

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Shirley C. Robinson, Administrative Law Judge

Case No.: 18-ALJ-22-0211-AP

Appellate Case No. 2018-001685

Cynthia G. Aldaqqaq,

Appellant,

v.

South Carolina Department of Employment
and Workforce & IQOR Holdings US, LLC,

Respondents.

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SC Court of Appeals

RETURN TO APPELLANT'S MOTION TO SUBMIT NEW EVIDENCE

Respondent South Carolina Department of Employment and Workforce (the Department) submits this return to Appellant Cynthia G. Aldaqqaq's motion to submit new evidence. Based on the following grounds, the Department respectfully requests this Court deny Appellant's motion. The Department also requests the Court strike item nine from Appellant's designation of matter as it relates directly to Appellant's motion to submit new evidence. Finally, the Department requests the Court hold all deadlines in abeyance pending resolution of Appellant's motion.

I. The Court should deny Appellant's motion to submit new evidence and strike item nine from her designation of matter because the appellate court rules prohibit the Court from considering evidence that was not presented to the lower court or tribunal.

This Court's review is limited to the facts and evidence appearing in the record on appeal, and the record may include only matter that was presented to the lower court or tribunal. *See* Rule 210(h), SCACR (providing an appellate court "will not consider any fact which does not appear in the Record on Appeal" except in very limited and specific circumstances); Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."); *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."). Likewise, the designation of matter may only include materials that "may be properly included in the Record on Appeal." Rule 209(b), SCACR.

Furthermore, the Administrative Procedures Act (the Act) governs appeals to this Court from decisions by the administrative law court (ALC), and the Act provides the standard of review. *Kiawah Dev. Partners, II. v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014). The Act mandates this Court's "review of the administrative law judge's order must be confined to the record." S.C. Code Ann. § 1-23-610(B) (Supp. 2017). Based on the foregoing, it is axiomatic that 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.

Here, Appellant is attempting "to add new evidence" for this Court's consideration even though Appellant failed to present it below. Appellant had an opportunity to submit evidence during the administrative proceedings before the Department. However, Appellant failed to attempt to submit this evidence until her case reached the appellate level. Under the authorities cited above, Appellant's attempt to submit this new evidence for the first time on appeal to this

Court is impermissible. Thus, the Department respectfully requests the Court deny Appellant's motion to submit new evidence. The Department also requests the Court strike item nine from Appellant's designation of matter as it relates directly to Appellant's motion to submit new evidence.

II. The Court should deny Appellant's motion to submit new evidence and strike item nine from Appellant's designation of matter because, according to Appellant's own description of the evidence, it is plainly irrelevant to this appeal.

The record on appeal may include only the matter identified by the parties in their respective designations of matter. Rule 210(a), SCACR. Rule 209(b), SCACR describes what content a party may designate in its designation of matter and provides "[a] party shall not include any matter in his Designation which is not relevant to the appeal." Rule 209(b), SCACR. Thus, a party should not designate materials that are irrelevant to an appeal to be included in the record on appeal.

This appeal involves the jurisdictional issue of whether Appellant filed her appeal to the ALC within thirty days as required by section 41-35-750 of the South Carolina Code (Supp. 2017). *See Exhibit A, ALC Order Granting Motion to Dismiss and Order Denying Motion for Reconsideration.* The underlying merits of Appellant's claim for unemployment benefits were not before the ALC. However, according to Appellant's description, she proposes to "add new evidence" that would help this Court determine "the reason [Appellant] left [her] employment" with Respondent IQOR Holdings US, LLC.¹ This new evidence apparently would relate to the underlying merits of her claim for unemployment benefits, but it has no bearing on the jurisdictional issue of whether Appellant timely filed her appeal with the ALC. The reason

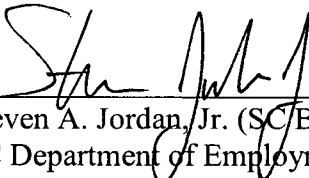
¹ Although Appellant filed this motion to submit new evidence, she failed to include the proposed evidence with her motion so the Court and parties to the appeal could review the evidence. Thus, we are left only with Appellant's description of the evidence.

Appellant left her employment is wholly irrelevant to the issue on appeal to this Court. Accordingly, the Department respectfully requests the Court deny Appellant's motion to submit new evidence because it is irrelevant to the issues before this Court. The Department also requests the Court strike item nine from Appellant's designation of matter as it relates directly to Appellant's motion to submit new evidence.

III. Conclusion

Based on the foregoing, the Department respectfully requests this Court deny Appellant's motion to submit new evidence. The Department also requests the Court strike item nine from Appellant's designation of matter as it relates directly to Appellant's motion to submit new evidence. Finally, the Department requests the Court hold all deadlines in abeyance pending resolution of Appellant's motion.

