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### Cases

I am functioning in a forma pauperis status; consequently, I do not have access to lexis nexus or any other software to research court precedents.

### Statutes

SC Code of Laws Title 41 Labor and Employment- Conditions of eligibility for benefits Section 41-35-110 (Referenced pgs. 3, 6)

SC Code of Laws Title 41 Labor and Employment- Disqualification of Benefits Misconduct Section 41-35-120 2(a) (Referenced pg. 6)

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SC Code Ann 1-23-380 (5) (Supp.2017) (Referenced pgs. 3, 6, 8)

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SC Employment and Workforce SC Reg. 47-101 (Referenced pgs. 3, 6, 9)

### Record on Appeal

(Page 3 of Brief) pgs. 079-092 Evidence of Task Completed

(Page 3 of Brief) pgs. 031 lines 1-28 and 032 lines 1-27 Objection to Information being allowed as evidence that had not been submitted prior to May 16, 2018 evidentiary hearing. Administrative error.

(Page 4 of Brief) pg. 022-025 Appeal Tribunal Letter stating requirements for evidence to be submitted prior to hearing

(Page 4 Brief) pg. 68 and 69 Appeal tribunal letter

(Page 4 Brief) 070-114 my documents for appeal to SCDEW Appellate Panel

(Page 6 Brief) pg. 053 lines 20 thru 29 and pg. 054 lines 1 and 2 (ED reason for termination of not seeing eye-to-eye how HR should be run

(Page 6 Brief) pg. 054 lines 12-19 (ED asked why separated again stated not seeing eye-to-eye)

(Page 6 Brief) pg. 028 lines 17 thru 20 (no policy violations)

(Page 7 Brief) pgs. 079 thru 092 (email communication for completion of task and response of completion)

(Page 7 Brief) pgs. 079 thru 087 (Instructions from ED and Task Completed)

(Page 7 Brief) pg. 54 lines 23-30 (ED admits never notified me job in jeopardy)

(Page 7 Brief) pg. 106 and 111

(Page 7 Brief) pg. 032 lines 2, 3 {objection of evidence January 17, 2018 email} and Pg. 42 objection of evidence lines 1-5).

(Page 7 Brief) pg. 031 lines 1-28 and 032 lines 1-27 (swearing in of evidence email not sworn in as evidence at the beginning of the hearing)

(Page 7 Brief) pgs. 022-025 (Appeal tribunal requiring submission of evidence prior to hearing)

(Page 8 Brief) pgs. 020-021 lines 11 thru 26

**Brief of Respondent**

(Page 3 Brief) Respondent Brief Pg. 10 II. SCDEW Reason for discharge and for cause finding

## A. Statement of Issues on Appeal

1. SCDEW's explanation for disqualification of unemployment benefits differ from that of the employer's explanation for discharge. SCDEW claims I was discharged for insubordination and failure to complete task. The excerpt states the following "Substantial evidence supports the Panel's finding that Wateree discharged Appellant for cause other than misconduct because, despite multiple warnings, Appellant repeatedly failed to complete tasks as instructed and was insubordinate to her supervisor."(Respondent Brief Pg. 10 II). While WCAI ED claims that I was discharged because we did not agree on how HR should be worked. The explanation of the employer for discharge is what should be considered in determining eligibility for unemployment benefits and not SCDEW.
2. WCAI's explanation for discharge (not seeing eye-to-eye) is not a qualifying reason to deny unemployment benefits **Section 41-35-120 Disqualification of Benefits (2) (a) (b) Cause other than misconduct SC Reg. 47-100, Substandard performance Due to inefficiency, inability, or incapacity SC Reg. 47-101.**
3. I have submitted email communication to prove that all tasks were completed and proper communication was sent to ED (Record on Appeal pgs. 079-092). By the WCAI ED own admission, I was not discharged for insubordination or failure to complete task.
4. SCDEW's hearing officer allowed the employer to reference an e-mail communication that had not been sent in as evidence prior to the hearing in spite of the lawful requirement to do so. All evidence was sworn in at the beginning of the hearing and the January 17, 2018 email was not sworn in as evidence during this time (Record on Appeal Pgs. 031 lines 1-28 and 032 lines 1-27), nor was it submitted prior to the hearing as required based on the information outlined in the Notice of Hearing Before Appeal Tribunal Letter (Record on Appeal Pg. 022-025). I was not able to adequately defend my position as a result of this information not being submitted prior to the hearing. Consequently, I contend that the decision of the SCALC, as well as the SCDEW panel were "...made upon unlawful procedure, and affected by other error of law..." SC Code Ann. 1-23-380(5) (Supp. 2017). When this occurs, the courts may reverse or modify the decision of the lower court.
5. In spite of the ED denying there were budgetary issues, the CFO of the organization casually mentioned to me that the administration budget was operating in the red as of January 2018. WCAI was in a financial crisis due to losing upfront funding for its weatherization program. In an effort to cover up the financial issues from the board, ED needed to relieve some of the financial responsibilities from the administrative budget in order to get the Weatherization program back on track and pay the employees in that program she needed to eliminate some of the financial responsibilities in the administration budget. Another employee by the name of Kelsey Edwards was laid-off on December 28, 2017 (paid out of administration budget) and she was eligible to receive unemployment benefits due to lay-off. The ED attempted to create issues where they were not any. I contend that the real reason for my discharge was due to budget issues within the organization. I often remained calm in spite of the ED efforts to exasperate me by placing unreasonable and irrational requirements on me during the latter part of my employment. Based on SC Code of Laws Chapter 41 Section 41-35-110 (5) Conditions of Eligibility for Benefits, a claimant who is discharged due to no fault of their own is eligible to receive unemployment benefits without penalty. The explanation of not seeing eye to eye is indicative of the ED stating that I was not able to meet her expectations. Furthermore, SC reg. 47-101 states that an employee not being able to meet the expectations of an employer should not be disqualified from receiving unemployment benefits.
6. I have not received communication from the courts in a timely manner due to possible issues with the postal system. I never received the communication informing me when to submit an initial brief, nor did I receive a more recent communication on November 14, 2019 of the decision of the Court of Appeals. Mailing system is something that is out of my control. When I have received communication I responded immediately.

