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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Crystal M. Rookard, Administrative Law Judge

Appellate Case No. 2025-000007

Christina M. Mims,.....Appellant,

v.

South Carolina Public Employee Benefit Authority,
South Carolina Retirement Systems,.....Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW JUDGE CORRECTLY FIND THAT APPELLANT'S APPLICATION FOR DISABILITY RETIREMENT BENEFITS WAS UNTIMELY BECAUSE IT WAS NOT FILED WITH THE SOUTH CAROLINA RETIREMENT SYSTEM WITHIN ONE YEAR OF HER TERMINATION FROM COVERED EMPLOYMENT?

STATEMENT OF THE CASE

By a request for a contested case hearing filed with the South Carolina Administrative Law Court on August 15, 2024, Appellant Christina M. Mims ("Mims") initiated this matter, in which she seeks review of Final Agency Determination No. 24-010 issued by Respondent South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems ("PEBA") on July 26, 2024. (Request for Contested Case Hearing.) In that Final Agency Determination, PEBA determined that Mims' application for disability retirement benefits from the South Carolina Retirement System ("SCRS" or "System") was properly denied as untimely because it was not filed with PEBA within one year of her termination from covered employment under the System. (PEBA's Mot. for Summ. J., Ex. #4.) In particular, PEBA found that, at the time Mims' SCRS disability retirement application was filed with PEBA on July 5, 2023, she was not currently employed by a participating employer in the System and had not been employed by a covered employer since September 3, 2021, over a year and ten months earlier. (PEBA's Mot. for Summ. J., Ex. #4.)

The contested case proceeding was assigned to the Honorable Crystal M. Rookard ("ALJ") on August 26, 2024. On October 21, 2024, PEBA filed a motion for summary judgment in this matter, on the grounds that there is no genuine issue as to any material fact in the case and that it is entitled to judgment in its favor as a matter of law. (PEBA's Mot. for Summ. J.) The motion was supported by an affidavit and four exhibits. (PEBA's Mot. for Summ. J.) After receiving an extension of time, Mims filed a Response in Opposition to PEBA's Motion for Summary Judgment

on November 20, 2024. (Mims' Resp. in Opp'n to PEBA's Mot. for Summ. J.) The response consisted solely of a memorandum in opposition to the motion, and did not include any supporting affidavits or records. (Mims' Resp. in Opp'n to PEBA's Mot. for Summ. J.) On December 2, 2024, PEBA filed a reply to Mims' response in opposition to its motion for summary judgment. (PEBA's Reply to Mims' Resp. in Opp'n to PEBA's Mot. for Summ. J.) By an Order issued December 6, 2024, the ALJ granted PEBA's motion for summary judgment. (Order of Dec. 6, 2024.) In the Order, the ALJ found that, "[v]iewing the evidence in the light most favorable to [Mims], the Court concludes there is no genuine issue as to any material fact in this case that could affect its legal conclusion, as such [PEBA] is entitled to judgment in its favor as a matter of law." (Order at 5.)

By a Notice of Appeal filed and served on January 2, 2025, Mims appealed the ALJ's decision to this Court, resulting in the instant proceeding.

STATEMENT OF FACTS

Appellant Christina Mims is an inactive member of SCRS, with approximately thirteen years and eleven months of service credit in the System. During her active membership in SCRS, Mims was most recently employed as a financial analyst for Santee Cooper, until her employment was terminated on September 3, 2021. (PEBA's Mot. for Summ. J., Ex. #1, at 1, 3.)

