeal or serve a party with the notice of appeal in a timely manner); *see also Burnette v. S.C. State Highway Dep’t*, 252 S.C. 568, 167 S.E.2d 571 (1969) (holding a court does not have authority to extend the time for filing appeal, or serving notice of appeal).
11. While the Department recognizes that Appellant is proceeding *pro se*, a *pro se* litigant is responsible “for complying with substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003); *State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013).
12. Accordingly, because Appellant failed to serve an appeal upon the Department as required by statute, the Court must dismiss Appellant’s appeal for lack of jurisdiction. *See* S.C. Code Ann. § 41-35-750 (a petition for judicial review must be filed in the ALC and served upon the Department within thirty (30) days from the date of mailing the Department’s decision and must state the grounds on which a review is sought).

WHEREFORE, for all the reasons discussed above, the Department respectfully moves this Court to dismiss Appellant's appeal with prejudice for lack of jurisdiction. The Department respectfully requests that all further time requirements set forth in the Notice of Assignment be held in abeyance pending resolution of this Motion.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ben Cook", written over a horizontal line.

Benjamin T. Cook (SC Bar # 102216)
Todd S. Timmons (SC Bar # 100249)
S.C. Department of Employment & Workforce
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-0395
legal@dew.sc.gov

Attorney for Respondent
S.C. Department of Employment and Workforce

November 19, 2018.

South Carolina
Department of Employment and Workforce

COA-017

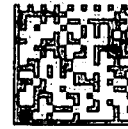


Exhibit A

2199134

Office of Appellate Panel

CORTEZ M JILES)
733 ARMOUR ST)
COLUMBIA SC 29203)
Claimant SSN: XXX-XX-1609
Claimant ID: 4486575

APPELLATE PANEL
DECISION

HOUSE OF RAEFORD FARMS INC)
P O BOX 21456)
COLUMBIA SC 29221)

Appellant: CORTEZ M JILES

Appeal Number:18-HA-001083

Appellant: Claimant

The Claimant filed for unemployment benefits on January 23, 2018. The claims adjudicator's determination mailed March 8, 2018, held the Claimant disqualified from receiving benefits for twenty weeks, upon finding he was discharged due to misconduct. The Claimant appealed, but was absent from the Appeal Tribunal hearing on the issue of his separation from employment. The Appeal Tribunal decision mailed April 12, 2018, dismissed the Claimant's appeal. The Claimant appealed the dismissal to the Appellate Panel. After a hearing on the cause of the Claimant's absence from the April 12, 2018 Appeal Tribunal hearing, the Appeal Tribunal decision mailed June 28, 2018, found the Claimant was afforded a reasonable opportunity for a fair hearing. The Claimant appealed the Appeal Tribunal decision on July 5, 2018 to the Appellate Panel.

The Appellate Panel issued its decision upon review of the record on appeal. We affirm the decision mailed June 28, 2018. The Claimant was absent from the appeal hearing on April 12, 2018, without good cause. The Appeal Tribunal decision mailed April 12, 2018 is final. The Claimant remains disqualified from receiving benefits for twenty weeks, effective January 21, 2018, to June 9, 2018, upon finding he was discharged due to misconduct.

BACKGROUND

The Claimant appealed a claim's adjudicator's determination holding him disqualified from receiving benefits for twenty weeks, upon finding he was discharged due to misconduct. The

South Carolina
Department of Employment and Workforce

COA-018

Exhibit A

Appeal Tribunal mailed a notice to the Claimant's address of record on March 30, 2018, informing him a hearing was scheduled for April 12, 2018, at 9:30 a.m. The hearing notice contained clear and specific instructions to contact the Appeal Tribunal by phone if the telephone number listed on the notice was incorrect. The notice also provided clear and specific instructions to contact the Appeal Tribunal at a specified telephone number if he did not receive a call from the hearing officer within ten minutes of the scheduled hearing time or if there was a schedule conflict. The Claimant was aware of the hearing, but he believed he had forgotten about it on the scheduled day. The hearing officer unsuccessfully attempted to contact the Claimant at the number on the notice and the number the Claimant provided to the Department on his appeal. The Claimant contacted the Department approximately one hour and ten minutes after the scheduled hearing time. He indicated he did not initially hear the missed calls from the hearing officer. He also indicated he had a scheduling conflict with a dental appointment for his son at 10:00 a.m. on the same day. There was no indication the Claimant requested a postponement due to his schedule conflict.

FINDINGS

S.C. Code Ann. § 41-35-680 requires that parties be afforded a reasonable opportunity for a fair hearing after notice of not less than seven days.

The evidence establishes the Department properly notified the Claimant of the April 12, 2018 Appeal Tribunal hearing, and provided him with detailed instructions to follow if he did not receive a call at the appointed time, or had a schedule conflict. The Claimant was aware of the hearing and was contacted regarding the hearing, but he missed the call. Further, he took no action in advance of the hearing to ensure he could participate, such as requesting a postponement or making changes to his other scheduled appointment. Therefore, we find the Claimant's absence was due to his own neglect or error, and not for good cause. The Claimant was afforded a reasonable opportunity for a fair hearing. The Appeal Tribunal decision is affirmed.

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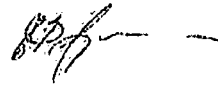
South Carolina
Department of Employment and Workforce

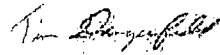
Exhibit A

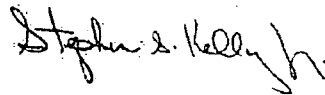
DECISION

The Appeal Tribunal decision mailed June 28, 2018 is affirmed. The Claimant was absent from the appeal hearing on April 12, 2018, without good cause. The Appeal Tribunal decision mailed April 12, 2018 is final. The Claimant remains disqualified from receiving benefits for twenty weeks, effective January 21, 2018, to June 9, 2018, upon finding he was discharged due to misconduct.

**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE
APPELLATE PANEL**



E.B. AYERS

TIM DANGERFIELD

STEPHEN S. KELLY, JR.

Date Mailed: 08/14/2018



South Carolina
Department of Employment and Workforce

COA-020

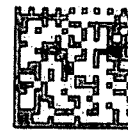


Exhibit B

2199134

08/14/2018

CORTEZ M JILES
733 Armour St
Columbia SC 29203-5007

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the mailing date of SCDEW's final decision (see the mailing date above).

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia SC 29201**

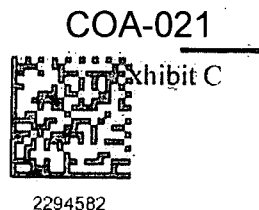
Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice law in South Carolina.



South Carolina
Department of Employment and Workforce



09/04/2018

RE: 18-HA-001083
Claimant ID: 4486575

CORTEZ M JILES
733 Armour St
Columbia SC 29203-5007

This is to acknowledge receipt of your letter concerning the above appeal. Your letter was accepted as a request for reconsideration. After review of submitted documents, the Appellate Panel considered and denied your request. If you disagree with the Panel's original decision, you have thirty (30) days from the mailing date of this letter to file a Petition for Judicial Review with the Administrative Law Court.

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia SC 29201**

A copy of the Petition also must be served on DEW at the following address:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

Higher Authority Appeals
803-737-0239
803-737-3166 (fax)

Recipient List

CORTEZ M JILES
733 Armour St
Columbia, SC 29203-5007

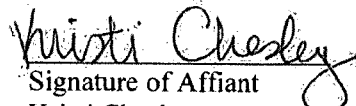
HOUSE OF RAEFORD FARMS INC
Po Box 21456
Columbia, SC 29221

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

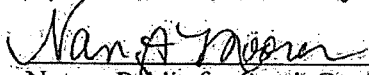
AFFIDAVIT

PERSONALLY appeared before me, the undersigned Notary, is Kristi Chesley, who is employed in Richland County, South Carolina, and makes this her statement and affidavit upon oath and affirmation of belief and personal knowledge that the following is true and correct to the best of her knowledge:

1. I am the Office Manager for the South Carolina Department of Employment and Workforce (Department). I am responsible for receiving, opening, and processing mail addressed to: Office of General Counsel, S.C. Department of Employment and Workforce, Post Office Box 8597, Columbia, SC 29202.
2. There has been no Notice of Appeal to the Administrative Law Court (ALC) received by mail or hand delivery from Cortez M. Jiles to the Department's Office of General Counsel in the case of Cortez M. Jiles v. South Carolina Department of Employment and Workforce and House of Raeford Farms, Inc., Docket #18-ALJ-22-0409-AP.
3. As of November 19, 2018, a review of the documents in the Department's Imaging system does not show any record of a Notice of Appeal to the ALC has been served on the Department.


Signature of Affiant
Kristi Chesley

DATED AND SWORN to before me this the
19th day of November, 2018.

 (LS)
Notary Public for South Carolina
My Commission Expires: April 1, 2021

COA-024

PROOF OF SERVICE

Kristi Chesley
Legal Assistant to Benjamin Cook
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

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cortez M. Jiles,
Appellant,

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

VS.

RECORD ON APPEAL

South Carolina Department of
Employment and Workforce and
House of Raeford Farms,
Respondent(s),

APPEAL FROM SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT
AND WORKFORCE APPELLATE
PANEL

Cortez M. Jiles
733 Armour St
Columbia SC 29203
Appellant

Benjamin T. Cook
Office of General Counsel-SCDEW
PO Box 8597
Columbia, SC 29202
803-737-0395
legal@dew.sc.gov
Attorney for Respondent DEW

House of Raeford Farms
PO Box 21456
Columbia SC 29221
Employer

THE SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
) CERTIFICATION
COUNTY OF RICHLAND)

The South Carolina Department of Employment and Workforce, by its Legal Department, hereby certifies that the attached hereto is a true and correct copy of the Record on Appeal in the matter of Jiles v. SCDEW & House together with a true and correct copy of the original decision of the Appellate Panel therein.
of Raeford Farms

THE SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE

Kristi Chesley
Kristi Chesley, Administrative Legal Assistant

Columbia, South Carolina

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South Carolina
Department of Employment and Workforce



CPA-028

2199133

08/14/2018

HOUSE OF RAEFORD FARMS INC
Po Box 21456
Columbia SC 29221

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the mailing date of SCDEW's final decision **(see the mailing date above)**.

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia SC 29201**

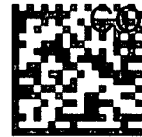
Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice law in South Carolina.



South Carolina
Department of Employment and Workforce



COA-029

2199133

Office of Appellate Panel

CORTEZ M JILES)
)
)
Claimant SSN:)
Claimant ID:)

APPELLATE PANEL
DECISION

HOUSE OF RAEFORD FARMS INC)
P O BOX 21456)
COLUMBIA SC 29221)

Appellant: CORTEZ M JILES

Appeal Number:18-HA-001083

Appellant: Claimant

The Claimant filed for unemployment benefits on January 23, 2018. The claims adjudicator's determination mailed March 8, 2018, held the Claimant disqualified from receiving benefits for twenty weeks, upon finding he was discharged due to misconduct. The Claimant appealed, but was absent from the Appeal Tribunal hearing on the issue of his separation from employment. The Appeal Tribunal decision mailed April 12, 2018, dismissed the Claimant's appeal. The Claimant appealed the dismissal to the Appellate Panel. After a hearing on the cause of the Claimant's absence from the April 12, 2018 Appeal Tribunal hearing, the Appeal Tribunal decision mailed June 28, 2018, found the Claimant was afforded a reasonable opportunity for a fair hearing. The Claimant appealed the Appeal Tribunal decision on July 5, 2018 to the Appellate Panel.

The Appellate Panel issued its decision upon review of the record on appeal. We affirm the decision mailed June 28, 2018. The Claimant was absent from the appeal hearing on April 12, 2018, without good cause. The Appeal Tribunal decision mailed April 12, 2018 is final. The Claimant remains disqualified from receiving benefits for twenty weeks, effective January 21, 2018, to June 9, 2018, upon finding he was discharged due to misconduct.

BACKGROUND

The Claimant appealed a claim's adjudicator's determination holding him disqualified from receiving benefits for twenty weeks, upon finding he was discharged due to misconduct. The

Appeal Tribunal mailed a notice to the Claimant's address of record on March 30, 2018, informing him a hearing was scheduled for April 12, 2018, at 9:30 a.m. The hearing notice contained clear and specific instructions to contact the Appeal Tribunal by phone if the telephone number listed on the notice was incorrect. The notice also provided clear and specific instructions to contact the Appeal Tribunal at a specified telephone number if he did not receive a call from the hearing officer within ten minutes of the scheduled hearing time or if there was a schedule conflict. The Claimant was aware of the hearing, but he believed he had forgotten about it on the scheduled day. The hearing officer unsuccessfully attempted to contact the Claimant at the number on the notice and the number the Claimant provided to the Department on his appeal. The Claimant contacted the Department approximately one hour and ten minutes after the scheduled hearing time. He indicated he did not initially hear the missed calls from the hearing officer. He also indicated he had a scheduling conflict with a dental appointment for his son at 10:00 a.m. on the same day. There was no indication the Claimant requested a postponement due to his schedule conflict.

FINDINGS

S.C. Code Ann. § 41-35-680 requires that parties be afforded a reasonable opportunity for a fair hearing after notice of not less than seven days.

