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**Jan 18 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Docket No. 21-ALJ-22-0448-AP

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Appellate Case No. 2022-001433

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Wendell D. Cooper

Appellant

v.

South Carolina Department of Employment and Workforce and  
School District of Greenville County,

Respondents

**MOTION TO DISMISS,**

**OR, IN THE ALTERNATIVE,**

**MOTION FOR CLARIFICATION AND  
EXTENSION OF TIME**

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**I. Motion to Dismiss**

Respondent the South Carolina Department of Employment and Workforce hereby moves, pursuant to Rule 209, SCACR, Rule 260(a), SCACR, Rule 262(b), SCACR, that this Court dismiss Appellant's appeal for failure to file his Designation of Matter and a

proper Proof of Service as directed by this Court's letters of December 7, 2022, and January 5, 2023.

On October 6, 2022, Appellant filed and served his Notice of Appeal with this Court. From the time Appellant served that Notice of Appeal, Appellant had thirty (30) days to file and serve his Initial Brief, his Designation of Matter, and a proper Proof of Service. Rule 208(a)(1), SCACR; Rule 209(a), SCACR; Rule 262(b), SCACR. Appellant failed to file or serve any of those documents by the November 7, 2022, deadline, thus subjecting himself to the dismissal of his appeal. Rule 208(a)(4), SCACR. On December 7, 2022, this Court sent Appellant a letter indicating that his Initial Brief and Designation of Matter were overdue and stating that he had ten days from the date of the letter to file his Initial Brief, his Designation of Matter, and a Motion requesting permission to serve and file the initial brief and Designation of Matter outside of the filing deadlines. Appellant's deadline to comply with the Court's letter was December 19, 2022. By package postmarked December 20, 2022, Appellant filed a document purporting to be his brief as well as a "Motion to File Initial Brief and Designation Letter Outside the Filing Deadlines." (Exhibits A – Appellant's Initial Brief, and Exhibit B – Appellant's Motion for Extension and Proof of Service). Included with the Motion was a facially deficient Proof of Service. (Exhibit B – Appellant's Motion for Extension and Proof of Service). By package postmarked December 22, 2022, Appellant served the Department with the document purporting to be his brief and the Motion filed with this Court as well as the facially deficient Proof of Service. (Exhibit C – Postmark of Envelope Served on Respondent containing Appellant's Initial Brief and Motion for Extension). As of the time of this motion and to the best of

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Respondent's knowledge, Appellant has not filed or served a Designation of Matter or a proper Proof of Service.

On January 5, 2023, this Court issued an Order granting Appellant's motion and accepting his Initial Brief as filed. On January 5, 2023, this Court also issued a deficiency letter which stated that Appellant's failure to accompany his Initial Brief with a Designation of Matter and a proper Proof of Service were deficiencies and that those deficiencies must be corrected within ten (10) days of the date of the letter, or Appellant's appeal would be dismissed. As of the date of this Motion, Respondent has not received a Designation of Matter or a proper Proof of Service as required by the Rules of this Court, the Court's December 7, 2022, letter, and the Court's subsequent January 5, 2023, deficiency letter.

Appellant has repeatedly failed to meet the time limits set forth by this Court's Rules and this Court's instructions. Appellant's failure to file a brief within thirty (30) days warranted dismissal under Rule 208(a)(4) ("Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260...."); *see also Henning v. Kaye*, 307 S.C. 436, 438, 415 S.E.2d 794, 794–95 (1992) ("Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State."). This Court gave Appellant an additional chance to salvage his appeal by letter dated December 7, 2022. Despite being offered that second chance, Appellant once again failed to timely file and serve his Initial Brief or his Motion

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and failed to file or serve a Designation of Matter or proper Proof of Service at all, once again warranting dismissal of his appeal. This Court granted Appellant's Motion and accepted Appellant's Initial Brief as filed and issued a deficiency letter granting Appellant a third chance to salvage his appeal by allowing him an additional ten days to file and serve his Designation of Matter along with a proper Proof of Service. Appellant has yet to file a Designation of Matter or a proper Proof of Service and over one hundred (100) days have elapsed since he filed his initial Notice of Appeal.<sup>1</sup> See *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990) ("There is a limit beyond which the court should allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties."). Due to Appellant's violation of Rule 208(a)(1) and failure to comply with this Court's subsequent letters, this Court should decline to allow Appellant to consume any more of the Court or Respondents' time and should dismiss Appellant's appeal pursuant to Rule 208(a)(4) and Rule 260.

