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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE 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.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

After the South Carolina State Board of Registration for Professional Engineers and Surveyors ("Board" or "Respondent") denied Appellant's application for comity in 2022, Appellant appealed the Board's decision to the Administrative Law Court ("ALC"). On February 6, 2023, the ALC filed and served its final order in the matter, in which it affirmed the Board's decision.[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 to file his motion for rehearing, with said motion being due no later than March 20, 2023. Appellant also provided that a hard copy of his motion would be mailed to both parties. (Appellant's Motion to Extend Time to File a Motion of Reconsideration dated February 16, 2023).

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. (ALC's February 27, 2023 Status Order pp. 1–4).

Appellant eventually satisfied the ALC's inquiries as provided in its aforementioned status order regarding whether he had timely filed the motion for extension of time in which to file the rehearing motion. On March 14, 2023, the ALC granted Appellant's motion for an extension to file and serve his motion for rehearing. (ALC's March 14, 2023 Order Granting Appellant an Extension to File and Serve His Motion for Rehearing in This Matter pp. 1–4). In doing so, the Court provided that Appellant indicated that he suffered from health problems which affected his ability to timely file a motion for rehearing. (*Id.* at 2). Finding that the ALC granted Respondent an extension for a similar reason, it concluded that Appellant had demonstrated good cause. (*Id.*)

[1] As provided in this Court's July 19, 2023 Order, this Court has no jurisdiction over the ALC's February 6, 2023 Final Order as further described in this Brief. *See infra* p. 5.

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). (*Id.* at 2–3).

Appellant failed to meet the ALC's graciously-extended March 20, 2023 deadline that he requested. Instead, on March 21, 2023, he emailed the ALC and Respondent a copy of his motion for rehearing and a filing in support of the motion. The email provided that the motion was being mailed to the Court and Respondent on March 21, 2023. The motion, filing in support, and certificate of service attached to the email were also dated March 21, 2023. (Appellant's Motion for Rehearing and Filing in Support dated March 21, 2023).

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. (ALC's March 30, 2023 Order Denying Appellant's Motion for Rehearing pp. 1–5).

On April 10, 2023, Appellant filed a "motion to extend time for late filing of motion for reconsideration." (Appellant's Motion to Extend Time for Late Filing of Motion of Reconsideration dated April 11, 2023 pp. 1–3). 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.

(ALC's April 28, 2023 Order Denying Appellant's Motion to Extend the Time to File His Motion for Rehearing pp. 1–6).

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

On May 31, 2023, this Court, after preliminarily reviewing the appealed order, indicated that the April 28, 2023 order may not be appealable and requested that each party serve and file a memorandum addressing the issue of appealability within ten days of May 31, 2023. In accordance with the Court's directive, Respondent served and filed its Memorandum regarding Appealability on June 7, 2023. Appellant submitted his memorandum on June 8, 2023.

After careful consideration of the parties' memoranda regarding appealability, this appeal was allowed to proceed as to the ALC's April 28, 2023 order only as provided for in this Court's July 19, 2023 order. In so ruling, this Court found that Appellant only included the April 28, 2023 order in his notice of appeal to the Court of Appeals, and that Appellant's March 21, 2023 motion for reconsideration was untimely; thus, it did not toll the time for serving and filing the notice of appeal of the ALC's February 6, 2023 Final Order. Consequently, this Court stated it had no jurisdiction over the ALC's February 6, 2023 Final Order.[2] However, this Court did find that Appellant had filed his notice of appeal within thirty days of receipt of the April 28, 2023 Order, which denied Appellant's second motion to allow late filing of his motion for reconsideration. Accordingly, the Court explained that the only issues on appeal before this Court would be limited

[2] Similarly, this appeal is limited to the April 28, 2023 order only, despite Appellant's attempt to relitigate and inject issues from a 2005 Board decision that was upheld by the ALC on appeal as well as a 2014 Board decision that was never appealed.

to the ALC's April 28, 2023 order only, and that the parties may not argue the merits of the case because the ALC's February 6, 2023 Final Order is not before this Court.

Appellant now appeals.

