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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Andre Brooks, Appellant,

Case No. 2023-000825

v.

RESPONDENT'S MEMORANDUM
REGARDING APPEALABILITY

South Carolina Department of Labor,
Licensing, and Regulation, South
Carolina Board of Registration for
Professional Engineers and Surveyors,
Respondent.

Appellant failed to timely file his motion for rehearing despite the South Carolina Administrative Law Court (“ALC”) giving him a generous extension to do so. In failing to timely file the motion for rehearing, the time to appeal was not stayed, and Appellant failed to timely appeal the ALC’s decision to this Court, which leaves this Court without jurisdiction to hear the present appeal. On May 31, 2023, this Court, after preliminarily reviewing the appealed order, indicated that the order might not be appealable and requested that the parties serve and file a memorandum addressing the issue of appealability within ten days of May 31, 2023. Accordingly, Respondent provides the following memorandum in support of its position that the order is not appealable and requests that this Court dismiss the appeal.

Respondent’s memorandum is based upon the South Carolina Appellate Court Rules (“Rule ___, SCACR”), the Rules of Procedure for the Administrative Law Court (“SCALC Rule ___”), and applicable case law.

I. Statement of the Case

Appellant appealed the final order of the South Carolina Board of Registration for Professional Engineers and Surveyors (“Board”) that denied his application for licensure by comity to the ALC. On February 6, 2023, the ALC filed and served its final order in the matter,

affirming the Board's decision. A copy of the ALC's February 6, 2023 Final Order is attached hereto and incorporated herein as **Exhibit #1**.

On February 16, 2023, at 5:00pm, Appellant emailed the ALC and Respondent; the email included an attached motion for extension. In the email, Appellant provided that he was seeking an extension until March 20, 2023 to file his motion for rehearing, and that a hard copy would be mailed to both parties.¹ As of February 27, 2023, the ALC had not received Appellant's motion to enlarge the time to file his motion for rehearing, and it issued a status order regarding the status of the motion being mailed. A copy of the ALC's February 27, 2023 Status Order is attached hereto and incorporated herein as **Exhibit #2**.

Appellant ultimately satisfied the ALC's inquiries regarding whether he had timely filed the motion for extension of time in which to file the rehearing motion, and on March 14, 2023, the ALC granted Appellant's motion for an extension to file and serve his motion for rehearing. In its written order dated March 14, 2023, the ALC provided that "Appellant shall have until **March 20, 2023**, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing, and e-mail the same to both the [ALC] and the Board at the time of filing and serving the motion." (emphasis in original). A copy of the ALC's March 14, 2023 Order Granting Appellant an Extension to File and Serve His Motion for Rehearing in This Matter is attached hereto and incorporated herein as **Exhibit #3**.

Appellant failed to meet the March 20, 2023 deadline. Instead, on March 21, 2023, he emailed the ALC and the Board a copy of his motion for rehearing and a filing in support of the motion. The motion and certificate of service attached to the email were also both dated March 21, 2023.

¹ A more detailed recitation of this appeal's procedural history is provided in the Statement of the Case in the ALC's April 28, 2023 order.

In its order dated March 30, 2023, the ALC denied Appellant's motion because it was untimely; it did not rule on the other grounds raised in Appellant's motion. A copy of the ALC's March 30, 2023 Order Denying Appellant's Motion for Rehearing is attached hereto and incorporated herein as **Exhibit #4**.

On April 10, 2023, Appellant filed a "motion to extend time for late filing of motion for reconsideration." In its order dated April 28, 2023—the order Appellant is presently appealing—the ALC denied Appellant's second, most recent motion and provided the following:

Presently, Appellant is yet again seeking an extension of time. The Court was receptive of Appellant's first request for an extension of time to file and serve his motion for rehearing, which was why the Court granted Appellant the deadline he sought. The deadline Appellant requested passed without any motions from Appellant seeking to extend the time again. Had Appellant sought an additional extension prior to the expiration of the initial extension, the Court might have been inclined to grant that request, but Appellant made no such motion. Moreover, Appellant's motion for an extension relies upon the same generic considerations which supported the first motion and make no mention of any changed or new circumstance requiring even more time. As of today's date, almost three months have elapsed since the Court issued the final order on February 6, 2023. At some point, finality is required.

A copy of the ALC's April 28, 2023 Order Denying Appellant's Motion to Extend the Time to File His Motion for Rehearing is attached hereto and incorporated herein as **Exhibit #5**.

Following the aforementioned April 28, 2023 order, Appellant emailed only the undersigned Counsel for Respondent a copy of his Appeal of Final Order on May 10, 2023. The undersigned forwarded it to the ALC, with Appellant copied, on May 11, 2023. In response, James Smith Harrison, III, the law clerk for the Honorable Robert L. Reibold, Administrative Law Judge, sent Appellant a letter on May 16, 2023 in which he succinctly summarized the procedural history following the February 6, 2023 issuance of the ALC's Final Order and provided that both the motion and the filing fee were being returned to Appellant, as his filing appeared to be a successive motion for rehearing ("See, e.g., App's Appeal of Final Order at 15 ('The SCALC's review of this

motion...’’’)). A copy of Mr. Harrison’s May 16, 2023 letter is attached hereto and incorporated herein as **Exhibit #6**.

On May 20, 2023, Appellant filed a Notice of Appeal of the ALC’s April 28, 2023 order with this Court.

II. Applicant’s failure to timely file his motion for rehearing before the ALC resulted in the ALC’s final order not being stayed. Because timely filing the notice of appeal is a jurisdictional matter, this Court lacks jurisdiction to hear the present appeal.

The South Carolina Appellate Court Rules require a party to file and serve a notice of appeal from an ALC decision within 30 days from receipt of the decision. *See* Rules 203(b)(6) and (d)(2)(B), SCACR. The SCALC Rules require a party to file a motion for rehearing before filing a Notice of Appeal of an ALC decision, and both the SCALC Rules and the South Carolina Appellate Court Rules are predicated on an appellant *timely* filing a motion for rehearing to stay the time for appeal. *See* SCALC Rule 40 (“*Prior to filing a Notice of Appeal from the decision of an administrative law judge, a party must file a motion for rehearing stating with particularity the points supposed to have been overlooked or misapprehended by the court. A motion for rehearing must be filed within ten days of receipt of the order. The time for appeal is stayed by a timely motion for rehearing and runs from receipt of an order granting or denying the motion.*”) (emphasis added). *See also* Rule 203(b)(6), SCACR (“*If a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion.*”) (emphasis added).

Here, it is clear that Appellant failed to satisfy this basic prerequisite by failing to timely file his motion for rehearing. In doing so, the ALC was unable to review the motion on its merits and determine substantively whether a rehearing would be granted or denied; this substantive determination must be done prior to filing a Notice of Appeal with this Court. The ALC’s final

order in the matter was issued February 6, 2023. Appellant filed a motion for an *extension* to file his motion for rehearing on February 16, 2023. Pursuant to SCALC Rule (3)(B),² the ALC granted Appellant’s requested relief to have his motion for rehearing “due no later than March 20, 2023.” It is undisputed that Appellant failed to file a motion for rehearing by the March 20, 2023 deadline. Accordingly, the Court issued an order on March 30, 2023 denying appellant’s motion for rehearing based on the untimeliness of said motion, in accordance with SCALC Rule 38.³

By failing to comply with the Court’s generously-extended deadline for filing his motion for rehearing, the time to appeal for all parties was not stayed per SCALC Rule 40 and Rule 203(b)(6), SCACR. Since the time to appeal was not stayed, Appellant would have had to appeal by March 8, 2023—30 days after the ALC’s February 6, 2023 Final Order. Pursuant to the clear instruction of the South Carolina Supreme Court in *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985), “[s]ervice of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.” *See also Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004) (“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.”). Because Appellant failed to timely file a motion for rehearing, the time for appeal was not stayed, and the deadline to file the notice of appeal of the ALC’s February 6, 2023 Final Order has passed. Thus, this Court lacks jurisdiction and must dismiss his appeal.

² “For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law.”

³ “Upon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided in these rules or by order of the Court.”