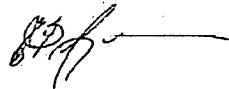
The evidence establishes the Department properly notified the Claimant of the April 12, 2018 Appeal Tribunal hearing, and provided him with detailed instructions to follow if he did not receive a call at the appointed time, or had a schedule conflict. The Claimant was aware of the hearing and was contacted regarding the hearing, but he missed the call. Further, he took no action in advance of the hearing to ensure he could participate, such as requesting a postponement or making changes to his other scheduled appointment. Therefore, we find the Claimant's absence was due to his own neglect or error, and not for good cause. The Claimant was afforded a reasonable opportunity for a fair hearing. The Appeal Tribunal decision is affirmed.

The remainder of this page is intentionally left blank.

DECISION

The Appeal Tribunal decision mailed June 28, 2018 is affirmed. The Claimant was absent from the appeal hearing on April 12, 2018, without good cause. The Appeal Tribunal decision mailed April 12, 2018 is final. The Claimant remains disqualified from receiving benefits for twenty weeks, effective January 21, 2018, to June 9, 2018, upon finding he was discharged due to misconduct.

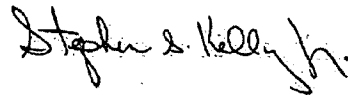
**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE
APPELLATE PANEL**



E.B. AYERS



TIM DANGERFIELD



STEPHEN S. KELLY, JR.

Date Mailed: 08/14/2018

Personal Information

Claimant Id: [REDACTED]
 Date of Birth: [REDACTED] Other Last Name Used (1):
 First Name: CORTEZ Other Last Name Used (2):
 Last Name: JILES Other Last Name Used (3):
 Middle Initial: M Gender: Male
 Suffix: Mothers Maiden Name:

Address Information

Country: USA
 Mailing Address, if different from residential: [REDACTED] Mailing Address City: [REDACTED]
 Mailing Address State: [REDACTED] Mailing Address Zip: [REDACTED]
 Residential Address Country: USA
 Residential Address: [REDACTED] Residential Address City: [REDACTED]
 Residential Address State: [REDACTED] Residential Address Zip: [REDACTED]
 Closest Employment Services Office: Columbia Commuter:

Contact Information

Primary Phone: 803-497-0647 Ext: Alternate Phone: Ext:
 Cell Phone: 803-806-2038 Fax Number:
 E-mail Address: Cortezjiles123@gmail.com Preferred Contact Method: Mail

Demographic Information

Education Level: 12 - HIGH SCHOOL DIPLOMA Disabled: No
 Do you need an interpreter: No Veteran: No
 Race: Black/African American U.S. Citizen: Yes
 Ethnicity: Not Hispanic or Latino Alien Registration Number:
 Preferred Language: English

Eligibility

Indicate from what location you are filing your claim One Stop Center
 Have you applied for or are you receiving benefits from any state or federal programs? No

Employment Questions

Has all of your employment been in another state since 07/23/2016 No
 Has any of your employment been in another state since 07/23/2016 No
 Have you served in the Military since 07/23/2016 No
 Are you currently in the State of SC
 Have you been employed as a civilian by the Federal Government since 01/23/2016 No
 Have you worked for a school or educational institution since 07/23/2016 No
 Have you worked for a professional athletics organization since 07/23/2016 No
 Are you a Longshoreman who has been assigned work by a Longshoreman union since No

07/23/2016

Are you an elected official? No

Employability Questions

Are you currently self-employed or do you earn income on a commission basis? No

Do you have plans to become self-employed or earn income on a commission basis? No

Are you currently able to look for, accept, and perform full time work for which you have training or experience? No

Are you currently enrolled in school or in training? No

Are you available only for part-time work? No

Have you filed a claim in the past year for worker's compensation due to a work related injury? No

Employers - Regular

Employer Name	Address	Dates of Employment	Type of Employment
AMICK FARMS LLC, DBAAMICK FARMS LLC	PO BOX 2309 BATESBURG-LEESVILLE 29070	04/20/2017-08/01/2017	Full Time
HIRE QUEST LLC, DBATROJAN LABOR	PO BOX 182366 COLUMBUS 43218	08/01/2017-01/07/2018	Full Time
HOUSE OF RAEFORD FARMS INC, DBAHOUSE OF RAEFORD FARMS	P O BOX 21456 COLUMBIA 29221	01/31/2016-04/06/2016	Full Time

Separation - Regular

Employer Name: AMICK FARMS LLC, DBAAMICK FARMS LLC

Reason employment ended: I was fired, terminated, or discharged from the job.

If Quit or Discharge select the reason why: Altercation

Will you be returning to work for this employer? Yes

If yes, please enter your return to work date: 01/01/2019

State where work was performed: South Carolina

City where work was performed: Batesburg-Leesville

Primary Occupation with this employer:

Are you an owner, corporate officer, or stakeholder of this employer? No

What were your total earnings with this employer from: 7000.0

Separation - Regular

Employer Name: HIRE QUEST LLC, DBATROJAN LABOR

Reason employment ended: I was put on a disciplinary suspension and/or administrative leave

If Quit or Discharge select the reason why:

Will you be returning to work for this employer? Yes

If yes, please enter your return to work date: 08/01/2018

State where work was performed: South Carolina

City where work was performed: Columbia

Primary Occupation with this employer:

Are you an owner, corporate officer, or stakeholder of this employer? No

What were your total earnings with this employer from: 2000.0

Separation - Regular

Employer Name: HOUSE OF RAEFORD FARMS INC, DBAHOUSE OF RAEFORD FARMS

Reason employment ended: I was put on a disciplinary suspension and/or administrative leave

If Quit or Discharge select the reason why:

Will you be returning to work for this employer? Yes

If yes, please enter your return to work date: 12/11/2018

State where work was performed: South Carolina

City where work was performed: Greenville

Primary Occupation with this employer:

Are you an owner, corporate officer, or stakeholder of this employer? No

What were your total earnings with this employer from 18840.0

Other Separation

Are you currently receiving workers' compensation workers compensation for a job related injury or illness? No

Are you or will you receive pension or retirement pay (other than Social Security)? No

Are you or will you receive vacation pay, severance pay, military accrued leave pay or other separation pay? No

If you are eligible to receive benefits, would you like Federal Income Tax withheld from your benefits? No

If you are eligible to receive benefits, would you like State Income Tax withheld from your benefits? No

Do you have a definite return to work date or will start a new job for an employer you have not told us about? No

If yes, what is the name of the employer?

If yes, what is your return to work or start date?

Preferred Payment Method Debit Card

Work Search

What is your lowest Rate of Pay you will accept for the type of work you are seeking? \$11.00 per Hour

Are tool, licenses, or permits required for the work you are seeking? No

If yes, do you have the required tools, licenses, or permits to perform the work you are seeking?

Military/Veteran Information

Are you a veteran? No

Is your spouse a veteran? No

Is your spouse a veteran killed in active duty? No

Is your spouse a deceased veteran who had a total disability? No

Is your spouse a service member who is a MIA or POW? No

Is your spouse a veteran who had a total (100%) disability rating from the VA?

Were you awarded any campaign badges, ribbons or decorations?

If yes, please mention:

Have you worked on a farm? No

Did you earn at least half of your last 12 months income on a farm?

Were you employed all year on a farm?

Did you travel to work?

Did you work at least 25 days on a farm?

Have you worked in a food processing plant? Yes

Did you earn at least half of your last 12 months income in food processing? Yes

Were you employed all year in food processing? Yes

Did you travel to work? Yes

Did you work at least 25 days in food processing?	Yes
Do you have a valid driver's license?	Yes
Driver's license class	D Regular Operator License
Commercial driver's license classes	None
Commercial driver's license restrictions	None

Job Eligibility Counties

Select upto 6 counties where you are willing to work:

GREENVILLE

Job Eligibility Experience

Are you willing to look for other types of work?

Primary Choice

Kinds of Jobs Seeking / ONET?

Stock Clerks - Stockroom, Warehouse, or Storage Yard

Years of experience:

02

Years of Training:

Secondary Choice

Kinds of Jobs Seeking / ONET?

Business Operations Specialists, All Other

Years of experience:

01

Years of Training:

Last Job Information

How much did you earn on your last job?

12.5

Unit of pay:

Hour

Travel Miles:

21+

Location

Are you willing to relocate?

Yes

Are you willing to travel at least the same distance as you last traveled to your last job?

Yes

Your transportation methods:

Automobile

Availability Start Date Immediately?

Yes

Are you willing to accept at least the last amount you earned on your last job?

Yes

Does a lack of childcare or dependent care affect your ability to work?

Yes

Job And Availability Schedule

Available Time (Start Time - End Time)

22:45 - 8:00

Available Days

Sunday

Monday

Tuesday

Wednesday

Thursday

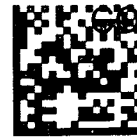
Friday

Are you willing to work the same hours/shifts/days you worked on your last job?

No



South Carolina
Department of Employment and Workforce



1151583

GA-036

CORTEZ M JILES

Claim ID: 574487
Claimant ID: [REDACTED]
SSN: [REDACTED]
SC Works Center: Columbia
Effective Date: 01/21/2018
Date Filed: 01/23/2018
Date Prepared: 01/24/2018

Initial Determination of Status as an Insured Worker

*BENEFITS YOU MAY BE ELIGIBLE FOR

WEEKLY BENEFIT AMOUNT \$248.00
MAXIMUM TOTAL BENEFITS \$4,960.00
BENEFIT YEAR ENDS 01/19/2019

SEE ATTACHED FOR CLAIMANT INFORMATION

EMPLOYMENT RECORD		STANDARD BASE PERIOD QUARTERLY EARNINGS			
EMPLOYER	ACCOUNT NO.	YEAR *QTR	YEAR *QTR	YEAR *QTR	YEAR *QTR
HOUSE OF RAEFORD FARMS INC HIRE QUEST LLC AMICK FARMS LLC		4/2016	1/2017	2/2017	3/2017
		\$0.00	\$2,903.49	\$1,289.38	\$4,409.17
		\$326.28	\$0.00	\$0.00	\$0.00
		\$0.00	\$0.00	\$4,482.52	\$2,047.41
STANDARD BASE QUARTER TOTAL		\$326.28	\$2,903.49	\$5,771.90	\$6,456.58

NOTE: The weekly benefit amount on this form reflects your **GROSS PAYMENT EACH WEEK BEFORE ANY DEDUCTIONS** are made. Possible deductions to this amount include, but are not limited to, tax withholding, pension, child support, offset of overpayment, and part-time earnings. **ALSO, YOUR FINAL PAYMENT MAY BE LESS THAN THE FULL WEEKLY BENEFIT AMOUNT BASED ON THE BALANCE REMAINING IN YOUR ACCOUNT.**

*QTR.

1. JAN, FEB, MAR 3. JULY, AUG, SEPT
2. APR, MAY, JUNE 4. OCT, NOV, DEC



South Carolina
Department of Employment and Workforce



GA-037

1151583

INFORMATION FOR CLAIMANT

This is a monetary determination of your claim for benefits based on wages paid during your Base Period. This determination shows your Base Period Employment Record. It lists your covered employer(s) that paid you wages, their account number, and the wages paid to you by quarter and year during the base period of your claim. The total amount of wages paid to you by quarter in the base period is shown beside Base Quarter Total. This determination covers only the monetary portion of your claim. Another determination will be issued that states if you are eligible to receive benefits. It will be based on the reason for separation from your most recent bona fide employer.

Under Benefits You May Be Eligible For, your Weekly Benefit Amount, Maximum Benefit Amount, and the date your Benefit Year Ends are shown.

BASE PERIOD: The first four of the last five completed calendar quarters prior to the effective date of your initial claim. If you earned wages in covered employment not shown on this form, contact the claims representative by calling 1-866-831-1724.

If the monetary determination was invalid using base period wages, this determination may show wages and employment from an Alternate Base Period.

ALTERNATE BASE PERIOD: The first four most recently completed calendar quarters prior to the effective date of your initial claim. If you earned wages in covered employment not shown on the face of this form, contact the claims representative by calling 1-866-831-1724.

HIGH QUARTER: The quarter in your Base Period during which wages paid to you for insured were highest.

WEEKLY BENEFIT AMOUNT: The amount of benefits you may receive weekly, if unemployed and otherwise eligible, shall be one-half of the average weekly wage in the high quarter of your base period but shall not be less than \$42.00 nor greater than the maximum weekly benefit amount as determined by the Department or before June 30 of each year for benefit years on or after July 1 of such current calendar year, and prior to July 1 of the succeeding calendar year as provided in Section 41 - 35 - 40 of the Law.

MAXIMUM POTENTIAL BENEFITS: The greatest amount of compensation that you may receive during your benefit year.

BENEFIT YEAR: The one (1) year period following the effective date at your initial Claim. To establish a Benefit Year in accordance with the provisions of the Law, you must meet the following wage requirements:

1. You were paid at least \$1,092.00 for issued work during the high quarter of your alternate base period;
2. You were paid at least \$4,455.00 for issued work during your base period and
3. The total of your base period wages for issued work equal or exceeded one and one-half times the total of your high quarter wages.

AVERAGE WEEKLY WAGE: Shall be determined by dividing the high quarter wage earnings by 13 weeks.

REDETERMINATION RIGHTS: You have the right to request a correction if you do not agree that this determination is correct. Your request for redetermination may be made by letter to the office where you filed and it should be made without delay. No change can be made on this determination after one year from the date of this notice.

IF YOU NEED TO UPDATE YOUR ADDRESS OR TELEPHONE NUMBER: PLEASE VISIT SCUIHUB.DEW.SC.GOV.

