CHAPTER 35

Employment and Workforce—Benefits and Claims Therefor

Code Commissioner’s Note

At the direction of the Code Commissioner “Employment and Workforce” substituted for “Employment Security”, to bring the chapter title in conformance with 2010 Act No. 146.

CROSS REFERENCES

Charge of overpaid benefits to employer’s account, see Section 41‑35‑135.

Corporate officers exempt from unemployment benefits absent employer election, procedure, exceptions, see Section 41‑27‑265.

Department of Employment and Workforce integrity fund, see Section 41‑33‑910.

ARTICLE 1

Regular Benefits

**SECTION 41‑35‑10.** Payment of benefits generally.

 Benefits shall become payable from the fund to any individual who is unemployed and eligible for benefits. Except as provided in Section 41‑35‑20 benefits based on service in employment defined in Section 41‑27‑230 (2) and (3) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to Chapters 27 through 41 of this Title. All benefits shall be paid through employment offices, in accordance with such regulations as the department may prescribe.

HISTORY: 1962 Code Section 68‑101; 1952 Code Section 68‑101; 1942 Code Section 7035‑83; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1971 (57) 950.

Code Commissioner’s Note

At the direction of the Code Commissioner “department” was substituted for “Commission” to conform to 2010 Act No. 146.

CROSS REFERENCES

Benefits payable under Title XV of the Social Security Act, as amended, see S.C. Code of Regulations R. 47‑35.

Payment of benefits to interstate claimants and the combination of wage credits, see S.C. Code of Regulations R. 47‑29.

Provisions governing staff leasing services do not affect Employment Security Law (Sections 41‑27‑10 through 41‑41‑50), see Section 40‑68‑180.

**SECTION 41‑35‑20.** Payment of benefits based on certain services in schools or institutions of higher education.

 (1) Benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education as defined in Section 41‑27‑290 or educational institution as defined in Section 41‑27‑340 must not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual’s contract, if the individual has a contract or a reasonable assurance that the individual will perform services in this capacity for both these academic years or both these terms.

 (2) With respect to services performed after December 31, 1977, in any other capacity for an educational institution or institution of higher education, irrespective of whether the institution is a public, private, or nonprofit organization, benefits are not payable on the basis of these services to any individual for any week which commences during a period between two successive academic years or terms if the individual performs these services in the first of those academic years or terms and there is a reasonable assurance that the individual will perform these services in the second of those academic years or terms. However, if compensation is denied to any individual under this subsection and the individual was not offered an opportunity to perform these services for the educational institution or institution of higher education for the second of these academic years or terms, the individual is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.

 (3) With respect to any services described in subsections (1) and (2), benefits are not payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs these services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform these services in the period immediately following the vacation period or holiday recess.

 (4) With respect to any services described in subsections (1), (2), and (3) of this section, benefits are not payable on the basis of services in any such capacities to any individual who performed these services in an educational institution or institution of higher education while in the employ of an educational service agency. For purposes of this section, “educational service agency” means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing these services to one or more educational institutions.

 (5) With respect to any services described in subsections (1), (2), and (3), benefits are not payable on the basis of services in any such capacities to any individual who performed these services for a private employer holding a contractual relationship with the educational institution and is providing the services to or on behalf of an educational institution or an institution of higher education, provided that the private employer notifies the Department of Employment and Workforce of the separation of an individual subject to this subsection.

 (6) In this section “reasonable assurance” means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term.

HISTORY: 1962 Code Section 68‑102; 1971 (57) 950; 1972 (57) 2309; 1977 Act No. 161 Section 9; 1982 Act No. 386; 1983 Act No. 62, Section 4; 1984 Act No. 406, Section 1; 1985 Act No. 83 Section 2; 1986 Act No. 361, Section 4, eff April 3, 1986; 2012 Act No. 262, Section 1, eff June 18, 2012.

Effect of Amendment

The 1986 amendment substituted “subsections (1), (2), and (4)” for “subsections (1) and (2)” in subsection (5).

The 2012 amendment rewrote items (3) and (5); in item (4), inserted “, and (3)”, and removed “as specified in subsections (1) and (2) of this section”; and, made other nonsubstantive changes.

**SECTION 41‑35‑30.** Payment of benefits in case of death.

 (A) When a benefit due an individual has been unpaid at the time of death and the estate of the individual has not been administered in the probate court within sixty days after the time of death, the department may pay benefit amounts the deceased may have been entitled to:

 (1) the surviving wife or husband and, if there is none;

 (2) the minor children and, if there are none;

 (3) the adult children and, if there are none;

 (4) the parents of the deceased and, if there are none;

 (5) a person dependent on the deceased.

 (B) If there is no person within those classifications, the payments due the deceased must lapse and revert to the unemployment trust fund.

 (C) Payment to a responsible adult with whom minor children are making their home, upon a written pledge to use the payment for the benefit of these minors, is considered proper and legal payment to the minor children without the requirement of formal appointment of a guardian.

HISTORY: 1962 Code Section 68‑103; 1952 Code Section 68‑103; 1942 Code Section 7035‑83; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 73, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; added subsection designations (A), (B), and (C) to previously undesignated paragraphs; and made other nonsubstantive changes throughout the section.

CROSS REFERENCES

Payment of benefits to deceased claimant, see S.C. Code of Regulations R. 47‑26.

**SECTION 41‑35‑40.** Weekly benefit amount.

 An insured worker’s weekly benefit amount is fifty percent of his weekly average wage, as defined in Section 41‑27‑140, and the weekly benefit amount, if not a multiple of one dollar, must be computed to the next lower multiple of one dollar. However, no insured worker’s weekly benefit amount may be less than forty‑two dollars nor greater than sixty‑six and two‑thirds percent of the statewide average weekly wage most recently computed before the beginning of the individual’s benefit year.

HISTORY: 1962 Code Section 68‑104; 1952 Code Section 68‑104; 1942 Code Section 7035‑83; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1945 (44) 375; 1948 (45) 1762; 1955 (49) 480; 1961 (52) 453; 1973 (58) 412; 1983 Act No. 62 Section 5; 2010 Act No. 234, Section 4, eff January 1, 2011.

Effect of Amendment

The 2010 amendment substituted “forty‑two dollars” for “twenty dollars” in the second sentence.

CROSS REFERENCES

Discharge of voluntarily admitted child upon request unless director of treatment program petitions for judicial commitment pursuant to this section, see Section 44‑24‑40.

Service as witness or juror not to constitute disqualification for benefits, but benefits to be reduced by amount of per diem received, see Section 41‑35‑115.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 246.

NOTES OF DECISIONS

In general 1

1. In general

There must be a valid claim for benefits before a weekly benefit amount and net maximum benefit amount can be determined. And where a claimant files a claim for benefits for which he or she is not eligible under Code 1962 Section 68‑113 because not available for work, such does not constitute a valid claim. Hartsville Cotton Mill v. South Carolina Employment Sec. Commission (S.C. 1953) 224 S.C. 407, 79 S.E.2d 381. Unemployment Compensation 180; Unemployment Compensation 253

**SECTION 41‑35‑50.** Maximum potential benefits for year.

 The maximum potential benefits of any insured worker in a benefit year are the lesser of:

 (1) twenty times his weekly benefit amount;

 (2) one‑third of his wages for insured work paid during his base period.

 If the resulting amount is not a multiple of one dollar, the amount must be reduced to the next lower multiple of one dollar, except that no insured worker may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed “insured work” as defined in Section 41‑27‑300 and earned wages in the employ of a single employer in an amount equal to not less than eight times the weekly benefit amount established for the individual in the preceding benefit year.

HISTORY: 1962 Code Section 68‑105; 1952 Code Section 68‑108; 1942 Code Section 7035‑83; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1952 (47) 1936; 1955 (49) 480; 1969 (56) 268; 1971 (57) 950; 1972 (57) 2309; 1983 Act No. 62 Section 6; 2011 Act No. 63, Section 17, eff June 14, 2011.

Effect of Amendment

The 2011 amendment in subsection (1) substituted “twenty” for “Twenty‑six”, and in subsection (2) substituted “one‑third” for “One‑third”.

CROSS REFERENCES

Benefits for seasonal workers, see Section 41‑31‑52.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 243.

**SECTION 41‑35‑60.** Weekly benefits for partial unemployment.

 Each eligible individual who is unemployed in any week must be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of the wages (if any) payable to him with respect to such week which is in excess of one‑fourth of his weekly benefit amount. Such benefit is not a multiple of one dollar must be computed to the next lower multiple of one dollar.

HISTORY: 1962 Code Section 68‑107; 1952 Code Section 68‑107; 1942 Code Section 7035‑83; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1955 (49) 480; 1983 Act No. 62 Section 7.

CROSS REFERENCES

Service as witness or juror not to constitute disqualification for benefits, but benefits to be reduced by amount of per diem received, see Section 41‑35‑115.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 158.

**SECTION 41‑35‑65.** Wages paid for previously uncovered services.

 With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this paragraph “previously uncovered services” means services which were not employment as defined in Section 41‑27‑230, and were not services covered pursuant to Section 41‑37‑20 at any time during the one‑year period ending December 31, 1975; and which are:

 (1) Agricultural labor as defined in Section 41‑27‑120, or domestic service as defined in Section 41‑27‑230(6); or

 (2) Services performed by an employee of this State or a political subdivision thereof, as provided in Section 41‑27‑230(2); or

 (3) Services performed by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in Section 41‑27‑230(3); except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

HISTORY: 1962 Code Section 68‑108; 1977 Act No. 161 Section 10.

**SECTION 41‑35‑66.** Benefits for participants in sports or athletic events.

 Benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such season (or similar periods).

HISTORY: 1962 Code Section 68‑108.1; 1977 Act No. 161 Section 11.

**SECTION 41‑35‑67.** Benefits to aliens.

 (1) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act).

 (2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

 (3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

HISTORY: 1962 Code Section 68‑108.2; 1977 Act No. 161 Section 12.

**SECTION 41‑35‑100.** Preservation of benefit rights of persons in armed forces.

 The department must promulgate regulations necessary to preserve the benefit rights of individuals who volunteer, enlist, or are called or drafted into a branch of the military, naval service, or an organization affiliated with the defense of the United States or this State. These regulations, with respect to these individuals, must supersede an inconsistent provision of Chapters 27 through 41 of this title, but where practicable must secure results reasonably similar to those provided in the analogous provisions of these chapters.

HISTORY: 1962 Code Section 68‑112; 1952 Code Section 68‑112; 1942 Code Section 7035‑83; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1955 (49) 480; 2010 Act No. 146, Section 74, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes.

CROSS REFERENCES

Regulation pertaining to military and naval personnel, see S.C. Code of Regulations R. 47‑28.

**SECTION 41‑35‑110.** Conditions of eligibility for benefits.

 An unemployed insured worker is eligible to receive benefits with respect to a week only if the department finds he:

 (1) has made a claim for benefits with respect to that week pursuant to regulations prescribed by the department;

 (2) has registered for work and after work has continued to report at an employment office, except that the department, by regulation, may waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs; provided, that no regulation conflicts with Sections 41‑35‑10 or 41‑35‑30;

 (3) is able to work and is available for work at his usual trade, occupation, or business or in another trade, occupation, or business for which he is qualified based on his prior training or experience; is available for this work either at a locality at which he earned wages for insured work during his base period or, if the individual has moved, to a locality where it may reasonably be expected that work suitable for him under the provisions of Section 41‑35‑120(3)(b) is available; and, in addition to having complied with subsection (2), is himself actively seeking work; provided, however:

 (a) notwithstanding another provision of Chapters 27 through 41 of this title, an otherwise eligible individual may not be denied a benefit with respect to a week in which he is in training with the approval of the department by reason of the application of the provision of this section relating to availability for work and an active search for work;

 (b) a claimant may not be eligible to receive a benefit or waiting period credit if engaged in self‑employment of a nature to return or promise remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over this period of time;

 (c) no claimant shall be eligible to receive benefits or waiting period credit following the completion of a temporary work assignment unless the claimant shows that he informed the temporary employment agency that provided the assignment of the assignment’s completion, has maintained on‑going weekly contact with the agency after completion of the assignment, and that the agency has not provided a subsequent assignment for which the claimant’s prior training or experience shows him to be fitted or qualified;

 (4) has been unemployed for a waiting period of one week, but a week may not be counted as a week of unemployment for the purposes of this paragraph:

 (a) unless it occurs within the benefit year that included the week with respect to which he claims payment of a benefit;

 (b) if a benefit has been paid with respect to it; and

 (c) unless the individual was eligible for a benefit with respect to it as provided in this section and Section 41‑35‑120, except for the requirements of this item (4) and of item (5) of Section 41‑35‑120;

 (5) has separated, through no fault of his own, from his most recent bona fide employer; provided, however, the term “most recent bona fide employer” means the work or employer from which the individual separated regardless of work subsequent to his separation in which he earned less than eight times his weekly benefit amount; and

 (6) participates in reemployment services, such as job search assistance services, if he is determined to be likely to exhaust regular benefits and need a reemployment service pursuant to a profiling system established by the department, unless the department determines:

 (a) the individual has completed such services; or

 (b) there is justifiable cause for the claimant’s failure to participate in those services.

HISTORY: 1962 Code Section 68‑113; 1952 Code Section 68‑113; 1942 Code Section 7035‑84; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1949 (46) 264; 1955 (49) 480; 1969 (56) 268; 1971 (57) 950; 1982 Act No. 340, Section 2; 1994 Act No. 497, Part II, Section 141, eff June 29, 1994; 2010 Act No. 146, Section 75, eff March 30, 2010.

