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Jan 13 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No.: 21-ALJ-22-0245-AP

Appellate Case No. 2021-001444

Keiarra Carr, Appellant,

v.

South Carolina Department of Employment
and Workforce and JDC Management, LLC, Respondents.

**Respondents' Joint Motion to Dismiss
for Lack of Appellate Jurisdiction**

Respondents South Carolina Department of Employment and Workforce (the Department) and JDC Management, LLC (JDC) move this Court to dismiss Appellant Keiarra Carr's appeal for lack of appellate jurisdiction. Appellant failed to serve Respondents with her notice of appeal as required by section 1-23-610(A)(1) of the South Carolina Code (Supp. 2021) and Rule 203(b)(6), SCACR. Thus, this Court lacks appellate jurisdiction to hear this appeal, and the Court should dismiss it. Also, Respondents request the Court hold all deadlines in abeyance pending the Court's decision on this motion.

I. Factual Background

Appellant filed an appeal in the Administrative Law Court (ALC) from a final agency decision issued by the Department's Appellate Panel. *See Exhibit A, ALC Dismissal Order.* Ultimately, the ALC dismissed Appellant's appeal when she failed to timely file her Appellant's brief supporting her position. *Exhibit A.* Appellant then filed a motion for rehearing, which the ALC denied in an order dated December 6, 2021. *See Exhibit B, ALC Order Denying Rehearing.*

Next, Appellant filed a notice of appeal with this Court on December 9, 2021, stating she "received written notice of entry of this order [judgment] on December 8, 2021."¹ *See Exhibit C, Dec. 9, 2021 Notice of Appeal.* The proof of service accompanying this notice of appeal did not certify that Appellant served either the Department or JDC. *Exhibit C.* It only certified that Appellant served the ALC. *Exhibit C.* Shortly thereafter, on December 13, 2021, the Court issued a deficiency letter informing Appellant her proof of service was deficient and must reflect that she served the Department with her notice of appeal.

Appellant then attempted to correct the deficiency with her notice of appeal. Appellant filed a second proof of service on December 16, 2021. In this proof of service, Appellant certified, "I have served the Notice of Appeal on The Honorable H.W. Funderburk[, Jr.] by depositing a copy of it in the United States Mail, postage prepaid, on December 16, 2021, addressed to his clerk of record, Elizabeth Perkins, 1205 Pendleton St., Suite 224 Columbia SC 20291." *See Exhibit D, Dec. 16, 2021 Proof of Service.* Below this certification, Appellant lists the contact information for counsel for the Department and counsel for JDC. *Exhibit D.* However, the proof of service

¹ Because Appellant failed to serve Respondents with her notices of appeal, and most other filings, Respondents collected these exhibits from the Court's case management system, C-Track.

fails to state or certify that Appellant actually served the Department or JDC with her notice of appeal. *Exhibit D*.

And, importantly, Appellant did not serve the Department or JDC with her notice of appeal. *See Exhibits E and F, Affidavits of Kristi Chesley and Lucy Sanders*. Appellant failed to serve both the Department and JDC with her notice of appeal, and her proofs of service failed to assert or certify otherwise.

II. This Court lacks appellate jurisdiction to hear this appeal because Appellant failed to serve both the Department and JDC with her notice of appeal.

This Court lacks appellate jurisdiction to hear this appeal because Appellant failed to serve both the Department and JDC with her notice of appeal.² When seeking review in this Court of a final decision from the ALC, an appellant "must" serve the opposing parties and the ALC with the notice of appeal "not more than thirty days after the party receives the final decision and order" of the ALC. § 1-23-610(A)(1). Also, Rule 203(b)(6) states,

When a statute allows a decision of the [ALC] or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, the [ALC] (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision.

Thus, under section 1-23-610(A)(1) and Rule 203(b)(6), an appellant must serve the agency and all parties of record with her notice of appeal within thirty days after receiving the ALC's final decision.

