

22366

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

Docket No. 14-ALJ-22-454-AP

RECEIVED

JAN 14 2016

SC Court of Appeals

CHARLES E. STUBBS,

Appellant,

vs.

**SOUTH CAROLINA
DEPARTMENT OF
EMPLOYMENT AND
WORKFORCE AND JSE
LLC,**

Respondents.

RECORD ON APPEAL

Jack E. Cohoon
Kirby Rakes Mitchell
South Carolina Legal Services
2109 Bull St.
Columbia, South Carolina 29201
(803) 744-4166

ATTORNEYS FOR APPELLANT
CHARLES E. STUBBS

Debra S. Tedeschi
E.B. "Trey" McLeod, III
Maura Dawson Baker
P.O. Box 8597
Columbia, SC 29202
(803) 737-0395

ATTORNEYS FOR RESPONDENT
S.C. DEPT. OF EMPLOYMENT AND
WORKFORCE

INDEX

I. ORDERS

1. Order of the Administrative Law Court (ALC), June 12, 2015 1

II. BRIEFS BEFORE THE ALC

1. Brief of Appellant to the ALC, December 16, 2014 8
2. Brief of Respondent to the ALC, January 26, 2015 21
3. Reply Brief of Appellant to ALC, February 10, 2015 46

III. PLEADINGS

4. Petition for Judicial Review, September 26, 2015 54

IV. RECORD ON APPEAL BEFORE THE ALC

1. Decisions and Orders

- a. Appellate Panel Decision No. 2014-P-1308, August 29, 2014 60
- b. Order of Remand from the ALC, April 15, 2014 64
- c. Order of Remand from the Court of Appeals, March 5, 2014 66
- d. Order Denying Motion for Rehearing to ALC, May 15, 2012 71
- e. Order of the ALC, March 26, 2012 72
- f. Appellate Panel Decision 2011-P-2780, November 29, 2011 74
- g. Appellate Panel Decision 2011-A-10528, June 17, 2011 77

2. Documents, Transcripts, and Papers

- a. Request for Determination of Status as an Insured Worker 79
- b. Determination of Claims Adjudicator 80
- c. Employer Appeal to Appeal Tribunal 81
- d. Notice to Claimant of Employer Appeal 82

e. Claimant Appeal to Appellate Panel.....	83
f. Letter of Dismissal from Higher Authority Appeals	85
g. Appeal of Dismissal Letter	87
h. Letter from Claimant to Higher Authority Appeals.....	90
i. Remand Letter from Higher Authority Appeals	92
j. Notice of Appeal Tribunal Hearing	93
k. Transcript of Testimony, Appeal No.: EUC-3533-16394	94
l. Petition for Judicial Review, December 21, 2011	117
m. Appeal to the Court of Appeals, June 14, 2012	112
n. Notice of Hearing before the Appellate Panel (Remand)	130
o. Notice of Postponement of Appellate Panel Hearing	131
p. Notice of Hearing before the Appellate Panel	132
q. Brief of Appellant on Remand.....	133
r. Certificate of Counsel	134

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charles E. Stubbs,

Appellant,

vs.

South Carolina Department of
Employment Workforce and JSE, LLC,

Respondents.

Docket No. 14-ALJ-22-0454-AP

ORDER

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to a Notice of Appeal filed by Charles E. Stubbs ("Appellant"). Appellant appeals from an Appellate Panel ("Panel") decision, dated August 29, 2014, finding that Appellant's appeal was untimely filed. The ALC has jurisdiction to hear this appeal pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2014). Upon consideration of the record and the briefs, this Court affirms the decision of the Panel.

BACKGROUND

Appellant was initially granted benefits by the Claims Adjudicator on April 29, 2011. However, his former employer, JSE, LLC ("Employer"), filed an appeal of the determination of the Claims Adjudicator. A hearing before the Appeal Tribunal was held on June 14, 2011. The Appeal Tribunal found that Appellant was disqualified from receiving benefits, thereby reversing the determination of the Claims Adjudicator. The Appeal Tribunal mailed the decision on June 17, 2011. Appellant mailed an appeal of the Appeal Tribunal decision, postmarked June 29, 2011. In a letter dated August 3, 2011, the South Carolina Department of Employment and Workforce ("DEW" or "Department") dismissed Appellant's appeal as untimely.

Appellant appealed the dismissal of his appeal and on October 27, 2011, DEW informed Appellant that the case was remanded to conduct an evidentiary hearing regarding the timeliness of the appeal. The hearing was held on November 9, 2011.

FILED

JUN 12 2015

SC ADMIN. LAW COURT

At the hearing, the Appellant stated that the decision of the Appeal Tribunal, mailed on June 17, 2011, was received by Appellant on June 20, 2011. Appellant stated that he mailed his appeal of the Appeal Tribunal decision on June 21, 2011. However, the letter was received by the Department on July 1, 2011, and was postmarked on June 29, 2011. Appellant had no idea why the postmark date was June 29, 2011, but he reiterated that he put his appeal in the mail on June 21, 2011. The Panel determined that the appeal was untimely. Specifically, the Panel found:

The Department properly mailed the Appeal Tribunal decision to the [Appellant's] address of record, and the [Appellant] received it in time to file a timely appeal. Although the [Appellant] asserts he mailed the appeal June 21, 2011, it was not postmarked until June 29, 2011, which was eight (8) days later. The [Appellant] was aware he was mailing a time sensitive document, and it was his responsibility to ensure that the appeal was timely filed. The [Appellant] filed an untimely appeal due to his own error or neglect. Therefore, the appeal is dismissed as untimely, and the Appeal Tribunal decision is final as a matter of law.

Appellant filed an appeal with the ALC. The ALC affirmed the decision of the Panel. Appellant moved for reconsideration, but that was denied by the ALC on May 15, 2012. Appellant then filed an appeal with the South Carolina Court of Appeals. The Court of Appeals vacated the ALC decision and remanded the appeal back to the ALC. On April 15, 2014, the ALC remanded the case back to the Panel "to make specific findings of fact, separately stated and to be supported by specific citation of the law applicable to those findings."

A hearing before the Panel was held on August 27, 2014. Again the Panel determined that the appeal was untimely. The Panel concluded:

The Department properly mailed the Appeal Tribunal decision to the [Appellant's] address of record. The Department has no authority to extend the appeal time limit unless the delay was caused by the Department or Postal error. Although the [Appellant] consulted a calendar to deduce when he probably mailed his appeal, we do not find his statement that he mailed the appeal June 21, 2011, to be credible. His statements show he was not certain as to when he actually received the decision. The [Appellant] has provided inconsistent information regarding the date he appealed: in his October 2011 supplementary appeal he wrote he mailed his letter on June 25, 2011, and in testimony on November 9, 2011, he stated he "probably" put it in the outgoing mail slot at his apartment complex on Tuesday, June 21, 2011. Further, the [Appellant] has not shown that the 8-day delay between the date he allegedly placed his letter in the apartment complex's mail slot and the date the letter was postmarked by the Postal Service was due to postal error. He noted that the mail was usually picked up the following day. The [Appellant] has not provided evidence of other outgoing mail being delayed in being picked up by the Postal Service, and has not provided any testimony from witnesses to support his assertion

he placed the appeal in the mail before June 27, 2011. In the absence of consistent and verifiable testimony and evidence, we rely on the Postal Service postmark to determine the point in time when the [Appellant] provided notice to the Department of his intent to appeal the Appeal Tribunal decision. As the postmark was stamped on June 29, 2011, two (2) days after the expiration of the appeal period, we find the greater weight of the credible evidence shows the [Appellant's] appeal to the Appellate Panel was not mailed on June 21, 2011, as the [Appellant] stated, but was mailed on June 29, 2011, after the appeal period expired. Therefore, the appeal is dismissed as untimely, and the Appeal Tribunal decision is final as a matter of law.

Appellant filed his appeal to the ALC arguing that the Panel erred by finding that Appellant's appeal was untimely.

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) (determining that the Employment Security Commission, a predecessor of DEW, was an "agency" within the meaning of the APA). Accordingly, the APA's standard of review governs appeals from decisions of DEW. 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). The standard used by appellate bodies to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2014). See S.C. Code Ann. § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner proscribed in § 1-23-380(5)). Section 1-23-380(5) reads:

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.

S.C. Code Ann. § 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., 267 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). The ALC 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); see also S.C. Code Ann. §1-23-380(5). A judgment with which reasonable people may differ will not be overturned. Todd’s Ice Cream, Inc. v. S.C. Employment Sec. Comm’n, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984). The party challenging an agency action bears the burden “to prove convincingly that the agency’s decision is unsupported by the evidence.” Waters, 321 S.C. at 226, 467 S.E.2d at 917.

ISSUE ON APPEAL

Did the Appellate Panel err in finding that Appellant’s appeal was untimely?

DISCUSSION

Appellant argues that the Panel erred in finding that Appellant’s appeal was untimely. The Court disagrees.

S.C. Code Ann. § 41-35-680 reads:

Unless an appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for a fair hearing, after notice of not less than seven days, must make findings and conclusions promptly and on the basis of the findings and conclusions affirm, modify, or reverse the determination or redetermination within thirty days from the date of the hearing. Each party promptly must be furnished a copy of the decision, including the reasons for the decision. This must be considered the final decision of the department, unless within ten days after the date of mailing the decision a further appeal is initiated pursuant to Section 41-35-710.

S.C. Code Ann. Regs. 47-52(a)(1) reads:

Any party aggrieved by the decision of an Appeal Tribunal, may apply for leave to appeal from such decision to the Appellate Panel, by filing at the office where the claim was filed, or at the office of the Appellate Panel in Columbia, South Carolina, within ten (10) calendar days after the date of notification or mailing of the decision of the Appeal Tribunal, an Application for Leave to Appeal to the Appellate Panel on the form provided, setting forth the information required thereon and the grounds for the appeal. Such application may be accompanied by reference from the original record of the hearing before the Appeal Tribunal. Copies of the Application for Leave to Appeal shall be mailed to all interested parties to the decision of the Appeal Tribunal.

The South Carolina Supreme Court has held that where “the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). However, “where a statute is ambiguous, the Court must construe the terms of the statute.” Wade v. Berkeley County, 348 SC 224, 229, 559 S.E.2d 586, 588 (2002). Further, “[i]n construing a statute, the Court looks to its language as a whole in light of its manifest purpose.” Adams v. Texfi Indus., 320 S.C. 213, 217, 464 S.E.2d 109, 112 (1995) (citing Simmons v. City of Columbia, 280 S.C. 163, 311 S.E.2d 732 (1984)). An “ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.” State v. Hudson, 336 S.C. 237, 247, 519 S.E.2d 577, 582 (Ct. App. 1999). Although courts give great weight to an agency’s long-standing construction of a statute, such construction is not dispositive of the issue. Plyler v. Evatt, 313 S.C. 405, 408, 438 S.E.2d 244, 246 (1993) (citing Gilstrap v. S.C. Budget & Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992)). While a court typically defers to an agency’s construction of its own regulation, where the plain language of the statute is contrary to the agency’s interpretation, the Court will reject its interpretation. Brown v. S.C. Dept. of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). “Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute.” Hodges v. Rainey, 341 S.C. at 85, 533 S.E.2d at 581 (2000) (citations omitted).

“Regulations are construed using the same canons of construction as statutes.” S.C. Dep’t of Revenue v. Blue Moon of Newberry, Inc., 397 S.C. 256, 261, 725 S.E.2d 480, 483 (2012). Therefore, “[t]he words of a regulation must be given their plain and ordinary meaning without

resort to subtle or forced construction to limit or expand the regulation's operation." Byerly v. Connor, 307 S.C. 441, 444, 415 S.E.2d 796, 799 (1992).

Appellant, in his brief, argues that an appeal must be filed within ten days after the date of notification or mailing as stated in Regulation 47-52(a)(1). South Carolina Code Section 41-35-680 states that an appeal must be filed within ten days of the mailing of the decision. The statute bears no mention of the date of notification. While a regulation does have the force of law, a regulation cannot "alter or add to a statute." Goodman v. City of Columbia, 318 S.C. 488, 491, 458 S.E.2d 531, 533 (1995); see also 73 C.J.S. Public Administrative Law and Procedure § 260 (noting courts "may not interpret the regulation as to go beyond the authority of the statute or to conflict with, or enlarge upon, the statute."). Regulation 47-52(a)(1) adds to the statute. The lone date of importance in the statute is the date of mailing of the decision. However, as interpreted by Appellant, the regulation has two dates of importance, the date of mailing, along with the date of notification. The regulation cannot add to the statute, and therefore the date of mailing of the decision is the only date of importance in determining whether an appeal is timely filed.

Also, if the regulation is read as Appellant interprets, the term "mailing" would be irrelevant, as the date of notification would always be after the date of mailing, and therefore the term "mailing" would not be needed, as what would be important would be the date of notification. However, nothing in the statute mentions "notification", as the lone focus is the date of mailing. Therefore, in order to timely file an appeal, an appellant must file within ten days of the date of mailing.

In this case, the Appeal Tribunal mailed the decision on June 17, 2011. Therefore, pursuant to South Carolina Code Section 41-35-680, the deadline for filing the appeal was June 27, 2011. The postmark containing his appeal was dated June 29, 2011, which was found to be untimely. Appellant, however, testified that he mailed the appeal on June 21, 2011. The Panel considered that testimony, but ultimately did not find the testimony to be credible, and determined that the greater weight of evidence showed that the appeal was mailed on June 29, 2011. Appellant, in his brief, argues that a postmark date is not dispositive to establish the date of mailing. Appellant is correct in this assertion. In Green v. Green, 320 S.C. 347, 465 S.E.2d 130 (Ct. App. 1995), the Court noted that although a postmark date is not dispositive, it is compelling evidence. Green at 350, 465 S.E.2d at 132. The Panel evaluated the evidence and concluded that the appeal was untimely. An "appellate court lacks jurisdiction to consider the appeal and has no authority or

discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004).

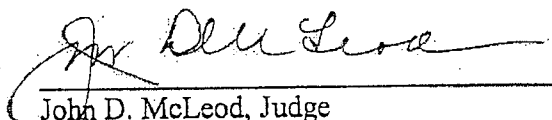
When reviewing a final decision of the Panel, this Court may reverse or modify only "if such decision is affected by errors of law, characterized by an abuse of discretion, or clearly erroneous in view of the substantial evidence on the whole record." Todd's Ice Cream, Inc. v. S.C. Employment Sec. Comm'n, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984). "Substantial Evidence" 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. Id.

The Court finds that the Panel's decision was not clearly erroneous in light of the substantial evidence in the record, and that the record supports the decision. The Court further finds that the Panel's decision was not arbitrary, capricious, an abuse of discretion, or a clearly unwarranted exercise of discretion.

ORDER

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

June 12, 2015
Columbia, S.C.

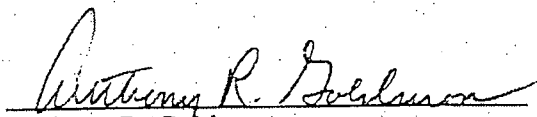


John D. McLeod, Judge
South Carolina Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

June 12, 2015
Columbia, S.C.



Anthony R. Goldman
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APPEAL FROM THE
APPELLATE PANEL
OF THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE

Docket No. 14-ALJ-22-454-AP

CHARLES E. STUBBS,

Appellant,

vs.

SOUTH CAROLINA
DEPARTMENT OF
EMPLOYMENT AND
WORKFORCE AND JSE
LLC,

Respondents.

BRIEF OF APPELLANT

December 16, 2014

S.C. LEGAL SERVICES

Jack E. Cohoon (SC Bar No.: 74776)
Kirby R. Mitchell (SC Bar No. 11640)
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4166
Fax: (803) 799-1781
jackcohoon@sclegal.org

ATTORNEYS FOR APPELLANT

FILED

DEC 16 2014

SC ADMIN. LAW COURT

STATEMENT OF ISSUES ON APPEAL

- I. Did the Department err by finding that Appellant's appeal was untimely when the uncontradicted evidence of record is that Appellant placed his appeal in the mail within ten days of the date of notification, as provided by S.C. Code Reg. 47-52(a)(1)?
- II. Did the Department err by finding that Appellant's appeal was untimely when the uncontradicted evidence of record is that Appellant placed his appeal in the mail within ten days of the Department's mailing it to him, as provided by S.C. Code Ann. § 41-35-680?

STATEMENT OF THE CASE

Procedural History

This case is before the Administrative Law Court following a lengthy series of remands and appeals. Claimant Charles E. Stubbs worked for Respondent JSE LLC, a staffing business, from October 28, 2009 to January 2, 2011 as an assembler. ROA at 18 to 19. Stubbs applied for unemployment benefits and was found eligible without disqualification. ROA at 57. The Employer appealed the decision and the Department set a hearing before its Appeal Tribunal. The hearing was held on June 14, 2011, and both Stubbs and the Employer participated. Stubbs was unrepresented at the hearing. The Appeal Tribunal found that Stubbs had injured his foot in a car accident on December 18, 2010 and that he had undergone surgery and remained under a doctor's care with restrictions from prolonged standing until May 2011. The employer offered no medical leave and provided him with no other assignments that would accommodate his doctor's restrictions. The Appeal Tribunal concluded that Stubbs was completely disqualified from receiving benefits because he voluntarily quit his position with the Employer due to health-related reasons:

Although the Agency is not unsympathetic to the claimant's circumstances, the employer did not alter the claimant's condition of hire. Furthermore, the claimant filed a claim for benefits prior to making himself available for addition [*sic*] work with subject employer. Therefore, the Tribunal finds that the reason the claimant voluntarily quit without good cause. [*sic*] ROA at 19.

The Appeal Tribunal committed an error of law by failing to consider the applicability of S.C. Code Ann. § 41-35-125(d), which provides that workers who are separated from employment due to "compelling family circumstances" are eligible for benefits. "Compelling family circumstances" includes separation from employment "because of the

illness or disability of the claimant and, based upon available information, the department finds that it was medically necessary for the claimant to stop working or change occupations.”

Representing himself, Stubbs appealed this decision to the Department’s Appellate Panel. ROA at 24. The appeal was dismissed as untimely by letter of the Department’s Higher Authority Appeals office. ROA at 26. Stubbs appealed this dismissal to the Appellate Panel. ROA at 15 to 16. The Appellate Panel remanded the case to the Appeal Tribunal for a hearing on the timeliness of Stubbs’ appeal, which was conducted on November 9, 2011. ROA at 35 *et seq.* Based upon the testimony and evidence developed at that hearing, the Appellate Panel issued a decision on the timeliness of Stubbs’ appeal on November 29, 2011. The Appellate Panel found that the Department mailed its decision to Stubbs’ address of record on June 17, 2011; that Stubbs received the decision on June 20; and that the appeal period expired on June 27. It acknowledged that Stubbs asserted he placed his appeal letter in the outgoing mail slot at his apartment complex on June 21, 2011 and that he assumed it was sent out timely. The Appellate Panel omitted any finding about Stubbs’ credibility but simply concluded that “[t]he claimant was aware he was mailing a time-sensitive document, and it was his responsibility to ensure that the appeal was timely filed. The claimant filed an untimely appeal due to his own error or neglect. Therefore the appeal is dismissed as untimely.” ROA at 15 to 16. The Panel’s decision was the final agency decision.

Stubbs appealed this final agency decision to the South Carolina Administrative Law Court (ALC). On March 26, 2012 Judge John D. McLeod issued an Order finding the appeal untimely based upon a finding that Stubbs did not deposit the appeal in a United

States postal box. ROA at 13. Stubbs moved for reconsideration based upon errors of law and moved for the ALC to take judicial notice that his apartment complex's outgoing mailbox is indeed a United States postal box. The ALC denied this motion on May 15, 2012. ROA at 12.

Stubbs appealed to the South Carolina Court of Appeals. In a published March 5, 2014 decision, the Court of Appeals vacated the ALC's order upon a finding that the ALC had made an improper finding of fact—that Stubbs' mailbox was not a U.S. postal box—which violated the ALC's standard of review. ROA at 7. The Court remanded the appeal back to the ALC. In an April 15, 2014 Order, the ALC found the Appellate Panel's previous decision not sufficiently detailed to enable the ALC to determine whether the findings are supported by the evidence and whether the law has been correctly applied to those findings and therefore remanded the case to the Department. ROA at 5. The Department's Appellate Panel requested further briefing and conducted a hearing on August 27, 2014. In a divided opinion, the Appellate Panel again found the appeal untimely. ROA at 1. This time the Appellate Panel found that the appeal period expired on Monday, June 27, 2011; that Stubbs' testimony that he had placed the appeal in the mail on June 21, 2011 was not credible; and that it was mailed on June 29, 2011, the date of the postmark, and was therefore untimely. This appeal proceeds therefrom.

The Evidence Presented

The facts regarding the timeliness of Stubbs' appeal were developed at a hearing before the Appeal Tribunal on November 9, 2011. The Department asserts that the Appeal Tribunal decision at issue was mailed to Stubbs on June 17, 2011. Stubbs testified that he received the June 17, 2011 decision on Monday, June 20, ROA at 37, lines 15 to 17, and that he mailed his appeal on June 21. ROA 23, lines 11 to 12. His testimony regarding these

events is clear:

HEARING OFFICER: Okay, when did you receive that in the mail?

CLAIMANT: I would have to say probably around the 20th, which I checked the calendar the 17th, was a Friday, so I probably got it that Monday.

HEARING OFFICER: Okay.

CLAIMANT: And put it back in the mail that Tuesday.

ROA 37, lines 14 to 19.

Stubbs explained that he mailed his appeal by placing it in the outgoing mailbox at his home on June 21, 2011:

HEARING OFFICER: Well, how...did you mail this?

CLAIMANT: I mailed this at my house. I got a...they got a box where the mailman comes, and he...you got little slots where you can...outgoing mail.

HEARING OFFICER: Right.

CLAIMANT: And he...he takes it out I...I don't know what happened with that, I don't. I have no idea.

HEARING OFFICER: And when you say you put it in that slot...

CLAIMANT: I put it in that slot on the...had to be the 21st.

ROA 39, lines 16 to 23.

Though Stubbs was initially confused about what constitutes a U.S. postal box, he concluded that the apartment complex's outgoing mailbox qualified as such:

HEARING OFFICER: And you say you put this letter in an envelope?

CLAIMANT: In my box at... it's not a US postal box, it's a box...I guess it is. Well, I guess it is because it's a box that's used by the apartment complex...

HEARING OFFICER: Right.

CLAIMANT: ...for delivering or...picking up mail. ROA 42, lines 5-10.

Stubbs did not know why the appeal was postmarked June 29. ROA 42, line 17. He testified "I don't know what happened with the letter." ROA 43, line 4. Stubbs asked the hearing officer to take into consideration "that the mail might have made a mistake...the mail is an entity in itself and...I have no control over it in any kind of way." ROA 44, lines 12-13.