Effect of Amendment

The 1994 amendment added paragraph (6).

The 2010 amendment substituted “department” for “Commission” throughout this section; added subparagraph (3)(c), relating to temporary work assignments; and made other nonsubstantive changes throughout the section.

CROSS REFERENCES

Service as witness or juror not to constitute disqualification for benefits, but benefits to be reduced by amount of per diem received, see Section 41‑35‑115.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Sections 197 et seq., 217, 247.

RESEARCH REFERENCES

Encyclopedias

1 Am. Jur. Proof of Facts 2d 613, Suitability of Work‑Unemployment Compensation.

Attorney General’s Opinions

The intention of the General Assembly would be best carried out by permitting the Employment Security Commission to make its finding, pursuant to Section 41‑35‑110(4), that those claimants in those counties affected by Hurricane Hugo cannot pursue other employment for the usual one week’s waiting period and that the terms of the statute cannot be met in such an unusual and limited circumstance. 1989 Op Atty Gen, No. 89‑106, p 286.

NOTES OF DECISIONS

Generally 1

Held eligible 2

Held ineligible 3

Review 4

1. Generally

The purpose of the availability for work requirement is to provide a test for determining whether unemployment compensation claimant is actually and currently attached to the labor market. McEachern v. South Carolina Employment Security Com’n (S.C.App. 2006) 370 S.C. 553, 635 S.E.2d 644. Unemployment Compensation 195

Whether claimant is available for work, for purposes of unemployment compensation, is question of fact for Employment Security Commission. Murphy v. South Carolina Employment Sec. Com’n (S.C.App. 1997) 328 S.C. 542, 492 S.E.2d 625. Unemployment Compensation 294

Employment Security Commission determines whether claimant has unrestricted exposure to labor market by looking at facts and circumstances of each case. Murphy v. South Carolina Employment Sec. Com’n (S.C.App. 1997) 328 S.C. 542, 492 S.E.2d 625. Unemployment Compensation 200

The basic purpose of the requirement that a claimant must be available for work to be eligible for benefits is to provide a test by which it can be determined whether or not the claimant is actually and currently attached to the labor market, which in this case is unrestricted availability for work. Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

The availability for work requirement has been said to be satisfied when an individual is willing, able, and ready to accept suitable work or employment, which he does not have good cause to refuse, that is, when he is genuinely attached to the labor market. Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965. Unemployment Compensation 193

Burden is upon the claimant for benefits to show that he has met the benefit eligibility conditions and that he is available for work. Hyman v South Carolina Employment Secur. Com. (1959) 234 SC 369, 108 SE2d 554. Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

Cited in Stone Mfg. Co. v. South Carolina Employment Sec. Com’n (S.C. 1951) 219 S.C. 239, 64 S.E.2d 644.

State’s denial of unemployment compensation benefits to individual who refused a temporary position requiring work on Sunday due to his religious belief that Sunday was “the Lord’s Day” violates free exercise clause of Federal Constitution’s First Amendment, even though individual belongs to no established religious sect or church. Frazee v. Illinois Dept. of Employment Sec., U.S.Ill.1989, 109 S.Ct. 1514, 489 U.S. 829, 103 L.Ed.2d 914. Constitutional Law 1387; Unemployment Compensation 200

2. Held eligible

Disqualification for benefits may not be based upon free exercise of religious beliefs, and employee may not be disqualified for her religion, for such ruling would penalize free exercise of her constitutional liberties. Sherbert v. Verner (U.S.S.C. 1963) 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

Substantial evidence supported Administrative Law Court’s (ALC) finding that unemployment compensation claimant was available to work, as required to establish her eligibility for benefits; although claimant was enrolled as a student for approximately 16 hours per week in pursuit of her GED, and although claimant spent up to 20 hours per week searching for a new location to re‑open restaurant at which she had been previously employed, claimant testified that she would leave school if she were offered full‑employment and always kept her phone with her in classes in case prospective employers called, and further testified that her search for a new restaurant location did not require specific hours each week and that she conducted her search in her “free time.” Morrow v. South Carolina Dept. of Emp. (S.C.App. 2014) 2014 WL 2199842, Unreported. Unemployment Compensation 439

Administrative Law Court (ALC) adequately considered the fact that unemployment compensation claimant’s husband owned approximately one‑third of the stock in restaurant corporation which previously employed claimant before the restaurant was closed, and that claimant was designated as corporation’s vice president, when concluding that any interest claimant held in the corporation did not disqualify her from receiving unemployment compensation benefits; ALC explicitly found that corporation’s stock certificates indicated that claimant did not own any interest in employer. Morrow v. South Carolina Dept. of Emp. (S.C.App. 2014) 2014 WL 2199842, Unreported. Unemployment Compensation 51

3. Held ineligible

There was substantial evidence to support Employment Security Commission’s determination that unemployment compensation claimant, who was corporate officer and worked for his own business, was not “unemployed;” claimant continued to work at his business in excess of customary full‑time hours, he acknowledged he worked at least sixty hours per week, he admittedly was not seeking alternative employment because he expected his business to return to profitability in near future, and there was no provision that would allow unemployment compensation to subsidize individuals who chose to operate business at a loss and continued to work while deferring a salary in order either to pay other employees or to meet other financial obligations. McEachern v. South Carolina Employment Security Com’n (S.C.App. 2006) 370 S.C. 553, 635 S.E.2d 644. Unemployment Compensation 51

Claimant who flatly refused to work except in certain area during hours between 8:30 a.m. and 2:30 p.m. was unavailable for work and, therefore, was disqualified from receiving unemployment compensation benefits. Murphy v. South Carolina Employment Sec. Com’n (S.C.App. 1997) 328 S.C. 542, 492 S.E.2d 625. Unemployment Compensation 216; Unemployment Compensation 219

There was substantial evidence to support the Employment Security Commission’s finding that a claimant’s efforts to obtain employment as a switchboard operator, based solely on undocumented and unverified telephone contacts, rendered her unavailable for work within the meaning of Section 41‑35‑110(3), where, although she was faced with seeking employment in a small town and needed to make transportation arrangements before any personal contacts could be made with potential employers, her personal appearance was an important factor in hiring switchboard and receptionist personnel, a type of employment which was not so unique as to lessen the type of job search efforts which would be considered reasonable. Wellington v. South Carolina Employment Sec. Com’n (S.C.App. 1984) 281 S.C. 115, 314 S.E.2d 37.

A claimant does not show that he was available for work simply by proving that he has registered with the employment office of the Commission and reporting to his union headquarters. Hyman v. South Carolina Employment Sec. Commission (S.C. 1959) 234 S.C. 369, 108 S.E.2d 554.

Failure of the claimant to make a personal search for work during the period of his unemployment is ample evidence to support the finding of fact by the Commission that he was unavailable for work. Hyman v. South Carolina Employment Sec. Commission (S.C. 1959) 234 S.C. 369, 108 S.E.2d 554.

Where a claimant’s unemployment did not result from the failure of her employer to provide stable employment, but arose out of a change in her domestic circumstances which rendered her unavailable for work on the shift on which she was most recently employed, it followed that while she was unavailable for work due to her own personal circumstances she fell outside the class which this Title was intended to benefit. Hartsville Cotton Mill v. South Carolina Employment Sec. Commission (S.C. 1953) 224 S.C. 407, 79 S.E.2d 381.

Where claimant was able to work on first or second shifts but refused work on the third shift on which she had formerly been working, it was held that she was not available for work within the meaning of that term; that in order to be entitled to benefits under this section [Code 1962 Section 68‑113] the unemployed individual must be able to and be available for the work which he or she had been doing. Judson Mills v. South Carolina Unemployment Compensation Com’n. (S.C. 1944) 204 S.C. 37, 28 S.E.2d 535.

4. Review

For purposes of reviewing administrative agency’s factual findings, “substantial evidence” is evidence which, considering record as whole, would allow reasonable minds to reach conclusion that administrative agency reached. Murphy v. South Carolina Employment Sec. Com’n (S.C.App. 1997) 328 S.C. 542, 492 S.E.2d 625. Administrative Law And Procedure 791

Findings of fact made by the Commission are conclusive and the Supreme Court will not review such findings except to determine whether there is any evidence to support such findings. Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

**SECTION 41‑35‑115.** Service as witness or juror not to constitute disqualification for benefits.

 Notwithstanding another provision of law, an individual otherwise eligible for a benefit may not be denied a benefit with respect to a week in which he is required by law to appear in court as a witness or juror. However, an unemployment benefit received by a person pursuant to Chapters 27 through 41 of this title must be reduced by any per diem received for service as a juror. The department must promulgate regulations necessary to implement the provisions of this section.

HISTORY: 1993 Act No. 21, Section 1, eff January 1, 1993; 2010 Act No. 146, Section 76, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “commission”; and made other nonsubstantive changes.

**SECTION 41‑35‑120.** Disqualification for benefits.

 An insured worker is ineligible for benefits for:

 (1) Leaving work voluntarily. If the department finds he left voluntarily, without good cause, his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim.

 (2)(a) Discharge for misconduct connected with the employment. If the department finds that he has been discharged for misconduct connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request, and continuing for the next twenty weeks, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker’s benefits to be calculated by multiplying his weekly benefit amount by twenty. For the purposes of this item, “misconduct” is limited to conduct evincing such wilfull and wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in the carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer’s interest or of the employee’s duties and obligations to his employer. No finding of misconduct may be made for discharge resulting from an extreme hardship, emergency, sickness, or other extraordinary circumstance.

 (b) If the department finds that he has been discharged for cause, other than misconduct as defined in item (2)(a), connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, then the department must find him partially ineligible. The ineligibility must begin with the effective date of the request, and continuing not less than five nor more than the next nineteen weeks, in addition to the waiting period. A corresponding and mandatory reduction of the insured worker’s benefits, to be calculated by multiplying his weekly benefit amount by the number of weeks of his disqualification, must be made. The ineligibility period must be determined by the department in each case according to the seriousness of the cause for discharge. Discharge resulting from substandard performance due to inefficiency, inability, or incapacity shall not serve as a basis for disqualification under either subitem (a) or (b) of this item.

 (3)(a) Discharge for illegal drug use, and is ineligible for benefits beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim if the:

 (i) company has communicated a policy prohibiting the illegal use of drugs, the violation of which may result in termination; and

 (ii) insured worker fails or refuses to provide a specimen pursuant to a request from the employer, or otherwise fails or refuses to cooperate by providing an adulterated specimen; or

 (iii) insured worker provides a blood, hair, oral fluid, or urine specimen during a drug test administered on behalf of the employer, which tests positive for illegal drugs or legal drugs used unlawfully, provided:

 (A) the sample was collected and labeled by a licensed health care professional or another individual authorized to collect and label test samples by federal or state law, including law enforcement personnel; and

 (B) the test was performed by a laboratory certified to perform such tests by the United States Department of Health and Human Services (USDHHS)/Substance Abuse Mental Health Services Administration (SAMHSA), the College of American Pathologists or the State Law Enforcement Division; and

 (C) an initial positive test was confirmed on the specimen using the gas chromatography/mass spectrometry method, or an equivalent or a more accurate scientifically accepted method approved by USDHHS/SAMHSA;

 (iv) for purposes of this item, “unlawfully” means without a prescription.

 (b) If an insured worker makes an admission pursuant to the employer’s policy, which provides that voluntary admissions made before the employer’s request to the employee to submit to testing may protect an employee from immediate termination, then the admission is inadmissible for purposes of this section as long as the:

 (i) employer has communicated a written policy, which provides protection from immediate termination for employees who voluntarily admit prohibited drug use before the employer’s request to submit to a test; and

 (ii) employee makes the admission specifically pursuant to the employer’s policy.

 (c) Information, interviews, reports, and drug‑test results, written or otherwise, received by an employer through a drug‑testing program may be used or received in evidence in proceedings conducted pursuant to the provisions of this title for the purposes of determining eligibility for unemployment compensation, including administrative or judicial appeal.

 (4) Discharge for gross misconduct, and is ineligible for benefits beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim if he is discharged due to:

 (i) wilful or reckless employee damage to employer property that results in damage of more than fifty dollars;

 (ii) employee consumption of alcohol or being under the influence of alcohol on employer property in violation of a written company policy restricting or prohibiting consumption of alcohol;

 (iii) employee theft of items valued at more than fifty dollars;

 (iv) failure to comply with applicable state or federal drug and alcohol testing and use regulations including, but not limited to, 49 C.F.R. part 40 and part 382 of the federal motor carrier safety regulations, while on the job or on duty, and regulations applicable for employees performing transportation and other safety sensitive job functions as defined by the federal government;

 (v) employee committing criminal assault or battery of another employee or a customer;

 (vi) employee committing criminal abuse of patient or child in his professional care;

 (vii) employee insubordination, which is defined as wilful failure to comply with a lawful, reasonable order of a supervisor directly related to the employee’s employment as described in an applicable written job description; or

 (viii) employee wilful neglect of duty directly related to the employee’s employment as described in an applicable written job description.

 (5) Failure to accept work.

 (a) If the department finds he has failed, without good cause:

 (i)(A) either to apply for available suitable work, when so directed by the employment office or the department;

 (B) to accept available suitable work when offered to him by the employment office or an employer; or

 (C) to return to his customary self‑employment, if any, when so directed by the department, the ineligibility begins with the week the failure occurred and continues until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined in Chapters 27 through 41 of this title and earned wages for services equal to at least eight times the weekly benefit amount of his claim.

