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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Court Judge

Appellate Case No. 2023-000736

Faranda Caldwell,

Appellant,

v.

South Carolina Department of Employment and Workforce,

Respondent.

MOTION TO DISMISS FOR LACK OF JURISDICTION

Respondent, South Carolina Department of Employment and Workforce (the Department) through its undersigned attorney, submits this Motion to Dismiss for lack of jurisdiction due to Appellant's failure to timely file the notice of appeal in this matter with the S.C. Court of Appeals within the mandatory thirty (30) day time limit required by S.C. Code Ann. § 1-23-610(A)(1) and SCACR Rules. Thus, this Court lacks appellate jurisdiction and should dismiss the appeal.

This is an action seeking appellate review of an Order issued by the Honorable Judge Shirley C. Robinson of the S.C. Administrative Law Court (ALC), and is governed by the S.C. Administrative Procedures Act (APA) and SCACR Rules. In order to obtain appellate review, this Court's jurisdiction must be properly invoked.

S.C. Code Ann. §1-23-610(A)(1) of the APA states:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on

the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge.

In this case, the ALC Order was served upon the parties on March 27, 2023. (*Exhibit A*). On May 9, 2023, the Department became aware via email correspondence from the Clerk of the S.C. Court of Appeals that Appellant filed a notice of appeal in this matter. Appellant's notice of appeal posted on this Court's C-track website was filed by mail postmarked May 1, 2023, and was an untimely filed appeal, on its face, filed outside the 30-day statutory time limit. Consequently, the Department is informed and believes this Court lacks jurisdiction because the notice of appeal was not timely filed and the appeal should be dismissed. *See* Rule 203(d)(3) ("If the notice of appeal is not timely filed . . . , the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.").

Further, SCACR Rule 203(a) also requires that "A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules." Appellant's initial notice of appeal was woefully non-compliant with SCACR Rule 203(d)(2)(B) and Rule 203(e)(2) and was jurisdictionally deficient on its face. Subsequently, in response to this Court's deficiency letter, Appellant filed a new notice of appeal and a proof of service on May 19, 2023, and filed a copy of the ALC Order on May 26, 2023, well beyond the statutory 30-day time limit required for timely filing a proper notice of appeal to this Court.

The Department recognizes that Appellant is proceeding *pro se* in this case. However, a *pro se* litigant "assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003); *see also State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013). "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." *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988).

"The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction." *Allison v. W.L. Gore & Assoc.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). Timely filing and service of the appeal are mandatory jurisdictional requirements, and the court has no authority to extend the time in which the notice of appeal must be filed or served. *See Mears v. Mears*, 287 SC 168, 337 SE2d 206 (1985); *Allison*, 394 S.C. at 189, 714 S.E.2d at 550 (noting "an appellate body may not extend the time to appeal").

In this case, based upon Appellant's own filings, the Department is informed and believes that Appellant did not timely file a notice of appeal and did not timely comply with the requirements for the Court to obtain appellate jurisdiction to review the ALC's Order. Accordingly, the Department respectfully requests this Court dismiss Appellant's appeal for lack of jurisdiction.

Respectfully Submitted,

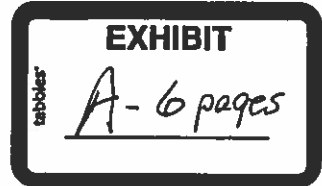


Sandra Grooms (SC Bar # 640)
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June 30, 2023.

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

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT



Faranda Caldwell,)
)
Appellant,)
v.)
)
South Carolina Department of Employment)
and Workforce,)
)
)
)
Respondent.)

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

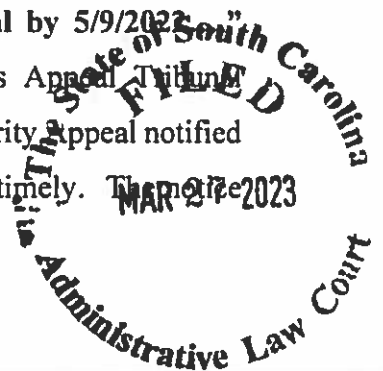
FINAL ORDER AFFIRMING

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.



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 adjudicators 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).

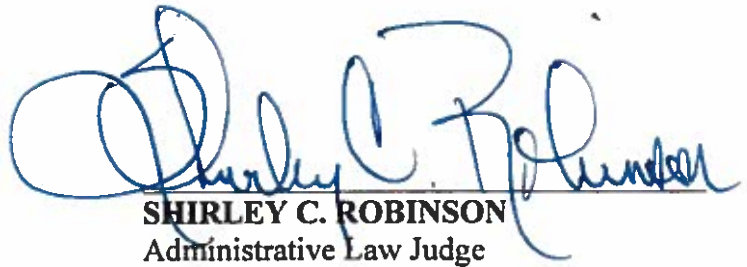
Section 41-35-680 clearly and unambiguously states that the decision “must be considered the final decision of the department, unless within ten days after the date of mailing the decision a further appeal is initiated...” In this instance, the record is clear, and it is undisputed that the claim adjudicator’s 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.

