THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

Deborah Durden, Administrative Law Judge

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

Appellate Case No. 2019-001033

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SC Court of Appeals

Cortez M. Jiles,

Respondent,

v.

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

Of Which South Carolina Department of Employment
And Workforce is the ,

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. DID THE ALC ERR BY DENYING THE DEPARTMENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION?

II. DID THE ALC ERR BY REVERSING THE APPELLATE PANEL'S DECISION WHEN THE PANEL'S DECISION WAS SUPPORTED BY THE SUBSTANTIAL EVIDENCE IN THE RECORD?

STATEMENT OF THE CASE

Respondent Cortez Jiles (Jiles) filed a claim for unemployment insurance (UI) benefits with Appellant the South Carolina Department of Employment and Workforce (Department) on January 23, 2018. (R.pp.32-35). The Department's claims adjudicator mailed a determination on March 8, 2018, holding Jiles disqualified from receiving benefits for twenty (20) weeks based on a finding he was discharged for misconduct. (R.p.38).

Jiles appealed the claims adjudicator's decision to the Department's Appeal Tribunal (Tribunal) on March 13, 2018. (R.p.40). 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 Jiles's address of record on March 30, 2018. (R.pp.42-45). Jiles failed to appear at the scheduled time of the hearing and the Tribunal issued a decision dismissing his appeal. (R.pp.47-48). Jiles appealed the dismissal to the Department's Appellate Panel (Panel) on April 18, 2018. (R.p.49). The Panel remanded the case to the Tribunal to take testimony concerning Jiles's absence from the previous hearing and to render a decision. (R.pp.53-54). The Tribunal held a hearing on May 31, 2018, and affirmed the dismissal of Jiles's appeal. (R.pp.60-68; pp.71-72). Jiles appealed the Tribunal decision to the Panel on July 5, 2018. (R.p.73). The Panel issued its decision

on August 14, 2018, affirming the Tribunal's decision. (R.pp.29-31; pp.77-79). Jiles filed a motion for reconsideration with the Panel and that motion was denied by letter issued September 4, 2018. (R.p.21).

Jiles filed a notice of appeal with the Administrative Law Court (ALC) on September 21, 2018. (R.p.7). The Department first received notification of the appeal via the ALC's notice of assignment which was issued November 6, 2018. (R.p.11). The Department filed a motion to dismiss for lack of jurisdiction on November 19, 2018 based on Jiles's failure to serve the Department with notice of his appeal. (R.pp.13-16). Jiles did not respond to the Department's motion; however, the ALC, by decision dated December 5, 2018, denied the Department's motion citing, as its only reason for denying the Department's motion, a form filed by Jiles with the ALC which purported to be a certificate of service. (R.pp.1-2; p.10). Following the filing of the record on appeal and briefs from both parties on Jiles's underlying appeal, the ALC issued an order on May 21, 2019, reversing the Panel's decision. (R.pp.3-6). The Department has now appealed the ALC's decision denying its motion to dismiss for lack of jurisdiction as well as the ALC's decision reversing the Panel's decision to this Court.

STANDARD OF REVIEW

Under the Administrative Procedures Act:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision, is:

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

S.C. Code Ann. § 1-23-610(B) (Supp. 2018).

With regard to factual issues, this Court's review is limited to determining whether the 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.").

FACTS

I. Absence From Hearing

A. Documentary Evidence

The Department mailed a hearing notice to Jiles's address of record on March 30, 2018. (R.p.42). The notice informed Jiles of the hearing scheduled for April 12, 2018, at

