

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Case No. 13- ALJ-22-0508-AP
Appellate Case No. 2013-002744

Timothy D. Revels,
Appellant,

v.

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

APPELLANT TIMOTHY D. REVELS'S INITIAL BRIEF

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SC Court of Appeals

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Home Health of South Carolina, Inc. v. S.C. DHEC et al.,
101695 SCALC, No. 95-ALJ-07-0477-CC (Oct. 16, 1995).....3

Williams v. Watkins,
681 S.E.2d 914, 918 (S.C. Ct. App. 2009).....4

I. Statement of Issue on Appeal

Was it an abuse of discretion for the Administrative Law Court to dismiss Mr. Revels's appeal based on the technicality of service of the Notice of Appeal, when South Carolina Department of Employment and Workforce had almost immediate actual notice of the Notice of Appeal and showed no prejudice from lack of service?

II. Statement of the Case

Timothy D. Revels ("Mr. Revels") sought unemployment benefits from Sherman College of Chiropractic ("Sherman") after his termination from Sherman in early 2013, and properly filed in the South Carolina Department of Employment and Workforce ("SCDEW") to that end. On July 12, 2013, Administrative Hearing Officer Robin Bradley determined Mr. Revels was terminated without cause and should receive unemployment benefits. Sherman College of Chiropractic appealed that decision, and the Appellate Panel reversed on September 25, 2013.

Mr. Revels filed his Notice of Appeal to the Administrative Law Court on October 22, 2013. *See* Exhibit A, File-Stamped Notice of Appeal. SCDEW moved to dismiss Mr. Revels's appeal on the basis that SCDEW was not properly served with the Notice of Appeal, and Sherman joined that motion. The record shows, however, that SCDEW had actual notice of Mr. Revels's Notice of Appeal on October 25, 2013, when the Administrative Law Court notified SCDEW of the assignment of the pending appeal. *See* Exhibit B, Notice of Assignment. Thus, SCDEW had actual notice of the Notice of Appeal within three days of Mr. Revels's filing the Notice of Appeal. SCDEW had ample notice of Mr. Revels's appeal, and thus was not prejudiced by any lack of service

of the Notice of Appeal.

In its Order of Dismissal on November 26, 2013, the Administrative Law Court found that Revels's appeal should be dismissed based on lack of service to SCDEW. *See* Exhibit C, Order of Dismissal. Mr. Revels now appeals that decision, on the grounds that the dismissal was arbitrary, capricious, and/or an abuse of discretion, because SCDEW received notice of the appeal on October 25, 2013, three days after the Notice of Appeal was filed, and thus SCDEW could not show it experienced prejudice from lack of service. Mr. Revels timely served SCDEW and Sherman Notice of this Appeal on December 26, 2013.

III. Argument

Mr. Revels hereby appeals the November 26, 2013 Order of Dismissal issued by the Honorable Deborah Brooks Durden on the grounds that the judgment was arbitrary, capricious, and an abuse of discretion. Mr. Revels filed his Notice of Appeal with the administrative law court timely on October 22, 2013. *See* Exhibit A, File-Stamped Notice of Appeal. Regardless of whether SCDEW was served on October 22, 2013, SCDEW admitted it received the administrative law court's Notice of Assignment for the appeal. *See* Exhibit D, SCDEW's Motion for Dismissal, ¶ 7. This Notice of Assignment was dated October 25, 2013. *See* Exhibit B, Notice of Assignment.

