

Notice of Appeal; the document does not list Bridgestone as a recipient.² Attached to Respondents' Motion are three exhibits labeled A through C. Exhibit C is an Affidavit of Beth Hellmann, a Litigation Paralegal employed by Bridgestone, who states that she is "responsible for receiving, opening, and processing mail addressed to Bridgestone's registered agent in South Carolina and received by its registered agent at 6650 Rivers Avenue, North Charleston, SC 29406." Ms. Hellmann attests that Bridgestone has not received a Notice of Appeal from Appellant by mail or by hand delivery.

As of the date of this Order, Appellant has not filed a response to Respondents' Motion. On or about December 11, 2023, Appellant did file, however, a response to the Department's Motion for Extension of Time filed on December 4, 2023, in which Appellant objected to the Department's request for ten (10) additional days to file the Record on Appeal (Record). . Appellant's objection was based on the alleged untimeliness of the Department's request for extension. Contrary to Appellant's argument, the Department's request for extension was timely, inasmuch as the Record was due thirty (30) days after the ALC's November 2, 2023 Notice of Assignment, rendering the Record due on December 4, 2023.³ As such, to the extent still necessary, the Department's Motion for Extension is **GRANTED**.

In pertinent part, subsection 1-23-600(E) of the South Carolina Code (2005 & Supp. 2023), which governs the ALC's appellate authority, provides:

2. The Court does not have an actual copy of the document marked as Exhibit B to Respondents' Motion. Appellant's filings with the Court only include Appellant's Proof of Service on the ALC, which is likewise dated October 20, 2023 - the same date as Appellant's Proof of Service on the Department, as shown in Respondents' Exhibit B. As such, the Court presumes Appellant separately completed Proof of Service form(s) for the parties, and only included his Proof of Service on the ALC in his appeal documents filed with the Court. Although the caption on the Proof of Service lists Bridgestone as a party to this action, the Court has not been provided any indication that Bridgestone was served the Notice of Appeal. Appellant failed to file a reply to the Motion addressing his alleged failure to serve Bridgestone.

3. Pursuant to SCALC Rule 3A regarding computation of time, a prescribed time period begins the day after an action is taken (in this case, the mailing of the Notice of Assignment) and "[t]he last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday'." Here, the thirtieth day after the mailing of the Notice of Assignment was Saturday, December 2, 2023, which means that the last day to file and serve the Motion for Extension of Time was on Monday, December 4, 2023. The accompanying Proof of Service indicates the Motion for Extension of Time was served by mail on Appellant this same day. The date Appellant received the Motion for Extension of Time is not significant.

(E) Review by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the Administrative Law Court, must be in the same manner as prescribed in Section 1-23-380 for judicial review of final agency decisions with the presiding administrative law judge exercising the same authority as the court of appeals, provided that a party aggrieved by a final decision of an administrative law judge is entitled to judicial review of the decision by the court of appeals pursuant to the provisions of Section 1-23-610.

Id.

The appeals process to the ALC, which is outlined under subsection 1-23-380(1) of the South Carolina Code (2005 & Supp. 2023) provides:

Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.⁴

Id. (Emphasis added.)

Filing a Notice of Appeal and service of the document on all parties is essential to perfecting a valid appeal with this Court. In *Elam v. S.C. Dep't of Transportation*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004), the South Carolina Supreme Court made the following observation:

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.

Id.

While the timeliness issue in *Elam* arose under different circumstances, its principle regarding appellate jurisdiction is applicable here where the Appellant allegedly failed to serve Bridgestone with a Notice of Appeal even though the Notice of Appeal was timely filed with the Court, and presumably, the Department. Service of the Notice of Appeal itself on all parties within the appropriate time frame is necessary to perfecting the appeal. At first glance, the Appellant's

4. Rule 203(b)(6) of the South Carolina Appellate Court Rules requires that "the notice of appeal shall be served on the agency, the administrative law court (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision." Rule 203(b)(6), SCACR.

failure to properly serve this document on Bridgestone deprives this Court of appellate jurisdiction to hear his appeal.

However, pursuant to subsection 41-35-750 of the South Carolina Code (2021), a procedure exists to affect direct service of only the Department with a Notice of Appeal from a final decision of the Appellate Panel. In pertinent part, this code section provides:

Within thirty days from the date of mailing the department's decision, a party to the proceeding whose benefit rights or whose employer account may be affected by the department's decision may initiate an action in the administrative law court against the department for the review of its decision, in which action every other party to the proceeding before the department 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 the department within the time specified by this section. Service is considered complete service on all parties, but there must be left with the person served as many copies of the petition as there are defendants, and the department promptly shall mail one copy to each defendant.

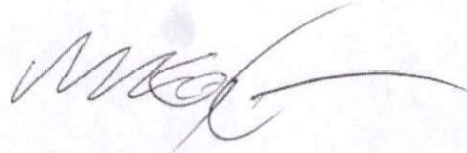
Id. (Emphasis added.)

As such, a plain reading of subsection 41-35-750 allows substituted service on the employer by serving the Department with the Notice of Appeal and including sufficient copies of the same so that the Department may furnish a copy of the Notice of Appeal to the employer. If this procedure is employed, “[s]ervice is considered complete service on all parties.”

Ms. Hellmann’s affidavit attests that Bridgestone has “no record of ever being served with a copy of the notice of appeal for that matter [Dequincey G. Simmons v. South Carolina Department of Employment and Workforce and Bridgestone American Tire Operation, LLC, Docket # 23-ALJ-22-0429-AP] either by mail or hand delivery from Dequincey G. Simmons or Bridgestone’s registered agent in South Carolina.” Notably, while Ms. Hellmann’s affidavit can perhaps be read broadly to encompass substituted service under subsection 41-35-750, nothing in her statement addresses whether Appellant’s Notice of Appeal in this matter was received from the Department. Furthermore, Respondents’ Motion does not address the possibility of substituted service under subsection 41-35-750 and is not supported by an affidavit from a Department employee attesting that the Appellant’s submission of his Notice of Appeal to the Department did not include copies for Bridgestone.

Because of this uncertainty, the Court finds it appropriate to hold a final ruling on the Respondents' Motion in abeyance. Respondents shall have an additional fifteen (15) days from the date of this Order to supplement their filing with the Court to address the concerns raised. Appellant may thereafter have fifteen (15) days from the date of Respondent's supplemental filings to respond. The Court will either grant or deny the Respondents' Motion based on these filings (or the absence thereof).

AND IT IS SO ORDERED.



March 22, 2024
Columbia, SC

—
Milton G. Kimpson, Judge
South Carolina Administrative Law Court