 (b) In determining whether work is suitable for an individual, the department must consider, based on a standard of reasonableness as it relates to the particular individual concerned, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

 (c) Notwithstanding another provision of Chapters 27 through 41 of this title, work is not considered suitable and benefits may not be denied under these chapters to an otherwise eligible individual for refusing to accept new work under any of the following conditions:

 (i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

 (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

 (iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

 (d) Notwithstanding another provision of Chapters 27 through 41 of this title, an otherwise eligible individual may not be denied a benefit for a week for failure to apply for, or refusal to accept, suitable work because he is in training with the approval of the department.

 (e) Notwithstanding another provision of this chapter, an otherwise eligible individual may not be denied a benefit for a week because he is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor may the individual be denied benefits by reason of leaving work to enter training, if the work left is not suitable employment, or because of the application to a week in training of provisions in this law or an applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subitem, “suitable employment” means, with respect to an individual, work of a substantially equal or higher skill level than the individual’s past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for the work at not less than eighty percent of the individual’s average weekly wage as determined for the purposes of the Trade Act of 1974.

 (6) Labor dispute. For a week in which the department finds that his total or partial unemployment is directly due to a labor dispute in active progress in the factory, establishment, or other premises at which he was last employed. This paragraph does not apply if it is shown to the satisfaction of the department that he:

 (a) is not participating in, financing, or directly interested in the labor dispute;

 (b) does not belong to a grade or class of workers of which, immediately before he became unemployed by reason of the dispute, there were members employed at the premises at which the dispute exists, any of whom are participating in or directly interested in the dispute. If separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each department for the purpose of this item is considered to be a separate factory, establishment, or other premises.

 (7) Receiving benefits elsewhere. For a week in which, or a part of which, he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. If the appropriate agency of the other state or of the United States finally determines that he is not entitled to unemployment benefits, this disqualification does not apply.

 (8) Voluntary retirement. If the department finds that he voluntarily retired from his most recent work with the ineligibility beginning with the effective date of his claim and continuing for the duration of his unemployment and until the individual submits satisfactory evidence of having had new employment and of having earned wages of not less than eight times his weekly benefit amount as defined in Section 41‑35‑40. For the purpose of this section, “most recent work” means the work from which the individual retired regardless of any work subsequent to his retirement in which he earned less than eight times his weekly benefit amount.

HISTORY: 1962 Code Section 68‑114; 1952 Code Section 68‑114; 1942 Code Section 7035‑85; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1945 (44) 258; 1947 (45) 252; 1949 (46) 384; 1955 (49) 480; 1961 (52) 453; 1969 (56) 268; 1971 (57) 950; 1973 (58) 268; 1976 Act No. 609; 1982 Act No. 323; 1982 Act No. 340, Sections 3, 4; 1983 Act No. 62 Section 8; 1984 Act No. 512, Part II, Section 69; 1985 Act No. 154, Section 6; 1985 Act No. 201, Part II, Section 53; 2005 Act No. 50, Section 3, eff May 3, 2005; 2010 Act No. 146, Section 77, eff March 30, 2010; 2012 Act No. 247, Section 1, eff June 18, 2012; 2015 Act No. 80 (H.3305), Section 1, eff June 11, 2015.

Effect of Amendment

The 2005 amendment, in paragraph (2), designated subparagraph (a) and added subparagraphs (b) to (d).

The 2010 amendment rewrote this section.

The 2012 amendment rewrote item (2).

2015 Act No. 80, Section 1, in (3)(a)(iii), inserted “oral fluid”; in (3)(a)(iii)(B), inserted “to perform such tests by”, deleted “National Institute on Drug Abuse”, and inserted “United States Department of Health and Human Services (USDHHS)/Substance Abuse Mental Health Services Administration (SAMHSA),”; and in (3)(a)(iii)(C), substituted “USDHHS/SAMHSA” for “the National Institute on Drug Abuse”.

CROSS REFERENCES

Cause other than misconduct, see S.C. Code of Regulations R. 47‑100.

Definition of “suitable work” applicable to individuals who cannot furnish satisfactory evidence of employment prospects, see Section 41‑35‑420.

Due process requirements for and judicial review of administrative actions, see SC Const, Art 1, Section 22.

Eligibility for extended benefits, see Section 41‑35‑420.

Service as witness or juror not to constitute disqualification for benefits, but benefits to be reduced by amount of per diem received, see Section 41‑35‑115.

Substandard performance due to inefficiency, inability, or incapacity, see S.C. Code of Regulations R. 47‑101.

Federal Aspects

Controlled Substances and Alcohol Use and Testing, Federal Motor Carrier Safety Administration, see 49 C.F.R. Section 382.101 et seq.

Procedures for Transportation Workplace Drug and Alcohol Testing Programs, see 49 C.F.R. Section 40.1 et seq.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Sections 160 et seq.

RESEARCH REFERENCES

ALR Library

75 ALR 5th 339 , Eligibility for Unemployment Compensation of Employee Who Retires Voluntarily.

41 ALR 5th 123 , Eligibility for Unemployment Compensation as Affected by Claimant’s Voluntary Separation or Refusal to Work Alleging that the Work is Illegal or Immoral.

Encyclopedias

S.C. Jur. Injunctions Section 47, Injunctions Against Administrative Proceedings.

LAW REVIEW AND JOURNAL COMMENTARIES

Collateral estoppel and Employment Security Commission decisions: Stunted efforts to minimize litigation costs. 49 S.C. L. Rev. 1151 (Summer 1998).

Attorney General’s Opinions

The provision formerly codified as Section 41‑35‑120(7), which provided a disqualification for workers who received separation wages (though if the amount received by a worker were less than the amount he would have received as unemployment benefits he would be eligible for prorated benefits), was repealed by the adoption of Act No. 154 of 1985, reenacting Section 41‑35‑120. 1986 Op Atty Gen, No. 86‑69, p 224.

NOTES OF DECISIONS

In general 1

Drug use 2

Review 4

Sufficiency of evidence 3

1. In general

The construction of Section 41‑35‑120 by the South Carolina Employment Security Commission so as to disqualify any claimant who voluntarily leaves her most recent employment because of pregnancy violates the prohibition against denial of unemployment compensation solely on the basis of pregnancy or termination of pregnancy contained in 26 USCA Section 3304(a)(12); the award of compensation, retroactive to January 1, 1978, the effective date of the federal statute, does not violate the Eleventh Amendment of the United States Constitution. Brown v. Porcher (C.A.4 (S.C.) 1981) 660 F.2d 1001, certiorari denied 103 S.Ct. 796, 459 U.S. 1150, 74 L.Ed.2d 1000. Unemployment Compensation 112

Hospital’s decision to apply its policy requiring all employees to get a flu shot to benefits coordinator was reasonable, for purposes of determining whether coordinator, who was terminated after refusing to get a flu shot, was eligible for unemployment benefits; determination of how to protect patients from life‑threatening illnesses was complicated medical and scientific evaluation that hospital was required to make under federal law. AnMed Health v. South Carolina Dept. of Employment and Workforce (S.C.App. 2013) 404 S.C. 224, 743 S.E.2d 854. Unemployment Compensation 70

Although hospital’s policy requiring all employees to get a flu shot was reasonable, refusal of hospital’s benefits coordinator to comply was also reasonable, and therefore, coordinator’s subsequent termination for her refusal was not “for cause” and she was eligible to receive unemployment benefits without disqualification; nine years earlier, coordinator’s daughter began exhibiting symptoms of multiple sclerosis a few days after receiving a flu shot, she died six years later from liver failure, daughter’s neurologist told coordinator that flu shot could have brought on symptoms, and coordinator’s own doctor wrote a note stating that coordinator should avoid getting a flu shot. AnMed Health v. South Carolina Dept. of Employment and Workforce (S.C.App. 2013) 404 S.C. 224, 743 S.E.2d 854. Unemployment Compensation 68

Narrow issue Employment Security Commission (ESC) decides is whether unemployment compensation claimant is qualified to receive benefits, and thus, jurisdiction of ESC is limited. Shelton v. Oscar Mayer Foods Corp. (S.C. 1997) 325 S.C. 248, 481 S.E.2d 706. Unemployment Compensation 235

Although with respect to a question of law, the Court of Appeals is not bound by the Employment Security Commission’s decision, the construction of a statute by the agency charged with its administration is accorded the most respectful consideration. Milliken & Co., Pendleton Plant v. South Carolina Employment Sec. Com’n (S.C.App. 1994) 315 S.C. 492, 445 S.E.2d 640, rehearing denied, certiorari granted in part, reversed 321 S.C. 349, 468 S.E.2d 638. Administrative Law And Procedure 438(13); Unemployment Compensation 474

In determining whether to award a former employee unemployment compensation benefits, the question of whether the conduct on which the termination was based is connected with work necessitates a case by case analysis; factors to consider include (1) whether the act occurred during working hours, (2) whether it occurred on the employer’s premises, and (3) whether the employee took advantage of the employment relation in order to commit the act. Milliken & Co., Pendleton Plant v. South Carolina Employment Sec. Com’n (S.C.App. 1994) 315 S.C. 492, 445 S.E.2d 640, rehearing denied, certiorari granted in part, reversed 321 S.C. 349, 468 S.E.2d 638. Unemployment Compensation 65

The fact that the employee’s disruptive behavior allegedly occurred in a break area of work while the employee was off duty was not a sufficient basis on which the Employment Security Commission could rule that the employee was discharged through no fault of her own and was therefore entitled to unemployment compensation benefits; Section 41‑35‑120 only requires the cause of discharge be connected to the worker’s employment; it does not limit where the cause for the discharge occurred. Milliken & Co., Pendleton Plant v. South Carolina Employment Sec. Com’n (S.C.App. 1994) 315 S.C. 492, 445 S.E.2d 640, rehearing denied, certiorari granted in part, reversed 321 S.C. 349, 468 S.E.2d 638.

The Employment Security Commission wrongfully denied a claim for unemployment compensation on the basis of discharge for cause where the employee discharged (1) had signed a statement upon his employment which provided that he would not reveal any confidential information, (2) attended a press conference but was not shown to have made any comment while there, (3) was presented a “final warning” by his employer which stated that he had violated company policy and that any further violation might result in termination, (4) refused to sign the warning statement, and (5) was fired as a result thereof; since nothing in the confidentiality statement prohibited the employee’s attendance at the conference, the employer could not have reasonably expected the employee to sign the statement. Mickens v. Southland Exchange‑Joint Venture (S.C. 1991) 305 S.C. 127, 406 S.E.2d 363.

An employee who left her employment due to “unethical business practices” voluntarily separated from her employment without good cause and was therefore ineligible for unemployment benefits. Although the employee may have considered the employer’s business practices improper and immoral, such is a personal judgment which amounts to nothing more than a disagreement with management decisions. Her fears that the company engaged in conduct of questionable legality were insufficient in light of the fact that no such illegality was shown. Sviland v. South Carolina Employment Sec. Com’n (S.C.App. 1989) 300 S.C. 305, 387 S.E.2d 688. Unemployment Compensation 426

Finding of the Employment Security Commission that employee was discharged for misconduct for attempted theft of company property, warranting a 10 week unemployment benefit disqualification, was supported by substantial evidence, including the testimony of two of the employee’s coworkers. Merck v. South Carolina Employment Sec. Com’n (S.C. 1986) 290 S.C. 459, 351 S.E.2d 338. Unemployment Compensation 419

An employee voluntarily quit within the meaning of Section 41‑35‑120, and was not entitled to unemployment benefits, where the employee originally went on sick leave, remained off the job after her extended accrued sick leave expired, fully understood the consequences of a registered letter she received from her employer stating that she would be removed from the payroll unless she applied for a leave of absence, and nevertheless failed to take any action to save her job. Samuel v. S.C. Employment Sec. Com’n (S.C. 1985) 285 S.C. 476, 330 S.E.2d 300.

Where a secretary had the ability to avoid numerous typographical mistakes and work at the standard her employer could rightfully expect, but a part‑time secretary had to redo some of her work, the type of mistakes made by the secretary in not following instructions proved her intentional and substantial negligent disregard for her employer’s interests, and justified the Employment Security Commission’s finding that the secretary was discharged for misconduct. DeGroot v. Employment Sec. Com’n (S.C.App. 1985) 285 S.C. 209, 328 S.E.2d 668.

Substantial evidence in the record supported the Employment Security Commission’s determination denying unemployment benefits to an employee who resigned within one day after receiving notice of a new salary system since the employee did not voluntarily leave her job for good cause attributable to her employment; moreover, the employee resigned with notice of the effects of a new salary procedure. Gibson v. Florence Country Club (S.C. 1984) 282 S.C. 384, 318 S.E.2d 365. Unemployment Compensation 431

Term “misconduct” under SC Code Section 41‑35‑120(2) does not mandate some willful or deliberate act. Lee v. South Carolina Employment Sec. Commission (S.C. 1982) 277 S.C. 586, 291 S.E.2d 378.

The phrase “without good cause” means without good cause connected with employment. State‑Record Pub. Co. v. South Carolina Employment Sec. Commission (S.C. 1970) 254 S.C. 1, 173 S.E.2d 144.

