

THE STATE OF SOUTH CAROLINA

In The Court of Appeals  
Supreme Court

---

**RECEIVED**

**Apr 16 2021**

**SC Court of Appeals**

APPEAL FROM SC ADMINISTRATIVE LAW COURT  
Deborah Brooks Durden, Administrative Law Judge

---

Case No. 20 ALJ 22 0216 - AP

---

Tamika E. Howard, Appellant,

v.

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

---

**RECORD ON APPEAL**

Sandra Grooms  
S.C. Dept. of Employment &  
Workforce  
Post Office Box 8597  
Columbia, SC 29202  
(803) 737-0395  
legal@dew.sc.sov

United cerebral palsy of SC  
Po box 182366  
Columbus Ohio 43218

Tamika Howard  
343 Wycombe rd  
Columbia, SC 29212  
Tamikah1234567@gmail.com  
803-665-0091

## INDEX

Premier spinal Health on January 7, 2020, February 14, 2020.....	1-2
Palmetto Imaging on March 11, 2020.....	3-6
Corrected covid 19 questions and Essential Personnel Letter email on March 25, 2020.....	7-8
Dew Appeal Tribunal decision on May 19, 2020.....	9-10
Dew Appeal Tribunal decision on July 7, 2020.....	11-12
Reply brief filed October 24, 2020 to Administrative Law.....	13-15
Appeal Information October 23, 2020.....	16-18
Order of Novmber 5, 2020 from Administrative Law.....	19-23
Certificate of Counsel.....	24

## PREMIER SPINAL HEALTH

7801 St. Andrews Rd.  
Irmo, SC 29063  
(803) 587-1893

Tamika Howard  
D.O.B: 04/08/1975  
Gender: Female  
Age: 44

February 14<sup>th</sup>, 2020

To Whom it May Concern;

Please excuse Tamika Howard from lifting over 30 pounds, excessive standing, excessive extension, excessive bending and lifting for the next 3 months. The patient was recently in an auto accident and is currently being treated in our office for radicular pain and nerve associated pain surrounding the cervical and lumbar spine. She is currently on a weekly treatment schedule and has been prescribed various medications for her current condition. X-ray results have been determined by the Radiologist that Mrs. Howard has severe cervical arthritis that lifting and transporting patients may aggravate. If you have any questions regarding Mrs. Howard's condition, please contact our office at (803) 587-1893.

Sincerely,

Dr. Danielle Motley-Jennings

Claim # 10531143

## PREMIER SPINAL HEALTH

7801 St. Andrews Rd.  
Irmo, SC 29063  
(803) 587-1893

Tamika Howard  
D.O.B: 04/08/1975  
Gender: Female  
Age: 44

January 7<sup>th</sup>, 2020

To Whom it May Concern;

Please excuse Tamika Howard from lifting over 50 pounds, excessive standing, excessive extension, excessive bending and lifting for the next 3 months. The patient was recently in an auto accident and is currently being treated in our office for radicular pain and nerve associated pain surrounding the cervical and lumbar spine. She is currently on a weekly treatment schedule and has been prescribed various medications for her current condition.

Sincerely,



Dr. Danielle Motley-Jennings

Claim # 10531143



**PATIENT NAME:** Howard, Tamika  
**DOB:** 04/08/1975  
**MRN:** 08-1650531  
**PHONE:** 803-665-0091  
**PHYSICIAN:** Danielle Motley Jennings, DC  
**EXAM DATE:** 03/11/2020

**EXAM:** MR-Cervical Spine without contrast

**REASON FOR EXAM:** M54.12 - Radiculopathy, cervical region

**ADDITIONAL HISTORY:** Neck pain

**TECHNIQUE:** The following sequences were performed on a 1.2 Tesla Hitachi magnet: Coronal T2, Sagittal T1, sagittal T2, T2 fat sat, axial gradient and T2.

