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July 6, 2018

The Honorable Shirley Robinson
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Cynthia G. Aldaqqaq v. South Carolina Department of
Employment and Workforce and IQOR Holdings US LLC
Docket Number: 18-ALJ-22-0211-AP

Dear Judge Robinson :

Enclosed is the Motion to Dismiss for Failure to File or Serve Notice within Thirty Days of the Respondent DEW in the above referenced case. Also enclosed is a Proof of Service to the other parties.

With kind regards, I am

Sincerely Yours,

A handwritten signature in cursive script that reads "Kristi Chesley". The signature is written in dark ink and is positioned above the typed name.

Kristi Chesley
Administrative Legal Assistant for
Steven A. Jordan
Attorney for South Carolina Department of
Employment and Workforce



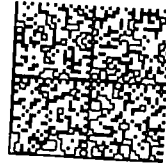
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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Cynthia G. Aldaqqaq,)	Docket No. 18-ALJ-22-0211-AP
)	
Appellant,)	
)	
v.)	
)	
South Carolina Department of)	MOTION TO DISMISS FOR FAILURE TO FILE OR SERVE NOTICE OF APPEAL WITHIN THIRTY DAYS OF FINAL AGENCY DECISION
Employment and Workforce,)	
)	
)	
)	
and)	
)	
IQOR Holdings US, LLC,)	
)	
Respondents.)	
<hr style="width: 30%; margin-left: 0;"/>)	

Respondent South Carolina Department of Employment and Workforce (the Department) moves this Court to dismiss Appellant Cynthia G. Aldaqqaq’s appeal because Appellant failed to file her notice of appeal with this Court or serve the Department with her notice of appeal within thirty (30) days of mailing the final agency decision as required by S.C. Code Ann. § 41-35-750 and SCALC Rule 33. Consequently, this Court should grant this motion and dismiss Appellant’s appeal for lack of appellate jurisdiction.

I. Procedural history

On May 8, 2018, the Department’s Appellate Panel (Panel) mailed its decision in Appellant’s case, affirming the Appeal Tribunal’s finding that Appellant voluntarily left work without good cause attributable to the employment and indefinitely disqualifying

Appellant from receiving unemployment insurance (UI) benefits. *See Exhibit A, Panel Decision.* The Panel's decision notified Appellant of the statutory requirements and, specifically, the thirty-day deadline:

To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the mailing date of SCDEW's final decision (**see the mailing date above**).

...

Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel
S.C. Department of Employment and Workforce
Post Office Box 8597
Columbia SC 29202**

Exhibit A (emphasis in original).

On June 21, 2018, this Court issued a Notice of Assignment indicating Appellant filed a notice of appeal with the Court on June 18, 2018. Further, Appellant served the Department with her notice of appeal on June 14, 2018, as noted by the postmark on Appellant's letter to the Department. *See Exhibit B, Letter from Appellant with June 14, 2018 postmark.* Presumably, Appellant served Respondent IQOR Holdings US, LLC on June 14, 2018 as well.

II. The ALC lacks jurisdiction due to Appellant's failure to meet statutory deadlines.

This Court lacks jurisdiction to consider Appellant's appeal because Appellant failed to timely file the notice of appeal with this Court and failed to timely serve the Department with the notice of appeal. A party filing a notice of appeal requesting judicial review of the Panel's decision must file the notice of appeal with this Court within thirty (30) days of the mailing date of the Panel's decision. S.C. Code Ann. § 41-35-750; SCALC Rule 33. "Within thirty days from the date of mailing the [D]epartment's decision, a party to the proceeding whose benefit rights or whose employer account may be affected by the [D]epartment's decision may initiate an action in [this Court] against the [D]epartment for the review of its decision" § 41-35-750; *see* SCALC Rule 33 (explaining a party appealing the Department's decision "must" file the notice of appeal within thirty days "of the date of mailing of the decision").

Also, a party appealing the Panel's decision must serve the Department with the notice of appeal within the same thirty days. The appealing party "must" serve the notice of appeal "on the executive director or on a person designated by the Department within the time specified by this section." § 41-35-750; *see* SCALC Rule 33 (explaining in an appeal from the Panel's decision the appealing party "must" serve the Department with the notice of appeal "within thirty (30) days of the date of mailing of the decision" of the Panel). Additionally, SCALC Rule 5 states that "[a]ny document filed with the Court shall be served upon all parties to the proceeding." Under Rule 5, "[s]ervice shall be

made by delivery, by mail to the last known address, or as otherwise approved by the Court through administrative order.”