EXAMPLE OF COMPUTATION OF BENEFITS

				Maximum Potential Benefits:	
				Your maximum total benefit amount for this benefit year is the lesser of	
Higher Quarter Wages	\$	1092.00		1. Twenty (20) times you Weekly Benefit Amount, or	
Base Period Wages	\$	4455.00		2. One-third (1/3) of your total Base Period Wages as shown on this	
Average Weekly Wage	\$1092.00 divided by 13 = \$	84.00		determination.	
Weekly Benefit Amount	\$84.00 divided by 2 = \$	42.00		(1) 20 X \$42.00 = \$840.00 (2) 1/3 of \$4455.00 = \$1485.00	
				Maximum Benefits would be \$ since that amount is less than \$1485.00	



South Carolina
Department of Employment and Workforce



1481066

SCBA-038

Original

CORTEZ M JILES

Mailing Date: 03/08/2018
Effective Date: 01/21/2018
Type: DC02
Category: Attendance
Benefit Year Ends: 01/19/2019
RE: HOUSE OF
RAEFORD FARMS
INC

Claimant ID:
SSN:

DECISION

You are held ineligible for benefits from 01/21/2018 to 06/09/2018.

DETERMINATION REASON

You were discharged from your job with your most recent bona fide employer for absenteeism and failure to comply with company call in procedures. For absenteeism and failure to comply with company call in procedures is a misconduct connected with the employment under the South Carolina code section 41-35-120(2)(a).

CONCLUSION

You have not met the eligibility requirements of the law, benefits are denied. You are disqualified for 20 weeks. Your maximum benefits are also reduced by 20 times your weekly benefit amount.

MONETARY INFORMATION

Weekly Benefit Amount	Maximum Potential	Less Reduction Of	Net Total Benefits	Benefit Year Ends
\$248.00	\$4,960.00	\$4,960.00	\$0.00	01/19/2019

UI Claims Adjudicator

IMPORTANT: This determination will be the final decision of the Department unless you file an appeal setting forth in detail the grounds for appeal by 03/19/2018. Your appeal may be filed via the MyBenefits Portal, by mail addressed to the "Appeal Tribunal, Post Office Box 995, Columbia, SC 29202," or by fax to 803-737-0287. For additional information on filing an appeal, contact the Appeals Department at 803-737-2520 or visit our website at www.dew.sc.gov/individuals/manage-your-benefits/appeals.

SEE FURTHER EXPLANATIONS OF THE LAW ON PAGE TWO (2) OF THIS FORM

EXPLANATION OF DETERMINATION

South Carolina Employment and Workforce Law provides varying penalties for a claim that does not meet the requirements of the law.

The term "bona fide employer" means the employer with whom the claimant last earned at least eight (8) times the weekly benefit amount.

SECTION 41-35-110 provides that a claimant is eligible for benefits for any week only if the week is claimed according to the regulations, and the claimant has registered and continued to report to an employment office for work as required. Additionally, a claimant must be physically able to work at his usual occupation which prior training and experience show him to be qualified. Also, a claimant must be available for work, which means being ready, able, and willing to accept suitable work, and that personal circumstances would not prevent him from accepting such work.

No weeks of unemployment benefits will be paid for weeks for which the claimant is held to be unavailable. The claimant should call 1-866-831-1724 if the condition which caused the unavailability changes.

SECTION 41-35-120(1) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant left work without good cause connected with the employment. The disqualification shall begin on the effective date of the claim and shall continue until the claimant returns to work and earns at least eight times the weekly benefit of the claim.

SECTION 41-35-120(2)(a) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant was discharged for misconduct connected with the most recent work. The disqualification shall begin on the effective date of the claim and shall continue for twenty weeks, with a corresponding reduction of the claimant's benefits to be calculated by multiplying the weekly benefit amount by twenty. Misconduct includes deliberate violations or disregard of standards of behavior the employer has the right to expect, or carelessness or negligence of such degree or recurrence as to show an intentional and substantial disregard of the employer's interest or the claimant's duties and obligations to the employer.

SECTION 41-35-120(2)(b) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant was discharged for cause, other than misconduct, connected with the most recent work. The disqualification shall begin on the effective date of the claim and shall continue for not less than five nor more than nineteen weeks, with a corresponding reduction of the claimant's benefits to be calculated by multiplying the weekly benefit amount by the number of weeks of the disqualification.

SECTION 41-35-120(3) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant was discharged for illegal drug use. The disqualification shall begin on the effective date of the claim and shall continue until the claimant returns to work and earns at least eight times the weekly benefit amount of the claim.

SECTION 41-35-120(4) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant was discharged for gross misconduct. The disqualification shall begin on the effective date of the claim and shall continue until the claimant returns to work and earns at least eight times the weekly benefit amount of the claim.

SECTION 41-35-120(5) provides that a claimant shall be disqualified from benefits if the Department finds the claimant failed without cause to either apply for suitable work when directed by the Department or to accept available suitable work. The disqualification shall begin on the effective the week the failure occurs and shall continue until the claimant returns to work and earns at least eight times the weekly benefit amount of the claim.

SECTION 41-35-120(8) provides that a claimant shall be disqualified from benefits if the Department finds that the claimant retired voluntarily from the most recent work. The disqualification shall begin on the effective date of the claim and shall continue until the claimant returns to work and earns at least eight times the weekly benefit amount of the claim.

If you are still unemployed at the end of a period of disqualification or believe you have met the requalification requirements imposed, you may reopen your claim by reporting to the local unemployment office on the earliest possible date following the end of the disqualification or after meeting the earnings requirement.

FOR ADDITIONAL INFORMATION OR QUESTIONS PLEASE CONTACT US AT 1-866-831-1724.

Appeal Filed Summary

Claimant Name JILES, CORTEZ M.

Claimant ID [REDACTED]

Claimants masked SSN [REDACTED]

Employer Name HOUSE OF RAEFORD FARMS INC

Employer Account # [REDACTED]

Issue ID 2006620

Issue Description Discharge - Attendance

Date of Determination being appealed 03/08/2018 12:00 AM

Reason the appellant provided for the appeal Suspending for review on attendance when
got it correct been laid of with no pay

Appellant Claimant

Date and Time Stamp when appeal was filed 03/13/2018 08:08 PM



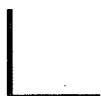
South Carolina
Department of Employment and Workforce



COA-041

1567500

HOUSE OF RAEFORD FARMS INC
P O Box 21456
Columbia SC 29221





South Carolina
Department of Employment and Workforce



CBA-042

1567500

NOTICE OF HEARING BEFORE APPEAL TRIBUNAL (TELEPHONE CONFERENCE)

Mail Date: 03/30/2018

Claimant Name: CORTEZ M JILES

Address:

Social Security Number:

Claimant ID:

Appeal Number :

Phone:

18-LA-004886

803-497-0647

Employer name: HOUSE OF RAEFORD FARMS INC

Address:

P O BOX 21456

COLUMBIA SC 29221

Phone:

803-354-9797

An administrative hearing will be held TELEPHONE CONFERENCE on: 04/12/2018 at 09:30 AM, Eastern Standard Time, BEFORE: DANIEL BEACH, Administrative Hearing Officer, for the SC Department of Employment and Workforce. The parties will be called by the hearing officer at the telephone numbers shown on this form. **IF THE TELEPHONE NUMBER IS INCORRECT OR NO TELEPHONE NUMBER IS SHOWN, YOU MUST CALL THIS TOLL-FREE NUMBER 866-269-5680 IMMEDIATELY TO INFORM US OF YOUR TELEPHONE NUMBER SO THAT YOU CAN PARTICIPATE IN THE HEARING.**

If you have not been called within 10 minutes after the scheduled time of the hearing, you must call 803-737-2520. Either another hearing is still in progress, or we are unable to contact you. Failure to call or participate in the hearing may result in your interests being considered abandoned.

The issue(s) for the hearing are:

- Discharge
- Voluntary Quit

SCHEDULE CONFLICTS: Hearing postponements are not ordinarily granted. However, if you have a justifiable conflict, notify the Department as soon as possible before your hearing. If you do not, a later request to reopen your hearing may be denied. Contact an appeals representative at 803-737-2520, AT ONCE, if you cannot be present at the time scheduled and wish to request a postponement of the hearing.

PURPOSE OF THE HEARING: The hearing is a fact-finding process that uses a question-and-answer method. Each side may present testimony, witnesses, and documents relevant to its case. The hearing officer will conduct a fair hearing, determine what is relevant, and make sure the record is complete. After the hearing, the officer will prepare a written decision based on the evidence. That decision will be mailed to you.

WHAT HAPPENS AT A HEARING: This notice lists what issues the hearing will cover. The hearing is recorded and all proceedings are taken under oath. After explaining the law and procedures, the hearing officer will ask questions of each side and its witnesses in turn. After all testimony is taken from one side the same procedure is repeated for the other side. Wait your turn, as you may not interrupt while another person is testifying. The hearing officer will tell you

when it's your turn to ask questions. Ask relevant questions that have not already been asked and answered. If you don't have any questions, let the hearing officer know.

EVIDENCE: Written evidence or documents such as letters timecards, or doctors' statements may help your case. Photos, maps, or charts may also help explain what happened. Be ready to tell who prepared the evidence and how it helps your case. Send legible copies of the documents to the hearing officer and the other side before the hearing. Do this even if you believe the Department or the other side already has them. **EVIDENCE MUST BE SUBMITTED TO THE APPEAL TRIBUNAL AND PROVIDED TO THE OPPOSING PARTY AT LEAST 24 HOURS PRIOR TO THE HEARING.** If you don't, the documents may not be considered as evidence. Include only evidence that relates directly to issues listed on the hearing notice.

Any evidence that you want to be considered in this hearing must be sent immediately to the Appeal Tribunal at the address shown on the top of this notice, or faxed to our number 803-737-0287, or uploaded through the MyBenefits Portal for claimants or the Employer Self Service (ESS) for employers.

WITNESSES: You may present witnesses to support your case. Choose witnesses who actually saw or heard what happened. Those witnesses must be present at the time and location of the hearing.

DO I NEED A LAWYER? The unemployment appeal process is designed for claimants and employers who don't have attorneys. However, an attorney may represent you at your own expense. If you do choose to retain a lawyer, fees charged to represent claimants are limited to the greater of \$200 or a claimant's maximum weekly benefit amount for each proceeding.

SUBPOENAS: A subpoena is a legal document issued by the Department that orders an essential witness to testify or produce certain documents for the hearing. You may apply for a subpoena of witnesses and/or documents by downloading a form APP-107 under the Appeal Hearings heading at www.dew.sc.gov/appeals.asp. The form must be completed, signed and sent to the Appeal Tribunal. It may be sent by mail to "Appeal Tribunal, P.O. Box 995, Columbia SC, 29202;" by fax to 803-737-0287, or through the *MyBenefits Portal* for claimants or SCBOS for employers. **SUBPOENA APPLICATIONS MUST BE RECEIVED SIX (6) BUSINESS DAYS PRIOR TO THE HEARING DATE OR THE REQUEST MAY NOT BE CONSIDERED.**

INTERPRETERS: The Appeal Tribunal will provide qualified language interpreter or interpreter for the deaf when requested. If you or any of your witnesses need an interpreter and you have not previously requested one, contact the Tribunal immediately.

WITHDRAWING AN APPEAL: Only the party who filed the appeal may withdraw it. If you wish to withdraw your appeal, please contact an appeals representative at 803-737-2520 or mail your notice of withdrawal to the Tribunal at P.O. Box 995, Columbia SC 29202.

TIME ZONES: If you call from a time zone other than Eastern Standard Time, be sure to properly calculate the time difference.

OVERPAYMENT OF BENEFITS: An adverse decision may result in an overpayment of benefits. In the event you are overpaid benefits, you will be required to repay those benefits to the Department.

DECISION: The Appeal Tribunal's written decision will resolve each issue, but it may not review in detail all testimony or documents given at the hearing. If you disagree with the decision, you may file a further appeal. The decision will explain how to file an appeal.

FILING FOR BENEFITS DURING APPEAL: A CLAIMANT MUST CONTINUE TO FILE WEEKLY CLAIMS FOR BENEFITS DURING THE APPEAL PROCESS, IF STILL UNEMPLOYED. Claim Weeks that are not timely filed cannot be paid, even if the claimant wins the appeal and is later held eligible. **CONTACT THE DEPARTMENT AT ONCE AT 1-866-831-1724 if there are any problems or questions when filing weekly claims.**

THIS NOTICE SUPERSEDES ANY PREVIOUS HEARING NOTICE ON THIS ISSUE YOU MAY HAVE RECEIVED. IF THE DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD ASSUME THAT THE PREVIOUS HEARING HAS BEEN POSTPONED AND FOLLOW THE INSTRUCTIONS ON THIS NOTICE.

Selected Sections of the South Carolina Unemployment Law

VOLUNTARY QUIT: Section 41-35-120(1) provides that a claimant found to have left work voluntarily without good cause is indefinitely disqualified from receiving benefits until s/he returns to work and earn at least eight (8) times the weekly benefit amount. Good cause is a reason that is connected to employment and would justify a reasonable person leaving employment.

DISCHARGE FOR MISCONDUCT: Section 41-35-120(2)(a) provides that a claimant found to have been discharged for misconduct is disqualified for twenty (20) weeks. "Misconduct" includes conduct showing willful disregard of an employer's interests, such as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee. No finding of misconduct may be made for discharge resulting from an extreme hardship, emergency, sickness, or other extraordinary circumstance.

DISCHARGE FOR CAUSE: Section 41-35-120(2)(b) provides that a claimant found to have been discharged for cause (i.e., fault), other than misconduct, is partially disqualified from benefits from five (5) to nineteen (19) weeks, according to the seriousness of the cause for discharge.

