STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

George Brisbon,

Appellant,

v.

South Carolina Criminal Justice Academy,

Respondent.

Docket No. 24-ALJ-30-0054-AP

ORDER DENYING PETITION FOR REHEARING

This matter is before the South Carolina Administrative Law Court (Court or ALC) upon the appeal of George Brisbon (Appellant) from a final agency decision issued by the Law Enforcement Training Council (LETC or Council) of the South Carolina Criminal Justice Academy (SCCJA or Respondent) permanently denying Appellant a law enforcement certification. This Court has jurisdiction pursuant to S.C. Code Ann. Section 1-23-600(D) (Supp. 2023); *see also* S.C. Code Ann. § 1-23-505(2) (Supp. 2023).

BACKGROUND

In 2019, the Charleston Police Department conducted an internal affairs investigation of an officer suspected of charging improper administrative fees when arranging for himself and other officers to fill off-duty employment assignments, such as providing security at concerts and other events. During the course of this investigation, the police department began to suspect that Appellant may have been involved in similar conduct.

Captain Anthony Cretella was instructed to and did open an investigation into Appellant's conduct. Captain Cretella interviewed Appellant multiple times. He also interviewed Linda McCormick, the manager of the Thomas Bennett House, about her dealings with Appellant regarding off-duty security jobs. Ms. McCormick later provided a written statement to Cretella for use in proceedings before the LETC.[1]

The record reflects that Appellant had received permission from his supervising officer to receive administrative fees when arranging off-duty security for the South Carolina Ports Authority. However, Appellant's supervisor and the police department have denied that Appellant

[1] The admissibility of this statement is the primary issue on appeal.

had permission to charge such fees when arranging off-duty employment for other events like church functions, tennis matches, and movie industry jobs. While Appellant was not criminally charged, the Charleston Police Department terminated Appellant's employment and submitted a PCS[2] of Separation form for Appellant to the Criminal Justice Academy on February 13, 2020. The form alleged that Appellant has committed misconduct by charging and accepting improper administrative fees for off-duty employment. On February 18, 2020, Appellant was served with the misconduct allegation and requested a contested case hearing, which was held on February 28, 2023.

During the contested case hearing Appellant's attorney objected to State's Exhibit #12, a letter by Linda McCormick, describing Appellant's misconduct while providing off-duty security services for the Governor Thomas Bennett House. The Hearing Officer ordered briefs on the admissibility of Ms. McCormick's letter and admitted the letter into evidence. On June 9, 2023, the Hearing Officer's Findings and Recommendation, hearing transcript and exhibits were sent to the parties. Appellant filed a Motion in Opposition to the Findings and Recommendations on June 29, 2023. On October 18, 2023, the parties were notified that the Law Enforcement Training Council (LETC) would meet to render a Final Agency Decision in Appellant's case and vote on a Final Agency Decision. On October 30, 2023, the LETC met to discuss Appellant's case and vote on a Final Agency Decision. After considering the recommendation, hearing transcript, exhibits, and all comments, the LETC voted to find misconduct and permanently deny Appellant a law enforcement certification. The Final Agency Decision was signed January 29, 2024, and a letter notifying the parties of the Final Agency Decision was sent January 30, 2024.

Appellant filed a Notice of Appeal on February 29, 2024. The Notice of Assignment was filed on March 7, 2024. On April 19, 2024, Respondent filed the Record of Appeal. Appellant filed his brief on May 17, 2024 and Respondent filed its brief on June 6, 2024. Appellant filed a Reply brief was filed on June 14, 2024.

The primary issue in the appeal involved the admissibility of the statement given by Linda McCormick. Appellant argued that the statement should not have been admitted into evidence because it was not properly authenticated and was not excepted from the hearsay rule by the public records exception. The Court concluded that the hearing officer had not abused his or her discretion in concluding that the letter was properly authenticated, but had erred in ruling that the

[2] "PCS" is a human resources term referring to "personnel change in status."

letter, although hearsay, was admissible under the public records exception. Nevertheless, the Court, by order dated July 16, 2024, affirmed the final decision of the LETC because it concluded that Appellant was not prejudiced by the admission of the McCormick statement.

Appellant filed a petition for rehearing on July 24, 2024. The Respondent filed an opposition to the petition on July 30, 2024. After carefully considering the parties' submissions, the Court denies the petition for the reasons stated below.

DISCUSSION

Petitions for rehearing are authorized by SCALC Rule 40(B). A petition for rehearing should state with particularity the points supposed to have been overlooked or misapprehended by the court. *See* Rule 221(a), SCACR; SCALC Rule 68. Appellant contends that the Court overlooked or misapprehended the following matters:[3]

(1) The McCormick statement was not properly authenticated;

(2) The McCormick statement was prejudicial to the Appellant;

(3) The McCormick statement was inadmissible pursuant to Rule 403, SCRE, because its prejudicial effect outweighed its probative value.

The Court will address the first two of these arguments.[4]

I. Authentication

The standard for authentication of a writing or letter is not strict and a party need not rule out any possibility the evidence is not authentic. *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019) (citation omitted), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020)). "The court decides whether a reasonable jury could find the evidence authentic; therefore, the proponent need only make 'a prima facie showing that the 'true author' is who the proponent claims it to be.'" *Green*, 427 S.C. at 230, 830 S.E.2d at 714 (quoting *United States v. Davis*, 918 F.3d 397, 402 (4th Cir. 2019)). Once the trial court determines the *prima facie* showing has been met, the evidence is admitted, and the [fact finder] decides whether to accept the evidence as genuine and, if so, what weight it carries. *Id.* (*citing* Rule 104(b), SCRE; *see United States v. Branch*, 970 F.2d 1368, 1370–72 (4th Cir. 1992)). This prima facie showing may be made by circumstantial

---

[3] In its opposition to Appellant's Petition for Rehearing, Respondent argues that the Court should have ruled that the McCormick statement was properly admitted pursuant to the public records hearsay exception. However, Respondent did not file a Petition for Rehearing, and this argument is not before the Court.

