

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

**RECEIVED**

Docket No. 23-ALJ-22-0429-AP

**Nov 08 2024**

---

Appellate Case No. 2024-001608

**SC Court of Appeals**

DeQuincey G. Simmons,

Appellant

v.

South Carolina Department of Employment and Workforce and  
Bridgestone Americas Tire Operations, LLC,

Respondents

---

**RESPONDENT'S RESPONSE IN OPPOSITION TO  
APPELLANT'S MOTION TO VACATE DISMISSAL OF  
JOINT MOTION TO DISMISS FOR LACK OF  
JURISDICTION**

---

Respondents the South Carolina Department of Employment and Workforce (the "Department") and Bridgestone Americas Tire Operations ("Bridgestone") (the Department and Bridgestone collectively herein the "Respondents") hereby submit this Response in opposition to Appellant's Motion to Vacate Dismissal of Joint Motion to Dismiss for Lack of Jurisdiction. Respondents' Joint Motion to Dismiss for Lack of Jurisdiction remains pending, and therefore, Appellant's Motion is entirely improper.

Appellant's request for sanctions is equally improper, and should be summarily dismissed, because Respondents have not engaged in any sanctionable conduct. Furthermore, this Court lacks jurisdiction over this action – due to the untimeliness of Appellant's filing of his Notice of Appeal – and Appellant has further failed to timely address the deficiencies outlined in this Court's October 15, 2024, deficiency letter, both of which warrants dismissal of this action. This motion is made on the following grounds.

**I. Factual Background**

This matter involves an appeal to the Administrative Law Court ( the "ALC") by Appellant from a decision by the Department's Appellate Panel ( the "Panel") disqualifying Appellant from receiving unemployment benefits for sixteen weeks upon a finding he was discharged for cause connected to his former employment. The initial panel decision, which prompted the appeal to the ALC was issued on July 19, 2023. Appellant then appealed the Panel's decision on October 20, 2023, to the ALC.

Ultimately, Respondents filed a Joint Motion to Dismiss for Appellant's failure to comply with the Court's rules. The thrust of the Joint Motion to Dismiss was that Appellant failed to file an appellate brief, as he was required to do under the relevant rules. On July 29, 2024, the ALC issued an Order granting Respondents' Joint Motion to Dismiss. (Exhibit A). In its order, the ALC held that the document filed by Appellant failed to identify the issues on appeal, did not raise any objection with the Panel's order, and further failed to offer "any legal argument on why the Panel's decision was erroneous." (*Id.*). As a result, the ALC ruled that Appellant's appeal of the Panel's Order should be dismissed for failure to comply with SCALC Rule 38. (*Id.* at 3). After the ALC issued its order

dismissing Appellant's appeal, Appellant filed a Motion for Summary Judgment and Sanctions for False Statements.

On August 13, 2024, Appellant filed an untimely Motion for Rehearing with the ALC. On August 22, 2024, the ALC issued an Order denying Appellant's Motion for Rehearing, holding, "Accordingly, because the Motion was untimely and because Appellant failed to show good cause to vacate the Court's July 29 Order of Dismissal, I conclude the Motion must be denied." (Exhibit B). The ALC summarily denied that motion in an order dated August 22, 2024. (Exhibit B).

On September 20, 2024, fifty-three days after the ALC's final decision in this matter, Appellant filed and served a Notice of Appeal to this Court. Appellant did not serve Respondents with the Notice of Appeal until September 23, 2024, fifty-six days after the ALC's final decision.

On September 24, 2024, this Court issued a Deficiency Letter to Appellant noting that Appellant (incorrectly) identified "an order dated September 1, 2006" in his Notice of Appeal and directed Appellant to correct the defect(s) identified in the Court's September 24<sup>th</sup> letter within ten (10) days of the letter. This letter expressly states that the "deficiency must be corrected within ten (10) days of the date of [the] letter" or the matter would be dismissed. On October 11, 2024, Appellant filed a corrected Notice of Appeal identifying "the decision of the Honorable Ralph King Anderson III dated August 22, 2024" as the order which is the basis of this action.

