

FORM 14
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

RECEIVED
AUG 14 2023
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
S. Phillip Lenski, Administrative Law judge

George E. Brown, Circuit Court Judge

Case No. 22-ALJ-22-0098-AP

South Carolina Department of Employment and workforce (SCDEW) and Amazon.com
Services Inc Respondent,

v.

Miya S. Freeman

Appellant.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Order of June 21,2022
2. Exhibit A of page 15 [of 32] Encl 1
3. Exhibit A of page 22 and 23 [of 32]

I certify that this designation contains no matter which is irrelevant to this appeal.

August 14, 2023

Miya S Freeman
405 Grand National Lane
Elgin Sc, 29045
(803)-862-9424 ©
Pro se appellant

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

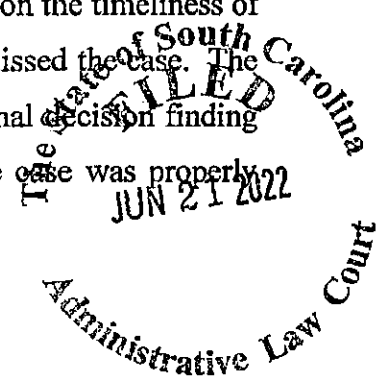
Miya Freeman,)	Docket No. 22-ALJ-22-0098-AP
)	
Appellant,)	
)	
v.)	FINAL ORDER
)	
South Carolina Department of Employment and Workforce and Amazon Com Services, Inc.,)	
)	
Respondents.)	
)	

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on March 22, 2022 by Miya S. Freeman (Appellant). The Appellant seeks review of the South Carolina Department of Employment and Workforce Appellate Panel’s decision affirming the Appeal Tribunal’s decision finding that the Appellant filed an untimely appeal to the Appeal Tribunal and the case was properly dismissed.

After careful consideration of the parties’ briefs, the record, and the applicable law, the court finds that substantial evidence in the record supports the Panel’s determination that the Appellant did not timely appeal the claims adjudicator’s decision to the Tribunal. Accordingly, the Panel’s decision is affirmed as modified.

BACKGROUND

The Appellant filed a claim for unemployment insurance (UI) benefits on August 25, 2021. The claims adjudicator’s determination mailed on October 4, 2021 held the Appellant indefinitely disqualified from benefits effective August 22, 2021, upon finding she voluntarily severed the employer/employee relationship without good cause by filing for unemployment benefits while on a leave of absence. The determination contained a clear and specific notice that the determination would be final unless the Appellant filed an appeal by October 14, 2021. On October 19, 2021, the Appellant appealed to the Appeal Tribunal. After an evidentiary hearing on the timeliness of the appeal, the Tribunal found the Appellant’s appeal was untimely and dismissed the case. The Appellant appealed to the Appellate Panel and the Panel affirmed the Tribunal decision finding that the Appellant filed an untimely appeal to the Appeal Tribunal and the case was properly dismissed.



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. *See* S.C. Code Ann. § 1-23-380 (Supp. 2020); S.C. Code Ann. §1-23-600(D) (Supp. 2020); *Gibson*, 282 S.C. at 386, 318 S.E.2d at 367.

Section 1-23-380(5) of the South Carolina Code provides the standard of review to be utilized by appellate bodies, including the ALC, when reviewing Department decisions:

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(5) (Supp. 2020); S.C. Code Ann. § 1-23-600(E) (Supp. 2020) (directing administrative law judges to conduct appellate review in the same manner as prescribed in Section 1-23-380).

This court’s review in appellate cases is limited to the record. *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2020); SCALC Rule 36(G). “‘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” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). “The limited substantial evidence standard of review is intended only to assure that the [agency’s] action is properly supported and that, therefore, no abuse of delegated authority occurred.” *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 595, 281 S.E.2d 118, 119 (1981). Thus, 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).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996). A reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact for which there is room for a difference of intelligent opinion. See *Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n*, 319 S.C. 225, 229, 460 S.E.2d 383, 386 (1995). Accordingly, "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 Nat. Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001). The party challenging an agency action on appeal has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

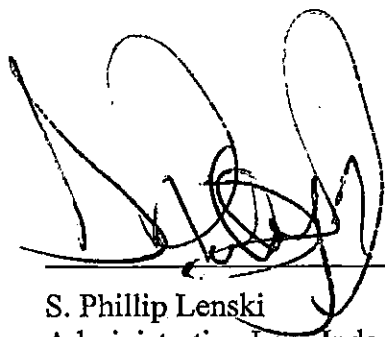
A claimant wishing to appeal from the initial determination of a Department claims adjudicator must file the appeal "not later than ten days after the determination was mailed to his last known address." S.C. Ann. § 41-35-660 (2021); see also S.C. Code Ann. Regs. 47-51(A)(1) (Supp. 2020) ("The party appealing from any determination of a claims adjudicator . . . shall file electronically, by fax, by mail, or otherwise deliver to the Department a Notice of Appeal, setting forth the grounds for the appeal."). Unfortunately, "[t]he service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court." *Hill v. S.C. Dep't of Health and Env't Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010); see also *Allison v. W.L. Gore & Assoc.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) ("[T]he question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction . . ."). Accordingly, "the failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction . . ." *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004).

In this case, the Appellant acknowledges that her appeal to the Appeal Tribunal was untimely, however, the Appellant argues that her untimeliness was due to diagnosed medical conditions for which she had requested medical leave from her employer, Amazon Com Services

Inc (Employer or Respondent).

