

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Case No.: 11-ALJ-22-0553-AP

Alma Washington,

Appellant,

v.

South Carolina Department of Employment
And Workforce and Palmetto Health,

Respondents.

INITIAL BRIEF OF RESPONDENTS

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ISSUES ON APPEAL

DID THE ADMINISTRATIVE LAW COURT ERR IN HOLDING THE FINAL DECISION OF THE DEPARTMENT WAS NOT CLEARLY ERRONEOUS IN LIGHT OF THE SUBSTANTIAL EVIDENCE IN THE RECORD?

STATEMENT OF THE CASE

Alma Washington, (hereinafter "Appellant") was employed with Palmetto Health (hereinafter "Employer"). She retired from her employment in May 2011. Thereafter the Appellant applied for unemployment benefits with the South Carolina Department and Workforce (hereinafter "SCDEW" or "Department"). A SCDEW claims adjudicator determination held Appellant indefinitely disqualified from receiving benefits, pursuant to S.C. Code Ann. § 41-35-120(8) upon finding she voluntarily retired from her employment. The Appellant appealed the initial determination to the Appeal Tribunal on August 23, 2011.

The Appeal Tribunal conducted an evidentiary hearing and both Employer and Appellant participated on September 22, 2011. The resulting decision affirmed the initial determination holding her indefinitely disqualified based on a finding she voluntarily retired from her employment. Appellant appealed the Appeal Tribunal decision to the Appellate Panel on September 29, 2011. The Appellate Panel issued the Department's final decision on October 25, 2011, which affirmed the Appeal Tribunal decision. Appellant then sought judicial review of SCDEW's final administrative decision in the Administrative Law Court (hereinafter "ALC"). After review of the record and briefs, the Honorable Deborah Brooks Durden affirmed the Department decision upon finding there is substantial evidence upon which a reasonable person could find that Appellant's retirement was voluntary. (R. __) The ALC further found that the Department's decision was not clearly erroneous in light of the substantial evidence in the record, and that the record supports the decision. (R. __)

Appellant commenced this action seeking judicial review the ALC's Order affirming SCDEW's final administrative decision.

FACTS

Appellant worked as a Sterile Processing Technician for Employer. (R.__) As a Sterile Processing Technician, Appellant customarily worked weekends. (R.__) In May of 2011, Appellant requested to have her schedule altered to accommodate her desire to have off one weekend a month. (R.__) Because of scheduling concerns, Employer could not accommodate her request. (R.__) Appellant then chose to voluntarily retire rather than continue working her normal schedule. (R.__) Appellant notified Employer that she was retiring effective May 18, 2011. She also filled out a form confirming her intention to retire.

ARGUMENT

STANDARD OF REVIEW

S.C. Code Ann § 1-23-610 sets forth the Court of Appeal's standard of review for a decision by the ALC regarding an administrative agency's final decision. The above section states, in relevant part:

The review of the administrative law judge's order must be confined to the record. Id. The court of appeals may reverse or modify the decision only if substantive rights of the appellant [have] been prejudiced because the decision is clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or otherwise characterized by an abuse of discretion or affected by other error of law. Id.

South Carolina Department of Corrections v. Mitchell, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (S.C.App. 2008).

SCDEW is an "agency" within the meaning of the Administrative Procedures Act (APA). See Gibson v. Florence Country Club, 282 S.C. 384, 386, 218, S.E.2d 365, 367 (1984). This court reviews ALC examinations of SCDEW Appellate Panel decisions pursuant to the judicial

review provisions of the Administrative Procedures Act, S.C. Code Ann. §§ 1-23-380 and 1-23-600 (2010). See Gibson, 282 S.C. 384, 386, 318 S. E.2d 365, 367 (1984); McEachern v. S.C. Employment Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-647 (Ct. App. 2006).

"The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence of 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 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;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probable and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(A)(5).

In accord with the deferential standards, "[t]he findings of an agency are presumed correct and will be set aside only if unsupported by substantial evidence" Kearse v. State Health and Human Services Finance Commission, 318 S.C. 198, 456 S.E.2d 892, 893 (1995). The burden is on the party seeking to overturn an agency decision "to prove convincingly that the agency's decision is unsupported by the evidence." Waters v. South Carolina Land Resources Commission, 321 S.C. 219, 467 S.E.2d 913, 917 (1996).

