

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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APPEAL FROM THE  
ADMINISTRATIVE LAW COURT  
S. Phillip Lenski, Administrative Law Judge  
Case No.: 15-ALJ-22-0328-AP

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Appellate Case No. 2015-002056

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SC Court of Appeals

Edward Spears,

Appellant,

v.

South Carolina Department of Employment  
and Workforce,

Respondent.

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**FINAL BRIEF OF RESPONDENT**

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E.B. "Trey" McLeod, III (SC Bar # 73642)  
Assistant General Counsel  
S.C. Dept. of Employment & Workforce  
Post Office Box 8597  
Columbia, SC 29202  
(803) 737-2666  
[legal@dew.sc.gov](mailto:legal@dew.sc.gov)  
Attorneys for Respondent

Appellant (*Pro Se*):

Edward Spears  
503 Rough Fork Street  
Florence, SC 29501

**TABLE OF AUTHORITIES**

Allison v. W.L. Gore & Associates, 394 S.C. 185, 714 S.E.2d 547 (2011).....6

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**STATEMENT OF THE ISSUE ON APPEAL**

**DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISS APPELLANT'S APPEAL FOR LACK OF APPELLATE JURISDICTION DUE TO APPELLANT'S FAILURE TO TIMELY FILE HIS NOTICE OF APPEAL WITH THE COURT?**

## **STATEMENT OF THE CASE**

The South Carolina Department of Employment And Workforce (Department) Appellate Panel (Panel) issued the agency's final decision on June 9, 2015, which related to an unemployment insurance (UI) claim filed by Edward Spears (Appellant). On this same date, the Department mailed a copy of this decision to Appellant's address of record. (R. p. 1)

On June 30, 2015 served a copy of his notice of appeal to the Administrative Law Court on the Department. Appellant later filed his notice of appeal with the ALC on July 13, 2015. (R. pp. 2-7.)

On July 31, 2015, the Department filed a Special and Limited Appearance and Motion to Dismiss (Motion) arguing that since its final written decision was mailed on June 9, 2015, the final date for perfecting an appeal from the decision was July 9, 2015. (R. p. 11.) On August 5, 2015, Appellant filed his response to the Department's Motion. The ALC dismissed Appellant's appeal by Order dated September 8, 2015. (R. p. 12.)

On October 8, 2015, Appellant timely filed a notice of appeal with this Court for review of the ALC's dismissal decision.

### **FACTS**

On June 9, 2015, the Department mailed to Appellant's address of record a copy of the Final Decision issued by the Panel. The appeal period expired on July 9, 2015.

On June 30, 2015 Appellant deposited in the mail two copies of his notice of appeal addressed to "Office of General Counsel, P.O. Box 8597, Columbia, SC 29202" and S.C. Employment Commission, P.O. Box 995 Columbia, SC 29202." (R. pp. 6-7.)

Enclosed with his notice of appeal was a copy of the Panel's Final Decision and a Certificate of Service form. The Certificate of Service stated:

I hereby certify that I am the [Appellant] in the above captioned matter and that on the 30 day of June, 2015, in Florence, South Carolina, I served a copy of the forgoing certificate of service on the following person(s) by depositing the same in the United States Mail, postage paid, and address as follows:

SC Employment Commission  
P.O. Box 995  
Columbia, SC 29202

Food Lion LLC  
C/O Corporate Control  
P.O. Box 1180  
Londonderry, NH 03053

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

(R. p. 3.)

ALC filings show that Appellant deposited his notice of appeal in the mail addressed to the ALC on July 13, 2015. (R. pp. 2, 10.) Enclosed with his notice of appeal was a hand written certificate of service which stated, "I Edward Spears would like to appeal the enclosed decision in the Administrative Court on this day July 10, 2015." (Appendix p. 1).<sup>1</sup> In addition to the addresses listed above, Appellant stated that he served the notice of appeal on the ALC. (Appendix p. 2).

Based on this filing, the ALC issued its Notice of Assignment which stated "NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on July 13, 2015." (R. p. 10.) In response, on July 31, 2015, the Department filed a Special and Limited Appearance and Motion to dismiss arguing that since its final written

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<sup>1</sup> The documents found in the Appendix to this Brief are not included in the original or the three subsequent amended records on appeal. However, the Department made multiple requests for the Court to order Appellant to include the relevant documents. (See *Respondent's Motion to Dismiss, or in the Alternative, Motion to Compel* filed April 25, 2016. p. 2; *Respondent's Designation of Matter* filed February 25, 2016.) The Department would respectfully request that the Court take judicial notice of these documents.

decision was mailed on June 9, 2015, the final date for perfecting an appeal from the decision was July 9, 2015. (R. p. 11.)

