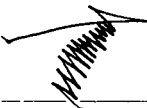


STATE OF SOUTH CAROLINA
COURT OF APPEALS

RECEIVED
APR 22 2014
SC Court of Appeals

 Cassandra D. Williams
Appellant.

Docket No: 13-ALJ-22-0588-AP

Vs.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT, South
Carolina Department of Employment and
Workforce and City of Columbia,
Respondent(s).

Appellant hereby submits this appeal of the Honorable S. Phillip Lenski's order dated February 28, 2014 and denial of Motion to Reconsider on March 28, 2014.

Background of events leading to the dismissal of appeal.

On January 27, 2014, the South Carolina Department of Employment and Workforce filed a Special and Limited Appearance and Motion to Dismiss Cassandra D. Williams (Appellant) appeal on the grounds of lack of Appellate jurisdiction and Failure to Timely File and Serve Notice of Appeal.

On February 4, 2014 Appellant filed a Response to the Department's Motion to Dismiss that included supportive documentation of timely filing. The information included the November 8, 2013 general statement requesting a review of the record, a certificate of service, the Departments final decision. The information also included an affidavit by Shawn V. Farris attesting to timely filing, a Memorandum from the Court dated December 5, 2013 notifying Appellant the information sent on November 8, 2013 was not in compliance because the appeal was faxed.

On February 28, 2014 the Honorable S. Phillip Lenski's ordered a dismissal of Appellants appeal on the grounds of lack of Appellate jurisdiction and Failure to Timely File and Serve Notice of Appeal.

On March 11, 2014 appellant filed a Motion for Reconsideration.

On March 28, 2014 the Honorable S. Phillip Lenski denied the reconsideration.

Appellant is respectfully requesting an order that will to allow this case to be heard on following grounds:

1. On November 8, 2013 Appellant contacted the Administrative Law Court for clarification of the rules and proper documentation for submission. (Exhibit A) Appellant was initially told faxing was an acceptable transmission of the appeal documents. Appellant was given the fax number and told what documents the court requires to file an appeal. The clerk confirmed information being sent was accurate and provided the fax number for submission. The appeal information was forwarded by fax directly to the court, addressed to the liaison of the court Appellant spoke with and thought to be the named "Susan Jana" at that time.

2. Appellant submitted documentation in more than enough time and should have been notified immediately documents submitted were not in compliance with the rules. Appellant could have been contacted readily by phone or by mail timely enough to preserve the appeal.

3. The documents submitted certify mail on December 9, 2013 are the same documents initially faxed. Appellant should have been contacted immediately that faxing was unacceptable upon receipt. As appeals are time sensitive, it is a disservice to the Appellant to hold documentation for almost a month knowing they are not in compliance with procedural rules. Any request which is incomplete or not in compliance with the rules ALC Rule 33 or Rule 71 will not be assigned to an administrative Law Judge until all required information is received.

4. The documents submitted contained Appellant name, address, phone number, and a remaining (10) ten days to be considered timely filed. Appellant never received timely and adequate notice of the need to act.

5. The Appellant did not have the control of appeal once submitted. When Appellant was notified, Appellant acted swiftly to file appeal again.

6. Appellant has worked diligently to perfect and ensure timely and accurate filing and should not be held responsible for a clerical or administrative deficiency that caused the delay to notify Appellant there was a compliance matter. Court errs if court dismisses pro se litigant without instruction of how pleadings are deficient and how to repair pleadings." **B.Platsky v. CIA, 953 F.2d 25, 26 28 (2nd Cir. 1991),**

7. The December 5, 2013 court Memorandum doesn't make any mention of any other compliance issues, only the court does not accept faxes. Appellant was not properly and timely informed of any other compliance issue. It's unimaginable why it would take the court almost (1) one month to notify Appellant of a compliance issue knowing most court correspondence are time sensitive. This is a disservice to Appellant who otherwise submitted the appeal timely enough to repair and perfect filing.

8. Finally, The appeal contained a general statement requesting a review of the record, a certificate of service, the Department's final decision. All the information submitted were synonymous with any other appeal and included Appellant's name, address, phone number. I am not sure how the information would be misconstrued to cause a delay but according to the December 5, 2013 court memorandum all Appellant needed to do was resend the information. Appellant had more than enough time left to resolve the issue "but for" the timely and adequate notice of the need to act.

I pray the court accepts this request because this is factual matter, Appellant could have easily resolved this matter if alerted in time there is a need to act. For the foregoing reasons Appellant asked the court to approve the faxed appeal as" filed" on November 8, 2013 and for the case to be heard.

Cassandra D. Williams

Appellant

April, 21, 2014

APR 22 2014
SC COURT OF APPEALS

P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



Nikki R. Haley
Governor

Cheryl M. Stanton
Executive Director

P.O. Box 8597
Columbia, South Carolina 29202
(803) 737-2666
FAX (803) 737-0124
January 27, 2014

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Cassandra Williams v. SCDEW and City of Columbia
Docket Number: 13-ALJ-22-0588-AP

Dear Judge Lenski:

Enclosed is the original Notice of Special Appearance and Motion to Dismiss and Memorandum in Support Thereof of Respondent SCDEW in the above referenced case. Also enclosed is a Certificate of Service to the other parties in this case.

