

SCDC

JUN 25 2024

MAIL ROOM

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Vincent B. Lasiter, #381036, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 South Carolina Department of Corrections, )  
 )  
 Respondent. )

Docket No. 23-ALJ-04-0517-AP  
Grievance No. LIWC 0142-23

ORDER OF DISMISSAL

SC Court of Appeals

JUN 28 2024

RECEIVED

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to a Notice of Appeal, filed November 6, 2023, by Vincent B. Lasiter (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the Department's final decision that his claim for back pay for work performed in the Prison Industry Private Sector Prison Industry Program (PIPS or program) is untimely under SCDC Policy ADM-15.13, section 12.1.<sup>1</sup>

Appellant filed an Automated Request to Staff Member (ARTSM) on July 8, 2023, seeking payment of prevailing wage.<sup>2</sup> Subsequently, a Step 1 Grievance was filed on July 17, 2023, with Appellant again requesting that the Department pay him prevailing wage for work served. Appellant's Step 1 was elevated to a Step 2 and, on October 25, 2023, the Responsible Official denied Appellant's Step 2 on the basis that, pursuant to section 12.1 of SCDC Policy ADM-15.13, Appellant's claim was untimely.

Appellant filed a Notice of Appeal on November 6, 2023. The case was assigned on November 20, 2023. Appellant filed his brief on February 21, 2024. Thereafter, on April 1, 2024, the Department filed this Motion to Dismiss. As of the date of this Order, Appellant has not responded to the Motion.

<sup>1</sup> While the record is replete with reference to SCDC Policy ADM-15.13, copies of the Department's policy were not included as part of the Record on Appeal. Nevertheless, the parties do not dispute its existence but rather whether it serves as a bar to Appellant's appeal. As such, the Court takes judicial notice of SCDC ADM-15.13. See S.C. Code Ann. § 1-23-330(4) (2005 & Supp 2023); see SCDC Policy, ADM-15.13, *Inmate Pay*, Approved June 1, 2007, <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.").

<sup>2</sup> See S.C. Code Ann. § 24-3-430(D) (2007) (wages for inmates participating in PIPS to be no less than "the prevailing wage for work of [a] similar nature in the private sector."); see *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 423-24, 602 S.E.2d 56, 57 (2004) (pronouncing that state has created a statutory right to the payment of a prevailing wage).

FILED JUN 18 2024  
South Carolina  
Administrative Law Court

### 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). 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

The Department contends that Appellant's appeal should be dismissed due to Appellant's failure to fully exhaust his administrative remedies. In support of its contention, the Department explains that for purpose of inmate pay, inmates must make efforts to informally resolve a grievance. Section 12.1 of SCDC Policy ADM-15.13 requires that inmates report problems in pay by way of an Automated Request to Staff Member (ARSTM) system within fifteen days of the payroll date error. Here, the Department indicates that Appellant received his last pay deposit on December 1, 2022, yet did not submit an ARTSM report of a problem until July 8, 2023. With reference to its policy, the Department argues that since Appellant failed to **timely** exhaust his administrative remedies (i.e. submission of an ARSTM report within fifteen days of a payroll date error), the Court lacks jurisdiction to consider Appellant's appeal.<sup>3</sup>

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<sup>3</sup> "The doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience, and discretion, rather than one of law." *Ward v. State*, 343 S.C. 14, 538 S.E.2d 245, at n.5 (2000). The doctrine of exhaustion of administrative remedies only comes into play when a litigant attempts to invoke the original jurisdiction of a court to adjudicate a claim based on a statutory violation for which the legislature has provided an administrative remedy. *Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 563 S.E.2d 109 (Ct. App. 2002), *reh'g denied* (May 21, 2002), *cert. denied* (Oct. 23, 2002). "Proper exhaustion of administrative remedies means using all steps that the agency holds out, and doing so properly, so that the agency addresses the issues on the merits." 2 Am. Jur. 2d Administrative Law § 450 (Feb. 2024 Update). "The failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction." *Ward v. State*, 343 S.C. 14, 538 S.E.2d 245, at n.5 (2000). While our Courts have consistently adhered to the doctrine as to avoid interference with the performance of administrative functions, it has also recognized that it is not an invariable rule. *Id.* at n.7; *see also* 2 Am. Jur. 2d Administrative Law § 454 (Feb. 2024 Update) ("Failure to exhaust remedies does not serve as an absolute bar to judicial consideration."). When exclusion is asserted, the party seeking to bypass the administrative process carries the burden of proof and the Court's decision must be considered with an understanding of the administrative scheme involved. 2 Am. Jur. 2d Administrative Law § 450 (Feb. 2024 Update).

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With this in mind, section 12.1 of SCDC Policy ADM-15.13 sets forth 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.” see SCDC Policy, ADM-15.13, Inmate Pay, Approved June 1, 2007, https://www.doc.sc.gov/sites/doc/files/Documents/policy/ADM-15-13.pdf. The policy further provides that if the inmate fails to notify the Agency in writing and within fifteen days, no back pay will be given. *Id.* The Department asserts that by submitting his ARTSM more than fifteen days past his last day of pay, Appellant failed to exhaust his administrative remedies.<sup>4</sup> The issue of whether the Department’s denial of Appellant’s Grievance is warranted falls squarely within this Court’s jurisdiction, as it is an issue of timeliness not a matter of exhaustion. *See Ward, supra* (failure to exhaust administrative remedies goes to prematurity of a case, not subject matter jurisdiction). While Appellant has reiterated his request for backpay and interest for payment of wages for his work in the PIPS to this Court, in neither his Notice of Appeal nor brief does he challenge the Department’s finding that the Grievance was untimely. An unchallenged ruling is the law of the case. *Ulmer v. Ulmer*, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006).

**ORDER**

**IT IS THEREFORE ORDERED** that the Department’s Motion is **DENIED**.

**IT IS FURTHER ORDERED** that the Department determination is **AFFIRMED**, and Appellant’s appeal **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**

*Crystal M. Rookard*

The Honorable Crystal M. Rookard  
South Carolina Administrative Law Judge

June 18, 2024  
Columbia, South Carolina

CERTIFICATE OF SERVICE  
I, the undersigned, hereby certify that a true and correct copy of the foregoing was served upon the parties to the above-captioned case on the date indicated below by the method indicated below. I am a member of the South Carolina Bar.  
M. S. B. 10-101  
The 18th day of June, 2024  
By *L. Harris*  
Law Firm

<sup>4</sup> Notably, the Department denied the Step 2 Grievance on the basis of untimeliness.