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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Jr., Administrative Law Judge

Case No.: 21-ALJ-22-0245-AP

Appellate Case No. 2021-001444

Keiarra Carr, Appellant,

v.

South Carolina Department of Employment
and Workforce and JDC Management, LLC, Respondents.

Initial Brief of Respondents

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STATEMENT OF THE ISSUES ON APPEAL

I. Does substantial evidence support the Administrative Law Court's finding that Appellant failed to serve and file a brief supporting her position?

II. Does this Court have jurisdiction over Appellant's appeal?

III. Even if this Court has jurisdiction over Appellant's appeal, does substantial evidence support the Department of Employment and Workforce's finding that Appellant voluntarily left work without good cause and was disqualified from receiving benefits?

STATEMENT OF THE CASE

After separating from employment with Respondent JDC Management, LLC ("Respondent JDC"), Appellant Keiarra Carr ("Appellant") filed a claim for unemployment benefits with Respondent South Carolina Department of Employment and Workforce ("Respondent DEW") on May 24, 2020. (ALC R. pp. 005-008.) On October 19, 2020, Respondent DEW issued a determination holding Appellant ineligible for benefits because she voluntarily quit employment with Respondent JDC for a personal reason and without good cause under South Carolina Code Section 41-35-120. (ALC R. pp. 027-028.) Appellant appealed the determination on October 20, 2020 (ALC R. pp. 029-038) and Respondent DEW's Appeal Tribunal held a hearing on May 20, 2020 (ALC R. pp. 046-073). The Appeal Tribunal affirmed the determination, finding Appellant disqualified from receiving benefits because she voluntarily quit without good cause. (ALC R. pp. 075-077.) Appellant appealed to DEW's Appellate Panel. (ALC R. pp. 078-088.) The Appellate Panel issued a decision on June 29, 2021 affirming the Appeal Tribunal's decision. (ALC R. pp. 001-004.) On July 13, 2021, Appellant filed a notice of appeal with the Administrative Law Court ("ALC") seeking review of the Appellate Panel's decision. (Appeal to ALC.) Respondent DEW filed the Record on Appeal on August 10, 2021. (ALC Record.) Respondents filed a Joint Motion to Dismiss the Appeal on September 27, 2021. (Joint Mot. to Dm.) On October 14, 2021, Appellant

filed a Motion for Extension to File Appellant's Brief. (Motion for Extension.) On October 26, 2021, Judge H.W. Funderburk, Jr. issued an Order granting the Joint Motion to Dismiss. (ALC Order, Oct. 26, 2021.) Appellant filed a Motion for Rehearing on November 4, 2021. (Mot. for Reh'g.) Respondents filed a Joint Return to Appellant's Motion on November 16, 2021 (Return) and Appellant submitted a reply on November 19, 2021 (Reply). On December 6, 2021, Judge H.W. Funderburk, Jr. issued an Order denying Appellant's Motion for Rehearing. (ALC Order, Dec. 6, 2021.) On December 13, 2021, Judge H.W. Funderburk, Jr. issued a Special Order amending the Order Granting Respondents' Joint Motion to Dismiss and Order Denying Motion for Rehearing to reflect the correct spelling of Appellant's name. (ALC Special Order, Dec. 13, 2021.)

Appellant filed a Notice of Appeal with this Court on December 9, 2021, stating she "received written notice of entry of this order [judgment] on December 8, 2021." (Not. of App. to SC Ct. of App.) The proof of service accompanying Appellant's Notice of Appeal stated that Appellant served the ALC but did not state that Appellant served either Respondent. (Proof of Service, Dec. 9, 2021.) On December 13, 2021, the Court issued a deficiency letter informing Appellant her proof of service was deficient and must reflect that she served the Respondent DEW with her notice of appeal. (Def. Letter.) Appellant filed a second proof of service on December 16, 2021. (Proof of Service, Dec. 16, 2021.) In this proof of service, Appellant certified, "I have served the Notice of Appeal on The Honorable H.W. Funderburk[, Jr.] by depositing a copy of it in the United States Mail, postage prepaid, on December 16, 2021, addressed to his clerk of record, Elizabeth Perkins, 1205 Pendleton St., Suite 224 Columbia SC 20291." (*Id*.) Appellant listed the contact information for counsel for Respondents but did not state or certify that Appellant served Respondents with her notice of appeal. (*Id*.)

