

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

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SC Court of Appeals

Kevin Daniel Driggers, #291264, )  
 )  
Appellant, )  
 )  
v. )  
 )  
South Carolina Department of Corrections, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. 23-ALJ-04-0518-AP  
Grievance No. LIWC 93-23

ORDER OF DISMISSAL

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to an appeal filed by Kevin Daniel Driggers (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 section 12.1 of SCDC Policy ADM-15.13.<sup>1</sup>

Appellant filed a Step 1 Grievance on June 26, 2023, requesting prevailing wages as required under *Torrence. South Carolina Department of Corrections*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), *reh'g denied* (Aug. 4. 021), *cert. denied* (Aug. 3, 2022).<sup>2</sup>

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 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's brief was filed on January 24, 2024. Thereafter, on April 1, 2024, the Department filed this Motion to Dismiss, with Appellant filing a reply on April 8, 2024.

<sup>1</sup> While the record refers 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 Rule 201, SCAR; 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 also, *Wicker v. S.C. Dep't of Corr.*, 366 S.C. 421, 423 S.E.2d 56, 57 (2004) (pronouncing that state has created a statutory right to the payment of a prevailing wage).

The State of South Carolina  
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Administrative Law Court

## JURISDICTION

The Court's jurisdiction to hear this matter is derived from the South Carolina Supreme Court's decision 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 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

In its motion, the Department contends Appellant's appeal should be dismissed due to his failure to exhaust administrative remedies.<sup>3</sup> In support of its contention, the Department explains that for the purpose of inmate pay, inmates must first make efforts to informally resolve a grievance. Section 12.1 of SCDC Policy ADM-15.13 explains 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.” 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 acknowledges Appellant worked in the PIPS through December 28, 2022, yet maintains that during his term of employment, he never submitted an

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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 to avoid interference with the performance of administrative functions, the Court has also emphasized that it is not a definitive 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).

ARTSM as required under section 12.1 of SCDC Policy ADM 15-13. Rather, the first claim of a problem in pay arose when Appellant submitted his Step 1 Grievance on June 26, 2023. Appellant does not dispute this fact. Against these facts, it would appear that Appellant failed to adhere to the requirements of section 12.1 of SCDC Policy ADM 15-13.

Nonetheless, Appellant argues in his reply to the Department's Motion that his appeal should not be time barred because submission of an ARTSM would be futile. In support of this proposition, Appellant cites to three responses to other inmate's ARTSM claim wherein the inmate pay designee stated, "you must contact General Counsel," "I do not handle this issue," and "ask control room for grievance." The Court finds Appellant's argument unpersuasive. To establish that resorting to section 12.1 of SCDC Policy ADM-15.13 would be futile, Appellant must establish that the Department has taken "a hard and fast position that makes an adverse ruling a certainty." *Brown v. James*, 389 S.C. 41, 54-55, 697 S.E.2d 604, 612-13 (Ct. App. 2010). Here, the three ARTSMs referenced in Appellant's reply were not submitted by Appellant. Thus, it cannot be said with certainty that the Department's actions would have been the same had Appellant adhered to the Department's policy and submitted an ARTSM report as required under section 12.1 of SCDC Policy ADM-15.13. *Stanton v. Town of Pawley's Island*, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1992) (rejecting futility claim by plaintiff denied building permit to rebuild based on Board's denial of another owner's identical claim). Appellant further submits that his claim is not procedural flawed as can be evidenced by the fact that the Department did not return his Step 1 Grievance as unprocessed. However, Appellant overlooks that in failing to submit an ARTSM report within 15 days of the alleged payroll date error, the issue became a matter of untimeliness.<sup>4</sup>

The Department has submitted credible evidence showing Appellant failed to timely pursue administrative remedies available to him. Appellant has failed to present a persuasive reason to warrant exception to the requirements set forth under section 12.1 of SCDC Policy ADM 15-13.

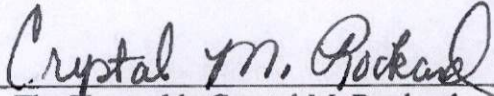
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<sup>4</sup> The Court underscores that Appellant's Step 1 Grievance was submitted 180 days after his last day of employment in the PIPS.

**ORDER**

**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.**

  
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The Honorable Crystal M. Rookard  
South Carolina Administrative Law Judge

June 17, 2024  
Columbia, South Carolina

CERTIFICATE OF SERVICE  
This is to certify that the enclosed signed copy of this date  
served in order in the above entitled action upon all  
parties to the cause by depositing a copy hereof,  
in the United States mail, postage paid, or in the irregularity  
Mail Service and return by the post, to the attorney at  
This 17<sup>th</sup> day of June 2024  
By L. Ann Jai  
Judicial Law Clerk