

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE  
ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

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

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Stephanie Stewart,

Appellant,

v.

South Carolina Department of Employment  
and Workforce and Oconee County,

Respondents.

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**RESPONDENT'S REPLY TO APPELLANT'S OPPOSITION TO MOTION TO STRIKE  
APPELLANT'S APPLICATION FOR LEAVE TO PRESENT ADDITIONAL  
EVIDENCE**

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**ARGUMENT**

Appellant's overall argument in response to Respondent's Motion To Strike Appellant's Application For Leave To Present Additional Evidence (the "Motion"), is that S.C. Code Ann. §1-23-380(3) of the Administrative Procedures Act ("APA") confers authority upon this Court to consider an application for leave to present additional evidence before the administrative agency. This contention is not supported by statute or case law.

Appellant references two case which clearly illustrate that this Court's review of Appellant's issue is governed not by §1-23-380(3) but instead controlled by S.C. Code Ann. § 1-23-610. Appellant motioned the Administrative Law Court ("ALC") to allow this additional

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evidence and the ALC ruled by denying the motion. As such, the question for this Court on appeal is whether the ALC erred in denying the motion.

In Brown v. Peoplease Corp., a Workers' Compensation case, this Court stated:

Section 1-23-380(3) provides that pursuant to the filing of a petition for review, the party may also apply to the court for leave to present additional evidence, and the court may order the additional evidence to be taken before the agency if '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.'

Unlike Brown, which was a direct appeal to this Court, the appeal from DEW's final decision in the instant case went first the ALC. See S.C. Code Ann. § 1-23-380 ("Except as otherwise provided by law, an appeal is to the court of appeals."); S.C. Code Ann. § 41-35-750 ("a party...may initiate an action in the administrative law court against [DEW] for the review of its decision."). The law further states that "[a]n appeal may be taken from the decision of the [ALC] pursuant to the South Carolina Appellate Court Rules and *Section 1-23-610.*" S.C. Code Ann. § 41-35-750 (emphasis added).

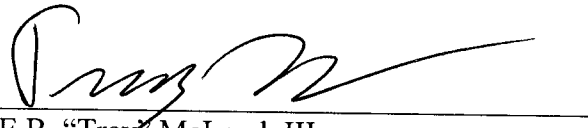
Under § 1-23-610, this Court's review of the ALC's denial of Appellant's motion to include new/additional evidence is limited to whether the ALC's denial was "characterized by abuse of discretion or [a] clearly unwarranted exercise of discretion" or "affected by some other error of law." Id; see also Boland v. S.C. Public Service Authority, 281 S.C. 293, 295, 315 S.E.2d 143, 145 (1984)("an abuse of discretion arises in cases in which: (1) the judge issuing the order was controlled by some error of law; or (2) where the order, based upon factual, as distinguished from legal, conclusions, is without evidentiary support.")

Accordingly, Appellant's Application for Leave to Present Additional Evidence presently before this Court is an improper presentation of issue(s) and arguments on appeal that should

properly have been presented in her brief for this Court's consideration. Therefore, the application should be stricken accordingly. See Wright v. Craft, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.")

### CONCLUSION

WHEREFORE Respondent respectfully request that this Honorable Court strike and/or deny Appellant's Application to Present Additional Evidence.



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(803) 737-2666

Attorney for Respondent, DEW

December 17, 2014

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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Shirley Robinson, Administrative Law Judge  
Case No. 2013-ALJ-22-0555-AP

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Stephanie Stewart,

Appellant,

v.

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Respondents.

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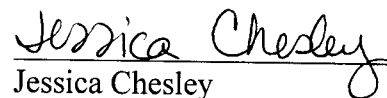
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I certify that I have served the Respondent's South Carolina Department of Employment and Workforce's Reply to Appellant's Opposition to Motion to Strike on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on December 18, 2014, addressed to the parties at their addresses of record:

Stephanie Stewart  
2142 Toccoa Highway  
Westminster, SC 29693

Reginald Gay  
PO Box 447  
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December 18, 2014

  
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December 18, 2014

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**SC Court of Appeals**

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

RE: Stephanie Stewart v. SCDEW and Oconee County  
Case No: 13-ALJ-22-0555-AP

Dear Ms. Kitchings:

Enclosed is the original Respondent's Reply to Appellant's Opposition to Motion to Strike. Also enclosed is a certificate of service to the parties.

Please let me know if you have any questions.

Sincerely,

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

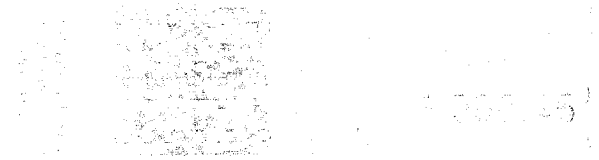
Jessica Chesley  
Administrative Legal Assistant for  
Trey McLeod  
General Counsel



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