Thus, SCDEW received actual notice of Petitioner's appeal before October 28, 2013. Indeed, SCDEW received notice of the appeal only three days after it would have received such notice from Petitioner himself. SCDEW is therefore seeking to dismiss Petitioner's appeal on a mere procedural technicality, and SCDEW has not shown it has

experienced prejudice in the slightest from lack of service. Without a showing of prejudice from lack of service, dismissal of this matter is not warranted. *See Home Health of South Carolina, Inc. v. S.C. DHEC et al.*, 101695 SCALC, No. 95-ALJ-07-0477-CC (Oct. 16, 1995) (finding “dismissal is not warranted” because there was “no prejudice established to [Respondent]”). Further, it is an “unduly harsh” punishment and an abuse of discretion to dismiss Petitioner’s appeal and deny him unemployment benefits solely based on SCDEW’s receipt of the Notice of Appeal three days after it was filed. *See Balloon Plantation, Inc. v. Head Balloons, Inc.*, 399 S.E.2d 439, 440 (S.C. Ct. App. 1990) (finding that a circuit judge’s striking a counterclaim and holding defendants in default because they missed a deadline by three hours was an abuse of discretion).

Importantly, “ ‘[i]t is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted as it is to exercise the discretion improperly.’ ” *Id.* (quoting *State v. Smith*, 280 S.E.2d 200, 202 (1981)). The administrative law court abused its discretion when it ignored the fact that SCDEW had actual notice of the Notice of Appeal within three days of Petitioner’s filing said Notice regardless of service. The dismissal of Petitioner’s appeal based on such an insignificant technicality is indeed unduly harsh, as “ ‘the law favors the resolution of disputes based upon all parties having their day in court.’ ” *Williams v. Watkins*, 681 S.E.2d 914, 918 (S.C. Ct. App. 2009) (quoting *McClurg v. Deaton*, 671 S.E.2d 87, 93-94 (S.C. Ct. App. 2008) (finding no prejudice in requiring the parties to proceed with a trial on the merits). Petitioner deserves to have his unemployment case decided on the merits, not dismissed based on a procedural technicality by which SCDEW cannot show it was prejudiced in the slightest.

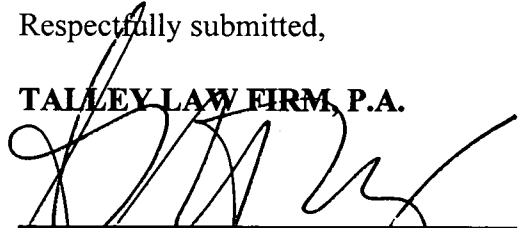
Based on the foregoing, Petitioner requests that the Court reverse the decision of the administrative law court, remand for further proceedings, and for such other relief as he may be entitled.

IV. Conclusion

The administrative law court's finding that Mr. Revels's appeal should be dismissed should be reversed, because SCDEW did not and cannot show it was prejudiced by lack of service when it had actual notice of Mr. Revels's appeal.

Respectfully submitted,

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Home Health of South Carolina, Inc., Petitioner

v.

South Carolina Department of Health and Environmental Control and Tuomey Regional Medical Center, (Sumter County), Respondent

No. 95-ALJ-07-0477-CC

South Carolina Administrative Law Court Decisions

October 16, 1995

Stuart M. Andrews, Jr., Attorney for Petitioner
Samuel L. Finklea, III, Attorney for Respondent DHEC

Cynthia B. Hutto, Attorney for Respondent/Movant
Tuomey Regional Medical Center

PREHEARING ORDER

STEPHEN P. BATES, ADMINISTRATIVE LAW JUDGE

A Motion to Dismiss was filed by Respondent Tuomey Regional Medical Center ("Tuomey"). A motion hearing/prehearing conference was conducted at 2:30 p.m., October 11, 1995, with counsel for each party participating. The Motion to Dismiss is denied, and a discovery and hearing schedule for this case is ordered.

MOTION TO DISMISS

This case involves DHEC's proposed decision to grant a CON to one of two applicants seeking to provide home health services in Sumter County. DHEC has preliminarily granted Tuomey's CON application and denied the application of Home Health of South Carolina, Inc. ("Home Health"). Home Health filed a Petition for Administrative Review and Request for Contested Case Hearing with DHEC on July 7, 1995. On July 12, 1995, DHEC served Tuomey with a copy of the Petition and Agency Transmittal Form which was filed with the Administrative Law Judge Division. Tuomey served its Answer to the Petition on August 14, 1995.

