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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable S. Phillip Lenski, Administrative Law Judge

Docket No. 22-ALJ-22-0098-AP

Appellate Case No. 2022-000982

Miya S. Freeman,

Appellant,

v.

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

Respondents.

BRIEF OF RESPONDENT SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

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STATEMENT OF ISSUES ON APPEAL

- I. Has Appellant abandoned this appeal by failing to make any arguments in her brief that are supported by citation to legal authority?

- II. Did the Administrative Law Court properly affirm the Appellate Panel's decision when substantial evidence supported the Panel's finding that Appellant did not timely file her appeal of the Department's claims adjudicator to the Appeal Tribunal?

STATEMENT OF THE CASE

Appellant Miya S. Freeman filed a claim for unemployment insurance (UI) benefits with Respondent South Carolina Department of Employment and Workforce (Department) on August 25, 2021. (ALC Record pp.5-8). The Department mailed a claims adjudicator's determination on October 4, 2021, holding Appellant ineligible to receive UI benefits upon a finding Appellant voluntarily severed the employer/employee relationship without good cause. (ALC Record p.29). Appellant filed an appeal to the Department's Appeal Tribunal (Tribunal) by mail on October 19, 2021. (ALC Record pp.31-35). The Department dismissed Appellant's appeal as untimely by letter mailed November 4, 2021. (ALC Record p.37). Appellant faxed an appeal of the dismissal letter on November 16, 2021. (ALC Record pp.38-43). The Department's Appellate Panel (Panel) granted Appellant an evidentiary hearing before the Tribunal to discuss the timeliness of her appeal of the Department's October 4, 2021, determination. (ALC Record p.44). The Tribunal conducted an evidentiary hearing on January 5, 2022, and mailed a decision on January 5, 2022, dismissing Appellant's appeal to the Tribunal as untimely. (ALC Record pp.47-91).

Appellant appealed the Tribunal's decision to the Panel. (ALC Record pp.92-96). The Panel mailed its decision on February 22, 2022, affirming the Tribunal's decision that found Appellant's appeal of the October 4, 2021, determination was untimely. (ALC Record pp.1-4; pp.99-102).

Appellant filed an appeal of the Panel's decision with the Administrative Law Court (ALC) on March 22, 2022. (Appellant's Notice of Appeal). The ALC affirmed the Panel's

decision by order dated June 21, 2022. (ALC Order Affirming Panel). Appellant now appeals to this Court.

STANDARD OF REVIEW

The Department is an agency governed by the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding the Department's predecessor, the Employment Security Commission, subject to the APA). Pursuant to the provisions of the South Carolina Administrative Procedures Act, the Court of Appeals may reverse or modify the decision of an Administrative Law Judge if substantial rights of the appellant have been prejudiced because the findings or decisions are:

- a) in violation of constitutional or statutory provisions;
- b) in excess of the statutory authority of the agency;
- c) made upon unlawful procedure;
- d) affected by other error of law;
- e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B).

Under section 1-23-610(B), this Court's review is limited to determining whether the ALC committed an error of law when applying its standard of review pursuant to section 1-23-380(5) of the South Carolina Code and finding substantive evidence supported the Panel's decision. "The decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue Ribbon Taxi Corp. v. S.C. Dept. of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676

(Ct. App. 2008). “The ALC judge’s order should be affirmed if supported by substantial evidence in the record.” *Id.* “Substantial evidence, when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the Administrative Law Court and is more than a scintilla of evidence.” *Id.* at 605, 670 S.E.2d at 676. “The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence.” *Id.* at 605, 670 S.E.2d at 677.

STATEMENT OF THE FACTS

Appellant filed a claim for UI benefits, stating on her application that the reason her employment ended was because she was on a leave of absence. (ALC Record pp.5-7). The Department’s claims adjudicator mailed a determination on October 4, 2021, holding Appellant indefinitely disqualified from UI benefits upon a finding she voluntarily severed the employer/employee relationship without good cause by filing for benefits while on a leave of absence. (ALC Record p.29). Appearing at the bottom of the determination is the following notice that instructed Appellant how to file an appeal of the determination to the Tribunal:

IMPORTANT: This determination will be the final decision of the Department unless you file an appeal setting forth in detail the grounds for appeal by 10/14/2021¹. Your appeal may be filed by mail addressed to the “Appeal Tribunal, Post Office Box 995, Columbia, SC 29202,” or by fax to 803-737-0287. For additional information on filing an appeal, contact the Appeals Department at 803-737-2520 or visit our website at <https://dew.sc.gov/individuals/manage-your-benefits/appeals>.

¹ As discussed below, this appeal deadline is set by statute. *See* S.C. Code Ann. § 41-35-660.

Id. (emphasis in original)

On October 19, 2021, five days past the statutory appeal deadline, Appellant submitted an appeal of the claims adjudicator's determination by mail. (ALC Record pp.31-35). On November 4, 2021, Appellant's appeal was dismissed by letter for being untimely. (ALC Record p.37). On November 16, 2021, appellant submitted an appeal of the dismissal letter by fax but did not address the reason why her prior appeal was untimely. (ALC Record pp.38-43).