This section [Code 1962 Section 68‑114] and Code 1962 Section 68‑115 are mutually exclusive. State‑Record Pub. Co. v. South Carolina Employment Sec. Commission (S.C. 1970) 254 S.C. 1, 173 S.E.2d 144.

Where employee voluntarily accepted the terms of the company retirement plan which contained a mandatory retirement provision, his separation from work thereunder constituted a voluntary retirement within the purview of item (6). Richey v. Riegel Textile Corp. (S.C. 1969) 253 S.C. 59, 169 S.E.2d 101.

A laudable motive for leaving employment and a “good cause” are entirely different things. Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

The words “good cause” as used in subsection (1) of this section [Code 1962 Section 68‑114] contemplate, ordinarily at least, a cause attributable to or connected with claimant’s employment. Stone Mfg. Co. v South Carolina Employment Secur. Com. (1951) 219 SC 239, 64 SE2d 644. Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

Cited in Hartsville Cotton Mill v. South Carolina Employment Sec. Commission (S.C. 1953) 224 S.C. 407, 79 S.E.2d 381.

If a wife quits her employment for the sole purpose of being with her husband, a regular member of the Armed Forces, who has been transferred from a post in South Carolina to one in another state, she leaves her employment “voluntarily without good cause” within the contemplation of subsection (1) of this section [Code 1962 Section 68‑114]. Stone Mfg. Co. v. South Carolina Employment Sec. Com’n (S.C. 1951) 219 S.C. 239, 64 S.E.2d 644.

As to sufficiency of evidence for Commission to find workers claiming benefits ineligible as belonging to same class or grade, see Johnson v. Pratt (S.C. 1942) 200 S.C. 315, 20 S.E.2d 865.

Paragraphs (a) and (b) of item (4) establish separate conditions, both of which a claimant must satisfy. The first paragraph must be read to give effect to both conditions. Paragraph (b) cannot be so construed as to render the grade or class provision to have been satisfied by compliance with the terms of the preceding paragraph, for in that event paragraph (b) would be devoid of meaning. Johnson v. Pratt (S.C. 1942) 200 S.C. 315, 20 S.E.2d 865.

Under this section [Code 1962 Section 68‑114] the language clearly indicates that unemployment may be directly due to a labor dispute, even though the claimant himself had nothing to do with the dispute and was not at fault. This section [Code 1962 Section 68‑114] does, however, permit the claimant to receive benefits if he goes on to prove that he is not at fault and does not belong to the same grade or class, etc. Johnson v. Pratt (S.C. 1942) 200 S.C. 315, 20 S.E.2d 865.

This section [Code 1962 Section 68‑114] indicates clearly that the question of grade or class is a question of fact, to be determined by the Commission. Johnson v. Pratt (S.C. 1942) 200 S.C. 315, 20 S.E.2d 865.

Just as a labor dispute is a condition of fact under this section [Code 1962 Section 68‑114], so is the issue as to whether a claimant’s unemployment was directly due to it. Johnson v. Pratt (S.C. 1942) 200 S.C. 315, 20 S.E.2d 865.

When the existence of a labor dispute appears, the question whether such was the cause of the unemployment, or whether it was produced by some other cause, can be answered only by hearing and passing upon the evidence in the case. This is the exclusive function of the Commission. Johnson v. Pratt (S.C. 1942) 200 S.C. 315, 20 S.E.2d 865. Unemployment Compensation 493(7)

It was not the intent of the legislature to give the courts the right to determine whether a labor dispute existed, for under this section [Code 1962 Section 68‑114] this right is patently given to the Commission, whose duty it is to determine by the testimony and the evidence in each case whether certain facts existed, among them, whether or not a labor dispute existed, as a matter of fact. Johnson v. Pratt (S.C. 1942) 200 S.C. 315, 20 S.E.2d 865. Unemployment Compensation 493(7)

This section [Code 1962 Section 68‑114] is a very definite limitation on the provisions of Code 1962 Section 68‑38. Johnson v. Pratt (S.C. 1942) 200 S.C. 315, 20 S.E.2d 865.

State’s denial of unemployment compensation benefits to individual who refused a temporary position requiring work on Sunday due to his religious belief that Sunday was “the Lord’s Day” violates free exercise clause of Federal Constitution’s First Amendment, even though individual belongs to no established religious sect or church. Frazee v. Illinois Dept. of Employment Sec., U.S.Ill.1989, 109 S.Ct. 1514, 489 U.S. 829, 103 L.Ed.2d 914. Constitutional Law 1387; Unemployment Compensation 200

2. Drug use

An employer may elect to discharge an employee, for the purposes of determining the employee’s eligibility for unemployment benefits, as a result of a positive drug test administered by a non‑certified laboratory. Nucor Corp. v. South Carolina Dept. of Employment and Workforce (S.C. 2014) 410 S.C. 507, 765 S.E.2d 558. Unemployment Compensation 92

Drug screen from independent laboratory, which showed that employee tested negative for presence of drugs, was relevant to determination whether employee was discharged for misconduct connected with work or gross misconduct due to failure to comply with state or federal drug and alcohol testing, as basis for rendering employee statutorily ineligible for unemployment benefits, despite positive drug test results from drug screens performed by employer’s non‑certified laboratory. Nucor Corp. v. South Carolina Dept. of Employment and Workforce (S.C. 2014) 410 S.C. 507, 765 S.E.2d 558. Unemployment Compensation 383

3. Sufficiency of evidence

Substantial evidence supported determination by Administrative Law Court that former employee was not disqualified from receiving unemployment compensation benefits due to misconduct connected with work and gross misconduct due to failure to comply with state or federal drug and alcohol testing, after positive drug screens were obtained by employer’s non‑certified laboratory, where employee underwent testing at independent off‑site laboratory, which test resulted in negative screen. Nucor Corp. v. South Carolina Dept. of Employment and Workforce (S.C. 2014) 410 S.C. 507, 765 S.E.2d 558. Unemployment Compensation 421

4. Review

Administrative Law Court’s initial ruling that employer’s evidence failed to show that employee committed misconduct connected with work based on positive drug screen or gross misconduct due to failure to comply with state or federal drug and alcohol testing, as statutory ground for finding that employee was ineligible for unemployment benefits, became “final,” as prerequisite to judicial review, when, following remand to Department of Employment and Workforce (DEW) to determine whether drug testing facility used by employer was certified in accordance with statute, DEW appellate panel determined that facility was not certified, and panel’s decision was not appealed. Nucor Corp. v. South Carolina Dept. of Employment and Workforce (S.C. 2014) 410 S.C. 507, 765 S.E.2d 558. Unemployment Compensation 454

**SECTION 41‑35‑125.** Benefits for individuals unemployed as a result of domestic abuse.

 (A)(1) Notwithstanding the provisions of Section 41‑35‑120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse and:

 (a) reasonably fears future domestic abuse at or en route to the workplace;

 (b) needs to relocate to avoid future domestic abuse; or

 (c) reasonably believes that leaving work is necessary for his safety or the safety of his family.

 (2) When determining if an individual has experienced domestic abuse for the purpose of receiving unemployment compensation, the department must require him to provide documentation of domestic abuse such as police or court records or other documentation of abuse from a shelter worker, attorney, member of the clergy, or medical or other professional from whom the individual has sought assistance.

 (3) Documentation or evidence of domestic abuse acquired by the department pursuant to this section must be kept confidential unless consent for disclosure is given, in writing, by the individual.

 (B)(1) Notwithstanding the provisions of Section 41‑35‑120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual was separated from employment due to compelling family circumstances.

 (2) For the purposes of this subsection:

 (a) “Immediate family member” means a claimant’s spouse, parents, or dependent children.

 (b) “Illness” means a verified illness that necessitates the care of the ill person for a period of time that exceeds the amount of time the employer will provide paid or unpaid leave.

 (c) “Disability” means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant paid or unpaid leave. Disability encompasses all types of disability, including mental and physical disabilities, permanent and temporary disabilities, and partial and total disabilities.

 (d) “Compelling family circumstances” means:

 (i) that a claimant was separated from employment with the employer because of the illness or disability of the claimant and, based upon available information, the department finds that it was medically necessary for the claimant to stop working or change occupations;

 (ii) the claimant was separated from work due to the illness or disability of an immediate family member; and

 (iii) the claimant’s spouse was transferred or employed in another city or state, the family is required to move to the location of that job, the location is outside the commuting distance of the claimants previous employment, and the claimant separates from employment in order to move to the new location with his spouse.

HISTORY: 2005 Act No. 50, Section 1, eff May 3, 2005; 2010 Act No. 146, Section 78, eff March 30, 2010; 2010 Act No. 234, Section 10, eff January 1, 2011; 2011 Act No. 63, Section 10, eff June 14, 2011.

Effect of Amendment

The first 2010 amendment, 2010 Act No. 146, Section 78, substituted “department” for three occurrences of “commission”; and made other nonsubstantive changes.

The second 2010 amendment, 2010 Act No. 234, Section 10, inserted the subsection identifiers and added subsection (B) relating to compelling family circumstances.

The 2011 amendment in subsection (A)(2) substituted “such as” for “including, but not limited to,”; and rewrote subsection (B).

**SECTION 41‑35‑126.** Military relocation benefits.

 Notwithstanding the provisions of Section 41‑35‑120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual has left work voluntarily to relocate because of the transfer of a spouse who has been reassigned from one military assignment to another, provided that the separation from employment occurs within fifteen days of the scheduled relocation date.

HISTORY: 2007 Act No. 67, Section 1, eff June 7, 2007; 2010 Act No. 146, Section 79, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “commission”.

**SECTION 41‑35‑130.** Payments which shall not be charged to former employer.

 (A) A benefit paid to a claimant for unemployment immediately after the expiration of disqualification for:

 (1) voluntarily leaving his most recent work without good cause;

 (2) discharge from his most recent work for misconduct; or

 (3) refusal of suitable work without good cause must not be charged to the account of an employer.

 (B) A benefit paid to a claimant must not be charged against the account of an employer by reason of the provisions of this subsection if the department determines under Section 41‑35‑120 that the individual:

 (1) voluntarily left his most recent employment with that employer without good cause;

 (2) was discharged from his most recent employment with that employer for misconduct connected with his work; or

 (3) subsequent to his most recent employment refused without good cause to accept an offer of suitable work made by that employer if the employer furnishes the department with those notices regarding the separation of the individual from work or the refusal of the individual to accept an offer of work as is required by the law and regulations of the department.

 (C) If a benefit is paid pursuant to a decision that is finally reversed in subsequent proceedings with respect to it, an employer’s account must not be charged with a benefit paid.

 (D) A benefit paid to a claimant for a week in which he is in training with the approval of the department must not be charged to an employer.

 (E) Benefits paid as a result of a natural disaster declared by the President of the United States.

 (F) Benefits paid as a result of declaration of emergency declared by the Governor must not be charged to an employer.

 (G) The provisions of subsections (A) through (E), all inclusive, with respect to the noncharging of benefits paid must be applicable only to an employer subject to the payment of contributions.

 (H) A benefit paid to a claimant during an extended benefit period, as defined in Article 3, Chapter 35, must not be charged to an employer; except that a nonprofit organization electing to become liable for payments in lieu of contributions in accordance with Section 41‑31‑620 must reimburse fifty percent of extended benefits attributable to services performed in its employ and that after January 1, 1979, the State or a political subdivision or instrumentality of it as defined in Section 41‑27‑230(2)(b) electing to become liable for payment in lieu of contributions in accordance with Section 41‑31‑620 must reimburse all extended benefits attributable to services performed in its employ.

 (I) A nonprofit organization that elects to make a payment in lieu of a contribution to the unemployment compensation fund as provided in Section 41‑31‑620(2) or Section 41‑31‑810 is not liable to make those payments with respect to the benefits paid to an individual whose base period wages include wages for previously uncovered services as defined in Section 41‑35‑65 to the extent that the unemployment compensation fund is reimbursed for those benefits pursuant to Section 121 of P.L. 94‑566.

 (J) A benefit paid to an individual whose base period wages include wages for previously uncovered services as defined in Section 41‑35‑65 must not be charged against the account of an employer to the extent that the unemployment compensation fund is reimbursed for those benefits pursuant to Section 121 of P.L. 94‑566.

 (K) A benefit paid to an individual pursuant to Section 41‑35‑125 must not be charged to the account of a contributing employer.

 (L) A benefit paid to an individual pursuant to Section 41‑35‑126 must not be charged to the account of a contributing employer.

 (M)(1) For the purposes of this subsection, “most recent bona fide employer” means the work or employer from which an individual was discharged regardless of work subsequent to his discharge in which he earned less than eight times his weekly benefit amount.

 (2) A benefit paid to a claimant must not be charged against the account of an employer if the department determines that the claimant’s most recent bona fide employer discharged him for misconduct connected with his employment. This provision is applicable only to an employer subject to the payment of contributions.

HISTORY: 1962 Code Section 68‑115; 1952 Code Section 68‑115; 1942 Code Sections 7035‑85, 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1947 (45) 252; 1948 (45) 1761; 1971 (57) 950; 1975 (59) 77; 1977 Act No. 161 Section 13; 2005 Act No. 50, Section 4, eff May 3, 2005; 2007 Act No. 67, Section 2, eff June 7, 2007; 2010 Act No. 146, Section 80, eff March 30, 2010; 2011 Act No. 63, Section 11, eff June 14, 2011; 2012 Act No. 247, Section 2, eff June 18, 2012.

Effect of Amendment

The 2005 amendment added subsection (i).

