

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**RECEIVED**

APPEAL FROM THE  
ADMINISTRATIVE LAW COURT

FEB 12 2016

John D. McLeod, Administrative Law Judge  
Case No.: 15-ALJ-22-0497-AP

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SC Court of Appeals

Appellate Case Number: 2016-000037

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Billie D. Mueller,

Appellant,

v.

South Carolina Department of Employment  
and Workforce,

Respondent.

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

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Respondent South Carolina Department of Employment and Workforce (DEW) respectfully moves to dismiss this appeal for Appellant's failure to properly serve the Notice of Appeal within thirty (30) days after as required by S.C. Code Ann. § 1-23-610 and Rule 203(b)(6), SCACR. This motion is based upon the grounds set forth herein and upon the exhibits attached hereto.

**INTRODUCTION**

This is an unemployment insurance (UI) benefits case. On July 31, 2015, Appellant timely appealed a final decision of DEW's Appellate Panel, regarding her UI claim, to the Administrative Law Court (ALC). The ALC issued and Appellant received by email the order of the Honorable John D. McLeod on January 4, 2016. Thus, Appellant was required to file and

serve her Notice of Appeal no later than Wednesday, February 3, 2016. See S.C. Code Ann. § 1-23-610; Rule 203(b)(6), SCACR (providing that “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.”)

Appellant failed to comply with the applicable rules by not properly serving her Notice of Appeal upon DEW within the statutorily prescribed deadline; therefore, this Court should dismiss her appeal for lack of appellate jurisdiction.

### FACTS

On December 15, 2014, the ALC emailed<sup>1</sup> both parties, and this email stated in full:

Please find attached to this email a copy of the Order that was signed by Judge McLeod.

Regards,  
Anthony R. Goldman, Esquire  
Judicial Law Clerk to  
The Honorable John D. McLeod  
S.C. Administrative Law Court

(Exhibit A). A signed and entered copy of the appealed order was attached to the email. (Exhibit B). Counsel for DEW received this email on January 4, 2016. Appellant received the email on this same date.<sup>2</sup>

On January 4, 2016, Appellant **emailed** a copy of her Notice of Appeal to the Department. (Exhibits C & D). As of February 8, 2016, DEW had not been properly served the Notice of Appeal. (Exhibit E).

### ARGUMENT

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<sup>1</sup> “A party who furnishes an e-mail address to the [ALC] consents to the service of documents issued by the Court via e-mail.” ALC Rule 5. “Unless otherwise approved by administrative order of the Court, **e-mail service applies only to documents issued and served upon a party by the Court**, such as prehearing statements, notices of hearing, or final orders, **and parties may not serve documents by e-mail.**” 2013 Revised Notes to ALC Rule 5 (emphasis added).

<sup>2</sup> Appellant acknowledges receipt of the ALC Order on January 4, 2016, in her Notice of Appeal. (Exhibit C, p. 3.)

“The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction.” Allison v. W.L. Gore & Assocs., 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011).

Therefore, the controlling inquiry is whether Appellant’s emailed notice of her appeal complies with the service rules under Rule 203(b)(6) and Rule 262(b), SCACR. If not, Appellant’s service of her appeal was deficient and renders compliance with the statutory requirement to perfect her appeal incomplete. Id. Moreover, any future service of her notice of appeal would be untimely. Therefore, this appeal must be dismissed for lack of appellate jurisdiction.

S.C. Code Ann. § 1-23-610(A)(1) states a Notice of Appeal from an ALC Order “must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules...**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.” (Emphasis added). Rule 203(b)(6), SCACR, also requires that the notice of appeal “**be served** on the agency, [the ALC],...and all parties of record within thirty days after receipt of the decision.” (emphasis added). Rule 262(b), SCACR states:

**Service.** Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the appellate court. Service upon the attorney or upon a party shall be made by **delivering a copy** to him or by **mailing it** to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(Emphasis added). Furthermore, the South Carolina Supreme Court has stated that when “service by mail is permitted, it is complete when the document is deposited with the United States Postal Service, properly addressed with sufficient postage.” Southbridge Properties, Inc. v. Jones, 292 S.C. 198, 199, 355 S.E.2d 535, 536 (1987).

In other words, Rules 203(b)(6) and 262(b), SCACR only allow for service of a Notice of Appeal to be accomplished by mail or hand delivery. The applicable rules simply do not authorize service of the Notice of Appeal by email. Accordingly, because Appellant never mailed or delivered her Notice of Appeal to DEW, she has failed to properly serve DEW within the thirty-day period.

