THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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Sep 22 2021
SC Court of Appeals

Case No.: 20-ALJ-22-0340-AP

Appellate Case No. 2021-000490

Greg German,

Appellant,

v.

South Carolina Department of Employment
and Workforce,

Respondent.

FINAL BRIEF OF RESPONDENT SC DEPARTMENT OF EMPLOYMENT AND WORKFORCE

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STATEMENT OF ISSUES ON APPEAL

I. Did the Administrative Law Court properly affirm the Appellate Panel's decision when substantial evidence supported the Panel's finding that Appellant did not file timely weekly claims for unemployment insurance benefits because Appellant filed those claims more than a month after the regulatory deadline?

II. Should this Court disregard Appellant's new argument that a principal/agent relationship existed between the Department and Appellant when that argument is unpreserved for appellate review?

III. Did the Administrative Law Court properly disregard Appellant's arguments that the Panel's decision was arbitrary, capricious, an abuse of discretion, or otherwise affected by an error of law when Appellant's arguments are manifestly without merit?

STATEMENT OF THE CASE

Appellant Greg J. German filed a claim for unemployment insurance (UI) benefits with Respondent South Carolina Department of Employment and Workforce (the Department) on March 30, 2020. (R. pp. 4-7). The Department mailed a determination on April 15, 2020, holding Appellant eligible to receive UI benefits without disqualification effective March 29, 2020. (R. pp. 12-13).

Appellant did not file weekly claims for the six claim weeks from the claim week ending April 4, 2020, through the claim week ending May 9, 2020, until June 19, 2020. (R. p. 60, lines 17-21; p.94). Appellant provided statements to the Department on June 19, 2020, explaining why he did not file claims for those weeks until that day. (R. pp. 14-23). The Department mailed six determinations on July 23, 2020, that collectively held Appellant ineligible to receive benefits for the six claim weeks from the claim week ending April 4, 2020, through the claim week ending May 9, 2020, upon a finding Appellant did not file timely weekly claims. (R. pp. 24-35).

Appellant appealed the claims adjudicator's determinations to the Department's Appeal Tribunal (Tribunal). (R. pp. 36-46). The Tribunal held an evidentiary hearing on October 14, 2020. (R. pp. 47-94). The Tribunal mailed a decision on October 15, 2020, affirming the claims adjudicator's determinations by finding that Appellant did not file timely weekly claims. (R. pp. 95-98). Appellant appealed to the Department's Appellate Panel (Panel). (R. pp. 99-105). The Panel issued its decision on November 17, 2020, affirming the Tribunal's decision that Appellant did not meet the eligibility requirements under the law. (R. pp.1-3; pp.108-110).

Appellant filed an appeal of the Panel's decision with the Administrative Law Court (ALC) on December 15, 2020. (R. p. 156). The ALC affirmed the Panel's decision by order dated April 27, 2021. (R. pp. 156-160). Appellant now appeals to this Court.

STATEMENT OF THE FACTS

Appellant filed his initial application for UI benefits on March 30, 2020. (R. pp. 4-7; p. 59, lines 20-24). The claims application required Appellant to affirmatively acknowledge the following statement: "You must actively search for suitable work each week **that you file a weekly certification for unemployment insurance benefits** by performing at least two (2) job searches through the South Carolina Works Online System (SCWOS), so that search can be electronically verified." (R. p. 7; p. 92) (emphasis added). The Department mailed a determination on April 15, 2020, holding Appellant eligible to receive UI benefits effective March 29, 2020. (R. pp. 12-13). This determination included the following statement: "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**..." (R. p. 13).[1] (emphasis added). Appellant, however, did not comply with the instructions provided on his claim application and on his determination that he must timely file a weekly certification in order to receive UI benefits for a given week. Instead, Appellant did not file a weekly certification for UI benefits for the six claim weeks from the claim week ending April 4, 2020, through the claim week ending May 9, 2020, until June 19, 2020. (R. p. 60, lines 17-21; p.94).