Tuomey moves for dismissal of this action on the ground that Home Health failed to serve Tuomey with a copy of its Petition, citing 25 S.C. Code Ann. Regs. 61-72, §§ 204 and 302 (Supp. 1994); and ALJD Rules 4(a) and 5.

S.C. Code Ann. Regs. 61-72, § 302, and ALJD Rule 5 require that a party serve all other parties with a copy of any document filed in a contested case matter. Under S.C. Code Ann. Regs. 61-72, § 402, the applicant whose license is the subject of a Petition is deemed a party upon receipt of a copy of the Petition. ALJD Rule 4 defines a

party as "... each person or agency named or admitted as a party or properly seeking and entitled to be admitted as a party, including a license or permit applicant."

Home Health did not name Tuomey as a party in its Petition. While Tuomey was entitled to be a party upon commencement of the action, not until DHEC designated Tuomey as a party in the Agency Transmittal Form and served a copy of the Transmittal Form and Petition upon Tuomey, was Tuomey a formal party in this case. Home Health was not, therefore, technically required to serve Tuomey with its initial pleading.

Even if Home Health were required to serve the Petition on Tuomey contemporaneously with filing with DHEC, Tuomey failed to show any prejudicial effect from the four-day delay in receiving a copy of the Petition. Tuomey timely filed an Answer and has been served all subsequently filed documents, and has fully participated in the proceedings to date.

Furthermore, S.C. Code Ann. Regs. 61-72, § 204, which states the grounds for dismissal of a petition, does not specifically include non-service of a petition as a ground. It is therefore within the Administrative Law Judge's discretion whether to dismiss for such an omission. There being some legitimate confusion among litigants as to certain pleading and procedural requirements for CON cases before the Administrative Law Judge Division and there being no prejudice established to Tuomey because of lack of service by Home Health, dismissal is not warranted.

For the foregoing reasons, the Motion to Dismiss is denied.

SCHEDULING

Pursuant to agreement of the parties and direction of this Court, the following provisions are hereby ordered:

- (1) In addition to discovery specifically allowed under ALJD Rule 21, discovery may be expanded pursuant to agreement and consent of the parties, but not to exceed the parameters of SCRCP 26-37, and subject to possible future restriction as may be ordered by this Court upon its own motion or motion of a party.
- (2) For all discovery requests served on or after October 11, 1995, responses must be served within fifteen (15) days of service of the request.
- (3) Parties shall complete all discovery no later than Monday, February 26, 1996.
- (4) The contested case hearing on the merits shall commence at 9:30 a.m., March 25, 1996, at the Administrative Law Judge Division, 1205 Pendleton

Street, Columbia, South Carolina:

(a) Counsel shall meet in the hearing room at 9:00 a.m. March 25, 1996, to finalize stipulations, exchange exhibits, and have all exhibits pre-marked for identification by the court reporter prior to commencement of the hearing;

(b) The parties shall submit to the Court, no later than the commencement of the contested case hearing, written stipulations as to resolved issues, contested issues, relevant facts, admissibility of exhibits, and any other matters which would expedite the hearing process;

AND IT IS SO ORDERED.

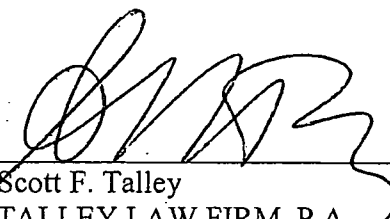
EXHIBIT A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Timothy D. Revels,)
)
Petitioner,)
)
v.)
)
Sherman College of Chiropractic,)
)
Respondent.)