Nearly two years after Mims' termination, by correspondence received by PEBA on July 5, 2023, Santee Cooper submitted an SCRS Disability Retirement Application completed by Mims. (PEBA's Mot. for Summ. J., Ex. #1, at 3, 4.) In the correspondence, Santee Cooper indicated that the application had been prepared and signed on September 15, 2021, but acknowledged that the application had not been previously filed with PEBA. (PEBA's Mot. for Summ. J., Ex. #1, at 1.) In its letter, Santee Cooper also confirmed that the effective date of Mims'

termination had been September 3, 2021. (PEBA’s Mot. for Summ. J., Ex. #1, at 1.) Subsequently, on April 8, 2024, PEBA sent Mims a Notification of Disability Ineligibility, informing her that it was unable to process her application for disability retirement benefits because she was not a “member in service” with a participating employer in SCRS at the time her application was filed with PEBA. (PEBA’s Mot. for Summ. J., Ex. #2.) By correspondence received by PEBA on May 3, 2024, Mims sought further review of the denial of her disability retirement application with PEBA. (PEBA’s Mot. for Summ. J., Ex. #3.) On July 26, 2024, PEBA issued Final Agency Determination No. 24-010, which affirmed the decision not to process her application for disability retirement benefits because it was not timely filed. (PEBA’s Mot. for Summ. J., Ex. #4.)

Mims sought review of that Final Agency Determination in a contested case proceeding before the Administrative Law Court. (Request for Contested Case Hearing.) On October 21, 2024, PEBA filed a motion for summary judgment in that proceeding, and, by an Order dated December 6, 2024, the ALJ granted PEBA’s motion. (PEBA’s Mot. for Summ. J.; Order of Dec. 6, 2024.) In particular, the ALJ found that “it is undisputed that [Mims’] last day of employment with a covered employer, Santee Cooper, occurred on September 3, 2021,” and that “[i]t is also undisputed that PEBA received the SCRS disability retirement application for [Mims] on July 5, 2023, nearly two years following her termination.” (Order at 3-4.) The ALJ further recognized that, under the plain language of the retirement statutes, a disability retirement application must actually be received by PEBA, and not another state agency, in order to be considered filed with the retirement system. (Order at 4.) Consequently, the ALJ found that, “[u]nfortunately, on July 5, 2023, upon the filing of [Mims’] application for disability retirement benefits, [Mims’] last day of employment with a covered employer in the system was more than one year from the date of application” and that, accordingly, “she was not a ‘member in service’ as defined by subsection 9-

1-1540(B)(1) of the South Carolina Code, and thus, not eligible to apply for disability retirement.” (Order at 5.) Mims now seeks review before this Court of the determination by PEBA and the ALJ that her application for SCRS disability retirement benefits was properly denied as untimely because it was not filed with PEBA within one year of her termination from covered employment.

STANDARD OF REVIEW

The standard of review for an appeal to this Court of a final decision of an ALJ is set out in the Administrative Procedures Act at Section 1-23-610(B) of the Code of Laws. S.C. Code Ann. § 1-23-610(B) (Supp. 2024). Pursuant to that section, “[t]he review of the administrative law judge’s order must be confined to the record.” *Id.* And, in conducting that review, this Court “may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact.” *Id.* Rather, under Section 1-23-610(B), this Court

may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (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.

Id. Accordingly, under this standard, “[t]he decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law.”

Centex Int’l, Inc. v. S.C. Dep’t of Revenue, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) (quoting 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)).

On appeal, an appellate court “reviews the grant of a summary judgment motion under the same standard as the trial court, pursuant to Rule 56(c), SCRPC: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Austin v. Beaufort County Sheriff’s Office, 377 S.C. 31, 34, 659 S.E.2d 122, 123 (2008). Further, under Rule 56, “[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Rule 56(e), SCRPC. And, “[i]f he does not so respond, summary judgment, if appropriate, shall be entered against him.” Id. Consequently, “[w]here the plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.” Humana Hospital-Bayside v. Lightle, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991).

ARGUMENT

THE COURT SHOULD AFFIRM THE ADMINISTRATIVE LAW JUDGE’S DECISION THAT MIMS’ APPLICATION FOR DISABILITY RETIREMENT BENEFITS WAS UNTIMELY BECAUSE IT WAS NOT FILED WITH THE SOUTH CAROLINA RETIREMENT SYSTEM WITHIN ONE YEAR OF HER TERMINATION FROM COVERED EMPLOYMENT.

