

RECEIVED

APR 06 2016  
SC Court of Appeals

The State of South Carolina  
In the Court of Appeals

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Appeal From the  
Administrative Law Court

S. Phillip Lenski

Administrative Law Judge

Case no: 15-ALJ-22-0328-AP

---

Appellate case no. 2015-002056

Edward Spears  
Appellant

v.

South Carolina Department of Employment  
and Work Force

---

Record of Appeals

*Edward Spears*

Edward Spears  
503 Rough Fork St  
Flo., S.C. 29501  
843-446-3711  
in business with 4900 W. Dattiner

5 copies

R. page 1

Decision No. 2015-P-765  
Appeal No. 04664-150685

**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE**  
Columbia, South Carolina

**IN THE MATTER OF THE CLAIM OF:**

Edward R. Spears )  
503 West Roughfork Street )  
Florence, SC 29501 )  
Claimant SSN: XXX-XX-8450 )

Food Lion, LLC )  
c/o Corporate Cost Control )  
PO Box 1180 )  
Londonderry, NH 03053 )  
Liable Employer )

**APPELLATE PANEL**  
**DECISION**

Appellant: Claimant

The claimant appealed Appeal Tribunal Decision 2015-A-4627 to the Appellate Panel. The Tribunal held the claimant disqualified from benefits upon finding he was discharged for misconduct. This decision affirmed the claims adjudicator's determination.

The Appellate Panel issued its decision upon review of the record on appeal.

**DECISION**

Appeal Tribunal Decision 2015-A-4627 is affirmed. The claimant is disqualified from receiving benefits for twenty (20) weeks, effective March 1, 2015, through July 18, 2015, with a corresponding monetary reduction, upon finding the claimant was discharged for misconduct connected with the employment.

The claimant worked from November 6, 2013, to February 25, 2015, most recently as a lead grocery stocker. He was discharged for inappropriate behavior. The claimant had been counseled by the assistant store manager and the grocery manager about his performance in January 2015. After this counseling session, the claimant requested a meeting with the employer's store manager to discuss the counseling session. The store manager states that during the meeting, the claimant used disrespectful language when speaking about the assistant store manager and grocery manager. After this meeting, the store manager gave the claimant a verbal warning on February 14, 2015,

about his conduct and disrespectful language during the meeting. The store manager states this was to make sure the claimant was aware of the employer's expectations regarding his language and interactions with fellow associates. On February 17, 2015, the claimant engaged in an argument with the grocery manager. According to the grocery manager, the claimant had directed profanity at him, made a statement the grocery manager perceived as a threat, and the claimant held his hand back as if he was going to strike the grocery manager. The assistant store manager needed to step in to separate the claimant from the grocery manager. On February 24, 2015, the claimant directed foul language and made a comment that could be perceived as a threat to another associate while in an aisle of the store with a customer present. The associate informed the store manager of this incident and the store manager elected to terminate the claimant for his conduct after the warning on February 14, 2015.

The claimant maintains he did not engage in the behavior described by the employer, although he acknowledges he responded to the grocery manager after he instructed the claimant to work on a specific task. He asserts his supervisor was harassing him for contacting human resources and filing a complaint against the supervisor. The store manager denies this was the reason for the claimant's termination, and affirms the claimant was terminated for the inappropriate behavior.

S.C. Code Ann. § 41-35-120(2)(a) requires disqualification from benefits for twenty weeks, with a corresponding monetary reduction, when the Department finds that a claimant has been discharged for misconduct connected with the employment. "Misconduct" includes deliberate violations or disregard of the standards of behavior which an employer has the right to expect of an employee, and carelessness or negligence of such a degree or frequency as to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

The record is in direct dispute; however, we find the greater weight of credible evidence establishes the claimant acted in an inappropriate manner. The employer has presented sufficient testimony to show the claimant was warned about his language and behavior prior to the final incidents, and that the claimant acted in an inappropriate manner on both February 17, and 24, 2015. The claimant has failed to present sufficient evidence to establish he did not engage in the actions described by the employer and he has not shown his termination was for reasons other than his inappropriate behavior. The claimant's inappropriate conduct and language constituted a deliberate disregard for the standard of behavior the employer had the right to expect. Therefore, we find the claimant was discharged for misconduct connected with the employment. The Appeal Tribunal decision is affirmed.

