

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Case No.: 18-ALJ-30-0181-CC

Appellate Case No. 2018-001740

Clara L. Brockington, Appellant,

v.

South Carolina Department of Employment and
Workforce, Respondent.

RECEIVED
MAR 04 2019
SC Court of Appeals

RETURN TO APPELLANT'S MOTION FOR EXTENSION

Respondent South Carolina Department of Employment and Workforce (the Department) submits this return to Appellant Clara L. Brockington's second motion for extension. The Department does not oppose Appellant's motion. However, the Department respectfully requests this Court limit Appellant's extension to no more than twenty (20) days from the date of its order and that any future motions for extension from Appellant be denied absent proof of extraordinary circumstances.

I. Procedural History

1. The Administrative Law Court (ALC) issued its decision August 21, 2018, finding the Department was entitled to receive a debt set-off in the amount of \$752.00. (*See Exhibit A, ALC Decision*). Specifically, the ALC granted summary judgment in favor

of the Department, in part, on the grounds that Appellant failed to exhaust her administrative remedies and was precluded from re-litigating an issue she previously failed to appeal. (*Id.*).

2. Appellant filed her appeal with this Court on September 21, 2018. (*See Exhibit B, Appeal to Court of Appeals*).
3. On November 15, 2018, this Court advised Appellant that she had to serve and file her initial brief and designation of matter by December 5, 2018. (*See Exhibit C, November 15, 2018, letter*).
4. After Appellant failed to submit her initial brief and designation of matter, this Court sent a letter on December 18, 2018, advising Appellant that she had to serve and file her initial brief and designation of matter by December 28, 2018. (*See Exhibit D, December 18, 2018, letter*). Additionally, the Court informed Appellant that her brief would not be considered without a motion requesting permission to file her brief and designation of matter outside of the standard filing deadlines. (*Id.*).
5. On December 22, 2018, Appellant served only a motion requesting thirty (30) additional days to file her initial brief and designation of matter, citing “the holidays and plans to be away from home to visit the sick...” (*See Exhibit E, Appellant first motion for extension*).
6. This Court granted Appellant motion for extension by order filed January 11, 2019, giving Appellant until February 11, 2019, to file her initial brief and designation of matter. (*See Exhibit F, January 11, 2019, order*).

7. On February 11, 2019,¹ Appellant filed a second motion for extension. (*See Exhibit G, February 11, 2019, motion*). Appellant cited a variety of personal ailments and, notably, did not request a specific timeframe for her extension. (*Id.*)
8. While the Department recognizes that 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); *State v. Policano*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct.App.2013).

II. Conclusion

The Department does not oppose Appellant’s second motion for extension. However, given Appellant’s persistent history of missed deadlines and extensions, coupled with the narrow issue on appeal, the Department respectfully requests that this Court grant Appellant no more than twenty (20) additional days to file her initial brief and designation of matter. Additionally, the Department respectfully requests that Appellant be denied any future request for extension to file her initial brief and designation of matter absent proof of extraordinary circumstances.

Respectfully Submitted,



Paul Famolari (SC Bar # 076723)
SC Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202
803.737.0395 (phone); 803.737.0124 (fax)
Legal@dew.sc.gov

February 19, 2019

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

¹ Although Appellant dated her motion February 4, 2019, and included a corresponding proof of service, the envelope was not postmarked until February 11, 2019, and the Department did not receive it until February 13, 2019.

EXHIBIT A

case hearing with the Administrative Law Court (ALC or court.) On June 19, 2018, the court issued an Order for Pre-Hearing Statements to the parties. On July 3, 2018, the Department filed its Pre-Hearing Statement and a Motion in Limine¹ arguing that the doctrine of *res judicata* prevents this court from relitigating issues that were finally decided in the unappealed Department decision from the March 21, 2017 hearing.

STANDARD OF REVIEW

Pursuant to ALC Rule 68, this court may apply South Carolina Rules of Civil Procedure (SCRCP) in contested case proceedings where no ALC rule applies and when practicable. Therefore, Rule 56(c), SCRCP applies in determining whether summary judgment is proper in this case. Summary judgment is proper when there is no issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000); Rule 56(c), SCRCP. Summary judgment should not be granted, even when there is no dispute as to evidentiary facts, if there is disagreement concerning the conclusions or inferences to be drawn from those facts. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000); *Fleming v. Rose*, 338 S.C. 524, 236 S.E.2d 732 (2000). To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable ambiguities and inferences in the light most favorable to the non-moving party. *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563, 564 S.E.2d 94, 96 (2002). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Trico Surveying, Inc. v. Godley Auction Co.*, 314 S.C. 542, 431 S.E.2d 565 (1993).

