

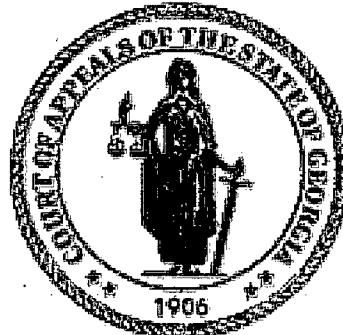
Court of Appeals of the State of Georgia

ATLANTA, April 04, 2024

The Court of Appeals hereby passes the following order

A24A1250. SOLOMON A. JONES v. GEORGIA DEPARTMENT OF LABOR et al.

The APPELLANT'S PRO SE MOTION/S in the above-styled case is hereby DENIED as MOOT.



*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, April 04, 2024.*

*I certify that the above is a true extract from the minutes
of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto
affixed the day and year last above written.*

Stephen E. Castor, Clerk.

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

SOLOMON A. JONES,

Plaintiff,

v.

GEORGIA DEPT. OF LABOR and
EDUCATIONAL TESTING
SERVICE,

Defendants.

CIVIL ACTION FILE
NO. 2023CV377488

ORDER GRANTING GEORGIA DEPT. OF LABOR'S MOTION TO DISMISS

This matter came before the Court on Defendant Georgia Department of Labor's Motion to Dismiss. Plaintiff Solomon A. Jones's Complaint seeks relief from Defendant Georgia Department of Labor ("GDOL") related to his application for unemployment benefits. GDOL filed an Answer and a Motion to Dismiss arguing that the Court should dismiss Plaintiff's Complaint for lack of subject matter jurisdiction and failure to state a claim for relief.

After considering the parties' arguments and the record in this case, the Court holds that it does not have subject matter jurisdiction over Plaintiff's claims and that the Plaintiff otherwise failed to state a claim for relief. *See Remax the Mountain Co. v. Tabsum, Inc.*, 280 Ga. App. 425, 426 (2006); O.C.G.A. § 9-11-12. As such and for the reasons that follow, the Court hereby **GRANTS** GDOL's Motion to Dismiss and **DISMISSES** Plaintiff's case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Viewing the facts in the light most favorable to Plaintiff, the Court finds that Plaintiff filed a claim for unemployment benefits on February 13, 2022. On February 18, 2022, GDOL issued

Plaintiff a benefit determination indicating that he was not eligible for any benefits, based upon not having enough work hours. On February 22, 2022, Plaintiff filed an appeal of the benefit determination by completing the DOL-423 form and sending it to appeals@gdol.ga.gov. Before GDOL scheduled an internal hearing on his appeal, Plaintiff filed a Complaint in Fulton County State Court on November 16, 2022.

On January 13, 2023, Defendant filed an Answer and Motion to Dismiss. Plaintiff filed a Response to Defendant's motion to which Defendant filed a Reply. On March 2, 2023, the Fulton County State Court transferred this case to Superior Court.

A. The Court lacks subject matter jurisdiction over Plaintiff's claims under the Employment Security Law.

The Court holds that it lacks subject matter jurisdiction over Plaintiff's claims because they are barred by the State of Georgia's sovereign immunity, which would extend to GDOL. The doctrine of sovereign immunity is well established in this State, *Crowder v. Department of State Parks*, 228 Ga. 436 (1971), and is of constitutional dimensions. *Azizi v. Board of Regents of the University System of Georgia*, 132 Ga. 384 (1974). Any waiver of this immunity must be strictly construed.

Plaintiff's allegations reveal that he seeks redress under the Georgia Employment Security Law, disputing GDOL's denial of his application for unemployment benefits. However, his Complaint fails to comply with the limited, permissible terms upon which one can appeal a denial of unemployment benefits and, therefore, his claims are barred by sovereign immunity.

O.C.G.A. § 34-8-223(b) constitutes such a waiver to the extent that it allows the Commissioner of the GDOL to be named as a party respondent in actions seeking judicial review of decisions of the GDOL's Board of Review. O.C.G.A. § 34-8-223(b) provides those procedures necessary for appeal of an administrative decision to the superior court:

(b) Within 15 days after the decision of the board of review has become final, any party aggrieved thereby may secure judicial review by filing a petition against the Commissioner in the superior court of the county where the employee was last employed. . . . The petition, . . . shall be served upon the Commissioner or upon such persons as the Commissioner may designate . . .

O.C.G.A. § 34-8-223(b). The statute further mandates that the petition be served on the Commissioner within thirty days of filing.

A Petitioner who fails, however, to follow the precise guidelines of the statute does not invoke the limited jurisdiction of the superior court over the State provided by the statute. Plaintiff's complaint admits that he failed to exhaust his administrative remedies below before seeking relief in superior court, as required by O.C.G.A. § 34-8-223(a), because he did not proceed through the internal appeals including receipt of a decision of the Board of Review.¹ The fact that Plaintiff has failed to comply with the statutory provisions for bringing an action under Georgia's Employment Security Law renders the Complaint subject to dismissal for lack of subject matter jurisdiction under O.C.G.A. § 9-11-12(b)(1).

