

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Jamie Hussett,)
)
Appellant,)
)
v.)
)
South Carolina Department of)
Employment and Workforce,)
)
Respondent.)
_____)

Docket No. 22-ALJ-22-0062-AP

**MOTION TO DISMISS
FOR
LACK OF JURISDICTION**

Respondent, South Carolina Department of Employment and Workforce (the Department), through its undersigned attorney, respectfully moves this Court to dismiss Appellant Jamie Hussett's appeal, 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
***Appellant Failed to Timely File and
Failed to Timely and Properly Serve Appeal on Respondent***

This is an action seeking judicial review by the Administrative Law Court (ALC) of a final Department decision on a claim for unemployment insurance (UI) benefits, and is governed by S.C. Code Ann. § 41-35-750 and S.C. Code Ann. § 1-23-380. For the Court to review this appeal, its appellate jurisdiction must be properly invoked.

S. C. Code Ann. § 41-35-750 requires that an appeal requesting judicial review must be filed in the ALC and must be served on the Department within thirty (30) days of the date of mailing of the final decision of the Department and such a petition for judicial review must be served on "the executive director or on a person designated by the

department.” S.C. Code Ann. § 1-23-380 permits a party to institute proceedings for review before the ALC by “serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency....” Rule 262(c), SCACR states, “Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the appellate court.” Rule 262(c) further states that service shall be made by personal delivery, electronic means authorized by the Supreme Court, or by “[d]epositing a copy in the U.S. mail, properly addressed to the person at that person’s last known address...” Further, SCALC Rule 33 also requires that a notice of appeal must be filed with the Court and served on 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. SCALC Rule 5 states, “Service shall be made upon counsel if the party is represented.... Service shall be made by delivery, by mail to the last known address, or as otherwise approved by the Court through administrative order.”

The Department mailed its final decision in this matter to Appellant on January 18, 2022. (*Exhibit A*). The Panel’s decision included a “Notice of Mailing of Appellate Panel Decision,” which explicitly informed Appellant “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.” *Id.* The “Notice of Mailing of Appellate Panel Decision” solely designated the Department’s attorneys at the Office of General Counsel as the proper recipient of service for any Petition for Judicial Review in

this case at the address:

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

Id. (emphasis in original).

Pursuant to S.C. Code Ann. § 41-35-750 and SCALC Rule 33, Appellant's deadline to file an appeal with the Court and to serve the appeal upon the Department was February 17, 2022. The Court's Notice of Assignment for this case, issued on February 24, 2022, does not contain the specific filing date of Appellant's appeal to this Court; however, Appellant's Notice of Appeal is dated February 18, 2022, and therefore, was presumably filed with the Court untimely on or after February 18, 2022. (*Exhibit B*). Additionally, the envelope containing a copy of the Notice of Appeal that was mailed to the Department is postmarked February 19, 2022. (*Exhibit C*). The envelope is addressed to:

SC Employment and Workforce
1550 Gadsden Street
Columbia SC 29201

Id. The envelope is not addressed to the Department's Office of General Counsel and has not otherwise been properly served upon the Department's attorneys as required by this Court's rules and the South Carolina Appellate Court Rules. *Id.*; *see also* Rule 262(c), SCACR; *see also* SCALC Rule 5. The date listed on the Proof of Service included with Appellant's Notice of Appeal is January 18, 2022, the same day the Panel initially mailed its decision in this case. (*Exhibit D*). That listed date is manifestly inaccurate and cannot support any contention Appellant timely filed or served a Notice of Appeal in this Case;

however, it seems likely, given the handwritten date on Appellant's Notice of Appeal, that Appellant intended to indicate a date of service of February 18, 2022, which, as previously stated, would have been untimely. (*Exhibit B*). Based on the information available to the Department, the Department believes and asserts that Appellant filed a Notice of Appeal with the Court after the mandatory appeal deadline of February 17, 2022, had expired. Further, Appellant manifestly served her Notice of Appeal to the wrong address after the mandatory appeal deadline of February 17, 2022, had expired. (*Exhibit C*).

