

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

David Brice, #298937,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)

Docket No. 23-ALJ-04-0746-AP

ORDER

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by David Brice (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 enhancement program (PIECP) is untimely under SCDC Policy ADM-15.13, Section 12.1.

PROCEDURAL HISTORY

Appellant filed an Automated Request to Staff Member (ARTSM) on May 3, 2023, asserting the Department was paying him less than the prevailing wage as required by law.¹ Following the staff’s response, Appellant filed a Step 1 Grievance on May 7, 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, 2024. On January 19, 2024, Appellant filed his brief. The Department filed a Motion to Extend Time to file the Record on March 13, 2024. The Court granted an extension of thirty

¹ “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).



days to file the Record on March 21, 2024. The Court also specified the timeframes for filing the briefs.

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. On August 15, 2024, Appellant filed a Motion requesting the Court to “enter a default against Respondent for failure to adhere to the Court’s Order.” Indeed, as of the date of this Order, the Department has not filed its brief. Rule 62 of the Rules of Procedure for the Administrative Law Court (SCALC Rules), 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, because the Department has not timely filed a brief in compliance with SCALC Rule 60, the Court will resolve this case solely based upon Appellant’s brief and the Record on Appeal.

ISSUE ON APPEAL

Whether Appellant is entitled to backpay for the time period he was not paid the prevailing wage while working in the PIECP program.

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 “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, 2022.² He argues that pursuant to *Torrence*, he is entitled to the difference between what he was paid for his labor in the PIECP program and the prevailing wage under subsection 24-3-430(d). He claims the Department failed to pay him the prevailing wage and also failed to “disburse the percentages from Appellant’s gross wages.” Thus, he asks the Court to order the Department to pay him backpay for all the time he worked in the PIECP program and did not receive the prevailing wage as the Court of Appeals instructed in *Torrence*.³

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. *Torrence*, 433 S.C. 633, 861 S.E.2d 36, *reh’g denied* (Aug. 4, 2021), *cert. denied* (Aug. 3, 2022). Rather, the question is whether Appellant can claim reimbursement for any difference between

² 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.

³ In his brief, Appellant argued that his grievance involved policies/procedures so the fifteen days provision does not apply. However, Appellant does not make this argument in his Step 1 or Step 2 Grievance, or his Notice of Appeal filed with this Court; therefore, the Court does not address it. *Cf. See Prince v. Beaufort Mem’l Hosp.*, 392 S.C. 599, 611, 709 S.E.2d 122, 128 (Ct. App. 2011) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [factfinder] to be preserved for appellate review.”) (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)); *State v. Passmore*, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005) (“The issue preservation requirement applies to assertions of constitutional violations as well.”).

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

The Department denied Appellant's Step 2 Grievance on the ground that it was untimely pursuant to SCDC Policy ADM-15.13, Section 12.1. This policy 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 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).⁴ 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 of *Torrence* being issued. Although the Department determined the fifteen-day period runs from the date *Torrence* was decided, and, thus, Appellant's claim was 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,

⁴ 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).

Section 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.**” (emphasis added)). In addition, if the Department’s interpretation was correct, every inmate would be foreclosed from reporting any current 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.

Within the time period at issue, Appellant received his last pay deposit from the Department on September 16, 2022. Appellant submitted an ARTSM to notify SCDC of a problem with his prison industry pay on May 3, 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”).⁵

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

September 12, 2024
Columbia, South Carolina

⁵ Although I ultimately affirm the Department’s decision, I nevertheless note the Department’s failure to file a brief 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).



Stephanie Perez
Judicial Law Clerk

September 12, 2024
Columbia, South Carolina