

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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SC Court of Appeals

Edward Spears,)
)
Appellant,)
)
v.)
)
South Carolina Department of Employment)
and Workforce,)
)
Respondent.)
_____)

Docket No. 15-ALJ-22-0328-AP

ORDER OF DISMISSAL

This matter is before the court on the appeal of Edward Spears (Appellant) filed on July 13, 2015. On July 31, 2015, the South Carolina Department of Employment and Workforce (Department) filed a Special and Limited Appearance and Motion to Dismiss. The Department cited S.C. Code Ann. § 41-35-750 and ALC Rule 33 which provide that an appeal must be filed within thirty (30) days from the date of mailing of the final decision of the Department. The Department argued that since its final written decision was mailed on June 9, 2015, the date for perfecting an appeal from the decision was July 9, 2015. It is undisputed that the Appellant did not file his appeal until July 13, 2015, beyond thirty days from the date the Department mailed its decision.

Pursuant to ALC Rule 19, the Appellant timely filed a response to the Department's Motion, and argued that he mistakenly mailed two certificates of service to the Department on June 30, 2015, well in advance of his filing deadline. The Appellant argued that the Department had both a legal and moral obligation to "see that workers get a fair shake in the employment system according to their webpage," which he attached as Exhibit E. The Appellant argued that the Department, when it received two copies of his appeal, should have immediately returned one of the copies, or at least contacted him so that he could have corrected the problem.

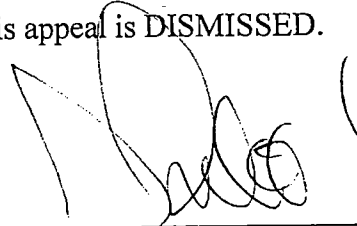
The Appellant requests a right to file a late appeal because of his alleged excusable neglect, as well as an alleged moral and legal duty of the Department to notify him of his mistake in a timely manner. Though this court is sympathetic to the Appellant's arguments, this court has no

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discretion in this matter, and no authority to extend the time for appeal so as to give this court jurisdiction. *Burnett v South Carolina State Highway Department*, 252 S.C. 568, 167 S.E. 2d 571 (1969). Timely filing and service of a notice of appeal is a jurisdictional requirement and this court does not have the authority to extend or expand the time for filing such appeal. See *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985); *State v. Brown*, 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001). Pursuant to the Department's motion, this court concludes that this matter must be dismissed.

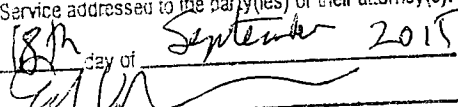
IT IS THEREFORE ORDERED that this appeal is **DISMISSED**.
AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

September 18, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 18th day of September 2015
By: 
Judicial Law Clerk