

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

OCT 11 2016

SC Court of Appeals

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

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

v.

Billie D. Mueller,.....Appellant

Appellate Case No.: 2016-000037

AMENDED RECORD ON APPEAL

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

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

INDEX

1.	Order of November 12, 2015.....	1-21
2.	Order of January 4, 2016.....	22-25
3.	Amended Brief of Appellant to ALC November 20, 2016	26-30
4.	Brief of Respondent to ALC December 11, 2016.....	31-40
5.	Complaint.....	41
6.	Answer.....	41-42
7.	Charge.....	43
8.	Request to Charge.....	44
9.	Appellant Exhibits A, B, C.....	45-48
10.	Certificate of Appellant.....	49

1

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

STATE OF SOUTH CAROLINA	)	
	)	CERTIFICATION
COUNTY OF RICHLAND	)	

The South Carolina Department of Employment and Workforce, by its Legal Department, hereby certifies that the attached hereto is a true and correct copy of the Record on Appeal in the matter of Mueller v. SCDEW together with a true and correct copy of the original decision of the Appellate Panel therein.

THE SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE

Kristi Chesley
Kristi Chesley, Administrative Legal Assistant

Columbia, South Carolina

INDEX

Appellate Panel Decision No. 2015-P-888	1
Appeal Tribunal Decision 2015-A-4817	4
Claimant Appeal to the Appellate Panel	6
Letter of Remand to Appeal Tribunal for Timeliness	7
Notice of Appeal Tribunal Hearing (Timeliness)	8
Transcript of Testimony	9

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Billie D. Mueller

)
)
)
)
)
)

APPELLATE PANEL
DECISION

Appellant: Claimant

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

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

DECISION TO DISMISS

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

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

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

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

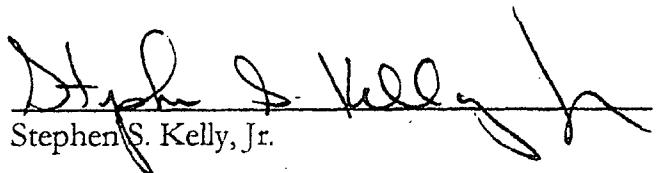
The Department properly mailed the Appeal Tribunal decision to the claimant's address of record. The deadline to file an appeal was May 18, 2015. The claimant appealed on May 29, 2015, eleven (11) days after the appeal period expired. The Department has no authority to extend the appeal time limit unless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

**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**


W.B. Ayers


Tim Dangerfield

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


Stephen S. Kelly, Jr.

Mailing Date: July 7 , 2015

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

NOTICE OF MAILING OF APPELLATE PANEL DECISION

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

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

The address of the Administrative Law Court is:

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

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

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

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

Form App-115
Rev.8/12

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

DECISION OF APPEAL TRIBUNAL

Hearing Date: May 05, 2015

BILLIE D. MUELLER

CLAIMANT

NO LIABLE EMPLOYER

EMPLOYER

APPELLANT: Claimant

SS NO:

APPEARANCES

FOR THE
CLAIMANT: Participated

FOR THE
EMPLOYER: No Liable Employer

FINDINGS OF FACT

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

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

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

REASONS

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

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

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

DECISION

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

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



Daniel C. Beach
Administrative Hearing Officer

DCB:TDD

Decision Mailed: 05/07/15

Mailed on the above Date By: DCB

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

P.O. BOX 1752, COLUMBIA, SC 29202

APPLICATION FOR LEAVE TO APPEAL TO THE APPELLATE PANEL

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

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

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

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

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

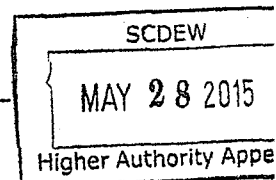
X I Agree I know that I must continue to file my claims for each week of unemployment during the pendency of this appeal. I know that I can only be paid for those weeks that I have timely claimed. If I have received benefits and am ruled disqualified or ineligible, I know that I will be required to repay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