"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,

² "[L]ate service of the notice of appeal deprives this [C]ourt of appellate jurisdiction rather than subject matter jurisdiction." *Lemmons v. Macedonia Water Works, Inc.*, 431 S.C. 186, 191 n.4, 647 S.E.2d 471, 474 n.4 (Ct. App. 2020).

549 (2011). Consequently, the timely filing and service of the notice of appeal are jurisdictional requirements under section 1-23-610(A)(1) and Rule 203(b)(6), and the Court "has no authority to extend or expand the time in which the notice of intent to appeal must be served." *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985); *Allison*, 394 S.C. at 189, 714 S.E.2d at 550 (noting "an appellate body may not extend the time to appeal"); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) ("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."); *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 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.").

Here, the ALC issued its final decision, which denied Appellant's motion for rehearing, on December 6, 2021, and Appellant admitted receiving the decision on December 8, 2021. *Exhibits B and C*. Thus, Appellant's deadline for serving the Department and JDC with her notice of appeal was January 7, 2022, which was thirty days after December 8, 2021. However, Appellant failed to timely serve the Department or JDC with her notice of appeal. *Exhibits E and F*. In fact, as of the date of this motion, Appellant has not served the Department or JDC with her notice of appeal. *Exhibits E and F*.

Further, Respondents have been unable to locate any evidence in the Court's file to contradict their contention that Appellant failed to serve either opposing party with her notice of appeal. Appellant filed two proofs of service regarding her notice of appeal, but neither of them certifies she served the Department or JDC. Appellant's proof of service filed on December 9, 2021, states she served the ALC judge who heard her case and lists contact information at the

bottom for herself and the ALC. *Exhibit C*. This proof of service does not certify that Appellant served Respondents with the notice of appeal. The Court recognized this as well and issued a deficiency order on December 13, 2021, informing Appellant her proof of service was defective.

Thereafter, Appellant filed a second proof of service on December 16, 2021. *Exhibit D*. However, this second proof of service was also defective because it certified only that Appellant served the ALC judge who heard her case. In full, Appellant's second proof of service stated, "I certify that I have served the Notice of Appeal on The Honorable H.W. Funderburk[, Jr.] by depositing a copy of it in the United States Mail, postage prepaid, on December 16, 2021, addressed to his clerk of record, Elizabeth Perkins, 1205 Pendleton St., Suite 224 Columbia SC 20291." *Exhibit D*. This proof of service does not certify or assert Appellant served either the Department or JDC with her notice of appeal.

Respondents acknowledge Appellant's December 16, 2021 proof of service lists contact information for the Department's and JDC's respective counsel. *Exhibit D*. However, this is inconsequential because the proof of service fails to certify or assert that Appellant served Respondents' counsel. It merely lists the contact information at the bottom of the page. Simply listing contact information does not qualify as a proof of service. To qualify as a proof of service, the document must certify the appellant served those parties. As for Appellant's December 16, 2021 proof of service, it certifies that Appellant served the ALC only. Thus, Appellant's December 16, 2021 proof of service is not evidence that could support a finding that Appellant served the Department or JDC with her notice of appeal. *See Re-Emp't Servs., Ltd. v. Nat'l Loan Acquisitions Co.*, 969 So.2d 467, 471 (Fla. Dist. Ct. App. 2007) (explaining if the proof of service "is defective on its face, it cannot be relied upon as evidence that the service of process was valid"); *Gerding v. Hawes Firearms Co.*, 698 S.W.2d 605, 607 (Mo. Ct. App. 1985) (finding, in the context of

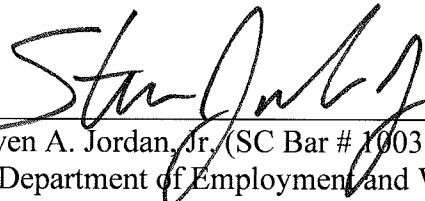
acquiring personal jurisdiction, "[i]f the return or proof of service is deficient on its face, the court acquires no jurisdiction over the party allegedly served").

