

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from the Administrative Law Court
Hon. Crystal M. Rookard, ALJ Presiding
Docket No. 23-ALJ-04-0602-AP

Gary Wayne Woodside, Jr., #265980.....APPELLANT,

-vs-

South Carolina Department of Corrections.....RESPONDENT.

Appellate Case No. 2024-001913

APPELLANT'S BRIEF ON APPEAL

Gary Wayne Woodside Jr.

Gary Wayne Woodside, Jr.
SCDC #265980
TYRCI-Unit10/Rm #117
200 Prison Rd.
Enoree, SC 29335

Appellant, pro-se

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STATEMENT OF THE CASE

This case is before the Court of Appeals pursuant to the appeal of Gary Wayne Woodside, Jr., (hereafter "Appellant") an inmate in the South Carolina Department of Corrections (hereafter "SCDC"). This appeal is based on SCDC's denial of a prevailing wage grievance and whether the Administrative Law Judge exercised an unwarranted Abuse of discretion by undertaking the litigation when Respondents abandoned the appeal and did not file a brief in response to Appellant's Initial Brief on Appeal.

STANDARD OF REVIEW

In an appeal from an ALJ decision, the Administrative Procedures Act provides the appropriate standard of review. "See Kiawah Dev. Partners, ll v. S.C. Dep't of Health & Env't Control, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014)." Section 1-23-610 of the South Carolina Code ([supp.2021]) sets forth the standard of review when the Court of Appeals is sitting in review of a decision by the ALC on an appeal from an administrative agency). See. S.C. Dep't of Corr. v. Mitchell, 377 S.C. 256, 258, 659 S.E.2d 233, 234 (Ct.App.2008); § 1-23-610 (B) ("[An appellate] Court may not substitute its judgement for the judgment of the [ALJ] as to the evidence on question of fact."); Id. (stating, however, when reviewing an ALC decision, an appellate court "may reverse the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized as an abuse of discretion or clearly unwarranted exercise of discretion."). Id.

PROCEDURAL HISTORY

On June 13, 2023, Appellant filed a Step 1 grievance asserting the South Carolina Department of Corrections was paying him less than the prevailing wage as required under Torrence v. SCDC, 433 S.C. 633, 636, 861 S.E.2d 36, 38

(Ct. App. 2021), reh'g denied (Aug. 4, 2021), cert. denied (Aug. 3, 2022) and statutory law § 12-3-430 (d) (2007). Appellant specifically requested he be paid the prevailing wage for the time he worked in the (PIECP) program from 2022 to the present date and for his rate of pay to be adjusted to the proper prevailing wage rate.

Appellant's Step 1 grievance was elevated to the Step 2 grievance level. Appellant's grievance was subsequently denied on October 23, 2024 on the grounds that it was untimely pursuant to SCDC policy ADM-15.13, section 12.1.

On November 17, 2023 a timely Notice of Appeal was filed in the Administrative Law Court ('ALC') and the case was assigned on December 1, 2023. The Record on Appeal (hereafter "ROA") was originally due seventy days after the Notice of Assignment was filed, or February 9, 2024. SCALC Rule 59. On February 9, 2024 Respondent filed a Motion for Extension of time to file the ROA. On February 15, 2024, the Court denied the Motion yet adjusted the scheduling order so the ROA was due within forty-five (45) days of the Order, the Appellant's brief was due within thirty (30) days from the date the Record was filed and the Department's brief was due within thirty (30) days from the date the Appellant's brief was filed.

The ROA was filed on April 1, 2024. Appellant filed his brief on April 29, 2024. On June 5, 2024 Appellant filed two pro-se motions: (1) a motion for Default Judgment and, (2) a Motion to Dismiss. In each, Appellant requested that the Court resolve the matter in his favor and, thus requested the court to dismiss the Department's Appeal.

On August 2, 2024 Appellant then filed a Motion to Compel and a response to SCDC's Motion to Stay. Appellant requested the Court to "answer" his Motion to Dismiss that was filed June 5, 2024. Respondent never filed a response and nor did SCDC ever file their Initial Brief on Appeal. The ALC concluded in its October 3, 2024 Order that because SCDC did not timely file a brief in compliance with SCALC Rule 60, the Court determined it would resolve the case solely based on Appellant's brief and ROA, thereby denying Appellant the opportunity to file a Reply Brief pursuant to SCALC Rule 60. The ALC found the appeal should be dismissed for failure to exhaust administrative remedies. "There is no dispute that Appellant is entitled to the statutory prevailing wage under section :24-3-430 (D) (2022) of the South Carolina Code when Appellant first filed his Step 1 grievance."

