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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Arthur Simmons,)
)
 Appellant,)
)
 vs.)
)
 South Carolina Criminal Justice Academy,)
)
 Respondent.)
)
)

Docket No. 23-ALJ-30-0337-AP

FINAL ORDER

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on August 18, 2023 by Arthur Simmons (Appellant). The Appellant is appealing the South Carolina Criminal Justice Academy’s (SCCJA or Respondent) decision to permanently deny him a law enforcement certification in South Carolina. After consideration of the record and the briefs of the parties, the court affirms the decision of the Respondent.

BACKGROUND

On November 17, 2020, the Respondent received a Personnel Change in Status (PCS) Report Notification of Separation Due to Misconduct from the Colleton County Sheriff’s Office (Department) following the Appellant’s termination as an officer with the County. In its submission to the Respondent, the Department indicated that the Appellant’s separation action was a termination involving misconduct in violation of subsections 23-23-150(A)(3)(i) and (k) of the South Carolina Code for “willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency...and willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form...” Specifically, that the Appellant provided information to his physician and a Workman’s Compensation manager stating that he had been forced to violate his physician’s orders during a course on the firing range. This information was relayed to the County Risk Management and the Department’s Office Administration. A subsequent internal investigation revealed that the Appellant intentionally disregarded instructions from the firearms instructors on the range and that he falsely reported that he had been forced to violate his physician’s orders.

The State of South Carolina
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Administrative Law Court

A contested case hearing was held on July 26, 2022. The Hearing Officer accepted into evidence the following: Notice of Misconduct Allegation, Personnel Change in Status Report (Notification of Separation Due to Misconduct), Request for Contested Case Hearing, Notice of Contested Case Hearing, Notice of Continuance, Notice of Rescheduled Contested Case Hearing, Notification of Misconduct, Firearms Qualifications, numerous emails, the Appellant's prior disciplinary form, pictures, the Internal Investigation Report, recorded interviews of the Appellant, Internal Affairs Findings & Notifications, and a statement from Ricky Valentine. The Hearing Officer also accepted testimony from the following personnel: George Welch, Jason Chapman, Ricky Valentine, William Tindal, Julie Swank, Keith Crosby, and Charles Ghant.

On November 4, 2022, the Hearing Officer issued his recommendation to the Law Enforcement Training Council (LETC). The Hearing Officer found that the Department established by a preponderance of the evidence that the Appellant willfully made false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency as was charged in the PCS Report provided by the Department to the SCCJA and that the allegation of misconduct against the Appellant should be deemed substantiated by the evidence adduced at the hearing. Therefore, the Hearing Officer recommended that the LETC issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107D finding that the allegation of misconduct filed against the Appellant by the Department has been proven by a preponderance of the evidence and to impose such sanction as the LETC in its discretion deems appropriate pursuant to its authority set forth in S.C. Code Ann. Regs. 37-108A.

On April 24, 2023, the LETC met, and the parties were given the opportunity to present oral arguments. Prior to this meeting, the LETC reviewed the transcripts, exhibits, motions, and the Hearing Officer's Recommendation. The LETC then voted that the Appellant did engage in misconduct and voted that the Appellant is permanently denied a law enforcement certification in South Carolina. The LETC issued a written decision on July 20, 2022. The Appellant timely appealed this decision to this court.

STANDARD OF REVIEW

The SCCJA is governed by the Law Enforcement Training Council (LETC). S.C. Code Ann. § 23-23-20. The ALC has jurisdiction to hear the appeal of a final decision of the SCCJA pursuant to the Administrative Procedures Act. S.C. Code Ann. § 1-23-600(D). Under the appellate standard of the Administrative Procedures Act, the court's review in appellate cases is

limited to the record, absent irregularities in the procedure of the agency. S.C. Code Ann. § 1-23-380(4). Additionally,

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5).