9:30 AM. *Id.* The notice also directed Jiles to contact the Department if he had a scheduling conflict which required a postponement. *Id.* The notice further directed Jiles to contact the Department if he had not received a call within ten minutes of the scheduled hearing time. *Id.* Prior to the hearing, Jiles contacted the Department and provided his fiancée's phone number as an alternate contact number for the hearing. (R.p.63, line 34-p.64, 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 Jiles. (R.p.69). Jiles was asleep at the scheduled start time of the hearing and did not answer his phone. (R.p.64, lines 4-7). The hearing officer called Jiles 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. (R.p.69). The hearing officer then called Jiles's alternate contact number and Jiles's fiancée answered at 9:39 AM. *Id.* Jiles's fiancée gave the hearing officer the same phone number at which the hearing officer had previously attempted to reach Jiles. *Id.* The hearing officer made one final attempt to contact Jiles at 9:46 AM without success and then contacted the employer's witness and informed them the hearing was cancelled and Jiles's appeal would be dismissed. *Id.* After waking up, Jiles 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.* Jiles had not requested a postponement or informed the Department of any scheduling conflicts prior to the scheduled hearing time.

B. Jiles's Testimony

Jiles 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.64, lines 4-7). Then, when asked if he realized he had a hearing that day, Jiles 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.65, 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.63, line 34-p.64, 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.64, lines 30-35). 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.66, lines 22-24).

C. Panel Decision

In its decision, mailed August 14, 2018, the Panel found:

> The evidence establishes the Department properly notified [Jiles] 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. [Jiles] 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 [Jiles]'s absence was due to his own neglect or error, and not for good cause. [Jiles] was afforded a reasonable opportunity for a fair hearing. The Appeal Tribunal decision is affirmed.

(R.p.30-31). Along with the Panel's decision, the Department also mailed a notice of mailing of the Panel's decision which informed Jiles any appeal of the Panel's decision must be filed with the ALC and served on the Department at the following address:

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

(R.p.28). Jiles filed a motion for rehearing with the Panel on August 20, 2018 and the Panel denied Jiles's motion for reconsideration by letter dated September 4, 2018. (R.p.21). Jiles had until October 4, 2018, to perfect an appeal to the ALC. In their denial letter, the Panel once again notified Jiles any appeal of the Panel's decision would need to be made by Petition for Judicial Review with the Administrative Law Court and would need to be served on the Department's Office of General Counsel, Post Office Box 8597, Columbia, SC 29202. *Id.*

II. ALC Jurisdiction

Jiles filed an incomplete request for an appeal on September 21, 2018. (R.p.7). Jiles never served that document on the Department. (R.p.23). The ALC sent Jiles a memorandum on September 21, 2018, stating they had received the incomplete request for an appeal and Jiles's case would not be assigned to a judge until they had received various additional information, including proof of service on all parties. (R.p.9). On September 27, 2018, Jiles provided the court with a signed document purporting to be a proof of service. (R.p.10). The document was a form document provided by the ALC to Jiles. The proof of service that Appellant submitted to the ALC listed no documents as having been served,

and instead merely listed "SCDEW" in the space for providing the description of documents that were served. *Id.* Further, the document listed the Department's street address of 1550 Gadsden St., Columbia, S.C. 29201 as the address for service, which is not the same as the mailing address designated for service on the Department's Office of General Counsel. *Id.* Despite these facial jurisdictional deficiencies, the ALC accepted the document as a valid proof of service and issued a notice of assignment on November 6, 2018. The Department first learned of Jiles's appeal when it received the notice of assignment issued by the ALC, over two months after the Panel denied Jiles's motion for reconsideration. (R.p.11).

On November 19, 2018, having received no notice of appeal from Jiles, the Department filed a motion to dismiss for lack of jurisdiction due to Jiles's failure to serve the Department with his notice of appeal as required by statuted and ALC Rules. (R.pp.13-24). Along with the motion, the Department included the original Panel decision, the notice of mailing, which included the Department's proper address for service, the letter denying Jiles's motion for reconsideration, which also included the Department's proper address for service, and an affidavit from Kristi Chesley, the office manager for the Office of General Counsel, stating the Office of General Counsel had not been served with a notice of appeal from Jiles related to the current case. (R.pp.17-24). Jiles made no response to the Department's motion. By order dated December 5, 2018, in which the ALC mistakenly identified Jiles as an inmate, the ALC denied the Department's motion to dismiss for lack of jurisdiction stating, "The Court has in its file the Notice of Appeal, including the Certificate of Service, filed September 27, 2018, indicating [Jiles] served [the Department]

with a copy [of the Notice of Appeal], addressed to 'SCDEW, 1550 Gadsden Street, Columbia, S.C. 29201.'" (R.p.1). The Order does not provide further explanation for denying the Department's motion to dismiss. *Id.*