Accordingly, Appellant failed to serve the Department or JDC with her notice of appeal, *Exhibits E and F*, and Respondents have been unable to locate any evidence in the Court's file that could support a different finding. Because Appellant failed to serve Respondents with her notice of appeal, this Court lacks appellate jurisdiction to hear this appeal and should dismiss it.

III. Conclusion

Based on the foregoing, Appellant failed to serve Respondents with her notice of appeal as required by section 1-23-610(A)(1) and Rule 203(b)(6). Thus, this Court lacks appellate jurisdiction to hear this appeal, and the Court should dismiss it. Respondents request the Court hold all deadlines in abeyance pending the Court's decision on this motion.

Respectfully Submitted,



Steven A. Jordan, Jr. (SC Bar # 100314)
SC Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202
803.737.0395 (phone)
803.737.0124 (fax)
Legal@dew.sc.gov

*Attorney for Respondent SC Department of
Employment and Workforce*

BLOODGOOD & SANDERS, LLC

s/ Lucy C. Sanders

Lucy C. Sanders, SC Bar No.: 78169
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464
Telephone: (843) 972-0313
Email: lsanders@bloodgoodsanders.com

Attorneys for Respondent JDC Management, LLC

January 13, 2022

EXHIBIT A

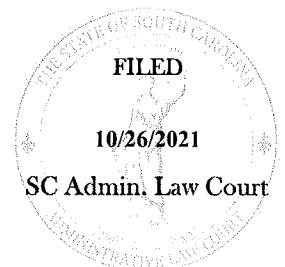
**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kierra Carr,)	Docket No. 21-ALJ-22-0245-AP
)	
Appellant,)	
)	
vs.)	ORDER GRANTING JOINT
)	MOTION TO DISMISS FOR
South Carolina Department of Employment,)	FAILURE TO FILE BRIEF
And Workforce and JDC Management,)	
LLC,)	
)	
Respondent.)	
_____)	

This matter is before the South Carolina Administrative Law Court (ALC) pursuant to a Notice of Appeal filed July 13, 2021, by Kierra Carr (Appellant) seeking judicial review of a decision by the Appellate Panel of South Carolina Department of Employment and Workforce (Respondent) affirming an Appeal Tribunal’s decision holding that Appellant voluntarily left her employment without good cause attributable to the employment and indefinitely disqualifying her from receiving benefits effective May 24, 2020.

This case was assigned to the ALC on July 21, 2021. In a Notice of Assignment, the parties were given notice of the deadlines for filing the Record on Appeal, Appellant’s Brief, and Respondent’s Brief. The Record on Appeal was filed on August 10, 2021. On September 27, 2021, Respondents SCDEW and JDC Management, LLC, filed a Joint Motion to Dismiss for Failure to File Appellant’s Brief (Motion). On October 14, 2021, eighteen (18) days after the filing of Respondents’ Motion, Appellant filed a Motion for Extension of Time to File Appellant’s Brief along with a proffered brief.

SCALC Rules 37(A) and 37(C) allow Appellant twenty (20) days from the date the Record on Appeal is filed (by August 30, 2021) to file her brief. SCALC Rule 38 provides that “[u]pon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided in these rules or by order of the Court.”

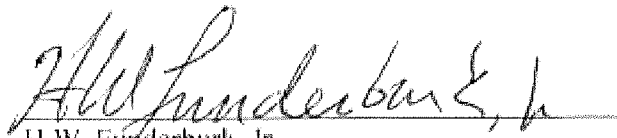


By virtue of her appeal, Appellant had an obligation to file a brief to advance her position, and Appellant was given ample time to do so. Nevertheless, Appellant has not timely filed a brief in support of her appeal, nor did she request an extension in which to do so before the expiration of the brief deadline. It is therefore,

ORDERED that this appeal is **DISMISSED**.