Appellant did not file timely weekly claims for benefits for those weeks because, according to him, he was unaware of the requirement to file a claim each week, despite the prior written notifications:

> All I thought was necessary was filing a claim, and then seeking on a weekly basis employment. So one, file a claim; two, on a weekly basis seek employment. (R. p. 60, lines 26-29).

[1] This advisement is included on every job separation and weekly eligibility determination the Department issues, including each of the six determinations that held Appellant ineligible for benefits because he did not file timely claims for benefits. (R. pp. 71-82).

I had no idea there was a certification requirement. (R. p. 61, lines 14-15).

I would agree that I did not certify six weeks of my unemployment within a couple of weeks of those dates. (R. p. 67, lines 11-13)

Appellant maintains that he was also confused by the fact that the Department waived the regulation requiring claimants to perform two online job searches each week on SCWOS. (R. p. 60, lines 10-16; p. 61, lines 1-4; p. 62, lines 3-8; p. 64, lines 10-12).[2] Finally, Appellant asserts that he made multiple attempts to contact the Department to check on his claim status from early April until June, but that each time he only received a recorded message before the call hung up. (R. p. 61, lines 5-9; p. 61 lines 24-25). In his first written communication to the Department about his late weekly claims for benefits, however, Appellant asserted that "I did not certify weekly, as I did not know it was required. I saw that it took 21 days from "Decision Date" until I might get paid unemployment, **so I waited for that date before I started to ask questions**. When I tried to call, the DEW phone line just clicked me off." (R. p. 14) (emphasis added). Further, Appellant admitted he kept his customary night hours during his period of unemployment, which meant that he could not talk to people on a daily basis and he frequently visited the Department's website at times when the website was down for maintenance. (R. p. 61, lines 16-18; p. 67, p.19-22).

The Panel evaluated the evidence and determined the following:

> ...The Department provided the Claimant instructions to file each week for benefits when he filed his initial claim. The Claimant maintains he was unaware he needed to file claims for benefits in order to receive benefits. He believed that because he was not required to conduct a weekly work search on the South Carolina Works Online Service (SCWOS), he did not need to do anything to draw benefits after he filed the initial application. (R. p. 2; p. 109)

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[2] Governor McMaster issued Executive Order 2020-10 on March 17, 2020, authorizing cabinet agencies to waive or suspend any regulations that would impede or delay the state's response to the COVID-19 pandemic. To promote social distancing, the Department utilized this authority to suspend the regulatory requirement for claimants to perform two online job searches since many claimants relied on public buildings to access computers.

> The record establishes the Claimant failed to file a timely claim for benefits for the six claim weeks from March 29, 2020[3], through May 9, 2020. The greater weight of the credible evidence shows the Claimant did not attempt to file any weekly certifications until more than a month after the Claimant initially filed his claim for benefits. The Claimant did not file a claim for the weeks in question as required by law. Therefore, we find the Claimant ineligible for benefits effective March 29, 2020, through May 9, 2020. (R. p. 2; p. 110).

After reviewing briefs submitted by the parties, the ALC affirmed the Panel's decision, finding "[t]he 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." (R. pp. 156-160).

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[3] Claim weeks begin on Sundays and end on Saturdays. *See* S.C. Code Ann. Regs. § 47-24. Sunday, March 29, 2020, was the beginning of the claim week ending Saturday, April 4, 2020.

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:

> The review of the administrative law [court]'s order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law [court] 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). Further, "[t]he decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct.App.2008).

"The 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.*

ARGUMENT

I. THIS COURT SHOULD AFFIRM BECAUSE THE ALC PROPERLY FOUND SUBSTANTIAL EVIDENCE SUPPORTED THE PANEL'S DECISION THAT APPELLANT DID NOT MEET THE ELIGIBILITY REQUIREMENTS TO RECEIVE UI BENEFITS UNDER THE LAW SINCE HE FAILED TO FILE TIMELY WEEKLY CLAIMS.

