

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
John D. McLeod, Administrative Law Judge  
Case No.: 15-ALJ-22-0497-AP

**RECEIVED**

JUL 20 2016

**SC Court of Appeals**

South Carolina Department of Employment & Workforce,.....Respondent

v.

Billie D. Mueller,.....Appellant

Appellate Case No.: 2016-000037

RECORD ON APPEAL

Billie D. Mueller  
1341 Rockfish Drive  
Manning, SC 29102  
Telephone: 803-410-6935  
E-mail address: [dinkerboy49@gmail.com](mailto:dinkerboy49@gmail.com)  
Appellant has no Attorney

Trey McLeod  
Office of General Counsel  
SC Dept. of Employment and Workforce  
PO Box 8597  
Columbia, SC 29202  
[legal@dew.sc.gov](mailto:legal@dew.sc.gov)  
Attorney for Respondent SCDEW

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**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Billie D. Mueller,  
Appellant,

vs.

SC Department of Employment and  
Workforce,  
Respondent,

---

) Docket No. 15-ALJ-22-0497-AP

) **RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Administrative Law Court

APPEAL FROM SOUTH CAROLINA  
DEPARTMENT OF EMPLOYMENT  
AND WORKFORCE APPELLATE  
PANEL

Billie D. Mueller  
1341 Rockfish Drive  
Manning, SC 29102  
Claimant

Trey McLeod  
Office of General Counsel-SCDEW  
PO Box 8597  
Columbia, SC 29202  
803-737-0395  
legal@dew.sc.gov  
Attorney for Respondent

## Columbia, South Carolina

COUNTY OF RICHLAND

copy of the Record on Appeal in the matter of Mueller v. SCDPW  
together with a true and correct copy of the original decision of the Appellate  
Panel therein.

THE SOUTH CAROLINA DEPARTMENT OF  
EMPLOYMENT AND WORKFORCE

Kristi Chesley  
Kristi Chesley, Administrative Legal Assistant

Columbia, South Carolina

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

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

Billie D. Mueller

)  
)  
)  
)  
)  
)

**APPELLATE PANEL**  
**DECISION**

Appellant: Claimant

The claimant appealed Appeal Tribunal Decision 2015-A-4817 to the Appellate Panel. The Tribunal held the claimant indefinitely ineligible for benefits upon finding the claimant failed to meet the eligibility requirements of the law. This decision affirmed the claims adjudicator's determination.

The claimant's appeal was untimely on its face. The Appellate Panel remanded this case to the Appeal Tribunal to conduct a hearing regarding the timeliness of the claimant's appeal. That has been accomplished, and the matter is again before the Appellate Panel for review and decision.

**DECISION TO DISMISS**

The claimant's appeal to the Appellate Panel is dismissed as untimely, and Appeal Tribunal Decision 2015-A-4817 is final. The claimant remains indefinitely ineligible for benefits effective March 30, 2015.

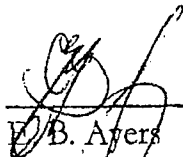
The claimant participated in an Appeal Tribunal hearing on May 5, 2015. The resulting decision, Appeal Tribunal Decision 2015-A-4817, was mailed to the claimant's address of record on May 7, 2015. The decision contained instructions for filing an appeal and a clear and specific notice that it would be final unless appealed within ten (10) calendar days, including weekends and holidays, from the mailing date of the decision. The appeal period expired on May 18, 2015. The claimant received the decision at her address of record. She does not always stay at her address of record, and checks the mail at that location approximately every two (2) weeks.

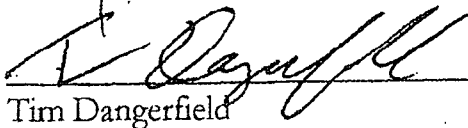
In the claimant's appeal to the Appellate Panel, she noted she received Appeal Tribunal Decision 2015-A-4817 on May 21, 2015. The claimant received the decision and read the appeal instructions, but she mistakenly believed she had ten (10) days from the date she received the decision to file an appeal. The claimant did not appeal until May 29, 2015.

S.C. Code Ann. § 41-35-680 requires that an Appeal Tribunal decision is final unless the decision is appealed to the Appellate Panel within ten (10) days of the decision's mailing date.

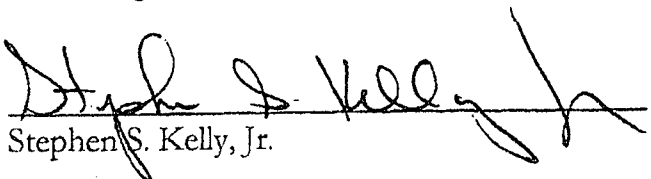
The Department properly mailed the Appeal Tribunal decision to the claimant's address of record. The deadline to file an appeal was May 18, 2015. The claimant appealed on May 29, 2015, eleven (11) days after the appeal period expired. The Department has no authority to extend the appeal time limit unless the delay was caused by Department or Postal error, and we evidence of no such error. The claimant filed an untimely appeal due to her own error or neglect in failing to carefully read the appeal instructions, and by failing to act in a diligent manner to preserve her appeal rights. Knowing that a time-sensitive decision from the Department would be forthcoming, the claimant reasonably should have taken affirmative steps to check the mail more often than every fourteen (14) days. The greater weight of evidence indicates that if the claimant had checked her mail on a regular basis, she would have received the decision earlier, and likely could have filed a timely appeal. Therefore, the appeal is dismissed as untimely, and the Appeal Tribunal decision is final as a matter of law.

**SOUTH CAROLINA DEPARTMENT OF  
EMPLOYMENT AND WORKFORCE**

  
E.B. Ayers

  
Tim Dangerfield

Review Date: 07/07/15  
Date Mailed: 07/07/15  
Mailed By: AG

  
Stephen S. Kelly, Jr.

**Mailing Date: July 7 , 2015**

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE  
(SCDEW)  
Columbia, South Carolina

---

**NOTICE OF MAILING OF APPELLATE PANEL DECISION**

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Attached is a copy of the final agency decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a *Petition for Judicial Review* must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the date of mailing of the agency's final decision (**see the mailing date above**).

**The address of the Administrative Law Court is:**

**S.C. Administrative Law Court  
Edgar A. Brown Building  
1205 Pendleton St., Ste. 224  
Columbia, SC 29201**

**Service of the Petition on SCDEW must be addressed and mailed to:**

**Office of General Counsel  
S.C. Department of Employment and Workforce  
Post Office Box 8597  
Columbia, SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice in South Carolina.

Form App-115  
Rev.8/12

SOUTH CAROLINA  
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

**DECISION OF APPEAL TRIBUNAL**

Hearing Date: May 05, 2015

BILLIE D. MUELLER

CLAIMANT

NO LIABLE EMPLOYER

EMPLOYER

APPELLANT: Claimant

SS NO:

**APPEARANCES**

FOR THE  
CLAIMANT: Participated

FOR THE  
EMPLOYER: No Liable Employer

**FINDINGS OF FACT**

The issue in this case is whether the claimant meets the eligibility requirements of the law.

The claimant was separated from her most recent bona fide employer on April 4, 2014, and filed a claim for unemployment insurance benefits on April 4, 2014, with an effective date of March 30, 2014. The claimant's benefit year ended on March 29, 2015. During this year, the claimant performed no insured work in the employ of a single employer equal to but not less than eight (8) times the weekly benefit amount established in the first benefit year.

The claimant entered into an agreement and release with the employer on April 22, 2014. It provided that the employer would pay the claimant severance payments and those payments were received in May 2015 and June 2015. The claimant maintains that these payments establish her eligibility for a second benefit year as they should be treated as wages. She is available and actively seeking full-time employment for each week she files her weekly claims for unemployment insurance benefits. The claimant filed a claim for a second benefit year on March 31, 2015, with an effective date of March 30, 2015.

### REASONS

S.C. Code Ann. §41-35-50 provides that no insured worker may receive benefits in a second benefit year unless, subsequent to the beginning of the first benefit year during which he received benefits, he performed work in the employ of a single employer in an amount equal to at least eight (8) times the weekly benefit amount established for the individual in the preceding benefit year.

South Carolina Code provides in §41-27-380(A) that "Wages" means remuneration paid for personal services, including commissions and bonuses, sums paid to an employee by an employer pursuant to an order of the National Labor Relations Board or by private agreement, consent, or arbitration for the loss of pay by reason of discharge and cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration paid in a medium other than cash is estimated as determined pursuant to regulations prescribed by the department. "Wages" includes all tip income including charged tips, received while performing a service that constitutes employment and is included in a written statement furnished to the employer.

The testimony reveals the claimant has failed to meet the eligibility requirements to receive unemployment insurance benefits for the second benefit year since she has not earned wages as described above since establishing the first benefit year. Although she maintains that the severance payments should be considered wages, the statute does not include severance in the definition of wages for the purpose of unemployment insurance benefits. The claimant performed no services for the money she received in accordance with the separation agreement and release. Therefore, severance payments are not considered wages for the purpose of unemployment insurance benefits and so the claimant was properly held ineligible.

### DECISION

The Tribunal holds the claimant ineligible for benefits March 30, 2015. This decision affirms the claimant's adjudicator's determination mailed April 2, 2015.

This will be the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed by mail addressed to "Appellate Panel, Post Office Box 1752, Columbia, South Carolina, 29202", by fax at 803.737.3166. For additional information on filing an appeal, visit our web site at [www.dcw.sc.gov/appeals.asp](http://www.dcw.sc.gov/appeals.asp).



