30718

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Clayton Walker, Claimant/appellant, v. MG Oil CO, Employer/Appellee and SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION, REEMPLOYMENT ASSISTANCE DIVISION, Defendants/Appellee.	**Case Number 30718** **Appellants Brief**

From DOL Reemployment Assistance Division and Appeal Selection

ALJ Brian W. Underdahl, from 7th Circuit Court Jane Pfeifle

Clayton G. Walker 1515 E. St. Patrick St # 356 Rapid City, SD 57703 Claytongwalker.com Claytongwalker.us Please contact by US Mail	Heather Lammers Bogard, Jess M. Pekarski Attorney for MG Oil PO Box 290 Rapid City SD 57709-0290 Seth A. Lopour - DOL Attorney Woods, Fuller Shultz and Smith P.C. 300 S. Phillips Ave. Suit 300 Sioux Falls SD 57104

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Under SDCL § 1-26-31.4 Within the Computation of Time under SDCL § 15-6-6(a) The Appellant must disclose the Case is Over the $2500.00. The Appellant intends to present on appeal are § 61-6-9.1(3), Standard of Behavior from an Employer, FMLA, S.D. Const., Art. VI, § 6 & Statute, Rights under SDCL § 1-26-21, SDCL 61-7-1 Posting by Employers, SDCL 19-19-103 Rulings on Evidence, Subpoena §§ 19-5-14, 19-5-7, SDCL §§ 60-8-1,60-8-2, SDCL §§§§ 61-3-16,61-3-7, 61-3-3, 61-3-1,19-5-7, SDCL § 15-6-37(a), SDCL §§§§§§ 1-26-33.2, 1-26-18,1-26-19, 1-26-23 1-26-32, 1-26-32.1

Jurisdictional Statement

1. Date from Agency ALJ Hearing was on January 8, 2024
2. Ruling sought to be reviewed is the ALJ Decision in 85744 disqualified from receiving benefits.
3. First Notice of Appeal dated January 18, 2024. Filed on Jan 19th 2024.
4. The Appeal from Circuit Court from Jane Pfeifle
5. Appealed to South Dakota Supreme Court, Order Granted of Extension to September 18th 2024
6. Title VII, 42 USC §§ 2000e-5
7. The Employment Practices are alleged to be an unlawful action that were and now are committed in this Jurisdiction of the Seventh Judicial Circuit, State of Pennington County.

Background

8. Wrongful Termination by MG Oil, the employee can prove that the dismissal violates a clear mandate of police of Tittle 7, Equal pay act of 1964, please see Doc 85744 #033 of the record. The Appellant was told to break the law multiple times, please see the Appellants Opposition Brief to Determination. I was told to break the Law of Fire Safety codes, Health Codes and a violation of INA 8 U.S.C. an employee should have a remedy when he is discharged for refusal to participate in MG Oils schemes, and law breaking. Please see Johnson v. Kreiser's, Inc 433 N.W. 2d 255 (1988) After the Appellant Filled a Complaint with Trish his supervisor, I became a

bigger target of harassment and unfairness. The Appellant started to see himself constrictively dismissed. On Oct 24 I had a conversation with Trish about being sexual harassed by an employee, I was laughed at.. I was a hard worker doing the job of 3 employees. I was mentoring a kid at the Park that dropped out of school and didn't know if he should go back and finish High School. I find school very Important, working on taking my GRE and finishing College myself. John the GM told everyone he graduated from a 4 year college at Black Hills State University. The Employees used Facebook as a way to message other people at the Park. I do not have a Facebook Account, but used a friends account and seen he didn't graduate in MAY like everyone else does. This was a red flag. The Appellant called the school and told April from BHSU that I was not from HR but wanted to know some Questions about an employee I worked with, I told her if she didn't believe who I was I could send the police to show who I was. The ALJ said this is why I was terminated. ¶ 6 page 3 But at the hearing Shannon Franke testified on her closing statement that I was a good worker, they didn't want to lose me or give up on me. That I was being transferred to the Truck Stop, Please listen to her closing statement /./.././/…./.. Mr. Walker was not a no call no show. The Appellant Submitted text messages that Appellant had a Family Emergence and could not make it. A text was normal as they used Facebook Messager for their communication between employees. As the Appellee testified at the hearing. The Appellant got fired on November 14,2023 by a text message from Don Williamson that I turn in all the keys. As seen in the Appellants Exhibits. Don Williamson said John Hayward lied on his application by putting the wrong Degree down. John did testify that on October 9th

that I was not completing tasks but the Appellant has evidence that he did do a prescreen on an employee in question. I was fired because of a Family and Medical Leave, my complaints of sexual harassment. Protected by FMLA, please the Appellants Motion for Judicial Notice of FMLA, and Title VII.

Legal Issues

9. The Appellant is guarantee a Jury Trial under the 7th Amendment please see SEC. v. Jarkesy.
10. Wilson v. Ark. Dept of Hum. Servs., 580 F. 3d 368,373 (8th Cir. 2017) as the Appellant must prevail
11. How the DOL decided it, Claimant voluntarily Quit employment without good cause or was discharged for work connected misconduct.
12. The AJL did ignore the Appellants Supporting Brief and did error SDCL § 61-6-9.1(3) a Standard of Behavior from an Employer
13. The Appellant started to see himself Constrictive Dismissal at MG Oil
14. The Appellant did exhaust administrative remedies. Title VII,706(f) 42 USC §§ 2000e-5 with the Walker v. MG Oil EEOC Charge Number 32J-2024-00032
15. SDCL 60-4-4 an exception provides that an employer becomes subject to tort liability if its discharge of an employee contravenes some well established public policy Phipps v. Clark Oil & refining Corp., 369 N.W. 2d 588(Minn.App.1986)
16. The employer may be liable to the employee for damages by the discharge Harless v. First Nat. Bank, 162 W. Va 116,246 S.E. 2d 270 275 (1978)

17. The Family and Medical leave Act of 1993, protects the appellant.
18. Due Process, the Right to a Jury Trial under the 7th Amendment
19. The ALJ Brian W. Underdahl threated the Appellant with delay of his appeal.
20. MG Oil did submit altered documents at the Hearing.
21. The ones they ignored, retaliation, complaints, Racial Discrimination, Immigration and Employee Rights Section (IER) and the INA
22. The Appellant was forced a change from the Park restaurant to the Flying J Truckstop.
23. No copy of his motion and record, the Appellant asked for a copy of his file and the ALJ could not send me a copy of my file for the hearing, I only received half of what was submitted and nothing from my motion that I filed with the DOL.
24. The Appellant attempted Discovery, and even in good faith to exchange discovery
25. Interrogatories, the Appellant did not get a reply on the interrogators he sent his employer, the appellant attempted good faith efforts but ignored.
26. Disparate Treatment, Discharge, Harassment, Bullying, Hostile work Environment, Assignment, transfer, hours working conditions, Retaliation.

The Appellant submits Filing of the Notice of Appeal dated January 18, 2024. Filed on Jan 19th 2024. Under SDCL § 1-26-31.4 Within the Computation of Time under SDCL § 15-6-6(a) The Appellant must disclose the Case is Over the $2500.00. The Appellant intends to present on appeal are § 61-6-9.1(3), Standard of Behavior from an Employer, FMLA, S.D. Const., Art. VI, § 6 & Statute, Rights under SDCL § 1-26-21, SDCL 61-7-1 Posting by Employers, SDCL 19-19-103 Rulings on Evidence, Subpoena

§§ 19-5-14, 19-5-7, SDCL §§ 60-8-1,60-8-2, SDCL §§§§ 61-3-16,61-3-7, 61-3-3, 61-3-1,19-5-7, SDCL § 15-6-37(a), SDCL §§§§§§ 1-26-33.2, 1-26-18,1-26-19, 1-26-23 1-26-32, 1-26-32.1 and others as stated in the Plaintiffs/ Appellant Supporting Brief to Order/Decision filed on Jan 19, 2024.

Statement of the case and Facts

27. The Appellant allegedly was demoted and received a pay deduction because of his complaints, the Appellant was the only Employee that received a pay deduction. None of the other managers received a pay deduction, walker the only white male. All other were females and mixed races. Please see Title 7
28. The appellant was already seeing himself Constructively Dismissed, due to his race, and complaints being ignored.
29. Identifying the Agency is the South Dakota Department of Labor.
30. Walker v. MG Oil EEOC Charge Number 32J-2024-00032
31. Nature of the case4disposition by the agency was an error
32. Relevant to the reversal, FMLA, Constructively Dismissed, Right to a Jury trial,
33. The Appellant was alleging Violation of Title VII, Art. VI, § 6 & Statute, and Rights under SDCL by the Defendant. All the Conditions of precedent to the institution of this appeal have been met.
34. Cut wadges because of complaint or Title 7, no other manager got a pay reduction.
35. The court must rule in favor of Due Process, under the 5th & 7th Amendment

Argument

36. South Dakota does recognize Constructive Discharge claims "Constructive discharge occurs when an employer has intentionally rendered an employee's working conditions so intolerable that the employee is essentially forced to terminate his or her self." Jansen v. lemmon. FED credit Union. 562 N.W. 2d 122 (S.D. 1997) Please see Turner v. Honeywell Federal Mfg. & Technologies, llc 336 F.3d 716, 724,(8th Cir. 2003)\
37. Johnson v. Kreiser's, Inc 433 N.W.2d 255 (1988) Constructively dismissed.
38. The Rules of procedure favor the resolution of cases upon the merits by trial or summary judgment rather than on failed or inartful accusations Janklow v. Viking Press, 378 N. W. 2d 875 (S.D. 1985)
39. The court has ruled that primary sources for declarations of public policy in South Dakota are the constitution, statutes, and judicial decisions. State ex rel. Meierhenry v. Spiegel, inc., 277 N.W. 2d 289 (S.D. 1979)
40. The Appellant did exhaust administrative remedies with DOL but the Appellant is also scared from what was threated from Don Williamson About MG Oil having "Deep Pockets". The Human Rights Commission gives no security of Protection. The South Dakota Human Relations Act of 1972 does not have Jurisdiction over Judicial or Court matters, Political affiliation or Disabilities. Please see Jansen v. Lemmon Fed. Credit Union, 562 N.W. 2d 122 (S.D. 1997) With the Sexual harassment and the threating by don the work environment was horrible and intolerable. Please see Turner v. Honeywell Federal Mfg. & Technologies, llc 336 F.3d 716, 724,(8th Cir. 2003)

41. Liberally Construed SDCL § 12-21-. The case should be Liberally Construed

42. The U. S. Supreme Court indicated that evidence of psychological or emotional harm to an individual could be a substantial factor in determining whether an employer is responsible for sexual Harassment. And could be evidence in a civil Suit. (Harris v. Forklift.)

43. The case of EECO v. Mitsubishi Motor Manufacturing of America Constrictively Dismissed.

44. Walker v. MG Oil did file a Charge with the EEOC Charge Number 32J-2024-00032

45. Equal Employment under Title VII, Equal pay act of 1964,

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1. Harris v. Forklift. Harris vrs. Forklift System INC. 510 U.S. 17 (1993)
2. (EEOC v Mitsubishi) EEOC v. Mitsubishi Motor Manufacturing of America, inc 1:96-CV-01192
3. Johnson v. Kreiser's, Inc 433 N.W.2d 255 (1988)
4. (Due Process) the 14th Amendment Due Process Clause
5. (5th Amendment) the 5th Amendment life liberty

46. The Administrative Law Judge ignored Due process under the 14th Amendment Due Process

47. The Administrative Law Judge ignored Due process under the 5th Amendment

48. Right to a jury trial, Sec v. Jarkesy

49. Discovery was ignored and the plaintiff submitted good faith efforts to get discovery.

50. No motion to squash was issued by the Employer/ Appellees.

51. Please see the following SDCL

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52. SDCL § 1-26-21 Contents of record in contested cases.
53. SDCL § 19-5-7 **Disobedience of subpoena or refusal to testify as contempt.** Disobedience of a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe a deposition, when lawfully ordered, may be punished as a contempt of the court or officer, by whom his attendance or testimony is required- Appellee refused Discovery.
54. SDCL § 19-5-14 **Civil liability of witness for failure to attend or give testimony.** The witness shall also be liable to the party injured for any damages occasioned by his failure to attend, or his refusal to be sworn, testify, or give his deposition. S
55. SDCL § 19-19-103 **Rulings on evidence (a)Preserving a claim of error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and: (1) If the ruling admits evidence, a party, on the record: (A) Timely objects or moves to strike; and**
56. SDCL § 20-13-1(7) and SDCL § 20-13-1(6)
57. SDCL § 20-13-10 **Unfair or discriminatory practices.** It is an unfair or discriminatory practice for any person, because of race, color, creed, religion, sex, ancestry, disability, or national origin, to fail or refuse to hire, to discharge an employee, or to accord adverse or unequal treatment to any person, employee, or intern with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or any term or condition of employment. MG Oil Did discriminate against the Appellant.
58. SDCL § 20-13-31 did file charges within 180 days Walker v. MG Oil EEOC Charge Number 32J-2024-00032

59. SDCL § 61-7-1 **Rules for filing of claims**--Posting by employers--Statement furnished at time of unemployment. Claims for benefits shall be made in accordance with rules promulgated by the department pursuant to chapter 1-26

60. Family and Medical Leave Act of 1993,(FMLA) this law guarantees that a qualified employee may take up to twelve weeks for reason such as delivery, adoption, personal and or Family illness. Please see Exhibits and Briefs.

61. Appellants Brief properly alleges an Error and is entitled to relief, and the Court must modified, and amend. The workplace was hostile and the employer ignored the Appellants complaints asking him to break the law on multiple occasions.

62. The employer discriminated against an employee after hiring him because of his immigration visa status, forcing a firing to the young lad, I was told I had to fire him and I refused to break the law. The INA Could have testified in the Appellants behalf.

63. The Appellees testified that I **was not** discharged because I found out John Hayward lied on his application of employment and didn't graduate after I called BHSU. The ALJ failed to hear or acknowledge that I was being transfer to the Tuck Stop the Flying. Page 3 ¶ 6, also see ¶ 2 Page 2. The employer said I was a good worker and I was not Fired but transferred. The Appellant did not threaten anyone and she would need to testify as its hearsa

64. The Court needs to protect the Appellant Substantial Rights and needs to get those rights under the 9th Amendment.

65. **SDCL 61-6-9.1 (3) Good cause for Voluntarily leaving employment restricted to certain situations.** (3)The employers conduct demonstrates a substantial disregard of the standards of behavior that the employee has a right to expect of an employer or the employer has breached or substantially altered the contract for employment: the

Appellant did think this was the wrong environment with drugs and asking him to break the law.

66. employer likely expected that they could move him out of their employment relationship without an actual termination, by shifting him into a new role that seemed similar but would make him unhappy enough to resign or quit.

67. Please see SDCL § 60-8-1 of intimidation, I was told by Don Williamson, a Manager of MG OIL)" that MG Oil has deep Pockets, I would never win in Court and that I had no option for continued employment at THE Park Restaurant a conversation with him the day of my termination "on or about" November 9th 2023.

68. SDCL § 60-8-1 **Intimidation of Employees—Misdemeanor**

69. The DOL and ALJ does need to adhere to Hearsay SDCL § 19-19-802 as hearsay is not admissible.

70. The ALJ did threating me that he would move the hearing weeks out if I continued to seek evidence threw testimony. Please see the Court transcript's of the ALJ Hearing.

71. The DOL ALJ does need to adhere to SDCL § 19-19-1002, Requirement of the original evidence admitted into the records.

> Any Person who by any use of force, threats, or intimidation, prevents or endeavors to prevent any hired Forman, Journeyman, workman, laborer, servant, or other person employed by another person from continuing or performing work or from accepting any new work or employment, or induces the hired person to relinquish work or employment, or to return any work the person has in hand before it is finished, is guilty of a Class 2 Misdemeanor.

72. Please see SDCL § 60-8-2 of Intimidation of Employers—Misdemeanor. I was told to alter the mode of carrying on business.

SDCL § 60-8-2 **Intimidation of Employers—Misdemeanor**

73. Any person who by use of force, threats, or intimidation prevents or endeavors to prevent another person from employing any person, or compels another person to employ any person, or forces or induces another to alter the mode of carrying on business, or to limit or increase the number of hired Forman, Journeyman, Workman.
74. The DOL ignored my motions on Discovery, witness, Jury Trial, Federal and SDCL
75. The Employer was not discharging the Claimant for reasons that constitute work-connected misconduct as that was what they testified at. But was what they called no call no show, but the Appellant did notify the employer. The ALJ errored in his Conclusions of Law ¶ 3 #3
76. Family and Medical Act of 1993, (FMLA) to qualify for the Family and Medical Leave Act , an employee must work for an employer who has more than 50 Employees within a 75 mile radius and was employed for a minimum of 1,250 hrs within a past 12 months.

77. Remedies Available SDCL § 20-13-35.1 SDCL § 21-3-2
78. Wadge Discrimination § 60-12-15
79. Please see SD Const. Art VI § 2 § 6-8-3

The employee was subject to adverse employment action that negatively affected his employment in a substantial way. Diminishing his pay, lowering his position, and changing to less desirable job duties. The Appellant was a Constructive dismissal, but the ALJ ignored and then failed to state the appellants arguments in his decision.

Constructive Dismissal was a key point in my actions against MG Oil. Because of the ALJ obvious neglect of Constructive Dismissal, the court should rule in favor of the Appellant and grant his Benefits.

1. **Constructive Dismissal** occurs when the employer is creating a hostile work environment, or has applied other forms of pressure or coercion which forced the employee's separation. Employment legislation such as FMLA 1993, EPA 1963, TITLE VII 1964, EMPLOYER SHOWING FAVORITISM TO ANOTHER EMPLOYEE WITHOUT RESON OR EEXPLANATION.