GROSS MISCONDUCT: Section 41-35-120(4) provides if a claimant is discharged for gross misconduct claimant is indefinitely disqualified from receiving benefits until s/he returns to work and earn at least eight (8) times the weekly benefit amount.

UNEMPLOYMENT DUE TO DOMESTIC ABUSE OR COMPELLING FAMILY CIRCUMSTANCES: Section 41-35-125 provides that a claimant may be found to be eligible for unemployment benefits if the separation from employment is attributable to domestic abuse or other compelling family circumstances. Compelling family circumstances may involve illness or disability of the claimant or an immediate family member and a required relocation for the

claimant's spouse. The burden is on the claimant to show these circumstances exist. Where required by statute, the claimant must produce documentary evidence supporting the claim.

AVAILABILITY: Section 41-35-110 provides that a claimant is eligible for benefits for any week only if the week is claimed according to the regulations and the claimant has registered and maintained contact with the Department as required. Additionally, a claimant must be physically "able to work" at his/her usual occupation which prior training and experience shows him to be qualified. Also, a claimant must be "available for work," which means being ready, able and willing to accept suitable work, and that personal circumstances would not prevent him/her from accepting such work.

Unemployment benefits will not be paid for weeks in which the claimant is held to be unavailable. If the conditions which cause the unavailability change, the claimant may contact the Department to reopen his claim. The burden is on the claimant to show availability for work and reasonable effort to obtain work.

JOB OFFER AND REFERRAL: Section 41-35-120(5) provides that any claimant who has failed (1) without good cause to either apply for available suitable work, when so directed by the Department, or (2) to accept available suitable work when offered by the Department or an employer, shall be ineligible until the claimant furnishes satisfactory evidence of having been re employed and having earned at least eight (8) times the weekly benefit amount. The burden is on the claimant to show availability for work and reasonable effort to obtain work. See S.C. Code Ann. Regs. 47-23.



South Carolina
Department of Employment and Workforce



CPA-046

1619582

04/12/2018

CORTEZ M JILES





South Carolina
Department of Employment and Workforce



1619582

GA-047

DECISION OF APPEAL TRIBUNAL

Hearing Date: April 12, 2018

Appeal Number: 18-LA-004886

CORTEZ M JILES

CLAIMANT

HOUSE OF RAEFORD FARMS INC
P O BOX 21456
COLUMBIA SC 29221

EMPLOYER

APPELLANT: Claimant

SSN: [REDACTED]

CLAIMANT ID: [REDACTED]

APPEARANCES

FOR THE CLAIMANT: None

FOR THE EMPLOYER: One Witness (No Testimony
Taken)

DECISION

This case was set for a hearing on April 12, 2018, at 9:30 a.m. I find notice of the hearing was mailed to the appellant's address of record on March 30, 2018. Appellant did not appear at the call of the case. After a final call to the appellant with no response at 9:46 a.m., I find that the appellant has abandoned the appeal. Upon review of the record and in the absence of testimony, the Tribunal affirms the claims adjudicator's determination mailed March 8, 2018, holding the claimant disqualified from receiving benefits for twenty (20) weeks effective January 21, 2018, through June 9, 2018, with a corresponding monetary reduction upon a finding the claimant was discharged for misconduct.

South Carolina
Department of Employment and Workforce

COA-048

The appeal is dismissed.

This will be the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed by mail addressed to "**Appellate Panel, Post Office Box 1752, Columbia South Carolina, 29202**", or by fax at **803-737-3166**. For additional information on filing an appeal, visit our web site at www.dew.sc.gov/appeals.



Daniel C. Beach
Administrative Hearing Officer

Decision Mailed: April 12, 2018

Mailed on the above Date By: _____

Appeal Filed Summary

Claimant Name JILES, CORTEZ M.**Claimant ID** [REDACTED]**Claimants masked SSN** [REDACTED]**Employer Name** HOUSE OF RAEFORD FARMS INC**Employer Account #** [REDACTED]**Issue ID** 2006620**Issue Description** Discharge - Attendance**Date of Determination being appealed** 04/12/2018 12:00 AM

Reason the appellant provided for the appeal Attendance were missing alot of false aleration so im request for another appointment appeal dont agree with decision

Appellant Claimant

Date and Time Stamp when appeal was filed 04/18/2018 12:36 PM



South Carolina
Department of Employment and Workforce



1647382

GA-050

04/19/2018

Claimant SSN: [REDACTED]
Claimant ID: [REDACTED]
Claimant Name: CORTEZ JILES

HOUSE OF RAEFORD FARMS INC
P O Box 21456
Columbia SC 29221

NOTICE OF APPEAL TO THE APPELLATE PANEL

APPEAL NO: 18-HA-000582

LIABLE EMPLOYER:

HIRE QUEST LLC
PO BOX 182366
COLUMBUS OH 43218-2366

The Claimant in this case appealed the Appeal Tribunal Decision to the Appellate Panel for review.

The Panel will review your case as soon as possible and generally will issue a decision based solely on its review of the record on appeal. However, any party may request an in-person hearing, also known as an oral argument. Oral arguments are conducted only at the Appellate Panel office in Columbia, South Carolina. No additional evidence is permitted to be introduced at the oral argument. If you would like to request an oral argument, you must mail a written request to the Panel at P.O. Box 1752, Columbia, SC 29202, within seven (7) calendar days of the above date. The Panel, at its sole discretion, may grant or deny the request. If an oral argument is scheduled, a copy of the transcript from the Appeal Tribunal hearing and an Appellate Panel hearing notice will be mailed to you at a later date.

SPECIAL NOTE: The Appellate Panel can make its own factual findings and may reverse, affirm, or modify the decision on appeal. **Be advised that this may result in an increase or decrease of the disqualification.**

Claimants must continue filing a weekly claim pending the appeal to receive benefits. Any benefits received by the claimant may be subject to recovery if the Appeal Tribunal decision is reversed.

Higher Authority Appeals
803-737-0239

Recipient List

HOUSE OF RAEFORD FARMS INC
P O Box 21456
Columbia, SC 29221



South Carolina
Department of Employment and Workforce



1752084

05/15/2018

CORTEZ M JILES

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the mailing date of SCDEW's final decision **(see the mailing date above)**.

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia SC 29201**

Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice law in South Carolina.

South Carolina
Department of Employment and Workforce



18-053

1752084

Office of Appellate Panel

CORTEZ M JILES)

[REDACTED])

Claimant SSN: [REDACTED])

Claimant ID: [REDACTED]

APPELLATE PANEL
DECISION

HOUSE OF RAEFORD FARMS INC)

P O BOX 21456)

COLUMBIA SC 29221)

Appellant: CORTEZ M JILES

Appeal Number: 18-HA-000582

Appellant: Claimant

The Claimant filed for unemployment benefits on January 23 2018. A claims adjudicator's determination mailed March 8, 2018, held the Claimant disqualified from benefits for twenty weeks and twenty times the weekly benefit amount, from January 21, 2018, to June 9, 2018, upon finding he was discharged for misconduct connected with the employment. The Claimant appealed the determination. An Appeal Tribunal hearing was scheduled for April 12, 2018. The Claimant failed to appear at the call of the case, and the Appeal Tribunal dismissed the Claimant's appeal. The Claimant appealed the Appeal Tribunal decision on April 18, 2018 to the Appellate Panel.

The Appellate Panel issued its decision upon review of the record on appeal.

DECISION TO REMAND TO THE APPEAL TRIBUNAL

This case is remanded to the Appeal Tribunal to conduct an evidentiary hearing and render a decision on the Claimant's absence from the hearing scheduled on April 12, 2018. All interested parties will be notified of the date, time, and location of the hearing in the near future.

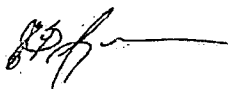
S.C. Code Ann. § 41-35-680 requires that parties be afforded a reasonable opportunity for a fair hearing after notice of not less than seven days.

S.C. Code Ann. § 41-35-710 provides that the Appellate Panel may on its own motion affirm, modify, or set aside a decision of an Appeal Tribunal on the basis of evidence previously submitted in the case, and may direct the taking of additional evidence.

DECISION

This case is remanded to the Appeal Tribunal for an evidentiary hearing and to render a decision on the Claimant's absence from the April 12, 2018 Appeal Tribunal hearing.

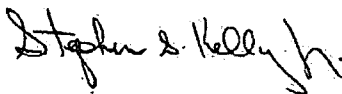
**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE
APPELLATE PANEL**



E.B. AYERS



TIM DANGERFIELD



STEPHEN S. KELLY, JR.

Date Mailed: 05/15/2018



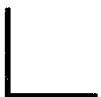
South Carolina
Department of Employment and Workforce



COA-055

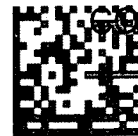
1763821

CORTEZ M JILES





South Carolina
Department of Employment and Workforce
Appeal Tribunal
P.O. Box 995
Columbia SC 29202



1763821

COA-056

NOTICE OF HEARING BEFORE APPEAL TRIBUNAL (TELEPHONE CONFERENCE)

Mail Date: 05/17/2018

Claimant Name: CORTEZ M JILES

Address:

Social Security Number:

Claimant ID:

Appeal Number :

Phone:

18-LA-008666

803-806-2038

Employer name: HOUSE OF RAEFORD FARMS INC

Address:

P O BOX 21456

COLUMBIA SC 29221

Phone:

803-354-9797

An administrative hearing will be held TELEPHONE CONFERENCE on: 05/31/2018 at 01:30 PM, Eastern Standard Time, BEFORE: KENNEN SHORTT, Administrative Hearing Officer, for the SC Department of Employment and Workforce. The parties will be called by the hearing officer at the telephone numbers shown on this form. **IF THE TELEPHONE NUMBER IS INCORRECT OR NO TELEPHONE NUMBER IS SHOWN, YOU MUST CALL THIS TOLL-FREE NUMBER 866-269-5680 IMMEDIATELY TO INFORM US OF YOUR TELEPHONE NUMBER SO THAT YOU CAN PARTICIPATE IN THE HEARING.**

If you have not been called within 10 minutes after the scheduled time of the hearing, you must call 803-737-2520. Either another hearing is still in progress, or we are unable to contact you. Failure to call or participate in the hearing may result in your interests being considered abandoned.

The issue(s) for the hearing are:

- Absence from Hearing

SCHEDULE CONFLICTS: Hearing postponements are not ordinarily granted. However, if you have a justifiable conflict, notify the Department as soon as possible before your hearing. If you do not, a later request to reopen your hearing may be denied. Contact an appeals representative at 803-737-2520, AT ONCE, if you cannot be present at the time scheduled and wish to request a postponement of the hearing.

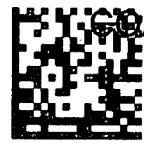
PURPOSE OF THE HEARING: The hearing is a fact-finding process that uses a question-and-answer method. Each side may present testimony, witnesses, and documents relevant to its case. The hearing officer will conduct a fair hearing, determine what is relevant, and make sure the record is complete. After the hearing, the officer will prepare a written decision based on the evidence. That decision will be mailed to you.

SPECIAL NOTE: The Appeal Tribunal may reverse, affirm, or modify the decision on appeal. **Be advised that if a disqualification is at issue, then the appeal may result in an increase or decrease of the disqualification.**

WHAT HAPPENS AT A HEARING: This notice lists what issues the hearing will cover. The hearing is recorded and all proceedings are taken under oath. After explaining the law and



South Carolina
Department of Employment and Workforce
Appeal Tribunal
P.O. Box 995
Columbia SC 29202



SCA-057

1763821

procedures, the hearing officer will ask questions of each side and its witnesses in turn. After all testimony is taken from one side the same procedure is repeated for the other side. Wait your turn, as you may not interrupt while another person is testifying. The hearing officer will tell you when it's your turn to ask questions. Ask relevant questions that have not already been asked and answered. If you don't have any questions, let the hearing officer know.

EVIDENCE: Written evidence or documents such as letters timecards, or doctors' statements may help your case. Photos, maps, or charts may also help explain what happened. Be ready to tell who prepared the evidence and how it helps your case. Send legible copies of the documents to the hearing officer and the other side before the hearing. Do this even if you believe the Department or the other side already has them. **EVIDENCE MUST BE SUBMITTED TO THE APPEAL TRIBUNAL AND PROVIDED TO THE OPPOSING PARTY AT LEAST 24 HOURS PRIOR TO THE HEARING.** If you don't, the documents may not be considered as evidence. Include only evidence that relates directly to issues listed on the hearing notice.

Any evidence that you want to be considered in this hearing must be sent immediately to the Appeal Tribunal at the address shown on the top of this notice, or faxed to our number 803-737-0287, or uploaded through the claimant or employer self-service portal.

WITNESSES: You may present witnesses to support your case. Choose witnesses who actually saw or heard what happened. Those witnesses must be present at the time and location of the hearing.

DO I NEED A LAWYER? The unemployment appeal process is designed for claimants and employers who don't have attorneys. However, an attorney may represent you at your own expense. If you do choose to retain a lawyer, fees charged to represent claimants are limited to the greater of \$200 or a claimant's maximum weekly benefit amount for each proceeding.