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

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

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

Claimant is Deaf Mute



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



Nikki R. Haley
Governor

Cheryl M. Stanton
Executive Director

PO Box 1752
Columbia, SC 29202

June 1, 2015

Billie Mueller

RE Billie Mueller

Appeal No 05054-150765

Dear Ms Mueller

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

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

Higher Authority Appeals
803-737-0239

cc Employer
Imaging
File

adg
rev 09/03/2013

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

NOTICE OF APPEAL HEARING BY TELEPHONE

CLAIMANT'S NAME BILLIE D MUELLER
ADDRESS

SOCIAL SECURITY NO
PHONE

EMPLOYER'S NAME NO LIABLE EMPLOYER

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

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

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

ISSUES

☐ 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	

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

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

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

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

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

MAILING DATE 06/08/15

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

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

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT & WORKFORCE

Columbia, South Carolina

Transcript of Testimony

Before

Lee Caulder, Administrative Hearing Officer

Billie Mueller

)
)
)
)

CLAIMANT

NLE

)

LIABLE EMPLOYER

PLACE OF HEARING:

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

DATE OF HEARING:

June 18, 2015

APPEARANCES:

For Claimant:

Participated

For Employer:

None

TESTIFYING WITNESSES

CLAIMANT:

Billie Mueller

EMPLOYER WITNESSES:

None

Before: Lee Caulder, Administrative Hearing Officer

HEARING OFFICER'S PREAMBLE.

CLAIMANT SWORN.

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

CLAIMANT: No sir.

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

CLAIMANT: Yes sir.

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

CLAIMANT: No sir.

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

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

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

CLAIMANT: Yes sir.

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

CLAIMANT: No.

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

CLAIMANT: Yes.

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

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

HEARING OFFICER: Okay.

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

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

CLAIMANT: Yes sir.

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

CLAIMANT: Yes sir.

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

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

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

CLAIMANT: Yes sir.

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

CLAIMANT: No sir.

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

CLAIMANT: According to the Supreme Court....

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

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

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

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

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

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

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

CLAIMANT:
and that's all I can say.

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

HEARING OFFICER:
declare this hearing closed.

Having no more questions and hearing no more testimony, I

HEARING CLOSED.

STATE OF SOUTH CAROLINA)

COUNTY OF: RICHLAND)

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


Kristi Chesley

SWORN to before me this the

29th day of October, 2015

Nancy Moon (LS)

My Commission expires April 1, 2021

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

DECISION OF APPEAL TRIBUNAL

Hearing Date: May 05, 2015

BILLIE D. MUELLER

CLAIMANT

NO LIABLE EMPLOYER

EMPLOYER

APPELLANT: Claimant

SS NO:

APPEARANCES

FOR THE
CLAIMANT: Participated

FOR THE
EMPLOYER: No Liable Employer

FINDINGS OF FACT

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

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

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

10 EXHIBIT
A# / front back
FILE NO: 15 18 -15

REASONS

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

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

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

DECISION

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

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



Daniel C. Beach
Administrative Hearing Officer

DCB:TDD

Decision Mailed: 05/07/15

Mailed on the above Date By: TD

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE

P.O. BOX 1752, COLUMBIA, SC 29202

APPLICATION FOR LEAVE TO APPEAL TO THE APPELLATE PANEL

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

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

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

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

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

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

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

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

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

Claimant is Deaf Mute

SCDEW

MAY 28 2015

Higher Authority Appeal

10 EXHIBIT

A# 2

FILE NO: 1505054-150765

5/29/ 20 36:52

add 5/7

CERTIFICATE OF SERVICE

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

This 12th day of November, 2015

By: Kristi Chesley

Title: Administrative Legal Assistant, Legal Department

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

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

Appellant now appeals to the ALC.

STANDARD OF REVIEW

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

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

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure; (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5) (Supp. 2014).

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

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

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

ISSUE ON APPEAL

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

DISCUSSION

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

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

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

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

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

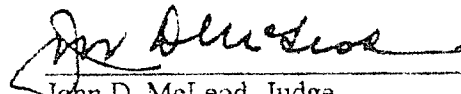
Wilder Corporation v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

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

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

AND IT IS SO ORDERED.

January 4, 2015
Columbia, S.C.