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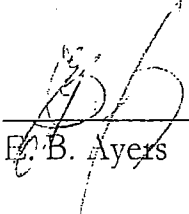
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As noted in the letter issued by the Chief Administrative Hearing Officer on May 19, 2015, the Appellate Panel reviewed the record on appeal. We have determined the documentary evidence, submitted by the employer subsequent to the April 30, 2015 hearing, should not be considered in making this decision. The employer did not comply with the requirements of the hearing notice, in that the employer failed to present this evidence to the claimant in addition to the Department when submitting this evidence for consideration.


In his appeal to the Appellate Panel, the claimant requested to submit additional evidence pertaining to his separation. As a board of review, the Appellate Panel is confined to the record developed by the Appeal Tribunal, and cannot consider additional information which was not previously presented in the evidentiary hearing before the Tribunal. The claimant further indicates the hearing officer did not provide him with an opportunity to fully describe his separation from the employer. The claimant also asserts the hearing officer's conduct was unprofessional. Upon careful review of the record, we find the hearing officer allowed the claimant a full and fair opportunity to present his case, and conducted the hearing with impartiality. We find there was no error in the administration of this matter or that the rights of the parties were substantially prejudiced in this case.

**SOUTH CAROLINA DEPARTMENT OF  
EMPLOYMENT AND WORKFORCE**



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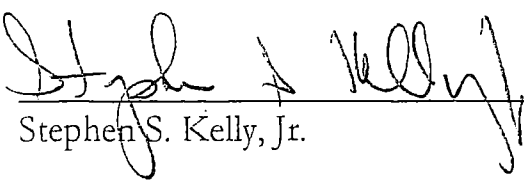
E. B. Ayers



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Tim Dangerfield

Review Date: 06/09/15  
Date Mailed: 06/09/15  
Mailed By: AG



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Stephen S. Kelly, Jr.

R. P2

Scopies

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

P.3

EXB.B

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

RECEIVED  
JUL 01 2015

Edward Spears)  
)

Appellant/Petitioner, )  
)

vs. )  
)

Food Lion)  
)

Respondent. )  
)

BY: KC

Docket No. -ALJ-

CERTIFICATE OF SERVICE

I hereby certify that I am the ✓ (Appellant/Petitioner/Respondent) in the above-captioned matter and that on the 30 day of June, 2015 in Florence (city), South Carolina, I served a copy of the forgoing Certificate of Service (type of document) on the following person(s) by depositing the same in the United States Mail, postage paid, and addressed as follows:

S.C. Employment Commission  
Name  
P.O. Box 995  
Address  
Columbia, S.C. 29202  
City/State/Zip

Food Lion LLC  
Name  
10 Corporate Control P.O. Box 1181  
Address  
Londonberry, NH 03053  
City/State/Zip

Office of General Counsel  
Name  
P.O. Box 8597  
Address  
Columbia, S.C. 29202  
City/State/Zip

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City/State/Zip

Edward Spears  
(Print Name)

Edward Spears  
(Signature)

503 Roughfork Rd.  
(Street)

Florence, S.C. 29501  
(City, State, Zip Code)

P. 4

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



Exb. E

Nikki R. Haley  
Governor

Cheryl M. Stanton  
Executive Director

---

P.O. Box 8597  
Columbia, South Carolina 29202  
(803) 737-0395  
FAX (803) 737-0124  
July 14, 2015

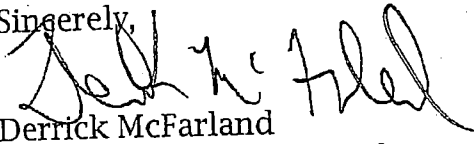
Edward Spears  
503 W. Roughfork St.  
Florence, SC 29501

Re: Appeal letters

Dear Mr. Spears:

This letter is in response to your inquiry concerning receipt of your "Certificates of Service" dated June 30, 2015. I can confirm that the SC Department of Employment and Workforce received this documentation on July 1, 2015.

