

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

RECEIVED
FEB 29 2016
SC Court of Appeals

Appellate Case No. 2015-002056

Edward Spears,

Appellant,

v.

South Carolina Department of Employment
and Workforce,

Respondent.

INITIAL BRIEF OF RESPONDENT

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Appellant

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE JUDGE ERROR IN HIS DECISION IN THE ADMINISTRATIVE COURT TO DISMISS THE APPEAL?
- II. SHOULDN'T THE JUDGE DISMISS WITHOUT PREJUDICE?
- III. SHOULDN'T THE SCDEW BE HELD ACCOUNTABLE FOR NEGLIGENCE AND FRAUD?

RESTATEMENT OF THE ISSUE(S) ON APPEAL

DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISS APPELLANT'S APPEAL FOR LACK OF APPELLATE JURISDICTION DUE TO APPELLANT'S FAILURE TO TIMELY FILE HIS NOTICE OF APPEAL WITH THE COURT?

STATEMENT OF THE CASE

On June 9, 2015, the South Carolina Department of Employment And Workforce (Department) Appellate Panel (Panel) mailed the agency's final decision on Edward Spears' (Appellant) unemployment insurance (UI) claim to Appellant's address of record. (Panel Decision No. 2015-P-765 dated June 8, 2015). On June 30, 2015, Appellant served a notice of appeal on the Department. However, Appellant did not concurrently file his notice of appeal with the Administrative Law Court (ALC). Appellant later filed his notice of appeal with the ALC on July 13, 2015. (Appellant's Notice of Appeal served on SCDEW postmarked June 30, 2015)

On July 31, 2015, the Department filed a Special and Limited Appearance and Motion to Dismiss (Motion) moving the ALC to dismiss the appeal for lack of jurisdiction on the grounds that Appellant failed to file his notice of appeal with the ALC within the mandatory 30-day time limit as required by S.C. Code Ann. § 41-35-750. (SCDEW Notice of Special Appearance and Motion to Dismiss dated July 31, 2015.) On August 5, 2015, Appellant filed his response in opposition to the Department's Motion. (Appellant's Response in Opposition to Motion dated August 5, 2015.)

The ALC granted the Department's Motion and dismissed Appellant's appeal for lack of jurisdiction by Order dated September 8, 2015. (ALC Order of Dismissal, dated September 28, 2015). Appellant filed a notice of appeal with this Court for review of the ALC's dismissal decision on October 8, 2015.

FACTS

On June 9, 2015, the Department mailed to Appellant's address of record the agency's final Appellate Panel Decision on his claim for unemployment benefits. (Panel Decision No.

2015-P-765 dated June 8, 2015.) Pursuant to S.C. Code Ann. § 41-35-750, the thirty (30) day period to appeal this decision to the Administrative Law Court expired on July 9, 2015.

On June 30, 2015, Appellant deposited in the mail two copies of his notice of appeal addressed to "Office of General Counsel, P.O. Box 8597, Columbia, SC 29202" and "S.C. Employment Commission, P.O. Box 995 Columbia, SC 29202." (Appellant's Notice of Appeal served on DEW postmarked June 30, 2015.) Enclosed with his notice of appeal was a copy of the Panel's Final Decision and a Certificate of Service form. The Certificate of Service stated:

I hereby certify that I am the [Appellant] in the above captioned matter and that on the 30 day of June, 2015, in Florence, South Carolina, I served a copy of the forgoing certificate of service on the following person(s) by depositing the same in the United States Mail, postage paid, and address as follows:

S.C. Employment Commission
P.O. Box 995
Columbia, SC 29202

Food Lion LLC
C/O Corporate Control, P.O. Box 1180
Londonderry, NH 03053

Office of General Counsel
P.O. Box 8597
Columbia, SC 29202

(Appellant's Notice of Appeal served on DEW postmarked June 30, 2015.)

On July 13, 2015, four (4) days after his 30-day deadline to file an appeal, Appellant mailed his notice of appeal to the ALC. (Appellant's Notice of Appeal filed with the ALC postmarked July 13, 2015.) Enclosed with his notice of appeal was a hand written certificate of service which stated, "I Edward Spears would like to appeal the enclosed decision in the Administrative Court on this day July 10, 2015." (Appellant's Notice of Appeal filed with the ALC postmarked July 13, 2015.)

Based on this filing, the ALC issued its Notice of Assignment which stated "NOTICE IS GIVEN that a notice of appeal seeking review of agency action was **filed on July 13, 2015.**" (ALC Notice of Assignment filed dated July 22, 2015.) (Emphasis added).

On July 31, 2015, the Department filed a Special and Limited Appearance and Motion to dismiss for lack of jurisdiction on the grounds that Appellant failed to file his notice of appeal with the ALC within the mandatory 30-day time limit required by S.C. Code Ann. § 41-35-750. The Department argued that since its final written decision was mailed to Appellant on June 9, 2015, the final date for Appellant to perfect an appeal by timely filing and serving a notice of appeal to the ALC was July 9, 2015. (Motion dated July 31, 2015.)

Appellant filed a response in opposition to the Department's Motion, and argued that he mistakenly mailed two certificates of service to the Department on June 30, 2015. (Appellant's Response in Opposition to Motion dated August 5, 2015.) Appellant further argued that the Department, when it received two copies of his appeal, should have notified him that he failed to file his appeal with the ALC. (Appellant's Response in Opposition to Motion dated August 5, 2015.) However, Appellant has acknowledged that he did not file his appeal with the ALC until July 13, 2015, more than thirty days after the date the Department mailed its final decision to Appellant's address of record. (Appellant's Response in Opposition to Motion dated August 5, 2015.)