## B. Statement of Case

I appealed the decision of the South Carolina Department of Employment and Workforce, which disqualified me from receiving unemployment benefits for sixteen weeks. Following my separation from the employer on January 19, 2018 I filed for benefits on February 23, 2018 after waiting to receive further communication from the employer regarding why I was discharged. I was told by the ED that I would receive further communication because the exact reason for discharge was unclear. When no further communication was received, I applied for benefits and indicated that I was discharged due to lack of work because that was the closest explanation to what I believed coincided with the real reason for my discharge, which was budget issues. I was found eligible to receive benefits. The employer appealed this decision on February 23, 2018. An evidentiary hearing was held on May 17, 2018, and the appeal tribunal reversed the initial February 23, 2018 decision that qualified me to receive unemployment benefits. May 28, 2018 I appealed the decision of the Appeal Tribunal to SCDEW's appellate panel submitting detailed documentation refuting the claim set forth in the final decision of the appeal tribunal letter sent to me on May 17, 2018 (**Record on Appeal pg. 68 and 69 Appeal tribunal letter**) (**Record on Appeal 70-114 My documents for appeal to SCDEW Appellate Panel**). I submitted an appeal to the SC Administrative Law Court Honorable H.W. Funderburk Jr. on October 17, 2018. I received communication from the office of Judge Funderburk upholding the decision of SCDEW's Appellate panel October 29, 2018. I filed a motion requesting to proceed forma pauperis and submitted notice of appeal form 6, form 7 proof of service, and form 8 Letter to the Appellate Court Clerk filing the Notice of appeal on November 26, 2018 to the SC Court of appeal. SCDEW sent a letter requesting that the case be dismissed. I was still waiting on a response regarding whether I had been approved to proceed forma pauperis when I received the motion form SCDEW requesting the case be dismissed. Again after conversation with the Court of Appeal office I learned that a letter was sent to me approving me to proceed forma pauperis and informed me to submit an initial brief within 30 days. Due to no fault of my own, I never received this notification. The case was subsequently dismissed. Consequently, I submitted a motion to have the case reinstated on June 3, 2019. The motion to request reinstatement was denied. I learned in January 2020 that the motion to reinstate was denied based on a phone conversation with the court of appeal that a letter had been sent to me on November 14, 2019 denying my request to reinstate the case. Again, due to no fault of my own I never received this letter that they were saying was mailed to me on November 14, 2019. I went online to search for the letter via the Court of Appeals website, and I was not able to locate the letter. I requested that the November 14, 2019 letter be resent and to date I have not received the letter. I was prompted to call the court of appeal after receiving a letter in January 2020 from the Court of Appeal stating that the case had been remitted back to the lower courts. I am now requesting that the case be remitted back to the Court of Appeals for further review. Additionally, I am submitting my initial brief.

