

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

DEC 04 2015

SC Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge
Case No.: 15-ALJ-22-0328-AP

Appellate Case Number: 2015-002056

Edward Spears,

Appellant,

v.

South Carolina Department of Employment
and Workforce, and Food Lion,

Respondents.

**RESPONDENT DEW'S MOTION TO DISMISS
AND MEMORANDUM IN SUPPORT**

Respondent, the South Carolina Department of Employment and Workforce (DEW or Department), hereby moves this Court to dismiss Appellant's appeal from the decision of the South Carolina Administrative Law Court (ALC), pursuant to Rule 240, SCACR. In support thereof, the Department submits the following memorandum:

DISCUSSION

On September 28, 2015, Appellant, Edward Spears (Appellant) appealed from an ALC order which dismissed as untimely Appellant's petition for judicial review of DEW's final administrative decision on a claim for unemployment insurance (UI) benefits. (ALC Order of Dismissal, dated September 18, 2015). On November 2, 2015, Appellant served DEW with a document purported to be Appellant's initial brief. Because Appellant's filing does not conform

to the South Carolina Appellate Court Rules, this Court must dismiss the appeal. See Rule 208(a)(4), SCACR.

Rule 208, SCACR, governs the filing and content requirements for initial briefs before this Court. Rule 208(b)(1)(B), SCACR requires “[a] statement of each of the issues presented for review. The statement shall be “concise and direct as to each issue and may be stated in question form” and “broad general statements may be disregarded by the Court.” Id. Pursuant to Rule 208(b)(1)(D), SCACR, the initial brief of Appellant “shall contain” an Argument section that is “divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority.” In addition to the initial brief, Appellant is also required to serve and file a separate designation of matter that “must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal.” Rule 209(b), SCACR.

Here, Appellant’s filing, while labeled an initial brief, does not conform with the applicable rules. Most importantly, Appellant has failed assert any cognizable legal arguments and has not provided any legal authority or citation in support of his filing. See Rule 208(b)(1)(D), SCACR (Any arguments in a brief must be “followed by discussion and citations of authority.”)

Appellant’s brief is a mere recitation of Appellant’s version of the facts surrounding the filing and serving of his appeal documents, followed by baseless allegations of “negligence and fraud” on the part of the Department.

Additionally, Appellant’s claim that the ALC improperly disregarded his arguments regarding fraud on the part of the Department is not preserved. Appellant raised this defense in

response to the Department's Motion to Dismiss for lack of appellate jurisdiction. However, in its order, the ALC issued only a general ruling stating "Though this court is sympathetic to the Appellant's arguments, this Court has no discretion in this matter, and no authority to extend the time for appeal." This is not sufficient to preserve the issue for appellate review. See Shealy v. Aiken Cnty., 341 S.C. 448, 460, 535 S.E.2d 438, 444-45 (2000) (stating a "[reviewing court's] general ruling is insufficient to preserve the specific issue for appellate review" and if no motion for rehearing is filed requesting a ruling on a particular issue, the appellate court may not address it).

Furthermore, as to the argument that the ALC erred in disregarding his arguments generally, this Court must find the issue abandoned because Appellant provides no citation to legal authority or citation to the record that supports his claim. See Hunt v. Forestry Comm'n, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct.App.2004) ("Issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal."); Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 327 n. 1, 730 S.E.2d 282, 284 n. 1 (2012) (finding an issue abandoned when the argument in appellant's brief was "purely a recitation of facts, devoid of any citation to legal authority," resulting in a summary conclusion).

Finally, Appellant failed to file a separate Designation of Matter as required by Rule 209, SCACR.

The Department is aware of the fact that Appellant has chosen to represent himself and may not be versed in the rules of appellate procedure; however, this does not excuse his duty to present a cognizable issue on appeal. See State v. Burton, 356 S.C. 259, 265 n. 5, 589 S.E.2d 6, 9 n.5 (2003) ("A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law."); see also State v. Hollman, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) (the "established rules of

procedure are not to be discarded, either in the trial court or on appeal, merely because the defendant has been his own lawyer”) overruled on other grounds by *Stevenson v. State*, 335 S.C. 193, 516 S.E.2d 434 (1999).

CONCLUSION

For these reasons, Appellant’s appeal to this Court should be dismissed. Additionally, Respondent prays that all time limits and deadlines be held in abeyance pending the resolution of this motion.



E.B. “Trey” McLeod, III (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

December 2, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Case No.: 15-ALJ-22-0328-AP
Appellate Case Number: 2015-002056

RECEIVED

DEC 04 2015

SC Court of Appeals

Edward Spears,

Appellant,

v.

South Carolina Department of Employment
and Workforce, and Food Lion,

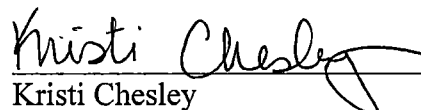
Respondents.

PROOF OF SERVICE

I certify that I have served Respondent's Motion to Dismiss and Memorandum in Support on all parties in this action by depositing a copy of it in the United States Mail, first class postage prepaid, on December 2, 2015, to the following addresses:

Edward R. Spears
503 West Roughfork Street
Florence, SC 29501
Respondent (*Pro Se*)

Food Lion
Corporate Control
P.O Box 1180
LondonBerry, NH 03053
Employer-Defendant



Kristi Chesley
S.C. Dept. of Employment & Workforce
Post Office Box 8597
Columbia, SC 29202
(803) 737-2666
legal@dew.sc.gov

December 2, 2015

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



Nikki R. Haley
Governor

Cheryl M. Stanton
Executive Director

P.O. Box 8597
Columbia, South Carolina 29202
(803) 737-2666
FAX (803) 737-0124

December 2, 2015

RECEIVED

DEC 04 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: *Edward R. Spears v. South Carolina Department of Employment and Workforce, & Food Lion*

Appellate Case No.: 2015-002056

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Appellant's Motion to Dismiss and Memorandum in Support of Motion to Dismiss in connection with the above-referenced matter.

By copy of this letter to Appellant and Food Lion, I have enclosed a copy of Appellant's Motion to Dismiss and Memorandum in Support of Motion to Dismiss.

Please contact me if you have any questions

With kind regards, I am

Sincerely Yours,

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

Kristi Chesley
Administrative Legal Assistant for
E.B. "Trey" McLeod, III
Assistant General Counsel

Enclosures

cc: Edward R. Spears, *Pro Se*
Food Lion

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

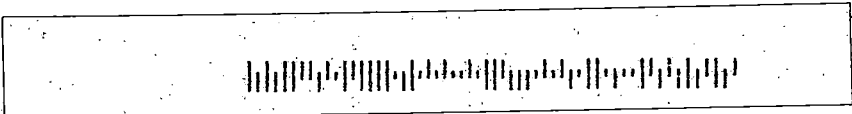
P.O. BOX 995
COLUMBIA, S.C., 29202

FIRST CLASS



U.S. POSTAGE

ZIP 29201 \$
02 1W
0001400923 D



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

RECEIVED
DEC 04 2015
SC Court of Appeals