STANDARD OF REVIEW

S.C. Code Ann. § 41-35-750 provides that “[i]n a judicial proceeding under [Title 41, Chapter 35], the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the court must be confined to questions of law.” The Administrative Procedures Act (A.P.A.) sets forth the bases upon which a court of appellate review may act on an administrative finding, inference, conclusion or decision of an agency. S.C. Code Ann. § 1-23-310 *et. seq.* The South Carolina Employment Security Commission is an “agency” within the scope of the A.P.A. S.C. Code Ann. § 1-23-310(2). An appellate court may affirm or remand an agency decision. S.C. Code Ann. § 1-23-380(A). Otherwise, it 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. S.C. Code Ann. § 1-23-380(A)(5).

The “substantial evidence” standard governs factual findings under the A.P.A. *See, e.g. Hall v. United Rentals*, 371 S.C. 69, 79, 636 SE.2d 876, 882 (S.C. Ct. App. 2006) (Worker's Compensation case), *McEachern v. South Carolina Emp. Sec. Commission*, 370 S.C. 553, 635 SE.2d 644 (S.C. Ct. App. 2006). An appellate court may not overturn an agency's finding of fact, when it is supported by substantial evidence. Substantial evidence requires a showing of more than a “mere scintilla of evidence.” *Houston v. DeLoach & DeLoach*, 378 S.C. 543, 550, 663 SE.2d 85, 89 (S.C. Ct. App. 2008). To be substantial,

evidence must be such that reasonable minds can reach the same conclusion that the agency reached. *Merck v. South Carolina Employment Security Commission*, 290 S.C. 459, 461, 351 S.E.2d 338 (1986).

The appellant court's review is "plenary" when the agency's decision is controlled by an error of law. *Lizee v. S.C. Dep't of Mental Health*, 367 S.C. 122, 126; 623 S.E.2d 860, 863 (S.C. Ct. App. 2005). An appellate court may "freely and absolutely" review a trial court's or agency's error of law. *Houston v. DeLoach & DeLoach*, 378 S.C. 543, 552; 663 S.E.2d 85, 90 (S.C. Ct. App. 2008) (citing *Lizee v. S.C. Dep't of Mental Health*, 367 S.C. 122, 126, 623 S.E.2d 860, 863 (S.C. Ct. App. 2005)).

An error of law is present when the agency's decision is based upon:

[A]pplication of the wrong legal principle; or when based upon factual conclusions, the ruling is without evidentiary support; or when the trial court is vested, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious. *State v. Allen*, 370 S.C. 88, 94; 634 S.E.2d 653, 656 (2006).

A decision is considered arbitrary "if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment . . . or is governed by no fixed rules or standards." *Deese v. State Bd. Of Dentistry*, 286 S.C. 182, 184-85; 332 S.E.2d 539, 541 (1985).

ARGUMENT

- I. **The Department erred by finding that Appellant's appeal was untimely when the uncontradicted evidence of record is that Appellant placed his appeal in the mail within ten days of the date of notification, as provided by S.C. Code Reg. 47-52(a)(1).**

The Department committed a serious error of law, and issued a decision unsupported by substantial evidence of the whole record, by finding that Stubbs failed to timely file his appeal. Even if it is accepted that Stubbs placed his appeal in the mail on or about June 29, 2011, that was well within the deadline for filing an appeal under the Department's own governing regulation, which provides that "[a]ny party aggrieved by the decision of an Appeal Tribunal, may apply for leave to appeal from such decision to the Appellate Panel, by filing at the office where the claim was filed, or at the office of the Appellate Panel in Columbia, South Carolina, *within ten (10) calendar days after the date of notification* or mailing of the decision of the Appeal Tribunal, an Application for Leave to Appeal to the Appellate Panel. S.C. Code Reg. § 47-52(A)(1)[emphasis added]. The Department claims to have placed the decision in the mail to Stubbs on Friday, June 17, 2011. It is uncontradicted that Stubbs received the decision on Monday, June 20, 2011. ROA at 37, lines 15 to 17. Since Stubbs was notified of the decision by receipt of it in the mail on June 20, 2011, he had ten calendar days from that date in which to file an appeal. The deadline to file an appeal would therefore be June 30, 2011. In fact, the Department acknowledges receipt of the appeal in the mail that same day. Because Stubbs' appeal was filed within ten days of his receipt of notification of the decision of the Appeal Tribunal, it must be considered timely and the Department's appeal must be reversed as unsupported by substantial evidence and affected by error of law.

II. The Department erred by finding that Appellant's appeal was untimely when the uncontradicted evidence of record is that Appellant placed his appeal in the mail within ten days of the Department's mailing it to him, as provided by S.C. Code Ann. § 41-35-680.

Even assuming, for the sake of argument, that the Department's regulation providing for timely filing within ten days of notification is inapplicable and that the appeal had to have been filed within ten days of the mailing date of the Appeal Tribunal decision, substantial evidence of the whole record does not support the Department's decision finding the appeal untimely. A review of the record as a whole does not support the Department's finding that Stubbs placed the appeal in the mail on June 29, 2011. Moreover, the Department committed an error of law by considering the postmark as dispositive of the mailing date.

As the courts of this state have consistently held, when service by mail is permitted, it is complete when the document is deposited with the United States Postal Service, properly addressed with sufficient postage. *Southbridge Properties, Inc. v. Jones*, 292 S.C. 198, 199 (S.C. 1987); *see also Town of Honea Path v. Wright*, 194 S.C. 461, 9 S.E. (2d) 924 (1940); *Walters v. Lauren Cotton Mills*, 53 S.C. 155, 31 S.E. 1 (1898). Stubbs testified compellingly and repeatedly that he placed the appeal in the mail within the deadline. Specifically, he testified that he mailed his appeal by placing it in the outgoing mailbox at his home on June 21, 2011:

HEARING OFFICER: Well, how...did you mail this?

CLAIMANT: I mailed this at my house. I got a...they got a box where the mailman comes, and he...you got little slots where you can...outgoing mail.

HEARING OFFICER: Right.

CLAIMANT: And he...he takes it out. I...I don't know what happened with that, I don't. I have no idea.

HEARING OFFICER: And when you say you put it in that slot...

CLAIMANT: I put it in that slot on the...had to be the 21st.

ROA 39, lines 16 to 23.

To contradict Stubbs' testimony that he timely mailed the appeal the Department requires reliance upon the June 29, 2011 postmark. A mail piece's postmark is not dispositive to establish the mailing date, but is simply one factor to consider. *Green v. Green*, 320 S.C. 347, 465 S.E.2d 130 (1995). In *Green*, the court accepted testimony that a March 25, 1994 order was received on April 2, 1994. *Id.* at 350, 465 S.E.2d at 132. The motion was then dated April 12, 1994 and postmarked April 14, 1994. *Id.* The trial court in *Green* found the motion timely filed even though it was signed ten days after the petitioner testified that he received the letter and it was postmarked twelve days after receipt, and twenty days after it was originally mailed to him. *Id.* The South Carolina Supreme Court held that the judge did not err by denying a motion to dismiss based on the fact that the *postmark* was more than the required ten days. *Id.* The Court stated that:

Although the postmark date of an envelope is compelling evidence in cases where timely service through the mail is at issue, we are unaware of any authority, and the wife cites none, indicating the postmark date is dispositive. *Such would assume the infallibility of the U.S. Postal Service, an illogical assumption given the volume of letters and packages constantly being processed and the number of human hands any one envelope may pass through.* We find no abuse of discretion in the trial court's finding that the motion was timely served by mail. *Id.* [emphasis added].

In the case at hand, Stubbs testified that he mailed the letter on June 21, 2011, only four days after it was issued by the Appeal Tribunal and well within the ten-day requirement. The postmark was only two days outside of the ten-day requirement, which was much less than the 12-day delay in the *Green* case. It was an error of law for the Department to "assume the infallibility of the U.S. Postal Service" in the face of Stubbs' sworn testimony.

Likewise, the Court of Appeals has held that service was completed when a party deposited his notice of appeal in a mailbox two days before it was postmarked. *Lindsey v.*

South Carolina Tax Commission, 323 S.C. 57, 448 S.E.2d 577 (Ct.App.1994). In *Lindsey*, the Court relied upon "uncontroverted evidence" that a notice of appeal of a property tax valuation was deposited in the mail during the applicable statutory period to find the appeal timely, despite a later postmark. *Id.* In the present case, Stubbs' testimony that he placed the appeal in the mail to the Department before June 27 is uncontroverted and is therefore dispositive.

Because the postmark is not dispositive of the mailing date of the appeal, the Department's decision is controlled by error of law and should be reversed.

CONCLUSION

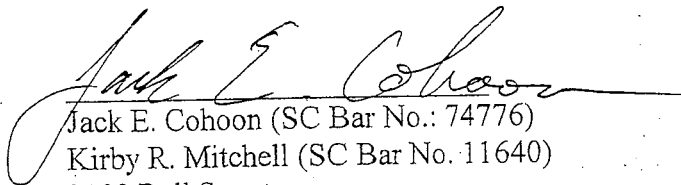
Charles E. Stubbs, a South Carolina worker entitled to unemployment benefits, met the Department's requirements to timely file his appeal to the Department's Appellate Panel. He should not be denied the opportunity to obtain review of the Department's error based upon a misapplication of the Department's law and regulations regarding the deadline for appeals. The General Assembly has clearly stated its public policy in enacting unemployment benefits:

Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this State; involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family; the achievement of social security requires protection against this greatest hazard of our economic life... The General Assembly therefore declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. S.C. Code Ann. § 41-27-20.

The Unemployment Compensation Law is remedial in nature and should be liberally construed to give effect to its beneficent purposes. *Hartsville Cotton Mill v. South Carolina Employment Sec. Com.*, 224 S.C. 407 (S.C. 1953). The General Assembly, and this state's Supreme Court, both have recognized that this important safety net is essential to protecting workers and their families from evils such as loss of homes to foreclosure or eviction, cars to repossession, and health due to the inability to purchase food or medicine. An erroneous decision finding an appeal untimely based upon an overly narrow reading of the Department's own law and regulations frustrates the purposes of this important safety net by depriving a South Carolina worker of the opportunity to correct a significant error in the adjudication of his case. The Department's decision finding Stubbs' appeal to be untimely violates both the letter and the spirit of the law and must be reversed.

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES



Jack E. Cohoon (SC Bar No.: 74776)
Kirby R. Mitchell (SC Bar No. 11640)
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4166
Fax: (803) 799-1781
jackcohoon@sclegal.org

Attorneys for Appellant

Columbia, South Carolina

December 16, 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles Stubbs,

Appellant,

vs.

South Carolina Department of
Employment and Workforce and
ISE LLC,

Respondent.

Docket No. 14-ALT-22-0454-AP

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

BRIEF OF THE SOUTH CAROLINA
DEPARTMENT OF
EMPLOYMENT AND WORKFORCE

Jack Cochran
SC Legal Services
PO Box 1445
Columbia, SC 29201
Claimant Attorney

Maura Baker
Office of General Counsel
SC Dept. of Employment and Workforce
PO Box 8597
Columbia, SC 29202
legal@dey.sc.gov
Attorney for Respondent SCDEW

ISE, LLC
c/o Theresa Rhodes
5000 Thurmond Mall, Suite 114
Columbia, SC 29201
Employer

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of the Issue on Appeal.....	1
Statement of the Case.....	2
Statement of the Facts.....	3
Argument.....	7
Standard of Review.....	7
DEW's decision should be affirmed as substantial evidence exists for the Appellate Panel to find Appellant did not timely file his appeal.....	9
The Appellate Panel's Decision is not based on an error of law.....	11
Appellant's argument that the appeal was timely based on S.C. Code Ann. Reg. 47-52 would render S.C. Code Ann. §41-35-660 meaningless.....	13
It was not an error of law for the Appellate Panel to find Appellant's appeal was filed untimely after weighing the evidence in the record and in reviewing the record as a whole.....	14
The Appeal Tribunal's decision is not before the Administrative Law Court.....	16
Conclusion.....	17

TABLE OF AUTHORITIES

Cases

<u>Buist v. Buist</u> , 410 S.C. 569, 766 S.E.2d 381 (2014).....	11
<u>Bursey v. S. Carolina Dep't of Health & Env'tl. Control</u> , 360 S.C. 135, 600 S.E.2d 80, (Ct. App. 2004).....	16
<u>Carson v. South Carolina Dep't of Natural Res.</u> , 371 S.C. 114, 638 S.E.2d 45 (2002).....	11
<u>Consolo v. Federal Maritime Commission</u> , 383 U.S. 607, 16 L.Ed.2d 131, 86 S.Ct. 1018 (1966).....	15
<u>Elam v. S.C. Dept. of Transportation</u> , 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004).....	6, 10, 12
<u>Friends of the Earth v. Public Service Commission of South Carolina</u> , 387 S.C. 360 692 S.E.2d 910 (2010).....	8-9, 17
<u>Goodman v. City of Columbia</u> , 318 S.C. 488, 458 S.E.2d 531 (1995).....	13
<u>Grant v. South Carolina Coastal Council</u> , 319 S.C. 348, 461 S.E.2d 388 (1995).....	12
<u>Green v. Green</u> , 320 S.C. 347, 465 S.E.2d 130 (Ct. App. 1995).....	14
<u>Home Med. Sys., Inc. v. S. Carolina Dep't of Revenue</u> , 382 S.C. 556, 677 S.E.2d 582, (2009).....	11-12
<u>Independent Stave Co. v. Fulton</u> , 251 Ark. 1086, 476 S.W.2d 792 (1972).....	8
<u>I'On, L.L.C. v. Town of Mt. Pleasant</u> , 338 S.C. 406, 526 S.E.2d 716 (2000).....	12
<u>Lark v. Bi-Lo, Inc.</u> , 276 S.C. 130, 276 S.E.2d 304 (1981).....	8-9, 15-17
<u>Lindsey v. South Carolina Tax Com'n</u> , 323 S.C. 57, 448 S.E.2d 577 (1994).....	15
<u>Pye v. Estate of Fox</u> , 369 S.C. 555, 633 S.E.2d 505 (2006).....	11
<u>Risher v. S. Carolina Dep't of Health & Env'tl. Control</u> , 393 S.C. 198, 712 S.E.2d 428 (2011).....	12
<u>Rodney v. Michelin Tire Corp.</u> , 320 S.C. 515, 466 S.E.2d 357 (1996).....	8
<u>Small v. Pioneer Machinery, Inc.</u> , 329 S.C. 448, 494 S.E.2d 835 (Ct.App.1997).....	15-16
<u>Todd's Ice Cream, Inc. v. South Carolina Employment Security Commission</u> , 281 S.C. 254, 315 S.E.2d 373 (Ct. App. 1984).....	10

<u>Town of Mt. Pleasant v. Roberts</u> , 393 S.C. 332, 713 S.E.2d 278 (2011).....	10
<u>Waters v. South Carolina Land Resources Conversation Com'n</u> , 321 S.C. 219, 467 S.E.2d 913 (1996).....	8, 16
<u>Weaver v. Lentz</u> , 348 S.C. 672, 561 S.E.2d 360 (Ct. App. 2002).....	15

Statutes

S.C. Code Ann. § 1-23-310.....	7
S.C. Code Ann. § 1-23-380.....	7-8
S.C. Code Ann. § 41-27-20.....	10
S.C. Code Ann. § 41-35-125.....	16
S.C. Code Ann. § 41-35-680.....	8-9, 13-14
S.C. Code Ann. § 41-35-690.....	7, 9
S.C. Code Ann. § 41-35-710.....	13

Regulations

S.C. Code Ann. Regs. 47-52.....	11, 13
---------------------------------	--------

Rules

Rule 59(e), SCRCP.....	11-12
------------------------	-------

TABLE OF CONTENTS

Table of Authorities.....	ii
Statement of the Issue on Appeal.....	1
Statement of the Case.....	2
Statement of the Facts.....	3
Argument.....	7
Standard of Review.....	7
DEW's decision should be affirmed as substantial evidence exists for the Appellate Panel to find Appellant did not timely file his appeal.....	9
The Appellate Panel's Decision is not based on an error of law.....	11
Appellant's argument that the appeal was timely based on S.C. Code Ann. Reg. 47-52 would render S.C. Code Ann. §41-35-660 meaningless.....	13
It was not an error of law for the Appellate Panel to find Appellant's appeal was filed untimely after weighing the evidence in the record and in reviewing the record as a whole.....	14
The Appeal Tribunal's decision is not before the Administrative Law Court.....	16
Conclusion.....	17

TABLE OF AUTHORITIES

Cases

<u>Buist v. Buist</u> , 410 S.C. 569, 766 S.E.2d 381 (2014).....	11
<u>Bursey v. S. Carolina Dep't of Health & Envtl. Control</u> , 360 S.C. 135, 600 S.E.2d 80, (Ct. App. 2004).....	16
<u>Carson v. South Carolina Dep't of Natural Res.</u> , 371 S.C. 114, 638 S.E.2d 45 (2002).....	11
<u>Consolo v. Federal Maritime Commission</u> , 383 U.S. 607, 16 L.Ed.2d 131, 86 S.Ct. 1018 (1966).....	15
<u>Elam v. S.C. Dept. of Transportation</u> , 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004).....	6, 10, 12
<u>Friends of the Earth v. Public Service Commission of South Carolina</u> , 387 S.C. 360 692 S.E.2d 910 (2010).....	8-9, 17
<u>Goodman v. City of Columbia</u> , 318 S.C. 488, 458 S.E.2d 531 (1995).....	13
<u>Grant v. South Carolina Coastal Council</u> , 319 S.C. 348, 461 S.E.2d 388 (1995).....	12
<u>Green v. Green</u> , 320 S.C. 347, 465 S.E.2d 130 (Ct. App. 1995).....	14
<u>Home Med. Sys., Inc. v. S. Carolina Dep't of Revenue</u> , 382 S.C. 556, 677 S.E.2d 582, (2009).....	11-12
<u>Independent Stave Co. v. Fulton</u> , 251 Ark. 1086, 476 S.W.2d 792 (1972).....	8
<u>I'On, L.L.C. v. Town of Mt. Pleasant</u> , 338 S.C. 406, 526 S.E.2d 716 (2000).....	12
<u>Lark v. Bi-Lo, Inc.</u> , 276 S.C. 130, 276 S.E.2d 304 (1981).....	8-9, 15-17
<u>Lindsey v. South Carolina Tax Com'n</u> , 323 S.C. 57, 448 S.E.2d 577 (1994).....	15
<u>Pye v. Estate of Fox</u> , 369 S.C. 555, 633 S.E.2d 505 (2006).....	11
<u>Risher v. S. Carolina Dep't of Health & Envtl. Control</u> , 393 S.C. 198, 712 S.E.2d 428 (2011)....	12
<u>Rodney v. Michelin Tire Corp.</u> , 320 S.C. 515, 466 S.E.2d 357 (1996).....	8
<u>Small v. Pioneer Machinery, Inc.</u> , 329 S.C. 448, 494 S.E.2d 835 (Ct.App.1997).....	15-16
<u>Todd's Ice Cream, Inc. v. South Carolina Employment Security Commission</u> , 281 S.C. 254, 315 S.E.2d 373 (Ct. App. 1984).....	10

<u>Town of Mt. Pleasant v. Roberts</u> , 393 S.C. 332, 713 S.E.2d 278 (2011).....	10
<u>Waters v. South Carolina Land Resources Conversation Com’n</u> , 321 S.C. 219, 467 S.E.2d 913 (1996).....	8, 16
<u>Weaver v. Lentz</u> , 348 S.C. 672, 561 S.E.2d 360 (Ct. App. 2002).....	15

Statutes

S.C. Code Ann. § 1-23-310.....	7
S.C. Code Ann. § 1-23-380.....	7-8
S.C. Code Ann. § 41-27-20.....	10
S.C. Code Ann. § 41-35-125.....	16
S.C. Code Ann. § 41-35-680.....	8-9, 13-14
S.C. Code Ann. § 41-35-690.....	7, 9
S.C. Code Ann. § 41-35-710.....	13

Regulations

S.C. Code Ann. Regs. 47-52.....	11, 13
---------------------------------	--------

Rules

Rule 59(e), SCRCP.....	11-12
------------------------	-------

RESTATEMENT OF THE ISSUE ON APPEAL

**DID DEW CORRECTLY DISMISS THIS APPEAL AS UNTIMELY BECAUSE DEW
HAS NO AUTHORITY TO EXTEND THE STATUTORY APPEAL TIME LIMIT?**

STATEMENT OF THE CASE

Appellant Charles E. Stubbs ("Appellant") received a determination, mailed on April 29, 2011, from Respondent South Carolina Department of Employment and Workforce ("DEW" or "the Department"), which determined he was eligible for benefits. (R.p.57)

Appellant's employer, Respondent JSE, LLC ("JSE"), appealed the determination on or about May 4, 2011. (R.pp.22). DEW's Appeal Tribunal held Appellant "disqualified from receiving benefits...upon a finding the claimant voluntarily quit employment without good cause." (R.p.19). The Appeal Tribunal's decision was mailed on June 17, 2011. (R.p.19).

Appellant mailed a letter to request an appeal of the Appeal Tribunal decision. (R.p.24; p.48). The letter was not dated and the postmark on the envelope was June 29, 2011. (R.p.24; p.48). DEW dismissed the appeal as untimely in a letter dated August 3, 2011. (R.p.26; p.50). Appellant requested reconsideration of the dismissal that was received by DEW's Appellate Division on October 7, 2011. (R.pp. 27-29; pp.51-52). DEW's Appellate Panel remanded the case to the Appeal Tribunal to hold an evidentiary hearing on the timeliness of Appellant's "appeal dated June 29, 2011 from an Appeal Tribunal Decision mailed June 17, 2011." (R.p.33; p.56). The Appeal Tribunal held an in-person hearing on November 9, 2011. (R.p.34).

On November 29, 2011, the Appellate Panel determined the appeal from the Appeal Tribunal decision was correctly dismissed as untimely. (R.pp.15-16).

Appellant appealed the Appellate Panel's decision to the South Carolina Administrative Law Court ("ALC"), which affirmed the Appellate Panel on March 26, 2012. (R.pp.13-14). The ALC denied Appellant's Motion for Reconsideration, which the ALC treated as a Motion for Rehearing, on May 15, 2011. (R.p.12).

Appellant appealed the ALC's order to the South Carolina Court of Appeals, which vacated and remanded the case to the ALC on March 5, 2014. (R.p.7). The ALC found the case

was “not sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been correctly applied to those findings” and remanded the case to the Appellate Panel on April 15, 2014. (R.p.5).

After remand, the Appellate Panel again dismissed the appeal as untimely on August 29, 2014.

Appellant now seeks judicial review of the Appellate Panel’s decision dated August 29, 2014, in the ALC.

STATEMENT OF THE FACTS

Appellant filed for unemployment benefits and received a claim adjudicator’s determination, which was mailed on April 29, 2011, and found Appellant eligible for benefits “due to lack of work and no disqualification is imposed.” (R.p.21; p.57).

JSE appealed to the Appeal Tribunal, which reversed the claims adjudicator’s determination and found Appellant ineligible for benefits “upon a finding [Appellant] voluntarily quit employment without good cause.” (R.p.47).