### **C. Standard of Review**

I am functioning in a forma pauperis status; consequently, I do not have access to lexis nexus or any other software to research court precedents.

## D. Argument

**1. The explanation provided by SCDEW as the reason for discharge conflicts with that of the Executive Director of Wateree Community Action Inc. SCDEW claims that I was discharged for insubordination and failing to complete task after receiving multiple warnings. While the ED of WCAI claims that I was discharged because we did not see eye-to-eye on how HR should be ran.**

The ED stated in the Record on appeal that I was not discharged for insubordination as claimed by SCDEW. Hearing officer asked Executive Director "Okay. And can you tell me this, Ms. Tucker? Was there any certain company policy that was violated related to her separation January 18th of 18? Annette Tucker: Company policy, no being we didn't-It was not-She was insubordinate when she was written up. But was that-had anything to do with the decision-making? Yes. But did I fire her for being insubordinate at that particular time on the 19th? I would have to say-honestly say no." Contrary to SCDEW's statement, the ED admits that I was not terminated for being insubordinate. **(Record on Appeal Pg. 053 lines 20 thru 24 and page 054 lines 1 and 2)**. When asked specifically for the reason for termination she states that I was discharged because she and I don't agree as to how the HR Director is supposed to be worked she makes no mention of me failing to complete task, insubordination, or an issue with the email **(Record on Appeal pg. 054 lines 14 thru 19)**. She only made issue of the email during the evidentiary hearing when prompted to do so by the hearing officer. Furthermore, I never received multiple warnings about insubordination, failure to complete task or any other issue with my performance. ED WCAI failed to submit evidence supporting that I was insubordinate, failed to complete task, or evidence to support the multiple warning SCDEW claimed I received during the evidentiary hearing or prior to the hearing as required by SCDEW appeal tribunal. Additionally, WCAI to date has not submitted any proof of any of the allegations brought forward by SCDEW supporting SCDEW's decision to deny benefits under a for cause reason.

**2. I contend that I should not have been disqualified from receiving unemployment benefits as the explanation for discharge provided by the Executive Director of Wateree Community Action Inc. does not qualify as a legitimate reason for disqualification of unemployment benefits (Section 41-35-120 SC Code of Laws Title 41 Chapter 35). SC Reg. 47-101**

During the hearing with SCDEW on May 16, 2018, Executive Director was asked directly why she discharged me. The conversation went as quoted "The hearing officer asked, "All right. And Ms. Tucker, did you tell Ms. Wilson why she was terminated? Annette Tucker: I told Ms. Wilson that she-it is best that we depart our ways because she and I don't agree as to how the HR Director is supposed to be worked-This is not a good working relationship here, so that's why we are departing" **(Record on Appeal Pg. 054 lines 12-19)**. I was not discharged for misconduct 41-35-120 (2) (a). SCDEW claims that I was discharged for cause as outlined in 41-35-120(2) (b) and SC Reg. 47-100. SC 47-100 reg. states the following, "47-100. Cause Other Than Misconduct. Under South Carolina Code Annotated Section 41-35-120(2) (b), if a claimant is discharged for cause other than misconduct, the claimant is partially disqualified from unemployment insurance benefits. "Cause other than misconduct" is conduct that demonstrates a level of fault of the employee but does not rise to the level of deliberate disregard for the standards of behavior which the employer has the right to expect of his or her employee. Fault includes those acts or omissions of employees over which an employee exercised reasonable control and which violate reasonable requirements of the job." Not seeing eye-to-eye on how a department should be run does not qualify as a legitimate cause for disqualification of unemployment benefits. In fact, SC Reg. 47-101 states the following, "Substandard Performance Due to Inefficiency, Inability, or Incapacity. Under South Carolina Code Section 47-101, a discharge resulting from substandard performance due to inefficiency, inability, or incapacity shall not serve as a basis for disqualification of unemployment insurance benefits. "Substandard performance due to inefficiency, inability or incapacity" describes a claimant's failure to perform to the satisfaction of the employer where such failure was beyond the claimant's control, had no harmful intent or was a good faith error in judgment or discretion." I followed all the rules by the ED own admission I did not violate any company policies **(Record on Appeal pg. 028 lines 17 thru 20)**. No matter what I did, I was not able to meet the ED expectations. I was not able to perform to the satisfaction of the employer (ED), and this was beyond my control. Furthermore, I had no harmful intent and

completed task in a timely and accurate manner and sometimes ahead of schedule. The email I sent to the ED on January 17, 2018 was a good faith effort to help her understand what I needed from her in order for me to perform successfully in my role as the Director of HR. By her own admission I complied with her request to inform her of my departure for lunch and at the end of the day in spite of this requirement not being placed on other Directors.

