

15C

I was informed that I can reach out to the SC courts regarding my recently dismissed administrative law court appeal. I have sent in the appropriate documentation requested of me, but no one will review them except for their lawyer. It appears this lawyer continues to request information from me which seems unnecessary to prolong and delay this process. I am sending all the documentation that I obtained. This documentation shows adequate evidence that I deserve my unemployment benefits. I am requesting that you review the attached documents and review my case. I truly believe that if you take the time to read through my documentation, you will see that I have a good case and the proper evidence to support my plea. I feel there has been wrongdoing here and I want justice to be served and light to be shed on the facts.

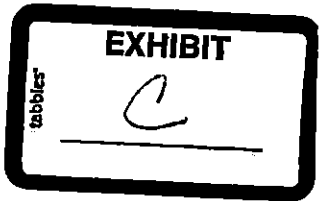
Thank you for your attention to this matter,
Susan Lee

RECEIVED

OCT 13 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT



Susan Lee
Appellant/Petitioner.

Docket No. -ALJ-

vs.
Administrative Law Court
and Chartwell
Respondent.

PROOF OF SERVICE

RECEIVED

OCT 13 2021

SC Court of Appeals

I hereby certify that I have served the Notice of appeal
(Description of the document) in the above-captioned matter by depositing it in the
United State Mail, postage prepaid, on 7-27-2021 (Month/Day/Year) to the
below named parties at their address of record:

Administrative Law Court
Name
Edgar A. Brown Building
Address
1205 Pendleton St Suite 224
City/State/Zip
Columbia S.C. 29201

Chartwell
Name
709 2B Howard St
Address
Spartanburg SC 29303
City/State/Zip

Name

Address

City/State/Zip

Name

Address

City/State/Zip

Susan Lee
(Print Your Name)

Susan Lee
(Your Signature)

P.O. Box 554
(Street)

Pacolet Mills SC 29373
(City, State, Zip Code)

FILED

JUL 29 2021

RECEIVED

OCT 13 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Susan Lee)
)
Appellant,)
)
v.)
)
South Carolina Department of)
Employment and Workforce, and)
Compass Two, LLC,)
)
Respondents.)
_____)

Docket No. 21-ALJ-22-0292-AP

MOTION TO DISMISS
FOR
LACK OF JURISDICTION

Respondent, South Carolina Department of Employment and Workforce (Department), through its undersigned attorney, respectfully moves this Court to dismiss Appellant Susan Lee’s appeal (Appellant), which seeks judicial review of a final decision of the Department, for lack of jurisdiction. This Motion is made on the following grounds:

LACK OF JURISDICTION
Failure of Appellant to Timely Serve Appeal

1. This is an action seeking judicial review by the Administrative Law Court (ALC our Court) of a final Department decision on a claim for unemployment insurance (UI) benefits, and is governed by S.C. CODE ANN. § 41-35-750 (2021). For the Court to review this appeal, its appellate jurisdiction must be properly invoked.
2. S.C. CODE ANN. § 41-35-750 requires that an appeal requesting judicial review **must be filed in the ALC and served upon the Department within thirty (30) days of the date of mailing of the final decision of the Department.** (emphasis added).
3. Further, SCALC Rule 33 requires that a notice of appeal must be filed with the Court

and served on each party and the agency whose final decision is the subject of the appeal within thirty (30) days of the date of mailing of the decision of the Department.

4. The Department mailed its final decision to Appellant on June 29, 2021, and attached a specific Notice advising Appellant that any further appeal must be filed in the ALC and served on all parties and the Department within thirty (30) days from the mailing date on the decision. (*Exhibit A*). The Notice also listed the address for proper service on the Department as:

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

Id.

5. In this case, Appellant's thirty-day deadline to file an appeal with the Court and to serve the appeal upon the Department and Respondent Compass Two, LLC. (Employer), was July 29, 2021.

6. The Court has issued a Notice of Assignment to the parties, indicating that Appellant filed a notice of appeal with the Court on July 27, 2021.

7. However, as of the date of this Motion, the Department has not been served with Appellant's notice of appeal, and Appellant's statutory time limit to serve the Department expired on July 29, 2021. (*Exhibit B, Affidavit of Kristi Chesley*).

