

SOUTH CAROLINA COURT OF APPEALS
THE HONORABLE JENNY ABBOTT KITCHINGS
PO BOX 11629
COLUMBIA, S.C. 29211

OCTOBER 8, 2024

APPELLATE CASE NO: 2024-001561

DEAR MS KITCHINGS,

ENCLOSED IS THE FINAL ORDER
OF THE SOUTH CAROLINA ADMINISTRATIVE
LAW COURT AND THE REQUEST TO FILE
WITHOUT FEE.

PLEASE LET ME KNOW IF I
NEED TO DO ANYTHING ELSE.

RESPECTFULLY,



MARK DORSEY 302988

TYGER RIVER CORR.

UNIT 7-223

200 PRISON RD.

ENGLER, S.C. 29335

RECEIVED

OCT 14 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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OCT 14 2024
SC Court of Appeals

Mark Dorsey, #302988,)
)
Appellant,)
)
v.)
)
South Carolina Department of Corrections,)
)
Respondent.)
_____)
)

Docket No. 23-ALJ-04-0715-AP

AMENDED ORDER¹

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal filed by Mark Dorsey (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 a Request to Staff Member (RTSM) on February 6, 2023, asserting the Department was paying him less than the prevailing wage required.² Following the staff's response, Appellant filed a Step 1 Grievance on February 8, 2023, asserting similar claims. The Department denied Appellant's Step 1 Grievance stating that he was "provided with wages that were approved by the governing authority of South Carolina at that time and accepted as such." Appellant filed a Step 2 Grievance on February 11, 2024, again asserting he is entitled to prevailing wages. 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.

¹ This order was amended to correct a clerical error.

² "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).

FILED

08/29/2024

SC Admin. Law Court

Appellant filed a Notice of Appeal on December 8, 2023. The case was assigned on December 15, 2023.³ The Department filed a Motion to Extend Time to file the Record on February 23, 2024. Appellant filed his brief on March 12, 2024. The Court granted the Department's Motion to Extend on May 14, 2024. The Court also specified the timeframes for filing the record on appeal and briefs. As a result of the Order, the Department's brief was due on August 12, 2024.

On June 14, 2024, the Department filed the Record on Appeal. On August 12, 2024, the day the Department's brief was due, the Department filed a Motion for 20-Day extension to File the Respondent's Brief (Motion) due to counsel's workload. Specifically, Department's newly-retained private counsel explained that he serves as counsel for the South Carolina Law Enforcement Officers' Association and, in his capacity as counsel for them, has had conflicts on July 25, July 30, and other dates in August. He further explained that he has "many briefs and records due in other appeals pending before the Court." As of the date of this Order, Appellant has not filed a response to the motion. In addition, as of the date of this Order, the Department has not filed its brief.

MOTION

Although the Court understands the difficulty in juggling multiple clients and cases, the Department hired private counsel to specifically assist in handling these inmate prevailing wage cases and work towards resolving them. However, the Department's newly-retained counsel has filed motion after motion to delay the proceedings. In fact, the Department's brief was originally due on April 3, 2024, or one hundred and ten days (110) after the Notice of Assignment was filed. Yet, as of the date of this Order, the Department has had an additional three months to prepare its brief. Accordingly, the Department has not sufficiently shown exceptional circumstances or good cause to extend the time to file the brief. SCALC Rule 60. Therefore, I find that an extension of twenty days to file its brief is not justified, and the Motion is denied.

Furthermore, the filing of the Motion did not stay the time to file the Department's brief. SCALC Rule 60. Accordingly, the Department did not timely file a brief by August 12, 2024. The Court therefore resolves this case without the Department's brief.

³ It was later reassigned to the undersigned.

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 from February 2, 2017, to March 22, 2023.⁴ 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 paid him an amount near to the federal minimum wage rather than the prevailing wage. 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, and to order the Department to calculate the prevailing wage as the Court of Appeals instructed in *Torrence*.⁵

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 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

⁴ According to the Record on Appeal, Appellant received his last pay deposit on December 1, 2022. Although he received deposits on February 16, 2023, March 1, 2023, March 16, 2023, March 31, 2023, and April 14, 2023, those deposits occurred after Appellant filed his RTSM, thus, those deposits are outside the scope of the grievance at issue in this case.

⁵ In his Step 1 and Step 2 Grievances, Appellant also argued that his claim was a grievance concerning a policy that was exempt from certain time limits for filing his claim. However, Appellant does not make this argument on appeal in his brief; therefore, the Court does not address it. *Cf. Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006) ("An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.").

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).⁶ 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, 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 December 1, 2022. Appellant submitted a RTSM⁷ to notify SCDC of a problem

⁶ 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).

⁷ Inmates can report a problem to staff through the Automated Request to Staff Member (ARTSM) system or the paper version, which is simply known as a Request To Staff Member (RTSM) system. Appellant used the paper

with his prison industry pay on February 6, 2023, much more than fifteen days later. Therefore, although Appellant followed the proper procedure for submitting a wage claim by submitting a RTSM 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").⁸

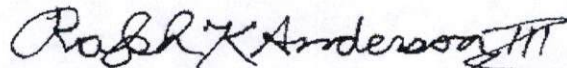
ORDER

For the reasons set forth in this Order,

IT IS HEREBY ORDERED that the Department's Motion for 20-Day extension to File the Respondent's Brief is **DENIED**.

IT IS FURTHER ORDERED that the Department's final agency decision is **AFFIRMED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

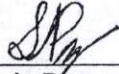
August 29, 2024
Columbia, South Carolina

version rather than the automated system.

⁸ 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

August 29, 2024
Columbia, South Carolina