**3. If SCDEW's explanation for discharge for cause is without merit. The record on appeal contains email communication between the Executive Director and I regarding task she wanted me to complete. All tasks were completed and some in advance of the expected date of completion (Record on Appeal pages 079 thru 092).**

Following the July 2017 accusation of insubordination, I requested that the ED send me instructions for task to be completed via email so there was no confusion about what she wanted done.

The documents to support that I did complete task were not considered during my appeal to SCDEW's appeal panel because they were not submitted prior to the hearing; therefore, I had no other recourse but to pursue this matter to the higher courts (**Record on Appeal pgs. 079 thru 087 Task Completed**). In the final decision from the appeal panel they state "In her appeal to the Appellate Panel, the claimant requested to submit additional evidence pertaining to her separation. As a board of review, the Appellate Panel generally is confined to the record developed by the appeal tribunal and does not consider additional information which was not previously presented in the evidentiary hearing before the Tribunal." I would like for the Court of Appeal to review these documents, which support my position that all task were completed refuting the allegation of SCDEW that I was discharged for cause other than misconduct for not completing task or not following supervisors instructions. Additionally, the record shows that I did object to ED referencing these items during the May 16, 2018 hearing. Hearing officer asked, "All right, thank you. I do have one final question for you, Ms. Tucker. Did you ever tell Ms. Wilson her job was in jeopardy? Annette Tucker: No ma'am. Hearing Officer: Based on your verbal communication to Ms. Wilson did you share with her that you were not happy with her responses to you. Annette Tucker: Yes, ma'am I have (**Record on Appeal Pg. 54 lines 23-30**). ED never shared that she had an issue with the email I sent to her on January 17, 2018 following her accusing me of failing to follow the chain of command. The email I sent her on January 17, 2018 submitted with the **Record on appeal Pg. 106 and 111**, was me requesting to be allowed to do my job and function in the capacity, in which I was hired to function as the Director of Human Resources as outlined in my position description. The aforementioned pages also contains the communication that lead up to this conversation. My employment was terminated on January 19, 2018, and the explanation she provided was that we did not see eye-to-eye on how HR should be ran she made no mention of the email communication during our conversation on January 19, 2018. I was not really clear about her explanation, and requested that she explain what she meant by us not seeing eye-to-eye, and I was informed that I would receive a letter in the mail. I never received any form of communication and only learned of her discontent with the email on May 16, 2018 during the evidentiary hearing with SCDEW. The email was allowed to be discussed in spite of it not being entered as evidence prior to the hearing, so I was not able to reference it during the hearing because I did not have it in front of me, nor did I submit it because I was not aware that the January 17, 2018 email communication was an issue.

Additionally, contrary to what is stated in SCDEW brief, I did object to the ED being able to reference the email during the evidentiary hearing on May 16, 2018. I objected two different times to evidence being referenced that was not submitted prior to the hearing as required during the May 16, 2018 evidentiary hearing (**Record on Appeal Pg. 032 lines 2, 3 {objection of evidence January 17, 2018 email} and Pg. 42 objection of evidence lines 1-5**). The Administrative Hearing Officer conducting the appeal tribunal is the authority during the evidentiary hearing. They have the authority to stop information that was not submitted as evidence to not be referenced. All evidence was sworn in at the beginning of the hearing and the January 17, 2018 email was not sworn in as evidence during this time (**Record on Appeal Pgs. 031 lines 1-28 and 032 lines 1-27**), nor was it submitted prior to the hearing as required based on the information outlined in the Notice of Hearing Before Appeal Tribunal Letter (**Record on Appeal Pg. 022-025**). Consequently, I contend that the decision of the SCALC, as well as the SCDEW panel were "...made upon unlawful

procedure, and affected by other error of law..." SC Code Ann. 1-23-380(5) (Supp. 2017). When this occurs, the courts may reverse or modify the decision of the lower court.