The Panel granted Appellant an evidentiary hearing before the Tribunal to discuss the timeliness of her appeal of the Department's October 4, 2021 determination. (ALC Record p.44). At the evidentiary hearing, Appellant testified that she received the October 4, 2021 determination by mail and read the section regarding her appeal rights. (ALC Record p.59 lines 1-18). Additionally, she was made aware of the appeal information when she contacted the Department. (ALC Record p.59 lines 19-23). Appellant initially testified that she had attempted to submit appeals of the October 4, 2021 determination on October 4, 2021, and September 29, 2021. (ALC Record p.61 lines 12-14). Appellant later clarified that those appeals were for other determinations. (ALC Record p.62 lines 2-4). She also confirmed that her first attempt to appeal the October 4, 2021 determination that held her ineligible for benefits was the appeal that she mailed on October 19, 2021. (ALC Record p.62 lines 5-11). On January 5, 2022, the Tribunal issued its decision holding Appellant's appeal untimely. (ALC Record pp.89-91). Appellant appealed to the Panel and the Panel found:

The Department properly mailed the claims adjudicator's determination to [Appellant's] address of record on October 4, 2021. The deadline to file an appeal was October 14, 2021. [Appellant's] appeal was mailed on October 19, 2021, five days after the appeal period expired. The greater weight of the credible evidence in the record shows [Appellant] filed an untimely appeal due to her own error or neglect in failing to immediately follow the appeal instructions when she received the determination. [Appellant] did not act in a diligent manner to preserve her appeal rights in this matter. Therefore, we find the appeal to the Appeal Tribunal was properly dismissed.

(ALC Record p.3; p.101).

Appellant appealed the Panel's decision to the ALC, and after reviewing briefs submitted by the parties, the ALC affirmed the Panel's decision, finding "substantial evidence in the record supports the Panel's determination that the Appellant did not timely appeal the claims adjudicator's decision to the Tribunal." (ALC Order Affirming Panel). That evidence was Appellant's own acknowledgement that she had filed her appeal untimely. (ALC Order Affirming Panel).

ARGUMENT

I. APPELLANT HAS ABANDONED ANY ARGUMENT THAT THE ALC'S ORDER AFFIRMING THE PANEL DECISION WAS ERRONEOUS OR AFFECTED BY AN ERROR OF LAW BY FAILING TO MAKE SUBSTANTIVE ARGUMENTS IN HER BRIEF, WITH CITATIONS TO LEGAL AUTHORITY.

Pursuant to Rule 208(b)(1), SCACR, Appellant's initial brief was required to contain a table of contents and cases, statement of issues, statement of the case standard of review, argument, and conclusion. For the argument section, the Rule states "[t]he brief shall be divided into as many parts as there are issues to be argued. At the head of each

part, the particular issue to be addressed shall be set forth...followed by **discussion and citations of authority.**” Rule 208(b)(1)(E), SCACR. (emphasis added). According 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. These rules are designed to assist the Court and the parties in clearly identifying and resolving issues under dispute. As such, "appellants have the responsibility to identify errors on appeal, not the Court." *Kennedy v. S. C. Ret. Sys.*, 349 S.C. 531,533,564 S.E.2d 322,323 (2001). “Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to ‘grope in the dark’ to ascertain the precise point at issue.” *Forest Dunes Assocs. v. Club Carib, Inc.*, 301 S.C. 87, 89, 390 S.E.2d 368, 370 (Ct.App.1990). Moreover, "[a]n issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.” *Fields v. Melrose Ltd. P’Ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993).

In Appellant’s initial brief she identified two issues on appeal:

1. Were the appellant’s rights prejudiced in the Administrative Law Court Judge’s failure to weigh and consider the appellant’s whole record in its decision to affirm the Department’s Petition?
2. Did the Administrative Law Court err in failing to uphold the Appellant’s entitlement to unemployment benefits?

(App.Br.p.1).

These broad, general statements vaguely raise issues with the ALC's order. However, Appellant then proceeded with an argument that in no way references the broad general issues she identified. Rather, Appellant uses her argument section to set forth the facts of her job separation and whether she left her employment for good cause. While there was a determination by a claim's adjudicator regarding her separation from employment, that is not the issue that was considered by the ALC, and is not the issue before this Court. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9,23, 602 S.E.2d 772, 779-80 (2004) ("Issues and arguments are preserved for appellate review only when the are raised to and ruled on by the lower court."). Further, Appellant provides no discussion or legal citation that would support any argument the ALC erred in affirming the Panel's decision that Appellant's appeal was untimely, or that her rights were prejudiced. By failing to engage in discussion and citation to legal authority, Appellant has abandoned her designated issues on appeal. *See Ellie, Inc. v. Miccichi*, 358, S.C. 78,99, 594 S.E.2d 485, 496 (Ct.App.2004) ("Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal."); *First. Sav Bank v. McLean*, 314 S.C. 361, 363, 444 S.E. 2d 513, 514 (1993) (noting an issue is deemed abandoned where appellant fails to provide arguments or supporting authority for their assertions).