**COMPARISON:** None.

**FINDINGS:** There is no tonsillar ectopia. There is no traumatic or pathologic marrow. No soft tissue paraspinal masses are seen

At C2-3, there is a small annular tear without stenosis

At C3-4, there is a small right paracentral annular tear without stenosis

At C4-5, the disc is well maintained

At C5-6, there is marked loss of disc height and signal with diffuse bulging of the disc with neural foraminal stenosis bilaterally

At C6-7, there is diffuse bulging of the disc eccentric towards the left with neural foraminal stenosis left greater than right

At C7-T1, the disc is well maintained

PATIENT NAME: Howard, Tamika  
DOB: 04/08/1975  
EXAM: MR-Cervical Spine without contrast  
EXAM DATE: 03/11/2020

IMPRESSION: Disc disease with stenosis C5-6 and C6-7 as described above

Robin Daum Kowalski, MD  
(877) 527-9375

*** THIS IS AN ELECTRONICALLY VERIFIED REPORT ***
3/12/2020 8:50 AM: Robin Daum Kowalski, MD

RD/rdk  
DD: 03/12/2020 08:48 am  
DT: 03/12/2020 08:50 am  
Accession #: 08-3907006



**PATIENT NAME:** Howard, Tamika  
**DOB:** 04/08/1975  
**MRN:** 08-1650531  
**PHONE:** 803-665-0091  
**PHYSICIAN:** Danielle Motley Jennings, DC  
**EXAM DATE:** 03/11/2020

**EXAM:** MR-Lumbar Spine without contrast

**REASON FOR EXAM:** M54.16 - Radiculopathy, lumbar region

**ADDITIONAL HISTORY:** Back pain

**TECHNIQUE:** The following sequences were obtained on a Hitachi 1.2 Tesla magnet: Coronal T2, Sagittal T1, sagittal T2 with and without fat saturation, axial T1 and T2.

**COMPARISON:** None

**FINDINGS:** The marrow appears normal. No soft tissue paraspinal masses are seen. The conus is seen at L1. No soft tissue paraspinal masses are seen. There is incidental note of a uterine fibroid.

At L1-2, the disc is well maintained.

At L2-3, the disc is well maintained.

At L3-4, the disc is well maintained. There is mild facet hypertrophy with hypertrophy of ligamentum flava right greater than left. There is no nerve root impingement

At L4-5, the disc is well maintained. There is facet hypertrophy with hypertrophy of ligamentum flavum. There is epidural lipomatosis

At L5-S1, there is disc desiccation. There is a central annular tear. There is no stenosis. There is epidural lipomatosis.

**IMPRESSION:**

1. Annular tear L5-S1

PATIENT NAME: Howard, Tamika  
DOB: 04/08/1975  
EXAM: MR-Lumbar Spine without contrast  
EXAM DATE: 03/11/2020

- 2. Facet hypertrophy
- 3. Epidural lipomatosis

Robin Daum Kowalski, MD  
(877) 527-9375

*** THIS IS AN ELECTRONICALLY VERIFIED REPORT ***
3/12/2020 8:47 AM: Robin Daum Kowalski, MD

RD/rdk  
DD: 03/12/2020 08:45 am  
DT: 03/12/2020 08:47 am  
Accession #: 08-3907005



## CORRECTED: COVID-19 Questions and Essential Personnel Letter

4 messages

Terri Carter <tcarter@ucpga.org>  
To: Terri Carter <tcarter@ucpga.org>

Wed, Mar 25, 2020 at 6:42 PM

Please see the FAQ's that answer many questions related to our COVID-19 efforts. Also, attached is a copy of the letter which designates our workforce as "Essential Personnel". Copies of this letter will be available for distribution at your location. Please contact your supervisor for a hard copy.

If you have any questions, please let us know.

Thank you for all that you do!

### UCPGA and UCPSC COVID-19 FAQs

- **What is UCP doing to protect employees from contracting the Coronavirus while working in the homes and in the buildings?**
  - We take the health and safety of the people we support and our employees extremely seriously, so a comprehensive response to the COVID-19 outbreak is currently our top priority. We are constantly reviewing guidance from the CDC and other public health experts on the most effective ways to remain safe during the COVID-19 outbreak. Using that information along with internal conversations with key team members, we've implemented a proactive response for all employees on preventing community spread of this contagious virus. Here are some of the proactive steps we are taking:
    - Our administrative offices and day programs are closed, but agency operations continue. Administrative staff will be actively working remotely from home, and community living support services in UCP homes will continue (with alternate staff schedules in some cases). We will reassess in weekly increments to determine when it is safe to reopen.
    - We are monitoring the wellness of the people we support in community living situations very closely, including identification of those whom the CDC deems at high risk due to age or existing medical condition. We have temporarily ceased travel and community activities for everyone we support and are strictly limiting visitors in order to minimize risk of infection.
    - We have implemented a new cleaning protocol in addition to our daily cleaning regimen which includes frequent disinfecting of shared surfaces and frequently touched surfaces (such as light switches, door handles, faucets, etc.) in all UCP homes.
    - We are reemphasizing the importance of observing Universal Precautions and frequent, thorough hand washing to staff and those we support.
    - We are closely tracking incidences of employee illness to confirm they have access to care and will remain away from work until they are well.
  
