

1 THE STATE OF SOUTH CAROLINA  
2 In the Court of Appeals

3 APPEAL FROM THE ADMINISTRATIVE LAW COURT

4 John D. McLeod, Administrative Law Judge

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

**RECEIVED**

MAR 04 2016

SC Court of Appeals

6  
7 Billie D. Mueller, Appellant,

8 vs

9 South Carolina Dept. of Employment &  
10 Workforce

11 Respondent

Appellate Case No.: 2016-000037

INITIAL BRIEF OF APPELLANT

Judicial Review from the decision  
of the  
State Of South Carolina  
Administrative Law Court  
dated January 4, 2016

13  
14 Billie D. Mueller  
15 1341 Rockfish Drive  
16 Manning, SC 29102

17 Telephone: 803-410-6935 / E-mail address: [dinkerboy49@gmail.com](mailto:dinkerboy49@gmail.com)  
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Petitioner has no Attorney

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## APPELLATE'S BRIEF

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### STATEMENT OF THE CASE

#### **The Nature of the Proceeding and the Relief Sought**

This is a Petition for Review of a decision of the Administrative Law Court affirming the decision of a Court of Appeals Judge decision denying unemployment benefits to Appellate. Appellate requests that the decision be reversed.

#### **The Nature of the Decision To Be Reviewed**

A final decision made and entered on January 4, 2016 by the Administrative Law Court.

#### **Statement of the Statutory Basis for Appellate Jurisdiction**

This court has appellate jurisdiction over this matter pursuant to S.C. Code Ann. 41-35-750

#### **Statement of Appellate Jurisdiction**

The Administrative Law Court entered its decision on January 4, 2016. The Petition for Judicial Review was filed on January 6, 2016.

#### **Questions Presented on Review**

- A. Did the SCDEW Appellate Panel err in finding the Appellant neglected to file her appeal in a timely manner?
- B. Did the SCDEW Appellate Panel err in finding that Appellant received the decision in a timely manner?

1 C. Did the Appellate Panel and Appeal Tribunal err in the decision on  
2 Severance payments and bonus not being wages for which the  
3 Appellant paid all Federal, State and FICA taxes?

4 **Summary of Argument**

5 I checked my mail on May 13, 2015 and my mail did not contain a  
6 letter from SCDEW. I was staying with a friend while undergoing several medical  
7 procedures. Cancer and Foot surgery so at the time I could not drive. I was  
8 receiving the radiation treatments in Sumter and had foot surgery in Florence.  
9 Went to check the mail again on May 20, 2015 and the letter from SCDEW was  
10 obtained. The 10 day filing period had already passed so I submitted my appeal as  
11 timely as possible. SCDEW has no certified proof that the decision was mailed in a  
12 timely manner or that it was received in a timely manner. I am asking the court to  
13 reconsider the decision of the Appellate Panel in this case. Again the SCDEW  
14 mailed me their Brief postmarked Dec. 11, 2015 and it was not received in my mail  
15 box until Dec. 22, 2015 which was 11 days later so how can they state that the  
16 Appellate Panel's decision was received in a timely manner.

17 According to U.S. Supreme Court Certiorari To The United States  
18 Court Of Appeals For The Sixth Circuit # 12-1408 (a) FICA defines "wages"  
19 broadly as "all remuneration for employment." §3121(a). As a matter of plain  
20 meaning, severance payments fit this definition: They are a form of remuneration  
21 made only to employees in consideration for employment. "Employment" is "any  
22 service . . . performed . . . by an employee" for an employer. §3121(b). By varying  
23 according to a terminated employee's function and seniority, the severance  
24 payments at issue confirm the principle that "service" "mea[ns] not only work  
25 actually done but the entire employer employee relationship for which

1 compensation is paid.” The Severance constituted 26 weeks pay for 26 years of  
2 service to the employer. I am asking the court to reconsider the decision of the  
3 Appellate Panel and the Appeal Tribunal in this case.

4  
5 Dated this 1<sup>st</sup> day of March, 2016

6 Billie D. Mueller  
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UCR 104-S 20WK  
5-12

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

0

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.

