THE STATE OF SOUTH CAROLNA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2018-001167

Edward W. Miller, ...Petitioner,

v.

South Carolina Public Employee Benefit Authority,
South Carolina Retirement Systems,.....Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

Justin R. Werner
Legal Counsel
S.C. Bar # 69464
Stephen R. Van Camp
General Counsel
South Carolina Public Employee Benefit Authority
202 Arbor Lake Drive
Columbia, South Carolina 29223
(803) 737-6894

Attorneys for Respondent

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The South Carolina Court of Appeals correctly affirmed the decision of the South Carolina Administrative Law Court finding that Petitioner's August 2014 challenge to a service purchase invoice issued by the South Carolina Retirement Systems in December 2002 was untimely and not subject to review on its merits. Further, this case does not raise any legal questions that would constitute the "special and important reasons" necessary to support review by writ of certiorari by this Court. See Rule 242(b), SCACR. Accordingly, the Petition for Writ of Certiorari should be denied.

STATEMENT OF THE CASE

Petitioner Edward W. Miller is an active member of the Retirement System for Judges and Solicitors of the State of South Carolina ("JSRS"), who has purchased the maximum sixteen years of service credit in the system. (R. p. 51 (Stipulation of Fact #1).) As set forth below, in this matter, Petitioner has sought to reopen a service purchase transaction he completed in 2003 for a portion of that service credit.

In December 2002, Petitioner submitted a request to Respondent South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems ("Retirement Systems"), to purchase public service credit in JSRS for his employment as an assistant public defender for the Defender Corporation of Greenville County between 1986 and 2002. (R. pp. 55-56 (Joint Exhibit #2); R. p. 52 (Stipulation of Fact #4).) On the request form, both Petitioner and the Defender Corporation stated that Petitioner's employment with the Defender Corporation had not been full-time employment, with the Corporation certifying in its section that Petitioner's part-time employment had been equal to 60% of full-time employment. (R. pp. 55 (Joint Exhibit #2, Part I, Section #3); R. p. 56 (Joint Exhibit #2, Part II, Section #3, Columns (D)-(E)).) Relying upon the certifications from

Petitioner and his employer, the Retirement Systems issued an invoice to Petitioner on December 23, 2002, for the purchase of public service credit exactly as reported on the request form—namely, 9 years, 8 months, and 5 days of public service credit, representing 60% of full-time employment for the 16 years, 1 month, and 18 days of Petitioner's employment for the Defender Corporation. (R. p. 52 (Stipulations of Fact #5 and #6); R. pp. 57-58 (Joint Exhibit #3).) Petitioner did not appeal, object to, or otherwise seek review of the Retirement Systems' determination of the public service credit he was found eligible to purchase on that invoice. Rather, on August 1, 2003, Petitioner completed the purchase of the public service credit as invoiced. (R. p. 52 (Stipulation of Fact #7); R. p. 59 (Joint Exhibit #4).)

Eleven years later, by a letter dated August 7, 2014, Petitioner wrote to the Retirement Systems seeking to appeal the Retirement Systems'. December 2002 determination regarding the amount of public service credit he was eligible to purchase in JSRS for his employment with the Defender Corporation between 1986 and 2002. (R. pp. 60-62 (Joint Exhibit #5); R. p. 52 (Stipulation of Fact #8).) On October 17, 2014, the Retirement Systems issued Final Agency Determination No. 14-015, finding that Petitioner's August 2014 challenge to the December 2002 invoice was not timely filed under the South Carolina Retirement Systems Claims Procedures Act and should be dismissed. (R. pp. 70-75 (Joint Exhibit #6); R. p. 52 (Stipulation of Fact #9).)

By a Request for a Contested Case Hearing filed on November 20, 2014, Petitioner sought review of the Retirement Systems' Final Agency Determination before the South Carolina Administrative Law Court. (R. p. 16.) By a letter to the court dated May 5, 2015, the parties notified the administrative law judge ("ALJ") assigned to hear

the case that they had conferred regarding the presentation of the case and had determined that

> the parties do not believe that an evidentiary hearing is necessary in this matter and instead believe that this matter could be decided by the [c]ourt as a matter of law based upon stipulations of fact, joint exhibits, and memoranda of law submitted by the parties.