NOTICE OF APPEAL

Petitioner, Timothy D. Revels, appeals the Appellate Final Decision from the hearing before the Appellate Panel on September 25, 2013. The Appellate Panel Decision was mailed to Petitioner on September 26, 2013; therefore, this appeal is timely filed. The basis for this appeal is that the decision of the Appellate Panel, a copy of which is attached, is clearly erroneous in view of the evidence presented at the hearing. Further, the decision is arbitrary, capricious, is characterized by an abuse of discretion or is a clearly unwarranted exercise of discretion in denying Petitioner unemployment benefits.



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Dated: October 22, 2013
Spartanburg, SC

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FILED

OCT 22 2013

SC ADMIN. LAW COURT

Decision No. 2013-P-1387

Appeal No. 07622-130833

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Timothy D. Revels
7 Swathmore Court
Greenville, SC 29615
Claimant SSN: XXX-XX-9355

Sherman College of Chiropractic
PO Box 1452
Spartanburg, SC 29304
Liable Employer

Appellant Employer

APPELLATE PANEL
DECISION

The employer appealed Appeal Tribunal Decision 2013-A-11050 to the Appellate Panel. The Tribunal held the claimant eligible for benefits upon finding he was discharged without cause. This decision reversed the claims adjudicator's determination.

The Appellate Panel notified the parties of its hearing to consider the appeal.

DECISION

Appeal Tribunal Decision 2013-A-11050 is reversed. The claimant is disqualified from benefits for eighteen (18) weeks, from March 24, 2013, to July 27, 2013, with a corresponding monetary reduction, upon finding he was discharged for cause connected with the employment.

The claimant worked from March 13, 1995, to March 18, 2013, most recently as a vice president of business and finance. He was discharged for improper behavior. The new president of the college, whose employment began in January 2013, received a complaint from the director of human resources that she could no longer tolerate the claimant's argumentative, insulting demeanor. The director of human resources participated at the Appeal Tribunal hearing. She states the claimant was difficult to work with, frequently raised his voice, and he offended her when he referenced individuals of a foreign descent in a derogatory manner. She further asserts he recently slammed her office door, which she immediately reported. She shared her concerns

with the new president who subsequently approved her request to transfer and report directly to the president. The president was also made aware that the claimant previously referred to him by a characterization the president found offensive, disrespectful, and unprofessional. Another employer witness at the evidentiary hearing stated she observed the claimant's offensive and inappropriate ethnic comments.

The claimant acknowledges over the years of working together, he and the director of human resources argued, but he appreciated her debates with him over issues in their work. The claimant contends he was unaware the director of human resources felt mistreated. He denies slamming her door and maintains he collided with the door which then slammed. The claimant states he was not made aware there were reported problems with his behavior. He denies intentionally making discriminatory or offensive remarks. The claimant acknowledges referring to the new president in an informal way on a handwritten document in November 2012. He states he was unable to recall the new president's name at the time, and maintains he was not intending to be offensive or have prejudicial meaning. One of the claimant's job functions was the chairperson of the college's equal opportunity committee. The employer contends the claimant's use of a demeaning reference for the new president and the complaint by the director of human resources showed insensitive, inappropriate behavior which contradicted the principles of the committee he chaired.

The claimant oversaw and assisted in several functions of the administration for the college, including security. The claimant contends during his employment he responded to after-hours calls to security. For this reason, he had written authorization from the former president of the college to carry a firearm on campus. The claimant states he also had the proper permit to carry a concealed weapon. The claimant often worked alone after hours and carried a weapon for his own security as well as back-up to the director of security. In January 2013, during a meeting with the vice presidents, the new president expressed general concerns that the claimant had a firearm on campus. The president maintains he directed the claimant not to bring his weapon to the school. The claimant denies being instructed to discontinue carrying a firearm. He states the president was merely inquiring about the necessity of his having a weapon and whether he had the proper permits. The president contends the claimant continue to keep a concealed weapon on the premises without authorization.