John D. McLeod, Judge
South Carolina Administrative Law Court

South Carolina Administrative Law Court

Billie D. Mueller,

Petitioner,

vs

South Carolina Department of
Employment and Workforce

Respondent

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

PETITIONER'S AMENDED
OPENING BRIEF

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

Billie D. Mueller
1341 Rockfish Drive
Manning, SC 29102

Telephone: 803-410-6935 / E-mail address: dinkerbov49@gmail.com

Petitioner has no Attorney

Office of General Counsel-SCDEW
PO Box 8597

Columbia, SC 29202

Telephone: 803-737-0395 / E-mail: legal@dew.sc.gov

INDEX

STATEMENT OF THE CASE

1. The Nature of the Proceeding and the Relief Sought.....1
2. The Nature of the Decision To Be Reviewed.....1
3. Statement of the Statutory Basis for Appellate Jurisdiction...1
4. Statement of Appellate Jurisdiction.....1
5. Questions Presented on Review.....2-3
6. Summary of Argument.....3-4
7. Exhibits "A", "B", & "C"

1
2
3 **PETITIONER'S BRIEF**
4

5
6 **STATEMENT OF THE CASE**

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

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

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

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

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

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

18 **Statement of Appellate Jurisdiction**

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

22 **Questions Presented on Review**

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

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

3 C. Did Employment Appellate Panel and Appeal Tribunal err in
4 the decision on Severance payments & bonus not being wages? For which
5 the Petitioner paid all Federal, State and FICA taxes on the amounts.
6

7 **Summary of Argument**

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

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

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

5
6 Dated this 20th day of November, 2015

7 Billie D. Maeller
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

THE STATE OF SOUTH CAROLINA
In The Administrative Law Court

BRIEF OF THE SOUTH CAROLINA
DEPARTMENT OF
EMPLOYMENT AND WORKFORCE

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

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

ISSUES ON APPEAL

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

STATEMENT OF THE CASE

Appellant, Billie D. Mueller (Appellant) filed a claim with Respondent, the South Carolina Department of Employment and Workforce (DEW or Department), for unemployment insurance (UI) benefits. On April 2, 2015, the Department initially found that Appellant did not meet the eligibility requirements of the law pursuant to S.C. Code Ann. § 41-35-50¹ and, therefore, was ineligible to receive UI benefits (R. p. 5.).

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

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

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

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

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

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

STATEMENT OF FACTS

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

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

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

Based on the Record, the Panel held the following:

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

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

ARGUMENT

Standard of Review

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

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

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

"Substantial evidence" is defined as:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

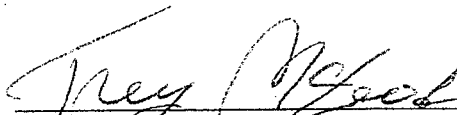
³ Reversed on other grounds, 390 S.C. 418, 702 S.E.2d 246 (2010).

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

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

CONCLUSION

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

 
E.B. "Trey" McLeod, III SC Bar #73642
S.C. Department of Employment & Workforce
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-2666
legal@dew.sc.gov

December 11, 2015

Attorney for Respondent DEW

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Billie Mueller,
Appellant,

v.

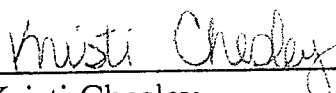
SC Dept. of Employment and Workforce,
Respondent(s).

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

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

Billie Mueller
1341 Rockfish Dr.
Manning SC 29102

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



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

1 **COMPLAINT**

- 2
- 3 A. Did the SCDEW Appellate Panel err in finding the
- 4 Appellant neglected to file her appeal in a timely manner?
- 5 B. Did the SCDEW Appellate Panel err in finding that
- 6 Appellant received the decision in a timely manner?
- 7 C. Did the Appellate Panel and Appeal Tribunal err in the decision on Severance
- 8 payments and bonus not being wages for which the Appellant paid all Federal,
- 9 State and FICA taxes?
- 10

11 **ANSWER**

12 I checked my mail on May 13, 2015 and my mail did not contain a letter from

13 SCDEW. I was staying with a friend while undergoing several medical procedures. Cancer and

14 Foot surgery so at the time I could not drive. I was receiving the radiation treatments in Sumter

15 and had foot surgery in Florence. Went to check the mail again on May 20, 2015 and the letter

16 from SCDEW was obtained. The 10 day filing period had already passed so I submitted my

17 appeal as timely as possible. SCDEW has no certified proof that the decision was mailed in a

18 timely manner or that it was received in a timely manner. I am asking the court to reconsider the

19 decision of the Appellate Panel in this case. Again the SCDEW mailed me their Brief

20 postmarked Dec. 11, 2015 and it was not received in my mail box until Dec. 22, 2015 which was

21 11 days later so how can they state that the Appellate Panel's decision was received in a timely

22 manner. Also South Carolina is the only state that I have researched that does not extend the

23 appeal time for illness or incapacitation.

