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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
ADMINISTRATIVE LAW COURT

Chief Judge H. Bruce Williams and Judges Aphrodite Konduros and Jerry Vinson Jr.,
Court of Appeals Judges
S. Phillip Lenski, Administrative Law Court Judge

Appellate Case No. 2021-001462 (S.C. Ct. App. filed December 13, 2021)
Docket No. 21-ALJ-22-0116-AP (ALC filed April 22, 2021)

South Carolina Department of Employment and Workforce and 4056 LLC Main DBA Spill the Beans currently known as Andee's Custom Blended Ice Cream — Respondents,

v.

Katrina Daniels, — Petitioner.

PETITION FOR ORIGINAL / EXTRAORDINARY WRIT AND/OR WRIT OF MANDAMUS

May 29, 2022

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INDEX

CERTIFICATE OF COUNSEL

Petitioner (pro-se) certifies that the appeal to the South Carolina Court of Appeals was denied on May 4, 2022 because all parties were served within thirty (30) days after the receipt of the decision, except for the employer (who, originally, the court said did not need to be served) but was served 9 days later. Motion to Reinstate/Petition for Rehearing before the Court of Appeals, which was construed as a Petition to Rehear the dismissal, was made and finally ruled on May 12, 2022, denying the petition due to lack of jurisdiction.

INTRODUCTION

The writ before this court is directly related to the extraordinary circumstances presented by the global COVID-19 pandemic resulting in a new federal Pandemic Unemployment Assistance (PUA) program which was offered for the first time through the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (2020) (CARES Act).

This case is regarding the stopping and remanding of the twice approved PUA benefits. The federal CARES Act of 2020 is simply written, and clearly verifies that the petitioner's benefits should not have been stopped and reversed. The rulings of both the Administrative Panel and the Administrative Law Court are in conflict with the unambiguous terms of the federal CARES Act of 2020.

QUESTIONS PRESENTED

1. Did the Appellate Panel and the Administrative Law Court correctly interpret the CARES Act of 2020 federal statute?

2. Should the Tribunal hearing of October 7, 2020 (which was ruled in the petitioner's favor) have been upheld?

3. Has the petitioner's case continually been thwarted due to the learning curve and mistakes being made as a result of the Department of Employment and Workforce (DEW) being flooded with claims due to the severe magnitude of the COVID pandemic and the handling of new and unfamiliar PUA claims for the first time?

4. Should the theory of cumulative errors apply in this case?

STATEMENT OF CASE

In March of 2020, the petitioner (a college student) was laid off from her part-time employment at an ice cream/coffee shop because the employer's business closed due to COVID. This would be the 4th year that the petitioner worked for this employer. On April 26, 2020, after the employer gave permission to do so (as initially the employer wasn't sure the petitioner would qualify for benefits), the petitioner filed for unemployment.

The petitioner did not qualify for regular unemployment but was found eligible for PUA benefits on April 30, 2020, which was confirmed in DEW's May 12, 2020 determination letter.

On April 28, 2020, the employer sent a GroupMe message stating,

"Hi everyone, once again I know filing for unemployment can be confusing. Remember, if you would not have been working at STBC for the duration of summer, you should not be applying for unemployment benefits from STBC now that the semester has come to an end.
If you had another summer job lined up, you could apply for unemployment benefits through that job if you are not able to work there due to COVID19. Feel free to reach out to me if you have questions!"

The petitioner contacted the South Carolina Department of Workforce (DEW). Initially, the petitioner had filed separate applications for each employer she worked for during the benefit period, since DEW said the summer job of 2019 is in the qualifying benefit period. DEW said there should only be one application listing all employers, and DEW was working on merging all employers into one application. DEW said she was filing correctly and to continue to certify each week, as the employer is confused on how these benefits work.

At the end of the semester, in May of 2020, the employer sent out another Group me text message stating:

"Hi again, I hate to have to clarify this once more. For those of you who made it clear that you would not be in Clemson this summer and would not be working for STB, you should not have filed and be receiving weekly unemployment benefits. The pay you receive on a weekly basis does come from my bank account. Yes, unemployment is from the state, though it is a fund I pay into in order for you to receive that money. It's not only financially challenging but also makes me very disappointed to have some of you earning a weekly benefit from me when you would not have been her working this summer. If this applies to you consider refiling

with the summer job you would have had that is not STB. And if you would not have had another summer job, you shouldn't be receiving unemployment. I am working on my end to remove those of you who are not summer staff from my weekly payments. But maybe consider declining on your end."

The employer sent another personal text message stating:
" … I'm reaching out once again to those of you who this applies to. Since you made it clear that you would not be working at STB this summer you should not be receiving weekly unemployment pay for STB. The state does not do back pay as you were hoping for and I'm sorry for that. But it does appear that they have qualified to pay you beginning 4/19 moving forward on my behalf. This unemployment pay is for staff who are currently here and ready to work the minute work is available to them. As far as I know you were not one of these people planning to work this summer. I am working to file an appeal against a number of staff who would not have been summer employees and are receiving unemployment pay this summer. You can probably imagine it is a financial hardship to be covering staff who planned to work as well as staff who had no plans to work this summer. I hope you'll reconsider your filing and make changes on your end if possible. I will likely not be bringing staff back in the fall who have made this decision for summer time as it makes me uncomfortable."

Followed by another text message stating:

"For everyone who did plan to work here this summer, I know this has been a huge inconvenience and support you filing for unemployment. I know the website has been tricky and you may call me if you have questions and I'll do my best to help. It's definitely a time of uncertainty so as much as I would love to have summer staff here, I don't know yet when that time will come. So, if you did plan to work this summer and we had previously spoken about that again I support you filing for unemployment benefits, if needed."

The petitioner reached out to DEW again. The employer's request to reassign the bona fide employer appeared to be a simple one. Since all employers need to be on one application, according to DEW, one cannot simply "decline on your end" from one employer. DEW informed that Pandemic Unemployment Assistance (PUA) benefits does not affect the employer's bank account and one cannot reassign, pick, or chose who the bona fide employer is, reiterating that all employers that the petitioner worked for during the benefit period needs to be on one application, and since the employer was the last employer the petitioner worked for and the summer job is also closed due to COVID, then the employer is still considered the bona fide employer.

Based on the employer's misunderstanding and not understanding that the petitioner could not "decline on her end" from one of the jobs listed on the application, the employer followed through with attempting to eliminate all the part-time help that fell into this category, which includes the petitioner, and appealed. After being approved for PUA benefits the second time, the petitioner received a decision letter dated June 12, 2020 stating that she was held ineligible for benefits from May 10, 2020.

The petitioner called DEW, as she was confused why she received this letter. All correspondence, in the order in which they were received (which is part of the ROA, which was presented as evidence at all the hearings, which was presented to the Appellate Panel, and which was also presented to the ALC), was reviewed. Among the correspondence, the employer had sent out a letter on May 12, 2020 to her employees to gauge interest for potential and hopeful but limited and uncertain hours for the upcoming summer, acknowledging that there will not be enough hours to go around. In the meanwhile, the employer was hoping to open the shop on a "trial basis" with just her sister and herself as she "figures out best practices for the time." By law, the dining area had to remain closed, and only a small walk-up window could be utilized. The petitioner responded to this letter, and the employer responded to the petitioner's response.

After reading all the correspondence, DEW instructed the petitioner to appeal the employer's appeal. DEW said one of the most important correspondences is in the letter that was emailed a month *after* the employer tried to deny such benefits (emphasis on after), which proved that the employer approved these benefits (as the employer stated that she hopes that the benefits the petitioner is receiving on behalf of the employer is helping her (the petitioner) with her expense). DEW said that the other important fact in this same letter also proved that there is "no job available" for the petitioner (as only those who were previously confirmed before COVID, which eliminates all those who had summer internship jobs lined up, including the

petitioner, will be offered a job for the upcoming summer first, once they become available, as there were many uncertainties).

DEW dismissed the appeal. DEW stated that by law, in pursuant to **S.C. Code Regs. § 47-23**, a bona fide offer needed to be presented to the agency, but the employer did not provide a bona fide offer. DEW worked for months to dismiss what the petitioner thought was the employer's second appeal. DEW confirmed again that there was not a bona fide offer on file and was escalating the dismissal, as the dismissal was being rejected because of the petitioner's pending appeal (which DEW instructed petitioner to submit).