8. After receipt of the Notice of Assignment from the Court, the Department made an inquiry with the Court because it had not received an appeal from Appellant in this matter. The Court provided the Department with a courtesy copy of Appellant's filings with the

Court, which included Appellant’s “Proof of Service”. (*Exhibit C*). Appellant’s “Proof of Service” filed with the Court is jurisdictionally defective and fatally deficient on its face.

9. Importantly, Appellant’s “Proof of Service” does not attest that Appellant served the Department with a notice of appeal, and as noted above, Appellant did not serve the Department with her appeal that she filed with the Court. Appellant’s proof of service lists only the name and address of “Administrative Law Court” and “Chartwell”. (*Exhibit C*).

10. Appellant has not served her appeal on the Department, as required by S.C. CODE ANN. § 41-35-750 and SCALC 33 and the statutory time limit to do so has expired. Consequently, this Court lacks jurisdiction to consider the appeal and must dismiss it.

11. “The question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction.” *Allison v. W.L. Gore & Assoc.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011).

12. The timely filing and service of the notice of appeal are jurisdictional requirements under S.C. CODE ANN. § 41-35-750, and the Court has no authority to extend the time in which the notice of appeal must be served. As the South Carolina Supreme Court has held:

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.

Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). *See also Southbridge Props., Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d 535 (1987) (finding the court must dismiss an appeal when the appellant fails to file an appeal or serve a party with the notice of appeal in a timely manner); *Hill v. S.C. Dep’t of Env’tl. Control*, 289 S.C. 1, 21,

698 S.E.2d 312, 623 (2010) (“The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court.”); *Sadisco of Greenville, Inc. v. Greenville Cty. Bd. Of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000) (per curiam) (“This Court has consistently stated that service of the Notice of Appeal is a jurisdictional requirement and this Court has no authority to extend or expand the time in which the Notice of Appeal must be served”).

13. While the Department recognizes that 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); *State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013). *see also State v. Hollman*, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) (the “established rules of procedure are not to be discarded, either in the trial court or on appeal, merely because the defendant has been his own lawyer”) *overruled on other grounds by Stevenson v. State*, 335 S.C. 193, 516 S.E.2d 434 (1999).

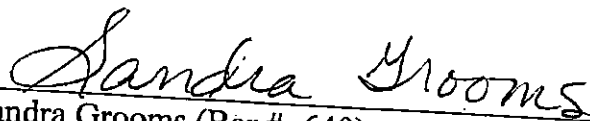
14. Indeed, Appellant's *pro se* status does not excuse her failure to comply with rudimentary procedures, such as serving the notice of appeal. Also, Appellant was aware of the service requirement. The Panel's decision gave Appellant notice “[t]he law requires that a Petition for Judicial Review must 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.” (*Exhibit A*). Furthermore, the Panel's decision gave Appellant clear instructions for effectuating service on the Department, including the address for the

Department. As a result, Appellant had knowledge of the service requirement but, nonetheless, failed to comply.

15. Accordingly, because Appellant failed to timely serve the notice of appeal upon the Department as required by statute and this Court's rules, the Department respectfully submits this Court must dismiss Appellant's appeal for lack of jurisdiction.

WHEREFORE, for all the reasons discussed above, the Department respectfully moves this Court to dismiss Appellant's appeal with prejudice for lack of jurisdiction. The Department also requests the Court to hold all further time requirements set forth in the Notice of Assignment in abeyance pending resolution of this Motion.

Respectfully Submitted,



Sandra Grooms (Bar #: 640)
SC Department of Employment & Workforce
Office of General Counsel
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-0395 (phone); (803) 737-0124 (fax)
legal@dew.sc.gov

August 24, 2021.

Attorney for Respondent
SC Department of Employment and Workforce

To the honorable Shirley Robinson:

I, Susan Lee, am responding to the "Motion to Dismiss for Lack of Jurisdiction" for Docket No. 21-ALJ-22-0292-AP.