Daniel C. Beach  
Administrative Hearing Officer

DCB:TDD

Decision Mailed: 05/07/15

Mailed on the above Date By: TD

## SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

P.O. BOX 1752, COLUMBIA, SC 29202

## APPLICATION FOR LEAVE TO APPEAL TO THE APPELLATE PANEL

Claimant's Name: Billie d Mueller Social Security Number: \_\_\_\_\_  
 Address: \_\_\_\_\_ Date of Initial Claim: 5/29/2015  
 Telephone Number: \_\_\_\_\_  
 Employer's Name: N/A Address: N/A  
 Party Appealing: Claimant

On 5/21/2015, I received Appeal Tribunal Decision Number 2015-A-4817 mailed to me on  
 (Date of Receipt)

5/7/2015 and ask for review of the record on the following grounds:  
 (Mailing Date on Decision)

The Supreme Court found that severance payments is subject to FICA tax. FICA defines employment as any service of whatever nature, performed by an employee for the person employing him/her. The IRS Code in the context of federal withholding defines Severance amounts paid to an employee. A unanimous Court found that severance payments are wages under FICA as they are clearly "remuneration for employment"

\*If appeal is untimely, state the reason. If appellant failed to attend Appeal Tribunal hearing, state the reason and whether postponement was requested:

Had a few medical procedures during the last 3 to 4 weeks

☒ I Agree

I know that I must continue to file my claims for each week of unemployment during the pendency of this appeal. I know that I can only be paid for those weeks that I have timely claimed. If I have received benefits and am ruled disqualified or ineligible, I know that I will be required to repay the benefits I have received for that time period.

\*\*As a Board of Review, the Appellate Panel is confined solely to the record submitted by the Appeal Tribunal and does not accept additional evidence or testimony in its consideration of the appeal.

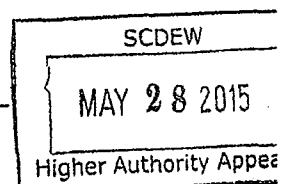
Appellant: Claimant

Title: Billie D Mueller

Date: 5/29/2015

Does claimant need an interpreter? Yes ☒ No What language/dialect? \_\_\_\_\_

Claimant is Deaf Mute



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



Nikki R. Haley  
Governor

Cheryl M. Stanton  
Executive Director

PO Box 1752  
Columbia, SC 29202

June 1, 2015

Billie Mueller

RE Billie Mueller

Appeal No 05054-150765

Dear Ms Mueller

The Appellate Panel has remanded this case to the Appeal Tribunal to conduct an evidentiary hearing regarding the timeliness of your appeal dated May 29, 2015, from Appeal Tribunal Decision 2015-A-4817, mailed May 7, 2015. The Appellate Panel will review the record developed by the Appeal Tribunal and render a decision on the timeliness of your appeal.

Notice of the Appeal Tribunal evidentiary hearing will be issued in the near future, and you are advised to attend to explain the timeliness of your appeal.

Higher Authority Appeals  
803-737-0239

cc Employer  
Imaging  
File

adg  
rev 09/03/2013

**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE**  
P.O. Box 995, Columbia, SC 29202

**NOTICE OF APPEAL HEARING BY TELEPHONE**

**CLAIMANT'S NAME BILLIE D MUELLER**  
**ADDRESS**

**SOCIAL SECURITY NO**  
**PHONE**

**EMPLOYER'S NAME NO LIABLE EMPLOYER**

**HEARING DATE 6/18/15 AT 9 00 AM EST BEFORE Leland M Caulder Jr**, Administrative Hearing Officer, South Carolina Department of Employment and Workforce will conduct this hearing by means of a Telephone Conference. The parties will be called by the Administrative hearing officer at the telephone numbers shown on this form. **IF NO TELEPHONE NUMBER IS GIVEN OR THE NUMBER IS INCORRECT, YOU MUST CALL THIS TOLL FREE NUMBER (866) 269-5680 IMMEDIATELY TO INFORM US OF YOUR NUMBER SO THAT WE MAY INCLUDE YOU IN THE HEARING**

**If you have not been called within 10 minutes after the scheduled time of the hearing, you must call (803) 737-2515. Either another hearing is still in progress, or we are unable to contact you. Failure to call or participate in the hearing may result in your interests being considered abandoned.**

**THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY.** Contact a representative of the Agency at (803) 737-2515, **AT ONCE**, if you cannot be present at the time scheduled and wish to request a postponement of the hearing. Also, if you require any special needs such as an interpreter, please contact us prior to the hearing.

**ISSUES**

|                                                              |                                               |                                                          |
|--------------------------------------------------------------|-----------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Voluntary Quit (for good cause)     | <input type="checkbox"/> Voluntary Retirement | <input checked="" type="checkbox"/> Timeliness of Appeal |
| <input type="checkbox"/> Discharge (for disqualifying cause) | <input type="checkbox"/> Absence from Hearing | <input type="checkbox"/> Fraud & Overpayment             |
| <input type="checkbox"/> Availability                        | <input type="checkbox"/> Overpayment          | <input type="checkbox"/> Job Offer & Referral            |
| <input type="checkbox"/> Eligibility                         | <input type="checkbox"/> Other                |                                                          |

**ATTENTION:** This hearing is your only chance to testify and present evidence. **Sworn testimony is required from witnesses with first-hand knowledge.** Any documents that you want to be considered in this hearing must be mailed forwarded immediately to **Appeals Tribunal** at the address shown on the top of this notice or faxed to our number (803) 737-0287. Only documents such as business records (for example timesheets, employer's policies or handbook warnings) can be considered. In addition to the copy sent to the Appeals Tribunal, you **must mail or fax copies to the opposing party**. No testimony or evidence will be considered from witnesses who are not present. Documents sent to another address or fax number may not be considered.

**SUBPOENAS:** If a witness is reluctant to appear, you may apply for a subpoena through the Agency's local office or the Appeal Tribunal at (803) 737-2520.

**LEGAL REPRESENTATION:** An attorney licensed to practice in South Carolina may represent you. It is your responsibility to obtain representation prior to the hearing. Fees charged to represent claimants are limited by the Agency.

**BENEFITS:** A CLAIMANT SHOULD CONTINUE TO FILE FOR BENEFITS DURING THE APPEAL PROCESS. Weekly benefits claimed cannot be paid, even if the claimant is held eligible.

**THIS NOTICE SUPERSEDES ANY PREVIOUS HEARING NOTICE YOU MAY HAVE RECEIVED. IF THE DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD ASSUME THAT THE PREVIOUS HEARING HAS BEEN POSTPONED AND FOLLOW THE INSTRUCTIONS ON THIS NOTICE.**

**MAILING DATE 06/08/15**

GENERAL INFORMATION ON THE SOUTH CAROLINA CODE IS ATTACHED TO THIS NOTICE

☒ Claimant ☐ Self Emp ☒ File ☐ Liab Emp ☐ Local Office ☐ Claimant's Atty ☐ Emp's Atty ☐ UI Tech ☒ Imaging

**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT & WORKFORCE**

**Columbia, South Carolina**

**Transcript of Testimony**

*Before*

Lee Caulder, Administrative Hearing Officer

Billie Mueller

)  
)  
)  
)

**CLAIMANT**

NLE

)

**LIABLE EMPLOYER**

**PLACE OF HEARING:**

SC Department of Employment & Workforce  
Central Office Annex  
631 Hampton Street  
Columbia, South Carolina

**DATE OF HEARING:**

June 18, 2015

**APPEARANCES:**

For Claimant:

Participated

For Employer:

None

**TESTIFYING WITNESSES**

**CLAIMANT:**

Billie Mueller

**EMPLOYER WITNESSES:**

None

Before: Lee Caulder, Administrative Hearing Officer

**HEARING OFFICER'S PREAMBLE.**

**CLAIMANT SWORN.**

HEARING OFFICER: Let the record reflect that the witness has been sworn in. Ms. Mueller, any other witnesses you wish to have present with you?

CLAIMANT: No sir.

HEARING OFFICER: I'm initially going to ask you some questions and give you an opportunity to answer those questions. At the end of my questions, you'll also be given the opportunity to present any further testimony that you feel is relevant and you wish to have considered on this issue. If you've got any documents or exhibits that you wish to have considered, please present those whenever you talk about them in your testimony and they should have already been mailed or faxed to my attention. You will be notified of a decision and it will be in writing, mailed to your address of record just as soon as possible. Ms. Mueller, we've got your address as , is that correct?

CLAIMANT: Yes sir.

HEARING OFFICER: Do you have any questions concerning the issues or the procedures before we continue?

CLAIMANT: No sir.

HEARING OFFICER: Please state your name and spell your first and last names.

CLAIMANT: Billie D. Mueller, B-I-L-L-I-E, M-U-E-L-L-E-R.

HEARING OFFICER: Thank you. Ms. Mueller, I have in front of me a one page Appeal Tribunal decision that was mailed to you on May 7, 2015, is this the decision that you are appealing at this time?

CLAIMANT: Yes sir.

HEARING OFFICER: Do you have any objection to me entering it in to the record to show that this is what we're going to talk about?

CLAIMANT: No.

HEARING OFFICER: This one page front and back Appeal Tribunal Decision Number 2015-A-4817 mailed on May 7<sup>th</sup> will be entered into the record as Agency Exhibit 1. Ms. Mueller, do you remember receiving this decision?

CLAIMANT: Yes.

HEARING OFFICER: Do you recall approximately when you received it?

CLAIMANT: I don't know when it came in the mail because, that's my house but I don't stay there all the time. My son lives there but I don't go and get the mail every day. Sometimes I don't get the mail for a week or two.

HEARING OFFICER: Okay.

CLAIMANT: So I don't exactly when it came in the mail, but when I did get it I opened it and I filed the appeal. I might go get the mail once every two weeks.

HEARING OFFICER: Okay. So when you did receive the decision, did you read through the entire thing?

CLAIMANT: Yes sir.

HEARING OFFICER: Including the box at the back of the decision?

CLAIMANT: Yes sir.

HEARING OFFICER: Did you understand that you had 10 calendar days from the date of the decision to mail it in?

CLAIMANT: Let's put it this way, I didn't know if it meant from when it was mailed or when you received it. I took it from when I received it, which I filed in due time.

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?

CLAIMANT:  
and that's all I can say.

No, I just think that, I tried to appeal it as soon as I read the thing

HEARING OFFICER:  
declare this hearing closed.

Having no more questions and hearing no more testimony, I

**HEARING CLOSED.**

STATE OF SOUTH CAROLINA )

COUNTY OF: RICHLAND )

This is to certify that the above is a true and correct transcript of recorded testimony transcribed to the best of my ability.