A. Eligibility requirements to receive UI benefits under South Carolina law.

It is settled law in South Carolina that a UI claimant bears the burden of proof "to show that he met the benefit eligibility conditions and he was available for work." *See Hyman v. S.C. Emp't Sec. Comm'n*, 234 S.C. 369, 373, 108 S.E.2d 554, 556 (1959); *Wellington v. S.C. Emp't Sec. Comm'n*, 281 S.C. 115, 117, 314 S.E.2d 37, 38 (Ct. App. 1984); *Murphy v. S.C. Emp't Sec. Comm'n*, 328 S.C. 542, 544, 492 S.E.2d 625, 626-27 (Ct.App.1997) (citing *Wellington*).

An individual is eligible to receive UI benefits 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).

B. Appellant did not file timely weekly claims for UI benefits as required.

The ALC properly affirmed the Panel's decision because substantial evidence in the record as a whole supports the Panel's finding that Appellant failed to establish he met the eligibility requirements under the law to receive UI benefits for the six claim weeks from the claim week ending April 4, 2020, through the claim week ending May 9, 2020.

It is undisputed that 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. (R. p. 60, lines 17-21; p. 94). It is further undisputed that Appellant did not file timely

claims for those weeks because he did not believe he had to file a claim each week despite being provided written notification of the requirement on at least two occasions. (R. p. 7; p. 13; p. 60, lines 26-29; p. 61, lines 14-15; p. 67, lines 11-13; p. 92). Because regulation 47-32(A) requires a claimant to file a claim for benefits within fourteen days of the end of the claim week, Appellant's filings for all six claim weeks on June 19, 2020, more than five weeks after the last claim week ending date, were untimely. Thus, substantial evidence supported the Panel's decision, and the ALC properly affirmed.

Appellant essentially argues that he had good cause for filing late claims and the Department should have accepted his late filings under regulation 47-32(A). (App. Br.) This argument is founded entirely on his claim that he was ignorant of the weekly filing requirement. However, it has long been the law in this state that claiming ignorance of the law is no excuse. *See Corley v. Atl. Life Ins. Co.*, 179 S.C. 95, 183 S.E. 596, 598 (1936) ("The fact that the insured may not have been aware of this law does not excuse his failure to comply therewith."); *Fairey v. Strange*, 115 S.C. 10, 104 S.E. 325, 327 (1920) ("While there is no presumption that everyone knows the law, still ignorance of the law excuses no one."). Thus, even if Appellant was truly ignorant of the law requiring him to file weekly certifications, that ignorance is no excuse, especially considering the Department notified Appellant of the requirement on two occasions. Further, even if Appellant was unclear regarding the weekly certification requirement, despite the two notices provided during the initial claims process, Appellant could have read the clear and simple language in regulation 47-32(A) and should have had no doubt as to the requirement. Also, the Department's website contained information on the weekly certification requirement. Accordingly, Appellant's alleged ignorance of the law is no excuse, and this Court should affirm the ALC's decision.

Further, Appellant argues he had good cause for filing late claims because he alleges he was unable to speak to a Department representative despite numerous phone calls and because he was confused by the Department's waiver of the online work search requirement. (App. Br). *See* S.C. Code Ann. Regs. § 47-32(A) ("The claims representative in the Department office may accept any late filing of a continued weekly claim for good cause shown."). The Panel, however, properly exercised its discretion and authority as fact-finder and determined Appellant failed to show good cause for his failure to file timely weekly claims. Specifically, the Panel found Appellant's failure to file timely weekly claims was not due to his alleged inability to speak with a Department representative but rather because Appellant erroneously believed he did not need to file a claim each week that he wanted to receive benefits[4]. In essence, Appellant's own negligence in failing to read and understand the requirement to file weekly claims that he was provided at least twice, and Appellant's decision to wait at least twenty-one days after his determination was mailed before contacting the Department, were the but-for causes of his failure to file timely weekly claims for benefits. (R. p. 7; p. 13; p. 60, lines 10-16; p. 61, lines 1-4; p. 92).[5]

Finally, the good cause provision within S.C. Code Ann. Regs. § 47-32(A) is discretionary because the regulation provides that the Department "**may** accept any late filing." (Emphasis added). Indeed, "[t]he use of the word 'may' signifies permission and generally means that the

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[4] Although the Panel did not reference the good cause provision under S.C. Code Ann. § 47-32(A), the Panel implicitly determined Appellant did not have good cause for filing late claims by finding Appellant did not believe he had to file a claim each week and would essentially receive benefits every week without doing anything other than filing his initial application. (R. p. 2; p. 109).