\*QTR. STANDARD BASE QUARTER TOTAL 15454.23 13317.36 35010.49 00

1 - JAN, FEB, MAR 3 - JULY, AUG, SEPT.

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

(Slip Opinion)

OCTOBER TERM, 2013

I

## 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" "mea[ns] 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

HEARING OFFICER: Okay. It does say specifically from the mailing date of this decision. I've got a copy of your appeal in front of me. Your appeal is dated May 29<sup>th</sup>, is that when you filed your appeal?

CLAIMANT: Yes sir.

HEARING OFFICER: Do you have any objection to me entering that into the record?

CLAIMANT: No sir.

HEARING OFFICER: This one page, it's an APP-111 but it should be an APP-100 will be entered into the record as Agency Exhibit 2. All right. Can you tell me why you appealed at that time?

CLAIMANT: According to the Supreme Court....

HEARING OFFICER: Ma'am, I'm asking you about why you appealed, I'm not asking you about...

CLAIMANT: Because I didn't agree with their decision.

HEARING OFFICER: I understand that, but I mean why specifically on that date.

CLAIMANT: I don't know why on that date. I don't get on the computer every day, I don't go check my mail every day. Sometimes I have my car, sometimes I don't. Sometimes my son and his girlfriend have my car, so it's just that it happened to be that date.

HEARING OFFICER: All right. I don't really have any further questions for you Ms. Mueller, anything else you want to tell me concerning the timeliness of your appeal?

CLAIMANT: Just that I don't think it was untimely for the simple reason you can't guarantee when it was received, you can't guarantee when I got it. It's hearsay. I said I didn't get it because I don't check my mail, so it could have gotten lost in the mail and I could have never gotten it.

HEARING OFFICER: Yes ma'am, but I can guarantee when it was mailed and the law says that you have 10 days from the mailing date, not from when you received it. Any other questions or anything else you want to tell me?

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

Appellate Case No. 2016-000037

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

Respondent,

v.

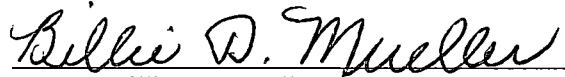
Billie D. Mueller,

Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Designation of Matter and Appellant's Initial Brief on John D. McLeod by depositing a copy of it in the United States Mail, postage prepaid on March 1, 2016, addressed to his Office of Record, John D. McLeod, 1205 Pendleton Street, Suite 224, Columbia, SC 29201.

March 1, 2016



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Dinkerboy49@gmail.com

Other Counsel of Record:  
Trey McLeod  
Office of General Counsel SCDEW  
Post Office Box 8597  
Columbia, SC 29202  
Attorney for Respondent

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SC Court of Appeals

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MAR 04 2016

**SC Court of Appeals**

March 1, 2016

South Carolina Court of Appeals  
Jenny Abbot Kitchings, Clerk  
PO Box 11629  
Columbia, SC 29211

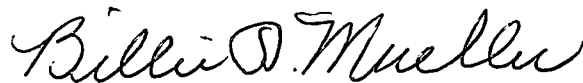
RE: Billie D. Mueller v, South Carolina Department of Employment and  
Workforce  
Appellant Case No.: 2016-000037

Dear Ms. Kitchings:

Enclosed are the original and one copy of Appellant's Designation of Matter and Appellant's Initial Brief in the above referenced case. Also enclosed is the Certificate of Service to Trey McLeod SCDEW and John D. McLeod Administrative Law Judge.

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

Very truly yours,



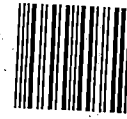
Billie D. Mueller  
1341 Rockfish Drive  
Manning, SC 29102  
(803) 410-6935

Cc: Trey McLeod General Counsel SCDEWS  
Honorable John D. McLeod SCALC

Ms  
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Manning, SC 29102



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29211

U.S. POSTAGE  
PAID  
MANNING, SC  
29102  
MAR 02 16  
AMOUNT  
**\$1.86**  
R2305K140351-10

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SC Court of Appeals

South Carolina Court of Appeals  
Jenny Abbott Kitchings, Clerk  
PO Box 11629  
Columbia, SC 29211