ARGUMENT

I. The ALC committed an error of law by relying on a facially defective proof of service, and its decision finding Jiles served the Department with his notice of appeal lacked evidentiary support and is clearly erroneous in view of the reliable, probative, and substantial evidence in the record.[1]

The ALC erred by denying the Department's motion to dismiss for lack of jurisdiction because Jiles did not serve the Department with his notice of appeal and there is no evidence in the record to support the ALC's finding that Jiles properly served the Department with his notice of appeal. S.C. Code Ann. § 41-35-750 (Supp. 2018) specifically governs appeals from the Department's final agency decisions and it requires that an appeal requesting judicial review must be filed with the ALC and served upon the Department within thirty (30) days of the date of mailing of the final decision of the Department. 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

[1] The issue of facially invalid proofs of service being used as the sole justification to deny a motion to dismiss for lack of jurisdiction comes up regularly in appeals from Panel decisions and a published opinion clarifying this issue would be extremely helpful for the bench and bar. At least two other jurisdictions have weighed in on the matter. *See Re-Emp't Servs., Ltd. v. Nat'l Loan Acquisitions Co.*, 969 So.2d 467, 471 (Fla. Dist. Ct. App. 2007) (explaining if the proof of service "is defective on its face, it cannot be relied upon as evidence that the service of process was valid"); *see also Gerding v. Hawes Firearms Co.*, 698 S.W.2d 605, 607 (Mo. Ct. App. 1985) ("If the return or proof of service is deficient on its face, the court acquires no jurisdiction over the party allegedly served.").

of the appeal within thirty (30) days of the date of mailing of the decision of the Department.

"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). Consequently, the timely filing and service of the notice of appeal are jurisdictional requirements under S.C. Code Ann. § 41-35-750, and the ALC had 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 an appeal, or serving notice of appeal). Accordingly, because Jiles failed to serve his notice of appeal upon the Department as required by statute, the ALC lacked appellate jurisdiction. *See* § 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).

In its decision denying the Department's motion to dismiss, the ALC cited a

document purporting to be a proof of service which had been filed by Jiles on September 27, 2018. (R.p.1). Jiles did not respond to the Department's motion to dismiss and the ALC cited no other evidence to support their decision.[2] The ALC states this document indicates Jiles served a copy of his notice of appeal to the Department at the 1550 Gadsden Street address. *Id.* However, the document does no such thing. (R.p.10). The document makes no mention of any documents which were allegedly served and instead merely lists "SCDEW" in the space on the form designated "(Description of document)". *Id.* The document cited as the only evidence supporting the ALC's order denying the Department's motion is facially invalid, fatally deficient, and provides no evidence whatsoever to support a finding Jiles served the Department with a copy of his notice of appeal as required by law. Therefore, the ALC's finding the document indicates Jiles served a copy of his notice of appeal on the Department is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. For that reason alone, this Court should reverse the ALC's order denying the Department's motion to dismiss for lack of jurisdiction.

Moreover, the document purporting to be a proof of service is also fatally deficient because it fails to list the correct address for proper service on the Department. The Department informed Jiles on multiple occasions that proper service must be made on the Department's Office of General Counsel, Post Office Box 8597, Columbia, SC 29202. (R.p.28; R.p.21). The Office of General Counsel is specifically designated by the

[2] The ALC also cites the affidavit by Kristi Chesley; however, the affidavit states the Department was never served with Jiles's notice of appeal. (R.p.23). The affidavit provides no support for the ALC's decision finding the Department was properly served.