S.C. Code Ann. § 41-35-120(2)(b) requires disqualification from benefits for five to nineteen weeks, with a corresponding monetary reduction, when the Department finds that a claimant has been discharged for cause, other than misconduct connected with the employment. "Cause" may include unintentional violations of policy, an

Decision No. 2013-P-1387


Appeal No. 07622-130833

unintentional disregard for the standards of behavior the employer can rightfully expect of an employee, or carelessness or negligence of an employee.

The record establishes the claimant was discharged for improper behavior. The evidence is insufficient to show the claimant failed to follow a directive regarding his concealed firearm. The claimant actively assisted with security matters and in his position, he supervised the director of security. The claimant had permission to possess a weapon under the past president. Although the new president may have had the authority to revoke the prior authorization, the employer has not provided sufficient evidence to establish the claimant was given specific directives which he failed to follow with regard to possessing a firearm. However, the greater weight of the evidence shows the claimant made inappropriate remarks and was argumentative with other employees. The claimant's carelessness in his treatment toward others, and his disrespectful comment referencing the new president, did not exemplify the behavior expected in his position of leadership, particularly in his role as the equal opportunity committee chair. While the claimant maintains he was not made aware that others were dissatisfied with his behavior, he engaged in repetitive conduct he knew or should have known would be considered unprofessional and inappropriate. The claimant's actions constituted a disregard for the reasonable standard of behavior that the employer had a right to expect. Therefore, we find the claimant was discharged for cause connected with the employment. The Appeal Tribunal decision is reversed.

**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**


L. B. Ayers


Tim Dangerfield

Hearing Date: 09/25/13
Date Mailed: 09/26/13
Mailed By: AG

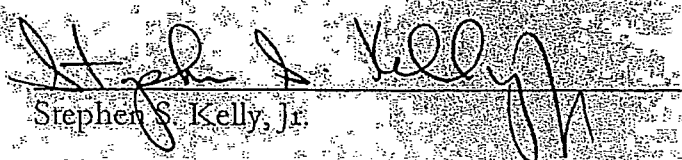

Stephen S. Kelly, Jr.

EXHIBIT B

EXHIBIT C

**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.

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
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

EXHIBIT D

**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

NOTICE OF SPECIAL
APPEARANCE AND
MOTION TO DISMISS

TO: Scott F. Talley, Esquire, Attorney for Appellant, Timothy D. Revels; Brian Magargle, Esquire, Attorney for Respondent, Sherman College of Chiropractic:

NOTICE IS HEREBY GIVEN that Respondent, the South Carolina Department of Employment and Workforce (“Department”), through its undersigned attorney, makes a special appearance and moves the Court to dismiss Appellant Timothy D. Revels’ appeal which attempts to seek judicial review of a final administrative decision.

The Department respectfully requests that all deadlines be held in abeyance pending the outcome of this Motion.

This Motion is made upon the following grounds:

1. The South Carolina Administrative Law Court, Rule 33 requires “[i]n appeals from decisions of the Department of Employment and Workforce, the notice of appeal must be filed **and served** within thirty (30) days of the date of the decision of the Department of Employment and Workforce Appellate Panel.” South Carolina Administrative Court Rule 33 (emphasis added).

2. Upon information and belief, Appellant seeks to appeal Appellate Panel Decision No. 2013-P-1387. This final decision of the Department was mailed to Appellant on September 26, 2013. (Exhibit A).
3. Based on the September 26, 2013 mailing date of the Appellate Panel's Decision, Appellant had until October 28, 2013, to file his appeal for judicial review, as October 26, 2013 was a Saturday.
4. The Department received a letter from Appellant's Counsel on October 22, 2013 via facsimile requesting a copy of a transcript from the Appellate Panel hearing held on September 25, 2013. (Exhibit B)
5. The Department mailed a letter to Appellant's Counsel on October 24, 2013 informing him that there was not a transcript as hearings before the Appellate Panel are not recorded. (Exhibit C).
6. The 30-day statutory time period for perfecting the appeal expired on October 28, 2013. Appellant did not perfect the filing of his Notice of Appeal by serving the Department. Appellant clearly failed to comply with the mandatory requirements set by the ALC rules governing this appeal.
7. The Department was notified of the appeal via the Notice of Assignment filed by the Administrative Law Court, which indicated "a notice of appeal seeking review of agency action was filed on October 22, 2013." (Exhibit D). To date, the Department has not been served a Notice of Appeal. (Exhibit E).
8. The Notice of Assignment also indicated that "parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal." (Exhibit D).