Upon further review of DEW's record on appeal, the employer only submitted one appeal, but the DEW agent who instructed the petitioner to appeal the employer's appeal was not aware of this. By instructing the petitioner to file her own appeal, the appeal that was already denied, was wrongfully reopened.

From June of 2020 until the Tribunal hearing of October 7, 2020, the petitioner's account was frozen, incurring many hardships, as now she had to call in to certify each week by phone since her online certification privileges had been suspended. This was an extremely difficult task that the petitioner had to endure over the next five (5) months. DEW was faced with insurmountable claims that were pouring in due to COVID; DEW's phone lines were flooded. Hold times (if able to get through, as many times, upon opening at 8:00 a.m., DEW had already met the limit for the day and were not accepting phone calls) were averaging 5 hours. Most times, after waiting 5 hours on hold, the agent would pick up, but the phone call would drop. The petitioner would have to call back again, having to wait another 5 hours in the holding queue only to be disconnected once again or when the hold was terminated because the office had closed with instructions to call back tomorrow. The shortest hold time during this period was a 3 ½ hour hold. As a result, it took days of attempts each week to try to certify. Despite always

giving a call back number immediately after the agent picked up the call (after being disconnected continually) only one time did one of the agents call back. DEW said that this was because once one phone call dropped, another phone call was received.

After five months of hardships and without receiving benefits, the Tribunal hearing on October 7, 2020 ruled in the petitioner's favor finding the petitioner eligible for PUA benefits once more. Despite that the petitioner tried in good faith to reassign the bona fide employer to the summer employer and notified the employer of DEW's response, the employer still did not understand. These bad sentiments were noted when the employer stated, " I hope you'll reconsider your filing and make changes on your end if possible. I will likely not be bringing staff back in the fall who have made this decision for summer time as it makes me uncomfortable." To address the employer's misconception, and that the inability to follow the employer's request was due to no fault of the petitioner, the hearing officer also notated S.C. Code Ann.§ 41-27-370 "(5) has separated, through no fault of his own, from his most recent bona fide employer; provided, however, the term "most recent bona fidsubsequent [*sic*] to his separation in which he earned less than eight times his weekly benefit amount;" in the findings.

The employer appealed again because she did not participate in the hearing. DEW explained all the rules and regulations which disqualified the employer's appeal and stated that the employer would not be afford another hearing. To everyone's surprise, including DEW's, on January 6, 2021, the tribunal allowed the employer another hearing.

On January 28, 2021, the tribunal hearing was based on the hypothetical question "if COVID never happened," but COVID did happen, and this cannot and should not be ignored, nor should the rules that had recently been put into place (such as the CARES Act of 2020) simply be overlooked. The hearing officer ruled in the employer's favor.

The petitioner appealed to the Appellate Panel. The Panel ignored all the evidence presented before each hearing and which was presented to the Panel and the fact that the employer presented no evidence at all for each of the hearings. The Panel ignored or misinterpreted the provision put in place by the CARES Act which confirms that petitioner's twice approved PUA benefits should not have been remanded and the decision from the Tribunal on October 7, 2020 (in the petitioner's favor) should have been upheld. Instead, the Panel found the petitioner ineligible for benefits.

The Appeals Department escalated the problem on March 31, 2021 and again on April 5, 2021, as the petitioner had incurred a new debt of $10,500.00 (even though she was approved for Double Affirmation, which DEW confirmed meant that anything already paid out will not be owed back, regardless of the Panel's decision) and DEW's promise for reimbursement, regarding an overpayment error, could not be generated, as the account was frozen again, for the second time. Once again, the petitioner was faced with the task of certifying online from January 2021 through September 2021, facing extremely long hold times due to limited staff and an overwhelming number of claims as a result of the pandemic, making it almost impossible to get through, because her online certification privileges and benefits had been taken away for the second time while the appeals were pending resulting in even further hardships.

DEW said that due to the number of errors made, the petitioner's claim should never have gotten to this point. Therefore, as opposed to filing an appeal with the Administrative Law Court (ALC), DEW instructed the petitioner to write an Appeal/Waiver Request, fax to three different numbers, e-mail to appealshelp@dew.sc.gov, upload the document to her portal, as well as to reach out to her state representatives for help.

The petitioner did as DEW instructed, filed the Waiver Request and the Appeal on April 5, 2021, and reached out to her state representatives for the first time. DEW's Director of

Governmental Affairs listened intently, reviewed the long list of errors that had been made, spoke with the Director of Appeals, but later concluded that his hands were tied; he could not overrule the Panel's decision. The petitioner was informed that she would have to appeal to the Administrative Law Court (ALC).

On April 22, 2021, the petitioner appealed to the ALC.

On October 21, 2021, the ALC's final order affirmed the Panel's decision.

On October 29, 2021, the Appellant served a Motion for Reconsideration. On November 8, 2021, the Respondent filed a Response in Opposition. On November 12, 2021, the ALC judge (immediately after receiving the Respondent's Opposition which was sent by US postal mail but was marked as received the day the Opposition was written) changed the Motion for Reconsideration to a Motion for Rehearing, and then denied the Motion for Rehearing before receiving the Appellant's Response to the Respondent's Opposition, which had been timely served and mailed the same day as the judge's order. There was no further response from the ALC.

On December 16, 2021, the petitioner appealed to the Court of Appeal by serving the ALC Clerk of Court (only this one time) and DEW, as instructed by this court, stating that the employer does not need to be served. All required parties were served within thirty (30) days after the final notice was given. The petitioner served the appeal to the employer 9 days later, after receiving a letter regarding a change in title moving forward, and while awaiting further clarification (Motion to Amend) from the court.

DEW did not raise any concerns upon receiving the timely served appeal dated December 13, 2021, nor upon receipt of the court's letter regarding the title until 29 days later, on January 11, 2022 when DEW issued a Motion to Dismiss, which was served **after** the appeal had been

served to all parties (emphasis on *all*). On March 4, 2022, the appeal was dismissed based on lack of jurisdiction.

On March 18, 2022, the petitioner filed a Motion to Reinstate / Petition for Rehearing. Three judges from the Court of Appeals carefully considered all matters addressed in the motion/petition. Arguments made included that there is substantial evidence that an employer need not be served on a PUA case based on standards applied to other PUA cases (which are limited because the program is new and was only offered for a short period of time). PUA funds are federally funded, unlike state unemployment, and only an employer whose tax account is affected (according to DEW) needs to be served. The employer would not be a party of prejudice if the employer had not been served (as the employer is represented by DEW and not required to file briefs or motions). According to **Federal Rules of Civil Procedure, Rule 4 (a) (5) / Appeals as a Right When Taken**, the court can make an exception to extend the time to file when a party shows excusable neglect or good cause. The petitioner took great strides to ensure all rules of the court were properly being met, but the error was due to (possible) misinformation given by the court, as there is supporting documentation that the employer does not need to be served on a PUA claim, which would constitute excusable good cause. Not serving an employer is not a jurisdictional defect requiring dismissal *Bridge v. State Dept. of Employment*, 896 P.2d 759, 760 (Wyo. 1995). As in *Bridge v. State Dept. of Employment*, the petitioner remedied any procedural defect by serving the employer, without unnecessary delay. Quirks in the cases (which applies to this PUA case) can allow the courts to establish jurisdiction *Finch v. City of Vernon*, 845 F.2d 256 (11th Cir. 1988). Provisions from **28 U.S.C. § 2107 (b) (2**) / **Time for Appeal to Court of Appeals,** would have 60 days, not 30 days to file the appeal, which meant all parties were served on time (with emphasis on all), since the definition of a United States agency is "Government employees in the United States includes the United States

federal civil service, ***employees of the state governments of the United States***, and ***employees of local government in the United States"***

https://en.wikipedia.org/wiki/Government_employees_in_the_United_States. According to SC 29 Rule (4) D / Motion for Reconsideration, the final order would be considered January 11, 2022 (as the judge did not respond to the second correspondence regarding the Motion for Rehearing) in which case either of the two statutes would mean ALL parties (including the employer) were timely served. The Motion to Reinstate/Petition for Rehearing before the Court of Appeals, which was construed as a Petition to Rehear the dismissal, was made and finally ruled on May 12, 2022, denying the petition due to lack of jurisdiction.

