

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Supreme Court

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SC Court of Appeals

APPEAL FROM SC ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Case No. 20 ALJ 22 0216 - AP

Tamika E. Howard, Appellant,

v.

South Carolina Department of Employment and Workforce and United Cerebral Palsy of

South Carolina, Respondents

AMENDED RECORD ON APPEAL

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→ This is where I got confused with
the 4/15/2020 Appeal

DECISION OF APPEAL TRIBUNAL

Hearing Date: May 19, 2020

Appeal Number: 20-LA-010665

TAMIKA E HOWARD
343 WYCOMBE RD
COLUMBIA SC 29212

CLAIMANT

APPELLANT: Claimant

SSN: XXX-XX-6265

CLAIMANT ID:10531143

APPEARANCES

FOR THE CLAIMANT: Claimant

FOR THE EMPLOYER: NONE

ISSUE STATEMENT

The issue in this case is whether the claimant meets the availability requirements of the law.

FINDINGS OF FACT

The claimant appealed the claims adjudicator's determination mailed April 14, 2020, which held the claimant unavailable to work and ineligible from receiving benefits effective March 29, 2020.

During the Appeal Tribunal hearing, the claimant testified that she has a medical condition and was advised by her doctor that she could no longer perform the duties of her last job which required lifting, standing, flexing or extending. She has experience as a telephone operator and in telecommunications which is able to perform and is seeking this type of work. The testimony in this case shows the claimant has been available for work.

REASONS

S.C. Code Ann. §41-35-110 provides that an individual must be able, available, and actively seeking work in order to be eligible for benefits for each week claimed.

L

In this case, the greater weight of credible evidence establishes the claimant has been able, available, and actively seeking work in an occupation which she has training and/or experience. Therefore, the Appeal Tribunal finds the claimant meets the availability requirements of the law.

DECISION

The Tribunal finds the claimant eligible for benefits effective March 29, 2020, because the claimant meets the availability requirements of the law. Provided she meets other eligibility requirements of the law. This decision reverses the claims adjudicator's determination mailed April 14, 2020.

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 <https://dew.sc.gov/individuals/manage-your-benefits/appeals>.

Erika S. Davis

Erika S. Davis
Administrative Hearing Officer

Decision Mailed: May 20, 2020

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DECISION OF APPEAL TRIBUNAL

Hearing Date: July 7, 2020

Appeal Number: 20-LA-022018

TAMIKA E HOWARD
343 WYCOMBE RD
COLUMBIA SC 29212

CLAIMANT

APPELLANT: Claimant

SSN: XXX-XX-6265

CLAIMANT ID:10531143

APPEARANCES

FOR THE CLAIMANT: Claimant

FOR THE EMPLOYER: NONE

ISSUE STATEMENT

The issue in this case is whether the claimant meets the eligibility requirements of the law.

FINDINGS OF FACT

The claimant appealed the claims adjudicator's determination mailed May 14, 2020, which held the claimant unavailable to work and ineligible from receiving benefits effective May 10, 2020 .

During the Appeal Tribunal hearing, the claimant testified that she has been available to engage in work without undue restriction. The claimant's testimony during the hearing is consistent with the fact finding documents completed by the claimant in connection with the issue under appeal. The evidence in this case shows the claimant has been available for work since the date May 10, 2020 .

REASONS

S.C. Code Ann. §41-35-110 provides that an individual must be able, available, and actively seeking work in order to be eligible for benefits for each week claimed.

In this case, the greater weight of credible evidence establishes the claimant has been able, available, and actively seeking work since the date May 10, 2020. Therefore, the Appeal Tribunal finds the claimant meets the availability requirements of the law.

DECISION

The Tribunal finds the claimant eligible for benefits effective May 10, 2020, because the claimant meets the availability requirements of the law. This decision reverses the claims adjudicator's determination mailed May 14, 2020.

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 <https://dew.sc.gov/individuals/manage-your-benefits/appeals>.