- **If I am sick, and do not report, do I need to bring a doctor's note? Would I need to bring a doctor's note clearing me to return?**
  - If an employee calls in sick to work, they must also contact their doctor. In order to return to work, the employee must be fever free for 72 hours **AND** email HR stating that their doctor has cleared them to return to work. They must specify who they spoke with at the doctor's office, the doctor's name, and the doctor's phone number. The employee may be asked to provide authorization for a member of UCP's HR or senior leadership staff to contact their healthcare provider directly.
  
- **Will I receive a coaching if I do not report to work?**
  - You will not face disciplinary action for being unable to work, but we do ask that you communicate with your supervisor and give them as much notice of your absence as possible.
  
- **What if I am not sick, but I am afraid that I can contract the Coronavirus because I am in a high-risk category. Would I need to resign? Will my job be available when conditions improve?**
  - If you are not sick but you choose not to work, you may take PLT. If you run out of paid leave or do not have paid leave, you may take leave without pay without penalty. We do ask that you communicate with your supervisor and give them as much notice of your absence as possible.
  
- **What if I am concerned because I live with someone in a high-risk population?**
  - If you are not sick but you choose not to work, you may take PLT. If you run out of paid leave or do not have paid leave, you may take leave without pay without penalty. We do ask that you communicate with your supervisor and give them as much notice of your

absence as possible.

- **I only have a few hours of PLT (or no PLT). Is there any way to get paid for my time off?**
  - Executive Leadership is working on revising policy to better address this situation and will adhere to all applicable federal legislation. In the meantime, if you are unable to work and have no PLT, please contact your HR Director (Terri Carter in Georgia [tcarter@ucpga.org](mailto:tcarter@ucpga.org) or Kionia Ryant in South Carolina [kryant@ucpsc.org](mailto:kryant@ucpsc.org)).
  
- **Can I apply for Unemployment insurance if I am unable to work for a period of time?**
  - Please contact the Department of Labor for more information on what circumstances qualify for unemployment and how to apply.
  
- **Where can I get information about UCP's plans for Coronavirus?**
  - You can find information on our websites in the news section at [ucpga.org](http://ucpga.org) and [ucpsc.org](http://ucpsc.org), as well as on PolicyStat (Special COVID-19 Workplace Policy Guidance).
  
- **I am scheduled to take a CPR/FA, CPI, Doc Refresher class? Are those being held? Will I be removed from the schedule if a refresher is not scheduled in time?**
  - At this time, all refresher courses have been cancelled **with the exception of CPR and First Aid. CPR and First Aid refresher courses will continue to occur.** Our training department is working on scheduling these classes and will contact applicable staff members. You will not be removed from the schedule if your CPI or documentation training expires.
  
- **If my managers/supervisor cannot answer my question, to whom should I reach out?**
  - Residential staff should reach out to Rachel Sharp in South Carolina and Kevin Walton in Georgia. Day program staff should reach out to Jocelin Jenkins in South Carolina and Stephanie Montwid in Georgia. All other departments' employees should reach out to the appropriate executive staff member if their supervisor cannot answer their questions (Brad Beasley, Angela Easter, Laura Heise, Kevin Walton, or Jonessa Alexander). You may also contact your state's HR Director (Kionia Ryant or Terri Carter).
  
- **I currently have physical restrictions and cannot work without reasonable accommodations. Will I be allowed to work light duty in a residential home?**
  - Unfortunately, we are unable to provide light duty assignments at this time. Please contact your state's HR Director for further guidance.

If you have any questions, please let me know.



Terri F. Carter

Director

Human Resources/Training

United Cerebral Palsy of Georgia

p: 770-676-2000 m: 404-314-8361

w: [ucpga.org](http://ucpga.org)





9516261

→ This is where I got confused with the 4/15/2020 Appeal

**DECISION OF APPEAL TRIBUNAL**

Hearing Date: May 19, 2020

Appeal Number: 20-LA-010665

TAMIKA E HOWARD  
343 WYCOMBE RD  
COLUMBIA SC 29212

**CLAIMANT**

APPELLANT: Claimant

SSN: XXX-XX-6265

CLAIMANT ID:10531143

**APPEARANCES**

FOR THE CLAIMANT: Claimant

FOR THE EMPLOYER: NONE

**ISSUE STATEMENT**

The issue in this case is whether the claimant meets the availability requirements of the law.

