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Aug 21 2023

SC Court of Appeals

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

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

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

Appellate Case No. 2022-000982

Miya Freeman, Appellant,

v.

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

Respondent's Motion to Dismiss

Respondent South Carolina Department of Employment and Workforce (the Department) moves this Court to dismiss Appellant Miya Freeman's appeal because Appellant has continuously failed to file a proper Record on Appeal in accordance with this Court's rules and orders. Further the Department requests the Court hold all deadline in abeyance pending the Court's decision on this motion. In support thereof, the Department respectfully shows:

I. Factual Background

Appellant filed an appeal to the ALC from a final agency decision issued by the Department's Appellate Panel. Ultimately, by its Order dated June 21, 2022, the ALC found substantial evidence in the record supported the Panel's determination that Appellant did not

timely appeal the claims adjudicator's decision to the Appeal Tribunal. Appellant now seeks judicial review from this Court.

On October 18, 2022, Appellant filed her initial brief to this Court. On October 19, 2022, the Court issued a deficiency letter with instructions regarding a designation of matter. On October 27, 2022, Appellant filed her designation of matter and proposed the following be included in the record on appeal:

1. SCDEW Brief of June 7, 2022
2. Administrative Law Court Order of June 21, 2022
3. Full Transcript of Proceeding of June 21, 2022
4. Transcript of SCDEW Administrative Hearing of January 5, 2022, P.061. Lines 12-14
5. Defendant's Exhibits 1-10
6. Defendant's Exhibits 11: Six (6) SCDEW's Notices of Denial of Appellant Unemployment Benefits.

On November 17, 2022, the Department filed a motion requesting an extension to file Respondent's initial brief and designation of matter, which was granted by the Court. On November 29, 2022, the Department filed its initial brief and designation of matter and proposed the following be included in the record on appeal:

1. Appellant's Notice of Appeal to the ALC dated March 22, 2022.
2. The ALC notice of assignment dated March 23, 2022.
3. The ALC Record filed with the ALC on April 12, 2022.
4. Appellant's Brief to the ALC filed on April 4, 2022.
5. The Department's Respondent Brief to the ALC filed on June 7, 2022.
6. The ALC's Order Affirming the Panel Filed June 21, 2022.

On December 20, 2022, Appellant filed a motion for extension of time to file the record on appeal. This Court granted an extension to January 23, 2023 to file and serve the record on Appeal. On January 20, 2023, Appellant filed a brief, designation of matter, and record on appeal. On January 31, 2023, the Department filed a motion to strike Appellant's January 20, 2023, brief, designation of matter, and record on appeal. On March 23, 2023, the Court granted the

Department's motion and provided Appellant thirty days to serve and file an amended record on appeal which contains all of the Respondent's designated matters. On April 7, 2023, Appellant filed a document with the Court labeled "Amended Record on Appeal." On May 5, 2023, the Department filed a Motion to Dismiss or Alternative to Strike Appellant's Amended Record on Appeal. On June 13, 2023, this Court denied the Department's Motion to Dismiss, but granted the Motion to Strike and provided Appellant thirty days to file an amended record on appeal which complies with this Court's rules. On July 12, 2023, Appellant filed a motion to extend her time to serve and file the amended record on appeal. On July 14, 2023, this Court granted the motion and extended the time until August 2, 2023. On August 2, 2023, Appellant filed a second motion to extend her time to serve and file the amended record on appeal. On August 3, 2023, this Court granted the motion and extended the time until August 14, 2023.

On August 14, 2023, Appellant filed and served a packet of documents labeled "Amended Record on Appeal with Designation of Matter Attached."¹ *See Exhibit 1*. This packet appears to include a new Designation of Matter along with documents. Appellant's new filing does not constitute a proper record on appeal in compliance with this Court's rules and does not contain the documents set forth in Respondent's designation of matter.