  
Kristi Chesley

SWORN to before me this the

29<sup>th</sup> day of October, 2015

Nancy Moon (LS)

My Commission expires April 1, 2021

SOUTH CAROLINA  
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

**DECISION OF APPEAL TRIBUNAL**

Hearing Date: May 05, 2015

BILLIE D. MUELLER

CLAIMANT

NO LIABLE EMPLOYER

EMPLOYER

APPELLANT: Claimant

SS NO:

APPEARANCES

FOR THE  
CLAIMANT: Participated

FOR THE  
EMPLOYER: No Liabe Employer

FINDINGS OF FACT

The issue in this case is whether the claimant meets the eligibility requirements of the law.

The claimant was separated from her most recent bona fide employer on April 4, 2014, and filed a claim for unemployment insurance benefits on April 4, 2014, with an effective date of March 30, 2014. The claimant's benefit year ended on March 29, 2015. During this year, the claimant performed no insured work in the employ of a single employer equal to but not less than eight (8) times the weekly benefit amount established in the first benefit year.

The claimant entered into an agreement and release with the employer on April 22, 2014. It provided that the employer would pay the claimant severance payments and those payments were received in May 2015 and June 2015. The claimant maintains that these payments establish her eligibility for a second benefit year as they should be treated as wages. She is available and actively seeking full-time employment for each week she files her weekly claims for unemployment insurance benefits. The claimant filed a claim for a second benefit year on March 31, 2015, with an effective date of March 30, 2015.

100 EXHIBIT  
A# / front/back

FILE NO: 15 18 -15

### REASONS

S.C. Code Ann. §41-35-50 provides that no insured worker may receive benefits in a second benefit year unless, subsequent to the beginning of the first benefit year during which he received benefits, he performed work in the employ of a single employer in an amount equal to at least eight (8) times the weekly benefit amount established for the individual in the preceding benefit year.

South Carolina Code provides in §41-27-380(A) that "Wages" means remuneration paid for personal services, including commissions and bonuses, sums paid to an employee by an employer pursuant to an order of the National Labor Relations Board or by private agreement, consent, or arbitration for the loss of pay by reason of discharge and cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration paid in a medium other than cash is estimated as determined pursuant to regulations prescribed by the department. "Wages" includes all tip income including charged tips, received while performing a service that constitutes employment and is included in a written statement furnished to the employer.

The testimony reveals the claimant has failed to meet the eligibility requirements to receive unemployment insurance benefits for the second benefit year since she has not earned wages as described above since establishing the first benefit year. Although she maintains that the severance payments should be considered wages, the statute does not include severance in the definition of wages for the purpose of unemployment insurance benefits. The claimant performed no services for the money she received in accordance with the separation agreement and release. Therefore, severance payments are not considered wages for the purpose of unemployment insurance benefits and so the claimant was properly held ineligible.

### DECISION

The Tribunal holds the claimant ineligible for benefits March 30, 2015. This decision affirms the claimant's adjudicator's determination mailed April 2, 2015.

This will be the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed by mail addressed to "Appellate Panel, Post Office Box 1752, Columbia, South Carolina, 29202", by fax at 803.737.3166. For additional information on filing an appeal, visit our web site at [www.dew.sc.gov/appcals.asp](http://www.dew.sc.gov/appcals.asp).



Daniel C. Beach  
Administrative Hearing Officer

DCB:TDD

Decision Mailed: 05/07/15

Mailed on the above Date By: DD

## SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

P.O. BOX 1752, COLUMBIA, SC 29202

## APPLICATION FOR LEAVE TO APPEAL TO THE APPELLATE PANEL

Claimant's Name: Billie d Mueller Social Security Number: \_\_\_\_\_  
 Address: \_\_\_\_\_ Date of Initial Claim: 5/29/2015  
 Telephone Number: \_\_\_\_\_  
 Employer's Name: N/A Address: N/A  
 Party Appealing: Claimant

On 5/21/2015, I received Appeal Tribunal Decision Number 2015-A-4817 mailed to me on  
 (Date of Receipt)  
5/7/2015 and ask for review of the record on the following grounds:  
 (Mailing Date on Decision)

The Supreme Court found that severance payments is subject to FICA tax. FICA defines employment as any service of whatever nature, performed by an employee for the person employing him/her. The IRS Code in the context of federal withholding defines Severance amounts paid to an employee. A unanimous Court found that severance payments are wages under FICA as they are clearly "remuneration for employment"

\*If appeal is untimely, state the reason. If appellant failed to attend Appeal Tribunal hearing, state the reason and whether postponement was requested:

Had a few medical procedures during the last 3 to 4 weeks

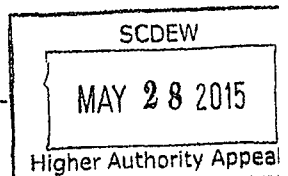
X I Agree I know that I must continue to file my claims for each week of unemployment during the pendency of this appeal. I know that I can only be paid for those weeks that I have timely claimed. If I have received benefits and am ruled disqualified or ineligible, I know that I will be required to repay the benefits I have received for that time period.

\*\*As a Board of Review, the Appellate Panel is confined solely to the record submitted by the Appeal Tribunal and does not accept additional evidence or testimony in its consideration of the appeal.

Appellant: Claimant  
 Title: Billie D Mueller  
 Date: 5/29/2015

Does claimant need an interpreter? Yes XNo What language/dialect? \_\_\_\_\_

Claimant is Deaf Mute



10 EXHIBIT

A# 2

FILE NO: 1505054-158765

5/29/ 20 36:52 A

add 5/7

## CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this Record on Appeal in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service address to the party(ies) or their attorney(s).

This 12<sup>th</sup> day of November, 2015

By: Kristi Chesley

Title: Administrative Legal Assistant, Legal Department

South Carolina Administrative Law Court

Billie D. Mueller,

Petitioner,

vs

South Carolina Department of

Employment and Workforce

Respondent

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

PETITIONER'S AMENDED  
OPENING BRIEF

Judicial Review from the decision  
of the  
Employment Appellate Panel  
dated July 07, 2015

Billie D. Mueller

1341 Rockfish Drive

Manning, SC 29102

Telephone: 803-410-6935 / E-mail address: [dinkerboy49@gmail.com](mailto:dinkerboy49@gmail.com)

Petitioner has no Attorney

Office of General Counsel-SCDEW

PO Box 8597

Columbia, SC 29202

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### STATEMENT OF THE CASE

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2. The Nature of the Decision To Be Reviewed.....1
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1  
2  
3 **PETITIONER'S BRIEF**  
4  
5

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6 **STATEMENT OF THE CASE**

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

8 This is a Petition for Review of a decision of the Employment  
9 Appellate Panels affirming the decision of an Administrative Law Judge  
10 decision denying unemployment benefits to petitioner. Petitioner requests  
11 that the decision be reversed.  
12

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

14 A final decision made and entered on July 07, 2015 by the  
15 Employment Appellate Panel.

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

17 This court has appellate jurisdiction over this matter pursuant to S.C.  
18 Code Ann. 41-35-680 & 41-27-380(A)

19 **Statement of Appellate Jurisdiction**

20 The Employment Appellate Panel entered its decision on July 07,  
21 2015. The Petition for Judicial Review was filed on July 30, 2015.  
22 Petitioner's Amended Brief filed November 20, 2015.

23 **Questions Presented on Review**

24 A. Did the Employment Appellate Panel err in finding that the  
25 Petitioner received the decision in a timely manner.

1           B.     Did the Employment Appellate Panel err in finding that  
2     Petitioner neglected to file the Appeal in a timely manner.

3           C.     Did Employment Appellate Panel and Appeal Tribunal err in  
4     the decision on Severance payments & bonus not being wages? For which  
5     the Petitioner paid all Federal, State and FICA taxes on the amounts.

6  
7     **Summary of Argument**

8           I checked my mail on May 13, 2015 and my mail did not consist of a  
9     letter from SCDEW. I was staying with a friend while undergoing Radiation  
10    *Treatments for Breast Cancer since at the time I did not want to drive.* I was  
11    receiving the treatments at Tuomey Radiation Oncology in Sumter, SC by Dr.  
12    Edward W. Duffy. Went to check the mail again on May 20, 2015 and the letter  
13    *from SCDEW was obtained. The 10 day filing period had already passed so I*  
14    submitted my appeal as timely as possible. I and SCDEW have absolutely no  
15    Certified proof that the decision was mailed in a timely manner or that it was  
16    *received in a timely manner. I am asking the court to reconsider the decision of the*  
17    Appellate Panel in this case.

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

1 actually done but the entire employer employee relationship for which  
2 compensation is paid." The Severance constituted 26 weeks pay for 26 years of  
3 service to the employer. I am asking the court to reconsider the decision of the  
4 Appellate Panel and the Appeal Tribunal in this case.

5  
6 Dated this 20th day of November, 2015

7 Billie D. Mueller  
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STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| Billie D. Mueller,              | ) | Docket No. 15-ALJ-22-0497-AP |
| Appellant,                      | ) |                              |
|                                 | ) |                              |
| vs.                             | ) |                              |
|                                 | ) |                              |
| SC Department of Employment and | ) |                              |
| Workforce,                      | ) |                              |
| Respondent,                     | ) |                              |
|                                 | ) |                              |

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THE STATE OF SOUTH CAROLINA  
In The Administrative Law Court

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BRIEF OF THE SOUTH CAROLINA  
DEPARTMENT OF  
EMPLOYMENT AND WORKFORCE

Billie D. Mueller  
1341 Rockfish Drive  
Manning, SC 29102  
Claimant

Trey McLeod  
Office of General Counsel-SCDEW  
PO Box 8597  
Columbia, SC 29202  
803-737-0395  
legal@dew.sc.gov  
Attorney for Respondent

## ISSUES ON APPEAL

- I. DID APPELLANT FAIL TO FILE A SUFFICIENT BRIEF TO INCLUDE CITATION TO AUTHORITY ON THE ISSUE OF THE TIMELINESS OF HER APPEAL TO THE DEPARTMENT'S APPELLATE PANEL?
- II. DID THE DEPARTMENT CORRECTLY FIND THAT APPELLANT'S APPEAL WAS UNTIMELY FILED?
- III. SHOULD APPELLANT'S ADDITIONAL ARGUMENTS BE REJECTED BECAUSE THEY ARE NOT PRESERVED FOR REVIEW?