Conclusion

The Appellant's Employer made changes to cut wadges because of his complaints, no other manager got a pay reduction. The Appellants unwillingness to break the law, the Employer changed his working Condition and the Appellant refused the change. When the Employer creates a toxic environment that forces the employee to resign. The Appellant did see fundamental changes to the work conditions. APPELLANT, Clayton Walker request this case be sent back for a Jury Trial and be able to call witness to come testify at the ALJ hearing, the ALJ errored and so did Jane Pfeifle the court errored in helping the other side by doing the work for them and looking up court cases to help them win. Records are in the transcript that Waller cant afford yet, he has hopes the United Supreme Court will recognize how important these are. In Appendix A to chapter 16-2 South Dakota code of Judicial conduct it states that our legal system is based on the principle that an independent, impartial fair and competent Judiciary will interpret and

apply the laws that govern us, the role of the judiciary is central to American concepts that Judges protect and strive to enhance and maintain confidence in our legal system.

The Appellant filed an extension of time till December to get transcript from the court reporter. As seen in the documents submitted to this court, the price to get those transcripts was fraudulently presented to the Appellant at time of request, because it is transcribed as they type, a court reporter is already paid for the work they do. But the Supreme Court of South Dakota gave appellant less than 30 days to pay a cost around $500.00 which should be free, the court should not be making money off indigent litigants. It's crazy because the appellant can't even afford the cost to serve papers of $60.00 in a lawsuit.

The Appellant Clayton Walker hereby will be known as Appellant, Walker,

Please see Wilson v. Ark. Dept of Hum. Servs., 580 F. 3d 368,373 (8th Cir. 2017) as the Appellant will likely prevail,

Please see Securities and Exchange Commission v. Jarkesy and the 7th Amendment. Employer's are to be aware of the potential for retaliation and to take steps to prevent it from occurring. The employer does not want to talk about the meeting held on November 8th,2023 only that he was a no call, no show on Nov 13th, but walker did send a text about sexual harassment training, after being intimidated by Don Willamson on that 8th day of November 2023.

Intimidation, Don Williamson used intimidation tactics that MG Oil had deep pockets so that Mr. Walker would not file a claim and would just drop the issue. It is Walkers belief that this tactic was used before to stop people from filing a harassment case against MG Oil.

Mr. Walker has that recording and has submitted on an ONN 32 GB for the evidence for the EEOC that was sent by certified mail on 5/19/2024 the tracking number is 9589 0710 5270 1322 6267 53. Please see the attach exhibit in red.

What is an intimidation tactic, is where the supervisor informing you that if you continue to pursue your action you'll be fired or you might get anonymous emails or notes that encourage you to drop your complaint. In this case Mr. Walker has the evidence on the recording that he has presented to the EEOC that these intimidation tactics were used. Mr. Walker intends with discovery in Federal Court to find these other witnesses that these intimidation tactics were used.

There is a reason why Trish Stevens didn't sign her affidavit drafted by , because if she would have, Trish would have committed perjury. Because Mr. Walker has that evidence and used that evidence of the recording in 51-CIV-24-00094 in Walker against MG Oil. It is unclear why our Attorney General of South Dakota Marty Jackley is having a representative/attorney from his office get this recording be removed on behalf of the defendants of MG Oil. But our old Attorney General Jason Ravnsborg did kill someone with his car and got no jail time, allegedly leaving a political event party drunk. Marty Jackley did use to work for COSTELLO, PORTER, HILL, HEISTERKAMP, BUSHNELL & CARPENTER, LLP, the same as Heather Lammers Bogard, so our state isn't surprised by anything.

We must look at what is retaliation, it is to give a performance evaluation that is lower than it should be, or transferred the employee to a less desirable position, like a truck stop, engage in verbal or physical abuse which was happening to Mr. Walker.

The South Dakota Supreme Court needs to recognize this as retaliation for Mr. Walker being threatened and harassed. Retaliatory behavior is any negative job actions such as demotion discipline, firing salary reduction or job shift reassignment which all happened to Mr. Walker. MG Oil hid witnesses from testimony for the administrative hearing.

There was actually two meetings, the first meeting Mr. Walker has provided the EEOC where he was intimidated and threatened by Don Williamson that if he pursued the sexual harassment he would not have a job. After Mr. Walker made a decision to continue to pursue the sexual harassment complaint that all employees have sexual harassment training classes Mr. Walker was fired the next day the case in citing in Wilson v. Ark Dep't of Hum. Servs., 850 F. 3d 368, 373 (8th Cir. 2017) Walker was fired Nov 14th 2023. But walker had already seen himself Constructively Dismissed from his sexual harassment being ignored, a hostile work environment, race and age discrimination and after the Intimidation on November 8th 2023 by Don.

Keep in mind Mr. Walker was given seven days to prepare this case for court with the ALJ in which the Department of Labor took advantage of Mr. Walkers pro se status. Mr. Walker was told by the Seventh Judicial Circuit Court that he was rude by the judge and that he slandered her name because she gave advice to MG Oil on how to win the case, so Mr. Walker could not have a Jury trial to determine the Disputable facts. Mr. Walker is appealing this to the Supreme Court of the South Dakota and will most likely have to appeal to the United states Supreme Court.

The ALJ would not issue his subpoena for the ALJ hearing.

What to look for after you file a complaint with your Employer?

1. You're excluded or left out
2. you're reassigned to a different shift or department
3. you're passed over for a promotion or raise your pay or hours are cut
4. You encounter more harassment or bullying
5. you're fired from your job
6. increased and scrutiny or monitoring of work
7. imitation and threats

All this happen to the charging party of Clayton Walker

Mr. Walker the charging party started seeing certain changes in his job conditions that are viewed as retaliation, including negative performance reviews after I spoke out about the discrimination.

Walker has a pending lawsuit against April Meeker and Black Hills State University for falsifying threats. (Recordings of that conversation with her) after notice was given to the Attorney General, Kristy Noem signed ex. Order on SDCL 3-21-3. How great is our legal system, they want notice so the law can be changed to favor the state. The ALJ would not let walker subpoena any witness, would not let him have a jury trial, and denied discovery to find out witness names so they could be subpoena, (the food runner under 18, that Mickey was also sexually harassing) It is Walkers intention to find other witnesses/litigants for the Federal lawsuit against MG Oil.

This case warrants a Reversal, Modification is needed, MG Oil pay for lying at the hearing, submitting altered documents, discovery, No objection or motion to squash, motion to compel. Punish the DOL for clear evidence.

Relief and Demands

Wherefore, the Appellant respectfully request that this Court:

A. Grant a Reversal for the error of the DOL and ALJ,
B. Modification of the decision from the ALJ and DOL,
C. Grant the Appellants request for benefits,
D. Award the Appellant for MG Oil lying at the hearing, submitting altered documents, and ignoring discovery. Award the Appellant $900,000.00 in Compensatory Damages and $5,3000,000.00 in Punitive Damages,
E. Award the Appellant for the DOL clear evidence ignored by awarding the Appellant 1.5 Million in Compensatory and Punish the State 16 Million in Punitive Damages,
F. Discrimination Prohibition, provide anti-discrimination training, reporting and policy changes for the State of South Dakota and MG Oil.
G. Contact the Disciplinary Board for the action in this brief,
H. Demands a fair hearing so he may to be able to get discovery and call witness to come testify.

I. The grant Basic concept of American Justice

J. Award the Appellant any other relief the Court thinks is Just.

Dated this 29th day of September 2024

Clayton G. Walker

1515 East Saint Patrick Street #356

Rapid City SD 57703

605-519-3290 H

Proselitigation247@hotmail.com or claytongwalker.com

Request respond by U S Mail

South Dakota Supreme Court

Certificate of Service and Affidavit

I Clayton G. Walker the Plaintiff states that all is true to the best of my knowledge.

That I the Plaintiff sent a copy of the following: Appellants Brief & motion for suspension of Rules.

I certify that the original was mailed to the clerks of the Supreme Court of South Dakota at 500 E Capitol Ave Pierre SD 57501 and ~~CFMS~~

Certified Mail receipt # 9589 0710 5270 1322 6269 20

I certify that a copy was served to Heather Lammers Bogard, Jess M. Pekarski Attorney for MG Oil PO Box 290 Rapid City SD 57709-0290 by CFMS ~~and US mail~~ Hand Delivered

I certify that a copy was sent to Seth A. Lopour - DOL Attorney of Woods, Fuller Shultz and Smith P.C.300 S. Phillips Ave. Suite 300 Sioux Falls SD 57104 by CFMS and US Mail

A copy thereof on the United States mail, postage paid for First Class Mail to the following persons above.

Dated this ~~30th Day of September~~, 2024
10-1-24

Clayton G. Walker

1515 East Saint Patrick Street #356

Rapid City SD 57703

605-519-3290 H

Proselitigation247@hotmail.com or claytongwalker.com

Request respond by U S Mail

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Times New Roman (Proportionally) typeface in 12-point type.

Appellant Brief contains 5,254 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word.

Dated this 29th day of September, 2024.

Amber McLaughlin

Clayton Walker

1515 E Sait Patrick St. # 356

Rapid City SD, 57703

605-593-7974

Charge Number 32J-2024-00032

SD Card here

The tracking Number is

9589 0710 5270 1322 6267 53 Certified Mail Receipt

Actual SD card sent in mail

Inside is a SD 32 GB Keep Onn SDHC Card.

1. On this card is the recording of Trish Stevens laughing when Mr. Walker told her about being Sexual Harassed by Micky Tillman- Walker recorded it because the first time it was ignored.
2. Next is a recording of Don Williamson, saying that MG Oil has deep Pockets, This was the 3rd time I Brought up the Issue to Mg Oil,
3. Walker brought up the issue of Mickey using hands to sexual harass.
4. After asking for sexual harassment training I was Fired (citing in Wilson v. Ark. Dep't of Hum. Servs., 850 F.3d 368, 373 (8th Cir. 2017).
5. Next is Pictures of Hand Gestures of Mickey Tillman.
6. Trish Didn't sign here affidavit because it would be perjury because of the recordings I have as evidence.
7. Don, Tanner, and other employees were not as smart as Trish, they committed Perjury by saying the issue was not Brought up. But the recording shows that walker let Don and other employees know about the issue.
8. Walker has another Copy of the recordings in case number 51 CIV 24-00094
9. MG Oil refused to release the names(discovery, Due process) of the other people that filed sexual harassment against Mickey Tillman

This is more than Just allegations this is direct evidence and the EEOC must act.

This is part of Walker response to Mg Oil brief to the EEOC, walker will be sending in his Brief in on the date it is Due.

v.

MG OIL CO.,

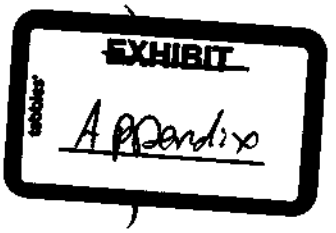
Employer/Appellee,

and

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION REEMPLOYMENT ASSISTANCE DIVISION,

Department/Appellee.

MEMORANDUM DECISION AND ORDER



This is How it printed from the Clerks office. The Supreme Court should have been given a copy of the record.

JURISDICTIONAL STATEMENT

Claimant/Appellant Clayton Walker (Walker) appealed Administrative Law Judge Brian Underdahl (ALJ Underdahl)'s January 10, 2024, decision that Claimant was ineligible for reemployment assistance benefits (RA benefits), and accordingly, Employer's experience-rating account is exempt from charge. CR[1] 100-04. Claimant timely appealed this decision directly to this Court by a Notice of Appeal filed January 19, 2024. The Department is entitled to participate in this appeal pursuant to SDCL § 61-7-13.

This Court has jurisdiction to hear this appeal pursuant to SDCL §§ 61-7-14, 1-26-30.2, 1-26-31, and 1-26-31.1.

[1] References to the certified record provided by the Department will be indicated by CR __with the applicable page number. References to the transcript of the administrative hearing will be HT __.

connected misconduct? The ALJ held that Walker was discharged by Respondent for work-connected misconduct. AR 104; APP 5.

2. Is Respondent's experiencing-rating account subject to or exempt from charge? The ALJ held that Respondent's account is exempt from charge. AR 104; APP 5.

3. Whether ALJ Underdahl erred in denying Claimant's requested discovery.

4. Whether the Claimant can receive compensatory or punitive damages against the Department in this administrative appeal.

Walker, who is self-represented, identifies the statement of issues[2] as:

1. Whether the Family and Medical Leave Act should have applied in this matter.
2. Whether Walker's workplace was hostile
3. Whether the employer discriminated against another employee because of his immigration visa status and Walker refused to fire him.
4. Whether Walker was fired because he called Black Hills State University to learn whether a coworker lied on his application.
5. Whether the transfer of Walker to a different position was designed to make him resign or quit
6. Whether ALJ Underdahl threatened Walker or erred when he offered to move the hearing if additional testimony was needed.
7. Whether the ALJ erred by denying requests for discovery and jury trial.
8. Whether the ALJ erred by finding that Walker was a no call no show and therefore was discharged for work connected misconduct.

In his second brief, Walker identified the issues as (errors in original; Court has continued the numbering from the first brief)):

9. How the DOL decided it, Claimant voluntarily quit employment without good cause or was discharged for work connected misconduct.
10. The AJL did ignore the Appellants Supporting Brief and did error SDCL§ 61-6-9.1(3) a Standard of behavior from an Employer.
11. The Appellant started to see himself Constrictive Dismissal at MG Oil

[2] The Court is interpreting the issues as outlined by Walker understanding that his statements are not always clear.

15. SDCL 60-4-4 an exception provides that an employer becomes subject to tort liability if its discharge of an employee contravenes some well established public policy [citation omitted]
16. The employer may be liable to the employee for damages by the discharge [citation omitted]
17. The Family and Medical leave Act of 1993 protects the appellant, please see 85744 #052, an exhibit of demanding I return to work with MG having sexual Harassment prevention training for all employees.

Defendant has failed to comply with SDCL § 1-26-33.3(2). Given the Claimant's self-represented status, the Court will give him some leeway to the extent it can.

STATEMENT OF THE CASE

Claimant Walker (hereafter Walker) filed a claim for unemployment benefits with the Department of Labor effective November 12, 2023. CR 3, 101. The Department sent Walker a Determination Notice dated December 11, 2023, denying Walker's request for benefits, finding he was ineligible because he voluntarily quit without good cause. *Id.* at 3. Walker timely appealed the determination on December 20, 2023. *Id.* at 5–11.

The administrative hearing on the merits of Walker's appeal was heard by ALJ Underdahl on January 8, 2024, via telephone conference. *Id.* at 124. After hearing testimony, and considering the evidence presented, ALJ Underdahl issued a written decision determining that Walker did not voluntarily quit employment with Employer, that he was ineligible for benefits because he was terminated for work-connected misconduct, Employer's account was exempt from charge. *See* CR 100–03. Walker timely appealed ALJ Underdahl's decision to this Court. *Id.* at 106.

Williamson] the district manager. On August 15, 2023, Hayward issued a written counseling statement to Walker AR 99. Walker had previously received a verbal warning. *Id.* Hayward advised Walker that another occurrence could lead to suspension or termination. *Id.* Several other reprimands and warnings followed for Walker. AR 213, 98.

Walker contacted Black Hills State University on November 7, 2023, identifying himself as a representative of Respondent and requesting Hayward's educational records. AR 96; APP 8. The recipient of the call contacted Respondent's payroll manager, Bethany Dunbar [hereinafter Dunbar], on that same date, telling her what Walker had requested and that he was harassing and threatening her. *Id.*

Respondent determined that Walker would be transferred from The Park to a truck stop location also owned and operated by Employer. AR 162. Walker was advised of the same on November 7 and that a meeting would be held on November 13 to discuss the transfer. AR 163, 165. After the time for the meeting Walker sent a text, advising that he would not attend, as he had a personal matter. AR 94, 100; APP 6. AR 148. Walker also offered some settlement options, which included a request for sexual harassment training and a payment of $7,700. AR 94-95, 101; APP 6-7. Walker did not attend the meeting and was deemed a no call, no show. HT 41-43; CR 163. On November 14, 2023, Williamson sent Walker a text message, advising him to turn in his keys and other items.

court under this chapter by appeal to the Supreme Court. The appeal shall be taken as in other civil cases. The Supreme Court shall give the same deference to the findings of fact, conclusions of law and final judgment of the circuit court as it does to other appeals from the circuit court. Such appeal may not be considered de novo.

SDCL 1–26–37. "Factual findings can be overturned only if [found] to be 'clearly erroneous' after considering all the evidence." *Bankston v. New Angus, LLC*, 2023 S.D. 27, ¶ 16, 992 N.W.2d 801, 806 quoting *Abild v. Gateway 2000, Inc.*, 1996 S.D. 50, ¶ 6, 547 N.W.2d 556, 558 (citing SDCL 1-26-36). Conclusions of law are mixed questions of law and fact and fully reviewable. Thus, the question of whether Appellant is entitled to reemployment assistance benefits is fully reviewable by this Court. *Id* at 807.

ANALYSIS

Walker has failed to sustain his burden to show that the findings of fact were clearly erroneous. Walker admitted that he was fired and the ALJ agreed but did not accept the Employer's version that it was a voluntary quit[3]. The ALJ found that Walker had no job-related reason call to BHSU to try and secure school records for an employee and that Walker intended to harm the employee. Those actions and Walker's threats to the BHSU employee demonstrated a substantial disregard of Employer's interest constituting work-connected misconduct. This Court agrees.

Walker's failure to show for the November 13th meeting designed to address his employment constitutes work-connected misconduct. Given that the settlement demands were

[3] During oral argument, Walker stated he was fired, quit with good cause and was constructively discharged.

made, the ALJ concluded that Walker did not voluntarily quit, but that he was discharged for reasons that constituted work-connected misconduct. In addition, given the finding, Employer's experience-rating account is exempt from charge. Any one of the grounds found by the ALJ of work-connected misconduct would support the finding. The Court affirms the legal conclusions of the ALJ.