[4] The third argument was not raised to or ruled upon by the Council and was not addressed by the Court in its order affirming the LETC. Stated differently, it is raised for the first time in the petition on rehearing and is not properly before the Court.

evidence. *State v. Hightower*, 221 S.C. 91, 105, 69 S.E.2d 363, 370 (1952). The hearing officer concluded that enough circumstantial evidence existed to allow for authentication of the McCormick statement. The Court was tasked with reviewing this conclusion under the abuse of discretion standard. *See State v. Adams*, 354 S.C. 361, 377, 580 S.E.2d 785, 793 (Ct. App. 2003) ("A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion ...."). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Pittman,* 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007). "In other words, the abuse of discretion standard of review does not allow this court to reweigh the evidence." *State v. Rosenbaum*, 438 S.C. 91, 102, 882 S.E.2d 180, 185 (Ct. App. 2022).

After review of the record below, the Court concludes that Appellant has not identified any fact which was overlooked or legal matter which was misapprehended. The Court was not at liberty to reweigh the evidence below and there is circumstantial evidence in the record that the McCormick statement was authentic.

II. Prejudice

Although the Court affirmed the conclusion below that the McCormick statement satisfied Rule 901 for purposes of admissibility, it nevertheless ruled that the statement was improperly admitted pursuant to a hearsay exception for public records. Appellant naturally does not challenge this conclusion.

The Court further concluded that a presumption of prejudice existed because the content of the McCormick statement was material. *Mali v. Odom,* 295 S.C. 78, 84, 367 S.E.2d 166, 170 (Ct.App.1988) ("[T]he admission of incompetent evidence having some probative value upon a material issue of fact in the case is ordinarily presumed to be prejudicial"). Ultimately, however, the Court reasoned that the content of the statement was cumulative, and, as a result, Appellant was not prejudiced by introduction of the statement. *See Conway v. Charleston Lincoln Mercury Inc.*, 363 S.C. 301, 307–08, 609 S.E.2d 838, 842 (Ct. App. 2005) ("When improperly admitted evidence is merely cumulative, no prejudice exists, and therefore, the admission is not reversible error.") (citing *Creech v. South Carolina Wildlife Marine Res. Dept.,* 328 S.C. 24, 35, 491 S.E.2d 571, 576 (1997)).

Appellant argues against this conclusion, stating that the McCormick statement was, according to Appellant, highly prejudicial. Appellant notes that the admission of the statement

was fiercely contested below. He argues that the hearing officer gave great weight to the statement because the parties had contested its admissibility and because the hearing officer only allowed a short period of time for the parties to authenticate the statement. Appellant finally asserts that without Ms. McMormick's actual testimony at the hearing, Appellant's counsel was prevented from contesting the authenticity of the statement and was denied the opportunity to introduce evidence contesting the authenticity of the statement.

These arguments miss the mark. The fact that the parties contested the admission of evidence does not mean the evidence unduly influenced the finder of fact. Additionally, Appellant's arguments regarding Ms. McCormick's presence at the hearing and the denial of an opportunity to introduce evidence contesting the authenticity of the McCormick statement, are, if true, assignments of error which could have been raised to the Council. However, neither circumstance relates to the question of whether admission of the statement was prejudicial to the Appellant.

Nevertheless, the Court conducted a review of the decisions below to assess whether the evidence was merely cumulative, or instead, should be considered prejudicial. That review indicates that the McCormick statement should be considered cumulative. The hearing officer did not expressly refer to the statement in making findings of fact, and, in discussing the statement, said all of the following:

- "[t]he contents of the document itself are consistent with the other evidence and testimony entered onto the record without objection"
- "[t]he statement is generally consistent with the billing records admitted as State's Exhibit 9"
- "[t]he statement corresponds with information Cretella testified he received from McCormick as part of earlier conversations"
- "[t]he information contained in McCormick's statement is consistent with information relayed in the emails between Brisbon and McCormick included in the exhibit"
- "the contends of the document correspond with much of Brisbon's account of interactions with McCormick during his internal affairs investigation."

These same statements can be found in the Final Agency decision.

Moreover, as the Court noted in its initial decision, the content of the McCormick statement is cumulative of other evidence in the record. Information contained in the statement can also be

found in Exhibits 9, 10, 11 and 14. State's Exhibit 2 also contains admissions from Appellant regarding his off-duty rates and representations to civilians that they would have to pay a higher rate for his services.

The Court perceives no factual matters it overlooked in concluding that Exhibit 12 was cumulative to other evidence in the record.

ORDER

IT IS THEREFORE ORDERED that the Appellant's Petition for Rehearing is **DENIED. AND IT IS SO ORDERED.**

The Honorable Robert L. Reibold
Administrative Law Judge

August 23, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Van Whitehead, hereby certify that I have on 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).

Van Whitehead

Van Whitehead
Judicial Law Clerk

August 23, 2024
Columbia, South Carolina