

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Crystal M. Rookard, Administrative Law Judge

Appellate Case No. 2024-000603

South Carolina Department of Corrections . . . Respondent,

v.

Robert Lee, Jr., #348833. . . . . Appellant.

INITIAL BRIEF OF APPELLANT

Robert Lee, Jr.  
#348833 F5  
Allendale Corr. Inst.  
1057 Revolutionary Trail  
Fairfax, SC 29827

Appellant, Pro Se

TABLE OF CONTENTS

Table of Authorities . . . . . ii

Statement of Issues on Appeal . . . . . 1

Statement of the Case . . . . . 1

Standard of Review . . . . . 2

Arguments

1. BECAUSE RESPONDENT IS BARRED FROM APPLYING  
SCDC POLICY ADM-15.13, THE ADMINISTRATIVE LAW  
COURT ERRED IN FORECLOSING APPELLANT'S  
PREVAILING WAGE CLAIM. . . . . 4

2. BECAUSE THE ADMINISTRATIVE LAW COURT FAILED TO  
TO APPLY THE PRECEDENT OF ACKERMAN v. S.C. DEP'T  
OF CORR. AND TORRENCE V. S.C. DEP'T OF CORR. TO  
THE POLICY AND PROCEDURE EXCEPTION FOR  
GRIEVANCES IN PREVAILING WAGE CLAIMS AND  
APPELLANT'S DUE PROCESS RIGHTS, APPELLANT WAS  
FORECLOSED FROM RECOVERY . . . . . 7

Conclusion . . . . . 8

TABLE OF AUTHORITIES

CASES

Ackerman v. S.C. Dep't of Corr., 782 S.E.2d 757  
 (Ct. App. 2016) . . . . . 1, 5, 7

Al-Shabazz v. State, 527 S.E.2d 742 (Ct. App. 2000) . . . . . 2

Converse Power Corp. v. S.C. Dep't of Health & Env'tl.  
 Control, 564 S.E.2d 341 (Ct. App. 2002) . . . . . 4

McKissick v. J.F. Cleckley & Co., 479 S.E.2d 67 (Ct. App. 1996) . . . . 3

S.C. Coastal Conservation League v. S.C. Dep't of Health  
 & Env'tl. Control, 669 S.E.2d 899 (Ct. App. 2008)  
 rev'd on other grounds, 702 S.E.2d 246 (S.C. 2010) . . . . . 3

S.C. Dep't of Corr. v. Mitchell, 659 S.E.2d 233 (Ct. App. 2008) . . . . 3

Torrence v. S.C. Dep't of Corr., 646 S.E.2d 866  
 (S.C. 2007) (Torrence I) . . . . . 6

Torrence v. S.C. Dep't of Corr., 861 S.E.2d 36  
 (Ct. App. 2021) reh'g. denied Aug. 4 2021,  
 cert. denied Aug. 3 2022 (Torrence II) . . . . . 1, 2, 5, 7

Wicker v. S.C. Dep't of Corr., 602 S.E.2d 56 (S.C. 2004) . . . . . 2, 7

STATUTES

S.C. Code Ann. §1-23-380 . . . . . 1

S.C. Code Ann. §1-23-380(A)(6) . . . . . 6

S.C. Code Ann. §1-23-610(B) . . . . . 2 - 3

S.C. Code Ann. §24-3-430(D) . . . . . 1

OTHER AUTHORITIES

SCDC Policy ADM.- 15.13 (Inmate Pay) (June 3, 2014) . . . . . passim

SCDC Policy GA-01.12 (Inmate Grievance System) . . . . . passim

STATEMENT OF ISSUES ON APPEAL

I. LEE'S GRIEVANCE

Appellant Robert Lee, Jr. appeals the March 7, 2024 Order issued by the Administrative Law Court ("ALC"), the Honorable Crystal M. Rookard. By this order, pursuant to S.C. Code §1-23-380, the ALC affirmed the final agency decision of the S.C. Department of Corrections (DOC or Department) concerning prison industries wage claims articulated in a grievance filed by Appellant, under Department's Inmate Grievance System, GA-01.12.

I. Did the ALC err in foreclosing Appellant's prevailing wage claim by allowing Respondent to apply the limitation set forth in SCDC Policy ADM-15.13?

II. Did the ALC fail to apply the precedent of Ackerman v. S.C. Dep't of Corr. and Torrence v. S.C. Dep't of Corr. to the policy and procedure exception for grievances in prevailing wage claims which foreclosed Appellant from recovery?

STATEMENT OF THE CASE

Appellant initiated a Step 1 Grievance asserting a due process right to recover the back pay of prevailing wages mandated by S.C. Code 24-3-430(D) for his labor performed in Department's private sector prison industries ("PIE") on October 23, 2022, ROA pp. .Department denied the grievance based on an agency interpretation of §24-3-430 and Department Policy ADM-15.13 on October 28, 2022. Appellant timely filed a Step 2 Grievance on November 11, 2022, ROA pp. Department's responsible official denied the grievance

and affirmed Step 1 on December 2, 2022. Appellant timely filed a Notice of Appeal in the ALC on December 21, 2022.