OTHER PROCEDURAL CLAIMS RAISED BY WALKER

The Court has reviewed Walker's claims that the ALJ abused his discretion when he refused additional discovery, testimony from an immigration official, and a jury trial. The Court is aware that Walker struggles to understand the legal system and particularly procedural matters. He did seek to subpoena other persons, but the ALJ, who has discretion to allow the same, denied the request as they were collateral to the matters before him.[4] See SDCL 1-26-19(1); -19.2. Wallker's claim that the ALJ threatened him is frivolous and not supported by a fair reading of the transcript. Walker's behavior at the hearing was oftentimes combative and inappropriate. After a review of the transcript and the file, the Court finds that the ALJ did not abuse his discretion. *Ehlebracht v. Crowned Ridge Wind II, LLC*, 2022 S.D. 19, ¶ 20, 972 N.W.2d 477, 485 (Matters of reviewable discretion are reviewed for abuse.)

[4] During oral argument Walker raised additional issues including his belief that driving to the bank in hot weather put undue stress on his vehicle, and that there was an issue regarding fire suppression equipment and that employees laughed at him. The Court understood him to try and support a voluntary quit claim.

right to jury trial. *Carr v. South Dakota Department of Labor, Unemployment Insurance Division,* 355 N.W.2d 10, 13 (1984)("There is no statutory or administrative procedure provision for the right to a jury trial in an administrative process."). Walker has tried to add alleged FMLA and Title VII claims into this appeal proceeding as well as what seems to be a claim for wrongful termination seeking compensatory and punitive damages. It appears Walker wishes to do this to save the filing fee that multiple claims might require. The harassment, FMLA, and wrongful termination claim[5]s are "separate and distinct civil actions and controlled by the laws that give rise to them and the civil procedure set forth in SDCL Chapter 15-16." *Id* This Court cannot address the numerous issues he raises outside of this appeal. The only matter the Court has jurisdiction to address is the appeal from the Reemployment Assistance Division decision. SDCL 1-26-30 is the exclusive avenue for review of administrative decisions. *Id.* This Court's appellate jurisdiction allows only a review of agency decisions. *Id* The Court declines the invitation to exceed its jurisdiction..

CONCLUSION

Having failed to meet his burden to demonstrate that the decision of the ALJ was clearly erroneous, the decision will be affirmed.

[5] The Court expresses no opinion on the merits of these claims.

BY THE COURT:

Jane Wipf Pfeifle
Circuit Court Judge

ATTEST:
/s/ Amber Watkins
Clerk of Courts
By: _____
Deputy

FILED
Pennington County, SD
IN CIRCUIT COURT

APR 29 2024

Amber Watkins, Clerk of C
By _____ D

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Clayton Walker, Claimant/Appellant, v. MG Oil CO, Employer/Appellee and SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION, REEMPLOYMENT ASSISTANCE DIVISION, Defendants/Appellee.	Appeal No. -30718 Circuit Court # 51CIV24-000094 **Findings of Fact**

The Appellant respectfully Submits Findings of Fact. Here as the Plaintiffs/Appellant Written Finding of Facts. The Appellant will keep them simple and short without much detail under SDCL § 15-26A-60.

1. The Family and Medical leave act Does apply, as the Appellant use text message to ask for Sexual harassment training.
2. The work place was a hostile, three people died because of the harassment from John Hayward, John committed perjury on his Job application and was embezzling from the casino, and torture the appellant for his complaints about the Sexual harassment that was happing, please seek EEOC Complaints as they are not Public.
3. The immigration visa was valid, and discrimination did occur , but discovery was ignored an error by the ALJ and Court.
4. The appellant was transfer because, he found out John lied on his application.

5. The appellant became a target because of his complaints with right ups and singling out, not informing.
6. The Appellant was threatened by the ALJ, come on now it's in the transcripts.
7. What is Discovery for? The Supreme court case about getting a Jury Trial 22-859 SRC v. Jarkesy, 7th Amendment does entitled to a Jury Trial.
8. Text messaging was used as a way of Communication.
9. We have Disputable facts that a Jury must decide, and Discovery needs to happen. Employees were being torture, Ethan Reasy freedom of religion rights were violated and he died the next day sexual harassment was an out of control problem.
10. The ALJ errored in the SDCL § 61-6-9.1(3)
11. The Appellant was a target and was the only one being writing up, the appellant stating stated seeing himself Constrictive Dismissal, the Firing/turn in keys was only a description of what occurred.

    Please see the record.

Both the ALJ and Court errored, the case must be reversed and sent back for a Jury Trial because of all the disputable facts and with the new Supreme Court decision in Jarkesy a Jury trial must be given under the 7th Amendment.

Wherefor the Appellant respectfully Demands access to justice by Jury Trial under a reversal and Benefits. Dated this 29th Day of September, 2024

Clayton G. Walker1515 East Saint Patrick Street #356 Rapid City SD 57703 605-519-3290 H Proselitigation247@hotmail.com or claytongwalker.com Request respond by U S Mail

IN SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 30718

CLAYTON WALKER,
Plaintiff/Appellant,

v.

MG OIL, SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION, REEMPLOYMENT ASSISTANCE DIVISION
Defendants/Appellees,

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE JANE WIPF PFEIFLE

APPELLEE MG OIL'S BRIEF

Appellant:
Clayton Walker
1515 St. Patrick Street, Lot 356
Rapid City, SD 57709
proselitigation247@hotmail.com
Pro Se

Attorneys for Appellee MG Oil:
Heather Lammers Bogard
Jess Pekarski
Costello, Porter, Hill, Heisterkamp
Bushnell & Carpenter, LLP
PO Box 290
Rapid City, SD 57709-0290
(605) 343-2410
hbogard@costelloporter.com
jpekarski@costelloporter.com

Attorneys for Appellee SD Department of Labor
Seth Lopour
Courtney Chapman
Woods Fuller
300 S Phillips Ave. Ste 300
Sioux Falls, SD 57104
(605) 336-3890
seth.lopour@woodsfuller.com
courtney.chapman@woodsfuller.com

Notice of Appeal was filed on the 3rd day of June, 2024.

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JURISDICTIONAL STATEMENT

The Memorandum Decision and Order appealed from, attached hereto as Appendix 1- 8; SR 479, was dated and filed on April 26, 2024. Notice of Entry was filed on April 30, 2024. SR 487.A Notice of Appeal was filed May 29, 2024. If not contained in the Appendix, references to the record will be designated as "SR" for Settled Record.

STATEMENT OF LEGAL ISSUES

Appellant Clayton Walker [hereinafter Walker] incorrectly represented the Statement of Legal Issues in his brief, just as was done in the Circuit Court. Brief at 7. He asserted issues unrelated to the merits of his reemployment benefit claim, including the right to a jury trial, the Administrative Law Judge [hereinafter ALJ] "ignor[ing]" his brief, exhausting administrative remedies relating to EEOC, tort liability, damages for discharge, Family Medical Leave Act, altered documents being submitted, ignoring complaints, retaliating, transfer of position, failure to receive a copy of the file from ALJ, and hostile work environment. Id. at 7-8.

The actual legal issues addressed by the Circuit Court and appealed by Walker include:

1. Whether Clayton Walker was disqualified from receiving reemployment assistance benefits because he voluntarily quit without good cause or was discharged for work-connected misconduct.

   The Circuit Court held in the affirmative.

   SDCL § 61-6-14.1

   Jorenby v. South Dak. Dep't of Labor, 2003 S.D. 76, ¶13, 666 N.W.2d 461, 464

Kienast v. Sioux Valley Co-op, 371 N.W.2d 337, 340-41 (S.D. 1985)

In re Yaroch, 333 N.W.2d 448, 449-50 (S.D. 1983)

2. Whether Walker's experience-rating account was subject to or exempt from charge.

   The Circuit Court held in the negative.

   SDCL § 61-5-29

3. Whether the Administrative Law Judge [hereinafter ALJ] erred in denying Walker's requested discovery.

   The Circuit Court held in the negative.

   SDCL § 1-26-19(1)

   SDCL § 1-26-19.1

   Dubray v. South Dakota Dep't of Soc. Serv., 2004 S.D. 130, ¶ 8, 690 N.W.2d 657, 661

   Barnaud v. Belle Fourche Irrigation Dist., 2000 SD 57, ¶ 20, 609 N.W.2d 779, 784

4. Whether Walker can receive compensatory or punitive damages against Appellee South Dakota Department of Labor and Regulation [hereinafter Department].

   The Circuit Court held in the negative.

   Carr v. South Dakota Department of Labor, Unemployment Ins. Div., 355 N.W.2d 10, 13 (S.D. 1984)

   Barnaud v. Belle Fourche Irrigation Dist., 2000 SD 57, ¶ 20, 609 N.W.2d 779, 784

1 AmJur.2d *Administrative Law* § 16 (1962)

STATEMENT OF CASE AND FACTS

Statement of the Case.[1] This appeal is from the Seventh Judicial Circuit Court, Pennington County, before the Honorable Jane Wipf Pfeifle. The Circuit Court affirmed the decision of the ALJ, finding that Walker did not meet his burden of demonstrating that the decision was clearly erroneous. Appendix 1-8; SR 479-86.

The history of the matter follows. Walker initially filed a claim for unemployment benefits with the Department of Labor on or about November 13, 2023.[2] After an unfavorable decision wherein the South Dakota Department of Labor determined that Walker left his employment due to his dissatisfaction, SR 60, he appealed to the South Dakota Department of Labor Reemployment Assistance Appeals. SR 63. His appeal included the following issues, most of which were irrelevant to the appeal: intimidation of employees, good cause for leaving employment, retaliation for the complaint about a sexual predator, reduced wages, and constructive discharge. SR 63-67. A hearing was held by the ALJ on January 8, 2024. SR 180 *et seq.*

The determination on appeal was that Walker did not voluntarily quit, but that he was discharged for inappropriate communication with a representative of Black Hills State University on behalf of MG Oil, his failure to appear for a meeting with superiors concerning a job transfer, and his proposed settlement offer that he sent to MG Oil.

---

[1] Walker failed to adhere to SDCL § 15-26A-60(5), as he did not first identify the trial court and the trial judge.

[2] Walker also filed a Charge of Discrimination against MG Oil on March 13, 2024 with the Equal Employment Opportunities Commission, alleging retaliation, age, gender, religious and race discrimination, as well as sexual harassment. The matter is pending.

Appendix 11-12; SR 159-160. The conclusion was that Walker was discharged for "reasons that constitute work-connected misconduct as defined by law." Appendix 12; SR 160.

Walker then appealed the decision of Reemployment Assistance Appeals to Circuit Court. SR 1. Separate from his notice of appeal was a brief, setting forth various arguments, including an FMLA violation; hostile workplace; directing Walker to fire a person due to his immigration status; that he was transferred, not fired; he had good cause for leaving employment; intimidation by MG Oil and the ALJ; denial of motions; that he was not fired for work-connected misconduct. SR 2-8. That same day, Walker filed a motion for jury trial, motion to amend, motion for copy of the records, judicial notice of FMLA, and affidavit. SR 9-16.

Among other filings, Walker filed Appellant's statement, application on suspension, order of transcripts, and request of numerical index, SR 28-33, as well as notice of writ of mandamus, motion of judgment for missing Attorney General's approval, affidavit, petition for bifurcation, demand on motions, motion for hearing, motion for reconsideration, motion to strike and show cause, and motion for entry of default. SR 311-50. The Circuit Court ruled on Walker's motions, in addition to the Department of Labor's motions, on March 12, 2024. SR 358-59. All of Walker's motions were denied. Id.

Walker then filed his brief with attachments with the Circuit Court. SR 369-87. A hearing was held on March 28, 2024, addressing Walker's motion for reconsideration on the issue of whether he was entitled to a jury trial. The Court denied his motion. SR 405. On that same date, March 28, Walker filed a declared emergency employment injunctive

relief. SR 396-98. As to that issue, the Court scheduled a hearing for April 4, 2023. On that same date, Walker filed a motion for recusal. SR 406-15. At the April 4, 2024, hearing, the Court denied Walker's emergency motion for injunctive relief, motion for recusal and motion for judicial notice of FMLA, with a written order following on April 17, 2024. SR 457-58.

Subsequent to the April 4 hearing, issues were briefed. SR 416-56, 465-68. On April 25, 2024, oral arguments were presented on Walker's appeal by all parties. On April 26, 2024, the Circuit Court issued its decision, affirming the ALJ's decision favorable to MG Oil and the Department. Appendix 1-8; SR 479-86.

Statement of the Facts.[3] Walker began working for MG Oil at The Park, a bar and restaurant, on November 18, 2022, as a floor manager, making $11 per hour. SR 219, 273. Walker's supervisor was general manager, John Hayward [hereinafter Hayward]; Hayward's supervisor was Don Williamson [hereinafter Williamson].

On August 15, 2023, Hayward issued a written counseling statement to Walker for arguing with another employee in the presence of patrons. SR 156. Noted in the counseling statement is that a prior verbal warning had already been given. Id. He was advised that another occurrence could lead to suspension or termination. Id. In addition to the two reprimands, Walker was warned about being unable to calm down in front of customers. SR 271. On October 9, 2023, Walker was provided with a written warning for

[3] Walker's brief fails to adhere to SDCL § 15-26A-60(5), in that he asserts facts irrelevant to the "grounds urged for reversal, modification or other relief." To the extent Walker's brief references irrelevant facts, the same should be rejected and not considered on this appeal. Further, Walker failed to identify with particulars and supporting evidence the findings of fact that he claimed were erroneous. And last, Walker failed to reference the record as to each statement of material fact.

failing to perform certain tasks. SR 155. Shortly thereafter, the needs of the business changed and Walker was advised that he would work as a server three days per week, making $11 per hour, rather than other servers making $7 per hour. SR 154, 273. He was to remain as the floor manager two nights per week at the same previous pay rate. SR 154. Walker agreed to this arrangement. SR 274.

Apparently concerned about Hayward's education, Walker unilaterally contacted Black Hills State University on November 7, 2023, identifying himself as a representative of MG Oil and requesting Hayward's educational records. Appendix 14; SR 153. The recipient of the call to BHSU, April, then contacted MG Oil's payroll manager, Bethany Dunbar [hereinafter Dunbar], on that same date, advising that the information Walker requested would not be provided. Id. April further stated that Walker was harassing her and threatening to have her arrested. Id.

Around the same time frame, a decision was made to move Walker from The Park to a truck stop location, as Walker was "harassing employees and had a lot of problems with the management that was in place [at The Park]." SR 219. Walker was advised of the same on November 7 and that a meeting would be held on November 13 to discuss the transfer. SR 220, 222. *After* the time set for the meeting, Walker sent a text, advising that he would not attend, as he had a personal matter. Appendix _; SR 151; 220. He also set forth settlement "options," including that he would *return to work* if there was sexual harassment training for all employees, at regular pay and hours; or sexual harassment training for employees and $7,770 paid to him; or "[y]ou do nothing, which is in fact doing something." Appendix 15-16; SR 151-52.

As a result of Walker's actions described herein, November 7, 2023, was the last

day that Walker worked for MG Oil. On November 14, 2023, Williamson sent Walker a text message, advising him to turn in his keys and other items. SR 205.

The facts set forth herein, as well as settled South Dakota law, dictate that the Circuit Court's decision affirming the ALJ must be upheld.

ARGUMENT[4]

I. Standard of Review

Administrative decisions are reviewed as follows. "Factual findings can be overturned only if [the court finds] them to be 'clearly erroneous' after considering all the evidence. Bankston v. New Angus, LLC, 2023 S.D. 27, 992 N.W.2d 801, 806 (S.D. 2023) (citing Abild v Gateway 2000, Inc., 1996 S.D. 50, ¶6, 547 N.W.2d 556, 558)). "The findings will not be disturbed unless [the Court is] left with a definite and firm conviction a mistake has been made." Id. (citing Weeks v. Valley Bank, 2000 S.D. 104, ¶8, 615 N.W.2d 179, 182 (other citation omitted)). Conclusions of law are mixed questions of law and fact. Id.

II. Walker's Actions Constituted Misconduct, Depriving Him of Reemployment Benefits

First and foremost, the findings of fact by the Circuit Court have not been shown by Walker to be clearly erroneous, just as the Circuit Court noted in its decision that the ALJ's findings were not shown to be clearly erroneous by Walker. The Circuit Court specifically referenced that the "ALJ found that Walker had no job-related reason to call to BHSU and try and secure school records for an employee and that Walker intended to

[4] Walker's arguments set forth in his brief fail to adhere to SDCL § 15-26A-60, in that he did not present facts that are "relevant to the grounds urged for reversal, modification, or other relief." Further, he did not state the facts "fairly, with complete candor, and as concisely as possible" or refer to the record evidence that supports his claims.

harm the employee." SR 483. The Circuit Court agreed that Walker's action contacting BHSH "demonstrated a substantial disregard of [MG Oil's] interest constituting work-connected misconduct." Id.

The record unequivocally supports this finding. Walker admitted to placing the call to inquire about Hayward's educational records, claiming he was "investigating the education fabrication of [Hayward.]" SR 202-204. During this call, Walker "started harassing [the BHSU representative] and threatening to get her arrested for withholding information." Appendix 14; SR 153.

Although Walker only referenced this issue in his Brief to this Court as to alleged general testimony of MG Oil representatives, he failed to cite to the record or identify any testimony that disproves that he made this call. Brief at 6. In fact, Walker has consistently admitted that he made the call and has continued to assert that he had a right to make the inquiry. In his submissions to the Circuit Court, Walker stated that "the employee did lie on his application for employment just as John Hayward did on his application under the Education part." SR 98. While he claimed he was not fired for placing the call, SR 378, he also admitted, "Because I investigated the Education of the GM John Hayward, I was told I was done at The Park Restaurant[.]" SR 99.

Concerning the missed meeting on November 13, 2023, the Circuit Court found that Walker's failure to show constituted work-connected misconduct. Appendix 5; SR 483. The Circuit Court specifically concluded that Walker refused to go to work "and that his efforts to strong arm [MG Oil] demonstrate[d] work-connected misconduct[,]" as shown by Walker's text that same day asserting settlement demands while also claiming he had a personal matter. Id. 483-84.