"Substantial evidence" means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Glenn v. South Carolina Dep't of Mental Health, 291 S.C. 279, 353 S.E.2d 284, 286 (1987). The testimony of a single witness, where credited by the administrative agency, constituted substantial evidence sufficient to support a factual finding "unless there is no reasonable probability that the fact could be as related by the witness." Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304, 307 (1981). The possibility of drawing two

inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports an administrative agency's finding. *Id.*

In contrast to factual findings, statutory interpretation is a matter of law and, as such, subject to *de novo* review by the Court. See Transportation Inc. Co. and Flagstar Corp. v. South Carolina Second Injury Fund, 389 S.C. 422, 699 S.E.2d 287, 289 (2010). Nevertheless, "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Id.* (internal citations omitted).

THE ADMINISTRATIVE LAW COURT DID NOT ERR IN HOLDING THE FINAL DECISION OF THE DEPARTMENT WAS NOT CLEARLY ERRONEOUS IN LIGHT OF THE SUBSTANTIAL EVIDENCE IN THE RECORD.

The ALC affirmed the Department's final decision holding Appellant ineligible to receive unemployment benefits upon finding that she voluntarily retired from her employment. (R. __) Her retirement came about as a result of the Appellant's own actions, not those of the Employer. In conformance with the standard of review, heretofore prescribed, the ALC's decision must be affirmed because it is supported by substantial evidence in the record and accords with applicable statutory and case law.

An employee who voluntarily retires from his most recent work is ineligible for unemployment benefits. See S.C. Code Ann. § 41-35-120(8). It is uncontroverted that Employer was the Appellant's most recent employment. While Appellant asserts in her Initial Brief that there is "no actual proof of retirement," that is simply not the case. Appellant herself admitted that she retired; a fact that is corroborated by documentary evidence, including a fact-finding form signed by Appellant and her letter of retirement, as well as the Employer's testimony. (R. __)

The Appellant became frustrated after Employer denied her request for a schedule change that would allow her to have one weekend off each month, but she testified that her job was never in jeopardy. (R.__) The Appellant worked the same schedule for eleven (11) years, until June of 2009, after which she found herself often working alone. (R.__) She spoke with managers about her frustration, but continued working under those conditions until retirement. (R.__) The Appellant never contacted Employer's human resources department about her concerns or to request a schedule change until after she retired. (R.__) Although the Appellant asserted that her supervisor told her that the only way to get a weekend off was to retire, Employer denied making the statement. (R.__)

The Employer's witnesses also confirmed that the Appellant's job was not in jeopardy, that Appellant was a good worker, and that they did not want her to retire (R.__) The issue was simply that the Appellant's request for one weekend off each month could not be accommodated at that time due to staffing issues. (R.__) Employer did not provide the Appellant with an incentive or pressure to retire. (R.__)

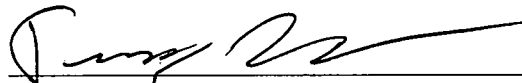
The fundamental purpose of the employment security laws is to benefit persons who are unemployed through no fault of their own. See S.C. Code Ann. § 41-27-20. By her election to retire, the Appellant voluntarily terminated her own employment. Therefore, she is ineligible to receive unemployment benefits pursuant to the law. See Richey v. Riegel Textile Corp., 253 S.C. 59, 169 S.E.2d 101 (S.C. 1969) ("Workers who separate from their work from personal choice do not thereby become unemployed because of the inability of industry to provide employment or 'through no fault of their own.'").

As in Richey, when the Appellant filed her claim for benefits, she was ineligible by reason of her voluntary retirement. There is evidence in the record to substantiate the Department's conclusion that the decision to retire rested solely with the Appellant. Therefore,

the ALC properly affirmed the Department's decision holding the Appellant was indefinitely disqualified from receiving unemployment benefits.

CONCLUSION

Because the Transcript and other documents that were part of the record before the Department establish Ms. Washington's job was never in jeopardy and that she could have remained in her current position, the ALC decision is fully supported by record evidence and is certainly not clearly erroneous. Therefore, the order of the Administrative Law Court must be affirmed.



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April 25, 2013

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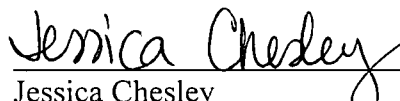
PROOF OF SERVICE

I certify that I have served the Initial Brief of the Respondents and the Designation of Matter on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on April 25, 2013, addressed to the parties at their addresses of record:

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