[5] Though the Panel did not specifically cite Appellant's failure to understand the weekly claim filing requirement, or the twenty-one day delay in contacting the Department, there is evidence in the record on appeal that Appellant's failure to understand and promptly act on the information the Department provided him contributed to his failure to file timely weekly claims for UI benefits. The Department presents these facts as additional sustaining grounds in support of the Panel's decision. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute." *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352-53, 549 S.E.2d 243, 250 (2001). The Panel reasonably exercised its discretion to determine that Appellant did not have good cause for filing untimely weekly claims for benefits. Substantial evidence in the record supports the Panel's decision. Appellant was provided written notice on at least two occasions. (R. p. 7; p. 13; p. 92). Both notifications included clear statements that he had to file a weekly certification for benefits each week. *Id.* Moreover, Appellant's confusion regarding the waiver of the requirement to search for work online each week does not excuse his failure to file a claim for benefits. When he filed his initial claim for benefits, Appellant acknowledged understanding two clear requirements: (1) file a weekly certification; and (2) perform two job searches via SCWOS. *Id.* The waiver of the online work search requirement did not eliminate the foundational requirement to file a claim each week to receive benefits. Indeed, Appellant's belief that he did not have to do anything beyond filing his initial claim for benefits is absurd on its face. Under Appellant's assumption, the Department would have to pay benefits each week to a claimant without knowing whether the claimant had become reemployed or if the claimant met the weekly eligibility conditions required by law. This contention is clearly contrary to the long settled rule that it is a UI claimant's responsibility "to show that he met the benefit eligibility conditions and he was available for work" each week. *See Hyman, supra.*

The Panel's determination that Appellant did not file timely weekly claims was reasonable and supported by Appellant's own testimony. Documents show that the Department provided Appellant with two separate notices that he had to file a claim for benefits each week. (R. p. 7; p. 13; p. 92). Appellant testified that he did not fully understand one of the notices and did not know he had to file a claim each week. (R. p. 60, lines 10-16; p. 60, lines 26-29; p. 61, lines 14-15; p.

67, lines 11-13). Appellant further informed the Department that he did not attempt to inquire about his claim until at least twenty-one days after the determination was mailed on April 15, 2020, which would make his first alleged attempt in early to mid-May, well after the end of most of the claim weeks he is now trying to claim. (R. p. 14). Therefore, substantial evidence supports the Panel's findings, the ALC properly affirmed the Panel, and this Court should affirm the ALC.

II. THE COURT SHOULD DISREGARD APPELLANT'S ARGUMENT THAT A PRINCIPAL/AGENT RELATIONSHIP EXISTED BETWEEN THE DEPARTMENT AND APPELLANT BECAUSE THE ARGUMENT IS UNPRESERVED.

The Court should disregard Appellant's argument, raised for the first time in his initial brief to this Court, that a principal/agent relationship existed between the Department and Appellant. "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). The preservation rules requiring a party to raise its arguments and obtain a ruling on them apply to administrative proceedings. *See Brown*, 348 S.C. at 519, 560 S.E.2d at 417; *see Home Med. Sys., Inc. v. S.C. Dep't of Revenue*, 382 S.C. 556, 562, 677 S.E.2d 582, 586 (2009) ("As in other appellate matters, we require issue preservation in administrative appeals."). "An issue that is not raised to an administrative agency is not preserved for appellate review by the ALC." *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 324, 785 S.E.2d 600, 611 (Ct.App.2016).