A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

DISCUSSION

On November 2, 2020, the Appellant returned to work for the Department on a restricted light duty status due to his recent knee surgery. The Appellant's vehicle and weapons qualifications had lapsed during his absence. The Appellant requested the use of a Department vehicle and was informed that in accordance with Department policy because his vehicle and weapons qualifications had lapsed he would be required to complete those courses. The Appellant

passed both the vehicle and weapons qualifications. Afterward, the Appellant contacted his physician's office and left a message that he was forced by his employer to perform duties that were restricted by his medical provider. If true, such activity would have been contrary to the Appellant's physician's instructions. The Appellant's message was routed to Mr. George Welch, Director of Risk Management for Colleton County. In this role, Mr. Welch handles workers compensation claims for county employees and was therefore asked to follow-up about the Appellant's message. When Mr. Welch spoke with the Appellant, the Appellant stated that he had been required to complete the full weapons qualification course without accommodation. Mr. Welch then asked the Appellant if he had informed any of the range officers of his restrictions and the Appellant confirmed that he had. After his conversation with the Appellant, Mr. Welch contacted the Department and provided the Department with a copy of the Appellant's doctor's note to remind the Department of the Appellant's limitations.

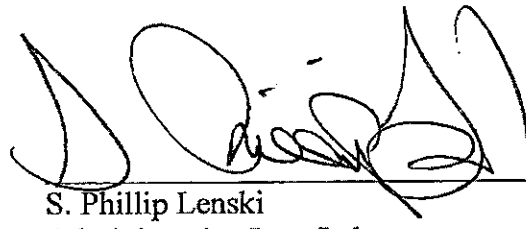
The Department initiated an internal investigation to determine whether the Appellant had been made to perform activity that conflicted with his medical restrictions. Lt. Keith Crosby conducted the investigation and interviewed Deputy Swank (a newly hired officer who was also qualifying at the range), Captain Chapman, Lt. Valentine, Sergeant Tindal (the firearms instructor), George Welch and the Appellant. Sgt. Tindal stated that he was aware of the Appellant's knee surgery, and that he told the Appellant to fire only from the standing position. Further, the Appellant was told that he was not required to qualify on the AR-15, however, he chose to do so anyway, as well as choosing to fire from the kneeling and prone positions despite being told that he did not have to so. Deputy Swank corroborated Sgt. Tindal's statement. Deputy Swank stated that Sgt. Tindal reiterated multiple times that shooters did not have to kneel or get in the prone position if they had an injury that prevented them from doing so. Sgt. Tindal even told all officers qualifying that day, including the Appellant, that they could fire all rounds from the standing position. However, Deputy Swank stated that she and the Appellant chose to fire from the kneeling and prone positions.

The Appellant asserts that he felt implicit pressure to complete the qualification course without any modifications to the shooting positions to accommodate his injury. The Appellant argues that Lt. Valentine's mere presence at the range made him feel pressured to complete the course without accommodation for his injuries. He maintains that the pressure he felt was not through direct instruction, but rather was indirect or implicit due to Department leadership being

present on the course. However, the message that the Appellant left for his physician was that he was forced to complete the weapons qualification course in a manner that conflicted with his medical restrictions. The Appellant failed to mention to his doctor and to Mr. Welch that Sgt. Tindal explicitly told him that he was not required to fire his weapons from the kneeling or prone positions. The evidence supports the decision of the LETC, and does not support a finding that the Appellant was forced, either through explicit or implicit pressure, to perform the shooting course in a manner contrary to his physician's orders. Therefore, based on the foregoing,

IT IS HEREBY ORDERED that the decision of the Law Enforcement Training Council is **AFFIRMED**.

AND IT IS SO ORDERED.

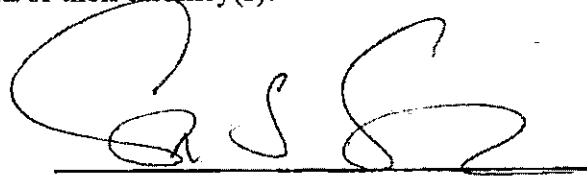


S. Phillip Lenski
Administrative Law Judge

March 15, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Erika S. Easler, 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, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler
Judicial Law Clerk

March 15, 2024
Columbia, South Carolina