II. Argument

This Court should dismiss Appellant's appeal because Appellant's August 14, 2023, packet of documents fails as a proper record on appeal. *See* Rule 260(a) ("Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court."). When a party serves its initial brief, the party must also serve a designation of matter

¹ A review of c-track reflects the packet is uploaded in two parts, as "Amended Record Record on Appeal Filed" and Designation of Matter – Designation of Matter Filed."

under Rule 209, SCACR, which sets forth the documents and materials the party would like included in the record on appeal. The Appellant is responsible for filing a complete Record on Appeal which includes all matters designated by any party under Rule 209. *See* Rule 210(a), SCACR (“[T]he appellant shall serve a copy of the Record on Appeal on each party who has served a brief.”); Rule 210(c), SCACR (“The Record on Appeal **shall** include all matter designated to be included by any party under Rule 209[.]”)(emphasis added).

On November 29, 2022, the Department properly filed and served the Designation of Matter and proposed the following to be included:

1. Appellant’s Notice of Appeal to the ALC dated March 22, 2022.
2. The ALC notice of assignment dated March 23, 2022.
3. The ALC Record filed with the ALC on April 12, 2022.
4. Appellant’s Brief to the ALC filed on April 4, 2022.
5. The Department’s Respondent Brief to the ALC filed on June 7, 2022.
6. The ALC’s Order Affirming the Panel Filed June 21, 2022.

The Amended Record on Appeal filed by Appellant is deficient because it omits most of the records designated by the Department. *See Exhibit 1*. The Amended Record appears to only include item 6, the June 21, 2022 ALC Order from the Department’s designation of matter. *Id.* Additionally, Appellant’s designation of matter filed on October 27, 2022, which designated six items, appears to have been abandoned by Appellant. It appears Appellant may be improperly attempting to include a new designation of matter in the record, and additional documents which appear to be some sort of motion or additional argument. This runs contrary to the requirements of Rule 209, SCACR and Rule 210(c), SCACR.

Appellant has been provided ample time to file a proper record on appeal and has continuously failed to do so, despite multiple attempts. Importantly, Appellant's failure to file a proper record on appeal is not the result of her unfamiliarity with the Court's rules. The Court and

Department have drawn Appellant's attention to the rules governing the record on appeal multiple times through deficiency letters, the Department's January 31, 2023, motion to strike, the Court's March 23, 2023 Order, the Department's May 5, 2023, Motion to Dismiss or Alternatively to Strike, this Court's June 13, 2023 Order, this Court's July 14, 2023 Order, and this Court's August 3, 2023, Order. Thus, Appellant is either unwilling or unable to file a record on appeal that complies with the Court's rules, and the Court should dismiss this appeal. *See Henning v. Kaye*, 307 S.C. 436, 438, 415 S.E.2d 794, 794–95 (1992) ("Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State."); *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990) ("There is a limit beyond which the court should allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties.").

Additionally, Appellant erred by not properly formatting the record on appeal. Rule 210(c) provides, "[m]atter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index." The index does not appear to include all documents within the packet, and the record fails to properly number the pages.

III. Conclusion

Based on the foregoing, the Department moves this Court to dismiss this appeal due to Appellant's repeated failures to comply with this Court's rules and orders. Appellant's amended record does not include the matters Appellant originally designated or the matters designated by the Department. Despite having been referred to the Court's rules multiple times, Appellant

appears either unwilling or unable to file a proper record on appeal despite the Court and the Department pointing her to the applicable rules multiple times. Thus, the Court should dismiss this appeal.

In the alternative, if the Court declines to dismiss the appeal, the Department requests the Court strike the amended record on appeal due to its fatal defects and order Appellant to file a record on appeal in compliance with the Court's rules and which contains the Respondent's designated matters. The Respondent Department is unable to finalize its brief without a proper record on appeal.

The Department also requests the Court hold all timelines in abeyance pending the Court's ruling on this motion.