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 854, 856 (2001). One may not create a genuine issue of material fact and, thus, avoid summary judgment by asserting

¹ Although the Department filed its motion as a Motion in Limine, the court will treat it as a Motion for Summary Judgment.

that the trier of fact may disbelieve uncontradicted evidence. *Hoard ex rel. Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 694 S.E.2d 1 (2010).

DISCUSSION

The Department seeks to recover a debt owed to it by the Petitioner for overpayment of unemployment insurance benefits pursuant to the Setoff Debt Collection Act, S.C. Code Ann. § 12-56-10 *et seq.* The South Carolina Supreme Court held in *Gardner v. S. Carolina Dep't of Revenue*, 353 S.C. 1, 18, 577 S.E.2d 190, 199 (2003), that unemployment insurance overpayments could be recovered by the Department as a delinquent debt pursuant to the Setoff Debt Collection Act by intercepting a claimant's state income tax refund if the debt "accrued through contract, subrogation, tort, operation of law, or any other legal theory." *Id* at 17. A "delinquent debt" is defined as "a sum due and owing a claimant agency, including collection costs, court costs, fines, penalties, and interest which have accrued through contract, subrogation, tort, operation of law, or other legal theory..." S.C. Code Ann. § 12-56-20(4) (2014).

In this case, the Department relies on the operation of law as the basis for its claim to set off a delinquent debt owed by the Petitioner against tax refunds. A claimant who is found by the Department to have "received a sum as benefits under Chapters 27 through 41 while conditions for the receipt of benefits...were not fulfilled or while he was disqualified from receiving benefits...liable to repay [the Department]...a sum equal to the amount received by him. S.C. Code Ann. § 41-41-40(A)(1) (Supp. 2014). This section obligates the Petitioner to repay any benefits she received to which she was not entitled. The obligation arises by operation of law when a final decision as to eligibility is reached. A decision is final ten days after the date that decision is mailed, unless the decision is timely and properly appealed. S.C. Code Ann. § 41-35-740 (Supp. 2014). In this case, the Petitioner failed to appeal the Department's decision; therefore, it became a final decision as to the Petitioner's overpayment.

The Petitioner's right to seek relief from this court pursuant to the Setoff Debt Collection Act does not include a right to relitigate issues which should have been presented to the Department's Appellate Panel. With respect to the Department's decisions, "judicial review is permitted only after a party claiming to be aggrieved by it has exhausted his administrative remedies as provided by Chapters 27 through 41 of [Title 41]." S.C. Code Ann. § 41-35-740 (Supp. 2014.) Because the Petitioner did not timely appeal the underlying decision, she is barred

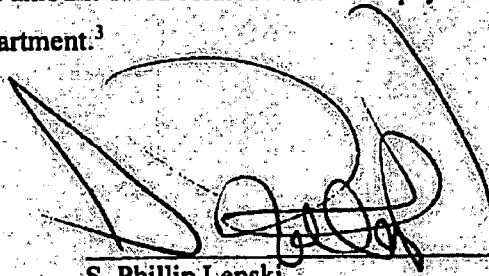
from relitigating issues that she failed to appeal at the proper time. The doctrine of *res judicata* applies to the decisions of state agencies, barring the relitigation of issues which were or could have been raised before the administrative hearing body. *S. Carolina Dep't of Soc. Servs. v. Winyah Nursing Homes, Inc.*, 282 S.C. 556, 563, 320 S.E.2d 464, 468 (Ct. App. 1984). The Department's factual findings are preclusive if they meet the traditional elements of *res judicata* and there exists no countervailing consideration which necessitates relitigation². *Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 417 S.E.2d 569 (1992). The doctrine of *res judicata* bars a litigant from raising any issues that were adjudicated in the former suit and any issues which might have been raised in the former suit. To establish *res judicata*, a party must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). All of these elements are met in this case. The determination that the Petitioner was overpaid benefits to which she was not entitled to and the amount of the overpayment due to the Department was the subject adjudicated between the parties in the Department's decision issued after the March 21, 2017 hearing.

