

20368

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

Docket No. 11-ALJ-22-0654-AP

CHARLES E. STUBBS,

Appellant,

vs.

**SOUTH CAROLINA
DEPARTMENT OF
EMPLOYMENT AND
WORKFORCE AND JSE
LLC,**

Respondents.

RECORD ON APPEAL

Jack E. Cohoon
South Carolina Legal Services
2109 Bull Street
Columbia, South Carolina 29201
(803) 744-4166

Maura Dawson
Assistant General Counsel
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-0395

ATTORNEY FOR APPELLANT
CHARLES E. STUBBS

ATTORNEY FOR RESPONDENT
S.C. DEPT. OF EMPLOYMENT
AND WORKFORCE

RECEIVED

DEC 13 2012

SC Court of Appeals

INDEX

I. ORDERS	
a. Order of the Administrative Law Court dated March 26, 2012.....	1
b. Order Denying Motion for Rehearing dated May 15, 2012.....	3
II. PLEADINGS	
a. Petition for Judicial Review dated December 21, 2011.....	4
III. MOTIONS	
a. Appellant's Motion for Reconsideration, April 4, 2012.....	6
i. Affidavit of S. Ashley Cole	10
1. Exhibit A.....	14
2. Exhibit B.....	15
3. Exhibit C.....	16
4. Exhibit D.....	17
5. Exhibit E.....	18
6. Exhibit F.....	19
ii. Affidavit of Charles E. Stubbs.....	20
IV. DECISIONS	
a. Decision of Appeal Tribunal dated June 14, 2011.....	23
b. Decision of Appellate Panel dated November 29, 2011	25
V. TRANSCRIPTS	
a. Transcript of Hearing before Appeal Tribunal, November 9, 2011	27
VI. EXHIBITS AND OTHER MATERIALS AND DOCUMENTS	
a. Determination by Claims Adjudicator, April 28, 2011.....	38
b. Notice to Claimant of Appeal Filed by Former Employer, May 13, 2011	39
c. Notice of Hearing before Appeal Tribunal, May 31, 2012.....	40
d. Decision of Appeal Tribunal, June 17, 2011	41
e. Claimant Appeal to the Appellate Panel and Envelope	43
f. Dismissal Letter from Higher Authority Appeals, August 3, 2011	45
g. Claimant Appeal of Dismissal Letter, August 10, 2011	46
h. Claimant Letter Regarding Appeal and Overpayment.....	49
i. Remand Letter from Higher Authority Appeals, October 27, 2011	51

j. Notice of Hearing before Appeal Tribunal, November 1, 2011	52
k. Information on Claims Against the State of South Carolina	53
VII. CERTIFICATE OF COUNSEL.....	54

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles E. Stubbs,

Appellant

VS.

South Carolina Department of
Employment and Workforce and JSE,
LLC,

Respondents.

Docket No. 11-ALJ-22-0654-AP

ORDER

FILED

MAR 26 2012

SC ADMIN. LAW COURT

THIS CAUSE COMING TO BE HEARD on the Petitioner's Petition for Administrative Review, pursuant to S.C. Code Ann. § 41-35-750 (2011). Petitioner appeals Decision No. 2011-P-2780, of the South Carolina Department of Employment and Workforce (SCDEW or Department), dated November 29, 2011, dismissing his appeal to the Appellate Panel because it was untimely filed.

Petitioner was a party to a SCDEW Appeal Tribunal hearing regarding his claim for unemployment benefits. The Tribunal mailed its Decision No. 2011-A-10528, to the Petitioner on June 17, 2011. Petitioner testified that he received the decision on June 20, 2011. A Tribunal decision is final unless the decision is appealed to the SCDEW Appellate Panel within ten (10) days of the mailing date of the decision. S.C. Code Ann. § 41-35-680. The appeal period expired on June 27, 2011. Thereafter, the Department received an appeal from the Petitioner by letter postmarked June 29, 2011. The Panel dismissed the appeal as untimely.

Petitioner asserts that he timely deposited his appeal in a mail slot at his apartment complex on June 21, 2011. The Petitioner testified that the mail slot where he placed the envelope containing his notice of appeal was not a U.S. postal box, authorized by the United States Postmaster General for receipt and delivery of mail. *Rosen v. United States*, 245 U.S. 467, 468 (1918). In essence, the Petitioner merely gave his notice of appeal to a third party, rather than to the SCDEW or the United States Postal Service. The South Carolina Supreme Court has ruled that where service by mail is permitted, it is complete when the document is deposited with the United States Postal Service, properly addressed with sufficient postage. *Southbridge*

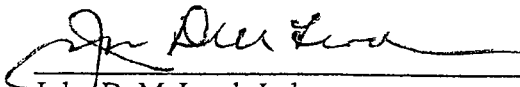
Properties, Inc., v. Jones, 292 S.C. 198, 355 S.E.2d 535 (S.C. 1987). In this case, the Petitioner's actions did not constitute timely or proper serve of his Notice of Appeal upon the Department.

The requirement of timely service of a Notice of Appeal is jurisdictional. If a party misses a deadline, the court, or Appellate Panel, has no authority to extend or ignore the deadline for service. *Elam v. S.C. Dept of Transportation*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004). The Panel lacked jurisdiction to hear, and correctly dismissed, the appeal.

IT IS HEREBY ORDERED that Appellate Panel Decision No. 2011-P-2780 is **AFFIRMED**.

AND IT IS SO ORDERED.

March 26, 2012
Columbia, SC



John D. McLeod, Judge
S.C. Administrative Law Court

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 Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 26 day of March, 2012

By: Anthony R. Balderson
Judicial Law Clerk

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles E. Stubbs,

Appellant

vs.

South Carolina Department of Employment
and Workforce and JSE, LLC,

Respondents.

Docket No. 11-ALJ-22-0654-AP

**ORDER DENYING MOTION FOR
REHEARING**

The captioned docket is before this Court in its appellate capacity.

The Court has issued a final decision affirming the decision initially appealed from and Appellant has filed a Motion for Reconsideration specifically stating that the Motion is under SCALC Rule 29(D) and SCRCP Rule 59. These rules apply in contested cases, not in appeals.

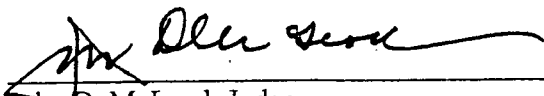
The applicable rule is SCALC 40, which permits a Motion for Rehearing in an appellate matter in the discretion of the Court.

In this instance, the Court will treat Appellant's motion as one for Rehearing.

Having considered the Record, the Court has determined that the Motion for Reconsideration (Rehearing) should be, and hereby is, **DENIED**.

AND IT IS SO ORDERED.

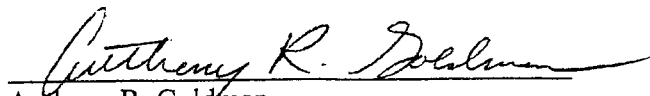
May 15, 2011
Columbia, SC


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

May 15, 2011
Columbia, SC


Anthony R. Goldman
Judicial Law Clerk

FILED

MAY 15 2012

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA

Charles E. Stubbs,

Petitioner,

vs.

South Carolina Department of Employment
And Workforce and JSE LLC,

Respondents.

IN THE ADMINISTRATIVE LAW
COURT

CASE NO.:

**PETITION FOR JUDICIAL REVIEW
OF THE FINAL DECISION OF THE
SOUTH CAROLINA DEPARTMENT
OF EMPLOYMENT AND WORKFORCE**

Now comes the Petitioner, complaining of the Respondents herein, and respectfully shows this Court that:

1. This is an action for judicial review of the Final Decision of the South Carolina Department of Employment and Workforce is brought pursuant to S.C. Code Ann. §§ 1-23-380 and 41-35-750.

2. Respondent South Carolina Department of Employment and Workforce (hereinafter "Respondent SCDEW") is an administrative agency of the State of South Carolina as defined in S.C. Code Ann. § 1-23-310(1) and is authorized by § 41-35-710 to hear and decide appeals of awards or denials of unemployment benefits.

3. Respondent JSE LLC is the liable employer for unemployment benefits.

4. Respondent SCDEW issued an Appellate Panel Decision on November 29, 2011 finding untimely Petitioner's previous appeal to the Appellate Panel of an Appeal Tribunal decision disqualifying him from benefits.

5. Petitioner has exhausted all administrative remedies available to him within Respondent SCDEW's appeals process.

6. Respondent SCDEW committed serious errors in holding Petitioner's appeal untimely.

FILED

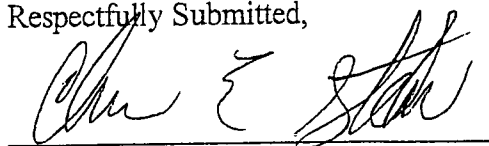
DEC 21 2011

7. The uncontradicted evidence of record is that Petitioner placed his appeal in the mail within the ten-day timeframe of S.C. Code Ann. § 41-35-680, and that, through no fault of his own, the appeal was delayed in its transmission to Respondent SCDEW.