(R. p. 17 (emphasis added).) By an Order for Continuance and Scheduling Order dated May 7, 2015, the ALJ granted the parties' request to have the matter heard as a matter of law upon stipulated facts, in lieu of an evidentiary hearing. (R. p. 13.) In the Order, the ALJ noted that, in granting the parties' request, she would be adjudicating the case as if "upon cross motions for summary judgment." (R. p. 13.) Pursuant to the parties' agreement and the ALJ's order, the parties submitted a set of Joint Stipulations of Fact and Exhibits to the ALJ on July 6, 2015. (R. pp. 51-75.) The Joint Stipulations of Fact and Exhibits document, which was signed by Petitioner, again recited that, "upon motion of the parties," the case would be adjudicated "as a matter of law" based upon the stipulated facts. (R. p. 51.) Subsequently, the parties also submitted memoranda of law, and reply memoranda, in support of their positions to the ALJ. (R. pp. 18-38.) At no point in making these filings did Petitioner withdraw from his agreement to have the case heard as a matter of law or otherwise object to the manner in which the case was being adjudicated, including the ALJ's statement that the matter would be decided as if on cross-motions for summary judgment.

By an Order dated August 24, 2015, the ALJ granted summary judgment in favor of the Retirement Systems, finding that Petitioner's August 2014 challenge to the

Retirement Systems' December 2002 invoice could not be heard by the court on its merits as a result of Petitioner's failure to timely exhaust his agency remedies for the claim. (R. pp. 6-12.) On September 2, 2015, Petitioner filed a motion for reconsideration of the ALJ's order, arguing, among other things, that the procedural posture of the case had been mischaracterized. (R. pp. 49-50.) In response to Petitioner's motion, the ALJ held a conference call with the parties on September 24, 2015, for the sole purpose of confirming that she had correctly understood the nature of the parties' request to have the matter adjudicated by the court as a matter of law based upon the stipulated facts and exhibits. (R. p. 2; R. p. 44.) During the conference call, the parties confirmed their agreement to have the matter decided by the ALJ as a matter of law based upon stipulated facts. (R. p. 2; R. p. 44.) By an Order dated September 28, 2015, the ALJ denied Petitioner's motion for reconsideration. (R. pp. 1-5.)

By a Notice of Appeal dated October 27, 2015, Petitioner appealed the ALJ's September 28, 2015 order denying his motion for reconsideration to the South Carolina Court of Appeals. Oral argument was heard on the appeal on October 4, 2017. By an unpublished, per curiam decision filed February 7, 2018, the Court of Appeals affirmed the decision of the ALJ below. Petitioner requested rehearing, and, by an Order filed May 24, 2018, the Court of Appeals denied the petition for rehearing. Petitioner has now filed a Petition for Writ of Certiorari to this Court, seeking review of the decision of the Court of Appeals.

ARGUMENT

At root, this case is nothing more than a "do over" requested by Petitioner—the proverbial "second bite at the apple." Petitioner chose to have this case adjudicated at the

trial level as a matter of law based upon stipulated facts. (R. pp. 17, 51.) But, having been disappointed by the decision reached by the ALJ (and affirmed by the Court of Appeals), and perhaps recognizing that those stipulated facts do not support his arguments, Petitioner now requests in this Petition to have this case remanded to the ALJ for a second chance to litigate his case with new facts and evidence. (Petition for Writ of Certiorari at 3, 5, 6, 7, 9, 10.) However, this Court has consistently recognized that "[i]t would be patently inappropriate and unfair to [the opposing party], as well as a violation of well-established preservation of error principles and notions of judicial economy" to give a disappointed litigant a second chance to try its case where the alleged error below is a trial procedure of the litigant's own choosing. Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 481, 629 S.E.2d 653, 673 (2006); see also, e.g., City of Myrtle Beach v. Tourism Expenditure Review Committee, 407 S.C. 298, 303 n.5, 755 S.E.2d 425, 427 n.5 (2014) (declining to allow a remand for the City to present new evidence based upon a theory not advanced by the City, because the Court saw "no reason to afford the City a reprieve from a situation its own conduct induced"); Therrell v. Jerry's Inc., 370 S.C. 22, 30, 633 S.E.2d 893, 897 (2006) (finding no justification for "a significant departure from our rules" that would allow a worker's compensation claimant a "second bite at the apple" by presenting new evidence to the commission that she did not elect to present in her initial hearings).[1]