STANDARD OF REVIEW

The standard of review for appeals from an administrative law judge is governed by S.C. Code Ann. § 1-23-610(B) of the South Carolina Administrative Procedures Act ("APA"). However, this Court may not overturn the ALC's decision unless it finds that the decision is, among other reasons, in excess of the statutory authority of the agency, affected by an error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. Code Ann. § 1-23-610(B)(b), (d), (e), and (f) (2008).

"The decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008). "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). "An abuse of discretion occurs when the trial court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the trial court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious." *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 656 (2006).

"Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Midlands Util., Inc. v. S.C. Dep't of Health & Envtl. Control*, 298 S.C. 66, 69, 378 S.E.2d 256, 258 (1989). "[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. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). Furthermore, the factual findings of an administrative agency are presumed to be correct and will be set aside only if unsupported by substantial evidence. *Kearse v. State Health and Human Servs. Fin. Comm'n,* 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995). Appellant has the burden of convincingly proving that the ALC's decision is unsupported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996).

ARGUMENTS

I. The ALC did not err in denying Appellant's second extension request to file his motion for rehearing.

Appellant presents two arguments as to why the ALC erred in denying his April 10, 2023 motion for extension to file his motion for rehearing — his second extension request.[3] As detailed below, these arguments are wholly without merit and must fail.

[3] In his brief, Appellant incorrectly and repeatedly refers to his second motion as being filed on April 28, 2023. It was in fact dated April 10, 2023, with the ALC order denying said motion on April 28, 2023. Further, while Appellant's April 10, 2023 motion was captioned as "Appellant's Motion to extend time for late filing of motion of reconsideration" this Brief will refer to it as "Appellant's second motion for extension" for the sake of brevity and clarity.

A. Appellant ignores both the record and the law in arguing that the ALC erred when it denied granting his second motion for extension.

In his brief, Appellant argues that the ALC erred in denying his second motion for extension "because Appellant had good cause." (Appellant's Br. p. 4). Appellant then argues that the "SC Rules of procedure allows parties to file motions for extensions, and agencies and courts generally grant these extensions if the parties demonstrate good cause." (*Id.*) In his brief, Appellant identifies that the ALC's denial of his second motion for extension was based on the ALC including in its order that "Appellant's motion for an extension relies upon the same generic considerations which supported the first motion[...]." (*Id.*)[4] In support of his argument, Appellant then includes language from his second motion for extension and devotes half a page to purported issues involving the attorney that represented him in his 2005 appearance before the Board. (*Id.* at 4–5). After providing more information regarding his status as an out-of-state pro se litigant, Appellant argues that "[i]t should be noted that the original deadline for Appellant filing the Motion for Reconsideration was March 20, 2023, [and that] the Appellant submitted an extension on March 21, 2023, and was thus only one day late." (*Id.* at 5).

Upon review of the record, case law, and applicable court rules, it is clear that Appellant's argument must fail.

As an initial matter, Appellant has abandoned his "good cause" argument on appeal by making conclusory statements and failing to cite legal authority. "An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." *State v. Howard*, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct. App. 2009). "South

[4] The ALC's full statement, after first providing that the ALC might have been inclined to grant an additional extension had Appellant properly moved for one before the expiration of the initial extension, is as follows: "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.*" (*Id.*) (emphasis added).

Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fidelity and Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001); *see also Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court."). Here, Appellant broadly asserts that motions for extensions are allowed to be filed, and that agencies and courts generally grant these extensions if the parties demonstrate good cause without providing any supporting authority for these statements.

Pursuant to SCALC Rule 40, a motion for rehearing "must be filed within ten days of receipt of the order." Applying SCALC Rule 40 to the present matter, that meant that Appellant's motion for rehearing was due February 16, 2023. Instead of filing the motion for rehearing within that 10-day time period, Appellant sought and received an extension until March 20, 2023. Even in light of the additional 32-day period he was afforded, Appellant failed to comply with the Court-extended deadline he requested. Pursuant to SCALC Rule 38, "[u]pon 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).

