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OCT 21 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From The Administrative Law Court
The Honorable Robert L. Reibolt Administrative Law Judge

Docket No. 22-ALJ-04-0080-AP

Grievance No. TYRCI 13-221

Bruce Houser, # 243356.....Apellant,

v.,

South Carolina Department of Corrections.....Respondent

INITIAL BRIEF OF APPELLANT



Bruce Houser, #243356
TYGER RIVER C.I.
200 Prison Rd
Enoree, SC 29335

STATEMENT OF ISSUES ON APPEAL

I

Did the judge error in using appellant past record of service to justify multiple breaks in service of more than fifteen day to become ineligible for continue state pay.

II

The ten day quarantine due to covid 19 should be tolled and his fifteen day deadline for reassignment start at the end of ten day.

III

Did the Respondent respond properly to petition for rehearing.

STATEMENT OF THE CASE

The Appellant is an inmate in the South Carolina Department of correction serving a life sentence. On 11/15/21 he was transferred to Tyger River Corr. Inst. and place on a ten-day quarantine due to covid 19. Appellant had 15 days to complete a reassignment on a job unless his state pay would end and he would lose back pay as well. Appellant lost his pay and back pay because of past breaks in his service. Appellant current situation for filing his grievance is that he was quarantine for 10-day due to covid 19 and time for reassignment should be tolled for 10-days.

STATEMENT OF FACTS

Appellant came to Tyger River Corr. Inst. November 15, 2021 housed in unit 3 and was put on a 10-day quarantine. On December 06 and 8, 2021, the job board was closed. Appellant wrote Inmate Financial on November 18, 2021, regarding my pay, and they replied stating contact your case worker. On November 19, 2021, I wrote classification regarding my state pay. Classification reply and said, when they call me for my initial review and job board, once place on a job my state pay will start back. Appellant wrote classification on January 3, 2022 regarding not receiving state pay, and they reply ad said write inmate financial. On January 03, 22, Classification according to Headquater you not eligible for state pay due to multiple breaks in service. On 1/10/22 the response said; I don't know about the too many breaks. you came to us Tyger RIVER on 11/15/2021 and we put you on a job 12/17/2021. You need to write Ms Brown and see if she can explain to you about to many breaks. And on 2/01/2022 Appellant wrote ms Santor and her response is: don't write again regarding this, I have spoke with Ms Brown about this and it's out of our hands. Columbia determines if they are going to give it to you or not, not as here at Tyger River.

1/10/22 12/2022 Appellant wrote

ARGUMENT

I

Whether the judge error in using appellant past record of service to justify multiple breaks in service of more than fifteen days to become ineligible for continue state pay.

In an appeal from an ALC decision, the Administrative Procedure Act provides the appropriate standard of review. *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014) Section 1-23-610 of the South Carolina Code ([Supp. 2020]) sets forth the standard of review when the court of appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency. *S.C. Dep't of Corr. v Mitchell*, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct. App. 2008).

The review of the [ALC] order must be confined to the record. S.C. Code Ann. §1-23-610(B). (Supp. 2020) This court may not substitute its judgment for the judgment of the [ALC] as to the weight of the evidence on question of fact. *Id* In determining whether the ALC's decision supported by substantial evidence, this court need only find ... evidence from which reasonable minds could reach the same conclusion as the ALC. *Kiawah*, 411 S.C. at 28, 766 S.E.2d at 715.

However, when the issue on review raises a question of law, this court may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error

of law. Chapman v. S.C. Dep't of Soc. Servs., 420 S.C. 184 188, 801 S.E.2d 401, 403 (Ct. App. 2017) (quoting S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010)).

SCDC Policy ADM 15.13.8.1 provides:

8.1 Voluntary Transfers and Job Terminations: 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.

Appellant were transferred to Tyger River on 11/15/21 and placed in a 10 day quarantine. On 12/06/21 and 12/08/21 the job board was cancelled. Classification responded to appellant's inmate request of 1/21/22 and said in part; You came to us (Tyger River) on 11/15/2021 and we put you on a job 12/17/2021.

PETITION FOR REHEARING

Appellant filed a timely Petition for rehearing based on the Department's inmate pay policy Adm, 15.13 and the facts evidence of the Department pass error should not be used to decide this current situation, from which motion to dismiss is based.

Respondent responded and stated I have marked the document as filed, however, while it has been docketed in the Court's records, it will not be acted upon. See SCALC Rule 65. ("The decision of the Administrative Law Judge is a final decision and motion for reconsideration will not be considered.")

