

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

South Carolina Department of Consumer Affairs,

Respondent,

v.

Lavisha Green,

Appellant.

RECEIVED

AUG 03 2026

SC Court of Appeals

Appellate Case No. 2024-001652

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellant Lavisha Green respectfully petitions this Court for rehearing because the Court overlooked and misapprehended material facts and controlling legal principles regarding both the timeliness of Appellant's Notice of Appeal and the evidentiary record concerning receipt of the Administrative Law Court's Final Order.

STATEMENT OF THE ISSUES

1. Whether the Court overlooked Appellant's sworn affidavit denying receipt of the Administrative Law Court's Final Order on August 2, 2024, and improperly required Appellant to prove a negative rather than requiring competent evidence establishing actual receipt.
2. Whether the Court misapprehended Rule 203(b)(6), SCACR, and applicable case law by treating transmission of an email as conclusive proof of receipt.
3. Whether the Court overlooked that Respondent produced no competent evidence establishing that Appellant received the Final Order on August 2, 2024.

ARGUMENT

I. THE COURT OVERLOOKED THE EVIDENTIARY VALUE OF APPELLANT'S SWORN AFFIDAVIT.

The Court's decision effectively disregards Appellant's affidavit stating that she did not receive the Administrative Law Court's Final Order on August 2, 2024.

An affidavit is competent evidence. Appellant submitted sworn testimony that she did not receive the Final Order until August 27, 2024. Rather than evaluating this sworn evidence, the Court accepted Respondent's unsupported assertion that transmission of an email necessarily established receipt.

The Court therefore misapprehended the evidentiary record.

Respondent argued that Appellant failed to provide screenshots, server records, or technical evidence demonstrating why she did not receive the email. However, neither Rule 203 nor South Carolina appellate precedent requires a litigant to produce electronic server logs or technical data to establish nonreceipt.

Appellant submitted sworn testimony denying receipt. That testimony constitutes evidence.

The Court overlooked that Respondent never rebutted Appellant's affidavit with competent evidence establishing actual receipt.

II. THE COURT MISAPPREHENDED THE DISTINCTION BETWEEN TRANSMISSION AND RECEIPT.

Rule 203(b)(6), SCACR, measures the appeal period from receipt of the Administrative Law Court's decision.

Even Respondent's briefing acknowledges that the triggering event is receipt rather than transmission.

The Department relied upon *Wells Fargo Bank, N.A. v. Fallon Properties, LLC* while simultaneously acknowledging that the rule concerns the date a party actually receives the decision rather than merely when an email is sent.

The Court therefore overlooked a critical distinction.

Proof that an email was transmitted is not necessarily proof that the intended recipient actually received it.

Nothing in the record establishes:

- that the email entered Appellant's inbox on August 2, 2024;
- that the email was accessible on that date;
- that the attachment was successfully delivered; or
- that Appellant actually received and could access the Final Order on August 2, 2024.

Instead, Respondent merely established that an email was sent.

The Court misapprehended this distinction.

III. RESPONDENT FAILED TO PRODUCE EVIDENCE ESTABLISHING ACTUAL RECEIPT.

Respondent repeatedly argued that Appellant failed to provide technical evidence explaining why she did not receive the email.

However, Respondent likewise failed to produce competent evidence establishing actual receipt.

The record contains no:

- electronic delivery confirmation;
- server records;
- read receipt;
- proof the message entered Appellant's email system;
- evidence the attachment was successfully received;
- testimony from any witness establishing actual receipt.

Instead, Respondent relied upon an assumption that because the email was sent, it must have been received.

The Court overlooked that Respondent's position rests upon speculation rather than evidence demonstrating actual receipt.

IV. THE COURT MISAPPREHENDED THE APPLICATION OF LEMMONS.

Respondent attempts to distinguish Lemmons v. Macedonia Water Works, Inc., yet that case illustrates the importance of evidence establishing electronic receipt.

Rather than presuming receipt based solely upon transmission, Lemmons examined whether competent evidence existed establishing receipt under the Uniform Electronic Transactions Act.

Here, Respondent produced no comparable evidence.

The Court therefore overlooked the evidentiary principles discussed in Lemmons and instead accepted an unsupported presumption of receipt despite Appellant's sworn affidavit to the contrary.

V. THE COURT IMPROPERLY SHIFTED THE BURDEN TO APPELLANT TO PROVE A NEGATIVE.

The Court's decision effectively required Appellant to prove she did not receive an email.

That is not the standard contemplated by Rule 203.

Once Appellant submitted sworn testimony denying receipt, the factual issue became whether Respondent produced competent evidence demonstrating actual receipt.

Instead, Respondent argued only that Appellant failed to produce screenshots, server logs, or technical records.

Nothing in Rule 203 imposes such a requirement.

The Court therefore misapprehended the applicable evidentiary burden.

VI. THE COURT SHOULD RECONSIDER ITS CONCLUSION REGARDING APPELLATE JURISDICTION.

Because the Court overlooked Appellant's sworn evidence and misapprehended the distinction between transmission and receipt, its conclusion that the Notice of Appeal was untimely rests upon an incomplete evaluation of the record.

Had Appellant's affidavit been afforded appropriate evidentiary consideration, dismissal for lack of appellate jurisdiction would not have been warranted.

Accordingly, rehearing is necessary to prevent manifest injustice and to ensure that appellate jurisdiction is determined based upon competent evidence rather than assumptions regarding electronic transmission.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court grant rehearing, withdraw its Opinion dismissing this appeal, reconsider its jurisdictional ruling, and address the merits of Appellant's appeal.

Respectfully submitted,

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FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case No. 23-ALJ-30-0335-CC

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South Carolina Department of
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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Zachary Passmore, James Copeland, and Kelly Rainsford by depositing a copy of it in the United States Mail, postage prepaid, on August 13, 2026, addressed to Post Office Box 5757, Columbia, South Carolina 29250.

August 3, 2026

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