

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Jan 15 2021

SC Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge
Case No.: 20-ALJ-22-0216-AP

Appellate Case Number: 2020-001506

Tamika E. Howard,

Appellant,

v.

South Carolina Department of Employment and Workforce
and United Cerebral Palsy of South Carolina,

Respondents.

**RESPONDENT'S MOTION TO STRIKE AND EXCLUDE
ITEMS 5 AND 6 OF APPELLANT'S DESIGNATION OF MATTER
AND TO STRIKE APPELLANT'S INITIAL BRIEF**

Respondent South Carolina Department of Employment and Workforce (Department), respectfully moves to strike items 5 and 6 of Appellant's Designation of Matter because these items were not part of the record presented to the Department's Appeal Tribunal or Appellate Panel, or to the Administrative Law Court (ALC). Therefore, pursuant to Rules 209(b) and 210(c), SCACR, items 5 and 6 of Appellant's Designation of Matter constitute improper matter which should be excluded from the Record on Appeal to this Court. The Department moves to strike Appellant's initial brief because it contains these same matters, which are not properly includable in the Record on Appeal, as 'facts' and impermissibly contains arguments based on these improper matters as issues in her

brief. The Department respectfully requests that this Court hold all further time lines in abeyance pending resolution of this motion.

BACKGROUND and RELEVANT LAW

The ALC determined substantial evidence supported the Department's Appellate Panel (Panel) decision, which found Appellant's appeal to the Department's Appeal Tribunal (Tribunal) was filed untimely and was properly dismissed pursuant to S.C. CODE ANN § 41-35-660. Appellant now seeks judicial review from this Court.

Because this action challenges a final administrative decision of the Department, appellate review is confined to the same record upon which the agency reached its decision, and is limited to determining whether the Department's decision is supported by substantial evidence on the record as a whole, or controlled by error of law. S.C. CODE ANN. § 1-23-380(4) ("The [Court's] review . . . must be confined to the record."). Pursuant to Rule 210(h), SCACR, the Court's review is limited to reviewing only the facts that appear in the Record on Appeal.

THE COURT SHOULD STRIKE ITEMS 5 AND 6 OF APPELLANT'S DESIGNATION OF MATTER AND STRIKE APPELLANT'S INITIAL BRIEF BECAUSE APPELLANT INCLUDED IMPROPER MATTER IN VIOLATION OF THE APPELLATE COURT RULES.

By virtue of her request for judicial review of the Department's final agency decision, Appellant has an obligation to advance her appeal in accordance with the statutory and procedural requirements of the Court.

Rule 209(b), SCACR, governing the content of a party's Designation of Matter requires that the Designation "may only propose to include portions of the transcript, pleadings, orders, exhibits, or other **materials which may be properly included** in the

Record on Appeal. [See Rule 210(c)]. **A party shall not include any matter in his Designation which is not relevant to the appeal.**” (emphasis added).

Moreover, Rule 210(c) states that the Record on Appeal **“shall not . . . include matter which was not presented to the lower court or tribunal.”** (emphasis added). *See Henning v. Kaye*, 307 S.C. 436, 438, 415 S.E.2d 794, 794-95 (1992) (“Appellant is reminded that the Record on Appeal shall not contain any matter not presented to the trial court.”).

In this case, Appellant's Designation of Matter includes items 5 and 6, described as:

- “5. Email from UCP, Terri Carter on March 25, 2020, in response to my light duty request.
6. All Medical and Non Medical documents submitted November 19, 2020, via email and us mail postage paid to Supreme Court and respondents.”

This Court should strike items 5 and 6 because Appellant did not present these documents during the proceedings below, and they are not contained in the ALC's Record on Appeal. Consequently, Appellant has improperly attempted to include these various additional materials that were not a part of the record before the Department or the ALC, and under Rule 210(c), these documents should be excluded from the Record on Appeal to this Court and from Appellant's brief.

Moreover, these materials are not relevant to the appeal of the ALC Order to this Court, and instead pertain to separate matters that are not properly before the Court and exceed the scope of appellate review of this appeal. Appellant improperly attempts to designate these new materials for inclusion in the Record on Appeal as evidence, and also to cite them as ‘facts’ in her brief and provide arguments based on these matters as issues in her brief. This material pertains solely to her job separation and has nothing to do with

the timeliness of her appeal to the Tribunal, which was the sole issue before the ALC. Thus, this material is irrelevant, and Rule 209(b) prohibits inclusion of this material in Appellant's Designation of Matter. The Department moves and requests this Court strike this material from Appellant's Designation of Matter and Appellant's initial brief because Appellant submits evidence, issues and argument not properly before this Court, which is procedurally barred.

The Department recognizes that Appellant has chosen to represent herself and may not be versed in the rules of appellate procedure; however, Appellant has a fundamental duty to comply with appellate court rules to provide a proper Designation of Matter, Record on Appeal, and Brief of Appellant. *See State v. Burton*, 356 S.C. 259, 265 n. 5, 589 S.E.2d 6, 9 n. 5 (2003) (“A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.”).

Appellant has failed to comply with the South Carolina Appellate Court Rules governing appeals by including impermissible matter in her Designation of Matter for the Record on Appeal and by submitting an Appellant's brief containing the impermissible matters as 'facts' and with arguments based on those matters as issues in her brief. Therefore, pursuant to Rule 209(b) and 210(c), this Court should exclude items 5 and 6 of Appellant's Designation of Matter from the Record on Appeal and strike Appellant's initial brief, and require Appellant to comply with this Court's rules.

CONCLUSION

For all of the foregoing reasons, the Respondent Department respectfully moves this Court for an Order to strike and exclude items 5 and 6 of Appellant's Designation of

Matter from the Record on Appeal and to strike Appellant's initial brief, and to require Appellant to comply with the rules governing the appeal to this Court.

The Department respectfully requests that this Court hold all further time lines in abeyance pending resolution of this motion.

Respectfully submitted,

s/ Sandra Grooms

Sandra Grooms (S.C. Bar # 640)
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***Attorney for Respondent
South Carolina Department of
Employment and Workforce***

January 15, 2021.

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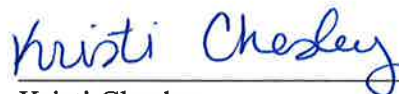
PROOF OF SERVICE

I certify that I have served the Respondent DEW's Motion to Strike and Exclude Items 5 and 6 of Appellant's Designation of Matter and To Strike Appellant's Initial Brief on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, and by email on January 15, 2021, addressed to the parties at their addresses of record:

Tamika E. Howard
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Tamikah1234567@gmail.com

United Cerebral Palsy of SC
PO Box 182366
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January 15, 2021



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SC Court of Appeals

VIA EMAIL AND US MAIL

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

RE: Tamika E. Howard v. South Carolina Department of Employment and
Workforce and United Cerebral Palsy of South Carolina
Appellate Case No: 2020-001506

Dear Ms. Kitchings:

Enclosed is the original of the Respondent DEW's Motion to Strike and Exclude Items 5 and 6 of Appellant's Designation of Matter and To Strike Appellant's Initial Brief in the above referenced case. A Proof of Service is also included in this packet.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Kristi Chesley".

Kristi Chesley
Administrative Legal Assistant for
Sandra Grooms
Attorney for Respondent South Carolina
Department of Employment and Workforce