

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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DEC 15 2014

Appeal from the Administrative Law Court

SC Court of Appeals

The Honorable Shirley C. Robinson, Administrative Law Judge

Case No.: 2014-001484

Stephanie Stewart,
Appellant,

v.

**South Carolina Department of Employment & Workforce,
and Oconee County, South Carolina,**
Respondents.

**APPELLANT'S RESPONSE IN OPPOSITION TO THE RESPONDENTS' MOTION TO
STRIKE APPELLANT'S APPLICATION FOR LEAVE TO PRESENT ADDITIONAL
EVIDENCE**

Stephanie Stewart, Appellant
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Pro-Se

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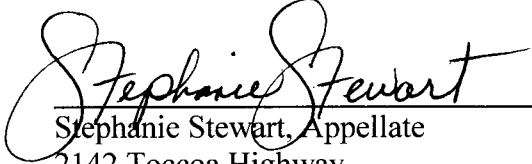
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COMES NOW, Stephanie Stewart, Appellant, (hereinafter "Stewart"), Pro-Se, in the above captioned case, moving this Honorable Court to **deny** the Respondent's, South Carolina Department of Employment and Workforce (hereinafter "SCDEW"), Motion to Strike filed on October 30, 2014. Stewart posits the Respondents' Motion is severely misleading and serves as the Respondents' **second** attempt to influence this Court to preclude Stewart from being heard on the merits, as statutorily entitled, based on meritless procedural grounds. Stewart shows good cause for **denying** Respondents' Motion as illuminated in the attached memorandum with citations of authority in support.

Dated this 13th day of December, 2014

Respectfully Submitted, .

A handwritten signature in black ink that reads "Stephanie Stewart". The signature is written in a cursive style with a horizontal line underneath it.

Stephanie Stewart, Appellate
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Stephanie Stewart,	:	
Appellant,	:	MEMORANDUM IN SUPPORT OF
	:	APPELLANT'S RESPONSE IN
v.	:	OPPOSITION TO THE
	:	RESPONDENTS' MOTION TO STRIKE
South Carolina Department of Employ-	:	APPELLANT'S APPLICATION FOR
ment & Workforce, and Oconee County,	:	LEAVE TO PRESENT ADDITIONAL
Respondents.	:	EVIDENCE
_____	:	

COMES NOW, Stephanie Stewart, Appellant, (hereinafter "Stewart"), Pro-Se, submitting this Memorandum with relevant facts and supporting citation of authorities in vehement opposition to the "Respondents' Motion to Strike". In support of such Stewart shows as follows:

FACTUAL BACKGROUND

Stewart submits that the Respondent has eloquently re-framed the material facts and laws of this case in a manner purposely "wordsmithed" to mislead this Honorable Court into falsely believing that both Stewart's "additional evidence" motion and issue on appeal were improper. The Respondent in its attempt to influence this Court has conveniently excluded the cited authorities Stewart invoked that statutorily confers authority for the SCALC and now this Court to consider an "Application for Leave to Present Additional Evidence". Prior to establishing that her "Additional Evidence" and Initial Appeal Brief were in fact properly presented before the Court, Stewart delineates the facts for the Court as follows:

1. On April 8, 2014, Stewart moved the SCALC for “An Order granting leave for additional evidence to be taken before the SCDEW”. (See Exhibit 1 “Application for Leave to Present Newly Discovered Evidence” at pg. 2). The Application was made pursuant to S.C. Administrative Procedures Act § 1-23-380(3), “Judicial Review Upon Exhaustion of Administrative Remedies”. (See Exhibit 1, pg. 2, 4-5). Further, in Stewart’s “Citations of Authority”, at page 4, this Court’s authority in *Brown v. Peoplease Corp.*, 741 S.E. 2d 761 (2013) and *Byers v. S.C. Alcoholic Beverage Control Comm’n.*, 407 S.E. 2d 653, 654-655 (1991) was invoked to further confer the statutory authority and S.C. Court of Appeals precedent upon which a decision should be adjudicated.
2. On April 30, 2014 Stewart filed an “Addendum to Application for Leave to Present Newly Discovered Evidence” further invoking S.C. Code Ann. § 1-23-380(3), (See Exhibit 2, pg. 2), to present additional evidence not included in the original motion on dated April 8, 2014.
3. On May 8, 2014 the SCALC denied Stewart’s “Application for Leave to Present Newly Discovered Evidence” pursuant to Stewart’s failure to meet the threshold delineated in SCRP 60(b)(2) and Rule 59(b). See Exhibit 3.
4. On May 19, 2014, Stewart filed a “Motion to Reconsider the Court’s Denial of Appellants Application for Leave to Present Newly Discovered Evidence”, as a result of the SCALC’s Order denying her application. Again, Stewart invoked S.C. Code Ann. § 1-23-380(3), *Brown*, and *Byers*. (See Exhibit 4, pg. 2, 3-4). Stewart argued to the SCALC the Order’s denial was not predicated on the standard of review set forth statutorily in § 1-23-380(3) and as set by S.C. Court of Appeals precedent in *Brown* and *Byers*.
5. On July 8, 2014, Stewart filed her Notice of Appeal before this Court. On July 30, 2014, the Respondents “joined forces” and filed their **first** frivolous procedural defense in a pleading styled, “Respondents’ Joint Motion to Dismiss”. The Respondents argued that this Court lacked jurisdiction to adjudicate Stewart’s appeal because they allege non-receipt of Stewart’s Notice of Appeal pursuant to S.C. Code Ann. Section 1-23-610(A)(1). On October 18, 2014,

this Court denied the Respondents' frivolous Motion. Such was an attempt, as the instant pleading, to preclude Stewart from being heard on the merits of this case.

6. On October 23, 2014, Stewart filed the instant Motion styled "Appellant's Application for Leave to Present Additional Evidence" before this Court. Attached to this Motion were 1) Memorandum in Support of Appellant's Applications to Leave to Present Additional Evidence; 2) Relevant excerpts of 12/11/13 SCDEW Initial Record on Appeal; 3) SCDEW 2/19/14 Amended Record on Appeal and 4) SCDEW 3/24/14 Supplement to the Record on Appeal.¹ Again, Stewart invoked S.C. Code Ann. § 1-23-380(3), *Brown*, and *Byers*. The instant Motion specifically motioned this Court for "**An order granting leave for additional evidence to be taken before the SCDEW**", (see Additional Evidence Motion at pg. 1). **The instant Motion did not move this Court pursuant to Rule 212, SCACR, to supplement the Appeal Court Record as the Respondent misleadingly portrays in its Motion to Strike. The Additional Evidence Motion seeks to remand this case so the evidence can be "taken before the SCDEW", (Appellate Panel, or Tribunal).**
7. On October 23, 2014, Stewart filed her Initial Appeal Brief. Stewart raised and briefed the following issue, "Whether the Administrative Law Court erred and or abused its discretion or used the wrong standard of review to deny Stewart's Motion for Leave to Present Additional Evidence, resulting in substantial prejudice?" (See Initial Brief pg. I, v and 13-16). Such specifically argued the SCALC's use of SCRCF 60(b)(2) and Rule 59(b) versus the statutory mandates of S.C. Code Ann. § 1-23-380(3), *Brown*, and *Byers* was the wrong standard of review. (See Initial Brief pg. 13-16).
8. On October 30, 2014, the Respondent filed its "Motion to Strike Appellant's Application for Leave to Present Additional Evidence". Such misleadingly argued the issue(s) in Stewart's instant Motion were "An improper presentation of an issue on appeal", "the record on appeal may not be supplemented ... with evidence presented in the pending motion" and the issues were not raised in Stewart's Initial Brief.

¹ Such was accomplished pursuant to Rule 240(c)(1)(2)(3) SCACR to present the Court with the facts to rule upon the application because the formal record on appeal has not been filed with this Court pursuant to Rule 210(A), SCACR.