## **II. In the Alternative, Motion for Clarification and Extension of Time**

Due to Appellant's repeated failure to timely file and serve documents in this case, the current deadline for Respondent to file and serve Respondent's Initial Brief and Designation of Matter has become unclear. Should this Court deny Respondent's Motion to Dismiss, Respondent moves this Court to clarify the due date for filing and service of

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<sup>1</sup> Due to the time constraints created by Appellant's repeated failure to make timely filings, it is possible Appellant may have filed and/or served something in response to this Court's January 5, 2023, deficiency letter that has not yet been received by Respondent. However, even if Appellant manages to timely file a document in response to the deficiency letter, Respondent still asks this Court to dismiss Appellant's appeal due to his repeated failure to timely file and serve required documents.

Respondent's Initial Brief and to extend the deadline for filing and service until at least thirty (30) days after issuing an Order on Respondent's Motion to Dismiss above. Respondent asks this Court to hold all other timelines and due dates in abeyance pending the outcome of this Motion.

Respectfully Submitted,



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SC Department of Employment and  
Workforce  
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Legal@dew.sc.gov

January 18, 2023

**Attorney for Respondent**  
**SC Dept. of Employment and Workforce**

**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA

\_\_\_\_\_  
In The Supreme Court

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DEC 22 2022

**SC Court of Appeals**

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

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Case No. 2022-001433

Wendell D. Cooper,

Appellant,

v.

South Carolina Department of  
Employment of Workforce, and  
School District of Greenville County,

Respondents,

\_\_\_\_\_  
**APPELLANT'S FIRST BRIEF**

Wendell Cooper First Brief, dated November 19, 2021, placed a copy in the U.S. Mail on November 19, 2022, to persons associated with the matter.

\_\_\_\_\_  
Wendell Cooper, Pro Se  
117 Palm Springs Way  
Simpsonville, South Carolina 29681  
864-230-7049

\*

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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**APPEAL FROM SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**Deborah Brooks Durden,  
S.C Administrative Law Court Judge**

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**DEC 22 2022**

**Case No. 2017-CP-00-00000**

**SC Court of Appeals**

**Wendell D Cooper,**

**Appellant,**

**v.**

**South Carolina Department of  
Employment of Workforce and  
School District of Greenville  
County,**

**Respondents.**

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**BRIEF OF APPELLANT**

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**Wendell Cooper  
117 Palm Springs Way  
Simpsonville S.C. 296810  
(864) 000-0000  
Attorney Pro Se**

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STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT ERR IN FAILING TO FIND THAT THE APPELLANT IS PROHIBITED FROM HAVING MORE THAN ONE BENEFITS CLAIM OPEN AT THE SAME TIME?
2. DID THE COURT ERR IN FAILING TO FIND THAT THE APPELLANT WAS AVAILABLE FOR WORK?
3. DID THE COURT ERR FIND THAT THE APPELLANT FAILED TO APPEAL ALL GROUNDS OF THE APPEAL?

STATEMENT OF THE CASE

From July 13, 2021, to July 20, 2021, the Appellant filed multiple appeals of two claims adjudicators' determinations with the Department's Appeal Tribunal (Tribunal). On September 6, 2022, the court affirmed the Department's decision.

STANDARD OF REVIEW

The Appeals Court has the jurisdiction to review the law judge's opinion.

FACTS

The Appellant's first benefits year expired on March 13, 2021. Still, the Appellant continued to be eligible for PUA benefits due to Congress's extension of the program for claimants who could not reach their place of employment due to quarantine imposed by a medical professional. The PUA program ended in South Carolina on June 26, 2021.