The Appeal Tribunal held Appellant “disqualified from receiving benefits...upon a finding the claimant voluntarily quit employment without good cause.” (R.p.19). The Appeal Tribunal’s decision was mailed on June 17, 2011. (R.p.19).

Appellant mailed a letter, which was postmarked June 29, 2011, and requested an appeal of the Appeal Tribunal’s decision. (R.pp.24-25; pp.48-49).

In a letter dated August 3, 2011, DEW dismissed Appellant’s appeal as untimely. (R.p.26; p.50). Appellant sent a letter requesting reconsideration of his overpayment. (R.p.27). Appellant sent a letter dated August 10, 2011, and received in the Appellate Division on October 7, 2011. (R.pp.28-29; pp.51-52). He explained that his contract ended while he was out with an injury and JSE did not have a medical leave policy. (R.p.51).

Appellant sent another letter received in the Appellate Division on October 7, 2011.

(R.p.54). In this letter, he stated that he mailed his letter **on June 25, 2011**¹. (R.p.31; p.54) (emphasis added).

On October 27, 2011, DEW informed Appellant that the case was remanded “to conduct an evidentiary hearing regarding the timeliness of your appeal dated June 29, 2011 from an Appeal Tribunal Decision mailed June 17, 2011.” (R.p.33; p.56).

The evidentiary hearing was held on November 9, 2011. (R.p.35).

During the hearing, Appellant gave the following testimony:

Hearing Officer: And I have in the records of the Agency a determination mailed on June 17, '11, holding the claimant indefinitely disqualified effective, March 6, '11. Did you receive that decision in the mail?

Claimant: Okay, this is the one that **came on the 17th**, you're saying?

Hearing Officer: Well, it was **mailed on the 17th**, [UNCLEAR].

Claimant: Okay, okay, yeah. I... **I received that and promptly put it back in the mail the next day.**

Hearing Officer: Okay, when did you receive that in the mail?

Claimant: I would have to say probably around the 20th, **which I checked the calendar the 17th, was on a Friday, so I probably got it that Monday.**

Hearing Officer: Okay.

Claimant: And put it back in the mail **that Tuesday.**

Hearing Officer: Okay, you can hand that to me then. We'll note that then and enter the decision of the Appeal Tribunal as Agency Exhibit Number One. Then we have what appears to be an appeal letter, and it appears to have with it a [sic] envelope in which the appeal letter was mailed with the postmark of June, 29, 2011. Is that what those two pages are? Is that your appeal letter with a copy of the envelope?

¹ For the ALC's information, June 25, 2011 was a Saturday.

Claimant: Yes, sir, it is. I received it on July the 1st looks like.

Hearing Officer: Well, do you see the postmark of the post office?

Claimant: Yeah.

Hearing Officer: [UNCLEAR]

Claimant: ...the 29th of June.

Hearing Officer: Yes. Is that when you mailed it?

Claimant: No. I mailed it on... it would have been the... I mailed it on...**which probably would have been the 21st.**

(R. p. 37, line 6- p. 38, line 12) (Emphasis added).

He further testified:

Claimant: I put it in that slot on the... had to be the 21st.

Hearing Officer: On June 21st?

Claimant: Yeah, had to be because I...I would have gotten it the 17th, on the Friday, the 20th, was that Monday. And I know I mailed it the next day. **I had to look the dates back up once they gave me the dates** and that's [UNCLEAR].

(R. p. 39, line 23 - p. 40, line 2) (Emphasis added).

It appears Appellant referred to the mailing date of the Appeal Tribunal's decision in order to determine what date he mailed his letter. (R.p.39, line 25- p.40. line 6). Despite testifying that he received the notice on "that Monday" and mailed it "that Tuesday" "which probably would have been the 21st," Appellant previously had sent a letter to DEW stating that he had mailed the notice on June 25, 2011, which was a Saturday. (R.p.31; p.54)

The Appellate Panel, on November 29, 2011, found:

The Department properly mailed the Appeal Tribunal decision to the claimant's address of record, and the claimant received it in time to file a timely appeal. Although the claimant asserts he mailed the appeal June 21, 2011, it was not postmarked until June 29,

2011, which was eight (8) days later. The claimant was aware he was mailing a time-sensitive document, and it was his responsibility to ensure that the appeal was timely filed. The claimant filed an untimely appeal due to his own error or neglect. Therefore, the appeal is dismissed as untimely, and the Appeal Tribunal decision is final as a matter of law.”

(R. p. 16).

Appellant filed for judicial review with the ALC. The ALC held:

The requirement of timely service of a Notice of Appeal is jurisdictional. If a party misses a deadline, the court, or Appellate Panel, has no authority to extend or ignore the deadline for service. Elam v. S.C. Dept. of Transportation, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004). The Panel lacked jurisdiction to hear, and correctly dismissed, the appeal.

(R. p. 14)

Appellant filed a Motion for Reconsideration, which the ALC treated as a Motion for Rehearing and denied the motion on May 15, 2012. (R. p. 12).

Appellant appealed to the South Carolina Court of Appeals, which vacated and remanded the case to the ALC. (R.p.7-11). The ALC subsequently remanded the case to the Appellate Panel. (R.p.5)

On August 29, 2014, the Appellate Panel found:

Although the claimant consulted a calendar to deduce when he probably mailed his appeal, we do not find his statement that he mailed the appeal June 21, 2011 to be credible. His statements show he was not certain as to when he actually received the decision. The claimant has provided inconsistent information regarding the date he appealed: in his October 2011 supplementary appeal he wrote he mailed his letter on June 25, 201, and in testimony on November 9, 2011, he stated he “probably” put it in the outgoing mail slot at his apartment complex on Tuesday, June 21, 2011. Further, the claimant has not shown that the 8-day delay between the date he allegedly placed his letter in the apartment complex’s mail slot and the date the letter was postmarked by the Postal Service was due to postal error. He noted that the mail was usually picked up the following day. The claimant has not provided evidence of other outgoing mail being delayed in being picked up by the Postal Service, and has not provided any testimony from witnesses to support the assertion he placed the appeal in the mail before June 27, 2011. In the absence of consistent and verifiable testimony and evidence, we rely on the Postal Service postmark to determine the point in time when the claimant provided notice to the Department of his intent to appeal the Appeal Tribunal decision. As the postmark

was stamped on June 29, 2011, two (2) days after the expiration of the appeal period, we find the greater weight of the credible evidence shows the claimant's appeal to the Appellate Panel was not mailed on June 21, 2011, as the claimant stated, but was mailed on June 29, 2011, after the appeal period expired. Therefore, the appeal is dismissed as untimely, and the Appeal Tribunal decision is final as a matter of law.

(R.p.3).

This appeal followed.

ARGUMENT

Standard of Review

DEW is defined as an agency in and is subject to the Administrative Procedures Act.

S.C. Code Ann. § 1-23-310 (Supp. 2013). The administrative procedures of DEW include an appeal to the Appeal Tribunal and further appeal to the Appellate Panel. S.C. Code Ann. § 41-35-690 (Supp. 2013). Once the administrative remedies available within an agency are exhausted, the aggrieved party is entitled to judicial review. S.C. Code Ann. § 1-23-380 (Supp. 2013).

During the judicial review, the ALC:

[M]ay 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.

S.C. Code Ann. § 1-23-380 (5) (Supp. 2013).

The agency's findings "are presumed correct and will be set aside only if unsupported by substantial evidence." Rodney v. Michelin Tire Co., 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (internal citation omitted). Further, unless there is a clearly erroneous application of the law, an agency's decision will be upheld if there is substantial evidence to support the agency's finding. Lark v. Bi-Lo, Inc., 276 S.C. 130, 135-36, 276 S.E.2d 304, 306-07 (1981).

In Lark, the Court noted, "[t]he substantial evidence rule, prescribed in the statute, means that we 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'." Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981) (quoting Independent Stave Co. v. Fulton, 251 Ark. 1086, 476 S.W.2d 792, 793).

Substantial evidence has been defined as:

[N]ot a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.

Lark v. Bi-Lo, Inc., 276 S.C. at 135-36, 276 S.E.2d at 306-07 (internal citation omitted).

The burden is on the appellant to prove the agency's decision is not supported by substantial evidence. Waters v. South Carolina Land Resources Conversation Commission, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) (internal citation omitted). The fact that reasonable minds may reach a separate and distinct conclusion does not prevent an agency's decision from being upheld by substantial evidence. Id. In viewing the record as a whole, if reasonable minds can reach the same conclusion as the agency, the ALC shall affirm. Friends of the Earth v Public

Service Commission of South Carolina, 387 S.C. 360, 366, 692 S.E.2d 910, 912 (2010) (citing Lark, 276 S.C. at 135-36, 276 S.E.2d at 306-7).

DEW's decision should be affirmed as substantial evidence supports the Appellate Panel's decision that Appellant did not timely file his appeal.

There is substantial evidence supporting the Appellate Panel's decision finding the appeal was untimely, and, therefore, the ALC should affirm the Appellate Panel's dismissal of the appeal. The statutes in Chapter 35 of Title 41 provide for the appellate procedure from determinations by DEW. S.C. Code Ann. § 41-35-690 (Supp. 2013). An Appeal Tribunal's decision will become final "unless within ten days after the date of mailing the decision a further appeal is initiated pursuant to Section 41-35-710," which governs appeals to DEW's Appellate Panel. S.C. Code Ann. § 41-35-680 (Supp. 2013). The statute does not refer to the receipt of the decision, rather the date of mailing, in determining the time frame for initiating the appeal.

In this matter, DEW mailed the claims adjudicator's decision on April 29, 2011. (R.p.21). JSE timely filed an appeal, and the Appeal Tribunal mailed its decision finding Appellant ineligible for benefits on June 17, 2011. (R.p.19). Pursuant to S.C. Code Ann. § 41-35-680, the deadline for filing the appeal was June 27, 2011. Appellant filed a letter to request an appeal, which was not dated. The postmark on the envelope containing his appeal was dated June 29, 2011, which was determined by DEW to be untimely. (R.pp.24-26; pp.48-50).

Appellant appealed the Dismissal and sent a subsequent letter that stated he mailed his appeal on June 25, 2011. (R.p.31; p.54).

The Appellate Panel remanded the matter to the Appeal Tribunal for an evidentiary hearing. During the hearing, Appellant testified he received the decision, "I would have to say **probably around the 20th, which I checked the calendar on the 17th, was on a Friday, so I probably got it that Monday.**" (R.p.37, lines 15-17). He also stated, "I mailed it on...it would

have been the... I mailed it on...which **probably** would have been the 21st.” (R.p.38, lines 11-12) (emphasis added).

He then testified that, “I would have gotten it the 17th, on the Friday, the 20th, was that Monday. And I know I mailed it the next day. **I had to look the dates back up once they gave me the dates...**” (R.p.39, line 25- p.40, line 1) (emphasis added).

While Appellant argues that DEW has an “overly narrow” reading of the law and it should be “liberally construed” given the public policy in S.C. Code Ann. § 41-27-20, the Supreme Court has specifically found an “appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” Elam v. S.C. Depart. of Transp., 361 S.C. at 14-15, 602 S.E.2d at 775 (internal citation omitted). The Appellate Panel had no appellate jurisdiction to hear the underlying matter.

The Appellate Panel dismissed the appeal as untimely in its decision upon remand, and stated, “[a]lthough the claimant consulted a calendar to deduce when he probably mailed his appeal, we do not find his statement that he mailed the appeal June 21, 2011 to be credible” and found “the greater weight of the credible evidence shows the claimant’s appeal...was mailed on June 29, 2011.” (R.p.3). The ALC may not substitute its judgment in the fact finding or substitute its judgment for DEW’s. Todd’s Ice Cream, Inc. v. South Carolina Employment Security Commission, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984) (internal citation omitted). As the Appellate Panel found the Appellant did not timely file the appeal, the Appellate Panel did not have appellate jurisdiction to proceed with the case, and the ALC should affirm the Appellate Panel’s decision. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 343-44, 713 S.E.2d 278, 283-84 (2011) (internal citation omitted).

The Appellate Panel's decision is not based on an error of law.

Appellant argues that the Appellate Panel's decision is based on an error of law due to the Appellant's calculation of the filing deadline based on Appellant's reading of S.C. Code Ann. Regs. 47-52. Appellant also argues that it was an error of law for the Appellate Panel to rely on the postmark on the envelope. However, Appellant failed to secure a ruling on the issue despite raising the matter in his brief before the Appellate Panel. (R.pp.74-92). "It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to *and ruled upon by the [lower] court to be preserved.*" Buist v. Buist, 410 S.C. 569, 766 S.E.2d 381, 383 (2014) (quoting Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 510 (2006) (emphasis added)).

Appellant also alludes to the underlying decision of the Appeal Tribunal as being based on an error of law. Appellant argues that an error of law exists where the correct legal principle was not used, there is no evidence to support and the decision is arbitrary. (Appellant's Brief, p.7). The Appellate Panel used the correct law and interpretation of the law in its decision, examined the record as a whole, and had a factual basis for its decision, therefore, making its decision not arbitrary.

While Appellant raised the issue in his Brief before the Appellate Panel, he failed to secure a ruling on the issues either initially or in a timely post-hearing motion. See Rule 59(e), SCRCPP. Accordingly, these issues are not preserved for appeal and must be rejected. Only issues raised and ruled upon by the Appellate Panel are cognizable on appeal. See Carson v. South Carolina Dep't of Natural Res., 371 S.C. 114, 120, 638 S.E.2d 45, 48 (2002) (court sitting in appellate capacity may not consider issues not raised or ruled on by administrative agency); see also Home Med. Sys., Inc. v. S. Carolina Dep't of Revenue, 382 S.C. 556, 562, 677 S.E.2d 582, 586 (2009) ("As in other appellate matters, [the court] require[s] issue preservation in

administrative appeals”). A Rule 59(e) “type of motion is often required for issue preservation purposes.” Id. at 562-63, 677 S.E.2d at 586. As the court explained in Elam, a “party must file [a Rule 59(e), SCRCPP] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” 361 S.C. at 24, 602 S.E.2d at 780.

In I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000), the South Carolina Supreme Court discussed the policy underlying the issue preservation rule:

If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review. Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.

(citations omitted).

“Put simply, Rule 59(e) motions serve a vital purpose for proper issue preservation. As in other appellate matters, we require issue preservation in administrative appeals.” Home Med. Systems, 382 S.C. at 562; see also Risher v. S. Carolina Dep’t of Health & Env’tl. Control, 393 S.C. 198, 208, 712 S.E.2d 428, 433 n. 5 (2011) (“[The South Carolina Supreme] Court has long enforced and relied upon issue preservation rules in administrative appeals.”)

Appellant admittedly received the Appellate Panel’s prior decision and raised these issues to the Appellate Panel prior to filing the current appeal to the ALC. (R.pp.75-83). Since Appellant failed to secure a ruling from the Appellate Panel initially or through a timely motion, pursuant to Rule 59(e), SCRCPP, motion to alter or amend the judgment or request for reconsideration, he cannot now “be heard to complain that the Order is inaccurate or prejudicial.” Grant v. South Carolina Coastal Council, 319 S.C. 348, 356, 461 S.E.2d 388, 392 (1995) (internal citation omitted).

Appellant's argument that the appeal was timely based on S.C. Code Ann. Reg. 47-52 would render S.C. Code Ann. §41-35-680 meaningless.

In the event the ALC rules that these issues are preserved for the purposes of this appeal, then DEW argues Appellant incorrectly argued that Appellant's appeal was timely filed pursuant to S.C. Code Ann. Regs. 47-52 (a)(1) (2011), and incorrectly calculated the deadline to file the appeal was June 30, 2011. (Appellant's Brief; p.8); S.C. Code Ann. Regs. 47-52 ("Any party aggrieved by the decision of an Appeal tribunal, may apply for leave to appeal from such decision to the Appellate Panel, by filing at the office where the claim was filed or at the office of the Appellate Panel in Columbia, South Carolina, within ten (10) calendar days after the date of notification² or mailing of the decision of the Appeal Tribunal, an Application for Leave to Appeal to the Appellant"). Appellant appears to take the position that the deadline is ten days from either the mailing or the receipt of the notification.

However, Appellant's interpretation of this regulation would render the applicable statute, S.C. Code Ann. §41-35-680, meaningless. The statute explicitly states an Appeal Tribunal's decision will become final "unless **within ten days after the date of mailing the decision a further appeal is initiated** pursuant to Section 41-35-710." S.C. Code Ann. §41-35-680 (Supp.2013) (emphasis added). The statute and Appellant's interpretation of the regulation are in conflict. While regulations have the force of law, a regulation cannot "alter or add to a statute." Goodman v. City of Columbia, 318 S.C. 488, 491, 458 S.E.2d 531, 533 (1995). The proper calculation for the time for filing is found in the statute and it is "within ten days after the date of mailing." S.C. Code Ann. §41-35-680 (Supp.2013).

² Previously, claimants had to appear in person to file their weekly claim and they could receive their decision in person at the local office of the Employment Security Commission, DEW's predecessor, or they could receive by mail. Today, claimants file their weekly claims online or by phone, and DEW mails decisions to claimants.

Therefore, the Appellate Panel had a proper legal basis for its finding that Appellant's filing deadline was June 27, 2011, and the Appellate Panel did not base its finding on an error of law.

It was not an error of law for the Appellate Panel to find Appellant's appeal was filed untimely after weighing the evidence in the record and reviewing the record as a whole.

Appellant argues that it was an error of law for the Appellate Panel to find Appellant's appeal untimely when his testimony was "uncontroverted." (Appellant's Brief, p.11). However, the Appellate Panel made a determination that his testimony was not credible. (R.p.3). They noted that he "consulted a calendar to deduce when he probably mailed his mail," he previously had written he mailed the appeal on June 25, 2011, and he did not show there was postal error. (R.p.3)

The Appellate Panel found that "[a]s the postmark was stamped on June 29, 2011....the greater weight of the credible evidence shows the claimant's appeal to the Appellate Panel was not mailed on June 21, 2011, as the claimant stated, but was mailed on June 29, 2011...." (R.p.3)

Appellant cites Green v. Green, 320 S.C. 347, 465 S.E.2d 130 (Ct. App. 1995), for his position that the postmark is "not dispositive but is one factor to consider." (Appellant's Brief, p.10). However, in Green, the Court of Appeals also described the postmark date as "compelling evidence in cases where timely service through the mail is at issue..." and the underlying court in Green "accepted this explanation ["...either the envelope was incorrectly postmarked or the [party] misstated the date on which he received the order"] and entertained the motion," which is distinguishable from Appellant's case. Green v. Green, 320 S.C. at 350, 465 S.E.2d at 132. While the Appellant argues it was an error of law to "assume the infallibility" of the U.S. Post postmark, it was reasonable to find that the postmark was correct.

Appellant also cites Lindsey v. South Carolina Tax Com'n, 323 S.C. 57; 448 S.E.2d 577 (1994), for the argument that service was complete when the party placed the notice in the mailbox. (Appellant's Brief, pp.10-11). DEW does not dispute that service is complete when the appeal is placed in the mailbox. However, the issue in this matter is whether the appeal was timely placed in the mail. This case is distinguishable from Lindsey, because the facts were "largely undisputed" in Lindsey, as opposed to the Appellate Panel's findings that Appellant's testimony that he mailed the appeal on June 21, 2011, was not credible and he provided "inconsistent information regarding the date." Lindsey, 323 S.C. at 59; 448 S.E.2d at 578; (R.p.3).

The Court has found "[t]he possibility of drawing two inconsistent conclusions from the evidence does not prevent the administrative agency's finding from being supported by substantial evidence." Lark, 276 S.C. at 135-6, 276 S.E.2d at 307 (quoting Consolo v. Federal Maritime Commission, 383 U.S. 607, 620, 16 L.Ed.2d 131, 140, 86 S.Ct. 1018, 1026 (internal citation omitted)).

Further, "...it is not unusual for a case to have contradictory evidence and inconsistent testimony from a witness...it is the [fact finder] that must decide what part of the witness's testimony it wants to believe and what part it wants to disbelieve. Under such circumstances, it is not the function of this Court to weigh the evidence and determine the credibility of the witnesses." Weaver v. Lentz, 348 S.C. 672, 680-81, 561 S.E.2d 360, 365 (Ct. App. 2002) quoting Small v. Pioneer Machinery, Inc., 329 S.C. 448, 465, 494 S.E.2d 835, 843-44 (Ct.App.1997). In Small, the Court also stated, "[t]he fact finder is imbued with broad discretion in determining credibility or believability of witnesses. Quintessentially, an operative

factor in evaluating credibility of a witness is inconsistency.” Small v. Pioneer Machinery, Inc., 329 S.C. at 465; 494 S.E.2d at 843.

As the Appellate Panel made a credibility determination based on the inconsistency it found in Appellant’s testimony and the evidence in the record, there was no error of law in finding the appeal was filed untimely.

Additionally, Appellant did not meet his burden in establishing there was no substantial evidence to support the Appellate Panel’s finding. Bursey v. S. Carolina Dep’t of Health & Env’tl. Control, 360 S.C. 135, 144, 600 S.E.2d 80, 85 (Ct. App. 2004) aff’d, 369 S.C. 176, 631 S.E.2d 899 (2006); quoting Waters, 321 S.C. at 226, 467 S.E.2d at 917 (“[T]he burden is on Appellants to prove convincingly that the agency’s decision is unsupported by the evidence.”).

Therefore, the Appellate Panel’s decision the appeal was untimely filed after relying on the postmark to determine when the appeal was mailed versus the testimony they found to be not credible is not an error of law.

The Appeal Tribunal’s decision is not before the Administrative Law Court

Appellant argues the Appeal Tribunal committed an error of law by “failing to consider the applicability of S.C. Code Ann. § 41-35-125(d)...‘compelling family circumstances’.” (Appellant’s Brief p.2). Appellant describes a “plenary” standard of review “when the agency’s decision is controlled by an error of law.” (Appellant’s Brief, p.7).

However, the appeal before the ALC is not reviewing the underlying decision of the Appeal Tribunal. Rather, the appeal is whether substantial evidence exists to support the Appellate Panel’s determination that Appellant’s appeal was untimely.

As substantial evidence exists in the record (Appellant’s testimony, his prior letter indicating June 25, 2011 as the filing date, and the postmark), a reasonable mind could reach the

conclusion reached by the Appellate Panel. Lark at 135–36, 276 S.E.2d at 306–07. As a reasonable mind could reach the same conclusion as the Appellate Panel, the ALC must affirm. Friends of the Earth v Public Service Commission of South Carolina, 387 S.C. at 366, 692 S.E.2d at 912. (internal citation omitted).

CONCLUSION

For the reasons discussed above, this Court should affirm the Appellate Panel's decision.

Respectfully submitted,



Maura Dawson Baker, SC Bar #73726
Assistant General Counsel
South Carolina
Department of Employment and Workforce
P.O. Box 8597
Columbia, South Carolina 29202
(803) 737-0233
MBaker@dew.sc.gov
legal@dew.sc.gov

Attorney for Respondent DEW

January 26, 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles Stubbs,
Appellant,

v.