## II. THE ALC ORDER ON APPEAL

The ALC's March 7, 2024 Order finding Appellant was foreclosed from recovery by ADM-15.13 was a misapplication and error of law and facts where Appellant filed the grievance prior to the Department amending the Grievance Policy GA-01.12 referencing any other policy with a shorter limitation period.

The ALC Order further held that the policy and procedure exception outlined in Torrence v. S.C. Dep't of Corr., 861 S.E.2d 36 (2021) (Torrence II) does not address the policy and procedure outlined in ADM-15.13. The Order held that ADM-15.13 is the governing policy for all inmate pay procedures.

### STANDARD OF REVIEW

The ALC considered this matter pursuant to our Supreme Court's decision in Al-Shabazz, Wicker and Torrence II, ROA pp. ; as well as S.C. Code Ann. §1-23-380(6). Therefore, the sister statute to §1-23-380, specifically §1-23-610(B), established the standard of review applicable to this court's consideration of Appellant's appeal of the Order.

Section 1-23-610(B) provides:

The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if substantial rights of the petitioner have been prejudiced because the findings, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of 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.

Under this standard of review this Court may reverse or modify the decision of the ALC if Appellant is able to prove that [his] substantive rights were prejudiced because the decision was clearly erroneous in light of the reliable and substantial evidence on the whole record, arbitrary or characterized by an abuse of discretion, or affected by other error of law. See S.C. Dep't of Corr. v. Mitchell, 659 S.E.2d 233 (Ct. App. 2008) (applying §1-23-610 as 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). If Appellant demonstrates error [he] must also show prejudice, McKissick v. J.F. Cleckley & Co., 479 S.E.2d 67 (Ct. App. 1996).

Appellant must demonstrate convincingly the ALC's decision is unsupported by substantial evidence. Substantial evidence is relevant evidence "when considering the record as a whole, would allow reasonable minds to reach the same conclusion as the ALC arrived at in justifying the decision," S.C. Coastal Conservation League v. S.C. Dep't of Health & Env'tl. Control, 669 S.E.2d 899 (Ct. App. 2008), rev'd on other grounds, 702 S.E.2d 246 (S.C. 2010).

Appellant also has the burden of proving the ALC's decision is arbitrary or otherwise characterized by an abuse of discretion. A decision is arbitrary where no rational basis for the conclusion exists, or when it is based on one's will and not upon any course or reasoning and exercise of judgment; or if made at pleasure without adequate determining principles or is not governed by any fixed rules or standards, Converse Power Corp. v. S.C. Dep't of Health & Env'tl. Control, 564 S.E.2d 341 (Ct. App. 2002). An abuse of discretion occurs when the judge's ruling is based upon an error of law, such as the application of the wrong legal principle, or, when based upon factual conclusions, the ruling is without evidentiary support.

#### ARGUMENT

- I. THE ALC ORDER FORECLOSING APPELLANT'S PREVAILING WAGE CLAIM ERRED IN ALLOWING RESPONDENT TO APPLY THE LIMITATION SET FORTH IN SCDC POLICY ADM-15.13.

The March 7, 2024 ALC Order concluded that ADM-15.13 sets forth the proper procedure for the handling of payment of wages; that Appellant did not report the problem within 15 days of the payroll date error, and that ADM-15.13 had been in effect since 1998. Appellant suggests these findings are arbitrary and are characterized by an abuse of discretion, constitute an error of law, and the substantive rights of Appellant were prejudiced.

Department Policy GA-01.12 was amended September 1, 2023, one (1) year after Appellant filed the Step 1, ROA p.

. The 2023 amendment added an unenumerated paragraph following §13.2 that states:

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 years of when the issue arose.

Again, this "policy" was amended into practice to negate the reliance on Torrence on the policy and procedure exception set forth in GA-01.12 §13.9. The ALC Order held that Torrence did not contemplate ADM-15.13. Appellant suggests that this Court's analysis of policy and procedure exceptions clearly contemplates all policy and procedure, especially those that are relied upon some 25 years after published and not relied upon during the Torrence or Ackerman litigations.. The ALC relying upon this premise by Department is arbitrary and capricious and characterized by an abuse of discretion.

Department's attempt to foreclose Appellant's prevailing wage claim included Department's Responsible Authority response to Step 2 (ROA p. ) in holding that "[T]he recent decision by the South Carolina Court of Appeals upon which you relied in your grievance, Torrence v.S.C. Dep't of Corr., 2021 WL 2678920 (S.C. Ct. App. June 30, 2021, is not yet final." Yet Department suggests that Appellant is late in filing a grievance. In arbitrary and capricious actuality, Department did not admit Torrence was resolved until certiorari was denied on August 3, 2022 -

giving any claimant until August 2024 in which to file a claim. Appellant suggests that ADM-15.13 was published prior to the initiation of Torrence v. S.C. Dep't of Corr., 646 S.E.2d 866 (S.C. 2007) (Torrence I) and no where in the 20 year history of that litigation did Department attempt to use this second policy and procedure limitation period. If ADM-15.13 was applicable Department would have utilized that defense as well.

