

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT **SC Court of Appeals**

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2015-002228

Edward W. Miller,Appellant,

v.

South Carolina Public Employee Benefit Authority,
South Carolina Retirement Systems,Respondent.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW JUDGE CORRECTLY FIND THAT, WHERE APPELLANT'S CHALLENGE TO A DECEMBER 2002 DECISION BY THE SOUTH CAROLINA RETIREMENT SYSTEMS WAS NOT FILED UNTIL AUGUST 2014, HIS CLAIM COULD NOT BE HEARD ON ITS MERITS BY THE COURTS BECAUSE HE HAD FAILED TO EXHAUST HIS AGENCY REMEDIES FOR HIS CLAIM?

STATEMENT OF THE CASE

By a letter received by Respondent South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems ("Retirement Systems"), on August 11, 2014, Appellant Edward W. Miller ("Appellant") sought to appeal the decision made by the Retirement Systems in December 2002 regarding the amount of public service credit Appellant was eligible to purchase in the Retirement System for Judges and Solicitors of the State of South Carolina ("JSRS") in connection with his prior employment with the Defender Corporation of Greenville County between 1986 and 2002. (Ex. #5.) On October 17, 2014, the Retirement Systems issued Final Agency Determination No. 14-015, finding that Appellant's August 2014 challenge to the December 2002 calculation of his public service credit available for purchase was not timely filed under the South Carolina Retirement Systems Claims Procedures Act and should be dismissed. (Ex. #6.)

By a Request for a Contested Case Hearing filed on November 20, 2014, Appellant sought review of the Retirement Systems' Final Agency Determination before the South Carolina Administrative Law Court. (Request for Contested Case Hearing.) By a letter to the court dated May 5, 2015, the parties notified the administrative law judge ("ALJ") assigned to hear the case that they had conferred and had determined that it would not be necessary to hold an evidentiary hearing in the matter and that the case could be adjudicated by the court as a matter of law based upon stipulations of fact, joint

exhibits, and memoranda of law submitted by the parties. (Letter from Respondent to Judge Durden dated May 5, 2015.) By an Order for Continuance and Scheduling Order dated May 7, 2015, the ALJ granted the parties' request to have the matter heard as a matter of law upon stipulated facts, stating that the matter would be adjudicated as if upon cross-motions for summary judgment. (Order for Continuance and Scheduling Order filed May 7, 2015.) Pursuant to that agreement and order, the parties submitted a set of Joint Stipulations of Fact and Exhibits to the ALJ on July 6, 2015. (Joint Stipulations of Fact and Exhibits filed July 6, 2015.) In addition, on July 6, 2015, both parties submitted their memoranda of law in support of their positions to the ALJ. (Brief of Petitioner filed July 6, 2015; Respondent's Memorandum of Law filed July 6, 2015.) On July 10 and 16, the parties submitted reply memoranda to the initial memoranda of law. (Reply Brief of Petitioner filed July 16, 2015; Respondent's Reply to Petitioner's Brief filed July 10, 2015.)

By an Order dated August 24, 2015, the ALJ granted summary judgment in favor of the Retirement Systems, finding that Appellant's August 2014 challenge to the Retirement Systems' December 2002 determination on his service purchase request could not be heard by the court on its merits as a result of Appellant's failure to timely exhaust his agency remedies for the claim. (Order Granting Respondent's Motion for Summary Judgment filed August 24, 2015.) On September 2, 2015, Appellant filed a motion for reconsideration of the ALJ's order, arguing, among other things, that the procedural posture of the case had been mischaracterized. (Petitioner's Motion to Alter or Amend filed September 2, 2015.) In response to Appellant's motion, the ALJ held a conference call with the parties on September 24, 2015, to confirm that she had correctly understood

the nature of the parties' request to have the matter adjudicated by the court as a matter of law based upon the stipulated facts and exhibits. (Order Denying Petitioner's Motion to Alter or Amend filed September 28, 2015, at 2.) During the conference call, the parties confirmed their agreement to have the matter decided by the ALJ as a matter of law based upon stipulated facts. (Order Denying Petitioner's Motion to Alter or Amend filed September 28, 2015, at 2.) By an Order dated September 28, 2015, the ALJ denied Appellant's motion for reconsideration. (Order Denying Petitioner's Motion to Alter or Amend filed September 28, 2015.)

