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Feb 17 2021

SC Court of Appeals

EXHIBIT B

(Minus Attachments Which are in the ALC Filings)

SOUTH CAROLINA ADMINISTRATIVE LAW COURT

ROBERT M. ARDIS

Appellant/Claimant,

Lower Tribunal: SC Dept. of Emp. & Workforce

Appellate Panel No: 20-HA-000142

Appeal Tribunal No: 19-LA-0200031

vs.

SYKES ENTERPRISES, INC.

Appellee/Respondent,

_____ /

MEMORANDUM OF LAW

AND

**EMERGENCY MOTION FOR LEAVE TO PRESENT ADDITIONAL
EVIDENCE**

COMES NOW, the Appellant/Claimant, ROBERT M. ARDIS, on his own behalf, and respectfully files this **Memorandum of Law and Emergency Motion**

for Leave to Present Additional Evidence. This **Emergency Motion** is being filed pursuant to **South Carolina Code of Laws § 1-23-380**, which reads in relevant part as follows:

(3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

It is respectfully submitted that this Honorable Court should immediately **ORDER**, SC DEW to immediately hold a hearing, since one has never been heard, and the Appellant/Claimant has never been heard, in accordance with the South Carolina Constitution, and numerous laws and regulations of this state.

In accordance with **South Carolina Code of Laws § 41-35-760**.

Publication of department regulations on electronic website, a copy of which was included with the undersigned's March 16, 2020, filings with this Court, the undersigned is asking this Court to **REMAND** these matters, immediately to SC DEW, so the undersigned can be heard. I am making such a request, pursuant to

the provisions found in **South Carolina Code 1976 § 1-23-380(1)**, and also found in **South Carolina Code 1976 § 1-23-380(3)**.

1. The Appellant/Claimant is requesting that this Court to **REMAND** this case back to SC DEW and **ORDER** that Agency to hold an evidentiary hearing. Such a hearing has never been held. The undersigned is not pursuing an Appeal, but is pursuing a **REMAND**.

2. It is respectfully submitted that in my opinion, SC DEW is a grossly mismanaged, State Agency, which lacks oversight and accountability. I have been involved in a terse, adversarial relationship with that Agency, because it does **not** follow the law.

3. The South Carolina Department of Employment and Workforce, SC DEW, is **not** in Compliance with several laws passed by the General Assembly and signed by the Governor. With some of those laws have been enacted a full decade ago. For the sake of judicial economy and brevity, the Appellant/Claimant is not duplicating the production of those previously filed Appendixes. The Appellant/Claimant would respectfully request that the Court reviews his March 16, 2020, filing, and that the Court takes Judicial Notice of the following:

Appendix A: March 9, 2020, email serving as follow-up **SC FOIA Request**

Appendix B: **South Carolina Code 1976 § 41-35-760**

- Appendix C: South Carolina Code 1976 § 1-23-380**
- Appendix D: South Carolina Code 1976 § 41-35-750**
- Appendix E: South Carolina Code 1976 § 41-35-750**
- Appendix F: South Carolina Code 1976 § 41-29-300**
- Appendix G: S.C. Code of Regulations R. 47-2**
- Appendix H: Rule 59, S.C. Rules of Civil Procedure**
- Appendix I: January 29, 2020 “Decision” of Appeals Tribunal**
- Appendix J: February 26, 2020, “Decision” of Appellate Panel**
- Appendix K: March 6, 2020, “Decision” of Appellate Panel in response to March 3, 2020, Emergency Motion to Strike and Emergency Motion for Reconsideration**
- Appendix L: March 3, 2020, Emergency Motion to Strike and Emergency Motion for Reconsideration**
- Appendix M: History and Overview of Work Environment**
- Appendix N: Selected Bibliography of Sykes Lawsuit History**
- Appendix O: Petition for *writ of mandamus*, filed in Sumter County Circuit Court on January 22, 2020 (minus attachments)**

4. The Appellant/Claimant is respectfully requesting that the Court takes **Compulsory Judicial Notice** of **Appendix A** through **Appendix O**, in accordance with **Rule 201 of the South Carolina Rules of Civil Procedure**. Specifically, **Rule 201(b)** and **Rule 201 (d)**, which read as follows:

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

**REASONS TO INVOKE THE PROVISIONS OF SOUTH CAROLINA
CODE 1976 § 1-23-380**

5. The Appellant/Claimant is respectfully invoking **South Carolina Code 1976 § 1-23-380(3)**, which reads as follows:

(3) If a timely **application** is made to the court for **leave to present additional evidence**, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, **the court may order that the additional evidence be taken before the agency upon conditions determined by the court**. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court. **(emphasis added)**

6. The Appellant/Claimant is asking this Honorable Court to **REMAND** these matters back to the SC DEW Appeals Tribunal, in order to conduct an actual hearing, with sworn testimony and evidence. Since there has never been a hearing held. I would also request that this Court takes such actions on an Expedited basis, in the interests of justice, because my family has been suffering, for months, due to the inactions, and illegal activity of SC DEW. I am requesting an **in-person, Appeals Hearing.**

7. The Appellant/Claimant avers that this should be done because SC DEW has **never** complied with **South Carolina Code 1976 § 41-35-760**. This Court is a reviewing Court and can consider these matters in reaching a decision pursuant to **South Carolina Code 1976 § 1-23-380(3)**. I would respectfully request that this Honorable Court searches the website of SC DEW, as it relates to § **41-35-760**, in an attempt to locate any of the following:

(B) Regulations governing procedures at hearings and appeals before the department shall include, at a minimum:

(1) procedures for seeking a hearing, review, or appeal;

(2) procedures for notifying parties;

(3) evidentiary rules;

(4) procedures for making findings of fact and conclusions of law;

(5) procedures for making and maintaining an appropriate record of interviews and proceedings before the department; and

(6) procedures for seeking review or appeal of the department's decision.

(C) All regulations must be promulgated in accordance with the provisions of Chapter 23, Title 1 of the South Carolina Code of Laws.

8. The Appellant/Claimant avers that he has been **Retaliated against**, by SC DEW, for pointing out that that Agency has never complied with **South Carolina Code 1976 § 41-35-760**, which mandatorily requires the following:

(A) The department **must promulgate all regulations described in this chapter and regulations governing procedures at all proceedings, hearings, and appeals before the department or any member or employee of the department, including claims for benefit determinations, and all appeals of determinations regarding those claims, and publish all regulations on an electronic website.**(emphasis added)

9. For these reasons, alone, this Honorable Court should **REMAND** these matters to the SC DEW Appeals Tribunal, and **ORDER** that Tribunal to actually hold an **in-person, Appeals Hearing**, in accordance with the attached laws. This has never been done, and, without such an Appeals Hearing being held, then my

family and I will continue to suffer the unjust, illegal consequences of the arbitrary and mean-spirited actions of SC DEW. Without a **REMAND** of these matters then I will not be able to Appeal matters to this Honorable Court because there is not, and will not, be a Record of the proceedings.

10. Because of SC DEW's actions and failures and violations of the attached laws, the Appellant/Claimant has been forced to do the following:

forced to take out a high interest title loan against my vehicle

forced to sell my burial plot in my family plot

go to the Salvation Army for food donations

go to United Ministries for food donations and assistance with our utility bills

Because of DEW's violations of the law, I have been forced to take such actions to put food on my family's table, and to keep the lights and other utilities turned on. I moved back to South Carolina from Florida, to care for my 78 year old Mother who is suffering from Stage 4 Bone Cancer. Because of the complete lack of professionalism from SC DEW, I was also forced to take the actions immediately above to help defray the costs of her chemotherapy and radiation treatments. No one should ever have to take such drastic actions. Unemployment compensation is a safety net that is put there to help us when we are in need and my family is in

need. And I am respectfully requesting that this Honorable Court takes immediate action, and **REMANDS** these matters to the SC DEW Appeals Tribunal, and **ORDER** the Tribunal to immediately call up an Appeals Hearing without any further delay. My family has been without any income since November and we are hurting, terribly. We cannot wait any longer.