8. Respondent SCDEW's decision is therefore made upon unlawful procedure; affected by error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

WHEREFORE, Petitioner prays that this Court, pursuant to S.C. Code Ann. §§ 1-23-380 and 41-35-750, reverse Respondent SCDEW's decision and find Petitioner's appeal timely.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Charles E. Stubbs', written over a horizontal line.

Charles E. Stubbs
Petitioner
115 Connie Drive
Columbia, SC 29210
(803) 551-2310

December 21, 2011

Columbia, SC

COPY

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles E. Stubbs,	)	Docket No.: 11-ALJ-22-0654-AP
	)	
Appellant,	)	
	)	
vs.	)	MOTION FOR RECONSIDERATION
	)	
South Carolina Department of Employment	)	
and Workforce and JSE, LLC,	)	
	)	
Respondents.	)	

Appellant Charles E. Stubbs, by and through his undersigned counsel and pursuant to the Rule 29(D) of the Rules of Procedure for the Administrative Law Court and Rule 59, SCRCF, moves this Court to reconsider its March 26, 2012 Order. That Order affirmed a final decision of Respondent South Carolina Department of Employment and Workforce ("the Department") holding that Stubbs' appeal of a Appeal Tribunal decision was untimely. Stubbs respectfully requests reconsideration of the Order to take into account information which can be properly considered by means of judicial notice, as well as to correct errors of law. This motion is based upon the record on appeal, applicable statutory and case law, the attached affidavits with exhibits, and such other and further submissions as may be filed hereafter.

In its Order, the Court found that Stubbs had filed an untimely appeal because "the Petitioner merely gave his notice of appeal to a third party, rather than to the SCDEW or the United States Postal Service." The Court stated that "[t]he Petitioner testified that the mail slot where he placed the envelope containing his notice of appeal was not a U.S. postal box, authorized by the United States Postmaster General for receipt and delivery of mail." This is a misconception of Stubbs' testimony. After first testifying that "it's not a US postal box," Stubbs testified, "I guess it is because...it's a box that's used by the apartment complex for

FILED

APR 04 2012

SC ADMIN LAW COURT

delivering...or picking up mail.” ROA 27, ln. 5 to 10. His testimony indicates some confusion about what constitutes a “US postal box.” The hearing officer did not ask any follow up questions to gather more information about the apartment’s mailbox. A postal box is not limited to the—increasingly rare—large blue boxes found in parking lots and street corners. “Any depository box designated as a mail depository, whether it is privately owned and controlled or placed in buildings or along a mail route, constitutes a depository authorized for the receipt and delivery of mail.” 62 *Am. Jur. 2d, Post Office* §53 (citing *Rosen v. United States*, 245 U.S. 467 (1918). Service occurs at the time a party places the document in a “designated mail depository box, whether in a building or along mail route.” *Green v. Green*, 320 S.C. 347, 465 S.E.2d 130 (Ct.App.1995).

Attached as exhibits to this motion are two affidavits which conclusively establish that the outgoing mail slot into which Stubbs placed the appeal is a postal box authorized by the United States Postal Service (“USPS”) United States Postmaster General for receipt and delivery of mail. *Rosen v. United States*, 245 U.S. 467, 468 (1918). Appendix One is a sworn affidavit of S. Ashley Cole, an employee of South Carolina Legal Services, and Appendix Two is an affidavit of Appellant Charles E. Stubbs. Cole visited Stubbs’ apartment complex at 115 Connie Drive on Tuesday, March 27, 2012 at 11:00 a.m. to inspect and photograph his outgoing United States Postal Office Mailbox. Exhibits A through F show what are indisputably USPS mail boxes. The outgoing mail slot in question is shown in Exhibit C and is secured by a lock. Stubbs’ affidavit confirms that Exhibit C shows the outgoing mailbox into which he placed his appeal, properly addressed, to the Department, with sufficient postage, on June 21, 2011; that it is used by all the tenants of the apartment complex for their outgoing mail; and is, to his knowledge, the only outgoing mailbox for the apartment complex residents. Appendix 2. A

posted sticker, bearing the insignia of the USPS, admonishes that “[M]ail receptacles and contents are protected by Federal law, and this law prohibits attempts to pry boxes open or otherwise tamper with them.” Exhibit D. In addition, there is a label welded to the back of the bank of mailboxes which states, “U.S. MAIL APPROVED BY POSTMASTER GENERAL.” Exhibit F.

It is appropriate for this Court to consider the attached exhibits under the doctrine of judicial notice. Original judicial notice of adjudicative facts at the appellate level should be limited to matters which are indisputable. *Masters v. Rodgers Dev. Group*, 283 S.C. 251, 256 (S.C. Ct. App. 1984). Judicial notice of an adjudicative fact may be taken at any time during the proceedings and a judicially noticed fact must be one “not subject to reasonable dispute” by either general knowledge or by a determination from a source whose accuracy cannot be reasonably questioned. Rule 201, SCRE; *See Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct. App. 2002) (finding that for a fact to be subjected to judicial notice, the fact must be of “such common knowledge that it is accepted by the general public without qualification or contention, or its accuracy may be ascertained by reference to readily available sources of indisputable reliability.”).

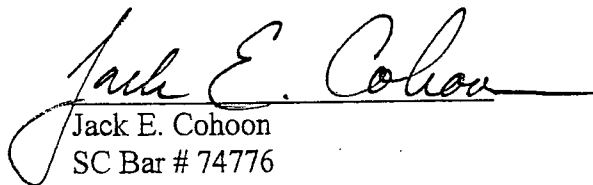
In this case, the outgoing mailbox at Mr. Stubbs’ apartment complex has been designated an approved mailbox for use by the USPS and the Postmaster General. Because the Postmaster General has the power to determine and designate boxes to be used for the receipt and delivery of mail, the USPS and Postmaster General are sources of indisputable reliability as to the determination of whether the apartment mailbox is an “authorized depository.” It is not subject to reasonable dispute that the mailbox is, in fact, a USPS mailbox and authorized

depository. Moreover, the existence of this mailbox is independently verifiable, and it is readily available for inspection by the parties or the Court.

It would be a manifest injustice for an unemployed worker to be deprived of unemployment benefits due to an erroneous finding that a mailbox is not a mailbox. The Court's previous decision should be reconsidered, Appellant Charles E. Stubbs' appeal found timely, and the case remanded to the South Carolina Department of Employment and Workforce for further proceedings consistent with that finding.

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES

A handwritten signature in black ink, reading "Jack E. Cohoon", written over a horizontal line.

Jack E. Cohoon
SC Bar # 74776
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4166
Fax: (803) 799-1781
jackcohoon@sclegal.org

Attorney for Appellant

Columbia, South Carolina

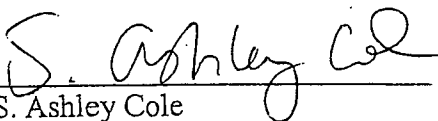
April 4, 2012

Appendix One
Affidavit of S. Ashley Cole

11

- d. Exhibit D: This photograph represents an adhesive sticker affixed directly above the outgoing mailbox illustrated in Exhibit C. This sticker is labeled "INFORMATION FOR APARTMENT HOUSE CUSTOMERS" and bears the United States Postal Service logo.
 - e. Exhibit E: This is a close-up photograph of the same adhesive sticker represented by Exhibit D.
 - f. Exhibit F: After taking pictures of the front of the outgoing mailbox in Exhibit C, I took this picture of the rear of the group of boxes in which the outgoing mailbox belongs. In this picture, one is able to see a handle used by the postal carrier to access the entire section of mailboxes. In addition, there is a label welded to this rear door which reads, "U.S. MAIL APPROVED BY POSTMASTER GENERAL."
- 5. The Appellant showed his own personal mailbox – Exhibit B – and the outgoing mailbox – Exhibit C – to me; he explained that this outgoing mailbox is where he submits his stamped and addressed outgoing mail.
 - 6. This specific outgoing mailbox – Exhibit C, identified to me by the Appellant, had two locks – one located on the front of the box and another located on the backside of the group of boxes to which it belongs. I pulled the front of the outgoing mailbox, and the lock was secure. Moreover, I walked around to the back of the group of mailboxes to which the outgoing mailbox belongs and also pulled on that door. It was locked and secure as well.
 - 7. During my inspection of the outgoing mailbox, I noted two features about the mailbox that indicate it is under the authority of the United States Postal Office and Postmaster General: (1) affixed on the top of the group of mailboxes to which the outgoing mailbox belongs is an adhesive label entitled "INFORMATION FOR APARTMENT HOUSE CUSTOMERS" bearing the United States Postal Service logo – Exhibits D and E; (2) welded on the rear door of the group of mailboxes to which the outgoing mailbox belongs is a small engraved plaque that reads, "U.S. MAIL APPROVED BY POSTMASTER GENERAL" – Exhibit F.
 - 8. Further, the Appellant informed me that the United States Postal Office mail carrier services these mailboxes.

