

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

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Case No.: 17-ALJ-22-0291-AP

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**RECEIVED**  
JUN 08 2018  
SC Court of Appeals

Antonio Aiken,

Appellant,

v.

South Carolina Department of Employment  
and Workforce,

Respondent.

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**MOTION TO DISMISS FOR MOOTNESS AND  
MEMORANDUM IN SUPPORT**

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Respondent South Carolina Department of Employment and Workforce (the Department) moves to dismiss Appellant Antonio Aiken's appeal on the grounds that, as explained below, there is no longer a justiciable controversy between the parties. Counsel for the Department has communicated with Appellant's counsel, who consented to the dismissal of this appeal on such grounds.

**I. PROCEDURAL HISTORY**

Appellant filed a claim for unemployment insurance (UI) benefits with the Department on May 5, 2017. On May 11, 2017, the Department's claims adjudicator determined Appellant was unable to work due to a health condition and, thus, temporarily

ineligible for benefits under S.C. CODE ANN. § 41-35-110(3) until he could show he met the eligibility conditions of Subsection 41-35-110(3). Appellant appealed the determination to the Department's Appeal Tribunal (Tribunal). (ALC R.p.18). On May 30, 2017, the Tribunal affirmed the determination. (ALC R.pp.64-65).

Appellant appealed to the Department's Appellate Panel (Panel). (ALC R.pp.67-69). On July 13, 2017, the Panel affirmed the Tribunal's decision. (ALC R.pp.1-3).

On August 14, 2017, Appellant appealed the Panel's decision to the Administrative Law Court (ALC), and on December 1, 2017, the ALC issued an Order affirming the Panel's decision. Appellant filed a Motion for Rehearing, and on January 24, 2017, the ALC denied that Motion. This appeal followed.

## **II. LACK OF JUSTICIABLE CONTROVERSY**

“Before any action can be maintained, there must exist a justiciable controversy.” *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996) (internal citations omitted). Courts “will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.” *Curtis v. State*, 345 S.C. 557, 567-68, 549 S.E.2d 591, 596 (2001) (internal citations omitted). “A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible for the reviewing Court to grant effectual relief.” *Id.* (internal citations and quotations omitted). “[M]oot appeals result when intervening events render a case nonjusticiable.” *Id.*

Under S.C. Code Ann. § 41-35-390(1), an “exhaustee” for purposes of unemployment insurance (UI) benefits is:

an individual who, with respect to any week of unemployment in his eligibility period:

(1) [h]as received, prior to such week, all of the regular benefits that were payable to him under Chapters 27 through 41 of this Title or any other State law . . . in his current benefit year that includes such week[.]

The South Carolina Supreme Court found a case to be mooted where a UI claimant “commenced receiving benefits and continued to do so until they were exhausted.” *Biter v. S.C. Emp. Sec. Com’n*, 276 S.C. 493, 493, 280 S.E.2d 60, 61 (1981).

Here, the Department held Appellant ineligible to receive UI benefits for benefit weeks ending May 6, 2017 – July 22, 2017. *Exhibit A, Payment Summary*. For benefit week ending July 29, 2017, Appellant established eligibility and began receiving \$326.00 in weekly UI benefits. *Id.* He continued receiving UI benefits for twenty (20) weeks until benefit week ending December 16, 2017, *id.*, at which point he had received the maximum twenty (20) times his weekly benefit amount, or \$6,520.00 (\$326.00 x 20). *Exhibit B, Remaining Balance Amount; see also* S.C. Code Ann § 41-35-50 (setting the “maximum potential benefits” at “twenty times [a claimant’s] weekly benefit amount”).

In sum, as of December 16, 2017 and pursuant to Subsections 41-35-50 and 41-35-390(1), Appellant exhausted his maximum UI benefits for the relevant benefit year.<sup>1</sup> Consequently, this Court could not provide a remedy by ordering additional UI benefits for the weeks of May 6, 2017 – July 22, 2017.

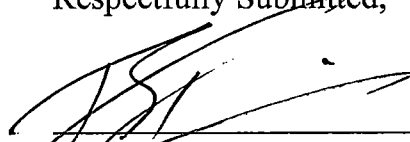
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<sup>1</sup> To avoid confusion, this case was not moot when it was before the Department and ALC because Appellant did not exhaust his twenty (20) weeks of benefits until after the ALC issued its Order on December 5, 2017. The “intervening event” of Appellant exhausting his

**III. CONCLUSION**

Because Appellant has received the maximum benefits allowed by law on his UI claim, this case is moot and should be dismissed. There is no justiciable controversy between the parties and a ruling from this Court would amount to an impermissible advisory opinion.

Respectfully Submitted,



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Legal@dew.sc.gov

*Attorney for Respondent SC Department of  
Employment and Workforce*

June 6, 2018

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benefits has since rendered this case nonjusticiable. *See Curtis*, 345 S.C. at 567-68, 549 S.E.2d at 596.