**4. I contend that the real reason for my discharge was due to budgetary issues occurring within the organization. WCAI lost upfront funding for the Weatherization program. Losing up front funding meant the program had to complete jobs and then be reimbursed by the government for the services provided to weatherization customers. Presumably, no money was in the Weatherization budget to pay employees. As a result, 3 employees were being paid out of the Administration budget that were not functioning in an administrative capacity resulting in a deficit in the budget. Furthermore, I believe this is the reason for the sudden excessive scrutiny I was placed under by the ED this behavior was a smoke screen to cover up the real reason for termination and that is issues with budget.**

In an effort to resolve the budgetary issue two employees were laid off. Kelsey Edwards was laid off on December 28, 2017 and I was laid-off 16 working days later on January 19, 2018. Kelsey Edwards was approved to receive unemployment benefits due to lay-off as the explanation for her leaving the organization. I attempted to ask the ED a series of questions regarding this matter, but I was abruptly interrupted by the hearing officer, and was not allowed to continue my questions regarding the budget (**Record on Appeal pgs. 020-021 lines 11 thru 26**). The hearing officer allowed evidence from the employer to be submitted that had not been submitted prior to the hearing but interrupted me when I attempted to ask ED a series of questions regarding the budget. Both Kelsey and I were being paid out of the Administration budget. Executive Director denied that the organization was in financial distress.

## E. Conclusion

In closing, based on the SC Employment and Workforce regulations the explanation provided by the employer and not SCDEW is not a reason to disqualify an employee from receiving unemployment benefits. No multiple warnings were received from the ED. The Executive Director of WCAI admitted that I was not terminated for being insubordinate nor did she provide evidence to prove that I failed to complete task or follow her instructions. SC Reg. 47-101 states that an employee who "...fails to perform to the satisfaction of the employer where such failure was beyond the claimant's control, had no harmful intent or was a good faith error in judgment or discretion shall not serve as a basis for disqualification of unemployment insurance benefits." Consequently the relief I am seeking is as follows:

1. Court of Appeal to reverse the decision of the lower court and SCDEW appellate panel to disqualify me from receiving unemployment benefits. Back pay of any benefits not received as a result of this decision whether claim filed for the weeks of unemployment or not.
2. Subpoena the financial records of WCAI administration budget and overall financials during the time, in which I was terminated to confirm that the organization was in good financial standing when the decision was made to terminate my employment. If the organization was in financial distress and I was laid-off as the other employee being paid out of the administration budget was laid-off, I should not have been disqualified from receiving unemployment benefits. Budget issues within the organization are something that is out of my control. Consequently, financial records during this timeframe should be subpoena to determine the financial state of the organization and the Administration budget for WCAI during this timeframe.

**FORM 7**  
**PROOF OF SERVICE REQUEST TO RECALL REMITTITUR**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

\_\_\_\_\_  
Adrian Wilson  
3739 Oakleaf Rd. Apt. B  
Columbia, SC 29206

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Appellate Case No. 2018-002107

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Adrian Wilson  
Vs.  
SC Employment and Workforce,  
Wateree Community Action Inc.

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PROOF OF SERVICE  
\_\_\_\_\_

**RECEIVED**  
FEB 28 2020  
SC Court of Appeals

I certify that I have served the Recall Remittitur, and initial brief to the Court of Appeal, SC Employment and Workforce, and Wateree Community Action Inc. by depositing a copy of it in the United States Mail, postage prepaid, on February 27, 2020 addressed  
To the following recipients at the addresses listed below:

Court of Appeal  
1220 Senate Street  
Columbia, SC 29201

Attorney Steven Jordan  
SC Department of Employment and Workforce  
PO Box 8597  
Columbia, SC 29202

Wateree Community Action Inc.  
PO Box 8328  
Columbia, SC 29202

February 27, 2020

Adrian Wilson  
3739 Oakleaf Rd. Apt. B  
Columbia, SC 29206

Court of Appeal  
1220 Senate Street  
Columbia, SC 29201

Re: Motion to Recall Remittitur, Submission of Initial Brief

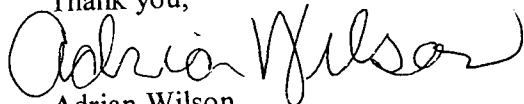
Docket No. 2018-002107

Dear Court of Appeal:

Please find enclosed a motion to remit my case back to your court, as well as the initial brief for the docket number listed above.

If you have any questions or concerns upon receipt of this information, I can be reached at 803-719-0740 or via email at [Adrian.wilson2012@yahoo.com](mailto:Adrian.wilson2012@yahoo.com)

Thank you,

  
Adrian Wilson

**RECEIVED**  
FEB 28 2020  
SC Court of Appeals