Based upon the undisputed facts in this case and the clear and unambiguous language of Section 9-1-1540(B) of the South Carolina Code of Laws, the ALJ appropriately granted summary judgment in favor of PEBA in this matter, because Mims’ SCRS disability retirement application was not filed with PEBA within one year of her termination from covered employment. And, Mims’ effort to overturn that decision by arguing that preparing her disability retirement

application with her employer's benefits office is the same as filing the application with SCRS is unavailing. The decision of the ALJ should be affirmed.

A. The ALJ properly granted summary judgment in favor of PEBA

Summary judgment is proper in a case when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; see also, e.g., Henderson v. Allied Signal Inc., 373 S.C. 179, 183, 644 S.E.2d 724, 726 (2007). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. Austin v. Beaufort County Sheriff's Office, 377 S.C. 31, 34, 659 S.E.2d 122, 123 (2008). As set forth below, there is no genuine dispute regarding the material facts of this case and the ALJ properly granted summary judgment in favor of PEBA as a matter of law based upon the plain language of the statute governing the time for filing an application for SCRS disability retirement benefits.

The procedural and substantive requirements for the issuance of disability retirement benefits to members of the South Carolina Retirement System are found in Section 9-1-1540 of the Retirement Code, which provides that such benefits are only available “[u]pon the application of a member in service or of the member’s employer received by the system.” S.C. Code Ann. § 9-1-1540(B)(1) (Supp. 2024) (emphasis added). Section 9-1-1540 further provides that, for the purpose of determining whether an application has been timely filed under that section, “a member is considered to be in service on the date the application is filed if the last day the member was employed by a covered employer in the system occurred not more than one year before the date of filing.” Id. Consequently, once a member has been terminated from all covered employment in the System for more than one year and is, therefore, no longer “in service” with a participating employer, the member is no longer eligible to apply for disability retirement benefits under Section

9-1-1540. Id.; cf. Lazicki-Thomas v. S.C. Budget & Control Bd., 378 S.C. 72, 75, 661 S.E.2d 374, 376 (2008) (“The disability retirement statutes mandate that the application be filed by a ‘member in service’.”) (emphasis added).

In the case at hand, the record plainly demonstrates that Mims was not a “member in service” of a participating employer in SCRS at the time her application for disability retirement benefits was filed with PEBA. When Mims’ application was filed with PEBA on July 5, 2023, she was not currently employed by an employer participating in the System and had not been employed by a covered employer since her employment with Santee Cooper had been terminated on September 3, 2021, over a year and ten months earlier. (PEBA’s Mot. for Summ. J., Ex. #1.) Put simply, the undisputed facts in this matter demonstrate that, at the time Mims’ application for disability retirement benefits was filed with PEBA, she was not a “member in service” with a participating employer in SCRS and, thus, was not eligible to apply for disability retirement under the System as a matter of law. See S.C. Code Ann. § 9-1-1540(B)(1) (Supp. 2024); Lazicki-Thomas v. S.C. Budget & Control Bd., 378 S.C. 72, 661 S.E.2d 374 (2008).

Further, given the nature of the statutory requirements at issue in this matter, neither PEBA nor the ALJ had the legal authority to ignore the plain language of Section 9-1-1540(B) and to allow Mims to apply for SCRS disability retirement benefits outside of the period authorized by statute. See S.C. Code Ann. § 9-1-1540(B)(1); S.C. Tax Comm’n v. S.C. Tax Bd. of Revenue, 278 S.C. 556, 560, 299 S.E.2d 489, 491-92 (1983) (holding that an administrative agency “may not validly act in excess of its powers, nor has it any discretion as to the recognition of or obedience to a statute,” but rather the agency “must obey a law found upon the statute books”) (quoting 2 Am. Jur. 2d Administrative Law § 188 (1962)). In sum, under the undisputed facts of this case and the plain language of the applicable statutes, Mims was not eligible to apply for SCRS