**EXHIBIT A**



# PAYMENTS: REMAINING BALANCE AMOUNT

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SSRN 2894

Claimant ID: [ ]

Name: AIKEN, ANTONIO

Date of Birth: 07/26/1971

Search

Address: 100 OWENS MEADOW CT

City/State/Zip: PIEDMONT, SC 29573

Phone: 843-694-2616

Language: English

Clear

GO

Claim ID	BYB	BYE	Wable State	Program	Status	
189520	04/30/2017	04/28/2018	SC	UI	Expired	
<b>Monetary:</b>	High	WBA: 326	MBA: 6520	RBA: 0	Fund: UI	Earning Allowance: 81.5

**RBA Data:**

	High Monetary	School Monetary	Professional/Attorney Monetary
WBA:	326		
MBA:	6,520		
<b>Sum of Compensable or Subtotal Amounts:</b>	<b>6,520</b>		
<b>Remaining Balance Amount:</b>	<b>0</b>		

Payment Summary

**EXHIBIT B**

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SSN:

Address:   
City/State/Zip:

Claimant ID:

Phone:

Name:

Date of Birth:

Language:

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Claim ID	BYB	BYE	Liability State	Program	Status
189520	04/30/2017	04/28/2018	SC	UI	Expired

Monetary	High	WBA: 326	MBA: 6520	RBA: 0	Fund: UI	Earning Allowance: 81.5
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Payment Summary


33 items found, displaying 1 to 10. [First/Prev] 1, 2, 3, 4 [Next/Last]

	BWE	Payment Type	File Date	Payment Date	Payment Status	Earnings	Deductions	Compensable Amount	Distributions	Amount Paid	Payment Method	Adjust	OP
<input type="radio"/>	12/16/2017	Continued Week	12/17/2017			0.00		0.00	-0.00	0.00		Yes	
<input type="radio"/>	12/09/2017	Final Pay	12/10/2017	12/11/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	12/02/2017	Continued Week	12/03/2017	12/04/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	11/25/2017	Continued Week	11/26/2017	11/26/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	11/18/2017	Continued Week	11/19/2017	11/19/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	11/11/2017	Continued Week	11/12/2017	11/12/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	11/04/2017	Continued Week	11/05/2017	11/06/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	10/28/2017	Continued Week	10/29/2017	10/29/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	10/21/2017	Continued Week	10/22/2017	10/22/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	10/14/2017	Continued Week	10/15/2017	10/15/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	

Payment Details
Certification Responses
Adjustments

Processed Date	Non-Payment Reason	Issue Status	Determination Date
12/17/2017	Non-Pay Due to Monetary Exhausted		

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SSN:  | Claimant ID:  | Name:  | Date of Birth:    
 Address:  | City/State/Zip:  | Phone:  | Language:

Claim ID	BYB	BYE	Liable State	Program	Status
189520	04/30/2017	04/28/2018	SC	UI	Expired

**Monetary:** High WBA: 326 MBA: 6520 RBA: 0 Fund: UI Earning Allowance: 81.5

**Payment Summary**  
 33 Items found, displaying 11 to 20. [First/Prev] 1, 2, 3, 4 [Next/Last]


	BWE	Payment Type	File Date	Payment Date	Payment Status	Earnings	Deductions	Compensable Amount	Distributions	Amount Paid	Payment Method	Adjust	OP
<input type="radio"/>	10/07/2017	Continued Week	10/08/2017	10/08/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	09/30/2017	Continued Week	10/01/2017	10/01/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	09/23/2017	Continued Week	09/24/2017	09/25/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	09/16/2017	Continued Week	09/17/2017	09/17/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	09/09/2017	Continued Week	09/10/2017	09/11/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	09/02/2017	Continued Week	09/03/2017	09/03/2017	Cleared	0.00		326.00	-124.00	202.00	Debit Card	Yes	
<input type="radio"/>	08/26/2017	Continued Week	08/27/2017	08/27/2017	Cleared	0.00		326.00	-56.00	270.00	Debit Card	Yes	
<input type="radio"/>	08/19/2017	Continued Week	08/20/2017	08/20/2017	Cleared	0.00		326.00	-56.00	270.00	Debit Card	Yes	
<input type="radio"/>	08/12/2017	Continued Week	08/13/2017	08/13/2017	Cleared	0.00		326.00	-56.00	270.00	Debit Card	Yes	
<input type="radio"/>	08/05/2017	Continued Week	08/06/2017	08/06/2017	Cleared	0.00		326.00	-56.00	270.00	Debit Card	Yes	

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**Non-Pay Details**

Processed Date	Non-Payment Reason	Issue Status	Determination Date
12/17/2017	Non-Pay Due to Monetary Exhausted		

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SSN: <input type="text" value="9894"/>	Claimant ID: <input type="text"/>	Name: <input type="text" value="AIKEN, ANTONIO"/>	Date of Birth: <input type="text" value="07/26/1974"/>	<input type="button" value="Search"/>
Address: <input type="text" value="1051 OWENS MEADOW CT"/>	City/State/Zip: <input type="text" value="COLUMBIA, SC 29573"/>	Phone: <input type="text" value="803-694-2616"/>	Language: <input type="text" value="English"/>	<input type="button" value="Clear"/>

