

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

Carolyn C. Matthews, Administrative Law Judge

Case No.: 10-ALJ-30-0910-CC

Charles Moore,

Appellant,

v.

South Carolina Department of Employment
And Workforce,

Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

- I. SHOULD APPELLANT'S APPEAL BE DISMISSED ON THE BASIS THAT HE FAILED TO CITE ANY AUTHORITY IN SUPPORT OF HIS ASSERTION THE ADMINISTRATIVE LAW COURT ERRED IN ITS DECISION?
- II. SHOULD APPELLANT'S APPEAL BE DISMISSED ON THE BASIS APPELLANT'S BRIEF DOES NOT CONFORM PROPERLY TO APPELLATE COURT RULES?
- III. DID THE ADMINISTRATIVE LAW COURT ERR IN DISMISSING APPELLANT'S APPEAL UPON FINDING THE ISSUE MOOT?

STATEMENT OF THE CASE

A South Carolina Department of Employment and Workforce (hereinafter "SCDEW") claims adjudicator determination held Charles Moore (Appellant) overpaid in the amount of \$9,128.00, mailed June 2, 2010, upon a finding he received unemployment benefits during a period of ineligibility, pursuant to S.C. Code Ann. § 41-41-40. Moore appealed the determination to the Appeal Tribunal on June 7, 2010. The Appeal Tribunal conducted an evidentiary hearing on July 6, 2010, at 11:15 am and Appellant failed to appear. In the absence of testimony, the resulting decision issued on July 7, 2010, affirmed the claims adjudicator's determination. Appellant appealed the Appeal Tribunal decision to the Appellate Panel on July 23, 2010. Pursuant to S.C. Code Ann. § 41-35-680, Appellant's appeal from the Appeal Tribunal decision had to be served within the prescribed ten (10) days from the date of the decision. The appeal to the Appellate Panel was therefore found to be untimely. The Department notified Appellant of the rejection of his appeal by letter dated August 2, 2010. The letter stated that Appellant could appeal the ruling of untimeliness to the Appellate Panel within ten (10) days. Appellant did not appeal this decision and it became the final decision of the Department.

On October 1, 2010, Appellant received a Notice to Debtor stating that the overpayment amount owed to the Department was subject to the Setoff Debt Collection Act pursuant to S.C. Code Ann. § 12-56-10 *et al.* Subsequently, SCDEW informed Appellant it would be intercepting his South Carolina income tax return which would be applied to his outstanding overpayment balance. Appellant protested this notice pursuant to S.C. Code Ann. § 12-56-63 on October 12, 2010. The Appeal Tribunal conducted an evidentiary hearing on November 8, 2010, at 9:00 am and Appellant failed to appear. In the absence of testimony, the resulting decision issued on November 10, 2010, found Appellant's appeal to have been abandoned.

Appellant commenced action seeking judicial review of the SCDEW's final administrative decision in the Administrative Law Court (ALC). Appellant served notice of the appeal on the SCDEW by mail postmarked November 29, 2010. SCDEW filed a motion to dismiss the appeal on February 22, 2011, arguing the decision on appeal was not the controlling issue and the appeal should therefore be dismissed. The ALC issued an Order of Dismissal on March 28, 2011, which dismissed Appellant's appeal upon finding the Setoff Debt Collection issue to be moot.

Appellant commenced this action seeking judicial review of the SCDEW's final administrative decision. Appellant served notice of the appeal on the SCDEW by mail postmarked April 15, 2011.

ARGUMENTS

- I. APPELLANT'S APPEAL SHOULD BE DISMISSED ON THE BASIS THAT HE FAILED TO CITE ANY AUTHORITY IN SUPPORT OF HIS ASSERTION THE ADMINISTRATIVE LAW COURT ERRED IN ITS DECISION.