By a Notice of Appeal dated October 27, 2015, Appellant appealed the ALJ's September 28, 2015 order denying his motion for reconsideration to this Court, resulting in the instant proceeding.¹

FACTS

Appellant Edward W. Miller ("Appellant") is an active member of the Retirement System for Judges and Solicitors of the State of South Carolina ("JSRS"), who has earned approximately 12 years of service credit in JSRS and has purchased the maximum 16 years of service credit in JSRS. (Joint Stipulation of Fact #1.) Upon his election to the Circuit Court in 2002, Appellant inquired with the Retirement Systems about purchasing public service credit in JSRS for his prior employment as an assistant public defender with the Defender Corporation of Greenville County between 1986 and 2002. (Joint

¹ Although Appellant's Notice of Appeal only recites that he is appealing the ALJ's September 28, 2015 order denying his motion for reconsideration, the Retirement Systems presumes that Appellant is also seeking review of the ALJ's August 24, 2015 Order Granting Respondent's Motion for Summary Judgment. Therefore, while not conceding or acquiescing in any expansion of the matters identified in the Notice of Appeal, the Retirement Systems, in an abundance of caution, will address both orders in this brief.

Stipulation of Fact #3.) In connection with that inquiry, on December 16, 2002, the Retirement Systems received a completed service verification form signed by Appellant and the defender corporation that verified the details of Appellant's employment with the defender corporation. (Ex. #2.) In the member information section of the form, Appellant indicated that he had been employed by the defender corporation between May 12, 1986, and June 30, 2002, but that the employment had not been "full time" service. (Ex. #2, at 1, Question #3.) Similarly, in the employer verification section of the form, the defender corporation confirmed that Appellant had been employed by the office as an assistant public defender between May 1986 and June 2002 and that the service had not been "full time" service, but had been part-time service equal to 60% of full-time employment. (Ex. #2, at 2, Question 3, Columns (D)-(E).)

Based upon the verification form, the Retirement Systems determined that Appellant was eligible to purchase 9 years, 8 months, and 5 days of public service credit in JSRS in connection with his part-time employment with the defender corporation between May 1986 and June 2002, for a cost of \$43,963.02.² (Ex. #3, at 2.) By a letter dated December 23, 2002, the Retirement Systems mailed Appellant a Member Service Payment Invoice for the purchase of the 9 years, 8 months, and 5 days of public service credit. (Ex. #3.) Appellant did not appeal or otherwise seek review of the Retirement Systems' determination of the public service credit he was found eligible to purchase on that invoice. Rather, on August 1, 2003, Appellant completed the purchase of the public service credit as invoiced. (Ex. #4.)

² This 9 years, 8 months, and 5 days of credit was determined by applying the 60% part-time percentage reported on the verification form to the 16 years, 1 month, and 18 days of the total duration of Appellant's employment for the defender corporation.

Some eleven years later, by telephone contacts and correspondence with the Retirement Systems beginning in March 2014, Appellant began inquiring as to whether the amount of public service credit he was eligible to purchase had been properly calculated in 2002. (Joint Stipulation of Fact #8.) Ultimately, by a letter dated August 7, 2014, Appellant submitted a letter requesting formal review of the December 2002 determination of the amount of public service credit he was eligible to purchase in JSRS for his employment with the Defender Corporation of Greenville County.³ (Ex. #5.) By Final Agency Determination No. 14-015, the Retirement Systems found that Petitioner's request for review of that December 2002 determination was not timely filed and should be dismissed. (Ex. #6.) Appellant sought review of that determination in a contested case proceeding before the South Carolina Administrative Law Court. (Request for Contested Case Hearing filed November 20, 2014.) In that proceeding, the parties agreed that it was not necessary for the administrative law judge to conduct an evidentiary hearing in the matter and requested that the ALJ adjudicate the case as a matter of law based upon the stipulated facts, joint exhibits, and memoranda of law submitted by the parties. (Letter from Respondent to Judge Durden dated May 5, 2015.) By an Order dated August 24, 2015, the ALJ found in favor of the Retirement Systems, concluding that Appellant's claim was properly dismissed by the Retirement Systems and could not be heard by the court on its merits because of his failure to timely exhaust his agency remedies on his claim. (Order Granting Respondent's Motion for Summary Judgment filed August 24, 2015.) The ALJ confirmed her decision in response to Appellant's

³ Because Appellant has already purchased the maximum sixteen years of purchased service credit allowed under JSRS, his claim is not for the purchase of additional years of service credit, but simply for a revised service purchase cost for service he purchased in 2002 and 2005.

motion for reconsideration and the instant appeal followed. (Order Denying Petitioner's Motion to Alter or Amend filed September 28, 2015.)