The petitioner has exhausted all remedies and is now presenting this petition to this court. Although the main argument is that the provisions provided in the CARES Act, which are clearly stated, in unambiguous terms, proves that the petitioner's PUA benefits twice approved should not have been remanded. It is also important to show the record as a whole and all the errors and hardships that had been incurred while processing this claim.

ARGUMENTS

1. The Appellate Panel and the Administrative Law Court Did Not Correctly Interpret the CARES Act of 2020 Federal Statute.

> "The CARES Act, signed into law on March 27, 2020, 'creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits, and provides funding to states for the administration of the program.' U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 1. Under the Act, the Secretary of Labor 'shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially employed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other employment compensation ... or waiting period credit.' CARES Act § 2102(b).
>
> A 'covered individual" eligible to collect PUA benefits is an individual who (1) 'is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation,' and (2) self-certifies that she is

'otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because' of one of 11 reasons related to the COVID-19 pandemic. CARES Act § 2102(a)(3)(A). The PUA program extended economic assistance to people who lost work due to the pandemic but would not be eligible for regular unemployment-compensation benefits, such as "gig economy' workers who are ineligible for regular unemployment benefits because they are classified as independent contractors and not employees. UIPL 16-20 Attachment 1, at I-6; UIPL 16-20 Change 1 (April 27, 2020), at I-8. As the U.S. Department of Labor (USDOL) has explained, 'PUA is a benefit of last resort for anyone who does not qualify for other [unemployment-compensation] programs and who would be able and available to work but for one or more of the COVID-19 related reasons listed in section 2102 of the CARES Act.' UIPL 16-20 Change 1, at I-8."
In re Muse, 956 N.W.2d 1, 3 (Minn. Ct. App. 2021

"Enacted on March 27, 2020, the CARES Act provided financial assistance to individuals affected by the COVID-19 public health emergency declared by the United States Secretary of Health and Human Services on January 27, 2020. Such individuals included those who were unable or unavailable to work due to closure of their "place of employment . . . as a direct result of the COVID-19 public health emergency[.]" Section 2104(b)(1) of the CARES Act provided that, upon execution of an agreement between a state and the Labor Secretary, individuals otherwise entitled to receive UC benefits would be paid "regular compensation" in the amount determined under state law, plus an additional amount for Pandemic Compensation.Per Section 2104(b)(2) of the CARES Act, Pandemic Compensation could be made payable at the same time as, or separately from, any payment of "regular compensation." Individuals not otherwise eligible for "regular compensation," such as those who were self-employed, could receive Pandemic Unemployment Assistance under Section 2102 of the CARES Act, the total amount of which included the Pandemic Compensation provided for in Section 2104(b)(3) of the CARES Act. States are entitled to reimbursement by the federal government for Pandemic Unemployment Assistance paid to eligible individuals under Section 2102 of the CARES Act and for the "total amount of [Pandemic Compensation]" paid, plus administrative costs." *Carbon Lehigh Intermediate Unit #21 v. Kimberly Waardal (Workers' Comp. Appeal Board)*, 750 C.D. 2021, 1-2 (Pa. Cmmw. Ct. Jan. 3, 2022)

The CARES Act sets out two requirements for PUA eligibility: (1) an individual must be ineligible for regular unemployment benefits and (2) an individual must self-certify that they are available to work but unable to do so because of one of 10 criteria related to the COVID-19 pandemic. CARES Act § 2102(a)(3)(A). The 10 criteria is listed under "Who is eligible for PUA?' in unambiguous terms on DEW's website (http://www.scdew.gov/docs/default-source/covid-faq/ui-during-covid-9ff7d0f61e4a043d5897c292cdeb32df2.pdf?sfvrsn=2d8ce19_0 page 18). (Exhibit A). The 10 criteria can also be found and are also clearly listed on the federal

Advisory: Unemployment Insurance Program Letter No. 16-20 to State Workforce Agencies. (Exhibit B).

The petitioner met both requirements under the plain language of the CARES Act, which was confirmed by DEW's Pandemic Unemployment Assistance Determination mailed on May 12, 2020. (Exhibit C). At the time the claim was initially processed, the Letter of Determination indicated that PUA were not available yet, but if the petitioner was held eligible for PUA, DEW will contact her. (Exhibit D). On April 24, 2020, DEW's PUA self-service was live, and again clearly stated who is eligible for PUA. (Exhibit E).

The first requirement met for PUA benefits is that the petitioner not qualify for regular unemployment during the benefit period of April 2018 through March 2019 (Exhibit F) or from January 2019 through April 2019. (Exhibit G).

The second requirement met is that the petitioner's place of employment was closed due to COVID.

Under the PUA criteria, if a job became available, with emphasis on *if*, as there is substantial evidence that there was no job available for petitioner, the CARES Act holds the petitioner eligible for PUA benefits because she would have been unable to reach the new job (3 hours away) as a direct result of COVID-19. (Exhibit A, Exhibit B, Exhibit E, and DEW's website listed above).

According to the Employment and Training Administration Advisory System of the U.S. Department of Labor, Classification: Unemployment Insurance, the definition of the latter criteria is that:

"g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency. For example:
• An individual is unable to reach his or her job because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of the coronavirus or the employer has closed the place of employment.

• An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency."
(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf, I-5).

The Panel did not correctly interpret the CARES Act of 2020 nor apply the provisions provided by this Act. The Panel's finding on March 31, 2021 stated, "*We find the offer was suitable for the Claimant, but she refused because she had moved out of town. This was a personal reason for declining work and does not constitute good cause.*" (Exhibit H).

The Panel ignored that the petitioner was approved for Double Affirmation by the Appellate on February 9, 2021 and March 28, 2021, days before the Panel's final decision based on DEW's Appellate decision to dismiss the employer's initial appeal on May 5, 2020 (which appears to be a typo, should be May 15, 2020) and the subsequent Tribunal ruling on October 7, 2021, which was ruled in the petitioner's favor. (Exhibit I, Exhibit J, Exhibit K). The Panel failed to acknowledge these rulings in the petitioners favor in the panel's determination letter as facts and history of the case, so that when the Director of Governmental Affairs looked at the decision for the first time, he was not aware that there had ever been any previous rulings in the petitioner's favor. (Exhibit J, Exhibit K). Whereas the Panel did acknowledge that the employer closed due to the global emergency, the Panel ignored that the petitioner did not qualify for regular unemployment, but only PUA (despite this clarification being repeatedly made and that the determination letter from DEW finding the petitioner eligible for PUA was included in the evidence). (Exhibit C, Exhibit D, Exhibit E, Exhibit F). The Panel ignored that the colleges and universities were shut down (as directed by a government mandate), and that the president of the university, following the direct orders of Governor McMaster, told all students to go home and stay home as the college is closed and will only be resorting to long distance virtual learning. The Panel ignored the stay-at-home ordinances put into effect prevented traveling. The Panel ignored or misinterpreted the provisions provided in the CARES Act of 2020, which are clearly

stated in unambiguous terms, that the PUA benefits twice approved should not have been remanded. (Exhibit A, Exhibit B, Exhibit E). The Panel ignored that, per DEW, a bona fide offer needs to be a definite offer made in good faith to one individual (not a group) with unconditional terms and a letter to gauge interest for hopeful summer hours with many uncertainties to a limited number of selected employees (which the petitioner was not one of) is not a bona fide offer. The Panel ignored that *if* a job was available, it would be a 3-hour commute (which, according to DEW a bona fide offer must be a reasonable commute) and the provisions provided in the CARES Act would hold the petitioner eligible, regardless. (Exhibit A, Exhibit B, Exhibit E, Exhibit U). The Panel ignored that in the employer's grounds for appeal the employer allegedly claimed that the petitioner "…did not respond to this e-mailed invitation to return to work, nor respond to additional attempt at communication" but which was factually untrue (ROA 100). The Panel ignored that during the 3rd hearing (which is the first to be ruled in the employer's favor) when the hearing officer asked, "Did you receive any response from the claimant?" The employer testified under oath, "I did not receive a response." (ROA 173, 15-16). The Panel ignored that when the hearing officer asked, "Was there any—what was the last communication with the claimant…?" The employer said, "This email would have been our final communication." (ROA 173, 17-20). The Panel ignored when the hearing officer ask the employer once again, the employer testified, "No. I received no reply to the email and no form of communication via phone, text, did not come into the shop and ask for her job position to be ---you know, return to work, no communication whatsoever, so I took it as an assumption of no longer interested in working." (ROA 176, 7-11). The Panel ignored that there were over 18 written communications, including three responses after the May 12, 2020 letter to gauge interest for the upcoming hopeful summer hours between the employer and the petitioner, which was presented as evidence for all hearings, including the Panel. The Panel ignored the employer's