Notwithstanding the aforementioned timeliness issue, in the event this Court finds that the March 30, 2023 Order Denying Appellant’s Motion for Rehearing served as “the decision (or order) granting or denying the petition or motion for rehearing” pursuant to SCALC Rule 40 or Rule 203(b)(6), SCACR, Appellant’s present appeal of a subsequent order issued by the ALC on April 28, 2023 must also be untimely.⁴ If this Court were to restart the clock with the March 30, 2023 order, Appellant never timely filed an appeal with this Court with respect to that order, as the present appeal was filed with this Court in late May 2023 and challenges the ALC’s April 28, 2023 order. Appellant cannot perpetually extend the time to satisfy the jurisdictional requirement to timely notice an appeal by filing successive, repetitive motions before an administrative tribunal that had already issued its final decision months prior.

The most recent order issued by the ALC on April 28, 2023 came well after the ALC ruled on the *one* motion for rehearing provided for in SCACR Rule 203(b)(6) (“If *a* timely petition for rehearing is filed with the administrative tribunal...”) (emphasis added) and SCALC Rule 38 (“The time for appeal is stayed by *a* timely motion for rehearing...”) (emphasis added).

The filing of a subsequent motion—here a “motion to extend time for late filing of motion for reconsideration”—after the ALC has already denied Appellant’s Motion for Rehearing does not again extend the time to file a notice of appeal. In *Coward Hund Const. Co. v. Ball Corp.*, 336 S.C. 1, 3, 518 S.E.2d 56, 58 (Ct. App. 1999), this Court addressed successive motions for reconsideration and held that a second, successive Rule 59(e), SCRCF motion filed after denial of a prior reconsideration motion, did not stay the time to appeal. This Court found in *Coward* that the appellant’s notice of appeal was untimely, as it was filed more than thirty days after the denial of its first motion for reconsideration. This Court’s reasoning in *Coward* is dispositive in the

⁴ The present appeal is of the ALC’s April 28, 2023 Order Denying Appellant’s Motion to Extend the Time to File His Motion for Rehearing, included herein as **Exhibit #5**.


present matter. This Court should find that Appellant filing successive motions following the ALC's initial denial of the motion for rehearing does not stay the time for appeal, and the present appeal should therefore be dismissed because this Court lacks jurisdiction to consider an untimely-noticed appeal.

In line with the 2014 Notes to SCALC Rule 38, the initial extension given to Appellant to file his motion for rehearing per SCALC Rule 3(B) evinces that the ALC made reasonable efforts to assure fairness with a pro se litigant. With that said, a pro se litigant must comply with all applicable substantive and procedural requirements. *See State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013) ("A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.") (quoting *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003)). Here, Appellant did not do so. Appellant has failed to timely serve his notice of appeal with the appropriate court, and this Court is simply without jurisdiction to hear his appeal.

III. Conclusion

By failing to timely file a motion for rehearing for which he was granted an extension, Appellant's time to appeal was not stayed, which ultimately resulted in Appellant failing to timely appeal the ALC's decision to this Court. As a result, this Court lacks jurisdiction to hear this appeal and this appeal must be dismissed.

June 7, 2023



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Exhibit #1

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Andre Brooks,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, South Carolina
Board of Registration for Professional
Engineers and Surveyors,

Respondent.

Docket No. 22-ALJ-11-0313-AP

FINAL ORDER

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). Andre Brooks (Appellant) appeals the final decision of the South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's most recent application for licensure by comity as a professional engineer in South Carolina. The Board, acting in conjunction with the South Carolina Department of Labor, Licensing and Regulation (the Department), denied the application for Appellant's failure to meet the applicable requirements for licensure in the State of South Carolina. S.C. Code Ann. § 40-22-10 (Supp. 2022); *see also* S.C. Code Ann. § 40-22-220(C)(2) (Supp. 2022)

Based upon the record on appeal, the parties' briefs, and the applicable law, the Court affirms the Board's final decision.

PROCEDURAL HISTORY

This matter comes to the Court after a somewhat lengthy history of past administrative actions, dating back to 2005. During 2005, Appellant submitted an application for licensure by comity as a Category A Professional Engineer in South Carolina. The application included documentation of licensure in Michigan in 1999, evidence of completion of a bachelor of science in civil engineering technology (a TAC/ABET program) from South Carolina State University in 1986, and additional post-graduate coursework, which included: a calculus course at Oakland



Community College (1989-1990); six semester hours of engineering course work at Wayne State University (WSU) from 1989 to 1990; and a three semester hours math course at WSU during 1994.¹

Pursuant to its practice, the Department's staff forwarded Appellant's academic record to its educational consultant, Dr. Walter E. Castro, Ph.D., PE.,² for review to determine whether Appellant's academic record reflected completion of coursework that was substantially equivalent to the EAC/ABET requirements. Appellant's application was denied at the staff level because Dr. Castro determined Appellant's academic record was not substantially equivalent to the EAC/ABET requirements.

On February 23, 2005, a full evidentiary hearing was held. Dr. Castro explained engineering technology courses are not always equivalent to engineering courses. Dr. Castro went on to testify regarding Appellant's academic record which included coursework completed at South Carolina State University in 1986 as well as additional post-graduate coursework at Oakland Community College and WSU. Dr. Castro informed the Board that Appellant's academic record was deficient by three (3) hours of differential equations, fourteen (14) semesters of engineering science, and eleven (11) hours of engineering science. Counsel for Appellant questioned Dr. Castro regarding his accounting of Appellant's coursework and the standard against which Appellant's coursework was compared.³ Additionally, counsel argued Appellant should be granted licensure by comity due to his extensive experience and because Appellant had been granted licensure by the Michigan Board of Engineers. *See* S.C. Code Ann. § 40-22-230(C) (Supp. 2004) (amended 2007 & 2016).

¹ At the time of application, one criterion for licensure as a Category A Professional Engineer was a TAC/ABET accredited engineer technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, supplemental post-graduate studies in approved engineering science courses sufficient to equate the applicant's cumulative program of formal engineering study as being substantially equivalent to an EAC/ABET accredited program. S.C. Code Ann. § 40-22-220(C)(3) (Supp. 2004) (amended 2007 & 2016). "ABET" means the Accreditation Board for Engineering and Technology." S.C. Code Ann. § 40-22-20(1) (Supp. 2022). "EAC" means the Engineering Accreditation Commission of ABET." *Id.* "TAC" or "ETAC" means the Engineering Technology Accreditation Commission of ABET." *Id.*

² Dr. Castro reviewed only those applicants who were not ABET/EAC graduates of accredited ABET/EAC criteria.

³ Appellant is presently appearing before the Court in a pro se capacity.

On March 31, 2005, the Board denied Appellant's application, noting not only the deficiencies identified by Dr. Castro but also making specific recommendations for remedial coursework, or challenging exams, to cure the deficiencies noted in his academic record. Thereafter, Appellant appealed to the ALC.

On appeal, Appellant neither contested Dr. Castro's application of the 1986 criteria nor the findings of deficiency in Appellant's academic record—a point which the Honorable John D. McLeod specifically noted in his order. *See Brooks v. S.C. Dep't of Lab., Licensing & Reg.*, Docket No. 05-ALJ-11-0231-AP, 2005 WL 3419928, at *1 (S.C. Admin. L. Ct. filed Nov. 16, 2005). Judge McLeod upheld the Board's denial, finding that the Board appropriately applied subsection 40-22-220(C)(3) of the South Carolina Code (Supp. 2004) to determine whether Appellant's academic record was substantially equivalent to an EAC/ABET accredited program, and that substantial evidence supported the Board's finding that Appellant's academic record was deficient. *See id.* at *5. Appellant did not appeal Judge McLeod's order.

During 2014, Appellant reappeared before the Board for consideration of licensure by comity as a Category A professional engineer. Following a full evidentiary hearing, the Board denied Appellant's application for licensure by comity by order dated October 20, 2014, finding no evidence or documentation that Appellant had remedied the academic deficiencies noted in the Board's March 31, 2005 order. The Board concluded that in the absence of any additional qualifying education, or challenging examination, the ALC's and the Board's 2005 orders stood as the law of the case. Appellant did not appeal the Board's denial.