The ALC concluded the only question is whether Appellant can claim reimbursement for any difference between what he was paid and the prevailing wage for the entire time he worked in the PI program or whether some of the claim is barred under SCDC policie See ALC Order at page 2.

A timely Notice of appeal was filed with this Court and Appellant's Initial Brief is as follows:

ISSUE (I).

THE ADMINISTRATIVE LAW COURT EXERCISED
AN UNWARRANTED ABUSE OF DISCRETION WHEN
IT UNDERTOOK THE LITIGATION AFTER
SCDC ABANDONED THE APPEAL?

FACTS

AS noted by the ALC, Respondents did not file their Brief on Appeal even after being advised to do so by the ALC numerous times. The deliberate failure to file their Initial Brief on Appeal constitutes an implied waiver and abandonment of a known right and the ALC should have resolved the appeal in Appellant's favor.

See Black's Law Dictionary (12th ed. 2024) defines "abuse of discretion" as: An adjudicator's failure to exercise sound, reasonable, and legal decision-making; specifically, a decision-maker's use of power in a way that denies justice or deprives someone of a substantial right, as when it is based on a misunderstanding of the law. An arbitrary, fanciful, or manifestly unreasonable exercise of authority." Id.

A waiver is a presumption that it has been abandoned is considered a waiver. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Eason v Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009). In order for a party to waive a right, the party must have known of the right and known that the right was being abandoned. Id.

The determination of whether one's actions constitutes a waiver is a question of fact. Laser supply & Servs. Inc. v. Orchard Park Associs, 382 S.C. 326, 337, 676 S.E.2d 139, 145 (Ct. App. 2009).

In the Instant matter it is logically deduced that with Respondent's expertise in the field of legal litigation there can be no doubt Respondent

clearly and willfully waived and abandoned their rights and this deliberate neglect to file an appeal brief even after being advised so by the ALC on numerous occasions was no strategic maneuver made in anticipation of litigation, but can only be viewed as a bold; blatant abandonment of their rights and opposition in this matter.

The ALC abused its discretion when Respondent's abandoned the appeal and the ALC resumed the litigation where Respondents abandoned it. The question here now begs, "Is the ALC now the Respondent in this litigation?"

The ALC's Order of Dismissal appears to be one-sided, Appellant against the ALC because Respondents have bailed on the appeal in the early stages of the litigation. In fact, almost immediately after the Responsible Official answered the Step 2 grievance and a request for extension of time.

The ALC should have dismissed the appeal adversely against Respondent when Respondent on numerous occasions disobeyed numerous court orders. Instead, the ALC showed prejudice toward appellant, and not take up their role in the litigation. This was an arbitrary and capricious unwarranted abuse of discretion.

When the Respondent's abandoned the appeal the ALC should have dismissed the appeal in Appellant's favor pursuant to Rule 62 which states in pertinent part:

Upon 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, including the failure to comply with any of the time limits provided by this section (v).

SCALC Rule 62.

As noted in the Rule above, the ALJ should have of its own initiative resolved the appeal adversely to Respondent's once they abandoned the appeal and did not file a Brief on Appeal... "at all." SCDC just up and left the litigation . Clearly a willfull abandonment and waiver of a known right and

the ALC abused its discretion in not resolving the appeal in Appellant's favor.

The matter should be remanded with instructions to pay Appellant the prevailing wage as mandated by 24-3-430 (D)(2023) or in the alternative, this court should order SCDC to pay Appellant all of the back pay to the present date.

ISSUE II

THE ALC ERRED IN CONCLUDING APPELLANT FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES PRIOR TO FILING HIS PREVAILING WAGE GRIEVANCE.

The ALC erroneously dismissed the appeal adversely to Appellant while erroneously finding that SCDC Informal Resolution Policy ADM-15.13, Section 12.1 somehow limits and shields SCDC from their blatant disregard for S.C. Code Ann. § 24-3-430 (D)(2023); § 24-3-315 (2020) Code of Law.

Before it can be said Appellant failed to exhaust his administrative remedies before filing his prevailing wage grievance, it must be determined just what remedies are due.

Our courts have repeatedly held that an inmate's statutory right to compensation as a prison industry worker give rise to a state-created liberty interest and the right to a grievance. See e.g. Torrence v. S.C. Dep't of Corrs., 373 S.C. 586, 592-93, 646 S.E.2d 866 (2007)(Torrence I); Adkins v. S.C. Dep't of Corr., 360 S.C. 413, 419, 602 S.E.2d 51, 55 (2004); Wicker v. S.C. Dep't of Corrs., 360 S.C. at 424-25, 602 S.E.2d at 57-58; S.C. Dep't of Corrs., v. Cartrette 387 S.C. 640, 645, 694 S.E.2d 18, 21 (Ct. App. 2010; See also Akerman v. S.C. Dep't of Corrs., 415 S.C. 412, 421, 782 S.E.2d 757, 762 (Ct. App. 2016), cert. denied (2017); Torrence v. S.C. Dep't of Corrs., 433 S.C. 633, 861 S.E.2d 36 (Ct. APP. 2021), cert. denied (2022), (Torrence II).

