

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE  
ADMINISTRATIVE LAW COURT

H. W. Funderburk, Jr., Administrative Law Judge

**RECEIVED**

**May 14 2021**

**SC Court of Appeals**

Case No.: 20-ALJ-22-0070-AP

Appellate Case No. 2020-000981

Robert M. Ardis,

Appellant,

v.

South Carolina Department of Employment  
and Workforce and Sykes Enterprises,

Respondents.

INITIAL BRIEF OF RESPONDENT SC DEPARTMENT OF EMPLOYMENT AND  
WORKFORCE

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Respondent Employer

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## **STATEMENT OF ISSUES ON APPEAL**

- I. Did the Administrative Law Court properly find it lacked appellate jurisdiction when Appellant failed to timely and properly serve the Department with his notice of appeal as required by section 41-35-750 of the South Carolina Code (2021) and the Administrative Law Court's Rules?
  
- II. Should this Court disregard the issues Appellant raises in his brief that are unpreserved and irrelevant to the only issue considered and ruled upon by the ALC—whether the ALC had appellate jurisdiction?

## STATEMENT OF THE CASE

Appellant Robert M. Ardis filed a claim for unemployment insurance (UI) benefits with Respondent South Carolina Department of Employment and Workforce (the Department) on November 22, 2019. (Panel Decision, 2/26/20). The Department's claims adjudicator issued a determination on December 11, 2019, finding Appellant ineligible for UI benefits because Respondent Sykes Enterprises, Inc. (Sykes) terminated Appellant's employment due to misconduct connected with the employment. (Panel Decision, 2/26/20).

Appellant appealed the adjudicator's decision to the Department's Appeal Tribunal (the Tribunal), which dismissed the appeal due to Appellant's failure to participate in multiple scheduled hearings. (Panel Decision, 2/26/20). Appellant appealed the Tribunal's decision to the Department's Appellate Panel (the Panel). (Panel Decision, 2/26/20). On February 26, 2020, the Panel affirmed the Tribunal's decision and mailed its decision to Appellant. (ALC Order, 5/18/20; Panel Decision, 2/26/20). Following the Panel decision, Appellant filed a motion to reconsider. (ALC Order, 5/18/20). On March 6, 2020, the Panel issued its decision denying Appellant's motion to reconsider. (ALC Order, 5/18/20; Panel Denial of Motion to Reconsider, 3/6/20).

Subsequently, Appellant filed an appeal with the Administrative Law Court (ALC) on March 16, 2020. (ALC Notice of Assignment, 3/26/20). On April 9, 2020, the Department filed a motion to dismiss with the ALC, notifying the court Appellant failed to serve the Department with his notice of appeal, and thus, the ALC lacked appellate jurisdiction. (Motion to Dismiss, 4/9/20). The ALC granted the Department's motion on May 18, 2020. (ALC Order, 5/18/20). Following the ALC's May 18, 2020 order, Appellant filed multiple motions, and in an order dated June 17, 2020, the ALC denied all of Appellant's motions. (ALC Order, 6/17/2020). This appeal followed.

## STATEMENT OF THE FACTS

Appellant Robert M. Ardis filed a claim for unemployment insurance (UI) benefits with Respondent South Carolina Department of Employment and Workforce (the Department) on November 22, 2019. (Panel Decision 2/26/20). Appellant pursued his UI claim through the Department's internal appeal process, and ultimately, the Panel issued and mailed the Department's final agency decision on February 26, 2020. (Motion to Dismiss, 4/9/20; Panel Decision, 2/26/20). The Panel's decision notified Appellant of the statutory requirements for appealing the Panel decision and, specifically, the requirement that Appellant serve the Department and all parties with a notice of appeal:

To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. § 41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and **served on all parties and SCDEW** within thirty (30) days from the mailing date of SCDEW's final decision (**see the mailing date above**).

...

