

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Robert Lee, #348833,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Department of Corrections,)
)
 Respondent.)

Docket No. 22-ALJ-04-0356-AP
 TYRCI 0219-22

ORDER

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 SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to a Notice of Appeal, filed December 21, 2022, by Robert Lee (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant is appealing the Department’s final decision that he was paid the proper hourly rate for work performed in the Prison Industry Private Sector Prison Industry Program (PIPS or program) out of Perry and Tyger River Correctional Institutions from September 8, 2020, through the present date.¹

The case was assigned to the Honorable Judge Shirley Robinson on January 17, 2023.

Appellant filed his brief on February 9, 2023, additional documentation was attached with his filing.² The Department filed a Motion to Strike on the basis that the additional documents were not a part of the record. Appellant filed a response on March 3, 2023, after which the Court granted the Department’s motion. Thereafter, on March 28, 2023, the Department filed the Record on Appeal. On April 10, 2023, Appellant filed a Motion to Supplement the Record with Payroll Authorization and wage-earning information for the period ranging from 2020-2022. Upon motion by the Department, the case was held in abeyance on May 8, 2023. On July 6, 2023, upon the retirement of Judge Robinson, the case was reassigned to the undersigned.

The matter was subsequently restored to the active docket on September 25, 2023, and the Department was ordered by the Court to file its brief. On October 25, 2023, the Department filed

¹ The Record reflects that Appellant worked continuously in the PIPS from September 8, 2020, through January 12, 2023. The Department’s final agency determination was issued on December 2, 2022. Thus, for purpose of this appeal, the Court limits its consideration to wages received for work through December 2, 2022.

² The documents included purported billing rates for February 22, 2021, a single page printout from “Payscale.com,” and a multi-page document purporting to be a contract between SCDC and Shaw Industries.

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its brief. Appellant filed a timely reply brief to which the Department filed a sur-reply on November 28, 2023.

JURISDICTION

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). Thereafter, in *Wicker v. South Carolina Department of Corrections*, our Supreme Court held the state's statutory mandate that inmates be paid the prevailing wage is a state-created liberty interest which may not be denied without due process. 360 S.C. 421, 423–24, 602 S.E.2d 56, 57 (2004) (“We find that where, as here, the state has created a statutory right to the payment of a prevailing wage, it cannot thereafter deny that right without affording due process of law.”).

DISCUSSION

Appellant asserts that the Department's current payment scheme is contrary to state and federal law as all participants in the PIPS are paid an hourly rate of \$7.25 per hour while billing Shaw Industries \$10.03 per hour, an amount which Appellant maintains is less than that required by subsection 24-3-430(D) of the South Carolina Code (2007). As such, Appellant requests to be paid prevailing wage for his in the PIPS as a Quality Control from September 8, 2020, through the present, which he alleges to be the rate set forth by the Department of Employment and Workforce (DEW) and occupational code for locationality. Regrettably, the Court concludes that the Appellant is foreclosed from the relief sought.

As stated by the Department in its reply brief, Appellant's claim for back pay of wages for his participation in PIPS is foreclosed due to Appellant's failure to report the alleged problems within fifteen (15) days of the payroll date error as required by section 12.1 of SCDC Policy ADM-15.13.³ The applicability of the policy to issues regarding payment of wages for work performed in the PIPS is supported by the express language of the policy which states its applicability to inmates who gain employment in the PIPS.

Moreover, the policy further provides that if an inmate fails to comply with the fifteen-day reporting “no back pay will be given.” See SCDC Policy, ADM-15.13, *Inmate Pay*, Approved

³ At the time of Appellant's employment in the PIPS, the June 3, 2014 version of the policy was in effect. See SCDC Policy, ADM-15.13, *Inmate Pay*, Approved June 3, 2014, <https://www.doc.sc.gov/sites/doc/files/Documents/policy/ADM-15-13.pdf> (providing that “[i]nmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error.”). The Court takes judicial notice of SCDC ADM-15.13. See S.C. Code Ann. § 1-23-330(4) (2005 & Supp 2023).

June 3, 2014, <https://www.doc.sc.gov/sites/doc/files/Documents/policy/ADM-15.13.pdf>. In this case, the record is devoid of any indication that Appellant adhered to the criteria of section 12.1 of SCDC Policy ADM-15.13. Thus, as stated by the policy, no back pay will be given.