B. Plaintiff fails to state a claim for relief under the Georgia Tort Claims Act.²

The Court further holds that, to the extent Plaintiff attempts to assert a tort claim against Defendants, his complaint is deficient for failing to state a claim for relief and for not complying with the ante litem notice requirement under the Georgia Tort Claims Act ("GTCA"). Plaintiff's

¹ "The rationale for requiring exhaustion of administrative remedies is that resort to the administrative process will permit the agency to apply its expertise, protect the agency's autonomy, allow a more efficient resolution, and result in the uniform application of matters within the agency's jurisdiction." *Cerulean Companies, Inc. v. Tiller*, 271 Ga. 65, 67, 516 S.E.2d 522, 524 (1999).

² By its own terms, the GTCA "constitutes the exclusive remedy for any tort committed by a state officer or employee." O.C.G.A. § 50-21-25(a).

Complaint fails to set out any specific counts or state a cognizable claim for a tort, or for any other claim. Therefore, his complaint fails to state a claim for relief under O.C.G.A. § 9-11-12(b)(6).

Any potential tort claim is also subject to dismissal for failing to comply with the ante litem provisions of the GTCA. Prior to filing a tort lawsuit, the GTCA requires a claimant to send an ante litem notice to the director of the Risk Management Division of the Department of Administrative Services within 12 months of the date of loss, and also to send a copy of this ante litem notice to the state government entity allegedly involved. Specifically, the statute provides:

(a) No person having a tort claim against the state under this article shall bring any action against the state upon such claim without first giving notice of the claim as follows:

(1) Notice of a claim shall be given in writing within 12 months of the date the loss was discovered or should have been discovered . . .;

(2) Notice of a claim shall be given in writing and shall be mailed by certified mail or statutory overnight delivery, return receipt requested, or delivered personally to and a receipt obtained from the Risk Management Division of the Department of Administrative Services. In addition, a copy shall be delivered personally to or mailed by first class mail to the state government entity, the act or omissions of which are asserted as the basis of the claim.

O.C.G.A. § 50-21-26(a)(1) and (2). O.C.G.A. § 50-21-26(a)(3) further provides that “[n]o action against the state under this article shall be commenced and courts shall have no jurisdiction thereof unless and until a written notice of claim has been timely presented to the state as provided in this subsection.”

Furthermore, the statute states that not only must an ante litem notice be given, but a copy of the notice and a receipt for its delivery to the Risk Management Division of the Department of Administrative Services must also be attached as exhibits to the Complaint:

Any complaint filed pursuant to this article must have a copy of the notice of claim presented to the Department of Administrative Services together with the certified mail or statutory overnight delivery receipt or receipt for other delivery attached as exhibits. If failure to attach such exhibits to the complaint is not cured within 30 days after the state raises such issue by motion, then the complaint shall be dismissed without prejudice.

O.C.G.A. § 50-21-26(a)(4).

Plaintiff failed to comply with these ante litem notice requirements, as evidenced by the lack of the required ante litem notice with delivery receipt to the Risk Management Division of the Department of Administrative Services attached to the Complaint as exhibits. If timely and compliant ante litem notice exhibits are not attached by amendment to the Complaint within 30 days, the tort claim must be dismissed. *See Baskin v. Georgia Department of Corrections*, 272 Ga. App. 355, 356-58 (2005). Because Plaintiff has not complied with the statute, the Court holds that his Complaint must also be dismissed on that basis.

In light of the foregoing, GDOL's Motion to Dismiss is **GRANTED** and Plaintiff's case is **DISMISSED WITH PREJUDICE**.

SO ORDERED this 9 day of November, 2023.

Adele Grubbs
HON. ADELE GRUBBS, JUDGE
Fulton County Superior Court
Atlanta Judicial Circuit

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

SOLOMON A. JONES,

Plaintiff,

v.

GEORGIA DEPT. OF LABOR and
EDUCATIONAL TESTING SERVICE,

Defendants.

CIVIL ACTION FILE
NO. 2023CV377488

ORDER GRANTING EDUCATIONAL TESTING SERVICE'S MOTION TO DISMISS

Having heard and considered Defendant Educational Testing Service's Motion to Dismiss, the Court hereby **GRANTS** the Motion pursuant to O.C.G.A § 9-11-12(b)(1) and (6), finding Plaintiff failed to exhaust his administrative remedies and fails to state a claim upon which relief can be granted as to Defendant Educational Testing Service. Accordingly, all of Plaintiff's claims against Defendant Educational Testing Service are hereby **DISMISSED**.

SO ORDERED this 9 day of November, 2023.



S^t HON. ADELE GRUBBS, JUDGE
Fulton County Superior Court
Atlanta Judicial Circuit

Created On	Click below link(s) to view notice(s)
07/09/2022 02:10:05 PM	View Regular UI Monetary Redetermination - 07/09/2022 View Notice .
02/18/2022 09:15:17 PM	You have an Unemployment Insurance Benefit Determination Notice. View Notice .