As seen in the above, our Supreme Court and this Court of Appeals have held in numerous decisions that inmates wishing to challenge SCDC's failure to pay the prevailing wage the remedy is to file a grievance in the Agency's SCDC) internal grievance process. Appellant clearly filed a Step 1 stating a valid prevailing wage claim. Appellant restated the same position in his Step

2, just as directed by our Supreme Court and this Court of Appeals.

ADM-15.13, section 12.1 does not apply to prevailing wage grievances filed under SCDC Policy GA-01.12 Inmate Grievance System and nor is ADM-15.13 a prerequisite to filing a grievance under GA-01.12 SCDC's Internal grievance Policy.

The ALJ's conclusion that ADM-15.13, section 12.1 somehow governs the timeliness of a prevailing wage grievance filed under SCDC Policy GA-01.12 and allegedly acts as some type of bar to prevent Appellant from successfully raising a prevailing wage claim is arbitrary and capricious.

As previously noted, our Supreme Court and this Court has held numerous times that inmates wishing to challenge Pay rates (not payroll errors) may do so through SCDC's internal grievance process. Turning to SCDC's Step 1 grievance which comes with instructions on the back and states verbatim:

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate request to Staff Member (RTSM form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.
2. Complete each section in its entirety writing only in the space provided for inmate use. No additional pages may be permitted.
3. Only one issue is to be addressed on each form.
4. Submit the completed form by placing it in the Grievance Box at your institution within (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and classification Review appeals

must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the warden's response.

5. If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the grievance Box of your Institution.

After a stringent review of the above cited instructions that is absolutely no mention of SCDC's ADM-15.13 policy at all in the grievance policy at all in the grievance policy and that is simply because ADM-15.13 does not apply to SCDC's grievance policy GA-01.12.

In the case of Nesbitt v. SCDC, 22CO345-AP the Tyger River Grievance Coordinator advised Nesbitt that "an Informal Resolution cannot be accomplished in a situation such as a prevailing wage issue and therefore you do not have to do an informal resolution." See Appellant exhibit (A) (Nesbitt's ARTSM Supplemental ROA at 1) attached hereto. In the second ARTSM of Nesbitt's attached hereto as Appellant's exhibit (B) the Grievance Coordinator went on to inform Nesbitt "at this time there is no informal resolution requirement and no time frame limitations." (emphasis original, added and supplied).

In plain language the Institutional Grievance Coordinator said "no informal resolution required on a prevailing wage claim and most importantly, "no time frame limitations."

Appellant's prevailing wage grievance is not untimely.

Now turning to the Step 2 grievance and its instructions:

INSTRUCTIONS FOR COMPLETING A STEP 2 GRIEVANCE FORM

1. Complete form in its entirety, writing only in the space provided for inmate use,
2. State your specific reason for further appeal.
Do not submit any new issues for review. No additional pages will be permitted.

3. Submit this completed form by placing in the grievance box within five (5) days of your receipt of the Warden's decision. Do not write in the space provided for the responsible official.

4. The decision rendered by the responsible official exhausts the appeal process of the SCDC inmate grievance procedure. Id.

A stringent review of the above cited instructions on SCDC Step 2 grievance sets forth the procedures to be followed in filing a grievance and neither make and mention or reference to ADM-15.13 as a prerequisite to filing a prevailing wage grievance to challenge the pay rates.

The denial of the Step 2 grievance is and was SCDC's last word in the matter and the responsible official who answered the Step 2 and the ALJ's adoption of SCDC's erroneous conclusion that the Court of Appeals in Torrence v. SCDC (2021) somehow placed a time limit on filing a prevailing wage grievance.

SCDC Policy ADM-15.13 does not purport to construe or elucidate the three (3) statutes quoted below, but instead is an attempt to limit or avoid the clear mandates of the statutes Code Section(s) § 24-3-315; § 24-3-40 (A); § 24-3-430 (D) (2023) (collectively the Prevailing Wage statutes) repeat in two separate places inmates shall not be paid less than the prevailing wage for work performed. See also 12 U.S.C. 1761.

Furthermore, the prevailing wage statutes place the responsibility for assuring that the prevailing wage is paid on SCDC's Director [prior to the commencement of inmate labor].

