

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Tiffany A. Chabot,

Appellant,

vs.

South Carolina Department of Employment
and Workforce and Wal-Mart Associates,
Inc.,

Respondents.

Docket No. 24-ALJ-22-0403-AP

**ORDER GRANTING MOTION
TO DISMISS**

RECEIVED
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SC Court of Appeals

BACKGROUND

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Tiffany A. Chabot (Appellant). Appellant challenges a final decision of the Appellate Panel of the South Carolina Department of Employment and Workforce (DEW or the Department) dated and mailed on October 15, 2024, in which the Appellate Panel affirmed that Appellant was disqualified from benefits for a period of twenty weeks, with a corresponding monetary reduction. Appellant filed a Notice of Appeal with the Court on November 13, 2024; however, Appellant did not include a copy of the Appellate Panel Decision being appealed. Accordingly, the Clerk's Office at the ALC sent Appellant a memorandum dated November 19, 2024, in which the Clerk's Office instructed Appellant to provide the missing document. The memo concludes in bold print: "DISCLAIMER: Nothing in this Memorandum extends or tolls any statutory deadline for filing the request for hearing / appeal with the Court." Appellant provided the Appellate Panel Decision to the Court on November 29, 2024. This matter was assigned to the undersigned on December 3, 2024.

On January 2, 2025, the Department filed a Motion to Dismiss for Lack of Appellate Jurisdiction, asserting Appellant failed to timely perfect her appeal within the requisite thirty days after mailing of the Appellate Panel Decision.¹ On February 5, 2025, Appellant filed a response

¹ An appellate court has inherent authority and a duty to determine if it has jurisdiction to hear and determine a case. See *Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 380, 762 S.E.2d 44, 47 (Ct. App. 2014) (stating the appealability of an order can be raised at any time); *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 571, 698 S.E.2d 856, 858 (Ct. App. 2010) ("An appellate court may determine the question of appealability of a decision from a [trial] court as a matter of law."); 4 C.J.S. Appeal and Error § 84 (Dec 2024 Update)(" An appellate court has the duty to determine



objecting to the motion and asserting she had timely filed but acknowledged repeatedly that she did not attach a copy of the decision below. Her response comments on difficulties with the U.S. Postal Service.

DISCUSSION

The Administrative Law Court generally has subject matter jurisdiction over appeals from the Department. S.C. Code Ann. § 41-35-750 (2021) (providing for review in the ALC of the Department's decisions). It has appellate jurisdiction over any matter where the procedural requirements for perfecting an appeal have been met. *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 168, 886 S.E.2d 671, 672 (2023); *Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 82 n. 5, 529 S.E.2d 6, 7 n.5 (2000) (holding the failure of a party to comply with the procedural requirements for perfecting an appeal divests the [reviewing court] of appellate jurisdiction); *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (noting that failure to comply with the procedural requirements for an appeal divests the court of appellate jurisdiction); *see generally* S.C. Code Ann. § 1-23-380(1) (Supp. 2024) (stating proceedings for appellate review of an agency decision before the ALC are initiated by "serving and filing [a] notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency").

The requirements for perfecting an appeal of this kind before the ALC are set forth in a number of places. Section 41-35-750 of the South Carolina Code (2021) provides the following:

Within thirty days from the date of mailing [DEW's] decision, a party to the proceeding whose benefit rights or whose employer account may be affected by [DEW's] decision may initiate an action in the [ALC] against [DEW] for the review of its decision, in which action every other party to the proceeding before [DEW] must be made a defendant. In this action a petition, which need not be verified but which must state the grounds on which a review is sought, must be served on the executive director or on a person designated by [DEW] within the time specified by this section.

Id. SCALC Rule 33 states in relevant part: "In appeals from decisions of [DEW], the notice of appeal must be filed and served within thirty (30) days of the date of mailing of the decision of the [DEW] Appellate Panel." *Id.* The rule also addresses the content of a notice of appeal and documents which must be filed with the notice of appeal to perfect the appeal. One document

the question of its and the lower court's jurisdiction on its own motion, and dismiss an appeal if jurisdiction is lacking, even when the parties do not raise the issue.").

required for a perfected notice of appeal is a copy of the final decision which is the subject of the appeal. *Id.* (“The notice shall be accompanied by a filing fee ... and shall contain the following information: ...C. a copy of the final decision ...”).