Walker's only references to this missed meeting in his Brief were that he did "notify the employer" and had a "Family Emergence [sic][.]" Brief at 6, 15. The record is clear, however, that Walker sent the text after the time set for the meeting. SR 151, 220. More importantly, Walker's use of words in his text made clear he did not intend to return to work unless certain demands were met. Under "Options," Walker stated:

> 1. I *return to work* with MG oil [sic] having a sexual harassment prevention training for all employees within 3 weeks. To receive my regular pay and hours as normal before I filed the complaint.

Appendix 15-16; SR 151-52 (emphasis added). When the ALJ inquired of Walker whether he would have returned to work if the sexual harassment training were not provided, he responded:

> I think I already considered myself to be literally or constructively terminated because of what was going on with – because of what was going on with South Dakota Codified Law 61-6-9.1(3) that states that employer demonstrated a total disregard in standard of behavior that employee has the right to expect.

SR 207. In sum, Walker had no intention of returning to work.

In this same November 13 text, Walker went on with a second option to Williamson, demanding $7700 and sexual harassment training for the employees "sometimes [sic] in the future" and he would "release all future claims and lawsuit." Appendix 16; SR 152. As a third option, Walker stated, "You do nothing, which is in fact is [sic] doing something." Id. And last, he advised that he would have an "official settlement demand" served on MG Oil that day. Id. It was clear that Walker intended to proceed with a lawsuit, rather than discuss his possible transfer to a different location operated by MG Oil.

The intent of MG Oil at the meeting was to discuss finding a location that could possibly be successful for Walker. When Walker did not show up for the scheduled

meeting to discuss a possible transfer, failed to text until after the meeting, and then sent demands to MG Oil, they considered him as a "no call, no show[.]" SR 220. Walker failed to "in any kind of good faith try to reschedule [the meeting.]" SR 222. Rather than having a conversation, Walker sent demands. SR 222-23. Ultimately then, Williamson text Walker on November 14, requesting that he return his keys and other items to MG Oil. SR 149.

The testimony and evidence presented at the hearing support the ALJ's findings of fact and the Circuit Court's adoption of those findings. The Circuit Court concluded that, based on the ALJ's correct findings of fact, "[a]ny one of the grounds found by the ALJ of work-connected misconduct" support that Walker was "discharged for reasons that constituted work-connected misconduct." SR 484. Walker cannot establish that the Circuit Court erred in this conclusion.

Misconduct in connection with reemployment benefits is defined by SDCL § 61-6-14.1:

1. Failure to obey orders, rules or instructions, or failing to discharge the duties for which an individual was employed; or
2. Substantial disregard of the employer's interest or of the employee's duties and obligations to the employer; or
3. Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of the employee; or
4. Carelessness or negligence of such degree or recurrence as to manifest equal culpability or wrongful intent.

As stated hereinabove, the Circuit Court agreed with the ALJ that Walker's inappropriate communication with BHSU demonstrated a substantial disregard of MG Oil's interest, satisfying subpart 2 above. Further, Walker's November 13 text showed his "efforts to strong arm" MG Oil, supporting misconduct under all of SDCL § 61-6-14.1's

subparts.

Again, the Circuit Court opined that any one of the ALJ's findings constituted grounds for misconduct. SR 484. In addition to Walker's call to BHSU and his text in lieu of attending a meeting, there are other facts that support Walker's actions constituting "misconduct" under SDCL § 61-6-14.1 and corresponding caselaw:

- Walker was harassing to the BHSU representative, going so far as threatening to have her arrested. Appendix 14; SR 153. At best, Walker's actions were extraordinarily careless with wrongful – even malicious – intent. SDCL § 61-6-14.1(4).

- Walker's malicious conduct was a willful and wonton disregard of MG Oil's interests and the standards to which MG Oil could expect of Walker. SDCL § 61-6-14.1(3). Walker explicitly admitted to placing the call, referring to himself as a "pro se litigator" who was "investigating the education fabrication of John Hayward, our general manager." SR 202-03. Walker knew – or certainly should have known – that he was not entitled to his boss's educational records and that he could not represent himself as an employee of MG Oil and harass and intimidate the BHSU representative. See, e.g., 20 U.S.C.S § 1232g (under Family Educational and Privacy Rights (FERPA), stating that the educational institute will not receive funding if it has a policy or practice of releasing educational records without written consent of the student); see also Alig-Mielcarek v. Jackson, 286 F.R.D. 521, 526 (N.D. Ga. 2012) (finding that the purpose of FERPA is to protect individuals' right to privacy by limiting the disclosure of educational records without their consent). Moreover, Walker knew full well that threatening the BHSU employee was nothing but malicious.

- Walker admittedly made a "conscious, intentional decision" to place the call to BHSU and was "fully aware of all of the information and facts necessary to make an appropriate decision." Jorenby v. South Dak. Dep't of Labor, 2003 S.D. 76, ¶13, 666 N.W.2d 461, 464 (holding that employee's violation of work policy constituted misconduct under South Dakota law). "Despite this awareness, [Walker] unilaterally chose to" contact BHSU without any good faith basis. Id.

- Walker was fully aware that the meeting scheduled for November 13, 2023, as evidenced by his text advising he was not going to attend. Appendix 15; SR 151. While he knew the meeting concerned his possible transfer of employment as a result of his inability to get along with Hayward, he failed to advise that he was not going to attend until after the meeting and when he did so advise, he made various demands. Failing to attend the meeting alone

constitutes misconduct per SDCL § 61-6-14.1(1), as he failed to obey a clear order. See also Kienast v. Sioux Valley Co-op, 371 N.W.2d 337, 340-41 (S.D. 1985) (denying unemployment benefits to employee to effectively refused to follow a directive to train an employee); In re Yaroch, 333 N.W.2d 448, 449-50 (S.D. 1983) (denying unemployment benefits for failing to complete assigned tasks).

- Walker's litigious text to his general manager, setting forth "options" for his return, was not only egregious, but also a clear sign that Walker had no intention of returning to work. Further, these demands were simply "more harassing behavior from him." SR 220. He made a monetary demand, in exchange for releasing future claims. He then went on to advise that an official settlement demand would be served on MG Oil. Walker failed to explain or even address these "options" in his brief to this Court. Brief at 6, 17. This threat of litigation is certainly not the behavior anticipated of an employee. See, e.g. Leiss v. Henderson, 267 F.3d 856, 858 (8th Cir. 2001) (holding that there can be no doubt that the initial decision to terminate plaintiff's employment was lawful; the Postal Service is not required to tolerate threatening employees); Williams v. Widnall, 79 F.3d 1003, 1007 (10th Cir. 1996) (concluding employee was terminated not because of disability, but because he "made threats against his supervisor and co-workers").

- Walker's text with "options" exemplifies his failure to perform duties for which he was hired. SDCL § 61-6-14.1(1). Per his text, he had no interest in returning to work and performing duties, unless he was monetarily compensated.

- The text is also a substantial disregard of MG Oil's interests and of Walker's obligations to Respondent. SDCL § 61-6-14.1(2).

- The text is a willful and wanton disregard of the standards of behavior which Respondent has the right to expect of its employee. SDCL § 61-6-14.1(3).

- A healthy employment relationship cannot exist when the employee is baselessly threatening damages and litigation. At the very least, the text is of such degree of negligence or carelessness that it manifests wrongful intent. SDCL § 61-6-14.1(4).

Under no circumstances can Walker's behavior be categorized as "mere inefficiency, unsatisfactory conduct, failure in good performance. . ., inadvertencies or ordinary negligence . . ., or good faith errors in judgment or discretion." Jorenby, 2003 S.D. 76, ¶8. Again, Walker had been previously reprimanded at least four times, one of

which referencing termination being the next step. Appendix 17-18; SR 155-56, 271. He did not just make a mistake, underperform, or use error in judgment. He was purposeful and intentional when he contacted BHSU, failed to attend a meeting to discuss his continued employment, and sent the text threatening litigation. Similarly, Walker's actions are not isolated or temporary, in that he had been previously reprimanded and his actions at the end of his employment were threefold. By his own admission, Walker's actions were not excusable, as he continues to maintain his contact with BHSU was legitimate.

In addition, Walker's continued actions in this litigation support that his behavior is not isolated or temporary, as evidenced by the arguments that he is presenting to this Court, including the outlandish requested relief. Brief at 15. If Walker's actions were reasonable or excusable, he would not continue to assert causes of action that have no relevance to this appeal, including retaliation, discrimination, harassment, intimidation, etc. Brief at 8-15; see Carr v. South Dakota Department of Labor, Unemployment Ins. Div., 355 N.W.2d 10, 13 (S.D. 1984) (holding that the claimant's argument that he was entitled to millions of dollars for his rights being violated was not subject to the jurisdiction of the Court, as the Court was reviewing an administrative decision). He further would not present arguments that are false, including that Trish Stevens did not sign her affidavit (in the EEOC matter) and that South Dakota's Attorney General was somehow involved in this case. Brief at 18. Likewise, he would not have filed a separate lawsuit against BHSU for "falsifying" threats. Id. at 20.

Given Walker's inability to show that the Circuit Court erred in any way, the decision must be upheld.

III. MG Oil's Experience-Rating Account is Exempt from Charge

As Walker was not entitled to reemployment benefits, due to engaging in misconduct, MG Oil's experience-rating is exempt from charge. SDCL § 61-5-29. An employer's experience rating account is exempt from any charges for benefits if the separation of employment was due to misconduct by the employee. In Re South Dakota DOL, 343 N.W.2d 382, 384 n2 (S.D. 1984).

IV. The ALJ Did Not Abuse its Discretion by Denying Walker's Request for Discovery

The Circuit Court held that the ALJ has discretion to allow discovery, but did not abuse its discretion by denying Walker the ability to serve subpoenas per SDCL § 1-26-19(1) and SDCL § 1-26-19.1. Appendix 6; SR 484; Dubray v. South Dakota Dep't of Soc. Serv., 2004 S.D. 130, ¶ 8, 690 N.W.2d 657, 661 (holding that evidentiary rulings are reviewed on an abuse of discretion standard).

While SDCL § 1-26-19.1 authorizes subpoenas of witnesses, SDCL § 1-26-19(1) provides that "[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded." As determined by the Circuit Court, the evidence Walker sought via subpoena was collateral to the relevant issues, including stress on his vehicle, fire suppression equipment at MG Oil, and employees laughing at him. Appendix 6; SR 484 n4. Having no relevancy to whether Walker was entitled to reemployment benefits, the ALJ had discretion to disallow the subpoenas. Moreover, Walker failed to present any evidence to this Court that the discovery he desired was somehow relevant on appeal. He stated only that discovery was ignored. Brief at 12. Further, Walker failed to cite any authority to support that he was entitled to issue the subpoenas. "It is well settled that failure to cite authority violates SDCL § 15-26A-60(6) and constitutes a waiver of that issue." Barnaud

v. Belle Fourche Irrigation Dist., 2000 SD 57, ¶ 20, 609 N.W.2d 779, 784 (quotations omitted).

As to Walker's assertion that the ALJ somehow threatened him, the Circuit Court held that there was no evidence to support the claim and the argument was frivolous. Appendix 6; SR 484. The Circuit Court further noted that a fair review of the transcript supported that Walker's behavior was "oftentimes combative and inappropriate." Id. Thus, the Circuit Court's decision that the ALJ did not abuse its discretion must be affirmed.

V. Compensatory and Punitive Damages are not Subject to this Appeal

Walker's only reference to damages in his brief related to damages from a charge filed with the Division of Human Rights, SDCL § 20-13-35.1, and punitive damages in certain noncontractual situations in civil court, SDCL § 21-3-2. Brief at 15. He later quantified these damages in section, "Relief and Demands," wherein he claimed $900,000 in compensatory damages and $5,300,000 in punitive damages from MG Oil and even higher damages from the Department. Brief at 21. He provided no support for his claim for damages, either factually or legally, as his statutory citations have no application to a reemployment benefit matter. The failure to cite authority for his argument constitutes a waiver of that issue. Barnaud, 2000 SD 57, ¶ 20, 609 N.W.2d at 784.

SDCL § 20-13-35.1 specifically relates to the filing of a civil action for "unfair or discriminatory practice" after the Division of Human Rights reviews and makes a determination on the allegations. Here, of course, the Department of Labor was reviewing only whether Walker was entitled to reemployment benefits. The other statute cited by

Walker, SDCL § 21-3-2, relates to judicial remedies for actions brought in Circuit Court, not relating to reemployment benefits.

These alleged damages, like so many other issues Walker continues to assert as part of this Appeal, have nothing to do with whether he was entitled to reemployment benefits. These other issues include, but are not limited to, right to a jury trial, FMLA, and Title VII claims. As described by the Circuit Court, these numerous demands are "meritless[.]" Appendix 7; SR 485.

First, "[t]here is no statutory or administrative procedure provision for the right to a jury trial in an administrative process." Carr, 355 N.W.2d at 13. The Carr case involved an appeal of the Department of Labor's determination that the appellant was liable for unemployment insurance tax. Id. at 11. As part of the appeal, the appellant argued that he had a right to a jury trial. The South Dakota Supreme Court firmly held that administrative appeals were special proceedings and not protected by the right to a jury trial in the constitution. Id. at 11-13 (citing 1 AmJur.2d *Administrative Law* § 16 (1962)).

Second, Walker's other claims are "separate and distinct civil action[s] and thus . . . controlled by rules of civil procedure set out in SDCL Ch. 15-6." Id. at 13. Similar to Walker, the appellant in Carr sought millions of dollars for a violation of his rights and denial of due process. Id. The South Dakota Supreme Court was clear that the Circuit Court is "statutorily cloaked with appellate jurisdiction which permits nothing more than a review of agency decisions." Id. Just as in Carr. Walker's allegations relating to FMLA, Title VII, Division of Human Rights, punitive damages, and various other matters had no place in his appeal to the Circuit Court and have no place in this appeal. Per settled South Dakota law, the jurisdiction of this Court in this action solely relates to Walker's

reemployment benefit claims. Thus, the Circuit Court's determination that Walker's appeal on these issues was "meritless" must be upheld.

CONCLUSION

Walker has not met his burden of showing that the Circuit Court's adoption of ALJ's findings of fact was clearly erroneous. Based on those findings, there is no question that Walker was terminated for misconduct under SDCL § 61-6-14.1 and was not entitled to reemployment benefits. Further, Walker's remaining arguments are without merit and lack the jurisdiction of this Court. For these reasons, the Circuit Court's decision and order must be affirmed.

Dated this 15th day of November, 2024.

COSTELLO, PORTER, HILL, HEISTERKAMP, BUSHNELL & CARPENTER, LLP

By: */s/ Heather Lammers Bogard*

Heather Lammers Bogard
Jess M. Pekarski
Attorneys for MG Oil
PO Box 290
Rapid City, SD 57709-0290
(605) 343-2410
hbogard@costelloporter.com
jpekarski@costelloporter.com

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2024, a true and correct copy of the foregoing **Appellee MG Oil's Brief** was served upon the following counsel of record, in the manner of service indicated, as follows:

Clayton Walker	[x]	U.S. Mail
1515 St. Patrick Street, Lot 356	[ ]	Hand Delivery
Rapid City, SD 57703	[ ]	Electronic E-mail
Claimant/Appellant	[ ]	Odyssey File & Serve
Seth Lopour	[ ]	U.S. Mail

Courtney Chapman
Woods Fuller
300 S Phillips Ave. Ste 300
Sioux Falls, SD 57104
(605) 336-3890
seth.lopour@woodsfuller.com
courtney.chapman@woodsfuller.com
Attorneys for SD Department of Labor

[ ] Hand Delivery
[ ] Electronic E-mail
[x] Odyssey File & Serve

COSTELLO, PORTER, HILL, HEISTERKAMP, BUSHNELL & CARPENTER, LLP

By: */s/ Heather Lammers Bogard*
Heather Lammers Bogard
Jess M. Pekarski
Attorneys for MG Oil
PO Box 290
Rapid City, SD 57709-0290
(605) 343-2410
hbogard@costelloporter.com
jpekarski@costelloporter.com

CERTIFICATE OF COMPLIANCE

The undersigned, counsel for Appellant, certifies pursuant to SDCL § 25-26A-66 that the brief contains 4,572 words and 23,537 characters without spaces, exclusive of the Table of Contents, Table of Authorities, Jurisdictional Statement, Statement of Legal Issues, Appendix and Certificates of Counsel, and certifies that the name and the version of the word processing software used to prepare the brief is Microsoft Word 10 using Times New Roman font 12 and left justification.

Dated this 15th day of November, 2024.

COSTELLO, PORTER, HILL, HEISTERKAMP, BUSHNELL & CARPENTER, LLP

By: */s/ Heather Lammers Bogard*
Heather Lammers Bogard
Jess M. Pekarski
Attorneys for MG Oil
PO Box 290
Rapid City, SD 57709-0290
(605) 343-2410
hbogard@costelloporter.com

jpekarski@costelloporter.com

CERTIFICATE OF PROOF OF FILING

The undersigned hereby certifies that pursuant to SDCL § 15-26C-3 she served an electronic copy in Word format and an original and two hard copies of the above and foregoing **Appellee MG Oil's Brief** on the Clerk of the Supreme Court by depositing the same this date in the United States mail, postage prepaid, at Rapid City, South Dakota, addressed as follows:

Clerk of the Supreme Court
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070
Email address: scclerkbriefs@ujs.state.sd.us

Dated this 15th day of November, 2024.