Sincerely,

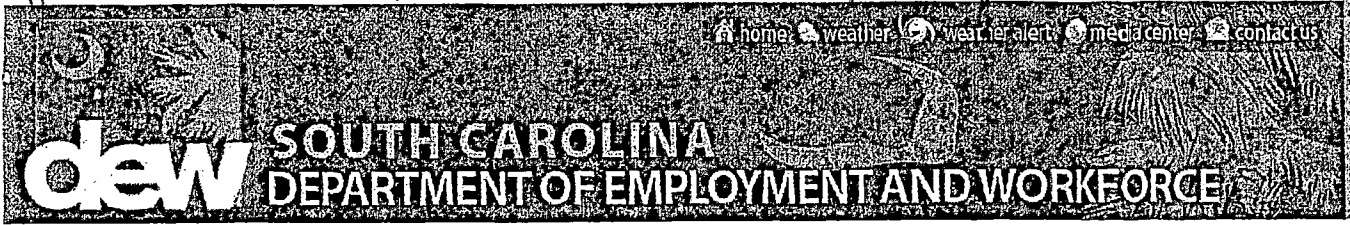
  
Derrick McFarland  
Office of General Counsel  
SC Department of Employment and Workforce

**FILED**

AUG 06 2015

SC ADMIN. LAW COURT

P.S. Exb. [Signature]



<b>AGENCY INFO</b> SENIOR LEADERSHIP OFFICES LMI	<b>JOBSEEKERS</b> JOBS VETERANS FAQS	<b>CLAIMANTS</b> ELIGIBILITY FILING BENEFITS FAQS	<b>EMPLOYERS</b> WORKERS TAXES SERVICES FAQS
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Quick Links: [File a Claim](#) | [SC Works](#) | [LMI](#) | [Offices](#) | [Unemployment Rate: 6.6%](#)

Search:

## About Us

The South Carolina Department of Employment and Workforce (DEW) is responsible for paying unemployment insurance benefits, collecting unemployment taxes, helping people find jobs, matching businesses with qualified candidates, and collecting and disseminating state/federal employment statistics.

Our main goal is to match jobseekers with employers quickly, efficiently, and effectively, and we offer a variety of services to assist both groups.

DEW, one of 16 cabinet agencies, is a partner in the state's workforce system. This includes SC Works centers, satellite offices and Connection Points in 12 local workforce investment areas, where DEW and its partners provide services to meet the needs of the state's businesses, jobseekers and those looking to further their careers.

### Our Mission

To promote and support an effective, customer-driven workforce system that facilitates financial stability and economic prosperity for employers, individuals, and communities.

### Our Vision

To be viewed as an efficient, transparent, customer-friendly partner in providing quality workforce solutions.

### Our Commitment

XX

# see it. own it. work it. dew it.

DEW is dedicated to the motto: **See it. Own it. Work it. DEW it.** We know that each and every employee plays a role in the success of the agency and accomplishing the mission. At its core, *See it. Own it. Work it. DEW it.* means that as employees of DEW, if we know of an issue, we take ownership of that issue and work to come up with a solution.

### Unemployment Insurance

Unemployment Insurance (UI) is a nationwide program created to financially help eligible individuals, who are unemployed through no fault of their own, while they actively search for new work.

The program allows UI recipients to maintain purchasing power, therefore, easing the serious effects of unemployment on individual households, the community and the state. In South Carolina, a UI claim can provide up to 20 weeks of benefits. The average weekly benefit amount

### Latest News

[Fact Sheet about state's unemployment rate](#)

[South Carolina's Employment Situation - June 2015](#)

[Statement on June 2015 Unemployment Rate](#)

[LMI Facts Fast! SC's workforce status at a glance ...](#)

**Employment June 2015**

**Monthly Employment in SC:**  
2,112,034  
+2,094 increase in June compared to May

**Labor Force**

**Employed: 2,112,034**  
**Unemployed: 148,757**  
**Unemployment Rate: 6.6**

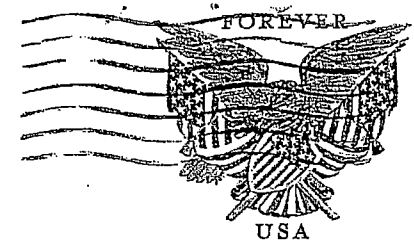
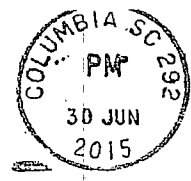
**New from SCDEW**



The blog has a new and improved look!

Find up-to-the-minute information for businesses, jobseekers and claimants!