Respectfully submitted,


S. Ashley Cole

SWORN TO AND SUBSCRIBED BEFORE ME

This 29 day of March, 2012.

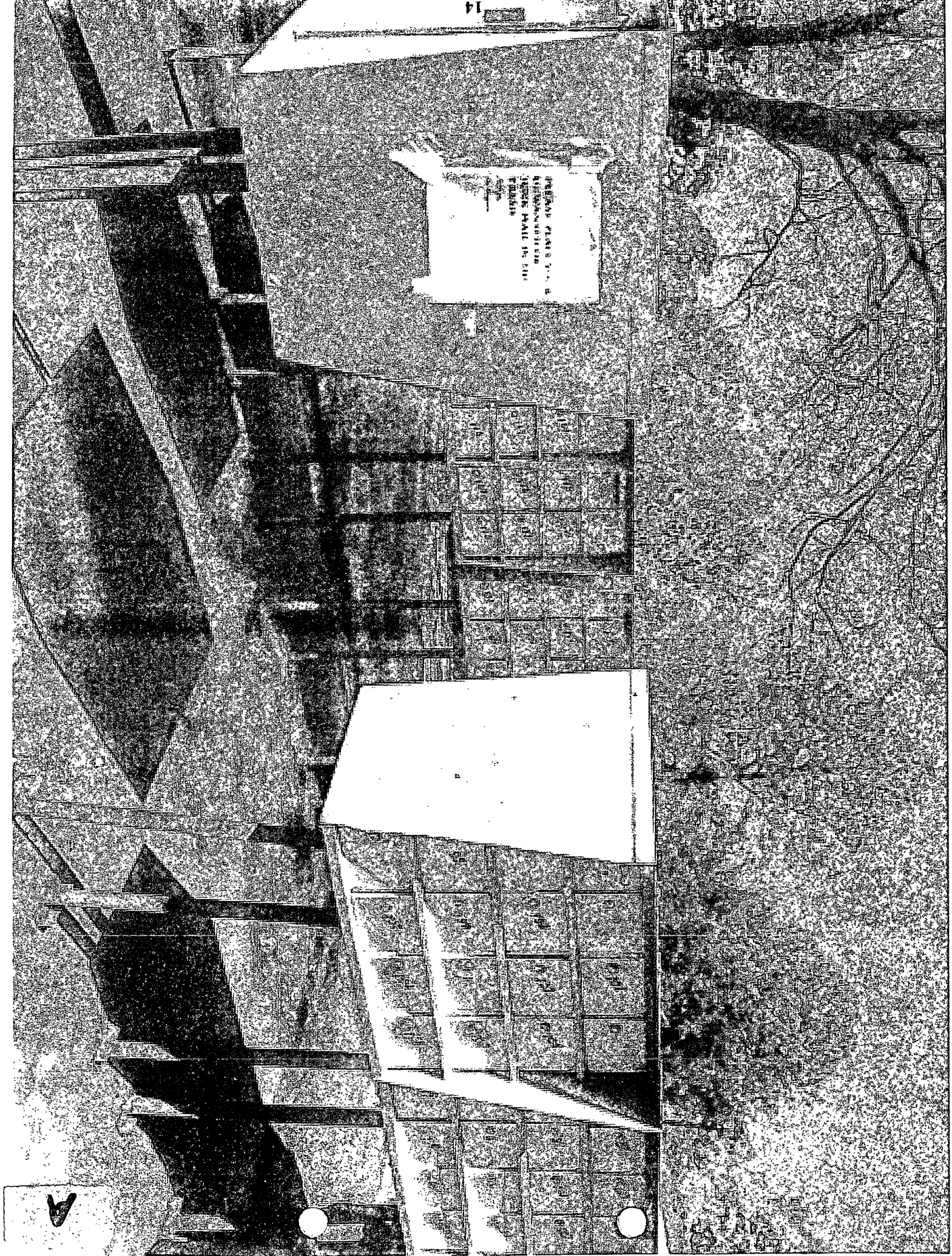
Jack E. Cochran

Notary Public for South Carolina

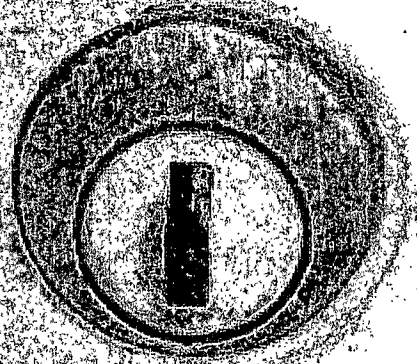
My Commission Expires: June 8, 2015

RECEIVED PLAIN 3 1 1 1
BIRMINGHAM
JAN 10 1961
FBI

RECEIVED PLAIN 3 1 1 1
BIRMINGHAM
JAN 10 1961
FBI

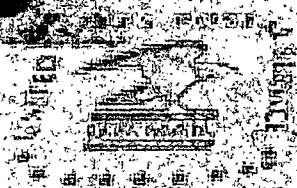






OUT GOING MAIL

C



INFORMATION FOR APARTMENT HOUSE CUSTOMERS

The following information is intended to help prevent the possible delay, non delivery, misdelivery, or loss of your mail:

1. The names of all persons receiving mail through your mailbox should appear either on the outside or inside of the box.
2. Advise correspondents to use the apartment number and ZIP CODE on all mail addressed to you, and include both in your return address.
3. Mail receptacles and contents are protected by Federal law, and this law prohibits attempts to pry boxes open or otherwise tamper with them. If you lose your key, apply to the building owner or manager for another one.
4. Failure to keep the letterbox locked at all times may result in suspension of delivery service. It is contrary to postal regulations to deliver mail, including check letters, into unlocked or defective apartment mailboxes.

DIRECTOR OF CITY OPERATIONS

D



INFORMATION FOR APARTMENT HOUSE CUSTOMERS

The following information is intended to help prevent the possible delay, non-delivery, misdelivery, or loss of your mail.

1. The names of all persons receiving mail through your mailbox should appear either on the outside or inside of the box.
2. Advise correspondents to use the apartment number and CODE on all mail addressed to you, and include both in your return address.
3. Mail receptacles and contents are protected by Federal law and this law prohibits attempts to pry boxes open or otherwise tamper with them. If you lose your key, apply to the building owner or manager for another one.
4. Failure to keep the letterbox locked at all times may result in suspension of delivery service. It is contrary to postal regulations to deliver mail, including check letters into unlocked or defective apartment mailboxes.

DIRECTOR OF CITY OPERATIONS



ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 03-11-20 BY 60322
60322 T13142115

Appendix Two
Affidavit of Charles E. Stubbs

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Charles E. Stubbs,	)	Docket No.: 11-ALJ-22-0654-AP
	)	
Appellant,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	CHARLES E. STUBBS
South Carolina Department of Employment	)	
and Workforce and JSE, LLC,	)	
	)	
Respondents.	)	
	)	
	)	

Charles E. Stubbs personally appeared before me duly sworn, deposes and states as follows:

1. I am the Appellant in this court action.
2. I live at 115 Connie Drive, Trenton Court Apartment Complex, and I have lived at location at all times since the initial filing of my unemployment claim to the present.
3. I have seen the Affidavit of S. Ashley Cole, including accompanying photographs.
4. The photographs accurately depict the mailboxes at my apartment complex both as they are now, and as they were on or about June 21, 2011.
5. Exhibit A accurately depicts the group of tenant mailboxes used by the entire apartment complex, including the outgoing mailbox.
6. Exhibit B accurately depicts my incoming mailbox. This is where I pick up my mail.
7. The outgoing mailbox shown in Exhibit C of S. Ashley Cole's Affidavit is the outgoing mailbox into which I placed my appeal, properly addressed to South Carolina Department of Employment and Workforce, and with sufficient postage, on June 21, 2011. The outgoing mailbox is used by all the tenants of the apartment complex for their outgoing mail and is, to my knowledge, the only outgoing mailbox for the apartment complex residents.