On April 14, 2022, Appellant submitted a third application for licensure by comity in South Carolina; it is this application that gives rise to the present appeal. In addition to materials submitted as part of his prior applications, Appellant submitted documentation of licensure in Georgia, North Carolina, and Florida as well as educational evaluations performed by the Michigan Board, the South Carolina State University Engineering Department, and the North Carolina A&T University Civil Engineering Department.

Appellant appeared before the Board on May 24, 2022, arguing he was entitled to licensure because Dr. Castro's 2005 evaluation was flawed and that his academic record was substantially equivalent to an EAC/ABET accredited program. Appellant stated "the real issue here [wa]s the education evaluation." Board member Dr. Johnson W. Peoples inquired why issues related to Dr. Castro's evaluation were only now being raised; Appellant stated, "I just didn't pursue it at that

time." When asked whether Appellant had completed any additional qualifying college-level coursework since Dr. Castro's 2005 review, Appellant acknowledged he had not completed any such work; however, he stated he had completed over 400 hours of continuing education in engineering science and engineering. Thereafter, the Board orally voted on Appellant's application, informed Appellant that it was going to deny his application, and stated a formal order would be forthcoming.

On May 26, 2022, Appellant sent an email to the Board Administrator, requesting reconsideration on the basis that under subsections 40-22-220(B)(2) and -220(B)(4) of the South Carolina Code (Supp. 2022) and arguing his education was substantially equivalent to an EAC/ABET engineering program.

By order dated June 7, 2022, the Board took notice of the 2005 and 2014 orders and noted the absence of any evidence indicating completion of further post-graduate engineering coursework or examination as described in the March 31, 2005 and October 20, 2014 orders. Additionally, the Board noted the ALC had previously found Dr. Castro's educational evaluation of Appellant to be appropriate, and absent evidence of additional coursework or examinations obtained subsequent to the Board's March 31, 2005 or October 20, 2014 orders, the Board concluded the ALC's unappealed ruling stood as the law of the case.

By order dated July 28, 2022, the Board denied Appellant's motion for reconsideration, finding Appellant had not corrected previously determined deficiencies in his academic record and that the doctrines of res judicata and law of the case precluded Appellant from relitigating issues previously addressed as well as those that might have been raised.⁴ This appeal followed.

ISSUES ON APPEAL

1. Whether the Board used the correct standard for evaluating Appellant's education for purposes of licensure by comity?
2. Whether the Board erred in denying Appellant a licensure by comity based on an incorrect education evaluation as being equivalent to an engineering program?

⁴ Appellant did not appear for the hearing on his motion to reconsider before the Board.

3. Whether the Board erred in denying Appellant a licensure by comity based on not evaluating Appellant's education as being substantially equivalent to an engineering program?

STANDARD OF REVIEW

When sitting in its appellate capacity, the ALC reviews a final decision in the same manner prescribed by section 1-23-380 of the South Carolina Code (Supp. 2022). S.C. Code Ann. § 1-23-600(E) (Supp. 2022); S.C. Code Ann. § 40-1-160 (2011) (providing an appeal from the Board is to the ALC). Section 1-23-380(5) provides the following:

The [C]ourt may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The [C]ourt may affirm the decision of the agency or remand the case for further proceedings. The [C]ourt 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.

"[T]he burden rests squarely on the appellant to prove that substantive rights were prejudiced based on one of six statutory criteria" listed in section 1-23-380(5). *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008).

"Substantial evidence" is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.

Lark v. Bi-Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Laws v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). "[T]he possibility of drawing

two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Palmetto Alliance, Inc. v. South Carolina Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). In applying the substantial evidence rule, "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*, 276 S.C. at 136, 276 S.E.2d at 307). When applying the substantial evidence rule, the factual findings of the administrative agency "are presumed to be correct and will be set aside only if unsupported by substantial evidence." *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996).

DISCUSSION

On appeal, Appellant raises three issues.⁵ However, Appellant's issues center on Dr. Castro's evaluation from 2005. Specifically, Appellant argues the Board erred in relying on Dr. Castro's 2005 evaluation because Dr. Castro evaluated Appellant's academic record using an incorrect standard. This argument is the core of Appellant's appeal and frames all of the arguments raised on appeal. Appellant does, in passing, raise claims that the Board is prejudiced against him because other technology applicants were granted licensure. Appellant also argues his education meets the "substantially equivalent" standard prescribed by subsections 40-22-220(B)(2), (B)(4), and (C)(2) of the South Carolina Code (Supp. 2022), and regulation 49-604(1) of the South Carolina Code of Regulations (Supp. 2022). Nowhere in his initial brief, however, does Appellant use the terms *res judicata*, law of the case, or otherwise attempt to discuss why the Board incorrectly relied upon the doctrines of *res judicata* and law of the case in determining that he did not meet the requirements for licensure by comity.

The Court affirms the Board's final decision for the reasons stated below.

I. Appealed Rulings in the Present Appeal

As noted above, Appellant devotes the great majority of his brief advocating that Dr. Castro did not use the correct standard in reviewing his application for licensure by comity and that, as a

⁵ The Court notes Appellant only lists two main argument headings in his initial brief.

result, Dr. Castro's analysis is flawed. Appellant's issue statements and arguments, however, fail to address the Board's conclusions as to law of the case and res judicata.

A ruling which is not appealed, right or wrong, must stand as law of the case. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance."); *Atkins v. Wilson*, 417 S.C. 3, 17, 788 S.E. 2d 228, 235 (Ct. App. 2016) (stating law of case prohibits issues decided in a prior appeal from being relitigated in the trial court in the same case); *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 573 776 S.E.2d 397, 404 (Ct. App. 2015) ("While the law of the case doctrine is not an inexorable command, a decision of a legal issue or issues by an appellate court establishes the law of the case and must be followed in all subsequent proceedings in the same case in the trial court or on a later appeal in the appellate court, unless the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision of the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice.").

Based on Appellant's statement of the issues in Appellant's brief and the absence of any relevant argument, the Court determines that Appellant has not appealed the Board's decision as to law of the case and res judicata. *See* SCALC Rule 37(B) ("A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue and may be stated in question form."). Appellant's reply brief confirms this conclusion, as it states that the appeal "is not a request for [the ALC] to relitigate an issue, but rather to make the correct determination that the Board's 2005 decision to deny license must be vacated for applying the incorrect standard." Appellant then discusses why he believes Judge McLeod erred in 2005.⁶ Thus, the Court affirms the Board's decision that the doctrines of law of the case and res judicata bar Appellant's appeal as to whether his education meets the necessary criteria. Appellant has not challenged those rulings.⁷

To the extent Appellant's issue statements on appeal could be construed as addressing the merits of the Board's conclusions regarding law of the case and res judicata, the Court finds

⁶ To the extent Appellant's reply brief could be construed as raising res judicata and law of the case, the Court determines this is not proper because a reply brief cannot be used to argue an issue that could have been raised in the initial brief. *See ABB, Inc. v. Integrated Recycling Grp. of SC, LLC*, 432 S.C. 545, 553, 854 S.E.2d 171, 175 (Ct. App. 2021) ("[A] party cannot raise an issue for the first time in an appellate reply brief."); 4 C.J.S. *Appeal and Error* § 735 (West Nov. 2022) ("A point raised for the first time in the reply brief will not be considered by the appellate court.").

⁷ The Board's conclusion that the doctrine of law of the case bars Appellant's appeal is itself law of the case.

Appellant abandoned these issues. The substance of the discussion section in Appellant's initial brief is devoid of any mention of the Board's conclusions regarding law of the case and res judicata. While Appellant is certainly not required to use the exact name of a legal doctrine to sufficiently challenge an issue and/or argument on appeal, *cf. State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground."), Appellant must make sure that an argument is actually put forth to address the issue at hand. *See* SCALC Rule 37(B)(3) ("An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory."); *Bluffton Towne Center, LLC v. Gilleland-Prince*, 412 S.C. 554, 570, 772 S.E.2d 882, 892 (2015); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (considering an issue abandoned because the appellant failed to provide pertinent argument or supporting authority). Here, Appellant's initial brief did not address the Board's determinations related to law of the case and res judicata. Accordingly, to the extent Appellant's issue statements could be construed as challenging these determinations, the Court finds that those arguments were abandoned.