The 2007 amendment added subsection (j).

The 2010 amendment redesignated subsections (a) through (j) as (A) through (J), respectively; substituted “department” for four occurrences of “Commission”; and made other nonsubstantive changes throughout the section.

The 2011 amendment inserted subsections (E) and (F) relating to benefits paid as a result of a natural disaster and a declaration of emergency, redesignated former subsections (E) through (J) as subsections (G) through (L), in subsection (G) substituted “(E)” for “(D)”, and in subsection (H) substituted “nonprofit” for “non‑profit”.

The 2012 amendment added subsection (M).

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 68‑115] and Code 1962 Section 68‑114 are mutually exclusive. State‑Record Pub. Co. v. South Carolina Employment Sec. Commission (S.C. 1970) 254 S.C. 1, 173 S.E.2d 144.

The phrase “without good cause” means without good cause connected with employment. State‑Record Pub. Co. v. South Carolina Employment Sec. Commission (S.C. 1970) 254 S.C. 1, 173 S.E.2d 144.

“Without good cause,” referred to in this section [Code 1962 Section 68‑115], does not contemplate fault in the sense of blame. State‑Record Pub. Co. v. South Carolina Employment Sec. Commission (S.C. 1970) 254 S.C. 1, 173 S.E.2d 144.

No benefits when labor dispute exists. The legislature has determined that no benefits shall be paid under this section [Code 1962 Section 68‑115] when a labor dispute exists. The merits of the strike and the cause are not relevant on the issue of good cause. State‑Record Pub. Co. v. South Carolina Employment Sec. Commission (S.C. 1970) 254 S.C. 1, 173 S.E.2d 144.

**SECTION 41‑35‑135.** Charge of overpaid benefits to employer’s account.

 (A) Notwithstanding any other provision of law, the department shall not relieve the charge benefits to an employer’s account when it determines that the overpayment has been made to a claimant and it determines that both of the following conditions apply:

 (1) the overpayment occurred because the employer was at fault for failing to respond timely or adequately to a written request of the department for information relating to an unemployment compensation claim; and

 (2) the employer exhibits a pattern of failure to timely or adequately respond to requests from the department for information relating to unemployment compensation claims on three or more occasions, or three percent of requests made, within a single calendar year, whichever is greater, provided:

 (a) if an employer uses a third‑party agent to respond on its behalf to the department’s request for information relating to an unemployment compensation claim, the agent’s actions on behalf of the employer will be considered when determining a pattern of behavior;

 (b) a response is considered untimely if it fails to meet the time as prescribed in the statute or in the regulations;

 (c) a response is considered inadequate if it fails to provide sufficient facts to enable the department to make an accurate determination of benefits that do not result in an overpayment. However, a response may not be considered inadequate if the department fails to request the necessary information.

 (B) In all cases where the department contacts, or attempts to contact, an employer via telephone concerning a claim for benefits, it must document the contact, or attempt to contact, the employer and provide the documentation to the employer upon request. The documentation must contain the name of the department’s staff contacting, or attempting to contact, the employer, the date, time, and whether the department’s staff spoke with the employer, and the name of the person with whom the department’s staff spoke, if anyone.

 (C) A written request for information may be made by electronic mail provided, the employer has opted for notice by electronic mail pursuant to Section 41‑35‑615.

 (D) The department shall charge an employer’s account that meets the conditions of subsection (A) for each week of unemployment compensation that is an overpayment until the department makes a determination that the individual is no longer eligible for unemployment compensation and stops making such payments.

 (E) If the claim is a combined wage claim, the determination of not charging for the combined wage claim shall be made by the paying state. If the response from the employer does not meet the criteria established by the paying state for an adequate or timely response, the paying state promptly must notify the transferring state of its determination and the employer must be appropriately charged.

 (F)(1) The department must waive the charging of benefits to an employer’s account when the department finds the employer failed to timely or adequately respond due to good cause.

 (2) For the purposes of this section, “good cause” may include, but is not limited to, an error made by the department that results in the employer’s error, or a natural disaster, emergency, or similar event, or an illness on the part of the employer, the employer’s agent of record, or the employer’s staff charged with responding to inquiries. The burden is on the employer to establish good cause.

 (G) Determinations of the department prohibiting the relief of charges pursuant to this section shall be subject to appeal pursuant to procedures contained in Chapter 35, Title 41.

 (H) The department shall charge benefits to an employer’s account pursuant to this section for any overpayment determined by the department after October 21, 2013.

HISTORY: 2013 Act No. 53, Section 2, eff June 7, 2013.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 25, Claims.

**SECTION 41‑35‑140.** Disclosure regarding child support obligations; deductions from benefits due.

 (A) The department may require an individual filing a new claim for unemployment compensation to disclose, at the time of filing the claim, whether or not he owes child support obligations as defined under subsection (G), or, pursuant to an agreement between the department and the state or local child support enforcement agency, the state or local child support enforcement agency must notify the department whether a particular individual who has filed a new or continued claim for unemployment compensation, at the time of filing the claim, owes child support obligations, or if the state or local child support enforcement agency advises the department that the individual owes child support obligations and the individual is determined to be eligible for unemployment compensation, the department must notify the state or local child support enforcement agency enforcing the obligations that the individual has been determined to be eligible for unemployment compensation.

 (B) The department must deduct and withhold from unemployment compensation payable to an individual who owes a child support obligation as defined under subsection (G):

 (1) the amount specified by the individual to the department to be deducted and withheld under this section, if neither (2) nor (3) of this subsection (B) is applicable;

 (2) the amount, if any, determined pursuant to an agreement submitted to the department under Section 454 (20)(B)(i) of the Social Security Act by the state or local child support enforcement agency unless item (3) is applicable; or

 (3) An amount otherwise required to be deducted and withheld from unemployment compensation pursuant to legal process, as that term is defined in Section 462(e) of the Social Security Act properly served upon the department.

 (C) An amount deducted and withheld under subsection (B) must be paid by the department to the appropriate state or local child support enforcement agency.

 (D) An amount deducted and withheld under subsection (B) must be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual’s child support obligation.

 (E) For the purposes of subsections (A) through (D), the term “unemployment compensation” means compensation payable under this act, including amounts payable by the department pursuant to an agreement under federal law providing for compensation, assistance, or allowances concerning unemployment.

 (F) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the department under this section which are by the state or local child support enforcement agency.

 (G) The term “child support obligation” means for purposes of these provisions, attributable to a child support obligation enforced pursuant to a plan described in Section 454 of the Social Security Act and approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

 (H) The term “state or local child support enforcement agency” as used in these provisions means an agency of this State or a political subdivision of this State operating pursuant to a plan described in subsection (G).

 (I) This section is effective for weeks commencing on or after October 1, 1982.

HISTORY: 1983 Act No. 62 Section 9; 2010 Act No. 146, Section 81, eff March 30, 2010.

Effect of Amendment

The 2010 amendment redesignated subsections (a) through (i) as (A) through (I), respectively; substituted “department” for “commission” throughout the section; and made other nonsubstantive changes throughout the section.

CROSS REFERENCES

Payments by the State as subject to legal process for the enforcement of child or spousal support obligations, except that this section shall control in cases concerning the Department of Employment and Workforce, see Section 43‑5‑600.

Provision barring assignment, pledge or encumbrance of benefits, see Section 41‑39‑20.

Requirements that child support enforcement agency notify court when agency is notified pursuant to this section that an obligor is receiving unemployment benefits, and that the intercept of benefits be in accordance with this section, see Sections 63‑17‑1210, 63‑17‑1410 through 63‑17‑1590.

ARTICLE 3

Extended Benefits

**SECTION 41‑35‑310.** “Extended benefit period” defined.

 “Extended benefit period” means a period which

 (1) Begins with the third week after a week for which there is a state “on” indicator; and

 (2) Ends with either of the following weeks, whichever occurs later:

 (a) The third week after the first week for which there is a state “off” indicator.

 (b) The thirteenth consecutive week of such period. No extended benefit period may begin by reason of a state “on” indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this State.

HISTORY: 1962 Code Section 68‑125; 1971 (57) 950; 1983 Act No. 62 Section 10.

CROSS REFERENCES

Provisions governing staff leasing services do not affect Employment Security Law (Sections 41‑27‑10 through 41‑41‑50), see Section 40‑68‑180.

**SECTION 41‑35‑320.** Payment of extended unemployment security benefits when federally funded.

 (1) For a week in which one hundred percent federal sharing funding is available, there is an “on” indicator for a week:

 (a) beginning after March 7, 2009; and

 (b) ending four weeks before the last week of unemployment for which one hundred percent federal sharing is available under Section 2005(a) of Public Law No. 111‑5, or an amendment of this provision, without regard to the extension of federal sharing for certain claims as provided under Section 2005(c) of this law.

 (2) There is a state “on” indicator for this State for a week in which the United States Secretary of Labor determines that for the period consisting of the most recent three months, the rate of total unemployment, seasonally adjusted, equaled or exceeded six and a half percent, and the average rate of total unemployment for the State, seasonally adjusted, as determined by the United States Secretary of Labor for this period equals or exceeds one hundred ten percent of the average unemployment for the State in one or more of the corresponding three‑month periods ending in the three preceding calendar years.

 (3)(a) Effective with respect to weeks beginning in a “high unemployment period”, Section 41‑35‑440 must be applied by substituting:

 (i) “eighty percent” for “fifty percent” in item (1)(a) of that section; and

 (ii) “twenty;” for “thirteen” in item (1)(b) of that section.

 (b) For the purpose of this section, a “high unemployment period” exists during a period in which an extended benefit period would be in effect by substituting “eight percent” for “six and a half percent” in subsection (2).

 (4) There is a state “off” indicator for the purpose of this section when a condition of subsection (2) is not satisfied.

 (5) Notwithstanding a provision of Section 41‑35‑380, an individual’s “eligibility period” must include an eligibility period provided in Section 2005(b) of Public Law 111‑5 and an amendment of this provision.

 (6) The department shall implement procedures to allow retroactive claims, but these procedures must conform to conditions of federal funding.

HISTORY: 2009 Act No. 123, Section 1, eff October 29, 2009; 2011 Act No. 3, Section 13, eff March 14, 2011.

Code Commissioner’s Note

At the direction of the Code Commissioner “department” was substituted for “Commission” to conform to 2010 Act No. 146.

Effect of Amendment

The 2011 amendment, in subsection (2) substituted “in one or more” for “for either or both” and “three preceding calendar years” for “two preceding calendar years”; and in subsection (6) substituted “department” for “commission”.

**SECTION 41‑35‑330.** “State ‘on’ indicator” and “State ‘off’ indicator” defined.

 (A) There is a “state ‘on’ indicator” for this State for a week if the department determines, pursuant to the regulations of the United States Secretary of Labor, that for the period consisting of that week and the immediately preceding twelve weeks the rate of insured unemployment, not seasonally adjusted, under Chapters 27 through 41 of this title:

 (1) equaled or exceeded one hundred twenty percent of the average of those rates for the corresponding thirteen week period ending in each of the preceding two calendar years; and

 (2) equaled or exceeded five percent. With respect to benefits for weeks of unemployment beginning after July 1, 1977, the determination of whether there has been a “state ‘on’ or ‘off’ indicator” for this State beginning or ending an extended benefit period must be made under this section as if:

 (a) subsection (A) did not contain item (1); and

 (b) the word “five” contained in item (2) of this subsection were “six” except that, notwithstanding a provision of this section, a week for which there would otherwise be a “state ‘on’ indicator” for this State must continue to be such a week and must not be determined to be a week for which there is a “state ‘off’ indicator” for this State.

 (B) There is a “state ‘off’ indicator” for this State for a week if, for the period consisting of that week and the immediately preceding twelve weeks, either items (1) or (2) of subsection (A) are not satisfied.

 (C) This section applies to weeks beginning after September 25, 1982.

HISTORY: 1962 Code Section 68‑127; 1971 (57) 950; 1975 (59) 77; 1977 Act No. 161 Section 15; 1983 Act No. 62 Section 11; 2010 Act No. 146, Section 82, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “commission”; redesignated all of the subsections in the section; and made other nonsubstantive changes.

CROSS REFERENCES

Exclusion of claims for extended benefits in determining the rate of insured unemployment, see S.C. Code of Regulations R. 47‑43.

**SECTION 41‑35‑340.** “Rate of insured unemployment” defined.

 For purposes of Section 41‑35‑330 “rate of insured unemployment” means the percentage derived by dividing the:

 (1) average weekly number of individuals filing claims for regular state compensation in this State for weeks of unemployment with respect to the most recent thirteen consecutive week period, as determined by the department on the basis of its reports to the United States Secretary of Labor, by

 (2) average monthly employment covered under Chapters 27 through 41 of this title for the first four of the most recent six completed calendar quarters ending before the end of this thirteen‑week period.

HISTORY: 1962 Code Section 68‑128; 1971 (57) 950; 1983 Act No. 62 Section 12; 2010 Act No. 146, Section 83, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “commission” in subsection (1); and made other nonsubstantive changes throughout the section.

CROSS REFERENCES

Procedure when extended benefit period becomes effective, see Section 41‑35‑450.

**SECTION 41‑35‑350.** “Regular benefits” defined.

 “Regular benefits” means benefits payable to an individual under Chapters 27 through 41 of this Title or under any other State law (including benefits payable to Federal civilian employees and to ex‑servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits and additional benefits.