Edward Spears  
503 Roughfork St.  
Flo., S.C. 29501



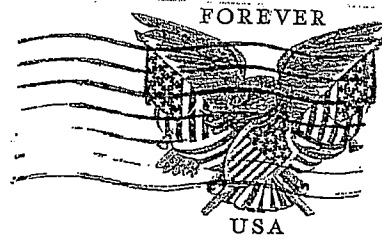
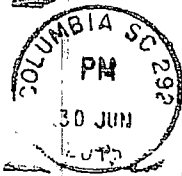
Exb ~~██████~~ ~~██████~~

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

Page 6

~~████████████████████~~  
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Edward Spears  
503 Rough Fork St.  
Flo, S.C. 29501



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

Exb ~~0~~

P  
7

~~Handwritten scribble~~

(have mail on each party)

1 Copy

**FILED**

JUL 13 2015

SC ADMIN. LAW COURT  
15-ALJ-22-0328-CC

P. 8 Please Read

My name is Edward Spears,  
I would like to appeal the enclosed case in the Administrative Court.

The Law requires that Certificate of Service and Petition for Judicial review be filed in Administrative Court in 30 days of the agency decision.

I did what I thought in the mailings of the petition was right. However, I mistakenly mailed 2 of the petitions to the same place. I mailed 2 petitions to the S.C. Employment Commission & The S.C. Dept. of Employment and Workforce (Both are the same).

I did however corresponded with Ms. Janet Shealy ~~Shealy~~ who was very helpful in me dealing with the petitions. She told me to mail petitions to the Employer, the employment Commission, and Administrative court. However the day I mailed them (6-30-15) I became confused looking at the enclosed notice I got from SCDEW. If you notice I highlighted or circled the addresses of the Administrative Court and Office of General Counsel, I thought they were the same for 2 reasons. I took the Office of General Counsel to be that of a processing dept, that handles paperwork such as Certificate of Service and other paperwork for the Administrative court. I thought since they received the paperwork they would

to

then pass it on the Administrative Court. I never heard before of General Council. I also thought at that time the Administrative Court only hears the cases and not do paperwork. So since the addresses were so close together.

I simply thought they were the same. I also knew previously that the address for S.C. Employment Commission was P.O. Box 995 not P.O. Box 8597. So you can see that kind of confusing. In no way ~~did~~ I intentionally or deliberately not mailed the petitions in the wrong place. I will track down the petitions and send it to you to confirm my story and the post date of the mailings.

Again Ms. Shealy was very helpful. It was just an honest mistake.

I do however lay some blame on personnel in S.C.D.E.W. and the legal dept. because I called them several times to track down the petitions or ask to help remedy the problem. They didn't help. Only Ms. Shealy helped. Because of her busy schedule I only talked to her ~~on~~ a few times, but she helped. She even email me in trying to track down petitions. ~~She~~ I applauded her help.

I would still very much to appeal my case

P.S. The bottom line is only one petition should have been mailed to the S.C.D.E.W. and one should have been sent to the Administrative Court. The Post, mail, date

A. P. ~~Q~~

Exb B

Edward Spears  
Appellant  
v.

S.C. DEW &  
Food Lion

Docket# 15-ALJ-22-  
0328-AP

Rebuttal to Motion  
to dismiss

To: S.C. DEW & Food Lion - This rebuttal  
is made on the following grounds:

Negligent - Failure to return mail

1. The SCDEW claim I fail to serve  
notice of Appeal(s) in a timely matter.  
I denied those claims. Enclosed you  
will find copies of certificate services  
& envelope marked (Exb. A-2) that indicate  
June 30. I had until July 9 to mail the  
certificates. The post dates indicates  
that my intentions were 100% honest.

I however make the mistake of mailing  
two of the certificates to SCDEW. I am  
sure they recognize this mistake the minute  
they open their mail. According to the letter  
enclosed marked (Exb. E) Derrick McFarlan  
confirmed they received the certificates

On July-1-2015, They knew also there was no certificate for the Administrative court. They also knew I had to just the 9th to serve certificates to everyone. With that in mind ~~the~~ they should have immediately return one of the certificates, or contact me so that I could correct the problem. I had 8 days well time to correct the problem. They choose to do nothing. Now they trying to have the case dismiss when they are the ones who stall the appeal process and withheld evidence.

SCDFW have a core of duty, an legal & moral obligation to see that workers get a fair shake in the employment system according to their web. page see (Exb. ~~F~~ E). To me this seems to be an fraudulent statement. To not resend mail that don't belong to you, to not notify an appellant of an urgent mistake, to then have his case dismissed an deliberate willfully act of negligence.