Based on the foregoing, the Court determines the Board's decision as to Appellant's educational analysis must stand and Appellant is not entitled to licensure by comity. Accordingly, the Court affirms.

II. Law of the Case and Res Judicata

While Appellant's failure to specifically challenge the Board's decision as to res judicata and law of the case, the Court will address those conclusions out of an abundance of caution. The Court agrees with the Board that the doctrines of law of the case and res judicata preclude Appellant from raising concerns regarding Dr. Castro's 2005 analysis.

The conclusion that Appellant did not meet the necessary educational requirements for licensure in 2005 is law of the case. Judge McLeod concluded in his 2005 order that substantial evidence supported the Board's position that Appellant did not meet the necessary qualifications. Appellant failed to appeal this ruling. Thus, the Board's 2005 order, which was affirmed by Judge McLeod became law of the case. *See Shirley's Iron Works, Inc.*, 403 S.C. at 573, 743 S.E.2d at 785 ("An unappealed ruling is the law of the case and requires affirmance."). Any issue with Dr. Castro's analysis should have been challenged at the time of the 2005 litigation, not seventeen

years after Judge McLeod issued his order. Accordingly, the Board did not err in finding law of the case to be applicable.

"Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). "Under the doctrine of res judicata, '[a] litigant is barred from raising any issues which were adjudicated in the former suit *and* any issues which might have been raised in the former suit.'" *Id.* (quoting *Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n of S.C.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)) (emphasis added). "To establish *res judicata*, three elements must be shown: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992).

The three elements of res judicata are met here. There is an identity of the parties, as the Board and Appellant were the parties involved in the litigation in 2005. There is an identity of subject matter. The issue in the prior case is the same as the issue presented here—whether Dr. Castro's analysis of Appellant's educational requirements was flawed with the result that Appellant should receive a license. Finally, the Board adjudicated this issue in its 2005, as did Judge McLeod. *See Brooks*, 2005 WL 3419928, at *3-5. Accordingly, res judicata bars relitigation of any arguments related to Dr. Castro or his evaluation. *See Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 109.

III. Present Licensing Requirements

The Court's conclusions above largely, but not wholly, dispose of Appellant's appeal. Remaining before the Court is Appellant's contention that he should have received licensure by comity under the *current* licensing requirements. Appellant argues his education meets the "substantially equivalent" standard prescribed by subsections 40-22-220(B)(2), (B)(4), and (C)(2) of the South Carolina Code (Supp. 2022), and regulation 49-604(1) of the South Carolina Code of Regulations (Supp. 2022). The Court disagrees.

Appellant's reliance on these particular statutes and regulations is misplaced in part. Article 6 of Chapter 49 of the South Carolina Code of Regulations sets forth requirements for Continuing Professional Competency for Professional Engineers and Land Surveyors. *See generally* S.C.

Code Ann. Reg. 49-600 (Supp. 2022) (requiring "[p]rofessionals licensed to practice engineering, surveying, or engineering and surveying in South Carolina . . . to demonstrate to a continuing development of professional competency"). Regulation 49-604 provides the criteria to obtain credit for *professional competency requirements*, not the criteria to receive credit to obtain initial licensure as a professional engineer. S.C. Code Ann. Regs. 49-604 (Supp. 2022); *cf.* § 40-22-220. While subsections 40-22-220(B)(2) & (B)(4) provide standards for licensure, subsections 40-22-220(B)(2) & (B)(4) pertain to criteria to be eligible for certification as an *engineer-in-training*, not licensure as a *professional engineer*.⁸

Subsection 40-22-220(C)(2) does, however, set forth the minimum standards to obtain licensure as a professional engineer. Regulation 49-203(A)(2) of the South Carolina Code of Regulations (Supp. 2022) directs that consideration for licensure by comity be based upon the applicable licensure act in effect *at the time such other license was issued*. The record provides evidence of Appellant having obtained licensure as a professional engineer in four other states: Michigan (issued 1999), Georgia (issued Feb. 28, 2005), North Carolina (expires 2022), and Florida (expires 2023). The Court considers each of these in turn.

A. Requirements in 2005

Appellant was licensed in both Michigan and Georgia in 2005. Under the standard for licensure by comity described above, the Board was required to determine whether Appellant's educational background in 2005 was substantially equivalent to an EAC/ABET accredited program. This determination was made adversely to Appellant. *See Brooks*, Docket No. 05-ALJ-11-0231-AP, 2005 WL 3419928, at *3-5. This previous determination is, as discussed above, binding on Appellant.

Accordingly, unless Appellant cured the deficiencies noted in 2005 prior to his 2022 application, the fact that he holds licenses in Michigan and Georgia does not require that he be

⁸ Engineer-in-training is "a person who has qualified for and passed the NCEES Fundamentals of Engineering examination as provided in this chapter and is entitled to receive a certificate as an engineer-in-training." S.C. Code Ann. § 40-22-20(12) (Supp. 2022); *see also* S.C. Code Ann. § 40-22-20(30) (Supp. 2022) (defining a professional engineer as "a license holder who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as defined in this section as attested by his license and registration as a professional engineer in this State").

licensed by comity in South Carolina. Substantial evidence supports the Board's conclusion that Appellant had not cured the deficiency. During the most recent Board hearing, Appellant testified that he had not completed any additional qualifying college courses since 2005. This testimony alone provides substantial evidence to support the Board's finding that Appellant's academic record remains deficient and continues to prevent licensure based upon Michigan or Georgia licensure. *See Lark*, 276 S.C. at 135, 276 S.E.2d at 306.⁹

B. Subsequent Requirements

The physical licenses issued by North Carolina and Florida which were submitted by Appellant do not include the date on which these licenses were issued nor do the dates of issuance appear elsewhere in the record. Because the Court cannot determine when these licenses were issued, it is difficult to ascertain which set of standards Appellant's qualifications should be judged against. For example, if the North Carolina and Florida licenses were issued in early 2005 or before, the Court's analysis above is conclusive. If these licenses were issued between 2007 and 2016, a different standard might apply.¹⁰ Finally, if these licenses were issued after 2016, the current standard would apply.

Generally, and regardless of the actual standard in place, res judicata precludes any argument by Appellant that he should receive licensure by comity based upon licensure in North Carolina or Florida if either of these licenses were issued prior to the decision on his 2014

⁹ Certainly, Appellant could have attempted to use his licensure in Georgia in his 2014 action with the Board, and Appellant did not appeal the Board's 2014 order. Appellant's failure to raise this argument in 2014 and/or his failure to appeal the Board's 2014 order precludes any attempt to do so now under the doctrine of res judicata. Res judicata is therefore an additional ground on which the Court confirms the Board's ruling in this case that licensure in Georgia does not require that Appellant be granted a South Carolina license by comity. *See Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 109.

¹⁰ The statutory requirements were revised in 2007 and again in 2016. *See* S.C. Code Ann. § 40-22-220 (Supp. 2007); S.C. Code Ann. § 40-22-220 (Supp. 2022). Appellant's brief does not specifically argue that he should be licensed under standards in place between 2014 and 2016. He simply cites the current statute. Accordingly, the Court finds any argument regarding standards in place between 2014 and 2016 to be abandoned. *See* SCALC Rule 37(B)(3) ("An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory."); *Bluffton Towne Center, LLC*, 412 S.C. at 570, 772 S.E.2d at 892; *First Sav. Bank*, 314 S.C. at 363, 444 S.E.2d at 514 (considering an issue abandoned because the appellant failed to provide pertinent argument or supporting authority). The Court addresses this argument herein solely out of an abundance of caution.

application for licensure in South Carolina. Appellant needed to raise these matters to the Board in 2014 and challenge any resulting adverse ruling on appeal. He failed to do so then and is therefore precluded from doing so now. *See Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 109.