HISTORY: 1962 Code Section 68‑129; 1971 (57) 950; 1973 (58) 248.

**SECTION 41‑35‑360.** “Additional benefits” defined.

 “Additional benefits” means benefits totally financed by a state payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law. If extended compensation is payable to an individual by this State and additional compensation is payable to him for the same week by another state, he may elect which of the two types of compensation to claim.

HISTORY: 1962 Code Section 68‑129.1; 1973 (58) 248.

**SECTION 41‑35‑370.** “Extended benefits” defined.

 “Extended benefits” means benefits (including benefits payable to Federal civilian employees and to ex‑servicemen pursuant to 5 U.S.C. Chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

HISTORY: 1962 Code Section 68‑130; 1971 (57) 950.

**SECTION 41‑35‑380.** “Eligibility period” defined.

 “Eligibility period” of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

HISTORY: 1962 Code Section 68‑131; 1971 (57) 950.

**SECTION 41‑35‑390.** “Exhaustee” defined.

 “Exhaustee” means an individual who, with respect to any week of unemployment in his eligibility period:

 (1) Has received, prior to such week, all of the regular benefits that were payable to him under Chapters 27 through 41 of this Title or any other State law (including dependents’ allowances and regular benefits payable to Federal civilian employees and ex‑servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such week; or

 (2) Has received, prior to such week, all of the regular benefits that were available to him under Chapters 27 through 41 of this Title or any other State law (including dependents’ allowances and regular benefits available to Federal civilian employees and ex‑servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such week, after the cancellation of some or all of his wage credits or the total or partial reduction of his right to regular benefits;

 Provided, that, for the purposes of items (1) and (2), an individual shall be deemed to have received in his current benefit year all of the regular benefits that were payable to him, or available to him, as the case may be, even though (a) as a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his current benefit year, he may subsequently be determined to be entitled to more regular benefits; or (b) by reason of the seasonal provisions promulgated pursuant to Section 41‑35‑90, or the seasonal provisions of another State law, he is not entitled to regular benefits with respect to such week of unemployment (although he may be entitled to regular benefits with respect to future weeks of unemployment in the next season or off season, as the case may be, in his current benefit year), and he is otherwise an exhaustee within the meaning of this section with respect to his right to regular benefits under such State law seasonal provisions during the season or off season in which that week of unemployment occurs; or (c) having established a benefit year, no regular benefits are payable to him during such year because his wage credits were cancelled or his right to regular benefits was totally reduced as the result of the application of a disqualification; or

 (3) His benefit year having ended prior to such week, he has insufficient wages or employment, or both, on the basis of which he could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he is precluded from receiving regular benefits by reason of the provision in Section 41‑35‑50 which meets the requirement of Section 3304 (a) (7) of the Federal Unemployment Tax Act, or the similar provision in any other State law; and

 (4)(a) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Act of 1974, and such other Federal laws as are specified in regulations issued by the U. S. Secretary of Labor; and

 (b) Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada or the Virgin Islands; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual shall be considered an exhaustee if the other provisions of this definition are met: Provided, however, that the reference in this paragraph to the Virgin Islands shall be inapplicable effective on the day after the date on which the Secretary of Labor approves under Section 3304(a) of the Internal Revenue Code of 1954, an unemployment compensation law submitted to the Secretary by the Virgin Islands for approval.

HISTORY: 1962 Code Section 68‑132; 1971 (57) 950; 1973 (58) 248; 1977 Act No. 161 Section 16.

CROSS REFERENCES

Eligibility of exhaustee to receive extended benefits with respect to any week of unemployment, see Section 41‑35‑420.

Federal Aspects

Additional extended unemployment benefits, see 45 U.S.C.A. Section 352.

**SECTION 41‑35‑400.** “State law” defined.

 “State law” means the unemployment insurance law of any state, approved by the U.S. Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954.

HISTORY: 1962 Code Section 68‑133; 1971 (57) 950.

**SECTION 41‑35‑410.** Application of provisions relating to regular benefits.

 Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the department, the provisions of Chapters 27 through 41 of this title which apply to claims for, or the payment of, regular benefits must apply to claims for, and the payment of, extended benefits.

HISTORY: 1962 Code Section 68‑134; 1971 (57) 950; 2010 Act No. 146, Section 84, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made one other nonsubstantive change.

CROSS REFERENCES

Disqualification from receipt of extended benefits, see Section 41‑35‑420.

Exception to provisions of this section with regard to eligibility for extended benefits after March 31, 1981, see Section 41‑35‑420.

**SECTION 41‑35‑420.** Eligibility for extended benefits.

 (A) An individual is eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the department finds that with respect to that week:

 (1) He is an “exhaustee” as defined in Section 41‑35‑390.

 (2) He has satisfied the requirements of Chapters 27 through 41 of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

 (3) Except as provided in item (4), an individual must not be eligible for extended benefits for a week if:

 (a) extended benefits are payable for that week pursuant to an interstate claim filed in a state under the interstate benefit payment plan; and

 (b) no extended benefit period is in effect for that week in the State.

 (4) Item (3) of subsection (A) does not apply with respect to the first two weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual with respect to the benefit year.

 (B)(1) Notwithstanding the provisions of Sections 41‑35‑410 and 41‑35‑420, effective for weeks beginning after March 31, 1981, an individual is disqualified from receipt of extended benefits if the department finds that during any week of his eligibility period he has failed either to apply for, or to accept an offer of, suitable work, as defined under item (4) of this subsection, to which he was referred by the department.

 (2) Notwithstanding the provisions of Sections 41‑35‑410 and 41‑35‑420, effective for weeks beginning after March 31, 1981, an individual is disqualified from receipt of extended benefits if the department finds that during any week of his eligibility period he has failed to furnish evidence that he has actively engaged in a systematic and sustained effort to find work.

 (3) This disqualification begins with the week in which the failure occurred and continues until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times his weekly extended benefit amount.

 (4) For the purposes of this subsection, the term “suitable work” means work within the individual’s capabilities to perform if:

 (a) the gross average weekly remuneration payable for the work exceeds the sum of the individual’s weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits, as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954, payable to the individual for that week;

 (b) the wages payable for the work equal the higher of the minimum wages provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to an exemption, or the state or local minimum wage;

 (c) the position was offered to the individual in writing or was listed with the State Employment Service;

 (d) the work otherwise meets the definition of “suitable work” for regular benefits contained in subsection (5)(b) of Section 41‑35‑120 to the extent that the criteria of suitability are not inconsistent with the provisions of this item; and

 (e) the individual cannot furnish satisfactory evidence to the department that his prospects for obtaining work in his customary occupation within a reasonably short period of time are good. If the evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to the individual must be made pursuant to the definition of suitable work contained in Section 41‑35‑120 without regard to the definition specified by this item (4).

 (C) Notwithstanding a provision of item (d) of this subsection to the contrary, work may not be considered suitable for an individual if it is not consistent with Section 41‑35‑120(5)(b).

 (D) For the purposes of item (2) of subsection (B), an individual must be treated as actively engaged in seeking work during a week if the individual:

 (1) has engaged in a systematic and sustained effort to obtain work during the week;

 (2) furnishes tangible evidence that he has engaged in an effort during the week.

 (E) The Employment Service must refer any claimant entitled to extended benefits under this chapter to any suitable work that meets the criteria prescribed in item (4) of subsection (B).

 (F) An individual must not be eligible to receive an extended benefit with respect to a week of unemployment in his eligibility period if he has been disqualified for regular or extended benefits under the chapter because he voluntarily left work, was discharged for cause, or failed to accept an offer of or apply for suitable work unless the disqualification imposed for these reasons has been terminated pursuant to specific conditions established under the South Carolina Employment Security Law requiring the individual to perform service for remuneration subsequent to the date of the disqualification.

 If the disqualification imposed did not require the individual to perform service for remuneration subsequent to the date of the disqualification, the individual is ineligible for an extended benefit beginning with the effective date of the request for initiation of an extended benefit claim series and continuing until he secures employment and shows to the department’s satisfaction that he has worked in each of at least four different weeks, whether or not those weeks are consecutive, and earned wages equal to at least four times the weekly benefit amount of his claim.

HISTORY: 1962 Code Section 68‑135; 1971 (57) 950; 1981 Act No. 108 Section 10; 1983 Act No. 62 Section 13; 1993 Act No. 125, Section 1, eff June 14, 1993; 2010 Act No. 146, Section 85, eff March 30, 2010.

Code Commissioner’s Note

The legislative enactment by 1981 Act No. 108, Section 10, omitted references to (c) and (d) in subsection (1). By direction of the Code Commissioner, subsection (1) is reprinted in the supplement to correct the omission.

Editor’s Note

1993 Act No. 125, Section 2, effective June 14, 1993, provides as follows:

“SECTION 2. Notwithstanding any provision of Section 41‑35‑420 of the 1976 Code of Laws, and in accordance with Section 202(b)(1) of the Unemployment Compensation Amendments of 1992 (Public Law 102‑318), subsection 2(a), (b), and (c) and subsection (6) of Section 41‑35‑420 are suspended for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995.”

Effect of Amendment

The 1993 amendment, in the first paragraph of subsection (6), substituted “discharged for cause” for “discharged for misconduct”; and made grammatical changes.

The 2010 amendment substituted “department” for “commission” throughout the section; redesignated all of the subsections in the section; and made other nonsubstantive changes.

CROSS REFERENCES

Suitable work requirements for extended benefits, see S.C. Code of Regulations R. 47‑48.

NOTES OF DECISIONS

In general 1

1. In general

Only employment after person has applied for extended benefits will terminate disqualification; thus, pursuant to Section 41‑35‑420(6), individual is ineligible for extended benefits because of disqualification during his benefit year even though he worked after having been disqualified, where (1) he was discharged from his employment on November 12, 1981 and applied for unemployment compensation benefits, (2) he was disqualified from receiving any benefits for 7 weeks because he had been discharged for misconduct, (3) his benefit year was established as November 8, 1981 to November 7, 1982, and he began drawing regular unemployment benefits after 7 weeks of disqualification expired in January 1982, (4) payment continued until May 1982 when he became employed with different company, and (5) he again became unemployed in July 1982 through no fault of his own. Floyd v. South Carolina Employment Sec. Com’n (S.C. 1984) 281 S.C. 483, 316 S.E.2d 143.

Section 41‑35‑420(6) does not violate worker’s right to equal protection. Floyd v. South Carolina Employment Sec. Com’n (S.C. 1984) 281 S.C. 483, 316 S.E.2d 143.

**SECTION 41‑35‑430.** Weekly extended benefit amount.

 The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. For any individual who was paid benefits during the applicable benefit year in accordance with more than one weekly benefit amount, the weekly extended benefit amount shall be the average of such weekly benefit amounts.

HISTORY: 1962 Code Section 68‑136; 1971 (57) 950.

**SECTION 41‑35‑440.** Total extended benefit amount.

 (1) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year is the least of the following amounts:

 (a) Fifty percent of the total amount of regular benefits which were payable to him under Chapters 27 through 41 of this title in his applicable benefit year.

 (b) Thirteen times his weekly benefit amount which was payable to him under Chapters 27 through 41 of this title for a week of total unemployment in the applicable benefit year.

 (2) Notwithstanding any other provision of Chapters 27 through 41 of this title, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, must be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual’s weekly benefit amount for extended benefits.

HISTORY: 1962 Code Section 68‑137; 1971 (57) 950; 1983 Act No. 62 Section 14.

**SECTION 41‑35‑450.** Announcement of “on” and “off” indicators; computation of rate of insured unemployment.

 When an extended benefit period is to become effective in this State as a result of a “state ‘on’ indicator”, or an extended benefit period is to be terminated in this State as a result of a “state ‘off’ indicator”, the department must make an appropriate public announcement. A computation required by the provisions of Section 41‑35‑340 must be made by the department pursuant to regulations prescribed by the United States Secretary of Labor.

HISTORY: 1962 Code Section 68‑138; 1971 (57) 950; 1983 Act No. 62 Section 15; 2010 Act No. 146, Section 86, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for two occurrences of “commission”; and made other nonsubstantive changes.

ARTICLE 5

Allowance of Claims

**SECTION 41‑35‑610.** Procedures must be pursuant to department regulations; duties of employers.

 A request for determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting‑week credit, and a claim for benefits must be made pursuant to regulations the department promulgates. An employer must post and maintain in places readily accessible to individuals in his service printed statements concerning regulations or related matters the department prescribes by regulation. An employer must supply those individuals copies of the printed statements or materials the department prescribes by regulation. These statements or materials must be supplied by the department to an employer without cost to the employer.

HISTORY: 1962 Code Section 68‑151; 1952 Code Section 68‑151; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1955 (49) 480; 1972 (57) 2309; 2010 Act No. 146, Section 87, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for four occurrences of “Commission”; and made other nonsubstantive changes.

CROSS REFERENCES

Filing claims for benefits and registration for work, see S.C. Code of Regulations R. 47‑21.

Provisions governing staff leasing services do not affect Employment Security Law (Sections 41‑27‑10 through 41‑41‑50), see Section 40‑68‑180.

Requirement that workers produce social security account number, see S.C. Code of Regulations R. 47‑18.

Separation notices, see S.C. Code of Regulations R. 47‑19.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Sections 271 et seq.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Hartsville Cotton Mill v. South Carolina Employment Sec. Commission (S.C. 1953) 224 S.C. 407, 79 S.E.2d 381.