Appellant served Respondents with her Initial Brief on December 14, 2021, via electronic service. (Email serving Initial Brief with PDF attachment.) The Initial Brief was attached to an email as a PDF named "Notice of Appeal in a Civil Case." (*Id*.) The PDF attachment did not include Appellant's Notice of Appeal and Appellant did not attach any other documents to the email. (*Id.*) Respondents filed a Joint Motion to Dismiss for Lack of Appellate Jurisdiction on January 13, 2022. (Joint Mot. to Dismiss for Lack of Jurisdiction.) Appellant filed a Response on January 24, 2022. (Response to Joint Mot. to Dismiss for Lack of Jurisdiction.) This Court denied Respondents' Motion on January 28, 2022 and notified Respondents that their Initial Brief should be filed within 30 days of January 28, 2022. (App. Ct. Order.)

STANDARD OF REVIEW

Pursuant to the provisions of the South Carolina Administrative Procedures Act, the Court of Appeals may reverse or modify the decision of an administrative law judge if substantial rights of the appellant have been prejudiced because the findings 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, probative, and substantial evidence on the whole record; or
f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code § 1-23-610(B). In reviewing an administrative law judge's order, the appellate court "may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact" and the review "must be confined to the record." *Id*. This standard of review is referred to the substantial evidence rule and, pursuant to this standard, the appellate court should not reverse the order simply because there exists a "possibility of drawing two inconsistent conclusions from the evidence." *McEachern v. S.C. Emp. Sec. Comm'n*, 370 S.C.

553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006) (internal citations omitted). The order should be upheld unless it is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *Id.*

In order for the appellate court to have jurisdiction to review an order from an administrative law judge, an appellant must serve and file a notice of appeal not more than thirty days after receiving the order of the administrative law judge. S.C. Code § 1-23-610(A)(1). "The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008).

STATEMENT OF FACTS

Appellant worked for Respondent JDC from October 14, 2019 to February 21, 2020 and was employed as an assistant property manager. (ALC R. pp. 53-54, 65.) Appellant had concerns about being overworked and not having enough support from upper management so she sent emails to her district manager and vice president. (ALC R. pp. 55-56.) She also notified management of concerns about the condition of the property and lack of internet. (ALC R. pp. 55-57.) Appellant testified she told the vice president she was going to be giving a notice because everyone knew she was pregnant and would be leaving soon and she wasn't quitting under normal working conditions because she was having to cover two properties with no manager for three months. (ALC R. p. 57.) The Vice President told Appellant that Respondent JDC was working on hiring a Property Manager but then the Vice President left employment and Appellant did not contact Human Resources to share her concerns or ask about the timeline for hiring a Property Manager. (ALC R. pp. 056, 063.) Respondent JDC was recruiting for a property manager while

Appellant was employed but it took time to find someone for the position, especially because there was a limited job pool of applicants interested in and qualified for property management positions with affordable housing. (ALC R. p. 64.)

Respondent's District Manager worked with Appellant and supervised her in the absence of a property manager. (ALC R. pp. 65-66.) Appellant was frustrated that she was paid as an Assistant Property Manager instead of being promoted to a full-time property manager. (ALC R. pp. 058-59.) Respondent's District Manager was not notified by Appellant that Appellant would be leaving or giving notice. (ALC R. p. 065.) Respondent's HR Director joined the company on January 2, 2020 and was not notified by Appellant that Appellant had concerns about being overworked or would be giving notice or had given notice to resign. (ALC R. p. 063-064.) Appellant sent Respondent's HR Director an email on the day she resigned stating that she had resigned (after only four months of employment) and had dropped her keys in the drop box. (ALC R. pp. 063-64, 070.) Respondent JDC paid Appellant for all hours Appellant worked, even when Appellant worked more hours than initially stated in her offer letter. (ALC R. pp. 058-059.) Appellant was hired to work twenty-nine hours per week and worked over twenty-nine hours during four weeks of her four-month employment with Respondent JDC. (*Id.*)

ARGUMENT

I. Substantial evidence supports the Administrative Law Court's finding that Appellant failed to serve and file a brief supporting her position.