By contrast, policy ADM-15.13 is a statement of agency policy without the force of law. (emphasis supplied and added).

It has not been promulgated as a regulation in compliance with the rule-making provisions of the Administrative Procedures Act. See generally S.C. Code Ann. § 1-23-10 10-160 (2005 & Supp.2023):

"Interpretation such as those in opinion letters ...like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law... do not warrant Chevron-style deference." See e.g. Reno v. Korey, 515 U.S. 50, 61 115 S.Ct 2021 (1995) internal agency

guideline which is not, "subject to the rigors of the Administrative Procedur[e] Act, including public notice and comment." entitled to only "some deference" (internal quotation marks omitted); EEOC v. Arabian American oil Co., 499 U.S. 244, 256-58, 111 S.ct. 1227 (1991)(interpretive guidelines do not receive Chevron deference); Martin v. Occupational Safety and health Review Comm'n, 499 U.S. 144, 157, 111 S.ct. 1171 (1991) interpretive rules and enforcement guidelines are "not entitled to the same deference as norms that derive from the exercise of the secretary's delegated lawmaking powers"). See generally, 7 K. Davis & R. Pierce, Administrative Law Treatises § 3.5. (3d ed. 1994), "Instead, interpretations contained in formats such as opinions letters are entitled to respect under our decision in Skidmore v. Swift & Co., 323 U.S. 134, 140, 65 S.Ct. 161 (1944), but only to the extent that those interpretations have the "power to persuade." See Arabian oil Co. at 256-58.

Christian v. Harris Cty., 529 U.S. 576, 587 (2000).

The ALJ's interpretation of ADM-15.13 is flawed because ADM-15.13 lacks persuasive power as an interpretation of the statutory scheme supporting the PIECP program because it clearly violates section § 24-3-430 (D) (2023); 24-3-315 (2024) and is at odds with this court's decision in Torrence II and Akerman.

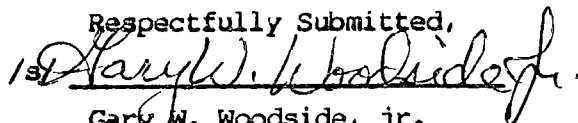
Respectfully the ALJ's findings that an unpromulgated Departmental policy may be somehow interpreted to foreclose prevailing wage claims made pursuant to the Prevailing wage statutes and Torrence II. Even if ADM-15.13 had somehow been promulgated as a regulation, it would be ineffective to contradict the statutory mandates of the prevailing wage statutes. The ALJ cannot by regulation contradict a statute. SCDC cannot by regulation contradict a statute either, but may only impliment it. Keys v. Barnhart, 347 F.3d 990, 993 (7th Cir. 2003). Where as here, the plain language of the statute is contrary to the Agency's and the ALJ'S interpretation and this Court should reject both SCDC and the ALJ's interpretation. Media Gen. Commc'ns Inc. v. S.C. Dep't of Revenue, 388 S.C. 138, 150. 694 S.E.2d 525, 531 (2010).

CONCLUSION

Based on the above, Appellant's prevailing wage grievance was not untimely and the ALJ exercised an unwarranted abuse of discretion and

prejudice when she undertook the litigation for Respondents even after Respondent abandoned the appeal. The matter should be resolved in Appellant's favor and the matter remanded with instructions to calculate Appellant's hours both regular and overtime hours of labor worked and to adjust Appellant's rate of pay to conform to the avg. mean wage of \$19.56 outlined by (D.E.W.), and Respondent should be ordered to pay Appellant the prevailing wage and all back pay from 3-10-2022 to the present date without reprisal.

Respectfully Submitted,



Gary W. Woodside, jr.

Appellant, pro-se

DATED:

November 26, 2024

[CC: filed]

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STATE OF SOUTH CAROLINA
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Gary Woodside, #265980, APPELLANT

-vs-

South Carolina Department of Corrections.... RESPONDENT.

APPELLATE CASE No. 2024-001913

CERTIFICATE OF SERVICE

I, Gary Woodside, # 265980, do certify that on the 26th day of November, 2024 served a copy of Appellant's Brief on Appeal upon all parties by depositing a copy hereof in the United States Mail, postage paid at the Tyger River C.I. Mailroom addressed to all parties.

Gary Woodside
Gary Woodside, #265980
Appellant, pro-se

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The Honorable Jenny A. Kitchings
Clerk of the S.C. Court of Appeals
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Columbia, S.C. 29211

SWORN TO AND SUBSCRIBED BEFORE ME:

this 26 day of Nov, 2024

Paul Dennis
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: Dec 10, 2026

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