RECEIVED
Sep 12 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

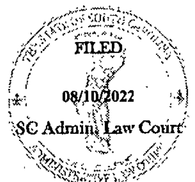
Bruce Houser, #243356 Appellant, vs. South Carolina Department of Corrections, Respondent.	Docket No. 22-ALJ-04-0080-AP **ORDER GRANTING RESPONDENT'S MOTION TO DISMISS**

BACKGROUND

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) pursuant to an appeal filed by Bruce Houser (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (the Department or SCDC). Appellant filed a step 1 grievance on January 17, 2022, alleging that on November 15, 2021, he was transferred to Tyger River Correctional Institution and placed on a ten-day quarantine due to COVID-19 precautions, resulting in a discontinuation of his "state pay."[1] He further alleges he inquired about the status of his state pay in late November 2021 and was informed his pay would continue once he was placed in a job at the new institution. According to Appellant, in early January 2022, he was informed that he was no longer eligible for state pay due to multiple breaks in service of more than fifteen days. On January 31, 2022, the warden denied Appellant's step 1 grievance because Appellant had multiple breaks in service for fifteen days or more, stating that while "SCDC [was] lenient in reinstating [Appellant's] pay" after each break in service, the decision to discontinue his pay was made in accordance with a Department policy requiring inmates to report any problems in their pay to their institution's inmate pay designee in writing within fifteen days of the payroll date error.

Appellant filed a step 2 grievance on January 31, 2022, including the same allegations as the step 1 grievance and requesting that the breaks in his work history be tolled because the

[1] The Department indicates in its motion to dismiss that state pay refers to pay provided to inmates prior to January 20, 1998, for job assignments *outside* of the prison industries program (e.g., ward keeper, custodial worker, etc.).



circumstances surrounding each was out of his control. The warden denied the step 2 grievance on February 25, 2022, reiterating that Appellant had experienced three prior breaks in service of longer than fifteen days that should have led to discontinuation of his state pay effective November 15, 1999. According to the Department's response to the step two grievance, the Department contends it informed Appellant that if he had documentation to explain his breaks in service, it could be submitted to his inmate pay representative; however, in the absence of proof, reinstatement of pay was not warranted.

Appellant filed a notice to appeal to this Court on March 15, 2022. In the notice of appeal, Appellant contends he has had no disciplinary infractions during his period of incarceration to warrant discontinuation of his state pay, and because any delay of more than fifteen days in job assignments was through no fault of his own, he is entitled to reinstatement of his state pay, including back pay. He alleges he has a protected liberty interest to be treated fairly when it comes to state pay and that the Department stopped his pay based upon "unlawful procedure," specifically ending state pay for breaks in service. The case was assigned to the undersigned on March 17, 2022. Appellant filed his brief on April 13, 2022, reasserting the allegations from his notice of appeal and arguing because he has no history of disciplinary infractions, his state pay was improperly terminated. On May 20, 2022, the record on appeal was filed.

On July 1, 2022, the Department filed a motion to dismiss and conditionally filed its brief in the event that the motion to dismiss was unsuccessful. The Department argues in its motion that Appellant has no state-created liberty or property interest in state pay and, accordingly, that the appeal should be dismissed pursuant to appeal pursuant to *Slezak v. South Carolina Department of Corrections*, 361 S.C. 327, 605 S.E.2d 506 (2004), and *Skipper v. South Carolina Department of Corrections*, 370 S.C. 267, 633 S.E.2d 910 (Ct. App. 2006). The Department filed a motion to supplement the record with Appellant's history of earned work credits and movement history.[2] As of the date of this order, the Court has not received a response to the Department's motion to dismiss.

DISCUSSION

[2] Because the Court grants the Department's motion to dismiss, the motion to supplement the record is moot.

The Court generally has jurisdiction to hear properly filed and served inmate appeals. *See* S.C. Code Ann. § 1-23-600(D) (Supp. 2021); *see also Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 757 (2000) (stating the ALC's jurisdiction in inmate appeals is generally limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing because of a serious rule violation). In *Slezak*, our supreme court further confirmed the ALC has "subject matter jurisdiction to hear appeals from the final decision of the [Department] in a non-collateral or administrative matter." 361 S.C. at 331, 605 S.E.2d at 507. Our supreme court explained that while the ALC has jurisdiction over properly filed inmate grievance appeals, summary dismissal is appropriate when "the inmate's grievance does not implicate a state-created liberty or property interest." *Id.*; *see also id.* (explaining the Due Process Clause is only offended when an inmate is subjected to "atypical and significant hardships in relation to ordinary incidents of prison life" (citing *Sandin v. Conner*, 515 U.S. 472, 484 (1995))); *Skipper*, 370 S.C. at 272-74, 633 S.E.2d at 913-14.