Department to receive service and failing to serve the Office of General Counsel would represent a failure to perfect service of the document. *See* § 41-35-750 ("In [an action seeking judicial review of a department decision,] a petition . . . must be served on the executive director or on a person designated by the department within [thirty days from the date of mailing the department's decision.]"). Along with failing to mention that he served the notice of appeal, Jiles does not list the proper address for service in the document purporting to be his proof of service. In sum total and excepting the information already present on the form before the ALC sent it to Jiles, the document cited by the ALC to support its ruling contains Jiles's own name and address, a date, an address which is not proper for service on the Department, and the acronym SCDEW. (R.p.10). No reasonable person could conclude that Jiles made proper service of his notice of appeal on the Department because there is no evidentiary support for that conclusion in the record. *See Todd's Ice Cream*, 281 S.C. at 258, 315 S.E.2d at 375 ("'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 ALC's findings are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record as well as arbitrary and capricious. Further, the ALC's reliance on a facially defective proof of service in its decision denying the Department's motion to dismiss for lack of jurisdiction represents an error of law. *See Re-Emp't Servs.*, 969 So.2d at 471 (explaining if the proof of service "is defective on its face, it cannot be relied upon as evidence that the service of process was valid"); *Gerding*, 698 S.W.2d at 607 ("If the return or proof of service is deficient on its

face, the court acquires no jurisdiction over the party allegedly served."). As a result, this Court should reverse the ALC's order denying the Department's motion to dismiss for lack of jurisdiction and reinstate the Panel's decision.

II. The ALC erred in finding the Panel's decision is not supported by substantial evidence because the Panel's findings are clearly supported by substantial evidence in the whole record and the ALC draws its conclusions from clear misstatements of the record which are themselves not supported by substantial evidence in the whole record.

The ALC's decision reversing the Panel's decision finds fault with two statements made in the Panel's decision. The first statement is the Panel's finding that "the Claimant contacted the Department approximately one hour and ten minutes after the scheduled hearing time." (R.p.5). The original hearing was scheduled for April 12, 2018, at 9:30 AM, which means that one hour and ten minutes after that scheduled time would have been approximately 10:40 AM. (R.p.42). The ALC states that this finding is completely unsupported by substantial evidence in the record; however, the Department's notes, timestamped at 10:40:17 on April 12, 2018, state that Jiles "called at 10:30 am to state he missed his hearing today at 4/12/18 at 9:30 am. [Jiles] was advised he may receive another decision and will need to appeal if he disagrees. He stated his contact number is 803 806 2038." (R.p.69). This note was read into the record, without objection from Jiles, by the hearing officer during the hearing on May 31, 2018. (R.p.64, lines 8-14). The note, which Jiles did not refute during the hearing, is substantial evidence supporting the Panel's statement that Jiles called in approximately an hour and ten minutes after the scheduled hearing time. Therefore, the ALC's finding that the Panel's statement was unsupported by substantial evidence in the record is clearly erroneous and represents an error of law.

The second statement with which the ALC takes issue is the Panel's finding that Jiles "indicated he had a scheduling conflict with a dental appointment for his son at 10:00 a.m. on the same day." (R.p.5). The ALC states Jiles's testimony indicated "the appointment was for 12:15 that day, not at 10 a.m., which would have conflicted with the scheduled hearing time." *Id.* The ALC then goes on to state, "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." *Id.* However, during the May 31, 2018, hearing concerning his absence from the April 10, 2018, hearing, the hearing officer asked Jiles, "What you told me before, that you had missed the call and that you had called back, is there any other reason as to why you missed it other than that?" and Jiles responded, "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…." (R.p.66, lines 19-23). Admittedly, the Panel's decision does list the incorrect time for the dental appointment, and were the Panel's decision based on the Panel's own judgment of whether the appointment represented a conflict with the scheduled hearing time, that fact would have some bearing on this case. However, the Panel specifically based its finding of a conflict on Jiles's own testimony: "[Jiles] also indicated he had a scheduling conflict with a dental appointment for his son…." (R.p.30). At no time does the Panel make any independent judgment as to whether the appointment represents an actual conflict.[3] Jiles's own testimony clearly