Service of the Petition on SCDEW must be addressed and mailed to:

**Office of General Counsel  
S.C. Department of Employment and Workforce  
Post Office Box 8597  
Columbia SC 29202**

(Panel Decision, 2/26/20). From this quoted text, it is clear the Panel decision educated Appellant on the service requirement and explained how to achieve service of a notice of appeal on the Department. (Panel Decision, 2/26/20). The Panel decision explained to Appellant that service of a notice of appeal "must be addressed and mailed to" the Department. (Panel Decision, 2/26/20).

Following the Panel decision, Appellant filed a motion to reconsider. (Appellant Motion to Reconsider, 3/3/20). On March 6, 2020, the Panel issued its decision denying Appellant's motion to reconsider, explaining Appellant's arguments were insufficient to warrant modification of its prior decision. (Denial of Motion to Reconsider, 3/6/20). The Panel's denial of Appellant's motion to reconsider informed Appellant again of his appeal rights and the process for appealing and specifically informed Appellant he "must" serve the Department by mail with any notice of appeal. (Denial of Motion to Reconsider, 3/6/20). The Panel's denial provided the mailing address for serving the Department with a notice of appeal. (Denial of Motion to Reconsider, 3/6/20).

Subsequently, the ALC issued a Notice of Assignment indicating Appellant filed a notice of appeal with the ALC on March 16, 2020. (Notice of Assignment, 3/26/20). However, Appellant failed to serve the Department with his notice of appeal. (Affidavit of Kristi Chesley, 4/9/20). Thus, the Department filed a motion to dismiss Appellant's appeal on April 9, 2020. (Motion to Dismiss, 4/9/20). As of the date of the Department's motion to dismiss, the Department had not received any mailings or deliveries from Appellant. (Affidavit of Kristi Chesley, 4/9/20).

In its motion to dismiss, the Department argued the ALC lacked appellate jurisdiction due to Appellant's failure to serve the Department by delivery or mail with his notice of appeal. (Motion to Dismiss, 4/9/20). The Department also argued, to the extent Appellant attempted to e-mail various employees of the Department with documents, service of the notice of appeal may not be accomplished by e-mail. (Motion to Dismiss, 4/9/20). In Appellant's return to the Department's motion to dismiss, Appellant claimed the Department filed its motion to dismiss in bad faith. (Appellant's Answer to Motion to Dismiss, 4/13/20). However, Appellant effectively admitted he failed to timely serve the Department via delivery or by mail, claiming he e-mailed the Department his notice of appeal, which he believed was sufficient. (Appellant's Answer to

Motion to Dismiss, 4/13/20). Appellant requested the Court allow him more time to properly serve the Department if the ALC found his e-mails were insufficient for service. (Appellant's Answer to Motion to Dismiss, 4/13/20).

On May 18, 2020, the ALC issued an order granting the Department's motion to dismiss. (ALC Order, 5/18/20). The ALC examined the various rules governing service of the notice of appeal and found the notice of appeal must be delivered or mailed. (ALC Order, 5/18/20). The ALC concluded Appellant failed to properly effectuate service of the notice of appeal, and thus, the ALC lacked appellate jurisdiction. (ALC Order, 5/18/20). Following the ALC's order on May 18, 2020, Appellant filed approximately six motions with the ALC seeking reconsideration. (ALC Order, 6/17/20). The ALC noted Appellant continued to serve the Department with these motions via e-mail, rather than properly serving the Department via mail or delivery, and denied all of Appellant's motions because the ALC lacked appellate jurisdiction. (ALC Order, 6/17/20). This appeal followed.

## STANDARD OF REVIEW

The Department is an agency governed by the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding the Department's predecessor, the Employment Security Commission, subject to the APA). Under the APA,

The review of the administrative law [court]'s order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law [court] as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (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. § 1-23-610(B) (Supp. 2020). "The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008).