II. THE ADMINISTRATIVE LAW COURT PROPERLY AFFIRMED THE APPELLATE PANEL'S DECISION BECAUSE SUBSTANTIAL EVIDENCE SUPPORTS THE PANEL'S FINDING THAT APPELLANT DID NOT TIMELY FILE HER APPEAL OF A CLAIM'S ADJUDICATOR DETERMINATION TO THE APPEALS TRIBUNAL WITHIN TEN DAYS OF THE DATE OF MAILING OF THE CLAIM'S

ADJUDICATOR DETERMINATION AS REQUIRED BY SECTION 41-35-660 OF THE SOUTH CAROLINA CODE.

The ALC did not err in affirming the Panel's finding that the Appellant failed to timely appeal the claims adjudicator's determination to the Tribunal because substantial evidence supported the Panel's decision. A claimant "may file an appeal from an initial determination, redetermination, or subsequent determination not later than ten days after the determination was mailed to [her] last known address." S.C. Code Ann. § 41-35-660. Further, a "party appealing from any determination of a claims adjudicator ... shall file ... a Notice of Appeal, setting forth the grounds for the appeal." S.C. Code Ann. Regs. § 47-51(A)(1). "The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction." *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). Consequently, the timely filing of a proper notice of appeal, "setting forth the grounds for appeal," is a jurisdictional requirement, and neither the Panel, the ALC, nor this Court has the authority to extend the time in which the claimant must file a proper appeal. *See Hill v. S.C. Dep't of Health & Env'tl. Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) ("The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court."); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." (quoting *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004))).

In this case, the ALC found substantial evidence in the record supported the Panel's determination that Appellant did not timely appeal the claims adjudicator's decision to the Tribunal. (ALC Order). The claims adjudicator's determination was mailed to Appellant's address of record on October 4, 2021. (ALC record p.29). The appeal deadline of October 14, 2021 naturally flows from the same determination, and is correct as a matter of law. *See* § 41-35-660 (requiring that an appeal to the Tribunal must be filed "not later than ten days after the determination was mailed to his last known address."). In her testimony she confirmed that the letter mailed on October 19, 2021, was her first attempt to appeal the October 4, 2021, separation determination:

HEARING OFFICER: [...]So your first attempt to appeal the determination that we're speaking of, the one that was mailed on October 4 of 2021, which held you ineligible effective August 22 of 2021 was on October 19 of 2021. Is that correct?

MIYA S. FREEMAN: Yes.

(ALC Record p.62 lines 7-11).

The envelope in which she mailed her appeal is postmarked October 19, 2021, and the Notice of Appeal to Appeal to the Tribunal that Appellant completed is dated October 19, 2021. (ALC Record p.31-32). Thus, based on Appellant's own testimony during the hearing and the postmark on the envelope containing her notice of appeal, substantial evidence supported the Panel's decision finding Appellant's appeal untimely, and the ALC properly affirmed and did not commit an error of law by affirming the Panel decision.

Additionally, in Appellant's Initial Brief she acknowledges she did not file her appeal until October 19, 2022, from the October 4, 2022, claims adjudicator determination. (App.Br.p. 1-2). Further, as a practical matter, while Appellant makes a passing argument she filed an appeal on September 27, 2021, that is not possible where the claims adjudicator's determination did not yet exist. (App.Br.p. 7; ALC record p.29). It is axiomatic that in order to file an appeal "from an initial determination" as outlined in section 41-35-660 and to set forth grounds for an appeal as required by regulation § 47-51(A)(1), there must first be a determination to appeal. (emphasis added). Here, the determination was not made until October 4, 2021. (ALC Record p.29). Therefore, a reasonable person could conclude, as the ALC did, that Appellant did not file a proper appeal until October 19, 2021, five days after the appeal deadline.

While the Department recognizes that Appellant proceeded *pro se* in appealing to the Tribunal, a *pro se* litigant is still responsible "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). As argued above, the proper and timely filing of an appeal is a jurisdictional requirement under S.C. Code Ann. § 41-35-660 and S.C. Code Ann. Regs. § 47-51(A)(1), and neither the Tribunal, the Panel, the ALC, nor this Court, has the authority to extend that deadline. Therefore, the ALC correctly affirmed the Panel's decision and Appellant's appeal was properly dismissed because

substantial evidence in the record supports the finding that Appellant filed an untimely appeal to the Tribunal. For the above reasons, this Court should affirm.

CONCLUSION

The party challenging the ruling bears the burden of proving that the Panels decision is unsupported by the evidence. *Original Blue Ribbon Taxi Corp, supra*. The Panels decision, however, is supported by substantial evidence. The Panel properly concluded that Appellant failed to timely file her appeal of a claims adjudicator's determination to the Tribunal. As a result, the ALC's decision affirming the Panel was correct and this Court should affirm.

Respectfully Submitted,



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