ARGUMENT

THE ADMINISTRATIVE LAW JUDGE CORRECTLY FOUND THAT, WHERE APPELLANT'S CHALLENGE TO A DECEMBER 2002 DECISION BY THE SOUTH CAROLINA RETIREMENT SYSTEMS WAS NOT FILED UNTIL AUGUST 2014, HIS CLAIM COULD NOT BE HEARD ON ITS MERITS BY THE COURTS BECAUSE HE HAD FAILED TO EXHAUST HIS AGENCY REMEDIES FOR HIS CLAIM.

The Court should affirm the decision of the administrative law judge in this matter. Based upon the stipulated facts in this case, it is clear that, as a matter of law, Appellant's nearly twelve-year delay in seeking review of the Retirement Systems' December 2002 determination on his service purchase request foreclosed his opportunity to have review of that claim by the courts.

- A. Appellant failed to timely exhaust his agency remedies regarding his challenge to the Retirement Systems' December 2002 determination on his service purchase request, thus depriving the courts of jurisdiction to hear his claim on its merits.**

In his request for review before the Retirement Systems, Appellant sought to "appeal [the] agency's decision in December of 2002 to allow [him] to purchase only 60% of [his] allowable service credit for the time period of May 12, 1986 through June 30, 2002." (Ex. #5, at 1.) In particular, Appellant asserted that the part-time service reported on the Request for Service Verification form completed by Appellant and the Defender Corporation of Greenville County in December 2002 reflected only his nominal classification as a part-time assistant public defender for staffing and benefit purposes, but did not reflect his true workload in that position, which was consistent with the caseload and time demands of a full-time public defender. (Ex. #5.) In addition,

Appellant contends that other members of JSRS have been allowed to purchase full-time service credit in JSRS for similar work. (Ex. #5.) However, as set out below, this claim was not timely made under the applicable statutory claims procedures and is therefore precluded from review by the courts.

The South Carolina Retirement Systems Claims Procedures Act (“Claims Procedures Act”), and the procedures set forth therein, “constitute the exclusive remedy for a dispute or controversy between the retirement systems and a member or a member’s designated beneficiary arising pursuant to or by virtue of Title 9 of the Code of Laws of South Carolina,” and any claim presenting such a dispute “must be resolved in accordance with the procedures and provisions provided in [the Claims Procedures Act].” S.C. Code Ann. § 9-21-30 (Supp. 2015). In order to timely file a claim with the Retirement Systems under the Claims Procedures Act,

[a] member or the member’s designated beneficiary shall file a claim concerning an administrative decision by the retirement systems arising pursuant to or by virtue of this title that adversely affects the personal interest of the member or the member’s designated beneficiary by the filing of a written claim with the director within one year of the decision by the retirement systems.

S.C. Code Ann. § 9-21-50(A) (Supp. 2015) (emphasis added). If a member does not timely file a claim pursuant to Section 9-21-50 with regard to a decision of the Retirement Systems, the member has failed to exhaust his or her agency remedies under the Claims Procedures Act. S.C. Code Ann. § 9-21-20(5) (Supp. 2015) (stating that the first prerequisite to the “exhaustion of agency remedy” under the Claims Procedures Act is for the member to have “filed a timely claim pursuant to Section 9-21-50 containing the information required pursuant to that section”) (emphasis added). And, because the exhaustion of agency remedies is a condition precedent to review by the Administrative

Law Court, the failure to timely exhaust those remedies precludes review of the merits of the member's claim before the Administrative Law Court and any subsequent review by the judicial branch courts. S.C. Code Ann. § 9-21-60 (Supp. 2015) (providing that a claimant under the Claims Procedures Act may only seek review of a Retirement Systems' decision with the Administrative Law Court "[u]pon exhaustion of the agency remedy set out in this chapter").

