

P.O. Box 8597
Columbia, SC 29202
dew.sc.gov



Henry McMaster
Governor

G. Daniel Ellzey
Executive Director

Post Office Box 8597
Columbia, SC 29202
Telephone: (803) 737-0395
Fax: (803) 737-0124

August 4, 2022

RECEIVED

Aug 04 2022

SC Court of Appeals

By Email at ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Miya Freeman v. SC Department of Employment and Workforce and
Amazon.com Services Inc.
Appellate Case No: 2022-000982

Dear Ms. Kitchings:

Enclosed is the Respondent's Motion to Dismiss for Lack of Jurisdiction in the above referenced case. A proof of service is also included in this mailing.

Please let me know if you have any questions.

Sincerely,

Kristi Chesley
Administrative Legal Assistant for
Valerie McMellan
Attorney for Respondent South Carolina
Department of Employment and Workforce

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Court Judge

Case No.: 22-ALJ-22-0098-AP

Appellate Case No. 2022-000982

Miya Freeman,

Appellant,

v.

South Carolina Department of Employment and Workforce
and Amazon Com Services, Inc.,

Respondents,

MOTION TO DISMISS FOR LACK OF JURISDICTION

Respondent, South Carolina Department of Employment and Workforce (the Department) through its undersigned attorney, submits this Motion to Dismiss for lack of jurisdiction due to Appellant's failure to properly serve her Notice of Appeal. Appellant failed to serve her Notice of Appeal on the South Carolina Administrative Law Court (ALC) within thirty (30) days of receipt of the ALC's final decision as required by S.C. Code Ann. § 1-23-610(A)(1) and Rule 203(b)(6), SCACR, and thus, this Court lacks appellate jurisdiction.

The ALC issued its decision on June 21, 2022, finding that substantial evidence supported the Department's determination Appellant had not timely filed an appeal. According to Appellant's Notice of Appeal dated July 15, 2022, she received the ALC decision on June 23, 2022. On July 15, 2022, Appellant filed a proof of service indicating Appellant had served the Department and Amazon Com Services. The July 15, 2022, proof of service made no indication that the ALC had been served. On July 25, 2022, Appellant filed an Amended Notice of Appeal

and Proof of Service with service to the Department and Amazon Con Services. The July 25, 2022, Amended Proof of Service made no indication that the ALC had been served.

This action is a petition for judicial review of a final decision of the ALC and is therefore governed by the Administrative Procedures Act (APA). The APA, S.C. Code Ann. §1-23-610(A)(1) states:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and *served on* the opposing party and *the Administrative Law Court* not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

(emphasis added). Furthermore, Rule 203(b)(6), SCACR states:

When a statute allows a decision of the administrative law court ... to be appealed directly to ... the Court of Appeals, the notice of appeal *shall be served on the agency, the administrative law court* ... and all parties of record within thirty (30) days after receipt of the decision.

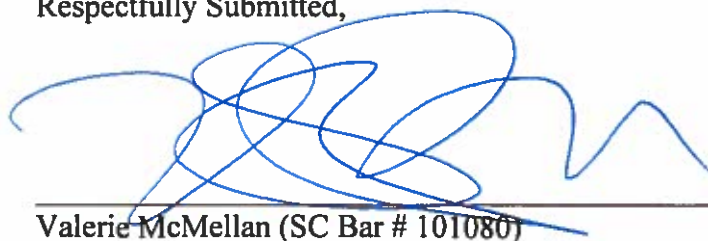
(emphasis added).

Appellant acknowledged in her notice of appeal that she received the ALC's final decision on June 23, 2022. Therefore, the last day to properly serve the ALC with her notice of appeal within the statutory time limit was July 25, 2022¹. Neither the July 15, 2022 proof of service nor the July 25, 2022, amended proof of service, reflect that the ALC has been served by Appellant. Service of the appeal on all parties and the ALC is a mandatory and jurisdictional requirement, and the court has no authority to extend the time in which the notice of appeal must be served. *Mears v. Mears*, 287 SC 168, 337 SE2d 206 (1985); *State v. Brown*, 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001). The Department recognizes that Appellant is proceeding *pro se* in this case. However, a *pro se* litigant "assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259,

265, 589 S.E.2d 6, 9 (2003); *see also State v. Hollman*, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) (the "established rules of procedure are not to be discarded, either in the trial court or on appeal, merely because the defendant has been his own lawyer") *overruled on other grounds by Stevenson v. State*, 335 S.C. 193, 516 S.E.2d 434 (1999). Further, pursuant to Rule 260(a), SCACR, this Court "shall" dismiss an appeal whenever an appellant fails to comply with the requirements of the Court's rules.

In this case, based upon Appellant's own proofs of service, Appellant has not served the ALC. By failing to serve the Notice of Appeal on the ALC, Appellant has not complied with the statutory requirements for the Court to obtain appellate jurisdiction to review the ALC's final decision. Further, the statutory time period for Appellant to comply with this mandatory service requirement has expired. Accordingly, the Department respectfully requests this Court dismiss Appellant's appeal pursuant to Rule 260(a) due to her failure to comply with Rule 203(b)(6). The Department further respectfully requests that all further deadlines be held in abeyance pending the Court's resolution of this motion.

Respectfully Submitted,



Valerie McMellan (SC Bar # 101080)
SC Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202
803.737.0395 (phone); 803.737.0124 (fax)
Legal@dew.sc.gov

**Attorney for Respondent SC Department of
Employment and Workforce**

August 4, 2022

¹ Thirty days from June 13, 2022, was July 23, 2022, a Saturday. Pursuant to Rule 263(a), SCACR, the deadline extended to Monday, July 25, 2022.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge
Case No.: 22-ALJ-22-0098-AP

Appellate Case No. 2022-000982

Miya Freeman,

Appellant,

v.

South Carolina Department of Employment and
Workforce and Amazon.com Services,

Respondents.

PROOF OF SERVICE

I certify that I have served the Respondents' Motion to Dismiss for Lack of Jurisdiction on the parties in this case by mail on August 4, 2022, addressed to the parties at their addresses of record:

Miya S. Freeman
405 Grand National Ln
Elgin SC 29045

Amazon.com Services
PO Box 16560
Clearwater FL 33766

August 4, 2022



Kristi Chesley
South Carolina Department of Employment and
Workforce
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-0395