Claim ID	BYB	BYE	Liable State	Program	Status
189520	04/30/2017	04/28/2018	SC	UI	Expired

Monetary:	High	WBA: 326	MBA: 6520	RBA: 0	Fund: UI	Earning Allowance: 81.5
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**Payment Summary**

33 items found, displaying 21 to 30. [First/Prev] 1, 2, 3, 4 [Next/Last]

	BWE	Payment Type	File Date	Payment Date	Payment Status	Earnings	Deductions	Compensable Amount	Distributions	Amount Paid	Payment Method	Adjust	OP
<input type="radio"/>	07/29/2017	First Pay	07/30/2017	07/30/2017	Cleared	0.00		326.00	-56.00	270.00	Debit Card	Yes	
<input type="radio"/>	07/22/2017	Continued Week	07/23/2017			0.00		0.00	-0.00	0.00		Yes	
<input type="radio"/>	07/15/2017	Continued Week	07/16/2017			0.00		0.00	-0.00	0.00		Yes	
<input type="radio"/>	07/08/2017	Continued Week	07/09/2017			0.00		0.00	-0.00	0.00		Yes	
<input type="radio"/>	07/01/2017	Continued Week	07/02/2017			0.00		0.00	-0.00	0.00		Yes	
<input type="radio"/>	06/24/2017	Continued Week	06/26/2017			0.00		0.00	-0.00	0.00		Yes	
<input type="radio"/>	06/17/2017	Continued Week	06/18/2017			0.00		0.00	-0.00	0.00		Yes	
<input type="radio"/>	06/10/2017	Continued Week	06/13/2017			0.00		0.00	-0.00	0.00		Yes	
<input type="radio"/>	06/03/2017	Continued Week	06/04/2017			0.00		0.00	-0.00	0.00		Yes	
<input type="radio"/>	05/27/2017	Continued Week	05/28/2017			0.00		0.00	-0.00	0.00		Yes	

**Non-Pay Detail**

Processed Date	Non-Payment Reason	Issue Status	Determination Date
12/17/2017	Non-Pay Due to Monetary Exhausted		

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SSN: 9894	Claimant ID: [REDACTED]	Name: AIKEN, ANTONIO	Date of Birth: 07/26/1971	<input type="button" value="Search"/>
Address: 09 DOWNS MEADOWS	City/State/Zip: PIEDMONT, SC 29676	Phone: 843-651-2210	Language: English	<input type="button" value="Clear"/>
Claim ID: 189529	BYB: 04/30/2017	BYE: 01/28/2018	SC	UI
Monetary: H1ed	H01: 825	H04: 6570	R01: 0	P01: UI

**Payment Summary**

33 items found, displaying 31 to 33. [First/Prev] 1, 2, 3, 4 [Next/Last]

	BWE	Payment Type	File Date	Payment Date	Payment Status	Earnings	Deductions	Compensable Amount	Distributions	Amount Paid	Payment Method	Adjust	OP
<input type="radio"/>	05/20/2017	Continued Week	05/21/2017			0.00		0.00	0.00	0.00		Yes	
<input type="radio"/>	05/13/2017	Continued Week	05/14/2017			0.00		0.00	-0.00	0.00		Yes	
<input type="radio"/>	05/06/2017	Continued Week	05/07/2017			360.00		0.00	0.00	0.00		Yes	

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE  
ADMINISTRATIVE LAW COURT  
S. Phillip Lenski, Administrative Law Judge

Case No: 17-ALJ-22-0291-AP

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SC Court of Appeals

Antonio Aiken,

Appellant,

v.

South Carolina Department of Employment  
and Workforce,

Respondent.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss for Mootness and Memorandum of Support on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on June 6, 2018, addressed to the parties at their addresses of record:

Mark Fessler  
SC Legal Services  
701 Main Street  
Greenville SC 29601

June 6, 2018



Kristi Chesley  
Administrative Legal Assistant  
South Carolina Department of Employment and  
Workforce  
Post Office Box 8597  
Columbia, South Carolina 29202  
(803) 737-0395

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



Henry McMaster  
Governor

Cheryl M. Stanton  
Executive Director

Post Office Box 8597  
Columbia, SC 29202  
Telephone: (803) 737-2666  
Fax: (803) 737-0124

June 6, 2018

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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JUN 08 2018  
SC Court of Appeals

RE: Antonio Aiken v. South Carolina Department of Employment and  
Workforce  
Case No: 17-ALJ-22-0291-AP

Dear Ms. Kitchings:

Enclosed is the original unbound and six copies of the Motion to Dismiss for Mootness and Memorandum in Support with a Certificate of Service to the other parties.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kristi Chesley".

Kristi Chesley  
Administrative Legal Assistant for  
Todd Timmons  
Attorney for Appellant South Carolina  
Department of Employment and Workforce

ND WORKFORCE

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