The Petitioner cannot use the protest rights granted by S.C. Code Ann. § 12-56-65 to reverse a decision regarding issues which are soundly the law of the case. "An unchallenged ruling, right or wrong, is the law of the case and requires affirmance." *First Union Nat. Bank of S. Carolina v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998). Therefore, because the Petitioner did not appeal the Department's decision that she owed the overpayment nor the amount due, the Department's decision became the law of the case. The only issue raised by the Petitioner in her Request for Contested Case Hearing is that she is "...not in agreement that I owe the agency any monies." That issue falls squarely within the matters decided after the Department's March 21, 2017 hearing and relitigation of that issue is barred by *res judicata*.

² The South Carolina Supreme Court held in *Shelton v. Oscar Mayer Foods Corp.*, 325 S.C. 248, 252, 481 S.E.2d 706, 708 (1991), that the doctrine of collateral estoppel does not apply to bar relitigation of issues decided by the Department in subsequent litigation. That decision was based on the Court's conclusion that "the narrow issue the [Department] decides is simply whether the claimant is qualified to receive unemployment benefits. That case is distinguishable from the circumstances of the present case because of the differences between the doctrines of collateral estoppel and *res judicata*. See *Beall v. Doe*, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 190 (Ct. App. 1984) "The doctrines of *res judicata* and collateral estoppel are, of course, two different concepts."

IT IS THEREFORE ORDERED that the South Carolina Department of Employment and Workforce is entitled to receive a debt set-off in the amount of \$752.00 from Petitioner's 2019 tax return for credit on the delinquent amount owed related to the overpayment determined after the March 21, 2017 hearing of the Department.³

AND IT IS SO ORDERED.




S. Phillip Lenski
Administrative Law Judge

August 21, 2018
Columbia, South Carolina

³ All other motions not addressed in this Order are deemed denied.

CERTIFICATE OF SERVICE

I, Erika S. Easler, 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).



Erika S. Easler
Judicial Law Clerk

August 21, 2018
Columbia, South Carolina

EXHIBIT B

Rec'd 9/24

**COURT OF APPEALS
COLUMBIA, SOUTH CAROLINA
NOTICE OF APPEAL**

CLARA LEWIS BROCKINGTON
POST OFFICE BOX 3232
FLORENCE, SOUTH CAROLINA 29502
TELEPHONE: (843-616-1317)

DOCKET NO. 18-AJ-30-0181-CC

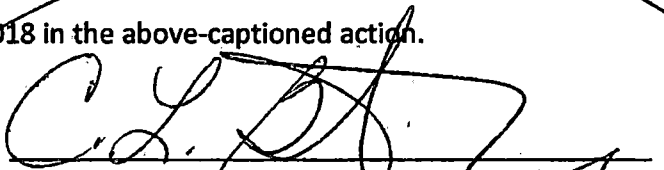
APPELLANT/PETITIONER, PRO SE

NOTICE OF APPEAL

VS.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
EDGAR A. BROWN BUILDING
1205 PENDLETON STREET, SUITE 224
COLUMBIA, SOUTH CAROLINA 29201
RESPONDENT

NOTICE IS GIVEN that Clara Lewis Brockington, Pro Se, Appellant/Petitioner, hereby Appeals from the South Carolina Administrative Law Court Honorable Judge S. Phillip Lenski, who signed the order dated, August 21, 2018 in the above-captioned action.



Clara Lewis Brockington, Pro Se Appellant/Petitioner
Post Office Box 3232, Florence, SC 29502
Telephone: (843) 616-1317

September 17, 2018

Columbia, South Carolina

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CAPTION:

CLARA Lewis Brockington,
Pro Se Petitioner/Appellant,

CERTIFICATE OF SERVICE*

Docket Number: 18-ALJ-30-0181-CC

v.

The Honorable Judge S. Phillip Lenski,
Administrative Law Court, Respondents.

I, CLARA Lewis Brockington, hereby certify under penalty of perjury that
(print name)

on September 17, 2018, I served a copy of (1) Notice of Appeals;

(2) Copy of (date) The Honorable Judge S. Phillip Lenski's Order
(list all documents)

by (select all applicable)**

- Personal Delivery
United States Mail
Federal Express or other Overnight Courier
Commercial Carrier
E-Mail (on consent)

on the following parties:

Court of Appeals P.O. Box 11629, Columbia, SC 29211
Name Address City State Zip Code

S.C. Administrative Law Court, 1205 Pendleton St, Suite 224, Columbia, SC 29201
Name Address City State Zip Code

S.C. Dept. of Employment + Workforce, P.O. Box 995, Columbia, SC 29202
Name Address City State Zip Code

Name Address City State Zip Code

*A party must serve a copy of each paper on the other parties, or their counsel, to the appeal or proceeding. The Court will reject papers for filing if a certificate of service is not simultaneously filed.