On November 23, 2020, Appellant stopped accepting substitute teaching positions based on the advice of his doctor regarding Appellant's medical conditions and concerns about Covid - 19

On August 10, 2021, The Panel ruled that the Appellant was ineligible for UI benefits effective June 6, 2021. August 21, 2021 (R. p 2 par 2).

Appellant Panel ruled that an individual can only receive benefits under one program at a time. The Appellant can establish his claim as of a subsequent date by providing evidence that he meets the availability requirements of the law (R. p 3 par 4)

The Appellant filed a new application for UI benefits on June 9, 2021. The Department determined that the Appellant could receive UI benefits on a new benefits year, effective March 14, 2021, based on his wages with Greenville (See p. 5 par. 2 of Respondent's Reply to Appellant's

The claim adjudicators denied the Appellant UI benefit for having a reasonable assurance of returning to work and not accepting all available work hours.

An individual may only receive benefits under one program at a time. The Appellant would not have been eligible to receive UI or PEUC benefits while receiving PUA benefits (*R. p 3 par 4*).

**ARGUMENT**

**I. DID THE COURT ERR IN FAILING TO FIND THAT THE APPELLANT IS PROHIBITED FROM HAVING MORE THAN ONE BENEFIT OPEN AT THE SAME TIME**

It is undisputed that the Appellant can only have one claim open, and he was denied UI benefits while receiving PUA benefits. Furthermore, stated reasons for denying UI benefits would be moot under these guidelines. The Appellant agrees with the adjudicator that he would not be eligible for UI benefits until his PUA benefits ended (*R. p 3 par 4*). Nevertheless, the established date of June 6, 2021, finding the Appellant ineligibility for UI benefits would be misplaced because the Appellant would not be eligible for UI benefits until June 26, 2021. Consequently, the Appellant did not apply for UI benefits at the end of the school year or seek payment of benefits because he was already receiving benefits under the PUA for not being able to reach his employment due to a Covid-19 outbreak, S.C. Code – 41- 35 -20 does not apply to here because the record shows that the break in service performed occurred on November 23, 2020, and not on June 6, 2021 (See *R. p. 165 par. 7*). Moreover, the UI benefits denied under (S.C. Code Ann – 41- 35-50 and S. C. Code Ann – 41-35-12(viii)(5) is not pertinent to this case for reasons stated above.

**II. THE APPELLANT CAN NOT BE DENIED UI BENEFITS WHEN HE IS UNABLE TO REACH HIS EMPLOYMENT THROUGH NOT FAULT OF HIS OWN.**

The Appellant agrees with the Respondent that under the PUA program, a covered individual means an individual who is not eligible for regular compensation (See R. p. 170). However, to receive benefits under the PEUC program, the federal unemployment program was expanded to provide benefits to individual who exhausted their regular UI benefits and are still unemployed as a result of Covid – 19 (See R. p. 171). A fact-finding questionnaire required the Appellant to prove that he was still unable to return to work due to the Covid-19 pandemic (See R. p. 165). The Appellant received PEUC benefits when his UI benefits ended on March 13, 2021; to June 26, 2021, because his separation from his employer was through no fault of his own (See *S.C. Code Ann. § Section 41-35-120 (5)(b)*). The weekly qualification for both UI and PEUC is the same, and there is nothing in the record to demonstrate a difference.

### III. DID THE COURT ERR IN BASING ITS FINDINGS ON ISSUES THAT WERE NOT RAISED AT THE TIME OF THE APPELLANT'S APPEAL HEARING AND NOT PART OF THE RECORD

In the appeal hearing, the issues discussed are a break in employment and reasonable assurance. Nothing in the record would indicate that the Appellant's UI benefits were denied because he could not work (See R. p.4). In the Court's order on March 16, 2022. The Court stated:

Appellant was "unable to work," The letter from Appellant's physician stated that Appellant was "advised to stay home at the time that Covid-19 was surging." This is not the same as declaring the Appellant unable to work since it is possible to work from. Furthermore, the Panel did not find the Appellant "unable to work," so this is not a matter in which the Court is bound to the Department's judgment as to the weight of evidence on a question of fact. Section 41-35 110(3) does not necessarily bar Appellant from being granted effectual relief.

