

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

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Deborah Brooks Durden, Administrative Law Judge SEP 25 2018

SC Court of Appeals

Appellate Case No. 2018-000949

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Elvis G. Groce, .....Appellant,

v.

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

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FINAL BRIEF OF RESPONDENT

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Melissa Alexander  
Assistant General Counsel  
S.C. Bar # 79861  
Justin R. Werner  
Deputy General Counsel  
South Carolina Public Employee Benefit  
Authority  
202 Arbor Lake Drive  
Columbia, South Carolina 29223  
(803) 737-6830

Attorneys for Respondent

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## STATEMENT OF THE ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW JUDGE CORRECTLY FIND APPELLANT FAILED TO MEET THE STATUTORY REQUIREMENTS OF ELIGIBILITY TO RECEIVE DISABILITY RETIREMENT BENEFITS BECAUSE THE DATE OF DISABILITY ESTABLISHED FOR APPELLANT'S SOCIAL SECURITY DISABILITY BENEFITS WAS MORE THAN ONE YEAR AFTER THE DATE HE TERMINATED FROM ALL COVERED EMPLOYMENT UNDER THE SOUTH CAROLINA RETIREMENT SYSTEM?

## STATEMENT OF THE CASE

Appellant Elvis G. Groce ("Appellant") appealed the denial of his application for disability retirement benefits and, on January 29, 2018, the South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems ("PEBA") issued Final Agency Determination No. 18-002, affirming the determination that Appellant is not eligible to receive disability retirement benefits under the South Carolina Retirement System ("SCRS" or "System"). (R. pp. 35-37.)

By a Request for a Contested Case Hearing filed on February 8, 2018, Appellant sought review of PEBA's Final Agency Determination before the South Carolina Administrative Law Court. (R. p. 13.) On March 27, 2018, PEBA filed a Motion for Summary Judgment on the grounds that the undisputed facts demonstrated that, because the date of disability established for Appellant's receipt of Social Security disability benefits was more than one year after the date he had terminated from all covered employment under SCRS, Appellant is not eligible to receive disability retirement benefits from the System. (R. pp. 14-16.) On April 9, 2018, PEBA filed its Memorandum in Support of the Motion for Summary Judgment (R. pp. 17-37.) Appellant did not file a response to PEBA's Motion for Summary Judgment.

By an Order dated April 17, 2018, the ALJ granted summary judgment in favor of PEBA, finding that the undisputed facts demonstrated that the date of disability established for Appellant's receipt of Social Security disability benefits was more than one year after the date he had terminated from all covered employment under SCRS. (R. pp. 38-42.) On April 20, 2018, Appellant filed a motion for reconsideration of the ALJ's order. (R. p. 43.) By an Order dated May 9, 2018, the ALJ denied Appellant's motion for reconsideration. (R. pp. 44-45.)

By a Notice of Appeal dated June 5, 2018, Appellant appealed the ALJ's May 9, 2018 order denying his motion for reconsideration to this Court, resulting in the instant proceeding.<sup>1</sup>

### FACTS

Appellant Elvis Groce is an inactive member of the South Carolina Retirement System ("SCRS" or "System") who has approximately nine years of service in the System. During his active membership in SCRS, Appellant was most recently employed as a training coordinator with the South Carolina Department of Revenue. (R. p. 24.) On April 22, 2015, Appellant submitted an application for SCRS disability retirement benefits to PEBA. (R. p. 24.) By a letter to Appellant dated that same day, PEBA acknowledged receipt of the application and informed Appellant that, among other things, in order to be approved for disability retirement benefits from SCRS, not only must he be approved for disability benefits from the Social Security Administration, but

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<sup>1</sup> Although Appellant's Notice of Appeal only recites that he is appealing the ALJ's May 9, 2018 order denying his motion for reconsideration, PEBA presumes that Appellant is also seeking review of the ALJ's April 17, 2018 Order Granting Respondent's Motion for Summary Judgment. Therefore, while not conceding or acquiescing in any expansion of the matters identified in the Notice of Appeal, PEBA, in an abundance of caution, will address both orders in this brief.

also “[t]he date of disability established by the Social Security Administration must be within one year of your last day of employment covered by the South Carolina Retirement System.” (R. p. 25.) Appellant subsequently terminated from covered employment with the Department of Revenue on October 1, 2015. (R. pp. 32-33.)