Due to the aforementioned facts, Stewart vehemently opposes the Respondents' Motion to Strike. Subsequently, this pleading follows.

I. THE SOUTH CAROLINA ADMINISTRATIVE PROCEDURES ACT § 1-23-380(3) CONFERS AUTHORITY UPON THIS COURT TO CONSIDER AN APPLICATION OR LEAVE TO PRESENT ADDITIONAL EVIDENCE BEFORE THE LOWER AGENCY AND PERMITS A PARTY TO MOTION THE S.C. COURT OF APPEALS FOR AN ORDER GRANTING SUCH

The South Carolina Administrative Procedures Act (APA) § 1-23-380(3), "Judicial Review Upon Exhaustion of Administrative Remedies", provides that:

... a timely application is made to **the court** for leave to present additional evidence, and it is shown to the satisfaction of **the court** that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, **the court** may order that the additional evidence be taken before the agency upon conditions determined by **the court**.

Recently in *Brown* and previously in *Byers*, the Appellants moved this very Court pursuant to § 1-23-380(3) for leave to present additional evidence to the lower agency upon filing their notices of appeal. In rendering both decisions this Court performed its legal analysis and vividly stated:

In ruling on the application to submit additional evidence, this court should consider two factors: (1) the materiality of the additional evidence; and (2) the existence of a good reason for the failure to introduce such evidence at the original hearing. S.C. Code Ann § 1-23-380(3) (Supp. 2012)."

A plain reading of the APA's § 1-23-380(3) clearly identifies "**the court**" as having authority to adjudicate additional evidence motions and a party having entitlement to file such motion as a matter of right. "**The Court**" in this instance is the South Carolina Court of Appeals. Section 1-23-380(3) does not preclude a party from filing an additional evidence motion with the South Carolina Court of Appeals because such motion was previously requested by the party before the Administrative Law Court. This Court's precedence has long recognized that "the language of a ... statute must be given its plain, ordinary meaning and must be construed strictly ...". *Owens Indus, Prods., Inc., v. Sharpe*, 274 S.C. 193, 195, 262 S.E. 2d 33, 34 (1980). **The Respondent cannot and has failed to cite or direct this Court's attention to any authority that contradicts the statutory language in § 1-23-380(3) that permits the filing of the instant motion.** In fact,

the Respondent has strategically avoided addressing § 1-23-380(3)'s applicability in any fashion within its Motion to Strike, when this is the statutory vehicle Stewart has utilized to move this Court. Instead, the Respondents' Motion to Strike essentially argues that 1) Stewart cannot move the S.C. Court of Appeals for "An order granting leave for additional evidence to be taken before the [SCDEW]" pursuant to § 1-23-380(3), 2) adjudication of the Motion by this Court is not permissible and 3) the SCALC's reason for denying the Motion cannot be reviewed by this Court on appeal. The Respondent has improperly "couched" inapplicable procedural arguments as a basis to misinform this Court of what it deems as impermissible, though § 1-23-380(3) confers authority upon this Court to adjudicate Stewart's Pleading. Simply Stewart can and in fact did appeal to this Court the SCALC's standard of review in denying her "Additional Evidence" Motion within her Initial Appeal Brief pursuant to SCACR. Stewart also moved this Court de novo for "an order granting leave for additional evidence to be taken before the SCDEW" as permitted by "the court" pursuant to § 1-23-380(3) of the APA by way of the instant Motion. Stewart's Motion was properly submitted before this Court for consideration pursuant to § 1-23-380(3), *Brown*, and *Byers*. As such, the Pleading is ripe for adjudication by this Honorable Court.