11. The Appellate Panel is bound by the **Code of Judicial Conduct**, and other controlling legal authorities, yet in its "Decision" (**Appendixes J & K**) it completely violated not only the **Code of Judicial Conduct**, but several other legal authorities. **South Carolina Code 1976 § 41-29-300**, reads in pertinent part as follows:

(F)(1) A panelist is bound by the **Code of Judicial Conduct**, as contained in Rule 501 of the South Carolina Appellate Court Rules, and the State Ethics Commission is responsible for enforcement and administration of Rule 501 pursuant to [Section 8-13-320](#). A panelist also must comply with the applicable requirements of Chapter 13, Title 8.**(emphasis added)**

12. I would respectfully direct the Court to **Appendix L**, which is my **March 3, 2020, Emergency Motion to Strike and Emergency Motion for Reconsideration**. Specifically, with the filing of **Appendix L**, I requested that SC DEW issue an Order **STRIKING** both **Appendix I** and **Appendix J**, and that SC DEW actually call up and conduct an Appeal Hearing, which is something that Agency has never done. Here is a microcosm of what is contained in **Appendix L**.

13. There has **never** been an Appeal Hearing held in accordance with the laws of South Carolina. Accordingly, the "Decisions" of the SC DEW Appeals Tribunal, and Appellate Panel, cannot stand. Both "Decisions" are based exclusively on "hearsay" and the law and regulations are clear on this point. **South Carolina Code of Regulations, R. 47-51**, reads as follows:

S.C. Code of Regulations R. 47-51

C(3) Evidence will not be excluded solely because it may be hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements, may be considered. However, findings of fact **cannot** be based exclusively on hearsay evidence unless that evidence is admissible under the South Carolina Rules of Evidence. (**emphasis added**)

14. Without ever giving me the benefit of a Hearing, and without the submission of evidence and testimony, SC DEW has violated my rights and the rights of my family. Specifically, **South Carolina Code of Regulations, R. 47-2**, reads as follows:

S.C. Code of Regulations R. 47-2

The Department may designate by written authorization any of its employees as its representatives **to administer oaths and affirmations**, issue subpoenas for the production of books, papers, correspondence, and other memoranda deemed necessary by it as evidence **in connection with**

disputed or contested claims, or in the administration of the South Carolina Employment Security Law.

15. The Appellant/Claimant was so emphatic and serious about my Appeal Hearing before SC DEW, that he took the extraordinary step of actually filing an **Emergency Petition for writ of mandamus**, in the Sumter County Circuit Court, in an effort to have the Circuit Court, **ORDER** SC DEW to hold an Appeals Hearing without any further delay. Please see **Appendix O**, which was filed on January 22, 2020, and provided to this Court on March 16, 2020. I am providing the **Emergency Petition for writ of mandamus**, minus its attachments for the review of the Court.

16. The Appellant/Claimant is filing this **Memorandum of Law**, under the provisions of **South Carolina Code 1976 § 1-23-380, Judicial review upon exhaustion of administrative remedies**, which reads in part:

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals. **(emphasis added)**

(1) Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.

(3) If a timely application is made to the court for **leave to present additional evidence**, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, **the court may order that the additional evidence be taken before the agency upon conditions determined by the court.** The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court. **(emphasis added)**

(4) The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, **not shown in the record**, and established by proof satisfactory to the court, the case may **be remanded to the agency** for action as the court considers appropriate. **(emphasis added)**

17. The actual facts that I wanted to present, and still want to present, to SC DEW, so I can receive the unemployment compensation my family desperately needs can be found in **Appendix M** and **Appendix N**, provided to this Court on March 16, 2020.

18. Even after SC DEW had taken such actions, in a demonstration of good faith on the part of the Appellant/Claimant, before bringing matters before this Court, the undersigned presented SC DEW with the opportunity to correct its grave errors of law, by **Striking** the "Decisions" of both the Appeals Tribunal (**Appendix I**), and the Appellate Panel (**Appendix J**), all to no avail. Following the filing of his **March 3, 2020, Emergency Motion to Strike and Emergency Motion for Reconsideration, Appendix L**, SC DEW instead choose to ignore its legally required duties, under the law, and issued a letter denying my **Emergency Motion**,

Appendix L, with their **Appendix K**. A very sad and telling example of what is wrong with SC DEW.