response after the petitioner responded to the letter to gauge interest for hopeful summer hours (where the employer stated she was hoping that the benefits she was receiving from the employer was helping the petitioner with her expenses and confirming that there is no work for the petitioner) which was received a month after the employer denied benefits. (Exhibit L). The Panel ignored that these correspondences were acknowledge during the hearing by the employer who testified, "I believe I have all except for one of the emails that she referred to…" (ROA 195 13-14). The Panel ignored all the evidence that only the petitioner submitted (and went to great lengths to do so) by e-mail, fax, and uploading to the portal 24 hours in advance before each hearing and which is part of DEW's ROA, and the fact that the employer did not submit any evidence at all, and this lack of evidence was questioned by the hearing officers during each of the hearings that the employer participated in. The Panel ignored the dismissal of relevant facts that were timely submitted before the hearing, discussed during the hearing, but omitted from the last Tribunal's finding disqualifying the petitioner for the first time (after being previously twice approved for PUA) which was brought to the Panel's attention. Instead, the Panel held that the employer's evidence was more credible than the petitioner's whereas the employer provided no evidence at all for any of the hearing. On March 31, 2021, the Panel's decision stated, "We find the offer was suitable for the Claimant, but she refused because she had moved out of town. This was a personal reason for declining work and does not constitute good cause." (Exhibit H).

On April 22, 2021, the petitioner appealed to the Administrative Law Court (ALC). The ALC also did not correctly interpret the CARES Act of 2020 nor apply the provisions provided in this Act. Instead, on October 21, 2021, the court's final order affirmed the Panel's decision based on, "The offer was suitable for the Appellant, but she refused the offer because she had moved at the end of the school semester" and "based on the foregoing" the court ordered the

final decision. (Exhibit M). None of the issues raised in the petitioner's appeal and brief (outlined above) were addressed by ALC.

The ALC did not address the employer's grounds for appeal allegedly claiming that the petitioner "…did not respond to this e-mailed invitation to return to work, nor respond to additional attempt at communication" which is factually untrue, and which was finally admitted by the employer during the hearing. (ROA 100, ROA 173, 15-16, ROA 173, 17-20, ROA 176, 7-11, ROA 195, 13-14).

The ALC did not address that the employer's work certification was also factually not true. In the employer's certification to DEW, the employer allegedly claimed the petitioner was offered work ***two*** times in the ***past three months***, acknowledging that this statement was true under the penalties of perjury. (Exhibit N). The employer only offered one (1) unconditional offer of work to all the employees on April 2, 2020, while the employees were all laid off due to the closure of the shop because of COVID. (Exhibit O). The opportunity offered involved watching a set of informational videos and completing an exam. The employer promised to pay four (4) hours of work when the employees return to work. The petitioner emailed the certification to the employer. The employer's response was, "Wonderful!!" (Exhibit P).

The petitioner respectfully requested that the ALC overturn the decision of the Panel, therefore entitling her to full benefit amount, thereby dismissing the $10,550 UI debt (of which is PUA), refund the $679.33 for the overpayment error that DEW worked on correcting but was asked to pay then be reimbursed because DEW could not stop the IRS letters from generating (even though the minimum balance due was corrected to $0), for a ruling on the Double Affirmation, as, confirmed by DEW, is under the jurisdiction of the ALC and to be determined by the ALC in this appeal (which would negate any further appeals on this matter) and to be paid the verified 4 hours of work, which the employer promised, but was never compensated. Due to

the ALC's misinterpretation of the federal statues set forth in the CARE Act (which clearly stated that the petitioner was eligible for PUA benefits) all requests were denied.

On October 29, 2021, due to a manifest of error of fact and an incorrect interpretation of a federal statue, the petitioner served a Motion for Reconsideration to all parties (which was within 10 days after receiving the Order). (Exhibit Q). A Motion for Reconsideration may be an option "**when you believe the judge did not properly examine certain evidence or correctly apply the law;"** and the judge should consider this Motion of Reconsideration when **"the final decision was made after an incorrect interpretation of the law or the law has changed since the judge made his/her final decision; and denying the Motion for Reconsideration will result in an obvious injustice." https://www.womenslaw.org/laws/preparing-court-yourself/after-decision-issued/motions-reconsideration**

The Motion included that the petitioner did not move home (which is three hours away with traffic) after the semester ended (with emphasis on end of the semester) as erroneously indicated in the final order dated October 21, 2021, but moved during the middle of the semester, as directed by the President of the University responding to Governor McMaster's order to close all schools, including colleges and universities in response to this unprecedented Global Pandemic that swept the world and the state of emergency that was declared by the United States President. The petitioner (who proved that she did not receive nor deny a bona fide job offer as no job was available for her and which was verified in writing by the employer and upheld in the October 7, 2020 hearing) did not move back home without good cause (as the Panel had indicated in their findings) but with good cause (based on a standard of reasonableness **S.C. Code Regs. $ 47-23**) following the executive orders put in place by both the Federal and State Government and the University's president following the direct orders of the state governor.

Included in the Motion for Reconsideration was all the government mandates, and letters from the university requesting all students to go home and stay home (to prove the Appellant did not move home without good cause during this extraordinary time). (Exhibit Q). *Id*. citing 76 Am. Jur. 2d, Unemployment Compensation § 102 (updated Nov. 2010)." Angelica Baker Smith v. Bagel Prot Café & Deli LLC and South Carolina Department of Workforce, Docket No. 20-ALJ-22-0215-AP.

The Motion for Reconsideration also pointed out that the provisions of the CARES Act of 2020 (which was overlooked by the court) stating that a person is eligible to receive PUA benefits based on 10 criteria. Since the place of employment was closed as a direct result of COVID-19, and since the Appellant would have been unable to reach the new job (*if* one was available) as a direct result of COVID-19, the Appellant qualifies under this act http://www.scdew.gov/docs/default-source/covid-faq/ui-during-covid-19ff7d0f61e4a043d5897c292cdeb32df2.pdf?sfvrsn=2d8ce19_0, page 18). (Exhibit A, Exhibit B, Exhibit E, Exhibit Q).

In addition, the Motion of Reconsideration listed the state and municipal orders restricting travel. This evidence was presented in the lower hearings, presented in the brief to the ALC, and respectfully presented again in the Motion for Reconsideration as a material fact that had been overlooked, and which was repeatedly not taken into consideration.

On November 8, 2021, the Respondent filed a Response in Opposition to the Appellant's Motion to Reconsider the Final Order stating that "The Appellant has not properly identified any points which have been overlooked or misapprehended…" and "The points Appellant has addressed in her Motion are manifestly without merit and do not require the Court to address them. Id." (Exhibit R).

On November 12, 2021, the ALC judge (immediately after receiving the Respondent's Opposition which was sent by US postal mail but was marked as received the day the Opposition was written) changed the Motion for Reconsideration to a Motion for Rehearing, and then denied the Motion for Rehearing before receiving the petitioner's Response to the Respondent's Opposition, which had been timely served and mailed the same day (November 12, 2021). The petitioner's response was issued addressing that DEW failed to counter, refute, or acknowledge the most important issues that were raised in the Motion for Reconsideration and to clarify and rebut, restate the material facts of the case. (Exhibit S, Exhibit T).

The federal provisions put into place to protect and qualify those who have been negatively affected as a result of the COVID-19 pandemic, which the petitioner was amongst those, were not correctly interrupted by the Panel or the ALC. These provisions, which is written in unambiguous plain English, clearly shows that the petitioner's twice approved PUA benefits should not have been remanded and denied.