“The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction.” *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). Consequently, the timely filing and service of the notice of appeal are jurisdictional requirements under Section 41-35-750, and the Court has no authority to extend the time in which the notice of intent to appeal must be served. *See Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985); *Allison*, 394 S.C. at 189, 714 S.E.2d at 550 (noting “an appellate body may not extend the time to appeal”).

In this case, the Panel mailed its decision on May 8, 2018, and Appellant’s statutory deadline for filing her notice of appeal with this Court and serving the Department with the notice of appeal was June 7, 2018. However, Appellant failed to file her notice of appeal with this Court until June 18, 2018, which exceeded the statutory deadline for filing by eleven days. *See Exhibit C, Notice of Assignment*. Also, Appellant failed to serve the Department with the notice of appeal until June 14, 2018, which exceeded the statutory deadline for service by seven days. *See Exhibit B, Letter from Appellant with June 14, 2018 postmark*. Thus, because Appellant failed to file and serve the notice of appeal within the statutory deadline, this Court lacks jurisdiction to hear this appeal. The Department respectfully submits this Court should dismiss this appeal pursuant to SCALC Rule 38 based on a lack of jurisdiction. *See generally Elam v. Dep’t of Trans.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate

court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.")

Although the Department recognizes Appellant is proceeding *pro se*, a *pro se* litigant is responsible "for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003). Indeed, Appellant's *pro se* status does not excuse her failure to comply with rudimentary procedures, such as timely filing and serving the notice of appeal within statutory prescribed deadlines. Also, Appellant was aware of the deadline. The Panel's decision gave Appellant notice "[t]he law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and [the Department] within thirty (30) days from the mailing date of [the Panel]'s final decision." As a result, Appellant had knowledge of the thirty-day deadline but, nonetheless, failed to comply.

III. Conclusion

Because Appellant has not complied with Section 41-35-750 and SCALC Rule 33, this Court lacks appellate jurisdiction over this appeal. Therefore, the Department respectfully requests this Court dismiss Appellant's appeal with prejudice, pursuant to SCALC Rule 38, and hold all deadlines in abeyance pending resolution of this Motion.

Department with her notice of appeal on June 14, 2018, as noted by the postmark on Appellant's letter to the Department. Presumably, Appellant served Respondent IQOR Holdings US, LLC on June 14, 2018, as well.

On July 6, 2018, the Department filed a motion to dismiss Appellant's appeal because she failed to file and serve her notice of appeal within thirty days of the mailing date of the Panel's decision. Appellant did not file a response to the Department's motion. On July 24, 2018, this Court filed an order granting the Department's motion. This Court found it lacked authority to extend the time for filing and serving the notice of appeal and dismissed the appeal.

Subsequently, on August 2, 2018, Appellant filed a motion for rehearing. Appellant requested rehearing because, at the time of her hearing before the Tribunal, she was "surprised by her [eighty-seven] year old sister's health declining rapidly." (App. Motion p.1). Appellant also claimed she omitted "vital information" during her hearing before the Appeal Tribunal (Tribunal) because she was "disoriented" during the hearing after discovering her sister's medical issue. (App. Motion p.2). Finally, Appellant requested this Court allow her to "submit the vital information" she omitted during the hearing before the Tribunal. (App. Motion p.2).

II. THIS COURT LACKS APPELLATE JURISDICTION OVER THIS APPEAL BECAUSE APPELLANT FAILED TO TIMELY FILE AND SERVE HER NOTICE OF APPEAL.

The Department respectfully submits this Court should deny Appellant's motion for rehearing because, as explained by the Court in its order dated July 24, 2018, Appellant failed to timely file and serve her notice of appeal, which robbed the Court of

appellate jurisdiction. In her motion for rehearing, Appellant does not dispute this Court's finding that she failed to timely file and serve her notice of appeal and, instead, merely requests rehearing due to her personal circumstances. However, Appellant's failure to timely file and serve the notice of appeal is a jurisdictional issue, and respectfully, this Court lacks authority to extend the time for filing and serving the notice of appeal.