SUBPOENAS: A subpoena is a legal document issued by the Department that orders an essential witness to testify or produce certain documents for the hearing. You may apply for a subpoena of witnesses and/or documents by downloading a form APP-107 under the Appeal Hearings heading at www.dew.sc.gov/individuals/tools/forms. The form must be completed, signed and sent to the Appeal Tribunal. It may be sent by mail to "Appeal Tribunal, P.O. Box 995, Columbia SC, 29202;" by fax to 803-737-0287, or through the claimant or employer self-service portal. **SUBPOENA APPLICATIONS MUST BE RECEIVED SIX (6) BUSINESS DAYS PRIOR TO THE HEARING DATE OR THE REQUEST MAY NOT BE CONSIDERED.**

INTERPRETERS: The Appeal Tribunal will provide qualified language interpreter or interpreter for the deaf when requested. If you or any of your witnesses need an interpreter and you have not previously requested one, contact the Tribunal immediately.

WITHDRAWING AN APPEAL: Only the party who filed the appeal may withdraw it. If you wish to withdraw your appeal, please contact a Department representative at 803-737-2520 or mail your notice of withdrawal to "Appeal Tribunal P.O. Box 995, Columbia SC 29202".



South Carolina
Department of Employment and Workforce
Appeal Tribunal
P.O. Box 995
Columbia SC 29202



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GBA-058

TIME ZONES: If you call from a time zone other than Eastern Standard Time, be sure to properly calculate the time difference.

OVERPAYMENT OF BENEFITS: An adverse decision may result in an overpayment of benefits. In the event you are overpaid benefits, you will be required to repay those benefits to the Department.

DECISION: The Appeal Tribunal's written decision will resolve each issue, but it may not review in detail all testimony or documents given at the hearing. If you disagree with the decision, you may file a further appeal. The decision will explain how to file an appeal.

FILING FOR BENEFITS DURING APPEAL: A CLAIMANT MUST CONTINUE TO FILE WEEKLY CLAIMS FOR BENEFITS DURING THE APPEAL PROCESS, IF STILL UNEMPLOYED. Claim Weeks that are not timely filed cannot be paid, even if the claimant wins the appeal and is later held eligible. **CONTACT THE DEPARTMENT AT ONCE AT 1-866-831-1724 if there are any problems or questions when filing weekly claims.**

THIS NOTICE SUPERSEDES ANY PREVIOUS HEARING NOTICE ON THIS ISSUE YOU MAY HAVE RECEIVED. IF THE DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD ASSUME THAT THE PREVIOUS HEARING HAS BEEN POSTPONED AND FOLLOW THE INSTRUCTIONS ON THIS NOTICE.

Selected Sections of the South Carolina Unemployment Law

VOLUNTARY QUIT: Section 41-35-120(1) provides that a claimant found to have left work voluntarily without good cause is indefinitely disqualified from receiving benefits until s/he returns to work and earn at least eight (8) times the weekly benefit amount. Good cause is a reason that is connected to employment and would justify a reasonable person leaving employment.

DISCHARGE FOR MISCONDUCT: Section 41-35-120(2)(a) provides that a claimant found to have been discharged for misconduct is disqualified for twenty (20) weeks. "Misconduct" includes conduct showing willful disregard of an employer's interests, such as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee. No finding of misconduct may be made for discharge resulting from an extreme hardship, emergency, sickness, or other extraordinary circumstance.

DISCHARGE FOR CAUSE: Section 41-35-120(2)(b) provides that a claimant found to have been discharged for cause (i.e., fault), other than misconduct, is partially disqualified from benefits from five (5) to nineteen (19) weeks, according to the seriousness of the cause for discharge.

GROSS MISCONDUCT: Section 41-35-120(4) provides if a claimant is discharged for gross misconduct claimant is indefinitely disqualified from receiving benefits until s/he returns to work and earn at least eight (8) times the weekly benefit amount.

UNEMPLOYMENT DUE TO DOMESTIC ABUSE OR COMPELLING FAMILY CIRCUMSTANCES: Section 41-35-125 provides that a claimant may be found to be eligible



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CDA-059

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for unemployment benefits if the separation from employment is attributable to domestic abuse or other compelling family circumstances. Compelling family circumstances may involve illness or disability of the claimant or an immediate family member and a required relocation for the claimant's spouse. The burden is on the claimant to show these circumstances exist. Where required by statute, the claimant must produce documentary evidence supporting the claim.

AVAILABILITY: Section 41-35-110 provides that a claimant is eligible for benefits for any week only if the week is claimed according to the regulations and the claimant has registered and maintained contact with the Department as required. Additionally, a claimant must be physically "able to work" at his/her usual occupation which prior training and experience shows him to be qualified. Also, a claimant must be "available for work," which means being ready, able and willing to accept suitable work, and that personal circumstances would not prevent him/her from accepting such work.

Unemployment benefits will not be paid for weeks in which the claimant is held to be unavailable. If the conditions which cause the unavailability change, the claimant may contact the Department to reopen his claim. The burden is on the claimant to show availability for work and reasonable effort to obtain work.

ONLINEWORK SEARCH REQUIREMENT: To be eligible for your weekly claim, you must perform at least two (2) job searches each week through the South Carolina Works Online Services (SCWOS) system. If you do not complete this requirement, you may not receive payment. The Department may waive this requirement to perform at least two (2) weekly job searches through SCWOS only for good cause. Good cause includes, but is not limited to, verifiable electronic access and/or language barriers, and is determined by the Department on a case-by-case basis and only after a claim has not been paid. See S.C. Code Ann. Regs. 47-104.

JOB OFFER AND REFERRAL: Section 41-35-120(5) provides that any claimant who has failed (1) without good cause to either apply for available suitable work, when so directed by the Department, or (2) to accept available suitable work when offered by the Department or an employer, shall be ineligible until the claimant furnishes satisfactory evidence of having been re employed and having earned at least eight (8) times the weekly benefit amount. The burden is on the claimant to show availability for work and reasonable effort to obtain work. See S.C. Code Ann. Regs. 47-23.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT & WORKFORCE**Columbia, South Carolina****Transcript of Testimony****Before****Kennen Shortt, Administrative Hearing Officer**

Cortez M. Jiles)

CLAIMANT

[REDACTED])

Claimant SSN: [REDACTED])

House of Raeford Farms)

LIABLE EMPLOYER

PO Box 21456)

Columbia, SC 29221)

PLACE OF HEARING:SC Department of Employment & Workforce
Central Office Annex
631 Hampton Street
Columbia, SC 29201**DATE OF HEARING:**

May 31, 2018

APPEARANCES:

For Claimant:

Participated

For Employer:

TESTIFYING WITNESSES

CLAIMANT:

Cortez M. Jiles

EMPLOYER WITNESSES:

1 Before: Kennen Shortt, Administrative Hearing Officer

2 HEARING OFFICER: We are now record, this hearing is being recorded. This is a
3 hearing on Appeal Number 18-LA-008666 in the case of the
4 claimant, Cortez Jiles and the employer, House of Raeford Farms.
5 This cases is remanded to the Appeal Tribunal to conduct an
6 evidentiary hearing and render a decision on the claimant's
7 absence from the hearing scheduled on April 12, 2018. This
8 hearing is being conducted on May 31, 2018, by telephone, before
9 Kennen Shortt, an Administrative Hearing Officer with the SC
10 Department of Employment and Workforce. The claimant, Cortez
11 Jiles, is present with no witness and no attorney. The employer is
12 not present at this hearing. All testimony must be taken by oath or
13 affirmation. Mr. Jiles, I'll ask you, do you solemnly swear or
14 affirm that the testimony that you are about to give will be the
15 truth, the whole truth and nothing but the truth so help you God?

16 CORTEZ JILES: Yes sir.

17 HEARING OFFICER: Thank you sir, let the record reflect that the claimant has been
18 sworn in. I'll initially ask you questions and then give you an
19 opportunity to respond and if there's anything further you want to
20 tell me about any matters that are relevant to this hearing. I'll ask
21 that you please present any documents or exhibits that you feel
22 should be considered and you will be notified of a decision just as
23 soon as possible. It will be mailed to your address of record. Mr.
24 Jiles, if you would, tell me your address please.

25 CORTEZ JILES: My address is [REDACTED]
26 [REDACTED]

27 HEARING OFFICER: Thank you Mr. Jiles. Since this has been ruled an absence issue,
28 I'll begin testimony with the claimant. Before I go any further, do
29 you have any questions about the procedures or the issues?

30 CORTEZ JILES: No sir.

31 HEARING OFFICER: Okay. What I have here is a copy, first of all, I have a copy of the
32 decision that was mailed to you...

1 CORTEZ JILES: I've got a question for you sir. Is that for the House of Raeford
2 because I worked at several House of Raeford, I worked at the one
3 in Columbia SC and also Greenville SC.

4 HEARING OFFICER: This one, it looks like the one on this, the address on this is the
5 House of Raeford in Columbia, SC but that's not really so much of
6 an issue in this hearing here. If it's determined that that's an issue,
7 about which one you worked at that would be something else.
8 What I'm asking you here is about the day that we're talking
9 about, the absence from the prior hearing. I'm going to go ahead
10 and enter this as Agency Exhibit 1, pages 1, 2 and 3. This is the
11 Appellate Panel decision that was mailed to you, Appeal Number
12 18-HA-000582. I'll go ahead and place in to evidence. I also have
13 a copy of the notes from that previous hearing. These are the notes
14 documenting when you were called and when the Hearing Officer
15 called you. I'll label this as page 4. So, Mr. Jiles, this hearing was
16 scheduled for April 12 at 9:30. First off all, would you start off by
17 just stating your name and giving me a quick spelling of it please.

18 CORTEZ JILES: Cortez, C-O-R-T-E-Z, M. Jiles, M is my middle name, and Jiles, J-
19 I-L-E-S. That's my last name.

20 HEARING OFFICER: Okay. Mr. Jiles, this hearing was set for April 12 at 9:30 and tell
21 me what happened.

22 CORTEZ JILES: I had missed it, I had missed it like twenty minutes and I called,
23 they had told me that if I had missed it I could call. She told me
24 that I would have to set another appeal up because I hadn't been
25 seen, and I called twenty minutes after she had called, I was trying
26 to return the phone call back. At the time I could have returned the
27 phone call, she was saying it was too late.

28 HEARING OFFICER: At that time, did you actually receive the phone call? Did you ever
29 hear it ringing? How did you know that you had been called for
30 the hearing?

31 CORTEZ JILES: My fiancée, she was at work at the time and she called, I didn't
32 hear my phone ring, but they had called my fiancée's number
33 because I had, I had to go back because the number that I had
34 given them, I had given them my fiancée's number for the call,

1 because I didn't have a phone at the time. By the time I went
2 online at www.works.gov and changed my contact information,
3 that's why, I had to go back and change that and she had called me.
4 My fiancée was trying to get in contact with me, and by the time
5 my fiancée got in contact with me, when I woke up, she told me
6 that unemployment had called so I called them fifteen to twenty
7 minutes later.

8 HEARING OFFICER:

9 Let me go ahead and read the Hearing Officer's notes, and this is
10 what is says, it kind of goes back, it says, at 9:46, I called the
11 employer and advised....let's see, this is at 10:40, the claimant
12 Cortez Jiles called at 10:30 a.m. to state that he had missed his
13 hearing today, 4/12/18 at 9:30 a.m. The claimant was advised that
14 he may receive another decision and would need to appeal if he
15 disagrees. He stated his contact number is 803-806-2038. Prior to
16 that, at 9:53, called the employer at 864-991-3810 and got
17 Jacquelyn Miller on the phone, placed her on hold, called the
18 claimant. 9:36, called the claimant at 803-506-2038 and received a
19 recording that the number is no longer in service. 9:37, called the
20 number again and got the same recording. 9:37, advised the
21 employer of the ten minute wait and that I would call them back at
22 9:38. Saw that the claimant had provided another number on his
23 online appeal, 9:39, called the claimant at 803-497-0647 and a
24 female answered. I advised who I was and she indicated that I
25 could call 803-806-2038, the same number I originally called,
26 9:46, called the claimant at 803-806-2038 and got the same
27 recording, number is no longer in service. 9:46, called the
28 employer and advised of the claimant's non-appearance and that I
29 would issue a decision affirming the twenty weeks to the address
of record in the next few days. Okay....

30 CORTEZ JILES:

31 What was wrong was my phone, it wasn't on all the way, it went
32 off. My phone just went off, it acted like it was dead at the time. I
33 had called briefly prior to it so they could change my contact and
34 when I charged my phone up and it got up and I found out that I
35 had a missed call from the unemployment, or workforce. That's
when I tried to call back. That's what happened.

36 HEARING OFFICER:

37 Okay, so what had happened was the hearing officer, they couldn't
38 get you on the phone at that number and so he called the other
number, this is your fiancée's number, she gave him the number,

1 which looks like it's the same number, and he called that and he
2 wasn't able to get you. Then it was about twenty minutes later that
3 you called him back, is that correct?

4 CORTEZ JILES: Yes sir.

5 HEARING OFFICER: Okay. It looks like it was about 10:30, according to this it was
6 about 10:30.

7 CORTEZ JILES: Yes sir, that's when I got through all the recordings and got
8 someone in appeals.

9 HEARING OFFICER: Tell me why you weren't ready for the hearing at 9:30.

10 CORTEZ JILES: I'm thinking it was my phone, I did go on the workforce and
11 change my contact number, because that's what I had to do. I
12 think my phone was dead at the time. I get off work at 8:00 and
13 when I got off that's when I charged it. I had really just got in
14 from work.

15 HEARING OFFICER: My question is did you realize that you had a hearing that day?

16 CORTEZ JILES: I think it probably slipped my mind. I think I would have
17 remembered, but it probably slipped my mind. I was working, I
18 work at night so I sleep throughout the day.