24 According to U.S. Supreme Court Certiorari To The United States Court Of

25 Appeals For The Sixth Circuit # 12-1408 (a) FICA defines "wages" broadly as "all
remuneration for employment." §3121(a). As a matter of plain meaning, severance payments fit

1 this definition: They are a form of remuneration made only to employees in consideration for
2 employment. "Employment" is "any service . . . performed . . . by an employee" for an
3 employer. §3121(b). By varying according to a terminated employee's function and seniority, the
4 severance payments at issue confirm the principle that "service" "mean[s] not only work actually
5 done but the entire employer employee relationship for which compensation is paid." The
6 Severance constituted 26 weeks pay for 26 years of service to the employer. I am asking the
7 court to reconsider the decision of the Appellate Panel and the Appeal Tribunal in this case.

8
9 Dated this 4th day of October, 2016

10 Billie D. Muller
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

NOTICE OF APPEAL HEARING BY TELEPHONE

CLAIMANT'S NAME BILLIE D MUELLER
ADDRESS

SOCIAL SECURITY NO
PHONE

EMPLOYER'S NAME NO LIABLE EMPLOYER

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

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

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

ISSUES

☐ 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	

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

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

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

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

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

MAILING DATE 06/08/15

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

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

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. BOX 1752, COLUMBIA, SC 29202

APPLICATION FOR LEAVE TO APPEAL TO THE APPELLATE PANEL

Claimant's Name: Billie d Mueller Social Security Number: _____
 Address: _____ Date of Initial Claim: 5/29/2015
THE ABOVE DATE IS WRONG
 Telephone Number: _____
 Employer's Name: N/A Address: N/A
 Party Appealing: Claimant

On 5/21/2015, I received Appeal Tribunal Decision Number 2015-A-4917 mailed to me on
 (Date of Receipt)
5/7/2015 and ask for review of the record on the following grounds:
 (Mailing Date on Decision)

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

**SEE SXHIBIT "C" MR. CAULDER REFUSED TO LET ME BRING THIS SUBJECT UP
 IN THRE MEETING ON JUNE 18, 2015.**

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

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

**THERE ARE NO EXHIBITS THEY HAVE BEEN REMOVED BY THE REQUEST OF THE COURT OF APPEALS.
 MR. CAULDER WOULD NOT LET ME EXPLAIN IN DETAIL ASTO WHY APPEAL WAS FILED LATE.
 THERE IS NO CERTIFIED PROOF THAT IT WAS MAILED ON 05/07/2015 AND THAT IT WAS RECEIVED
 IN A TIMELY MANNER. IT IS ALL HEARSAY! WORKED IN AN OFFICE AND MAILINGS DID NOT ALWAYS
 GO OUT ON THE DAY THEY WERE POSTMARKED.**

☒ I Agree

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

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

Appellant: Claimant

Title: Billie D Mueller

Date: 5/29/2015

**THESE 2 DATES DO NOT
 MATCH**

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

Claimant is Deaf Mute

SCDEW
MAY 28 2015
 Higher Authority Appe

Exhibit A

UCH 101-S 2004
5-17

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE INITIAL DETERMINATION OF STATUS AS AN INSURED WORKER

SC WORKS CENTER 430

EFFECTIVE DATE 03/30/15

DATE FILED 03/31/15

DATE PREPARED 03/31/15

0

527-76-0453

BILLIE D MUELLER
1341 ROCKFISH DR

MANNING

SC 29102

*BENEFITS YOU MAY BE ELIGIBLE FOR:

MILITARY ASSIGNMENTS

WEEKLY BENEFIT AMOUNT 326.00

MAXIMUM TOTAL BENEFITS 6520.00

BENEFIT YEAR ENDS

03/29/16

*This statement establishes that you have the necessary wages to qualify for unemployment insurance. However, to receive benefits your job separation must also be considered. If you qualify, this is the maximum you may be entitled to receive.

SEE BACK FOR CLAIMANT INFORMATION

EMPLOYMENT RECORD		STANDARD BASE PERIOD QUARTERLY EARNINGS			
EMPLOYEE	ACCOUNT NO	YEAR	*QTR	YEAR	*QTR
EBTRON, INC.	289798	2013	04	2014	01
		15454.23		13317.36	
		2014	02	2014	03
		35010.49			.00

NOTE: The weekly benefit amount on this form reflects your GROSS PAYMENT EACH WEEK BEFORE ANY DEDUCTIONS are made. Possible deductions to this amount include, but are not limited to, tax withholding, pension, child support, offset of overpayment, and part-time earnings. ALSO, YOUR FINAL PAYMENT MAY BE LESS THAN THE FULL WEEKLY BENEFIT AMOUNT BASED ON THE BALANCE REMAINING IN YOUR ACCOUNT.