While the court is sympathetic to the Appellant's situation, substantial evidence in the record supports the Panel's determination that the Appellant did not timely appeal the claims adjudicator's decision to the Tribunal. Consequently, the claims adjudicator's determination that the Appellant is ineligible for UI benefits because she voluntarily severed the employer/employee relationship without good cause by filing for unemployment benefits while on a leave of absence must stand. *See Atl. Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”). Therefore, based on the foregoing,

IT IS HEREBY ORDERED that the Department's determination is **AFFIRMED**.
AND IT IS SO ORDERED.

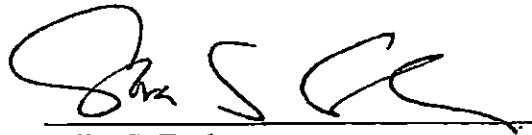


S. Phillip Lenski
Administrative Law Judge

June 21, 2022
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Erika S. Easler, 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).



Erika S. Easler
Judicial Law Clerk

June 21, 2022
Columbia, South Carolina

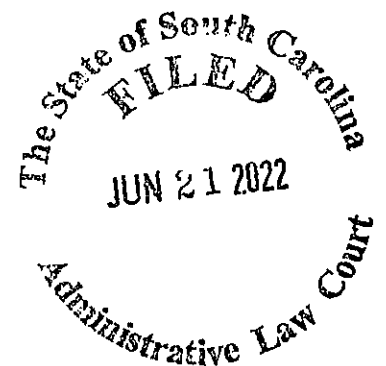


Exhibit A

Sent from my iPhone

Begin forwarded message:

From: MyDocs-noreply <MyDocs-noreply@onbaseonline.com>

Date: July 28, 2021 at 20:12:37 EDT

To: freemanmiya129@gmail.com

Subject: Termination Documents are Available for Review

Dear Miya,

Please review your termination letter attached to this email. Your termination and employment documents are available for review on the MyDocs portal for 90 calendar days after the end of your employment. To access the MyDocs portal, navigate to <https://amazon.onbaseonline.com> and input your personal email address and password.

Thank you,

Amazon Human Resources

108871897

Exhibit A

Sent from my iPhone

Begin forwarded message:

From: Amazon Disability and Leave Services <amazondls@dali-leave-disability.services.hr.a2z.com>

Date: August 12, 2021 at 16:24:56 EDT

To: freemanmiya129@gmail.com

Subject: About Leave for - Miya Freeman, Employee ID [REDACTED] Case 02298957

amazon

Disability & Leave Services

August 12, 2021

Miya Freeman
405 grand national lane
Elgin, SC 29045
USA

Dear Miya,

Your leave of absence has been approved. Please review the attached documents related to your leave of absence request.

Thank you,
Melanie Rodriguez | Tier 2 DLS Case Manager
Disability & Leave Services

If you believe you are receiving this email in error, please contact the Disability & Leave Services (DLS) Team at (888) 892-7180.

This message, and any attachments to it, may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are notified that any use, dissemination, distribution, copying, or communication of this message is strictly prohibited. If you have received this message in error, please notify the sender immediately by return e-mail and delete the message and any attachments. Thank you.

Exhibit A



Disability & Leave Services

August 12, 2021

Miya Freeman
405 grand national lane
Elgin, SC 29045
USA

Re: Decision Notification -- Miya Freeman, Case 02298957

Dear Miya,

On July 26, 2021 we received your request for a leave of absence. See below for more information about the status of your claim.

Leave Decision Notification

- The following decisions have been made on your request for leave.

Plan Name	Status	Decision Date	Start Date	End Date
Federal FMLA	Denied	July 26, 2021	July 27, 2021	August 17, 2021
Federal FMLA	Denied	July 26, 2021	July 17, 2021	July 26, 2021
Medical Leave of Absence	Pending	August 12, 2021	July 27, 2021	August 17, 2021
Medical Leave of Absence	Approved	August 12, 2021	July 17, 2021	July 26, 2021

- See below for your estimated leave usage. Please note, this is an estimate and is subject to change if your leave dates change.

Plan Name	Time Used	Estimated Time Remaining
Federal FMLA		12 weeks
Medical Leave of Absence	10 days	172 days

- You are not eligible for leave under the federal Family and Medical Leave Act because:
 - You have not worked 1,250 hours in the previous 12 months. As of the date of this letter you have worked approximately 715.64 hours.
 - You have not worked for Amazon for 12 months. As of the date of this letter you have worked approximately 8.2 months.

Pay Decision We have received your claim for short-term disability (STD) benefits. The Plan is administered in accordance with the terms of the Employee Retirement Income Security

FORM 7

PROOF OF SERVICE OF A NOTICE OF APPEAL
In the Court of Appeals
[In the Supreme Court]

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

AUG 14 2023

Case No. 2022-000982

SC Court of Appeals

South Carolina Department of Employment
and Workforce and Amazon.com Services, Inc,

Respondents,

v.

Miya S. Freeman,

Appellant,

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on South Carolina Department of Employment and Workforce and Amazon.com Service, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on August 14, 2023, addressed to their respective attorney of record, Valerie McMellan, Post Office Box 8597, Columbia, South Carolina 29202 and Benjamin Thomas Cook, Amazon.com Service Inc. P.O. Box 16560, Clearwater, FL 33766, on August 14, 2023.

The Administrative Law Court
The Honorable S. Phillip Lenski
Kristi Chelsey, Clerk
1205 Pendleton St., Suite 224, Columbia, SC 29201

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

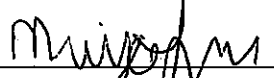
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Attorney for Respondent SC Department of
Employment and Workforce

Benjamin Thomas Cook, Esquire
Amazon.com Services Inc.
PO Box 16560, Clearwater FL 33766
Attorney for Respondent, Amazon.com Services,
Inc

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(803) 862-9424 (C)
freemanmiya129@gmail.com
Pro se Appellant

August 14, 2023



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Pro se Appellant