Respectfully Submitted,

s/ Valerie McMellan

Valerie McMellan (SC Bar # 101080)

SC Department of Employment and
Workforce

Post Office Box 8597

Columbia, SC 29202

803.737.0395 (phone)

803.737.0124 (fax)

Legal@dew.sc.gov

*Attorney for Respondent SC Department of
Employment and Workforce*

August 21, 2023

Exhibit 1

Rec'd
8/14/23
17

**FORM 15
RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
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

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

AMENDED RECORD ON APPEAL WITH DESIGNATION OF MATTER ATTACHED



Miya S. Freeman
405 Grand National Lane
Elgin, SC 29045
(803) 862-9424 (C)
Pro se Appellant

The State of South Carolina
FILED
AUG 14 2023
Administrative Law Court

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ORDER OF JUNE 21, 2022

While the court is sympathetic to the Appellant's situation, substantial evidence in the record support the Panel's determination that adjudicator's decision to the Tribunal. Consequently, the claims adjudicator's determination that the Appellant is ineligible for the 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. 324, 329, 730 S.E. E. 2d 282, 285 (2012) (“[A]n unappalled ruling, right or wrong, is the law of the case.”). Therefore, based on the foregoing,

JUDGMENT

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

(Signed) S. Phillip Lenski
Administrative Law Judge
June 21, 2022
Columbia, South Carolina

DECISION

Court un-strike its decision of June 13, 2023 and allow the Appellant's appeal to move forward to the Court of Appeals

PLEADINGS

1. WERE THE APPELLANT'S RIGHTS PREJUDICED IN THE ADMINISTRATIVE LAW COURT JUDGE'S FAILURE TO WEIGH AND CONSIDER THE APPELLANT'S *WHOLE RECORD* IN ITS DECISION TO AFFIRM THE DEPARTMENT'S PETITION?
2. DID THE ADMINISTRATIVE LAW COURT ERR IN FAILING TO UPHOLD THE APPELLANT'S ENTITLEMENT TO UNEMPLOYMENT BENEFITS?

PRE-TRIAL MATTERS

1. Exhibit A on Page 15 [of 32], Encl 1 of Appellant's Record of Appeal submitted to and received by the Court of Appeals February 1, 2023, cites Amazon Letter to Miya Freeman , Employee Identification Number 1088871897 and reads as follows "This letter confirms that the date of your voluntary resignation due to job abandonment with Amazon.com Services LLC is July 27, 2021. You have executed a Confidentiality and Invention Assignment Agreement with the Company. You are reminded that certain provisions of the agreement survive the termination of your employment with the Company and remain in full force and effect. Your agreement is available for review in the MyDocs portal for 90 calendar days after the end of your employment. We wish you the best in your future endeavors. Sincerely, Amazon Human Resources."

2. Exhibit A on page 22 and 23 [of 32], Encl 5 and 6, respectively, of Appellant's Record of Appeal submitted to and received by the Court of Appeals, February 1, 2023, cites Amazon Email, dated August 12, 2021 at 16:24:56 EDT. **Subject:** About Leave for – Miya Freeman, **Case 02298957.** **Encl 5** reads as follows: "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 and Leave Service." **Encl 6** reads as follows: " On July 26, 2021 we received your request for a leave of absence. See below for more information about the status of your claim." ' Medical Leave of Absence *Pending* August 12, 2021 Start Date July 27, 2021 **End Date** August 17, 2021.'

MOTION

The Court of Appeals should reverse the judgment of the Administrative Law Court and direct the Department to pay the Appellant unemployment benefits for 20 weeks based on evidence contained in the *whole record* of the case.

CLOSING ARGUMENTS

South Carolina policy favors the disposition of issues on the merits rather than on technicalities. To this end, the Appellant enjoins the court to view the evidence of the *whole record* in the light most favorable to the moving party as a Matter of Law.

1. WHETHER SUBSTANTIAL EVIDENCE EXISTS TO REVERSE THE ADMINISTRATIVE LAW JUDGE’S DECISIONS TO AFFIRM THE DEPARTMENT’S DENIAL OF PAYMENT OF UNEMPLOYMENT INSURANCE (UI) BENEFITS TO THE APPELLANT DUE TO UNTIMELY APPEAL SUBMISSIONS?
2. WHETHER IN ACCORDANCE WITH S.C. CODE ANN.§ I-23-380 (5) THE SUBSTANTIAL RIGHTS OF THE APPELLANT WERE PREJUDICED WHEN, AMONG OTHER THINGS, THE DEPARTMENT’S DECISION, INCLUDING ITS FINDINGS, INFERENCES, AND CONCLUSIONS, WERE CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD?