**SECTION 41‑35‑615.** Notice to employer by United States mail or electronic mail; designation of preferred method of notice; default; time for required response.

 All notices given to an employer concerning a request for determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting‑week credit, a claim for benefits, and any reconsideration of a determination must be made by United States mail or electronic mail. The employer may designate with the department its preferred method of notice. If an employer does not make a designation, then notices must be made by United States mail. The employer may not be required to respond to the notice until ten calendar days, or the next business day if the tenth day falls on a Saturday, Sunday, or state holiday, after the postmark on notices sent via United States mail or ten calendar days after the date a notice is sent via electronic mail.

HISTORY: 2010 Act No. 146, Section 115, eff March 30, 2010; 2011 Act No. 3, Section 14, eff March 14, 2011.

Effect of Amendment

The 2011 amendment, in the fourth sentence, substituted “until ten calendar days, or the next business day if the tenth day falls on a Saturday, Sunday, or state holiday, after” for “until twelve business days after” and “calendar days” for “business days”.

CROSS REFERENCES

Charge of overpaid benefits to employer’s account, see Section 41‑35‑135.

**SECTION 41‑35‑620.** Notice of determination of insured status.

 (1) Written notice of a determination of insured status shall be furnished to the claimant promptly. Such notice shall include a statement as to whether the claimant is an insured worker, the amount of wages for insured work paid to him by each employer during his base period, and the employers by whom such wages were paid. For an insured worker the notice shall include also his benefit year, his weekly benefit amount, and the maximum amount of benefits that may be paid to him for his unemployment during such year; for a worker who is not insured, the notice shall include the reason for such determination.

 (2) The claimant, his most recent employer, and any employer whose account may be affected by adjudication of the claim shall be promptly notified in writing of the initial determination, any amended initial determination, or redetermination and the reasons therefor.

HISTORY: 1962 Code Section 68‑152; 1952 Code Section 68‑152; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1955 (49) 480; 1972 (57) 2309.

CROSS REFERENCES

Due process requirements for and judicial review of administrative actions, see SC Const, Art 1 Section 22.

Notice of benefit determination and appeal rights, see S.C. Code of Regulations R. 47‑34 .

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 280.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 25, Claims.

NOTES OF DECISIONS

In general 1

1. In general

There is no real inconsistency between a claimant’s entitlement to unemployment compensation for loss of wages through the termination of a job which he could and did perform in his partially disabled condition, and his entitlement to some workmen’s compensation benefits. Harvey v. Art Metal, Inc. (S.C. 1966) 247 S.C. 443, 147 S.E.2d 697.

Cited in Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

A claimant who is found to be unavailable for work, and thus ineligible, or who fails to meet any of the other benefit eligibility conditions of Code 1962 Section 68‑114, cannot file a valid claim for benefits as such term is used in the Unemployment Compensation Law, upon which there can be established a benefit year, a weekly benefit amount and a net maximum benefit amount. Hartsville Cotton Mill v. South Carolina Employment Sec. Commission (S.C. 1953) 224 S.C. 407, 79 S.E.2d 381. Unemployment Compensation 195; Unemployment Compensation 253

**SECTION 41‑35‑630.** Determination of claim when labor dispute is involved; determinations involving multiple claimants; group appeals.

 (A) In a case where the payment or denial of a benefit will be determined by the provisions of Section 41‑35‑120(6), the department must designate a special examiner to make an initial determination with respect to it. The determination of the examiner may be appealed in the same manner, within the same time, and through the same procedures as any other determination. The department may, upon written request by a group of workers or their authorized representative, allow one of a group representing a grade or class of workers similarly situated to file an appeal known as a “Group Test Appeal”, and the decision of the appeal tribunal or the department regarding the disqualification of the group representative because of the application of Section 41‑35‑120(6) is binding on the entire group.

 (B) When a determination involves multiple claimants and difficult issues of fact or law, the department may designate a special examiner to render the determination. A determination, which may be appealed in the same manner, within the same time, and through the same procedures as any other determination. The department must allow a claimant affected by this determination to join in one appeal and the decision of the appeal tribunal or the department is binding on all claimants who are parties to the consolidated appeal.

HISTORY: 1962 Code Section 68‑153; 1952 Code Section 68‑153; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1972 (57) 2309; 2010 Act No. 146, Section 88, eff March 30, 2010.

Effect of Amendment

The 2010 amendment redesignated subsections (1) and (2) as (A) and (B), respectively; substituted “department” for five occurrences of “Commission”; and made other nonsubstantive changes throughout the section.

CROSS REFERENCES

Due process requirements for and judicial review of administrative actions, see SC Const, Art 1, Section 22.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

**SECTION 41‑35‑640.** Reconsideration of determinations.

 (A) An initial determination may for good cause be reconsidered. A party entitled to notice of an initial determination may apply for a reconsideration not later than ten days after the determination was mailed to his last known address. Notice of the redetermination must be promptly given in the manner prescribed in this article with respect to notice of an initial determination.

 (B) An initial determination must be reconsidered when the department finds an error in computation or of a similar character has occurred in connection with it or that wages of the claimant pertinent to the determination, but not considered in connection with it, have been newly discovered. However, this redetermination must not be made after one year from the date of the original determination. The reconsidered determination supersedes the original determination. Notice of this redetermination promptly must be given in the manner prescribed in this article with respect to notice of an original determination. Subject to the same limitations and for the same reasons, the department may reconsider a determination in a case where a final decision is rendered by an appeal tribunal, the department, or a court, and, after notice to and the expiration of the period for appeal by the persons entitled to notice of the final decision, may apply to the body or court that rendered the final decision and seek a revised decision. In the event that an appeal involving an original determination is pending on the date a redetermination is issued, the appeal, unless withdrawn, must be treated as an appeal from the redetermination.

HISTORY: 1962 Code Section 68‑154; 1952 Code Section 68‑154; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1955 (49) 480; 1972 (57) 2309; 1973 (58) 248; 1981 Act No. 108 Section 11; 2002 Act No. 203, Section 3, eff April 10, 2002; 2010 Act No. 146, Section 89, eff March 30, 2010.

Effect of Amendment

The 2002 amendment, in subsection (1), in the second sentence, deleted “or otherwise delivered to him” following “address”; and in the third sentence, substituted “must” for “shall”, and deleted the comma following “promptly given”.

The 2010 amendment redesignated subsections (1) and (2) as (A) and (B), respectively; substituted “department” for three occurrences of “Commission”; and made other nonsubstantive changes throughout the section.

CROSS REFERENCES

Due process requirements for and judicial review of administrative actions, see SC Const, Art 1, Section 22.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 281, 291.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

**SECTION 41‑35‑650.** Notification of denial.

 If subsequent to an initial determination or redetermination benefits with respect to any week for which a claim has been filed are denied for reasons other than matters included in the initial determination or redetermination, the claimant shall be promptly notified of the denial and the reasons therefor.

HISTORY: 1962 Code Section 68‑155; 1952 Code Section 68‑155; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1952 (47) 1884; 1972 (57) 2309.

CROSS REFERENCES

Due process requirements for and judicial review of administrative actions, see SC Const, Art 1, Section 22.

Regulation of appeals, see S.C. Code of Regulations R. 47‑1 et seq.

**SECTION 41‑35‑660.** Appeals.

 The claimant or any other interested party may file an appeal from an initial determination, redetermination, or subsequent determination not later than ten days after the determination was mailed to his last known address. The term “any other interested party” means the claimant’s last or separating employer and any employer whose account may be affected by the adjudication of the claim. If an appeal is filed with respect to a matter other than the weekly benefit amount or maximum amount of benefits payable and the appeal tribunal affirms a determination allowing benefits, the benefits paid before the decision disallowing benefits shall not be recovered from any claimant regardless of any appeal which may subsequently be taken to the extent that these benefits are not charged to the account of any employer.

HISTORY: 1962 Code Section 68‑156; 1952 Code Section 68‑156; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1972 (57) 2309; 1973 (58) 248; 1975 (59) 330; 1981 Act No. 108 Section 12; 2002 Act No. 203, Section 4, eff April 10, 2002.

Effect of Amendment

The 2002 amendment, in the first sentence, deleted “, or otherwise delivered to him” following “address”; in the second sentence, substituted “means” for “shall mean and include”, and deleted “last or” and the comma preceding and following “separating employer”, respectively; in the third sentence, deleted “duly” preceding “filed”, the comma following “benefits payable”, and substituted “the” for “such”, “before” for “prior to”, “subsequently” for “thereafter”, and “these” for “such”.

CROSS REFERENCES

Due process requirements for and judicial review of administrative actions, see SC Const, Art 1, Section 22.

Regulation of appeals, see S.C. Code of Regulations R. 47‑1 et seq.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 281, 291.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 26, Appeals.

**SECTION 41‑35‑670.** Benefits shall be paid until determination, redetermination or decision has been modified or reversed.

 (A) Notwithstanding another provision contained in this article, benefits must be paid pursuant to a determination, redetermination, or the decision of an appeal tribunal, the department, or a reviewing court upon the issuance of that determination, redetermination, or decision, regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review provided with respect to it or the pendency of such an application, filing, or petition, until the determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits must be paid or denied for weeks of unemployment afterward pursuant to the modifying or reversing redetermination or decision.

 (B) If a determination or redetermination allowing a benefit is affirmed by the appeal tribunal or the department, or if a decision of an appeal tribunal allowing a benefit is affirmed by the department, those benefits must be paid promptly regardless of a further appeal that may be taken, and no injunction, supersedeas, stay, or other writ or process suspending the payment of the benefits must be issued by a court.

HISTORY: 1962 Code Section 68‑157; 1952 Code Section 68‑157; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1972 (57) 2309; 2010 Act No. 146, Section 90, eff March 30, 2010.

Effect of Amendment

The 2010 amendment redesignated subsections (1) and (2) as (A) and (B), respectively; substituted “department” for three occurrences of “Commission”; and made other nonsubstantive changes throughout the section.

CROSS REFERENCES

Due process requirements for and judicial review of administrative acts, see SC Const, Art 1, Section 22.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 281, 291.

**SECTION 41‑35‑680.** Decision on appeal.

 Unless an appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for a fair hearing, after notice of not less than seven days, must make findings and conclusions promptly and on the basis of the findings and conclusions affirm, modify, or reverse the determination or redetermination within thirty days from the date of the hearing. Each party promptly must be furnished a copy of the decision, including the reasons for the decision. This must be considered the final decision of the department, unless within ten days after the date of mailing the decision a further appeal is initiated pursuant to Section 41‑35‑710.

HISTORY: 1962 Code Section 68‑158; 1952 Code Section 68‑158; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1972 (57) 2309; 1983 Act No. 56 Section 2; 2002 Act No. 203, Section 5, eff April 10, 2002; 2010 Act No. 146, Section 91, eff March 30, 2010.

Effect of Amendment

The 2002 amendment, in the first sentence, inserted “of the findings and conclusions” preceding “affirm”; in the second sentence, substituted “including” for “together with”, deleted “therefore” and inserted “for the decision” following “reasons”; and made nonsubstantive changes throughout.

The 2010 amendment substituted “department” for “commission”; and made other nonsubstantive changes.

CROSS REFERENCES

Due process requirements for and judicial review of administrative acts, see SC Const, Art 1, Section 22.

Provisions relating to Commission review of appeal tribunal decisions, see Section 41‑35‑710.

Provisions relating to notice and hearing in contested cases, depositions, subpoenas, informal dispositions and content of record, see Section 1‑23‑320.

Appeals regulations, Department of Employment and Workforce, see S.C. Code of Regulations R. 47‑51 et seq.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 281, 291.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 26, Appeals.

LAW REVIEW AND JOURNAL COMMENTARIES

Collateral estoppel and Employment Security Commission decisions: Stunted efforts to minimize litigation costs. 49 S.C. L. Rev. 1151 (Summer 1998).

**SECTION 41‑35‑690.** Exclusive procedure for appeals.

 The procedure provided in this chapter for appeals from a determination or redetermination to the appeal tribunal and for appeals from the tribunal, first to the Department of Employment and Workforce Appellate Panel, as established by Section 41‑29‑300, and afterward to the administrative law court, pursuant to Section 41‑29‑300(C)(1), is the sole and exclusive appeal procedure.

HISTORY: 1962 Code Section 68‑159; 1952 Code Section 68‑159; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1972 (57) 2309; 2010 Act No. 146, Section 92, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

Effect of Amendment

The 2010 amendment rewrote this section, relating to appeals to the Workforce Department Appellate Panel and then to the administrative law court.

CROSS REFERENCES

Due process requirements for and judicial review of administrative acts, see SC Const, Art 1, Section 22.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 281, 291.

Attorney General’s Opinions

The South Carolina Department of Employment and Workforce must comply with the appellate process set forth in Section 41‑35‑690 and Section 41‑29‑300, meaning that cases appealed from the Appeal Tribunal would first go to the Appellate Panel and then, if appealed again, the case would go to the Administrative Law Court. S.C. Op.Atty.Gen. (July 1, 2011) 2011 WL 3346422.

**SECTION 41‑35‑700.** Appeal tribunals.

 (A) To hear and decide appeal claims, the executive director must appoint one or more impartial appeal tribunals consisting of either:

 (1) a referee, selected pursuant to Section 41‑29‑70; or

 (2) a body consisting of three members, one of whom:

 (a) must be a referee who must serve as chairman;

 (b) one of whom must be a representative of employers; and

 (c) the third of whom must be a representative of employees.