## STATEMENT OF THE CASE

Appellant, Billie D. Mueller (Appellant) filed a claim with Respondent, the South Carolina Department of Employment and Workforce (DEW or Department), for unemployment insurance (UI) benefits. On April 2, 2015, the Department initially found that Appellant did not meet the eligibility requirements of the law pursuant to S.C. Code Ann. § 41-35-50<sup>1</sup> and, therefore, was ineligible to receive UI benefits (R. p. 5.).

Appellant appealed the initial determination to the Appeal Tribunal (Tribunal) pursuant to S.C. Code Ann. § 41-35-660. The Tribunal conducted an evidentiary hearing in which Appellant participated. The resulting decision, mailed to the Appellant's address of record on May 7, 2015, affirmed the initial determination. Id.

Thereafter, Appellant filed a letter of appeal from the Tribunal decision with the Department's Appellate Panel (Panel) received on May 29, 2015. (R. p. 6.).

In a letter dated June 1, 2015, the Panel remanded the case to the Tribunal for the sole purpose of receiving testimony regarding the timeliness of Appellant's letter of appeal. (R. p. 7.) On June 18, 2015, the Tribunal held a telephone hearing for this purpose. (R. pp. 9-14.) The matter was then returned to the Panel to make a decision on the record developed. Id. On July 7,

---

<sup>1</sup> This statute provides that no insured worker may receive benefits in a second benefit year unless, subsequent to the beginning of the first benefit year during which he received benefits, he performed work in the employ of a single employer in an amount equal to at least eight (8) times the weekly benefit amount established for the individual in the preceding benefit year.

2015, the Panel issued the final agency decision that dismissed Appellant's appeal as untimely filed. (R. pp. 1-2.)

On July 31, 2015, Appellant timely appealed the Panel's decision to this Court.

### **STATEMENT OF FACTS**

The only issue in this case is whether Appellant's appeal of the Tribunal decision to the Panel was untimely.

The Tribunal decision was mailed to Appellant on May 7, 2015. The statutory time period for appealing this decision expired on May 18, 2015, see S.C. Code Ann. § 41-31-680; however, the Panel did not receive Appellant's appeal until May 29, 2015. (R. p. 6.)

During the timeliness hearing, Appellant testified that she did not know when the determination actually appeared in her mailbox because she did not stay at that location all the time, nor did she check the mail every day. (R. p. 12.) Appellant stated that during that period of time she usually checked her mail every two weeks. *Id.* Appellant also admitted she was uncertain whether her appeal had to be ten days from the date of mailing or ten days from the date of receipt. *Id.*

Based on the Record, the Panel held the following:

The Department properly mailed the Appeal Tribunal decision to [Appellant's] address of record. The deadline to file an appeal was May 18, 2015. [Appellant] appealed on May 29, 2015, eleven (11) days after the appeal period expired. The Department has no authority to extend the appeal time limit unless the delay was caused by Department or Postal error, and we evidence of no such error. [Appellant] filed an untimely appeal due to her own error or neglect in failing to carefully read the appeal instructions, and by failing to act in a diligent manner to preserve her appeal rights. Knowing that a time-sensitive decision from the Department would be forthcoming, [Appellant] reasonably should have taken affirmative steps to check the mail more often than every fourteen (14) days. **The greater weight of evidence indicates that if [Appellant] had checked her mail on a regular basis, she would have received the decision earlier, and likely could have filed a timely appeal.** Therefore, the appeal is dismissed as untimely, and the Appeal Tribunal decision is final as a matter of law.

(R. p. 2) (emphasis added).

## ARGUMENT

### Standard of Review

DEW is an agency governed by the Administrative Procedures Act (APA). See Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding DEW's predecessor, the Employment Security Commission, subject to the APA). Under the APA:

[A] reviewing tribunal may reverse or modify the decision of the agency where it is arbitrary or capricious or constitutes an abuse of discretion. Reviewing courts apply the substantial evidence rule, under which the agency's decision is upheld unless it is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record."

McEachern v. S.C. Emp. Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006) (footnotes and citations omitted). This is a very "narrow scope of review." Id. at 561, 635 S.E.2d at 649.

"Substantial evidence" is defined as:

[S]omething less than the weight of the evidence; it is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action. The substantial evidence rule does not allow judicial fact-finding, or the substitution of judicial judgment for agency judgment.

Todd's Ice Cream, Inc. v. S.C. Emp. Sec. Comm'n, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984). Stated differently, substantial evidence is "evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion as the agency." Friends of the Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010).

Furthermore, the reviewing court "may not substitute its judgment ... as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-610(B) (Supp. 2011). "The findings of the agency are presumed correct and will be set aside only if unsupported by substantial evidence." Kearse v. State Health & Human Services Fin. Comm'n, 318 S.C. 198, 200, 456

S.E.2d 892, 893 (1995). The possibility of drawing two inconsistent conclusions from the evidence does not mean the agency's conclusion is unsupported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). Finally, the Appellant bears the burden "to prove convincingly that the agency's decision is unsupported by the evidence." Id.

**I. APPELLANT FAILED TO FILE A SUFFICIENT BRIEF WITH CITATION TO AUTHORITY ON THE ISSUE RULED ON BY THE PANEL.**

On appeal, Appellant now presents only a single-sentence, conclusory argument that the Panel erred by "finding that Appellant received the decision in a timely manner." However, the Court need not consider that argument given that Appellant has not filed a brief in support of that argument that complies with the SCALC rules.

An Order Governing Procedure was mailed to the parties on October 23, 2015, which stated in part that "if the Appellant fails to serve the brief on all parties, **or the brief fails to comply with the ALC rules**, the Court may dismiss this appeal." (Emphasis added). SCALC Rule 37(B)(3) states that the "brief shall be divided into as many parts as there are issues to be argued, and each such part shall bear an appropriate caption, followed by a discussion and citation of authority."

Appellant's Brief merely recites her view of the facts, without any arguments backed by supporting authority. Therefore, she has failed to identify any legal issues this Court may address within its standard of review.

SCALC Rule 38 allows this Court, on its own motion, to dismiss an appeal for failure to comply with the rules of procedure governing appeals. Moreover, Rule 208(b)(1)(D), SCACR,<sup>2</sup>

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<sup>2</sup> SCALC Rule 68 allows this Court the discretion to apply the South Carolina Appellate Court Rules (SCACR) to resolve questions not addressed by the SCALC Rules.

requires arguments on appeal to include citations to legal authority. See also Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review."). An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority. Historic Charleston Holdings, L.L.C. v. Mallon, 365 S.C. 524, 533 n.7, 617 S.E.2d 388, 393 n.7 (Ct. App. 2005). Bryson v. Bryson, 378 S.C. 502, 662 S.E.2d 611 (Ct. App. 2008).

Thus, from the rules of two Courts as well as from binding case law, compliance with the ALC's briefing rules is not optional. Accordingly, Appellant's appeal should be dismissed for failure to comply with applicable briefing rules.

## **II. THE DEPARTMENT CORRECTLY FOUND THAT APPELLANT'S APPEAL WAS UNTIMELY FILED.**

Again, the Court should not take up the single-sentence argument presented in Appellant's brief because the brief itself fails to comply with the Court's rules. However, even if this Court does consider the argument, the Panel's decision should still be affirmed because S.C. Code Ann. § 41-31-680 plainly states that the Tribunal's decision will become the Department's final decision "unless **within ten days after the date of mailing the decision** a further appeal is initiated pursuant to Section 41-35-710." (Emphasis added).

The question of compliance with the statutes, regulations, and rules governing an appeal is one of appellate jurisdiction, and an appellate body may not extend the time to appeal. Allison v. W.L. Gore & Assocs., 394 S.C. 185, 188-89, 714 S.E.2d 547, 549-50 (2011). "Compliance with statutory time periods for filing appeals is a prerequisite for an appellate entity to have jurisdiction to hear an appeal." S.C. Coastal Conservation League v. S.C. Dep't of Health and

Envtl. Control, 380 S.C. 349, 376, 669 S.E.2d 899, 913 (Ct. App. 2008);<sup>3</sup> see also Burnett v. S.C. State Highway Dep't, 252 S.C. 568, 167 S.E.2d 571 (1969) (where the Supreme Court held that when the statutory time period for appeal had expired, the circuit court erred by extending the time for taking an administrative appeal).

Here, it is uncontested that the Tribunal decision was mailed to Appellant's address of record on May 7, 2015. Indeed, Appellant has not disputed that the decision was delivered to her address of record within the statutory time period for filing her appeal. See Lindsey v. S.C. Tax Comm'n, 323 S.C. 57, 60, 448 S.E.2d 577, 578 (Ct. App. 1994) (where there was no contention that the document was not properly addressed or contained insufficient postage, the court found the uncontroverted evidence showed the notice was deposited in the mail on the date alleged).

The language of S.C. Code Ann. § 41-35-680 is explicit and affords no discretion to the Panel to modify the 10-day appeal period due to the personal circumstances of a claimant or employer representative. See Allison, *supra*; Burnett, *supra*; see also Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985) (a failure to satisfy the time limits of jurisdiction is fatal since an untimely appeal prohibits the Panel from deciding the matter.).

The Panel concluded: "[Appellant] filed an untimely appeal due to her own error or neglect in failing to carefully read the appeal instructions, and by failing to act in a diligent manner to preserve her appeal rights." (R. p. 2.) In light of Appellant's own testimony, there is substantial evidence in the record to support the Panel's conclusion.

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<sup>3</sup> Reversed on other grounds, 390 S.C. 418, 702 S.E.2d 246 (2010).

### **III. APPELLANT'S ADDITIONAL ARGUMENTS MUST BE REJECTED BECAUSE THEY ARE NOT PRESERVED FOR REVIEW**

The general rule is that an appellate court cannot address an issue unless it was raised to and ruled upon by the lower court. Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 510–11, 598 S.E.2d 712, 715 (2004). Here, Appellant's assertions regarding the underlying UI benefits eligibility cannot be reached by this Court as it could not be reached by the Panel. Senn v. Spartanburg Cty., 192 S.C. 489, 7 S.E.2d 454, 456 (1940) (“[A]s a general rule if an inferior court or tribunal has no jurisdiction of a cause an appeal from its decision confers no jurisdiction on the appellate court.”)