Appellant timely filed a response to the Department's Motion, and argued that he mistakenly mailed two certificates of service to the Department on June 30, 2015. (R. p. 9) Appellant further argued that the Department, when it received two copies of his appeal, should have notified him that he failed to file his appeal with the ALC. *Id.* However, Appellant does acknowledge that he did not file his appeal with the ALC until July 13, 2015, beyond thirty days from the date the Department mailed its decision. *Id.*

On September 8, 2015, the ALC dismissed Appellant's appeal finding:

Though this court is sympathetic to the Appellant's arguments it has no discretion in this matter, and no authority to extend the time for appeal so as to give this court jurisdiction. Timely filing and service of a notice of appeal is a jurisdictional requirement and this court does not have the authority to extend or expand the time for filing such appeal. Pursuant to the Department's motion, this court concludes that this matter must be dismissed. [internal citations omitted].

(R. p. 12.)

## ARGUMENT

### *Standard of Review*

Pursuant to S.C. Code Ann. § 1-23-610(B)

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (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.

Under the Administrative Procedures Act, this Court's review of an ALC decision "is limited to determining whether the findings were supported by substantial evidence or were controlled by an error of law." Hill v. S.C. Dep't of Health and Env'tl. Control, 389 S.C. 1, 9, 698 S.E.2d 612, 617 (2010).

**THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL FOR LACK OF APPELLATE JURISDICTION DUE TO APPELLANT'S FAILURE TO TIMELY FILE HIS NOTICE OF APPEAL WITH THE COURT.**

Appellant argues that the ALC erred in dismissing his appeal upon a finding he did not file his appeal with the ALC within the thirty (30) day statutory time limit. Appellant contends this decision is an error of law.

Appellant's appeal to the ALC requested a review of a final agency decision issued by the Panel on a claim for UI benefits. Jurisdiction in this matter is governed, exclusively, by S.C. Code Ann. § 41-35-750, which requires a notice of appeal be filed in the ALC, and served upon the Department within thirty (30) days after mailing of its final decision.

The Panel mailed its final written decision to Appellant's address of record on June 9, 2015. The agency fulfilled its sole obligation under the law by mailing the decision to the Appellant's address of record. Appellant does not dispute that the Department mailed the decision to Appellant's proper address on the date indicated.

The thirty (30) time period for Appellant to file and serve his Notice of Appeal expired on Thursday, July 9, 2015. Based on the Notice of Assignment issued by this

Court on July 24, 2015, and the postmark date of Appellant's notice of appeal as filed with the ALC, Appellant's appeal was not filed with the Court until July 13, 2015.

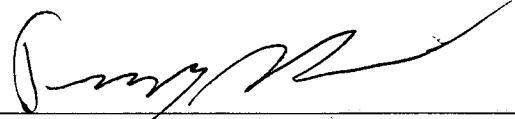
It is well settled that "The requirement [for a timely] notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004); accord Camp v. Camp, 386 S.C. 571, 574, 689 S.E.2d 634, 636 (2010) (stating courts have "no authority to extend or expand the time" for serving a notice of appeal). Accordingly, the ALC was required to dismiss this untimely appeal without considering its merits. Canal Ins. Co. v. Caldwell, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct.App.1999).

Therefore, Appellant's notice of appeal, filed more than thirty days after the mailing of the Panel's final decision, was untimely. See SCALC Rule 33; State v. Cooper, 342 S.C. 389, 397, 536 S.E.2d 870, 875 (2000); Canal, 338 S.C. at 5, 524 S.E.2d at 418. Because Appellant missed the applicable deadline, the ALC lacked jurisdiction to consider his appeal and has no discretion to ignore this defect. See Elam, 361 S.C. at 15, 602 S.E.2d at 775; Allison v. W.L. Gore & Associates, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) (stating failure to timely file a notice of appeal divests an appellate body of appellate jurisdiction);

### CONCLUSION

The decision of the ALC is supported by substantial evidence on the record as a whole and is in accord with applicable law, therefore, the findings are binding on the

court and the decision should be affirmed.



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E.B. "Trey" McLeod, III (SC Bar # 73642)  
Assistant General Counsel  
S.C. Dept. of Employment & Workforce  
Post Office Box 8597  
Columbia, SC 29202  
(803) 737-0395  
[legal@dew.sc.gov](mailto:legal@dew.sc.gov)  
Attorney for Respondent, DEW