STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

McKinley Wright, Jr., Appellant, vs. South Carolina Department of Employment and Workforce and SEFA Transportation, Inc. Respondents.	Docket No. 21-ALJ-22-0180-AP

ORDER

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to McKinley Wright, Jr.'s (Appellant) appeal from the South Carolina Department of Employment and Workforce's (Department) Appellate Panel (Panel) Decision No. 21-HA-000410, affirming the decision of the Appeal Tribunal (Tribunal) finding that Appellant was disqualified from benefits on the basis he was discharged for misconduct connected with his employment. This Court has jurisdiction to hear this matter pursuant to Sections 1-23-380 and -600(E), and Section 41-35-750 of the South Carolina Code. S.C. Code Ann. § 1-23-380 and -600 (Supp. 2020); S.C. Code Ann. § 41-35-750 (2021). Upon consideration of arguments raised in the parties' briefs, and a review of the record on appeal and the law, the decision of the Department's Appellate Panel is affirmed.

BACKGROUND

Appellant was employed by SEFA Transportation, Inc. (Employer) as a truck driver from April 30, 2007, to March 16, 2020. On February 9, 2017, Appellant received a final written warning for hitting a legally parked vehicle that resulted in damage to the vehicle and Employer's truck.[1] The warning stated any future violations would result in immediate termination. Appellant acknowledged receipt of the warning. On March 13, 2020, Appellant lowered the truck bed of Employer's truck to dump a load of wet ash which resulted in the truck overturning. Employer determined Appellant failed to report an issue he claimed to have been experiencing with the load prior to the incident. Employer also determined Appellant failed to operate Employer's truck in compliance with Employer's safety policy while at the landfill. On April 7, 2020, Appellant

[1] The accident occurred on January 27, 2017.

applied for unemployment insurance benefits. On April 16, 2020, the claims adjudicator issued a determination concluding there was insufficient evidence to show wrongdoing on Appellant's part and finding Appellant eligible. By letter dated June 25, 2020, Employer appealed the claims adjudicator's decision.

On October 20, 2020, the Tribunal conducted an evidentiary hearing. Appellant and Employer's human resources director participated. In its decision mailed on October 26, 2020, the Tribunal held Appellant was discharged for misconduct and stated in part that Appellant's actions in failing to report a load issue (after having previously hit a parked car) which resulted in a truck overturning, fell below the standards of professional and safe conduct that Employer had a right to expect.

On November 5, 2020, Appellant appealed. On May 31, 2021, the Panel mailed its decision affirming the Tribunal's decision that Appellant was discharged for misconduct. The Panel stated in part:

> The record establishes the Claimant repeatedly caused safety concerns while operating the Employer's truck resulting in damage to the Employer's vehicle. The Claimant knew or should have known the Employer's truck had an overweight load that could result in the truck overturning. Based on the Claimant's testimony he was aware that wet material could cause a load to be overweight and failed to inform anyone with the Employer that there could be an issue with the load being overweight on the day in question. The Claimant dumped the overweight load resulting in damage to the Employer's truck. The Claimant failed to ensure he exercised reasonable care when operating the Employer's vehicle. The Claimant's carelessness was of such frequency as to show an intentional and substantial disregard of the Employer's interests. The Claimant was discharged for misconduct connected with the employment, and we find a twenty-week disqualification is appropriate.

This appeal followed.

ISSUE

Whether substantial evidence exists in the record to support the Department's Appellate Panel's decision that Appellant was terminated misconduct.

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). This Court reviews decisions of the Department in an appellate capacity

and is "restricted to reviewing the decision[s] below." *Al-Shabazz v. State*, 338 S.C. 354, 377, 527 S.E.2d 742, 754 (2000). According to Section 1-23-600(E) of the South Carolina Code, when acting in an appellate capacity, the court must apply the criteria of Section 1-23-380(5) which states:

> (5) 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 if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (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. § 1-23-380 (Supp. 2020).

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)). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 466 S.E.2d 357 (1996).

Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C 348, 461 S.E.2d 388 (1995). Finally, the party challenging an agency action has the

burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 467 S.E.2d at 917.