19. I am respectfully requesting that this Honorable Court takes action on an **Emergency Basis**, pursuant to **South Carolina Code 1976 § 1-23-380**, based upon the facts set forth herein, and especially what is contained in **Appendix L**. I am respectfully incorporating, by reference as if quoted verbatim herein, everything contained within my **Appendix L**, my **March 3, 2020, Emergency Motion to Strike and Emergency Motion for Reconsideration**.

20. The bottom line is that SC DEW has never complied with the laws passed by the South Carolina Legislature and signed by the Governor. So for SC DEW to argue that this Court should Dismiss the undersigned's case, when DEW has neglected its required duty to comply with the law, for over a decade now, smacks of a slippery slop and a blatant, double standard. For example, **South Carolina Code of Laws § 41-35-760. Publication of department regulations on electronic website**, states in part the following:

(A) The department must promulgate all regulations described in this chapter and regulations governing procedures at all proceedings, hearings, and appeals before the department or any member or employee of the department, including claims for benefit determinations, and all appeals of determinations regarding those claims, and **publish all regulations on an electronic website**.

(B) Regulations governing procedures at hearings and appeals before the department shall include, at a minimum:

- (1) **procedures for seeking a hearing, review, or appeal;**
- (2) **procedures for notifying parties;**
- (3) **evidentiary rules;**
- (4) **procedures for making findings of fact and conclusions of law;**
- (5) procedures for making and maintaining an appropriate record of interviews and proceedings before the department; and
- (6) procedures for seeking review or appeal of the department's decision.

(C) All regulations must be promulgated in accordance with the provisions of **Chapter 23, Title 1 of the South Carolina Code of Laws.** **(emphasis added)**

21. SC DEW did **not**, and has **not**, ever complied with § **41-35-760**. Not only has SC DEW never complied with the aforementioned law, which is ten years old, furthermore, when I pointed this out to SC DEW, that Agency actually **Retaliated** against me causing dire and extreme harm to me and my family. It is because of such dire, exigent circumstances, that I am pleading with this Honorable Court to invoke the provisions of **South Carolina Code 1976 § 1-23-380**, and immediate **REMAND** these matters back to the SC DEW Appeals Tribunal, specifying and **ORDERING** that a neutral and detached hearing officer be assigned, and that an Emergency, in-person Appeals Hearing be called up, without any further delay.

22. It is axiomatic that an Appeals Hearing has never been conducted by SC DEW in these matters, and the preposterous assertion by the Appeals Tribunal that I "abandoned" my Appeal is belied by the fact that I took the extraordinary

measure of filing an **Emergency Petition for writ of mandamus**, with the Sumter County Circuit Court in an effort to Compel SC DEW to hold an Appeals Hearing in these matters. The only reason I backed off the *mandamus petition* was that when I received notification from the Appellate Panel it stated that I had a **Right to Oral Argument**, before that Panel. However, contrary to the law, the Appellate Panel refused to allow me to have **Oral Argument**, and that is what has brought these matters before this Court.

23. Since there has never been an Appeals Hearing, and since no one has ever been put under Oath pursuant to **S.C. Code of Regulations R. 47-2**, then everything contained in the "Decisions" of SC DEW is hearsay, that this is strictly prohibited by **S.C. Code of Regulations R. 47-51**

C(3) Evidence will not be excluded solely because it may be hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements, may be considered. However, findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the South Carolina Rules of Evidence. (**emphasis added**)

24. **South Carolina Code of Laws § 1-23-360**, states that members or employees of an agency "assigned to *render a decision or to make findings of fact and conclusions of law in a contested case* shall **not** communicate, **directly or indirectly**, in connection with **any issue of fact**, with any person or party, nor, in

connection with **any issue of law**, with any party or its representative, except upon notice and **opportunity for all parties to participate.**" (**emphasis added**) This law is crystal clear and unambiguous, and was **not** followed by the Appeals Tribunal and subsequently **not** followed by the Appellate Panel. Here again this Honorable Court must invoke **South Carolina Code 1976 § 1-23-380**, and **REMAND** these matters to the Appeals Tribunal so a hearing can be held.