Gibson v. Florence Country Club, 282 S.C.384 at 318 S.E.2d 365, 367 (1984) Circuit Court’s reversal of The Employment Security Commission’s denial of Gibson’s unemployment benefits provides precedence for a similar reversal of the ALC’s and the Department’s denial in this case.

The Department relied on the erroneous statement in Amazon's letter dated July 27, 2021, that the Appellant abandoned her job as the basis for denying her claims for unemployment benefits. The Department erred in its initial decision to deny the Appellant's claim for unemployment benefits for 20 weeks. **ALL** of the Department's subsequent actions pertain to the Appellant's late submission of appeals **FLOW** from this initial, erroneous decision.

Among the assorted reasons for denying the payment of benefits, the Department stated: the Appellant *voluntarily severed her employee relationship with Amazon*; filed for benefits while on a leave of absence; was unable to work due to a health condition; did not provide the specified number of verifiable contacts; did not provide evidence that she was available and actively seeking full time work; was on vacation and not available for work.

The Department should not have denied the Appellant's claim for unemployment benefits for the following reasons:

On July 28, 2021, via email with a letter attachment dated July 27, 2021, Amazon discharged the Appellant from her employment and cited *job abandonment* as the reason for its action. On August 12, 2021, Amazon sent another email to the Appellant informing her of its July 26, 2021, decision to deny her Federal Family and Medical Leave [FMLA] from July 27, 2021, to August 17, 2021; and further, of their denial of FMLA from July 17, 2021, to July 26, 2021. In addition, the email also showed that as of August 12, 2021, her request for medical leave from July 27, 2021, to August 17, 2021, **as being in a pending status (in contravention to her notice of termination, dated July 27, 2021)**.

Moreover, the email also communicated that as of August 12, 2021, Amazon approved her medical leave of absence from July 17, 2021, to July 26, 2021.

The period of medical leave shown in Amazon's letter of August 12, 2021, is **different** from the from the period stated in Amazon's Case Number 02298957 (**July 17, 2021, to August 18, 2021**) request for information sent to the Appellant's medical service provider.

The Appellant's '**whole record**' contains incontrovertible evidence that shows the Appellant **DID NOT** voluntarily sever her employee/employer relationship with Amazon, the rationale the Department used to deny the Appellant's initial claim.

In its June 7, 2022, BRIEF OF RESPONDENT, the Department restated its erroneous rationale (R.p.29) and enumerated instances of the Appellant's late submission of her appeal. See (R.p.37); (R.pp.44); (R.pp.47-91) and (R.pp.1-4; pp.99-102), which served as the basis for the June 21, 2022, Administrative Law Court Judge's decision to AFFIRM the Department's determination that denied payment of unemployment benefits to the Appellant.

In its June 7, 2022, BRIEF OF RESPONDENT, the Department, however, was **SILENT** on the **CONTENTS of the Appellant's appeal submissions dated September 29, 2021, and October 4, 2021, respectively.**

Beyond the January 5, 2022, Evidentiary Hearing's inconclusive and confusing exchange between the Hearing Officer and the Appellant; the Department asserted that October 19, 2021, was the Appellant's first attempt to appeal the October 4, 2021, separation determination, without addressing the 'contents' of the Appellant's September 29, 2021, and

October 4, 2021, respectively, correspondence submitted via FAX to 803-727-0287, **per lines 12-14, page 061 of Evidentiary Hearing on January 5, 2021.**

The Appellant contends that she did not voluntarily sever her relationship with Amazon and the Appellate Panel's and the Department's decisions were based on Amazon's improper termination of her employment on July 27, 2021, and were, therefore, flawed.

CLOSING ARGUMENTS

1. WHETHER SUBSTANTIAL EVIDENCE EXISTS TO REVERSE THE ADMINISTRATIVE LAW JUDGE'S DECISIONS TO AFFIRM THE DEPARTMENT'S DENIAL OF PAYMENT OF UNEMPLOYMENT INSURANCE (UI) BENEFITS TO THE APPELLANT DUE TO UNTIMELY APPEAL SUBMISSIONS?
2. WHETHER IN ACCORDANCE WITH S.C. CODE ANN. § I-23-380 (5) THE SUBSTANTIAL RIGHTS OF THE APPELLANT WERE PREJUDICED WHEN, AMONG OTHER THINGS, THE DEPARTMENT'S DECISION, INCLUDING ITS FINDINGS,
3. INFERENCES AND CONCLUSIONS WERE CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD?