**If different methods of service have been used on different parties, please complete a separate certificate of service for each party.

September 17, 2018
Today's Date

[Handwritten Signature]
Signature

EXHIBIT C



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1838
www.sccourts.org

November 15, 2018

Clara L. Brockington
Post Office Box 3232
Florence SC 29502

Re: Clara Brockington v. SCDEW
Appellate Case No. 2018-001740

Dear Ms. Brockington:

Upon reviewing your correspondence dated November 9, 2018, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and this deficiency must be corrected within ten (10) days of the date of this letter. Within twenty (20) days of the date of this letter, you must serve and file your appellant's initial brief and designation of matter.

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

Handwritten signature of Jenny Abbott Kitchings in cursive script.
CLERK

cc: Sandra Bell Grooms, Esquire

EXHIBIT D



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
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December 18, 2018

Clara L. Brockington
Post Office Box 3232
Florence SC 29502

Re: Clara Brockington v. SCDEW
Appellate Case No. 2018-001740

Dear Ms. Brockington:

Our records reflect that the time for serving and filing the appellant's initial brief and designation of matter has expired. Within ten (10) days of the date of this letter, you must serve and file the appellant's initial brief and designation of matter, along with a motion requesting permission to serve and file the appellant's initial brief and designation of matter outside of the filing deadlines set by Rules 208 and 209 of the SCACR. Your appellant's initial brief and designation of matter will not be considered if no motion is made. Failure to comply with the Court's request within ten (10) days of the date of this letter will result in the dismissal of this appeal.

Very truly yours,

A handwritten signature in cursive script that reads "Jay A. Kitchings".
CLERK

cc: Sandra Bell Grooms, Esquire

EXHIBIT E

THE SOUTH CAROLINA COURT OF APPEALS

CLARA LEWIS BROCKINGTON, APPELLANT,


VERSES

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT
AND WORKFORCE, RESPONDENT.

APPELLATE CASE NUMBER: 2018-001740

APPELLANT MOTION FOR EXTENSION

Per the request of Pro Se Appellant, this motion is to request an additional 30 days of Extension to reply to the court's order dated, December 18, 2018 to file the Appellant's initial Brief and designation of matter. Due to the holidays and plans to be away from home to visit the sick and the time needed to prepare the above mentioned lengthy documents, Pro Se Appellant is requesting an additional 30 days to return home and seek advice on preparing the documents requested by the court. Thanks in advance for the court understanding and in granting this motion.


Clara Lewis Brockington, Pro Se Appellant
Post Office Box 3232, Florence, South Carolina

December 22, 2018

Florence, South Carolina

RECEIVED
DEC 28 2018

BY:

THE SOUTH CAROLINA COURT OF APPEALS

CLARA LEWIS BROCKINGTON, APPELLANT,

VERSES

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT
AND WORKFORCE, RESPONDENT.

APPELLATE CASE NUMBER: 2018-001740

PROOF OF SERVICE

I, certify that I have served the South Carolina Department of Employment by depositing a copy of the Motion for Extension in the United States Mail, postage paid, on December 22, 2018, addressed to South Carolina Department of Employment and Workforce, Post Office Box 995, Columbia, South Carolina 29202.

Clara Lewis Brockington

Clara Lewis Brockington, Pro Se Appellant
Post Office Box 3232, Florence, South Carolina

December 22, 2018

Florence, South Carolina

RECEIVED
DEC 28 2018

BY:.....

EXHIBIT F

The South Carolina Court of Appeals

Clara L. Brockington, Appellant,

v.

South Carolina Department of Employment and
Workforce, Respondent.

Appellate Case No. 2018-001740

The Honorable S. Phillip Lenski
Trial Court Case No. 2018ALJ300181CC

ORDER

The appellant has filed a motion to allow late filing of the appellant's initial brief and designation of matter. No return has been filed. The motion is Granted. The appellant's initial brief and designation of matter must be served and filed within thirty (30) days from the date of this order. Failure to comply with the Court's request will result in the dismissal of this appeal.