### CONCLUSION

For the reasons discussed above, this Court should affirm DEW's final decision that Appellant filed an untimely appeal.

A handwritten signature in cursive script, appearing to read "Trey McLeod", followed by the initials "by DS".

E.B. "Trey" McLeod, III SC Bar #73642  
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)

December 11, 2015

Attorney for Respondent DEW

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Billie Mueller,  
Appellant,

v.

SC Dept. of Employment and Workforce,  
Respondent(s).

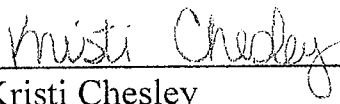
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)  
) DOCKET NO. 15-ALJ-22-0497-AP  
)  
) CERTIFICATE OF SERVICE  
) BY MAIL

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 Brief of Respondent SC DEW in the above named action to the Appellant addressed to:

Billie Mueller  
1341 Rockfish Dr.  
Manning SC 29102

that the postage was duly prepaid; and that it was deposited in the United States Mail to the Appellant on the 11<sup>th</sup> day of December, 2015.

  
\_\_\_\_\_  
Kristi Chesley  
Administrative Legal Assistant  
SC DEW-Office of General Counsel



**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Billie D. Mueller,

Appellant,

vs.

South Carolina Department of  
Employment and Workforce,

Respondents.

Docket No. 15-ALJ-22-0497-AP

**ORDER**

**FILED**

JAN 04 2016

**SC ADMIN. LAW COURT**

This matter is before the Administrative Law Court ("ALC" or "Court") pursuant to a Notice of Appeal that was filed by Billie D. Mueller ("Appellant"). Appellant appeals from an Appellate Panel Decision of the South Carolina Department of Employment and Workforce ("Department"), dismissing the appeal as untimely pursuant to S.C. Code Ann. § 41-35-660 (Supp. 2014). The ALC has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2014).

**BACKGROUND**

After separating from her employer, Appellant filed an initial claim for unemployment insurance benefits with the Department's Claims Adjudicator that was denied. Appellant appealed the denial of her claim to the Appeal Tribunal ("Tribunal"), which upheld the denial of benefits in an order that was mailed to Appellant on May 7, 2015. The Record on Appeal ("Record") shows that Appellant did not file her appeal with the Appellate Panel ("Panel") until May 29, 2015.

The Panel remanded the appeal back to the Tribunal for an evidentiary hearing regarding the timeliness of Appellant's appeal. The Panel would render a decision regarding the timeliness of Appellant's appeal based upon the record established on remand to the Tribunal.

The Tribunal hearing commenced as scheduled for June 18, 2015, with Appellant appearing *pro se* before the hearing officer. It was Appellant's position that she tried to appeal as soon as she read the Tribunal decision. However, Appellant was not certain whether she was required to file her appeal within 10 days of it being mailed or received. More importantly, Appellant admitted that she does not know when the decision arrived in the mail at her house

because she does not check her mail regularly. Appellant only checks her mail once every two weeks.

Upon review of the Tribunal record, the Panel determined that the Department properly mailed the Tribunal decision to Appellant on May 7, 2015 and that the deadline to file an appeal was May 18, 2015. The Panel found that Appellant filed her appeal eleven (11) days after the appeal period expired and concluded that the greater weight of the evidence indicated that if Appellant had checked her mail on a regular basis, she would have received the decision earlier and could have filed a timely appeal.

Appellant now appeals to the ALC.

### **STANDARD OF REVIEW**

The Department is an "agency" under the Administrative Procedures Act (APA). See Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, the predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA's standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2014); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). Section 1-23-380(5) of the South Carolina Code (Supp. 2014) provides the standard used by appellate bodies to review agency decisions. See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (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.

§ 1-23-380(5) (Supp. 2014).

A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv.

Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. Rodney v. Michelin Tire Co., 320 S.C. 515, 466 S.E.2d 357 (1996). Thus, the party challenging an agency action has the **burden** of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 321 S.C. 219, 467 S.E.2d 913 (citing Hamm v. AT&T, 302 S.C. 210, 394 S.E.2d 842 (1994)). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. Waters, 467 S.E.2d at 917.

#### ISSUE ON APPEAL

1. Did the Appellate Panel err in finding that Appellant neglected to file her appeal in a timely manner?
2. Did the Appellant Panel err in finding that the Appellant received the decision in a timely manner?
3. Did the Appellate Panel and Appeal Tribunal err in the decision on severance payments and bonus no being wages for which Appellant paid all Federal, State and FICA taxes?

#### DISCUSSION

Appellant argued in her brief on appeal that the Department did not present any certified proof that the Tribunal decision was mailed in a timely manner. The Department argued in its brief that Appellant's appeal was untimely and that the Tribunal decision became the final decision in this appeal pursuant to Section 41-35-680.

Section 41-35-660 provides that, "The claimant or any other interested party may file an appeal from an initial determination, redetermination, or subsequent determination not later than ten days after the determination was mailed to his last known address." S.C. Code Ann. § 41-35-660 (Supp. 2014). Here, the record is clear that the Tribunal decision was mailed on May 7, 2014 and that the last day to file an appeal was May 18, 2015. However, Appellant filed her appeal on May 29, 2014, which was eleven (11) days beyond the time allowed under Section 41-35-660. As a result, Appellant's appeal to the Panel was untimely. The Court finds that the Panel decision that Appellant appealed from is supported by the substantial evidence in the record.

With regard to the remaining issues that were raised by Appellant, this Court will only review issues that were raised and ruled upon below.

The South Carolina Supreme Court has stated the following regarding the preservation of an issue for appellate review:

It is axiomatic that an issue cannot be raise for the first time on appeal, but that must have been **raised to and ruled upon** by the trial judge to be preserved for appellate review. (Emphasis supplied) (Internal citation omitted).

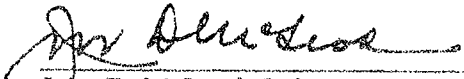
Wilder Corporation v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

The remaining issues and facts that were argued in Appellant's brief were neither raised before the Tribunal nor ruled upon by the Panel and are therefore not subject to review by this Court.

**IT IS HEREBY ORDERED** that the Appellate Panel decision is **AFFIRMED**.

**AND IT IS SO ORDERED.**

January 4, 2015  
Columbia, S.C.

  
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John D. McLeod, Judge  
South Carolina Administrative Law Court

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## COMPLAINT

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

## ANSWER

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

1 According to U.S. Supreme Court Certiorari To The United States Court Of  
2 Appeals For The Sixth Circuit # 12-1408 (a) FICA defines "wages" broadly as "all  
3 remuneration for employment." §3121(a). As a matter of plain meaning, severance payments fit  
4 this definition: They are a form of remuneration made only to employees in consideration for  
5 employment. "Employment" is "any service . . . performed . . . by an employee" for an  
6 employer. §3121(b). By varying according to a terminated employee's function and seniority, the  
7 severance payments at issue confirm the principle that "service" "mean[s] not only work actually  
8 done but the entire employer employee relationship for which compensation is paid." The  
9 Severance constituted 26 weeks pay for 26 years of service to the employer. I am asking the  
10 court to reconsider the decision of the Appellate Panel and the Appeal Tribunal in this case.

11  
12 Dated this 17 day of July, 2016

13 Billie D. Mueller  
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**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE**  
P.O. Box 995, Columbia, SC 29202

**NOTICE OF APPEAL HEARING BY TELEPHONE**

**CLAIMANT'S NAME** BILLIE D MUELLER  
**ADDRESS**

**SOCIAL SECURITY NO**  
**PHONE**

**EMPLOYER'S NAME** NO LIABLE EMPLOYER

**HEARING DATE** 6/18/15 **AT** 9 00 AM **EST** **BEFORE** Leland M Caulder Jr, Administrative Hearing Officer,  
The South Carolina Department of Employment and Workforce will conduct this hearing by means of a Telephone Conference. The parties  
will be called by the Administrative hearing officer at the telephone numbers shown on this form. **IF NO TELEPHONE NUMBER IS  
KNOWN OR THE NUMBER IS INCORRECT, YOU MUST CALL THIS TOLL FREE NUMBER (866) 269-5680 IMMEDIATELY.**  
**INFORM US OF YOUR NUMBER SO THAT WE MAY INCLUDE YOU IN THE HEARING**

**If you have not been called within 10 minutes after the scheduled time of the hearing, you must call (803) 737-2515. Either another  
hearing is still in progress, or we are unable to contact you. Failure to call or participate in the hearing may result in your interests  
being considered abandoned.**

**THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY.** Contact a representative of the Agency at (803) 737-  
2515, **AT ONCE**, if you cannot be present at the time scheduled and wish to request a postponement of the hearing. Also, if you require any  
special needs such as an interpreter, please contact us prior to the hearing.

**ISSUES**

|                                                              |                                               |                                                          |
|--------------------------------------------------------------|-----------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Voluntary Quit (for good cause)     | <input type="checkbox"/> Voluntary Retirement | <input checked="" type="checkbox"/> Timeliness of Appeal |
| <input type="checkbox"/> Discharge (for disqualifying cause) | <input type="checkbox"/> Absence from Hearing | <input type="checkbox"/> Fraud & Overpayment             |
| <input type="checkbox"/> Availability                        | <input type="checkbox"/> Overpayment          | <input type="checkbox"/> Job Offer & Referral            |
| <input type="checkbox"/> Eligibility                         | <input type="checkbox"/> Other                |                                                          |

**EVIDENCE** This hearing is your only chance to testify and present evidence. Sworn testimony is required from  
witnesses with first-hand knowledge. Any documents that you want to be considered in this hearing must be mailed forwarded  
immediately to Appeals Tribunal at the address shown on the top of this notice or faxed to our number (803) 737-0287. Only documents such  
as business records (for example timesheets, employer's policies or handbook warnings) can be considered. In addition to the copy sent to the  
Appeals Tribunal, you must mail or fax copies to the opposing party. No testimony or evidence will be considered from witnesses who are  
not present. Documents sent to another address or fax number may not be considered.

**SUBPOENAS** If a witness is reluctant to appear, you may apply for a subpoena through the Agency's local office or the Appeal Tribunal at  
(803) 737-2520.

