

OCT 21 2016

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Michael A. D'Amelio,)
)
Appellant,)
)
vs.)
)
South Carolina Department of Employment)
and Workforce,)
)
Respondent.)

Docket No.: 16-ALJ-22-0333-AP

**ORDER GRANTING
RESPONDENT'S
MOTION TO DISMISS**

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SC Court of Appeals

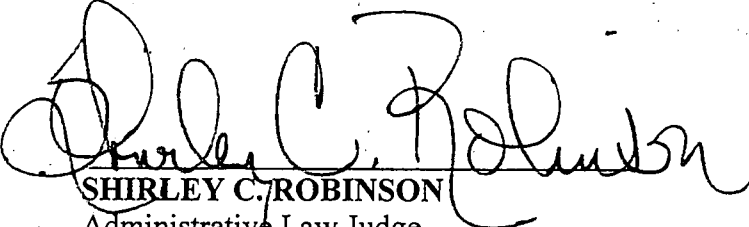
This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to a Notice of Appeal filed by Michael D'Amelio ("Appellant") on September 15, 2016, seeking judicial review of a final decision rendered by the South Carolina Department of Employment and Workforce's ("the Department's") Appellate Panel. The case was assigned to the undersigned on September 16, 2016. Subsequently, on September 27, 2016, the Department filed a notice of special appearance and motion requesting that the appeal be dismissed pursuant to section 41-35-750 of the South Carolina Code. Specifically, the Department alleges Appellant failed to timely serve the Notice of Appeal in this matter and, therefore, this Court lacks jurisdiction over this appeal.

In response, Appellant argues that SCALC Rule 3 adds an additional five days to a deadline where a party is required to take some action pursuant to service by mail. While the Court understands Appellant's argument, it does not solve the timeliness issue presented in this case. Section 41-35-750 confers jurisdiction upon this Court to review Department decisions. The statute requires that an appeal be filed "[w]ithin thirty days from the date of mailing the department's decision." S.C. Code Ann. § 41-35-750 (Supp. 2015). Until the requirements of this statute are met, the Court does not have jurisdiction in a case. Because appellate jurisdiction has not been established, the procedural rules of the ALC have not yet attached and are not applicable to resolve the issue of timeliness. See SCALC Rule 1, 2014 Revised Notes ("These Rules are applicable to all matters within the jurisdiction of the Court . . ."). The filing and service of a notice of appeal is a jurisdictional requirement and the Court may not rescue a party who fails to meet the deadline. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004); see also Allison v. W.L. Gore & Assocs., 394 S.C. 185, 188-89, 714 S.E.2d 547, 549-50

In this case, the final decision of the Department's Appellate Panel was mailed to Appellant on August 15, 2016. Pursuant to section 41-35-750, Appellant's Notice of Appeal must have been filed with the Court and served upon the Department no later than September 14, 2016. Appellant filed his appeal with the Court on September 15, 2016. Because Appellant did not serve the notice of appeal as required by statute, this Court lacks jurisdiction over this appeal and must dismiss.

IT IS THEREFORE ORDERED that the Department's Motion to Dismiss is **GRANTED** and this appeal is **DISMISSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

October 21st, 2016
Columbia, South Carolina

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 Emergency Mail Service addressed to the party(ies) or their attorney(s).

This 21 day of October 2016
By: Yeeble Menden
Clerk