19 HEARING OFFICER: I see. What did the instructions tell you on the notice, that if you
20 haven't received a call within ten minutes, to go ahead and call the
21 number that's on the sheet there. You didn't call after ten minutes,
22 you waited until afterwards to call, is that right?

23 CORTEZ JILES: I called the number as soon as, well, yes, you can say that. As
24 soon as I got the call I started making the calls and they gave me
25 the right number to call and that's when I finally got through.

26 HEARING OFFICER: Mr. Jiles, I don't have any further questions for you. Is there
27 anything else you want to tell me about that issue?

28 CORTEZ JILES: Say that again sir.

1 HEARING OFFICER: Is there anything else you want to tell me about this absence issue?

2 CORTEZ JILES: Yes, because, the absence issue, it's not really an absence issue
3 because I got suspended from the job at the time....

4 HEARING OFFICER: Mr. Jiles, I'm talking about absence from the hearing not absence
5 from the job.

6 CORTEZ JILES: Oh okay.

7 HEARING OFFICER: Anything further you want to tell me about that?

8 CORTEZ JILES: Sir?

9 HEARING OFFICER: I said is there anything further you want me to know about that?

10 CORTEZ JILES: No sir.

11 HEARING OFFICER: I don't have any further questions for you about that. So, having
12 no further questions and hearing no further testimony, this hearing
13 is now closed. Okay Mr. Jiles, we'll get this decision out to you
14 and I wish you good luck and hope you have a great day.

15 CORTEZ JILES: Oh okay, I do have some more reasons why I had missed the
16 hearing as well. What we are going through financially wise and
17 everything like that...

18 HEARING OFFICER: Right. What I was just asking you about is this particular hearing
19 here. What you told me before, that you had missed the call and
20 that you had called back, is there any other reason as to why you
21 missed it other than that?

22 CORTEZ JILES: I think I had a dentist appointment as well at that date as well
23 because I was doing a lot of dental work for my son, my son had
24 the dentist that day at 12:15 for me and my son because I'm a
25 single parent right now, because my fiancée, UNCLEAR, with my
26 baby's mother, so now I'm stepping in to play with my son and
27 doing everything that my baby momma should doing for my son,

1
2

but she's incarcerated right now. That's the big issue too, because of my son.

3
4
5

HEARING OFFICER:

Okay. Mr. Jiles, I don't have any further questions for you so having no further questions and hearing no further testimony, this hearing is now closed.

6

HEARING CLOSED.

STATE OF SOUTH CAROLINA)
)
COUNTY OF: RICHLAND)

This is to certify that the above is a true and correct transcript of recorded testimony transcribed to the best of my ability.

Kristi Chesley
Kristi Chesley

SWORN to before me this the

13th day of December, 2018

[Signature] (LS)

My Commission Expires April, 2021



04/12/2018 10:40:17 - APPEALS:MWHTLWCK: The claimant, Cortez Jiles called at 10:30 am to state he missed his hearing today 4/12/18 at 9:30 am. Claimant was advised he may receive another decision and will need to appeal if he disagrees. He stated his contact number is 803 806 2038.

04/12/2018 09:53:00 - APPEALS:DBEACH: APP-120: 9:33 - Called the employer at 864-991-3810 and got Jacyn Miller on the phone. Placed him on hold to call the claimant. 9:36 - Called the claimant at 803-806-2038 and received a recording that the number is no longer in service. 9:37 - Called the number again and got the same recording. 9:37 Advised the employer of the 10 minute wait and that I will call him back. 9:39 - Saw that the claimant provided another number on his online appeal. 9:39 - Called the claimant at 803-497-0647 and a female answered. I advised who I was and she indicated I could call 803-806-2038 (the number I originally dialed). 9:46 - Called the claimant at 803-806-2038 and got the same recording, number is no longer in service. 9:46 - Called the employer and advised of the claimant's non appearance and that I will issue a decision affirming the 20 weeks to the address of record in the next few days.



South Carolina
Department of Employment and Workforce



GA-070

1956070

06/28/2018

CORTEZ M JILES

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1956070

CA-071

DECISION OF APPEAL TRIBUNAL

Hearing Date: May 31, 2018

Appeal Number: 18-LA-008666

CORTÉZ M JILES

CLAIMANT

HOUSE OF RAEFORD FARMS INC
P O BOX 21456
COLUMBIA SC 29221

EMPLOYER

APPELLANT: Claimant

SSN: [REDACTED]

CLAIMANT ID: [REDACTED]

APPEARANCES

FOR THE CLAIMANT: Participate

FOR THE EMPLOYER: None

FINDINGS OF FACTS

The issue in this case is the claimant's absence from a prior hearing.

The claimant appealed a determination mailed March 8, 2018 wherein he was held disqualified from receiving benefits for twenty (20) weeks effective January 21, 2018 through June 9, 2018, upon a finding he was discharged for misconduct. An appeal hearing was scheduled for June 5, 2018, but the claimant failed to appear. As a result, the Appeal Tribunal issued a Decision for appeal number 18-LA-004886 on April 12, 2018 which affirmed the initial determination.

The claimant appealed to the Appellate Panel on April 18, 2018. The Panel, by decision for appeal number 18-HA-000582, granted a new hearing before the Tribunal to take testimony concerning the claimant's absence from the original hearing and render a decision.

The claimant received the hearing notice prior to the hearing. At the call of the case, the hearing officer made several attempts to the telephone number of record but was unsuccessful in contacting the claimant. An additional number was called and the individual who answered the call provided the initial phone number for the claimant. After fifteen minutes, the hearing

officer released the employer from the hearing. The claimant called in approximately forty five minutes after the final call of the hearing officer. He then filed an appeal when he received the decision.

REASONS

S.C. Code Ann. §41-35-680 provides that unless an appeal is withdrawn, an Appeal Tribunal, after affording the parties a reasonable opportunity for a fair hearing, must make findings and conclusions promptly within thirty (30) days from the date of the appeal.

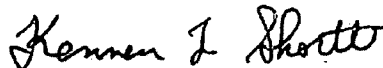
In determining "good cause" for absence from a hearing, the Tribunal will consider, but is not limited to: proper address, adequate notice of hearing time, and receipt of hearing notice.

The claimant was afforded a reasonable opportunity for a fair hearing. The Department fulfilled its sole responsibility by mailing to the claimant at the address of record a notice of hearing. In that notice, it relays to the parties the consequences in failing to attend. At the call of the case, the claimant was not available and thus, did not participate in the evidentiary hearing. Due to the claimant's own neglect or error, he failed to appear and provide testimony.

DECISION

The Tribunal finds the claimant was afforded a reasonable opportunity for a fair hearing and finds that the claimant has not shown good cause for his absence. The Decision of the Appeal Tribunal mailed on April 12, 2018, remains the final decision of the Department on the claimant's separation.

This will be the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed by mail addressed to "**Appellate Panel, Post Office Box 1752, Columbia South Carolina, 29202**", or by fax at **803-737-3166**. For additional information on filing an appeal, visit our web site at www.dew.sc.gov/appeals.



Kennen L. Shortt
Administrative Hearing Officer

Decision Mailed: June 28, 2018

Appeal Filed Summary

Claimant Name JILES, CORTEZ M.**Claimant ID** [REDACTED]**Claimants masked SSN** [REDACTED]**Employer Name****Employer Account #****Issue ID** 2147448**Issue Description** Show Cause - Absence from an appeal hearing**Date of Determination being appealed** 06/28/2018 12:00 AM**Reason the appellant provided for the appeal** single parent in do not agree with termination with employed**Appellant** Claimant**Date and Time Stamp when appeal was filed** 07/05/2018 08:32 AM



South Carolina
Department of Employment and Workforce



CPA-074

2003023

07/09/2018

Claimant SSN: [REDACTED]

Claimant ID: [REDACTED]

CORTEZ M JILES
[REDACTED]

NOTICE OF APPEAL TO THE APPELLATE PANEL

APPEAL NO: 18-HA-001083

LIABLE EMPLOYER:

The Claimant in this case appealed the Appeal Tribunal Decision to the Appellate Panel for review.

The Panel will review your case as soon as possible and generally will issue a decision based solely on its review of the record on appeal. However, any party may request an in-person hearing, also known as an oral argument. Oral arguments are conducted only at the Appellate Panel office in Columbia, South Carolina. No additional evidence is permitted to be introduced at the oral argument. If you would like to request an oral argument, you must mail a written request to the Panel at P.O. Box 1752, Columbia, SC 29202, within seven (7) calendar days of the above date. The Panel, at its sole discretion, may grant or deny the request. If an oral argument is scheduled, a copy of the transcript from the Appeal Tribunal hearing and an Appellate Panel hearing notice will be mailed to you at a later date.

SPECIAL NOTE: The Appellate Panel can make its own factual findings and may reverse, affirm, or modify the decision on appeal. **Be advised that this may result in an increase or decrease of the disqualification.**

Claimants must continue filing a weekly claim pending the appeal to receive benefits. Any benefits received by the claimant may be subject to recovery if the Appeal Tribunal decision is reversed.

Higher Authority Appeals
803-737-0239

Recipient List

CORTEZ M JILES





South Carolina
Department of Employment and Workforce



2199133

08/14/2018

HOUSE OF RAEFORD FARMS INC
Po Box 21456
Columbia SC 29221

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the mailing date of SCDEW's final decision **(see the mailing date above)**.

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia SC 29201**

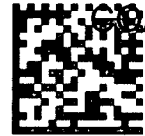
Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice law in South Carolina.



South Carolina
Department of Employment and Workforce



2199133

Office of Appellate Panel

CORTEZ M JILES)
)
)

Claimant SSN: [REDACTED]

Claimant ID: [REDACTED]

APPELLATE PANEL
DECISION

HOUSE OF RAEFORD FARMS INC)

P O BOX 21456)

COLUMBIA SC 29221)

Appellant: CORTEZ M JILES

Appeal Number: 18-HA-001083

Appellant: Claimant

The Claimant filed for unemployment benefits on January 23, 2018. The claims adjudicator's determination mailed March 8, 2018, held the Claimant disqualified from receiving benefits for twenty weeks, upon finding he was discharged due to misconduct. The Claimant appealed, but was absent from the Appeal Tribunal hearing on the issue of his separation from employment. The Appeal Tribunal decision mailed April 12, 2018, dismissed the Claimant's appeal. The Claimant appealed the dismissal to the Appellate Panel. After a hearing on the cause of the Claimant's absence from the April 12, 2018 Appeal Tribunal hearing, the Appeal Tribunal decision mailed June 28, 2018, found the Claimant was afforded a reasonable opportunity for a fair hearing. The Claimant appealed the Appeal Tribunal decision on July 5, 2018 to the Appellate Panel.

The Appellate Panel issued its decision upon review of the record on appeal. We affirm the decision mailed June 28, 2018. The Claimant was absent from the appeal hearing on April 12, 2018, without good cause. The Appeal Tribunal decision mailed April 12, 2018 is final. The Claimant remains disqualified from receiving benefits for twenty weeks, effective January 21, 2018, to June 9, 2018, upon finding he was discharged due to misconduct.

BACKGROUND

The Claimant appealed a claim's adjudicator's determination holding him disqualified from receiving benefits for twenty weeks, upon finding he was discharged due to misconduct. The

Appeal Tribunal mailed a notice to the Claimant's address of record on March 30, 2018, informing him a hearing was scheduled for April 12, 2018, at 9:30 a.m. The hearing notice contained clear and specific instructions to contact the Appeal Tribunal by phone if the telephone number listed on the notice was incorrect. The notice also provided clear and specific instructions to contact the Appeal Tribunal at a specified telephone number if he did not receive a call from the hearing officer within ten minutes of the scheduled hearing time or if there was a schedule conflict. The Claimant was aware of the hearing, but he believed he had forgotten about it on the scheduled day. The hearing officer unsuccessfully attempted to contact the Claimant at the number on the notice and the number the Claimant provided to the Department on his appeal. The Claimant contacted the Department approximately one hour and ten minutes after the scheduled hearing time. He indicated he did not initially hear the missed calls from the hearing officer. He also indicated he had a scheduling conflict with a dental appointment for his son at 10:00 a.m. on the same day. There was no indication the Claimant requested a postponement due to his schedule conflict.

FINDINGS

S.C. Code Ann. § 41-35-680 requires that parties be afforded a reasonable opportunity for a fair hearing after notice of not less than seven days.

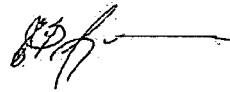
The evidence establishes the Department properly notified the Claimant of the April 12, 2018 Appeal Tribunal hearing, and provided him with detailed instructions to follow if he did not receive a call at the appointed time, or had a schedule conflict. The Claimant was aware of the hearing and was contacted regarding the hearing, but he missed the call. Further, he took no action in advance of the hearing to ensure he could participate, such as requesting a postponement or making changes to his other scheduled appointment. Therefore, we find the Claimant's absence was due to his own neglect or error, and not for good cause. The Claimant was afforded a reasonable opportunity for a fair hearing. The Appeal Tribunal decision is affirmed.

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DECISION

The Appeal Tribunal decision mailed June 28, 2018 is affirmed. The Claimant was absent from the appeal hearing on April 12, 2018, without good cause. The Appeal Tribunal decision mailed April 12, 2018 is final. The Claimant remains disqualified from receiving benefits for twenty weeks, effective January 21, 2018, to June 9, 2018, upon finding he was discharged due to misconduct.

