

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

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APR 18 2014

SC Court of Appeals

Timothy D. Revels,

Appellant,

v.

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

Respondents.

FINAL BRIEF OF APPELLANT TIMOTHY D. REVELS

April 14, 2014

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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 (R. p. 28). 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 (R. p. 9, ¶ 7; R. p. 33). 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 (R. pp. 3-4). 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 (R. p. 28). 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 (R. p. 9, ¶ 7). This Notice of Assignment was dated October 25, 2013 (R. p. 33).

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.

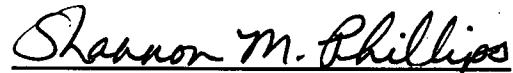
Based on the foregoing, Petitioner requests that the Court reverse the decision of the administrative law court, remand for further proceedings, and for such other relief as he may be entitled.

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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CERTIFICATION

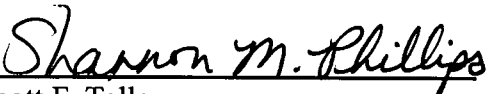
IT IS HEREBY CERTIFIED that Appellant's Final Brief in this matter complies with South Carolina Rule of Appellate Procedure 211(b). This Certification was served upon Counsel for South Carolina Department of Employment and Workforce, Maura Dawson Baker, Counsel for Sherman College of Chiropractic, M. Brian Magargle, and the SC Administrative Law Court, by placing copies of same in the United States Mail this date, with sufficient postage affixed thereto, addressed as follows:

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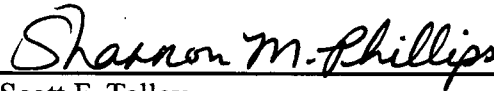
IT IS HEREBY CERTIFIED that a copy of the foregoing Final Brief by Appellant in this action was served upon Counsel for South Carolina Department of Employment and Workforce, Maura Dawson Baker, Counsel for Sherman College of Chiropractic, M. Brian Magargle, and the SC Administrative Law Court, by placing copies of same in the United States Mail this date, with sufficient postage affixed thereto, addressed as follows:

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