**FILED** withheld evidence or important papers such as certificate of service when you know they were sent wrong is not only morally wrong but unlawful by law. To date SCDFW have not return any of the certificates.

AUG 06 2015

CC ADMIN. LAW COURT

New certificates have been sent out since

SCDEW is government operated and is expected to set high standards of fairness and honesty. In this incident they display nothing but deception.

3. The SCDEW in this case can actually be charge with mail fraud according to US Postal Service Web. It reads "mail fraud refers to any deceitful action includes the use of the postal system".

In this case they know the certificate(s) should have been return it was extra mailing with my name on it. They should have act the same way as mail is delivered to your home wrongly. You have an legal obligation to return it by law. They also were deceitful because they knew I had only 9 days to deliver the certificates yet they held on to them and still have them.

Wherefore, appellante prays the Administrative court do not condone the unlawful, illegal, dishonest action of SCDEW and dismiss their motion. Edward Spears

FBI

AUG 06 2015

ADMIN. LAW COURT

(843)496-3711

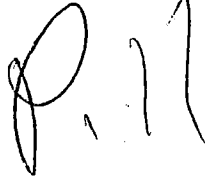
503 Rough Fork St  
Flo. SC. 29501

Edward 4920@att.net  
Edward R. Spear



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*

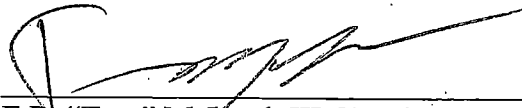
7. Service of a notice of appeal is required for jurisdiction over the appeal to attach. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004).

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 & Env'tl. 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](mailto:legal@dew.sc.gov)

P. 12

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Edward Spears, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 South Carolina Department of Employment )  
 and Workforce, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

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

**ORDER OF DISMISSAL**

This matter is before the court on the appeal of Edward Spears (Appellant) filed on July 13, 2015. On July 31, 2015, the South Carolina Department of Employment and Workforce (Department) filed a Special and Limited Appearance and Motion to Dismiss. The Department cited S.C. Code Ann. § 41-35-750 and ALC Rule 33 which provide that an appeal must be filed within thirty (30) days from the date of mailing of the final decision of the Department. The Department argued that since its final written decision was mailed on June 9, 2015, the date for perfecting an appeal from the decision was July 9, 2015. It is undisputed that the Appellant did not file his appeal until July 13, 2015, beyond thirty days from the date the Department mailed its decision.

Pursuant to ALC Rule 19, the Appellant timely filed a response to the Department's Motion, and argued that he mistakenly mailed two certificates of service to the Department on June 30, 2015, well in advance of his filing deadline. The Appellant argued that the Department had both a legal and moral obligation to "see that workers get a fair shake in the employment system according to their webpage," which he attached as Exhibit E. The Appellant argued that the Department, when it received two copies of his appeal, should have immediately returned one of the copies, or at least contacted him so that he could have corrected the problem.

The Appellant requests a right to file a late appeal because of his alleged excusable neglect, as well as an alleged moral and legal duty of the Department to notify him of his mistake in a timely manner. Though this court is sympathetic to the Appellant's arguments, this court has no

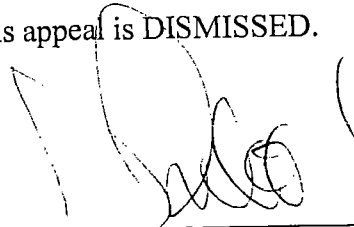
**FILED**

SEP 18 2015

SC ADMIN. LAW COURT

discretion in this matter, and no authority to extend the time for appeal so as to give this court jurisdiction. *Burnett v South Carolina State Highway Department*, 252 S.C. 568, 167 S.E. 2d 571 (1969). 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. See *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985); *State v. Brown*, 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001). Pursuant to the Department's motion, this court concludes that this matter must be dismissed.

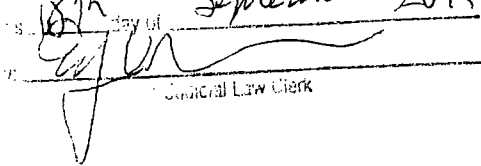
**IT IS THEREFORE ORDERED** that this appeal is **DISMISSED**.  
**AND IT IS SO ORDERED.**



S. Phillip Lenski  
Administrative Law Judge

September 18, 2015  
Columbia, South Carolina

RETURN TO SERVICE  
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy thereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

18th day of September 2015  
  
Judicial Law Clerk