SCALC Rule 40, (Prior to filing a notice of appeal from the decision of the ALC, a party must filed motion for reconsideration ...) an unpublish Opinion, Johnson v. SCDC, 2022 WL 470408; Sierra Club v. South Carolina dep't of Health & Environmental Control, 387 S.C. 424, 693 S.E.2d 13 (Court of Appeals of South Carolina 2010) provides; "We believe the Sierra Club overcame the "ruled upon" requirement for preservation. Here, the Sierra Club submitted a post-trial motion requesting the ALC rule on these issues which the ALC generally denied without addressing spectific issues. pursuant to rule 40 of the South Carolina Administrative Law Court (2009), issues raised on appeal but not addressed in the (final) order are deem denied. Therefore, under the current version of the Administrative Law Rules, because are deem denied they satisfy the ruled upon preservation requirement. In its holdings, the court noted lawyers cannot force trial courts to address an issue, and a proper Rules 59 request is sufficent without a specific judicial decision on the issue. id at 566, 633 S.E.2d at 511. Therefore, because the Sierra Club properly filed a rule 59(e) motion with the ALC, we believe these issues are preserved even though the ALC did not specifically rule on them; and See Books-A-Million, Inc. v. South Carolina Department of Revenue, 430 S.C. 388, 844 S.E.2d 399 (Court of Appeal of South Carolina 2020) where the

court said; "A hearing was held before the ALC on May 9, 2017. The ALC issued its order on June 1, 2017, however, on June 6, 2017, the ALC issued an order vacating its June 1, order and amending its order granting SCDOR's motion for summary judgment. BAM filed a motion for reconsideration, which was denied. The appeal follows:

Appellant has preserved this matter for appeal.

EXTRAORDINARY OCCURRENCE

Beyond what is used, customary, regular or common relating to, or involving an occurrence. An incident or accident that would not have been foreseeable .

Appellant asked for a ten days of equitable tolling and the Respondents failed to answer and even without that tolling appellant would have satisfy Adm 15.13.8.1. See Record on appeal dated 1/21/22.

THE RESPONDENT LACKS AUTHORITY

Section 13.6 of Adm 15.13 provides Appeal to the Responsible Official, all reviews and/or appeal of any inmate grievance will be allowed automatically without interference from any department personnel.


In reading the response from 1/21/22 REQUEST DETAILS: I wrote the business office regarding my state pay, she according to HQ I am not eligible due to multiple breaks in service.

I would have been able to appeal to the responsible employee had the name be given instead of HQ. See Jones v Brock, 549 U.S. 199; stating the inmate may further appeal to step III using the same appeal form, ... director is designated as respondent for all step III.

CONCLUSION

Appellant prays that this court would reverse ALC ruling and restore appellant's back pay and reinstate his state pay.

Dated
October 18 2022



Bruce Houser, # 243356
Tyger River Corr. Inst.
200 Prison Rd
Enoree, SC 29335

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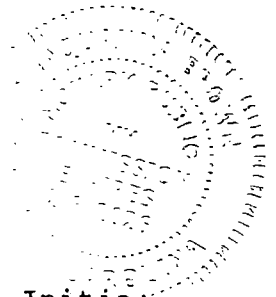
Docket No. 22-ALJ-04-0080-AP
Grievance No. TYRCI 13-221

Bruce House, # 243356.....APPELLANT,

v.

South Carolina Department of Corrections.....Respondent

PROOF OF SERVICE



I Bruce Houser, #243356, certify that I have served the Initial Brief On Respondent by depositing same in the United States mail.

postage prepaid, addressed To: South Carolina Department of Correction
Office of the General Counsel
4444 Broad River Road
Columbia, S.C. 29221

October 18th 2022

Sworn To And Subscribed Before Me
This 18th DAY OF October 2022

[Signature]
Notary Public of South Carolina

My Commission Expires 2/3/2026

[Signature]
Bruce Houser, # 243356

[Signature]
Bruce Houser, #243356

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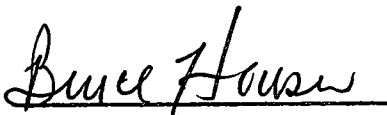
South Carolina Dep't of Corrections
Office of the General Counsel
4444 Broad River Road
Columbia, SC 29221

RE: Bruce Houser, # 243356 v. SCDC
22-ALC-04-0080-AP

Dear Mr. Shakibanasab:

Enclosed please find initial brief of appellant that is served upon you.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Houser". The signature is written in black ink and is positioned above a horizontal line.

Bruce Houser, # 243356

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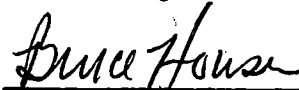
S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RE Bruce Houser, # 243356 v SCDC
22-ALJ_04-0080-AP

Dear Clerk:

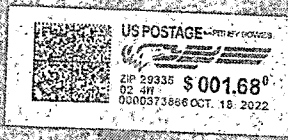
Enclosed please find initial brief that is served upon you
for filing Please return stamp filed copy to me.

Sincerely,



Bruce Houser
Bruce Houser, # 243356

Bruce Houser # 243356
42-B126
Tyger River Inn
200 Prison Road
Enoree, SC 29335



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