South Carolina Department of Employment
and Workforce and JSE, LLC,
Respondent(s).

Docket No: 14-ALJ-22-0454-AP

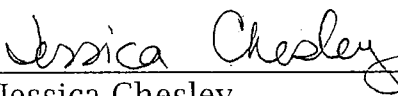
CERTIFICATE OF SERVICE

I certify that I am the Administrative Legal Assistant for the South Carolina Department of Employment and Workforce; and that I served by mail a copy of the Brief of the Respondent DEW in the above named action to the parties addressed to:

Jack Cohoon
SC Legal Services
PO Box 1445
Columbia, SC 29201

JSE, LLC
c/o Theresa Rhodes
5000 Thurmond Mall, Suite 114
Columbia, SC 29201

that the postage was duly prepaid; and that it was deposited in the United States Mail to the parties on the 26th day of January, 2015.



Jessica Chesley

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

APPEAL FROM THE
APPELLATE PANEL
OF THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE

Docket No. 14-ALJ-22-454-AP

CHARLES E. STUBBS,

Appellant,

vs.

SOUTH CAROLINA
DEPARTMENT OF
EMPLOYMENT AND
WORKFORCE AND JSE
LLC,

Respondents.

REPLY BRIEF OF APPELLANT

February 10, 2015

S.C. LEGAL SERVICES

Jack E. Cohoon (SC Bar No.: 74776)
Kirby R. Mitchell (SC Bar No.: 11640)
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4166
Fax: (803) 799-1781
jackcohoon@sclegal.org

ATTORNEY FOR APPELLANT

FILED

FEB 10 2015

SC ADMIN. LAW COURT

ARGUMENTS

I. THE DEPARTMENT CANNOT DISAVOW THE PLAIN LANGUAGE OF ITS OWN REGULATION TO FIND APPELLANT'S APPEAL UNTIMELY.

The South Carolina Department of Employment and Workforce seeks to deny Charles Stubbs the right to pursue an appeal of an unemployment benefits denial even though he complied with the Department's own regulation to file his appeal "*within ten (10) calendar days after the date of notification or mailing of the decision of the Appeal Tribunal.*" S.C. Code Reg. § 47-52(A)(1)[emphasis added]. In interpreting statutes and regulations, it is axiomatic that courts "give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the [regulation's] operation." See *Harris v. Anderson County Sheriff's Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). It is also presumed that the Department, in promulgating this regulation, "intended by its actions to accomplish something and not to do a futile thing." See, *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964). According to the plain and ordinary language of this regulation, a party seeking to appeal a decision may timely do so not just within ten days of the date that the Department places the decision in the mail to the party, but also with within ten days notification of the decision.

The Department mailed its Appeal Tribunal decision to Stubbs on June 17, 2011. Record on Appeal at 2. The Department's Appeal Tribunal does not dispute that Stubbs received the decision on or about June 20, 2011. This would be the first *notification* that Stubbs ever had of the Appeal Tribunal's decision. Though Stubbs testified that he mailed his appeal on June 21, 2011, the Department's Appellate Panel chose instead to rely upon the postmark date of June 29, 2011 as the mailing date. Record on Appeal at 3. Even

accepting the Department's finding that June 29, 2011 is the date of filing of the appeal, Stubbs filed his appeal "within ten (10) calendar days after the date of notification" S.C. Code Reg. § 47-52(A)(1).

The Department chose the specific words found in S.C. Code Reg. 47-52, presumably with the assistance of its legal staff and a keen eye on the underlying statutory regime and the requirements of due process, submitted the regulation to the General Assembly, and duly promulgated it. The Department argues, with no supporting authority, that the regulation refers to "notification" because at some time in the past claimants would receive decisions about their claims at the local office of the Employment Security Commission, the Department's predecessor, or they could receive the decision by mail.¹ Yet the regulation makes no reference to when notification is received. If it was intended solely to apply to notification at a hearing, then the Department should have specified this intention in the regulation. If the reference to "notification" is no longer applicable, the Department should have amended or revoked it. Regardless of the merits of the Department's historical explanation for S.C. Code Reg. 47-52—using facts not found in the record—the regulation remains in effect, unchanged, even on the day of the filing of this brief. The Department now asks this Court to ignore the plain language of the Department's own regulation in order to "close the courthouse door" to an unemployed South Carolina worker seeking to raise a meritorious appeal.

The Department asserts that to provide appealing parties ten calendar days from the date of "notification," as stated in its regulation, would improperly "alter or add to a

¹ Appellant's counsel has represented clients in over 222 unemployment benefits appeals over the course of nine years—including when the Department was known as the Employment Security Commission—and has never witnessed an Appeal Tribunal hearing officer provide his or her decision in person.

statute.” *Goodman v. City of Columbia*, 318 S.C. 488, 491, 458 S.E.2d 531, 533 (1995). However, the Department’s regulation does not alter or add to S.C. Code Ann. § 41-35-680—it simply explains and interprets the statute. It is entirely proper for the Department to “‘to fill up the details’ by prescribing rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.” *Bauer v. S.C. State Housing Auth.*, 271 S.C. 219, 232, 246 S.E.2d 869, 876 (S.C. 1978). Without the application of S.C. Code Reg. 47-52, the statute produces unfair and unconstitutional results. There is no “good cause” exception to this very short and unforgiving statutory deadline, and the statute fails to acknowledge the real possibility that a party might not even receive the decision in the mail before the appeal deadline. If the statute was applied in a manner without regard to notification and ignored the possibility that a party might not receive a decision with enough time to act upon it, then it would violate the requirement of due process that persons threatened with government action be afforded notice and an opportunity to be heard. South Carolina and United States Constitutions. S.C. Const. art. I, § 3, and U.S. Const. amend. XIV, § 1. Such a narrow interpretation of a statute would produce an impermissible result.

It is entirely reasonable that the Department would promulgate a regulation to interpret and apply S.C. Code Ann. § 41-35-680 in a manner that is rational and meets the requirement to provide appealing parties sufficient time to perfect their appeals. It is unreasonable and unjust for the Department to disavow a promulgated regulation when it suits the Department. Citizens must be able to rely upon the deadlines and procedures that state agencies promulgate through regulations. A state agency must not be allowed to tell the public, through its own regulation, that the deadline is ten days from “notification,” and

then, on appeal, deny the truth of its previous representation.

II. APPELLANT'S ARGUMENTS WERE RAISED AND RULED UPON BY THE DEPARTMENT'S APPEAL TRIBUNAL AND ARE THEREFORE PRESERVED.

The issues before this Court were both raised and ruled upon by the Department. The Department acknowledges, through its brief, that Stubbs raises these issues before the Appellate Panel but claims the Department's Appellate Panel did not rule on them. Respondent's Brief at 11. Specifically, the Department asserts that Stubbs should have made a motion pursuant to Rule 59, SCRPC, to alter or amend the judgment to raise errors of law in the Appellate Panel decision. Issues must be properly preserved at every level of appeal, but this requirement is not so strict as to require that a trial court or agency cite each and every statute, regulation, and case being relied upon or rejected in the making of its decision.

The issue before the Appellate Panel was the timeliness of Stubbs' appeal. The Appellate Panel ruled on this issue. The Appellate Panel found Stubbs' appeal untimely based upon the same analysis that the Department makes now—that "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." ROA at 3. The Appellate Panel ruled on the issue before it but came to the wrong conclusion. Stubbs had no further obligation raise the issue before the Appellate Panel yet again.

The Department misapplies the law by citing *Grant v. S.C. Coastal Council* as authority that because Stubbs did not file a Rule 59(e) motion he cannot now "be heard to complain that the Order is inaccurate or prejudicial." 319 S.C. 348, 356, 461 S.E.2d 388, 392 (1995). In *Grant*, the appellant objected that he had not been provided with a proposed

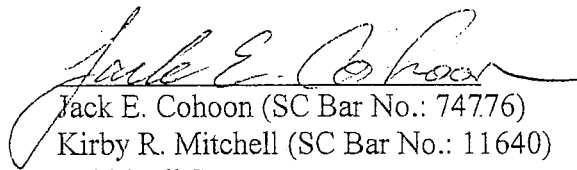
circuit court order before it had been provided to the judge for signing. The South Carolina Supreme Court held that the appellant should have made Rule 59(e) motion to preserve that particular argument because it had not previously been raised. The appellant's other grounds for appeal were found to have been preserved though without merit. This is contrary to the present case, in which it is undisputed that Stubbs raised the issues presently before this Court at the administrative agency level and the Appellate Panel ruled against him. It is entirely proper for Stubbs to now seek this Court's review of the Department's decision.

CONCLUSION

The South Carolina Department of Employment and Workforce should not be permitted to deny the appeal of a South Carolina worker who complied with the appeal deadline described in the Department's own regulations. Nor should this Court accept the Department's overbroad and erroneous assertions that the issues in this case are not preserved for review. This Court should reverse the decision of the Department's Appellate Panel, find Charles Stubbs' appeal timely, and remand the case for further proceedings.

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES



Jack E. Cohoon (SC Bar No.: 74776)
Kirby R. Mitchell (SC Bar No.: 11640)
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4166
Fax: (803) 799-1781
jackcohoon@sclegal.org

Attorneys for Appellant

Columbia, South Carolina

February 10, 2015

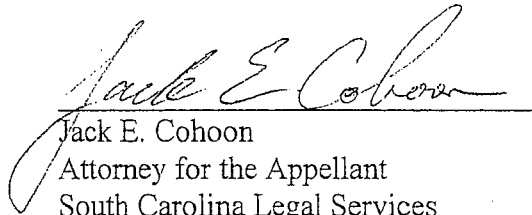
CERTIFICATE OF SERVICE

I certify that I have served the Brief of Appellant on South Carolina Department of Employment and Workforce and on JSE LLC by U.S. Mail, Postage Paid on February 10, 2015 to the following addresses:

Maura Dawson Baker
Legal Department
Department of Employment and Workforce
P.O. Box 8597
Columbia, South Carolina 29202

JSE LLC
c/o Theresa Rhodes
5000 Thurmond Mall, Suite 114
Columbia, SC 29201

Respectfully Submitted,

A handwritten signature in cursive script, reading "Jack E. Cohoon", is written over a horizontal line.

Jack E. Cohoon
Attorney for the Appellant
South Carolina Legal Services
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4166
Fax: (803) 799-1781

FILED

FEB 10 2015

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA

Charles E. Stubbs,

Petitioner,

vs.

South Carolina Department of Employment
And Workforce and JSE LLC,

Respondents.

IN THE ADMINISTRATIVE LAW
COURT

CASE NO.:

**PETITION FOR JUDICIAL REVIEW
OF THE FINAL DECISION OF THE
SOUTH CAROLINA DEPARTMENT
OF EMPLOYMENT AND WORKFORCE**

Now comes the Petitioner, complaining of the Respondents herein, and respectfully shows this Court that:

1. This is an action for judicial review of the Final Decision of the South Carolina Department of Employment and Workforce is brought pursuant to S.C. Code Ann. §§ 1-23-380 and 41-35-750.
2. Respondent South Carolina Department of Employment and Workforce (hereinafter "Respondent SCDEW") is an administrative agency of the State of South Carolina as defined in S.C. Code Ann. § 1-23-310(1) and is authorized by § 41-35-710 to hear and decide appeals of awards or denials of unemployment benefits.
3. Respondent JSE LLC is the liable employer for unemployment benefits.
4. Respondent SCDEW issued an Appellate Panel Decision on August 29, 2014 finding untimely Petitioner's previous appeal to the Appellate Panel of an Appeal Tribunal decision disqualifying him from benefits.
5. Petitioner has exhausted all administrative remedies available to him within Respondent SCDEW's appeals process.
6. Respondent SCDEW committed serious errors in holding Petitioner's appeal untimely.

FILED

SEP 28 2014

7. The uncontradicted evidence of record is that Petitioner placed his appeal in the mail within the ten-day timeframe of S.C. Code Ann. § 41-35-680, and that, through no fault of his own, the appeal was delayed in its transmission to Respondent SCDEW.

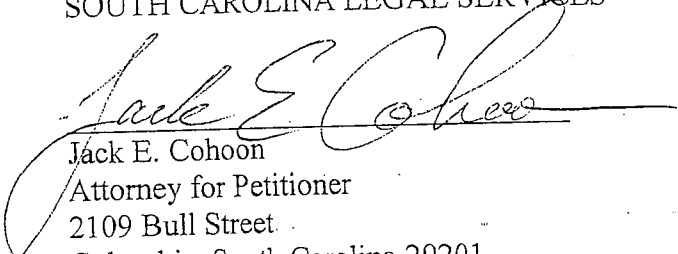
8. The uncontradicted evidence of record is that Petitioner placed his appeal in the mail within ten days of the date of notification of the Appeal Tribunal decision. S.C. Code Reg. 47-52(A)(1).

9. Respondent SCDEW's decision is therefore made upon unlawful procedure; affected by error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

WHEREFORE, Petitioner prays that this Court, pursuant to S.C. Code Ann. §§ 1-23-380 and 41-35-750, reverse Respondent SCDEW's decision and find Petitioner's appeal timely.

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES



Jack E. Cohoon

Attorney for Petitioner

2109 Bull Street

Columbia, South Carolina 29201

Office: (803) 744-4166

Fax: (803) 799-1781

S.C. Bar No.: 74776

Columbia, South Carolina

September 26, 2014

56

Columbia, South Carolina

CERTIFICATION

Stubbis v. SCREW & JSE, LLC

Kristi Chesley
Kristi Chesley, Administrative Legal Assistant

57

INDEX

DECISIONS AND ORDERS

Appellate Panel Decision No. 2014-P-1308	1
Order of Remand from ALC (4/15/14)	5
Order of Remand from Court of Appeal (3/5/14)	7
Order Denying Motion for Rehearing to ALC (5/15/12)	12
Order of ALC (3/26/12)	13
Appellate Panel Decision 2011-P-2780	15
Appeal Tribunal Decision	18

DOCUMENTS, TRANSCRIPTS AND PAPERS

Request for Determination of Status as an Insured Worker	20
Determination of Claims Adjudicator	21
Employer Appeal to Appeal Tribunal	22
Notice to Claimant of Employer Appeal	23
Claimant Appeal to Appellate Panel	24
Letter of Dismissal from Higher Authority Appeals	26
Appeal of Dismissal Letter	27
Letter from Claimant to Higher Authority Appeals	31
Remand Letter from Higher Authority Appeals	33
Notice of Appeal Tribunal Hearing	34
Appeal No. EUC-3533-16394	35

Petition for Judicial Review (12/21/11)	58
Appeal to the Court of Appeals (6/14/12)	63
Notice of Hearing before the Appellate Panel (Remand)	71
Notice of Postponement of Appellate Panel Hearing	72
Notice of Hearing before the Appellate Panel	73
Brief of Appellant on Remand	74

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Charles E. Stubbs

Claimant SSN: [REDACTED]

JSE, LLC
c/o Theresa Rhodes
5000 Thurmond Mall, Suite 114
Columbia, SC 29201
Liable Employer

Appellant: Claimant

APPELLATE PANEL
DECISION

The claimant appealed Appeal Tribunal Decision 2011-A-10528 to the Appellate Panel. The Tribunal held the claimant indefinitely disqualified from benefits upon finding he voluntarily quit. This decision reversed the claims adjudicator's determination.

The claimant's appeal to the Appellate Panel was untimely on its face. The Appellate Panel dismissed the claimant's appeal as untimely by letter. The claimant appealed the letter, and was granted a hearing on the timeliness of his appeal. After a hearing on November 9, 2011, the Appellate Panel reviewed the record, and in Appellate Panel Decision 2011-P-2780 dismissed the claimant's appeal to the Appellate Panel as untimely. The claimant filed an appeal to the Administrative Law Court. By order dated March 26, 2012, the Administrative Law Court affirmed the Appellate Panel's dismissal. The claimant appealed to the Court of Appeals. By decision filed March 5, 2014, the Court of Appeals vacated the decision of the Administrative Law Court, and remanded the case to the Administrative Law Court for a new decision on the timeliness of the claimant's appeal to the Appellate Panel. By order dated April 15, 2014, the Administrative Law Court remanded the case to the Appellate Panel to issue a new decision.

Pursuant to the history of this case outlined above, the matter is again before the Appellate Panel. The Appellate Panel notified the parties of its hearing to consider the appeal.

DECISION TO DISMISS

The claimant's appeal to the Appellate Panel is dismissed as untimely, and Appeal Tribunal Decision 2011-A-10528 is final. The claimant remains indefinitely disqualified from benefits effective March 6, 2011.

The Department mailed Appeal Tribunal Decision 2011-A-10528 to the claimant's address of record on Friday, June 17, 2011. 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 Monday, June 27, 2011. The Department received the claimant's appeal on Thursday, June 30, 2011. The appeal envelope is postmarked June 29, 2011.

Higher Authority Appeals dismissed the claimant's appeal by letter dated August 3, 2011. The Department accepted the claimant's appeal, dated August 10, 2011, of the dismissal letter. The Department received an additional letter from the claimant regarding his appeal on October 7, 2011. In the October letter, the claimant stated he mailed the appeal to the Appellate Panel on June 25, 2011.

A hearing regarding the timeliness of the claimant's appeal to the Appellate Panel was held on November 9, 2011. During that hearing, the claimant stated he "had to look the dates back up [on a calendar] after they gave me the dates," and he "probably" received the decision "around" June 20, 2011, on the Monday after the decision was mailed. He states he placed his appeal in a box for outgoing mail at his apartment complex the next day, on Tuesday, which "probably" would have been June 21, 2011. Later during the hearing, the claimant stated it "had to be the 21st" because he knows he mailed his appeal letter the day after he received the decision. When asked by the hearing officer if it was correct that he put the letter in an envelope in the apartment complex box on June 21, 2011, he stated, "Yes sir. Or to my knowledge, yes." He does not know why the postmark is July 29, 2011, and he denies that he waited until July 29 to put the letter in the box. The claimant maintained the mail is usually picked up the next day; he did not indicate he had an issue with the Postal Service picking up any other mail. The claimant presented no witnesses to provide testimony as to the timeliness of his appeal.

The claimant also asserted he attempted to mail other correspondence to the Department, but those letters were returned to him. When specifically questioned by the hearing officer whether the appeal letter postmarked June 29, 2011, had come back to him, the claimant answered, "No. Not that I recall."

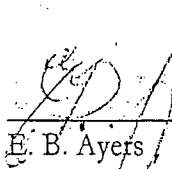
Under Public Law 110-252, Emergency Unemployment Compensation is payable to an individual who has exhausted benefit rights for regular compensation with respect to a benefit year that ended on or after May 1, 2007. The individual must have received all regular compensation payable or had his/her rights to regular compensation terminated by reason of expiration of the applicable benefit year. EUC08 is administered through voluntary agreements between states and the U.S. Department of Labor. Continuing eligibility is determined under the requirements of the state law.

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 Department has no authority to extend the appeal time limit unless the delay was caused by Department or Postal error. Although the claimant consulted a calendar to deduce when he probably mailed his appeal, we do not find his statement that he mailed the appeal June 21, 2011, to be credible. His statements show he was not certain as to when he actually received the decision. The claimant has provided inconsistent information regarding the date he appealed: in his October 2011 supplementary appeal he wrote he mailed his letter on June 25, 2011, and in testimony on November 9, 2011, he stated he "probably" put it in the outgoing mail slot at his apartment complex on Tuesday, June 21, 2011. Further, the claimant has not shown that the 8-day delay between the date he allegedly placed his letter in the apartment complex's mail slot and the date the letter was postmarked by the Postal Service was due to postal error. He noted that the mail was usually picked up the following day. The claimant has not provided evidence of other outgoing mail being delayed in being picked up by the Postal Service, and has not provided any testimony from witnesses to support the assertion he placed the appeal in the mail before June 27, 2011. In the absence of consistent and verifiable testimony and evidence, we rely on the Postal Service postmark to determine the point in time when the claimant provided notice to the Department of his intent to appeal the Appeal Tribunal decision. As the postmark was stamped on June 29, 2011, two (2) days after the expiration of the appeal period, we find the greater weight of the credible evidence shows the claimant's appeal to the Appellate Panel was not mailed on June 21, 2011, as the claimant stated, but was mailed on June 29, 2011, after the appeal period expired. Therefore, the appeal is dismissed as untimely, and the Appeal Tribunal decision is final as a matter of law.

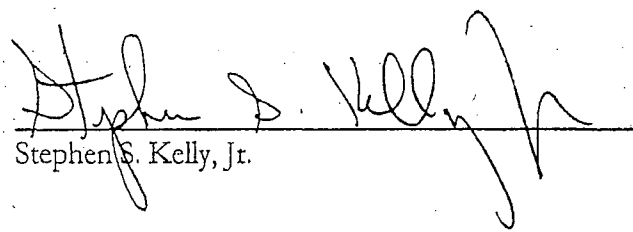
Ms. Ayers dissents

SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE


E. B. Ayers dissenting


Tim Dangerfield

Hearing Date: 08/27/14
Date Mailed: 08/29/14
Mailed By: AG


Stephen S. Kelly, Jr.

Mailing Date: August 29 2014

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

NOTICE OF MAILING OF APPELLATE PANEL DECISION

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

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

April 15, 2014
Columbia, S.C.


Anthony R. Goldman
Judicial Law Clerk

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Charles Stubbs, Appellant,

v.

South Carolina Department of Employment and
Workforce and JSE, LLC, Respondents.

Appellate Case No. 2012-212280

Appeal From The Administrative Law Court
John D. McLeod, Administrative Law Judge

Opinion No. 5202
Heard October 8, 2013 – Filed March 5, 2014

VACATED AND REMANDED

Kirby Rakes Mitchell, of Greenville, and Jack E.
Cohoon, of Columbia, both of S.C. Legal Services, for
Appellant.

Maura Dawson Baker, of the South Carolina Department
of Employment and Workforce, of Columbia, for
Respondent.

FEW, C.J.: Charles Stubbs appeals an order from the Administrative Law Court (ALC) affirming the South Carolina Department of Employment and Workforce's dismissal of Stubbs' appeal as untimely. We find the ALC improperly made its own factual findings in violation of its standard of review. Therefore, we vacate the ALC's order and remand.

I. Appeals from the Department of Employment and Workforce

Section 41-35-610 of the South Carolina Code (Supp. 2013) provides that "a claim for [unemployment] benefits must be made pursuant to regulations the department promulgates." According to those regulations, the department's initial determination regarding unemployment benefits is made by a claims adjudicator. S.C. Code Ann. Regs. 47-51 (2011). A party aggrieved by the adjudicator's decision may appeal to the department's "appeal tribunal," which conducts a de novo hearing at which the parties may present testimony to the tribunal. *Id.* The next level for appeal is the department's "appellate panel," which decides the appeal based solely on the evidence in the record before the appeal tribunal. S.C. Code Ann. Regs. 47-52 (2011). The appellate panel's decision may then be appealed to the ALC. S.C. Code Ann. § 41-35-750 (Supp. 2013). Finally, a party may appeal the decision of the ALC to the court of appeals. *See id.* ("An appeal may be taken from the decision of the [ALC] pursuant to the . . . Appellate Court Rules and Section 1-23-610."); S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2013) ("For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the . . . Appellate Court Rules.").