With respect to good cause specifically, SCALC Rule 3(B) provides that "[f]or 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." A review of the record makes clear that the ALC properly exercised discretion in determining when good cause was and was not shown. S*ee Morris v. BB & T Corp.*, 438 S.C. 582, 587, 885 S.E.2d 394, 397 (2023) ("[W]hen a ...court's...thought process of applying sound principles of law to the court's view of the facts and circumstances is evident in

the record of proceedings in a hearing, in a written order, or otherwise, the appellate court will defer to the trial court's exercise of discretion, even when the judges on the appellate court might have made the decision differently.") The 2014 Notes to SCALC Rule 38 are also instructive and provide the following:

> In all cases involving pro se litigants or those without substantial knowledge and experience in administrative matters, the administrative law judge may make reasonable efforts to assure fairness. Nevertheless, such litigants remain responsible for complying with these Rules and all applicable statutes. An administrative law judge may dismiss an appeal or resolve an appeal adversely to the offending party for failure to comply with any of the ALC Rules of Procedure for appeals or for failure to comply with an order of the Court.

An examination of what has transpired since the ALC issued its February 6, 2023 Final Order reveals the ALC committed no error and did not abuse its discretion.

The ALC served its final order on February 6, 2023. Thus, the actual original deadline for filing the motion for hearing was February 16, 2023. At 5:00 pm on February 16, 2023, Appellant emailed the Court and Respondent with his first motion for extension attached. Appellant's motion sought an extension to file the motion for reconsideration, with said motion being due no later than March 20, 2023. In his first motion, Appellant cited he was seeking an extension "[d]ue to health issues of the Appellant as well as an unexpectedly high volume of work and meetings and seeking to retain counsel to file the Motion of Reconsideration." (Appellant's First Motion to Extend Time to File a Motion of Reconsideration pp. 1–2).[5]

On February 27, 2023, after not receiving Appellant's first extension motion, the ALC issued a Status Order directing Appellant to take certain actions to ensure that he did in fact file with the Court and serve Respondent by U.S. mail on February 16, 2023, in order to meet the requisite 10-day deadline. Appellant had until March 9, 2023, to provide this information. On

[5] As provided by the ALC in its March 14, 2023 Order, the ALC granted Respondent a prior extension in the matter for a similar reason.

March 8, 2023, Appellant filed, served, and emailed a copy of the documents that were outlined in the February 27, 2023 Status Order. So, the ALC granted Appellant's motion for an extension of time to file his first motion for rehearing in an order dated March 14, 2023. In that order, it provided that he had until March 20, 2023, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing, and email the same to both at the time of filing and serving the motion.

As of March 20, 2023, Appellant had filed nothing with the Court and had served nothing upon Respondent, despite the Court having granted Appellant an extension until March 20, 2023, to file his motion for rehearing, notwithstanding Appellant's previous deficient service and filing issues.

On March 21, 2023, Appellant emailed a copy of his motion for rehearing and a filing in support — over 42 days after the ALC issued its final order and after the Court-extended deadline that Appellant himself had requested and received passed. In that email, he confirmed that the motion and filing in support were being mailed on March 21, 2023, and the motion, filing in support, and certificate of service reflected the same late date.

On March 30, 2023, the ALC denied Appellant's motion for rehearing because it was untimely. (March 30, 2023 ALC Order Denying Appellant's Motion for Rehearing pp. 1–4).

On April 10, 2023 — approximately 21 days *after* his motion for rehearing was due based on the ALC having already granted him an extension to file said motion — Appellant emailed and mailed a "motion to extend time for late filing of motion of reconsideration."

Here, the ALC committed no error when it denied Appellant's second motion for extension in its order dated April 28, 2023, which Appellant is presently appealing.

After referencing the aforementioned applicable SCALC Rules, the ALC explained that because it was receptive of Appellant's first request for an extension of time for him to file and

serve his motion for rehearing, it granted Appellant the deadline he sought, necessarily finding that good cause was shown pursuant to SCALC Rule 3(B). (April 28, 2023 ALC Order p. 4). It further explained that the deadline Appellant requested passed without any motions from him seeking a further extension, and that "[h]ad Appellant sought an additional extension prior to the expiration of the initial extension, the [ALC] might have been inclined to grant that request, but Appellant made no such motion." (*Id.*) The ALC continued and provided that Appellant's second motion for 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." (*Id.*)