The result herein does not change even if Appellant became licensed in North Carolina and/or Florida *between* October 20, 2014, the date of the Board's 2014 order, and June 2, 2016, the last day before section 40-22-220(C)(2) (Supp. 2017) was amended. The educational standard to which Appellant's educational background would have been compared in 2015 or that portion 2016 prior to June 2nd of that year (had either license been issued in these years) was no different than the standard applicable when Appellant's 2014 South Carolina application was considered. Because the Board determined that Appellant did not satisfy South Carolina's requirements in 2014, and these requirements did not substantively change in the next subsequent interval,¹¹ the outcome of Appellant's licensing application also would not have changed. Appellant is bound by the Board's 2014 decision that his education did not meet the applicable South Carolina standard.¹²

To the extent Appellant was licensed in North Carolina and Florida after June 3, 2016, to present, his application for licensure by comity as a result of either license would be governed by the current South Carolina standard. The Court disagrees with Appellant's argument that the Board incorrectly determined he did not satisfy the current requirements for licensure. The minimum educational requirement for licensure as a professional engineer under this provision is "graduation in a bachelor's degree program and completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET." § 40-22-220(C)(2)(a) (Supp. 2022). Notably, the current scheme no longer provides an avenue for applicants such as Appellant who possess a TAC/ABET degree to close the gap between that

¹¹ That version of the statute removed the "TAC" reference and broadly required a "baccalaureate degree program and completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET." *Id.* Dr. Castro already determined Appellant did not meet that educational criteria.

¹² Naturally, if Appellant had taken additional qualifying courses after the Board's determination in 2014 but prior to June 2, 2016 (again assuming that either the North Carolina or Florida license were issued in this interval), then the effect of the additional course work would need to be examined. However, as discussed above, Appellant took no such additional course work since 2005.

degree and the required EAC/ABET degree with additional coursework.¹³ As a result, Appellant's lack of an EAC/ABET degree is dispositive of his application under the current standard, and substantial evidence supports the Board's decision to deny Appellant licensure. Even if this avenue remained opened to Appellant, and it does not, Appellant did not, as discussed above, complete additional qualifying coursework prior to his 2022 application. The Court finds that substantial evidence supports that Board's ruling that Appellant's academic record is deficient and continues to serve as an impediment to licensure by comity based upon either North Carolina or Florida licensure.

IV. Appellant Claims the Board Was Prejudiced Towards Appellant

In passing, Appellant asserts the Board's decision to deny his license displays prejudice towards Appellant as the Board has previously granted licensure to other applicants who did not satisfy the educational requirements. The Court construes this argument to be one made pursuant to 1-23-380(5)(f), which allows the Court to reverse arbitrary and capricious decisions made by the Board. For the reasons discussed below, the Court rejects this argument and affirms the Board's decision.

As a preliminary matter, the Court questions whether this argument is preserved for review. It is not clear to the Court that Appellant raised this specific argument to the Board. *See generally State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *id.* at 142, 587 S.E.2d at 694 ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground."); *id.* ("A party may not argue one ground at trial and an alternate ground on appeal."). The Court scoured the hearing transcript from the Board's May 24, 2022 hearing for references to any statements of prejudice evident from a comparison of the Board's decision regarding Appellant's licensure and decisions made by the Board for other applicants. The Court located only passing references of prejudice to the Board and a statement that Appellant had included a summary table listing individuals whom Appellant

¹³ Section 40-22-220(C)(2)(a) (Supp. 2022) does not include language indicating acceptance of "supplemental post graduate studies in approved engineering science courses sufficient to equate the applicant's cumulative program of formal engineering study as being substantially equivalent to an EAC/ABET accredited program[]" as that observed in section 40-22-220(C) (Supp. 2004).

believed had filed deficient applications but were ultimately granted licensure. R. 47. Appellant submitted some supporting documentation to the Board in conjunction with this statement. Notably, the Board's order was devoid of any discussion on this issue, and Appellant did not raise this in his motion to reconsider to the Board. This argument is therefore likely unpreserved.

What is clear to the Court is that Appellant failed to challenge the Board's action as arbitrary or capricious in his brief's statement of issues on appeal.¹⁴ The argument is therefore not properly before the Court and cannot be a basis for reversal of the Board's decision. *See* SCALC Rule 37(B)(1) ("Ordinarily, no point will be considered that is not set forth in the statement of issues on appeal).

Even if the Court were required to reach the merits of this argument, however, the Court would affirm. "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). Furthermore, "arbitrary," in the context of a judicial decision, has been defined as being "founded on prejudice or preference rather than fact or reason." *Arbitrary*, *Black's Law Dictionary* (11th ed. 2019). "Capricious" has been defined as being "characterized by or guided by unpredictable or impulsive behavior; likely to change one's mind suddenly or to behave in unexpected ways." *Capricious*, *Black's Law Dictionary* (11th ed. 2019).

The 2022 Board's decision was not arbitrary or capricious. The Board correctly applied the doctrines of law of the case and res judicata and substantial evidence supports its conclusion that Appellant's educational background did not meet the requirements of the current standard for licensure by comity. In other words, the Board attempted to and did follow applicable legal

¹⁴ The Court notes Appellant mentions "prejudice" in his initial brief on seven occasions but fails to fully address the purported arbitrariness or capriciousness of the Board's action in light of the Board's discussions in 2005. Nowhere in Appellant's initial brief does he make any specific claim that the Board's decision should be reversed as arbitrary or capricious. Appellant also reattaches some of the exhibits presented at the hearing to his appellate brief to the Court, some of which were *not* submitted to the Board, *e.g.*, an email dated November 1, 2022, to Ms. Kathy Burgess. Any attachments which were not submitted to the Board may not be considered on appeal. *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2022) (stating the Court's review is confined to the record).

principles in reaching its decision. While Appellant might be dissatisfied with the Board's decision, the 2022 Board's actions cannot be characterized as arbitrary or capricious.¹⁵

Based on the foregoing, the Court affirms.

CONCLUSION

The Court must stress that by its ruling it neither intends to diminish or disparage either the training Appellant has received nor Appellant's competency to act as a professional engineer. The Court's review, however, is constrained to determining whether the Board's decision violates the law, exceeds its authority, involved unlawful procedure, rests on an error of law, was not supported by evidence, was arbitrary, or was an abuse of discretion. Given this standard and the Court's review of the record and briefs, the Board's decision must be affirmed.

ORDER

IT IS THEREFORE ORDERED that the Board's decision is **AFFIRMED**.
AND IT IS SO ORDERED.



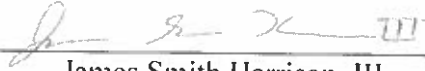
Robert L. Reibold
Administrative Law Judge

February 6, 2023
Columbia, South Carolina

¹⁵ To the extent Appellant refers to individuals that were discussed at the 2005 Board hearing as a basis characterizing the Board's action as being arbitrary or capricious, res judicata bars litigation of arguments based upon these individuals' qualifications. In 2005, the Board distinguished the academic background of these individuals from that of Appellant and at no time did Appellant challenge the Board's conclusion in this regard. See *Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 109.

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

February 6, 2023
Columbia, South Carolina

Exhibit #2

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Andre Brooks,

Appellant,

vs.

South Carolina Labor, Licensing and
Regulation, South Carolina Board of
Registration for Professional Engineers and
Surveyors,

Respondent.

Docket No. 22-ALJ-11-0313-AP

STATUS ORDER

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed by Andre Brooks (Appellant) pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). In this appeal, Appellant challenges the final administrative order of the South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's application for licensure by comity as a professional engineer in South Carolina. This matter was assigned to the undersigned on September 1, 2022. The Board filed the record on appeal on October 11, 2022. On November 10, 2022, Appellant filed his brief. On December 6, 2022, the Board moved for an extension to file its brief, which the Court granted on December 9, 2022. Thus, the Board filed its brief on January 13, 2023, and Appellant filed his reply brief on January 23, 2023.