"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). Consequently, 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. *See generally 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."); *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); *see also Burnette v. S.C. State Highway Dep't*, 252 S.C. 568, 167 S.E.2d 571 (1969) (holding a court does not have authority to extend the time for filing appeal, or serving notice of appeal).

While the Department recognizes that Appellant is proceeding *pro se*, a *pro se*

EXHIBIT C

From: Jamie W Hussett
7749 Edmund Hwy
Pelton SC 29123
10302 Gadsden

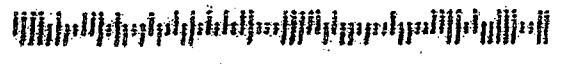


TO: SC Employment & Workforce
1550 Gadsden Street
Columbia SC
29201

Ready Post.

Document Mailer

2920132713 0049



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Jamie w Hussett

Appellant/Petitioner,

vs.

S.C. Department of Employment and Workforce

Respondent.

Docket No. -ALJ-

PROOF OF SERVICE

I hereby certify that I have served the Appeal request
(Description of the document) in the above-captioned matter by depositing it in the
United State Mail, postage prepaid, on 18th, January 2022 (Month/Day/Year) to the
below named parties at their address of record:

S.C Department of Employment and Workforce

Name
1550 Garden Street
Address
Columbia SC 29201
City/State/Zip

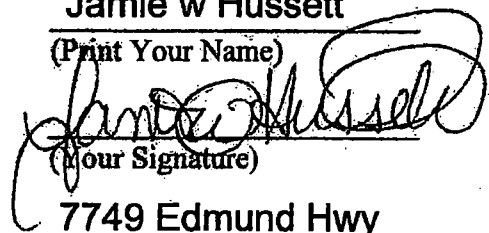
Name
Address
City/State/Zip

Name
Address
City/State/Zip

Name
Address
City/State/Zip

Jamie w Hussett

(Print Your Name)



(Your Signature)

7749 Edmund Hwy

(Street)

Pelion SC 29123

(City, State, Zip Code)

EXHIBIT B
Rec'd
2/22
pm
2/19

Jamie w Hussett
7749 Edmund highway
pelion, SC 29123
(803)317-5192

Administrative law court 1205 Pendleton Street
Suite 224
Columbia S.C 29201

Dear Judge,

My name is Jamie Hussett,
Claimant I.D. 4686883

If I may possibly have a moment of your time please and thank you ma'am/Sir.
I'm writing today requesting an appeal to a letter I received January 22nd ,2022 of the decision made June,7th 2021 of my unemployment claim.

In May of 2020 I went to an attorney Billy Oswald for assistance with filing my unemployment claim. I filled out the form at the lawyer's office and spoke with Billy Oswald briefly he, informed me that I needed a copy of my social security card and he could file the claim 7 weeks later's I went to MrOswalds office to take the social security card everyone was out to lunch so I left a copy with the secretary. Billy Oswald's assistants her name was Laken. Laken was whom filed the claim upon speaking with Mr. Oswald I had told him of my trying to build my new business trying to seek employment trying to go back to school trying to receive training and I went to vocational rehabilitation center to see if they could help me get back into school to do computer programming , I wanted to start a business as well building websites . I never spoke with no one only Mr Oswald , when his assistant filed my claim she put in the system on my claim that I had worked for voc rehab as a computer programmer.when in fact I asked voc rehab for helping my returning to school for a trade computer programming didn't become aware of how she filed the claim "a total error "of no fault of my own .until I received a denial letter from the unemployment office , I became aware of the incorrect information in my claim and the decision was made based on the misinformation. I made numerous phone calls at least 50 phone calls to unemployment office trying to correct the information asking that they redo my claim rereview/ reprocess my claim .I've called requesting to speak with a supervisor not once did I get a return phone call my whole fight my whole battle has been to correct the information on the claim

""All are equal
Not all are treated equal""

To determine what was needed ,when Ms Laken initially put in my claim approx 2 weeks later Ms Laken needed proof of wages, I gave to her three different proof of wages forms a copy of a positive covid test as well as a copy of a police report as my being a victim of domestic violence