In short, the requirement that a member timely file a claim under the Claims Procedures Act is a statutory condition precedent to any review of the merits of that claim before the courts, such that failure to make a timely claim precludes the courts from taking jurisdiction over the merits of the claim. See Sadisco of Greenville, Inc. v. Greenville Cty Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000) (holding that the time for serving a notice of appeal for review of an administrative decision "is a jurisdictional requirement, and [the] Court has no authority to extend or expand the time in which the Notice of Appeal must be served"); Burnett v. S.C. State Highway Dep't., 252 S.C. 568, 167 S.E.2d 571 (1969) (holding that the statutory method for seeking review of a decision of the board of condemnation was exclusive and that the court has not authority to extend the time for taking an appeal under those statutory provisions); Perkins v. Dep't of Med. Assistance, 555 S.E.2d 500, 502, 503 (Ga. Ct. App. 2001) (noting that "[i]t must be remembered that the constitutional separation of powers between the executive branch and the judicial branch prevents courts from involvement in review of administrative decisions unless there exists specific legislative empowerment for the judiciary to act regarding executive branch functions; when such delegation of power exists, appeals to the courts must follow such statutory procedures as a condition

precedent to obtaining subject matter jurisdiction, because such conferred powers over executive branch functions are statutorily circumscribed” and holding that the lower court had no jurisdiction to review the party’s challenge to an administrative decision “because [the party] had no right to appeal to the superior court unless and until it had as a condition precedent exhausted its administrative remedies through a timely administrative appeal”); see generally Richard H. Seamon, Paige J. Gossett and John D. Geathers, Administrative Agencies—General Concepts and Principles, in South Carolina Administrative Practice and Procedure 1, 102 (Randolph R. Lowell ed., 3d ed. 2013) (noting that, unlike the judicially developed doctrine of exhaustion of administrative remedies, “[i]f a statute is interpreted to both (1) require exhaustion prior to judicial review and (2) provide the exclusive means of judicial review, then the failure to meet the exhaustion requirement . . . could defeat jurisdiction”). Further, this limitation has been routinely recognized by the Administrative Law Court. See, e.g., Elizabeth L. Hehn v. S.C. Public Employee Benefit Auth., S.C. Ret. Sys., Docket No. 14-ALJ-30-0427-CC (S.C. Admin. Law Ct. Dec. 18, 2014) (granting summary judgment in favor of the Retirement Systems because of petitioner’s failed to exhaust her administrative remedies by timely seeking review of the denial of her disability retirement application under the Claims Procedures Act); Ernest Legette v. S.C. Budget & Control Bd., S.C. Ret. Sys., Docket No. 10-ALJ-30-0714-CC (S.C. Admin. Law Ct. Jan. 13, 2011) (dismissing petitioner’s case for his failure to exhaust his administrative remedies with the Retirement Systems because he had failed to seek review of the denial of his disability retirement application within one year of his notice of the decision); Mark Campbell v. S.C. Budget & Control Bd., S.C. Ret. Sys., Docket No. 07-ALJ-30-0527-CC (S.C. Admin. Law Ct.

Mar. 27, 2008) (granting the Retirement Systems' motion for summary judgment where a disability retiree failed to exhaust his administrative remedies with the Retirement Systems by failing to timely seek review of the decision to discontinue his benefits through the Retirement Systems' claims procedures).

In the instant matter, by a Member Service Payment Invoice prepared December 20, 2002, and mailed to Appellant on December 23, 2002, the Retirement Systems notified Appellant of its determination of the amount of public service credit he was eligible to purchase in JSRS based upon his employment with the Defender Corporation of Greenville County between 1986 and 2002. (Ex. #3.) The invoice clearly specified that the total public service credit Appellant was eligible to purchase for his employment between May 12, 1986, and June 30, 2002, was 9 years, 8 months, and 5 days, based upon 60% of full-time equivalent service credit for that period. However, upon receipt of the invoice, Appellant did not seek review of the calculation reflected on that invoice or otherwise contact the Retirement Systems to inquire about the accuracy of the service purchase invoice. To the contrary, Appellant purchased the service as invoiced, and without protest, in August 2003. (Ex. #4.) Then, in August 2014, some eleven years after the issuance and payment of that invoice, Appellant sought formal review of the calculation of the public service credit he was eligible to purchase as reflected on that invoice. (Ex. #5.) However, because this claim was not timely filed within one year of the Retirement Systems' decision, Appellant failed to exhaust his agency remedies under the Claims Procedures Act, such that this claim was properly dismissed by the Retirement Systems. See S.C. Code Ann. §§ 9-21-20(5)(a), 9-21-50(A). And, by failing to timely file his claim and exhaust his agency remedies, Appellant is precluded from pursuing his

claim on its merits before the courts as a matter of law. See S.C. Code Ann. §§ 9-21-20(5)(a), 9-21-60. Finally, it should be emphasized this preclusion is no mere procedural technicality. In fact, the complications implicated in Appellant's request for review are precisely the sort of problems that the deadlines in the Claims Procedures Act and other administrative procedures acts are designed to prevent. For example, in large part, the merits of Appellant's claim involve using documents generated in 2014 to call into question the service verification executed in 2002 that itself addresses work performed dating back to 1986. It is the difficulty faced in resolving these sorts of stale claims that the deadlines in the administrative claims procedures are intended to avoid.