Nonetheless, Appellant contends that his claim is not barred by section 12.1 of SCDC Policy ADM-15.13 since, as noted by the *Torrence* Court, his grievance falls within an exception set forth under section 13.9 of SCDC policy GA-01.12. However, Appellant confuses the holding in *Torrence*. While the Court of Appeals opinion in *Torrence* is suggestive that grievances concerning SCDC policy and procedures are exempt from filing deadlines established under section 13.9 of SCDC policy GA-01.12, the *Torrence* Court did not pass judgment upon the applicability of SCDC Policy ADM-15.13 on requests for back pay of prevailing wage.

Further, the Court's finding in *Torrence* does not stand for the proposition that the Department must remit retroactive backpay to any inmate who makes a PIPS wage claim. *Torrence* at 633-50, 861 S.E.2d at 36-46; see also *Ackerman v. S.C. Dep't of Corr.*, 415 S.C. 412, 416, 782 S.E.2d 759 (Ct. App. 2016) (addressing no timeliness issues where inmates filed their respective Step 1 Inmate Grievance Forms with the Department on various dates in late September 2004 to request the prevailing wage for their labor from 1999 through June 30, 2001).

Appellant suggests that the Department's application of the fifteen-day limitation is contradicted by section 13.2 of SCDC Policy GA-01.12, approved Sept. 1, 2023,⁴ which permits filings of grievances of continuous matters (prison industries pay) within two (2) years of when the issue arose. Setting aside the fact that Appellant did not raise this issue until his reply brief,⁵ Appellant overlooks that section 13.2 also sets forth that all inmates must make an effort to informally resolve a grievance. In this case, section 12.1 of SCDC Policy ADM-15.13 establishes

⁴ Section 13.2 of SCDC Policy GA-01-12 provides in pertinent part that:

Unless a separate SCDC policy requires filing a grievance within a shorter period of time, any and all grievances that involve a continuous matter (prison industries pay) must be filed within two (2) years of when the issue arose, or the grievant should have known about it. If the issue is older than two (2) years but has continued to be an issue that is grievable, only the two (2) year portion immediately prior to filing of the grievance will be considered. This section does not apply to grievances pertaining to PREA (Prison Rape Elimination Act) or criminal matters.

SCDC Policy, GA-01-12, *Inmate Grievance System* (Eff. Sep. 1, 2023), <https://www.doc.sc.gov/sites/doc/files/Documents/policy/GA-01-12.pdf?v=1>. The Court takes judicial notice of SCDC Policy GA-01-12. See S.C. Code Ann. § 1-23-330(4) (2005 & Supp 2023).

⁵ Rule 60(b)(1) of the South Carolina Administrative Law Court Rules advises that “[o]rordinarily, no point will be considered that is not set forth in the statement of issues on appeal.”

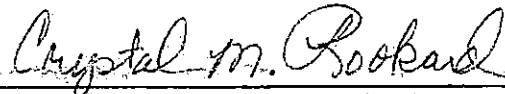
the proper procedure for reporting problems in pay and, pursuant to section 12.1 of SCDC Policy 15.13, problems must be reported within fifteen days of the payroll problem; something which did not occur in this case. SCDC Policy, GA-01-12, *Inmate Grievance System* (Eff. Sep. 1, 2023), <https://www.doc.sc.gov/sites/doc/files/Documents/policy/GA-01-12.pdf?v=1>.

In conclusion, SCDC Policy ADM-15.13 sets forth the proper procedure for the handling of payment of wages. In situations where an inmate believes there to be an error in payment of wages, section 12.1 of SCDC Policy ADM-15.13 requires that the problem be reported utilizing the Automated Request to Staff Member within 15 days of the payroll date error. Were the Court to accept Appellant's argument, it would render meaningless a policy which has been in effect since as early as 1998. With respect to the grievance filed pursuant to GA-01:12, the burden of proof is on Appellant to show that the Department failed to adhere to policy and procedure set forth under Policy ADM-15.13. In the absence of evidence of a problem having been reported in accordance with the criterion set forth under section 12.1 of SCDC Policy ADM-15.13, Appellant cannot establish a wrong by the Department. Therefore, the Department's decision denying Appellant's grievance must be affirmed. With Appellant having not reported a problem with pay as required by SCDC Policy ADM-15.13, there is no need for the Court to consider additional documentation of wage-earning information, as requested by Appellant.

ORDER

IT IS THEREFORE ORDERED that Appellant's Motion to Supplement the Record is **DENIED**.

IT IS FURTHER ORDERED that the Department's Decision is **AFFIRMED**.
AND IT IS SO ORDERED.

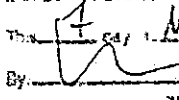


The Honorable Crystal M. Rookard
South Carolina Administrative Law Judge

March 7, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Emergency Mail Service according to the applicable rules of the Court.

On 7 day of March 2024
By:  _____
JUDGE LEE