The timely service of the notice of appeal is an absolute jurisdictional requirement and, upon the failure of an appellant to timely serve the notice, an appellate court must dismiss the appeal. See Elam v. South Carolina Dep’t of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (the “requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, **the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.**”) (emphasis added).

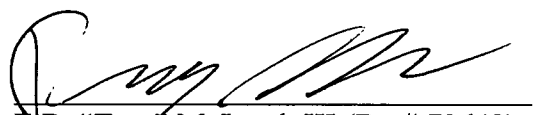
In White v. S. Carolina Dep’t of Health & Env’tl. Control, 392 S.C. 247, 708 S.E.2d 812 (Ct. App. 2011), this Court held that “there is nothing in the current applicable rules that authorizes service” by email. The Court concluded that since no official written rule or notice exists announcing a binding effect of the service by email, “due process does not allow this court to recognize such service in applying Rule 203(b)(6), SCACR, to determine the timeliness of the appeal.” In the instant case, when viewed in light of the decision in White, Rule 203(b)(6) and

Rule 262(b), SCACR contemplate service via the United States Postal Service or hand delivery and not via email.

In short, Appellant received the ALC Order on January 4, 2016. Thus, she had to properly serve her notice of appeal on or before February 3, 2016, in the manner provided by Rule 262(b), SCACR. She failed to do so and, therefore, this appeal must be dismissed for lack of appellate jurisdiction.

### CONCLUSION

There is no meaningful difference between the email in this case and the email relied upon by this Court in White, supra. Here, like the email in White, the Notice of Appeal served by email does not comply with the applicable rules and statutes, and therefore, this Court's appellate jurisdiction has not been properly invoked. Allison v. W.L. Gore & Assocs., supra. For this reason, and for the reasons set forth above, it is respectfully submitted that this appeal must be dismissed.



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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](mailto:legal@dew.sc.gov)

February 8, 2016

**McLeod, Trey**

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**From:** Anthony Goldman <agoldman@scalco.net>  
**Sent:** Monday, January 04, 2016 3:05 PM  
**To:** dinkerboy49@gmail.com; McLeod, Trey  
**Subject:** 15-0497, Mueller (Order)  
**Attachments:** 150497.pdf

Please find attached to this email a copy of the Order that was signed by Judge McLeod.

Regards,

Anthony R. Goldman, Esquire  
Judicial Law Clerk to  
The Honorable John D. McLeod  
S.C. Administrative Law Court

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.



because she does not check her mail regularly. Appellant only checks her mail once every two weeks.

Upon review of the Tribunal record, the Panel determined that the Department properly mailed the Tribunal decision to Appellant on May 7, 2015 and that the deadline to file an appeal was May 18, 2015. The Panel found that Appellant filed her appeal eleven (11) days after the appeal period expired and concluded that the greater weight of the evidence indicated that if Appellant had checked her mail on a regular basis, she would have received the decision earlier and could have filed a timely appeal.

Appellant now appeals to the ALC.

## STANDARD OF REVIEW

The Department is an “agency” under the Administrative Procedures Act (APA). See Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, the predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA’s standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2014); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm’n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). Section 1-23-380(5) of the South Carolina Code (Supp. 2014) provides the standard used by appellate bodies to review agency decisions. See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure; (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5) (Supp. 2014).

A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv.

Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 466 S.E.2d 357 (1996). Thus, the party challenging an agency action has the **burden** of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. 219, 467 S.E.2d 913 (citing Hamm v. AT&T, 302 S.C. 210, 394 S.E.2d 842 (1994)). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 467 S.E.2d at 917.

## ISSUE ON APPEAL

1. **Did the Appellate Panel err in finding that Appellant neglected to file her appeal in a timely manner?**
2. **Did the Appellant Panel err in finding that the Appellant received the decision in a timely manner?**
3. **Did the Appellate Panel and Appeal Tribunal err in the decision on severance payments and bonus no being wages for which Appellant paid all Federal, State and FICA taxes?**

## DISCUSSION

Appellant argued in her brief on appeal that the Department did not present any certified proof that the Tribunal decision was mailed in a timely manner. The Department argued in its brief that Appellant's appeal was untimely and that the Tribunal decision became the final decision in this appeal pursuant to Section 41-35-680.