[1] And, the "do overs" sought by Petitioner in this case are not limited to how the case was tried before the ALJ. For example, at the Administrative Law Court, Petitioner sought a second chance to appeal a decision made by the Retirement Systems in 2002, even though he had missed the time for filing such an appeal by over a decade. (R. p. 19.) Similarly, in the underlying appeal that he sought to bring before the Retirement Systems, Petitioner sought a second chance to report his employment for the Defender Corporation

Further, reflecting the inherent tension in seeking redress for an alleged error of his own making, many of Petitioner's arguments are simply confounding, essentially requiring him to argue that it was error to grant his own requests. Most notably, despite having asked the ALJ to adjudicate this case as a matter of law based upon stipulated facts (R. pp. 17, 51), Petitioner now contends that it was error for the ALJ to decide the case as a matter of law based upon the stipulations submitted by the parties without conducting an evidentiary hearing. (Petition for Writ of Certiorari at 7 ("The ALC erred in failing to require the parties to fully develop a complete evidentiary record when making its decision.").) Similarly, Petitioner takes great issue with the decision of the ALJ to conduct a conference call with the parties for the sole purpose of ensuring that she had not misunderstood Petitioner's request to have the matter decided as a matter of law based upon stipulated facts (R. pp. 2, 44); to Petitioner, this effort by the ALJ to make sure that he had been afforded a full opportunity to present his case and receive the process he was due is somehow a violation of his due process rights. (Petition for Writ of Certiorari at 7-9.)[2]

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as full-time employment, even though both he and the Defender Corporation had reported the employment as part-time employment in 2002. (R. p. 60.)

[2] As with the "do overs" discussed above, these confounding arguments are not limited to Petitioner's objections to the proceedings before the ALJ. For example, Petitioner contends that the Retirement Systems somehow breached a fiduciary duty to him by finding that he was eligible to purchase public service credit exactly as reported by Petitioner and his employer on his request. (R. pp. 55-58; Petition for Writ of Certiorari at 3-4.) Elsewhere in the Petition, Petitioner contends that counsel for Respondent breached its fiduciary duties to another member by responding to a question from the Court of Appeals regarding that member, even though that member had voluntarily proffered information about his circumstances to be used in support of Petitioner's case (R. pp. 63-64) and it is Petitioner that has interjected that member's information into this matter, including numerous discussions of that member's circumstances and information, in which Petitioner refers to the member by name, stylizing the circumstances as the "Joe Watson case." (R. pp. 19, 21, 22-23, 24-25.)

Although these general concerns apply across all of the arguments made by Petitioner on the questions he presents in his Petition for Writ of Certiorari, each of those arguments will be specifically addressed, in turn, below.

1. THE COURT OF APPEALS CORRECTLY FOUND THAT PETITIONER HAD NOT ESTABLISHED A BREACH OF FIDUCIARY DUTY

A. Petitioner failed to timely exhaust his agency remedies regarding his challenge to the Retirement Systems' December 2002 invoice, thus depriving the courts of jurisdiction to hear his claim on its merits.

As an initial matter, it is clear that the Court of Appeals correctly affirmed the ALJ's decision, which found, as a matter of law, that Petitioner's delay for over a decade in seeking review of the Retirement Systems' December 2002 determination on his service purchase request foreclosed his opportunity to have review of that claim by the courts. In his August 2014 request for review before the Retirement Systems, Petitioner sought to "appeal [the] agency's decision in December of 2002 to allow [him] to purchase only 60% of [his] allowable service credit for the time period of May 12, 1986 through June 30, 2002." (R. p. 60.) However, as set out below, this claim was not timely made under the applicable statutory claims procedures and is therefore precluded from review by the courts.

The South Carolina Retirement Systems Claims Procedures Act ("Claims Procedures Act"), and the procedures set forth therein, "constitute the exclusive remedy for a dispute or controversy between the retirement systems and a member or a member's designated beneficiary arising pursuant to or by virtue of Title 9 of the Code of Laws of South Carolina," and any claim presenting such a dispute "must be resolved in accordance with the procedures and provisions provided in [the Claims Procedures Act]."