In arguing that the ALC erred by failing to find good cause exists, it is clear that Appellant has completely ignored his first extension request to file his motion for rehearing, which was granted by the ALC in accordance with its discretion in determining that good cause did exist in that instance and for which he was able to have approximately 42 days after the date the final order was issued to submit his motion for rehearing, which he failed to do so. Despite arguing that the "original deadline was March 20, 2023," this is simply incorrect. (Appellant's Br. p. 5). The original deadline to file a motion for rehearing was February 16, 2023, and the ALC graciously provided Appellant an extension to file his motion for rehearing until March 20, 2023. (March 14, 2023 ALC Order Granting Appellant an Extension to File and Serve his Motion for Rehearing in this Matter).

Appellant completely ignores what has taken place thus far and takes issue with the ALC's characterization of his second motion that relies on "generic considerations."[6] Further, Appellant

[6] In contesting this characterization, Appellant argues that his challenges are not generic and provides that the entire world's struggles with the pandemic, together with "ever-aging" and taking care of his mother, are not generic considerations. With the exception of taking care of an elderly relative, aging and the general impact of an ebbing global pandemic are, by their nature, generic considerations. *See* "Generic." Merriam-*Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/generic. Accessed November 10, 2023 (defining "generic" as "relating to or characteristic of a whole group or class.")

disregards the rationale that the Court has provided as to why it did not grant a second request for extension. Of note, the issues he cited in his late-filed second motion for extension are virtually identical to the first with the exception of adding the word "continued" before the first two considerations: Appellant's health issues, unexpectedly high volume of work and meetings, and seeking to retain counsel to file the reconsideration motion.

The ALC has demonstrated a more than equitable exercise of discretion in its handling of the protracted, repeated motions from Appellant for extension to file a motion for rehearing, exhibiting painstaking efforts to ensure fairness throughout this matter. The record unequivocally shows that the ALC did not abuse its discretion, and Appellant has shown neither good cause nor any reasonable argument that the ALC erred in its decision. As the ALC properly summarized this matter, "almost three months [had] elapsed since the [ALC] issued the final order on February 6, 2023. At some point, finality is required." (April 28, 2023 ALC Order p. 4).

B. The doctrine of equitable tolling, if applicable to appellate deadlines imposed by court rules, is reserved for extraordinary circumstances, which are wholly absent in this case.

Appellant's second argument is that this Court should apply the judicial doctrine of equitable tolling in the present matter. In arguing in favor of applying equitable tolling, Appellant pulls quotations from reported cases that simply identify what equitable tolling is and that the doctrine can be used to prevent unfairness to a diligent plaintiff, a status to which Appellant likens himself because he has, off and on for almost two decades, attempted to become licensed in South Carolina. Here, Appellant thoroughly misunderstands the applicability of equitable tolling and conveniently leaves out the grounding principles that direct the doctrine's applicability.

Respondent takes no issue with the authority Appellant has cited in his very truncated summation of equitable tolling. However, Appellant has conveniently omitted from his brief that equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of

limitations and that it is "reserved for extraordinary circumstances." *See Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008) (*quoting Hooper v. Ebenezer Senior Svcs. and Rehabilitation Ctr.*, 377 S.C. 217, 230, 659 S.E.2d 213, 219 (Ct. App. 2008), *rev'd on other grounds*, 386 S.C. 108, 687 S.E.2d 29 (2009)).

Based upon a review of applicable case law, the reported cases reviewed are in the context of the timeliness of asserted claims as they relate to statutes of limitations.[7] The present matter is not in the context of statutes of limitations, but rather deadlines imposed by court rules. With that said, in the event this Court finds that the doctrine of equitable tolling does apply to appellate deadlines created by court rules, it should find that equitable tolling is inapplicable and inappropriate in the present matter.

This Court in *Pelzer* provided the following summarization for equitable tolling and when it has been deemed applicable:

> The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff. However, equitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.