25. Pursuant to **Rule 12(f), South Carolina Rules of Civil Procedure**, I am respectfully requesting that this Court issues an **ORDER** which **STRIKES** the attached "Decision" of the Appeals Tribunal, **Appendix I**, and the "Decision" of the Appellate Panel, **Appendix J**, for all the reasons set forth herein.

26. The **South Carolina Constitution Article I, § 22** was added to the 1895 Constitution in 1970 "as a safeguard for the protection of liberty and property of citizens." Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895, p. 21 (1969). **Article I, § 22** provides, in part:

No person **shall be finally bound** by a judicial or quasijudicial decision of an administrative agency affecting private rights **except on due notice and an opportunity to be heard**; nor shall he be subject to the same person for both prosecution and adjudication; . . .(**emphasis added**)

27. The South Carolina Administrative Procedures Act (the APA) sets forth the standard for judicial review of decisions by the Commission." (citing § 1-23-380)); Hutson, 399 S.C. at 387, 732 S.E.2d at 503. Under this standard, the Administrative Law Court can reverse or modify the decision if the claimant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

28. First, there has never been any hearing held. The Appellant/Claimant is entitled to due process and has a Right to be heard. This has never happened as far as SC DEW is concerned. See Sloan v. South Carolina Board of Physical Therapy Examiners, 636 S.E.2d 598 (S.C. 2006):

Holding that in order to prove a denial of due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law

29. Pursuant to section 1-23-380(5), the reviewing court may reverse or modify the agency's decision ***"if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."***

30. In Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304, the Court recognized that judicial review of Industrial Commission decisions would be governed by the Administrative Procedures Act, Section 1-23-380(g), Code of Laws, (1976 Cum. Supp.). That section permits judicial review and reversal where "administrative findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions... (4) affected by other error of law... (5) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record...."

31. This Court should assert jurisdiction because the Appellant/Claimant, hand-delivered the Appeal documents, in person, to the Court, over a month ago. There is no Record below, and a hearing has never been held. As the South Carolina Supreme Court held in, Bone v. U.S. Food Serv., 744 S.E.2d 552 (S.C. 2013)

Stating " '[a]n agency decision which does not decide the merits of a contested case' " is not a final decision under section 1-23-380 (quoting S.C. Baptist Hosp. v. S.C. Dep't of Health & Env'tl. Control, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987))

32. Below is a brief sampling of email communications between the Appellant/Claimant, and the Defendants, SC DEW. It is clear from these emails,

which serve as a microcosm of the interactions of the undersigned, and SC DEW. At best, it is disingenuous of SC DEW to argue that hey did not receive service of the Appeal documents on March 16, 2020, when **Rule 4, of the South Carolina Rules of Civil Procedure** is styled as **4. E-Filing and E-Service**. And, it further lacks Candor Towards the Tribunal when SC DEW has provided Service, upon the Appellant/Claimant, via email Service on many occassions. Simply put, SC DEW cannot have it both ways, which is what they are attempting to do. Email Service emails from SC DEW, to the undersigned, are as follows:

EMAIL EXAMPLE #1

Appeals Help <AppealsHelp@dew.sc.gov>

Wed, Jan 22, 1:31 PM

to me

Mr. Ardis,

We received your message dated today at 12:39 p.m. indicating you are unable to attend the above hearing scheduled for 1:30 p.m. today.

EMAIL EXAMPLE #2

Appeals Help <AppealsHelp@dew.sc.gov>

Attachments

Fri, Jan 17, 4:56 PM

to me

Attached is the subpoenaed documentation that was received from the employer.

EMAIL EXAMPLE #3

Appeals Help <AppealsHelp@dew.sc.gov>

Thu, Jan 9, 1:54 PM

to me

Mr. Ardis,

Due to your statement below that you are experiencing a medical emergency, your hearing scheduled for today at 2:30 pm is postponed.

33. Moreover, to assuage and negate the baseless arguments of SC DEW, the undersigned went to great lengths to make additional copies of the Appeals documents, and personally delivered them to the Assistant Executive Director of SC DEW, Mr. Brian Urban, on April 16, 2020. After waiting for a half hour for Mr. Urban to appear, he finally came out of the building and stated, and the Appellant/Claimant is quoting:

" . . I am the Deputy Assistant Executive Director, and you're talking to the right man. You don't need to give those to me, just use the email address on that card, and email them to me, and I'll make sure they get to the right person."