**LEGAL REPRESENTATION** An attorney licensed to practice in South Carolina may represent you. It is your responsibility to  
obtain representation prior to the hearing. Fees charged to represent claimants are limited by the Agency.

**BENEFITS** A CLAIMANT SHOULD CONTINUE TO FILE FOR BENEFITS DURING THE APPEAL PROCESS. Weekly  
benefits claimed cannot be paid, even if the claimant is held eligible.

**THIS NOTICE SUPERSEDES ANY PREVIOUS HEARING NOTICE YOU MAY HAVE RECEIVED. IF THE  
DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD ASSUME  
THE DATE ON THE PREVIOUS HEARING HAS BEEN POSTPONED AND FOLLOW THE INSTRUCTIONS ON THIS  
NOTICE.**

**MAILING DATE** 06/08/15

GENERAL INFORMATION ON THE SOUTH CAROLINA CODE IS ATTACHED TO THIS NOTICE

☒ Claimant ☐ Sep Emp ☒ File ☐ Liab Emp ☐ Local Office ☐ Claimant's Atty ☐ Emp's Atty ☐ UI Tech ☒ Imaging

## SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

P.O. BOX 1752, COLUMBIA, SC 29202

## APPLICATION FOR LEAVE TO APPEAL TO THE APPELLATE PANEL

Claimant's Name: Billie d Mueller Social Security Number: \_\_\_\_\_  
 Address: \_\_\_\_\_ Date of Initial Claim: 5/29/2015  
 Telephone Number: \_\_\_\_\_  
 Employer's Name: N/A Address: N/A  
 Party Appealing: Claimant

On 5/21/2015, I received Appeal Tribunal Decision Number 2015-A-4817 mailed to me on  
 (Date of Receipt)

5/7/2015 and ask for review of the record on the following grounds:  
 (Mailing Date on Decision)

The Supreme Court found that severance payments is subject to FICA tax. FICA defines employment as any service of whatever nature, performed by an employee for the person employing him/her. The IRS Code in the context of federal withholding defines Severance amounts paid to an employee. A unanimous Court found that severance payments are wages under FICA as they are clearly "remuneration for employment"

\*If appeal is untimely, state the reason. If appellant failed to attend Appeal Tribunal hearing, state the reason and whether postponement was requested:

Had a few medical procedures during the last 3 to 4 weeks

☒ I Agree I know that I must continue to file my claims for each week of unemployment during the pendency of this appeal. I know that I can only be paid for those weeks that I have timely claimed. If I have received benefits and am ruled disqualified or ineligible, I know that I will be required to repay the benefits I have received for that time period.

\*\*As a Board of Review, the Appellate Panel is confined solely to the record submitted by the Appeal Tribunal and does not accept additional evidence or testimony in its consideration of the appeal.

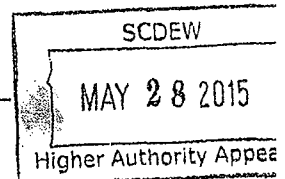
Appellant: Claimant

Title: Billie D Mueller

Date: 5/29/2015

Does claimant need an interpreter? Yes ☒ No What language/dialect? \_\_\_\_\_

Claimant is Deaf Mute



10 EXHIBIT

A# 2

FILE NO: 1505254-158765

5/29 45 36:52

add 5/7

Certificate of Appellant

The undersigned hereby certifies that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 17, 2016

*Billie D. Mueller*

Billie D. Mueller  
1341 Rockfish Drive  
Manning, South Carolina 29102  
(803) 410-6935  
Appellant has no Attorney

UCR 104-S 2090  
b-12

SC WORKS CENTER 430

DATE FILED 03/31/15

0

MANNING SC 29102

MILITARY ASSIGNMENTS

MAXIMUM TOTAL BENEFITS 6520.00

03/29/16

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

| 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.**

Page 47

1 JAN FEB, MAR    2. APR, MAY, JUNE, SEPT

|                                                                 |  |                                                  |  |                                                                                                                                       |  |                                             |  |                     |  |                  |  |
|-----------------------------------------------------------------|--|--------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------|--|---------------------|--|------------------|--|
| Void <input type="checkbox"/>                                   |  | Employee's social security number<br>527-76-0453 |  | OMB No. 1545-0008 X4A                                                                                                                 |  | 006115                                      |  | 000150              |  |                  |  |
| b Employer Identification number (EIN)<br>22-2455232            |  |                                                  |  | 1 Wages, tips, other compensation<br>48327.85                                                                                         |  | 2 Federal income tax withheld<br>6271.81    |  |                     |  |                  |  |
| c Employer's name, address, and ZIP code<br>EBTRON INC          |  |                                                  |  | 3 Social security wages<br>48327.85                                                                                                   |  | 4 Social security tax withheld<br>2996.33   |  |                     |  |                  |  |
|                                                                 |  |                                                  |  | 5 Medicare wages and tips<br>48327.85                                                                                                 |  | 6 Medicare tax withheld<br>700.75           |  |                     |  |                  |  |
|                                                                 |  |                                                  |  | 7 Social security tips                                                                                                                |  | 8 Allocated tips                            |  |                     |  |                  |  |
| d Control number<br>000150 CHAR/X4A                             |  |                                                  |  | 9                                                                                                                                     |  | 10 Dependent care benefits                  |  |                     |  |                  |  |
| e Employee's first name and initial Last name<br>BILLIE MUELLER |  |                                                  |  | 11 Nonqualified plans                                                                                                                 |  | 12a See instructions for box 12<br>W 446.15 |  |                     |  |                  |  |
|                                                                 |  |                                                  |  | 13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/> |  | 12b                                         |  |                     |  |                  |  |
|                                                                 |  |                                                  |  | 14 Other                                                                                                                              |  | 12c                                         |  |                     |  |                  |  |
|                                                                 |  |                                                  |  |                                                                                                                                       |  | 12d                                         |  |                     |  |                  |  |
| f Employee's address and ZIP code                               |  |                                                  |  |                                                                                                                                       |  |                                             |  |                     |  |                  |  |
| 15 State Employer's state ID number<br>SC 25319905 1            |  | 16 State wages, tips, etc.<br>48327.85           |  | 17 State income tax<br>3180.96                                                                                                        |  | 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

1

## 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” “mean[s] 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

## Syllabus

exemption for severance payments made "because of . . . retirement for disability," §3121(a)(13)(A), would be unnecessary were severance payments generally not considered wages. FICA's statutory history sheds further light on the definition. FICA originally contained definitions of "wages" and "employment" identical in substance to the current ones, but in 1939, Congress excepted from "wages" "[d]ismissal payments" not legally required by the employer, 53 Stat. 1384. Since that exception was repealed in 1950, FICA has contained no general exception for severance payments. Pp. 4-7.

(b) The Internal Revenue Code chapter governing income-tax withholding does not limit the meaning of "wages" for FICA purposes. Like FICA's definitional section, §3401(a) has a broad definition of "wages" and contains a series of specific exemptions. Section 3402(o) instructs that "supplemental unemployment compensation benefits" or SUBs, which include severance payments, be treated "as if" they were wages. Contrary to Quality Stores' reading, this "as if" instruction does not mean that severance payments fall outside the definition of "wages" for income-tax withholding purposes and, in turn, are not covered by FICA's definition. Nor can Quality Stores rely on §3402(o)'s heading, which refers to "certain payments other than wages." To the extent statutory headings are useful in resolving ambiguity, see *FTC v. Mandel Brothers, Inc.*, 359 U. S. 385, 388-389, §3402(o)'s heading falls short of declaring that all the payments listed in §3402(o) are "other than wages." Instead, §3402(o) must be understood in terms of the regulatory background against which it was enacted. In the 1950's and 1960's, because some States provided unemployment benefits only to terminated employees not earning wages, IRS Rulings took the position that severance payments tied to the receipt of state benefits were not wages. To address the problem that severance payments were still considered taxable income, which could lead to large year-end tax liability for terminated workers, Congress enacted §3402(o), which treats both SUBs and severance payments the IRS considered wages "as if" they were wages subject to withholding. By extending this treatment to all SUBs, Congress avoided the practical problems that might arise if the IRS later determined that SUBs besides severance payments linked to state benefits should be exempt from withholding. Considering this regulatory background, the assumption that Congress meant to exclude all SUBs from the definition of "wages" is unsustainable. That §3402(o) does not narrow FICA's "wages" definition is also consistent with the major principle of *Rowan Cos. v. United States*, 452 U. S. 247: that simplicity of administration and consistency of statutory interpretation instruct that the meaning of "wages" should be in general the same for income-tax withholding and for FICA calculations. Pp. 7-

## SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

P.O. BOX 1752, COLUMBIA, SC 29202

## APPLICATION FOR LEAVE TO APPEAL TO THE APPELLATE PANEL

Exhibit D

Claimant's Name: Billie d Mueller Social Security Number: \_\_\_\_\_  
 Address: \_\_\_\_\_ Date of Initial Claim: 5/29/2015  
 Telephone Number: \_\_\_\_\_  
 Employer's Name: N/A Address: N/A  
 Party Appealing: Claimant

On 5/21/2015, I received Appeal Tribunal Decision Number 2015-A-4817 mailed to me on  
 (Date of Receipt)  
5/7/2015 and ask for review of the record on the following grounds:  
 (Mailing Date on Decision)

The Supreme Court found that severance payments is subject to FICA tax. FICA defines employment as any service of whatever nature, performed by an employee for the person employing him/her. The IRS Code in the context of federal withholding defines Severance amounts paid to an employee. A unanimous Court found that severance payments are wages under FICA as they are clearly "remuneration for employment"

SEE EXHIBIT C

\*If appeal is untimely, state the reason. If appellant failed to attend Appeal Tribunal hearing, state the reason and whether postponement was requested:

Had a few medical procedures during the last 3 to 4 weeks

SEE ALL OF EXHIBIT D

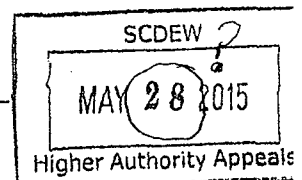
☒ I Agree I know that I must continue to file my claims for each week of unemployment during the pendency of this appeal, I know that I can only be paid for those weeks that I have timely claimed. If I have received benefits and am ruled disqualified or ineligible, I know that I will be required to repay the benefits I have received for that time period.