II. THE RESPONDENTS' "MOTION TO STRIKE" SHOULD BE DENIED BECAUSE IT COVERTLY AND IMPROPERLY RAISES ISSUES THAT SHOULD HAVE BEEN RAISED IN THE RESPONDENTS' APPEAL BRIEF BECAUSE IT SEEKS TO PROCEDURALLY CHALLENGE AN ISSUE STEWART RAISED AND BRIEFED ON APPEAL

The Respondent moves this Court to dismiss Stewart's instant Additional Evidence Motion because the pending motion is "improperly couched" as an improper presentation of an issue on appeal. Further, the Respondents argue "the issue(s) were raised and ruled on by the ALC, as such, the issues presentation via the pending motion is improper" and "if [Stewart took] exception to [the SCALC's] denial, **the argument in its entirety should have been raised in her brief**". The proper vehicle to raise this opposition to an appeal issue, is the Respondents' Appeal Brief, not a motion.

A. Respondents' opposition to Stewart' appeal issue and factual omission

The Respondent conveniently omitted the fact that Stewart raised and argued in her Initial Brief, the SCALC's basis for denying her motion styled "Appellant's Application for Leave to Present Newly Discovered Evidence", was in error.² Upon closer examination of Stewart's Appeal Brief at pages 13-16, with specificity and supporting authority, in question format, she appealed "Whether the Administrative Law Court erred and/or abused its discretion or used the wrong standard of review to deny Stewart's Motion for Leave to Present Additional Evidence, resulting in substantial prejudice?" "For an appeal to be legally sufficient it must be one which will direct the court's attention to the abuse or abuse allegedly committed below through a distinct and specific statement of the rulings complained of. In short, the petition must include all that is necessary to enable the appellate court to decide whether the ruling complained of was erroneous." *Smith v. S.C. Dep't of Soc. Servs.*, 284 S.C. 469, 327 S.E. 2d 348 (1985) (citing 4Am. Jur. 2d, Appeal and Error, § 430 (1962). Additionally, "[an appeal] pursuant to the Administrative Procedures Act (APA) must direct the court's attention to the abuse allegedly committed below, including a distinct and specific statement of the rulings of which appellant complains" *Pringle v. Builders Transp.*, 298 S.C. 494, 495, 381 S.E. 2d 731, 732 (1989) (citing Smith). Stewart's Initial Appeal Brief accomplishes such pursuant to precedent and rules of this Court.

Page 13 of Stewart's Initial Brief states, "... Stewart shows that the [SCALC] improperly effected a wrong standard of review in its denial of her Application." The issue further detailed the SCALC's standard of review effectuated to predicate its denial and the statutory authority, APA § 1-23-380(3), and S.C. Court of Appeals case law precedent in *Brown* and *Byers*. See Initial Brief pg. 13-16. Simply, the Brief directs the Court's attention to the SCALC's Order and Stewart's prior pleadings submitted to the SCALC.³ The Respondents' Motion to Strike, footnote 1, falsely states that Stewart attempts to append the pending Motion as an issue on appeal by

² Through the Motion was styled "Newly Discovered Evidence" before the SCALC, the authority Stewart cited to proceed under was S.C. Code Ann. § 1-23-380(3) which provides for taking of additional evidence. Such was specified on page 2 of the introductory paragraph of the Motion. The instant "Additional Evidence" Motion invoked § 1-23-380(3) and does not mislead or "mischaracterize" any factual assertion or argument as the Respondent infers in its Motion to Strike.

³ Rule 209(a)(b), SCACR, "Designation of Matter to be included in the Record on Appeal" provided that a party upon serving her initial brief "shall ... serve on all parties a Designation of Matter to be included in the ROA shall [specify] ... pleadings she propose to include in the record on appeal." Stewart designated her three "Additional Evidence" Motion Pleadings before the SCALC to be included as part of the Record on Appeal pursuant to Rule 209.

reference. The Designation of Matter' paragraph numbers 20, 30, and 34 each identify the pleadings submitted before the SCALC that are properly sought to be included as part of the Record on Appeal before this Court upon filing the Initial Brief pursuant to Rule 210(a)(b), SCACR.

Stewart's statement of facts, arguments and points of law expressed in her 1) Application for Leave to Present Newly Discovered Evidence," 2) "Addendum to Application for Leave to Present Newly Discovered Evidence, 3) Motion to Reconsider and 4) "Appellant' Application for Leave to Present Additional Evidence", currently before this Court are fully incorporated by reference.