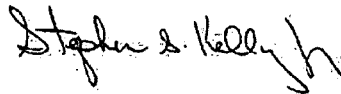
**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE
APPELLATE PANEL**



E.B. AYERS



TIM DANGERFIELD



STEPHEN S. KELLY, JR.

Date Mailed: 08/14/2018

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Cortez M. Jiles,

Appellant,

vs.

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

Respondents .

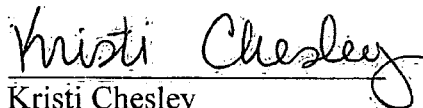
Docket No.18-ALJ-22-0409-AP

PROOF OF SERVICE

I hereby certify that I have served the RECORD ON APPEAL in the above-captioned matter by depositing it in the United State Mail, postage prepaid, on December 19, 2018 to the below named parties at their addresses of record:

Cortez M. Jiles
733 Armour St
Columbia SC 29203House of Raeford Farms
PO Box 21456
Columbia SC 29221

December 19, 2018



Kristi Chesley

Legal Assistant to Benjamin T. Cook
SC Department of Employment and Workforce
Post Office Box 8597
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**South Carolina
Legal Services**

Balancing the Scales of Justice

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February 25, 2019

South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Edgar A. Brown Building
Columbia, South Carolina 29201

Re: Cortez M. Jiles v . SCDEW and House of Raeford Farms
Case No.: 18-ALJ-22-0409-AP
Our File No.: 18-0664287

Dear Clerk:

Enclosed please find a *Appellant's Brief* and *Certificate of Service* for filing in the above-referenced case.

Please do not hesitate to call me at (803) 744-4166 if you have any questions.

Sincerely,

Jack E. Cohoon
Head Attorney, Employment Law Unit

Enclosures

Cc (w/encl.): SCDEW
House of Raeford Farms



THE STATE OF SOUTH CAROLINA
In the Administrative Law Court

Appeal from
South Carolina Department of Employment and Workforce
Deborah Brooks Durden, Administrative Law Judge

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

CORTEZ M. JILES

Appellant,

vs.

**SOUTH CAROLINA
DEPARTMENT OF
EMPLOYMENT AND
WORKFORCE AND HOUSE
OF RAEFORD FARMS,**

Respondents.

BRIEF OF APPELLANT

February 25, 2019

SOUTH CAROLINA LEGAL SERVICES

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ATTORNEY FOR APPELLANT

STATEMENT OF ISSUES ON APPEAL

- 1. Is the Department's Decision unsupported by substantial evidence of the whole record?**
- 2. Did the Department commit an error of law by relying upon an unpromulgated "guideline" to find Jiles' absence from the hearing to be without good cause?**

STATEMENT OF THE CASE

This is an appeal from a final decision of Respondent South Carolina Department of Employment and Workforce (hereinafter "the Department") finding that Appellant Cortez M. Jiles was absent from an Appeal Tribunal hearing without good cause. Record on Appeal (hereinafter "ROA") at 1-2.

The Department issued an initial determination on February 25, 2018, finding Jiles discharged for misconduct. *Id.* at 11. He appealed, and a hearing was set before the Department's Appeal Tribunal on the issue of his separation from employment. Jiles filed a timely appeal on March 13, 2018 through the Department's online portal. *Id.* at 13. A telephone hearing was set for April 12, 2018 at 9:30 a.m. before Administrative Hearing Officer Daniel Beach. The Appeal Tribunal dismissed the appeal based upon a finding that Jiles had failed to participate in the hearing. *Id.* at 20-21.

Jiles appealed to the Appellate Panel, which remanded the case back to the Appeal Tribunal for an evidentiary hearing on Jiles' absence from the previous hearing. *Id.* at 26-27.

The Appeal Tribunal hearing was conducted on May 31, 2018 before Administrative Hearing Officer Kennen Shortt. The Appeal Tribunal found that Jiles had not shown good cause for his absence. *Id.* at 44-45. Jiles then appealed to the Appellate Panel. The Appellate Panel affirmed that Appeal Tribunal's finding that Jiles' absence from first Appeal Tribunal hearing was without good cause. The Appeal Tribunal's decision is the final agency decision. This appeal to the Administrative Law Court proceeds therefrom.

STATEMENT OF FACTS

The facts regarding the issue of absence from the previous hearing were developed at a telephone hearing before Administrative Hearing Officer Kennen Shortt on May 31, 2018. Jiles represented himself in the hearing. He testified that, at the time of filing for benefits, he had listed his fiancée's telephone number because he did not have a working telephone. *Id.* at 36, line 31, to 37, line 7. The hearing officer in the previous Appeal Tribunal hearing called the fiancée at the call of the case, and the fiancée called Jiles to let him know of the call. He testified that he called the Department within fifteen to twenty minutes later. Jiles explained that his phone was not completely on and "acted like it was dead." *Id.* at 37, line 31. Jiles explained that he had called briefly prior to the hearing so the Department could change his contact. He explained that when he got up he found out he had missed a call from the Department. *Id.* at 37, lines 30-35. He agreed with the Department records which indicated that he spoke with a representative at 10:30 but explained that this was after he got through all the recordings in the telephone system and finally reached someone in Appeals. *Id.* at 38, lines 5 to 8. When asked why he wasn't ready for the hearing at 9:30, the scheduled time, Jiles acknowledged that he may have forgotten about the hearing on the scheduled morning because he works night shifts. However, he had taken steps to try to ensure that the telephone call would go through. Jiles explained "I'm thinking it was my phone, I did go to the workforce and change my contact number, because that's what I had to do. I think my phone was dead at the time. I get off work at 8:00 and when I got off that's when I charged it. I had really just got in from work." *Id.* at 38, lines 10 to 14. Jiles also talked about the challenge of being a single father of a child whose mother is incarcerated.

STANDARD OF REVIEW

S.C. Code Ann. § 41-35-750 provides that “[i]n a judicial proceeding under this chapter[Title 41, Chapter 35], the findings of the department regarding facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the administrative law court must be confined to questions of law.” The Administrative Procedures Act (A.P.A.) sets forth the bases upon which a court of appellate review may act on an administrative finding, inference, conclusion or decision of an agency. S.C. Code Ann. § 1-23-310 *et. seq.* The South Carolina Employment Security Commission is an “agency” within the scope of the A.P.A. S.C. Code Ann. § 1-23-310(2). An appellate court may affirm or remand an agency decision. S.C. Code Ann. § 1-23-380(A)(5) reads

The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The “substantial evidence” standard governs factual findings under the A.P.A. *See e.g. Hall v. United Rentals*, 371 S.C. 69, 79, 636 SE.2d 876, 882 (S.C. Ct. App. 2006) (Worker's Compensation case), *McEachern v. South Carolina Emp. Sec. Commission*, 370 S.C. 553, 635 SE.2d 644 (S.C. Ct. App. 2006). An appellate court may not overturn an agency's finding of fact, when it is supported by substantial evidence. Substantial evidence requires a showing of more than a “mere scintilla of evidence.” *Houston v. DeLoach &*

DeLoach, 378 S.C. 543, 550, 663 SE.2d 85, 89 (S.C. Ct. App. 2008). “Substantial evidence” supports a decision when the record, as a whole, allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm’n of S.C.*, 387 S.C. 360, 366, 692 S.E. 2d 910, 913 (2010).

The appellant court’s review is “plenary” when the agency’s decision is controlled by an error of law. *Lizee v. S.C. Dep’t of Mental Health*, 367 S.C. 122, 126; 623 S.E.2d 860, 863 (S.C. Ct. App. 2005). An appellate court may “freely and absolutely” review a trial court’s or agency’s error of law. *Houston v. DeLoach & DeLoach*, 378 S.C. 543, 552, 663 SE.2d 85, 90 (S.C. Ct. App. 2008) (citing *Lizee v. S.C. Dep’t of Mental Health*, 367 S.C. 122, 126, 623 S.E.2d 860, 863 (S.C. Ct. App. 2005)).

An error of law is present when the agency’s decision is based upon:

[A]pplication of the wrong legal principle; or when based upon factual conclusions, the ruling is without evidentiary support; or when the trial court is vested, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. *State v. Allen*, 370 S.C. 88, 94; 634 S.E.2d 653, 656 (2006).

A decision is considered arbitrary “if it is without a rational basis, is based alone on one’s will and not upon any course of reasoning and exercise of judgment . . . or is governed by no fixed rules or standards.” *Deese v. State Bd. Of Dentistry*, 286 S.C. 182, 184-85; 332 S.E.2d 539, 541 (1985).

ARGUMENTS

- 1. The Department's decision is not supported by substantial evidence of the whole record and should be reversed.**

The Department's final agency decision contains factual errors. First, it fails to mention the technical problems Jiles testified that he was having with his telephone at the time of the hearing, an omission that calls into question whether the Appellate Panel performed a meaningful review of the record. Second, it contains a clear factual misstatement. Contrary to the Appellate Panel's decision, Jiles did not indicate that he had a scheduling conflict at 10:00 a.m. on the same day for a dental appointment. He had testified that the appointment was at 12:15. *Id.* at 7, lines 22-24. Had the call gone through to his phone, he would have had sufficient time to get his son to the dental appointment.

Jiles' absence from the hearing was caused by technical problems with his phone and the Department should have found him to have good cause for absence. Jiles testified that he had contacted the Department to ensure that the correct telephone number would be used prior to the hearing. He explained that his phone never rang during the times that the Hearing Officer states he called him. Jiles explained that, despite having charged it when he got off of work, his phone was "not completely on" and "acted like it was dead." *Id.* at 37. Technical problems with his phone caused him to be absent from the hearing.

While Jiles testified that he had forgotten about the telephone hearing on the morning it was scheduled, his having forgotten the hearing did not cause his absence from the hearing—his telephone simply did not ring when it was called. If his phone, which he had charged and set up to receive calls, had worked, he would have been able to take the call and participate in the hearing.

After getting a call from his fiancée about the hearing, Jiles did not sit on his rights. He called the Department. It took a significant amount of time for him to navigate the Department's telephone system and reach the Appeals Department. The Department's records confirm this contact.

Workers have a wide variety of levels of sophistication with technology and a wide variety of level of quality of their devices. Some telephones—and some carriers—are more reliable than others. Workers should not lose the opportunity for an opportunity for his case to be heard due to technical malfunctions of personal electronics. The quality of electronics that an individual possesses should not dictate the quality of justice he or she receives. For these reasons, the Department's decision is not supported by evidence of the whole record and should be reversed.

2. The Department committed an error of law by relying upon an unpromulgated "guideline" to find Jiles' absence from the hearing to be without good cause.

The Department's decision relies significantly upon the fact Jiles did not call in within ten minutes of the hearing date: "The notice also provided clear and specific instructions to contact the Appeal Tribunal at a specified telephone number if [Jiles] did not receive a call from the hearing officer within ten minutes of the scheduled hearing time or if there was a schedule conflict." *Id.* at 51. However, the stated requirement to call within ten minutes of the scheduled hearing time is not a requirement of any regulation or law governing the Department. It is without statutory basis.

This state's Supreme Court has examined the issue of agency "guidelines" in other contexts:

[W]e hold an agency guideline does not have the force of law, and in any event, can never trump a regulation. Our law provides that "[r]egulation"

means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. *Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law.*" S.C. Code Ann. § 1-23-10(4) (2005) (emphasis added). *Doe v. S.C. HHS*, 398 S.C. 62, 68 n.7, 727 S.E.2d 605, 608 (2011).

The requirement to call in within ten minutes is not a promulgated regulation, and therefore does not have the force or effect of law. If the Department wished to set a hard and fast rule that claimants call in within ten minutes of the hearing date, the correct vehicle for doing so is described in the Administrative Procedures Act. It is erroneous for the Department to treat compliance or noncompliance with this requirement as dispositive. Therefore, the Department's decision finding that Jiles lacked good cause for absence from previous hearing should be reversed.

CONCLUSION

Unemployment benefits are especially important for the working poor and make all the difference in whether rent is paid, food is on the table, or medicine is purchased. Jiles should not lose the opportunity to present evidence regarding his eligibility for these important benefits due to a telephone malfunction, or due to the application of an arbitrary, unpromulgated rule. This Court should reverse the Department's decision, find Jiles to have good cause for absence from the previous hearing, and remand the case for a hearing before the Appeal Tribunal on the issue of his separation from employment.

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES



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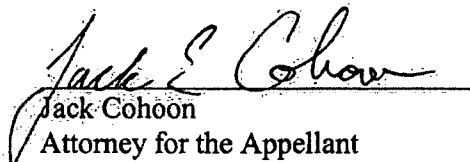
February 25, 2019

CERTIFICATE OF SERVICE

I, Jack E. Cohoon, hereby certify that I have served the Brief of Appellant on Respondents South Carolina Department of Employment and Workforce and on House of Raeford Farms by U.S. Mail, and Postage Paid on February 25, 2019 to the following addresses:

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COA-093

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Henry McMaster
Governor

Jamie Suber
Acting Executive Director

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March 18, 2019

The Honorable Deborah Durden
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Cortez M. Jiles v. South Carolina Department of Employment and
Workforce and House of Raeford Farms
Docket Number: 18-ALJ-22-0409-AP

Dear Judge Durden:

Enclosed are the original and one copy of the Brief of the Respondent South Carolina Department of Employment and Workforce in the above referenced case. Also enclosed is a Certificate of Service to all parties. Please contact me if you have any questions.

With kind regards, I am

Sincerely Yours,

A handwritten signature in cursive script that reads "Kristi Chesley".

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

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

APPEAL FROM THE SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Appellate Panel

Case No.: 18-ALJ-22-0409-AP

Cortez M. Jiles,

Appellant,

v.

