

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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SC Court of Appeals

Faranda Caldwell,

Appellant,

v.

South Carolina Department of Employment
and Workforce,

Respondent.

Docket No. 22-ALJ-22-0446-AP

FINAL ORDER AFFIRMING

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (Court) pursuant to the Notice of Appeal filed by Faranda Caldwell (Appellant). Appellant is seeking review of a final decision issued by the Appellate Panel (Panel) of the South Carolina Department of Employment and Workforce (Department). The Panel dismissed Appellant's appeal as untimely. The ALC has jurisdiction to hear this matter pursuant to section 41-35-750 of the South Carolina Code. *See* S.C. Code Ann. § 41-35-750 (2021). After careful review and consideration of the Record on Appeal, parties' briefs, and the applicable law, the Panel's decision is affirmed.

BACKGROUND

On April 8, 2022, Appellant filed a claim for unemployment benefits with the Department. On April 28, 2022, a Department claims adjudicator issued a determination finding that Appellant was discharged for misconduct due to absenteeism and failure to comply with company call in procedures, and held Appellant disqualified from UI benefits for twenty weeks pursuant to SC. Code Ann. § 41-35-120(2)(a). The claims adjudicator's decision included a notice in bold font stating: **"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 5/9/2022"**. Appellant appealed the claims adjudicator's decision to the Department's Appeal Tribunal (Tribunal) on July 19, 2022. On July 21, 2022, the Department's Lower Authority Appeal notified Appellant her appeal to the Tribunal was dismissed because it was not filed timely. The notice

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also stated in bold font **“You have the right to appeal this ruling to the Appellate Panel within (10) calendar days, including weekends and holidays, from the mailing date of this decision.”**

On August 8, 2022, Appellant appealed the Tribunal’s dismissal to the Department’s Appellate Panel. On September 20, 2022, the Department’s Higher Authority Appeals mailed a letter to Appellant acknowledging receipt of the appeal, and additionally notifying Appellant that the appeal was dismissed because it was not filed timely. Appellant was also given notice that the dismissal would become final if she failed to file an appeal within 10 calendar days from the date of the letter “setting forth the reasons for the untimeliness of [the] appeal.” Appellant filed her appeal on September 26, 2022, and the Panel remanded the case to the Tribunal to conduct an evidentiary hearing on the issue of Appellant’s untimely appeal.

On November 3, 2022, the Tribunal conducted an evidentiary hearing regarding the timeliness of the appeal. The record from the hearing was returned to the Panel for its review and decision on the timeliness of Appellant’s appeal. On December 6, 2022, the Panel issued a final decision dismissing Appellant’s appeal upon finding that the appeal was not filed within ten days of the July 21, 2022, mailing date of the Tribunal’s decision, pursuant to S.C. Code Ann. § 41-35-680. On December 15, 2022, Appellant filed this appeal with the ALC challenging the Panel’s decision.

ISSUE ON APPEAL

Whether substantial evidence exists in the Record to support the Appellate Panel’s decision dismissing Appellant’s appeal.

STANDARD OF REVIEW

The Department is an “agency” under the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA’s appellate standard governs appeals from Department decisions. S.C. Code Ann. § 1-23-380, -600(D) (2005 & Supp. 2020); *Gibson*, 282 S.C. at 386, 318 S.E.2d at 367. Section 1-23-380(5) provides the standard of review to be utilized the ALC when reviewing Department decisions:

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The

court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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 abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380 (2005 & Supp. 2020).

A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 466 S.E.2d 357 (1996). Thus, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 467 S.E.2d at 917.

DISCUSSION

Section 41-35-680 governs the time frame for filing an appeal to the Panel from a Tribunal decision and provides, in pertinent part that: "Each party promptly must be furnished a copy of the

decision, including the reasons for 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...** (Emphasis added). In this matter, the Panel found:

The Department properly mailed the claims adjudicator's determination to the Claimant's mailing address of record on July 21, 2022, and uploaded the determination to the Claimant's portal. The deadline to file an appeal was clearly and specifically noted on the determination as August 1, 2022. The Claimant did not appeal until August 8, 2022, seven days after the appeal period expired. The evidence shows due to the Claimant's own error or neglect, she failed to carefully read and follow the appeal instructions to file an appeal by August 1, 2022. The Claimant was aware on July 21, 2022, of the determination and her disqualification, but she failed to act in a diligent manner to preserve her appeal rights. Therefore, we find the appeal to the Appeal Tribunal was properly dismissed, and the claims adjudicator's determination is final.

In testimony before the Tribunal, Appellant testified that she retrieved the Tribunal's decision that was mailed July 21, 2022, from her mailbox on August 5, 2022. Because it was late afternoon and a Friday, Appellant stated the earliest she could file the appeal was Monday, August 8, 2022, which was seven days after the appeal period expired. Appellant asserts that she does not check her mail every day and does not know the exact date of the Tribunal's decision delivery.

While this court is sympathetic to Appellant's circumstances, it has no authority to extend the appeal time limit in this matter. *See Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) (citation omitted) (finding that "[t]he service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court."). South Carolina Courts have consistently held that "timely service of an appeal is a jurisdictional requirement that cannot be waived." *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 214, 544 S.E.2d 38, 48 (Ct. App. 2001).

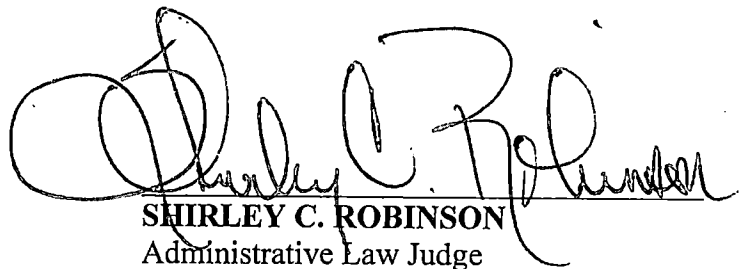
Section 41-35-680 clearly and unambiguously states that the decision "must be considered the final decision of the department, unless within ten days after the date of mailing the decision a further appeal is initiated..." In this instance, the record is clear, and it is undisputed that the claim adjudicator's determination was issued on July 21, 2022, and Appellant did not file an appeal until August 1, 2022, seven days past the statutory deadline. Because of Appellant's failure to file the appeal within the statutory timeframe, the Panel's dismissal of the appeal was proper.

CONCLUSION

Based upon the foregoing, I find that the substantial evidence in the record supports the Panel's final decision, and the decision must be affirmed. *See Friends of Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (explaining that substantial evidence is present when reasonable minds can reach the same conclusions as the agency when the record, as a whole, is considered). While this Court recognizes the harsh result of this decision, it is constrained by the rules and legal precedent in this State. *See McClain v. Ingram*, 314 S.C. 359, 444 S.E.2d 512 (1994).

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Panel's Decision is **AFFIRMED**.
AND IT IS SO ORDERED.

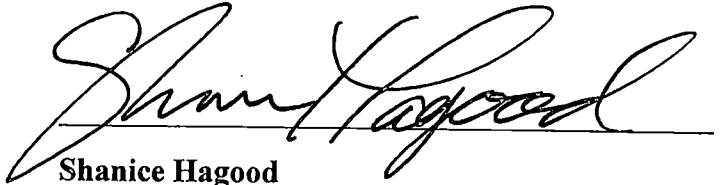


SHIRLEY C. ROBINSON
Administrative Law Judge

March 27, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Shanice Hagood, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in black ink, appearing to read "Shanice Hagood", written over a horizontal line.

Shanice Hagood
Judicial Law Clerk

March 27, 2023

Columbia, South Carolina