The Court filed and served its final order on February 6, 2023. On Thursday, February 16, 2023, at 5:00 P.M., Appellant e-mailed the Court and the Board. In the e-mail, Appellant stated the following: "Attached is the motion for an extension in the above captioned matter. [Counsel for the Board] is copied on the email and a hard copy will be mailed to both parties." The attached motion stated Appellant was seeking "an extension to file a Motion of Reconsideration, with the Motion of Reconsideration being due no later than March 20, 2023." *See generally* SCALC Rule 40 (providing for motions for rehearing). Appellant cited SCALC Rules 3(C) and 37(A). Appellant's certificate of service for the motion shows that Appellant "served" by placing the motion in the mail to the Court's mailing address; the certificate of service lists the Board as being



served, but no address was listed. Additionally, in Appellant's cover letter to the motion, Appellant stated the following: "Please find enclosed the original and one copy of Appellant's Motion to Extend Time to File a Motion of Reconsideration for the Court in the above-captioned matter. The Respondent will be mailed a copy of Appellant's Motion today."

At 5:11 P.M. on February 16, 2023, the Court confirmed receipt of Appellant's e-mail and electronic attachment. On Tuesday, February 21, 2023, counsel for the Board stated the following: "I've received Appellant's attached motion. Respondent does not intend to file an objection or formal response to the motion."

As of the date of this order, the Court has neither received Appellant's motion nor Appellant's filing fee for the motion. *See* SCALC Rule 71(D) (requiring a filing fee for motions); *id.* ("A motion will not be deemed filed until the fee is paid."); *see also* SCALC Rule 4(B) (defining filing with the Court as "(1) by delivering the document to the Court; (2) by depositing the document in the U.S. mail, properly addressed to the Court, with sufficient first class postage attached; or (3) as otherwise approved by the Court through administrative order"). Thus, there is conflicting evidence about whether Appellant has in fact properly served and filed his motion for an extension. Accordingly, the Court now seeks an affidavit from Appellant that states whether Appellant in fact placed the motion in the U.S. mail to both the Court and the board on February 16, 2023.

IT IS THEREFORE ORDERED that Appellant shall file an affidavit with the Court, serve the same upon the Board, and e-mail a copy to both at the time of serving and filing on or by **March 9, 2023, at 12:00 P.M.**, to explain if Appellant did in fact place the motion for an extension in the U.S. mail to the Court and the Board on February 16, 2023.

IT IS FURTHER ORDERED that if Appellant does not file, serve, and e-mail an affidavit on or by **March 9, 2023, at 12:00 P.M.**, the Court will consider this as a waiver and that Appellant did not in fact file and serve a motion for an extension on February 16, 2023.

IT IS FURTHER ORDERED that if Appellant did in fact file and serve the motion for an extension on February 16, 2023, then Appellant will need to resend the motion and filing fee to the Court; Appellant must file the motion and pay the fee on or by **March 9, 2023, at 12:00 P.M.**; Appellant shall e-mail a copy of the resent motion and note that a filing fee was included with the filing.

AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

February 27, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

February 27, 2023
Columbia, South Carolina

Exhibit #3

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Andre Brooks,

Appellant,

vs.

South Carolina Labor, Licensing and
Regulation, South Carolina Board of
Registration for Professional Engineers and
Surveyors,

Respondent.

Docket No. 22-ALJ-11-0313-AP

**ORDER GRANTING APPELLANT AN
EXTENSION TO FILE AND SERVE HIS
MOTION FOR REHEARING IN THIS
MATTER**

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed by Andre Brooks (Appellant) pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). In this appeal, Appellant challenges the final administrative order of the South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's application for licensure by comity as a professional engineer in South Carolina. This matter was assigned to the undersigned on September 1, 2022. The Board filed the record on appeal on October 11, 2022. On November 10, 2022, Appellant filed his brief. On December 6, 2022, the Board moved for an extension to file its brief, which the Court granted on December 9, 2022. Thus, the Board filed its brief on January 13, 2023, and Appellant filed his reply brief on January 23, 2023.

The Court filed and served its final order on February 6, 2023. On Thursday, February 16, 2023, at 5:00 P.M., Appellant e-mailed the Court and the Board. In the e-mail, Appellant stated the following: "Attached is the motion for an extension in the above captioned matter. [Counsel for the Board] is copied on the email and a hard copy will be mailed to both parties." The attached motion stated Appellant was seeking "an extension to file a Motion of Reconsideration, with the Motion of Reconsideration being due no later than March 20, 2023." *See generally* SCALC Rule 40 (providing for motions for rehearing in appeals). Appellant cited SCALC Rules 3(C) and 37(A). Appellant's certificate of service for the motion shows that Appellant "served" by placing the motion in the mail to the Court's mailing address; the certificate of service lists the Board as



being served, but no address was listed. Additionally, in Appellant's cover letter to the motion, Appellant stated the following: "Please find enclosed the original and one copy of Appellant's Motion to Extend Time to File a Motion of Reconsideration for the Court in the above-captioned matter. The Respondent will be mailed a copy of Appellant's Motion today."

At 5:11 P.M. on February 16, 2023, the Court confirmed receipt of Appellant's e-mail and electronic attachment. On Tuesday, February 21, 2023, counsel for the Board stated the following: "I've received Appellant's attached motion. Respondent does not intend to file an objection or formal response to the motion."

As of February 27, 2023, the Court had not received Appellant's motion to enlarge the time to file his motion for rehearing. Accordingly, on February 27, 2023, the Court issued a status order about Appellant's motion. The status order stated the following: (1) Appellant shall file an affidavit with the Court, serve the same upon the Board, and e-mail a copy to both by March 9, 2023, at 12:00 P.M. to explain if Appellant did in fact place the motion for an extension in the U.S. mail to the Court and the Board on February 16, 2023; (2) if Appellant did not comply with the prior conditions, the Court would deem this as a waiver; and (3) if Appellant in fact filed and served the motion for an extension on February 16, 2023, then Appellant needed to resend the motion and filing fee to the Court on or by March 9, 2023, at 12:00 P.M.

On March 8, 2023, Appellant filed, served, and e-mailed a copy of the documents that were outlined in the Court's February 27, 2023 order. Specifically, Appellant explained that he did in fact place his motion in the U.S. mail on February 16, 2023, and he was uncertain of the status of his prior motion in the U.S. mail. He also provided the filing fee and copy of the prior motion. The Court therefore concludes that Appellant timely filed a motion for an extension of time in which to file a motion for rehearing.

Our rules provide in pertinent part that: "For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law." SCALC Rule 3(B). Appellant indicates that he suffered from health problems which affected his ability to timely file a motion for rehearing. The Court granted the Department an extension for a similar reason in this case and concludes that Appellant has demonstrated good cause.

IT IS THEREFORE ORDERED that Appellant's motion for an extension to file and serve his motion for rehearing is **GRANTED** and Appellant shall have until **March 20, 2023**, to

file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion.

AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

March 14, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

March 14, 2023
Columbia, South Carolina

Exhibit #4

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Andre Brooks,

Appellant,

vs.

South Carolina Labor, Licensing and
Regulation, South Carolina Board of
Registration for Professional Engineers and
Surveyors,

Respondent.

Docket No. 22-ALJ-11-0313-AP

**ORDER DENYING APPELLANT'S
MOTION FOR REHEARING**

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed by Andre Brooks (Appellant) pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). In this appeal, Appellant challenges the final administrative order of the South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's application for licensure by comity as a professional engineer in South Carolina. This matter was assigned to the undersigned on September 1, 2022. The Board filed the record on appeal on October 11, 2022. On November 10, 2022, Appellant filed his brief. On December 6, 2022, the Board moved for an extension to file its brief, which the Court granted on December 9, 2022. Thus, the Board filed its brief on January 13, 2023, and Appellant filed his reply brief on January 23, 2023.

The Court filed and served its final order on February 6, 2023. On Thursday, February 16, 2023, at 5:00 P.M., Appellant emailed the Court and the Board. In the email, Appellant stated the following: "Attached is the motion for an extension in the above captioned matter. [Counsel for the Board] is copied on the email and a hard copy will be mailed to both parties." The attached motion stated Appellant was seeking "an extension to file a Motion of Reconsideration, with the Motion of Reconsideration being due no later than March 20, 2023." *See generally* SCALC Rule 40 (providing for motions for rehearing in appeals). Appellant cited SCALC Rules 3(C) and 37(A). Appellant's certificate of service for the motion reflected that Appellant "served" the



motion by placing the motion in the mail to the Court's mailing address; the certificate of service listed the Board as being served, but no address was listed. Additionally, in Appellant's cover letter to the motion, Appellant stated the following: "Please find enclosed the original and one copy of Appellant's Motion to Extend Time to File a Motion of Reconsideration for the Court in the above-captioned matter. The Respondent will be mailed a copy of Appellant's Motion today."