8. The outgoing mailbox shown in Exhibit C has two locks and, to my knowledge, is always locked, except when postal employees take the outgoing mail. Upon information and belief, only the United States Postal Service (USPS) has access to contents of this box.
9. Exhibits D and E accurately depict an adhesive sticker affixed directly above the outgoing mailbox illustrated in Exhibit C. This sticker is labeled "INFORMATION FOR APARTMENT HOUSE CUSTOMERS" and bears the USPS logo.
10. Exhibit F accurately depicts a metal label affixed to the back of the unit of mailboxes that includes the outgoing mailbox and which indicates that the mailboxes are "U.S. MAIL APPROVED BY POSTMASTER GENERAL."
11. To my knowledge, only the USPS, and no third-party, has access to the outgoing mailbox, and only the USPS services these boxes.

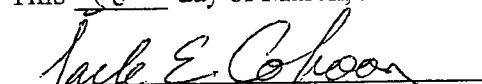
FURTHER AFFIANT SAYETH NAUGHT.

Respectfully submitted,


Charles E. Stubbs

SWORN TO AND SUBSCRIBED BEFORE ME

This 30th day of March, 2012.


Notary Public for South Carolina

My Commission Expires: June 8, 2015

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

DECISION OF APPEAL TRIBUNAL

Hearing Date: June 14, 2011

CHARLES E. STUBBS
115 CONNIE DR
COLUMBIA, SC 29210 5317

CLAIMANT

JSE LLC
C/O VENTURE RESOURCES GROUP LLC
4224 HENDERSON BLVD
TAMPA, FL 33629

EMPLOYER

APPELLANT: Employer

SS NO:

APPEARANCES

FOR THE
CLAIMANT: Present

FOR THE
EMPLOYER: One Witness

FINDINGS OF FACT

The issue in this case is whether the claimant voluntarily quit employment with good cause.

The employer appealed the determination mailed April 29, 2011, which held the claimant eligible to receive benefits effective March 6, 2011, upon a finding the claimant voluntarily quit employment with good cause.

The claimant worked from October 28, 2009, to January 2, 2011, with the subject employer, a staffing business, most recently as an assembler. He advised the employer he would not continue in his position with a client.

The claimant advised the employer he would undergo surgery after he was involved in a car accident on December 18, 2010. The claimant underwent surgery for his foot and remained under a doctor's care with restrictions from prolonged standing until May of 2011. He did not request a medical leave of absence with subject employer because it was not available. The employer advised the claimant to

inform management when he was available for additional work. The claimant did not make himself available for assignments with subject employer prior to filing a claim for benefits.

REASONS

South Carolina Code provides in §41-35-120(1) for an indefinite disqualification of benefits if a claimant is found to have voluntarily left the most recent bona fide employment without good cause attributable to employment. The disqualification continues until the claimant returns to work and earns at least eight times the weekly benefit amount in covered employment.

"Good Cause" for quitting within the meaning of the law refers to a substantial, material change in the terms or conditions of employment, or any circumstances that would cause a reasonable and prudent person to become totally unemployed rather than continue working.

The claimant voluntarily quit his position with subject employer due to health related reasons. Although the Agency is not unsympathetic to the claimant's circumstances, the employer did not alter the claimant's condition of hire. Furthermore, the claimant filed a claim for benefits prior to making himself available for additional work with subject employer. Therefore, the Tribunal finds that the reason the claimant voluntarily quit without good cause. Such being the case, a disqualification must be imposed.

DECISION

The Tribunal hereby holds the claimant disqualified from receiving benefits effective March 6, 2011, until requalification, upon a finding the claimant voluntarily quit employment without good cause. This decision reverses the determination mailed April 29, 2011, and may result in an overpayment in benefits to the claimant.

You may appeal the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed in person at any Workforce Center, or by mail, addressed to "Appellate Panel," Post Office Box 995, Columbia, South Carolina 29202. For additional information or assistance in filing an appeal, contact your local Workforce Center.

V. Joan Marshall

V. Joan Marshall
Administrative Hearing Officer

VJM:rib
Decision Mailed: 06/17/11
Mailed on the above Date By: *RVB*

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Charles E. Stubbs)
115 Connie Drive)
Columbia, SC 29210)
Claimant SSN:)

APPELLATE PANEL
DECISION

JSE, LLC)
c/o Venture Resources Group, LLC)
4224 Henderson Boulevard)
Tampa, FL 33629)
Liable Employer)

Appellant: Claimant

The claimant appealed Appeal Tribunal Decision 2011-A-10528 to the Appellate Panel. The Tribunal held the claimant indefinitely disqualified from benefits upon finding he voluntarily quit without good cause. This decision reversed the claims adjudicator's determination, which held the claimant eligible for benefits upon finding he was discharged without cause.

The claimant's appeal to the Appellate Panel was dismissed as untimely. The claimant appealed the dismissal of the case, requesting that the appeal be accepted and the case reconsidered. The Appellate Panel remanded this case to the Appeal Tribunal to conduct a hearing regarding the timeliness of the claimant's appeal. That has been accomplished, and the matter is again before the Appellate Panel for review and decision.

DECISION

The claimant's appeal to the Appellate Panel is dismissed as untimely, and Appeal Tribunal Decision 2011-A-10528 is final.

The Department mailed Appeal Tribunal Decision 2011-A-10528 to the claimant's address of record on June 17, 2011. The decision contained instructions for filing an appeal and a clear and specific notice that it would be final unless appealed within ten (10) days from its mailing date. The claimant received the decision June 20, 2011. He appealed by letter postmarked June 29, 2011. The appeal period expired June 27, 2011. The claimant asserted he put the appeal letter in the outgoing mail slot at his apartment

complex on June 21, 2011, and assumed it was sent out timely. He had no explanation for the postmark date on his appeal.

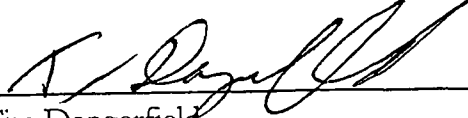
Under Public Law 110-252, Emergency Unemployment Compensation is payable to an individual who has exhausted benefit rights for regular compensation with respect to a benefit year that ended on or after May 1, 2007. The individual must have received all regular compensation payable or had his/her rights to regular compensation terminated by reason of expiration of the applicable benefit year. EUC08 is administered through voluntary agreements between states and the U.S. Department of Labor. Continuing eligibility is determined under the requirements of the state law.

S.C. Code Ann. § 41-35-680 requires that an Appeal Tribunal decision is final unless the decision is appealed to the Appellate Panel within ten (10) days of the decision's mailing date.

The Department properly mailed the Appeal Tribunal decision to the claimant's address of record, and the claimant received it in time to file a timely appeal. Although the claimant asserts he mailed the appeal June 21, 2011, it was not postmarked until June 29, 2011, which was eight (8) days later. The claimant was aware he was mailing a time-sensitive document, and it was his responsibility to ensure that the appeal was timely filed. The claimant filed an untimely appeal due to his own error or neglect. Therefore, the appeal is dismissed as untimely, and the Appeal Tribunal decision is final as a matter of law.

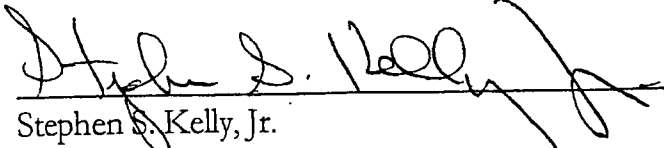
**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE**



E. B. Ayers

Tim Dangerfield

Review Date: 11/29/11
Date Mailed: 11/29/11
Mailed By: MRT



Stephen S. Kelly, Jr.

**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT &
WORKFORCE**

Columbia, South Carolina

Transcript of Testimony

Before

Lamar H. Kelsey, III, Administrative Hearing Officer

Charles E. Stubbs	)	CLAIMANT
115 Connie Drive	)	
Columbia, SC 29210	)	
Claimant SSN: xxx-xx-8697	)	

JSE LLC	)	LIABLE EMPLOYER
C/O Venture Resources Group LLC	)	
4224 Henderson Blvd.	)	
Tampa, FL 33629	)	

PLACE OF HEARING:	SC Dept of Employment & Workforce
	700 Taylor Street
	Columbia, South Carolina

DATE OF HEARING:	November 9, 2011
-------------------------	------------------

APPEARANCES:

For Claimant:	In Person
---------------	-----------

For Employer:	None
---------------	------

TESTIFYING WITNESSES

CLAIMANT:

Charles E. Stubbs

EMPLOYER WITNESSES:

None

1 Before: Lamar H. Kelsey, III, Administrative Hearing Officer

2 **HEARING OFFICER'S PREAMBLE.**

3 **ALL WITNESSES SWORN.**

4 HEARING OFFICER: Then state your name please.

5 CLAIMANT: Charles E. Stubbs.

6 HEARING OFFICER: And I have in the records of the Agency a determination
7 mailed on June 17, '11, holding the claimant indefinitely disqualified effective
8 March 6, '11. Did you receive that decision in the mail?