As I have no lawyer helping me in this case I appreciate the patience that you have with me. I was slightly confused to read about the accusation of not providing or filing that I requested judicial review to the administrative law court in the required time frame. Requirements state that I file an appeal requesting judicial review to the ALC within 30 days of the date of mailing of the final decision of the department. I believe I have done this within the required time frame which should result in continuing this case and not moving forward to dismiss. The final decision from the department was dated and mailed to me on June 29th, 2021. The notice of assignment (attached with this letter) shows me seeking appeal with the ALC on July 27th, 2021. Which would have validated my end of the agreement. I also have attached "Proof of service" from the ALC verifying that they filed said response on July 29th, 2021. I do, however, notice that the ALC did not file this until August 5th, 2021 which would have put me over the required time frame. I was assured that it would be filed the day they received it, but as you can see; it was not. I do not feel this to be any fault of my own and hope you take this into consideration. Attached is a copy of the final decision from the department and a second page is attached showing they received and filed my request within said required time frame. Thank you for reading and taking my letter under consideration to not continue the motion to dismiss.

Susan Lee

8-31-2021
Susan Lee

Kind Regards,

From: Pat Hamby < >
Sent: Thursday, July 22, 2021 10:16 AM
To: Crotwell, Duncan < >
Subject: Susan Lee

Your attachment(s) were cleaned by Check Point Sandblast Threat Extraction.

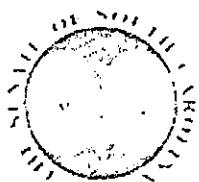
to restore the original(s).

Susan Lee
P. O. Box 554
Pacolet Mills, SC 29373
(864) 216-2299
Claimant ID 4763720

Ms. Lee and her co-worker quit their job because the employer changed the agreed upon work hours and refused to properly staff the cafeteria overworking them both as evidenced by the school Principal who states in her letter that she requested additional help in the cafeteria on several occasions which was not provided. However, after Ms. Lee and her co-worker the employer replaced with the three employees, which was required for the job. The Principal's letter is included in the attachment. There is also other supporting documentation in the attachment supporting Ms. Lee's claims.

Ms. Lee was denied unemployment benefits and received notice to Appeal dated May 26, 2021. She has signed letters supporting her claim, one coming from the Principal of the Middle School of Pacolet.

Thank you for having someone in authority review Ms. Lee's attached documentation as it relates to her UI claim.



Middle School of Pacolet

850 Sunny Acres Road • Pacolet, South Carolina 29372
Phone: 864.279.6600 • Fax: 864.279.6610

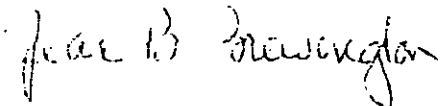
*Remembering the Past ...
Embracing the Future*

May 18, 2021

To Whom It May Concern;

As principal of Middle School of Pacolet, I asked on several occasions for additional help in the cafeteria. At the end of 2019-2020 school year, we had 3 full time cafeteria workers. The 2020-2021 school year began with only two full time cafeteria workers. We are a small school, but one person has to be dedicated to the computer to account for students eating. That leaves one person to serve all the food. The amount of work being asked of the two cafeteria workers was not realistic. They both were under a lot of stress daily. Once both employees left, Chartwells replaced the two with three employees. This seemed unfair to me.

Sincerely,



Jean B. Brewington

*Cynthia W. Sartor
Commission Expires on
9/25/2022*

5/17/2021

To whom it may concern:

In 2017 I was the district foodservice director for Spartanburg District Three, employed by Chartwells Dining. Susan Lee was an associate at Middle School of Pacolet. During this time I scheduled her hours from 9:00 – 2:30 on days school was in service. This schedule was created to accommodate her personal needs of being able to take her medicine before reporting to work. She had problems with her knees and was unable to work without the medication.

Sincerely,

A handwritten signature in cursive script that reads "Audra Terry". The signature is fluid and includes a long horizontal flourish at the end.

Audra Terry

2/18/2021

Optimum RV Mail - Susan Lee

13



Sonya Martin <sonya.martin@optimumrv.com>

Susan Lee

Thu, Feb 18, 2021 at 1:37 PM

Sonya Martin <sonya.martin@optimumrv.com>
To: diamonds33710@msn.com

To whom it may concern!!!