Approximately a year and a half later, Appellant visited PEBA on July 24, 2017, to submit a Notice of Award letter reflecting his approval for the receipt of disability benefits from the Social Security Administration. (R. pp. 26-31.) In the Notice of Award letter, the Social Security Administration informed Appellant that “[w]e found that you became disabled under our rules on October 6, 2016” and that “[t]he date we found you disabled is different from the date you gave us on the application.” (R. p. 26.) In response to the receipt of the Notice of Award letter, PEBA obtained confirmation of Appellant’s termination of covered employment with the Department of Revenue in an Employer’s Disability Employment Status Report and a Final Payroll Certification. (R. pp. 32-33.) On both of those forms, the Department certified that Appellant had terminated from covered employment on October 1, 2015. (R. pp. 32-33.) In particular, the Department reported on the forms that Appellant had resigned from employment on October 1, 2015, with over eight days of unused annual leave and over fifteen days of unused sick leave. (R. pp. 32-33.) Based upon that employer certification, PEBA wrote to Appellant on August 8, 2017, to inform him that his application for SCRS disability retirement benefits could not be approved because the date on which he became disabled, as established by the Social Security Administration, was more than one year after the last day he was employed by a covered employer in SCRS. (R. p. 34.) Appellant sought review of that determination before the PEBA Executive Director, and, on January 29,

2018, PEBA issued Final Agency Determination No. 18-002, which affirmed the determination that Appellant is not eligible to receive disability retirement benefits under SCRS. (R. pp. 35-37.) Appellant sought review of that determination in a contested case proceeding before the South Carolina Administrative Law Court. (R. p. 13.) In that proceeding, PEBA filed a Motion for Summary Judgment and, by an Order dated April 17, 2018, the ALJ granted summary judgment in favor of PEBA, finding that the undisputed facts demonstrated that the date of disability established for Appellant's receipt of Social Security disability benefits was more than one year after the date he had terminated from all covered employment under SCRS. (R. pp. 38-42.) The ALJ confirmed her decision in response to Appellant's motion for reconsideration and the instant appeal followed. (R. pp. 44-45.)

#### **STANDARD OF REVIEW**

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCPP; see also, e.g., Brandt v. Gooding, 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rule 56(e), SCRCPP; Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Rather, the nonmoving party must offer specific facts showing there is a genuine issue for trial. Rule 56(e), SCRCPP.

In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004).

On appeal from an order granting summary judgment, the appellate court applies the same standard that governs the trial court, reviewing all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001); Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976).

#### ARGUMENT

**THE ADMINISTRATIVE LAW JUDGE CORRECTLY FOUND APPELLANT FAILED TO MEET THE STATUTORY REQUIREMENTS OF ELIGIBILITY TO RECEIVE DISABILITY RETIREMENT BENEFITS BECAUSE THE DATE OF DISABILITY ESTABLISHED FOR APPELLANT'S SOCIAL SECURITY DISABILITY BENEFITS WAS MORE THAN ONE YEAR AFTER THE DATE HE TERMINATED FROM ALL COVERED EMPLOYMENT UNDER THE SOUTH CAROLINA RETIREMENT SYSTEM**

The Court should affirm the decision of the administrative law judge in this matter. Because the undisputed facts in this case clearly establish that the date of disability established by the Social Security Administration falls more than one year after the last day Appellant was employed by a covered employer in SCRS, it is clear that, as a matter of law, Appellant is not eligible for disability retirement benefits under the System.

The procedural and substantive requirements for the issuance of disability retirement benefits to members of the South Carolina Retirement System who apply for benefits after December 31, 2013, are found in Section 9-1-1540(B) of the Code of Laws. See S.C. Code Ann. § 9-1-1540(B) (Supp. 2017). This section provides that a member of SCRS who has timely applied for disability retirement benefits

is considered disabled if the member qualifies for the payment of Social Security disability benefits and is eligible for benefits pursuant to this section upon proof of the disability, provided that the date of disability established by the Social Security Administration falls within one year after the last day the member was employed by a covered employer in the system.