9. "The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction." *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011).
10. "Service of the notice of appeal is a jurisdictional requirement..." *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985)
11. "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." *Elam v. S. Carolina Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (citing *Mears*).
12. As Appellant has not served the Notice of Appeal on the Department pursuant to Rule 33 of the South Carolina Administrative Law Court Rules, the Department moves that its Motion to Dismiss be granted due to Appellant's failure to comply with fundamental ALC Rules.
13. In the alternative, if the Court denies Respondent's Motion to Dismiss and accepts Appellant's Notice of Appeal, the Department respectfully moves Respondents be granted twenty (20) days thereafter to file the Record on Appeal.

CONCLUSION

WHEREFORE, for all the reasons discussed above, Respondent SCDEW prays that this appeal be dismissed.

Respectfully Submitted,



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S.C. Dept. of Employment and Workforce
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803-737-0395 (phone)
803-737-0124 (fax)
Email: Legal@dew.sc.gov

Columbia, SC
November 14, 2013

EXHIBIT A

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Timothy D. Revels)
7 Swathmore Court)
Greenville, SC 29615)
Claimant SSN: XXX-XX-9355)

Sherman College of Chiropractic)
PO Box 1452)
Spartanburg, SC 29304)
Liable Employer)

_____)
Appellant: Employer)

APPELLATE PANEL
DECISION

The employer appealed Appeal Tribunal Decision 2013-A-11050 to the Appellate Panel. The Tribunal held the claimant eligible for benefits upon finding he was discharged without cause. This decision reversed the claims adjudicator's determination.

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DECISION

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with the new president who subsequently approved her request to transfer and report directly to the president. The president was also made aware that the claimant previously referred to him by a characterization the president found offensive, disrespectful, and unprofessional. Another employer witness at the evidentiary hearing stated she observed the claimant's offensive and inappropriate ethnic comments.

The claimant acknowledges over the years of working together, he and the director of human resources argued, but he appreciated her debates with him over issues in their work. The claimant contends he was unaware the director of human resources felt mistreated. He denies slamming her door and maintains he collided with the door which then slammed. The claimant states he was not made aware there were reported problems with his behavior. He denies intentionally making discriminatory or offensive remarks. The claimant acknowledges referring to the new president in an informal way on a handwritten document in November 2012. He states he was unable to recall the new president's name at the time, and maintains he was not intending to be offensive or have prejudicial meaning. One of the claimant's job functions was the chairperson of the college's equal opportunity committee. The employer contends the claimant's use of a demeaning reference for the new president and the complaint by the director of human resources showed insensitive, inappropriate behavior which contradicted the principles of the committee he chaired.

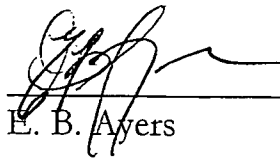
The claimant oversaw and assisted in several functions of the administration for the college, including security. The claimant contends during his employment he responded to after-hours calls to security. For this reason, he had written authorization from the former president of the college to carry a firearm on campus. The claimant states he also had the proper permit to carry a concealed weapon. The claimant often worked alone after hours and carried a weapon for his own security as well as back-up to the director of security. In January 2013, during a meeting with the vice presidents, the new president expressed general concerns that the claimant had a firearm on campus. The president maintains he directed the claimant not to bring his weapon to the school. The claimant denies being instructed to discontinue carrying a firearm. He states the president was merely inquiring about the necessity of his having a weapon and whether he had the proper permits. The president contends the claimant continue to keep a concealed weapon on the premises without authorization.