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

Respondents.

BRIEF OF RESPONDENT

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Attorney for Respondent SC Department of
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STATEMENT OF ISSUES ON APPEAL

- I. IS THE DECISION OF THE APPELLATE PANEL TO UPHOLD THE TRIBUNAL'S DISMISSAL OF APPELLANT'S APPEAL SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AND CORRECT AS A MATTER OF LAW?
- II. DOES THE PANEL'S REFERENCE TO THE INSTRUCTIONS ON THE HEARING NOTICE REPRESENT AN ERROR OF LAW?

STATEMENT OF THE CASE

Appellant Cortez Jiles filed a claim for unemployment insurance (UI) benefits with Respondent the South Carolina Department of Employment and Workforce (Department) on January 23, 2018. (R.pp.5-8). The Department's claims adjudicator mailed a determination on March 8, 2018, holding Appellant disqualified from receiving benefits for twenty (20) weeks based on a finding he was discharged for misconduct. (R.p.11).

Appellant appealed the claims adjudicator's decision to the Department's Appeal Tribunal (Tribunal) on March 13, 2018. (R.p.13). The Tribunal scheduled a telephone hearing to discuss the claimant's separation from his most recent employer for April 12, 2018, and mailed notice of that hearing to Appellant's address of record on March 30, 2018. (R.pp.15-18). Appellant failed to appear at the scheduled time of the hearing and the Tribunal issued a decision dismissing his appeal. (R.p.20-21). Appellant appealed the dismissal to the Department's Appellate Panel (Panel) on April 18, 2018. (R.p.22). The Panel remanded the case to the Tribunal to take testimony concerning Appellant's absence from the previous hearing and to render a decision. (R.pp.26-27). The Tribunal held a hearing on May 31, 2018, and affirmed the dismissal of Appellant's appeal. (R.pp.33-40; pp.44-45). Appellant appealed the Tribunal decision to the Panel on July 5, 2018. (R.p.46).

The Panel issued its decision on August 14, 2018, affirming the Tribunal's decision. (R.pp.2-4; pp.50-51). Appellant has appealed the Panel's decision to this Court.

FACTS

The Department mailed a hearing notice to Appellant's address of record on March 30, 2018. (R.p.15). The notice informed Appellant of the hearing scheduled for April 12, 2018, at 9:30 AM. *Id.* The notice also directed Appellant to contact the Department if he had a scheduling conflict which required a postponement. *Id.* The notice further directed Appellant to contact the Department if he had not received a call within ten minutes of the scheduled hearing time. *Id.* Prior to the hearing, Appellant contacted the Department and provided his fiancée's phone number as an alternate contact number for the hearing. (R.p.36, line 34-p.37, line 1).

On April 12, 2018, at the scheduled time of the hearing, the hearing officer successfully contacted the witness for the employer and then began attempting to contact Appellant. (R.p.41). Appellant admitted he was asleep at the scheduled start time of the hearing. (R.p.37, lines 4-7). The hearing officer called Appellant at his number of record twice at 9:36 AM and 9:37 AM and received a message stating the number was no longer in service. *Id.* The hearing officer then called Appellant's alternate contact number and Appellant's fiancée answered at 9:39 AM. *Id.* Appellant's fiancée gave the hearing officer the same phone number at which the hearing officer had previously attempted to reach Appellant. *Id.* The hearing officer made one final attempt to contact Appellant at 9:46 AM without success and then contacted the employer's witness and informed them the hearing was cancelled and Appellant's appeal would be dismissed. *Id.* After waking up, Appellant

contacted the Department by phone at approximately 10:30 AM and was informed he would receive a decision in the mail and would need to appeal if he disagreed. *Id.* Appellant did not request a postponement or inform the Department of any scheduling conflicts prior to the scheduled hearing time.

I. Appellant's Testimony

Appellant offered several excuses for his absence from the hearing. He admitted he was asleep at the time of the hearing, stating, "My fiancée was trying to get in contact with me, and by the time my fiancée got in contact with me, when I woke up, she told me that unemployment had called so I called them fifteen to twenty minutes later." (R.p.37, lines 4-7). Then, when asked if he realized he had a hearing that day, Appellant stated "I think it probably slipped my mind. I think I would have remembered, but it probably slipped my mind. I was working, I work at night so I sleep through the day." (R.p.38, lines 16-18). He also stated, "I had given [the Department] my fiancée's number for the call, because I didn't have a phone at the time." (R.p.37, line 1). He later stated that "What was wrong was my phone, it wasn't on all the way, it went off," and, "when I charged my phone up and it got up and I found out that I had a missed call from the unemployment, or workforce. That's when I tried to call back." (R.p.37, lines 30-31). When asked if there was any other reason he missed the hearing other than the reasons to which he had previously testified, he stated, "I think I had a dentist appointment as well at that date as well because I was doing a lot of dental work for my son, my son had the dentist that day at 12:15 for me and my son...." (R.p.39, lines 22-24).

II. Panel Decision

In its decision, the Panel found:

The evidence establishes the Department properly notified [Appellant] of the April 12, 2018, Appeal Tribunal hearing, and provided him with detailed instructions to follow if he did not receive a call at the appointed time, or had a schedule conflict. [Appellant] was aware of the hearing and was contacted regarding the hearing, but he missed the call. Further, he took no action in advance of the hearing to ensure he could participate, such as requesting a postponement or making changes to his other scheduled appointment. Therefore, we find [Appellant]'s absence was due to his own neglect or error, and not for good cause. [Appellant] was afforded a reasonable opportunity for a fair hearing. The Appeal Tribunal decision is affirmed.

(R.p.3).

ARGUMENT

I. Standard of Review

The Department 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 the Department's predecessor, the Employment Security Commission, subject to the APA). Under the APA, a reviewing court:

[M]ay not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2018).

With regard to factual issues, this Court's review is limited to determining whether the Panel's decision was "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *Id.*

"Substantial evidence" is something less than the weight of the evidence; it is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action. The substantial evidence rule does not allow judicial fact-finding, or the substitution of judicial judgment for agency judgment.

Todd's Ice Cream, Inc. v. S.C. Emp't. Sec. Comm'n, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984); see also *Friends of Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010) ("Substantial evidence is . . . evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency."). Further, "[t]he findings of the agency are presumed correct and will be set aside only if unsupported by substantial evidence." *Kearse v. State Health & Human Serv. Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995). The possibility of drawing two inconsistent conclusions from the evidence does not mean the agency's conclusion is unsupported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). Finally, the Appellant bears the burden "to prove convincingly that the agency's decision is unsupported by the evidence." *Id.*

II. The Panel's decision upholding the Tribunal's dismissal of Appellant's appeal upon finding Appellant was absent without good cause is supported by substantial evidence in the record and is not arbitrary, capricious, characterized by abuse of discretion, or controlled by an error of law.

There is substantial evidence in the record to support the Panel's decision to affirm the Tribunal's dismissal of Appellant's appeal. "Unless an appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for a fair hearing, after notice of not less than seven days, must make findings and conclusions promptly and on the basis of the findings and conclusions affirm, modify, or reverse the determination or redetermination within thirty days from the date of the hearing." S.C. Code Ann. § 41-35-680. "If the appealing party fails to appear at the hearing, the Appeal Tribunal may dismiss the appeal or issue a decision on the basis of the Department records." S.C. Code Ann. Regs. 47-51(D)(2) (Supp. 2018).

It is undisputed that Appellant failed to appear at the scheduled hearing time and that the Tribunal dismissed his appeal as a result. Appellant admitted it probably slipped his mind that he had a hearing scheduled that day and further admitted he was asleep at the time of the hearing. (R.p.37, lines 4-7; p.38, lines 15-18). Appellant did not contact the Department until he woke up and discovered he had missed calls registered on his phone, a full hour after the scheduled hearing time. (R.p.37, lines 30-35; p.42). Although Appellant argues a technological malfunction and a scheduling conflict resulted in his absence from the Tribunal hearing, that argument is absurd in light of the facts.¹ Even if Appellant's

¹ As such, the Panel's error in stating the appointment time was 10:00 AM instead of 12:15 AM is clearly harmless.

phone malfunctioned, it was Appellant's responsibility, having been duly notified of the hearing, to ensure his phone was charged and ready at the time of the hearing or contact the Department and request a postponement. Similarly, it was Appellant's responsibility to request a postponement if he had a conflicting appointment that could not be altered. However, in this case Appellant simply forgot about the hearing and slept through it. As the Panel correctly found, Appellant's absence was clearly due to his own neglect or error and he was afforded a reasonable opportunity for a fair hearing. Therefore, the Panel's decision is supported by substantial evidence in the record and is not arbitrary, capricious, characterized by an abuse of discretion, or controlled by an error of law. For these reasons, this Court should affirm.

III. The Panel's reference to the instructions on the hearing notice does not represent an error of law.

Appellant claims the Panel relied on an "unpromulgated regulation" requiring Appellant to call in within ten minutes of the hearing time to find Appellant lacked good cause for his absence from the Tribunal hearing and thus committed an error of law. (App.Br.pp.7-8). Appellant is factually mistaken as to both the content of the hearing notice and the Panel's reliance on the instructions found therein, and Appellant is, therefore, incorrect as a matter of law.

The instruction on the hearing notice states:

If you have not been called within 10 minutes after the scheduled time of the hearing, you must call 803-737-2520. Either another hearing is still in progress, or we are unable to contact you. Failure to call or participate in the hearing may result in your interests being considered abandoned.

(R.p.29). Firstly, Respondent notes there is no requirement on the hearing notice to call within ten minutes. The instruction directs claimants to contact the Department if they have not been contacted within ten minutes of the scheduled hearing time. There is no specific time limit on when a claimant may contact the Department after that point. The passage does note a party's interests, namely their appeal, may be considered abandoned if they don't contact the Department or participate in the hearing; however, that statement is perfectly in accord with state law. *See* Section 41-35-680 (providing the Department must afford the parties "reasonable opportunity for a fair hearing"); *see also* Reg. 47-51(D)(2) (permitting the Tribunal to "dismiss the appeal or issue a decision on the basis of the Department records" when an "appealing party fails to appear at the hearing").

Further, the Panel did not condition its decision on Appellant's failure to contact the Department within ten minutes of the scheduled hearing time. The Panel's decision twice references the instructions on the hearing notice directing Appellant to contact the Department if he had not heard from the hearing officer within ten minutes of the start time of the hearing. The first reference states: "The notice also provides clear and specific instructions to contact the Appeal Tribunal at a specified telephone number if he did not receive a call from the hearing officer within ten minutes of the scheduled hearing time **or if there was a schedule conflict.**" (R.p.3) (emphasis added). The second reference states "The evidence establishes the Department properly notified [Appellant] of the April 12, 2018, Appeal Tribunal hearing, and provided him with detailed instructions to follow if he did not receive a call at the appointed time, **or had a schedule conflict.**" *Id.* (emphasis added). A scheduling conflict regarding a dentist appointment was one of several reasons

Appellant gave for having missed the April 12, 2018, hearing. (R.p.39, lines 22-24). Nowhere does the Panel state its decision is based on Appellant's failure to contact the Department within ten minutes of the hearing time. (R.p.2-4). The Panel's references to the directions in the hearing notice merely show Appellant had the opportunity and the information necessary to request a postponement if he had a scheduling conflict or to contact the Department in a timely manner if he had some technological malfunction at the time of the hearing. However, as has been previously shown, these issues don't change the fact that Appellant slept through the hearing and did not contact the Department until after he woke up and realized he missed it.

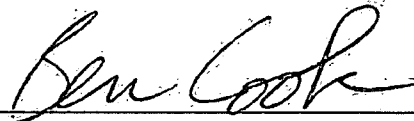
The Panel did not rely on the instructions in the hearing notice as a hard and fast rule to affirm the Tribunal's dismissal of Appellant's appeal. Further, the directions at issue do not establish any such hard and fast rule upon which the Panel could rely. They merely offer guidance to claimants to help them avoid running afoul of Regulation 47-51(D)(2) and having their appeal deemed abandoned. Because the instructions do not represent any sort of "unpromulgated regulation" and because the Panel did not rely on the instructions having any legal effect in making their decision, the decision is not controlled by an error of law, and this Court should affirm.

CONCLUSION

Ultimately, the Department afforded Appellant a reasonable opportunity for a fair hearing and Appellant slept through it. The Panel found his absence to be without good cause and affirmed the Tribunal's dismissal of his appeal pursuant to state law. Substantial evidence supports the Panel's findings and, based on those findings, the Panel's decision

affirming the Tribunal's dismissal of Appellant's appeal is correct as a matter of law. The decision is neither arbitrary nor capricious, nor is it controlled by an abuse of discretion or an error of law. Based on all the foregoing, DEW respectfully submits this Court should affirm.

Respectfully Submitted,



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March 18, 2019

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cortez M. Jiles,

Appellant,

vs.

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

Respondents .

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

PROOF OF SERVICE

I hereby certify that I have served the BRIEF OF RESPONDENT DEW in the above-captioned matter by depositing it in the United State Mail, postage prepaid, on March 18, 2019 to the below named parties at their addresses of record:

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March 18, 2019

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge
Case No.: 18-ALJ-22-409-AP

Appellate Case No. 2019-001033

Cortez M. Jiles

Respondent

v.

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

Of Which South Carolina Department of Employment and Workforce
is the Appellant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, Appellant's counsel hereby certifies that this
Record contains all material proposed to be included by any of the parties and not any other
material.



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SC Court of Appeals

July 22, 2019

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