AND IT IS SO ORDERED.

October 26, 2021
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge

CERTIFICATE OF SERVICE

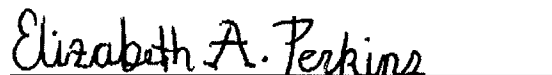
I, Elizabeth A. Perkins, hereby certify that I have this date served this **Order Granting Motion to Dismiss** upon all parties to this case by depositing a copy hereof, in the United States mail, postage paid, to the address provided by the party(ies) and/or their attorney(s).

Kierra Carr
2861 Hilton Circle
Kennesaw, GA 30152
Pro Se Appellant

Steven A. Jordan, Jr., Esquire
Office of General Counsel
SC Dep't of Employment & Workforce
PO Box 8597
Columbia, SC 29202
Counsel for Respondent SCDEW

Lucy C. Sanders, Esquire
242 Mathis Ferry Road
Mt. Pleasant, SC 29464
Counsel for Respondent JDC Management, LLC

October 26, 2021
Columbia, South Carolina


Elizabeth A. Perkins
Judicial Law Clerk

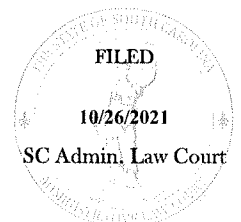


EXHIBIT B

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Kierra Carr,)	Docket No. 21-ALJ-22-0245-AP
)	
Appellant,)	
)	
vs.)	ORDER DENYING
)	MOTION FOR REHEARING
South Carolina Department of)	
Employment and Workforce and JDC)	
Management, LLC,)	
)	
Respondent.)	
_____)	

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed July 13, 2021, by Kierra Carr (Appellant) seeking judicial review of a decision by the Appellate Panel of South Carolina Department of Employment and Workforce (Respondent) affirming an Appeal Tribunal’s decision holding that Appellant voluntarily left her employment without good cause attributable to the employment and indefinitely disqualifying her from receiving benefits effective May 24, 2020.

This case was assigned to the ALC on July 21, 2021. In a Notice of Assignment, the parties were given notice of the deadlines for filing the Record on Appeal, Appellant’s Brief, and Respondent’s Brief. The Record on Appeal was filed on August 10, 2021. On September 27, 2021, Respondents SCDEW and JDC Management, LLC, filed a Joint Motion to Dismiss for Failure to File Appellant’s Brief. On October 14, 2021, eighteen (18) days after the filing of Respondents’ Motion, Appellant filed a Motion for Extension of Time to File Appellant’s Brief along with a proffered brief. On October 26, 2021, the Court granted Respondent’s Joint Motion to Dismiss for failure to File Appellant’s Brief.

On November 4, 2021, Appellant filed an unlabeled document along with a Proof of Service indicating she served a Motion for Rehearing on the Department the same day. On November 16, 2021, Respondents filed a Joint Return to Appellant’s Motion for Rehearing, to which Appellant replied on November 19, 2021.

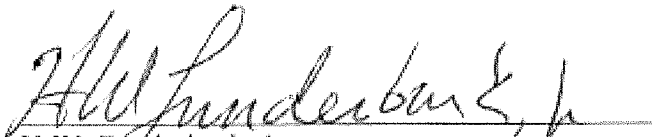


SCALC Rule 40 requires that “. . . a party must file a motion for rehearing stating with particularity the points supposed to have been overlooked or misapprehended by the court. Appellant’s Motion for Rehearing fails to meet this requirement. Appellant did not state with particularity any points supposed to have been overlooked or misapprehended by the Court. Nor did she provide any information or explanation regarding the failure to timely file Appellant’s Brief. Appellant’s Motion for Rehearing merely reiterates factual allegations intended to explain the circumstances of her job separation. It is, therefore,

ORDERED that Appellant’s Motion for Rehearing is **DENIED**.

AND IT IS SO ORDERED.