S.C. Code Ann. § 9-21-30 (Supp. 2017). In order to timely file a claim with the Retirement Systems under the Claims Procedures Act,

> [a] member or the member's designated beneficiary shall file a claim concerning an administrative decision by the retirement systems arising pursuant to or by virtue of this title that adversely affects the personal interest of the member or the member's designated beneficiary by the filing of a written claim with the director within one year of the decision by the retirement systems.

S.C. Code Ann. § 9-21-50(A) (Supp. 2017) (emphasis added). If a member does not timely file a claim pursuant to Section 9-21-50 with regard to a decision of the Retirement Systems, the member has failed to exhaust his or her agency remedies under the Claims Procedures Act. S.C. Code Ann. § 9-21-20(5) (Supp. 2017) (stating that the first prerequisite to the "exhaustion of agency remedy" under the Claims Procedures Act is for the member to have "filed a timely claim pursuant to Section 9-21-50 containing the information required pursuant to that section") (emphasis added). And, because the exhaustion of agency remedies is a condition precedent to review by the Administrative Law Court, the failure to timely exhaust those remedies precludes review of the merits of the member's claim before the Administrative Law Court and any subsequent review by the judicial branch courts. S.C. Code Ann. § 9-21-60 (Supp. 2017) (providing that a claimant under the Claims Procedures Act may only seek review of a Retirement Systems' decision with the Administrative Law Court "[u]pon exhaustion of the agency remedy set out in this chapter").

In short, the requirement that a member timely file a claim under the Claims Procedures Act is a statutory condition precedent to any review of the merits of that claim before the courts, such that failure to make a timely claim precludes the courts from taking jurisdiction over the merits of the claim. See Sadisco of Greenville, Inc. v.

Greenville Cty Bd. of Zoning Appeals, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000) (holding that the time for serving a notice of appeal for review of an administrative decision "is a jurisdictional requirement, and [the] Court has no authority to extend or expand the time in which the Notice of Appeal must be served"); Burnett v. S.C. State Highway Dep't., 252 S.C. 568, 167 S.E.2d 571 (1969) (holding that the statutory method for seeking review of a decision of the board of condemnation was exclusive and that the court has not authority to extend the time for taking an appeal under those statutory provisions); Perkins v. Dep't of Med. Assistance, 555 S.E.2d 500, 502, 503 (Ga. Ct. App. 2001) (noting that "[i]t must be remembered that the constitutional separation of powers between the executive branch and the judicial branch prevents courts from involvement in review of administrative decisions unless there exists specific legislative empowerment for the judiciary to act regarding executive branch functions; when such delegation of power exists, appeals to the courts must follow such statutory procedures as a condition precedent to obtaining subject matter jurisdiction, because such conferred powers over executive branch functions are statutorily circumscribed" and holding that the lower court had no jurisdiction to review the party's challenge to an administrative decision "because [the party] had no right to appeal to the superior court unless and until it had as a condition precedent exhausted its administrative remedies through a timely administrative appeal"); see generally Richard H. Seamon, Paige J. Gossett and John D. Geathers, Administrative Agencies—General Concepts and Principles, in South Carolina Administrative Practice and Procedure 1, 102 (Randolph R. Lowell ed., 3d ed. 2013) (noting that, unlike the judicially developed doctrine of exhaustion of administrative remedies, "[i]f a statute is interpreted to both (1) require exhaustion prior to judicial

review and (2) provide the exclusive means of judicial review, then the failure to meet the exhaustion requirement . . . could defeat jurisdiction"). Further, this limitation has been routinely recognized by the Administrative Law Court. See, e.g., Elizabeth L. Hehn v. S.C. Public Employee Benefit Auth., S.C. Ret. Sys., Docket No. 14-ALJ-30-0427-CC (S.C. Admin. Law Ct. Dec. 18, 2014) (granting summary judgment in favor of the Retirement Systems because of petitioner's failure to exhaust her administrative remedies by timely seeking review of the denial of her disability retirement application under the Claims Procedures Act); Ernest Legette v. S.C. Budget & Control Bd., S.C. Ret. Sys., Docket No. 10-ALJ-30-0714-CC (S.C. Admin. Law Ct. Jan. 13, 2011) (dismissing petitioner's case for his failure to exhaust his administrative remedies with the Retirement Systems because he had failed to seek review of the denial of his disability retirement application within one year of his notice of the decision); Mark Campbell v. S.C. Budget & Control Bd., S.C. Ret. Sys., Docket No. 07-ALJ-30-0527-CC (S.C. Admin. Law Ct. Mar. 27, 2008) (granting the Retirement Systems' motion for summary judgment where a disability retiree failed to exhaust his administrative remedies with the Retirement Systems by failing to timely seek review of the decision to discontinue his benefits through the Retirement Systems' claims procedures).

