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SC Court of Appeals

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Kenny William Raley, #273456, )  
)  
Appellant, )  
)  
v. )  
)  
South Carolina Department of Corrections, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. 23-ALJ-04-0744-AP

ORDER

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Kenny William Raley (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department). Appellant appeals the Department’s final decision finding that his claim for back pay for work performed in the prison industry program out of Lee Correctional Institution (LCI) is untimely under SCDC Policy ADM-15.13, Section 12.1.

PROCEDURAL HISTORY

Appellant filed an Automated Request to Staff Member (ARTSM) on May 2, 2023 asserting the Department was paying him less than the prevailing wage required.<sup>1</sup> Following the staff’s response, Appellant filed a Step 1 Grievance on May 3, 2023 asserting similar claims. The Department elevated Appellant’s Step 1 Grievance to a Step 2 Grievance. On November 14, 2023, the Department denied Appellant’s Step 2 Grievance because it was untimely pursuant to SCDC Policy ADM-15.13, Section 12.1.

Appellant filed a Notice of Appeal on December 12, 2023. The case was assigned on January 5, 2023. Appellant filed his initial brief on January 19, 2024. The Department filed a

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<sup>1</sup> “In 1995, the South Carolina 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); see also *Torrence v. South Carolina Department of Corrections*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), *reh’g denied* (Aug. 4, 2021), *cert. denied* (Aug. 3, 2022) (affirming inmates are entitled to the prevailing wage and explaining, for the first time, how to calculate the prevailing wage).



Motion to Extend Time to file the Record on March 13, 2024. The Court granted the Motion to Extend on March 21, 2024. Then, on April 22, 2024, the Department filed a Motion to Dismiss (Motion) asserting Appellant had failed to exhaust his administrative remedies, which the Court denied on May 14, 2024. The Court also specified the timeframes for filing the record on appeal and briefs.

On June 3, 2024, the Department filed the Record on Appeal. As of the date of this Order, the Department has not filed its brief.<sup>(2)</sup>

### ISSUE ON APPEAL

Did the Department err in concluding Appellant's grievance was untimely pursuant to SCDC Policy ADM-15.13, Section 12.1?

### 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). In *Al-Shabazz*, the Supreme Court set forth that the ALC has jurisdiction to review inmate appeals involving state-created liberty interests in which an inmate contends that prison officials have erroneously calculated his or her sentence. *Id.* The Court reviews these matters in "an appellate capacity." *Id.* at 388, 527 S.E.2d at 754. Furthermore, in *Wicker v. South Carolina Department of Corrections*, the South Carolina Supreme Court held this Court has jurisdiction to review 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.").

"A reviewing court will not disturb findings of [an administrative agency] if its findings are supported by substantial evidence on the record as a whole." *Pearson v. JPS Converter & Indus. Corp.*, 327 S.C. 393, 397, 489 S.E.2d 219, 220 (Ct. App. 1997). A decision is supported by

<sup>(2)</sup> SCALC Rule 62 provides that "[u]pon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals." Consequently, the Court may resolve this appeal adversely to the Department for its failure to timely file its brief.

“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 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). Furthermore “the party challenging a[n administrative agency’s] order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record.” *Porter v. S.C. Pub. Serv. Comm’n*, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998).

### **DISCUSSION**

Appellant requests to be paid the prevailing wage for his work in the prison industry program until September 16, 2022.<sup>3</sup> Appellant specifically argues that the fifteen-day timeframe in the policy does not bar his claim because his “grievance has to do with policies/procedures which is not an isolated incident.”

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 time period claim in his grievances or whether all or some of his claim is barred under SCDC policies.

### **Timeliness**

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 was in effect during the time period at issue, states:

#### **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

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<sup>3</sup> In his ARTSM and grievances filed with the Department, as well as his notice of appeal and briefs filed with this Court, Appellant did not specifically request backpay for a certain period of time. However, according to the Record on Appeal, Appellant received his last pay deposit on September 16, 2022.

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).<sup>4</sup> 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, the Department denied Appellant’s Step 2 Grievance on the ground that Appellant’s claim for back pay was foreclosed because Appellant failed to notify the Department of any problems with his prison industries pay within fifteen days.<sup>5</sup> Appellant argues the fifteen-day time frame does not apply but does not sufficiently explain why.<sup>6</sup>

Pursuant to SCDC Policy ADM-15.13, Appellant was required to notify SCDC through the ARTSM of any problems with his prison industry’s pay within fifteen days of the payroll error. Within the time period at issue, Appellant received his last pay deposit from the Department on September 16, 2022. Appellant did not use the ARTSM to notify SCDC of a problem with his

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<sup>4</sup> This policy has applied to all forms of inmate pay, including wages earned through PIECP, and has been in place since January 20, 1998. *See* SCDC Policy ADM-15.13 Policy Statement. Although this policy has been amended multiple times, the pertinent language in the fifteen-day provision has remained the same. *See* SCDC Policy ADM-15.13, Section 12.1 (2014).

<sup>5</sup> Although the Department argues that the fifteen-day period runs from the date *Torrence* was decided, and, thus, Appellant’s claims are completely foreclosed, the Court disagrees. The policy specifically states that it runs from the date of the “payroll date error.” SCDC Policy ADM 15.13, Section 12.1 (providing that “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” (emphasis added)). In addition, if the Department’s interpretation was correct, every inmate would be foreclosed from reporting any pay roll error as each claim would be well past the fifteen-day timeframe. This interpretation would render the policy meaningless and is therefore absurd.

<sup>6</sup> While the Court recognizes Appellant is *pro se*, *pro se* litigants are held to the same standards as represented litigants. SCALC Rule 8(A) (“A party proceeding without legal representation shall remain fully responsible for compliance with these Rules and the Administrative Procedures Act.”); *see State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003) (“A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.”).

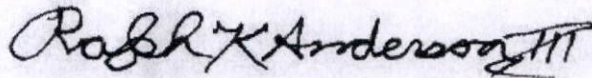
prison industry pay until May 2, 2023, much more than fifteen days later. Therefore, although Appellant followed the proper procedure for submitting a wage claim by submitting an ARTSM before filing his Step 1 and Step 2 Grievances, his submission was untimely. Consequently, under the applicable versions of Policy ADM- 15.13, Section 12.1, he is foreclosed from receiving back pay for any work participated in the program during the time period at issue. SCDC Policy ADM-15.13, § 12.1.

In sum, Appellant failed to carry his burden to show the Department erred, and the Department's decision must be affirmed. *See Porter*, 333 S.C. at 20, 507 S.E.2d at 332 (holding "the party challenging [an administrative agency's] order bears the burden of convincingly proving that the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence on the whole record").<sup>7</sup>

**ORDER**

For the reasons set forth in this Order,

**IT IS HEREBY ORDERED** that the Department's final agency decision is **AFFIRMED**.  
**AND IT IS SO ORDERED.**



Ralph King Anderson, III  
Chief Administrative Law Judge

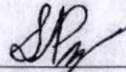
August 15, 2024  
Columbia, South Carolina

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<sup>7</sup> Although I affirm the Department's decision, I nevertheless note the Department's negligence in failing to file a brief. This is becoming a theme in the Department's cases.

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).



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Stephanie Perez  
Judicial Law Clerk

August 15, 2024  
Columbia, South Carolina