

RECEIVED
OCT 13 2021
SC Court of Appeals

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Susan Lee,)	Docket No. 21-ALJ-22-0292-AP
)	
Appellant,)	
)	
v.)	ORDER GRANTING RESPONDENT'S MOTION TO DISMISS
)	
South Carolina Department of Employment and Workforce and Compass Two, LLC,)	
)	
Respondents,)	
)	

This matter is before the South Carolina Administrative Law Court (ALC) or Court pursuant to the Notice of Appeal filed by Susan Lee (Appellant). Appellant is seeking review of a final decision rendered by the South Carolina Department of Employment and Workforce's (Department) Appellate Panel (Panel). The case was assigned to the undersigned on August 5, 2021. On August 24, 2021, the Department filed a motion requesting that the appeal be dismissed pursuant to ALC Rule 33 and S.C. Code Ann § 41-35-750. Specifically, the Department alleges Appellant failed to timely serve the Notice of Appeal, therefore, this Court lacks jurisdiction. Appellant filed a response in opposition to the Department's motion on September 1, 2021.

ALC Rule 33 provides in pertinent part that:

The notice of appeal from the final decision of an agency shall be filed with the Court and a copy served on each party and the agency whose final decision is the subject of the appeal...[i]n appeals from decisions of the Department of Employment and Workforce, the notice of appeal must be filed and served within thirty (30) days of the date of making of the decision of the Department of Employment and Workforce Appellate Panel.

SCALC Rule 33.


In this case, the final decision of the Panel was mailed to Appellant on June 29, 2021. Therefore, Appellant's Notice of Appeal must have been filed with the court and served upon the Department no later than July 29, 2021. Appellant timely filed her appeal with the State of South Carolina on July 27, 2021. However, Appellant's proof of service form shows no indication that appellant served the Department on the Department. In addition, the Department's motion asserts that, as of

FILED
The State of South Carolina

the date of its motion, the Department has not received service of Appellant's Notice of Appeal. Without proof of timely service on the Department, the Court must conclude that service was defective.

The South Carolina Supreme Court has determined that the timely filing and service of the notice of appeal upon the agency within thirty days are jurisdictional requirements. See *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 189, 714 S.E. 2d 547, 550 (2011) ("an appellate body may not extend the time to appeal"); See also *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004) ("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."). Consequently, because Appellant failed to timely serve the Notice of Appeal as required by statute and the ALC rules cited above, this Court lacks jurisdiction over this appeal. While this Court recognizes the harsh result of this decision, it is constrained by the rules and legal precedent in this State. See *McClain v. Ingram*, 314 S.C. 359, 444 S.E.2d 512 (1994).

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED that the Department's Motion to Dismiss is **GRANTED** and this appeal is **DISMISSED**.
AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

September 11, 2021
Columbia, South Carolina

DEPARTMENT OF REVENUE
This is to certify that the undersigned has been
served with a copy of the order of the Administrative Law Judge
in the above captioned case by the undersigned on the
date shown below by the undersigned on the undersigned
in the United States and the undersigned is the undersigned
of the undersigned in the undersigned in the undersigned
9 September 2021
JUDICIAL LAW CLERK