The South Carolina Supreme Court has explained that a court must dismiss an appeal when there is no appellate jurisdiction. *See generally Elam v. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (“The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.”); *Southbridge Props., Inc. v. Jones*, 292 S.C. 198, 198-99, 355 S.E.2d 535, 535 (1987) (applying the appellate court rules and dismissing case for failure to serve a notice of intent to appeal in a timely manner); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) (applying appellate court rules and finding lack of jurisdiction for failure to serve a notice of intent to appeal in a timely manner). “[A]n appellate body may not extend the time to appeal.” *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 189, 714 S.E.2d 547, 550 (2011).

Filing and service are defined by the rules of this Court. A document is deemed “filed” with the ALC by delivering the document to the Court or “by depositing the document in the U.S. mail, properly addressed to the Court, with sufficient first-class postage.” SCALC Rule 4(B); *see also* Rule 262(a), SCACR. A document is served when placed in the mail to a party's last known address. SCALC Rule 5; *see also* Rule 262(a), SCACR. As these rules indicate—when, as here, a person chooses to file and serve by mail—the controlling date for both filing and service is the date on which the document is placed in the mail.

Furthermore, the Appellant has the burden to establish the Court’s appellate jurisdiction. *See Brown v. Investment Management and Research, Inc.*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996)(“[w]hen challenged, the plaintiff has the burden of showing jurisdiction is properly asserted”); *Eldridge v. City of Greenwood*, 331 S.C. 398, 410, 503 S.E.2d 191, 197 (Ct. App. 1998)(“It is generally true that the plaintiff in an action bears the burden of proving jurisdiction when the defendant challenges it.”); *see generally* 35B C.J.S. Federal Civil Procedure § 849 (Dec 2024 Update) (Burden of Proof- “The party moving for dismissal bears the burden of persuasion except that, on a motion to dismiss for lack of jurisdiction, the plaintiff has the burden of persuasion to convince the court that it has jurisdiction.”). In evaluating the jurisdictional question, the Court must find the preponderance of the evidence supports jurisdiction after a thorough review of the

record. See *Pikaart v. A&A Taxi, Inc.*, 393 S.C. 312, 317, 713 S.E.2d 267, 270 (2011)(expressing appellate court's ability to make jurisdictional determinations based on the preponderance of the evidence); *Pilgram v. Eaton*, 391 S.C. 38, 42, 703 S.E.2d 241, 242 (Ct. App. 2010)("As to these jurisdictional facts, an appellate court must make its own findings according to the preponderance of the evidence after a thorough review of the entire record.").

In this case, the Department mailed the Appellate Panel decision to Appellant on December October 15, 2024. Appellant was required to file and serve the notice of appeal, with all necessary content, within thirty days, or on or before November 14, 2024. Appellant did not meet this deadline. Appellant did file a Notice of Appeal on November 13, 2024, but this filing was not sufficient to perfect the appeal. It incorrectly described the decision over which Appellant sought review,² and, as even Appellant admits, it did not include a copy of the decision challenged by Appellant.

The Court therefore concludes it lacks appellate jurisdiction over this appeal. The Court is aware the consequences of this decision appear harsh. However, applicable law compels the Court's decision. The Court cannot make an exception under these circumstances even though Appellant is a pro se litigant. "A pro se litigant who knowingly elects to represent himself [or herself] assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013) (quoting *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003)). "Lack of familiarity with legal proceedings is unacceptable[,] and the court will not hold a layman to any lesser standard than is applied to an attorney." *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988); see also *Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775 ("The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.").

Having addressed Appellant's failure to timely file a perfected notice of appeal, which alone is fatal for this appeal, the Court need not reach the remaining specific issue of Appellant's failure to timely serve the notice of appeal. *Futch v. McAllister Towing of Georgetown, Inc.*, 335

² The Notice of Appeal recites that Appellant hereby appeals a decision issued on November 13, 2024 but the decision actually challenged was issued on October 15, 2024.

S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (appellate court need not address remaining issues when disposition of prior issue is dispositive).

ORDER

IT IS THEREFORE ORDERED that the Department's motion is **GRANTED** and this matter is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

February 19, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Van Whitehead, hereby certify that I have on 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).



Van Whitehead
Staff Attorney

February 19, 2025
Columbia, South Carolina