Section 41-35-660 provides that, “ The claimant or any other interested party may file an appeal from an initial determination, redetermination, or subsequent determination not later than ten days after the determination was mailed to his last known address.” S.C. Code Ann. § 41-35-660 (Supp. 2014). Here, the record is clear that the Tribunal decision was mailed on May 7, 2014 and that the last day to file an appeal was May 18, 2015. However, Appellant filed her appeal on May 29, 2014, which was eleven (11) days beyond the time allowed under Section 41-35-660. As a result, Appellant’s appeal to the Panel was untimely. The Court finds that the Panel decision that Appellant appealed from is supported by the substantial evidence in the record.

With regard to the remaining issues that were raised by Appellant, this Court will only review issues that were raised and ruled upon below.

The South Carolina Supreme Court has stated the following regarding the preservation of an issue for appellate review:

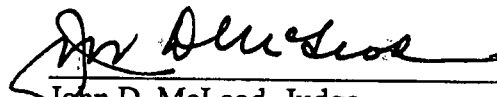
It is axiomatic that an issue cannot be raise for the first time on appeal, but that must have been **raised to and ruled upon** by the trial judge to be preserved for appellate review. (Emphasis supplied) (Internal citation omitted).

Wilder Corporation v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

The remaining issues and facts that were argued in Appellant’s brief were neither raised before the Tribunal nor ruled upon by the Panel and are therefore not subject to review by this Court.

**IT IS HEREBY ORDERED** that the Appellate Panel decision is **AFFIRMED**.  
**AND IT IS SO ORDERED.**

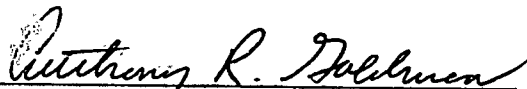
January 4, 2015  
Columbia, S.C.

  
\_\_\_\_\_  
John D. McLeod, Judge  
South Carolina Administrative Law Court

**CERTIFICATE OF SERVICE**

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

January 4, 2015  
Columbia, S.C.

  
\_\_\_\_\_  
Anthony R. Goldman  
Judicial Law Clerk

**McLeod, Trey**

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**From:** Billie Mueller <dinkerboy49@gmail.com>  
**Sent:** Wednesday, January 06, 2016 11:41 AM  
**To:** Legal  
**Subject:** Notice of Appeal to The South Carolina Court of Appeals  
**Attachments:** IMG\_20160106\_0003.pdf

Attn: Trey McLeod

Thank you.  
Billie Mueller  
[dinkerboy49@gmail.com](mailto:dinkerboy49@gmail.com)  
Ph. 803.410.6935  
Cell 803.460.2812

Billie D. Mueller  
1341 Rockfish Drive  
Manning, SC 29102  
Ph (803) 410-6935  
Cell (803) 460-2812

January 6, 2016

Jenny Abbot Kitchings, Clerk  
1015 Sumter Street  
Columbia, SC 29201

RE: Billie D. Mueller v. South Carolina Department of Employment and  
Workforce  
Docket No. 15-ALJ-22-0497-AP

Dear Ms. Kitchings:

Enclosed for filing please find an original and one copy of Appellant's Notice of Appeal to the Court of Appeals. I do not have the \$100.00 filing fee for this Notice because of my limited finances being on Social Security.

By copy of this letter I am serving all parties of record with this Motion.

If you have any questions please feel free to contact me.

Very truly yours,



Billie D. Mueller  
1341 Rockfish Drive  
Manning, SC 29102  
(803) 410-6935

Cc: Trey McLeod, General Counsel, SCDEWS

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Appellate Case No. 15-ALJ-22-0497-AP

South Carolina Department of Employment  
and Workforce And The Administrative Law Court

Respondent


Billie Mueller

Appellant

NOTICE OF APPEAL

Billie Mueller appeals the decision of the Honorable John D. McLeod dated January 4, 2016. Appellant received a copy of this decision on January 4, 2016 via email.

January 6, 2016



Billie Mueller  
1341 Rockfish Drive  
Manning, SC 29102  
Appellant Has No Attorney

Other Counsel of Record  
Office of General Counsel-SCDEW  
Trey McLeod  
PO Box 8597  
Columbia, SC 29202  
Email: legal@dew.sc.gov  
Attorney for Respondent SCDEW



because she does not check her mail regularly. Appellant only checks her mail once every two weeks.

Upon review of the Tribunal record, the Panel determined that the Department properly mailed the Tribunal decision to Appellant on May 7, 2015 and that the deadline to file an appeal was May 18, 2015. The Panel found that Appellant filed her appeal eleven (11) days after the appeal period expired and concluded that the greater weight of the evidence indicated that if Appellant had checked her mail on a regular basis, she would have received the decision earlier and could have filed a timely appeal.