December 6, 2021
Columbia, South Carolina


H.W. Funderburk, Jr.
Administrative Law Judge

CERTIFICATE OF SERVICE

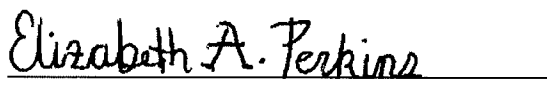
I, Elizabeth A. Perkins, hereby certify that I have this date served this **Order Denying Motion for Rehearing** upon all parties to this case by depositing a copy hereof, in the United States mail, postage paid, to the address provided by the party(ies) and/or their attorney(s).

Kierra Carr
2861 Hilton Circle
Kennesaw, GA 30152
Pro Se Appellant

Steven A. Jordan, Jr., Esquire
Office of General Counsel
SC Dep’t of Employment & Workforce
PO Box 8597
Columbia, SC 29202
Counsel for Respondent SCDEW

Lucy C. Sanders, Esquire
242 Mathis Ferry Road
Mt. Pleasant, SC 29464
*Counsel for Respondent JDC Management,
LLC*

December 6, 2021
Columbia, South Carolina


Elizabeth A. Perkins
Judicial Law Clerk

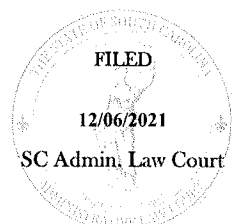


EXHIBIT C

RECEIVED

Dec 09 2021

SC Court of Appeals

FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

H. W. Funderburk, Jr.

Docket No. 21-ALJ-22-0245-AP

H. W. Funderburk, Jr.,
SC Administrative Law
Court

Respondent,

v.

Keiarra Carr,

Appellant.

NOTICE OF APPEAL

Keiarra Carr appeals the order [judgment] of the Honorable H. W. Funderburk, Jr. dated December 6, 2021. Appellant received written notice of entry of this order [judgment] on December 8, 2021.

December 9, 2021

Keiarra Carr
2861 Hilton Cir
Kennesaw Ga 30152

SC Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

RECEIVED

Dec 09 2021

SC Court of Appeals

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

H. W. Funderburk, Jr.

Docket No. 21-ALJ-22-0245-AP

H. W. Funderburk, Jr.,
SC Administrative Law
Court

Respondent,

v.

Keiarra Carr,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on H. W. Funderburk, Jr. by depositing a copy of it in the United States Mail, postage prepaid, on December 9, 2021, addressed to SC Administrative Law Court 1205 Pendleton Street Suite 224 Columbia, SC 29201.

December 9, 2021

Keiarra Carr
2861 Hilton Cir
Kennesaw Ga 30152

SC Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

EXHIBIT D

**FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

RECEIVED

Dec 16 2021

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable H. W. Funderburk Jr.

Case No. 2021-001444

South Carolina Department
Of Employment and Workforce,
And JDC Management, LLC

Respondent,

v.

Keiarra Carr

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The Honorable H. W. Funderburk by depositing a copy of it in the United States Mail, postage prepaid, on December 16, 2021, addressed to his clerk of record, Elizabeth Perkins, 1205 Pendleton St., Suite 224 Columbia, SC 20291.

December 16, 2021

S.C
Administrative
Law Court
1205 Pendleton St. Suite 224
Columbia, SC
803-734-6401
Attorney for Appellant

Steven A. Jordan Jr., Esquire
Office of General Counsel
SC Dep't of Employment & Workforce
PO Box 8597
Columbia, SC 29202
Counsel for Respondent SCDEW

Lucy C. Sander, Esquire
242 Mathis Ferry Road
Mt. Pleasant SC 29464
Counsel for Respondent JDC Managment