With kind regards, I am

Sincerely Yours,

A handwritten signature in cursive script that reads "Jessica Chesley".

Jessica Chesley
Administrative Legal Assistant for
Debra Tedeschi
Attorney for SC DEW

Mailing Date: October 17, 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:

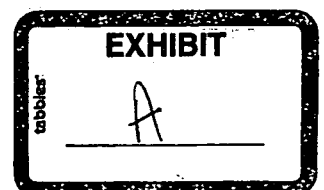
**S.C. Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201**

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.

Form App-115
Rev.8/12



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cassandra D. Williams,)
)
 Appellant,)
)
 vs.)

Docket No. 13-ALJ-22-0588-AP

South Carolina Department of)
Employment and Workforce)
and City of Columbia,)
)
 Respondents.)
)

NOTICE OF SPECIAL
APPEARANCE AND
MOTION TO DISMISS

TO: Cassandra D. Williams, *pro se*, 116 Summerhill Dr., Columbia SC 29203.

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

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

This Motion is made upon the following grounds:

Lack of Appellate Jurisdiction – Failure to Timely File and Serve Notice of Appeal

1. S.C. Code Ann. § 41-35-750 requires that a petition for judicial review be **filed in the Administrative Law Court and served upon the Department within thirty (30) days** of the final decision of the Department. Furthermore, ALC Rule 33 requires that “[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.”

2. Upon information and belief, Appellant seeks to appeal Appellate Panel Decision No. 2013-P-1541. This final decision of the Department was mailed to Appellant on October 17, 2013. (Exhibit A).
3. Based on the October 17, 2013 mailing date of the Appellate Panel's Decision, Appellant had until **November 18, 2013**, to file and serve her appeal for judicial review.
4. Through this Court's Notice of Assignment and Order Governing Procedure, SCDEW has been informed that Appellant filed a Notice of Appeal on **December 9, 2013**.
5. Appellant did not file her appeal until December 9, 2013, which was over 30 days after the Appellate Panel's decision was mailed on October 17, 2013. Therefore, Appellant's filing of the appeal was untimely.
6. In addition, SCDEW has not been served with a Notice of Appeal or a petition for judicial review. (Exhibit B, Affidavit). After her untimely filing with the Administrative Law Court, Appellant did send to SCDEW a written request for transcripts, dated December 30, 2013, and served a Brief of Appellant, with filing date of January 2, 2014. Neither of these documents was sent to SCDEW before the November 18, 2013, deadline for serving a Notice of Appeal.
7. Thus, Appellant has failed to timely serve SCDEW with her appeal. *See* S.C. Code Ann. § 41-35-750 (a petition for judicial review must be filed in the Administrative Law Court **and served upon the Department within thirty (30) days** of the **final** decision of the Department) (emphasis added); ALC Rule 33 ("In 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.") (emphasis added).

8. "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).
9. Consequently, the timely filing and service of the notice of appeal are jurisdictional requirements under Section 41-35-750, and the Court has no authority to extend or expand the time in which the notice of intent to appeal must be served. *E.g., Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985); *see also Allison*, 394 S.C. at 189, 714 S.E.2d at 550 ("an appellate body may not extend the time to appeal").
10. The South Carolina Supreme Court has stated that 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.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004).
11. A *pro se* litigant who knowingly elects to represent herself "assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013) (quoting *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003)).
12. "Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." *Goodson v. Am. Bankers Ins. Co. of Florida*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988).
13. Here, the 30-day statutory time period for perfecting the appeal expired on November 18, 2013. Because Appellant did not file her appeal documents with the Court until


December 9, 2013, and failed to serve SCDEW, Appellant clearly failed to comply with the mandatory requirements set by the state statutes and ALC rules governing this appeal. The Court does not have the authority or discretion to “rescue” Appellant from this failure. *Elam v. S.C. Dep't of Transp.*, 361 S.C. at 15, 602 S.E.2d at 775.

14. Therefore, this Court lacks appellate jurisdiction over this matter and must dismiss the appeal. See § 41-35-750; ALC Rule 33; *Allison, supra*; *Mears, supra*.

CONCLUSION

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

Respectfully Submitted,



Debra S. Tedeschi, SC Bar # 15307
Deputy General Counsel
S.C. Dept. of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202
803-737-0395 (phone)
803-737-0124 (fax)
Email: Legal@dew.sc.gov

Columbia, SC
January 27, 2014

AFFIDAVIT

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 Notice of Appeal or Petition for Judicial Review received by the Office of General Counsel from the Appellant Cassandra Williams and none of these documents is in the Department's imaging system for the case of Cassandra Williams and City of Columbia.
3. The Office of General Counsel did receive a written request for transcript on December 30, 2013 and a Brief of Appellant filed on January 2, 2014.

Jessica Chesley
Signature of Affiant
Jessica Chesley

DATED AND SWORN to before me this the
27th day of January, 2014.

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

