

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No.: 13-ALJ-22-0555-AP

RECEIVED

JUL 30 2014

SC Court of Appeals

Stephanie Stewart,

Appellant,


v.

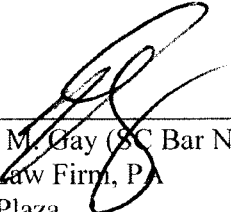
South Carolina Department of Employment
and Workforce and Oconee County,

Respondents.

RESPONDENTS' JOINT MOTION TO DISMISS

NOTICE IS HEREBY GIVEN that the Respondents, South Carolina Department of Employment and Workforce and Oconee County through their undersigned attorneys, move the Court to dismiss Appellant's appeal of the Administrative Law Courts Order issued June 9, 2014, for lack of jurisdiction pursuant to S.C. Code Ann. § 1-23-610(A)(1).


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Attorneys for Respondent, Oconee County

July 29, 2014

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South Carolina Department of Employment
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Respondents.

MEMORANDUM IN SUPPORT OF RESPONDENTS' JOINT MOTION TO DISMISS

Respondents, South Carolina Department of Employment and Workforce (“Department”), and Oconee County (“Oconee”) through their undersigned attorneys, submit the following memorandum and points of authority in support of their joint motion to dismiss Appellant’s appeal:

LACK OF JURISDICTION
Failure to Timely Serve Notice of Appeal

This action is an appeal for judicial review of a final decision of an administrative law judge (“ALC”) affirming a final agency decision of the Department on a claim for unemployment benefits. This honorable Court has no jurisdiction to review the final decision of the ALC, consider this appeal or to grant the relief requested. Jurisdiction of this matter is exclusively governed by S.C. CODE ANN. § 1-23-610, which requires a notice of appeal be filed

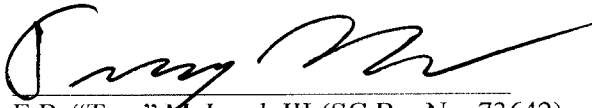
with the Court, and served upon all parties within thirty (30) days from the date the final decision was mailed, May 28, 2014.

As of the date of this motion, neither the Department nor Oconee has been served with a notice of appeal. **(See Exhibits A & B)**. Proper service is required for jurisdiction over the appeal to attach. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). This requirement applies to appeals from decisions of administrative agencies. *Sadisco of Greenville, Inc. v. Greenville County Bd. of Zoning Appeals*, 340 S.C. 57, 530 S.E.2d 383 (2000). Appellant has failed to comply with mandatory requirements governing this appeal and in the absence of proper service upon Respondents, the thirty (30) day statutory time period for perfecting the appeal has expired.

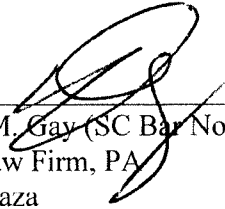
Furthermore, the court has no authority to extend the time in which the notice of appeal must be served. *Mears v. Mears*, 284 SC 168, 337 SE2d 206 (1985); *State v. Brown*, 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001). Appellant's noncompliance with the statutory requirements for this Court to obtain jurisdiction over the appeal decision, requires this Court to dismiss her appeal.

CONCLUSION

WHEREFORE, Respondents pray that the appeal be dismissed with prejudice and that all time requirements and deadlines be held in abeyance pending resolution of this motion.



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Attorneys for Respondent, Oconee County

July 29, 2014

EXHIBIT A

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: Legal Department, S.C. Department of Employment and Workforce, Post Office Box 8597, Columbia, SC 29202.

2. I have not received a Notice of Appeal from the Appellant in the matter of Stephanie Stewart v. South Carolina Department of Employment and Workforce and Oconee County, Case No. 13-ALJ-22-0555-AP.

3. No record of a Notice of Appeal in this matter is found on the Imaging/Records system of DEW.

Jessica Chesley
Signature of Affiant
Jessica Chesley

DATED AND SWORN to before me this the
29th day of July, 2014.

[Signature] (LS)

Notary Public for South Carolina

My Commission Expires: April 1, 2021.

EXHIBIT B

AFFIDAVIT

STATE OF SOUTH CAROLINA

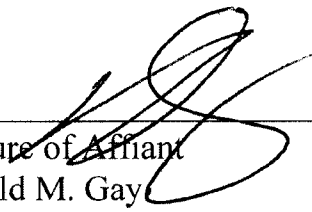
COUNTY OF GREENVILLE

PERSONALLY came before me, the undersigned Notary, the within named Reginald M. Gay who is employed in Greenville County, State of South Carolina, and makes this his 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 his knowledge:

1. I am the counsel of record for Oconee County, South Carolina in the lawsuit styled Stephanie Stewart v. South Carolina Department of Employment and Workforce and Oconee County, Case No. 13-ALJ-22-0555-AP.

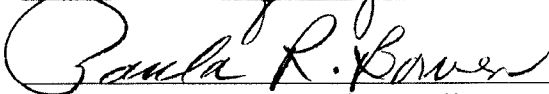
2. I have not received a Notice of Appeal from the Appellant in this matter.

3. No Notice of Appeal in this matter has been served on Oconee County or McNair Law Firm, PA.



Signature of Affiant
Reginald M. Gay
McNair Law Firm, PA
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Suite 700 (29601)
PO Box 447
Greenville, SC 29602
864-271-4940
864-271-4015
rgay@mcnair.net

DATED AND SWORN to before me this the 29th day of July, 2014.



(LS)
Notary Public for South Carolina
My Commission Expires: 6/9/2024

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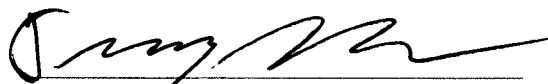
Respondents.

PROOF OF SERVICE

I certify that I have served **Respondents' Joint Motion To Dismiss** and **Memorandum In Support Of Respondents' Joint Motion To Dismiss** on all parties in this action by depositing a copy of it in the United States Mail, first class postage prepaid, on **July 29, 2014**, to the following address(es):

Stephanie Staggers Stewart
2142 Toccoa Highway
Westminster, SC 29693

Reginald M. Gay, Esquire
McNair Law Firm, PA
PO Box 447
Greenville, SC 29602.



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July 29, 2014

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Nikki R. Haley
Governor

Cheryl M. Stanton
Executive Director

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Telephone: (803) 737-2666
Fax: (803) 737-0124

July 29, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

RE: Stephanie Stewart v. SC DEW and Oconee County
Appellate Case No.: 2014-001484

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Joint Motion to Dismiss of Respondents DEW and Oconee County in the above case. Also enclosed is a Proof of Service to the parties.

Please let me know if you have any questions.

Sincerely,

Jessica Chesley

Jessica Chesley
Administrative Legal Assistant for
E.B. "Trey" McLeod
Asst. General Counsel

DEPARTMENT OF EMPLOYMENT AND WORKFORCE

P.O. BOX 995

COLUMBIA, S.C. 29202

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