**FINDINGS OF FACT**

The claimant appealed the claims adjudicator's determination mailed April 14, 2020, which held the claimant unavailable to work and ineligible from receiving benefits effective March 29, 2020.

During the Appeal Tribunal hearing, the claimant testified that she has a medical condition and was advised by her doctor that she could no longer perform the duties of her last job which required lifting, standing, flexing or extending. She has experience as a telephone operator and in telecommunications which is able to perform and is seeking this type of work. The testimony in this case shows the claimant has been available for work.

**REASONS**

S.C. Code Ann. §41-35-110 provides that an individual must be able, available, and actively seeking work in order to be eligible for benefits for each week claimed.

In this case, the greater weight of credible evidence establishes the claimant has been able, available, and actively seeking work in an occupation which she has training and/or experience. Therefore, the Appeal Tribunal finds the claimant meets the availability requirements of the law.

**DECISION**

The Tribunal finds the claimant eligible for benefits effective March 29, 2020, because the claimant meets the availability requirements of the law. Provided she meets other eligibility requirements of the law. This decision reverses the claims adjudicator's determination mailed April 14, 2020.

**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 by mail addressed to "**Appellate Panel, Post Office Box 1752, Columbia South Carolina, 29202**", or by **fax at 803-737-3166**. For additional information on filing an appeal, visit our web site at <https://dew.sc.gov/individuals/manage-your-benefits/appeals>.

*Erika S. Davis*

---

Erika S. Davis  
Administrative Hearing Officer

Decision Mailed: May 20, 2020



11226985

**DECISION OF APPEAL TRIBUNAL**

Hearing Date: July 7, 2020

Appeal Number: 20-LA-022018

TAMIKA E HOWARD  
343 WYCOMBE RD  
COLUMBIA SC 29212

**CLAIMANT**

APPELLANT: Claimant

SSN: XXX-XX-6265

CLAIMANT ID:10531143

**APPEARANCES**

FOR THE CLAIMANT: Claimant

FOR THE EMPLOYER: NONE

**ISSUE STATEMENT**

The issue in this case is whether the claimant meets the eligibility requirements of the law.

**FINDINGS OF FACT**

The claimant appealed the claims adjudicator's determination mailed May 14, 2020, which held the claimant unavailable to work and ineligible from receiving benefits effective May 10, 2020 .

During the Appeal Tribunal hearing, the claimant testified that she has been available to engage in work without undue restriction. The claimant's testimony during the hearing is consistent with the fact finding documents completed by the claimant in connection with the issue under appeal. The evidence in this case shows the claimant has been available for work since the date May 10, 2020 .

**REASONS**

South Carolina  
Department of Employment and Workforce

S.C. Code Ann. §41-35-110 provides that an individual must be able, available, and actively seeking work in order to be eligible for benefits for each week claimed.

In this case, the greater weight of credible evidence establishes the claimant has been able, available, and actively seeking work since the date May 10, 2020. Therefore, the Appeal Tribunal finds the claimant meets the availability requirements of the law.

**DECISION**

The Tribunal finds the claimant eligible for benefits effective May 10, 2020, because the claimant meets the availability requirements of the law. This decision reverses the claims adjudicator's determination mailed May 14, 2020.

**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 by mail addressed to "**Appellate Panel, Post Office Box 1752, Columbia South Carolina, 29202**", or by fax at **803-737-3166**. For additional information on filing an appeal, visit our web site at <https://dew.sc.gov/individuals/manage-your-benefits/appeals>.



---

Harold W. Goldin  
Administrative Hearing Officer

Decision Mailed: July 8, 2020

Brief of Appellant

10/23/2020  
**FILED**

OCT 24 2020

SC ADMIN. LAW COURT

Dear Honorable Judge Deborah, Morda Brates

Again I do not argue that my appeals  
was five days late. I attempted to

Contact Dew Numerous times and

I got help & sometime I got

NO help from the representatives.

I never stated that I could

not work. I just could not

fulfill the sub duties that were

required at the time. My employers

decided to stop my ~~unemployment~~ <sup>unemployment</sup> when

could 19 come about. I made that

clear when I answered the questions.

On 5/19/2020 Ms.  
Davis informed me  
to sign in an  
Appeal at this point  
I thought I already  
Appealed and someone  
got mixed up with the  
4/13/2020 Appeal before  
the 5/19/2020 hearing.