II. Facts and Procedural History

Stubbs applied for unemployment benefits with the department following a car accident that left him unable to continue working for JSE, LLC. The department's adjudicator made an initial determination that Stubbs was eligible for benefits. JSE appealed to the department's appeal tribunal.

On June 14, 2011, the appeal tribunal held a hearing in which Stubbs and a witness for JSE appeared. The appeal tribunal reversed the adjudicator's determination and found Stubbs was disqualified from receiving unemployment benefits because he quit his employment with JSE voluntarily and without good cause. On June 17, 2011, the department mailed the appeal tribunal's decision to Stubbs. The decision notified Stubbs that he may "file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten . . . calendar days," and that his "appeal may be filed in person at any Workforce Center, or by mail, addressed to Appellate Panel, Post Office box 995, Columbia, South Carolina, 29202."

Stubbs filed an appeal by mail. The envelope containing his appeal arrived at the department bearing a postmark of June 29, 2011, which was twelve days after the department mailed the decision.

In a letter dated August 3, 2011, the appellate panel informed Stubbs it was dismissing his appeal as untimely because he did not file it within ten days. However, the appellate panel advised Stubbs of his right to request that the appellate panel reconsider its decision by "setting forth the reasons for the untimeliness of your appeal."

Stubbs then submitted a handwritten letter asserting he mailed his appeal on June 25, 2011, which was only eight days after the date the department mailed the decision. The appellate panel remanded the case to the appeal tribunal to conduct an evidentiary hearing regarding the timeliness of Stubbs' appeal; stating, "Once this testimony has been received, the record will be reviewed by the [appellate panel]."¹

At the hearing, Stubbs testified he received the June 17 decision "probably around the 20th" of June. Stubbs asserted he placed his appeal in the outgoing mail slot at his apartment complex the next day, Tuesday, June 21. When asked how he mailed the appeal, Stubbs stated: "I mailed this at my house. [My apartment complex has] a box where the mailman comes, and . . . you got little slots where you can [put] outgoing mail." Stubbs further explained he placed the appeal "in my box . . . it's not a US postal box, it's a box . . . I guess it is. Well, I guess it is because . . . it's a box that's used by the apartment complex . . . for delivering . . . or picking up mail." Stubbs could not explain the June 29 postmark on his appeal.

Based on the evidence and testimony presented at the appeal tribunal's hearing, the appellate panel ruled Stubbs' appeal was properly dismissed as untimely. The appellate panel concluded:

Although [Stubbs] asserts he mailed the appeal June 21, 2011, it was not postmarked until June 29, 2011, which was eight (8) days later. [Stubbs] was aware he was mailing a time-sensitive document, and it was his responsibility to ensure that the appeal was timely filed. [Stubbs] filed an untimely appeal due to his own error or neglect. Therefore the appeal is dismissed as untimely,

¹ The department's regulations provide that the appellate panel may direct the appeal tribunal to take additional evidence. The appellate panel may then issue its own decision based on the additional evidence heard by the appeal tribunal. See S.C. Code Ann. Regs. 47-52(C)(3) (2011).

and the Appeal Tribunal decision is final as a matter of law.

Stubbs appealed to the ALC, arguing the appellate panel erred because "[t]he uncontradicted evidence of record is that [Stubbs] placed his appeal in the mail within the ten-day time frame of [section] 41-35-680, and that, through no fault of his own, the appeal was delayed in its transmission to [the department]."

The ALC affirmed the appellate panel's decision. The ALC, like the appellate panel, acknowledged Stubbs' assertion that he deposited his appeal in the outgoing mail slot at his apartment complex on June 21, 2011. However, the ALC stated:

[Stubbs] testified that the mail slot where he placed the envelope was not a U.S. Postal Box, authorized by the United States Postmaster General for receipt and delivery of mail. . . . In essence, [Stubbs] merely gave his notice of appeal to a third party, rather than to [the department] or the United States Postal Service. . . . In this case [Stubbs'] actions did not constitute timely or proper service of his Notice of Appeal upon the Department.

Stubbs now appeals to this court, claiming the ALC improperly made its own factual findings and based its decision on those findings.

III. Law/Analysis

The ALC reviews final agency decisions—such as the department's unemployment benefits determination in this case—in its appellate capacity "as prescribed in [South Carolina Code] Section 1-23-380 [(Supp. 2013)]." S.C. Code Ann. § 1-23-600(E) (Supp. 2013). Subsection 1-23-380(5) provides the reviewing court "may affirm the decision of the agency," "remand the case for further proceedings," or "reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . (d) affected by [an] error of law; [or] (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record" The ALC "may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." *Id.*; see also § 41-35-750 (stating "the findings of the department regarding facts, if supported by evidence . . . , must be conclusive and the jurisdiction of the [ALC] must be confined to questions of law"). Accordingly, the ALC, sitting in its appellate capacity, may not make its

own factual findings. See *Todd's Ice Cream, Inc. v. S.C. Emp't Sec. Comm'n*, 281 S.C. 254, 258, 315 S.E.2d 373, 375 (Ct. App. 1984) (stating the standard set forth in section 1-23-380 "does not allow judicial fact-finding" by the reviewing court).

As we read the appellate panel's findings, Stubbs did not act timely in mailing the appeal of the appellate tribunal's decision to the appellate panel. The appellate panel's decision, therefore, appears to be based on Stubbs' untimely placement of the document in the mailbox. The ALC, on the other hand, did not base its decision on the timeliness of Stubbs' actions, but made its own finding that Stubbs did not place the appeal in a United States Postal Service mailbox. Thus, the appellate panel's decision is based on Stubbs' untimely action of depositing the appeal in the mailbox, but the ALC affirmed based on Stubbs' action of depositing the appeal in an improper mailbox. The ALC did not review the finding made by the appellate panel, but instead affirmed based on its own finding, which was not made by the appellate panel. This violates the ALC's standard of review. Therefore, we vacate the ALC's order.

On remand, the ALC shall review the department's factual findings in accordance with section 1-23-380. If the ALC determines the department's findings are not sufficiently detailed to enable review, it may remand to the appellate panel. See *Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986) (vacating and remanding where the agency's findings of fact were insufficient to allow for a review of the agency decision, and stating, "The findings of fact of an administrative body must be sufficiently detailed to enable the reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings."). If the ALC determines the factual findings of the department are sufficient, it must review those findings within its standard of review, and it may not make factual findings of its own.

IV. Conclusion

The ALC's order is **VACATED** and the case is **REMANDED** to the ALC.

KONDUROS, J., concurs.

PIEPER, J., concurs in result only.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles E. Stubbs,

Appellant

vs.

South Carolina Department of Employment
and Workforce and JSE, LLC,

Respondents.

Docket No. 11-ALJ-22-0654-AP

ORDER DENYING MOTION FOR
REHEARING

The captioned docket is before this Court in its appellate capacity.

The Court has issued a final decision affirming the decision initially appealed from and Appellant has filed a Motion for Reconsideration specifically stating that the Motion is under SCALC Rule 29(D) and SCRCP Rule 59. These rules apply in contested cases, not in appeals.

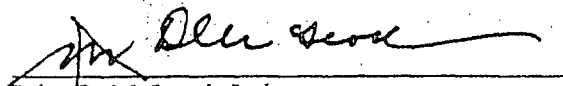
The applicable rule is SCALC 40, which permits a Motion for Rehearing in an appellate matter in the discretion of the Court.

In this instance, the Court will treat Appellant's motion as one for Rehearing.

Having considered the Record, the Court has determined that the Motion for Reconsideration (Rehearing) should be, and hereby is, **DENIED**.

AND IT IS SO ORDERED.

May 15, 2011
Columbia, SC


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

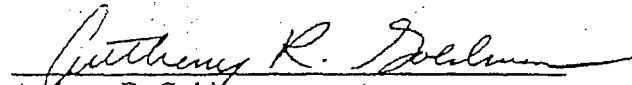
I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

May 15, 2011
Columbia, SC

SCDEW

JUN 08 2012

Received Benefits Div.


Anthony R. Goldman
Judicial Law Clerk

FILED

MAY 15 2012

SC ADMIN. LAW COURT
012

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC Dept. of
Employment & Workforce

APR 02 2012

Charles E. Stubbs,

Docket No. 11-ALJ-22-0654-AP

Received Benefits Div.

Appellant

vs.

ORDER

South Carolina Department of
Employment and Workforce and JSE,
LLC,

FILED

MAR 26 2012

Respondents.

SC ADMIN. LAW COURT

THIS CAUSE COMING TO BE HEARD on the Petitioner's Petition for Administrative Review, pursuant to S.C. Code Ann. § 41-35-750 (2011). Petitioner appeals Decision No. 2011-P-2780, of the South Carolina Department of Employment and Workforce (SCDEW or Department), dated November 29, 2011, dismissing his appeal to the Appellate Panel because it was untimely filed.

Petitioner was a party to a SCDEW Appeal Tribunal hearing regarding his claim for unemployment benefits. The Tribunal mailed its Decision No. 2011-A-10528, to the Petitioner on June 17, 2011. Petitioner testified that he received the decision on June 20, 2011. A Tribunal decision is final unless the decision is appealed to the SCDEW Appellate Panel within ten (10) days of the mailing date of the decision. S.C. Code Ann. § 41-35-680. The appeal period expired on June 27, 2011. Thereafter, the Department received an appeal from the Petitioner by letter postmarked June 29, 2011. The Panel dismissed the appeal as untimely.

Petitioner asserts that he timely deposited his appeal in a mail slot at his apartment complex on June 21, 2011. The Petitioner testified that the mail slot where he placed the envelope containing his notice of appeal was not a U.S. postal box, authorized by the United States Postmaster General for receipt and delivery of mail. *Rosen v. United States*, 245 U.S. 467, 468 (1918). In essence, the Petitioner merely gave his notice of appeal to a third party, rather than to the SCDEW or the United States Postal Service. The South Carolina Supreme Court has ruled that where service by mail is permitted, it is complete when the document is deposited with the United States Postal Service, properly addressed with sufficient postage. *Southbridge*

The requirement of timely service of a Notice of Appeal is jurisdictional. If a party misses a deadline, the court, or Appellate Panel, has no authority to extend or ignore the deadline for service. *Elam v. S.C. Dept of Transportation*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004). The Panel lacked jurisdiction to hear, and correctly dismissed, the appeal.

AND IT IS SO ORDERED.


John D. McLeod, Judge
S.C. Administrative Law Court

This 26 day of March, 2012
By: Anthony R. Baldino
Judicial Law Clerk

Received Benefits Div.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Charles E. Stubbs)
(
(
(
Claimant SSN: (b)(6))
(
(
JSE, LLC)
c/o Venture Resources Group, LLC)
4224 Henderson Boulevard)
Tampa, FL 33629)
Liable Employer)
_____)

Appellant: Claimant

APPELLATE PANEL
DECISION

The claimant appealed Appeal Tribunal Decision 2011-A-10528 to the Appellate Panel. The Tribunal held the claimant indefinitely disqualified from benefits upon finding he voluntarily quit without good cause. This decision reversed the claims adjudicator's determination, which held the claimant eligible for benefits upon finding he was discharged without cause.

The claimant's appeal to the Appellate Panel was dismissed as untimely. The claimant appealed the dismissal of the case, requesting that the appeal be accepted and the case reconsidered. 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

The claimant's appeal to the Appellate Panel is dismissed as untimely, and Appeal Tribunal Decision 2011-A-10528 is final.

The Department mailed Appeal Tribunal Decision 2011-A-10528 to the claimant's address of record on June 17, 2011. The decision contained instructions for filing an appeal and a clear and specific notice that it would be final unless appealed within ten (10) days from its mailing date. The claimant received the decision June 20, 2011. He appealed by letter postmarked June 29, 2011. The appeal period expired June 27, 2011. The claimant asserted he put the appeal letter in the outgoing mail slot at his apartment

complex on June 21, 2011, and assumed it was sent out timely. He had no explanation for the postmark date on his appeal.

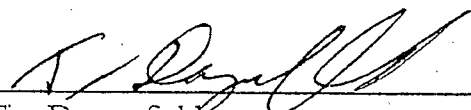
Under Public Law 110-252, Emergency Unemployment Compensation is payable to an individual who has exhausted benefit rights for regular compensation with respect to a benefit year that ended on or after May 1, 2007. The individual must have received all regular compensation payable or had his/her rights to regular compensation terminated by reason of expiration of the applicable benefit year. EUC08 is administered through voluntary agreements between states and the U.S. Department of Labor. Continuing eligibility is determined under the requirements of the state law.

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, and the claimant received it in time to file a timely appeal. Although the claimant asserts he mailed the appeal June 21, 2011, it was not postmarked until June 29, 2011, which was eight (8) days later. The claimant was aware he was mailing a time-sensitive document, and it was his responsibility to ensure that the appeal was timely filed. The claimant filed an untimely appeal due to his own error or neglect. Therefore, the appeal is dismissed as untimely, and the Appeal Tribunal decision is final as a matter of law.

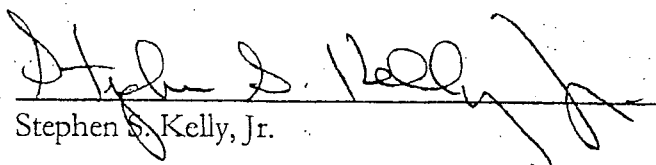
**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**



E. B. Ayers

Tim Dangerfield

Review Date: 11/29/11
Date Mailed: 11/29/11
Mailed By: MRT



Stephen S. Kelly, Jr.

November 29, 2011

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

NOTICE OF MAILING OF APPELLATE PANEL DECISION

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**).

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

**Legal Department
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.8/16/11

Appeal No: EUC-3533

DECISION NO: 2011-A-10528

overpayment ✓

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

DECISION OF APPEAL TRIBUNAL

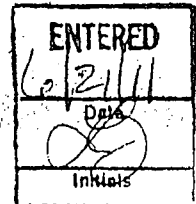
Hearing Date: June 14, 2011

CHARLES E. STUBBS



lyr celine 7
disc 3/6/11

CLAIMANT



JSE LLC
C/O VENTURE RESOURCES GROUP LLC
4224 HENDERSON BLVD
TAMPA, FL 33629

lyr A9
505101

EMPLOYER

APPELLANT: Employer

SS NO:



lyr - celine 1
disc 5/30/11

02 TO
009100

lyr - A9
505101

APPEARANCES

FOR THE
CLAIMANT: Present

01 TO
009100

FOR THE
EMPLOYER: One Witness

FINDINGS OF FACT

The issue in this case is whether the claimant voluntarily quit employment with good cause.

The employer appealed the determination mailed April 29, 2011, which held the claimant eligible to receive benefits effective March 6, 2011, upon a finding the claimant voluntarily quit employment with good cause.

The claimant worked from October 28, 2009, to January 2, 2011, with the subject employer, a staffing business, most recently as an assembler. He advised the employer he would not continue in his position with a client.

The claimant advised the employer he would undergo surgery after he was involved in a car accident on December 18, 2010. The claimant underwent surgery for his foot and remained under a doctor's care with restrictions from prolonged standing until May of 2011. He did not request a medical leave of absence with subject employer because it was not available. The employer advised the claimant to

inform management when he was available for additional work. The claimant did not make himself available for assignments with subject employer prior to filing a claim for benefits.

REASONS

South Carolina Code provides in §41-35-120(1) for an indefinite disqualification of benefits if a claimant is found to have voluntarily left the most recent bona fide employment without good cause attributable to employment. The disqualification continues until the claimant returns to work and earns at least eight times the weekly benefit amount in covered employment.

"Good Cause" for quitting within the meaning of the law refers to a substantial, material change in the terms or conditions of employment, or any circumstances that would cause a reasonable and prudent person to become totally unemployed rather than continue working.

The claimant voluntarily quit his position with subject employer due to health related reasons. Although the Agency is not unsympathetic to the claimant's circumstances, the employer did not alter the claimant's condition of hire. Furthermore, the claimant filed a claim for benefits prior to making himself available for additional work with subject employer. Therefore, the Tribunal finds that the reason the claimant voluntarily quit without good cause. Such being the case, a disqualification must be imposed.

DECISION

The Tribunal hereby holds the claimant disqualified from receiving benefits effective March 6, 2011, until requalification, upon a finding the claimant voluntarily quit employment without good cause. This decision reverses the determination mailed April 29, 2011, and may result in an overpayment in benefits to the claimant.

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 in person at any Workforce Center, or by mail, addressed to "Appellate Panel," Post Office Box 995, Columbia, South Carolina 29202. For additional information or assistance in filing an appeal, contact your local Workforce Center.

V. Joan Marshall

V. Joan Marshall
Administrative Hearing Officer

VJM:rlb

Decision Mailed: 06/17/11

Mailed on the above Date By: *RVB*

NAME: CHARLES E STUBBS		SSN: [REDACTED]	BYE: 05/29/11
CLAIMSTAKER ID: KWBKR	LO #: 400	FILED: 03/08/11	EFF DATE: 03/06/11
MAILING ADDRESS: [REDACTED]			
CITY: [REDACTED]		STATE: [REDACTED]	ZIP: [REDACTED]
OTHER NAME:			

☐ 1-UI	☐ 4-UI/UCFE/UCX	☐ 7-UCX	☐ NEW	☐ TRANSITIONAL
☐ 2-UI/UCFE	☐ 5-UCFE	☐ 8-CW	☒ ADDITIONAL	☐ R-ADD
☐ 3-UI/UCX	☐ 6-UCFE/UCX	☒ OTHER	☐ CONTINUED	

BONA FIDE EMPLOYER NAME & PAYROLL ADDRESS INFORMATION:		DATES OF EMPLOYMENT:	
NAME: JSE LLC			
STREET: C/O VENTURE RESOURCES GRO, 4224 HENDERSON BLVD		FROM:	TO:
		08/24/09	12/18/10
CITY: TAMPA	ST: FL	ZIP: 33629-5611	EMP. ACCT. # [REDACTED]

BONA FIDE EMPLOYER LOCAL ADDRESS INFORMATION:			
STREET:			
CITY: BLYTHEWOOD	ST: SC	ZIP:	PHONE #: (803) 748-8530

SEPARATION REASON:	☒ LOW	☐ VQ	☐ DISCHARGE	☐ STILL WORKING
--------------------	---	-----------------------------	------------------------------------	--

ISSUE CODES: 09 03	
--------------------	--

LIABLE EMPLOYER INFORMATION:		DATES OF EMPLOYMENT:	
NAME:			
EMP. ACCT #		FROM:	TO:
JOB LOCATION (CITY/STATE):			

SEPARATION REASON:	☐ LOW	☐ VQ	☐ DISCHARGE	☐ STILL WORKING
--------------------	------------------------------	-----------------------------	------------------------------------	--

NARRATIVE REASON FOR SEPARATION FROM LIABLE EMPLOYER:

1 UCB-103
REV. May 2007

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 995, COLUMBIA, S.C. 29202

1 CHARLES E STUBBS

DATE OF THIS NOTICE 04/28/11

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER		EFFECTIVE DATE		DISQUALIFICATION ENDS	
CHARLES E. STUBBS						03/06/11			
L.O. NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS		
400	A	21	\$ 134.00	\$ 1787.00	\$ 0.00	\$ 1787.00	05/29/11		

1 DETERMINATION BY CLAIMS ADJUDICATOR ON CLAIM FOR BENEFITS

1 ☒ You are eligible for benefits from the above effective date.

1 ☐ You have been disqualified from receiving benefits or have been found to be ineligible for benefits for the following reason(s).

1 YOU ARE ON LAY OFF FROM YOUR MOST RECENT BONA FIDE EMPLOYER DUE TO LACK OF WORK AND NO
1 DISQUALIFICATION IS IMPOSED ON THE SEPARATION UNDER THE SOUTH CAROLINA CODE.

1 ☐ LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

1 MAILING DATE 04/29/2011

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE COMMISSION UNLESS YOU FILE AN APPEAL SETTING FORTH IN DETAIL THE GROUNDS FOR APPEAL WITHIN TEN (10) CALENDAR DAYS, INCLUDING WEEKENDS AND HOLIDAYS, FROM THE MAILING DATE SHOWN ABOVE 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 IN PERSON AT ANY EMPLOYMENT SECURITY OFFICE, OR BY MAIL, ADDRESSED TO THE "APPEAL TRIBUNAL," P.O. BOX 995, COLUMBIA, SOUTH CAROLINA 29202. FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, CONTACT YOUR LOCAL EMPLOYMENT SECURITY OFFICE

From: 9

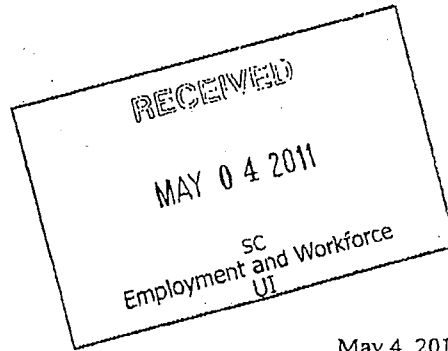
05/04/2011 15:13

#453 P.001/001



TRUEGROUP

The Really Useful Employment Group



May 4, 2011

Appeal Tribunal
PO Box 995
Columbia, SC 29202

Shelley Lanpher
JSE, LLC DBA TRUE GROUP
1410 Colonial Life Blvd. West Suite 230
Columbia, SC 29210

RE: Charles Stubbs Appeal

Charles Stubbs began working with TRUE Group on 10/28/09. His assignment with Pure Power Technologies ended on 1/2/11 due to resignation.

Please call me with any questions.

Shelley Lanpher
Payroll Administrator
JSE, LLC DBA TRUE GROUP
(803)748-8530

SCDEW

LB
MAY 06 2011

Lower Authority Appeals

SC Employment Appeal

MAY 12 2011

Received Benefits Div

1410 Colonial Life Boulevard | Suite 230 | Columbia, SC 29210 | Tel 803.748.8530 | Fax 803.748.8531 | www.TRUEgroup.biz

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 995
COLUMBIA, S.C. 29202

NOTICE TO CLAIMANT OF APPEAL FILED BY FORMER EMPLOYER

TO: CHARLES E STUBBS

A former employer JSE LLC has filed an appeal from the Claims Adjudicator's determination which held you eligible for unemployment insurance benefits without disqualification.

IF YOU ARE PAID ANY BENEFITS, AND THE APPEAL TRIBUNAL OR THE COMMISSION FINDS THAT YOU ARE NOT ELIGIBLE, YOU WILL HAVE TO REPAY THESE BENEFITS TO THE COMMISSION.

