

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

RECEIVED

JUL 11 2018

Shirley C. Robinson, Administrative Law Judge
Case No.: 17-ALJ-22-0224-AP

SC Court of Appeals

Appellate Case Number: 2017-002378

Ross Buchanan,

Appellant,

v.

South Carolina Department of Employment and Workforce
and Upstate Machine and Manufacturing, LLC,

Respondents.

**RESPONDENTS' MOTION TO EXCLUDE
ITEMS 3 AND 4 FROM APPELLANT'S DESIGNATION OF MATTER
AND MEMORANDUM IN SUPPORT**

Respondents South Carolina Department of Employment and Workforce (Department) and Upstate Machine and Manufacturing, LLC, (Upstate), collectively (Respondents) respectfully move to exclude Items 3 and 4 of Appellant's Designation of Matter because these items were not part of the record presented to the Department's Appeal Tribunal or Appellate Panel, or to the Administrative Law Court (ALC). Therefore, pursuant to Rules 209(b) and 210(c), SCACR, Items 3 and 4 of Appellant's Designation of Matter constitute improper matter which should be stricken and excluded from the Record on Appeal to this Court.

BACKGROUND and RELEVANT LAW

The ALC determined substantial evidence supported the Department's Appellate Panel decision that Appellant was discharged for misconduct and was properly disqualified from receiving unemployment benefits pursuant to S.C. CODE ANN § 41-35-120(a). Appellant now seeks judicial review from this Court.

Because this action challenges a final administrative decision of Respondent Department on Appellant's claim for unemployment benefits, appellate review is confined to the same record upon which the agency reached its decision, and is limited to determining whether the Department's decision is supported by substantial evidence on the record as a whole, or controlled by error of law. S.C. CODE ANN. § 1-23-380(4) ("The [Court's] review . . . must be confined to the record.")

THE COURT SHOULD EXCLUDE ITEMS 3 AND 4 OF APPELLANT'S DESIGNATION OF MATTER BECAUSE APPELLANT IMPROPERLY INCLUDED MATTER OUTSIDE OF THE ALC'S RECORD ON APPEAL.

By virtue of his request for judicial review of the Department's final agency decision, Appellant has an obligation to advance his appeal in accordance with the statutory and procedural requirements of the Court.

Rule 209(b), SCACR, governing the content of a party's Designation of Matter requires that the Designation "may only propose to include portions of the transcript, pleadings orders, exhibits, or other materials which may be properly included in the Record on Appeal. [See Rule 210(c)]. **A party shall not include any matter in his Designation which is not relevant to the appeal.**" (emphasis added).

Moreover, Rule 210(c) states that the Record on Appeal "**shall not . . . include matter which was not presented to the lower court or tribunal.**" (emphasis added).

See Henning v. Kaye, 307 S.C. 436, 438, 415 S.E.2d 794, 794-95 (1992) (“Appellant is reminded that the Record on Appeal shall not contain any matter not presented to the trial court.”)

In this case, Appellant's Designation of Matter includes 4 items:

1. Record on Appeal from Administrative Law Court;
2. Joint Brief of Respondents dated September 28, 2017;
3. Appellant's wage statements/ W-2 and the complaint filed with South Carolina Department of Labor for unpaid wages, dated May 9, 2018; and
4. Additional testimony from subpoenaed witnesses and violations of Labor laws and insurance fraud by employer if the Court finds it relevant.

Items 1 and 2 are included in Respondents' Designation of Matter as well and are unobjectionable.

This Court should exclude Item 3 because Appellant did not present these documents during the Tribunal hearing. Consequently, they were not a part of the record before the Department or the ALC. Indeed, his referenced complaint dated May 9, 2018, was prepared subsequent to the lower proceedings, which concluded with the ALC's opinion dated October 12, 2017. This document is not relevant to the appeal of the ALC Order to this Court as it pertains to separate matters outside of Appellant's unemployment benefits claim, and is relevant to matters that exceed the scope of the jurisdiction for the Tribunal, Panel, and ALC.

This Court should also exclude Item 4 because Appellant requests that additional testimony be taken, which he did not present in the lower proceedings, and it should not be allowed at this appellate stage. Moreover, it is not relevant to the Court's review of Appellant's unemployment benefits claim which is the sole matter at issue in this appeal.

The Department recognizes that Appellant has chosen to represent himself and may not be versed in the rules of appellate procedure; however, Appellant has a

duty to comply with appellate court rules to provide a proper Designation of Matter, Record on Appeal, and Brief of Appellant. *See State v. Burton*, 356 S.C. 259, 265 n. 5, 589 S.E.2d 6, 9 n. 5 (2003) (“A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.”).

Appellant has failed to comply with the South Carolina Appellate Court Rules governing appeals by proposing impermissible matter in his Designation of Matter. Therefore, pursuant to Rule 209(b) and 210(c), this Court should exclude Items 3 and 4 from Appellant’s Designation of Matter and from the Record on Appeal.

CONCLUSION

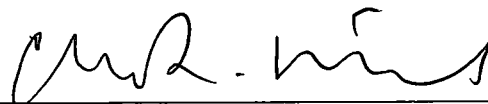
For all of the foregoing reasons, Respondents respectfully move this Court to exclude Items 3 and 4 from Appellant’s Designation of Matter and the Record on Appeal.

Respectfully submitted,



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July 10, 2018

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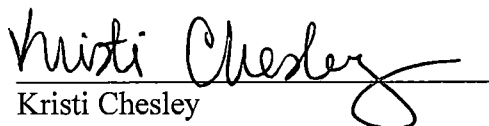
PROOF OF SERVICE

I certify that I have served the Motion to Exclude Items 3 and 4 from Appellant's Designation of Matter on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on July 10, 2018, addressed to the parties at their addresses of record:

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July 10, 2018



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July 10, 2018

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

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SC Court of Appeals

RE: Ross Buchanan v. South Carolina Department of Employment and
Workforce and Upstate Machine & Manufacturing LLC
Appellate Case No: 2017-002378

Dear Ms. Kitchings:

Enclosed are the original and six copies of the Respondents' Motion to Exclude Item 3 and 4 from Appellant's Designation of Matter. A Proof of Service is also included in this packet.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kristi Chesley". The signature is written in a cursive style.

Kristi Chesley
Administrative Legal Assistant for
Sandra Grooms
Attorney for Respondent South Carolina
Department of Employment and Workforce