Respectfully Submitted,



Steven A. Jordan, Jr. (SC Bar # 100314)
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**Attorney for Respondent SC Department of
Employment and Workforce**


November 26, 2018

EXHIBIT A

W.L. Gore & Assocs., 394 S.C. 185, 189, 714 S.E. 2d 547, 550 (2011) (“an appellate body may not extend the time to appeal”); *See also, Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) (“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.”). Because this Court does not have the authority to extend the appeal filing or service deadline, Appellant’s appeal must be dismissed.

THEREFORE, IT IS HEREBY ORDERED that the Department’s Motion to Dismiss is **GRANTED** and this appeal is **DISMISSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

July 24, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or in the emergency Mail Service according to the party (ies) or institution (s)

On 24 July, 2018
By Shirley C. Robinson
Administrative Law Judge

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Cynthia G. Aldaqqaq,) Docket No. 18-ALJ-22-0211-AP
)
Appellant,)
)
v.) **ORDER DENYING APPELLANT'S**
) **MOTION FOR RECONSIDERATION**
)
South Carolina Department of Employment)
and Workforce & IQOR Holdings US, LLC,)
)
Respondents.)
_____)

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to the Notice of Appeal filed by Cynthia G. Aldaqqaq (“Appellant”) on June 18, 2018. Appellant is seeking judicial review of a final determination rendered by the South Carolina Department of Employment and Workforce’s (“Department”) Appellate Panel. On July 6, 2018, the Department filed a motion requesting this appeal be dismissed pursuant to S.C. Code Ann. § 41-35-750 and SCALC Rule 33. Appellant did not file a response to the Department’s motion. On July 24, 2018, this Court issued an Order granting the Department’s motion to dismiss the appeal.

On August 2, 2018, Appellant filed a motion requesting that this Court reconsider its final decision to dismiss this appeal. The Department filed a response in opposition to Appellant’s motion on August 13, 2018. In Appellant’s request for rehearing, she recounts the recent loss of her sister, and this court’s condolences goes out to her. However, the fact remains that Appellant did not timely file and serve her Notice of Appeal, and the ALC simply does not have jurisdiction to address the appeal. *See Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) (“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.”). Therefore, Appellant’s request for reconsideration is denied.

Based upon the foregoing,

IT IS THEREFORE ORDERED that the Appellant’s Motion for Reconsideration is **DENIED.**

FILED

AUG 16 2018

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

August 16, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has, this date
served the order in the above entitled action upon
the party named by executing a copy hereof
by first class mail, postage paid, in the emergency
service address to the party, and the emergency
service address is 116 day of August, 2018

Shirley C. Robinson

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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ADMINISTRATIVE LAW COURT
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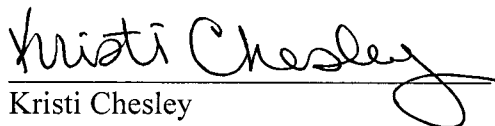
PROOF OF SERVICE

I certify that I have served the Return to Appellant's Motion to Submit New Evidence of the Respondents on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, on November 26, 2018, addressed to the parties at their addresses of record:

Cynthia G. Aldaqqaq
5933 Natures Drive
Las Vegas NV 89122

IQOR Holdings US LLC
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Clearwater FL 33766

November 26, 2018



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November 26, 2018

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

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RE: Cynthia G. Aldaqqaq v. South Carolina Department of
Employment and Workforce and IQOR Holdings US, LLC
Appellate Case No: 18-001685

Dear Ms. Kitchings:

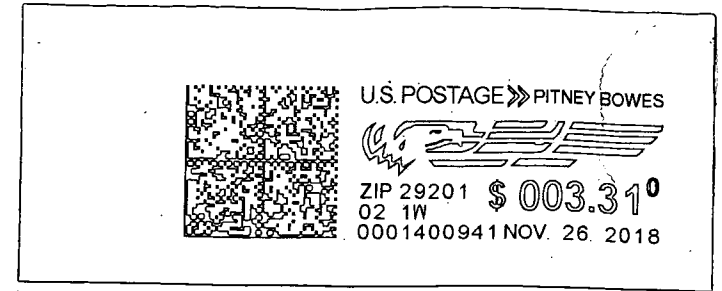
Enclosed are the original and six copies of the Return to Appellant's Motion to Submit New Evidence of Respondent South Carolina Department of Employment and Workforce. A Proof of Service is also included in this packet.

Please let me know if you have any questions.

Sincerely,

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

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. BOX 995
COLUMBIA, S.C., 29202



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