“The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction.” *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). The timely filing and service of the notice of appeal are jurisdictional requirements under section 41-35-750, and the Court has no authority to extend the time in which the notice of intent to appeal must be filed and served. *See Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985); *Allison*, 394 S.C. at 189, 714 S.E.2d at 550 (noting “an appellate body may not extend the time to appeal”). Consequently, regardless of Appellant's personal circumstances, her failure to timely file and serve the notice of appeal robs this Court of appellate jurisdiction, and the Court “has no authority or discretion to ‘rescue’ [Appellant] by extending or ignoring the deadline.” *See Elam v. Dep’t of Trans.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004). Thus, the Department respectfully submits this Court should deny Appellant's motion for rehearing.

Even if this Court had discretion to extend the time for filing and serving the notice of appeal, Appellant's motion gives no basis for this Court to reinstate her appeal. In her motion, Appellant requests rehearing because she “omitted much vital information” during her hearing on April 4, 2018, before the Tribunal due to a family

medical issue.¹ (App. Motion p.2). Appellant ultimately requests this Court allow her "to submit the vital information." (App. Motion p.2).

However, Appellant provides no explanation for how her family circumstances that allegedly caused her difficulty before the Tribunal prevented her from appealing to this Court within the statutory deadline.² Also, Appellant fails to explain why she neglected to respond to the Department's motion to dismiss. Accordingly, even if this Court had the discretion or authority to extend the time for filing and serving the notice of appeal, the Department respectfully submits this Court should deny Appellant's motion for rehearing because it lacks any reasonable basis for granting rehearing.³

III. CONCLUSION

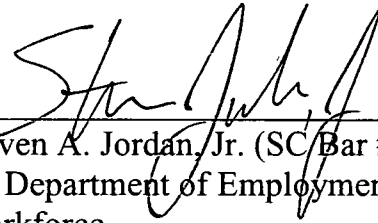
¹ The Department notes Appellant makes the assertion regarding family medical issues for the first time in her motion for rehearing. Although she now claims she omitted evidence during the Tribunal hearing due to receiving bad news about her sister's medical condition, when appealing to the Panel, Appellant made different claims. In her appeal to the Panel, Appellant asserted she omitted evidence because she was "frustrated" when her Tribunal hearing started late due to the employer's failure to answer the first telephone call. *See Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 324, 785 S.E.2d 600, 611 (Ct. App. 2016) ("An issue that is not raised to an administrative agency is not preserved for appellate review by the ALC.").

² The statutory deadline for Appellant to timely file and serve her notice of appeal was June 7, 2018, which was approximately sixty-four days after Appellant's family circumstances allegedly prevented her from offering evidence to the Tribunal.

³ With regard to Appellant's request to submit evidence to this Court, under the limited standard of review proscribed by section 1-23-380(5) of the South Carolina Code (Supp. 2017), this Court is not allowed to receive additional evidence from the parties. It is axiomatic that the parties to an appeal may not present new evidence, which was never presented to the lower decision-making body, to an appellate court for consideration. *See* SCALC Rule 36(B)(2) (requiring a record on appeal to include the "evidence received or considered" by the lower tribunal); SCALC Rule 36(G) ("The Administrative Law Judge will not consider any fact which does not appear in the Record."); Rule 210(c), SCACR (explaining a record on appeal "shall not, however, include matter which was not presented to the lower court or tribunal"). Thus, Appellant's request to introduce new evidence before this Court would be improper even if her appeal had not been dismissed.

Based on the foregoing, the Department respectfully requests this Court deny Appellant's motion for rehearing because she failed to timely file and serve her notice of appeal, which robbed the Court of appellate jurisdiction.

Respectfully Submitted,



Steven A. Jordan, Jr. (SC Bar # 100314)
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Legal@dew.sc.gov

**Attorney for Respondent SC Department of
Employment and Workforce**

August 13, 2018

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August 13, 2018

The Honorable Shirley Robinson
SC Administrative Law Court
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Columbia, SC 29201

Re: Cynthia G. Aldaqqaq v South Carolina Department of
Employment and Workforce and IQOR Holdings US, LLC
Docket Number: 18-ALJ-22-0211-AP

Dear Judge Robinson:

Enclosed is the original Response to Appellant's Motion for Rehearing in the
above referenced case.

Also enclosed is a Certificate of Service to the parties.

If you have any questions, please contact me at the above number.

With kind regards, I am

Sincerely Yours,

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

Kristi Chesley
Administrative Legal Assistant for
Steven Jordan
Attorney for SC Department of Employment and Workforce
Legal@dew.sc.gov

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Columbia, S.C. 29202

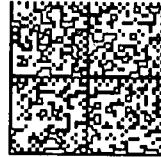
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Las Vegas, NC 89122

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