\*\*As a Board of Review, the Appellate Panel is confined solely to the record submitted by the Appeal Tribunal and does not accept additional evidence or testimony in its consideration of the appeal.

Appellant: ClaimantTitle: Billie D MuellerDate: 5/29/2015

Does claimant need an interpreter? Yes ☒ No What language/dialect? \_\_\_\_\_

Claimant is Deaf Mute



10 EXHIBIT

A# 2

FILE NO: 1505254-150765

-td 15/7

# Celebrate

We Celebrate the Completion of your  
Radiation Therapy Treatment.

Congratulations: Billie Mueller 5/13/15

"Because, nothing great has ever been achieved except by those who dared to believe that something inside them was superior to circumstance." -- Bruce Barton

Maurice Shaw

Loretta P. Amy Wood

Kelly Ogden

Brittany Sandy

Bryan Cohen

Darlene W.

Texin Li

Lynn Irina Riddle



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HEALTHCARE SYSTEM

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Lisa D.

Lorraine Z.

Lisa Bryan

Viggo Z. Jr.

Louisa

A. Q. Madson  
Marianne Dubois

Radiation Oncology Department, 130 North Washington Street, Sumter, South Carolina 29150

# Exhibit D



We are pleased that you and your physician have chosen Carolinas Hospital System for your upcoming procedure. Please follow all instructions carefully.

You are scheduled to have surgery/procedure on: Thursday (Day), 4/30/15 (Date).

Please arrive to: Carolinas Day Hospital of Carolinas Hospital System at 10:00 (time).

1. Dietary instructions prior to surgery: \_\_\_\_\_
2. **DO NOT eat or drink anything, including water, gum and hard candy, after:** 12:00 PM (date/time).  
You may brush your teeth and gargle on the morning of surgery, but do not swallow any water.
3. Do not drink any alcoholic beverages 24 hours before your surgery or procedure.
4. Please leave all jewelry and valuables at home. **Jewelry cannot be worn to the Operating Room.**
5. Please do not wear contact lenses, nail polish, makeup, or hairpins. If you have long hair, please braid it or secure it with either a cloth or rubber band. (Be sure to bring your container for contact lenses, if you wear them.)
6. Please take a bath or shower before coming to the facility. Remember to wear comfortable, loose-fitting clothing and low, comfortable shoes for your transport home. (You may bring a robe/housecoat if you desire.)
7. **A responsible adult, who is licensed to drive, must be present to accompany you home.** After your arrival home, we recommend you have a responsible person stay with you the first night following your procedure.
8. A parent or legal guardian must accompany a minor scheduled for surgery. Carolinas Hospital System requires all siderails to be up and locked at all times when a pediatric patient is in a crib or adult bed. Carolinas Hospital System is not responsible for siderails being left down by parents, guardians or other visitors. Carolinas Hospital System requires that a parent, guardian, or other adult remain in the room with all pediatric patients.
9. For babies or small children, we recommend night clothes. We also recommend bringing your child's favorite toy, stuffed animal, or blanket. Also, if indicated, bring diapers, formula, personal toddler cups, etc.
10. Notify your physician if you develop any sign of illness before the date of your surgery. Report symptoms such as high fever, sore throat, or other infection, breathing difficulties or chest pain.
11. **Due to space limitations and to ensure the comfort of our patients, please limit visitors and do not bring children into Day Hospital. Lobby areas are conveniently located directly outside Day Hospital to the left and right of the elevators.**
12. You will be allowed to take the following medications with a sip of water on the morning of surgery before coming to the facility: \_\_\_\_\_
13. If you are to be admitted, bring an overnight bag for \_\_\_\_\_ to \_\_\_\_\_ days.

Further Instructions: \_\_\_\_\_

**Special Note:** Carolinas Hospital System is a smoke-free environment.

**I understand, can verbalize, and will follow these instructions. All my questions have been answered in language that I can understand.**

Nurse Signature: [Signature] Date: 4/23/15 Time: 11:05

Patient/Other Signature: [Signature] Date: 4/23/15 Time: 11:05

Relationship: \_\_\_\_\_

## Pre-Procedural Instructions

1595-013715 03/05 (Rev. 06/10, 11/10) Page 1 of 1  
WHITE - Medical Record CANARY - Recipient

Patient Label

CAROLINAS HOSPITAL SYSTEM  
MUELLER BILLIE D HSV:SOP  
Admit: 04/30/15 MedRec:000685227  
Att Dr.: BAKER JORDANNA  
DOB:06/08/1949 Age: 65 Y  
Sex:F Pat #:3801878

# FAQs

(frequently asked questions)

## about "Surgical Site Infections"

### What is a Surgical Site Infection (SSI)?

A surgical site infection is an infection that occurs after surgery in the part of the body where the surgery took place. Most patients who have surgery do not develop an infection. However, infections develop in about 1 to 3 out of every 100 patients who have surgery.

Some of the common symptoms of a surgical site infection are:

- Redness and pain around the area where you had surgery
- Drainage of cloudy fluid from your surgical wound
- Fever

### Can SSIs be treated?

Yes. Most surgical site infections can be treated with antibiotics. The antibiotic given to you depends on the bacteria (germs) causing the infection. Sometimes patients with SSIs also need another surgery to treat the infection.

### What are some of the things that hospitals are doing to prevent SSIs?

To prevent SSIs, doctors, nurses, and other healthcare providers:

- Clean their hands and arms up to their elbows with an antiseptic agent just before the surgery.
- Clean their hands with soap and water or an alcohol-based hand rub before and after caring for each patient.
- May remove some of your hair immediately before your surgery using electric clippers if the hair is in the same area where the procedure will occur. They should not shave you with a razor.
- Wear special hair covers, masks, gowns, and gloves during surgery to keep the surgery area clean.
- Give you antibiotics before your surgery starts. In most cases, you should get antibiotics within 60 minutes before the surgery starts, and the antibiotics should be stopped within 24 hours after surgery.
- Clean the skin at the site of your surgery with a special soap that kills germs.

### What can I do to help prevent SSIs?

#### Before your surgery:

- Tell your doctor about other medical problems you may have. Health problems such as allergies, diabetes, and obesity could affect your surgery and your treatment.

- Quit smoking. Patients who smoke get more infections. Talk to your doctor about how you can quit before your surgery.
- Do not shave near where you will have surgery. Shaving with a razor can irritate your skin and make it easier to develop an infection.

#### At the time of your surgery:

- Speak up if someone tries to shave you with a razor before surgery. Ask why you need to be shaved and talk with your surgeon if you have any concerns.
- Ask if you will get antibiotics before surgery.

#### After your surgery:

- Make sure that your healthcare providers clean their hands before examining you, either with soap and water or an alcohol-based hand rub.

**If you do not see your providers clean their hands, please ask them to do so.**

- Family and friends who visit you should not touch the surgical wound or dressings.
- Family and friends should clean their hands with soap and water or an alcohol-based hand rub before and after visiting you. If you do not see them clean their hands, ask them to clean their hands.

### What do I need to do when I go home from the hospital?

- Before you go home, your doctor or nurse should explain everything you need to know about taking care of your wound. Make sure you understand how to care for your wound before you leave the hospital.
- Always clean your hands before and after caring for your wound.
- Before you go home, make sure you know who to contact if you have questions or problems after you get home.
- If you have any symptoms of an infection, such as redness and pain at the surgery site, drainage, or fever, call your doctor immediately.

If you have additional questions, please ask your doctor or nurse.

Co-sponsored by:

 AHRF

 IDSA

 American Hospital Association

 APIC

 The Joint Commission

Pre-Operative Teaching Surgical Checklist  
1595-OR-0010HMS Page 2 of 2  
07/09 (Rev. 04/10, 12/10, 03/11, 12/11, 02/13)

Patient Label

CAROLINAS HOSPITAL SYSTEM  
MUELLER BILLIE D HSV:SOP  
Admit: 04/30/15 MedRec:000685227  
Att Dr.: BAKER JORDANNA  
DOB:06/08/1949 Age: 65 y  
Sex:F Pat #:3801878



# THE FOOT INSTITUTE

Exhibit D

1730 Saint Julian Place Columbia 803.256.6776p# 803.256.6778f#

901 12<sup>th</sup> Street Cayce 803.796.0616p# 803.796-6771f#

709 West Evans Street Florence 843.665.4567p# 843-665-4448f#

3471 West Montague Ave N.Charleston 843.553.2235p# 843.553.2275f#

701 Medical Park Dr. Hartsville 843.339.4709f# Mon/Tues only 843.665.4448f#

## Carolinas

HOSPITALS SYSTEM

Billie Mueller  
DOB-6-8-49

### PHYSICIAN'S ORDER SHEET

|                                                                                                                   |                                  |
|-------------------------------------------------------------------------------------------------------------------|----------------------------------|
| Indicate choice when options are available by placing a check ( ) in the parenthesis                              |                                  |
| 1. Diagnosis                                                                                                      | Left foot hallux abductor valgus |
| 2. Consent For:                                                                                                   | Bunionectomy + Arthro            |
| 3. Allergies:                                                                                                     | none                             |
| 4. Nursing: vital signs every 4 hours                                                                             |                                  |
| 5. Intake and Output every 8 hours                                                                                |                                  |
| 6. Bed rest with ( ) Left Foot ( ) Right Foot                                                                     | Elevated                         |
| 7. Diet ( ) 1800 calories ADA ( ) Other                                                                           |                                  |
| 8. Labs ( ) BMP ( ) CBC w/diff ( ) ESR ( ) CRP ( ) UA ( ) HgbA1c ( ) PT ( ) INR ( ) PTT                           |                                  |
| 9. ( ) FSBS qid AC and HS and cover with Insulin Sliding Scale (PPO)210                                           |                                  |
| 10. Cardiopulmonary Services: ( ) EKG ( ) ABI (Ankle Brachial Index)                                              |                                  |
| ( ) Arterial Lower Extremity Segmental Pressures (without digits) ( ) With digits                                 |                                  |
| 11. Radiology: Study of ( ) Left foot ( ) Right foot ( ) Bilateral                                                |                                  |
| ( ) CXR ( ) MRI ( ) CT SCAN ( ) Indium Scan                                                                       |                                  |
| ( ) Arterial/Venous Doppler ( ) Foot X-ray ( ) Ankle X-ray ( ) Ceretec Scan Foot/Ankle                            |                                  |
| 12. Wound Care:                                                                                                   |                                  |
| 13. Medications:                                                                                                  |                                  |
| ( ) Phenergan (Promethazine) ( ) 25mg PO ( ) 12.5mg IV every 6 Hour PRN Nausea                                    | post-op                          |
| Dilute IV Phenergan in 20 ml of Normal Saline and give slowly over 3 minutes. Avoid hand/wrists sites if possible |                                  |
| ( ) Tylenol (Acetaminophen) 650mg PO every 4 hours PRN pain                                                       |                                  |
| ( ) Zolpidem (Ambien): age >65 give 5mg PO at bedtime if needed for sleep                                         |                                  |
| age <65 give 10mg PO at bedtime if needed for sleep                                                               |                                  |
| ( ) Antibiotics:                                                                                                  | 1gm Ancef pre-op                 |
| ( ) Analgesics:                                                                                                   |                                  |
| ( ) Other:                                                                                                        |                                  |
| 14. Additional Orders:                                                                                            |                                  |