APPEAL NO. EUC-3533

S.S. NO. [REDACTED]

L.O. NO. 400

You should continue to file claims for each week of unemployment until you receive the Appeals Tribunal or Commission decision, or until you return to work or your claim is exhausted. If you win the appeal, you can only be paid for those weeks that you have claimed.

In case the appeal is set for a hearing, you, as well as the employer, will receive notice in ample time to make preparations to present your case.

If you have any questions concerning your claim, contact your local office where you filed your claim.

05/13/11
DATE

MS. J. M. ANDERSON
UI SUPERVISOR

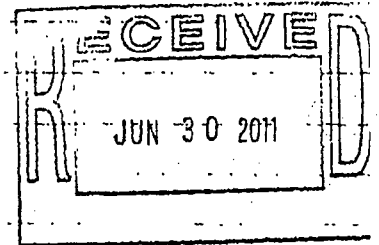
SOUTH CAROLINA
EMPLOYMENT SECURITY COMMISSION
P.O. BOX 995
COLUMBIA, S. C. 29202
OFFICIAL BUSINESS
APP-103

FORWARDING SERVICE REQUESTED

CHARLES E STUBBS
[REDACTED] [REDACTED]

Appeal # EUG3533
Decision # 2011-A-10528

Six 6/11 ✓



Appellate panel

I am appealing your decision base on the fact that I didn't quit my job. I was in a car accident had a plate in certed in my in my foot and my doctor gave me the go ahead to work if I could find a job that I could work with out being on my feet all day.

This temp job I was working required me to be on my feet a lot. When I contacted True group I was advised they didn't have a medical leave policy and to call them when I was ready to return to work. I talk to them on several occasions giving them up dates, before I was injured I was getting ready to go full time perment job with pure power technology. True group knew I didn't quit because I wanted this job which I had been working over a year. I hope you will Reconsider your decision.

Thank You
Charles Stubbs

Charles Stubbs

SC Employment Comm.

SCDEW

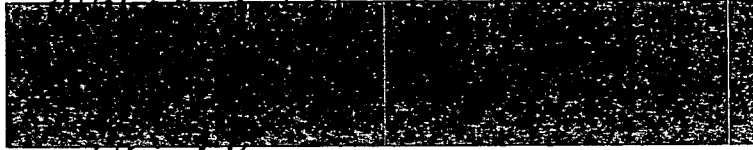
JUL 06 2011

JUL 07 2011

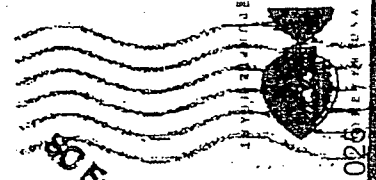
Received Benefits Div.

Lower Authority Appeals

Charles Stubbs



COLUMBIA, SC 292
29 JUN 2011 PM 37



6/29/11
SCDEW
JUL 01 2011

Lower Authority Appeals

SC Employment Comm.
JUL 06 2011
Received Benefits Div.

Appellate Panel
P.O. Box 995

COLUMBIA, SC 29202

PO Box 995
1550 Gadsden Street
Columbia, SC 29202
www.dew.sc.gov

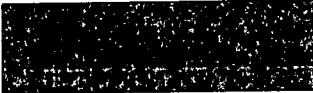


Nikki R. Haley
Governor

John L. Finan
Executive Director

August 3, 2011

Charles E. Stubb



RE: Charles E. Stubbs
SSN: [REDACTED]
Appeal No: EUC-3533-15416

Dear Mr. Stubbs:

This will acknowledge your appeal filed June 29, 2011 from Appeal Tribunal Decision Number 2011-A-10528 issued June 17, 2011.

South Carolina Code § 41-35-680 provides that an Appeal Tribunal Decision becomes final ten (10) days after the mailing thereof. We, therefore, have no alternative but to dismiss the appeal as being untimely.

You have the right to appeal this ruling to the Appellate Panel within ten (10) calendar days from the date of this letter setting forth the reasons for the untimeliness of your appeal.

Higher Authority Appeals
(803) 737-0239
(803) 737-0124

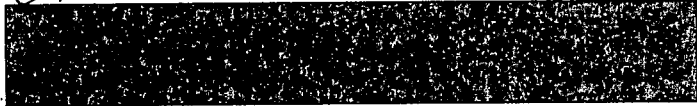
cc: Local Office - Columbia
Benefits Section - (Imaging)
File

Mailed by: adg

Dear Sirs

I Received a notice from the S.C. employment Commission stating, I owe you \$2050⁰⁰ which I Received through benefits, of which I was eligible for at the time, and receive through no fault of my own, \$134⁰⁰ a wk. my employer appeal and won. I appealed that decision and is waiting on a decision from them. I don't feel I owe that money back because I went through all the requirements including a doctors statement. I sincerely hope you reconsider your decision, There was no fraud or underhanded dealing. I don't have a job so I am not in a position to pay you back.

Charles Stubbs



\$2050⁰⁰

8-10-201

Dear Sirs.

76 I am back dating this letter to August because my original letter was missed placed. I am filing this appeal because I did nothing wrong. my contract had ended during course of time ~~while~~ while I was out injured since this was a temporary job I was not required to notify them if I was seeking another position. It was established in the hearing that they didn't have a medical leave policy. And even though I was not required to keep in contact with True group I still kept them informed of my medical situation. I advised them that I couldn't do the job I had been doing. They never offered me another position. Because this was a Temp. job, I was not bound to them and they offered me no help, I felt free to seek other type of employment where I didn't have to be on my feet all day. Since my accident, in December, I had a plate inserted in my left foot, I am a Certified (Loan Officer) I can do that job because I don't have to be on my feet all day. True group had already replace me on that job at Pure Power.

now I owe the S.C. employment
commission the \$2050⁰⁰ they
originally approve me to receive
in benefits. I followed all the
procedure in receiving these benefits.
I ask you to reconsider this
matter.

Thank you
Charles Stubbs



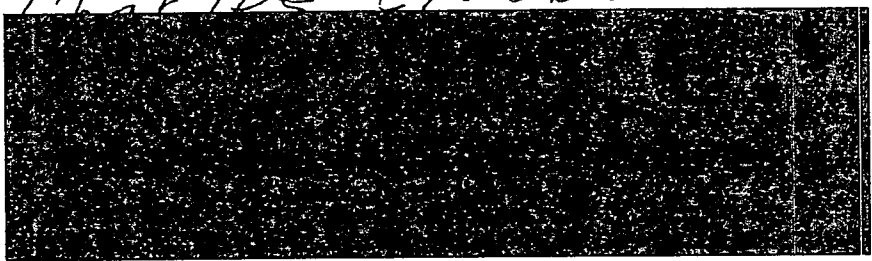
115 Connie Dr
Columbia SC 29210

SCDEW

OCT 07 2011

Assistant Executive Director
Appellate Division

Charles Stubbbs



RECEIVED

OCT 07 2011

Deputy Executive Director, JI

Appeals
P.O. Box 995
Columbia SC 29202

Charles Stubbs

SSN - [REDACTED]

Appeals NO.

EUC3533-1

Dear Higher Authority Appeals

I mail my appeals letter on June 25, 2011. I am not respon-
sible for the mail, I called several
times to check on my appeal
and the people I talked to had
no record of my appeal.
then all of a sudden you tel-
me I didn't appeal on time.
I find that real strange. Al-
though I need this money I've been
out of work since 12-16-20
First you approve my claim,
then you take it away, then
you tell me I owe over
\$2000.00 even though it was
at no fault of my own. I
want to go to work but until
then can't you penalize me for
some weeks and let me
collect my unemployment. Thank
you.

Charles Stubbs

SCDEW

OCT 07 2011

Assistant Executive Director
Appellate Division

Charles Stubbs

Appellate Panel
P.O. Box 995
Columbia SC 29202
↑



RECEIVED

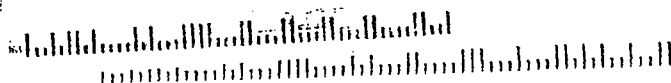
OCT 67

Deputy Executive Director, UI

Higher Appellate Appeals

STUB115 292104238 1N 13 10/05/11

P.O. Box
1350



PO Box 995
1550 Gadsden Street
Columbia, SC 29202
www.dew.sc.gov



Nikki R. Haley
Governor

Abraham J. Turner
Executive Director

P. O. Box 995
631 Hampton Street
Columbia, SC 29202

October 27, 2011

Charles E. Stubbs



RE: Charles E. Stubbs
Claimant SSN: [REDACTED]
Appeal Number: EUC-3533-16394

Dear Mr. Stubbs:

The Appellate Panel has remanded this case to the Appeal Tribunal to conduct an evidentiary hearing regarding the timeliness of your appeal dated June 29, 2011 from an Appeal Tribunal Decision mailed June 17, 2011. Once this testimony has been received, the record will be reviewed by the Panel.

Notice of the hearing will be issued in the near future and you are advised to attend.

Higher Authority Appeals
(803) 737-0239

cc: Imaging
Employer
Local Office - Columbia
File

adg

me

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

P.O. Box 995, Columbia, SC 29202

NOTICE OF HEARING BEFORE APPEAL TRIBUNAL (IN-PERSON)

CLAIMANT'S NAME: CHARLES E. STUBBS

SOCIAL SECURITY NO. [REDACTED]

ADDRESS: [REDACTED]

EMPLOYER'S NAME: NO LIABLE EMPLOYER

ADDRESS:

HEARING DATE AND TIME: 11/9/11 AT 11:30 AM EST BEFORE: Lamar H. Kelsey, III

HEARING LOCATION: SCDE&W - 701 Hampton Street (Lower Level) Columbia, SC 29201

IMPORTANT: If you have appealed and fail to appear within ten (10) minutes after the scheduled time for the hearing to begin, your appeal may be dismissed. Failure of either party to participate may result in your interest being abandoned.

REPORT TO THE RECEPTIONIST PROMPTLY

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY. Contact a representative of the Agency at (803) 737-2520, 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

☐ Voluntary Quit (for good cause)	☐ Voluntary Retirement	☒ Timeliness of Appeal
☐ Discharge (for disqualifying cause)	☐ Absence from Hearing	☐ Fraud & Overpayment
☐ Availability	☐ Overpayment	☐ Job Offer & Referral
☐ Eligibility	☐ Other	

EVIDENCE: This hearing is your only chance to testify and present evidence. Sworn testimony is required from witnesses with first-hand knowledge. Only documents, such as business records (for example: timesheets, employer's policies or handbook, warnings) can be considered and must be submitted with an original and two copies. The original will be returned. No testimony or evidence will be considered from witnesses who are not present.

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. Weeks not 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.

SMALL CHILDREN, PETS AND ELECTRONIC DEVICES ARE NOT ALLOWED IN HEARING.

MAILING DATE: 11/01/11

GENERAL INFORMATION ON THE SOUTH CAROLINA CODE IS ON THE BACK OF THIS NOTICE

Cc ☒ Claimant ☐ -Sep Emp ☒ -File ☐ -Liable 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

Lamar H. Kelsey, III, Administrative Hearing Officer

Charles E. Stubbs

) CLAIMANT

)
)
)

Claimant SSN

)
)

JSE LLC

) LIABLE EMPLOYER

C/O Venture Resources Group LLC

)
)
)

4224 Henderson Blvd.
Tampa, FL 33629

PLACE OF HEARING:

SC Dept of Employment & Workforce
700 Taylor Street
Columbia, South Carolina

DATE OF HEARING:

November 9, 2011

APPEARANCES:

For Claimant:

In Person

For Employer:

None

TESTIFYING WITNESSES

CLAIMANT:

Charles E. Stubbs

EMPLOYER WITNESSES:

None

1 Before: Lamar H. Kelsey, III, Administrative Hearing Officer

2 **HEARING OFFICER'S PREAMBLE.**

3 **ALL WITNESSES SWORN.**

4 HEARING OFFICER: Then state your name please.

5 CLAIMANT: Charles E. Stubbs.

6 HEARING OFFICER: And I have in the records of the Agency a determination
7 mailed on June 17, '11, holding the claimant indefinitely disqualified effective
8 March 6, '11. Did you receive that decision in the mail?

9 CLAIMANT: Okay, this is the one that came on the 17th, you're
10 saying?

11 HEARING OFFICER: Well, it was mailed on the 17th, [UNCLEAR].

12 CLAIMANT: Okay, okay, yeah. I...I received that and I
13 promptly put it back in the mail the next day.

14 HEARING OFFICER: Okay, when did you receive that in the mail?

15 CLAIMANT: I would have to say probably around the 20th,
16 which I checked the calendar the 17th, was on a Friday, so I probably got it that
17 Monday.

18 HEARING OFFICER: Okay.

19 CLAIMANT: And put it back in the mail that Tuesday.

20 HEARING OFFICER: Okay, you can hand that to me then. We'll note that then
21 and enter that decision of the Appeal Tribunal as Agency Exhibit Number One.
22 Then we have what appears to be an appeal letter, and it appears to have with it a

1 envelope in which the appeal letter was mailed with the postmark of June 29, 2011.
2 Is that what those two pages are? Is that your appeal letter with a copy of the
3 envelope?

4 CLAIMANT: Yes, sir, it is. I received it on July the 1st looks
5 like.

6 HEARING OFFICER: Well, do you see the postmark of the post office?

7 CLAIMANT: Yeah...

8 HEARING OFFICER: [UNCLEAR]

9 CLAIMANT: ...the 29th of June.

10 HEARING OFFICER: Yes. Is that when you mailed it?

11 CLAIMANT: No. I mailed it on...it would have been the...I
12 mailed it on...which probably would have been the 21st.

13 HEARING OFFICER: Okay, we'll note that and enter that as Agency Exhibit
14 Number Two then, the appeal letter and envelope. Would you know why the
15 postmark would be that many days later?

16 CLAIMANT: I have no idea but I would say this; I mailed some
17 more correspondence to the Work Force and, matter of fact, I had to hand carry it
18 in because they kept it for a month, didn't even deliver it. I mailed it twice to PO
19 Box 995...

20 HEARING OFFICER: Right.

21 CLAIMANT: ...Columbia, South Carolina. And I...and I...the
22 lady over at the Work Force Center, I told her, Jean. I have been talking with her
23 on the phone, and she...it just so happen that day it...it came back again because I
24 was calling about the information, and it came back. And she said, "Just bring it

1 over here, let me look at it." And...and because she had given...she said, "Perhaps
2 you didn't have the right address on here." And I told her, "PO Box 995 in
3 Columbia," and [UNCLEAR]. And I hand carried it over there, gave it to the
4 security officer over there, and she said she get it to the proper people. And that's
5 when I heard back on this then. I...I really don't know what the problem with it. I
6 had mailed...I can't remember what that letter was, I think it was asking about
7 what had happened with the appeal, I think it was. I had mailed it back in August
8 or September and it didn't come back to me until sometime late October but...but
9 the middle of October. But I...I don't know what happened with the mail on it, but
10 she said...I don't know whether she made copies of it or not. But her name
11 is...is...her name is Jean, and I always talked to her at 737-3089. And she'll tell
12 you the same thing, those letters were returned to me and I don't know why or
13 what happened with the post office. I can't say anything about what they're doing.
14 And my...my mail box, normally when I put mail in it they get it the next day.

15 HEARING OFFICER: Well, how...how did you mail this?

16 CLAIMANT: I mailed this at my house. I got a...they got a box
17 where the mailman comes, and he...you got little slots where you can...outgoing
18 mail.

19 HEARING OFFICER: Right.

20 CLAIMANT: And he...he takes it out. I...I don't know what
21 happened with that, I don't. I have no idea.

22 HEARING OFFICER: And when you say you put it in that slot...

23 CLAIMANT: I put it in that slot on the...had to be the 21st.

24 HEARING OFFICER: On June 21st?

25 CLAIMANT: Yeah, had to be because I...I would have gotten it
26 the 17th, on the Friday, the 20th, was that Monday. And I know I mailed it the next

1 day. I had to look the dates back up once they gave me the dates and that's
2 [UNCLEAR]. But why it wasn't delivered, or why? I don't know.

3 HEARING OFFICER: Do you know why the post office put the postmark date
4 of June 29, on it?

5 CLAIMANT: I have no idea. I have no idea, unless they
6 misplaced it and put when they got it, put it on there, because I...I have no idea
7 about that.

8 HEARING OFFICER: Okay. Then we have here a letter indicating that the
9 appeal was untimely. Did you receive a copy of that in the mail?

10 CLAIMANT: Okay, this came August the 3rd. I suppose so.

11 HEARING OFFICER: Okay.

12 CLAIMANT: I suppose so.

13 HEARING OFFICER: We'll note that...

14 CLAIMANT: Now, that might be what the other two letters was
15 about, in reference to that letter.

16 HEARING OFFICER: And enter that as Agency Exhibit Number Three. And
17 then that was mailed on...that letter was mailed on August 3. We have a letter
18 here from you that was mailed on...this is dated at the top, it's dated on the top
19 August 10...8/10, and it...it appears to be stamped October 7th, by the Agency.

20 CLAIMANT: Okay, I think that's the one that had been returned,
21 I believe.

22 HEARING OFFICER: Is that...what is that letter?

1 CLAIMANT: Okay. Oh, this is one that I didn't mail. I
2 had...this is the one I hand carried up there but that...that one over there, that got a
3 stamp on it...the other one right here? This...? Yeah, this is the one that I
4 responded to...to the August, and...and this is the one that I...I sent with the
5 address, and then I called the lady and she put this address on there and...and it
6 was returned also.

7 HEARING OFFICER: Okay, I'm going to enter the letter dated August 10,
8 2011, as Agency Exhibit Number Four.

9 CLAIMANT: Yeah, that was hand carried in.

10 HEARING OFFICER: And he said that was hand carried in. Now when was
11 this mailed?

12 CLAIMANT: That was the one mailed in August that I
13 responded to the...the 8...what was it, August? The turn down letter that I didn't
14 get the timeliness [UNCLEAR].

15 HEARING OFFICER: That was dated...that was dated August 3.

16 CLAIMANT: Yes, that was the one in response to that letter.

17 HEARING OFFICER: Okay.

18 CLAIMANT: Yeah, I'm...I'm pretty sure, but it was returned
19 several times...a couple times.

20 HEARING OFFICER: We'll enter that as Agency Exhibit Number Five. And
21 then we have a letter dated October 27, indicating that a hearing will be held. Did
22 you receive a copy of that?

23 CLAIMANT: Yes, sir.

1 HEARING OFFICER: Okay, and we're going to enter that as Agency Exhibit
2 Number Six. Then when do you say you appealed the...the decision that was
3 mailed on June 17?

4 CLAIMANT: I...I returned it on about June the 21st.

5 HEARING OFFICER: And you say you put this letter in an envelope?

6 CLAIMANT: In...In my box at...at...it's not a US postal box,
7 it's a box...I guess it is. Well, I guess it is because it's a...it's a box that's used by
8 the apartment complex...

9 HEARING OFFICER: Right.

10 CLAIMANT: ...for delivering or...or...or picking up mail.

11 HEARING OFFICER: And you say you put this letter in an envelope in that on
12 June 21st?

13 CLAIMANT: Yes, sir.

14 HEARING OFFICER: Is that correct?

15 CLAIMANT: Yes, sir. Or to my knowledge, yes.

16 HEARING OFFICER: And you don't know why the postmark is June 29?

17 CLAIMANT: I have no idea.

18 HEARING OFFICER: Did you wait till June 29, to put it in the box?

19 CLAIMANT: No. No, sir.

20 HEARING OFFICER: You put it in there before then?

1 CLAIMANT: I put it in on the 21st.

2 HEARING OFFICER: Okay. Then on that issue do you have anything else you
3 would like say?

4 CLAIMANT: I don't know what happened with the letter.
5 I...I...I tried to mail it back in a timely fashion because that's what the letter told
6 me was required, that I had to have it back in within a ten day period.

7 HEARING OFFICER: Right.

8 CLAIMANT: And I'm thinking it's from the 17th until the 27th.

9 HEARING OFFICER: That's right.

10 CLAIMANT: That's what I'm thinking, from the day it was
11 mailed until that day [UNCLEAR]. So I put it back in the mail and I was assuming
12 it gone, and I don't know what happened.

13 HEARING OFFICER: Did you see it after you put it in the...in the box?

14 CLAIMANT: No. When you put it in the box, it's...it's a slot
15 like this, small letter slot. Once you slide it in...

16 HEARING OFFICER: Did it come back to you in any...any way?

17 CLAIMANT: No. Not that I recall, no.

18 HEARING OFFICER: Okay.

19 CLAIMANT: Not that I recall, sir.

20 HEARING OFFICER: Then before I close the hearing, do you have anything
21 else?

1 CLAIMANT: No. I just hope I can, you know, take this into
2 consideration...you taking into consideration that the mail might have made a
3 mistake. I...I don't know. And but at the same time I...I'd certainly like to have a
4 chance to get my case in. But, you know, that's all...that's not...it's out of my
5 hands. I'm just coming to give you...tell you what happened from my point of
6 view, from my side, my vantage point. And I guess whatever you decide I got to
7 live with.

8 HEARING OFFICER: Okay.

9 CLAIMANT: But...but, guess that's it, sir. I...I can't...I
10 can't...I can't fight this because I don't know how...I don't know how to...what I
11 can say to...to make it sound anyway [UNCLEAR] with the mail because, you
12 know, the mail is an entity in itself and I can't...I have no control over it in any
13 kind of way.

14 HEARING OFFICER: Okay. Then hearing no further testimony I declare the
15 hearing closed.

16 **HEARING CLOSED.**

STATE OF NEW JERSEY)

COUNTY OF: MIDDLESEX)

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

Lois Szirko

SWORN to before me this the

10th day of January, 2012

Mary Farley (LS)

Mary Farley
Notary Public
New Jersey
My Commission Expires 11/05/2012

Appeal No: ELIC-3533

overpayment
DECISION NO: 2011-A-10528

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

DECISION OF APPEAL TRIBUNAL

Hearing Date: June 14, 2011

CHARLES F. STUBBS

lyr c2 line 7
disq 3/6/11

CLAIMANT

ENTERED
6/21/11
DATA
Initials

ISE LLC
C/O VENTURE RESOURCES GROUP LLC
4224 HENDERSON BLVD
TAMPA, FL 33629

EMPLOYER

APPELLANT: Employer

SS NO:

lyr - c2 line 1
disq 5/30/11

02 TU
009100

505101

APPEARANCES

FOR THE CLAIMANT: Present 01 TU
009100

FOR THE EMPLOYER: One Witness

FINDINGS OF FACT

The issue in this case is whether the claimant voluntarily quit employment with good cause.

The employer appealed the determination mailed April 29, 2011; which held the claimant eligible to receive benefits effective March 6, 2011, upon a finding the claimant voluntarily quit employment with good cause.

The claimant worked from October 28, 2009, to January 2, 2011, with the subject employer, a staffing business, most recently as an assembler. He advised the employer he would not continue in his position with a client.