At 5:11 P.M. on February 16, 2023, the Court confirmed receipt of Appellant's email and electronic attachment. On Tuesday, February 21, 2023, counsel for the Board stated the following: "I've received Appellant's attached motion. Respondent does not intend to file an objection or formal response to the motion."

As of February 27, 2023, the Court had not received Appellant's motion to enlarge the time to file his motion for rehearing. Accordingly, on February 27, 2023, the Court issued a status order about Appellant's motion. The status order stated the following: (1) Appellant shall file an affidavit with the Court, serve the same upon the Board, and email a copy to both by March 9, 2023, at 12:00 P.M. to explain if Appellant did in fact place the motion for an extension in the U.S. mail to the Court and the Board on February 16, 2023; (2) if Appellant did not comply with the prior conditions, the Court would deem this as a waiver; and (3) if Appellant in fact filed and served the motion for an extension on February 16, 2023, then Appellant needed to resend the motion and filing fee to the Court on or by March 9, 2023, at 12:00 P.M.

On March 8, 2023, Appellant filed, served, and emailed a copy of the documents that were outlined in the Court's February 27, 2023 order.¹ Specifically, Appellant explained that he did in fact place his motion in the U.S. mail on February 16, 2023, and he was uncertain of the status of his prior motion in the U.S. mail. He also provided the filing fee and copy of the prior motion. The Court therefore concluded that Appellant timely filed a motion for an extension of time in which to file a motion for rehearing. Accordingly, on March 14, 2023, the Court granted Appellant's motion and provided the following: "Appellant shall have until **March 20, 2023**, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

On March 21, 2023, Appellant emailed the Court and the Board a copy of his motion for rehearing and a filing in support of the motion. In the email, Appellant stated the motion and filing

¹ The Court notes that Appellant included the Board's mailing address with the certificate of service dated February 16, 2023.

in support were being mailed to the Court and the Board on March 21, 2023. Additionally, Appellant's motion and certificate of service was dated March 21, 2023. Appellant raises several arguments related to the Board's brief and the Court's order dated February 6, 2023. Specifically, Appellant requests the following relief: "[that he be] granted a license or a rehearing of the within matter or a setting aside of this [ALC] order Feb 6, 2023 and a remand to the Board to develop a more complete record or order the Board to grant Appellant a license."

DISCUSSION

Appellant requests that the Court reconsider its decision dated February 6, 2023. The Court denies Appellant's request because Appellant's motion for rehearing is untimely.

SCALC Rule 40 provides that a motion for rehearing "must be filed within ten days of receipt of the order." Moreover, SCALC Rule 38 permits the Court to deny a motion for rehearing if the party seeking the rehearing fails to comply with the Court's order setting the deadline for such motion to be filed and served. *See id.* ("Upon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or *resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided in these rules or by order of the Court.*" (emphasis added)).

Pursuant to SCALC Rule 3(B), the Court granted Appellant's requested relief to have his motion for rehearing "due no later than March 20, 2023." *See id.* ("For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law."). Specifically, in the Court's March 14, 2023 order, the Court ordered the following: "Appellant shall have until **March 20, 2023**, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

Appellant emailed, filed, and served his motion for rehearing on March 21, 2023—after the deadline that he requested in his motion for an extension and the date that the Court ordered on March 14, 2023. Accordingly, Appellant's motion for rehearing is untimely, and the Court denies Appellant's motion for rehearing based on the untimeliness of said motion.

ORDER

IT IS THEREFORE ORDERED that Appellant's motion for rehearing is **DENIED** because the motion is untimely.²

AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

March 30, 2023
Columbia, South Carolina

² Because the Court determines Appellant's motion is untimely, the Court need not address Appellant's arguments related to the merits of his motion for a rehearing. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

March 30, 2023
Columbia, South Carolina

Exhibit #5

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Andre Brooks,

Appellant,

vs.

South Carolina Labor, Licensing and
Regulation, South Carolina Board of
Registration for Professional Engineers and
Surveyors,

Respondent.

Docket No. 22-ALJ-11-0313-AP

**ORDER DENYING APPELLANT'S
MOTION TO EXTEND THE TIME TO
FILE HIS MOTION FOR REHEARING**

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed by Andre Brooks (Appellant) pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). In this appeal, Appellant challenges the final administrative order of the South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's application for licensure by comity as a professional engineer in South Carolina. This matter was assigned to the undersigned on September 1, 2022. The Board filed the record on appeal on October 11, 2022. On November 10, 2022, Appellant filed his brief. On December 6, 2022, the Board moved for an extension to file its brief, which the Court granted on December 9, 2022. Thus, the Board filed its brief on January 13, 2023, and Appellant filed his reply brief on January 23, 2023.

The Court filed and served its final order on February 6, 2023. On Thursday, February 16, 2023, at 5:00 P.M., Appellant emailed the Court and the Board. In the email, Appellant stated the following: "Attached is the motion for an extension in the above captioned matter. [Counsel for the Board] is copied on the email and a hard copy will be mailed to both parties." The attached motion stated Appellant was seeking "an extension to file a Motion of Reconsideration, with the Motion of Reconsideration being due no later than March 20, 2023." *See generally* SCALC Rule 40 (providing for motions for rehearing in appeals). Appellant cited SCALC Rules 3(C) and 37(A). Appellant's certificate of service for the motion reflected that Appellant "served" the



motion by placing the motion in the mail to the Court's mailing address; the certificate of service listed the Board as being served, but no address was listed. Additionally, in Appellant's cover letter to the motion, Appellant stated the following: "Please find enclosed the original and one copy of Appellant's Motion to Extend Time to File a Motion of Reconsideration for the Court in the above-captioned matter. The Respondent will be mailed a copy of Appellant's Motion today."

At 5:11 P.M. on February 16, 2023, the Court confirmed receipt of Appellant's email and electronic attachment. On Tuesday, February 21, 2023, counsel for the Board stated the following: "I've received Appellant's attached motion. Respondent does not intend to file an objection or formal response to the motion."

As of February 27, 2023, the Court had not received Appellant's motion to enlarge the time to file his motion for rehearing. Accordingly, on February 27, 2023, the Court issued a status order about Appellant's motion. The status order stated the following: (1) Appellant shall file an affidavit with the Court, serve the same upon the Board, and email a copy to both by March 9, 2023, at 12:00 P.M. to explain if Appellant did in fact place the motion for an extension in the U.S. mail to the Court and the Board on February 16, 2023; (2) if Appellant did not comply with the prior conditions, the Court would deem this as a waiver; and (3) if Appellant in fact filed and served the motion for an extension on February 16, 2023, then Appellant needed to resend the motion and filing fee to the Court on or by March 9, 2023, at 12:00 P.M.

On March 8, 2023, Appellant filed, served, and emailed a copy of the documents that were outlined in the Court's February 27, 2023 order.¹ Specifically, Appellant explained that he did in fact place his motion in the U.S. mail on February 16, 2023, and he was uncertain of the status of his prior motion in the U.S. mail. He also provided the filing fee and copy of the prior motion. The Court therefore concluded that Appellant timely filed a motion for an extension of time in which to file a motion for rehearing. Accordingly, on March 14, 2023, the Court granted Appellant's motion and provided the following: "Appellant shall have until **March 20, 2023**, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

On March 21, 2023, Appellant emailed the Court and the Board a copy of his motion for rehearing and a filing in support of the motion. In the email, Appellant stated the motion and filing

¹ The Court notes that Appellant included the Board's mailing address with the certificate of service dated February 16, 2023.

in support were being mailed to the Court and the Board on March 21, 2023. Additionally, Appellant's motion and certificate of service were dated March 21, 2023. Appellant raised several arguments related to the Board's brief and the Court's order dated February 6, 2023. Specifically, Appellant requested the following relief: "[that he be] granted a license or a rehearing of the within matter or a setting aside of this [ALC] order Feb 6, 2023 and a remand to the Board to develop a more complete record or order the Board to grant Appellant a license." On March 30, 2023, the Court denied Appellant's motion because the motion was untimely. Accordingly, the Court declined to rule on the other grounds raised in Appellant's motion.