## ARGUMENT

### **I. THIS COURT SHOULD AFFIRM BECAUSE THE ALC PROPERLY FOUND IT LACKED APPELLATE JURISDICTION WHEN APPELLANT FAILED TO TIMELY AND PROPERLY SERVE THE DEPARTMENT WITH HIS NOTICE OF APPEAL TO THE ALC.**

#### **A. The ALC lacked appellate jurisdiction because Appellant failed to properly serve the Department with his notice of appeal within thirty days of the mailing date of the Panel's decision as required by section 41-35-750 of the South Carolina Code (2021) and Rule 33, SCALC, and the ALC lacked authority to extend the time for serving the notice of appeal.**

A party filing a notice of appeal requesting judicial review of the Panel's decision must serve the Department with the notice of appeal "[w]ithin thirty days from the date of mailing" of the Panel's decision. S.C. Code Ann. § 41-35-750 (2021); *see* Rule 33, SCALC (explaining in an appeal from the Panel's decision the appealing party "must" serve the Department with the notice of appeal "within thirty (30) days of the date of mailing of the decision" of the Panel). The appealing party "must" serve the notice of appeal "on the executive director or on a person designated by the Department within the time specified by this section." § 41-35-750. Additionally, Rule 5, SCALC states "[a]ny document filed with the [ALC] shall be served upon all parties to the proceeding." Rule 5 further states "[s]ervice shall be made by delivery, by mail to the last known address, or as otherwise approved by the [ALC] through administrative order."

"The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction." *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). Consequently, timely service of the notice of appeal is a jurisdictional requirement under section 41-35-750. And, importantly, our supreme court has declared repeatedly our appellate courts have no authority to extend the time for serving a notice of appeal. *See Allison*, 394 S.C. at 189, 714 S.E.2d at 550 (noting "an appellate body may not extend the time to appeal"); *Elam v. Dep't of Trans.*, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) ("The requirement of service

of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) ("Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.").

In this case, the Panel mailed its denial of Appellant's motion for reconsideration on March 6, 2020. (Denial of Motion to Reconsider, 3/6/20). Thus, Appellant's statutory deadline for serving the Department with the notice of appeal was thirty days later, Monday, April 6, 2020. However, Appellant failed to serve the Department with his notice of appeal by delivery or mail by April 6, 2020, and as discussed below, there was no administrative order from the ALC allowing e-mail service of a notice of appeal. (Affidavit of Kristi Chesley, 4/9/20); *See* Rule 5, SCALC ("Service shall be made by delivery, by mail to the last known address, or as otherwise approved by the [ALC] through administrative order.").

As of the date the Department filed its motion to dismiss, Appellant still had not served the Department with his notice of appeal by delivery or mail. (Affidavit of Kristi Chesley, 4/9/20). Moreover, in his return to the Department's motion to dismiss, Appellant admitted he served his notice of appeal by e-mail only, which as discussed below was insufficient to effectuate service. (Appellant's Answer to Motion to Dismiss, 4/13/20).

Further, Appellant attempts to satisfy the service requirement by claiming he delivered the notice of appeal to DEW on April 16, 2020. (App. Br. 24). Even if Appellant served the notice of appeal by delivery on April 16, 2020, the ALC nevertheless lacked appellate jurisdiction because, as explained above, the statutory time limit for serving the notice of appeal expired on

April 6, 2020. Any attempt by Appellant to serve the notice of appeal via delivery on April 16, 2020, was untimely and did not confer appellate jurisdiction on the ALC. And the ALC lacked authority or discretion to extend the April 6, 2020 deadline. *See Elam*, 361 S.C. at 15, 602 S.E.2d at 775 ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.").

Because Appellant failed to properly serve his notice of appeal on the Department by April 6, 2020, the ALC lacked appellate jurisdiction to hear his appeal. The ALC properly recognized it lacked appellate jurisdiction and dismissed Appellant's appeal. This Court should affirm.

**B. The ALC properly found Appellant's attempt to serve the Department with his notice of appeal via e-mail was insufficient and failed to comply with the statutes and rules governing appeals from the Panel's decision and, thus, did not confer appellate jurisdiction.**