On September 8, 2015, the ALC dismissed Appellant's appeal finding:

Though this court is sympathetic to the Appellant's arguments it has no discretion in this matter, and no authority to extend the time for appeal so as to give this court jurisdiction. 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. Pursuant to the Department's motion, this court concludes that this matter must be dismissed. [internal citations omitted].

(ALC Order of Dismissal, dated September 28, 2015.)

ARGUMENT

Standard of Review

Pursuant to S.C. Code Ann. § 1-23-610(B):

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (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.

Under the Administrative Procedures Act, this Court's review of an ALC decision "is limited to determining whether the findings were supported by substantial evidence or were controlled by an error of law." Hill v. S.C. Dep't of Health and Env'tl. Control, 389 S.C. 1, 9, 698 S.E.2d 612, 617 (2010).

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL FOR LACK OF APPELLATE JURISDICTION DUE TO APPELLANT'S FAILURE TO TIMELY FILE HIS NOTICE OF APPEAL WITH THE COURT.

Appellant argues that the ALC erred in dismissing his appeal upon a finding he did not file his appeal with the ALC within the thirty (30) day statutory time limit. Appellant contends this decision is an error of law. Appellant's arguments are without merit and are not supported by any legal authority.

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). Appellant's appeal to the ALC requested a review of a final agency decision issued by the Panel on a claim for UI benefits. Therefore, jurisdiction in this matter is governed by S.C. Code Ann. § 41-35-750, which requires a notice of appeal be filed in the ALC, and

served upon the Department, within thirty (30) days after the Department's mailing of its final decision. Failure to comply with Section 41-35-750 means the ALC lacks appellate jurisdiction to consider Appellant's appeal. Allison, supra.

It is undisputed that the Panel mailed its final written decision to Appellant's address of record on June 9, 2015. (Panel Decision No. 2015-P-765 dated June 8, 2015.) Thus, the thirty (30) day time period for Appellant to file and serve his Notice of Appeal expired on Thursday, July 9, 2015. Based on the Notice of Assignment issued by this Court on July 24, 2015, and the postmark date of Appellant's notice of appeal as filed with the ALC, Appellant's appeal was not filed with the Court until July 13, 2015, four (4) days after the statutory appeal deadline. (Appellant's Notice of Appeal Filed with the ALC postmarked July 13, 2015.)

It is well settled that "[t]he requirement [for a timely] 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." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004); accord Allison, 394 S.C. at 189, 714 S.E.2d at 550 ("an appellate body may not extend the time to appeal"); Camp v. Camp, 386 S.C. 571, 574, 689 S.E.2d 634, 636 (2010) (stating courts have "no authority to extend or expand the time" for serving a notice of appeal). Accordingly, the ALC was required to dismiss this untimely appeal without considering its merits. Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct.App.1999).

Therefore, Appellant's notice of appeal, filed more than thirty days after the mailing of the Panel's final decision, was untimely. See ALC Rule 33; Canal, 338 S.C. at 5, 524 S.E.2d at 418. Because Appellant missed the applicable deadline, the ALC lacked appellate jurisdiction to consider his appeal and properly held that it has no discretion to excuse or ignore this defect. See

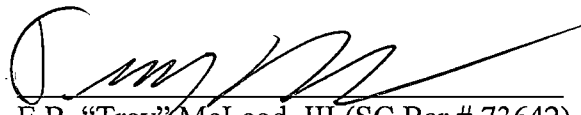
Elam, 361 S.C. at 15, 602 S.E.2d at 775; see also Allison, 394 S.C. at 188, 714 S.E.2d at 549 (stating failure to timely file a notice of appeal divests an appellate body of appellate jurisdiction).

A *pro se* litigant who knowingly elects to represent himself “assumes full responsibility for complying with substantive and procedural requirements of the law.” State v. Policao, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013) (quoting State v. Burton, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003)). Furthermore, a “[l]ack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” Goodson v. Am. Bankers Ins. Co. of Florida, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988).

Here, the 30-day statutory time period for perfecting the appeal expired on July 9, 2015. . Because Appellant did not file his initial appeal documents until **July 13, 2015**, Appellant failed to comply with the mandatory requirements set by the state statutes and ALC rules governing this appeal.

CONCLUSION

The Order of the ALC, supported by substantial evidence on the record as a whole and in accord with applicable law, should be affirmed.



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February 25, 2016

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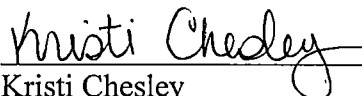
South Carolina Department of Employment
and Workforce,
Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief and Designation of Matter of the Respondent on the Appellant in this case by depositing a copy of it in the United States Mail, postage prepaid, on February 25, 2016, addressed to the Appellant at his address of record:

Edward Spears
503 Roughfork St.
Florence, SC 29501

February 25, 2016



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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 Spears v. SCDEW
Appellate Case No: 2015-002056

Dear Ms. Kitchings:

Enclosed are the original unbound and one stapled copy of the Initial Brief and Designation of Matter of the Respondent 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
Trey McLeod
Attorneys for Respondent SCDEW

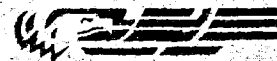
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