2. The Tribunal Hearing of October 7, 2020 (Which Was Ruled in the Petitioner's Favor) Should Have Been Upheld

The petitioner, upon receiving a letter dated June 12, 2022 stating that she is held ineligible for benefits from May 10, 2020, called DEW to inquire. After reading all the correspondence between the petitioner and the employee, DEW instructed the petitioner to appeal the employer's appeal. As instructed, the petitioner filed an appeal that same day, on June 12, 2020.

On May 5, 2020 (which appears to be a typo and should be May 15, 2020) the employer's appeal was dismissed. (Exhibit K). According to DEW, the employer's appeal was dismissed by the Appellate because, in pursuant to the requirements of Section 41-35-120(5)(b), a Bona Fide offer letter must be filed with the Agency, and as a result of the employer failing to do so, "No disqualification will be imposed by reason of the failure of a claimant without good

cause to accept a direct offer of available suitable work unless the employer submits a copy of such an offer to the Department together with a certification that it was either received and refused by the claimant." (Exhibit K).

S.C. Code Regs. § 47-23 (". Pursuant to the requirements of Section41-35-120(5)(b), in determining whether work is suitable for an individual, the Department must consider, based on a standard of reasonableness, as it relates to the particular individual concerned, the degree of risk involved to his health, safety, morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.")

– A Bona Fide offer letter must be filed with the Agency

S.C. Code Regs. § 47-23 ("B. A written offer of work made directly by an employer shall set out the nature of the work offered, the probable wages and hours per week, the shift or daily hours of the proposed employment, the expected duration of employment, the time and place the claimant should report, and the name of the person to whom he is to report. No disqualification will be imposed by reason of the failure of a claimant without good cause to accept a direct offer of available suitable work unless the employer submits a copy of such an offer to the Department together with a certification that it was either received and refused by the claimant, or that it was directed by registered or certified mail to the last known address of the claimant and that no response was made by the claimant. Provided, however, that no direct offer of available suitable work made in accordance with this regulation shall be considered unless a notice of such offer of work is received by the Department.")

DEW worked for months to dismiss what the petitioner thought was the employer's second appeal as DEW stated that, by law, the appeal must be dismissed. The petitioner was told repeatedly that this claim was being escalated, because each attempt to dismiss the appeal was unsuccessful due to the petitioner's pending appeal (which DEW instructed petitioner to submit). Upon further review of DEW's record on appeal, the employer only submitted one appeal, but the DEW agent who instructed the petitioner to appeal the employer's appeal was not aware of this. By instructing the petitioner to file her own appeal, the employer's appeal, which had already been dismissed, had been wrongfully reopened on June 16, 2020, Appeal ID 160143. (Exhibit K).

In May of 2020, after the employer's appeal, the petitioner's account was frozen. DEW continued to attempt to dismiss the wrongful reopening of the appeal from June – October of

2020, but to no avail.

On October 12, 2020, the Tribunal hearing took place and DEW's Determination letter was ruled in the Petitioner's favor stating the following: "Decision was made based on SC Code ANN 41-27-20, SC Code Ann. 41-27-370 sections (1) and (5). It was also deemed that **"upon re-opening, the claimant was not offered hours of work, as the employer re-opened with limited staffing and hours of availability. There was no other available work for HER, therefore she is considered to have been laid-off."** (Exhibit J).

The employer appealed again because she did not participate in the hearing. DEW advised the petitioner that the employer would not be afforded another hearing as the employer was duly notified of the hearing, she did not provide testimony (as the hearing notice clearly states in bold writing must be given 24 hours in advance of the hearing of which only the petitioner followed this rule and included over 18 written correspondences from the employer), she did not file a "Bona Fide offer letter" (so this appeal should have been dismissed as there shouldn't even had been a first hearing), and she did not file the appeal within 10 days of the Tribunal's decision later. The Tribunal's decision letter was dated October 14, 2020. (Exhibit J). According to DEW, the employer appealed on October, 28, 2020, which is 14 days after the decision. The information provided by DEW correlates with what is reported on the portal. (Exhibit W). Appeal 1900876 was received on October 28, 2020 and void; whereas Appeal 193571 was received on October 28, 2020, but was not voided or dismissed later. (Exhibit W). Regardless of the rules and regulations which DEW said disqualified the employer's appeal, the employer was allowed another hearing.

The employer admitted, during the hearing, that she had received the hearing notice weeks in advance and in plenty of time, and therefore DEW said this was not considered an excusable absence (because she did not call in before the hearing, as stated in bold letters on the

notice). (ROA 126 II 24-25, Exhibit V). The employer provided no documentation to DEW before each of the three hearings (only the petitioner did), which was questioned during the hearing by the hearing officers, and hearings two, three, and four (January 6, 2021/ 20-LA-056935, January 28, 2021/ 21-LA-001173, and March 31, 2021/ 21-HA-000431) and appeals/decisions were based on the employer not providing the correct phone number when, after the employer was asked and given the opportunity to cure with specific and easy directions on how to do so (going into the portal and update the phone number), but the employer repeatedly failed to do so. (ROA 120 II 18-21, ROA 120 II 26-30, ROA 122 II 1-4, ROA 164 II 1-6, ROA ROA 166 II 20-27, ROA 175 II 29-30).

DEW's response (disagreeing with the hearing officer's decision regarding the rehearing) is also what has been ruled on in other similar cases; "Holding that referee's inability to contact employer on day of hearing due to failure of employer to inform referee of change in telephone number is not proper cause for nonappearance." Holding that referee's inability to contact employer on day of hearing due to failure of employer to inform referee of change in telephone number is not proper cause for nonappearance 970 A.2d 492 (Pa. Cmmw. Ct. 2008). EAT'N PARK HOSPITALITY v. BOARD, 970 A.2d 492, 494-95 (Pa. Cmmw. Ct. 2008) ("Second, this Court has repeatedly held that a party's own negligence is not sufficient "good cause" as a matter of law for failing to appear at a Referee's hearing. Kelly v. Unemployment Compensation Board of Review, 747 A.2d 436 (Pa. Cmwlth. 2000); Savage v. Unemployment Compensation Board of Review, 89 Pa. Cmwlth. 61, 491 A.2d 947 (1985).") Lockmer v. Unemployment Comp. Bd. of Review, 773 C.D. 2020, 3 (Pa. Cmmw. Ct. May. 2, 2022) ("Because [C]laimant was notified of the need to assure she could accept the [R]eferee's call, but she failed to do so, she fails to offer a legally sufficient reason to support a finding of proper cause for her nonappearance at the hearing.").

DEW said to bring up all these issues in the hearing, as they were surprised another hearing was granted. The petitioner, once again, was the only one to submit evidence prior to the hearing. The hearing officer would not let the petitioner bring up these facts or admit her documentation, as the hearing officer said the only question the petitioner can address is whether the Petitioner knew why the employer was not present.

Therefore, as other agents of DEW stated, the employer should not have been allowed a hearing to begin with, nor should have been granted another hearing. The findings from the October 7, 2020 hearing, ruled in the petitioner's favor, should have been upheld.

3. The Petitioner's Case Has Continually Been Thwarted Due to the Learning Curve and Mistakes Being Made as a Result of DEW Being Flooded With Claims Due to the Severe Magnitude of the COVID Pandemic and the Handling of New and Unfamiliar PUA Claims for the First Time.

There is still a learning curve on how to handle these new situations presented by this pandemic and cases regarding PUA. The Department was flooded with claims, many mistakes were made and according to the Department, this claim should have never gotten to this point. A simple request to oblige with the employer's request to reassign who the bona fide employer is to the employer of the summer job (which had also closed due to COVID) could not be done per DEW. The petitioner was told by DEW that all three jobs need to be on one application and the employer cannot request a reassignment of the bona fide employer even though letters for the summer job, proving the summer job was affected by COVID and is also closed due to COVID, were submitted to DEW back in May 2020.

Due to this continuous learning curve on how to handle the new PUA cases, this case has been continually thwarted.