These pleadings were submitted to the SCALC and ruled upon and are part of the SCALC proceeding subject to review by this Court.⁴ As the Court of Appeals record has not been finalized in this case for formal reference and a repetitive dissertation of the facts were not necessary to determine whether the SCALC's standard of review was in error, Stewart referred this Court to pleadings that are in fact part of the proceeding developed before the SCALC. As issue one is not a fact specific challenge, Stewart's incorporation by reference to the facts are not dispositive to the issue of whether or not the proper standard of review was effectuated by the SCALC. See *United States v. Clark-Gonzalez* 530 Fed. Appx. 372; 2013 U.S. App. (While fact specific challenges could not be raised by mere reference appellate issue was not a fact specific challenge thus sufficiently raised). In-turn, for judicial efficiency, Stewart briefed this Court on the issue raised in her brief, whether the SCALC used the wrong standard of review to deny her motion for leave to present additional.⁵ Lastly, the Respondents' opposition to Stewart's appeal issue should have been submitted in its forthcoming appeal brief pursuant to Rule 208(a)(2).

⁴ Rule 210(a)(b), SCACR, requires Stewart to file the Record on Appeal after the Final Brief has been filed. The filing date of the Initial Brief preceded such date and pursuant to Rule 210(c) "each page of the ROA' has not been numbered consecutively for reference in her pleading.

⁵ Stewart's incorporation by reference of the instant "Additional Evidence Motion" in her Initial Brief is inconsequential. The issue seeks an appeal of the standard of review the ALC utilized to rule on Stewart's Motion, which does not or need to address the substantive facts within the Motion for adjudication.

III. STEWART’S MOTION MOVED THE COURT FOR PRESENTATION OF ADDITIONAL EVIDENCE BEFORE THE LOWER AGENCY AND DOES NOT MOVE FOR SUPPLEMENTATION OF THE RECORD FOR CONSIDERATION BY THIS COURT PURSUANT TO RULE 212, SCACR

The Respondents’ “Motion to Strike” attempts to influence this Court to alternatively construe Stewart’s “Additional Evidence” Motion as a motion to supplement the record pursuant to Rule 212. The Court should reject this inference and frivolous contention. A plain reading of Stewart’s additional evidence memorandum establishes she moved the Court:

Pursuant to S.C. Code Ann § 1-23-380(3) ... and Rule 240, SCACR for an order granting leave for additional evidence to be taken before the SCDEW.” (See Add. Ev. Memo. pg. 1).

The Additional Evidence Memorandum further states;

For all the reasons stated above, this Court is permitted to and should remand this case to the SCDEW to allow Stewart to present additional evidence with specific instructions [and] Stewart moves for a stay ... pending remand to the lower SCDEW ...”. See Motion at page 15. (See Add. Ev. Memo pg. 15).

Further, Stewart’s Application (Additional Evidence Motion) attached to the Memorandum states,

... Appellant ... mov[es] this ... Court for leave to present additional evidence under S.C. Code Ann § 1-23-380(3) of the APA. Appellant posits the additional evidence is dispositive to the review of the forthcoming appellate issues and requests a remand to the SCDEW Appellate Panel for the taking of such evidence under conditions determined by this Court.” See Application.

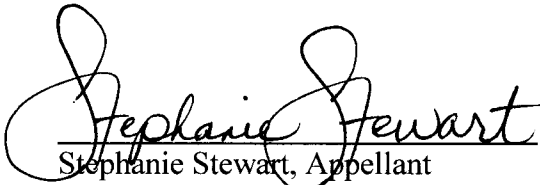
The Respondents’ proposition that Stewart is moving this Court to supplement the Record should be denied based on a citation of authority she never invoked, Rule 212, SCACR is simply wrong and should be rejected. As illustrated above, the plain language of Stewart’s pleading moved this Court for “an order granting leave for additional evidence to be taken before the SCDEW” pursuant to S.C. Code Ann. § 1-23-380(3). “... if the court can reasonably read [a pro se litigant] pleadings to state a valid claim on which the plaintiff could prevail, it should do so, but a court, [nor respondent], may not write a petition to conjure up questions never squarely presented to the court”. *Beaudett City of Hampton* 775 F.2d 1274, 1278 4th Cir. (1985). Again, this Court should reject the Respondents’ proposition and rule upon Stewart’s Application pursuant to statute and the merits of the request presented.