Appellant asserts that Department's reliance on ADM-15.13 is misplaced, is made on an unlawful procedure and is arbitrary and capricious. The policy states in pertinent part:

ADM-15.13 §5 (INMATE PAYROLL OFFICES) Each Warden or designee will be responsible for designating one (1) or more Inmate Payroll Offices. The Warden will designate at least one (1) employee to each Inmate Payroll Office who will be responsible for entering inmate pay data into the Inmate Pay System via the CRT or the (SCEIS). All staff members and inmates will be advised (in writing) of the location of the Inmate Payroll Office(s) at his/her assigned institution and the responsible staff person(s). (emphasis supplied).

Appellant asserts that the Record is devoid of any written acknowledgement of Appellant regarding ADM-15.13 §5 or any proof by Department that this policy was adhered to or complied with. Unless Department is able to provide Appellant's signature as acknowledgment or such written notice, then the Department's and ALC's reliance on ADM-15.13 is an unlawful procedure.

The ALC's finding that ADM-15.13 is controlling in this matter is an excess of statutory authority, is made on

unlawful procedure, is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, and is arbitrary and capricious or characterized by an abuse of discretion. For these reasons this matter should be remanded to be determined on the merits.

II. THE ALC FAILED TO APPLY THE PRECEDENT OF ACKERMAN V. S.C. DEP'T OF CORR. AND TORRENCE V. S.C. DEP'T OF CORR., TO THE POLICY AND PROCEDURE EXCEPTION FOR GRIEVANCES IN PREVAILING WAGE CLAIMS WHICH FORECLOSED APPELLANT FROM RECOVERY.

The ALC's Order held that policy and procedure ADM-15.13 was controlling in determining a limitation period for a complaint about PIE payroll issues and that neither Ackerman or Torrence analyzed or contemplated that policy, ROA pp. .Appellant suggests this decision was made upon unlawful procedure and is an error of law.

Torrence I held that inmates have a right to pursue their [prevailing wage] claims through the Department's internal grievance procedure, 646 S.E.2d 866, 869-70. This was guidance from our Supreme Court to allow prisoners to pursue prevailing wage claims established in Wicker via the grievance procedure.

The ALC's order that Torrence II did not contemplate ADM-15.13 is an error of law. This Court in Torrence was clear on the rationale:

"As in Ackerman, Torrence's claims involved 'topic[s] governed by statute' that reflect the Department's 'expression of the legislature's policy on inmate pay.'" Torrence, 861 S.E.2d at 43, citing Ackerman, 782 S.E.2d at 761-62.

Appellant suggests that this Court analyze Appellant's claims as the Department's policy and procedure which involve topics governed by statute, specifically, the legislature's policy on inmate pay, and determine that ADM-15.13 is classified as a "policy and procedure" and such exception is made.

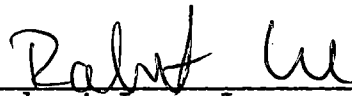
Appellant has demonstrated that the ALC order of March 7, 2024 regarding "policy and procedure" is arbitrary and capricious and is an error of law. Appellant further submits that he has suffered prejudice where his substantive rights, his property rights, mandated by state and federal law and South Carolina precedent, were arbitrarily denied.

#### CONCLUSION

For the reasons stated, this court should remand the Order of the Administrative Law Court to be heard on the merits.

Respectfully submitted,

June 20, 2024

  
\_\_\_\_\_  
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South Carolina Department of Corrections . . . Respondent,

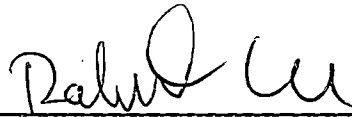
v.

Robert Lee, Jr., #348833. . . . . Appellant.

PROOF OF SERVICE

I certify that I have served the INITIAL BRIEF OF APPELLANT and DESIGNATION OF MATTER by depositing a copy in the U.S. Mail, postage prepaid, on June 21, 2024, addressed to Respondent's attorney of record, Joseph R. Shakibanasab, Office of General Counsel, S.C. Department of Corrections, 4444 Broad River Road / P.O. Box 21787, Columbia, S.C. 29221-1787.

June 20, 2024

  
\_\_\_\_\_  
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#348833 F5  
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Appellant, Pro Se

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June 20, 2024

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SC Court of Appeals

Honorable Catherine S. Harrison  
Chief Deputy Clerk  
S. C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Robert Lee, #348833 v. S.C. Dep't of Corr.  
Appellate Case No. 2024-000603

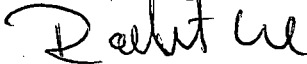
Dear Ms. Harrison,

Please find for filing Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal in the above-referenced appeal and Proof of Service on Respondent.

If there are any deficiencies in this filing please notify me immediately so I may timely correct them. Thank you for the patience of your office in dealing with this pro se matter.

With kindest regards, I am,

Sincerely,



Robert Lee  
Appellant, pro se

Cc: Joseph R. Shakibanasab, Esq.

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Allendale Correctional Institution  
1057 Revolutionary Trail  
Fairfax SC 29827

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