Provider's Signature: \_\_\_\_\_

Date: 4/13/15 Time: \_\_\_\_\_

Nurse's Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

(Indicates signing off orders)

410 - 2535

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**Exhibit D**

**Carolinas Hospital System**

**805 Pamplico Highway, Florence, SC 29505**

**(843) 674-5000**

**Patient Discharge Instructions**

**Name:** MUELLER, BILLIE D

**Current Date:** 04/30/2015 16:57:15

**DOB:**  **MRN:** 685227 **FIN:** 3801878

**Patient Address:**

**Patient Phone:** 8034106935

**Primary Care Provider:**

**Name:** UNKNOWN, PRIMARY

**Phone:** ( ) - 0

**Immunizations Provided:**

**Discharge Diagnosis:**

**Discharged To:**

**Home Treatments:**

**Devices/Equipment:**

**Notify Provider if:** Chest pain, Fever greater than 101F, Redness at site, Swelling at site, Short of breath, Symptoms worsen, Unrelieved nausea, Unable to eat, Unable to void

**Bathing Restrictions:** No Restrictions

**Professional Skilled Services:**

**Special Services and Community Resources:**

**Mode of Discharge Transportation:**

Private vehicle

**Discharge Orders::**

Order Name

Order Details

**Additional Discharge Instructions:**

Carolinas Hospital System would like to thank you for allowing us to assist you with your healthcare needs. The following includes patient education materials and information regarding your injury/illness.

MUELLER, BILLIE D has been given the following list of follow-up instructions, prescriptions, and patient education materials:

**Follow-up Instructions:**

**With:**

**Address:**

**When:**

JORDANNA BAKER

[Redacted Address Box]

(843) 665-4567 Business (1)

**Comments:**

## Exhibit D

All of the medications you were taking *before* and *after* your hospitalization have been reviewed by your health care provider. After this list review, your health care provider has determined that **the list below contains the medications and doses you should be taking**. This medication list is the result of the electronically signed discharge medication reconciliation performed by your health care provider.

### Medications to Continue with No Changes

#### Other Medications

letrozole (letrozole 2.5 mg oral tablet) 1 tab(s), Oral, every day, 7 day(s), Refills: 0

Last Dose: \_\_\_\_\_

pantoprazole (pantoprazole 40 mg oral delayed release tablet) 1 tab(s), Oral, every day, Refills: 0

Last Dose: \_\_\_\_\_

pravastatin (pravastatin 40 mg oral tablet) 1 tab(s), Oral, once a day (at bedtime), Refills: 0

Last Dose: \_\_\_\_\_

tiotropium (Spiriva 18 mcg inhalation capsule) 18 mcg, Inhalation, every day, Refills: 0

Last Dose: \_\_\_\_\_

Take only the medications listed above. Contact your doctor prior to taking any medications not on this list.

Medication leaflets, if any, will display below

Patient education materials, if any, will display below

## Bunionectomy, Care After

Refer to this sheet for the next few weeks. These discharge instructions provide you with general information on caring for yourself after you leave the hospital. Your caregiver may also give you specific instructions. Your treatment has been planned according to the most current medical practices available, but unavoidable complications sometimes occur. If you have any problems or questions after discharge, please call your caregiver.

### HOME CARE INSTRUCTIONS

- Resume normal diet and activities as directed or allowed.
- Put ice on the affected area.
  - Put ice in a plastic bag.
  - Place a towel between your skin and the bag.
  - Leave the ice on for 15-20 minutes each hour while awake for the first couple days following surgery.

Person Full Name MUELLER, BILLIE D

## Exhibit D

- Change bandages (*dressings*) if necessary or as directed.
- Only take over-the-counter or prescription medicines for pain, discomfort, or fever as directed by your caregiver.
- Make an appointment to see your caregiver for stitches (*sutures*) or staple removal as directed.
- Put weight on the foot as your caregiver tells you. Most people are on crutches for the first week.
- **Do not** wear high heels.
- Wear your boot for 6 weeks or as directed by your caregiver. If you are told to use a splint or special shoe, do so until instructed otherwise.
- Keep your foot raised (*elevated*).

### SEEK MEDICAL CARE IF:

- You have increased bleeding from the wound.
- You have redness, swelling, or increasing pain in the wound.
- You have pus coming from the wound.
- You have a fever.
- You notice a bad smell coming from the wound or dressing.

### SEEK IMMEDIATE MEDICAL CARE IF:

- You have a rash.
- You have difficulty breathing.
- You have any reaction or side effects to medicines given.

### MAKE SURE YOU:

- Understand these instructions.
- Will watch your condition.
- Will get help right away if you are not doing well or get worse.

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## General Anesthesia, Adult, Care After

Refer to this sheet in the next few weeks. These instructions provide you with information on caring for yourself after your procedure. Your health care provider may also give you more specific instructions. Your treatment has been planned according to current medical practices, but problems sometimes occur. Call your health care provider if you have any problems or questions after your procedure.

### WHAT TO EXPECT AFTER THE PROCEDURE

After the procedure, it is typical to experience:

- Sleepiness.
- Nausea and vomiting.

### HOME CARE INSTRUCTIONS

- For the first 24 hours after general anesthesia:
  - Have a responsible person with you.
  - **Do not** drive a car. If you are alone, **do not** take public transportation.
  - **Do not** drink alcohol.

Person Full Name MUELLER, BILLIE D

- **Do not** take medicine that has not been prescribed by your health care provider.
- **Do not** sign important papers or make important decisions.
- You may resume a normal diet and activities as directed by your health care provider.
- Change bandages (*dressings*) as directed.
- If you have questions or problems that seem related to general anesthesia, call the hospital and ask for the anesthetist or anesthesiologist on call.

**SEEK MEDICAL CARE IF:**

- You have nausea and vomiting that continue the day after anesthesia.
- You develop a rash.

**SEEK IMMEDIATE MEDICAL CARE IF:**

- You have difficulty breathing.
- You have chest pain.
- You have any allergic problems.

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**Healthy Lifestyle Suggestions**

**Diet:** Reduce the amount of saturated fats and trans fats (called hydrogenated fats) in your diet. A diet high in these fats increase your risk for BAD cholesterol. If you have congestive heart failure (CHF), eat a low sodium diet (do NOT add salt). Weigh daily and call your doctor if you gain two or more pounds in one day or five or more pounds in one week. Call your doctor if you experience increased shortness of breath, extreme fatigue with regular activities, swelling in legs, ankles, feet or stomach, frequent coughing, frequent urination at night, chest pain or pressure, irregular heartbeats, nausea or loss of appetite. Conserve energy with rest periods throughout the day. Schedule a follow-up appointment with your doctor(s).

**Activity:** Physical activity decreases your risk for heart disease and stroke. Your activity is as tolerated or as directed by your doctor. Regular exercise is a good way to help your body control cholesterol, blood pressure and blood sugar. Walking is an excellent form of exercise. Please check with your doctor before beginning any exercise program.

**Smoking:** Smoking increases your risk of heart disease, stroke, lung disease and cancer. If you are a current smoker, you are encouraged to stop smoking. There are many community resources to assist you in your efforts to stop smoking. You can contact the American Cancer Society at 800-277-2345 (855-228-4327 for TTY) or visit their website at [www.cancer.org](http://www.cancer.org) to obtain information about your community resources.

**Weight:** Excess weight increase the risk of developing other risk factors such as diabetes and high blood pressure which may lead to heart disease or stroke.

**If you Have Had A Stroke:** Within the first weeks and months after a stroke, it is not uncommon to feel fear, anger and loneliness. Depression is easily treated so, call physician immediately if symptoms develop. Symptoms include sadness, anxiety, hopelessness, restlessness or thoughts of dying.

**Call Physician For Adverse Drug Reaction:** Be alert for possible adverse drug reactions and notify MD if they occur.

If you have been discharged home on Coumadin/warfarin it is very important that you take medication as prescribed. Your physician will provide instructions regarding the follow up needed to monitor PT/INR blood draws. Avoid adding any medications except on the advice of your physician. Diet and medication changes can affect the PT/INR level. Avoid major changes in your diet, a consistent amount of foods with Vitamin K (green leafy vegetables, soybean, canola olive oils, cranberries) rather than avoidance is advised. Coumadin/Warfarin increase the risk of bleeding so report bleeding of any sort to your physician. IF You Are On Anti-Coagulants (Blood Thinners): Carry an ID card that states you are on anticoagulants. Notify dentists, podiatrists and other health care providers that you are at risk for bleeding. Follow-up monitoring is very important.

**Call 911 to activate Emergency Medical System (EMS) if you experience:**

- extreme shortness of breath or chest pain.
- sudden numbness or weakness of the face, arm or leg.
- sudden confusion, trouble speaking or understanding.
- sudden trouble seeing in one or both eyes.
- sudden trouble walking, dizziness, loss of balance or coordination.
- sudden severe headache with no known cause.