First – This case has been continually treated as a UI case when it is a PUA case. PUA rules, regulations, and qualifications differ greatly from that of a regular unemployment case. For example, the Tribunal's decision letter, dated February 9, 2021 (which was the first decision

in the employer's favor based on if COVID never happened), stated, "*It is noted, the Claimant may qualify for benefits due to the Pandemic for the period in question, the state in which she was affected*" after the Tribunal's statement finding that the petitioner was ineligible for benefits. It appears that the Tribunal (by their own admission in their final decision), did not recognize the fact that the petitioner did **not** qualify for UI, that petitioner was already approved for PUA benefits, and that the petitioner was only receiving PUA benefits, despite all the evidence, which included DEW's letter of determination dated May 12, 2020 holding the petitioner eligible for PUA benefits on April 26, 2020. As a result, the CARES Act of 2020 provisions, which are different than that of regular unemployment, had been overlooked and the twice previously approved PUA benefits had been stopped and remanded.

Second - On DEW's website (Unemployment Insurance During Covid, page 14):

The published question is: "I worked for an employer, but resigned to take a new job. Before my start date, my new employer told me that the job was eliminated due COVID-19. Can I still apply?"

The published answer is: "If you have a letter from the new employer with the intended start date then go ahead and file. You will originally be denied; however, you do not need to do anything. Please wait on our agency for further information once PUA is enacted." (Exhibit A pg. 14)

In this case, the petitioner did not resign from her other employer, but was laid off because the business closed due to COVID. She ***did*** have a letter from her summer internship job stating that she was hired to work for the summer, and two subsequent letters stating that the summer internship business is also closed and remains closed due to COVID. All correspondence was uploaded to the portal and acknowledged by DEW. Once again, the learning curve on how to handle these new situations presented by this pandemic and cases regarding PUA happened too late in this case.

Third - After the tribunal approved the petitioner's Pandemic Unemployment Assistance (PUA) for the second time, the petitioner started to receive her benefits from June 2020 –

January 24, 2021 with payments starting the end of October 2020 (after the tribunal's decision granting the petitioner PUA benefits once again). During this time, DEW had sent the petitioner a notice on January 13, 2021, stating that there was an overpayment of $524[1], but subsequently told the petitioner that this notice was in error, confirming that the $524 had **not** been deposited into the petitioner's account for the week ending May 30, 2020. (Exhibit X). DEW instructed the petitioner **not** to pay this overage, as it was sent out in error. DEW made several attempts to fix the error and was successful by making the minimum payment of $0 due, but DEW could not successfully eliminate the automatically generated Notice of Action Regarding State Income Tax Return(s) letters. DEW asked the petitioner to pay the debt (after previously directing her **not** pay the debt because there is **not** an overpayment) as DEW said it appeared to be the only solution to eliminate these letters from generating. The petitioner paid, in good faith, as DEW directed, with a promise to be reimbursed. Due to further complications and service charge fees, this error resulted in the loss of $679.33[2].

The employer appealed again. The petitioner's benefits had been frozen for the second time, and her promised reimbursement could not be generated. Once again, the petitioner's case had been thwarted because, although DEW successfully corrected the problem by making the minimum payment balance of $0 due, but there was a learning curve on how to stop the IRS

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[1] Per the Department, the benefit week ending May 30, 2020 was for $1,124.00 ($600 PUA plus $524 (PUA of $600 minus taxes) plus $4 for the week petitioner was shorted). $528.00 was directly deposited into petitioner's bank account. Therefore, DEW stated that the $524.00 is not an overpayment, because it was not deposited.

[2] Petitioner could not pay the total in full because credit card maximum is $500. On January 15, 2021, petitioner paid $356.95 and on January 24, 2021 (after payment posted), petitioner paid the remaining balance of $176.96 (due to service fees). Instead of getting refunded, the petitioner's direct deposit of $358 for January 24, 2021 (weekly benefit of $300 plus $131 less taxes) was reduced to $213.58 resulting in a weekly shortage of $144.42 and a total loss of $679.33

letters from being generated, which created even a further problem when the promised reimbursement could not be generated due to the status of the claim.

Fourth - The Department learned how to handle the filing for PUA on a job that an employee was supposed to start but which was also closed due to COVID, while still being laid off from the employee's previous employer, who is also closed due to COVID (regardless of if the petitioner would have worked for the employer or not that summer if COVID didn't happen, as COVID did happen, and this is the reason why the petitioner qualifies for PUA). DEW made the corrections (which is what the employer asked all along) which would reassign the bona fide employer. However, due to the pending status of the claim before the Panel, and DEW's late resolution on how to correct the problem, the correction would not process. The petitioner was informed that it was a very simple and easy correction, by only changing one date in the preexisting claim (which listed all three employers the petitioner had worked for, as mandated by DEW) and which would have alleviated all the subsequent legal proceedings and hardships that the petitioner has had to endure and is still enduring (two years later).

Once again, the learning curve happened too late in this case. When DEW realized there is a simple way to correct the reassignment (which DEW stated does not affect either employer either way as it is a federal program and does not affect the employers' tax account), DEW made the correction. However, the discovery was made too late, as the appeal was already in motion and the correction could not process.

Fifth - The Appeals Department escalated the problem March 31, 2021, and once again on April 5, 2021, as the petitioner had incurred a new debt of $10,550.00 (even though she was approved for Double Affirmation and which DEW confirmed meant that anything already paid out will not be owed back, regardless of the Panel's decision). (Exhibit Y, Exhibit I). The petitioner was also not eligible for the rest of her PUA benefits (which she had continued to

certify each week, but with great difficulty facing extremely long hold times due to limited staff and an overwhelming number of claims as a result of the pandemic, making it almost impossible to get through because her online certification privileges had been taken away while the appeals were pending).

DEW said that due to the number of errors made, this claim should never have gotten to this point. Therefore, as opposed to filing an appeal with the Administrative Law Court (ALC), DEW instructed the petitioner to write an Appeal/Waiver Request, fax to three different numbers, e-mail to appealshelp@dew.sc.gov, upload the document to her portal, as well as to reach out to her state representatives for help. The petitioner did as DEW instructed, filed the Waiver Request and the Appeal on April 5, 2021, and reached out her state representatives for the first time. The Department Director of Governmental Affairs listened intently, reviewed the long list of errors that had been made, spoke with the Director of Appeals, but later concluded that his hands were tied; he could not overrule the Panel's decision. The petitioner was informed that she would have to appeal to the Administrative Law Court, but DEW should have corrected the internal errors made without putting the petitioner through any more hardship.

Sixth – Even though the petitioner was approved by DEW for PUA on April 30, 2020, the employer's first appeal was dismissed on May 5, 2020, and the Tribunal hearing on October 7, 2020 ruled again in her favor, the last hearing and Panel's decision reversed the petitioner's benefits, and a letter stating that she owed $10,550 in UI benefits (of which the petitioner was only receiving PUA) was generated.

Due to the overwhelming number of cases before DEW as a result of the pandemic, the waiver request, which was submitted on April 4, 2020 and which the petitioner was told it was supposed to be heard in June of 2021, was severely delayed. The waiver request was not resolved until March of 2022, after three more additional hearings including a wrongful denial of

a hearing and with the petitioner in tears, not understanding why her second waiver hearing that lasted an hour had to be reconvened and rescheduled, requiring a third waiver hearing, when every detail was already discussed. Gratefully, the waiver was approved. However, instead of waiving the full $10,550 overpayment the waiver was only for the outstanding balance due of $10,026 (as DEW subtracted the payment that the petitioner made of $524 (which actually resulted in a loss of $679.33) which DEW promised would be reimbursed before the petitioner's account was frozen for a second time. (Exhibit Y, Exhibit Z). Yet another learning curve, as DEW successfully showed that the minimum balance due as $0, but they did not know how to stop the IRS letter from generating which negatively affected the petitioner, who paid in good faith, but was not reimbursed.

The petitioner agrees with the DEW's agents that stated this claim should have never gotten to this point, and would have hoped (after these agents helped to escalate her claim to the Appeals Department) that DEW would and should have been able to fix the problem without having to appeal to the ALC. By simply changing one ending date on the application to reassign the bona fide employer to the summer employer, the employer would be appeased, as in the employer's text correspondence she erroneously stated that these funds were coming from her bank account (a misunderstanding, as on the Department's website is states that PUA are from the federal government and does not affect the employer's tax account) and this is why the employer strongly felt that **only** summer staff (who said they were going to work before COVID) should be "furloughed" and, therefore, sought to remove those employees who normally would not be working in the summer if COVID never happened. This simple fix would alleviate all the hardships the petitioner had faced and has continued to face over the last two years.