On October 15, 2024, this Court issued a second Deficiency Letter to Appellant. The October 15<sup>th</sup> letter provides that Appellant's "initial brief is not accompanied by a

designation of matter to be included in the record on appeal.” Like the prior letter, the October 15<sup>th</sup> Deficiency Letter to Appellant expressly states that the “deficiency must be corrected within ten (10) days of the date of [the] letter” or the matter would be dismissed. Appellant has yet to file anything with this Court correcting the issue(s) identified in the Court’s October 15<sup>th</sup> Deficiency Letter.

On October 24, 2024, Respondents filed a Joint Motion to Dismiss for Lack of Jurisdiction. In that motion, Respondents moved to dismiss this matter because Appellant’s notice of appeal was untimely; therefore, this Court lacks jurisdiction over this appeal. No order has been issued on that Motion.

On November 4, 2024, counsel for Respondent Bridgestone Americas Tire Operations, LLC received – via U.S. mail – a copy of a document styled as Appellant’s “Motion to Vacate Dismissal of Joint Motion to Dismiss for Lack of Jurisdiction” (the “Motion”). (Exhibit C.) In the Motion, Appellant asks this Court for the following:

1. Vacate the dismissal order issued in response to the Respondents’ Joint Motion to Dismiss for Lack of Jurisdiction, recalculating the appeal timeline from the August 22<sup>nd</sup> denial.
2. Recognize the documented procedural delays and tactics employed by the Respondents and consider imposing appropriate sanctions.
3. Permit the case to proceed with all relevant documents on record to ensure a fair and complete judicial review.

(Motion at 4).

Respondents respectfully submit that Appellant’s Motion should be summarily denied because it is not ripe since no order dismissing this action has been issued. Furthermore, no basis exists upon which sanctions or other penalties should be imposed,

and Respondents, nor their counsel, have engaged in any improper conduct. Finally, Respondents respectfully request that this action be dismissed because (1) this Court lacks jurisdiction over this action due to Appellant's untimely appeal and (2) Appellant has failed to timely correct the deficiencies noted in this Court's October 15<sup>th</sup> Deficiency Letter.

**II. Appellant's Motion to Vacate is Unripe and Improper.**

Generally, [courts] only considers cases presenting a justiciable controversy. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006) (citations omitted); *Concerned Dunes West Residents, Inc. v. Georgia-Pacific Corp.*, 349 S.C. 251, 261, 562 S.E.2d 633, 639 (2002) (appellate courts will not pass on issues in which "a dispute . . . may never arise"). Indeed, where "the rights of the parties have not been finally adjudicated" by the appellate court, a decision by the appellate court on those rights "would be premature." *Spivey ex Rel. Spivey v. Car. Crawler*, 367 S.C. 154, 160, 624 S.E.2d 435 (Ct. App. 2005).

In his Motion, Appellant asks this Court to "vacate orders in the interest of justice," and to vacate "Respondents' Joint Motion to Dismiss for Lack of Jurisdiction." (Motion at 1). However, this Court has yet to rule upon Respondents' Joint Motion to Dismiss for Lack of Jurisdiction. As such, Appellant's Motion is not ripe for this Court's determination since no order has been issued on the pending Motion to Dismiss for Lack of Jurisdiction which *could* be vacated.

As a result, this Court should dismiss Appellant's Motion.

**III. No Sanctionable Conduct Has Occurred.**

Appellate Court Rule 269 provides, in pertinent part, that sanctions may be imposed “[w]here an appeal, petition, motion, or return is frivolous or taken solely for the purposes of delay, or is not in compliance with” the relevant rules of procedure. SCACR 269. Respectfully, none of the circumstances from Rule 260 apply here, and sanctions therefore are not appropriate.