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**IT IS HEREBY ORDERED** that the Appellate Panel decision is **AFFIRMED**.  
**AND IT IS SO ORDERED.**

January 4, 2015  
Columbia, S.C.



John D. McLeod, Judge  
South Carolina Administrative Law Court

UCB 104 S 20WK  
B-12

**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE  
INITIAL DETERMINATION OF STATUS AS AN INSURED WORKER**

SC WORKS CENTER 430

EFFECTIVE DATE 03/30/15

DATE FILED 03/31/15

DATE PREPARED 03/31/15

527-76-0453

BILLIE D. MUELLER  
1341 ROCKFISH DR

MANNING SC 29102

\*BENEFITS YOU MAY BE ELIGIBLE FOR

MILITARY ASSIGNMENTS

WEEKLY BENEFIT AMOUNT 326.00

MAXIMUM TOTAL BENEFITS 6520.00

BENEFIT YEAR ENDS 03/29/16

\*This statement establishes that you have the necessary wages to qualify for unemployment insurance. However, to receive benefits your job separation must also be considered. If you qualify, this is the maximum you may be entitled to receive.

SEE BACK FOR CLAIMANT INFORMATION

EMPLOYMENT RECORD		STANDARD BASE PERIOD QUARTERLY EARNINGS							
EMPLOYER	ACCOUNT NO.	YEAR	QTR	YEAR	QTR	YEAR	QTR	YEAR	QTR
EBTRON, INC.	289798	2013	04	2014	01	2014	02	2014	03
		15454.23	13317.36	35010.49	00				

NOTE: The weekly benefit amount on this form reflects your GROSS PAYMENT EACH WEEK BEFORE ANY DEDUCTIONS are made. Possible deductions to this amount include, but are not limited to, tax withholding, pension, child support, offset of overpayment, and part-time earnings. ALSO YOUR FINAL PAYMENT MAY BE LESS THAN THE FULL WEEKLY BENEFIT AMOUNT BASED ON THE BALANCE REMAINING IN YOUR ACCOUNT.

Void <input type="checkbox"/>		a. Employee's social security number 527-76-0453		OMB No. 1545-0008 X4A		006115		000150		
b. Employer identification number (EIN) 22-2455232				1. Wages, tips, other compensation 48327.85		2. Federal income tax withheld 6271.81				
c. Employer's name, address, and ZIP code EBTRON INC 1663 HIGHWAY 701 S LORIS SC 29569				3. Social security wages 48327.85		4. Social security tax withheld 2996.33				
				5. Medicare wages and tips 48327.85		6. Medicare tax withheld 700.75				
				7. Social security tips		8. Allocated tips				
d. Control number 000150 CHAR/X4A				9.		10. Dependent care benefits				
e. Employee's first name and initial BILLIE		Last name MUELLER		Suffix		11. Nonqualified plans		12a. See instructions for box 12 W 446.15		
f. Employee's address and ZIP code POST OFFICE BOX 98 DAVIS STATION SC 29401				13. Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		12b.				
				14. Other		12c.				
						12d.				
15. State Employer's state ID number SC 25319905 1		16. State wages, tips, etc. 48327.85		17. State income tax 3180.96		18. Local wages, tips, etc.		19. Local income tax		20. Locality name

Form **W-2** Wage and Tax Statement  
 Copy D - For Employer

2014

Department of the Treasury - Internal Revenue Service  
 For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

(Sup. Opinion)

OCTOBER TERM, 2013

11

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

## Syllabus

UNITED STATES, v. QUALITY STORES, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 12-1408. Argued January 14, 2014—Decided March 25, 2014

Respondent Quality Stores, Inc. and its affiliates (collectively Quality Stores) made severance payments to employees who were involuntarily terminated as part of Quality Stores' Chapter 11 bankruptcy. Payments—which were made pursuant to plans that did not tie payments to the receipt of state unemployment insurance—varied based on job seniority and time served. Quality Stores paid and withheld, *inter alia*, taxes required under the Federal Insurance Contributions Act (FICA), 26 U.S.C. §3101 *et seq.* Later believing that the payments should not have been taxed as wages under FICA, Quality Stores sought a refund on behalf of itself and about 1,850 former employees. When the Internal Revenue Service (IRS) did not allow or deny the refund, Quality Stores initiated proceedings in the Bankruptcy Court, which granted summary judgment in its favor. The District Court and Sixth Circuit affirmed, concluding that severance payments are not wages under FICA.