Appellant attempts to argue that the Department must adhere to what customer service representatives allegedly told Appellant because a principal/agent relationship existed between the Department and Appellant. (App.Br.) This argument was not raised at any point prior to Appellant's initial brief to this Court. Appellant failed to raise this argument to the Tribunal, to the

Panel, or to the ALC. Naturally, none of those entities ruled on this novel argument. Appellant's argument, therefore, is unpreserved for appellate review, and this Court should disregard it.

III. THE ADMINISTRATIVE LAW COURT DID NOT ERR IN DECLINING TO ADDRESS APPELLANT'S OTHER ARGUMENTS AS THEY ARE EACH MANIFESTLY WITHOUT MERIT.

Appellant raised four arguments to the ALC that he also raises to this Court in his initial brief. Appellant also complained that the ALC "failed to mention – even once – in its order the words 'arbitrary' or 'capricious' or the term 'abuse of discretion.'" (App. Br.) The ALC, however, properly ignored Appellant's arguments because they were, and are, manifestly without merit, and this Court should similarly disregard these arguments. *See* Rule 40, SCALC ("The administrative law judge may affirm any ruling, order or judgment upon any ground(s) appearing in the Record and need not address a point which is manifestly without merit."); Rule 220(b)(2), SCACR ("The Court of Appeals need not address a point which is manifestly without merit."). While none of Appellant's arguments establish that the Panel or the ALC committed an error of law and are manifestly without merit, each are addressed below.

A. Neither the Panel's decision nor the ALC's decision were arbitrary or capricious, characterized by an abuse of discretion, or made upon unlawful procedure.

Appellant essentially argues that the Panel's decision was arbitrary or capricious, or made upon unlawful procedures, because the Department "provided a confusing system for a first-time user to navigate.[6]" (App. Br). Appellant's argument is wholly without merit because it erroneously

[6] The Department notes that this allegedly "confusing system" successfully paid over $5 billion dollars of state and federal benefits to hundreds of thousands of eligible claimants that managed to file timely weekly claims during the first ten months of the COVID-19 pandemic. https://www.dew.sc.gov/news/2021-01/dew-exceeds-5-billion-benefits

tries to assign to the Panel alleged deficiencies in the customer service the Department provided to Appellant prior to the Appellant filing an appeal.

The ALC may reverse an administrative decision only if "substantial rights of the appellant have been prejudiced **because the administrative findings, inferences, conclusions, or decisions are**: ... (c) made upon unlawful procedure; ... or (f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion." S.C. Code Ann. § 1-23-380(5) (emphasis added). The ALC's review was therefore limited solely to whether the **decision** under appeal was made upon unlawful procedure or was arbitrary or capricious.

The Panel decision reviewed by the ALC was made upon the proper and lawful procedure. Pursuant to S.C. Code Ann. § 41-35-690, the "sole and exclusive appeal procedure" for disputing the Department's decision on UI benefits is for an individual to appeal a determination to the Tribunal, then to the Panel, and then to ALC. That procedure was followed precisely in this case. Appellant has not argued that the Panel based its decision on erroneously admitted or omitted evidence or that the Panel otherwise committed any procedural errors. The only unlawful procedures alleged by Appellant are a confusing UI system and poor customer service he encountered months before he ever filed an appeal. Those are not "unlawful procedures" that are grounds for reversal of an administrative decision as contemplated by Section 1-23-380(5).