Susan B Lee has worked for Chartwell Food Service for 15 plus years. She has during these years had physical limits for this job. She has been to her Doctors for lower back, knees, and feet issues. She has documentation for these limits. This is why she normally worked 9am till 2pm or 2:30pm according to work to be done in Cafeteria. She has certain medicines she has to take during the morning is also one of the reasons it was best for her to come in at 9am. She was told at the beginning of this school year Aug. 2020 that she would be needed to work 7:30am till 2pm. As Kristin Palacios the DM(district manager) told her, please help with this schedule and when school resumes full time I will get you back your regular 9am till 2pm. I was also in the conversation that Susan would get her schedule back if she could just help till school resumes other than the hybrid. Kristin now says she did not promise. But we took her at her word and figured she would keep it.

Susan and I have worked in the Middle School of Pacolet always with three workers. As this year due to Covid of course things were different. As the changes to menu and the amount of children eating at school when all lunches were deemed free for the remainder of school year 2020-2021. We had more children eating. Even the Principal Mrs Brewington had requested for Kristin that we needed another worker if only for three hours a day. Kristin said she had no one to help although two schools had workers on a schedule of work a week and be off a week. We did not understand why one of those workers could not help MSP.

When we found out schools in Spartanburg would go back full time for all students Monday thru Friday starting Dec, 4 2020. We again let Kristin know Susan would like her schedule back. Now Kristin says Susan would have to train someone first??? So Susan was very upset. Kristin called me to say she was coming to talk to Susan Dec 2. Kristin came with another DM I do not remember his name as her witness for this meeting. When Susan asks why can't I have witness Kristin told her Chartwell does not have to let her have one. I did not at all understand that. When Kristin told her she could not let her have her schedule Susan said well then Friday Dec 4 will be my last day. Kristin told her to go ahead and collect her things and clock out. Susan did not clock out she said to Kristin then you are firing me. Susan was told Kristin to get off the property when she went to the school office to see Mrs Brewington to get a mask and thank her for she did to try to help us in the cafeteria. Kristin put in Susan's employee record at Chartwell that she walked out in the middle of her shift which is not true Susan was told to leave. That is why to Susan she was being fired. I thought so to

Thank you,
Sonya Martin
Previous Cafeteria Manager at Middle School of Pacolet

Sonya Martin

Claimant ID

4763720

Stacy Binion

STACY BINION
Notary Public, State of South Carolina
My Commission Expires JUNE 14 2031

Medications

Medications: Taking Norco 5-325 MG Tablet 1 tablet Orally BID prn chronic pain, Taking Tramadol 50 mg tablet one tab orally bid prn pain, Taking Adderall XR 20 MG Capsule Extended Release 24 Hour 1 capsule in the morning Orally Once a day, Taking Valium 10 MG Tablet 1 tablet Orally BID prn, Taking Atenolol 50 MG Tablet 1 tablet Orally Once a day, Taking Cymbalta 60 MG Capsule Delayed Release Particles 1 capsule Orally Q AM, Taking Vitamin D3 5000 UNIT Capsule as directed Orally , Taking Flex Omega Benefits Soft Capsule 1 capsules Orally Twice Daily, Not-Taking Estrace 0.5 MG Tablet TAKE 1 TABLET EVERY DAY , Medication List reviewed and reconciled with the patient

Allergies: N.K.D.A.

Objective:

Vitals: BP 134/74 mm Hg, Pulse sitting 78, Wt 165.2, Ht 65, BMI 27.49.

Examination:

* General Examination:

GENERAL APPEARANCE: no acute distress, pleasant. HEENT: unremarkable. NECK: no lymphadenopathy, supple. HEART: no murmurs, regular rate and rhythm. LUNGS: no wheezes, rhonchi, rales. ABDOMEN no hepatosplenomegaly, no masses palpated. NEUROLOGIC EXAM: non-focal exam. SKIN normal, no rash. EXTREMITIES: no clubbing, no edema.