There is no evidence in the Record that Appellant timely filed and served a brief in her appeal to the Administrative Law Court ("ALC"). Appellant does not attempt to argue in her brief to this Court that she timely filed or served a brief in her appeal to the ALC, nor does she assert that the ALC's dismissal of her appeal on these grounds was erroneous or should be reversed. In the ALC's Notice of Assignment, Appellant was clearly notified of the deadline for filing her brief.

(Not. of Ass'n.) Appellant's brief was due on August 30, 2021. Respondents filed a Joint Motion to Dismiss the Appeal on September 27, 2021 and Appellant thereafter filed a Motion for Extension of Time and proffered brief on October 14, 2021. Under SCALC Rule 38, the ALC may dismiss an appeal "for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided in these rules or by order of the Court." The ALC dismissed Appellant's appeal in accordance with Rule 38. Appellant later filed a Motion for Rehearing and the ALC denied Appellant's Motion because Appellant failed to state any points that had been overlooked or misapprehended by the ALC as required by Rule 40 of the SCALC Rules and failed to provide any explanation regarding her failure to timely file a brief in support of her appeal. Appellant's appeal to this Court should be dismissed and the ALC's dismissal should be affirmed because Appellant has failed to allege that the ALC's dismissal was erroneous or provide any facts, legal arguments, or grounds to support a reversal of the ALC's Order.

II. This Court lacks jurisdiction over Appellant's appeal because of Appellant's failure to serve Respondents with her Notice of Appeal.

Pursuant to Section 1-23-610(A)(1) of the South Carolina Code of Laws and Rule 203(b)(6) of the South Carolina Appellate Court Rules, an appellant must serve the agency and all parties of record with her notice of appeal "not more than thirty days after the party receives the final decision and order" of the ALC. S.C. Code § 1-23-610(A)(1); SCACR 203(b)(6). "The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction." *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). Consequently, the timely filing and service of the notice of appeal are jurisdictional requirements under Section 1-23-610(A)(1) and Rule 203(b)(6), and the Court "has no authority to extend or expand the time in which the notice of intent to appeal must be served." *Mears v. Mears*, 287 S.C.

168, 169, 337 S.E.2d 206, 207 (1985); *Allison*, 394 S.C. at 189, 714 S.E.2d at 550 (noting "an appellate body may not extend the time to appeal"); *Clegg*, 377 S.C. at 651, 661 S.E.2d at 795 ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."); *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) ("The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court.").

Here, Appellant stated that she received the ALC decision on December 8, 2021. Appellant was required to serve the Respondents with her Notice of Appeal by January 7, 2022. Appellant failed to timely serve the Department or JDC with her Notice of Appeal. (Respondents' Joint Motion to Dm with Exhibits.) Appellant served Respondents with her Initial Brief via email by attaching the brief to an email as a PDF titled "Notice of Appeal in a Civil Case." (Email serving Initial Brief with PDF attachment.) However, the PDF did not include Appellant's Notice of Appeal nor did Appellant file a Proof of Service with this document certifying that she had served Respondents with her Notice of Appeal. (*Id*.) Because Appellant failed to timely serve Respondents with her notice of appeal, this Court lacks appellate jurisdiction to hear this appeal and should dismiss it.

III. Even if this Court has jurisdiction over Appellant's appeal, substantial evidence supports the Department of Employment and Workforce's finding that Appellant voluntarily left work without good cause and was disqualified from receiving benefits.

This Court lacks appellate jurisdiction to hear this appeal because Appellant failed to timely serve Respondents with her notice of appeal. Additionally, even if this Court finds that it has jurisdiction over this appeal, Appellant has only appealed the ALC's Order of Dismissal and

therefore this Court's review is limited to the issue of whether the ALC properly dismissed Appellant's appeal due to her failure to file a brief with the ALC. Respondents respectfully request that this appeal be dismissed for lack of jurisdiction or that the ALC's Order be affirmed. However, if this Court finds that jurisdiction is proper and the ALC erred in dismissing Appellant's appeal to the ALC, Respondents request that this Court affirm the denial of unemployment benefits on the ground that Appellant voluntarily left work without good cause. The Record includes substantial evidence supporting the finding that Appellant voluntarily left work without good cause and Respondents request affirmance of the denial of benefits on this ground, pursuant to Rule 220(c) of the South Carolina Appellate Court Rules.

