

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SCDC

APR 30 2024

MAIL ROOM

Robert Henry Osbey, #299910,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)

Docket No. 23-ALJ-04-0528-AP

ORDER OF DISMISSAL

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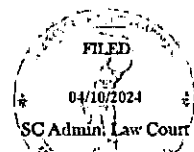
SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Robert Henry Osbey (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the Department's final decision finding Appellant was correctly paid the statutory prevailing wage while working in the Prison Industry Enhancement Certification Program (PIECP) out of Evans Correctional Institution.

On May 26, 2023, Appellant filed a Step 1 Grievance asserting the Department was paying him less than the prevailing wage required under *Torrence v. South Carolina Department of Corrections*, 433 S.C. 633, 636, 861 S.E.2d 36, 38 (Ct. App. 2021), *reh'g denied* (Aug. 4, 2021), *cert. denied* (Aug. 3, 2022) and statutory law.¹ He specifically requested to be paid the prevailing wage for the time he worked in PIECP until April 11, 2022. Appellant's Step 1 Grievance was elevated to the Step 2 level. On October 25, 2023, the Warden denied Appellant's Step 2 Grievance because it was untimely pursuant to SCDC Policy ADM-15.13 Section 12.1. On November 7, 2023, Appellant filed a Notice of Appeal with this Court, and the case was assigned on December 1, 2023.

On April 1, 2024, the Department filed a Motion to Dismiss (Motion) asserting Appellant had failed to exhaust his administrative remedies. As of the date of this Order, Appellant has not responded to the Motion.

¹ "In 1995, our legislature enacted section 24-3-430 of the South Carolina Code (2007) to authorize the expansion of the Prison Industries program into the private sector. This expansion allowed qualified private entities to use inmate labor but required the wages for participating inmates to be no less than 'the prevailing wage for work of [a] similar nature in the private sector.' Act No. 7, 1995 S.C. Acts 78. Section 24-3-430 became effective on July 1, 1995. *Id.* at 102." *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 309, 785 S.E.2d 600, 603 (Ct. App. 2016).



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) and *Furtick v. South Carolina Department of Probation, Parole and Pardon Services*, 352 S.C. 594, 576 S.E.2d 146 (2003). Furthermore, in *Wicker v. South Carolina Department of Corrections*, the Supreme Court held that this Court has jurisdiction to hear inmate wage claim grievances in the limited circumstance where the state has created a statutory right to that wage. 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 requests to be paid the prevailing wage for his work in the PIECP program until April 11, 2022. There is no dispute that Appellant is entitled to the statutory prevailing wage under section 24-3-430(D) of the South Carolina Code as it was defined in *Torrence* for his work going forward. Rather, the question is whether Appellant can claim reimbursement for any difference between what he was paid and the prevailing wage for the entire time he worked in the PIECP or whether some of his claim is barred under SCDC policies.

Failure to Exhaust Administrative Remedies

SCDC Policy ADM-15.13, Section 12.1, sets forth the Department's general policies governing inmate disputes with pay. The current version of this policy, which has been in effect since June 2014, provides the following:

12. PROBLEMS WITH PAY:

12.1 Inmates 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 inmate should maintain a record of the ARTSM reference number. The inmate pay designee will review the case and determine whether any additional pay is owed. Payroll corrections will be limited to the following:

- If the inmate fails to notify the Agency in writing and within 15 days, no back pay will be given.
- The pay rate will be adjusted to the proper rate amount for future payrolls in accordance with these procedures.

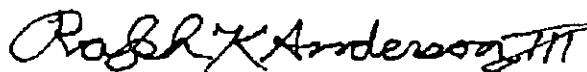
- The inmate may receive additional pay owed for the previous two (2) pay periods only.

SCDC Policy ADM-15.13, Section 12.1 (June 3, 2014). This policy has been in place at the Department since January 20, 1998. Under this policy, the first step an inmate “must” take to correct an issue with their pay is to report the problem “to their institution’s inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error.” *Id.* In this case, Appellant failed to utilize the ARTSM prior to submitting a Step 1 Grievance as required by SCDC Policy ADM-15.13, Section 12; therefore, he did not follow the proper procedure for reporting his payroll issue.

Based upon Appellant’s failure to follow the proper procedure for submitting a wage claim under SCDC Policy ADM-15.13, Section 12.1, I find Appellant has failed to exhaust his administrative remedies, and this matter is not ripe for this Court’s review. *See* S.C. Code Ann. § 1-23-380 (Supp. 2023) (“A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1.”); *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010) (“The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act.” (quoting 2 Am. Jur. 2d *Administrative Law* § 595 (1962))).

IT IS THEREFORE ORDERED that the Department’s Motion to Dismiss is **GRANTED** and Appellant’s appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

April 10, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, 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).



Stephanie Perez
Judicial Law Clerk

April 10, 2024
Columbia, South Carolina