34. This Court has the inherent authority, and jurisdiction, to make a credibility determination in these matters. As the Appellate Court held in Lee v. Bondex, Inc., 406 S.C. 97 (S.C. Ct. App. 2013), it is within the sound discretion of the Court to make such a "credibility determination" as it relates to the service of the Notice of Appeal.

35. As the Appellate Court held in Peake v. Dept. of Motor, 375 S.C. 589 (S.C. Ct. App. 2007), this Court should not consider a particular clause in a statute in isolation, but should read it in conjunction with the purpose of the entire statute. And, since email Service is recognized in Rule 4, and SC DEW have never denied

receiving said email Service, along with Serving the undersigned via email, in conjunction with the very own words of Assistant Executive Director of SC DEW, Mr. Urban, Service has been effectuated upon DEW.

36. SC DEW has been "dragging" these matters out since December of 2019, nearly half a year. During this period the Appellant/Claimant has had no income, and his family is hurting. The stated goal and purpose of SC DEW is to aid and assist citizens in need, not prolong litigation. As the South Carolina Supreme Court held in Russell v. Wal-Mart Stores, Inc., 426 S.C. 281 (S.C. 2019), the goal in these matters should be:

Refocusing the commission on its "primary" role in avoiding "complicated and protracted litigation" (emphasis added)

37. The Administrative Procedures Act limits the role of the judicial branch of government in meeting the goal of **quick decisions in limited litigation** by restricting appeals to final decisions in most cases. See S.C. Code Ann. § 1-23-380 (Supp. 2018) ("A party ... who is aggrieved by a final decision ... is entitled to judicial review...."); Spalt v. S.C. Dep't of Motor Vehicles, 423 S.C. 576, 583, 816 S.E.2d 579, 583 (2018) (stating "the Administrative Procedures Act permits an

appeal only from 'a final decision ...' " (quoting Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control , 387 S.C. 265, 266, 692 S.E.2d 894 (2010)). It is clear, based upon the South Carolina Constitution, as cited herein, and a host of other controlling legal authorities, that the Appellant/Claimant has never had due process and has never been heard.

38. As the South Carolina Supreme Court held in Russell v. Wal-Mart, 27875 (S.C. 2019):

Ultimately, we denied an immediate appeal and permitted a remand for a new hearing, 404 S.C. at 84, 744 S.E.2d at 562,

This is precisely what the Appellant/Claimant is requesting of this Honorable Court pursuant to **South Carolina Code 1976 § 1-23-380(3)**,

39. The attorney who has been drafting the legal pleadings for SC DEW is a young attorney, who has been licensed for 7 years, only graduating law school in 2012. Mr. Jordan's AVVO Profile, online, lists his expertise as one third each of the following, Internet, Construction & Development, Appeals law. Accordingly, Mr. Jordan should make it a point to be versed in **Rule 4, South Carolina Rules of Civil Procedure** which reads as follows:

4. E-Filing and E-Service

(a) Electronic Filing. The electronic transmission of a document to the E-Filing System in accordance with these Policies and Procedures and the Filer Interface User Guide constitutes the filing of that document in accordance with Rule 5(e), SCRCF. Any required filing fees and/or technology fees must be paid for by credit card at the time of submission.

This Rule 5(e) is the same as the Federal Rule. It restates and clarifies present Circuit Rules 32 and 67.

40. Besides the fact that constructive email service is specifically cited in the Rules, the fact that Mr. Jordan's Superior, Mr. Brian A. Urban, directly contradicts the arguments averred by Mr. Jordan, in his pleadings, when Mr. Urban stated on April 16, 2020:

". . . I am the Deputy Assistant Executive Director, and you're talking to the right man. You don't need to give those to me, just use the email address on that card, and email them to me, and I'll make sure they get to the right person."

41. Mr. Urban is Mr. Jordan's superior at SC DEW. If a citizen cannot take the word of the Assistant Executive Director of a State Agency, then the public's trust in the system is irretrievably destroyed.