Knee / Shin:

KNEE: right, left. INSPECTION: effusion, inferior swelling, mild, bilateral. RANGE OF MOTION: FROM but with pain. CREPITUS: mild, bilateral. PALPATION: bilateral tenderness prepatellar bursa.

Assessment:

Assessment:

1. Prepatellar bursitis, right knee - M70.41 (Primary)
2. Prepatellar bursitis of left knee - M70.42
3. Contusion of left knee - S80.02XA

Plan:

1. Prepatellar bursitis, right knee

Notes: Bursitis: Care Instructions material was published to portal.

Referral To: Douglas Wyland Orthopedic Surgery

Reason: chronic bilateral knee pain, hx of trauma/appt 10/03/16 at 1015am. office notes faxed.

LM FOR PT TO CALL BACK.

Therapeutic Injections:

TORADOL PER 15MG (60MG=4UNITS) : 4 U (Dose No:1) given by Stephanie Stribling on right gluteus

Procedure Codes: J1885 TORADOL PER 15 MG, Units: 4.00 , 96372 ADMIN THERA/ANTIBO INJ

Preventive:

Immunizations: Influenza Recommended every year. DTaP Recommend every ten years.

Screening / Special Tests: Colonoscopy Advised every 5 to 10 years based on risk.

Follow Up: prn

Provider: Mark Miles, MD

Patient: Lee, Susan B **DOB:** 01/12/1949 **Date:** 09/12/2016

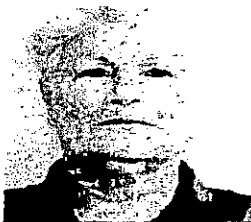


740503D

Expires:

01/12/22

Disabled Persons
Parking Identification Placard



South Carolina



1/2

Susan B. Lee
320 Stone Street
Pacolet Mills SC 29372

I am 71 years old and I have worked for Compass Two for 15 years. During 2016, I was involved in a car wreck that injured my knees. This injury made it very hard to walk and caused plantar fasciitis. I had to have shots in my knees and feet two times and also was prescribed special inserts for my shoes. I have lower back pain and polymyalgia in my back which causes a lot of pain and I take a lot of medications for these conditions. This makes it very difficult to function early in the morning and go to work. My medical and doctors records will reflect that. My other district manager Aldra Terry set my hours to be 9:00AM to 2:30PM so that I could take my medication and still work.

Kristin Palacios, my district manager, knew all the details regarding my medical situation. My regular work hours were from 9:00AM to 2:30PM and that made it easier for me to get up and move around a bit in the morning. It also allowed me to keep working my regular hours.

At the beginning of the 2020 school year things changed. Kristin informed my manager, Sonya martin, that my new schedule would be by 7:30-1:30pm and that she would move me back to my regular 9:00-2:30pm schedule when school started with all the students back, instead of the hybrid schedule. This was a verbal agreement and I agreed since it was the right thing to do and help out during the pandemic. I loved my job and the children.

On Thursday, November 26, 2020 we were told that school would start back full time on December 4 2020. Kristin released the new work schedules, and I was scheduled for 7:30am-1:30pm. My manager Sonya Martin, texted Kristen and told her that we're not happy with the schedule. I was upset that she did not schedule me for 9:00AM- 2:30PM as per our verbal agreement. The principal, Mrs. Brewington, was also upset as she knew I was getting tired because there were only two of us doing the job. Kristin texted back and said my schedule would not change as per the schedule that she sent. I told Sonya, my direct supervisor, that I could not physically maintain the scheduled hours due to my physical and medical condition. I was so upset I called and told Kristen not to come down to talk to me or I would quit because I did not want to see her, but she still came.

On November 30, I was in a meeting at MSP with Kristin and another district manager. I asked if Sonya martin could also be in the meeting as she was my direct supervisor/manager and could be a witness for me. She told me no that she could not be in the meeting. I did not understand why. Kristin was upset and told me that I disrespected her by not telling her that I wanted to quit. I did not disrespect anyone, as I told my direct manager on December 1st that I would work a weeks notice until December 4th so that I could train someone to do my job if Kristin did not put me back on my regular schedule. I felt that I would have to quit because I could not do the earlier hours due to my medication. Kristin refused to schedule me on my regular agreed-to hours, so I feel that she broke the verbal agreement we had. I believe that she was discriminating against me because of my health and age. I told Kristin that she and I had nothing further to discuss and I left the meeting to return to my job in the kitchen and finish my shift. Kristin called me back to the office and told me to collect my belongings and to clock out and leave. I asked her if she was firing me and she said no, that I quit. I said that I am not quitting until Friday. Again, she said clock out and leave.