In this case, the Court is using a play on words; if the Appellant can work, that would

mean he is available to work. Likewise, the Court, in the above ruling, did not distinguish between able to work and available to work; Panel's ruling on this matter would be pre-mature at best, given the evidence in the record that the Department paid the Appellant weekly benefits under both the PUA and PECU program. The Appellant must be able and available for work to receive these weekly benefits. The Appellant will not address the Respondent's other reason for denying UI benefits constitutes the above arguments. The Appellant will be available for work because he did not withdraw his name from the labor.

**IV. DID THE COURT ERR RULING THAT APPELLANT FAILED TO APPEAL ALL GROUNDS OF THE APPEAL?**


The Appellant properly appealed all grounds of the case. The adjudicator denied UI. Benefits for not accepting all available work and reasonable assurance and supported by the record. The Panel only has the authority to review the record. At the Appeals hearing, the issues of being still employed or unavailable for work and not seeking work were not the main focus of the hearing. Furthermore, Jones v. Lott has no bearing on this matter because the Panel is not considered a court but a review board.

CONCLUSION

The Court should reverse this decision because the law does not permit two claims to be open simultaneously, and the record does not support their finding of facts. Additionally, the Appellant's research did not yield any case law to support his position.

Respectfully submitted,

December 19, 2022,

Wendell Cooper, Pro Se  
  
Greenville, South Carolina  
29681(864) 230-7049

**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA

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\_\_\_\_\_  
Wendell Cooper, Pro Se  
117 Palm Springs Way  
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864-230-7049

*Handwritten:* (12) Van Stig...  
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Columbia SC 29201



**Motion To File Initial Brief and  
Destination Letter Outside the  
Filing Deadlines**

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**Deborah Brooks Durden,  
S.C Administrative Law Court Judge**

Case No. 2202-001433

Wendell D Cooper,

Appellant,

v.

South Carolina Department of  
Employment of Workforce and  
School District of Greenville  
County,

Respondents.

**Motion To File Initial Brief and  
Destination Letter Outside the  
Filing Deadlines**

Now, Wendell Cooper, Pro Se, is asking the Court grant permission to file his Initial Brief and Destination outside the filing deadline. The non - submission of the above documents was due to the Appellant waiting on a response from the court stating that he had properly corrected his appeal and proof of service. Unfortunately, this appeal process is more than was anticipated. Therefore, I asked the court to grant a 30-day extension to file and hire an attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wendell Cooper', written in a cursive style.

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Appellant Initial Brief

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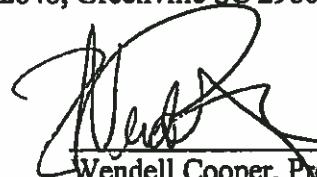
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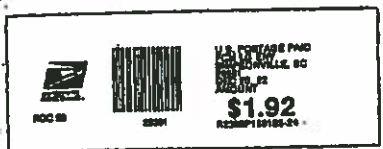
PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal on the South Carolina Department of Employment of Workforce and School District of Greenville County by depositing a copy of it in the United States Mail postage paid on December 19, 2022, addressed to their attorney of record, Benjamin T. Cook, Post Office Box 8597, Columbia, SC 29202, and General Counsel for School District of Greenville County Post Office Box 2848, Greenville SC 29602.

December 19 , 2022

  
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Simpsonville SC 29681



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Court of Appeals  
1220 Senate St  
Columbia SC, 29201



EXHIBIT C

Carrollville  
10/11/2022

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PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Dismiss or, in the alternative, Motion for Clarification and Extension of Time on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on January 18, 2023, addressed to the parties at their addresses of record:

Wendell Cooper  
117 Palm Springs Way  
Simpsonville SC 29681

School District of Greenville  
County  
PO Box 2848  
Greenville SC 29602

January 18, 2023



Kristi Chesley  
Administrative Legal Assistant  
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