Id. § 9-1-1540(B)(2) (emphasis added). Consequently, if a member is approved for Social Security disability benefits, but the date of disability established by the Social Security Administration falls more than one year after the last day the member was employed by a covered employer in the System, the member's disability is not considered connected to the period of the member's covered employment and the member is not eligible for disability retirement benefits from SCRS based upon that disability. Id.

In the case at hand, the record plainly demonstrates that Appellant is not eligible to receive disability retirement benefits under SCRS. Appellant terminated from all covered employment under SCRS when he resigned from employment with the Department of Revenue on October 1, 2015. However, when the Social Security Administration approved his claim for Social Security disability benefits, it found that Appellant did not become disabled until October 6, 2016, over a year after his termination from covered employment. Accordingly, under the plain terms of Section 9-1-1540(B)(2) of the Code of Laws, Appellant is not eligible for disability retirement benefits from SCRS based upon his receipt of those Social Security disability benefits.

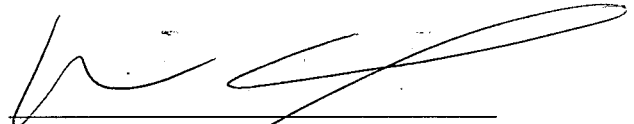
Appellant argues that PEBA should provide a “grace period” and find him eligible for the receipt of disability retirement benefits because his date of disability as established by the Social Security Administration fell “less than a week” past the statutory limit. This argument does not raise issues of fact that would affect the conclusion that, as a matter of law, Appellant is not eligible for disability retirement benefits under the System. While the onset date determined by the Social Security Administration for Appellant’s disability fell only a few days past the statutory limit, neither PEBA nor this Court has the authority to waive or ignore that statutory requirement. See generally S.C. Tax Comm’n v. S.C. Tax Bd. of Rev., 278 S.C. 556, 560, 299 S.E.2d 489, 491-92 (1983) (holding that an administrative agency “may not validly act in excess of its powers, nor has it any discretion as to the recognition of or obedience to a statute,” but rather the agency “must obey a law found upon the statute books”) (quoting 2 Am. Jur. 2d Administrative Law § 188 (1962)); City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) (“Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language.”). Appellant has not offered any specific facts showing there is a genuine issue for trial but rather has simply asserted that the facts are such that an exception to the statutory requirement should be made. See Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003) (the nonmoving party cannot simply rest on mere allegations or denials contained in the pleadings). Put simply, the undisputed facts in this matter demonstrate that the date of disability established by the Social Security Administration falls more than one year after the last day Appellant was employed by a covered employer in SCRS and, thus, it is further clear that, as a matter of

law, Appellant is not eligible for disability retirement benefits under the System. See S.C. Code Ann. § 9-1-1540(B)(2) (Supp. 2017). Accordingly, the Court should affirm the ALJ's order granting summary judgment in favor of PEBA.

## CONCLUSION

For the reasons set forth above, Respondent PEBA requests that this Court affirm the decision below by the administrative law judge.

Respectfully submitted,



Melissa Alexander  
Assistant General Counsel  
S.C. Bar #79861  
Justin R. Werner  
Deputy General Counsel  
South Carolina Public Employee Benefit  
Authority  
202 Arbor Lake Drive  
Columbia, South Carolina 29223  
(803) 737-6830  
Attorneys for Respondent

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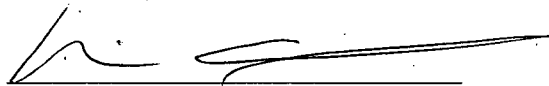
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CERTIFICATE OF COUNSEL

I hereby certify that the Final Brief of Respondent South Carolina Public Employee Benefit Authority, South Carolina Retirement Systems, complies with Rule 211(b), SCACR.



Melissa Alexander  
Assistant General Counsel  
S.C. Bar # 79861  
Justin R. Werner  
Deputy General Counsel  
South Carolina Public Employee Benefit Authority  
202 Arbor Lake Drive  
Columbia, South Carolina 29223  
Telephone: (803) 737-6830  
Attorneys for Respondent

September 25, 2018