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[7] *See, e.g.*, *English v. Pabst Brewing Co.*, 828 F.2d 1047, 1049 (4th Cir. 1987) ("Equitable tolling applies where the defendant has wrongfully deceived or misled the plaintiff in order to conceal the existence of a cause of action. To invoke equitable tolling, the plaintiff must therefore show that the defendant attempted to mislead him and that the plaintiff reasonably relied on the misrepresentation by neglecting to file a timely charge.") (citations omitted); *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 687 S.E.2d 29 (2009) (finding that the statute of limitations should be tolled when a nursing home failed to properly list its registered agent for service with the Secretary of State as required by state law, which hindered the personal representative of a former resident from pursuing service against the nursing home); *Hopkins v. Flovd's Wholesale*, 299 S.C. 127, 382 S.E.2d 907 (1989) (affirming the Court of Appeals' adoption of a rule that tolls the statute of limitations during the period of an employee's reliance on his employer's assurances that his claim was compensable and would be taken care of with respect to a workers' compensation claim); *Crocker v. S.C. Dep't of Health & Env't Control*, 428 S.C. 1, 10, 831 S.E.2d 924, 930 (Ct. App. 2019) ("We find the circuit court correctly refused to apply equitable tolling to Crocker's claim. In this case, Crocker did not allege the Department participated in any deceptive or bad faith attempts to conceal the existence of his cause of action."); *Pelzer v. State*, 378 S.C. 516, 662 S.E.2d 618 (Ct. App. 2008) (finding that the statute of limitations for filing an application for post-conviction relief was not tolled because applicant filed his application in the wrong venue).

> Equitable tolling has been deemed available where[:]
> - extraordinary circumstances prevented the plaintiff from filing despite his or her diligence.
> - the plaintiff actively pursued his or her judicial remedies by filing a defective pleading during the statutory period or the claimant has been induced or tricked by the defendant's misconduct into allowing the filing deadline to pass.
> - the plaintiff, despite all due diligence, is unable to obtain vital information bearing on the existence of his or her claim.
>
> ...
>
> *Pelzer,* 378 S.C. at 521, 662 S.E.2d at 620–21 (Ct. App. 2008) (*quoting Hooper v. Ebenezer Senior Svcs. and Rehabilitation Ctr.*, 377 S.C. 217, 232, 659 S.E.2d 213, 221 (Ct. App. 2008), *rev'd on other grounds*, 386 S.C. 108, 687 S.E.2d 29 (2009)).

In its opinion, the *Pelzer* court cites to *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2000), in which that court held that a *habeas* petitioner missing a filing deadline to due erroneous advice he received from his counsel did not amount to an extraordinary circumstance requiring the applicability of equitable tolling. The *Pelzer* Court found the following reasoning in *Harris*, in denying equitable tolling to a party, to be "particularly illuminating:"

> [A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where — due to circumstances external to the party's own conduct — it would be unconscionable to enforce the limitation period against the party and gross injustice would result.
>
> *Pelzer,* 378 S.C. at 522–23, 662 S.E.2d at 621 (Ct. App. 2008).

Here, none of the extraordinary circumstances in which equitable tolling has been deemed applicable are present.[8] In this case, Appellant failed to file a motion for rehearing almost 42 days after the ALC issued its final order. In its simplest terms, after receiving an extension to file the required motion for rehearing, Respondent missed the deadline through his own failure to act. No

[8] *See, e.g.*, cases cited *supra* note 7.

case law supports Appellant's bare contention that extraordinary circumstances drove his failure to timely meet the March 20, 2023 deadline.

Further, the reasoning provided in *Pelzer* and other supporting case law as to why this Court should carefully guard the application of equitable tolling is directly on point and is instructive for this Court as to equitable tolling not being applicable in this instance. None of the limited circumstances where equitable tolling has been applied to statutes of limitations are present here. Rather, Appellant simply failed to file his motion for rehearing or seek another extension within the extended timeframe provided. Thus, this Court should find that equitable tolling, if it applies to appellate deadlines, is wholly inapplicable here and affirm the Board's April 28, 2023 order.

CONCLUSION

This Court should affirm the ALC's April 28, 2023 Order. The ALC committed no error when it denied Appellant's second motion for extension submitted after the first extension deadline had passed. As is clear, the Court's decision, fully supported by the record, applicable court rules, and case law, was a fair, equitable, and appropriate exercise of discretion. To hold otherwise would allow litigants to successfully flout court rules despite having been given every opportunity for a fair proceeding.

Respectfully submitted,

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