S.C. Code Ann. § 41-35-120(2)(b) requires disqualification from benefits for five to nineteen weeks, with a corresponding monetary reduction, when the Department finds that a claimant has been discharged for cause, other than misconduct, connected with the employment. "Cause" may include unintentional violations of policy, an

unintentional disregard for the standards of behavior the employer can rightfully expect of an employee, or carelessness or negligence of an employee.

The record establishes the claimant was discharged for improper behavior. The evidence is insufficient to show the claimant failed to follow a directive regarding his concealed firearm. The claimant actively assisted with security matters, and in his position, he supervised the director of security. The claimant had permission to possess a weapon under the past president. Although the new president may have had the authority to revoke the prior authorization, the employer has not provided sufficient evidence to establish the claimant was given specific directives which he failed to follow with regard to possessing a firearm. However, the greater weight of the evidence shows the claimant made inappropriate remarks and was argumentative with other employees. The claimant's carelessness in his treatment toward others, and his disrespectful comment referencing the new president, did not exemplify the behavior expected in his position of leadership, particularly in his role as the equal opportunity committee chair. While the claimant maintains he was not made aware that others were dissatisfied with his behavior, he engaged in repetitive conduct he knew or should have known would be considered unprofessional and inappropriate. The claimant's actions constituted a disregard for the reasonable standard of behavior that the employer had a right to expect. Therefore, we find the claimant was discharged for cause connected with the employment. The Appeal Tribunal decision is reversed.

**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**



E. B. Ayers

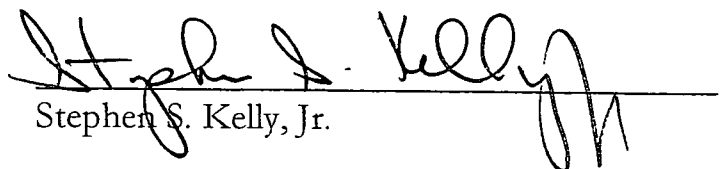


Tim Dangerfield

Hearing Date: 09/25/13

Date Mailed: 09/26/13

Mailed By: AG



Stephen S. Kelly, Jr.

Mailing Date: September 26, 2013

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
(SCDEW)
Columbia, South Carolina

NOTICE OF MAILING OF APPELLATE PANEL DECISION

Attached is a copy of the final agency decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the date of mailing of the agency's final decision (**see the mailing date above**).

The address of the Administrative Law Court is:

**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201**

Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice in South Carolina.

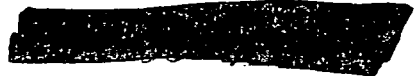
EXHIBIT B



Scott F. Talley
Joshua J. Hudson*
Lauren W. Barnwell

*Also admitted in Kentucky

October 22, 2013



VIA FACSIMILE – 803-737-3166
SC Department of Employment and Workforce
P. O. Box 8597
Columbia, SC 29202
ATT: APPELLATE PANEL

RE: Timothy D. Revels v. Sherman College of Chiropractic
Decision No. 2013-P-1387
Appeal No. 07622-130833

Dear Sir/Madam:

I represent Timothy D. Revels in the above matter. Please provide me with a copy of the Transcript from the hearing held on September 25, 2013 in the above matter. If anything further is needed, please let me know.

With kind regards, I remain

Yours very truly,
TALLEY LAW FIRM, PA

Scott F. Talley

/jbm
Enclosures
Copy to: M. Brian Magargle, Esquire
(Via Facsimile – 803-256-6277)

EXHIBIT C

PO Box 995
1550 Gadsden Street
Columbia, SC 29202
www.dew.sc.gov



Nikki R. Haley
Governor

Post Office Box 1752
Columbia, SC 29202
Telephone: (803) 737-0239
Fax: (803) 737-3166

October 24, 2013

Scott F. Talley, Esquire
2500 Winchester Place, Ste. 100
Spartanburg, SC 29301

Re: Timothy D. Revels
Appeal No: 07622-130833

Dear Mr. Talley:

Per your request, the hearings held before the Appellate Panel are not recorded; therefore, there is no transcript.

