

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

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

SEP 06 2018

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 FOR AN ORDER TO COMPEL APPELLANT TO
SUBMIT A SUPPLEMENTAL RECORD ON APPEAL
AND
FOR AN EXTENSION OF TIME TO FILE RESPONDENTS' FINAL BRIEF**

Appellant served Respondent South Carolina Department of Employment and Workforce (Department) and Upstate Machine and Manufacturing, LLC (Upstate) collectively (Respondents), with a Record on Appeal on August 21, 2018. The Record is incomplete and does not include all materials in Respondents' Designation of Matter. Accordingly, Respondents respectfully move this Court to Order Appellant to compile and serve a Supplemental Record on Appeal that includes all materials in Respondents' Designation of Matter in compliance with the South Carolina Appellate Court Rules (SCACR). Respondents also request this Court stay the time for filing their final brief pending the Court's ruling on this motion.

BACKGROUND and RELEVANT LAW

This case is an appeal from an Order of the S.C. Administrative Law Court (ALC) issued on October 12, 2017. The ALC conducted an appellate review of the Department's final decision on Appellant's unemployment benefits claim. 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 and Respondents have each filed and served their Initial Briefs and Designations of Matter in this appeal. On July 10, 2018, Respondents jointly filed and served upon Appellant a "Motion to Exclude Items # 3 and # 4 from Appellant's Designation of Matter" ('Motion to Exclude') because these items were not part of the record presented to the Department's Appeal Tribunal or Appellate Panel, or to the ALC. Therefore, pursuant to Rules 209(b) and 210(c), SCACR, Items # 3 and # 4 of Appellant's Designation constituted improper matter which should be stricken and excluded from the Record on Appeal to this Court. On July 23, 2018, Appellant filed and served a Return to the 'Motion to Exclude', along with his Initial Reply Brief. As of the date of this filing, the Court has not yet ruled on Respondents' 'Motion to Exclude'.

On August 21, 2018, Appellant proceeded in this matter and served Respondents with a purported Record on Appeal and filed a Proof of Service with this Court. Respondents have reviewed the Record on Appeal furnished by Appellant and respectfully note that Appellant has not included Items # 3 and # 4 of Appellant's Designation of Matter in the Record on Appeal. Accordingly, Respondents believe their 'Motion to Exclude' is now moot, and the Court no longer needs to consider or rule on it.

However, Respondents have determined that the Record on Appeal prepared by Appellant and served upon Respondents is incomplete and improperly formatted. Therefore, it does not comply with the South Carolina Appellate Court Rules.

Pursuant to Rule 210 (c), SCACR, Appellant is required to include in the Record on Appeal all matter designated in the Respondents Designation of Matter. Appellant failed to include 3 items that were identified in Respondents' Designation of Matter. Accordingly, Respondents move this Court for an Order compelling Appellant to compile and serve a proper Record on Appeal by submitting a Supplemental Record on Appeal, which contains the missing items designated by Respondents.

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

1. Order of Administrative Law Court, affirming the South Carolina Department of Employment and Workforce Appellate Panel (filed October 12, 2017);
2. Record on Appeal to Administrative Law Court (filed August 3, 2017);
3. Brief of Appellant to Administrative Law Court (filed August 22, 2017); and
4. Joint Brief of Respondents to Administrative Law Court (filed Sept. 28, 2017).

Currently, Appellant has served a Record on Appeal upon Respondents that duplicates the same Record on Appeal the Department previously filed with the ALC for the lower proceedings. This satisfies Item # 2 in Respondents' Designation of Matter¹.

However, Appellant's Record on Appeal does not contain Items # 1, # 3, and # 4 of Respondent's Designation of Matter. Most notably, Item # 1 is the Order of the Administrative Law Court that is on appeal to this Court. Items # 3 and # 4 are the briefs filed by both parties to the ALC. Moreover, Appellant listed Item # 4 in Appellant's own Designation of Matter as well, to be included in the Record on Appeal to this Court. These items are relevant to this appeal and should be included in the Record, as required by Rule 210(c), SCACR.

¹ Respondents note for the Court that the format of Item #2 does not comply with Rule 267, SCACR.

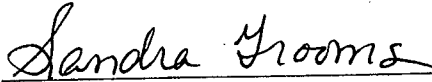
By virtue of his request for judicial review, Appellant has an obligation to advance his appeal in accordance with the statutory and procedural requirements of the Court. Respondents recognize that Appellant has chosen to represent himself and may not be versed in the rules of appellate procedure; however, Appellant has a fundamental duty to comply with appellate court rules to provide a proper Record on Appeal. *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.”).

Accordingly, Respondents respectfully move this Court to Order Appellant to compile and serve a Supplemental Record on Appeal that includes Items # 1, # 3, and # 4 of Respondents’ Designation of Matter, pursuant to Rule 210(c), SCACR. Respondents are unable to complete their Final Brief until Appellant serves a complete Record on Appeal, and therefore, Respondents further request that all time requirements and deadlines be held in abeyance pending resolution of this motion. Additionally, if the Court grants this motion, Respondents move for a time extension of twenty days to file its Final Brief, to commence after Appellant serves Respondents with the Supplemental Record on Appeal.

CONCLUSION

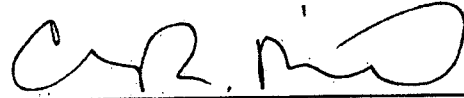
In sum, Appellant has served Respondents with a Record on Appeal that is incomplete and does not include all materials in Respondents’ Designation of Matter. For all the foregoing reasons and pursuant to SCACR, Respondents respectfully request this Court grant this Motion and Order Appellant to compile and serve a Supplemental Record on Appeal that includes Items # 1, # 3, and # 4 as listed in Respondents’ Designation of Matter. Further, Respondents request the Court hold all deadlines in abeyance pending resolution of this motion, and grant Respondents an extension of time to file its Final Brief.

Respectfully submitted,



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*Attorneys for Respondent
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September 5, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Shirley C. Robinson, Administrative Law Judge

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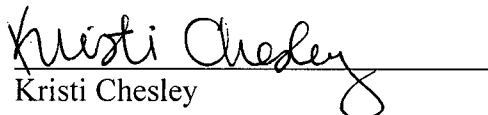
PROOF OF SERVICE

I certify that I have served the Respondents' Motion for an Order to Compel Appellant to Submit a Supplemental Record on Appeal and For an Extension of Time to File Respondents' Final Brief on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on September 5, 2018, addressed to the parties at their addresses of record:

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Chelsea R. Rikard
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September 5, 2018



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September 5, 2018

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SC Court of Appeals

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

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 for an Order to Compel Appellant to Submit a Supplemental Record on Appeal and For an Extension of Time to File Respondents' Final Brief. A Proof of Service is also included in this packet.

Please let me know if you have any questions.

Sincerely,

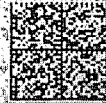
Kristi Chesley
Administrative Legal Assistant for
Sandra Grooms
Attorney for Respondent South Carolina
Department of Employment and Workforce

✓

**SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE**

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