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MAR 17 2016

SC Court of Appeals

NOA/AP.OTH
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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Edward Spears,

Appellant,

v.

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

Respondents.

NOTICE OF ASSIGNMENT

DOCKET NO. 15-ALJ-22-0328-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on July 13, 2015. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2014), the **Honorable S. Phillip Lenski**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

The parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal.

This the twenty-second day of July, 2015.

Ralph King Anderson, III
Chief Administrative Law Judge

By: *Jana E. Shealy*
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

JUL 22 2015

SC ADMIN. LAW COURT

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

July 31, 2015

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Edward Spears v. SCDEW and Food Lion
Docket Number: 15-ALJ-22-0328-AP

Dear Judge Lenski:

Enclosed is Respondent SCDEW's Notice of Special Appearance and Motion to Dismiss in the above referenced case. Also enclosed is a Certificate of Service to the other parties in this case.

With kind regards, I am

Sincerely Yours,

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

Kristi Chesley
Administrative Legal Assistant for
Trey McLeod
Attorney for SC DEW

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Edward Spears,

Appellant,

v.

South Carolina Department of Employment
and Workforce and Food Lion,

Respondents.

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

**NOTICE OF SPECIAL APPEARANCE
AND MOTION TO DISMISS**

TO: Edward Spears, Appellant (Pro Se)

NOTICE IS HEREBY GIVEN that the Respondent, the South Carolina Department of Employment and Workforce (DEW), through its undersigned attorney, makes a special appearance and moves the Court to dismiss the Appellant's appeal requesting a review of a final agency decision for lack of appellate jurisdiction pursuant to S.C. Code Ann. §§41-35-750 and 1-23-380. This Motion is made on the following grounds:

LACK OF JURISDICTION - FAILURE TO TIMELY SERVE NOTICE OF APPEAL

1. This action is requesting a review of a final agency decision of DEW on a claim for unemployment insurance benefits pursuant to S.C. Code Ann. 41-35-750 and 1-23-380.
2. Jurisdiction of this matter is governed, exclusively, by S.C. Code Ann. §41-35-750, which requires a petition/appeal for judicial review be filed in the Administrative Law Court (ALC), and served upon DEW within thirty (30) days after mailing of its final decision.
3. Sections 41-35-750 mandates that a petition for review/notice of appeal from DEW's final decision be filed in the ALC and served upon DEW within thirty (30) days of the mailing date of DEW's final decision.
4. DEW's Appellate Panel (Panel) mailed its final written decision to Appellant's address of record on June 9, 2015.
5. The thirty (30) time period for Appellant to file and serve his Notice of Appeal expired on Thursday, July 9, 2015.
6. 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 served on the Department, DEW is informed

and believes, Appellant's appeal was not filed with the Court and/or served on DEW until July 13, 2015. *See Exhibit A*

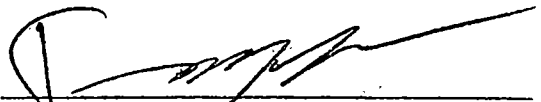
7. Service of a notice of appeal is required for jurisdiction over the appeal to attach. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004).

8. The above rule to apply to appeals from decisions of administrative agencies. Sadisco of Greenville, Inc. v. Greenville County Bd. of Zoning Appeals, 340 S.C. 57, 530 S.E.2d 383 (2000).

9. Service of the appeal 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. S. Carolina Coastal Conservation League v. S. Carolina Dep't of Health & Envtl. Control, 380 S.C. 349, 377, 669 S.E.2d 899, 914 (Ct. App. 2008) overruled on other grounds 390 S.C. 418, 702 S.E.2d 246 (2010); see also Allison v. W.L. Gore & Associates, 394 S.C. 185, 188-89, 714 S.E.2d 547, 549 (2011)(held Worker's Compensation Full Commission lacked the authority to extend the fourteen days permitted for the filing of an appeal from the decision of a single commissioner.)

10. Appellant failed to comply with mandatory requirements governing this appeal and the thirty (30) day statutory time period for perfecting the appeal has expired, therefore, the appeal must be dismissed.

WHEREFORE, Respondent prays that the appeal be dismissed with prejudice and that all time requirements and deadlines be held in abeyance pending resolution of this motion.