*QTR.

STANDARD BASE QUARTER TOTAL

15454.23

13317.36

35010.49

Page 45

1 JAN, FEB, MAR 2 APR, MAY, JUN, JUL, AUG, SEPT

Void ☐		Employee's social security number 527-76-0453		OMB No. 1545-0008 X4A		006115		000150	
b Employer identification number (EIN) 22-2455232				1 Wages, tips, other compensation 48327.85		2 Federal income tax withheld 6271.81			
c Employer's name, address, and ZIP code EBTRON INC 1663 HIGHWAY 701 S LORIS SC 29569				3 Social security wages 48327.85		4 Social security tax withheld 2996.33			
				5 Medicare wages and tips 48327.85		6 Medicare tax withheld 700.75			
				7 Social security tips		8 Allocated tips			
				9		10 Dependent care benefits			
d Control number 000150 CHAR/X4A				11 Nonqualified plans		12a See instructions for box 12 W 446.15			
e Employee's first name and initial Last name BILLIE MUELLER POST OFFICE BOX 98 DAVIS STATION SC 29401				13 Salaried employee ☐ Retirement plan ☐ Third-party sick pay ☐		12b			
				14 Other		12c			
						12d			
f Employee's address and ZIP code				15 State Employer's state ID number SC 25319905 1		16 State wages, tips, etc. 48327.85		17 State income tax 3180.96	
						18 Local wages, tips, etc.		19 Local income tax	
								20 Locality name	

Form **W-2** Wage and Tax
Statement
Copy D — For Employer

2014

Department of the Treasury — Internal Revenue Service
For Privacy Act and Paperwork Reduction
Act Notice, see separate instructions.

(Slip Opinion)

OCTOBER TERM. 2013

1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* QUALITY STORES, INC., ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 12–1408. Argued January 14, 2014—Decided March 25, 2014

Respondent Quality Stores, Inc., and its affiliates (collectively Quality Stores) made severance payments to employees who were involuntarily terminated as part of Quality Stores' Chapter 11 bankruptcy. Payments—which were made pursuant to plans that did not tie payments to the receipt of state unemployment insurance—varied based on job seniority and time served. Quality Stores paid and withheld, *inter alia*, taxes required under the Federal Insurance Contributions Act (FICA), 26 U. S. C. §3101 *et seq.* Later believing that the payments should not have been taxed as wages under FICA, Quality Stores sought a refund on behalf of itself and about 1,850 former employees. When the Internal Revenue Service (IRS) did not allow or deny the refund, Quality Stores initiated proceedings in the Bankruptcy Court, which granted summary judgment in its favor. The District Court and Sixth Circuit affirmed, concluding that severance payments are not wages under FICA.

Held: The severance payments at issue are taxable wages for FICA purposes. Pp. 4–15.

(a) FICA defines “wages” broadly as “all remuneration for employment.” §3121(a). As a matter of plain meaning, severance payments fit this definition: They are a form of remuneration made only to employees in consideration for employment. “Employment” is “any service . . . performed . . . by an employee” for an employer. §3121(b). By varying according to a terminated employee’s function and seniority, the severance payments at issue confirm the principle that “service” “mea[ns] not only work actually done but the entire employer-employee relationship for which compensation is paid.” *Social Security Bd. v. Nierotko*, 327 U. S. 358, 365–366. This broad definition is reinforced by the specificity of FICA’s lengthy list of exemptions. The

Syllabus

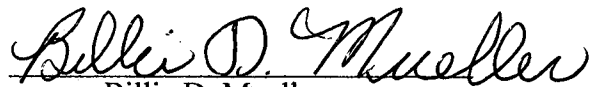
exemption for severance payments made "because of . . . retirement for disability," §3121(a)(13)(A), would be unnecessary were severance payments generally not considered wages. FICA's statutory history sheds further light on the definition. FICA originally contained definitions of "wages" and "employment"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

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

Certificate of Appellant

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

October 4, 2016



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

RECEIVED
OCT 11 2016
SC Court of Appeals