42. The Appellant/Claimant is not an attorney. He made this point clear in his first filings with the Court. However, the undersigned has labored to take all actions in good faith, and that is what sound matter. In Haines v. Kerner, 404 U.S. 519 (1972), the United States Supreme Court held:

pro se complaint seeking to recover damages for claimed physical injuries and deprivation of rights in imposing disciplinary confinement should not have been dismissed without affording him the opportunity to present evidence on his claims.

43. As in Haines v. Kerner, the undersigned has not been permitted to put for any evidence, none at all, by SC DEW. **REMAND** is necessary because of this.

44. In Powell v. Lennon, 914 F.2d 1459, 1463 (11th Cir. 1990), regarding motions to dismiss, the High Court held as follows:

A motion to dismiss will be denied unless it appears beyond all doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to relief. quoting Luckey, 860 F.2d at 1016.

Again, SC DEW has never permitted the undersigned to present anything in support of his claims.

45. In the case of a *pro se* action, moreover, the court should construe the complaint more liberally than it would formal pleadings drafted by lawyers.

Hughes v. Rowe, 449 U.S. 5, 9, 101 S.Ct. 173, 175, 66 L.Ed.2d 163 (1980) (per curiam).

46. In the case of Erickson v. Pardus, 551 U.S. 89, 127 S. Ct. 2197 U.S., 2007, regarding the leniency given to *pro se* filings, the Supreme Court held:

The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed pro se is "to be liberally construed," Estelle, 429 U.S., at 106, 97 S. Ct. 285, and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," ibid. (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice").

CONCLUSION

47. Pursuant to all the legal arguments set forth before this Honorable Court, and especially set for in **South Carolina Code 1976 § 1-23-380(1)**, the Appellant/Claimant is seeking an immediate, **Emergency Rehearing** before the

SC DEW Appeals Tribunal. I am making this request because there is no Record from which this Honorable Court could render any Decision.

48. Pursuant to **South Carolina Code 1976 § 1-23-380(1)**, this Honorable Court needs to immediately **REMAND** these matters back to the SC DEW Appeals Tribunal, and **ORDER** that Tribunal to immediately schedule an in-person Appeals Hearing, with all deliberate speed since my family has been suffering immensely since November of 2019. Additionally, the Court needs to **ORDER** that such an in-person Appeals Hearing needs to be held before a hearing officer who has no prior knowledge of any aspect of this case.

49. The Appellant/Claimant is making this request, before this Honorable Court pursuant to **South Carolina Code 1976 § 1-23-380(3)**, which specifically authorizes the **Emergency Rehearing** sought by the undersigned. I am making this Emergency Motion before the **South Carolina Administrative Law Court**, and cites to **South Carolina Code 1976 § 1-23-380(3)**, which reads as follows:

(3) If a timely application is made to the court for **leave to present additional evidence**, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, **the court may order that the additional evidence be taken before the agency** upon conditions determined by the court. The agency may modify its findings and **decision by reason of the additional evidence and shall file the evidence and**

modifications, new findings, or decisions with the reviewing court.

50. In closing, and on a personal note, my family has been inflicted numerous hardships on account of the violations of the laws of South Carolina by SC DEW. The fact that that Agency is so flippant and arrogant is disgusting when it is supposed to be an Agency that helps people during their time of need. I made the "mistake" of pointing out to SC DEW that it was not in Compliance with the laws of South Carolina. And my "reward" for being a consciousness citizen was to be belittled and **Retaliated** against by SC DEW. I have filed numerous Complaints against this rogue Agency and have also filed a **Notice of Claim** against them.

51. However, all I am seeking is due process of law, and the Appeals Hearing and the unemployment compensation to which I am entitled.

52. I would respectfully submit to the Court that further proof that SC DEW has never complied with **South Carolina Code of Laws § 41-35-760**, can be deduced from the fact that its hearing officers read and considered my Complaint emails to SC DEW Senior Administrators. This is indicative of the fact that DEW has never implemented or promulgated the rules, policies, procedures, etc., that are specifically cited in **Appendix B, South Carolina Code of Laws § 41-35-760**.