9 CLAIMANT: Okay, this is the one that came on the 17th, you're
10 saying?

11 HEARING OFFICER: Well, it was mailed on the 17th, [UNCLEAR].

12 CLAIMANT: Okay, okay, yeah. I...I received that and I
13 promptly put it back in the mail the next day.

14 HEARING OFFICER: Okay, when did you receive that in the mail?

15 CLAIMANT: I would have to say probably around the 20th,
16 which I checked the calendar the 17th, was on a Friday, so I probably got it that
17 Monday.

18 HEARING OFFICER: Okay.

19 CLAIMANT: And put it back in the mail that Tuesday.

20 HEARING OFFICER: Okay, you can hand that to me then. We'll note that then
21 and enter that decision of the Appeal Tribunal as Agency Exhibit Number One.
22 Then we have what appears to be an appeal letter, and it appears to have with it a

1 envelope in which the appeal letter was mailed with the postmark of June 29, 2011.
2 Is that what those two pages are? Is that your appeal letter with a copy of the
3 envelope?

4 CLAIMANT: Yes, sir, it is. I received it on July the 1st looks
5 like.

6 HEARING OFFICER: Well, do you see the postmark of the post office?

7 CLAIMANT: Yeah...

8 HEARING OFFICER: [UNCLEAR]

9 CLAIMANT: ...the 29th of June.

10 HEARING OFFICER: Yes. Is that when you mailed it?

11 CLAIMANT: No. I mailed it on...it would have been the...I
12 mailed it on...which probably would have been the 21st.

13 HEARING OFFICER: Okay, we'll note that and enter that as Agency Exhibit
14 Number Two then, the appeal letter and envelope. Would you know why the
15 postmark would be that many days later?

16 CLAIMANT: I have no idea but I would say this; I mailed some
17 more correspondence to the Work Force and, matter of fact, I had to hand carry it
18 in because they kept it for a month, didn't even deliver it. I mailed it twice to PO
19 Box 995...

20 HEARING OFFICER: Right.

21 CLAIMANT: ...Columbia, South Carolina. And I...and I...the
22 lady over at the Work Force Center, I told her, Jean. I have been talking with her
23 on the phone, and she...it just so happen that day it...it came back again because I
24 was calling about the information, and it came back. And she said, "Just bring it

1 over here, let me look at it.” And...and because she had given...she said, “Perhaps
2 you didn’t have the right address on here.” And I told her, “PO Box 995 in
3 Columbia,” and [UNCLEAR]. And I hand carried it over there, gave it to the
4 security officer over there, and she said she get it to the proper people. And that’s
5 when I heard back on this then. I...I really don’t know what the problem with it. I
6 had mailed...I can’t remember what that letter was, I think it was asking about
7 what had happened with the appeal, I think it was. I had mailed it back in August
8 or September and it didn’t come back to me until sometime late October but...but
9 the middle of October. But I...I don’t know what happened with the mail on it, but
10 she said...I don’t know whether she made copies of it or not. But her name
11 is...is...her name is Jean, and I always talked to her at 737-3089. And she’ll tell
12 you the same thing, those letters were returned to me and I don’t know why or
13 what happened with the post office. I can’t say anything about what they’re doing.
14 And my...my mail box, normally when I put mail in it they get it the next day.

15 HEARING OFFICER: Well, how...how did you mail this?

16 CLAIMANT: I mailed this at my house. I got a...they got a box
17 where the mailman comes, and he...you got little slots where you can...outgoing
18 mail.

19 HEARING OFFICER: Right.

20 CLAIMANT: And he...he takes it out. I...I don’t know what
21 happened with that, I don’t. I have no idea.

22 HEARING OFFICER: And when you say you put it in that slot...

23 CLAIMANT: I put it in that slot on the...had to be the 21st.

24 HEARING OFFICER: On June 21st?

25 CLAIMANT: Yeah, had to be because I...I would have gotten it
26 the 17th, on the Friday, the 20th, was that Monday. And I know I mailed it the next

1 day. I had to look the dates back up once they gave me the dates and that's
2 [UNCLEAR]. But why it wasn't delivered, or why? I don't know.

3 HEARING OFFICER: Do you know why the post office put the postmark date
4 of June 29, on it?

5 CLAIMANT: I have no idea. I have no idea, unless they
6 misplaced it and put when they got it, put it on there, because I...I have no idea
7 about that.

8 HEARING OFFICER: Okay. Then we have here a letter indicating that the
9 appeal was untimely. Did you receive a copy of that in the mail?

10 CLAIMANT: Okay, this came August the 3rd. I suppose so.

11 HEARING OFFICER: Okay.

12 CLAIMANT: I suppose so.

13 HEARING OFFICER: We'll note that...

14 CLAIMANT: Now, that might be what the other two letters was
15 about, in reference to that letter.

16 HEARING OFFICER: And enter that as Agency Exhibit Number Three. And
17 then that was mailed on...that letter was mailed on August 3. We have a letter
18 here from you that was mailed on...this is dated at the top, it's dated on the top
19 August 10...8/10, and it...it appears to be stamped October 7th, by the Agency.

20 CLAIMANT: Okay, I think that's the one that had been returned,
21 I believe.

22 HEARING OFFICER: Is that...what is that letter?

1 CLAIMANT: Okay. Oh, this is one that I didn't mail. I
2 had...this is the one I hand carried up there but that...that one over there, that got a
3 stamp on it...the other one right here? This...? Yeah, this is the one that I
4 responded to...to the August, and...and this is the one that I...I sent with the
5 address, and then I called the lady and she put this address on there and...and it
6 was returned also.

7 HEARING OFFICER: Okay, I'm going to enter the letter dated August 10,
8 2011, as Agency Exhibit Number Four.

9 CLAIMANT: Yeah, that was hand carried in.

10 HEARING OFFICER: And he said that was hand carried in. Now when was
11 this mailed?

12 CLAIMANT: That was the one mailed in August that I
13 responded to the...the 8...what was it, August? The turn down letter that I didn't
14 get the timeliness [UNCLEAR].

15 HEARING OFFICER: That was dated...that was dated August 3.

16 CLAIMANT: Yes, that was the one in response to that letter.

17 HEARING OFFICER: Okay.

18 CLAIMANT: Yeah, I'm...I'm pretty sure, but it was returned
19 several times...a couple times.

20 HEARING OFFICER: We'll enter that as Agency Exhibit Number Five. And
21 then we have a letter dated October 27, indicating that a hearing will be held. Did
22 you receive a copy of that?

23 CLAIMANT: Yes, sir.

1 HEARING OFFICER: Okay, and we're going to enter that as Agency Exhibit
2 Number Six. Then when do you say you appealed the...the decision that was
3 mailed on June 17?

4 CLAIMANT: I...I returned it on about June the 21st.

5 HEARING OFFICER: And you say you put this letter in an envelope?

6 CLAIMANT: In...In my box at...at...it's not a US postal box,
7 it's a box...I guess it is. Well, I guess it is because it's a...it's a box that's used by
8 the apartment complex...

9 HEARING OFFICER: Right.

10 CLAIMANT: ...for delivering or...or...or picking up mail.

11 HEARING OFFICER: And you say you put this letter in an envelope in that on
12 June 21st?

13 CLAIMANT: Yes, sir.

14 HEARING OFFICER: Is that correct?

15 CLAIMANT: Yes, sir. Or to my knowledge, yes.

16 HEARING OFFICER: And you don't know why the postmark is June 29?

17 CLAIMANT: I have no idea.

18 HEARING OFFICER: Did you wait till June 29, to put it in the box?

19 CLAIMANT: No. No, sir.

20 HEARING OFFICER: You put it in there before then?

1 CLAIMANT: I put it in on the 21st.

2 HEARING OFFICER: Okay. Then on that issue do you have anything else you
3 would like say?

4 CLAIMANT: I don't know what happened with the letter.
5 I...I...I tried to mail it back in a timely fashion because that's what the letter told
6 me was required, that I had to have it back in within a ten day period.

7 HEARING OFFICER: Right.

8 CLAIMANT: And I'm thinking it's from the 17th until the 27th.

9 HEARING OFFICER: That's right.

10 CLAIMANT: That's what I'm thinking, from the day it was
11 mailed until that day [UNCLEAR]. So I put it back in the mail and I was assuming
12 it gone, and I don't know what happened.

