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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 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 COMPEL
APPELLANT TO SUBMIT PROPER RECORD ON APPEAL**

Respondent South Carolina Department of Employment and Workforce (Department), respectfully moves to strike Appellant Tamika E. Howard's (Appellant) Record on Appeal because Appellant's purported Record on Appeal contains matters previously stricken by this Court's February 22, 2021 Order. Further, the Record on Appeal filed by Appellant is incomplete because it does not contain the materials in Respondent's Designation of Matter. Accordingly, the Department moves this Court to order Appellant to compile and submit a proper Record on Appeal that complies with the Court's February 22, 2021 order and includes the items in Respondent's Designation of Matter in compliance with the South Carolina Appellate Court Rules (SCACR). The Department also requests this Court stay the time for filing its final brief pending the Court's ruling on this motion.

BACKGROUND and RELEVANT LAW

This case is an appeal from an Order of the S.C. Administrative Law Court (ALC) affirming the Department's final administrative decision on Appellant's claim for unemployment insurance (UI) benefits. Pursuant to S.C. Code Ann. § 1-23-380, appellate review is confined to the same record upon which the agency utilized in reaching 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. The ALC conducted an appellate review and determined substantial evidence supported the Department's Appellate Panel decision that Appellant's appeal to the Appeal Tribunal was filed untimely and therefore properly dismissed, pursuant to S.C. Ann. § 41-35-660.

The ALC issued its Order on November 5, 2020, and Appellant appealed to this Court. On December 16, 2020, Appellant filed a Designation of Matter and Initial Brief. In response, Respondent filed a "Motion to Strike and Exclude" on January 15, 2021. On February 22, 2021, this Court issued its Order granting Respondent's motion to strike items 5 and 6 of Appellant's Designation of Matter and requiring Appellant to file an Amended Brief removing any reference to the above items in her brief. Appellant filed an Amended Initial Brief on February 23, 2021. Respondent then filed its Designation of Matter and Initial Brief on March 25, 2021. Appellant filed the Record on Appeal on April 16, 2021.

THE COURT SHOULD STRIKE APPELLANT'S RECORD ON APPEAL BECAUSE IT CONTAINS MATTERS PREVIOUSLY ORDERED STRICKEN, IN DISREGARD OF THIS COURT'S PRIOR ORDER.

Appellant's Record on Appeal should be stricken because it contains improper materials, to wit, materials listed in Item #6 of Appellant's Designation of Matter that this

Court previously ordered be stricken and excluded from the Record pursuant to its February 22, 2021 Order. Respondent specifically objects to the materials identified in Appellant's index in the Record on Appeal as pages 1 through 8, and moves these pages be stricken and excluded from the Record on Appeal. These pages appear to be documents that Appellant emailed to this Court on November 19, 2020, and documents described in item number 6 of her Designation of Matter as "All Medical and Non Medical documents submitted November 19, 2020 via email and us mail postage paid to Supreme Court and respondents."

On February 22, 2021, this Court ordered that item number 6 of Appellant's Designation of Matter be stricken and thus, excluded from the Record on Appeal. *See* Rule 210(c), SCACR (stating the record on appeal shall include the documents identified by the parties in their designations of matter). However, in disregard of this Court's Order, Appellant has submitted a Record on Appeal that nevertheless contains these improper materials as pages 1 through 8. These pages are objectionable and should be stricken because these items: 1) are outside the ALC record on appeal and exceed the scope of the appellate review by this Court, and 2) are documents that have been ordered by this Court to be stricken and thus, excluded from the Record on Appeal. Appellant's actions are in blatant disregard to this Court's order and rules. Accordingly, Respondent respectfully moves this Court to strike Appellant's Record on Appeal and order that pages 1 through 8 be excluded from the Record on Appeal submitted to this Court.

APPELLANT'S RECORD ON APPEAL IS INCOMPLETE AND IN VIOLATION OF SCACR RULES, AND THIS COURT SHOULD COMPEL APPELLANT TO SUBMIT A PROPER RECORD ON APPEAL THAT INCLUDES THE ITEMS IN RESPONDENT'S DESIGNATION OF MATTER.

Respondent has determined Appellant's Record on Appeal is incomplete because she failed to include the items contained in Respondent's Designation of Matter, in violation of SCACR Rules. As a result of this omission, this court has an inadequate and incomplete record for review. The Respondent is also unable to prepare its final brief and insert appropriate citations in its brief to the pages referenced in the ALC's record on appeal, as required by the Rules. Accordingly, this Court should compel Appellant to compile and submit a proper Record on Appeal that includes the items in Respondent's Designation of Matter in compliance with SCACR Rules.

