

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Nishka Burns,

Appellant,

v.

South Carolina Department of Employment
and Workforce and Tri-County Adult Day
Services, Inc.,

Respondent.

Docket No. 26-ALJ-22-0160-AP

ORDER OF DISMISSAL

RECEIVED

JUL 23 2026

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court) pursuant to a Motion to Dismiss for Lack of Appellate Jurisdiction (Motion) filed by the South Carolina Department of Employment and Workforce (Department) on June 8, 2026. The Department argues this Court lacks jurisdiction because Nishka Burns (Appellant) failed to timely file and serve her Notice of Appeal. As of the date of this Order, Appellant has not responded to the Motion.

Upon consideration of the Department's Motion, the Department's Motion is granted.

BACKGROUND

This matter arose pursuant to an appeal filed by the Appellant challenging the decision of the Department's Appellate Panel (Panel). The Panel determined Appellant was disqualified from receiving unemployment insurance benefits for sixteen weeks, from December 21, 2025, to April 11, 2026 with a corresponding monetary reduction, upon finding she was discharged for cause from TRI-County Adult Day Services, Inc. (Employer). Additionally, the Appellant was found ineligible for benefits from January 18, 2026, to January 24, 2026, after it was determined that she failed to comply with the work search requirement. The Panel mailed its decision on April 7, 2026.

On April 13, 2026, Appellant filed a Notice of Appeal with this Court. However, the Notice did not contain the proof of service required by Rule 33, SCALCR. As a result, on April 21, 2026, the Administrative Law Court Clerk's Office notified Appellant that her Notice of Appeal was deficient and that her attempted filing would be returned unprocessed unless she provided the

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SC Admin. Law Court

required proof of service within ten (10) days. Appellant did not respond to the memorandum within the ten (10) day period. On May 7, 2026, the Clerk's Office issued a notice to Appellant that her case was being returned unprocessed. Then on May 15, 2026, Appellant filed the Notice of Appeal with the required proof of service; however, the Department asserts it was not served with the May 15 notice of appeal. The case was assigned on May 19, 2026.

DISCUSSION

Pursuant to section 41-35-750 of the South Carolina Code (2021), a party may initiate a review in the Administrative Law Court of a decision of the Department by filing an appeal **within thirty days from the date of mailing** of the Department's decision. Review by the Administrative Law Court of a final decision by the Department is heard as prescribed in section 1-23-380 of the South Carolina Code (Supp. 2025). S.C. Code Ann. § 1-23-600(D) (Supp. 2025). That section states that "[p]roceedings 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." (emphasis added). Furthermore, "[a]ll requests for a hearing before the Administrative Law Court must be filed in accordance with the court's rules of procedure. S.C. Code Ann. § 1-23-600(B) (Supp. 2025). Of relevance to this matter, Rule 33 of the Rules of Procedure for the Administrative Law Court (SCALC Rules) states that the notice of appeal of the Department's final decision "must be filed and served **within thirty (30) days of the date of mailing** of the decision of the [Department's Appellate Panel]" and **must contain "proof of service of the notice of appeal on all parties."** Most importantly, the timely filing and service of notice of appeal is a jurisdictional requirement. *Elam v. S.C. 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 or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.").

In this case, the Department decision was mailed to Appellant on April 7, 2026. Therefore, Appellant had thirty days from April 7, 2026, the date of mailing, to file and serve notice of appeal. *See* S.C. Code. Ann. §§ 1-23-380(1) & 41-35-750; Rule 33, SCALCR. Although Appellant attempted to file this appeal on April 13, 2026, a complete notice of appeal with proof of service

was not filed with the Court until May 15, 2026, thirty-six (36) days after April 7, 2026.¹ Furthermore, while the May 15, 2026 Notice of Appeal included proof service, the Department contends that it was not served and Appellant has provided no argument to show otherwise. *See* Rule 34(A), SCALCR “Failure of a party to timely file a response [to a motion] may be deemed a consent by that party to the relief sought in the motion.”).

As a result of Appellant’s failure to timely file and serve her Notice of Appeal, this Court lacks jurisdiction over this appeal. *See 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.”); *Mears v. Mears*, 287 S.C. 168, 337 S.E. 2d 206 (1985) (applying appellate court rules and finding lack of jurisdiction for failure to serve a notice of intent to appeal in a timely manner). Additionally, it is well-established that an appellate body may not extend the time to appeal. *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 714 S.E.2d 547 (2011); *see also Burnette v. S.C. State Highway Dep’t*, 252 S.C. 568, 167 S.E. 2d 571 (1969) (holding a court does not have the authority to extend the time for filing an appeal, or for serving notice of appeal, from a decision of an administrative agency).

IT IS THEREFORE ORDERED that the Department’s Motion to Dismiss is **GRANTED** and that this appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



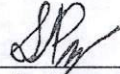
Ralph King Anderson, III
Chief Administrative Law Judge

June 24, 2026
Columbia, South Carolina

¹ Importantly, the Clerk’s memorandum to Appellant dated April 21, 2026, was clear that it did not toll the time for Appellant to file a complete notice of appeal.

CERTIFICATE OF SERVICE

I, Stephanie Armada, 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, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Armada
Judicial Law Clerk

June 24, 2026
Columbia, South Carolina



To: Tri-County Adult Dry Goods Inc.
Attn: Cam Scott
169 Calvary Rd
Colum SC 29520



To: SC Dew (Attn: Kristi Chesley
& Valerie McWeller)
Po Box 8597
Columbia SC 29202

CERTIFIED MAIL



9589 0710 5270 2584 0264 80

ika M. Burns
 Deery Thines Rd
 SC 29520

Retail



29201

RDC 99



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TO:

S.C. Administrative Law Court
Attn: Office of Judge Ralph Kind Anderson
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