In the instant matter, by a Member Service Payment Invoice prepared December 20, 2002, and mailed to Petitioner on December 23, 2002, the Retirement Systems notified Petitioner of its determination of the amount of public service credit he was eligible to purchase in JSRS based upon his employment with the Defender Corporation of Greenville County between 1986 and 2002. (R. pp. 57-58.) The invoice clearly specified that the total public service credit Petitioner was eligible to purchase for his

employment between May 12, 1986, and June 30, 2002, was 9 years, 8 months, and 5 days, based upon 60% of full-time equivalent service credit for that period. However, upon receipt of the invoice, Petitioner did not seek review of the calculation reflected on that invoice or otherwise contact the Retirement Systems to inquire about the accuracy of the service purchase invoice. To the contrary, Petitioner purchased the service as invoiced, and without protest, in August 2003. (R. p. 59.) Then, in August 2014, some eleven years after the issuance and payment of that invoice, Petitioner sought formal review of the calculation of the public service credit he was eligible to purchase as reflected on that invoice. (R. pp. 60-62.) However, because this claim was not timely filed within one year of the Retirement Systems' decision, Petitioner failed to exhaust his agency remedies under the Claims Procedures Act, such that this claim was properly dismissed by the Retirement Systems. See S.C. Code Ann. §§ 9-21-20(5)(a), 9-21-50(A). And, by failing to timely file his claim and exhaust his agency remedies, Petitioner is precluded from pursuing his claim on its merits before the courts as a matter of law. See S.C. Code Ann. §§ 9-21-20(5)(a), 9-21-60.

Finally, it should be emphasized this preclusion is no mere procedural technicality. In fact, the complications implicated in Petitioner's request for review are precisely the sort of problems that the deadlines in the Claims Procedures Act and other administrative procedures acts are designed to prevent. For example, in large part, the merits of Petitioner's claim involve using documents generated in 2014 to call into question the service verification executed in 2002 that itself addresses work performed dating back to 1986. It is the difficulty faced in resolving these sorts of stale claims that the deadlines in administrative claims procedures are intended to avoid.

In sum, because Petitioner's request for review of the December 2002 invoice was not timely made, the ALJ and Court of Appeals correctly found that his claim was properly dismissed by the Retirement Systems under the plain terms of the Claims Procedures Act and constitutes a failure of Petitioner to exhaust his administrative remedies such that, as a matter of law, it cannot be heard by the courts on its merits. And, such a straightforward application of the plain terms of the Clams Procedures Act does not present the sort of special and important reasons that would warrant further review before this Court upon writ of certiorari.

B. Petitioner did not establish a breach of fiduciary duty

In this case, Petitioner does not contest the fact that he did not timely submit his request for review within the period allowed under the Claims Procedures Act. Rather, he seeks to have his claim heard on its merits notwithstanding the fact that he failed to timely exhaust his agency remedies. In particular, he argues that the statutory condition precedent for review of his claim should be excused under various theories, all premised on a claim that he was treated differently than a similarly situated member of JSRS. Included among these theories is an allegation that the Retirement Systems breached its fiduciary duties to Petitioner. However, even if a breach of fiduciary duty were a basis for excusal from complying with the jurisdictional requirements of the Claims Procedures Act, Petitioner has not presented evidence to establish such a breach of fiduciary duty.

As recognized by the Court of Appeals, the Retirement Systems does owe fiduciary duties to the members of the South Carolina Retirement Systems. However, the Court of Appeals also correctly recognized that Petitioner had not established that the Retirement Systems breached any of those fiduciary duties to Petitioner in this matter.