"In contrast to state unemployment insurance programs, the federal government provides the funds from the general fund of the United States Treasury for paying benefits to claimants under the Programs. See, e.g., 15 U.S.C. § 9023(d)(3)." Opinion No. 28065 (S.C. Ct. App. Filed October 13, 2021)

4. A Series of Cumulative Errors Applies to this Case.

A. The first **SIGNIFICANT** error, pursuant to the requirements of Section 41-35-120(5)(b), is that DEW should have found a way to dismiss the employer's appeal for a second time. Although DEW acknowledged that this appeal needed to be dismissed, the system would not process the dismissal because of the petitioner's pending appeal; the appeal that DEW instructed the petitioner to write. This petitioner's appeal inadvertently reopened the employer's appeal that DEW already dismissed. (Exhibit K). A petitioner would not appeal an appeal that was already awarded in the petitioner's favor and was only following DEW's directions (who was unaware that the appeal was dismissed). DEW erred by not finding a way to dismiss the appeal, which, by law, had to be dismissed, and which would have stopped all subsequent hearings and litigation.

B. The second **SIGNIFICANT** error was that DEW allowed the employer to have another hearing when DEW's rules and regulations disqualified the employer's initial appeal as well as the employer's appeal for a rehearing. DEW was so upset regarding the hearing officer's ruling to allow the employer to have another hearing and the fact that the hearing officer changed the issues of the next hearing to Layoff, Voluntary Quit and Discharge (which the agent said cannot be all three), the Department instructed the petitioner to ask the Appeals Department for two hearing officers to be present at the next hearing. However, due to limit staff, two hearing officers were not available, and the petitioner's PUA benefits were denied based on as if COVID never happened. (Exhibit U).

C. DEW and the ALC erred by not addressing that the employer's grounds for DEW and the ALC erred by not addressing that the employer's grounds for appeal allegedly claiming that the petitioner "…did not respond to this e-mailed invitation to return to work, nor respond to additional attempt at communication" which is factually untrue, and which was finally

admitted by the employer during the hearing. (ROA 100, ROA 173, 15-16, ROA 173, 17-20, ROA 176, 7-11, ROA 195, 13-14).

D. The ALC erred by not addressing that the employer's work certification was also factually not true. In the employer's certification to DEW, the employer allegedly claimed the petitioner was offered work ***two*** times in the ***past three months***, acknowledging that this statement was true under the penalties of perjury. (Exhibit N). The employer only offered one (1) unconditional offer of work to all the employees on April 2, 2020, while the employees were all laid off due to the closure of the shop because of COVID. (Exhibit O, Exhibit P).

E. The next error is that DEW found that the $524 overpayment was in error and fixed the error by showing $0 minimum payment due but could not find a way to stop the IRS letters from being generated other than to have the petitioner pay the amount, (which she did, in good faith), after being told **not** to pay the amount, with promise of reimbursement.

F. The next error is the complete disregard of ALL of the evidence that the petitioner had to go to great lengths to fax, mail, email, and upload to the portal (with great difficulty as each page had to be scanned in one page at a time, there were countless number of pages, and DEW had repetitive problems with receiving faxes, which meant the process had to be started all over again, and all evidence needed to be received 24 hours in advance of each hearing). Instead, the Panel felt that the employer's evidence (who submitted no evidence at all) was more credible than that of the petitioner.

G. The next error is the misinterpretation of the CARES Act, which is written in unambiguous terms proving that the twice approved PUA benefits should not have been stopped and remanded, but which the provisions from this Act were continually disregarded. (Exhibit A, Exhibit B, Exhibit E).

H. This resulted in yet another error. After the petitioner was denied PUA benefits, a letter was generated stating she now owes $10,550. According to DEW, the Appellate granted the petitioner Double Affirmation (which DEW confirmed meant, regardless of the Panel's decision, no money already paid out will be owed). (Exhibit I, Exhibit J, Exhibit K, Exhibit Y).

I. The next error is that DEW did not refund the $524 as promised, because of the new pending appeal from the employer, and, subsequently, after the $10,550 debt was waived (after several more hearings and even more undue stress), applied the $524 (which actually cost $679.33) credit against the debt of $10,550 and only waived $10, 026. (Exhibit X, Exhibit Y, Exhibit Z).

J. The next error is that DEW was aware of all these issues and should have corrected these errors internally instead of having this case go before the ALC, which resulted in more time and expense to write, print, serve, and send the motions and briefs by certified mail.

K. After being mindful and respectful, and following the Court of Appeals instructions, as the petitioner was told that the employer need not be served on this PUA appeal (which DEW felt was in error), and despite all matters of consideration brought before the court, the case was dismissed due to a lack of jurisdiction.

There is no doubt that a series of cumulative errors can be applied to this case. Since all other means of remedy has been exhausted, this case is now before the Supreme Court.

A Prayer to Be Fairly Heard

The petitioner, a college student with no prior legal knowledge, is doing her best to abide by all the rules and regulations of each of the courts. The Respondent has continually tried to get this case dismissed and has continually dismissed all rules and regulations set forth during this pandemic, including the CARES Act of 2020 and the ability, approved by the Court

of Appeals (per the Supreme Court of South Carolina Memorandum dated August 25, 2021, which was another provision put into place due to the COVID) questioning the petitioner's ability to file by email in a Motion to Dismiss (Exhibit MM). The Petitioner was going to file both by postage paid US mail and email to appease the Respondent, but this request would incur further undue hardships to the Appellant in addition to the time and effort to address this Motion to Dismiss before the Court of Appeals, including additional and unnecessary costs to serve by US postage prepaid mail, and safety to do so due to the conditions of the roads being laden with snow and ice (when serving the response to the Respondent's Motion to Dismiss in the Court of Appeals) as well as unnecessary possible COVID exposure because the Respondent is unwilling to accept the COVID-19 provisions that the court has put in place. The US mail has also been adversely affected by COVID-19. As an example, a time sensitive document that SC DEW sent to the petitioner on January 5, 2022 to notify the Appellant of an upcoming hearing, was not received until January 12, 2022, after commencement of the hearing took place. Additional mail sent to the petitioner on December 7, 2021 and December 12, 2021 (one with a tracking number) had not been received by the petitioner. The petitioner is appreciative of the provisions that the Court of Appeals and the Supreme Court have put in place, is aware that e-mailing is a better, safer, and faster alternative, and, unless the court deems otherwise, would like to continue to file by email. The petitioner (who had endured many hardships during these unprecedent times) is respectively requesting the court to please allow her case to be fairly heard, to kindly allow her a chance to cure if the petitioner (unknowingly and unintentionally, due to her lack of knowledge of legal proceedings) files something incorrectly, and is asking the Respondent to please allow this case to be fairly decided by this court without further delays or continuous motions of dismissal and objections

that the petitioner has had to continually address. (Exhibit AA, Exhibit BB, Exhibit CC, Exhibit EE, Exhibit FF, Exhibit II, Exhibit JJ, Exhibit KK, Exhibit MM, Exhibit NN, Exhibit PP).

The petitioner did not want to inundate the court with additional countless exhibits (as the ROA alone is over 300 pages not including the briefs). However, if the court needs more exhibits than provided, please kindly let the petitioner know and she will oblige.

This case is unusual, complexed, and involved and for cases that have "quirks" the courts are allowed to establish jurisdiction. *Finch v. City of Vernon*, 845 F.2d 256 (11th Cir. 1988).

"Given that they were proceeding pro se, and the fact that the Federal Rules of Appellate Procedure "were not adopted to set traps and pitfalls by way of technicalities for unwary litigants," *Des Isles v. Evans,* 225 F.2d 235, 236 (5th Cir.1955), we hold that there is jurisdiction **260*over their appeals.[4] *See United States v. Rogers,* 788 F.2d 1472, 1475 (11th Cir.1986) (notice of appeal requirement is satisfied by any statement clearly evincing the party's intent to appeal); *Yates v. Mobile County Personnel Board,* 658 F.2d 298, 299 (5th Cir. Unit B Oct. 1981) ("A petition for mandamus filed in this court, however, may also satisfy the notice of appeal requirement, especially when the appellant is proceeding pro se ... and is thus generally ignorant of procedural rules."). This court retains jurisdiction to hear all of the appeals." *Finch v. City of Vernon*, 845 F.2d 256 (11th Cir. 1988).

