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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Greg German,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Employment and)
 Workforce,)
)
 Respondent.)

Docket No. 20-ALJ-22-0340-AP

FINAL ORDER

This matter is before the Administrative Law Court (ALC or court) on the appeal of Greg German (Appellant) filed on December 15, 2020. The Appellant appeals the decision of the South Carolina Department of Employment and Workforce (Department) Appellate Panel (Panel) finding him ineligible for benefits effective March 29, 2020 through May 9, 2020, upon finding the Appellant failed to file weekly claims in a timely manner. After careful consideration of the briefs of the parties, the record, as well as the applicable law, the court finds that substantial evidence in the record supports the Panel's determination that the Appellant failed to file his weekly claims in a timely manner. Accordingly, the Panel's decision is affirmed.

BACKGROUND

On March 30, 2020, the Appellant filed a claim for unemployment insurance (UI) benefits. The Department mailed a determination on April 15, 2020, finding the Appellant eligible to receive UI benefits without disqualification effective March 29, 2020. The Appellant did not file weekly claims for the six claim weeks from claim week ending April 4, 2020, through the claim week ending May 9, 2020, until June 9, 2020. The Department mailed six determinations on July 23, 2020, that collectively held the Appellant ineligible to receive benefits for the six claim weeks, from claim week ending April 4, 2020, through the claim week ending May 9, 2020, upon a finding that the Appellant did not file timely weekly claims. The Appellant appealed to the Appeal Tribunal and after an evidentiary hearing, the Appeal Tribunal affirmed the decision. The Appellant then appealed to the Appellate Panel. The Appellate Panel affirmed the Appeal Tribunal's decision. This appeal followed.

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APR 27 2021

SC ADMIN. LAW COURT

ISSUES ON APPEAL

Whether substantial evidence exists in the record to support the Department's determination that the Appellant did not file timely weekly claims for benefits?

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 appellate standard governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380 & 1-23-600(D). This court's review in appellate cases is limited to the record. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). Substantial rights of the appellant are prejudiced when, among other things, the agency's decision, including the agency's findings, inferences, and conclusions, are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *Id.* However, the party challenging an agency action on appeal has the burden of proving convincingly that the agency's decision is not supported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (citation omitted).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing *Kearse v. State Health & Human Servs. Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)); 73A C.J.S. *Public Administrative Law and Procedure* § 497 (2015). A reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact for which there is room for a difference of intelligent opinion. See *Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n*, 319 S.C. 225, 229, 460 S.E.2d 383, 386 (1995) (citation omitted); *Grant*, 319 S.C. at 353, 461 S.E.2d at 391 (citation omitted). As such, "[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.'" See *Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark*, 276 S.C. at 136, 276 S.E.2d at 307).

DISCUSSION

On October 14, 2020, the Appeal Tribunal held an evidentiary hearing. The Hearing Officer asked the Appellant, if at the time he filed his initial claim for unemployment insurance benefits, and answered yes to the question of whether he was willing to accept the requirement to "...actively search for suitable work each week that you file a weekly certification for unemployment insurance benefits..." if the Appellant understood that requirement at the time. The Appellant stated that he did not. (R. p. 60). The Appellant stated that he heard that he would no longer have to seek work because of the pandemic but that he "had no idea there was a certification requirement every week." (R. p. 61). The Appellant testified that he was not aware of the certification requirement until a neighbor had informed him of the requirement, after which he called the Department and certified the six weeks. (R. p. 64).

The Department argues that the Appellant failed to establish that he met the eligibility requirements under the law to receive UI benefits for the claim week ending April 4, 2020, through the claim week ending May 9, 2020, because the Appellant did not file claims for those weeks until June 19, 2020, more than two months after the earliest claim week ended and more than a month after the latest claim week ended. An individual is eligible to receive UI "benefits with respect to a week for a claim week only if the department finds he has made a claim for benefits with respect to that week pursuant to regulations prescribed by the department." S.C. Code Ann. § 41-35-110(1). A weekly claim for UI benefits is timely filed "if received within fourteen (14) calendar days of the claim week ending date." S.C. Code Ann. Regs. § 47-32(A).

Assessing the weight and credibility of the evidence is a task for the fact-finder, and the appellate court will not disturb those findings, absent error of law. *See* S.C. Code Ann. § 1-23-380(5) (Supp. 2016); *see also Houston v. Deloach & Deloach*, 378 S.C. 543, 551-52, 663 S.E.2d 85, 89 (Ct. App. 2008) (under the APA, the appellate court does not overturn findings of fact unless there is no reasonable probability that the fact could be as related by the witness). The Appellant maintains that he was unaware he needed to file weekly claims for benefits in order to receive benefits. The Appellant asserts that because he was not required to conduct a weekly work search on the South Carolina Works Online Service (SCWOS), he was under the assumption that he did not need to do anything to draw benefits after he filed the initial application.

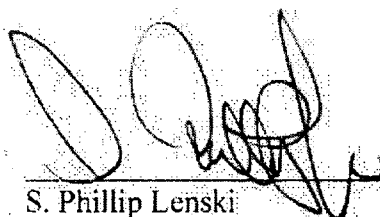
The Appellate Panel found that the record established the Appellant failed to file a timely claim for benefits for the six claim weeks from March 29, 2020, through May 9, 2020, and

therefore was ineligible for those benefits. This finding is supported by substantial evidence in the record. Under the substantial evidence standard of review, the Appellant has the burden of convincingly proving that the agency's decision is unsupported by the evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226; 467 S.E.2d 913, 917 (1996). "Substantial evidence is not a mere scintilla of evidence nor evidence viewed blindly from one side, but is evidence which, when considering the record as a whole, would allow reasonable minds to reach the conclusion that the agency reached." *Id.* (citation omitted). "The possibility of drawing two inconsistent conclusions from the evidence will not mean the agency's conclusion was unsupported by substantial evidence." *Id.* Therefore, based on the foregoing,

ORDER

IT IS HEREBY ORDERED that the Department's decision is **AFFIRMED**.

AND IT IS SO ORDERED.

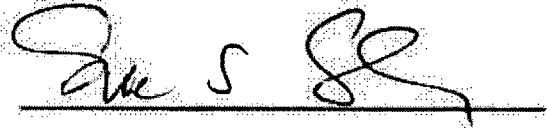


S. Phillip Lenski
Administrative Law Judge

April 27, 2021
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Erika S. Easler, 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, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler
Judicial Law Clerk

April 27, 2021
Columbia, South Carolina

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APR 27 2021

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