Pursuant to Rule 210(c), SCACR, Appellant is required to include in the Record on Appeal all matter designated in the Respondent's Designation of Matter. Appellant's "Certificate of Counsel" filed with her Record on Appeal attests that "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.**" This attestation is simply untrue. Respondent's Designation of Matter includes 5 items:

1. Order of Administrative Law Court dated November 5, 2020, affirming the decision of the Department's Appellate Panel.
2. Record on Appeal to ALC dated September 17, 2020 (No. 20-ALJ-22-0216-AP).
3. Brief of Appellant to ALC dated September 29, 2020.
4. Brief of Respondent Department to ALC dated October 19, 2020.
5. Reply Brief of Appellant to ALC dated October 23, 2020.

Currently, the Record on Appeal that Appellant submitted contains Item #1 and #5 of Respondent's Designation of Matter, which Respondent notes were specific items listed in Appellant's Designation of Matter. However, the Record on Appeal does not contain Items #2, #3, and #4 of Respondent's Designation of Matter. These items are relevant to this appeal and should be included in the Record, as required by Rule 210(c), SCACR. Most notably, Item #2 is the Record on Appeal filed with the ALC, which is the

record of proceedings utilized for appellate review of this appeal by the ALC and by this Court. Further, Respondent is unable to finalize its brief to this Court with appropriate references to the record until Appellant submits a complete Record on Appeal that contains Item #2 in Respondent's Designation of Matter. Items #3 and #4 are the briefs filed by both parties to the ALC and are relevant to the appeal. Accordingly, the Department moves this Court for an Order compelling Appellant to compile and serve a proper Record on Appeal, which contains the missing items designated by Respondents.

Appellant filed an appeal to this Court, seeking reversal of the ALC Order and the Department's final decision. By virtue of her request for judicial review in this matter, Appellant has the burden of providing an adequate record on appeal. *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 723 S.E.2d 597 (2012). Appellant has an obligation to advance her appeal in accordance with the statutory and procedural requirements of the Court. While Appellant has chosen to represent herself and may not be well versed in the rules of appellate procedure, she is not relieved of the duty to provide a proper Record on Appeal that complies with this court's orders and rules. *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.").

In sum, Respondent objects to the Record on Appeal submitted by Appellant, and moves to strike pages 1 through 8 because it is improper matter that was previously stricken by this Court from Appellant's Designation of Matter and thus, should be excluded from the Record on Appeal, pursuant to this Court's February 22, 2021, Order. Additionally, Respondent objects to the Record on Appeal submitted by Appellant

because Appellant failed to include Items #2, #3, and #4, of Respondent's Designation of Matter, in violation of Rule 210(c), SCACR, and the current Record on Appeal is incomplete and inadequate for review. Accordingly, the Department respectfully requests this Court grant its motion to strike and to compel Appellant to submit a proper Record on Appeal that complies with the Court's February 22, 2021, Order and that includes Items #2, #3, and #4 of Respondent's Designation of Matter, pursuant to Rule 210(c), SCACR. The Department is unable to complete its Final Brief until Appellant serves a complete Record on Appeal, and therefore, the Department requests that all time requirements and deadlines be held in abeyance pending resolution of this motion.

CONCLUSION

For the foregoing reasons, the Department respectfully moves that its motion be granted. Further, the Department requests all time limits and deadlines be held in abeyance pending the resolution of this motion.

Respectfully submitted,



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

May 3, 2021.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No: 20-ALJ-22-0216-AP

Appellate Case No. 2020-001506

Tamika E. Howard,

Appellant,

v.

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

Respondents.

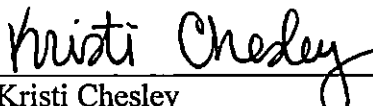
PROOF OF SERVICE

I certify that I have served the Respondent DEW's Motion to Strike and Compel Appellant to Submit Proper Record on Appeal on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, and by email on May 3, 2021, addressed to the parties at their addresses of record:

Tamika E. Howard
343 Wycombe Rd
Columbia SC 29212
Tamikah1234567@gmail.com

United Cerebral Palsy of SC
PO Box 182366
Columbus OH 43218

May 3, 2021



Kristi Chesley
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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 Respondent's Motion to Strike and Compel Appellant to Submit Proper Record on Appeal 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 cursive script that reads "Kristi Chesley".

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



**P.O. Box 995
Columbia, S.C. 29202**

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SC Court of Appeals

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