Moreover, the Panel's decision is not arbitrary and capricious when it is supported by substantial evidence in the record. *See Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct.App.1985) ("A decision is 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, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards."). As argued above, the Panel's decision was based on clear South Carolina law and

supported by substantial evidence in the form of Appellant's own testimony and documents entered into evidence. Appellant bears the burden of showing that he met the eligibility requirements for receiving UI benefits each week. *See Hyman, supra.* To receive UI benefits for a given week, Appellant was required to file a claim within fourteen days of the week ending date. *See* S.C. Code Ann. § 41-35-110(1); S.C. Code Ann. Regs. §47-32(A). The record is undisputed that Appellant failed to do so. (R. p. 60, lines 17-21; p. 94). Moreover, Appellant failed to file timely claims because he did not read and understand the information the Department provided him and because he waited an excessive period of time to contact the Department to inquire about his benefits. (R. p. 60, lines 10-16; p. 60, lines 26-29; p. 61, lines 14-15; p. 67, lines 11-13). The Panel's decision, therefore, was not arbitrary and capricious because it was made upon the rational basis of applying clear South Carolina law to a largely undisputed record. Consequently, the ALC did not err by failing to use the words "arbitrary," "capricious," or "abuse of discretion" in affirming the Panel's decision because the Appellant's arguments on those points were manifestly without merit.

B. Neither the Panel nor the ALC erred by refusing to accept Appellant's speculation that he was denied UI benefits because he made a request for records under the Freedom of Information Act (FOIA) and had recorded customer service calls.

Appellant argues that the Panel, and implicitly the ALC, erred by refusing to find that the Department denied Appellant benefits because he made a FOIA request and recorded calls with customer service representatives. (App. Br). Appellant's argument is based on nothing more than rank speculation and coincidence, and it ignores the clear South Carolina law that compelled the result in the Panel's decision. Appellant's argument is manifestly without merit.

Essentially, Appellant contends that the Department denied his eligibility for benefits on July 23, 2020, because he told an Appeals representative that day that he had submitted a FOIA

request and had recorded prior calls with customer service representatives: "The timeline of events show that weeks and weeks passed with assurances that payment would be received, but suddenly, on one day, that hope was slammed shut. DEW denied the benefits. That was the exact same day Appellee learned of the FOIA requests and taped conversations." (App. Br). Appellant's conspiracy theory, however, suffers from a fatal flaw. The Department learned of Appellant's FOIA request a month earlier, when he filed it on June 17, 2020. (R. pp. 44-45). Moreover, the Department actually provided Appellant with documents responsive to his FOIA requests prior to July 23, 2020. (R. p. 46).[7] It is merely coincidence that the fact-finding statements Appellant provided regarding his late claims on June 19, 2020, were reviewed and adjudicated on the same day that Appellant spoke with an Appeal representative.

Instead of some wild conspiracy, the Department denied Appellant's eligibility for benefits for the six weeks in question simply because he did not timely file claims for those weeks as required by South Carolina law, and because he was at fault in failing to do so. The Panel's decision making those simple findings is supported by substantial evidence in the form of Appellant's testimony and the documents entered into evidence. (R. p. 7; p. 13; 60, lines 10-16; p. 60, lines 26-29; p. 61, lines 14-15; p. 67, lines 11-13; p.92). As a result, the ALC properly affirmed the Panel's decision.

C. Neither the Panel nor the ALC exceeded its statutory authority in denying Appellant benefits under the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act).

Appellant argues that the Panel, and implicitly the ALC, erred in denying him benefits under the CARES Act. (App.Br). Appellant specifically references the Pandemic Emergency

[7] Appellant's letter to the Department mailed July 24, 2020, clearly references his receipt of the responsive documents the Department sent Appellant as a result of his FOIA request.

Unemployment Compensation (PEUC) program and the $600 supplemental payment provided by the Federal Pandemic Unemployment Compensation (FPUC) program, and his arguments are completely without merit.