COSTELLO, PORTER, HILL, HEISTERKAMP, BUSHNELL & CARPENTER, LLP

By: */s/ Heather Lammers Bogard*
Heather Lammers Bogard
Jess M. Pekarski
Attorneys for MG Oil
PO Box 290
Rapid City, SD 57709-0290
(605) 343-2410
hbogard@costelloporter.com
jpekarski@costelloporter.com

APPENDIX

PAGE

Appendix

STATE OF SOUTH DAKOTA)ss COUNTY OF PENNINGTON	)	IN CIRCUIT COURT SEVENTH JUDICIAL CIRCUIT
CLAYTON WALKER, Claimant/Appellant, v. MG OIL CO., Employer/Appellee, and SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION REEMPLOYMENT ASSISTANCE DIVISION, Department/Appellee.	)	51CIV24-000094 **MEMORANDUM DECISION AND ORDER**

JURISDICTIONAL STATEMENT

Claimant/Appellant Clayton Walker (Walker) appealed Administrative Law Judge Brian Underdahl (ALJ Underdahl)'s January 10, 2024, decision that Claimant was ineligible for reemployment assistance benefits (RA benefits), and accordingly, Employer's experience-rating account is exempt from charge. CR[1] 100-04. Claimant timely appealed this decision directly to this Court by a Notice of Appeal filed January 19, 2024. The Department is entitled to participate in this appeal pursuant to SDCL § 61-7-13.

This Court has jurisdiction to hear this appeal pursuant to SDCL §§ 61-7-14, 1-26-30.2, 1-26-31, and 1-26-31.1.

[1] References to the certified record provided by the Department will be indicated by CR __with the applicable page number. References to the transcript of the administrative hearing will be HT __.

STATEMENT OF THE ISSUES

Appellees Department and MG Oil Co. identify the issues as:

1. Is Walker disqualified from receiving reemployment assistance benefits because he voluntarily quit employment without good cause or was discharged for work-connected misconduct? The ALJ held that Walker was discharged by Respondent for work-connected misconduct. AR 104; APP 5.
2. Is Respondent's experiencing-rating account subject to or exempt from charge? The ALJ held that Respondent's account is exempt from charge. AR 104; APP 5.
3. Whether ALJ Underdahl erred in denying Claimant's requested discovery.
4. Whether the Claimant can receive compensatory or punitive damages against the Department in this administrative appeal.

Walker, who is self-represented, identifies the statement of issues[2] as:

1. Whether the Family and Medical Leave Act should have applied in this matter.
2. Whether Walker's workplace was hostile
3. Whether the employer discriminated against another employee because of his immigration visa status and Walker refused to fire him.
4. Whether Walker was fired because he called Black Hills State University to learn whether a coworker lied on his application.
5. Whether the transfer of Walker to a different position was designed to make him resign or quit
6. Whether ALJ Underdahl threatened Walker or erred when he offered to move the hearing if additional testimony was needed.
7. Whether the ALJ erred by denying requests for discovery and jury trial.
8. Whether the ALJ erred by finding that Walker was a no call no show and therefore was discharged for work connected misconduct.

In his second brief, Walker identified the issues as (errors in original; Court has continued the numbering from the first brief)):

9. How the DOL decided it, Claimant voluntarily quit employment without good cause or was discharged for work connected misconduct.
10. The AJL did ignore the Appellants Supporting Brief and did error SDCL§ 61-6-9.1(3) a Standard of behavior from an Employer.
11. The Appellant started to see himself Constrictive Dismissal at MG Oil

[2] The Court is interpreting the issues as outlined by Walker understanding that his statements are not always clear.

12. The Appellant did exhaust administrative remedies. Title VII, 51CIV24-00009442 USC 2000e-5 with
13. The Appellant did file a charge with the HR of the Department of labor see Walker v. MG Oil the EEOC Charge Number is 32-J-2024-00032
14. In the Order from ALJ it states that Mr. Walker can only appeal in one or two ways,
    1. Appeal to Circuit Court 2. Appeal to the secretary of labor and Regulation, than to the Circuit Court.
15. SDCL 60-4-4 an exception provides that an employer becomes subject to tort liability if its discharge of an employee contravenes some well established public policy [citation omitted]
16. The employer may be liable to the employee for damages by the discharge [citation omitted]
17. The Family and Medical leave Act of 1993 protects the appellant, please see 85744 #052, an exhibit of demanding I return to work with MG having sexual Harassment prevention training for all employees.

Defendant has failed to comply with SDCL § 1-26-33.3(2). Given the Claimant's self-represented status, the Court will give him some leeway to the extent it can.

STATEMENT OF THE CASE

Claimant Walker (hereafter Walker) filed a claim for unemployment benefits with the Department of Labor effective November 12, 2023. CR 3, 101. The Department sent Walker a Determination Notice dated December 11, 2023, denying Walker's request for benefits, finding he was ineligible because he voluntarily quit without good cause. *Id.* at 3. Walker timely appealed the determination on December 20, 2023. *Id.* at 5–11.

The administrative hearing on the merits of Walker's appeal was heard by ALJ Underdahl on January 8, 2024, via telephone conference. *Id.* at 124. After hearing testimony, and considering the evidence presented, ALJ Underdahl issued a written decision determining that Walker did not voluntarily quit employment with Employer, that he was ineligible for benefits because he was terminated for work-connected misconduct, Employer's account was exempt from charge. *See* CR 100–03. Walker timely appealed ALJ Underdahl's decision to this Court. *Id.* at 106.

FACTS

Walker began working for MG Oil (Employer) at The Park, a bar and restaurant, on November 18, 2022, as a floor manager. Walker's supervisor was general manager, John Hayward [hereinafter Hayward]; Hayward's supervisor was Don Williamson [hereinafter Williamson] the district manager. On August 15, 2023, Hayward issued a written counseling statement to Walker AR 99. Walker had previously received a verbal warning. *Id.* Hayward advised Walker that another occurrence could lead to suspension or termination. *Id.* Several other reprimands and warnings followed for Walker. AR 213, 98.

Walker contacted Black Hills State University on November 7, 2023, identifying himself as a representative of Respondent and requesting Hayward's educational records. AR 96; APP 8. The recipient of the call contacted Respondent's payroll manager, Bethany Dunbar [hereinafter Dunbar], on that same date, telling her what Walker had requested and that he was harassing and threatening her. *Id.*

Respondent determined that Walker would be transferred from The Park to a truck stop location also owned and operated by Employer. AR 162. Walker was advised of the same on November 7 and that a meeting would be held on November 13 to discuss the transfer. AR 163, 165. After the time for the meeting Walker sent a text, advising that he would not attend, as he had a personal matter. AR 94, 100; APP 6. AR 148. Walker also offered some settlement options, which included a request for sexual harassment training and a payment of $7,700. AR 94-95, 101; APP 6-7. Walker did not attend the meeting and was deemed a no call, no show. HT 41-43; CR 163. On November 14, 2023, Williamson sent Walker a text message, advising him to turn in his keys and other items.

STANDARD OF REVIEW

SDCL 1-26-37 governs the standard of review for decisions from administrative agencies. This statute provides:

> An aggrieved party or the agency may obtain a review of any final judgment of the circuit court under this chapter by appeal to the Supreme Court. The appeal shall be taken as in other civil cases. The Supreme Court shall give the same deference to the findings of fact, conclusions of law and final judgment of the circuit court as it does to other appeals from the circuit court. Such appeal may not be considered de novo.

SDCL 1–26–37. "Factual findings can be overturned only if [found] to be 'clearly erroneous' after considering all the evidence." *Bankston v. New Angus, LLC*, 2023 S.D. 27, ¶ 16, 992 N.W.2d 801, 806 quoting *Abild v. Gateway 2000, Inc.*, 1996 S.D. 50, ¶ 6, 547 N.W.2d 556, 558 (citing SDCL 1-26-36). Conclusions of law are mixed questions of law and fact and fully reviewable. Thus, the question of whether Appellant is entitled to reemployment assistance benefits is fully reviewable by this Court. *Id* at 807.

ANALYSIS

Walker has failed to sustain his burden to show that the findings of fact were clearly erroneous. Walker admitted that he was fired and the ALJ agreed but did not accept the Employer's version that it was a voluntary quit[3]. The ALJ found that Walker had no job-related reason call to BHSU to try and secure school records for an employee and that Walker intended to harm the employee. Those actions and Walker's threats to the BHSU employee demonstrated a substantial disregard of Employer's interest constituting work-connected misconduct. This Court agrees.

Walker's failure to show for the November 13th meeting designed to address his employment constitutes work-connected misconduct. Given that the settlement demands were

[3] During oral argument, Walker stated he was fired, quit with good cause and was constructively discharged.

made in the same text where he claimed he had a personal matter, one is left with the conclusion that Walker was refusing to come to work and that his efforts to strong arm the Employer demonstrate work-connected misconduct.

The Findings of Fact by the ALJ are not clearly erroneous. Considering the findings made, the ALJ concluded that Walker did not voluntarily quit, but that he was discharged for reasons that constituted work-connected misconduct. In addition, given the finding, Employer's experience-rating account is exempt from charge. Any one of the grounds found by the ALJ of work-connected misconduct would support the finding. The Court affirms the legal conclusions of the ALJ.

OTHER PROCEDURAL CLAIMS RAISED BY WALKER

The Court has reviewed Walker's claims that the ALJ abused his discretion when he refused additional discovery, testimony from an immigration official, and a jury trial. The Court is aware that Walker struggles to understand the legal system and particularly procedural matters. He did seek to subpoena other persons, but the ALJ, who has discretion to allow the same, denied the request as they were collateral to the matters before him.[4] See SDCL 1-26-19(1); -19.2. Wallker's claim that the ALJ threatened him is frivolous and not supported by a fair reading of the transcript. Walker's behavior at the hearing was oftentimes combative and inappropriate. After a review of the transcript and the file, the Court finds that the ALJ did not abuse his discretion. *Ehlebracht v. Crowned Ridge Wind II, LLC*, 2022 S.D. 19, ¶ 20, 972 N.W.2d 477, 485 (Matters of reviewable discretion are reviewed for abuse.)

[4] During oral argument Walker raised additional issues including his belief that driving to the bank in hot weather put undue stress on his vehicle, and that there was an issue regarding fire suppression equipment and that employees laughed at him. The Court understood him to try and support a voluntary quit claim.

Other Claims Raised by Walker

Walker has made numerous meritless demands including seeking a jury trial in an administrative proceeding and on this appeal. The law has long been in this state that administrative appeals are not cases at law and thus do not carry the protection of a constitutional right to jury trial. *Carr v. South Dakota Department of Labor, Unemployment Insurance Division*, 355 N.W.2d 10, 13 (1984)("There is no statutory or administrative procedure provision for the right to a jury trial in an administrative process."). Walker has tried to add alleged FMLA and Title VII claims into this appeal proceeding as well as what seems to be a claim for wrongful termination seeking compensatory and punitive damages. It appears Walker wishes to do this to save the filing fee that multiple claims might require. The harassment, FMLA, and wrongful termination claim[5]s are "separate and distinct civil actions and controlled by the laws that give rise to them and the civil procedure set forth in SDCL Chapter 15-16." *Id* This Court cannot address the numerous issues he raises outside of this appeal. The only matter the Court has jurisdiction to address is the appeal from the Reemployment Assistance Division decision. SDCL 1-26-30 is the exclusive avenue for review of administrative decisions. *Id.* This Court's appellate jurisdiction allows only a review of agency decisions. *Id* The Court declines the invitation to exceed its jurisdiction..

CONCLUSION

Having failed to meet his burden to demonstrate that the decision of the ALJ was clearly erroneous, the decision will be affirmed.

[5] The Court expresses no opinion on the merits of these claims.

It is hereby ORDERED that the decision of the Administrative Law Judge is affirmed.

Dated 26 day of April, 2024.

BY THE COURT:

Jane Wipf Pfeifle
Circuit Court Judge

ATTEST:
/s/ Amber Watkins
Clerk of Courts
By: _____
Deputy

FILED
Pennington County, SD
IN CIRCUIT COURT

APR 29 2024

Amber Watkins, Clerk of Courts
By _____ Deputy

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
REEMPLOYMENT ASSISTANCE APPEALS

IN THE MATTER OF
CLAYTON WALKER, Claimant
AND
MG OIL CO, Employer

DECISION
APPEAL NO. 85744

An administrative hearing was held by telephone conference on January 8, 2024. Claimant, Clayton Walker, appeared at the hearing. Jacob Black testified as a witness for Claimant. Shannon Franke appeared as a representative and witness for Employer, MG Oil Co. The following individuals testified as witnesses for Employer: Bethany Dunbar, Don Williamson, and John Hayward. Based on the evidence, the arguments of the parties, and the law, the Administrative Law Judge enters the following Findings of Fact, Conclusions of Law, and Order.

ISSUES

Is Claimant disqualified from receiving reemployment assistance benefits because Claimant voluntarily quit employment without good cause or was discharged for work-connected misconduct?

Is Employer's experience-rating account subject to or exempt from charge?

FINDINGS OF FACT

1. Employer operates The Park, a bar and restaurant. Employer also operates a truck stop at a separate location.
2. Bethany Dunbar (Dunbar) is Employer's payroll manager.
3. John Hayward (John) is the general manager of The Park.
4. Don Williamson (Don) is Employer's district manager and he also manages the truck stop. Don is John's supervisor.
5. Claimant began working for Employer at The Park on November 18, 2022.
6. On August 15, 2023 John issued Claimant a counseling statement for arguing with an employee.
7. On October 9, 2023 John issued Claimant a written warning for not completing his tasks.
8. On October 27, 2023 John moved Claimant to a server role three nights a week that paid $11 an hour plus tips. Two nights a week Claimant continued to work in his regular floor manager role at the pay rate associated with that role.
9. On November 7, 2023 Claimant spoke with April with Black Hills State University (BHSU) seeking the school records for John. Claimant stated he was employee of Employer.
10. April with BHSU called Dunbar on November 7, 2023. April stated that she informed Claimant that she would not release the information Claimant was seeking. April stated that Claimant started to harass her and threatened to have April arrested for withholding information.
11. Claimant's last day performing work for Employer was on November 7, 2023.
12. Claimant and Don had a telephone call on or about November 11, 2023 and they discussed several issues. Don informed Claimant that there would be a meeting with Claimant on Monday, November 13, 2023.
13. Claimant was a no call, no show for the November 13, 2023 meeting.
14. On November 13, 2023 Claimant sent a text message to Don stating:

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Settlement offer

It's unfortunate that I can't make it to this meeting I sincerely apologize by my absence. Unfortunately I can't make to the meeting due to an unexpected personal matter.

Options

1. I return to work with MG oil having a sexual harassment prevention training for all employees within 3 weeks. To receive my regular pay and hours as normal before I filed my complaint.
2. Sexual harassment training for employees sometimes in the future MG oil to Pay $7,770.00 and I'll release all future claims and lawsuit.
3. You do nothing, which is in fact doing something.

I will have someone serve an official settlement demand upon MG Oil this afternoon, please notify your superior and get back to me.

15. Claimant filed a reemployment assistance benefit claim on November 13, 2023, effective November 12, 2023.
16. On November 14, 2023 Don sent a text message to Claimant. Don asked Claimant to return all keys and any other items to Employer.
17. Employer discharged Claimant because of his telephone call with BHSU on November 7, 2023, being a no call, no show for the November 13, 2023 meeting, and Claimant's settlement offer.
18. Claimant did not voluntarily quit his employment.
19. Claimant appealed a determination by the South Dakota Reemployment Assistance Division (Agency) that held Claimant was disqualified from receiving reemployment assistance benefits effective November 12, 2023 and Employer's experience-rating was exempt charge because Claimant voluntarily quit employment without good cause as defined by law.

REASONING

Reemployment assistance law provides for a disqualification from receiving reemployment assistance benefits for individuals who voluntarily quit employment without good cause or were discharged or suspended from employment for work-connected misconduct. SDCL 61-6-9 and 61-6-14. Reemployment assistance law further provides that an employer's experience-rating account is subject to benefit charge unless the employee voluntarily quits without good cause attributable to the employer or the employment or was discharged or suspended for work-connected misconduct. SDCL 61-5-39.

The first issue that must addressed is whether Claimant voluntarily quit his employment or was discharged by Employer. In Rasmussen v S.D. Dep't of Labor and H & I Grain and Leasing, the South Dakota Supreme Court emphasized that in reviewing an individual's eligibility for [reemployment assistance] benefits, the court must look to the causal connection between the claimant's acts and the loss of employment. 510 NW 2d 655 (SD 1993).

Employer asserted that Claimant voluntarily quit his employment. Claimant contends that he was constructively discharged. A "constructive discharge" occurs when "an

employer deliberately renders the employee's working conditions intolerable and thus forces the individual to quit their job." Anderson v. First Century Federal Credit Union 738 NW2nd 40, 47 (S.D. 2007). To establish a voluntary quit requires that an employee intend to terminate or sever the employment relationship. In re Johnson, 337 N.W.2d 442, 447 (S.D. 1983). The evidence, however, does not objectively demonstrate that Claimant quit or that he intended to quit his employment. Claimant provided reasons upon which he would return to work—indicia of his intent to continue working for Employer. Consequently, Claimant did not voluntarily quit his employment and as a result it is not necessary to examine if or the grounds upon which Claimant may have been constructively discharged.

Employer expressly ended its employment relationship with Claimant when it promptly discharged Claimant instead of agreeing to or further entertaining Claimant's "settlement offer". Since Employer ended Claimant's employment when it discharged him, the focus now must turn to whether Employer discharged Claimant for work-connected misconduct as defined by SDCL 61-6-14.1.

Misconduct is defined by SDCL 61-6-14.1 as follows:

1. Failure to obey orders, rules or instructions, or failure to discharge the duties for which an individual was employed;
2. Substantial disregard of the employer's interests or of the employee's duties and obligations to the employer;
3. Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of the employee;
4. Carelessness or negligence of such degree or recurrence as to manifest equal culpability or wrongful intent.

However, mere inefficiency, unsatisfactory conduct, failure to perform as the result of inability or incapacity, a good faith error in judgment or discretion, or conduct mandated by a religious belief is not misconduct.