"The courts do not treat a litigant fairly when they insist that the litigant — unaided and unable to obtain the services of a lawyer — negotiate a thicket of legal formalities at peril of losing his or her right to be heard." *Judicial Conduct Reporter, Volume 36, NO. 3: Fall 2014.*

ISSUES

Should a de novo standard of review be applied to review administrative agencies' interpretations of federal statues such as the CARES act? *In re Muse*, 956 N.W.2d 1, 3 (Minn. Ct. App. 2021) ("*In re Gillette Children's Specialty Healthcare* , 883 N.W.2d 778, 784 (Minn. 2016")

Are college students who were directed by the University's President to go home and stay home as all schools (including universities) were shut down in the midst of the semester and which the universities were only allowed to offer long distance virtual learning as directed by the governor in response to the United States President who declared the ongoing Coronavirus Disease 2019 (COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act") and which these students complied to these rules and regulations considered to have gone home without good cause?

Conclusion:

This case is directly related to the extraordinary circumstances presented by the global COVID-19 pandemic resulting in a new federal Pandemic Unemployment Assistance (PUA) program which was offered for the first time through the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (2020) (CARES Act).

This case is regarding the wrongful stopping and remanding of the twice approved PUA benefits. The federal CARES Act of 2020 is simply written in unambiguous terms, and clearly verifies that the petitioner's twice previously approved PUA benefits should not have been stopped and reversed. This case has been continually thwarted due to the learning curve and mistakes being made as a result of DEW being flooded with claims due to the severe magnitude of the COVID pandemic and the handling of new and unfamiliar PUA claims for the first time.

Although the CARES Act is clearly written, this case has continually been treated like a regular unemployment case, which it is clearly not. There are not any similar cases pending in SC regarding this new PUA benefit that was offered for a limited time. However, since this is a

federally funded program, a case from another state where PUA benefits were wrongly denied, and the Supreme Court ruled in favor of the petitioner, holds merit.

In re Muse, 956 N.W.2d 1, 4 (Minn. Ct. App. 2021) *"Eligibility for PUA benefits requires a showing that the person is not eligible for regular unemployment- compensation benefits. If the very thing that makes the person eligible for PUA benefits is treated as a disqualification, no one would be eligible for PUA benefits*." *In re Muse*, 956 N.W.2d 1, 5-6 (Minn. Ct. App. 2021).

The rulings of both the Administrative Panel and the Administrative Law Court are in conflict with the unambiguous terms of the federal CARES Act of 2020.

When interpreting a federal statute, this court must "give effect to the will of Congress." *Goodman v. Best Buy, Inc.* , 777 N.W.2d 755, 758 (Minn. 2010) (quoting *Griffin v. Oceanic Contractors, Inc.* , 458 U.S. 564, 570, 102 S. Ct. 3245, 3250, 73 L.Ed.2d 973 (1982)). If the language of the statute is clear, we will not look beyond it. *Id.* "We must 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.' " *Id.* (quoting *Conn. Nat'l Bank v. Germain* , 503 U.S. 249, 253-54, 112 S. Ct. 1146, 1149, 117 L.Ed.2d 391 (1992)).

This Court has jurisdiction to provide the relief sought in this petition and has the ability to make or issue any order or writ necessary or appropriate in aid of its jurisdiction (Article 3, SECTION 14-3-310). This court shall have appellate jurisdiction for correction of errors of law in law cases and shall review upon appeal (Article 3, SECTION 14-3-330, Article V, Section 5 of the South Carolina Constitution).

WHEREFORE, the petitioner respectfully requests and pleas that the court overturn the decision of the Panel and the ALC, and reinstate the October 7, 2020 tribunal decision, grant the reimbursement of $679.33 due to an erroneous overpayment, allow the additional PUA benefits to be granted from January 2021 through the last certification date of July 6, 2021, award the payment of the 4 hours of work that the employer hasn't paid but the petitioner rightly deserves, and award any other compensation this court feels appropriate due to the hardships and expense incurred during the past two years because of the series of cumulative errors which DEW was aware of but failed to correct and the misinterpretations of

both the Panel and the ALC concerning the unambiguous federal statutes provided in the CARES Act of 2020.

Respectfully submitted,

May 29, 2022

/s/ Katrina Daniels
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RECEIVED
May 31 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
ADMINISTRATIVE LAW COURT

Chief Judge H. Bruce Williams and Judges Aphrodite Konduros and Jerry Vinson Jr.,
Court of Appeals Judges
S. Phillip Lenski, Administrative Law Court Judge

Appellate Case No. 2021-001462 (S.C. Ct. App. filed December 13, 2021)
Docket No. 21-ALJ-22-0116-AP (ALC filed April 22, 2021)

South Carolina Department of Employment and Workforce and 4056 LLC Main DBA Spill the Beans currently known as Andee's Custom Blended Ice Cream — Respondents,

v.

Katrina Daniels, — Petitioner.

PROOF OF SERVICE OF PETITION FOR AN ORIGINAL/EXTRAORDINARY WRIT AND/OR WRIT OF MANDAMUS, THE WRIT'S EXHIBITS, AND A MOTION TO PROCEED IN FORMA PAUPERIS

I certify that I have served the Petition for an Original/Extraordinary Writ and/or Writ of Mandamus, the Writ's Exhibits, and a Motion to Proceed in Forma Pauperis to both the South Carolina Department of Employment and Workforce (Legal@dew.sc.gov, kchesley@dew.sc.gov) and to 4056 Main, LLC (andee.osell@gmail.com), respondents, and to the Administrative Law Court, Clerk of Court, Ms. Jana Shealy (jshealy@scalc.net), and the Court of Appeals, Clerk of Court, Honorable Jenny Abbott Kitchings ctappfilings@sccourts.org) on May 29, 2022.

According to the provisions put in place by the Supreme Court of South Carolina Memorandum, dated December 16, 2020, (Amended Order Regarding the Operation of the Trial Courts During the Coronavirus Emergency), by the Supreme Court of South Carolina, Order dated August 25,2021, and confirmation from both the Court of Appeals and the Supreme Court, the serving and filing of appeals and petitions by email are allowed in these courts.

On January 11, 2022, the Department questioned the ability for someone who is pro-se to be allowed to file electronically and served a Motion to Dismiss to the Court of Appeals. The Department referenced (d) for Electronic Service Using AIS E-mail address, not realizing that section (c) in this same order allows for the service by email to all parties (including someone who is pro-se) on such matters.

Hopefully, this misunderstanding has been resolved. If the Department is not accepting of the provisions provided by this court, please notify the petitioner, and she will respectfully serve the Department by US mail. Hopefully, the court will allow for the reimbursement of the additional cost if the petitioner is asked to do so.

Respectfully submitted,

May 29, 2022

/s/ Katrina Daniels
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(412) 559-6213

Katrina Daniels
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York, SC 29745

May 29, 2022

RECEIVED
May 31 2022
SC Court of Appeals

The Honorable Patricia A. Howard
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Katrina Daniels, Petitioner, v. South Carolina Department of Employment and Workforce and 4056 Main LLC DBA Spills the Beans, currently known as Andee's Custom Blended Ice Cream, Respondents,
Docket No. 21-ALJ-22-0116-AP
Appellate Case No. 2021-001462

Dear Ms. Howard:

Enclosed for filing is a Petition for an Original / Extraordinary Writ and/or Writ of Mandamus, the Writ's Exhibits, and a Motion to Procced in Forma Pauperis in the above case. Also enclosed are the following:

(1) Proof of service of the Petition for an Original / Extraordinary Writ and/or Writ of Mandamus, the Writ's Exhibits, the Motion to Procced in Forma Pauperis to the South Carolina Department of Workforce and 4056 Main, LLC, Respondents, and to the Administrative Law Court Clerk and the Court of Appeals, Clerks of Court.

Respectfully submitted,

/s/ Katrina Daniels
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Petitioner (pro-se)

cc: Ben Cook
Office of General Counsel – SCDEW
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Respondent

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