The Panel did not commit an error of law, and its decision was not arbitrary or capricious, in failing to adjudicate whether Appellant was eligible for PEUC because the claim at issue in these proceedings is Appellant's UI claim, which is a claim and process that is separate from a claim for PEUC. Because a claim for UI and a claim for PEUC are two different proceedings, the Panel could not have adjudicated Appellant's claim for PEUC as part of his claim for UI. Each program has specific criteria and requirements for eligibility, and an application for each program is required to allow the Department to gather the information needed and adjudicate the individual's eligibility. Because a claim for UI and a claim for PEUC are two separate claims and involve separate proceedings, the Panel did not err by failing to adjudicate Appellant's eligibility for PEUC as part of Appellant's claim for UI benefits. Moreover, this Court is a court of review sitting in an appellate capacity, and its review is limited to the record before the ALC. *See* § 1-23-610(B) (stating this Court's standard of review); *Brown v. S.C. Dep't of Health and Envtl. Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002) (explaining that courts reviewing final agency decisions sit in an appellate capacity). Thus, this Court does not have jurisdiction to issue a decision determining Appellant's PEUC eligibility when neither the Department nor the ALC has issued a decision on a hypothetical claim for PEUC that Appellant has never applied for.

Additionally, the CARES Act requires that "the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for [PEUC] and the payment thereof, except where otherwise inconsistent

with the provisions of this section or with the regulations or operating instructions of the Secretary promulgated to carry out this section." 15 U.S.C. 9025(4)(B). The Secretary of Labor issued operating instructions to states advising that "the provisions of the applicable state law that apply to claims for PEUC include but are not limited to: a. Claim Filing and Reporting;...e. Disqualification, including disqualifying income provisions; Note: **An individual is not entitled to receive PEUC for a week if the individual is ineligible for benefits for the week due to a disqualification under the applicable state law**...." Unemployment Insurance Program Letter (UIPL)[8] 17-20, Attachment I, Section D(2) (emphasis added). Therefore, even if Appellant had applied for PEUC, he would be ineligible to receive PEUC for the weeks in question because he did not comply with South Carolina's law regarding the timely filing of weekly claims for benefits.

Finally, the $600 FPUC supplemental payment is only payable to an individual who is eligible to receive state or federal UI benefits during a given week. 15 U.S.C. 9023(b)(1) ("...the State will make payments of regular compensation to individuals in amounts and to the extent they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation..."). Further, the Secretary of Labor issued operating guidance to states advising that "**an individual is not entitled to receive FPUC for a week in which the individual is ineligible for regular UC** or the underlying benefit from another federal program." UIPL 15-20, Attachment I, Section D(2) (emphasis added). Therefore, Appellant is ineligible to receive FPUC for the weeks in question because he is ineligible to receive regular UI benefits for those weeks,

[8] UIPLs are written policy documents issued by the United States Department of Labor (USDOL) that provide formal guidance to states on how to administer various aspects of state and federal UI programs. UIPLs are available and searchable on USDOL's website: https://wdr.doleta.gov/directives/

and the Panel, and the ALC, would have exceeded its statutory authority if it had paid Appellant FPUC.

D. The Panel's decision is supported by substantial evidence.

Appellant argues that the Panel's decision is unsupported by substantial evidence in the record. As argued extensively above, the ALC properly affirmed the Panel's decision because the Panel's decision is clearly supported by substantial evidence in the form of Appellant's testimony that he did not file timely claims because he did not understand the written notices provided to him and Appellant's written statement that he waited at least twenty-one days to attempt to contact the Department. (R. p. 7; p. 13; 60, lines 10-16; p. 60, lines 26-29; p. 61, lines 14-15; p. 67, lines 11-13; p.92).

CERTIFICATE OF COUNSEL IN FINAL BRIEF

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No.: 20-ALJ-22-0340-AP

RECEIVED
Sep 22 2021
SC Court of Appeals

Appellate Case No.: 2021-000490

Greg German, Appellant,

v.

South Carolina Department of Employment and Workforce, Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

September 22, 2021

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CONCLUSION

The party challenging the ruling bears the burden of proving that the Panel's decision is unsupported by the evidence. *Waters, supra.* The Panel's decision, however, is supported by substantial evidence. The Panel reasonably concluded that Appellant failed to meet the eligibility requirements to receive UI benefits and that his own negligence was the root cause of his failure to file timely weekly claims as required by South Carolina law. As a result, the ALC's decision affirming the Panel was correct and this Court should affirm.

Respectfully Submitted,

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