On April 11, 2023, Appellant filed a "motion to extend time for late filing of motion of reconsideration." In the motion, Appellant stated the following:

Due to continued health issues of . . . Appellant, as well as continued unexpectedly high volume of work, meetings[,] and seeking to retain counsel to file the Motion of Reconsideration. Appellant attempted to retain counsel but was unable to get an attorney to represent . . . Appellant on this matter. Appellant respectfully requests the Court to grant an extension for late filing of the motion of Reconsideration, with the extended filing date of the Motion of Reconsideration being due no later than March 22, 2023[,] to allow for on time filing of the Motion to Reconsider. Due to the continued health issues of . . . Appellant and other issues referenced above beyond my control, Appellant respectfully request that this court grant . . . Appellant's Motion for Late Filing request.

As of the date of this order, the Court has not received a response from the Board on Appellant's present motion.

DISCUSSION

Appellant requests that the Court issue an order again extending the time for him to file his motion for rehearing. The Court denies Appellant's request.

SCALC Rule 40 provides that a motion for rehearing "must be filed within ten days of receipt of the order." Moreover, SCALC Rule 38 permits the Court to deny a motion for rehearing if the party seeking the rehearing fails to comply with the Court's order setting the deadline for such motion to be filed and served. *See id.* ("Upon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or *resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to*

comply with any of the time limits provided in these rules or by order of the Court." (emphasis added)).

Pursuant to SCALC Rule 3(B), the Court granted Appellant's initial requested relief to have his motion for rehearing "due no later than March 20, 2023." *See id.* ("For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law."). Specifically, in the Court's March 14, 2023 order, the Court ordered the following: "Appellant shall have until **March 20, 2023**, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

Appellant emailed, filed, and served his motion for rehearing on March 21, 2023—after the deadline that he requested in his motion for an extension and the date that the Court ordered on March 14, 2023. Accordingly, the Court determined Appellant's motion for rehearing was untimely, and the Court denied Appellant's motion for rehearing based on the untimeliness of said motion.

Presently, Appellant is yet again seeking an extension of time. The Court was receptive of Appellant's first request for an extension of time to file and serve his motion for rehearing, which was why the Court granted Appellant the deadline he sought. The deadline Appellant requested passed without any motions from Appellant seeking to extend the time again. Had Appellant sought an additional extension prior to the expiration of the initial extension, the Court might have been inclined to grant that request, but Appellant made no such motion. Moreover, Appellant's motion for an extension relies upon the same generic considerations which supported the first motion and make no mention of any changed or new circumstance requiring even more time. As of today's date, almost three months have elapsed since the Court issued the final order on February 6, 2023. At some point, finality is required.

The Court is aware the consequences of its decision may appear harsh, and the Court is cognizant about Appellant's statements about seeking counsel. However, while Appellant is pro se, he is still obligated to follow the substantive and procedural requirements of the law. *See State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013) ("A pro se litigant who knowingly elects to represent himself [or herself] assumes full responsibility for complying with substantive and procedural requirements of the law." (quoting *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003))); *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 403, 368

S.E.2d 687, 689 (Ct. App. 1988) ("Lack of familiarity with legal proceedings is unacceptable[,] and the court will not hold a layman to any lesser standard than is applied to an attorney."). Accordingly, the Court concludes Appellant's motion should be denied.

ORDER

IT IS THEREFORE ORDERED that Appellant's motion is **DENIED**.
AND IT IS SO ORDERED.




Robert L. Reibold
Administrative Law Judge

April 28, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

April 28, 2023
Columbia, South Carolina

Exhibit #6

STATE OF SOUTH CAROLINA
Administrative Law Court

Robert L. Reibold
Administrative Law Judge



PHONE: (803) 734-0550
FAX: (803) 734-6400
WEB: WWW.SCALC.NET

May 16, 2023

Mr. Andre Brooks
19200 Canterbury Rd
Detroit, MI 48221

Re: *Andre Brooks vs. South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Professional Engineers and Surveyors*, Docket No. 22-ALJ-11-0313-AP

Dear Mr. Brooks:

As you are aware, the South Carolina Administrative Law Court (the ALC or the Court) filed and served its final order on February 6, 2023.¹ Thereafter, the Court granted you an extension to file and serve your motion for rehearing and stated "Appellant shall have until **March 20, 2023**, to file his motion for rehearing with the Court, serve the [South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Professional Engineers and Surveyors (the Board)] with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

On March 21, 2023, you filed, served, and emailed the motion for rehearing. By order dated March 30, 2023, the Court denied your motion because the Court concluded your motion was untimely. On April 11, 2023, you filed a "motion to extend time for late filing of motion of reconsideration," and by order dated April 28, 2023, the Court denied the aforementioned motion.

On May 16, 2023, I received a document titled "Appellant's Appeal of Final Order" and a filing fee of \$50.00 that was made payable to the ALC. This filing appears to be a successive motion for a rehearing. See, e.g., App.'s Appeal of Final Order at 15 ("The SCALC's review of this motion . . ."). As such, I am returning your motion and filing fee to you.

[Signature block to follow on the next page.]

¹ For a full discussion of the history of the case since the Court filed and served its final order, see the statement of the case from *Brooks v. South Carolina Department of Labor, Licensing and Regulation*, Docket No. 22-ALJ-11-0313-AP (S.C. Admin. L. Ct. order filed April 28, 2023).

Sincerely,

A handwritten signature in dark ink, appearing to read "James Smith Harrison, III". The signature is fluid and cursive, with the last name "Harrison" being particularly prominent.

James Smith Harrison, III

Law Clerk to The Honorable Robert L. Reibold

cc: Mr. Timothy Kyle Tennis, Esq., Office of General Counsel, South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Professional Engineers and Surveyors

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this letter upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

May 16, 2023
Columbia, South Carolina

RECEIVED

Jun 07 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Jun 07 2023

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Robert L. Reibold, Administrative Law Judge

Case No. 2023-000825

Andre Brooks,

Appellant,

v.

South Carolina Department of Labor, Licensing, and Regulation,
South Carolina Board of Registration for
Professional Engineers and Surveyors,

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 2023, in Columbia, South Carolina, I filed Respondent's Memorandum regarding Appealability with the Court and served Appellant in this matter as follows:

By Electronically Filing with the Court of Appeals
Pursuant to Paragraph (b)(1) of Order
Re: Methods of Electronic Filing and Service
Under Rule 262 of the South Carolina
Appellate Court Rules (As Amended May 6, 2022),
Appellate Case No. 2020-000447

By Mailing:
Andre Brooks
19200 Canterbury Road
Detroit, MI 48221
Appellant

SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING AND REGULATION



T. Kyle Tennis
Counsel for Respondent

Columbia, South Carolina
June 7, 2023



South Carolina
Department of Labor, Licensing and Regulation



Office of Advice Counsel

110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4835
Fax: (803) 896-1877

Henry D. McMaster
Governor

Emily H. Farr
Director

June 7, 2023

RECEIVED

Jun 07 2023

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Andre Brooks, Appellant v. South Carolina Department of Labor, Licensing, and Regulation, South Carolina Board of Registration for Professional Engineers and Surveyors, Respondent
Appellate Case No. 2023-000825

Dear Ms. Kitchings:

Please find enclosed for electronic filing Respondent's Memorandum regarding Appealability in this matter as requested by the Court. A copy of Respondent's Memorandum regarding Appealability was mailed and emailed to Appellant today.

Sincerely,

T. Kyle Tennis, Esq.
S.C. Bar No. 101394
P.O. Box 11329
Columbia, SC 29211-1329
(803) 896-4835
Kyle.tennis@llr.sc.gov
Counsel for Respondent

cc: Andre Brooks, Appellant