 (B) Each of the latter two members shall serve at the pleasure of the executive director and shall be paid a per diem as fixed in the annual state appropriation act for boards, commissions, and committees for each day of active service on a tribunal plus necessary expenses, as fixed in the annual appropriation act. A person must not participate on behalf of the department in any case in which he is an interested party. The department may designate alternates to serve in the absence or disqualification of a member of an appeal tribunal. The chairman must act alone in the absence or disqualification of another member and his alternate. The hearings must not proceed unless the chairman of the appeal tribunal is present.

HISTORY: 1962 Code Section 68‑160; 1952 Code Section 68‑160; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 93, eff March 30, 2010.

Effect of Amendment

The 2010 amendment rewrote this section to add subsection designations, and to authorize the executive director and the department to appoint and oversee appeal tribunals.

CROSS REFERENCES

Due process requirements for and judicial review of administrative actions, see SC Const, Art 1, Section 22.

Regulation of appeals, see S.C. Code of Regulation R. 47‑51.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 281, 291.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

**SECTION 41‑35‑710.** Appellate Panel review of appeal tribunal decision.

 The Department of Employment and Workforce Appellate Panel may on its own motion affirm, modify, or set aside a decision of an appeal tribunal on the basis of evidence previously submitted in the case; direct the taking of additional evidence; or permit a party to the decision to initiate further appeals before it. The appellate panel must permit further appeals by a party to a decision of an appeal tribunal and by the examiner whose decision has been overruled or modified by an appeal tribunal. The appellate panel may remove to itself or transfer to another appeal tribunal the proceedings on a claim pending before an appeal tribunal. Proceedings removed to the appellate panel must be heard by a quorum pursuant to the requirements of Sections 41‑35‑690 and 41‑35‑720. The appellate panel promptly must notify a party to a proceeding of its findings and decision.

HISTORY: 1962 Code Section 68‑161; 1952 Code Section 68‑161; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1966 (54) 2640; 2010 Act No. 146, Section 94, eff March 30, 2010.

Code Commissioner’s Note

Pursuant to the directive to the Code Commissioner in 2010 Act No. 146, Section 114, “Department of Employment and Workforce” was substituted for “Department of Workforce”.

Effect of Amendment

The 2010 amendment rewrote this section to authorize the Workforce Department Appellate Panel to review decisions of appeal tribunals.

CROSS REFERENCES

Due process requirements for and judicial review of administrative actions, see SC Const, Art 1, Section 22.

Provisions relating to decisions on appeals, see Section 41‑35‑680.

Appeals regulations, Department of Employment and Workforce, see S.C. Code of Regulations R. 47‑51 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 26, Appeals.

NOTES OF DECISIONS

In general 1

1. In general

On appeal of an employment benefits determination, the Employment Security Commission is authorized to make its own findings of fact consistent with or inconsistent with those of the appeal tribunal. Merck v. South Carolina Employment Sec. Com’n (S.C. 1986) 290 S.C. 459, 351 S.E.2d 338. Administrative Law And Procedure 513; Unemployment Compensation 286

The Circuit Court, in reviewing the Employment Security Commission’s decision, must affirm the factual findings of the commission if they are supported by substantial evidence. Merck v. South Carolina Employment Sec. Com’n (S.C. 1986) 290 S.C. 459, 351 S.E.2d 338. Administrative Law And Procedure 791; Unemployment Compensation 486

Finding of the Employment Security Commission that employee was discharged for misconduct for attempted theft of company property, warranting a 10 week unemployment benefit disqualification, was supported by substantial evidence, including the testimony of two of the employee’s coworkers. Merck v. South Carolina Employment Sec. Com’n (S.C. 1986) 290 S.C. 459, 351 S.E.2d 338. Unemployment Compensation 419

Cited in Sherbert v. Verner (S.C. 1962) 240 S.C. 286, 125 S.E.2d 737, probable jurisdiction noted 83 S.Ct. 321, 371 U.S. 938, 9 L.Ed.2d 273, reversed 83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965.

**SECTION 41‑35‑720.** Conduct of appealed claims.

 The department must promulgate regulations establishing rules of procedure for proceedings, hearings, and appeals to the appellate panel and the appeal tribunals pursuant to Section 41‑35‑790. The rules of procedure must address the manner for determining the rights of each party to an appeal. The rules of procedure are not required to conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record must be kept of all proceedings in connection with an appealed claim. Testimony at a hearing before an appeals tribunal on an appealed claim must be recorded but must not be transcribed unless the claim is appealed to the appellate panel.

HISTORY: 1962 Code Section 68‑162; 1952 Code Section 68‑162; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1966 (54) 2640; 2010 Act No. 146, Section 95, eff March 30, 2010.

Effect of Amendment

The 2010 amendment rewrote this section to authorize the department to promulgate rules of procedure for the appellate panel and appeal tribunals.

CROSS REFERENCES

Due process requirements for and judicial review of administrative actions, see SC Const, Art 1, Section 22.

Regulation of appeals, see S.C. Code of Regulations R. 47‑51.

**SECTION 41‑35‑730.** Fees of subpoenaed witnesses.

 Witnesses subpoenaed pursuant to this article must be allowed fees and mileage at a rate fixed by the department, which must not exceed that allowed for witnesses by the administrative law court. These fees must be considered a part of the expense of administering Chapters 27 through 41 of this title.

HISTORY: 1962 Code Section 68‑163; 1952 Code Section 68‑163; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 96, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; substituted “by the administrative law court” for “in the court of common pleas in the county in which a hearing is held”; and made other nonsubstantive changes.

**SECTION 41‑35‑740.** Judicial review of department’s decision.

 A decision of the department, in the absence of an appeal from it as provided in this article, becomes final ten days after the date of notification or mailing of it, and judicial review is permitted only after a party claiming to be aggrieved by it has exhausted his administrative remedies as provided by Chapters 27 through 41 of this title. The department must be considered to be a party to a judicial action involving a decision and may be represented in the judicial action by a qualified attorney employed by the department and designated by the department for that purpose or, at the department’s request, by the Attorney General.

HISTORY: 1962 Code Section 68‑164; 1952 Code Section 68‑164; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 2010 Act No. 146, Section 97, eff March 30, 2010.

Effect of Amendment

The 2010 amendment substituted “department” for “Commission”; and made other nonsubstantive changes throughout the section.

CROSS REFERENCES

Due process for and judicial review of administrative procedures, see SC Const, Art 1, Section 22.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Sections 282 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 26, Appeals.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State‑Record Pub. Co. v. South Carolina Employment Sec. Commission (S.C. 1970) 254 S.C. 1, 173 S.E.2d 144.

Applied in Hartsville Cotton Mill v. South Carolina Employment Sec. Commission (S.C. 1953) 224 S.C. 407, 79 S.E.2d 381.

**SECTION 41‑35‑750.** Procedure to obtain review.

 Within thirty days from the date of mailing the department’s decision, a party to the proceeding whose benefit rights or whose employer account may be affected by the department’s decision may initiate an action in the administrative law court against the department for the review of its decision, in which action every other party to the proceeding before the department must be made a defendant. In this action a petition, which need not be verified but which must state the grounds on which a review is sought, must be served on the executive director or on a person designated by the department within the time specified by this section. Service is considered complete service on all parties, but there must be left with the person served as many copies of the petition as there are defendants, and the department promptly shall mail one copy to each defendant. With its answer the department must certify and file with the court all documents and papers and a transcript of all testimony taken in the matter and its findings of fact and decision. The department also may certify to the court questions of law involved in a decision by the department. In a judicial proceeding under this chapter, the findings of the department regarding facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the administrative law court must be confined to questions of law. These actions, and the questions so certified, must be heard in a summary manner and must be given precedence over other cases. An appeal may be taken from the decision of the administrative law court pursuant to the South Carolina Appellate Court Rules and Section 1‑23‑610. It is not necessary in a judicial proceeding under this article to enter exceptions to the rulings of the department, and no bond is required for entering the appeal. Upon the final determination of the judicial proceeding, the department must enter an order in accordance with the determination. A petition for judicial review must not act as a supersedeas or stay unless the department orders a supersedeas or stay.

HISTORY: 1962 Code Section 68‑165; 1952 Code Section 68‑165; 1942 Code Section 7035‑86; 1936 (39) 1716; 1939 (41) 487; 1941 (42) 369; 1999 Act No. 55, Section 43, eff June 1, 1999; 2002 Act No. 203, Section 6, eff April 10, 2002; 2006 Act No. 387, Section 20, eff July 1, 2006; 2010 Act No. 146, Section 98, eff March 30, 2010.

Editor’s Note

2006 Act No. 387, Section 53, provides as follows:

“This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling.”

2006 Act No. 387, Section 57, provides as follows:

“This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review.”

Effect of Amendment

The 1999 amendment, in the seventh sentence, changed the appeal provisions to refer to the Appellate Court Rules and made nonsubstantive changes.

The 2002 amendment, in the first sentence, substituted “the time specified by the South Carolina Administrative Procedures Act, a” for “ten days after a decision of the commission has become final, any”, “whose benefit rights or whose employer account may be affected” for “who claims to be aggrieved”, inserted “commission’s” preceding “decision”; in the second sentence, inserted “within the time specified by the South Carolina Rules of Civil Procedure governing these appeals” following “designate”; in the third sentence, inserted “promptly” following “commission”, deleted “forthwith” preceding “mail”; in the fifth sentence, deleted “, in its discretion” following “commission”, and substituted “the commission” for “it”; in the tenth sentence, substituted “orders a supersedeas or stay” for “shall so order”; and made nonsubstantive changes throughout.

The 2006 amendment in the first sentence substituted “thirty days from the date of mailing of the commission’s decision” for “the time specified by the South Carolina Administrative Procedures Act”; and at the end of the second sentence substituted “this section” for “the South Carolina Rules of Civil Procedure governing these appeals”.

The 2010 amendment rewrote this section to provide the administrative law court with jurisdiction over decisions of the department.

CROSS REFERENCES

Due process for and judicial review of administrative procedures, see SC Const, Art 1, Section 22.

Employment and Workforce Appellate Panel created, purpose, powers, composition, see Section 41‑29‑300.

LIBRARY REFERENCES

81 C.J.S., Social Security and Public Welfare Section 284.

NOTES OF DECISIONS

In general 1

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Cited in Richey v Riegel Textile Corp. (1969) 253 SC 59, 169 SE2d 101. State‑Record Pub. Co. v South Carolina Employment Secur. (1970) 254 SC 1, 173 SE2d 144.

Vacation of the administrative law judge’s (ALJ) order, which affirmed the dismissal of unemployment compensation claimant’s appeal as untimely based on claimant’s action of depositing the appeal in an improper mailbox, was warranted; the appellate panel’s decision was based on claimant’s untimely action of depositing the appeal in the mailbox, and the ALJ did not review the finding made by the appellate panel, but instead affirmed based on its own finding, which was not made by the appellate panel. Stubbs v. South Carolina Dept. of Employment and Workforce (S.C.App. 2014) 407 S.C. 288, 755 S.E.2d 114. Unemployment Compensation 313

Under Section 41‑35‑750, an administrative agency’s rulings on questions of law will not be disturbed if they are sound as a matter of law. Alton Newton Evangelistic Ass’n, Inc. v. South Carolina Employment Sec. Com’n (S.C.App. 1985) 284 S.C. 302, 326 S.E.2d 165. Administrative Law And Procedure 796

Findings of Commission on a claim under the Unemployment Compensation Law will be reviewed by the court under the “substantial evidence rule” under which the court may reverse or modify the Commission’s decision if the decision is affected by errors of law, characterized by an abuse of discretion, or clearly erroneous in view of the substantial evidence on the record as a whole. Todd’s Ice Cream, Inc. v. South Carolina Employment Sec. Com’n (S.C.App. 1984) 281 S.C. 254, 315 S.E.2d 373. Administrative Law And Procedure 791

Scope of review provision of Section 41‑35‑750 is repealed by implication and supplanted by scope of review of Section 1‑23‑380(g). Todd’s Ice Cream, Inc. v. South Carolina Employment Sec. Com’n (S.C.App. 1984) 281 S.C. 254, 315 S.E.2d 373.

Quoted in Harvey v. Art Metal, Inc. (S.C. 1966) 247 S.C. 443, 147 S.E.2d 697.

Applied in Judson Mills v. South Carolina Unemployment Compensation Com’n. (S.C. 1944) 204 S.C. 37, 28 S.E.2d 535.

**SECTION 41‑35‑760.** Publication of department regulations on electronic website.

 (A) The department must promulgate all regulations described in this chapter and regulations governing procedures at all proceedings, hearings, and appeals before the department or any member or employee of the department, including claims for benefit determinations, and all appeals of determinations regarding those claims, and publish all regulations on an electronic website.

 (B) Regulations governing procedures at hearings and appeals before the department shall include, at a minimum:

 (1) procedures for seeking a hearing, review, or appeal;

 (2) procedures for notifying parties;

 (3) evidentiary rules;

 (4) procedures for making findings of fact and conclusions of law;

 (5) procedures for making and maintaining an appropriate record of interviews and proceedings before the department; and

 (6) procedures for seeking review or appeal of the department’s decision.

 (C) All regulations must be promulgated in accordance with the provisions of Chapter 23, Title 1 of the South Carolina Code of Laws.

HISTORY: 2010 Act No. 146, Section 99, eff March 30, 2010.