Employer discharged Claimant from employment. Employer has the burden to establish Claimant was discharged for work-connected misconduct as defined in SDCL 61-6-14.1. Abild v. Gateway 2000, Inc., 547 N.W.2d 556, 559-60 (S.D. 1996).

Employer discharged Claimant because of his telephone with BHSU on November 7, 2023, being a no call, no show for the November 13, 2023 meeting, and Claimant's settlement offer. Each of these reasons will be analyzed in accordance with SDCL 61-6-14.1.

On November 7, 2023 Claimant spoke with BHSU. Claimant identified himself as an employee of Employer. Claimant sought John's school records for reasons that were not directly related to Claimant's job duties. Claimant's actions were directly intended to harm John. Further, Claimant's threats or other statements towards BHSU personnel cast Employer in a negative light, which is a substantial disregard of Employer's interests. Employer has demonstrated work-connected misconduct on this basis.

Claimant was aware of the November 13, 2023 meeting, but was a no call, no show for the meeting. The meeting was directly intended to address Claimant's future employment. Claimant's actions were a substantial disregard of an employee's duty and obligation to Employer to report to work when scheduled or to inform Employer

about issues regarding their availability. Employer has demonstrated work-connected misconduct on this basis.

Claimant also sent a text message to Don on November 13, 2023 that provided a settlement offer. Claimant's offer was not in the form of a negotiation, but was rather an attempt to leverage Employer to comply with Claimant's wishes; an action that is a substantial disregard of an Employer's reasonable ability to operate its business. Employer has demonstrated work-connected misconduct on this basis.

In summary, Employer discharged Claimant for reasons that constitute work-connected misconduct as defined by law. Therefore, Claimant is disqualified from receiving reemployment assistance benefits effective November 12, 2023. See ARSD 47:06:04:27 (Disqualifications that are imposed based on a disqualifying act that occurred during a week of unemployment for which benefits are claimed as provided in SDCL 61-6-9, 61-6-9.1, 61-6-14, 61-6-14.1, and 61-6-16 are effective on the Sunday preceding the day that the disqualifying act occurred.). Employer's experience-rating account is exempt from charge.

CONCLUSIONS OF LAW

1. The Department of Labor and Regulation has jurisdiction over the parties and subject matter of this appeal.
2. Claimant did not voluntarily quit employment with Employer.
3. Employer discharged Claimant for reasons that constitute work-connected misconduct as defined by law.
4. Claimant is disqualified from receiving reemployment assistance benefits effective November 12, 2023 and continuing until he has been reemployed at least six calendar weeks in insured employment during his current benefit year and earned at least his weekly benefit amount in each of the six weeks.
5. Employer's experience-rating account is exempt from charge.

ORDER

It is the Order of the Administrative Law Judge that the Agency's determination be modified. Claimant did not voluntarily quit employment with Employer. Employer discharged Claimant for reasons that constitute work-connected misconduct as defined by law. Claimant is disqualified from receiving reemployment assistance benefits effective November 12, 2023 and continuing until he has been reemployed at least six calendar weeks in insured employment during his current benefit year and earned at least his weekly benefit amount in each of the six weeks. Employer's experience-rating account is exempt from charge.

Dated January 10, 2024.

Brian W. Underdahl
Administrative Law Judge

NOTICE: This is the final decision in this matter unless you appeal in one of two ways:

(1) The decision is appealed directly to circuit court within 30 days after the date of this decision, OR
(2) A request for a Department of Labor and Regulation review is filed by mailing a letter of appeal to the Secretary, S.D. Department of Labor and Regulation, Reemployment Assistance Appeals, PO Box 4730, Aberdeen, SD 57402-4730 within 15 days after the date of this decision. The decision of the Secretary may then be appealed to circuit court within 30 days after the date of the Secretary's decision.

Decisions of the circuit court may be appealed to the South Dakota Supreme Court.

CERTIFICATE OF SERVICE

I certify that on January 10, 2024, at Aberdeen, South Dakota, a true and correct copy of this Decision was mailed to each of the parties listed below.

CLAYTON WALKER
1515 E SAINT PATRICK LOT 356
RAPID CITY SD 57709-1490

MG OIL CO
PO BOX 1006
RAPID CITY SD 57709

85744 #010

Employer Exhibit #B

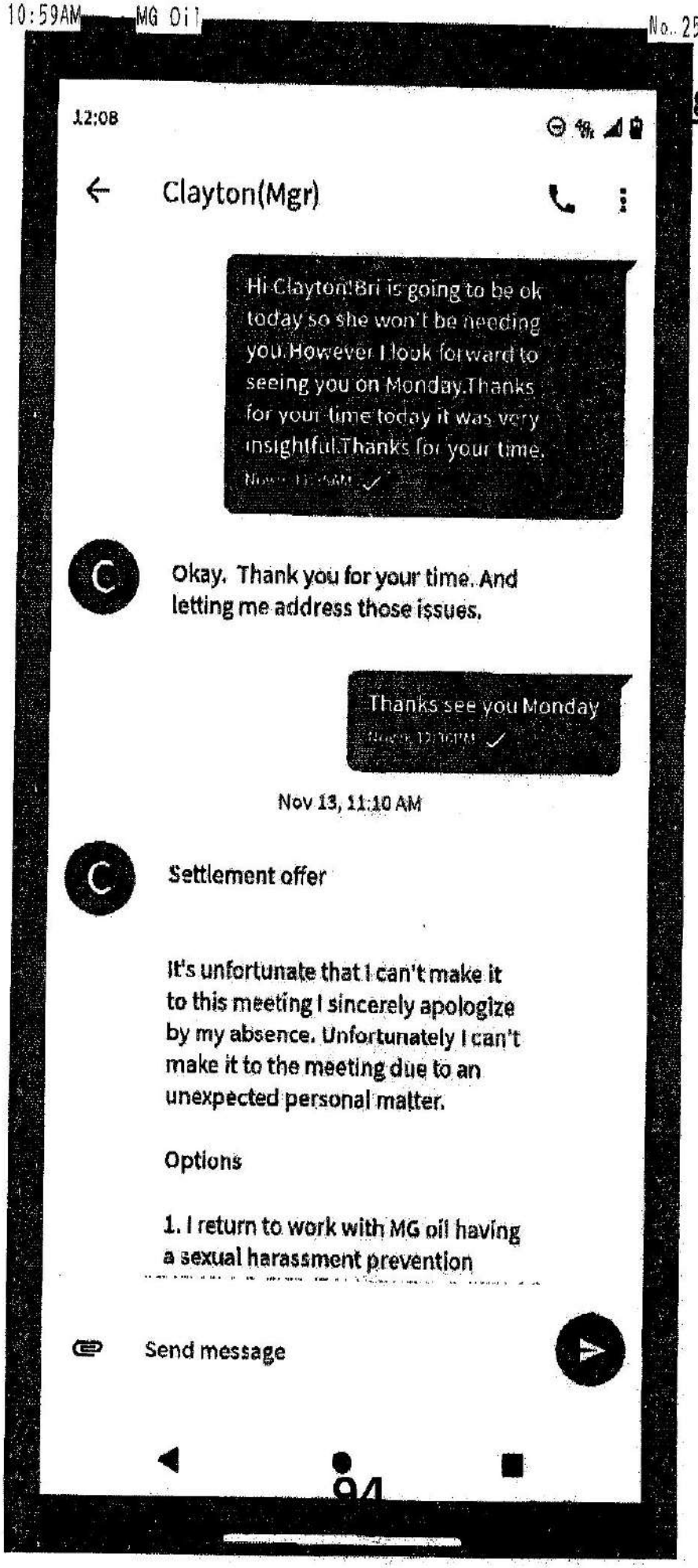
Thursday, November 9, 2023

I received a call on Tuesday, November 7th from April with the registrar's office at Black Hills State University in Spearfish, SD stating that she had an odd conversation with one of our employees. She said she received a call from Clayton Walker who identified himself as an employee at The Park and said he was requesting the school records for John Hayward. She said she would not release that information and he started harassing her and threatening to get her arrested for withholding information. She said after that conversation she wanted to be sure to call here to the main office and let us know what happened.

Bethany Dunbar
Payroll Manager
MG Oil Company

85744 # 065

Employer Exhibit # A 65 66



12:21

85744 # 066

← Clayton(Mgr)

It's unfortunate that I can't make it to this meeting I sincerely apologize by my absence. Unfortunately I can't make it to the meeting due to an unexpected personal matter.

Options

1. I return to work with MG oil having a sexual harassment prevention training for all employees within 3 weeks. To receive my regular pay and hours as normal before I filed the complaint.

2. Sexual harassment training for employees sometimes in the future MG oil to Pay $7,770.00 and I'll release all future claims and lawsuit.

3. You do nothing, which is in fact is doing something.

I will have someone serve an official settlement demand upon MG Oil this afternoon, please notify your superior and get back to me.

Respectfully

Clayton Walker.

Send message

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85744 #023

OCT 11 2023

Employee Warning Notice

Employee's Copy

Name: Clayton Walker
Employee ID:

Job Title: Floor Specialist
Store #: 43

Date: 10/09/23

Instructions: Complete this form when it is necessary to inform an employee of unacceptable performance. Make a copy for the employee and yourself. The original will be placed in the employees file.

You are hereby notified that your performance in the following area(s) is unsatisfactory at this time. We want you to remain employed with MG Oil, but failure to correct deficiencies may result in disciplinary action and/or termination of employment.

____	Punctuality	____	Job Knowledge	X	Policy Adherance
____	Attendance	____	Job Skill	X	Conduct
____	Attitude	____	Accuracy	____	Leadership
____	Cooperation	____	Safety	____	Team Player

____ You are on probation for ____ day
____ You are off work for ____ days w/out pay

____ You are not on probation

Explanation:
Clayton has not been completing tasks to their entirety
Clayton did not take the deposit to the bank on 9/29/23

Action Required:
Counseled Clayton on how important it is to finish the tasks assigned to him

I acknowledge this warning and I: X Agree ____ Disagree And State:

Employee Signature: [signature] 10/9/23 Date: ____

Store Manager: [signature] Date: 10/09/23

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85744 #024

AUG 1 8 2023

Counseling Statement

M.G. Oil Company

Name: Clayton Walker

Reason for Counseling: On Saturday August 3rd Clayton had an altercation with Kaylon on the floor. Patrons to the business do not need to see managers arguing on the floor. Clayton is also being counseled about employee relationships and boundaries.

Comments: This is a warning. A verbal one has already been given. Consequences to this occurring again can lead to suspension or termination.

Employee Signature: [signature] 27

Manager Signature: [signature]

Date: 08/15/23

8/15 JH2

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61-6-14.1. Misconduct defined.

As used in this chapter, misconduct is:

(1) Failure to obey orders, rules, or instructions, or failure to discharge the duties for which an individual was employed; or

(2) Substantial disregard of the employer's interests or of the employee's duties and obligations to the employer; or

(3) Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee; or

(4) Carelessness or negligence of such degree or recurrence as to manifest equal culpability or wrongful intent.

However, mere inefficiency, unsatisfactory conduct, failure to perform as the result of inability or incapacity, a good faith error in judgment or discretion, or conduct mandated by a religious belief which belief cannot be reasonably accommodated by the employer is not misconduct.

Source: SL 1984, ch 337; SL 1989, ch 449, § 2; SL 1992, ch 363, § 1; SL 2008, ch 277, § 122.

61-5-29. Investment fee--Promulgation of rules.

Employers required by this title to pay contributions, except employers pursuant to chapter 61-5A, that reimburse the unemployment compensation trust fund for benefits paid in lieu of contributions, shall also pay an employer's investment in South Dakota's future fee, hereinafter referred to as the, investment fee, on wages as defined by this title. The fee rate for employers not eligible for experience rating, as defined in § 61-5-24, must be seventy hundredths percent through calendar year 2006 and fifty-five hundredths percent on and after January 1, 2007. If an employer is eligible for experience rating, the employer's reserve ratio must be determined pursuant to § 61-5-25.3 through calendar year 2017, pursuant to § 61-5-25.4 for calendar years 2018 and 2019, pursuant to § 61-5-25.5 for calendar year 2020 through calendar year 2023, and pursuant to § 61-5-25.6 for calendar year 2024 and each year thereafter, and the employer's investment fee rate must be the rate appearing in column "A" on the same line the employer's reserve ratio appears in column "B" of the following rate schedule:

Column "A"	Column "B"
Investment Fee Rate	Reserve Ratio
0.53%	Less than 1.00%
0.50%	1.00% and Less than 1.20%
0.40%	1.20% and Less than 1.30%
0.30%	1.30% and Less than 1.40%
0.20%	1.40% and Less than 1.50%
0.10%	1.50% and Less than 1.60%
0.00%	1.60% and Over

The terms and conditions of this title that apply to the payment and collection of contributions also apply to the payment and collection of the investment fee. Proceeds from the investment fee must be deposited in the clearing account of the unemployment compensation fund for clearance only and may not become part of the fund. After clearance, the money derived from the investment fee payments, less refunds made pursuant to the provisions of this title, must be deposited in the employer's investment in South Dakota's future fund as provided for in § 61-5-29.1. No investment fee payment may be credited to the employer's experience-rating account nor may the payment be deducted in whole or in part by any employer from the wages of individuals in its employ.

The investment fee rate may not be increased over the applicable 1987 investment fee rate for any employer with a positive balance in the employer's experience-rating account on the computation date, as established in rules promulgated by the secretary of labor and regulation pursuant to chapter 1-26, for the current year and the year preceding the current year.

The investment rates provided in this section apply to and are retroactive to taxable wages paid on and after January 1, 1993.

Source: SL 1987, ch 387, § 5; SL 1988, ch 413, § 4; SL 1989, ch 448, § 4; SL 1991, ch 416, § 4; SL 1993, ch 375, § 28; SL 1993, ch 378, § 4; SL 2006, ch 268, § 1; SL 2011, ch 1 (Ex. Ord. 11-1), § 33, eff. Apr. 12, 2011; SL 2011, ch 225, § 3; SL 2011, ch 227, § 1, eff. Mar. 17, 2011; SDCL § 61-5-24.1; SL 2012, ch 252, § 59; SL 2017, ch 217, § 5; SL 2019, ch 217, § 4; SL 2023, ch 171, § 6.

1-26-19. Rules of evidence in contested cases.

In contested cases:

(1) Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not otherwise admissible thereunder may be admitted except where precluded by statute if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(2) A party may conduct cross-examinations required for a full and true disclosure of the facts;

(3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency.

Source: SL 1966, ch 159, § 10; SL 1972, ch 8, § 20; SL 1985, ch 15, § 9.

1-26-19.1. Administration of oaths--Subpoena powers--Witness fees--Disobedience of subpoena.

Each agency and the officers thereof charged with the duty to administer the laws of this state and rules of the agency shall have power to administer oaths as provided by chapter 18-3 and to subpoena witnesses to appear and give testimony and to produce records, books, papers and documents relating to any matters in contested cases and likewise issue subpoenas for such purposes for persons interested therein as provided by § 15-6-45. Unless otherwise provided by law fees for witnesses shall be as set forth in chapter 19-5 and be paid by the agency or party for whom the witness is subpoenaed.

Failure of a person to obey the subpoena issued pursuant to this chapter may be punished as a contempt of court in the manner provided by chapter 21-34.

Source: SL 1972, ch 8, § 21.

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

Appeal No. 30718

CLAYTON WALKER,

Appellant/Claimant,

v.

MG OIL CO.,

Appellee/Employer

and

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION,
REEMPLOYMENT ASSISTANCE DIVISION,

Appellee/Department.

Appeal from the Circuit Court
Seventh Judicial Circuit
Pennington County, South Dakota

THE HONORABLE Jane Wipf Pfeifle
Circuit Court Judge

APPELLEE/DEPARTMENT'S BRIEF

Clayton Walker
1515 East St. Patrick Street, Lot 356
Rapid City, SD 57703
Pro Se Appellant

COSTELLO, PORTER, HILL,
HEISTERKAMP, BUSHNELL &
CARPENTER, LLP
Heather Lammers Bogard
Jess M. Pekarski
P.O. Box 290
Rapid City, SD 57709-0290
Attorneys for MG Oil Co.

Filed: 11/14/2024 11:46 AM CST Supreme Court, State of South Dakota #30718

WOODS, FULLER, SHULTZ & SMITH, PC
Seth A. Lopour
Courtney S. Chapman
300 S. Phillips Avenue, Suite 300
PO Box 5027
Sioux Falls, SD 57117-5027
Attorneys for Reemployment Assistance Division

Notice of Appeal Filed on May 29, 2024

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PRELIMINARY STATEMENT

Throughout this brief, Appellant, Clayton Walker, will be referred to as "Claimant." Appellee, MG Oil Co., will be referred to as "Employer." Appellee, South Dakota Department of Labor and Regulation, Reemployment Assistance Division, will be referred to as "Department." The Pennington County Clerk of Court's record will be referred to by the initials "CR" and the corresponding page numbers located in its June 13, 2024, Chronological and Alphabetical Indices. Claimant failed to perfect an order and production of transcripts of the March 7, March 28, April 4, and April 25, 2024, hearings before Circuit Court Judge Jane Wipf Pfeifle, so none are available on appeal.

JURISDICTIONAL STATEMENT

Claimant has appealed Judge Wipf Pfeifle's April 26, 2024, Memorandum Decision and Order. (CR 479-486.) Notice of Entry of the same was entered on April 30, 2024, (*id.*, at 487-496), and Claimant timely filed a Notice of Appeal on May 29, 2024. (*Id.*, at 498.) Department agrees the April 26, 2024 Memorandum Decision and Order is appealable.

STATEMENT OF THE ISSUES

1. Whether the Circuit Court erred by affirming ALJ Underdahl's holding that there is no right to a jury trial in an administrative appeal when South Dakota law does not provide such a right.