Whether couched as a breach of fiduciary duty, violation of equal protection, or some other claim, Petitioner's argument is premised on three basic facts that he did not prove in this matter: (1) that an entirely similarly situated member of JSRS was allowed to purchase service credit that Petitioner was denied the opportunity to purchase, (2) that the Retirement Systems was aware of this similarly situated member who was treated differently than Petitioner, and (3) that the Retirement Systems concealed knowledge of this differential treatment from Petitioner. Because Petitioner did not establish those facts in the record of this matter, despite having the burden of proof on his claim, Petitioner's arguments on those theories cannot be supported. In fact, in his Petition, Petitioner essentially acknowledges that the facts in the record in this matter do not establish a breach of fiduciary duty and requests a second chance to present new evidence to a fact-finder in an effort to prove such a breach. (Petition for Writ of Certiorari at 3.) As discussed above, granting Petitioner this sort of "second bite at the apple" "would be patently inappropriate and unfair" to the Retirement Systems and would be "a violation of well-established preservation of error principles and notions of judicial economy." Erickson, 368 S.C. at 481, 629 S.E.2d at 673.

2. THE COURT OF APPEALS CORRECTLY FOUND THAT PETITIONER HAD NOT ESTABLISHED AN EQUAL PROTECTION VIOLATION

For similar reasons, the Court of Appeals correctly held that Petitioner did not prove that the Retirement Systems violated his right to equal protection under the law. As the moving party in this case, Petitioner had the burden of proof to establish that he had been treated differently than similarly situated persons. See TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 626, 503 S.E.2d 471, 479 (1998). Although Petitioner presented some evidence that another member who performed a similar type of work for

a different employer had purchased full-time service for his employment, he did not establish that his request to purchase public service was on all fours to that of the other member. For example, at the most basic level, Petitioner did not establish that he and the other member were classified as full-time or part-time in same manner by their employers nor that their employment classification was reported to the Retirement Systems in the same fashion. (R. p. 53 (Stipulation of Fact #11).) Without establishing such similarity, Petitioner's equal protection claim must fail.[3] And, as addressed at length above, Petitioner's request for a second chance to present new evidence of alleged disparate treatment "would be patently inappropriate and unfair" at this stage in the proceedings. Erickson, 368 S.C. at 481, 629 S.E.2d at 673.

3. THE COURT OF APPEALS CORRECTLY FOUND THAT PETITIONER'S AUGUST 2014 CHALLENGE TO THE RETIREMENT SYSTEMS' DECEMBER 2002 DETERMINATION WAS UNTIMELY

As set out in detail in Section 1(A) of the Argument above, the Court of Appeals correctly affirmed the ALJ's decision, which found, as a matter of law, that Petitioner's delay for over a decade in seeking review of the Retirement Systems' December 2002 invoice foreclosed his opportunity to have review of that claim by the courts. Further, as also discussed above, Petitioner did not prove the facts that would be necessary to support any of his arguments for being excused from failing to timely file his claim, and

[3] Petitioner's attempt to flip this burden of proof in his Petition is likewise unavailing. (Petition for Writ of Certiorari at 4.) It was not incumbent upon Respondent or the Court of Appeals to put facts into the record to disprove disparate treatment, but Petitioner's burden to establish that he was treated differently than persons who were similarly situated in all relevant respects—a burden he has failed to carry.

he cannot now be granted a second bite at the apple in an attempt to present new evidence to support those arguments.[4]

4. THE COURT OF APPEALS CORRECTLY AFFIRMED THE ALJ'S GRANT OF SUMMARY JUDGMENT

Petitioner's challenges to the procedures used by the ALJ are without merit and are somewhat puzzling in light of the parties' stipulations in this matter. The parties to this case conferred and agreed early in the proceedings before the Administrative Law Court that it would not be necessary to hold an evidentiary hearing in this case and that this case could be decided as a matter of law based upon a set of undisputed stipulated facts and joint exhibits. (R. pp. 17, 51.) The ALJ consented to the parties' request to have this case adjudicated as a matter of law on the stipulated facts, and, in her order confirming that process, the ALJ characterized her review as deciding the case on cross-motions for summary judgment. (R. pp. 13-14.) Petitioner did not object to this characterization, and based upon their agreement and the ALJ's order, the parties signed and submitted stipulations of fact and joint exhibits as the entire factual record upon which the ALJ would decide the case as a matter of law. (R. pp. 51-75.)