Claim Information

SOLOMON A JONES

Your most recently filed claim reflects you do not have enough wages, in the period used, to establish a valid claim. Please refer to the Unemployment Insurance Benefit Determination mailed to you for the indicated Benefit Year Begin (BYB) date for more information.

Current Program:	UI
Benefit Year Begin (BYB) Date:	02/13/2022
Benefit Year End (BYE) Date:	02/11/2023
Weekly Benefit Amount (WBA):	\$0.00
Maximum Benefit Amount (MBA):	\$0.00
Remaining Balance:	\$0.00
Employ Georgia Registration:	Yes

Your eligibility is pending a determination. You will be contacted by a GDOL Representative if additional information is needed.

Unemployment Insurance Payment Summary

The Payment Summary displays payments released by UI program.

Claim Weekly UI Benefits Payments

No recent payment summary available.

Pandemic Unemployment Assistance Payment Summary

No recent payment summary available.

Pandemic Emergency Unemployment Compensation Payment Summary

No recent payment summary available.

State Extended Benefits Payment Summary

No recent payment summary available.

Federal Pandemic Unemployment Compensation Payment Summary

The supplemental payment is payable one time for each week ending date of benefits paid during the applicable period.

No recent payment summary available.

Lost Wages Assistance Compensation Payment Summary

No recent payment summary available.

Mixed Earners Unemployment Compensation Payment Summary

The \$100 supplemental MEUC payment is payable for each qualifying week ending date of benefits paid during the applicable period.

No recent payment summary available.



SUPREME COURT OF GEORGIA
Case No. S24A0600

March 5, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**SOLOMON A. JONES v. GEORGIA DEPARTMENT OF LABOR
et al.**

Solomon Jones filed a civil action against, in relevant part, the Georgia Department of Labor (“GDOL”), seeking damages for the denial of unemployment benefits, plus pain and suffering. GDOL moved to dismiss the complaint, in part, on the grounds that the claims raised against it were barred by sovereign immunity; that Jones failed to exhaust his administrative remedies; that the claims failed to state a claim under the Georgia Torts Claim Act; and that any such tort claims were, in any event, barred by Jones’s failure to comply with the statutory *ante litem* notice provisions. On November 9, 2023, the trial court issued an order granting GDOL’s motion on those alternative grounds and dismissing the claims with prejudice. On December 4, 2023, Jones filed a notice of appeal seeking review of the November 9 order.

Jones argues that this appeal invokes this Court’s jurisdiction over constitutional questions because the case has drawn into question the constitutionality of Ga. Const. of 1983, Art. I, Sec. II, Par. IX (e) (sovereign immunity can only be waived by an Act of the General Assembly that specifically provides for the fact and extent of such waiver), in that the dismissal order raises issues of (1) what actions constitute an abuse of sovereign immunity; (2) whether a

Appendix C - Exhibit 1(1 of 3)

state retains its sovereign immunity if it abuses that immunity; and (3) what remedy the Court should provide to injured parties “regardless of whether sovereign immunity is retained.” But even if the dismissal order raised those questions, they are not sufficient to invoke this Court’s appellate jurisdiction.

This Court’s jurisdiction over cases involving constitutional questions is invoked only where the arguments at issue seek either a first-impression construction of some provision of the Georgia or federal constitutions or to have some law, ordinance, or constitutional provision declared unconstitutional and where the arguments were distinctly raised before and ruled upon by the trial court. See *Zepp v. Mayor & Council of City of Athens*, 255 Ga. 449, 451 (339 SE2d 576) (1986) (stating that a constitutional question within the jurisdiction of this Court “involves either a construction of some federal or state constitutional provision, or an attack upon the constitutionality of some law of this state or the United States (or an ordinance)’); *State v. Davis*, 303 Ga. 684, 687-688 (814 SE2d 701) (2018) (noting that this Court has interpreted Ga. Const. of 1983, Art. VI, Sec. VI, Par. II (1) “to extend only to constitutional issues that were distinctly ruled on by the trial court and that do not involve the application of unquestioned and unambiguous constitutional provisions or challenges to laws previously held to be constitutional against the same attack”). Here, Jones has not identified any place in the record where he made—or where the trial court ruled on—any specific constitutional challenge to the sovereign immunity provision of the Georgia Constitution (much less a novel one) and our review reveals none. See *In re D.H.*, 283 Ga. 556, 557-558 (663 SE2d 139) (2008). As no other basis for jurisdiction appears in the record, this appeal is transferred to the Court of Appeals.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the
minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto
affixed the day and year last above written.

Thurman S. Barnes, Clerk



SUPREME COURT OF GEORGIA
Case No. S24A0600

March 27, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

SOLOMON A. JONES v. GEORGIA DEPARTMENT OF LABOR et al.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa N. Barnes, Clerk

Appendix D - Exhibit 1(1 of 1)