CONCLUSION

For the above stated reasons, Stewart submits that the Respondents' Motion should be DENIED, as she is not moving to supplement the Record as the Respondent incorrectly argues. In addition the evidence is material and she has good reasons for not submitting the evidence before the Tribunal (As delineated above, the Respondents' withheld the information). The Administrative Procedures Act confers jurisdiction upon this Court to "remand a case to the SCDEW for the taking of additional evidence." Stewart respectfully requests that this Court institute justice and fairness by GRANTING her motion.

Dated this 13th day of December 2014.

Respectfully Submitted,

A handwritten signature in black ink that reads "Stephanie Stewart". The signature is written in a cursive style with a large initial 'S'.

Stephanie Stewart, Appellant
2142 Toccoa Highway
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Pro-Se

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

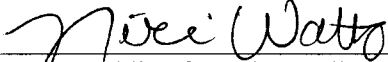
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SWORN AFFADAVIT

PERSONALLY came and appeared before me, the undersigned Notary, the within named Stephanie Stewart, who is a resident of Oconee County, 2142 Toccoa Highway, State of South Carolina, 29693, and makes her statement and Sworn Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts set forth within her pleading styled, "Appellant's Response in Opposition to the Respondents' Motion to Strike Appellant's Application for Leave to Present Additional Evidence" dated December 13, 2014, is true and correct to the best of her knowledge.


Stephanie Stewart
Affiant

Dated and sworn to before me this the
13 day of December 2014.


Notary Public of South Carolina
My Commission Expires: Apr 13, 2024

NIKKI WATTS
Notary Public - State of South Carolina
My Commission Expires April 3, 2024

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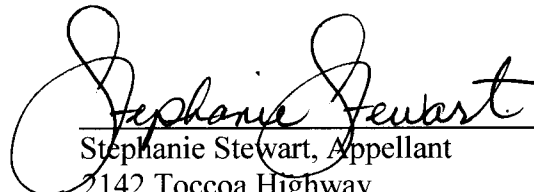
CERTIFICATE OF SERVICE

I certify that I have served the above Appellant's Response in Opposition to the Respondents' Motion to Strike Appellant's Application for Leave to Present Additional Evidence, by depositing the same in the United States mail, postage prepaid, on December 13, 2014 to each parties' address of record listed in the above captioned case. The same was also faxed on December 13, 2014 to each party of record listed in the above captioned case.

SCDEW
Office of General Counsel
Attn: Attorney E.B. Trey McLeod, III
Post Office Box 8597
Columbia, South Carolina 29202

Oconee County
c/o: McNair Law Firm
Attn: Attorney Reginald Gay
Post Office Box 447
Greenville, South Carolina, 29602

Dated this 13th day of December 2014.


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Pro-Se

December 13, 2014

Stephanie Stewart
2142 Toccoa Highway
Westminster, South Carolina 29693

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

RE: Stewart v. SCDEW et. al., Case No.: 2014-001484

Ms. Kitchings:

Please find enclosed “Appellant’s Motion for Extension of Time to File A Return to Respondents’ Motion to Strike Appellant’s Application for Leave to Present Additional Evidence” and “Appellant’s Response in Opposition to the Respondents’ Motion to Strike Appellant’s Application for Leave to Present Additional Evidence”, both dated December 13, 2014.

Should you have any questions or need additional information, please do not hesitate to contact me.

Respectfully Submitted,


Stephanie Stewart

cc: Trey McLeod
Reginald Gay

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