**Held:** The severance payments at issue are taxable wages for FICA purposes. Pp. 4–15.

(a) FICA defines wages broadly as "all remuneration for employment." §3121(a). As a matter of plain meaning, severance payments fit this definition. They are a form of remuneration made only to employees in consideration for employment. "Employment" is "any service . . . performed . . . by an employee for an employer." §3121(b). By varying according to a terminated employee's function and seniority, the severance payments at issue confirm the principle that "service" means not only work actually done but the entire employer-employee relationship for which compensation is paid." *Social Security Bd. v. Nierotko*, 327 U. S. 358, 365–366. This broad definition is reinforced by the specificity of FICA's lengthy list of exemptions. The

FORM 7

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

John D. McLeod Administrative Law Judge

Case No: 15-ALJ-22-0497-AP

Trey McLeod, South Carolina  
DEW's & John D. McLeod,  
South Carolina ALC

Respondent,

v.

Billie D. Mueller,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Trey McLeod by depositing a copy of it sent via email, on January 5, 2016, addressed to his Office of Record, Trey McLeod, Post Office Box 8597, Columbia, SC 29202, legal@dew.sc.gov.

January 5, 2016



Billie D. Mueller  
1341 Rockfish Drive  
Manning, SC 29102  
(803) 410-6935  
Dinkerboy49@gmail.com

Other Counsel of Record:  
Trey McLeod  
Office of General Counsel SCDEW  
Post Office Box 8597  
Columbia, SC 29202  
legal@dew.sc.gov  
Attorney for Respondent

# Exhibit E

## AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PERSONALLY came before me, the undersigned Notary, the within named Kristi Chesley who is employed in Richland County, State of South Carolina, and makes this her statement and affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge:

1. I am the Office Manager for the SC Department of Employment and Workforce (DEW). I am responsible for receiving, opening and processing the mail addressed to: Office of General Counsel, S.C. Department of Employment and Workforce, Post Office Box 8597, Columbia, SC 29202.

2. I have not received a Notice of Appeal from Appellant in the matter of Billie D. Mueller v. South Carolina Department of Employment and Workforce, Appellate Case Number: 2016-000037 via U.S. Mail or personal delivery.

3. No record of a Notice of Appeal in this matter is found on the Imaging/Records system of the Department.

Kristi Chesley  
Signature of Affiant  
Kristi Chesley

DATED AND SWORN to before me this the  
8<sup>th</sup> day of February, 2016. AP

Jay P. [Signature] (LS)  
Notary Public for South Carolina  
My Commission Expires: 12/5/2022

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
John D. McLeod, Administrative Law Court Judge  
Case No. 15-ALJ-22-0497-AP

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Appellate Case No. 2016-000037

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**RECEIVED**

FEB 12 2016

SC Court of Appeals

Billie D. Mueller,

Appellant,

v.

South Carolina Department of Employment  
and Workforce,

Respondent.

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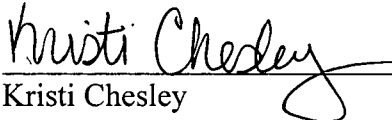
PROOF OF SERVICE

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I certify that I have served the Respondent's Motion to Dismiss and Memorandum in Support on the Appellant in this case by depositing a copy of it in the United States Mail, postage prepaid, on February 8, 2016, addressed to the Appellant at her address of record:

Billie Mueller  
1341 Rockfish Drive  
Manning, SC 29102

February 8, 2016

  
\_\_\_\_\_  
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

February 8, 2016

**RECEIVED**

FEB 12 2016

SC Court of Appeals

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

RE: Billie D. Mueller v. SC Department of Employment and Workforce  
Appellate Case No: 2016-000037

Dear Ms. Kitchings:

Enclosed are the original unbound and six stapled copies of the Respondent's Motion to Dismiss and Memorandum in Support in the above referenced case. Also enclosed is a Certificate of Service to the Appellant:

Please let me know if you have any questions.

Sincerely,

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

Kristi Chesley  
Administrative Legal Assistant for  
E.B. "Trey" McLeod  
Attorneys for Respondent SCDEW

**SOUTH CAROLINA  
DEPARTMENT OF EMPLOYMENT AND WORKFORCE  
COLUMBIA SC 29202**

**OFFICIAL BUSINESS**



**RECEIVED**

FEB 12 2016

**SC Court of Appeals**

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