In sum, because Appellant's request for review of the December 2002 invoice was not timely made, it was properly dismissed by the Retirement Systems under the plain terms of the Claims Procedures Act and constitutes a failure of Appellant to exhaust his administrative remedies such that, as a matter of law, it cannot be heard by the courts on its merits. Accordingly, the Court should affirm the ALJ's order dismissing Appellant's claim.

B. There is no basis in law or in the stipulated facts or exhibits in this matter for any estoppel, tolling, or other excusal of the statutory bar to a hearing on the merits of Appellant's untimely claim.

In this matter, Appellant does not contest the fact that he did not timely submit his request for review within the period allowed under the Claims Procedures Act. Rather, he seeks to have his claim heard on its merits notwithstanding the fact that he failed to timely exhaust his agency remedies. In particular, he argues that the statutory condition precedent for review of his claim should be excused under various theories, including

breach of fiduciary duty, collateral estoppel, and equitable estoppel. However, there is no basis in law or in the agreed-upon facts in this matter to support such an excusal.

As set forth above, the exhaustion of agency remedies requirement of the Claims Procedures Act is a statutory condition precedent to the right to review of a dispute with the Retirement Systems before the courts. As such a condition precedent, the failure to satisfy that exhaustion requirement precludes the courts from taking jurisdiction to hear the claim on its merits. Moreover, as discussed earlier, the courts have generally found such statutory conditions precedent to a right to appeal to be jurisdictional in nature and not subject to expansion or excusal by the courts. Although Appellant cites to general definitions of fiduciary duties, collateral estoppel, and equitable estoppel in his brief, he does not identify any authorities that hold that, contrary to other conditions precedent to appeal, the Claims Procedures Act's statutory exhaustion requirement may be estopped, tolled, or otherwise excused by the courts, such that Appellant's untimely claim can be heard on its merits.

Further, even if the Claims Procedures Act's exhaustion requirement were subject to being excused based upon the legal theories advanced by Appellant, the undisputed facts in the record do not support any such excusal. Whether couched as a breach of fiduciary duty or some form of estoppel, Appellant's arguments are premised on three basic facts that are simply not in the record in this matter: (1) that a similarly situated member of JSRS was allowed to purchase service credit that Appellant was denied the opportunity to purchase, (2) that the Retirement Systems was aware of this similarly situated member who was treated differently than Appellant, and (3) that the Retirement

Systems concealed knowledge of this differential treatment from Appellant. Without establishing those facts, Appellant's arguments on those theories cannot be supported.

As discussed above, the parties to this case agreed during the contested case proceeding before the Administrative Law Court that it was not necessary for the ALJ to hold an evidentiary hearing and requested that the ALJ decide the case as a matter of law based upon stipulated facts, joint exhibits, and memoranda of law submitted by the parties. There is only a single stipulated fact that relates to Appellant's claim of differential treatment of similarly situated individuals, which read as follows:

11. Petitioner is aware of another member of JSRS who was found eligible to establish full-time service credit in JSRS for a period of performing indigent criminal defense contract work for Greenville County. Although this member was employed directly by Greenville County, rather than by the Greenville County Public Defender's Office, the member performed substantially similar work in that employment to the work performed by Petitioner that is the subject of Petitioner's service purchase appeal.

While this stipulation recognizes that this other member performed similar work as a public defender, it falls far short of providing the evidence Appellant needs to support his arguments. For example, although the stipulation acknowledges that both Appellant and this other member had similar duties as public defenders, it does not establish that they were similarly situated in their employment situations. On its face, the stipulation states that Appellant and this member had different employers, one working for the non-profit Defender Corporation and one working directly for Greenville County. In addition, the stipulation does not address whether the other member was classified as full-time or part-time by his employer, what compensation was paid to the other member, or any other basic employment information that would be necessary to determine whether the circumstances of his employment were similar to those of Appellant.

