

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM THE  
ADMINISTRATIVE LAW COURT

OCT 15 2015

Ralph King Anderson, III, Administrative Law Judge

SC Court of Appeals

Case No.: 15-ALJ-22-0201-AP

Appellate Case No. 2015-001865

Mary E. Spates,

Appellant,

v.

South Carolina Department of Employment and Workforce  
and Palmetto Lake City Operating and Prime Time Healthcare,

Respondents,

**NOTICE OF SPECIAL APPEARANCE, MOTION TO  
DISMISS AND MEMORANDUM IN SUPPORT OF THEREOF**

NOTICE IS HEREBY GIVEN that Respondent, South Carolina Department of Employment and Workforce, (DEW or Department) through its undersigned attorney, make a special appearance and submit this Motion to Dismiss and Memorandum in Support thereof. Appellant failed to serve her Notice of Appeal on the South Carolina Administrative Law Court (ALC) within thirty (30) days of receipt of the ALC's final decision as is required for this Court's jurisdiction to attach pursuant to S.C. Code Ann. § 1-23-610 and Rule 203(b)(6), SCACR. Therefore, this Court should dismiss Appellant's appeal with prejudice for lack of jurisdiction.

**BACKGROUND**

The ALC issued its final decision on July 31, 2015. According to Appellant's Notice of Appeal dated September 2, 2015, she received the Order on August 3, 2015. By letter dated September 8, 2015, this Court informed Appellant that that the Notice of Appeal was deficient in that "A proof of service showing that a copy has been served on...the Administrative Law Court

has not been provided as required by Rule 203(e), SCACR.” In response, on September 21, 2015, Appellant filed with the Court a proof of service certifying that she had served her notice of appeal on the ALC by “depositing a copy of it in the United States Mail, postage prepaid, on September 12, 2015, addressed to Edgar A. Brown Building 1205 Pendleton Street, Suite 224 Columbia, SC 29201.”

## ARGUMENT

### **The court should dismiss appellant's appeal for lack of jurisdiction**

This action is a petition for judicial review of a final decision of the ALC and is therefore governed by the Administrative Procedures Act (APA). The APA, S.C. Code Ann. §1-23-610(A)(1) states:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and *served on* the opposing party and *the Administrative Law Court* not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

(emphasis added). Furthermore, Rule 203(b)(6), SCACR states:

When a statute allows a decision of the administrative law court ... to be appealed directly to ... the Court of Appeals, the notice of appeal *shall be served on the agency, the administrative law court* ... and all parties of record within thirty (30) days after receipt of the decision

(emphasis added)

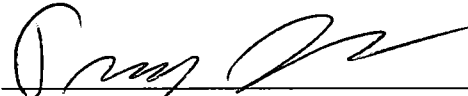
Appellant asserts in her notice of appeal that she received the ALC's final decision August 3, 2015. The last day to properly serve the ALC with her notice of appeal within the statutory time limit was September 2, 2015. By her own admission, Appellant did not serve the ALC until September 12, 2015.

Service of the appeal on all parties is a mandatory and jurisdictional requirement, and the court has no authority to extend the time in which the notice of appeal must be served. Mears v.

Mears, 287 SC 168, 337 SE2d 206 (1985); State v. Brown, 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001). Since Appellant failed to comply with the statutory requirements for the Court to obtain jurisdiction to review the ALC's final decision, the appeal should properly be dismissed.

### CONCLUSION

The Department respectfully requests that Appellant's appeal be dismissed with prejudice for lack of jurisdiction and that all deadlines be held in abeyance pending resolution of this motion pursuant to Rule 240(b), SCACR.



---

E.B. "Trey" McLeod, III (SC Bar # 73642)  
Assistant General Counsel  
S.C. Dept. of Employment & Workforce  
Post Office Box 8597  
Columbia, SC 29202  
(803) 737-2666  
[legal@dew.sc.gov](mailto:legal@dew.sc.gov)  
Attorney for Respondent

October 12, 2015

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

OCT 15 2015

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph King Anderson, III, Chief Administrative Law Judge

SC Court of Appeals

Appellate Case No. 2015-001865

Mary E. Spates,

Appellant,

v.

South Carolina Department of Employment  
and Workforce and Palmetto Lake City  
Operating and Prime Time Healthcare,

Respondent.

PROOF OF SERVICE

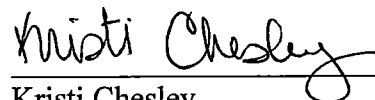
I certify that I have served the Respondent South Carolina Department of Employment and Workforce's Notice of Special Appearance, Motion to Dismiss and Memorandum in Support of Thereof, on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on October 12, 2015, addressed to the parties at their addresses of record:

Mary E. Spates  
887 Gracelyn Circle  
Lake City, SC 29560

Prime Time  
Healthcare  
8212 S. 109<sup>th</sup> St.  
La Vista, NE 68128

Palmetto Lake City Operating  
c/o TALX  
PO Box 182366  
Columbus, OH 43218

October 12, 2015



Kristi Chesley  
Administrative Legal Assistant  
SC Dept of Employment and Workforce  
Post Office Box 8597  
Columbia, South Carolina 29202  
(803) 737-0395

P.O. Box 995  
1550 Gadsden Street  
Columbia, SC 29202  
dew.sc.gov



Nikki R. Haley  
Governor

Cheryl M. Stanton  
Executive Director

Post Office Box 8597  
Columbia, SC 29202  
Telephone: (803) 737-2666  
Fax: (803) 737-0124  
October 12, 2015

**RECEIVED**

OCT 15 2015

SC Court of Appeals

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

RE: Mary E. Spates v. SC DEW and Palmetto Lake City  
Operating and Prime Time Healthcare

Appellate Case No: 2015-001865

Dear Ms. Kitchings:

Enclosed for filing are the original and six copies of the Notice of Special Appearance, Motion to Dismiss and Memorandum in Support of Thereof in the above referenced case. Also enclosed is a Proof of Service to the other parties.

Please let me know if you have any questions.

Sincerely,

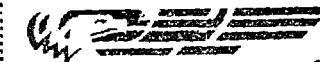
Kristi Chesley  
Administrative Legal Assistant for  
Trey McLeod  
Attorneys for SCDEW

**SOUTH CAROLINA**  
**DEPARTMENT OF EMPLOYMENT AND WORKFORCE**  
P.O. BOX 995  
COLUMBIA, S.C., 29202

Presort  
First Class Mail  
CombAsPrice



U.S. POSTAGE >> PITNEY BOWES



ZIP 29201 \$ 001.70<sup>3</sup>  
02 1W  
0001400923 OCT 12 2015

**RECEIVED**  
OCT 15 2015  
SC Court of Appeals

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