The claimant advised the employer he would undergo surgery after he was involved in a car accident on December 18, 2010. The claimant underwent surgery for his foot and remained under a doctor's care with restrictions from prolonged standing until May of 2011. He did not request a medical leave of absence with subject employer because it was not available. The employer advised the claimant to

inform management when he was available for additional work. The claimant did not make himself available for assignments with subject employer prior to filing a claim for benefits.

REASONS

South Carolina Code provides in §41-35-120(1) for an indefinite disqualification of benefits if a claimant is found to have voluntarily left the most recent bona fide employment without good cause attributable to employment. The disqualification continues until the claimant returns to work and earns at least eight times the weekly benefit amount in covered employment.

"Good Cause" for quitting within the meaning of the law refers to a substantial, material change in the terms or conditions of employment, or any circumstances that would cause a reasonable and prudent person to become totally unemployed rather than continue working.

The claimant voluntarily quit his position with subject employer due to health related reasons. Although the Agency is not unsympathetic to the claimant's circumstances, the employer did not alter the claimant's condition of hire. Furthermore, the claimant filed a claim for benefits prior to making himself available for additional work with subject employer. Therefore, the Tribunal finds that the reason the claimant voluntarily quit without good cause. Such being the case, a disqualification must be imposed.

DECISION

The Tribunal hereby holds the claimant disqualified from receiving benefits effective March 6, 2011, until requalification, upon a finding the claimant voluntarily quit employment without good cause. This decision reverses the determination mailed April 29, 2011, and may result in an overpayment in benefits to the claimant.

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 at the local Workforce Center, or by mail, addressed to "Appellate Panel," Post Office Box 995, Columbia, South Carolina 29202. For additional information or assistance in filing an appeal, contact your local Workforce Center.

V. Joan Marshall

V. Joan Marshall
Administrative Hearing Officer

VJM:nb
Decision Mailed: 06/17/11
Date of the above Date By: *RNB*

Appeal # EUG3533
Decision # 2011-A-10528

Six 6/7/11 ✓

RECEIVED
JUN 30 2011

Appellate panel

I am appealing your decision base on the fact that I didn't quit my job. I was in a car accident had a plate inserted in my foot and my doctor gave me the go ahead to work if I could find a job that I could work with out being on my feet all day.

This temp job I was working required me to be on my feet a lot. When I contacted True group I was advised they didn't have a medical leave policy and to call them when I was ready to return to work. I talk to them on several occasions giving them up dates, before I was injured I was getting ready to go full time permanent job with pure power technology. True group knew I didn't quit because I wanted this job which I had been working over a year. I hope you will Reconsider your decision.

Thank You
Charles Stubbs

Chris Stubbs

Sec. Employment Comm.

SCDEW

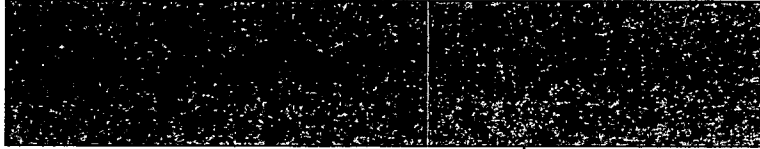
JUL 06 2011

JUL 07 2011

Received Benefits Div.

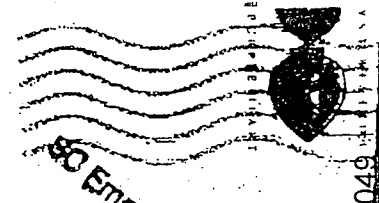
Lower Authority Appeals

Charles Stubbs



COLUMBIA, SC 292

29 JUN 2011 PM 37



SC Employment Comm.

JUL 06 2011

Received Benefits Div.

6/29/11
SCDEW

JUL 01 2011
Lower Authority Appeals

Appellate Panel

P.O. Box 995

~~2623246483~~ Columbia, SC 29302

PO Box 995
1550 Gadsden Street
Columbia, SC 29202
www.dew.sc.gov



Nikki R. Haley
Governor

John L. Finan
Executive Director

August 3, 2011

Charles E. Stubb
[REDACTED]

RE: Charles E. Stubbs
SSN: [REDACTED]
Appeal No: EUC-3533-15416

Dear Mr. Stubbs:

This will acknowledge your appeal filed June 29, 2011 from Appeal Tribunal Decision Number 2011-A-10528 issued June 17, 2011.

South Carolina Code § 41-35-680 provides that an Appeal Tribunal Decision becomes final ten (10) days after the mailing thereof. We, therefore, have no alternative but to dismiss the appeal as being untimely.

You have the right to appeal this ruling to the Appellate Panel within ten (10) calendar days from the date of this letter setting forth the reasons for the untimeliness of your appeal.

Higher Authority Appeals
(803) 737-0239
(803) 737-0124

cc: Local Office - Columbia
Benefits Section - (Imaging)
File

Mailed by: adg

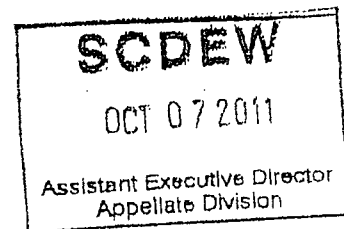
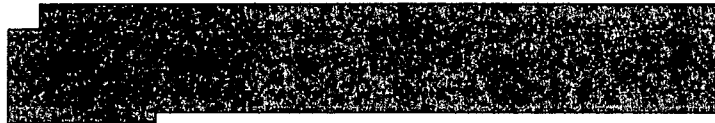
8-10-201

Dear Sirs.

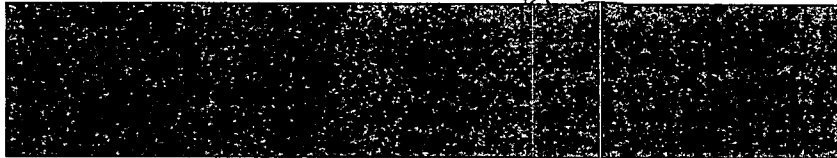
I am back dating this letter to August because my original letter was missed placed. I am filing this appeal because I did nothing wrong. my contract had ended during course of time ~~but~~ while ~~I was~~ I was out injured since this was a temporary job I was not required to notify them if I was seeking another position. It was established in the hearing that they didn't have a medical leave policy. And even though I was not required to keep in contact with True group I still kept them informed of my medical situation. I advised them that I couldn't do the job I had been doing they never offered me another position. Because this was a Temp. job, I was not bound to them and they offered me no help, I felt free to seek other type of employment where I didn't have to be on my feet all day. Since my accident in December, I had a plate inserted in my left foot, I am a Certified (Loan Officer) I can do that job because I don't have to be on my feet all day. True group has already replaced me on that job at Pure Power.

now I owe the S.C. employe
commission the \$2050⁰⁰ they
originally approve me to receive
in benifits. I followed all the
procedure in receiving these benifit.
I ask you to reconsider this
matter.

Thank you
Charles Stubbs



Charles Stubbs



RECEIVED

OCT 07 2011

Deputy Executive Director, JJ

Appeals

P.O. Box 995

Columbia SC 29202

Charles Stubbs

SSN - [REDACTED]

Appeals NO.

EUC3533-154

Dear Higher Authority Appeals

I mail my appeals letter on June 25, 2011. I am not respons for the mail, I called several times to check on my appeal and the people I talked to had no record of my appeal. then all of a sudden you tell me I didn't appeal on time, I find that real strange. All I need this money I've been out of work since 12-16-20. First you approve my claim, then you take it away, then you tell me I owe over \$2000.00 even though it was at no fault of my own. I want to go to work but unt then can't you penalize me for some weeks and let me collect my unemployment. Thank you.

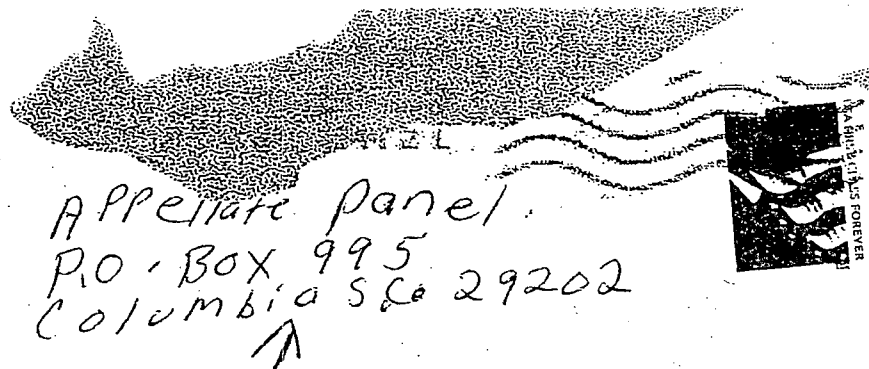
Chur E Stubbs

SCDEW

OCT 07 2011

Assistant Executive Director
Appellate Division

Charles Stubbs



Appellate panel
P.O. Box 995
Columbia SC 29202
↑

RECEIVED

OCT 6 2011

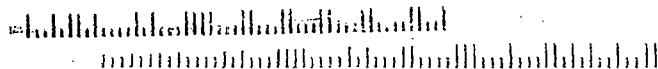
Deputy Executive Director, UI

Higher Appellate Appeals

STUB115 292104238 1N 13 10/05/11

P.O. Box
1350

29202-1350
Columbia SC



PO Box 995
1550 Gadsden Street
Columbia, SC 29202
www.dew.sc.gov



Nikki R. Haley
Governor

Abraham J. Turner
Executive Director

P. O. Box 995
631 Hampton Street
Columbia, SC 29202

October 27, 2011

Charles E. Stubbs
[REDACTED]

RE: Charles E. Stubbs
Claimant SSN: [REDACTED]
Appeal Number: EUC-3533-16394

Dear Mr. Stubbs:

The Appellate Panel has remanded this case to the Appeal Tribunal to conduct an evidentiary hearing regarding the timeliness of your appeal dated June 29, 2011 from an Appeal Tribunal Decision mailed June 17, 2011. Once this testimony has been received, the record will be reviewed by the Panel.

Notice of the hearing will be issued in the near future and you are advised to attend.

Higher Authority Appeals
(803) 737-0239

cc: Imaging
Employer
Local Office – Columbia
File

adg

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 995, COLUMBIA, S.C. 29202

1 JSE LLC
1 C/O VENTURE RESOURCES GROUP LLC
1 4224 HENDERSON BLVD
1
1
1 TAMPA FL 33629

DATE OF THIS NOTICE 04/28/11

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION ENDS	
CHARLES E STUBBS				[REDACTED]	03/06/11		
L.O. NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS
400	A	21	\$ 134.00	\$ 1787.00	\$ 0.00	\$ 1787.00	05/29/11

1
DETERMINATION BY CLAIMS ADJUDICATOR ON CLAIM FOR BENEFITS

- 1 ☒ You are eligible for benefits from the above effective date.
- 1 ☐ You have been disqualified from receiving benefits or have been found to be ineligible for benefits for the following reason(s).

1 YOU ARE ON LAY OFF FROM YOUR MOST RECENT BONA FIDE EMPLOYER DUE TO LACK OF WORK AND NO
1 DISQUALIFICATION IS IMPOSED ON THE SEPARATION UNDER THE SOUTH CAROLINA CODE.

EXHIBIT

A#: 1, 10

FILE NO: EUC-3533

1 ☐ LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

1 MAILING DATE 04/29/2011

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE COMMISSION UNLESS YOU FILE AN APPEAL SETTING FORTH IN DETAIL THE GROUNDS FOR APPEAL WITHIN TEN (10) CALENDAR DAYS, INCLUDING WEEKENDS AND HOLIDAYS, FROM THE MAILING DATE SHOWN ABOVE. 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 IN PERSON AT ANY EMPLOYMENT SECURITY OFFICE, OR BY MAIL, ADDRESSED TO THE "APPEAL TRIBUNAL," P.O. BOX 995, COLUMBIA, SOUTH CAROLINA 29202. FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, CONTACT YOUR LOCAL EMPLOYMENT SECURITY OFFICE.

STATE OF SOUTH CAROLINA)
)
Charles E Stubbs,)
)
Petitioner,)
)
vs)
)
South Carolina Department of Employment)
And Workforce and JSE LLC,)
)
Respondents)

IN THE ADMINISTRATIVE LAW
COURT

DEC 21 2011

CASE NO. _____

**PETITION FOR JUDICIAL REVIEW
OF THE FINAL DECISION OF THE
SOUTH CAROLINA DEPARTMENT
OF EMPLOYMENT AND WORKFORCE**

Now comes the Petitioner, complaining of the Respondents herein, and respectfully shows this Court that

1 This is an action for judicial review of the Final Decision of the South Carolina Department of Employment and Workforce is brought pursuant to S C Code Ann §§ 1-23-380 and 41-35-750

2 Respondent South Carolina Department of Employment and Workforce (hereinafter "Respondent SCDEW") is an administrative agency of the State of South Carolina as defined in S C Code Ann § 1-23-310(1) and is authorized by § 41-35-710 to hear and decide appeals of awards or denials of unemployment benefits

3 Respondent JSE LLC is the liable employer for unemployment benefits

4 Respondent SCDEW issued an Appellate Panel Decision on November 29, 2011 finding untimely Petitioner's previous appeal to the Appellate Panel of an Appeal Tribunal decision disqualifying him from benefits

5 Petitioner has exhausted all administrative remedies available to him within Respondent SCDEW's appeals process

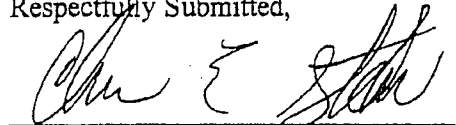
6 Respondent SCDEW committed serious errors in holding Petitioner's appeal untimely

7 The uncontradicted evidence of record is that Petitioner placed his appeal in the mail within the ten-day timeframe of S C Code Ann § 41-35-680, and that, through no fault of his own, the appeal was delayed in its transmission to Respondent SCDEW

8 Respondent SCDEW's decision is therefore made upon unlawful procedure, affected by error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, and arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion

WHEREFORE, Petitioner prays that this Court pursuant to S C Code Ann §§ 1-23-380 and 41-35-750, reverse Respondent SCDEW's decision and find Petitioner's appeal timely

Respectfully Submitted,



Charles E Stubbs
Petitioner



(803) 551-2310

December 21, 2011

Columbia, SC

Appeal No. EUC-3533-16394

Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF

Charles E Stubbs

Claimant SSN

DECISION

JSE, LLC

c/o Venture Resources Group, LLC

4224 Henderson Boulevard

Tampa, FL 33629

Liabe Employer

Appellant Claimant

The claimant appealed Appeal Tribunal Decision 2011-A-10528 to the Appellate Panel. The Tribunal held the claimant indefinitely disqualified from benefits upon finding he voluntarily quit without good cause. This decision reversed the claims adjudicator's determination, which held the claimant eligible for benefits upon finding he was discharged without cause.

The claimant's appeal to the Appellate Panel was dismissed as untimely. The claimant appealed the dismissal of the case, requesting that the appeal be accepted and the case reconsidered. 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

The claimant's appeal to the Appellate Panel is dismissed as untimely, and Appeal Tribunal Decision 2011-A-10528 is final.

The Department mailed Appeal Tribunal Decision 2011-A-10528 to the claimant's address of record on June 17, 2011. The decision contained instructions for filing an appeal and a clear and specific notice that it would be final unless appealed within ten (10) days from its mailing date. The claimant received the decision June 20, 2011. He appealed by letter postmarked June 29, 2011. The appeal period expired June 27, 2011. The claimant asserted he put the appeal letter in the outgoing mail slot at his apartment

Decision No 2011-P-2780

Appeal No EUC-3533-16394

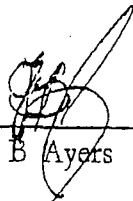
complex on June 21, 2011, and assumed it was sent out timely. He had no explanation for the postmark date on his appeal.

Under Public Law 110-252, Emergency Unemployment Compensation is payable to an individual who has exhausted benefit rights for regular compensation with respect to a benefit year that ended on or after May 1, 2007. The individual must have received all regular compensation payable or had his/her rights to regular compensation terminated by reason of expiration of the applicable benefit year. EUC08 is administered through voluntary agreements between states and the US Department of Labor. Continuing eligibility is determined under the requirements of the state law.

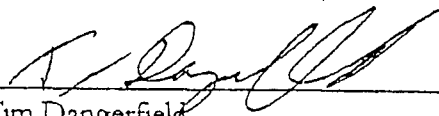
S.C. Code Ann. § 41-35-680 requires that an Appeal Tribunal decision is final unless the decision is appealed to the Appellate Panel within ten (10) days of the decision's mailing date.

The Department properly mailed the Appeal Tribunal decision to the claimant's address of record, and the claimant received it in time to file a timely appeal. Although the claimant asserts he mailed the appeal June 21, 2011, it was not postmarked until June 29, 2011, which was eight (8) days later. The claimant was aware he was mailing a time-sensitive document, and it was his responsibility to ensure that the appeal was timely filed. The claimant filed an untimely appeal due to his own error or neglect. 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**

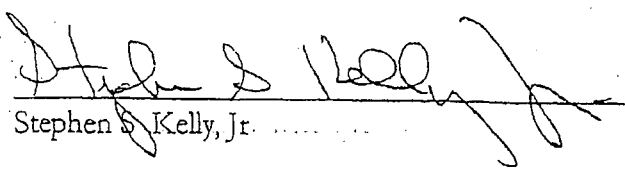


E. B. Ayers



Tim Dangerfield

Review Date 11/29/11
Date Mailed 11/29/11
Mailed By MRT



Stephen S. Kelly, Jr.

STATE OF SOUTH CAROLINA

Charles E Stubbs,

Petitioner,

vs

South Carolina Department of Employment
And Workforce and JSE LLC,

Respondents

IN THE ADMINISTRATIVE LAW
COURT

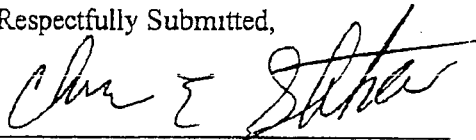
CASE NO

CERTIFICATE OF SERVICE

I certify that I am Petitioner in this action and that I have served the Petition for Judicial Review on South Carolina Department of Employment and Workforce and JSE LLC by hand-delivery on December 21, 2011 to the following address

Legal Dept
S C D E W
631 Hampton St
Columbia, SC 29201

Respectfully Submitted,



Charles E Stubbs
Petitioner
115 Connie Drive
Columbia, SC 29210
(803) 551-2310

December 21, 2011

Columbia, South Carolina



**South Carolina
Legal Services**

Balancing the Scales of Justice

Jack E. Cohoon, (803) 744-4166

2109 Bull Street, P.O. Box 1445, Columbia, South Carolina 29201

Phone: (803) 799-9668 Fax: (803) 799-1781

www.sclegal.org | www.lawhelp.org/sc | www.probono.net/sc

JUN 15 2012

June 14, 2012

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

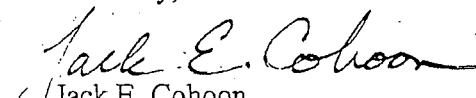
Re: Charles E. Stubbs v. South Carolina Department of Employment and Workforce and JSE,
LLC; Case No.: 11-ALJ-22-0654-AP
Our File No.: 12-0595095

Dear Ms. Gee:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

- (1) Proof of Service of the notice of appeal on the Respondents;
- (2) A copy of the Orders which are to be challenged on appeal; and
- (3) A Certificate and Motion to Proceed *In Forma Pauperis*.

Sincerely,


Jack E. Cohoon
Lead Employment Law Attorney

Enclosures

Cc: Brenda Gorski
Legal Department
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia, South Carolina 29202

JSE, LLC
1410 Colonial Blvd. West
Suite 230
Columbia, South Carolina 29210



South Carolina
BAR FOUNDATION
Lawyers Serving the People



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-22-0654-AP

Charles E. Stubbs,

Appellant,

v.

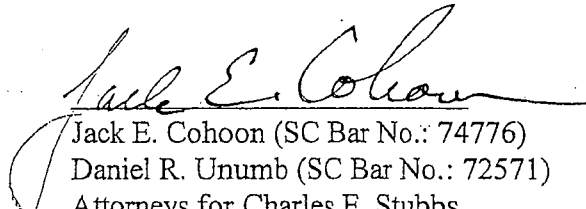
South Carolina Department of
Employment and Workforce
and JSE, LLC,

Respondents.

NOTICE OF APPEAL

Charles E. Stubbs appeals the Order Denying Motion for Rehearing dated May 15, 2012 of the Honorable John D. McLeod, the Order dated March 26, 2012 of the Honorable John D. McLeod, and all other Orders.

June 7, 2012


Jack E. Cohoon (SC Bar No.: 74776)
Daniel R. Unumb (SC Bar No.: 72571)
Attorneys for Charles E. Stubbs
South Carolina Legal Services
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4166/Fax: (803) 799-1781
jackcohoon@sclegal.org

Other Counsel of Record:

Brenda Gorski, Esq.
Legal Department
Department of Employment and Workforce
P.O. Box 8597
Columbia, South Carolina 29202

Pro Se:
JSE LLC
1410 Colonial Blvd. West
Suite 230
Columbia, South Carolina 29210

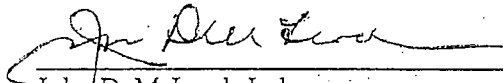
Properties, Inc., v. Jones, 292 S.C. 198, 355 S.E.2d 535 (S.C. 1987). In this case, the Petitioner's actions did not constitute timely or proper serve of his Notice of Appeal upon the Department.

The requirement of timely service of a Notice of Appeal is jurisdictional. If a party misses a deadline, the court, or Appellate Panel, has no authority to extend or ignore the deadline for service. *Elam v. S.C. Dept of Transportation*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004). The Panel lacked jurisdiction to hear, and correctly dismissed, the appeal.

IT IS HEREBY ORDERED that Appellate Panel Decision No. 2011-P-2780 is **AFFIRMED**.

AND IT IS SO ORDERED.

March 26, 2012
Columbia, SC



John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

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

This 26 day of March, 2012

By: Anthony R. Halderman
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles E. Stubbs,

Appellant

vs.

South Carolina Department of Employment
and Workforce and JSE, LLC,

Respondents.

Docket No. 11-ALJ-22-0654-AP

ORDER DENYING MOTION FOR
REHEARING

The captioned docket is before this Court in its appellate capacity.

The Court has issued a final decision affirming the decision initially appealed from and Appellant has filed a Motion for Reconsideration specifically stating that the Motion is under SCALC Rule 29(D) and SCRCP Rule 59. These rules apply in contested cases, not in appeals.

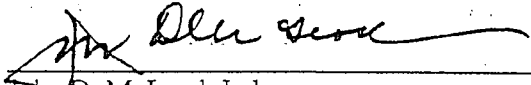
The applicable rule is SCALC 40, which permits a Motion for Rehearing in an appellate matter in the discretion of the Court.

In this instance, the Court will treat Appellant's motion as one for Rehearing.

Having considered the Record, the Court has determined that the Motion for Reconsideration (Rehearing) should be, and hereby is, **DENIED**.

AND IT IS SO ORDERED.