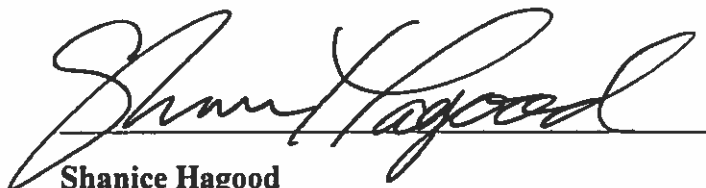


SHIRLEY C. ROBINSON
Administrative Law Judge

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).



Shanice Hagood
Judicial Law Clerk

March 27, 2023

Columbia, South Carolina

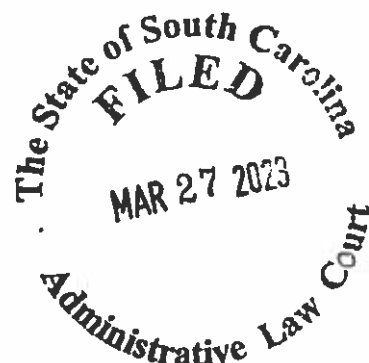


EXHIBIT
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FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]
Court of Appeals
Lancaster
APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

George E. Brown, Circuit Court Judge
Judge Robinson

Case No. 2000-CP-00-0000
22-ALJ-22-0446-AP

Stephen L. Doe, as Personal
Representative of the Estate of
John B. Doe, *South Carolina* Respondent,

Department of Employment and
Schaeffler Group USA INC.
Jane C. Roe, Appellant.
Faranda Caldwell

South Carolina Department of Employment and Schaeffler Group
USA INC. By mail 4/20/23

NOTICE OF APPEAL

Jane C. Roe appeals the order [judgment] of the Honorable George E. Brown dated
September 1, 2000. Appellant received written notice of entry of this order [judgment] on
September 3, 2000.

September 15, 2000

Court of Appeals
1220 Senate St,
Columbia, SC 29201

s/ John E. Smith
John E. Smith
Post Office Box 123
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Attorney for Appellant

Other Counsel of Record:
Mary P. Jones
Post Office Box 456
Greenville, South Carolina 29000
Attorney for Respondent
(864) 000-0000

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MAY 03 2023

SC Court of Appeals

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]
Court of Appeals
Lancaster
APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

George E. Brown, Circuit Court Judge
Judge Robinson

Case No. 2000-CP-00-0000
22-ALJ-22-0446-AP

Stephen L. Doe, as Personal
Representative of the Estate of
John B. Doe, *South Carolina*
Respondent,

*Department of Employment and
Schaeffler Group USA INC.*

v.

Jane C. Roe, Appellant.

Faranda Caldwell

South Carolina Department of Employment and Schaeffler Group
USA INC. By mail 4/20/2023

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Stephen L. Doe by depositing a copy of it in the United States Mail, postage prepaid, on September 15, 2000, addressed to his attorney of record, Mary P. Jones, Post Office Box 456, Greenville, South Carolina 29000 [by personally delivering a copy of it to his attorney of record, Mary P. Jones, at her office at 123 Oak Street, Greenville, South Carolina 29000, on September 15, 2000].

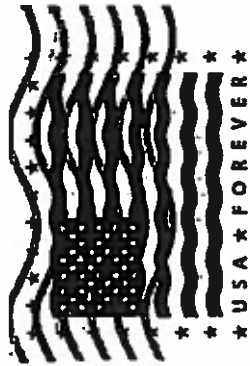
September 15, 2000

*Court of Appeals
120 Senate St
Columbia, SC 29201*

s/ John E. Smith
John E. Smith
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Greenville, South Carolina 29000
(864) 000-000-0000
Attorney for Appellant

Faranda Caldwell,
1749 Douglas Rd
Lancaster, SC 29720

CHARLOTTE NC 280
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Court of Appeals,
1220 Senate St.
Columbia, SC 29201
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Jun 30 2023

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2022-000736

Faranda Caldwell,

Appellant,

v.

South Carolina Department of Employment and
Workforce,

Respondents.

PROOF OF SERVICE

I certify that I have served the Respondent's Notice of Appearance and Motion to Dismiss for Lack of Jurisdiction on the parties in this case by mail on June 30, 2023, addressed to the parties at their addresses of record:

Faranda Caldwell
1749 Douglas Rd
Lancaster SC 29720

June 30, 2023



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