disability retirement benefits at the time her application was filed with PEBA. Consequently, while PEBA is sympathetic to Mims' circumstances, the ALJ properly granted summary judgment in favor of PEBA in this case. Cf. Lazicki-Thomas, 378 S.C. at 75-76, 661 S.E.2d at 376 (holding that, because "Appellant was not in service when her application [for disability retirement benefits] was filed," the retirement systems' motion for summary judgment in its favor was properly granted by the administrative law judge).

B. Mims' argument to the contrary fails as a matter of law by ignoring the plain language of the retirement statutes.

In this matter, Mims does not dispute that her application for SCRS disability retirement benefits was not received by PEBA until July 5, 2023, some 22 months after she terminated from all covered employment under SCRS. (Initial Brief of Appellant at 4 ("Despite these facts, the application for disability retirement was not received by Respondent [PEBA] until July 5, 2023.").) Nor does she dispute that the applicable statutes require that an application for disability retirement benefits be filed while the member is "in service" with a covered employer. (Initial Brief of Appellant at 10 ("[Mims] submits that the plain language of S.C. Code Ann. § 9-1-1540(B)(1) requires a disability retirement applicant to apply for benefits while the applicant is a 'member in service.'") Rather, she "believes that she complied with the filing requirement contained in the 'member in service' portion of the statute because her statutory obligations were extinguished when she filed the application with her employer, a state-owned electric and water utility." (Initial Brief of Appellant at 11; see also Mims' Resp. in Opp'n to PEBA's Mot. for Summ. J. at 5. (arguing that, even though her application for disability retirement benefits was not filed with PEBA while she was a member in service with a participating employer, Mims "satisfies the statute because she completed her application for retirement disability and filed it with Santee Cooper while she was a 'member in service.'") However, this argument fails as a matter of law.

As an initial matter, the plain language of the filing requirement in Section 9-1-1540 makes it clear that an application is filed only when it is “received by the system.” See S.C. Code Ann. § 9-1-1540(B)(1) (providing that SCRS disability retirement benefits are only available “[u]pon the application of a member in service or of the member’s employer received by the system”) (emphasis added). Other provisions of the Retirement Code likewise make it plain that the filing date for processing a disability retirement application is the date it is “received by the system.” See, e.g., S.C. Code Ann. §§ 9-1-1540(A), (B)(2), 9-1-1560(E)(1), (E)(2) (2019), 9-1-1570(B) (2019); cf. also S.C. Code Ann. § 9-1-1620(B)(1) (2019) (providing that a request to change the form of a retiree’s monthly benefit is not effective until “received by the system”). Further, the South Carolina Supreme Court has expressly held, in a case involving an allegation that a member’s employer failed to properly assist her with applying for disability retirement benefits, that a covered employer does not stand in the shoes of, or otherwise act on behalf of, the Retirement System, but that the duties for the administration of the System lie with the System. Hamiter v. Ret. Div. of the S.C. Budget & Control Bd., 326 S.C. 93, 484 S.E.2d 586 (1997). Consequently, there is no question that, for the purposes of filing an application for SCRS disability retirement benefits, an application is not filed until it is received by PEBA, and not any other entity, such as a participating employer. See S.C. Code Ann. § 9-1-10(6), (28) (2019) (defining “board” and “system” for the purposes of SCRS); S.C. Code Ann. § 9-1-20 (2019) (establishing SCRS and placing it under PEBA’s management).¹ And, while Mims is correct that Section 9-1-1540 does allow a participating employer to file a disability retirement application on behalf of a member,

¹ Moreover, this conclusion is consistent with black-letter South Carolina law that filing means actual receipt by the proper officer, not mere mailing of a document or providing a document to any other person or entity. See Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001) (“It is clear under South Carolina law that mailing does not constitute filing. When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer.”).

there is nothing in that authorization that would exempt such an application from the filing deadlines or requirements of the statute; that is, regardless of whether a disability application is filed by the member or by his or her employer, it must still be filed with PEBA while the member is “in service.” See S.C. Code Ann. § 9-1-1540(B)(1).