13 HEARING OFFICER: Did you see it after you put it in the...in the box?

14 CLAIMANT: No. When you put it in the box, it's...it's a slot
15 like this, small letter slot. Once you slide it in...

16 HEARING OFFICER: Did it come back to you in any...any way?

17 CLAIMANT: No. Not that I recall, no.

18 HEARING OFFICER: Okay.

19 CLAIMANT: Not that I recall, sir.

20 HEARING OFFICER: Then before I close the hearing, do you have anything
21 else?

1 CLAIMANT: No. I just hope I can, you know, take this into
2 consideration...you taking into consideration that the mail might have made a
3 mistake. I...I don't know. And but at the same time I...I'd certainly like to have a
4 chance to get my case in. But, you know, that's all...that's not...it's out of my
5 hands. I'm just coming to give you...tell you what happened from my point of
6 view, from my side, my vantage point. And I guess whatever you decide I got to
7 live with.

8 HEARING OFFICER: Okay.

9 CLAIMANT: But...but, guess that's it, sir. I...I can't...I
10 can't...I can't fight this because I don't know how...I don't know how to...what I
11 can say to...to make it sound anyway [UNCLEAR] with the mail because, you
12 know, the mail is an entity in itself and I can't...I have no control over it in any
13 kind of way.

14 HEARING OFFICER: Okay. Then hearing no further testimony I declare the
15 hearing closed.

16 **HEARING CLOSED.**

STATE OF NEW JERSEY)
)
COUNTY OF: MIDDLESEX)

This is to certify that the above is a true and correct transcript of recorded testimony transcribed to the best of my ability.

Lois Szirko

SWORN to before me this the

20th day of January, 2012
Mary Farley (L.S.)

Mary Farley
Notary Public
New Jersey
My Commission Expires 11/03/2018

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 995, COLUMBIA, S.C. 29202

1 CHARLES E STUBBS

DATE OF THIS NOTICE 04/28/11

1 115 CONNIE DR

1 COLUMBIA SC 29210

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION ENDS	
CHARLES E STUBBS				[REDACTED]	03/06/11		
LO NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS
400	A	21	\$ 134.00	\$ 1787.00	\$ 0.00	\$ 1787.00	05/29/11

1 DETERMINATION BY CLAIMS ADJUDICATOR ON CLAIM FOR BENEFITS

1 ☒ You are eligible for benefits from the above effective date.

1 ☐ You have been disqualified from receiving benefits or have been found to be ineligible for benefits for the following reason(s).

1 YOU ARE ON LAY OFF FROM YOUR MOST RECENT BONA FIDE EMPLOYER DUE TO LACK OF WORK AND NO
1 DISQUALIFICATION IS IMPOSED ON THE SEPARATION UNDER THE SOUTH CAROLINA CODE.

1 ☐ LAST SEPARATION FROM NON-LIABLE EMPLOYER

1 UI CLAIMS ADJUDICATOR

1 MAILING DATE 04/29/2011

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE COMMISSION UNLESS YOU FILE AN APPEAL SETTING FORTH IN DETAIL THE GROUNDS FOR APPEAL WITHIN TEN (10) CALENDAR DAYS, INCLUDING WEEKENDS AND HOLIDAYS, FROM THE MAILING DATE SHOWN ABOVE IF THE TENTH DAY FALLS ON A SATURDAY, SUNDAY, OR HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT BUSINESS DAY YOUR APPEAL MAY BE FILED IN PERSON AT ANY EMPLOYMENT SECURITY OFFICE, OR BY MAIL, ADDRESSED TO THE "APPEAL TRIBUNAL," P.O. BOX 995, COLUMBIA, SOUTH CAROLINA 29202. FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, CONTACT YOUR LOCAL EMPLOYMENT SECURITY OFFICE

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 995
COLUMBIA, S.C. 29202

NOTICE TO CLAIMANT OF APPEAL FILED BY FORMER EMPLOYER

TO: CHARLES E STUBBS

A former employer JSE LLC has filed an appeal from the Claims Adjudicator's determination which held you eligible for unemployment insurance benefits without disqualification.

IF YOU ARE PAID ANY BENEFITS, AND THE APPEAL TRIBUNAL OR THE COMMISSION FINDS THAT YOU ARE NOT ELIGIBLE, YOU WILL HAVE TO REPAY THESE BENEFITS TO THE COMMISSION.

APPEAL NO. EUC-3533

S.S. NO. [REDACTED]

L.O. NO. 400

You should continue to file claims for each week of unemployment until you receive the Appeals Tribunal or Commission decision, or until you return to work or your claim is exhausted. If you win the appeal, you can only be paid for those weeks that you have claimed.

In case the appeal is set for a hearing, you, as well as the employer, will receive notice in ample time to make preparations to present your case.

If you have any questions concerning your claim, contact your local office where you filed your claim.

05/13/11
DATE

MS. J. M. ANDERSON
UI SUPERVISOR

SOUTH CAROLINA
EMPLOYMENT SECURITY COMMISSION
P.O. BOX 995
COLUMBIA, S. C. 29202
OFFICIAL BUSINESS
APP-103

FORWARDING SERVICE REQUESTED

CHARLES E STUBBS
115 CONNIE DR
COLUMBIA SC 29210

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. Box 995, Columbia, South Carolina 29202
NOTICE OF HEARING BEFORE APPEAL TRIBUNAL

Claimant's Name: CHARLES E STUBBS Social Security Number: [REDACTED]
Address: 115 CONNIE DR
COLUMBIA SC 29210-5317

Employer's Name: JSE LLC

Appeal Number: EUC-3533 Hearing Date: 06/14/11 Hearing Time: 9:45 AM
Month/Day/Year Hour/Minute

Hearing Location: SC DEPARTMENT OF EMPLOYMENT & WORKFORCE
701 HAMPTON STREET (LOWER LEVEL) COLUMBIA SC 29201

Before: JOAN MARSHALL

IMPORTANT: IF YOU HAVE APPEALED AND FAIL TO APPEAR WITHIN TEN (10) MINUTES AFTER THE SCHEDULED TIME FOR THE HEARING TO BEGIN, YOUR APPEAL MAY BE DISMISSED. FAILURE OF EITHER PARTY TO PARTICIPATE MAY RESULT IN YOUR INTERESTS BEING ABANDONED.

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY. Contact a representative of the Department at (803) 737-2520, AT ONCE, if you cannot be present at the time scheduled and wish to request a postponement of the hearing. Also, if you require any special needs, such as an interpreter, please contact us prior to the hearing.

ISSUES

☐ Voluntary Quit	☐ Voluntary Retirement	☐ Timeliness of Appeal
☐ Discharge	☐ Absence from Hearing	☐ Fraud & Overpayment
☐ Availability	☐ Overpayment	☐ Job Offer & Referral
☒ Eligibility	☐ Other _____	

EVIDENCE: This hearing is your only chance to testify and present evidence. Sworn testimony is required from witnesses with first-hand knowledge. Only documents, such as business records (for example: timesheets, employer's policies or handbook, warnings) can be considered and must be submitted with an original and two copies. The original will be returned. No testimony or evidence will be considered from witnesses who are not present.

SUBPOENAS: If a witness is reluctant to appear, you may apply for a subpoena through the Commission's local office or the Appeal Tribunal at (803) 737-2520.

LEGAL REPRESENTATION: An attorney licensed to practice in South Carolina may represent you. It is your responsibility to obtain representation prior to the hearing. Fees charged to represent claimants are limited to the greater of \$125.00 or the claimant's weekly benefit amount per appearance.

BENEFITS: A claimant should continue to file for benefits during the appeal process. Weeks not claimed cannot be paid, even if the claimant is held eligible.

THIS NOTICE SUPERSEDES ANY PREVIOUS HEARING NOTICE YOU MAY HAVE RECEIVED. IF THE DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD ASSUME THAT THE PREVIOUS HEARING HAS BEEN POSTPONED AND FOLLOW THE INSTRUCTIONS ON THIS NOTICE.

Please note the hearing may result in an increase, decrease, or no change in the disqualification.

MAILING DATE: 05/31/2011

NO CELL PHONES OR CHILDREN ARE ALLOWED IN HEARINGS

GENERAL INFORMATION ON THE SOUTH CAROLINE CODE IS ON THE BACK OF THIS NOTICE.

Appeal No: ELIC-3533

overpayment
DECISION NO: 2011-A-10528

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

DECISION OF APPEAL TRIBUNAL

Hearing Date: June 14, 2011

CHARLES E. STUBBS
115 CONNIE DR
COLUMBIA, SC 29210 5317

lyc2line 7
disq 3/6/11

CLAIMANT

ENTERED
6/21/11
Date
Inklets

JSE LLC
C/O VENTURE RESOURCES GROUP LLC
4224 HENDERSON BLVD
TAMPA, FL 33629

EMPLOYER

lyc-A9
505101

APPELLANT: Employer

SS NO: [REDACTED]

lyc-c2line 1
disq 5/30/11

02 TO
009100

lyc-A9
505101

APPEARANCES

FOR THE
CLAIMANT: Present

01 TO
009100

FOR THE
EMPLOYER: One Witness

FINDINGS OF FACT

The issue in this case is whether the claimant voluntarily quit employment with good cause.