Carr v. S. Dakota Dep't of Lab., Unemployment Ins. Div., 355 N.W.2d 10 (S.D. 1984)
SDCL § 61-7-1
SDCL § 1-26-35

2. Whether the Circuit Court erred by affirming ALJ Underdahl's holding that Claimant was not constructively discharged when Claimant has admitted throughout these proceedings that he was fired by Employer.

Anderson v. First Century Fed. Credit Union, 2007 S.D. 65, ¶ 22, 738 N.W.2d 40
SDCL § 61-6-9.1(3)

3. Whether the Circuit Court erred in affirming ALJ Underdahl's holding that Claimant was terminated for work-connected misconduct when Claimant attempted to blackmail Employer.

Habben v. G.F. Buche Co., 2004 S.D. 29, ¶ 8, 677 N.W.2d 227, 230
SDCL § 61-6-14
SDCL § 61-6-14.1

4. Whether the Circuit Court erred in affirming ALJ Underdahl's denial of Claimant's discovery requests prior to the administrative hearing when ALJ Underdahl has discretion to grant the same and where the requests are irrelevant to the proceedings.

SDCL § 1-26-18
SDCL § 1-26-19.1
SDCL § 1-26.19.2

5. Whether the Circuit Court properly denied Claimant's request for general and punitive damages in this administrative appeal when there is no statutory or factual basis for the same.

SDCL § 1-26-36

6. Whether Claimant can expand the record on appeal with evidence that was never presented to ALJ Underdahl, excluded from the record by Judge Wipf Pfeifle, and that relates to his collateral EEOC claim.

SDCL § 1-26-21

STATEMENT OF THE CASE

The Department issued a Determination Notice on December 11, 2023, denying Claimant's request for reemployment assistance benefits ("RA benefits"), finding he was ineligible because he voluntarily quit without good cause. (CR at 60-62.) Claimant appealed the Determination Notice on December 20, 2023. (*Id.* at 63–68.) An administrative hearing on the merits of Claimant's appeal was held by Administrative Law Judge Brian Underdahl ("ALJ Underdahl") on January 8, 2024, via telephone conference. (*Id.* at 157.) On January 10, 2024, ALJ Underdahl issued a written decision determining that Claimant did not voluntarily quit employment with Employer, that he

was ineligible for benefits because he was terminated for work-connected misconduct, and therefore, Employer's account was exempt from charge. (*Id.* at 157-161.)

Claimant timely appealed ALJ Underdahl's decision to the Seventh Judicial Circuit Court, before Judge Wipf Pfeifle. (*Id.* at 163.) The merits of Claimant's appeal came to hearing on April 25, 2024. (*Id.* at 359.) Subsequently, Judge Wipf Pfeifle entered a Memorandum Decision and Order on April 26, 2024, holding that Claimant did not show any findings of fact were clearly erroneous, that Claimant's conduct constituted work-connected misconduct, and rejecting all other claims of error raised by Claimant. (*Id.* at 479-486.) On April 30, 2024, Department filed a Notice of Entry of the Memorandum Decision and Order. (*Id.* at 487-496.) On May 29, 2024, Claimant appealed to this Court. (*Id.* at 498.)

STATEMENT OF THE FACTS

Claimant worked at The Park, a restaurant and casino owned by Employer, as a floor manager. (CR 219.) Claimant experienced multiple performance issues with Employer, including an "Employee Warning Notice" on October 9, 2023 for not completing his tasks and being counseled on August 15, 2023 for his interactions with other employees in front of customers. (*Id.* at 155-156.)

After apparently believing his manager, John Hayward, had falsified his education records, Claimant called Black Hills State University ("BHSU") on November 7, 2023, to obtain Hayward's education records. (*Id.* at 153.) The BHSU employee notified

Employer and told them that after she denied Claimant's request, he began harassing her and threatened to have her arrested. (*Id.* at 153, 245.)[1]

Employer scheduled a meeting with Claimant on November 13, 2023 to discuss a possible transfer out of The Park given his harassment of other employees. (*Id.* at 220, 222.) Claimant did not attend the meeting and was deemed a no call, no show. (*Id.*) Claimant then sent a settlement demand via text message to Don Williamson, the district manager and manager of a truck stop owned by Employer, that stated:

> Settlement offer
>
> It's unfortunate that I can't make it to this meeting I sincerely apologize by my absence. Unfortunately I can't make to the meeting due to an unexpected personal matter.
>
> Options
>
> 1. I return to work with MG oil having a sexual harassment prevention training for all employees within 3 weeks. To receive my regular pay and hours as normal before I filed my complaint.
> 2. Sexual harassment training for employees sometimes in the future MG oil to Pay $7,700.00 and I'll release all future claims and lawsuit.
> 3. You do nothing, which is in fact doing something.
>
> I will have someone serve an official settlement demand upon MG Oil this afternoon, please notify your superior and get back to me.

(*Id.* at 129-130.) In response, Employer terminated Claimant's employment and Don Williamson sent Claimant a text message on November 14, 2023 asking him to return all keys and any other items to Employer. (*Id.* at 149, 256.)

Claimant filed a claim for RA benefits effective November 12, 2023. (*Id.* at 158.) The Department sent Claimant a Determination Notice dated December 11, 2023 denying

[1] Claimant commenced a separate lawsuit against the BHSU employee, the South Dakota Board of Regents, Tim Rave, Kristy Noem, and Marty Jackley over this interaction. *See* 51CIV24-719. The court, in that case, granted defendants' motion to dismiss.

Claimant's request for benefits, finding he was ineligible because he voluntarily quit without good cause. (*Id.* at 60-62.) Claimant appealed the determination on December 20, 2023. (*Id.* at 63–68.)

A notice of hearing was sent to Claimant on December 28, 2023 advising Claimant the two issues to be decided at the hearing were (1) whether Claimant was disqualified from receiving RA benefits because he voluntarily left employment without good cause or was discharged for work-connected misconduct, and (2) whether Employer's experience-rating account was subject to or exempt from charge. (*Id.* at 69-70.) On January 1, 2024, Claimant sent Department a Notice of Exhibit and Opposition. (*Id.* at 71-72.) In this Notice, Claimant asked the Department to consider an exhibit regarding the text message exchange on November 13 and 14, 2023 between Claimant and Don Williamson, refuted Employer's claims, and stated he would be requesting discovery, subpoenas, depositions and interrogatories. (*Id.*)

On January 4, 2024, the Department received Claimant's Motion on Application to Issue Subpoena dated January 2, 2024. (*Id.* at 78-80.) Claimant requested (1) the ALJ to issue subpoenas to obtain testimony of Marlyn Erickson, Reuben Valez-Hayward, Trish Stevenson, John Hayward, Don Williamson, Bethany Dunbar, Shannon Franke, and April (Unknown Last Name), (2) a subpoena duces tecum for an unknown category of documents and unknown individual or entity to produce the same, and (3) ostensibly requested an Order compelling discovery without providing any of the subject discovery requests to ALJ Underdahl. (*Id.*) (Motion on Application to Issue Subpoena dated January 2, 2024). *See also id.* at 81 (Motion to Serve Subpoena dated January 2, 2024); 83–89 (Subpoenas to Appear and Testify at Hearing to Marlyn Erickson, Reuben Valez-

Hayward, Trish Stevenson, John Hayward, Don Williamson, Bethany Dunbar, April (Unknown Last Name) and Shannon Franke). On January 4, 2024, ALJ Underdahl denied the requests for subpoenas, subpoena duces tecum, and the motion to compel interrogatories. (*Id.* at 90-91.)

That same day, Claimant faxed an Opposition Brief to Determination, Motion for Judgment, and Motion to Compel Discovery. (*Id.* at 92–104.) In his Motion to Compel Discovery, Claimant alleged "Appellant has not gotten any discovery from the Appellees and has ignored good faith attempts to take depositions." (*Id.* at 93.) Claimant did not attach any of the alleged outstanding discovery for ALJ Underdahl to consider. On January 5, 2024, ALJ Underdahl denied Claimant's Motion to Compel Discovery and Motion for Judgment and informed the parties that no further motions would be considered prior to the January 8, 2024 hearing. (*Id.* at 137.) Claimant also sent the Department a Motion for a Jury Trial dated January 4, 2024 on January 7, 2024. (*Id.* at 142-147.) ALJ Underdahl did not address this motion in writing prior to the hearing, but did deny his motion at the administrative hearing. (*Id.* at 188.)[2]

An administrative hearing on the merits of Claimant's appeal was held by ALJ Underdahl on January 8, 2024 via telephone conference. (*Id.* at 157.) Claimant appeared *pro se* with his roommate, Jacob Black, who appeared as a witness for Claimant. (*Id.*) Claimant also attempted to have a representative from the United States Department of Justice and Civil Rights Division of Immigration and Employee Rights Section testify on his behalf. (*Id.* at 183.) ALJ Underdahl denied this request, given the inapplicability of

[2] Claimant also made an oral Motion for Reconsideration for Jury Trial at the hearing, which was properly denied. (CR at 192.)

her expertise to state law issues. (*Id.* at 217.) Shannon Franke appeared on behalf of Employer. (*Id.* at 157.) Bethany Dunbar, Donald Williamson, and John Hayward appeared as witnesses on behalf of Employer. (*Id.*) Department did not appear at this hearing.

At this hearing, Claimant did not provide ALJ Underdahl with any alleged recordings or other documents he had of Employer or its employees to prove the alleged threats and other misconduct. The only documentary evidence offered by Claimant was the subject text message constituting Claimant's "settlement demand" and a document that purports to be his job description. (*Id.* at 150; *compare to id.* at 154.) During the hearing, Claimant was extremely combative with ALJ Underdahl. (*Id.* at 197-199.) At one point, Claimant laughed at ALJ Underdahl's frustration with him and even accused ALJ Underdahl of threatening him.[3] (*Id.* at 251-254.) Claimant made an oral motion to sequester all witnesses, which was denied. (*Id.* at 200.)

Importantly, Claimant testified that he did not quit, but was fired by Employer. (*See, e.g.*, at 201 ("Well, I was fired on November 14th, under Exhibit 52."); *Id.* at 202 (" Q: Okay. Why did you stop working for the company? A: They told me I was fired for

[3] Claimant asserts that ALJ Underdahl threatened him at this hearing. (Appellant's Br., at 14; CR 253.) This is untrue. ALJ Underdahl informed Claimant that if Claimant continued to argue with him, he would stop the hearing and reschedule for another day, and that he could not "guarantee I'll be quite as accommodating on the schedule." CR 253. ALJ Underdahl gave Claimant this warning in response to Claimant continuously arguing with ALJ Underdahl and his general combativeness with the witnesses and ALJ Underdahl. *See e.g.* CR 263 ("MR. WALKER: They need to make those objections, not you help them and hold their hand during this hearing. JUDGE UNDERDAHL: I'm not holding anyone's hand. I'm making an evidentiary ruling because you asked a question that's not a valid question. Now please ask your next one."); CR 293 (Claimant closing the hearing by stating "Yeah, good day. Treat people with respect and don't fucking hold them to a different standard.").

checking into John Hayward's education."); *Id.* at 205 (In response to ALJ Underdahl's question: "At any point did you state if you were quitting MG Oil or The Park?" Claimant responded, "No, Your Honor, I sent them a settlement offer on Monday, November 13th, that I couldn't make it to the meeting on Monday[.]"); *Id.* at 211; ("Q: Do you have any other testimony you wish to offer regarding your separation, Mr. Walker? A: Just that they fired me on the 14th...."); *Id.* at 291, (Claimant stating in his closing statement that "Again, I was fired on the 14th.")).

Claimant has similarly alleged in other filings in these proceedings that he was "fired," not constructively discharged or voluntarily quit his employment. *See, e.g.*, CR 170 ("The Appellant got fired on November 14,2023 by a text message from Don Williamson that I turn in all the keys."); CR 174 ("But the appellant [sic] court of the 7th Judicial Circuit Court needs to look at the Text Message from Don on the 14th day of November when the Appellant was fired.").

Claimant also testified that his employment did not end because he did not want to transfer roles. (*Id.* at 262.) Similarly, Employer testified that Claimant was terminated because "he was harassing employees and had a lot of problems with the management that was in place there. So we made the decision that he was not going to be working there." (*Id.* at 219.)

On January 10, 2024, ALJ Underdahl issued a written decision determining that Claimant did not voluntarily quit employment with Employer, that he was ineligible for benefits because he was terminated for work-connected misconduct, and therefore, Employer's account was exempt from charge. (*See* CR 157-161.) Claimant timely appealed ALJ Underdahl's decision to circuit court. (*Id.* at 163.)

Following Claimant's appeal to circuit court, he filed at least sixteen[4] different motions, applications, and requests for relief largely centering around his belief that he is entitled to a jury trial in these proceedings. Hearings were held on these motions on March 7, 2024, March 28, 2024, and April 4, 2024. Judge Wipf Pfeifle denied all of Claimant's requests for relief. (*Id.*, at 358-359, 457-458, 471-472.)

Following a hearing on the merits of Claimant's administrative appeal, Judge Wipf Pfeifle entered a Memorandum Decision and Order, affirming ALJ Underdahl's decision, in full. (*Id.* at 479-486.) This appeal followed and, after motion practice before this Court, Claimant failed to properly perfect and order of any transcripts from the various proceedings before Judge Wipf Pfeifle.

STANDARD OF REVIEW

The Supreme Court's standard of review of agency proceedings is governed by SDCL § 1-26-37, which provides "[t]he Supreme Court shall give the same deference to the findings of fact, conclusions of law, and final judgment of the circuit court as it does to other appeals from the circuit court." *Baker v. Rapid City Reg'l Hosp.*, 2022 S.D. 40, ¶ 29, 978 N.W.2d 368, 377. Under this standard, "[t]his Court 'makes the same review of the administrative agency's decision as did the circuit court, unaided by any presumption

[4]Claimant filed the following over the duration of his Circuit Court appeal: Motion Jury Trial, (CR 9), Motion to Amend, (*id.* at 10), Motion for copy of the records, (*id.* at 11), Judicial Notice on FMLA, (*id.* at 12), Application on Suspension, (*id.* at 29), Order of Transcripts, (*id.* at 30), Request of the Numerical Index and Alphabetical Index, (*id.* at 32), Notice of Writ of Mandamus, (*id.* at 311), Motion for Judgment for Missing Attorney General or Secretary's Approval, (*id.* at 313), Petition for Bifurcation, (*id.* at 316), Demand on Motions not Answered by Defendants, (*id.* at 321), Motion for Hearing, (*id.* at 322), Motion for Reconsideration for Jury Trial, (*id.* at 325), Motion to Strike and Show Cause, (*id.* at 336), "Declared Emergency" Employment Injunctive Relief, (*id.* at 396), Motion for Recusal, (*id.* at 406).

that the circuit court's decision was correct.'" *Boehrns v. S.D. Bd. of Pardons & Paroles*, 2005 S.D. 49, ¶ 5, 697 N.W.2d 11, 13 (citation omitted).

"SDCL § 1-26-36 delineates the standard for a circuit court's review of an administrative agency's decision, and '[t]he same rules apply on appeal to this Court.'" *Christenson v. Crowned Ridge Wind*, LLC, 2022 S.D. 45, ¶¶ 20-21, 978 N.W.2d 756, 762 (quoting *Anderson v. S.D. Ret. Sys.*, 2019 S.D. 11, ¶ 10, 924 N.W.2d 146, 148–49).

SDCL § 1-26-36 provides:

> The court shall give great weight to the findings made and inferences drawn by an agency on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in light of the entire evidence in the record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Supreme Court applies the following standards of review to agency decisions:

> Questions of law are reviewed de novo. *Dakota Trailer Mfg., Inc. v. United Fire & Cas. Co.*, 2015 S.D. 55, ¶ 11, 866 N.W.2d 545, 548. Matters of reviewable discretion are reviewed for abuse. SDCL 1-26-36(6). The agency's factual findings are reviewed under the clearly erroneous standard. SDCL 1-26-36(5). The agency's decision may be affirmed or remanded but cannot be reversed or modified absent a showing of prejudice. SDCL 1-26-36.

Christenson, 2022 S.D. 45, ¶ 21, 978 N.W.2d at 762 (quoting *Anderson*, 2019 S.D. 11, ¶ 10, 924 N.W.2d at 148–49).

ARGUMENT

Throughout this appeal, Claimant has misunderstood what these proceedings are meant to accomplish. In particular, Claimant has believed this administrative appeal to be a direct action against Employer where he would be entitled to a jury trial and damages against his Employer. *See, e.g.*, Appellant's Br. at 5 (alleging "[w]rongful termination by MG Oil…dismissal violates a clear mandate of police [sic] of Title 7 Equal pay act of 1964); *id* ("an employee should have a remedy when he discharged for refusal to participate in MG Oils [sic] schemes, and law breaking."); *id.* at 7 (explaining "employer becomes subject to tort liability" and "employer may be liable to the employee for damages…."). In fact, nearly all of the caselaw cited by Claimant involves direct suits by employees against their employers and are simply irrelevant to these proceedings. *See, e.g., Wilson v. Arkansas Dep't of Hum. Servs.*, 850 F.3d 368 (8th Cir. 2017) (claim for disparate treatment based on race); *Mosley v. MeriStar Mgmt. Co., LLC*, 137 F. App'x 248 (11th Cir. 2005) (discriminatory discharge, hostile work environment, and racial harassment claims under Title VII, § 1981, and the Florida Civil Rights Act); *Phipps v. Clark Oil & Ref. Corp.*, 396 N.W.2d 588 (Minn. Ct. App. 1986), *aff'd*, 408 N.W.2d 569 (Minn. 1987) (wrongful discharge and defamation); *Dudley v. Wal-Mart Stores, Inc.*, 166 F.3d 1317 (11th Cir. 1999) (race discrimination under Title VII).

However, this is not a direct action by Claimant against Employer. Claimant's burden in his administrative appeal was to show error with respect to the determination regarding his entitlement to RA benefits. Given Claimant's distraction by his alleged, potential claims against Employer, Claimant has failed to substantively satisfy his burden

in this appeal on all issues raised and has not shown any error below. ALJ Underdahl and Judge Wipf Pfeifle's decisions should be affirmed, in full.