In deciding the motion to dismiss, the Court must therefore determine whether Appellant has a state-created liberty or property interest in the continuation of "state pay." Inmates ordinarily have such an interest in pay earned through the statutorily authorized Prison Industry Enhancement (PIE) because the relevant statute mandates that inmates be paid for such work. *See Wicker v. S.C. Dep't of Corr.*, 360 S.C. 424-25, 602 S.E.2d 57-58 (2004) (holding the statutory mandate that requires inmates in the prison industry program to receive a prevailing wage creates a liberty interest in receipt of a prevailing wage that cannot be denied an inmate without affording him due process).

However, Appellant was not employed through the PIE program. He was instead a holdover of the prior state pay system. There is no statute which requires that inmates in the state pay system be paid, and as a result, there is no state-created liberty or property interest in wages paid under the state pay system. The Court further notes Appellant may seek and receive paid employment through the PIE Program; his ability to earn inmate pay has not been abridged.

If Appellant's claim is viewed as a loss of the opportunity to participate in the state pay program rather than merely a loss of earnings under the program, the result remains the same. Appellant has no right to participate in prison employment. *See Skipper*, 370 S.C. at 275, 633

S.E.2d at 915 (stating participation in prison employment "is not a right, but a privilege"); *see also id.* (explaining classifications and work assignments are discretionary matters for prison administration and are not within the reach of the procedural protections of the Due Process Clause).

Finally, Appellant's grounds for appeal do not indicate he was subjected to atypical and significant hardships in relation to ordinary incidents of prison life.[3]

Because the appeal does not involve a state-created liberty or property interest belonging to the Appellant, dismissal of this case is appropriate. *See Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 605 S.E.2d 506; *Skipper v. S.C. Dep't of Corr.*, 370 S.C. 267, 633 S.E.2d 910.[4]

---

[3] To the extent that Appellant alleges the Department violated his due process rights by failing to provide him with proper procedure, a review of the record shows no indication that Appellant was treated unfairly or that the Department failed to follow its grievance policy or inmate pay policy in discontinuing his state pay. *See Porter v. Pub. Serv. Comm'n*, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998) (noting the party challenging an agency decision "bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record").

[4] Were the Court to reach the merits of this matter, the Court would decide the matter adversely to Appellant. The Department's brief includes an excerpt of the Department's Inmate Pay Policy, ADM-15.13, which states in pertinent part:

> 8.1 Voluntary Transfers and Job Terminations: If an inmate requests a job transfer within his/her institution, the transfer must be approved by both the losing and gaining supervisors and by the institutional Classification Committee. The inmate will be paid for days worked and will continue to be eligible for inmate pay if the reassignment is completed within 15 days.
>
> . . . .
>
> 8.5.4 For security or administrative reasons unrelated to job assignment, the inmate will be paid for days worked, and will continue to be eligible for inmate pay if he/she is reassigned within 15 days.

While the Department's errors allowed Appellant to continue receiving state pay for more than twenty-two years after it should have been discontinued, the Department followed policy when it terminated Appellant's state pay when he was out of a job assignment for thirty-two days, from November 15, 2021, to December 17, 2021. While this Court sympathizes with the impact of COVID-19 protocols on the inmate population, Appellant had three previous breaks in service that, pursuant to Department policy, should have resulted in discontinuance of his state pay long before the pandemic began. According to Appellant's work history record, in addition to the break in service in 2021, he also experienced the following breaks in service: a twenty-two-day break

IT IS THEREFORE ORDERED because the record already contains the information the Department's motion to supplement the record seeks to add, that motion is **DENIED**.

IT IS FURTHER ORDERED that the Department's motion to dismiss is **GRANTED** and this appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

Robert L. Reibold
Administrative Law Judge

August 10, 2022
Columbia, South Carolina

---

from November 15, 1999, to December 7, 1999, when he was placed in protective custody; a nineteen-day break from October 31, 2001, to November 19, 2001, when he was transferred to a new institution; and a nineteen-day break from June 27, 2003, to July 16, 2003, when he was transferred to a new institution. This Court also notes Appellant has not denied the occurrence of these breaks in service; he has only stated generally that these breaks should be tolled because they occurred through no fault of his own. However, the record is devoid of any evidence to support this general assertion. *See Porter*, 333 S.C. at 20, 507 S.E.2d at 332 (noting the party challenging an agency decision "bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record"); *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.").

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

James Smith Harrison, III
Judicial Law Clerk

August 10, 2022
Columbia, South Carolina

RECEIVED
SEP 12 2022
S.C. SUPREME COURT