FOR THE COURT

BY V. Claus Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Clara L. Brockington
Sandra Bell Grooms, Esquire

FILED

January 11, 2019

EXHIBIT G

Reed
2/13

THE SOUTH CAROLINA COURT OF APPEALS

CLARA LEWIS BROCKINGTON, APPELLANT,

VS.

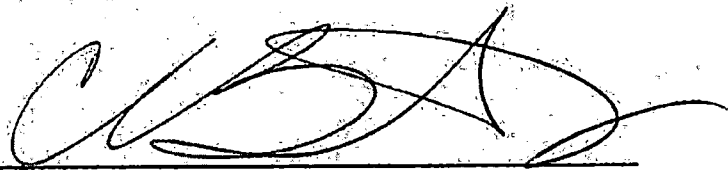
SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT
AND WORKFORCE, RESPONDENT.

APPELLATE CASE NUMBER: 2018-001740

MOTION FOR EXTENSION

Pro Se Appellant, Clara Lewis Brockington, is requesting an extension due to dealing with some health issues in the past 30 days. Pro Se Appellant has been dealing with some unstable diabetic conditions and attacks causing dizziness, unstable mobilization, extensive sweating, disoriented, blurred vision, very high sugar readings, etc., which has caused Pro Se Appellant's condition to be unstable, out of order and unable to reply to any COURT ORDERS.

Pro Se Appellant would like to thank the Court for their consideration in advance for understanding the medical condition of the Pro Se Appellant at this time and granting this extension.



Clara Lewis Brockington, Pro Se Appellant
Post Office Box 3232, Florence, S. C. 29502

Florence, South Carolina

February 4, 2019

THE SOUTH CAROLINA COURT OF APPEALS

CLARA LEWIS BROCKINGTON, PRO SE APPELLANT,

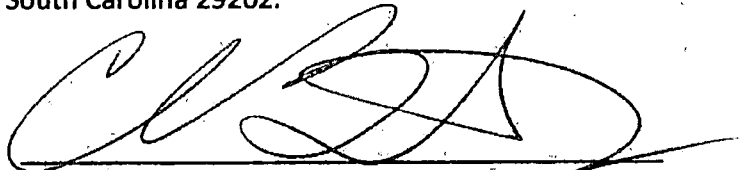
VS.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT
AND WORKFORCE, RESPONDENT.

APPELLATE CASE NUMBER: 2018-001740

PROOF OF SERVICE

I, certify that I have served the South Carolina Department of Employment and Workforce by depositing a copy of the Motion for Extension in the United States Mail, postage paid, on February 4, 2019, addressed to South Carolina Department of Employment and Workforce, Post Office Box 995, Columbia, South Carolina 29202.



Clara Lewis Brockington, Pro Se Appellant
Post Office Box 3232, Florence, SC 29502

February 4, 2019

Florence, South Carolina

Brockington
P.O. Box 3232
Florence, SC 29502

COLUMBIA
SC 290
11 FEB '19
PM 1 L



S. C. Dept. of Employment and Work Force
Post Office Box 995
Columbia, South Carolina 29202

29202-099595



P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



Henry McMaster
Governor

Jamie Suber
Acting Executive Director

Post Office Box 8597
Columbia, SC 29202
Telephone: (803) 737-0395
Fax: (803) 737-0124

February 28, 2019

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

RECEIVED

MAR 04 2019

RE: Clara L. Brockington v. South Carolina Department of Employment and Workforce
Appellate Case No: 2018-001740

SC Court of Appeals

Dear Ms. Kitchings:

The Appellant in the above case, Ms. Brockington, contacted our office to inform us that she was missing pages of DEW's Return to Appellant's Motion for Extension that was mailed on February 19, 2019. In reviewing our copies, we were also missing pages. To remedy that, we are remailing the original and six copies to the Court and a copy to Ms. Brockington of the full Return and exhibits.

Please let me know if you have any questions.

Sincerely,

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

Kristi Chesley
Administrative Legal Assistant for
Paul Famolari
Assistant General Counsel

Cc: Clara L. Brockington, Appellant

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



U.S. POSTAGE >> PITNEY BOWES
ZIP 29201 \$ 007.85⁰
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0001400941 FEB 28 2019

RECEIVED
MAR 04 2019
SC Court of Appeals

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