The employer appealed the determination mailed April 29, 2011, which held the claimant eligible to receive benefits effective March 6, 2011, upon a finding the claimant voluntarily quit employment with good cause.

The claimant worked from October 28, 2009, to January 2, 2011, with the subject employer, a staffing business, most recently as an assembler. He advised the employer he would not continue in his position with a client.

The claimant advised the employer he would undergo surgery after he was involved in a car accident on December 18, 2010. The claimant underwent surgery for his foot and remained under a doctor's care with restrictions from prolonged standing until May of 2011. He did not request a medical leave of absence with subject employer because it was not available. The employer advised the claimant to

inform management when he was available for additional work. The claimant did not make himself available for assignments with subject employer prior to filing a claim for benefits.

REASONS

South Carolina Code provides in §41-35-120(1) for an indefinite disqualification of benefits if a claimant is found to have voluntarily left the most recent bona fide employment without good cause attributable to employment. The disqualification continues until the claimant returns to work and earns at least eight times the weekly benefit amount in covered employment.

"Good Cause" for quitting within the meaning of the law refers to a substantial, material change in the terms or conditions of employment, or any circumstances that would cause a reasonable and prudent person to become totally unemployed rather than continue working.

The claimant voluntarily quit his position with subject employer due to health related reasons. Although the Agency is not unsympathetic to the claimant's circumstances, the employer did not alter the claimant's condition of hire. Furthermore, the claimant filed a claim for benefits prior to making himself available for additional work with subject employer. Therefore, the Tribunal finds that the reason the claimant voluntarily quit without good cause. Such being the case, a disqualification must be imposed.

DECISION

The Tribunal hereby holds the claimant disqualified from receiving benefits effective March 6, 2011, until requalification, upon a finding the claimant voluntarily quit employment without good cause. This decision reverses the determination mailed April 29, 2011, and may result in an overpayment in benefits to the claimant.

This will be the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed in person at any Workforce Center, or by mail, addressed to "Appellate Panel," Post Office Box 995, Columbia, South Carolina 29202. For additional information or assistance in filing an appeal, contact your local Workforce Center.

V. Joan Marshall

V. Joan Marshall
Administrative Hearing Officer

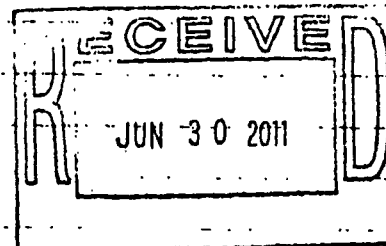
yjw:rlb

Decision Mailed: 06/17/11

Mailed on the Above Date By: *RJB*

Appeal # EUG3533
Decision # 2011-A-10528

Sgt 6/11/11 ✓



Appellate panel

I am appealing your decision base on the fact that I didn't quit my job. I was in a car accident had a plate in certed in my in my foot and my doctor gave me the go ahead to work. If I could find a job that I could work with out being on my feet all day.

This temp job I was working required me to be on my feet a lot. When I contacted True group I was advised they didn't have a medical leave policy and to call them when I was ready to return to work. I talk to them on several occasions giving them up dates, before I was injured I was getting ready to go full time permanent job with pure power technology. True group knew I didn't quit because I wanted this job which I had been working over a year. I hope you will Reconsider your decision.

Thank you
Charles Stubbs
Chris Stubbs

SC Employment Comm.

SCDEW

JUL 06 2011

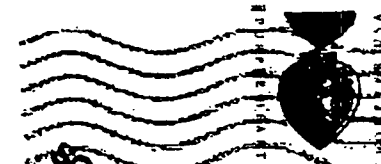
JUL 07 2011

Received Benefits Div.

Lower Authority Appeals

Charles Stubbs
15 Connie Dr
Columbia SC 29210

COLUMBIA, SC 292
29 JUN 2011 PM 3 T



6/29/11
SCDEW

JUL 01 2011
Lower Authority Appeals

SC Employment Comm.
JUL 06 2011
Received Benefits Div.

Appellate Panel
P.O. Box 995

~~2820240995~~ Columbia SC 29210

PO Box 993
1550 Gadsden Street
Columbia, SC 29202
www.dew.sc.gov



Nikki R. Haley
Governor

John L. Finan
Executive Director

August 3, 2011

Charles E. Stubb
115 Connie Drive
Columbia, SC 29210

RE: Charles E. Stubbs
SSN: [REDACTED]
Appeal No: EUC-3533-15416

Dear Mr. Stubbs:

This will acknowledge your appeal filed June 29, 2011 from Appeal Tribunal Decision Number 2011-A-10528 issued June 17, 2011.

South Carolina Code § 41-35-680 provides that an Appeal Tribunal Decision becomes final ten (10) days after the mailing thereof. We, therefore, have no alternative but to dismiss the appeal as being untimely.

You have the right to appeal this ruling to the Appellate Panel within ten (10) calendar days from the date of this letter setting forth the reasons for the untimeliness of your appeal.

Higher Authority Appeals
(803) 737-0239
(803) 737-0124

cc: Local Office - Columbia
Benefits Section – (Imaging)
File

Mailed by: adg

8-10-2011

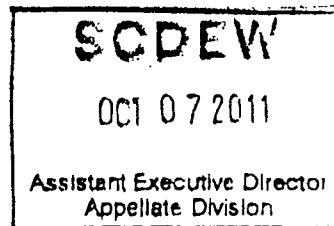
Dear Sirs,

76 I am back dating this letter to August because my original letter was missed placed. I am filing this appeal because I did nothing wrong. my Contract had ended during course of time ~~toty~~ while ~~I was~~ I was out injured since this was a temporary job I was not required to notify them if I was seeking another position. It was established in the hearing that they didn't have a medical leave policy. And even though I was not required to keep in contact with True group I still kept them informed of my medical situation. I advised them that I couldn't do the job I had been doing. They never offered me another position. Because this was a Temp. job, I was not bound to them and they offered me no help, I felt free to seek other type of employment where I didn't have to be on my feet all day. Since my accident, in December, I had a plate inserted in my left foot, I am a Certified (Loan Officer) I can do that job because I don't have to be on my feet all day. True group had already replace me on that job.

now I owe the S.C. employment
commission the \$2050⁰⁰ they
originally approve me to receive
in benefits. I followed all the
procedure in receiving these benefits.
I ask you to reconsider this
matter.

Thank you
Charles Stubbs

[REDACTED]
115 Connie Dr
Columbia SC 29210



48
Charles Stubbbs
115 Connie Dr
Columbia SC 29202

RECEIVED

OCT 07 2011

Deputy Executive Director, JI

Appeals
P.O. Box 995
Columbia SC 29202

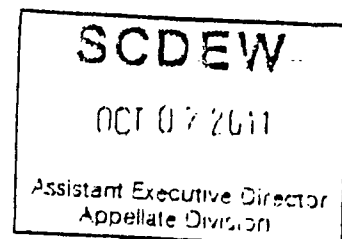
Charles Stubbs
115 Connie Dr
Columbia SC 29210

SSN - [REDACTED]
Appeals NO.
EUC-3553-1

Dear Higher Authority Appeals

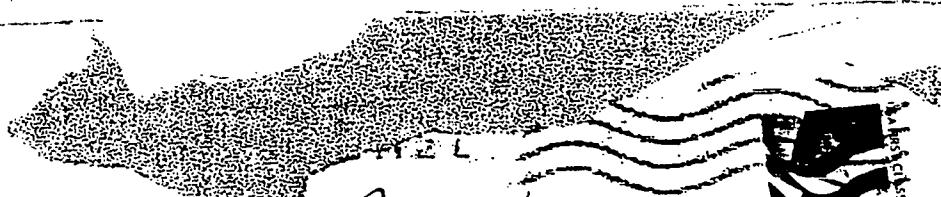
I mail my appeals letter on
June 25, 2011. I am not respons-
ible for the mail, I called several
times to check on my appeal
and the people I talked to had
no record of my appeal.
Then all of a sudden you tell
me I didn't appeal on time
I find that real strange. Also
I need this money to live
out of work since 12-16-20.
First you approve my claim
then you take it away, then
you tell me I owe over
\$2000.00 even though it was
at no fault of my own. I
want to go to work but until
then can't you penalize me for
some weeks and let me
collect my unemployment. Thank
you.