Further, regardless of whether Appellant and this other member had similar employment situations, this stipulation also does not provide any evidence that the Retirement Systems was contemporaneously aware of any such similarity. There is no evidence in the record that establishes what information was provided or reported to the Retirement Systems in connection with the other member's service purchase. For example, the other member's employer may have reported his service to the Retirement Systems as full-time employment, unlike Appellant's employer who reported his service as part-time employment. And, finally, without factual support for a finding that the Retirement Systems was aware of any such similarity between Appellant and the other member at the time of Appellant's service purchase, there can be no finding that the Retirement Systems, either intentionally or unintentionally, concealed such a fact from Appellant. Put simply, despite Appellant's multiple assertions that this other member's service purchase has "identical facts" to his own request, the facts in the record in this matter simply cannot support such a finding. And, any efforts to read additional facts into the record that were not presented below in an attempt to make such a showing are impermissible at this stage in the appellate process. See Rule 210(c), (h), SCACR.

C. The Administrative Law Judge followed the proper procedure—as agreed to by the parties—in adjudicating this matter.

Lastly, Appellant's challenges to the procedures used by the administrative law judge are without merit, and are somewhat confounding in light of the parties' stipulations in this matter.

As described in the Statement of the Case above, the parties to this case conferred and agreed early in the proceedings before the Administrative Law Court that it would not be necessary to hold an evidentiary hearing in this case and that this case could be

decided as a matter of law based upon a set of undisputed stipulated facts and joint exhibits. (Letter from Respondent to Judge Durden dated May 5, 2015.) The ALJ consented to the parties' request to have this case adjudicated as a matter of law on the stipulated facts, and, in her order confirming that process, the ALJ characterized her review as deciding the case on cross-motions for summary judgment. (Order for Continuance and Scheduling Order filed May 7, 2015.) Appellant did not object to this characterization, and based upon their agreement and the ALJ's order, the parties signed and submitted stipulations of fact and joint exhibits as the entire factual record upon which the ALJ would decide the case as a matter of law. (Joint Stipulations of Fact and Exhibits filed July 6, 2015.)

However, once the ALJ issued her order deciding this case as a matter of law, Appellant filed a motion for reconsideration, contending that the characterization of the matter as being heard as cross-motions for summary judgment was inaccurate. (Petitioner's Motion to Alter or Amend filed September 2, 2015.) As a result of that motion, the ALJ held a conference call with the parties to confirm that she had properly understood the parties' request to have the case heard as a matter of law based upon stipulated facts. (Order Denying Petitioner's Motion to Alter or Amend filed September 28, 2015.) During the call, the parties confirmed their request and their understanding that the case would be decided as a matter of law on the undisputed facts submitted. (Order Denying Petitioner's Motion to Alter or Amend filed September 28, 2015.) The ALJ did not take any evidence or hear arguments from the parties during the call.

On appeal, Appellant again contends that the adjudication of this matter was mischaracterized as being decided on summary judgment. Although Appellant disagrees

with the ALJ's conclusion on the legal issues raised in this case, it appears that the standard of review used by the ALJ in adjudicating this matter is precisely that requested by the parties. It is immaterial whether that review is characterized as adjudicating cross-motions for summary judgment or as deciding the case as a matter of law based upon the undisputed stipulated facts and joint exhibits submitted by the parties. In either event, the court is reviewing a set of undisputed facts and determining whether a judgment may be entered in a party's favor as a matter of law based upon that set of facts. In addition, Appellant further contends that the telephone conference held by the ALJ to confirm her understanding of the parties' requested process for adjudication of the case violated his due process rights. While the ALJ's order denying Appellant's motion for reconsideration does refer to the telephone call as a "telephonic hearing" in one instance, the ALJ did not take evidence during the call or hear arguments from the parties, but simply confirmed the parties' agreement of the procedural posture of the case. It does not appear that the ALJ's decision to hold a conference call to ensure she had not misunderstood Appellant's agreement to have the case adjudicated as a matter of law could constitute a violation of his due process rights.

CONCLUSION

For the reasons set forth above, Respondent South Carolina Retirement Systems requests that this Court affirm the decision below by the administrative law judge.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I served a copy of the Initial Brief of Respondent and Respondent's Designation of Matter to be included in the Record on Appeal on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

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