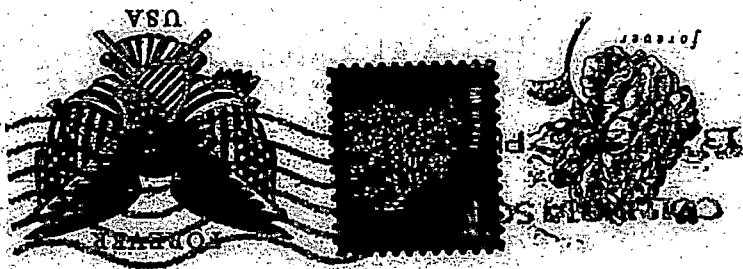
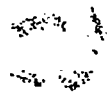
E.B. "Trey" McLeod, III, Esquire
Assistant General Counsel
S.C. Department of Employment & Workforce
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-2666
legal@dew.sc.gov

July 31, 2015

EXHIBIT A

Office of General
Counsel
S.C. Dept of Employment
& Work Force
P.O. Box 8597
29202

29202859797



Fluor & Spear
503 Roughton St
Flo., S.C. 29501

Scopie

I would like to Appeal
the Appellate Panel Decision
I believe the decision was
~~an~~ Arbitrary or Capricious

MAR 17 2016

SC Court of Appeals

JUL 15 2015

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Certificate of Service

Appellant: Edward Spears
Employer: Food Lion

I Edward Spears would like to appeal the enclosed decision in the Administrative Court on this day 7/16/2015

Employer: Food Lion c/o Corporate Cost Control P.O. Box 1180 111 Londonberry N.H. 03053	S.C. Employment Commission Commission P.O. Box 995 Columbia, S.C.
--	--

S.C. Administrative Court Edgar A. Brown Building 1205 Pendleton St Ste. 224 Columbia, S.C. 29201	Office of General Counsel S.C. Dept of Employment & Workforce P.O. Box 8597 Columbia, S.C.
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Edward Spears
503 Rough Fork St.
Florence, S.C. 29501

Edward R. Spear

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Edward Spears,
Appellant,

v.

South Carolina Department of Employment
and Workforce and Food Lion,
Respondent(s).

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

CERTIFICATE OF SERVICE

I certify that I am the Administrative Legal Assistant for the South Carolina Department of Employment and Workforce; and that I served by mail a copy of the Notice of Special Appearance and Motion to Dismiss of the Respondent SCDEW in the above named action to the parties addressed to:

Edward Spears
503 Roughfork St.
Florence, SC 29501

Food Lion
c/o Corporate Cost Control
PO Box 1180
Londonderry, NH 03053

that the postage was duly prepaid; and that it was deposited in the United States Mail to the parties on the 31st day of July, 2015.



Kristi Chesley

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



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Governor

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MAR 17 2016

SC Court of Appeals

March 15, 2016

Edward Spears
503 Roughfork Street
Florence, SC 29501

Re: Edward Spears v. SCDEW (2)
Appellate Case No. 2015-002056

Dear Mr. Spears,

The Department has received your telephone communication requesting copies of certain documents relating to the above referenced Appeal. For the following reasons, the Department declines your request.

On August 5, 2015, the Department provided you with copies of your own certificates of service, envelopes and postmark dates which were the subject of your telephone request. All other documents listed in both the Department's Designation of Matter and your Designation of Matter were previously served upon you either by the Department or the Administrative Law Court, and therefore, should already be in your possession.

Finally, these documents are now publicly available on the Court of Appeals' website because they have been filed with the Court of Appeals, with the exception of the following two documents and we have enclosed these two for you:

- Notice of Assignment filed by the ALC dated July 22, 2015.
- SCDEW Notice of Special Appearance and Motion to Dismiss dated July 31, 2015.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Trey McLeod", is written over the typed name.

E.B. "Trey" McLeod, III
Assistant General Counsel

Enclosures

CC: The Honorable Jenny Abbott Kitchings, Clerk of Court, South Carolina Court of Appeals



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Columbia, SC 29202
www.dew.sc.gov

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The Honorable Jenny Abbot Kitchings MAR 17 2016
Clerk, South Carolina Court of Appeals
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Columbia, South Carolina 29211

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