Appellant raises two separate arguments in his Statement of Issues on Appeal. Neither of these issues address the ultimate reason the ALC dismissed his case. Pursuant to the ALC's Order of Dismissal, the Court dismissed Appellant's appeal as moot "because the Appeal Tribunal Decision determined that [SCDEW] was due an overpayment. [Appellant] did not timely appeal that decision. Therefore, there are no remaining issues pertaining to [Appellant's] set-off." Appellant puts forth no argument as to why this decision is in error and cites no authority which would support a finding the ALC erred in its decision. The Court has stated, "An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." *State v. Howard*, 384 S.C. 212, 682 S.E.2d 42 (Ct. App. 2009). Not only has Appellant failed to raise the proper issue and cite authority, he has failed to cite authority for the issues that he does raise. Since Appellant has clearly failed to raise any error regarding the ALC's Decision he is not challenging the specific ruling of dismissal. The Court has held a ruling not challenged on appeal is the law of the case, regardless of the correctness of the ruling. *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env'tl. Control*, 363 S.C. 67, 76, 610 S.E.2d 482, 487 (2005). Appellant's appeal should therefore be dismissed.

II. APPELLANT'S APPEAL SHOULD BE DISMISSED ON THE BASIS APPELLANT'S BRIEF DOES NOT CONFORM PROPERLY TO APPELLATE COURT RULES AND SHOULD BE DISMISSED PURSUANT TO RULE 260(a).

Appellate Practice Rule 208(b)(1) governs the content of Appellant's Initial Brief as submitted to the Court. Rule 208(b)(1) states each brief shall contain: (A) Table of Contents, (B) Statements of the Issues on Appeal, (C) Statement of the Case, (D) Argument, and (E)

Conclusion. The Appellant has failed to provide a clear statement of the issues on appeal which are “concise and direct as to each issue” and the Court, accordingly, should disregard Appellant’s issues as “broad general statements.” Rule 208(b)(1)(B). Appellant has failed to provide a Statement of the Case which is a “concise history of the proceedings, insofar as necessary to an understanding of the appeal.” Rule 208(b)(1)(C). Appellant has failed to provide *any* Arguments section and, therefore, clearly did not divide them “into as many parts as there are issues to be argued...” or provide appropriate captions for the arguments presented. Rule 208 (b)(1)(D). Pursuant to Rule 260, Respondent moves for the Court to dismiss Appellant’s appeal for failure to comply with the Appellate Practice Rules in that he has not conformed the content of his Brief to the form required by Rule 208 (b)(1).

III. THE ADMINISTRATIVE LAW COURT DID NOT ERR IN DISMISSING APPELLANT’S APPEAL UPON FINDING THE ISSUE MOOT.

As is stated in the ALC’s Order of Dismissal, the Court has held it will not pass on moot and academic questions or make adjudication where there remains no actual controversy. *Wallace v. City of York*, S.C., 281 S.E.2d 487 (1981). A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief. *Mathis v. South Carolina State Highway Dept.*, 260 S.C. 344, 195 S.E.2d 713 (1973).

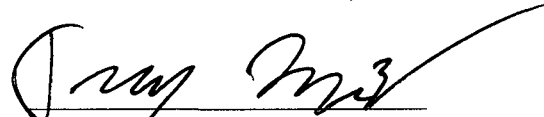
Appellant’s overpayment was established by a claims adjudicator’s determination mailed June, 2, 2010, which held him overpaid because he received benefits during a period of ineligibility. Appellant properly appealed this determination but failed to appear for the hearing and take advantage of the opportunity to give live testimony. His appeal was therefore ruled

abandoned and the determination upheld. Appellant appealed his absence to the Appellate Panel untimely and failed to take advantage of his right to appeal that decision. The issue of Appellant's absence from the hearing is in fact the controlling issue in controversy. That issue has not been properly brought before the Court because Appellant abandoned his appeal. The issue under appeal regarding the Setoff Debt Collection is controlled by the true issue in controversy; that of the Appellant's absence from the hearing which is not before the Court. Therefore, the issue under appeal is rendered moot and the ALC properly dismissed Appellant's appeal.

CONCLUSION

The ALC did not err and is supported by record as a whole and is in accord with applicable law, therefore, the findings are binding on the court and the decision should be affirmed.

Respectfully submitted,



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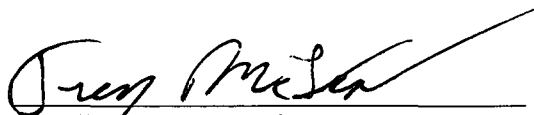
South Carolina Department of Employment
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**ATTORNEY'S CERTIFICATION THAT
FINAL BRIEF COMPLIES WITH RULE 211(B).**

Respondent certifies, through its undersigned attorney, that Respondent's Final Brief complies with Rule 211(b).

October 30, 2012


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