

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Timothy D. Revels,

Appellant,

vs.

South Carolina Department of Employment
and Workforce, and Sherman College of
Chiropractic,

Respondents.

Docket No. 13-ALJ-22-0508-AP

ORDER OF DISMISSAL

BACKGROUND

This appeal is before the Administrative Law Court (ALC or Court) on an appeal from a final decision of the South Carolina Department of Employment and Workforce Appellate Panel (DEWAP) pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2012). DEWAP issued a decision to Timothy D. Revels (Appellant) on September 26, 2013 reversing Appeal Tribunal Decision 2013-A-11050. Counsel for Appellant filed a Notice of Appeal with the ALC, along with a Certificate of Service, on October 22, 2013. On November 14, 2013, Respondent South Carolina Department of Employment and Workforce (Department) filed a Notice of Special Appearance and Motion to Dismiss with the Court stating that the Appellant did not serve the notice of appeal in this matter on the Department within thirty (30) days of the September 26, 2013 decision from the DEWAP. On November 18, 2013, Respondent Sherman College of Chiropractic (Sherman) filed a Joinder in Motion to Dismiss stating that it has no information or documents within its possession which indicate that Appellant ever served the Department and noted that the Appellant's Certificate of Service lists only counsel for Respondent Sherman as being served with the Notice of Appeal. Appellant filed a response to the Department's motion on November 21, 2013 asserting that because the Department received the Court's Notice of Assignment for the appeal before October 28, 2013 it had timely notice of the appeal and therefore was not prejudiced by Appellant's failure to timely serve the Notice of Appeal.

RECEIVED

DEC 30 2013

SC Court of Appeals

FILED

November 26, 2013

SC ADMIN. LAW COURT

DISCUSSION

The ALC is authorized to preside over appeals of decisions of the DEWAP. See S.C. Code Ann. § 41-35-750 (Supp. 2012). However, for this Court to hear such an appeal, its jurisdiction must be properly invoked. See Botany Bay Marina, Inc. v. Townsend, 296 S.C. 330, 372 S.E.2d 584 (1988) (holding that a party's failure to file an appeal of a zoning decision within the statutory time period divested the board of adjustment of jurisdiction to hear the appeal), overruled on other grounds by Woodard v. Westvaco Corp., 319 S.C. 240, 460 S.E.2d 392 (1995); Burnett v. S.C. State Highway Dept., 252 S.C. 568, 167 S.E.2d 571 (1969) (holding that a landowner's failure to timely appeal a condemnation decision by the Highway Department deprived the reviewing court of jurisdiction to hear the appeal.) The Court may not relieve a party from failure to timely file an appeal due to mistakes, inadvertence or excusable neglect. Burnett, 167 S.E.2d at 571.

S.C. Code Ann. § 41-35-750 (Supp. 2012) requires that a party seeking review of a final DEWAP decision must initiate an action in the ALC "within thirty days from the date of mailing of the department's decision." Pursuant to ALC Rule 33, the notice of appeal "shall be filed with the Court and a copy served on each party and the agency whose final decision is the subject of the appeal within thirty (30) days of receipt of the decision." Thus, in order for this Court to obtain jurisdiction to consider this appeal, Appellant must comply with the statutory mandate to file and serve the appeal within 30 days of the date the final decision was mailed. Service of the notice of intent to appeal is a jurisdictional requirement and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served. Mears v. Mears, 387 S.C. 168, 337 S.E.2d 206 (1995). In the case at hand, Appellant did not timely serve the Department with the Notice of Appeal. Therefore, while Appellant did attempt to timely file the Notice of Appeal by sending it to the Court within the thirty-day period after receipt of the final decision, he did not cross the mandatory jurisdictional threshold of timely serving the Notice of Appeal on a necessary party. Accordingly, this Court has no choice but to find that Appellant failed to properly invoke this Court's jurisdiction and to conclude that this matter must be dismissed. For the reasons set forth above,

ORDER

IT IS HEREBY ORDERED that Respondent DEW's motion to dismiss is **GRANTED** and the above-captioned case is **DISMISSED** with prejudice.

AND IT IS SO ORDERED.

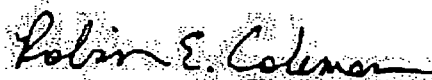


Deborah Brooks Durden
Administrative Law Judge

November 26, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

November 26, 2013
Columbia, South Carolina

FILED

November 26, 2013
SC ADMIN. LAW COURT