If you need any further assistance please feel free to contact us via the information listed above.

With kind regards, I am,

Sincerely

A handwritten signature in cursive script, appearing to read "Annette D. Goodwin".

Annette D. Goodwin
Administrative Assistant,
Higher Authority Appeals

cc: file

EXHIBIT D

EXHIBIT E

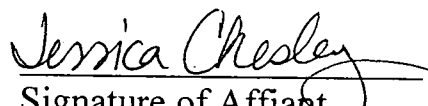
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STATE OF SOUTH CAROLINA

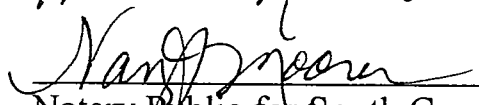
COUNTY OF RICHLAND

PERSONALLY came before me, the undersigned Notary, the within named Jessica Chesley who is employed in Richland County, State of South Carolina, and makes this her statement and affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge:

1. I am the Administrative Legal Assistant for the SC Department of Employment and Workforce (SCDEW). I am responsible for receiving, opening and processing the mail addressed to: Office of General Counsel, S.C. Department of Employment and Workforce, Post Office Box 8597, Columbia, SC 29202.
2. There was no appeal document received by the Appellant Timothy D. Revels in the Office of General Counsel and there are no appeal documents in the Department's imaging system in the case of Timothy D. Revels and Sherman College of Chiropractic.


Signature of Affiant
Jessica Chesley

DATED AND SWORN to before me this the
14th day of November, 2013.

 (LS)
Notary Public for South Carolina
My Commission Expires: April 1, 2021.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Case No. 13- ALJ-22-0508-AP
Appellate Case No. 2013-002744

Timothy D. Revels,
Appellant,

v.

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

PROOF OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing APPELLANT TIMOTHY D. REVELS'S INITIAL BRIEF in this action was served upon Counsel for South Carolina Department of Employment and Workforce, Maura Dawson Baker, and Counsel for Sherman College of Chiropractic, M. Brian Magargle, by placing copies of same in the United States Mail this date, with sufficient postage affixed thereto, addressed as follows:

M. Brian Magargle
Constangy, Brooks and Smith, LLP
P.O. Box 11297
Columbia, SC 29211-1297

Maura Dawson Baker
S.C. Department of Employment and Workforce
P.O. Box 8597
Columbia, SC 29202

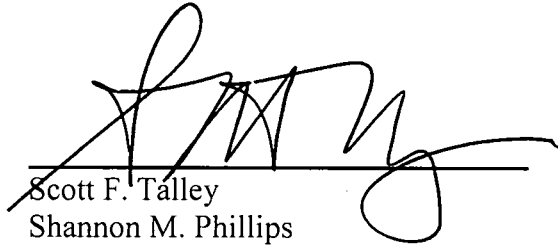
RECEIVED

JAN 27 2014

SC Court of Appeals

SC Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

January 23, 2014

A handwritten signature in black ink, appearing to read 'S. Talley', is written over a horizontal line. The signature is stylized and cursive.

Scott F. Talley
Shannon M. Phillips
TALLEY LAW FIRM, P.A.
2500 Winchester Place, Suite 100
Spartanburg, South Carolina 29301
(864) 595-2966
Attorney for Appellant Timothy D. Revels



TALLEY Law Firm, P.A.

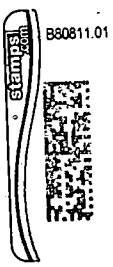
2500 Winchester Place, Suite 100
Spartanburg, South Carolina 29301

Jenny Abbott Kitchings
Clerk of Court
S. C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

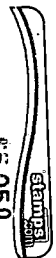
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JAN 27 2014

SC Court of Appeals



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