I had no intentions on leaving,  
I just needed a little time  
to figure out how my doctors  
~~that~~ can help me overcome what  
I was going through. And the  
request for light duty was terminated  
and denied. Hydrocodone is a  
very strong medication that I no  
longer take. It ~~has~~ caused confusion  
and other effects. I do apologize  
if I was misunderstood in any way.

Thank You  
Tamika Howard

Good Evening TAMIKA E HOWARD

Friday, October 23, 2020

[My Alert](#)    [Help Help](#)    | [Contact](#) | [Resources](#) | [Logoff](#)

[Appeal Information](#)

TAMIKA E HOWARD    CLAIMANT ID: 10531143

[Claim Status](#)[Customer Menu](#)[Claimant Homepage](#)[Change Personal Info](#)[Change Security Pref](#)[Confirmation History](#)[Debit Card Website](#)[Determination History](#)[Appeal Information](#)[My Documents](#)

ADVISEMENT: Please do not use your Internet browser "Back" buttons. In the event you need to return to a previous page, please utilize the navigation buttons or the menu links above.

343 WYCOMBE RD, COLUMBIA SC 29212 -1948

Tamikah1234567@gmail.com

Appeals History

Appeal ID	Appeal Date	Claimant	Employer	Status	Level
184914 CAROLINA	08/25/2020 Validated	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH SC Administrative Law Court		
176528 CAROLINA	08/03/2020 Closed	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH Board of Review		
156921 CAROLINA	06/08/2020 Closed	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH Appellate		
155374 CAROLINA	06/02/2020 Void	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH Board of Review		
155373 CAROLINA	06/02/2020 Closed	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH Board of Review		
150615	05/19/2020	TAMIKA HOWARD	UNITED CEREBRAL PALSY OF SOUTH		

CAROLINA Closed Appellate

150614 05/19/2020 TAMIKA HOWARD  
CAROLINA Closed Appellate

UNITED CEREBRAL PALSY OF SOUTH

134936 04/15/2020 TAMIKA HOWARD  
CAROLINA Closed Appellate

UNITED CEREBRAL PALSY OF SOUTH

#### Hearing History

Hearing ID	Docket#	Hearing Method	Location	Hearing Date	Hearing Time	Hearing Official
106977	AP200001	Telephone	Columbia	05/19/2020	13:41 PM	DAVIS,ERIKA

#### Schedule Details

Hearing Method : Telephone    Hearing Location : Telephone    Hearing Official : Hearing Officer

Hearing Date : 05/19/2020    Scheduled Start Time : 01:30

#### Hearing Issues

Issues Status Appellant

Not Able to Work    Closed Claimant

#### Subpoena Requests

Name Type Method

#### Uploaded Documents for Appeal

Nothing found to display.

Additional documents for a Hearing must be received prior to one business day before the hearing is scheduled to occur.

Please attach any supporting documentation

I understand any documents uploaded may be made available to the other parties to the hearing.

PROD SC CSS 2020-10-15 00:01 v1.001.690

[Privacy Statement](#) | [Legal](#)

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Tamika E. Howard,

Appellant,

vs.

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

Respondents.

Docket No. 20-ALJ-22-0216-AP

**ORDER**

**STATEMENT OF THE CASE**

Tamika E. Howard (Appellant) appealed the decision of the South Carolina Department of Employment and Workforce Appellate Panel (Panel), which dismissed her appeal as untimely. The Administrative Law Court (ALC or Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2019). Upon consideration of the record and the briefs, this Court affirms, finding that substantial evidence supports the decision of the Panel.

**BACKGROUND**

Appellant worked for United Cerebral Palsy of South Carolina (Employer). Employer granted Appellant a medical leave of absence, starting on March 30, 2020, and continuing for up to twelve weeks. Appellant filed a claim for unemployment insurance benefits (UI) with the South Carolina Department of Employment and Workforce (Department). The Department's claims adjudicator considered statements from both Appellant and Employer and held Appellant was ineligible for UI benefits, finding Appellant voluntarily severed the employer/employee relationship without good cause and was therefore ineligible to receive benefits under S.C. Code Ann. § 41-35-120 (Supp. 2019). On May 5, 2020, the Department mailed the claims adjudicator's determination to Appellant. The determination contained a portion of text in dark, bolded print outlined by a box. The text stated "IMPORTANT: This determination will be the final decision of the Department unless you file an appeal setting forth in detail the grounds for appeal by 05/15/2020." The text continued by providing contact information for the submission of an appeal and how to find additional information on filing an appeal. Appellant filed her appeal on May 19, 2020.