53. I am seeking the **Emergency assistance** of this Honorable Court, in the interests of justice. The following is taken from the website of this Honorable Court, and I am pleading for this Honorable Court's immediate assistance:

Mission of the Administrative Law Court

The mission of the Administrative Law Court is to provide a neutral forum for fair, prompt and objective hearings for any person affected by an action or proposed action of certain agencies of the State of South Carolina.

54. It is respectfully submitted to this Honorable Court, that no citizen should be put through what the undersigned has endured at the hands of a non-responsive, State Agency.

WHEREFORE, the Appellant/Claimant Prays for the following Relief on an **Emergency Basis**:

a) That this Honorable Court gives these matters **Emergency** attention, in the interests of justice since the undersigned and his family have been without any income since November of 2019;

b) That pursuant to **Rule 201(b)** and **Rule 201 (d)**, **South Carolina Rules of Civil Procedure**, that the Court takes **Compulsory Judicial Notice** of everything the Appellant has filed in this matter, including all pleadings and

Motions, and the attached **Appendix A** through **Appendix O**, filed on March 16, 2020;

c) Pursuant to everything contained herein, and in the attached Appendixes, that this Court invokes the provisions of **South Carolina Code 1976 § 1-23-380**, and in doings so that the Court **REMANDS** these matters to the SC DEW Appeals Tribunal and **ORDERS** the Tribunal to immediate call up and hear an in-person Appeals Hearing, without any further delay;

d) In the alternative, pursuant to everything contained herein, and in the attached Appendixes, that this Court invokes the provisions of **South Carolina Code 1976 § 1-23-380**, and in doings so that the Court **REMANDS** these matters to the SC DEW Appeals Tribunal and **ORDERS** the Tribunal to immediate call up and hear a telephonic Appeals Hearing, without any further delay. My first choice is to have an in-person Appeals Hearing, but at this point my family is hurting badly, and we desperately need the unemployment compensation that I am entitled to without any further delay;

e) That this Honorable Court, in **ORDERING** the SC DEW Appeals Tribunal to immediately hold an in-person Appeals Hearing that the Court **ORDERS** the Tribunal to specifically follow the provisions of **House Bill 4014, Labor and Employment Law, South Carolina Laws Act 203**, which requires **all decisions** reached by SC DEW, must be done in accordance with the **South**

Carolina Rules of Civil Procedure and the South Carolina Administrative Procedures Act;

f) Pursuant to **Rule 12(f), South Carolina Rules of Civil Procedure**, I am respectfully requesting that this Court issues an **ORDER** which **STRIKES** the "Decision" of the Appeals Tribunal, **Appendix I**, and the "Decision" of the Appellate Panel, **Appendix J**, for all the reasons set forth herein;

g) In the alternative, and only if possible, I would prefer to have nothing to do with SC DEW if this Honorable Court is empowered to call up an **Emergency Hearing** and permit me to make my arguments to this Court, pursuant to **South Carolina Code of Laws § 1-23-380(5)**;

h) Additionally, if this Honorable Court is empowered with the authority, and jurisdiction to **ORDER** SC DEW, to immediately Release all of the unemployment compensation owed to me, I would ask the Court to do so. My family is suffering extreme, dire situations, and we desperately need the unemployment compensation that I am owed;

i) Any and all other Relief the Court deems just, proper, and in the interests of justice;

Respectfully submitted on this 29th day of April 2020.

Mike Ardis

Mike Ardis, Appellant/Claimant
105 North Guignard Drive
Sumter, SC 29150
(803) 236-0859
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VERIFICATION

I HEREBY CERTIFY that, under penalty of perjury, that everything contained within this **Emergency Motion** is the absolute truth. The Appellant/Claimant is Verifying this **Emergency Motion** in that this is a crucially important issue to the undersigned, and he desires to impart its importance to the tribunal via this Verification.

*Mike Ardis*_____

Mike Ardis, Appellant/Claimant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of this **Emergency Motion**, and its **Appendixes**, have been provided to the Court via hand-delivery and to the South Carolina Department of Employment and Workforce on this 29th day of April 2020, via Rule 4 email and U.S. Mail.

*Mike Ardis*_____

Mike Ardis, Appellant/Claimant