Harold W. Goldin
Administrative Hearing Officer

Decision Mailed: July 8, 2020

OCT 24 2020

SC ADMIN. LAW COURT

Dear Honorable Judge Deborah, morden Briles

Again I do not argue that my appeals
was five days late. I attempted to
contact Dew numerous times and
I got help & sometime I got
not help from his representatives.

I never stated that I could
not work. I just could not
fullfill the sub Duties that were
required at the time. My employers
decided to stop my ~~unemployed~~ ^{unemployment} when
Covid 19 came about. I made that
clear when I answered the questionnaires.

Davis informed me
to sign in an
Appeal at this point
I think I already
Appealed and someone
got mixed up with the
4/15/2020 Appeal before
the 5/19/2020 hearing.

I just needed a little time
to figure out how my doctors
~~the~~ can help me overcome what
I was going through. And the
request for light duty was terminated
and denied. Hydrocodone is a
very strong medication, that I no
longer take. It ~~has~~ caused confusion
and other effects I do apologize
if I was misunderstood in any way.

Thank you
Tamilca Howard

Good Evening TAMIKA E HOWARD

Friday, October 23, 2020

[My Alert](#) [Help Help](#) | [Contact](#) | [Resources](#) | [Logoff](#)

Appeal Information

TAMIKA E HOWARD CLAIMANT ID: 10531143

[Claim Status](#)[Customer Menu](#)[Claimant Homepage](#)[Change Personal Info](#)[Change Security Pref](#)[Confirmation History](#)[Debit Card Website](#)[Determination History](#)[Appeal Information](#)[My Documents](#)

ADVISEMENT: Please do not use your Internet browser "Back" buttons. In the event you need to return to a previous page, please utilize the navigation buttons or the menu links above.

343 WYCOMBE RD, COLUMBIA SC 29212 -1948

Tamikah1234567@gmail.com

Appeals History

Appeal ID	Appeal Date	Claimant	Employer	Status	Level
184914	08/25/2020	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH CAROLINA	Validated	SC Administrative Law Court
176528	08/03/2020	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH CAROLINA	Closed	Board of Review
156921	06/08/2020	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH CAROLINA	Closed	Appellate
155374	06/02/2020	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH CAROLINA	Void	Board of Review
155373	06/02/2020	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH CAROLINA	Closed	Board of Review
150615	05/19/2020	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH		

150614 05/19/2020 TAMIKA HOWARD UNITED CEREBRAL PALSY OF SOUTH
CAROLINA Closed Appellate

134936 04/15/2020 TAMIKA HOWARD UNITED CEREBRAL PALSY OF SOUTH
CAROLINA Closed Appellate

Hearing History

Hearing ID	Docket#	Hearing Method	Location	Hearing Date	Hearing Time	Hearing Official
	106977 AP200001	Telephone	Columbia	05/19/2020	13:41 PM	DAVIS,ERIKA

Schedule Details

Hearing Method : Telephone Hearing Location : Telephone Hearing Official : Hearing Officer

Hearing Date : 05/19/2020 Scheduled Start Time : 01:30

Hearing Issues

Issues Status Appellant

Not Able to Work Closed Claimant

Subpoena Requests

Name Type Method

Uploaded Documents for Appeal

Nothing found to display.

Additional documents for a Hearing must be received prior to one business day before the hearing is scheduled to occur.

Please attach any supporting documentation

I understand any documents uploaded may be made available to the other parties to the hearing.

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Privacy Statement | Legal

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Tamika E. Howard,

Appellant,

vs.

South Carolina Department of Employment
and Workforce and United Cerebral Palsy of
South Carolina,

Respondents.

Docket No. 20-ALJ-22-0216-AP

ORDER

STATEMENT OF THE CASE

Tamika E. Howard (Appellant) appealed the decision of the South Carolina Department of Employment and Workforce Appellate Panel (Panel), which dismissed her appeal as untimely. The Administrative Law Court (ALC or Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2019). Upon consideration of the record and the briefs, this Court affirms, finding that substantial evidence supports the decision of the Panel.