Appellant's attempt to serve the Department with his notice of appeal via e-mail was insufficient to confer appellate jurisdiction on the ALC. As noted above, section 41-35-750 and Rule 5, SCALC require a party seeking judicial review of a Panel decision to serve the Department with the notice of appeal within thirty days of the mailing date of the Panel decision. Under Rule 5, "[s]ervice shall be made by delivery, by mail to the last known address, or as otherwise approved by the [ALC] through administrative order." The 2019 Revised Notes for Rule 5 further explain how a party must effectuate service. The notes expressly state "parties may not serve documents by e-mail." The notes further state "service is by delivery or mailing, but not fax." Further, to the extent it is even applicable to an appeal before the ALC, Rule 262(b), SCACR also requires service by delivery or mail. Rule 262(b) explains service "shall be made by delivering a copy to [the party] or by mailing it to [the party]...." Thus, the ALC rules and the South Carolina Appellate

Court Rules require an appellant to serve the notice of appeal by delivery or mail. Neither set of rules permit service via e-mail, and the notes to Rule 5, SCALC expressly state e-mail is insufficient for service.

Additionally, the ALC did not have any administrative order in effect due to the pandemic that allowed appellants to serve a notice of appeal via e-mail. As noted by the ALC in its May 18, 2020 order, the Chief Administrative Law Judge issued an administrative order on March 24, 2020, explaining any changes in procedure due to the pandemic. The March 24, 2020 administrative order specifically stated, "All Rules of Procedure regarding the method for the filing and service of documents are still in effect. **This Order does not apply to the statutory timeframes for filing the initial request for a hearing or notice of appeal.**" (ALC Administrative Order, 3/24/20). Thus, the ALC's administrative order did not alter or amend the methods for serving a notice of appeal.

In his brief, Appellant claims his e-mail service was sufficient based on Rule 4, SCRCF. (App. Br. 22, 25). This argument is flawed for multiple reasons. First, counsel for the Department has reviewed Rule 4 and cannot find where it authorizes service via e-mail. Rule 4 does not appear to ever mention e-mail.

Second, the ALC rules governed the Appellant's appeal to the ALC, and the applicable rules for service must be found in the ALC rules, not the rules of civil procedure. *See* Rule 1, SCALC ("These Rules shall govern all proceedings before the [ALC], in which the right to a hearing (a) is provided by the Administrative Procedures Act; (b) is specifically required by other statutes or regulations; or (c) is required by due process under the South Carolina or United States Constitutions."). The South Carolina Rules of Civil Procedure do not apply to administrative appeals before the ALC. *See* Rule 1, SCRCF ("These rules govern the procedure in all South

Carolina courts in all suits of a civil nature . . . ."); Rule 81, SCRCP (limiting the application of the rules of civil procedure to trial courts of civil jurisdiction as well as to magistrate's courts, probate courts, and family courts to the extent they are not inconsistent with the statutes and rules governing those courts); *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 422 S.C. 211, 215, 810 S.E.2d 856, 858 (2018) (finding reliance on the rules of civil procedure was erroneous in an appeal before the supreme court because the rules of civil procedure have no application in an appellate proceeding). Thus, even if the rules of civil procedure authorized service via e-mail, such a civil procedure rule would have no application to Appellant's administrative appeal before the ALC.

Although the Department recognizes Appellant is proceeding pro se, a pro se litigant is responsible "for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003). Indeed, Appellant's pro se status does not excuse his failure to comply with rudimentary procedures, such as serving the notice of appeal. Also, Appellant was aware of the deadline and the method required for service. The Panel's decision gave Appellant notice "[t]he law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and [the Department] within thirty (30) days from the mailing date of [the Panel]'s final decision." (Panel Decision, 2/26/20). The Panel decision also informed Appellant service must be completed by mail. (Panel Decision, 2/26/20). As a result, Appellant had knowledge of the service requirement and the method for service but, nonetheless, failed to comply. See *Georganne Apparel, Inc. v. Todd*, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990) ("There is a limit beyond which the court should allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties.").

Furthermore, despite his pro se status, Appellant has repeatedly informed the Department of an alleged high IQ, his extensive legal training and experience, and that he "is most capable of conducting extensive legal research." (Appellant's Emergency Motion to Strike and Emergency Motion for Reconsideration, p. 2, 3/3/20, included with the Department's Motion to Dismiss dated 4/9/20 as Exhibit B). Thus, based on pronouncements from our supreme court, as cited above, and Appellant's own claims regarding his legal acumen, this Court should require Appellant to comply with basic service requirements.