**FILED**

November 5, 2020

SC ADMIN. LAW COURT

The Appeal Tribunal (Tribunal) dismissed Appellant's appeal as untimely. Appellant appealed to the Panel on June 2, 2020. The Panel remanded the case to the Tribunal to conduct an evidentiary hearing and render a decision on the issue of the timeliness of Appellant's appeal. On July 27, 2020, the Tribunal conducted an evidentiary hearing. Appellant testified that she received the claims adjudicator's determination at her correct address and that she read the portion of the determination informing her of the May 15, 2020 deadline to file an appeal. Appellant testified that she mistakenly believed a previous appeal she filed in response to an April 14, 2020 determination holding her ineligible for benefits also counted as an appeal of the May 5, 2020 claims adjudicator's decision. On August 3, 2020, the Tribunal found Appellant's appeal was untimely and dismissed it. Appellant appealed the Tribunal's decision to the Panel. On August 25, 2020, the Panel affirmed the Tribunal's decision. This appeal followed.

#### ISSUE ON APPEAL

Did the Department's Appellate Panel err in dismissing Appellant's appeal of the claims adjudicator's decision as untimely pursuant to S.C. Code Ann. § 41-35-660 (Supp. 2019)?

#### STANDARD OF REVIEW

The Department is an "agency" under the Administrative Procedures Act (APA). See Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA's standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, 1-23-600(D) (Supp. 2019); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). The standard used by appellate bodies to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2019). See § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;

- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5) (Supp. 2019).

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub. Serv. Comm'n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

#### DISCUSSION

Appellant asserts that the Panel erred in dismissing her appeal of the claims adjudicator's decision as untimely. I disagree.

In its August 25, 2020 decision, the Appellate Panel found that, "[t]he Department properly mailed the claims adjudicator's determination to the claimant's address of record on May 5, 2020." The Appellate Panel further found that, "[t]he claimant filed an untimely appeal due to her own error or neglect by failing to act in a diligent manner to preserve her appeal rights." In Appellant's brief, she asserts that her appeal should be accepted as timely due to her mistaken understanding of the process of filing an appeal.

S.C. Code Ann. § 41-35-660 reads in pertinent part:

The claimant or any other interested party may file an appeal from an initial determination, redetermination, or subsequent determination not later than ten days after the determination was mailed to his last known address.

Exhibit 9

This statute is very clear that Appellant had ten days from the date of the mailing of the claims adjudicator's decision to file her appeal. The record reflects that the decision was mailed to Appellant's last known address and Appellant filed an untimely appeal due to her own error or neglect and not due to error by the Department. There has been no showing that there was any error that would have provided a basis to adjust the time for filing the appeal to allow a filing four days after the statutory window to file. Additionally, the decision provided to Appellant clearly stated the date she must submit the appeal by and provided addresses and contact information should she have any questions. Accordingly, because there is substantial evidence showing that Appellant received the final decision in the mail and failed to file an appeal within the mandatory time limits statutorily required for an appeal, the Court concludes that the Panel did not err by determining that Appellant was untimely in filing her appeal and that there was no sufficient excuse for the delay. The Court finds that the Department's decision that Appellant's appeal should be dismissed as untimely, as reflected in the determination of the Panel, is supported by the substantial evidence in the record.

**ORDER**

**IT IS THEREFORE ORDERED** that the Appellate Panel's decision dismissing Appellant's appeal to the Appeal Tribunal as untimely is **AFFIRMED**.

**AND IT IS SO ORDERED.**



Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

November 5, 2020  
Columbia, South Carolina

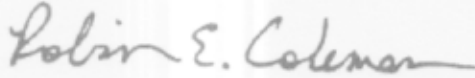
CERTIFICATE OF SERVICE

**RECEIVED**

I, Robin E. Coleman, 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).

**Apr 16 2021**

**SC Court of Appeals**



Robin E. Coleman  
Judicial Aide to Judge Deborah Brooks Durden

November 5, 2020  
Columbia, South Carolina

**FILED**

November 5, 2020  
SC ADMIN. LAW COURT

**RECEIVED**

**Apr 16 2021**

**SC Court of Appeals**

Certificate of Counsel

The undersigned hereby certifies that the Record on appeal contains all Material proposed to be included by any of the parties and not any other material.

April 16, 2021

/s/ Tamika Howard  
343 Wycombe rd  
Columbia, SC 29212  
(803) 665-0091