BACKGROUND

Appellant worked for United Cerebral Palsy of South Carolina (Employer). Employer granted Appellant a medical leave of absence, starting on March 30, 2020, and continuing for up to twelve weeks. Appellant filed a claim for unemployment insurance benefits (UI) with the South Carolina Department of Employment and Workforce (Department). The Department's claims adjudicator considered statements from both Appellant and Employer and held Appellant was ineligible for UI benefits, finding Appellant voluntarily severed the employer/employee relationship without good cause and was therefore ineligible to receive benefits under S.C. Code Ann. § 41-35-120 (Supp. 2019). On May 5, 2020, the Department mailed the claims adjudicator's determination to Appellant. The determination contained a portion of text in dark, bolded print outlined by a box. The text stated "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 05/15/2020." The text continued by providing contact information for the submission of an appeal and how to find additional information on filing an appeal. Appellant filed her appeal on May 19, 2020.

FILED

November 5, 2020

SC ADMIN. LAW COURT

July 27, 2020, the Tribunal conducted an evidentiary hearing. Appellant testified that she received the claims adjudicator's determination at her correct address and that she read the portion of the determination informing her of the May 15, 2020 deadline to file an appeal. Appellant testified that she mistakenly believed a previous appeal she filed in response to an April 14, 2020 determination holding her ineligible for benefits also counted as an appeal of the May 5, 2020 claims adjudicator's decision. On August 3, 2020, the Tribunal found Appellant's appeal was untimely and dismissed it. Appellant appealed the Tribunal's decision to the Panel. On August 25, 2020, the Panel affirmed the Tribunal's decision. This appeal followed.

ISSUE ON APPEAL

Did the Department's Appellate Panel err in dismissing Appellant's appeal of the claims adjudicator's decision as untimely pursuant to S.C. Code Ann. § 41-35-660 (Supp. 2019)?

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. 2019); 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. 2019). 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 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 [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;

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. 2019).

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. Dep't 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 Panel erred in dismissing her appeal of the claims adjudicator’s decision as untimely. I disagree.

In its August 25, 2020 decision, the Appellate Panel found that, “[t]he Department properly mailed the claims adjudicator’s determination to the claimant’s address of record on May 5, 2020.” The Appellate Panel further found that, “[t]he claimant filed an untimely appeal due to her own error or neglect by failing to act in a diligent manner to preserve her appeal rights.” In Appellant’s brief, she asserts that her appeal should be accepted as timely due to her mistaken understanding of the process of filing an appeal.

S.C. Code Ann. § 41-35-660 reads in pertinent part:

The claimant or any other interested party may file an appeal from an initial determination, redetermination, or subsequent determination not later than ten days after the determination was mailed to his last known address.

neglect and not due to error by the Department. There has been no showing that there was any error that would have provided a basis to adjust the time for filing the appeal to allow a filing four days after the statutory window to file. Additionally, the decision provided to Appellant clearly stated the date she must submit the appeal by and provided addresses and contact information should she have any questions. Accordingly, because there is substantial evidence showing that Appellant received the final decision in the mail and failed to file an appeal within the mandatory time limits statutorily required for an appeal, the Court concludes that the Panel did not err by determining that Appellant was untimely in filing her appeal and that there was no sufficient excuse for the delay. The Court finds that the Department's decision that Appellant's appeal should be dismissed as untimely, as reflected in the determination of the Panel, is supported by the substantial evidence in the record.

ORDER

IT IS THEREFORE ORDERED that the Appellate Panel's decision dismissing Appellant's appeal to the Appeal Tribunal as untimely is **AFFIRMED**.

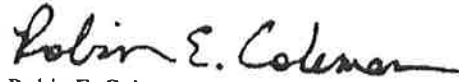
AND IT IS SO ORDERED.



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

November 5, 2020
Columbia, South Carolina

... of 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 Judge Deborah Brooks Durden

November 5, 2020
Columbia, South Carolina

FILED

November 5, 2020

SC ADMIN. LAW COURT

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JUN 08 2021

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 8, 2021

/s/ Tamika Howard

343 Wycombe rd

Columbia, SC 29212

(803)665-0091