Susan B Lee *Susan Lee*

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Susan Lee,

Appellant,

vs.

NOTICE OF ASSIGNMENT

South Carolina Department of Employment
and Workforce and Compass Two, LLC,

Respondents.

DOCKET NO. 21-ALJ-22-0292-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on July 27, 2021. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2020), the Honorable Shirley C. Robinson, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

FURTHER, NOTICE IS GIVEN that the parties are required to meet the following deadlines, unless otherwise ordered by the assigned Administrative Law Judge:

- Record on Appeal** Due within twenty (20) days of the date of this Notice (to be filed by the agency)
- Appellant's Brief** Due within twenty (20) days after the Record on Appeal is filed
- Respondent's Brief** Due within twenty (20) days after the Appellant's Brief is filed
- Reply Brief** Due within ten (10) days after the Respondent's Brief is filed

The parties are directed to the relevant provisions of the Rules of Procedure regarding these deadlines and other requirements applicable to the appeal process. Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

This the fifth day of August 2021.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E. Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201



Upon reflection of my current standing regarding my termination from Chartwell in order to set the record straight allowing my side to be completely understood! I was originally hired in 2005 agreeing to the hours of 11:30 am till 2:30 pm. After a few years I was verbally asked to start coming in at 9:00 am till 2:30 pm. I agreed to this as it would help out my employer. After my life altering car accident in July 2016 I still held up to my verbal agreement to work the hours of 9:00 am till 2:30 pm this not only helped my employer but also allowed to accommodate my medical needs as well. When the pandemic started in 2020 I was again verbally asked to come in at 7:30 am till 1:30 pm. I was extremely reluctant to this due accommodating my medical needs or original hiring agreement which again was 11:30am till 2:30 pm. Nevertheless I agreed to this on a TEMPORARY BASIS upon school returning in August. Temporarily meaning I was assured by Kristin my hours would return back to 9:30 am till 2:30 pm. When this not happened and the time came I approached my direct manager Sonya Martin who also had been assured by Kristin that I would be returning to my original hours of 9:00 am till 2:30 pm and this was an issue. Sonya and I connectively asked Kristin as to why this wasn't the case? She stated that she could not hold up to her end of the verbal agreement due to the lack of employees which is very confusing to myself because she brought 4 other people in to take myself and Sonya's position. She did have other people she could have gotten because its always taken 3 people to do our positions sufficiently! I was indeed upset as anyone would have been which explains my voicemail regarding me leaving my position not without obvious reasons. I put in my notice to leave my position due to I was not hired to work 7:30 am nor was this possible due to my age being 71 years and said medical conditions to which Kristin had been made well aware of! To recap I was hired 11:30 am till 2:30 pm (which I was contracted to do) all I asked for was 9:00 am till 2:30 pm. As you can see my issues and complains are justified and comprehensive resulting in a clear and fair justification as to my leaving.

Please see enclosed documentation confirming that all I have stated is a FACT.

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 REEPCO
This is to certify that the undersigned...
9 September 2021
JUDICIAL LAW CLERK

DECISION

The Appeal Tribunal decision mailed May 12, 2021 is affirmed. The Claimant is indefinitely disqualified from benefits effective December 6, 2020, upon finding she voluntarily left work without good cause attributable to the employment.

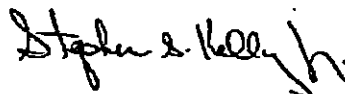
**SOUTH CAROLINA DEPARTMENT OF
EMPLOYMENT AND WORKFORCE
APPELLATE PANEL**



E.B. AYERS



TIM DANGERFIELD



STEPHEN S. KELLY, JR.

Date Mailed: 06/29/2021