The Appellant argues that the ALC's and the Department's decisions were *clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.*

For the reasons stated, the Court of Appeal should reverse the judgement of the Administrative Law Court and direct the Department to pay the Appellant unemployment benefits for 20 weeks based on evidence contained in the *whole record* of the case.

August 14, 2023

Miya S. Freeman
405 Grand National Lane
Elgin, SC 29045
(803) 862-9424
Pro se Appellant

**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**

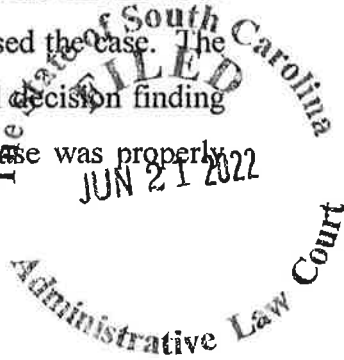
Miya Freeman,)	Docket No. 22-ALJ-22-0098-AP
)	
Appellant,)	
)	
v.)	FINAL ORDER
)	
South Carolina Department of Employment and Workforce and Amazon Com Services, Inc.,)	
)	
Respondents.)	

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

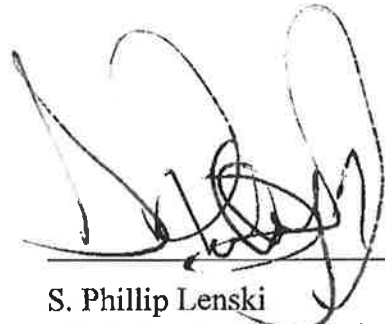
A claimant wishing to appeal from the initial determination of a Department claims adjudicator must file the appeal "not later than ten days after the determination was mailed to his last known address." S.C. Ann. § 41-35-660 (2021); *see also* S.C. Code Ann. Regs. 47-51(A)(1) (Supp. 2020) ("The party 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.

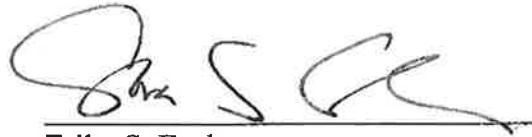


S. Phillip Lenski
Administrative Law Judge

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

amazon

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

Case No. 2022-000982

RECEIVED
AUG 14 2023
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

Valerie McMellan
SC Department of Employment and Workforce
PO Box 8597 Columbia, SC 29202
803-737-0395/803-737-0124 fax
legal@dew.sc.gov

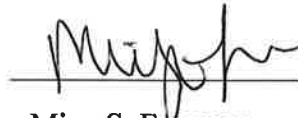
State of South Carolina
FILED
AUG 14 2023
Administrative Law Court

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

Miya S. Freeman
405 Grand National Lane, Elgin, SC 29045
(803) 862-9424 (C)
freemanmiya129@gmail.com
Pro se Appellant

August 14, 2023



Miya S. Freeman
405 Grand National Lane
Elgin, SC 29045
(803) 862-9424 (C)
freemanmiya129@gmail.com
Pro se Appellant

RECEIVED

Aug 21 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
S. Philip Lenski, Administrative Law Judge
Case No: 22-ALJ-22-0098-AP

Appellate Case No. 2022-000982

Miya Freeman.,

Respondents,

v.

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

Appellant.


PROOF OF SERVICE

I certify that I have served the South Carolina Department of Employment and Workforce's Motion to Dismiss on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on August 21, 2023 addressed to the parties at their addresses of record:

Miya S. Freeman
405 Grand National Lane
Elgin, South Carolina 29045

Amazon.com Services
Post Office Box 1650
Clearwater, Florida 33766

August 21, 2023



Amy Proveaux
Sr. Paralegal
South Carolina Department of Employment and
Workforce
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-0395