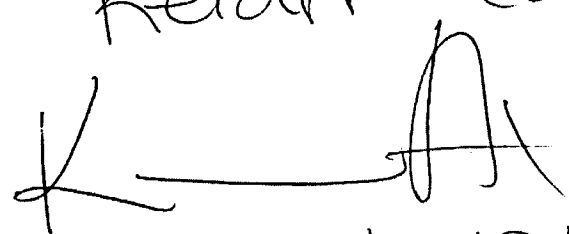
Keianna Carr

12/16/21

EXHIBIT E

AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PERSONALLY came before me, the undersigned Notary, the within named Kristi Chesley who is employed in Richland County, State of South Carolina, and makes this her statement and affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge:

1. I am the Office Manager for the SC Department of Employment and Workforce (DEW). I am responsible for receiving, opening and processing the mail addressed to: Office of General Counsel, S.C. Department of Employment and Workforce, Post Office Box 8597, Columbia, SC 29202.
2. There has been no Notice of Appeal received by mail, hand delivery or by email in the Office of General Counsel of the Department of Employment and Workforce in the case of Keiarra Carr v. SCDEW, Docket Number 2021-001444.


Signature of Affiant
Kristi Chesley

DATED AND SWORN to before me this the
13th day of January, 2022.

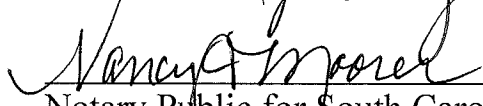
 (LS)
Notary Public for South Carolina
My Commission Expires: April 22, 2031.

EXHIBIT F

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No.: 21-ALJ-22-0245-AP

Appellate Case No. 2021-001444

Keiarra Carr, Appellant,

v.

South Carolina Department of Employment
and Workforce and JDC Management, LLC, Respondents.

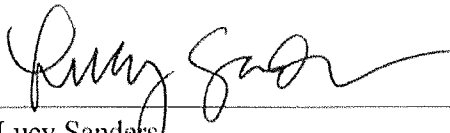
Affidavit of Lucy Sanders

PERSONALLY appeared before me, Lucy Sanders, who after being duly sworn, deposes and says as follows:

1. I practice law with Bloodgood & Sanders, LLC at 242 Mathis Ferry Road, Suite 201, Mt. Pleasant, South Carolina.
2. I routinely collect and review all documents received by mail or hand delivery to my Firm's address.
3. I review email messages sent to my email address (lsanders@bloodgoodsanders.com) on a daily basis.
4. From December 1, 2021 through January 13, 2022, I have reviewed all documents received by mail or hand delivery to my Firm's address or received at my email address.

5. As of January 13, 2022, I have not received a Notice of Appeal to the Court of Appeals from Keiarra Carr by email, mail, hand-delivery, or through any other delivery service.

FURTHER, YOUR DEPONENT SAYETH NAUGHT.



Lucy Sanders

Sworn to and subscribed before me
this 13 day of January ²⁰ 22
Nancy Bloodgood

Notary Public for the State of South Carolina
My Commission Expires: 3/1/2026

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Jan 13 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
H.W. Funderburk, Administrative Law Judge
Case No.: 21-ALJ-22-0245-AP

Appellate Case No. 2021-001444

Keiarra Carr,

Appellant,

v.

South Carolina Department of Employment and
Workforce and JDC Management LLC,

Respondent(s)

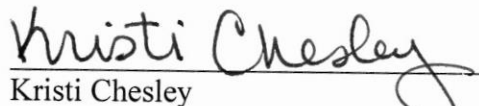
PROOF OF SERVICE

I certify that I have served the Respondents Joint Motion to Dismiss for Lack of Appellate Jurisdiction on the parties in this case by depositing a copy of it in the United States Mail, postage prepaid, and by email on January 13, 2022, addressed to the parties at their addresses of record:

Kierarra Carr
2861 Hilton Circle
Kennesaw GA 30152

Lucy Bloodgood Sanders
242 Mathis Ferry Rd
Mt. Pleasant, SC 29464
By Email

January 13, 2022



Kristi Chesley
South Carolina Department of Employment and
Workforce
Post Office Box 8597
Columbia, South Carolina 29202
(803) 737-0395