However, once the ALJ issued her order deciding this case as a matter of law, Petitioner filed a motion for reconsideration, contending that the characterization of the matter as being heard as cross-motions for summary judgment was inaccurate. (R. pp. 49-50.) As a result of that motion, the ALJ held a conference call with the parties to confirm that she had properly understood the parties' request to have the case heard as a

[4] Not only has Petitioner failed to prove the facts necessary to support his arguments on these theories, he has also failed to show that such facts, even if proven, would excuse his failure to comply with the jurisdictional requirements of the Claims Procedures Act as a matter of law.

matter of law based upon stipulated facts. (R. p. 2; R. p. 44.) During the call, the parties confirmed their request and their understanding that the case would be decided as a matter of law on the undisputed facts submitted. (R. p. 2; R. p. 44.) The ALJ did not take any evidence or hear arguments from the parties during the call. (R. p. 2; R. p. 44.)

In his Petition, Petitioner contends that the characterization of this matter as being decided on summary judgment was in error and warrants a remand for a new hearing. Although Petitioner disagrees with the ALJ's and Court of Appeals' conclusions on the legal issues raised in this case, it appears that the standard of review used by the ALJ, and affirmed by the Court of Appeals, in adjudicating this matter is precisely that requested by the parties. It is immaterial whether that review is characterized as adjudicating cross-motions for summary judgment or as deciding the case as a matter of law based upon the undisputed stipulated facts and joint exhibits submitted by the parties. In either event, the court is reviewing a set of undisputed facts and determining whether a judgment, if any, may be entered in a party's favor as a matter of law based upon that set of facts. Consequently, upon appeal, the Court of Appeals correctly recognized in its decision that, given the parties' stipulations, "the ALC neither erred in viewing these submissions as cross-motions for summary judgment nor in granting summary judgment in favor of [the Retirement Systems]." (Slip op. at 3.)

5. THE COURT OF APPEALS CORRECTLY HELD THAT THE ALJ'S CONFERENCE CALL DID NOT VIOLATE PETITIONER'S DUE PROCESS RIGHTS

For similar reasons, Petitioner's contention that the telephone conference held by the ALJ to confirm her understanding of the parties' requested process for adjudication of the case violated his due process rights must fail. While the ALJ's order denying

Petitioner's motion for reconsideration does refer to the telephone call as a "telephonic hearing" in one instance, the ALJ did not take evidence during the call or hear arguments from the parties, but simply confirmed the parties' agreement of the procedural posture of the case. (R. p. 2; R. p. 44.) It was not a formal hearing on Petitioner's motion for reconsideration. (Nor would Petitioner have a constitutional right to such a hearing on a motion for reconsideration.) Moreover, despite Petitioner's statements to the contrary, the Retirement Systems has not argued that any "settlements" or other formal agreements were made during that conference call. In sum, there is no legal or rational basis to contend that the ALJ's decision to hold a conference call to ensure she had given Petitioner the process he was due could constitute a violation of his due process rights.

CONCLUSION

The South Carolina Administrative Law Court and South Carolina Court of Appeals correctly decided this matter, and this case does not raise any special or important legal questions that would warrant review by writ of certiorari to this Court. Consequently, for all of the reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Justin R. Werner
Deputy General Counsel
S.C. Bar #69464
Stephen R. Van Camp
General Counsel
S.C. Public Employee Benefit Authority
202 Arbor Lake Drive
Columbia, SC 29223
(803) 737-6894
Attorneys for Respondent

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Columbia, South Carolina

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I served a copy of the Return to Petition for Writ of Certiorari on all parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows:

The Honorable Edward W. Miller
44 West Avondale Drive
Greenville, SC 29609

Howard W. Paschal, Jr., Esquire
644 East Washington Street
Greenville, SC 29601

Justin R. Werner
S.C. Bar # 69464
South Carolina Public Employee Benefit Authority
202 Arbor Lake Drive
Columbia, South Carolina 29223
Telephone: (803) 737-6894
Attorney for Respondent

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