Further, although the decisions are not precedential, it should be noted that this filing requirement has long been recognized by the Administrative Law Court. In particular, in light of the statutory nature of the filing requirements, the Administrative Law Court has repeatedly held that the filing deadline for a disability retirement application under Section 9-1-1540 cannot be expanded, waived, or otherwise excused because of the failure of a member’s employer to provide adequate benefit counseling or assistance with filing the application, and that summary judgment is appropriate in favor of PEBA where a member has claimed that his or her failure to timely file an application for disability retirement benefits with PEBA was caused by the erroneous conduct of his or her employer. See, e.g., Cindy B. Balcombe v. S.C. Pub. Emp. Benefit Auth., Docket No. 17-ALJ-30-0227-CC, 2017 WL 7052258 (S.C. Admin. Law Ct. Jan. 19, 2017); Rosemary S. Smith v. S.C. Pub. Emp. Benefit Auth., Docket No. 16-ALJ-30-0197-CC, 2016 WL 6137417 (S.C. Admin. Law Ct. Oct. 14, 2016); Lucile Muldrow v. S.C. Budget & Control Bd., S.C. Ret. Sys., Docket No. 11-ALJ-30-0419-CC, 2011 WL 7119378 (S.C. Admin. Law Ct. Nov. 28, 2011); Susan Cooper v. S.C. Budget & Control Bd., S.C. Ret. Sys., Docket No. 11-ALJ-30-0391-CC (S.C. Admin. Law Ct. Nov. 9, 2011) (no Westlaw cite available); Sheryl D. Smith v. S.C. Budget & Control Bd., S.C. Ret. Sys., Docket No. 11-ALJ-30-0061-CC (S.C. Admin. Law Ct. May 3, 2011) (no Westlaw cite available); Polly V. Jacobs v. S.C. Budget & Control Bd., S.C. Ret. Sys., Docket No. 08-ALJ-30-0311-CC, 2009 WL 467596 (S.C. Admin. Law Ct. Jan 23, 2009) (all granting summary judgment in favor of SCRS where a member claimed that her failure to timely file her

disability retirement application was caused by errors or failures made by her employer's benefits administrators).

Moreover, it is important to recognize that these decisions are not limited solely to circumstances where an employer provided mistaken or incomplete advice, but also include circumstances where members had submitted documentation to their employers and were relying upon the employers to file the documents on their behalf. For example, in a similar case where the "Petitioner contend[ed] that he submitted his completed disability retirement application and related paperwork to the Charleston County Human Resources office on October 28, 2015 and entrusted his employer to timely submit the application to PEBA," the court recognized that, "[u]nfortunately, Respondent is correct that even if true, Petitioner's contention does not raise issues of fact that would affect this Court's conclusion that, as a matter of law, Petitioner was not a 'member in service' of a covered employee when his application was filed with PEBA on November 13, 2018." James A. Tarter v. S.C. Pub. Employee Benefit Auth., Docket No. 20-ALJ-30-0005-CC, 2020 WL 5648837, at *2 (S.C. Admin. Law Ct. Sept. 10, 2020). Accordingly, in that case, the court granted summary judgment in favor of PEBA, finding that:

[w]hile this court is sympathetic of Petitioner's circumstances, it is factually undisputed that when Petitioner filed his application with SCRS on November 13, 2018, he was no longer a "member in service" as required by Section 9-1-1540(B)(1), and was not eligible to apply for disability retirement benefits as a matter of law. Viewing the evidence in a light most favorable to the Petitioner, this court finds that there is no genuine issue as to any material fact in this case that could affect its legal conclusions, and Respondent is entitled to judgment in its favor as a matter of law.