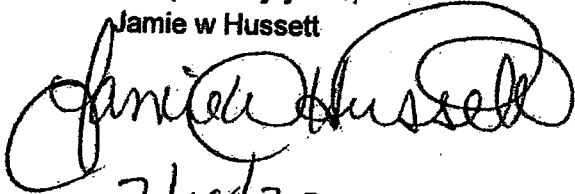
EXHIBIT B

I informed ms. Laken that I would have additional documents the following day she told me what I gave her was plenty. with that being said I did not know what she actually submitted if not all of the forms I gave her ...when I became aware of the incorrect filing of my claim I continued to call to try to find out what was needed what was turned in could somebody please hear my plea ,could they give me that equal opportunity to be decided I fought with unwavering attempts to speak to someone to find out what was submitted what was needed have to correct it . I wasn't given that equal right I couldn't get no answers couldn't get my claim corrected couldn't get it reheard remanded I was asking to challenge the court and with not knowing what was already submitted what needed to be submitted I submitted additional documents I thought would help my claim I was never asked for any additional documentation yet all the while I am submitting wage proof and statements asking if anything was needed I would submit additional documents I was never gave that opportunity to prayerfully have my claim reprocessed but I was never given that opportunity I never got that equal right my whole initial decision for the for my appeal was that the decision was made based on the misinformation presented by my attorney ,they never made a rereview and /or decision based on the information that I presented to be correct I was denied any opportunity,never corrected the information in the system it's still the same so when I went to my appeal that was what my fight was if they'd correct and possibly vacate and remand it but I never got that opportunity that equal rights . I wrote several statements and turned in multiple pieces of information and in each of one of my statements that I wrote to them I stated in all statement that if there was any information needed whatsoever to please let me know that I would be more than willing to submit it that I was not aware of what I needed to submit but if they needed any information or any documents to please let me know . when I went to my appeal the appellate panel asked me why I didn't turn in the letter stating that I was hired at IHOP I was not aware my attorney failed to submit it as well as it was never requested I said I could provide it it but she said no it's too late what I'm trying to understand is they never corrected the claim never rereviewed and redecided which in turn never requested any information yet it's too late I don't understand how it was too late when it was never corrected to the right way I feel so wrongly done sir I wouldn't be writing you this if I felt like it was done right rightfully I could accept a denial based on the correct information but it's hard to take a denial based on the misinformation knowing very well that I was and I am eligible for my unemployment sir. We were all affected by covid I was attempting to start a business before covid pandemic hit I was seeking ways to build it and make it more better and more stronger more stable I was seeking training with vocational rehabilitation trying to get go to school Midlands tech I went and got a job from IHOP as a rehire but they shut the doors down permanently due to covid no I was attempting to take over a business to a friend of mine's but it was shut down due to covid ordered by Gov. Henry McMaster all non-essential businesses close due to covid which in turn forced the business to permanently closed I as well contracted the covid delta variant . I sent in proof (please note that the statements I submitted explaining my situation and letting unemployment aware that if any further documents was needed to please let me know and submitted into my unemployment portal starting shortly after the initial denial decision I was fully willing and prepared to present any requested documents)they asked of me I was never asked to present anything sir was just trying to correct the wrong information and get a right and fair hearing on my case to have it vacated and remanded that's what I've asked to be treated equal as well as I stated in each of the

statements that I sent to the unemployment office that if they needed anything any document anything they never requested nothing sir I've pleaded with them to correct my information in the in the computer and they never did so I didn't know what I was going up against when I went to the appeal to knowledge by them the correct information. And make a right and just decision based on the correct information sir I'm asking you today to review my whole case and to please give me that opportunity it's very hard to accept the denial based on the misinformation presented by the attorney. I was asking to challenge the panel ,vacate ,and or remand if you could do that for me sir give me that opportunity I would be so grateful and if a decision of denied is made based on that information I would respectfully accept it sir . Sir I have pleaded and begged for the unemployment office to correct it and reevaluate my claim and I can not get any one to give me that opportunity Sir I pray you will today sir thank you for your time in this matter God bless!

Respectfully yours,

Jamie w Hussett



2/18/22