S.C. Code Section 41-35-120(1) requires disqualification from benefits if an employee left work voluntarily, without good cause. In 1951, the South Carolina Supreme Court held that "good cause" in this context contemplates a cause connected with the claimant's employment and, therefore, an employee who voluntarily left employment for a personal reason would be disqualified from receiving benefits. *Stone Mfg. Co. v. S.C. Emp. Sec. Comm'n*, 219 S.C. 239, 247, 64 S.E.2d 644, 647 (1951). Twenty-five years later, the South Carolina Supreme Court revisited the issue and again held that leaving employment for a personal reason, even if a good reason, disqualified a claimant from receiving benefits. *Faile v. S.C. Emp. Sec. Comm'n*, 267 S.C. 536, 541–42, 230 S.E.2d 219, 222–23 (1976).

The same result was reached in *Mills v. S.C. Unemployment Commission* in which the Court concluded that a claimant who left work because she needed to care for her children during the only available shift of work was disqualified from receiving benefits because the statute did not evidence an intent to provide benefits for persons who quit their jobs because of a change in their personal circumstances. 204 S.C. 37, 28 S.E.2d 535 (1943). More recently, this Court

examined the issue of good cause in *Hendricks v. Belcher Staffing*, No. 2005-UP-060, 2005 WL 7082985, at *3 (S.C. Ct. App. Jan. 24, 2005). In *Hendricks*, the claimant stated that he left the job because he was doing work as an electrician but being paid as an electrician's helper, told his employer about it, and the employer did nothing. *Id*. at *2. This Court found that there was "substantial evidence in the record to support the Commission's finding of fact that [claimant] left his assignment with [employer] because he was unhappy with his pay and status on the job" and affirmed the Unemployment Commission's holding that the claimant was disqualified from receiving unemployment benefits because he left his most recent work without good cause. *Id*. at *3.

Here, Appellant testified she resigned from employment with Respondent JDC for several reasons. Appellant testified she resigned because she was pregnant and was going to be leaving soon anyways[1] and because she was overworked because Respondent JDC had not yet hired a Property Manager to assist her at the property where she worked. (ALC R. p. 055-57.) Appellant testified she brought these concerns to her Vice President's attention and the Vice President told her the employer was working on hiring someone but then the Vice President left the employer and Appellant did not contact Human Resources to share her concerns or ask about the timeline for hiring a Property Manager. (ALC R. pp. 056-57, 063.) Respondent sent a District Manager to work at the property with Appellant in the absence of a Property Manager (ALC R. pp. 65-66), nevertheless, Appellant resigned after four months of employment (ALC R. pp. 054, 063). Appellant was hired to work twenty-nine hours per week and during four weeks (out of the four-month employment) she worked more than twenty-nine hours and was paid for all hours she

[1] Appellant argues that the Tribunal and Panel refused to let her submit evidence about her pregnancy but, the transcript of testimony from the Tribunal hearing shows that Appellant was allowed to testify about her pregnancy. (ALC R. p. 057.)

worked. (ALC R. p. 055, 058, 059.) Appellant was frustrated that she was paid as an Assistant Property Manager instead of being promoted to a full-time Property Manager although there is no evidence in the Record that Appellant applied for a promotion or requested a promotion. (ALC R. pp. 058-59.) Appellant's reasons for leaving work are similar to the reasons examined in *Stone Mfg*., *Mills*, and *Hendricks*. These reasons are not "good cause." Appellant voluntarily left employment for personal reasons and because she was dissatisfied with the job. Respondents respectfully request that this Court affirm the Department of Employment and Workforce's decision that Appellant is disqualified from receiving unemployment benefits

CONCLUSION

Based on the foregoing, Respondents respectfully request this Court affirm the ALC's Order dismissing Appellant's appeal for failure to file a brief and affirm the Appellate Panel's Order disqualifying Appellant from unemployment benefits.

Respectfully Submitted,

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