1. **There is no right to a jury trial in an administrative appeal.**

Throughout this appeal, Claimant has repeatedly demanded a jury trial. Requests were made prior to the administrative hearing before ALJ Underdahl, and several requests were made before Judge Wipf Pfeifle. These requests were properly denied because there is no right to a jury trial in an administrative appeal.

This Court has definitively held, "[t]here is no statutory or administrative procedure provision for the right to a jury trial in the administrative process." *Carr v. S. Dakota Dep't of Lab., Unemployment Ins. Div.*, 355 N.W.2d 10, 13 (S.D. 1984). Such a holding is consistent with the statutory framework for this appeal. Claims administration for RA benefits and eligibility for the same is governed by SDCL Ch. 61-7. Nowhere in this Chapter is the right to a jury trial conferred to Claimant. In fact, the appellate rights of claimants are controlled exclusively by SDCL Ch. 1-26. *See, e.g.,* SDCL §§ 61-7-1 ("Claims for benefits shall be made in accordance with rules promulgated by the department pursuant to chapter 1-26....."); 61-7-8 ("The manner in which disputed claims shall be presented, the related reports required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules promulgated pursuant to chapter 1-26 by the secretary of labor and regulation for determining the rights of the parties."); 61-7-14 ("A final decision of the Department of Labor and Regulation is appealable as provided by chapter 1-26 and no bond may in any event be required for entering such appeal."). Chapter 1-26, by statute, explicitly

excludes the right to a jury trial. *See* SDCL § 1-26-35 ("The review shall be conducted by the court without a jury and shall be confined to the record . . . .") (emphasis added).[5]

Claimant's reliance on *Securities and Exchange Commission v. Jarksey* is misplaced. *See* 144 S. Ct. 2117, 219 L. Ed. 2d 650 (2024). *Jarksey* adressed "whether the Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties against him for securities fraud." *Id.* at 2127. The United States Supreme Court found that the SEC's antifraud provisions replicate common law fraud and, therefore, the Seventh Amendment was implicated and, ultimately, that a jury trial was required in those proceedings. *Id. Jarksey* is simply inapposite to this case. No penalties are being sought against Claimant. Common law fraud (or their statutory counterparts) is not implicated in this case.

There is simply no avenue by which Claimant is entitled to a jury trial in this administrative appeal. Neither ALJ Underdahl nor Judge Wipf Pfeifle erred in denying his repeated requests in this appeal for a jury trial.

2. Claimant was not "constructively discharged" and admits, repeatedly, that he was fired.

Claimant has argued that he was constructively discharged, fired, and that he voluntarily quit his employment with Employer. (CR at 493 n.3.) Logically and legally, all of these positions cannot be true. On his claim of constructive discharge, ALJ

[5] To the extent Claimant is attempting to challenge the constitutionality of this statutory framework, he has not met all procedural requirements to do so. *See* SDCL § 15-6-24(c) ("When the constitutionality of an act of the Legislature affecting the public interest is drawn in question in any action to which the state or an officer, agency, or employee of the state is not a party, the party asserting the unconstitutionality of the act shall notify the attorney general thereof within such time as to afford him the opportunity to intervene.").

Underdahl and Judge Wipf Pfeifle did not err in finding that he was not constructively discharged because he did not quit his employment—he was terminated.

"An employee has been constructively discharged 'when an employer, through action or inaction, renders an employee's working conditions so intolerable that the employee essentially is forced to terminate [his] employment.'" *Anderson v. First Century Fed. Credit Union*, 2007 S.D. 65, ¶ 22, 738 N.W.2d 40, 47 (alteration in original) (emphasis added) (citation omitted). The record is replete with admissions by Claimant that he was fired by Employer. *See, e.g.*, CR at 201 ("Well, I was fired on November 14th, under Exhibit 52."); *Id.* at 202 ("Q: Okay. Why did you stop working for the company? A: They told me I was fired for checking into John Hayward's education."); *Id.* at 205 (In response to ALJ Underdahl's question: "At any point did you state if you were quitting MG Oil or The Park?" Claimant responded, "No, Your Honor, I sent them a settlement offer on Monday, November 13th, that I couldn't make it to the meeting on Monday[.]"); *Id.* at 211; ("Q: Do you have any other testimony you wish to offer regarding your separation, Mr. Walker? A: Just that they fired me on the 14th…."); *Id.* at 291, (Claimant stating in his closing statement that "Again, I was fired on the 14th.").

In Claimant's opening brief to this Court, he admits he was fired. *See* Appellant's Br., at 6, 7, 19, 20. Similarly, in submissions to Judge Wipf Pfeifle, Claimant also admitted to being fired. *See, e.g.*, CR 170 ("The Appellant got fired on November 14,2023 by a text message from Don Williamson that I turn in all the keys."); CR 174 ("But the appellant [sic] court of the 7th Judicial Circuit Court needs to look at the Text Message from Don on the 14th day of November when the Appellant was fired.") There

is simply no evidence to support Claimant's competing assertion that he quit his employment.

Claimant also relies on SDCL § 61-6-9.1(3) to argue that he is eligible for RA benefits because Employer's "conduct demonstrate[d] a substantial disregard of the standards of behavior that the employee has a right to expect of an employer or the employer has breached or substantially altered the contract for employment[.]" To be successful on both a constructive discharge claim and a claim under SDCL § 61-6-9.1(3), Claimant must have quit his employment. *See Anderson*, 2007 S.D. 65, ¶ 22, 738 N.W.2d at 47 (holding that a constructive discharge occurs when the employer's actions forces the employee to quit); *Matter of Johnson*, 337 N.W.2d 442, 447 (S.D. 1983) ("To establish a voluntary quit requires that an employee *intend to* terminate employment." (Emphasis in original)). Claimant did not quit, Employer terminated Claimant's employment when Don Williamson told him to turn in his keys and did not work with him after Claimant's settlement offer. Because Claimant's employment was terminated, ALJ Underdahl did not err in determining that Claimant was not constructively discharged nor did he voluntarily quit his employment under SDCL § 61-6-9.1(3).

Even if this Court considers Claimant's argument under § 61-6-9.1(3), Claimant did not present credible evidence of Employer's substantial disregard for Claimant's rights as an employee. Claimant testified at the hearing as to Employer's alleged misconduct, but there is no evidence in the record supporting his assertions and ALJ Underdahl rejected Claimant's testimony. For example, Claimant attempted to testify regarding an alleged threat from Don and alleged he had a recording of this threat but failed to produce the same for ALJ Underdahl's consideration. CR 151. This Court

should "defer to the agency on the credibility of a witness who testified live because the agency is in a better position . . . to evaluate the persuasiveness of [witness] testimony." *In re Prevention of Significant Deterioration (PSD) Air Quality Permit Application of Hyperion Energy Ctr.*, 2013 S.D. 10, ¶ 41, 826 N.W.2d 649, 661 (citation and internal quotation marks omitted).

3. ALJ Underdahl and Judge Wipf Pfeifle correctly held that Claimant was terminated for work-connected misconduct.

Claimant was terminated by Employer for work-connected misconduct as defined by SDCL § 61-6-14.1. "An unemployed individual who was discharged or suspended from the individual's most recent employment, the employment being at least thirty calendar days in duration for misconduct connected with the individual's work shall be denied benefits[.]" SDCL § 61-6-14 (emphasis added). Under Title 61, misconduct is defined as:

> (1) Failure to obey orders, rules, or instructions, or failure to discharge the duties for which an individual was employed; or
> (2) Substantial disregard of the employer's interests or of the employee's duties and obligations to the employer; or
> (3) Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee; or
> (4) Carelessness or negligence of such degree or recurrence as to manifest equal culpability or wrongful intent.

SDCL § 61-6-14.1. "[I]t is Employer's burden to prove that [Claimant] was not eligible for benefits." *Habben v. G.F. Buche Co.*, 2004 S.D. 29, ¶ 8, 677 N.W.2d 227, 230.

Employer presented sufficient evidence to show that Claimant was terminated for work-connected misconduct. Here, Employer proved that Claimant acted with a substantial disregard to Employer's interests when he called BHSU and threatened the BHSU employee for information that he was not entitled to, and when he made a

coercive "Settlement offer." Threatening a third-party while purporting to act on behalf of the Employer is a substantial disregard of Employer's interests and reflects poorly on Employer. Further, demanding the Employer take action or pay him through a "Settlement offer" after failing to show to a meeting with Employer is also a substantial disregard of Employer's interests. Based on the record, there is substantial evidence to support ALJ Underdahl's conclusion that Claimant was terminated for work-connected misconduct.

Because Claimant was ineligible for benefits based on his termination for work-connected misconduct, Employer's experience-rating account is exempt from charge. *See* SDCL § 61-5-39 (providing that no benefits may be charged to the experience rating of an employer if the claimant was discharged for work-connected misconduct).

4. ALJ Underdahl did not err in denying Claimant's requested discovery.

Claimant argues that ALJ Underdahl erred in denying certain discovery requests and that his discovery requests were ignored. The Notice of Hearing sent to Claimant on December 28, 2023 informed Claimant that this was an "adversary proceeding" and that "[a]ny additional documents to be considered during the hearing must be mailed **IMMEDIATELY** to the [Department][.]" (CR 69-70) (emphasis in original).

Administrative hearings regarding RA benefits are conducted in accordance with SDCL chapter 1-26. *See* SDCL § 61-7-8 ("The manner in which disputed claims shall be presented, the related reports required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules promulgated pursuant to chapter 1-26[.]"). In these proceedings, a claimant is entitled to conduct certain discovery and an ALJ has discretion in allowing such discovery. *See* SDCL § 1-26-18;

SDCL § 1-26-19.1 (allowing subpoenas at sole discretion of ALJ);[6] SDCL § 1-26.19.2 (permitting depositions at sole discretion of ALJ).[7] However, Claimant does not have unfettered ability to serve burdensome, irrelevant, and unreasonable discovery. Nor does Claimant have the right to conduct discovery in this action for matters that involve his collateral claims. "Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded" in contested cases. SDCL § 1-26-19(1). ALJ Underdahl properly exercised his authority to limit the discovery requests and the evidence presented to relevant and material evidence.

Claimant sent the Department a Motion on Application to Issue Subpoenas on January 2, 2024, which contained a motion for subpoenas for various witnesses, a motion for a subpoena duces tecum and motion to compel interrogatories. (CR 78-80.) He also filed a subsequent motion to compel discovery on January 4, 2024. (*Id.* at 106.) ALJ

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[6] SDCL § 1-26-19.1 provides:

> Each agency and the officers thereof charged with the duty to administer the laws of this state and rules of the agency shall have power to administer oaths as provided by chapter 18-3 and to subpoena witnesses to appear and give testimony and to produce records, books, papers and documents relating to any matters in contested cases and likewise issue subpoenas for such purposes for persons interested therein as provided by § 15-6-45. Unless otherwise provided by law fees for witnesses shall be as set forth in chapter 19-5 and be paid by the agency or party for whom the witness is subpoenaed.
>
> Failure of a person to obey the subpoena issued pursuant to this chapter may be punished as a contempt of court in the manner provided by chapter 21-34.

[7] SDCL § 1-26-19.2 provides:

> Each agency and the officers thereof charged with the duty to administer the laws and rules of the agency shall have power to cause the deposition of witnesses residing within or without the state or absent therefrom to be taken or other discovery procedure to be conducted upon notice to the interested person, if any, in like manner that depositions of witnesses are taken or other discovery procedure is to be conducted in civil actions pending in circuit court in any matter concerning contested cases.

Underdahl denied this requested discovery by Claimant. (*Id.* at 90-91; 137.) ALJ Underdahl properly exercised his discretionary authority to deny the subpoenas because Employer and Claimant were expected to testify about the events that led to Claimant's termination and the subpoenas were not necessary to obtain such testimony. (*Id.* at 90-91.) ALJ Underdahl also informed the parties in his January 4, 2024 letter that if he believed that relevant testimony was not presented at the hearing, he would consider continuing the hearing so that a subpoena could be issued and the testimony would be obtained. (*Id.* at 91.) Even if ALJ Underdahl should have issued the subpoenas, many of the individuals who Claimant requested to be subpoenaed, testified at the hearing, were subject to cross-examination by Claimant, and therefore, Claimant was not prejudiced by the denial of his motion.

Further, Claimant did not provide any discovery requests, including interrogatories or deposition requests, for ALJ Underdahl to properly consider and merely argued that Employer was not participating in discovery. (*Id.*at 106.) Moreover, the discovery sent by Claimant was ineffective because Claimant had no authority to unilaterally issue discovery—that power is held by ALJ Underdahl, by statute. *See* SDCL §§ 1-26-18, 1-26-19.1. Employer sent its documents it wanted considered at the hearing to the Department, *see id.* at 120-127, and the Department distributed those documents to Claimant, *see id.* at 118, 128. As such, ALJ Underdahl did not err in denying this discovery as an exercise of his discretionary authority.

"Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy." SDCL § 1-26-18. Claimant was afforded this opportunity and presented his case at the hearing before the ALJ and cross-

examined the witnesses for Employer. As such, there is no basis for Claimant's contentions that ALJ Underdahl erred in denying his discovery.

5. Claimant's request for damages is baseless.

Claimant requests $1,500,000 in compensatory damages and $5,000,000 in punitive damages "[against] the DOL [for] clear evidence ignored[.]" It is unclear whether he is requesting damages against ALJ Underdahl or Department as Department was not involved in the proceedings below. Regardless, such a request is baseless and has no legal foundation. First, this administrative appeal is not a direct action against the State, ALJ Underdahl, or the Department as Claimant believes. These proceedings are exclusively controlled by the South Dakota Administrative Procedure Act (Ch. 1-26) and nowhere in this Chapter are damages, let alone punitive damages, an available remedy in an administrative appeal. Second, the Court is limited in its authority to render relief in these proceedings. *See* SDCL § 1-26-36 (providing that the Court may affirm, remand, reverse, or modify the agency's decision). Because there is no basis for Claimant's request, it should be denied in full.

6. Department objects to Claimant's attempt to expand record.

Claimant has filed a number of extraneous documents with this Court as part of his opening brief. Department was not served with Claimant's Exhibit A, the recording attached thereto, or an Appendix and only is aware they were filed with this Court through Odyssey and correspondence with this Court's Clerk. Department explicitly objects to these pleadings as they improperly expand the record on appeal.[8]

[8] Claimant has also filed a document styled "Findings of Fact," which were attached to his opening brief as an independent pleading. Department is considering this document an extension of his brief and not an independent motion or claim for relief in this appeal.

Exhibit A was never before produced to ALJ Underdahl or Judge Wipf Pfeifle at any point in this appeal. In fact, it appears to be a document Claimant created in furtherance of his EEOC complaint he filed during the underlying appeal.[9] Because it is not contained in the record on appeal (either at the administrative level or circuit court), it should be excluded from consideration. *See* SDCL § 1-26-21 (contents of record in contested cases); SDCL § 1-26-35 (On appeal, "[t]he review . . . shall be confined to the record.").

As for the recording attached to Exhibit A, no recordings were ever presented to ALJ Underdahl in the underlying appeal. Claimant attempted to produce recordings for the first time in this appeal before Judge Wipf Pfeifle. (CR at 16.) However, all recordings were excluded from the record by Judge Wipf Pfeifle because evidence cannot be considered for the first time on appeal not contained in the administrative record. (*Id.* at 43-47, 358-359.); *see* SDCL § 1-26-35. Because all recordings were struck from the record below, they should not be considered now. SDCL § 1-26-21; *see also* SDCL § 1-26-35.

Claimant has provided this Court with an altered version of Judge Wipf Pfeifle's Memorandum Decision and Order as an Appendix. Claimant has apparently handwritten revisions to this document and has reproduced it in a format where large portions are missing. *Compare* to CR at 479-486. Such practice is clearly improper, and any notations should be disregarded by this Court. SDCL § 1-26-21.

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[9] The EEOC charge number contained in Exhibit A matches that number identified in his briefing to this Court.

CONCLUSION

All of the decisions below are fully supported by the record and the law. Claimant is free to pursue his collateral claims separate from this appeal. However, he has failed to show any error below and the decisions below should be affirmed, in full.

Dated this 14th day of November 2024.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ Seth A. Lopour

Seth A. Lopour
Courtney S. Chapman
300 South Phillips Avenue, Suite 300
Post Office Box 5027
Sioux Falls, SD 57117-5027
(605) 336-3890
Seth.Lopour@woodsfuller.com
Courtney.Chapman@woodsfuller.com
Attorneys for South Dakota
Reemployment Assistance Division

CERTIFICATE OF COMPLIANCE

In accordance with SDCL § 15-26A-66(b)(4), the undersigned certifies that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word 365, Times New Roman (12 point) and contains 6,734 words, excluding the table of contents, table of authorities, and certificates of counsel. The undersigned has relied on the word and character count of the word-processing program to prepare this certificate.

Dated this 14th day of November 2024.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ Seth A. Lopour

Seth A. Lopour
Courtney S. Chapman
300 South Phillips Avenue, Suite 300
Post Office Box 5027
Sioux Falls, SD 57117-5027
(605) 336-3890
Seth.Lopour@woodsfuller.com
Courtney.Chapman@woodsfuller.com
Attorneys for South Dakota
Reemployment Assistance Division

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of November 2024, a true and correct copy of the foregoing Appellee's Brief was sent, via U.S. first class mail, postage prepaid, to:

Clayton Walker
1515 East St Patrick Street, Lot 356
Rapid City, SD 57703.
Pro Se Appellant

and via Odyssey File and Serve to:

Heather Lammers Bogard
Jess M. Pekarski
Costello, Porter, Hill, Heisterkamp, Bushnell & Carpenter, LLP
P.O. Box 290
Rapid City, SD 57709-0290.
Attorneys for MG Oil Co.

/s/ Seth A. Lopour
One of the attorneys for Appellee