Id. at *3. Similarly, in a case where the petitioner contended that she had timely submitted change of beneficiary forms to her employer, the court found that "Petitioner's contention that ten days after her divorce, she met with her former Employer's Benefits Coordinator to change her beneficiary from her ex-husband to her children on all her benefits does not alter the undisputed

fact that Petitioner did not comply with the requirements of S.C. Code Ann. § 9-1-1620(B)(1).” Meredith P. Moore v. S.C. Pub. Employee Benefit Auth., Docket No. 19-ALJ-30-0023-CC, 2019 WL 2576523, at *3 (S.C. Admin. Law Ct. June 6, 2019). Consequently, the court granted summary judgment in favor of PEBA in that matter, noting that the South Carolina Supreme Court had “recognized that SCRS employers are not responsible for the administration of the system.” Id. (citing to Hamiter v. Ret. Div. of the S.C. Budget & Control Bd., 326 S.C. 93, 484 S.E.2d 586 (1997)).

In short, Mims’ argument that her SCRS disability retirement application should have been considered filed with the System on the date she prepared it with her employer’s benefits office is not supported by—and directly contradicts—the plain language of the applicable statutory provisions and years of decisions by the Administrative Law Court correctly applying those provisions. As such, it fails as a matter of law and was properly rejected by the ALJ in her decision granting summary judgment in favor of PEBA in this matter.²

In sum, the undisputed facts of this case show that Mims’ application for SCRS disability retirement benefits was not filed with PEBA while she was still a member in service with a covered employer, such that it was properly denied by PEBA and the ALJ as a matter of law pursuant to the plain language of Section 9-1-1540(B) of the Code of Laws. And, unfortunately, her contention

² It is further clear that nothing in Mims’ argument creates a material issue of fact for which an evidentiary hearing would have been necessary, even if it is viewed in the light most favorable to Mims. In particular, even if all of Mims’ contentions are taken as true, there is no dispute of fact that her application for SCRS disability retirement benefits was not filed with—i.e., received by—PEBA while she was still a “member in service” with a participating employer in the system. In addition, as noted above, Mims did not support her opposition to PEBA’s motion for summary judgment with any affidavits or other documents that would demonstrate a material issue of fact for which a hearing was necessary, but rather she simply made legal arguments regarding the filing requirements of Section 9-1-1540 of the Code of Laws. (Mims’ Resp. in Opp’n to PEBA’s Mot. for Summ. J.)

that she prepared her application with an employee in her employer's human resources department and was relying on that employee to timely file her application does not affect that legal conclusion. While those contentions may provide Mims with a basis to seek relief from or recourse against her former employer in another forum,³ it is clear that there are no genuine issues as to any of the material facts relevant to a determination of whether she was eligible to apply for disability retirement benefits under Section 9-1-1540 at the time her application was filed with PEBA. Accordingly, the ALJ properly granted summary judgment in favor of PEBA in this matter and that decision should be affirmed on appeal.

CONCLUSION

Based upon the foregoing discussion and the record in this matter, the Court should affirm the decision of the ALJ below.

Respectfully submitted,



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³ Tellingly, Mims' arguments in this matter do not center on any errors or omissions made by PEBA, but primarily concern the conduct of her employer. *See, e.g.*, Mims' Resp. in Opp'n to PEBA's Mot. for Summ. J. at 7 (noting that it was "because of Santee Cooper's own negligence the forms were never submitted" and arguing that she should not be "responsible for her employer's failure"); Initial Brief of Appellant at 14 (stating that "because of Santee Cooper's nonfeasance, the forms were never submitted" and quoting Santee Cooper representatives as acknowledging that "[t]he error in this instance rests solely with Santee Cooper").