[3] Although the Panel's decision does state the incorrect time for Jiles's dental appointment, the specific time of the appointment is completely immaterial to the case at hand and the

represents substantial evidence to show Jiles believed he had a conflict with the scheduled hearing and made that supposed conflict known to the hearing officer. The Panel took Jiles at his word that the dental appointment represented a conflict for him. Therefore, the ALC's statement that "there is no evidence [Jiles] had a conflict with the scheduled hearing time," is clearly in error. (R.p.5). The ALC's order reversing the Panel's decision was based on a finding that two factual statements made in the Panel decision were unsupported by substantial evidence. Because that finding by the ALC represents clear error, this Court should reverse the ALC's decision and reinstate the Panel decision.

Additionally, even if these factual findings in the Panel's decision were unsupported by substantial evidence in the record, there would still be reliable, probative, and substantial evidence on the whole record to support the Panel's ultimate conclusion that Jiles was absent from the hearing without good cause. "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 (Supp. 2018). "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 Jiles failed to appear at the scheduled hearing time and that the Tribunal dismissed his appeal as a result. Jiles

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Panel's transcription error is harmless and does not prejudice the substantial rights of the parties.

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.64, lines 4-7; p.65, lines 15-18). Jiles 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. (ALC Record p.64, lines 8-35; p.69). As the Panel correctly found, Jiles's absence was clearly due to his own neglect or error and he was afforded a reasonable opportunity for a fair hearing. The record in this case is clearly replete with substantial evidence to support the conclusion that Jiles's absence from the hearing was without good cause. As a result, this Court should reverse the ALC's decision and reinstate the Panel's decision.

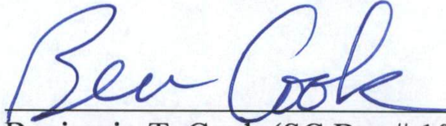
CONCLUSION

This case should never have proceeded to the ALC's consideration on the merits of the case. The ALC lacked appellate jurisdiction to review the case based on Jiles's failure to properly serve the notice of appeal and the ALC should have dismissed the appeal pursuant to the Department's motion. The document cited by the ALC as the sole evidence supporting its order denying the Department's motion offers absolutely no support for the ALC's position that the Department was properly served. The ALC's findings are completely without evidentiary support and, therefore, clearly erroneous. Further, the ALC's reliance on those findings in denying the Department's motion to dismiss is both arbitrary and capricious and represents an error of law. As a result, the Department respectfully requests that this Court reverse the ALC's order denying the Department's motion to dismiss for lack of jurisdiction and reinstate the Panel's decision.

However, should the Court reach the underlying issue of Jiles's absence from the appeal hearing, the Department notes that Jiles was provided a reasonable opportunity for a fair hearing and he 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 on the whole record supports the Panel's conclusions and the Panel's decision affirming the Tribunal's dismissal of Jiles's appeal is correct as a matter of law. The Panel's decision is neither arbitrary nor capricious, nor is it controlled by an abuse of discretion or an error of law. The ALC's decision, on the other hand, misstates the contents of the record, incorrectly identifies testimony from Jiles as the only evidence in the record on the issue of when Jiles called in to the Department, and misrepresents the clear contents of the record by stating there was no evidence Jiles had a conflict with the scheduled hearing time. The ALC's decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. For all the foregoing reasons, the Department respectfully requests this Court reverse the ALC's order and reinstate the Panel's decision.

[Signature on Following Page]

Respectfully Submitted,



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