

The State of South Carolina
In The Court of Appeals

Appeal From Administrative Law Court
Deborah Brooks Duerden ALJ

Case NO. 12-ALJ-04-0606-AP

Billy Lee Lisenby JR; #200273 Appellant

v.

South Carolina Department of Corrections Respondent

Initial Brief For Appellant

Dated: June 17th 2013

Attorney For Respondent
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Billy Lee Lisenby
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SC Court of Appeals

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Table of Authorities

NO Statutes

NO Cases

Statement of Issues on Appeal

1. Did the Administrative Law Judge err in dismissing Appellant's appeal for not filing in 30 days?

1.

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Statement of The Case

Appellant was found guilty on 3-6-12 by MRS A. Sellers in his absence of the charge of 809 Threatening to Inflict. He appealed through Step 1 & Step 2 of the grievance process, and on May 27th 2012 he filed a timely notice of appeal. On April 12th 2013 Judge Deborah Brooks Darden denied his appeal.

Argument 1

The Administrative Law Judge did in fact err in dismissing Appellant's appeal for not filing in 30 days. Appellant contends that the ALJ has erred, because he contends, that he sent his appeal on May 27, 2012, along with the following appeals:

1. 903 Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs

Docket No. 12-ALJ-04-0547-AP

Grievance No. KRCI 0235-12

Appellate Case No. 2013-000852

2. 898 Possession of Any Cell Phone or Other Type of Communication Device

Docket No. 12-ALJ-04-0546-AP

Grievance No. KRCI 0233-12

Appellate Case No. 2013-000864

All these appeals were filed the same day. All (3) filing fee's were paid the same day. Appellant thinks the court made a mistake by putting 6-27-13 on the \$75.00 receipt. It was suppose to be 5-27-13. See Receipt in the record.

Appellant had to pay \$25.00's for each filing and he filed (3) cases in the same day, which equal to \$75.00's. On all (3) charges he received the agency's decision on May 22, 2012, and had all (3) in the U.S. Postal by May 27th, 2012.

On October 17, 2012 Staff Attorney Shanika Johnson filed a Respondent's Brief and no where did she argue that Appellant's appeal was late, or not timely filed. Nor was it a defense in the other (2) cases 12-ALJ-04-0546-AP and 12-ALJ-04-0547-AP. All (3) Respondent's briefs are enclosed in the record. How could one case be late and not the other and Appellant received all the agency responses on the same day May 22nd, 2012, and filed all (3) on the same day May 27th, 2012.

Appellant further argues that it shows they received his payment on 6-27-12, but his case wasn't filed until 19 days later. But if Appellant's Notice of Appeal is viewed carefully it has been altered. It's enclosed in the record. There is no way he paid for his appeal before he filed it. Please view the clerk's stamp dated July 16th, 2012, it's been altered.

Appellant contends that he sent all (3) appeals in the same day, in a timely matter. The courts nor respondents can dispute that. The respondents didn't attempt to argue this. Based on the facts given and the ALC's error Appellant should be granted relief.

Conclusion

Appellant ask that his case be remanded back to the ACJ to be heard based on its merits.

Dated: June 17th 2013

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v.

South Carolina Department of Corrections Respondent

Certificate of Service

I hereby certify that I have served Respondent's a copy of Appellant's Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, June 17th, 2013, addressed to the Respondent's as follows:

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