Based on these authorities, Appellant's attempt to serve the Department with his notice of appeal via e-mail was insufficient to confer appellate jurisdiction. The ALC properly ruled Appellant's e-mail did not confer appellate jurisdiction on the ALC and dismissed the appeal.

**II. THE COURT SHOULD DISREGARD THE OTHER ISSUES APPELLANT RAISES IN HIS BRIEF BECAUSE THEY ARE UNPRESERVED AND IRRELEVANT TO THE ONLY ISSUE CONSIDERED AND RULED UPON BY THE ALC—WHETHER THE ALC HAD APPELLATE JURISDICTION.**

The Court should disregard the other issues Appellant raises in his brief because they are unpreserved and irrelevant to the only issue considered and ruled upon by the ALC—whether the ALC had appellate jurisdiction. The standard of review governing this Court's evaluation of the ALC decision, found in section 1-23-610(B), states the Court's review must be confined to the record. Further, "[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). The preservation rules requiring a party to raise its arguments and obtain a ruling on them apply to administrative proceedings. See *Brown v. S.C. Dep't of Health & Env'tl. Control*, 348 S.C. 507, 519, 560 S.E.2d 410, 417 (2002); see *Home Med. Sys., Inc. v. S.C. Dep't of Revenue*, 382 S.C. 556, 562, 677 S.E.2d

582, 586 (2009) ("As in other appellate matters, we require issue preservation in administrative appeals.").

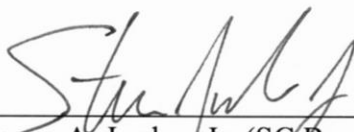
The ALC's orders addressed only one issue—whether the ALC had appellate jurisdiction. (ALC Order, 5/18/20; ALC Order, 6/17/20). The ALC properly never reached the merits of the underlying appeal because it determined it lacked appellate jurisdiction to hear the appeal. Indeed, because the Department raised the issue of appellate jurisdiction shortly after learning Appellant had filed an appeal, neither Appellant nor the Department filed briefs or a record on appeal with the ALC. Thus, the ALC never considered the merits of the underlying appeal. Accordingly, the only proper issue before this Court is whether the ALC had appellate jurisdiction.

Nevertheless, Appellant has raised and argued many unpreserved and irrelevant issues. These issues are unrelated in any way to the ALC's finding that it lacked appellate jurisdiction, including whether the Department published regulations on its website, vague allegations that the Department is not complying with other statutes, vague allegations that the Department has retaliated against Appellant, vague allegations of violations of the code of judicial conduct, and whether the Department held an evidentiary hearing for Appellant's UI claim. (App. Br.). Although some of these issues may have been relevant to the merits of a perfected appeal to the ALC, none of them are relevant in determining whether the ALC had appellate jurisdiction. Thus, none of them are relevant to the appeal before this Court. As noted above, the only issue relevant to this appeal is whether the ALC had appellate jurisdiction. Therefore, the Court should disregard the other issues Appellant raises in his brief because they are irrelevant to the only issue before this Court—whether the ALC had appellate jurisdiction.

## CONCLUSION

Based on the foregoing, this Court should affirm the ALC's finding that it lacked appellate jurisdiction because Appellant failed to timely serve the Department with his notice of appeal. Appellant admits he did not timely serve the Department via delivery or mail and claims his attempt to serve the Department via e-mail was sufficient. As discussed above, the ALC's rules permit service of the notice of appeal only via delivery or mail. Because Appellant failed to timely serve the Department via delivery or mail, the ALC lacked appellate jurisdiction, and this Court should affirm.

Respectfully Submitted,



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May 14, 2021

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE  
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H.W. Funderburk, Jr., Administrative Law Judge

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Appellate Case No. 2020-000981

Robert M. Ardis,

Appellant,

v.

South Carolina Department of Employment and  
Workforce and Sykes Enterprises, Inc.,

Respondents.


PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent SC Department of Employment and Workforce on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, and by email on May 14, 2021, addressed to the parties at their addresses of record:

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May 14, 2021

  
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