In the Motion, Appellant contends that sanctions are appropriate here because “of the documented pattern of delay and obstruction” by the Respondents.” (Motion at 3). No pattern of delay or obstruction exists. Respondents have timely and properly responded to each of Appellant’s filings in both this Court and in the lower courts. Each of those filings comports with the relevant rules of procedure, and the ALC summarily *denied* a nearly identical, equally improper and baseless, request from Appellant before he initiated this action.

Thus, no basis exists upon which sanctions should be considered or could be awarded in this action. As a result, Appellant’s request for sanctions should be denied.

**IV. Appellant has not Addressed the Procedural Deficiencies Identified by this Court; Therefore, this Action Should be Dismissed.**

On October 15, 2024, this Court issued a second Deficiency Letter to Appellant, in which the Court directed Appellant to correct deficiencies in his filings and to do so within ten (10) days of the date of that letter. If Appellant failed to do so, the October 15<sup>th</sup> letter provides that this Court would dismiss this action.

More than ten (10) days has passed since this Court issued its October 15<sup>th</sup> letter to Appellant. Appellant has failed to correct the deficiencies in that were identified in this Court's October 15<sup>th</sup> letter. Thus, dismissal of this action is entirely properly.

Moreover, Appellant simply cannot cure the untimeliness of the filing of his Notice of Appeal. Thus, for the reasons set forth in Respondents' Joint Motion to Dismiss, this Court lacks jurisdiction over this action and dismissal of the action is entirely proper.

Respectfully Submitted,



Benjamin T. Cook (Bar # 102216)  
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](mailto:Legal@dew.sc.gov)

November 8, 2024

**Attorney for Respondent**  
**SC Dept. of Employment and Workforce**

/s/ Benjamin T. Hepner

Benjamin Hepner( (Bar No. 102734)  
Littler Mendelson, P.C.  
110 E Court St., Suite 201  
Greenville, SC, 29601  
(864) 775-3200 (phone); (864) 484-8663 (fax)  
BHepner@littler.com

**Attorney for Respondent**  
**Bridgestone Americas Tire Operations, LLC**

RECEIVED

Nov 08 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE  
ADMINISTRATIVE LAW COURT  
Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2024-001608

DeQuincey G. Simmons.

Appellant,

v.

South Carolina Department of Employment and  
Workforce and Bridgestone Americas Tire Operations LLC,

Respondents.

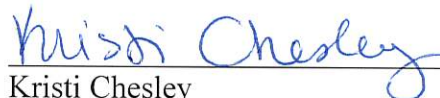
PROOF OF SERVICE

I certify that I have served the RESPONDENTS RESPONSE IN OPPOSITION TO APPELLANT'S MOTION TO VACATE DISMISSAL OF JOINT MOTION TO DISMISS FOR LACK OF JURISDICTION on the parties in this case by mail on November 8, 2024, addressed to the parties at their addresses of record:

DeQuincey G. Simmons  
2503 Hiers Ct  
Hephzibah GA 30815

Benjamin Hepner  
110 E Court St, Ste 201  
Greenville SC 29601

November 8, 2024



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

P.O. Box 995  
1550 Gadsden Street  
Columbia, SC 29202  
dew.sc.gov



Henry McMaster  
Governor

William H. Floyd, III  
Executive Director

Post Office Box 8597  
Columbia, SC 29202  
Telephone: (803) 737-0395  
Fax: (803) 737-0124  
November 8, 2024

**RECEIVED**  
**Nov 08 2024**  
**SC Court of Appeals**

By Email at [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)  
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: DeQuincey G. Simmons v. SCDEW and Bridgestone  
Americas Tire Operations LLC  
Appellate Case No: 2024-001608

Dear Ms. Kitchings:

Enclosed is the RESPONDENTS RESPONSE IN OPPOSITION TO APPELLANT'S MOTION TO VACATE DISMISSAL OF JOINT MOTION TO DISMISS FOR LACK OF JURISDICTION in the above referenced case. A proof of service is also included in this mailing.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Kristi Chesley".

Kristi Chesley  
Administrative Legal Assistant for  
Ben Cook  
Attorney for Respondent South Carolina  
Department of Employment and Workforce