Charles Stubbs



50

Charles Stubbs
15 Connie Dr
Columbia SC 29210



Appellate panel
P.O. Box 995
Columbia SC 29202
↑

RECEIVED

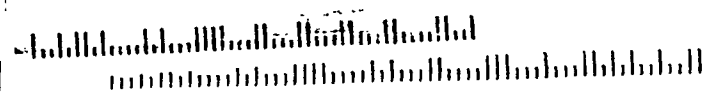
OCT 6 7 11

Deputy Executive Director, UI

Higher Appellate Appeals
STUB115 292104238 1N 13 10/05/11

P.O. Box
1350

23251 292104238 1N 13 10/05/11



PO Box 995
1550 Gadsden Street
Columbia, SC 29202
www.dew.sc.gov



Nikki R. Haley
Governor

Abraham J. Turner
Executive Director

P. O. Box 995
631 Hampton Street
Columbia, SC 29202

October 27, 2011

Charles E. Stubbs
115 Connie Drive
Columbia, SC 29210

RE: Charles E. Stubbs
Claimant SSN: [REDACTED]
Appeal Number: EUC-3533-16394

Dear Mr. Stubbs:

The Appellate Panel has remanded this case to the Appeal Tribunal to conduct an evidentiary hearing regarding the timeliness of your appeal dated June 29, 2011 from an Appeal Tribunal Decision mailed June 17, 2011. Once this testimony has been received, the record will be reviewed by the Panel.

Notice of the hearing will be issued in the near future and you are advised to attend.

Higher Authority Appeals
(803) 737-0239

cc: Imaging
Employer
Local Office - Columbia
File

adg

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. Box 995, Columbia, SC 29202

NOTICE OF HEARING BEFORE APPEAL TRIBUNAL (IN-PERSON)

CLAIMANT'S NAME: CHARLES E. STUBBS
ADDRESS: 115 CONNIE DRIVE
COLUMBIA, SC 29210

SOCIAL SECURITY NO. [REDACTED]

EMPLOYER'S NAME: NO LIABLE EMPLOYER
ADDRESS:

HEARING DATE AND TIME: 11/9/11 AT 11:30 AM EST BEFORE: Lamar H. Kelsey, III

HEARING LOCATION: SCDE&W - 701 Hampton Street (Lower Level) Columbia, SC 29201

IMPORTANT: If you have appealed and fail to appear within ten (10) minutes after the scheduled time for the hearing to begin, your appeal may be dismissed. Failure of either party to participate may result in your interest being abandoned.

REPORT TO THE RECEPTIONIST PROMPTLY

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY. Contact a representative of the Agency at (803) 737-2520, AT ONCE, if you cannot be present at the time scheduled and wish to request a postponement of the hearing. Also, if you require any special needs, such as an interpreter, please contact us prior to the hearing.

ISSUES

☐ Voluntary Quit (for good cause)	☐ Voluntary Retirement	☒ Timeliness of Appeal
☐ Discharge (for disqualifying cause)	☐ Absence from Hearing	☐ Fraud & Overpayment
☐ Availability	☐ Overpayment	☐ Job Offer & Referral
☐ Eligibility	☐ Other	

EVIDENCE: This hearing is your only chance to testify and present evidence. Sworn testimony is required from witnesses with first-hand knowledge. Only documents, such as business records (for example: timesheets, employer's policies or handbook, warnings) can be considered and must be submitted with an original and two copies. The original will be returned. No testimony or evidence will be considered from witnesses who are not present.

SUBPOENAS: If a witness is reluctant to appear, you may apply for a subpoena through the Agency's local office or the Appeal Tribunal at (803) 737-2520.

LEGAL REPRESENTATION: An attorney licensed to practice in South Carolina may represent you. It is your responsibility to obtain representation prior to the hearing. Fees charged to represent claimants are limited by the Agency.

BENEFITS: A CLAIMANT SHOULD CONTINUE TO FILE FOR BENEFITS DURING THE APPEAL PROCESS. Weeks not claimed cannot be paid, even if the claimant is held eligible.

THIS NOTICE SUPERSEDES ANY PREVIOUS HEARING NOTICE YOU MAY HAVE RECEIVED. IF THE DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD ASSUME THAT THE PREVIOUS HEARING HAS BEEN POSTPONED AND FOLLOW THE INSTRUCTIONS ON THIS NOTICE.

SMALL CHILDREN, PETS AND ELECTRONIC DEVICES ARE NOT ALLOWED IN HEARING

MAILING DATE: 11/01/11

GENERAL INFORMATION ON THE SOUTH CAROLINA CODE IS ON THE BACK OF THIS NOTICE

Cc ☒ Claimant ☐ Sep Emp ☒ File ☐ Liab Emp ☒ Local Office ☐ Claimant's Atty ☐ Emp's Atty ☐ UI Tech ☒ Imaging

- INFORMATION -
On Claims Against the State of South Carolina

The South Carolina Code provides, among other things, that an unemployed insured worker shall be eligible to receive benefits with respect to any week only if he has made a claim, registered for work and continued to report in accordance with regulations, and he is able to work and is available for work.

The South Carolina Supreme Court has held that the burden is on the claimant filing for benefits to show that he has met the benefit eligibility conditions including that he is available for work, and that he has made a reasonable effort to obtain employment.

The South Carolina Code provides that an insured worker shall be disqualified for an indefinite period if the Agency finds that he voluntarily left his most recent employment without good cause. The South Carolina Supreme Court has interpreted the words "good cause" to mean a cause attributable to or connected with the claimant's employment. Personal reasons, therefore, do not constitute good cause for quitting.

The South Carolina Code provides that an insured worker shall be disqualified from benefits from five to twenty-six weeks when discharged for cause connected with his work with a corresponding mandatory reduction of his maximum total benefits.

The South Carolina Code provides that an insured worker who has failed without good cause, (1) either to apply for available suitable work, when so directed by the Agency, (2) or to accept available suitable work when offered him by the Agency the employer or return to his customary self-employment (if any) when directed by the Agency, shall be denied benefits for an indefinite period and until he furnished satisfactory evidence of having been re-employed and having earned eight times his weekly benefit amount.

The South Carolina Code provides that an insured worker shall be disqualified if the Agency finds that he voluntarily retired from his most recent employment. The period of disqualification shall begin on the effective date of his retirement and shall continue until he submits satisfactory evidence of having been re-employed and of having earned wages of not less than eight times his weekly benefit amount.

BE SURE TO KEEP IN TOUCH WITH YOUR LOCAL WORKFORCE CENTER AT ALL TIMES.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

Docket No. 11-ALJ-22-0654-AP

CHARLES E. STUBBS,

Appellant,

vs.

**SOUTH CAROLINA
DEPARTMENT OF
EMPLOYMENT AND
WORKFORCE AND JSE
LLC,**

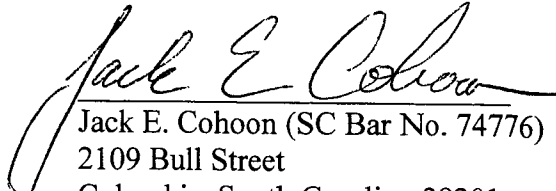
Respondents.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCRAP, Appellant's counsel hereby certifies that this Record contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES



Jack E. Cohoon (SC Bar No. 74776)
2109 Bull Street
Columbia, South Carolina 29201

Office: (803) 744-4166

Fax: (803) 799-1781

jackcohoon@sclegal.org

RECEIVED

DEC 13 2012

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-22-0654-AP

Charles E. Stubbs,

Appellant,

v.

South Carolina Department of
Employment and Workforce
and JSE, LLC,

Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the Record on Appeal upon Respondents South Carolina Department of Employment and Workforce and JSE LLC by U.S. Mail, Postage Paid on December 13, 2012 to the following address:

Maura Dawson
Attorney for Respondent South Carolina Department of
Employment and Workforce
Post Office Box 8597
Columbia, South Carolina 29202

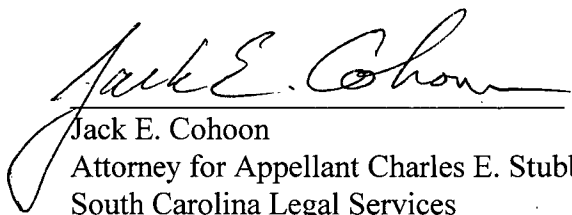
JSE LLC
1410 Colonial Blvd West
Suite 230
Columbia, South Carolina 29210

RECEIVED

DEC 13 2012

SC Court of Appeals

Respectfully Submitted,

A handwritten signature in cursive script, reading "Jack E. Cohoon". The signature is written in dark ink and is positioned above a horizontal line.

Jack E. Cohoon

Attorney for Appellant Charles E. Stubbs
South Carolina Legal Services
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4166
Fax: (803) 799-1781