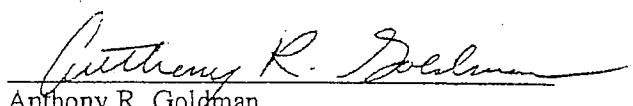
May 15, 2011
Columbia, SC


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

May 15, 2011
Columbia, SC


Anthony R. Goldman
Judicial Law Clerk

FILED

MAY 15 2012

SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-22-0654-AP

Charles E. Stubbs,

Appellant,

v.

South Carolina Department of
Employment and Workforce
and JSE, LLC,

Respondents.

**CERTIFICATE AND
MOTION TO PROCEED *IN FORMA PAUPERIS***

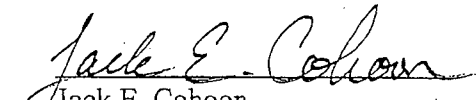
The Appellant, Charles E. Stubbs, by and through his undersigned counsel, would show that he is indigent and qualifies for assistance through South Carolina Legal Services pursuant to Rule 3(b)(2), S.C.R.C.P. Moreover, the imposition of a filing fee is prohibited by S.C. Code § 41-39-30, which states, in relevant part, that "an individual claiming benefits may not be charged a fee in a proceeding under Chapters 27 through 41 of this title...by a court or an officer, except an attorney, of it."

The Appellant respectfully requests that this appeal be filed without cost to him.

June 7, 2012

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES


Jack E. Cohoon
Attorney for Charles E. Stubbs
2109 Bull Street

Columbia, South Carolina 29201

Office: (803) 744-4166

Fax: (803) 799-1781

jackcohoon@sclegal.org

SC Bar No.: 74776

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-22-0654-AP

Charles E. Stubbs,

Appellant,

v.

South Carolina Department of
Employment and Workforce
and JSE, LLC,

Respondents.

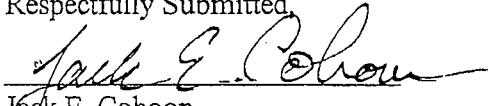
PROOF OF SERVICE

I certify that I have served the Notice of Appeal and In Forma Pauperis Certification on Respondents S.C. Department of Employment and Workforce and JSE, LLC by depositing copy of them in the United States mail, postage prepaid, on June 14, 2012, addressed to their counsel or designated representative as follows:

Brenda Gorski, Esq.
Legal Department
S.C.D.E.W.
P.O. Box 8597
Columbia, SC 29202

JSE, LLC
1410 Colonial Blvd West
Suite 230
Columbia, SC 29210

Respectfully Submitted,


Jack E. Cohoon
Attorney for Charles E. Stubbs
South Carolina Legal Services
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4166
Fax: (803) 799-1781
jackcohoon@sclegal.org

[REDACTED]
SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

Post Office Box 1752
Columbia, South Carolina 29202

NOTICE OF HEARING BEFORE THE APPELLATE PANEL

DATE July 24, 2014

CLAIMANT

SSN [REDACTED]
APPEAL NO 141144

CHARLES E. STUBBS
[REDACTED]

LIABLE EMPLOYER

JSE, LLC
C/O THERESA RHODES
5000 THURMOND MALL, STE 114
COLUMBIA, SC 29201-2391

SEPARATING EMPLOYER

A hearing has been scheduled in this matter for 11 30 a.m. Tuesday, August 5, 2014. All hearings are held in Columbia, South Carolina at this location

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

C LEM HARPER, CENTRAL OFFICE ANNEX BUILDING

631 HAMPTON STREET, ROOM 350, COLUMBIA, SC

(The three story reflective green building on the corner of Wayne and Hampton Streets The entrance is on Wayne Street)

NO CELL PHONES OR SMALL CHILDREN
ARE PERMITTED IN THE HEARING ROOM

The Appellate Panel is a Board of Review, and hearings are limited to the record developed by the Administrative Hearing Officer. As such, **no new evidence is admissible**. Parties may appear in person or be represented by counsel. Parties may also submit written arguments. Fees charged by claimants' attorneys are statutorily limited to the greater of \$200.00 or the claimant's weekly benefit amount per appearance.

SPECIAL NOTE. The Appellate Panel can make its own factual findings and may reverse, affirm or modify the decision on appeal. **Be advised that this may result in an increase or a decrease of the disqualification.**

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY. Contact a representative of the Department at 803-737-0239 **AT ONCE** if you cannot be present at the time scheduled and wish to request a postponement of the hearing.

Higher Authority Appeals
(803) 737-0239
(803) 737-3166 FAX

CC. Claimant
Claimant Attorney Jack Cohoon Esquire
Liable Employer
Separating Employer
Employer Attorney
Imaging
File

Revised 4/30/13

[REDACTED]

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

NOTICE OF POSTPONEMENT OF APPELLATE PANEL HEARING

August 4, 2014

Appeal Number: EUC-3533-141144

SS#: [REDACTED]

Claimant's Name: Charles E Stubbs

Address: [REDACTED]

Employer's Name: JSE, LLC
c/o Theresa Rhodes
5000 Thurmond Mall, Suite 114
Columbia, SC 29201

Appellant: Claimant

You are notified that the hearing on the above claim scheduled for **August 5, 2014, at 11.30 a.m.** has been postponed. The new hearing date and time will be mailed to you at a later date.

REASON FOR POSTPONEMENT: Claimant's Attorney Conflict

Higher Authority Appeals
(803) 737-0239

cc Employer
Claimant's attorney Jack Cohoon, Esquire
Imaging
File

Mailed by bcs

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

Post Office Box 1752
Columbia, South Carolina 29202

NOTICE OF HEARING BEFORE THE APPELLATE PANEL

DATE August 13, 2014

CLAIMANT

SSN [REDACTED]

APPEAL NO EUC-3533-141144

CHARLES E STUBBS
[REDACTED]

LIABLE EMPLOYER

SEPARATING EMPLOYER

JSE, LLC
C/O THERESA RHODES
5000 THURMOND MALL, STE 114
COLUMBIA SC 29201-2391

A hearing has been scheduled in this matter for 9 30 a m Wednesday, August 27, 2014 All hearings are held in
Columbia, South Carolina at this location

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

C LEM HARPER, CENTRAL OFFICE ANNEX BUILDING

631 HAMPTON STREET, ROOM 350, COLUMBIA, SC

**(The three story reflective green building on the corner of Wayne and
Hampton Streets The entrance is on Wayne Street)**

**NO CELL PHONES OR SMALL CHILDREN
ARE PERMITTED IN THE HEARING ROOM**

The Appellate Panel is a Board of Review, and hearings are limited to the record developed by the Administrative Hearing Officer. As such, **no new evidence is admissible**. Parties may appear in person or be represented by counsel. Parties may also submit written arguments. Fees charged by claimants' attorneys are statutorily limited to the greater of \$200.00 or the claimant's weekly benefit amount per appearance.

SPECIAL NOTE The Appellate Panel can make its own factual findings and may reverse, affirm or modify the decision on appeal. **Be advised that this may result in an increase or a decrease of the disqualification.**

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY Contact a representative of the Department at 803-737-0239 **AT ONCE** if you cannot be present at the time scheduled and wish to request a postponement of the hearing.

Higher Authority Appeals
(803) 737-0239
(803) 737-3166 FAX

(C) Claimant
Claimant Attorney Jack Cochran, Esquire
Liabic Employer
Separating Employer
Employer Attorney
Imaging
File

Revised 4/30/13

APPELLATE PANEL
OF THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE

SCDEW Appeal No.: 141144
ALC Docket No. 11-ALJ-22-0654-AP

CHARLES E. STUBBS,

Appellant,

vs.

SOUTH CAROLINA
DEPARTMENT OF
EMPLOYMENT AND
WORKFORCE AND JSE
LLC,

Respondents.

BRIEF OF APPELLANT ON REMAND

August 27, 2014

S.C. LEGAL SERVICES

Jack E. Cohoon (S.C. Bar No. 74776)
Kirby Rakes Mitchell (S.C. Bar No. 11640)
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4166
Fax: (803) 799-1781
jackcohoon@sclegal.org

ATTORNEYS FOR CLAIMANT

STATEMENT OF THE CASE

Procedural History

The Appellate Panel of the South Carolina Department of Employment and Workforce is hearing this case on remand from South Carolina Court of Appeals and the Administrative Law Court.

Claimant Charles E. Stubbs worked for Respondent JSE LLC, a staffing business, from October 28, 2009 to January 2, 2011 as an assembler. ROA at 31 to 32. Stubbs applied for unemployment benefits and was found eligible without disqualification. ROA at 42. The Employer appealed the decision and the Department set a hearing before its Appeal Tribunal. The hearing was held on June 14, 2011, and both Stubbs and the Employer participated. Stubbs was unrepresented at the hearing. The Appeal Tribunal found that Stubbs had injured his foot in a car accident on December 18, 2010 and that he had undergone surgery and remained under a doctor's care with restrictions from prolonged standing until May 2011. The employer offered no medical leave and provided him with no other assignments that would accommodate his doctor's restrictions. The Appeal Tribunal concluded that Stubbs was completely disqualified from receiving benefits because he voluntarily quit his position with the Employer due to health-related reasons:

Although the Agency is not unsympathetic to the claimant's circumstances, the employer did not alter the claimant's condition of hire. Furthermore, the claimant filed a claim for benefits prior to making himself available for addition [*sic*] work with subject employer. Therefore, the Tribunal finds that the reason the claimant voluntarily quit without good cause. [*sic*] ROA at 8.

The Appeal Tribunal committed an error of law by failing to consider the applicability of S.C. Code Ann. § 41-35-125(d), which provides that workers who are separated from employment due to "compelling family circumstances" are eligible for benefits. "Compelling family circumstances" includes separation from employment "because of the illness or disability of the

claimant and, based upon available information, the department finds that it was medically necessary for the claimant to stop working or change occupations.”

Representing himself, Stubbs appealed this decision to the Department’s Appellate Panel. ROA at 9. The appeal was dismissed as untimely by letter of the Department’s Higher Authority Appeals office. ROA at 11. Stubbs appealed this dismissal to the Appellate Panel. ROA at 12 to 16. The Appellate Panel remanded the case to the Appeal Tribunal for a hearing on the timeliness of Stubbs’ appeal, which was held on November 9, 2011. ROA at 17. A hearing on the issue of timeliness was conducted before the Department’s Appeal Tribunal on November 9, 2011. Based upon the testimony and evidence developed at that hearing, the Appellate Panel issued a decision the timeliness of Stubbs’ appeal on November 29, 2011. The Appellate Panel found that the Department mailed its decision to Stubbs’ address of record on June 17, that Stubbs received the decision on June 20, 2011, and that the appeal period expired on June 27. It acknowledged that Stubbs asserted he placed his appeal letter in the outgoing mail slot at his apartment complex on June 21, 2011 and that he assumed it was sent out timely. The Appellate Panel omitted any finding about Stubbs’ credibility but simply concluded that “[t]he claimant was aware he was mailing a time-sensitive document, and it was his responsibility to ensure that the appeal was timely filed. The claimant filed an untimely appeal due to his own error or neglect. Therefore the appeal is dismissed as untimely.” ROA at 44. The Appellate Panel’s decision was the final agency decision.

Stubbs appealed this final agency decision to the South Carolina Administrative Law Court (ALC). On March 26, 2012, Administrative Law Judge John D. McLeod issued an Order finding the appeal untimely based upon a finding that Stubbs did not deposit the appeal in a postal box. Stubbs moved for reconsideration based upon errors of law and moved for the ALC

to take judicial notice that his mail box is indeed a United States postal box. The ALC denied this motion on May 15, 2012.

Stubbs appealed to the South Carolina Court of Appeals. In a reported March 5, 2014 decision attached as Appendix One, the Court vacated the ALC's order upon a finding that the ALC had made an improper finding of fact—that Stubbs' mailbox was not a U.S. postal box—which violated the ALC's standard of review. The Court remanded the appeal back to the ALC.

In an April 15, 2014 Order, attached as Appendix Two, the ALC found the Appellate Panel's previous decision not sufficiently detailed to enable the ALC to determine whether the findings are supported by the evidence and whether the law has been correctly applied to those findings and therefore remanded the case to the Appellate Panel.

The Evidence Presented

The facts regarding the timeliness of Stubbs' appeal were developed at a hearing before the Appeal Tribunal on November 9, 2011. The Department asserts that the Appeal Tribunal decision at issue was mailed to Stubbs on June 17, 2011. Stubbs testified that he received the June 17, 2011 decision on Monday, June 20, ROA at 22, lines 15 to 17, and that he mailed his appeal on June 21, ROA 23, lines 11 to 12. His testimony regarding these events is clear:

HEARING OFFICER: Okay, when did you receive that in the mail?

CLAIMANT: I would have to say probably around the 20th, which I checked the calendar the 17th, was a Friday, so I probably got it that Monday.

HEARING OFFICER: Okay.

CLAIMANT: And put it back in the mail that Tuesday.

ROA 22, lines 14 to 19.

Stubbs explained that he mailed his appeal by placing it in the outgoing mailbox at his home on June 21, 2011:

HEARING OFFICER: Well, how...did you mail this?

CLAIMANT: I mailed this at my house. I got a...they got a box where the mailman comes, and he...you got little slots where you can...outgoing mail.

HEARING OFFICER: Right.

CLAIMANT: And he...he takes it out. I...I don't know what happened with that, I don't. I have no idea.

HEARING OFFICER: And when you say you put it in that slot...

CLAIMANT: I put it in that slot on the...had to be the 21st.

ROA 24, lines 16 to 23.

Though Stubbs was initially confused about what constitutes a U.S. postal box, he concluded that the apartment complex's outgoing mailbox qualified as such:

HEARING OFFICER: And you say you put this letter in an envelope?

CLAIMANT: In my box at... it's not a US postal box, it's a box...I guess it is.

Well, I guess it is because it's a box that's used by the apartment complex...

HEARING OFFICER: Right.

CLAIMANT: ...for delivering or...picking up mail. ROA 27, lines 5-10.

Stubbs did not know why the appeal was postmarked June 29. ROA 27, line 17. He testified "I don't know what happened with the letter." ROA 28, line 4. Stubbs asked the hearing officer to take into consideration "that the mail might have made a mistake...the mail is an entity in itself and...I have no control over it in any kind of way." ROA 29, lines 12-13.

ARGUMENT

Stubbs timely filed his appeal to the Appellate Panel by placing it into his mailbox on June 21, 2014, within ten days of the mailing date of the Appeal Tribunal decision's mailing date of June 17, 2011.

Stubbs testified that he timely filed his appeal by placing it into an outgoing mailbox at his apartment complex before the ten-day deadline ran on June 27, 2011. He specifically testified that he did so on June 21, 2011, one day after receiving the decision in the mail. ROA 24, lines 16 to 23 and ROA 27, lines 5-10. The Appellate Panel should accept his testimony as the best evidence of the date of when he mailed and perfected the appeal. As discussed below, a postmark does not establish the date when an item is placed in the mail and it is an error of law for a postmark to be treated as dispositive on the issue of whether an appeal is timely.

An interested party may file an appeal "not later than ten days after the determination was mailed to his last known address." S.C. Code Ann. § 41-35-660. The statute does not specify the manner in which an appeal is to be made. However, the Department has promulgated a regulation providing for perfecting an appeal in either of two ways: "by filing at the office where the claim was filed, or at the office of the Commission in Columbia, South Carolina, within ten (10) calendar days after the date of notification or mailing of the decision of the Appeal Tribunal." S.C. Code Reg. § 47-52(A)(1). The Department is also required to include in each appeal decision a notice specifying the appeal rights of the parties; this notice "shall state clearly the place and manner for filing an appeal from the decision and the period within which an appeal may be taken." S.C. Code Reg. § 47-51(F). The Department's Appeal Tribunal decision includes the following notice:

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 in person at any Workforce Center, or by mail, addressed to "Appellate Panel," Post Office Box 995, Columbia, South Carolina 29202. For additional information or assistance in filing an appeal, contact your local Workforce Center. ROA 8.

The Department acknowledges both in its regulation and in its notice that an interested party can appeal an Appeal Tribunal decision by placing the appeal in the mail. However, both the regulation and the notice are ambiguous as to whether the appeal must be received within ten calendar days of the mailing date of the decision, or whether it is sufficient to simply place the appeal in the mail within this timeframe.

Because the Department is mandated to "clearly" state the place, manner, and time period for filing appeals, any ambiguities in the Department's notice must be construed in the light most favorable to the appealing party. The most reasonable reading of this notice would be that the appealing party "files" the appeal by placing it in the mail within ten calendar days of the mailing date of the Appeal Tribunal decision. Moreover, such a reading is consistent with long-standing case law. The courts of this state have consistently held that, when service by mail is permitted, it is complete when the document is deposited with the United States Postal Service, properly addressed with sufficient postage. *Southbridge Properties, Inc. v. Jones*, 292 S.C. 198, 199 (S.C. 1987); *see also Town of Honea Path v. Wright*, 194 S.C. 461, 9 S.E. (2d) 924 (1940); *Walters v. Lauren Cotton Mills*, 53 S.C. 155, 31 S.E. 1 (1898). In the present case, the appeal envelope was properly addressed with sufficient postage. The delay in delivery was not caused by error in the manner in which Stubbs posted the mail.

A postmark does not establish a document's mailing date. Items are not necessarily postmarked the day they are placed in the mail, a fact recognized by this state's courts. For example, in *Lindsey v. South Carolina Tax Commission*, the Court of Appeals held that service was completed when a party deposited his notice of appeal in a mailbox, even though, like the

present case, the notice of appeal was postmarked two days after the deadline for appeal. 323 S.C. 57, 448 S.E.2d 577 (Ct.App. 1994). In that case, the Court considered the appellant's testimony to be "uncontroverted evidence" that a notice of appeal of a property tax valuation was deposited in the mail during the applicable statutory period to find the appeal timely, despite a postmark two days after the deadline. *Id.* Likewise, in the present case, Stubbs' testimony that he placed the appeal in the mail to the Department before June 27 is uncontroverted evidence, and the postmark is not dispositive.

Service occurs at the time a party places the document in a "designated mail depository box, whether in a building or along mail route." *Green v. Green*, 320 S.C. 347, 465 S.E.2d 130 (Ct.App.1995). In *Green*, the Court of Appeals affirmed a trial court's finding that a motion to alter or amend a judgment was timely even though it was postmarked two days after the ten-day deadline for the motion. The Court accepted the *pro se* husband's testimony that

he knew the significance of the ten day time limitation and adhered to it by mailing the motion on the tenth day after he received the order. In response to the judge's question regarding the disparity in the dates, the husband's attorney theorized either the envelope was incorrectly postmarked or the husband misstated the date on which he received the order. The judge accepted this explanation and entertained the motion. We find no error in this decision. *Green* at 350, 465 S.E.2d 132.

The Court further held that found that the postmark date was not dispositive. **"Such would assume the infallibility of the U.S. Postal Service, an illogical assumption given the volume of letters and packages constantly being processed and the number of human hands any one envelope may pass through."** *Id.* at 350, 465 S.E.2d 132. [emphasis added] As Stubbs testified, "I don't know what happened with the letter." ROA 28, line 4. "[T]he mail might have made a mistake...the mail is an entity in itself and...I have no control over it in any kind of way." ROA 29, lines 12-13.

The present case is similar to *Lindsey* and *Green* in many respects. Stubbs, like the parties in those cases, testified vehemently that he had timely filed the appeal by placing it in the mail within the deadline. Like those cases, no party has stepped forward with contrary evidence. Likewise, the appeal was inexplicably postmarked by the United States Postal Service two days after the appeal deadline. Prior precedent and due process require that Stubbs should not be denied due process before this Appellate Panel due to an error made by the postal service.

Lastly, it is inequitable and against public policy for the Department to dismiss Stubbs' appeal under these circumstances. The General Assembly has clearly stated its public policy in enacting unemployment benefits:

Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this State; involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family; the achievement of social security requires protection against this greatest hazard of our economic life...The General Assembly therefore declares that in its considered judgment the public good and the general welfare of the citizens of this State require the enactment of this measure, under the police powers of the State, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

The Unemployment Compensation Law is remedial in nature and should be liberally construed to give effect to its beneficent purposes. *Hatsville Cotton Mill v. South Carolina Employment Sec. Com.*, 224 S.C. 407 (S.C. 1953). The deadline to appeal, ten calendar days from the mailing date of the Appeal Tribunal decision, is one of the fastest and most unforgiving found in the law. Yet the stakes for being found to have filed untimely are so high. Not only does an erroneous decision deprive a worker of due process. An erroneous decision finding an appeal untimely can cause a worker to lose his home to foreclosure or eviction, car to repossession, and deprive him and his family of a modest source of income to buy food or medicine. Moreover, an unfavorable

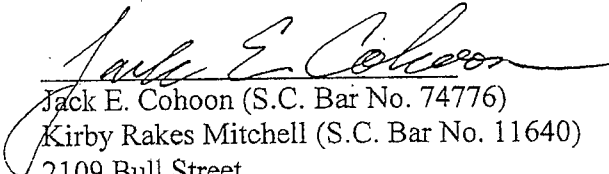
decision will cause Stubbs to be considered overpaid as a result of the Department's reconsideration of its initial determination finding him eligible. The Appeal Tribunal's decision finding Stubbs' appeal to be untimely violates both the letter and the spirit of the law and must be reversed.

CONCLUSION

Claimant Charles E. Stubbs simply seeks an opportunity on the merits before the Appellate Panel to correct a clear error of law the Appeal Tribunal. It is an error for the Appellate Panel to "assume the infallibility of the U.S. Postal Service," *Green* at 350, 465 S.E.2d 132, and thereby deprive a South Carolina worker of an opportunity to seek review of a meritorious legal issue. For the reasons above stated, the Appellate Panel should reverse the decision of the Appeal Tribunal, find Stubbs' appeal to timely, and grant him a hearing on the issue of his separation from employment.

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES


Jack E. Cohoon (S.C. Bar No. 74776)
Kirby Rakes Mitchell (S.C. Bar No. 11640)
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4166
Fax: (803) 799-1781
jackcohoon@sclegal.org

Attorneys for Claimant

Columbia, South Carolina

August 26, 2014

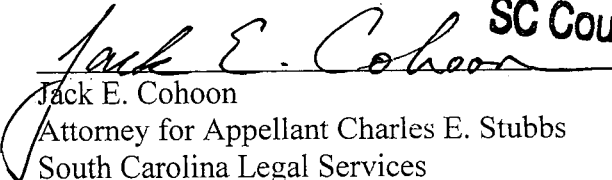
Certificate of Counsel

Pursuant to Rule 201(g), SCRAP, Appellant's counsel hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

RECEIVED

JAN 14 2016

SC Court of Appeals


Jack E. Cohoon

Attorney for Appellant Charles E. Stubbs

South Carolina Legal Services

2109 Bull Street

Columbia, South Carolina 29201

Office: (803) 744-4166

Fax: (803) 799-1781

Columbia, South Carolina

January 14, 2016