DISCUSSION

The public policy underlying the unemployment insurance program is to provide benefits only to those who are unemployed through no fault of their own. S.C. Code Ann. § 41-27-20 (2021); *see also* S.C. Code Ann. § 41-35-110(5) (2021) (explaining that an unemployed and insured worker is eligible to receive benefits only if he "has separated, through no fault of his own, from his most recent bona fide employer." "Misconduct" is defined as:

> [C]onduct evincing such wilful and wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in the carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his employer ...

S.C. Code Ann. § 41-35-120(2)(a) (2021). Misconduct includes the disregard of the standard of behavior which an employer can rightfully expect from an employee. *Mickens v. Southland Exch.-Joint Venture*, 305 S.C. 127, 130, 406 S.E.2d 363, 365 (1991) (*citing Lee v. S.C. Emp't Sec. Comm'n*, 277 S.C. 586, 588, 291 S.E.2d 378, 379 (1982)). "[T]he general rule is that, where the employer's request is *reasonable*, a refusal to comply will constitute misconduct, justifying a discharge for cause.") (emphasis in original). *Id.* "What is 'reasonable' will vary according to the circumstances of each case." *Id.*

Here, substantial evidence exists to support the Panel's decision that Appellant was discharged for misconduct connected with his employment. At the hearing before the Tribunal, Employer's human resources director testified about the written warning Appellant was given in 2017 after he hit a legally parked disabled vehicle resulting in property damage to both vehicles. Employer determined Appellant had violated its safety-policy by failing to slow and move into another lane. Appellant signed the warning which stated any future moving violations or accidents would result in termination per Employer's safety policy.

With regard to the second at-fault incident, Employer testified Appellant admitted he was aware the material was too heavy when the truck was loaded. When Appellant started dumping the material at the landfill and it was not fluidly dumping, he failed to report the unloading issue. Employer also said Appellant had sufficient experience to know the truck bed needed to be lowered which would have prevented the truck tipping over.

Appellant testified when he picked up the load of ash, it was hot and had to be watered down to cool it. As a result of watering down the ash, the tractor trailer was overweight. When he lifted the bed, the truck turned over. Contrary to Employer's testimony, Appellant said he reported the overweight ash to his supervisor prior to the incident but the supervisor directed him to proceed to the landfill anyway. Appellant said he had reported similar issues prior to the second incident. When Appellant arrived at the landfill and attempted to dump the load, the truck tipped over. When questioned by the hearing officer, Appellant admitted he knew the contents were sticky.

On appeal, Appellant maintains he rebutted Employer's testimony.[2] He also argues his supervisor made misrepresentations about whether Appellant had reported the truck being overweight and that there were witnesses who could have testified about the events leading to the vehicle overturning. By letter mailed on October 12, 2020, Appellant was notified of the hearing date and advised he could present witnesses on his behalf. Information about how to subpoena witnesses was also included in the notice yet Appellant subpoenaed no witnesses. A layperson is held to the same standard as an attorney. *See Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988) ("Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.").

While the Court is sympathetic to Appellant's situation, and while this determination in no way expresses how this Court might have found were it the trier of fact in the matter, the inescapable conclusion is that the Panel's decision is supported by substantial evidence in the record. Though the record contains evidence that could have permitted the Department to find for Appellant,[3] this does not mean that the Department's contrary findings are not supported by substantial evidence under this Court's limited standard of review. Consequently, Appellant has failed to meet his burden of establishing error in the Panel's decision.

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[2] Appellant said after the incident, Employer started handling these materials differently by putting the material on a belt trailer.

[3] *Waters, supra.* (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.).

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that the decision of the South Carolina Department of Employment and Workforce's Appellate Panel is **AFFIRMED**.

AND IT IS SO ORDERED.

SHIRLEY C. ROBINSON
Administrative Law Judge

October 5, 2021
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has served this order in the above entitled action upon all parties to the case by depositing a copy thereof in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s) of record at their last known address(es) this 5 day of October 2021.

By: _____
Judicial Law Clerk