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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Sandtonyo Barber, #291757,
Appellant,
v.
South Carolina Department of Corrections,
Respondent.

Docket No. 23-ALJ-04-0551-AP
Grievance No.: TYRCI 0233-23

ORDER

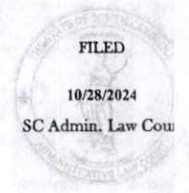
This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed November 13, 2023, by Sandtonyo Barber (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant filed a Notice of Appeal challenging the Department's determination that his grievance was untimely under SCDC Policy ADM-15.13, section 12.1. This matter was assigned to the Honorable Judge Milton Kimpson on December 1, 2023 and reassigned to the undersigned on May 3, 2024.

PROCEDURAL HISTORY

On April 17, 2023, Appellant filed a Step 1 Grievance asserting the Department was paying him less than the prevailing wage while working in the Prison Industry Enhancement Certification Program (PIECP) at Tyger River Correctional Institution as required under *Torrence v. South Carolina Department of Corrections*, 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.¹ Specifically, Appellant requests to be paid the prevailing wage from the time he worked in PIECP from January 2020 to present. Appellant's grievance was subsequently denied on April 24, 2023, on the grounds that it was untimely pursuant to SCDC Policy ADM-15.13, Section 12.1. Appellant filed a Step 2 Grievance that was denied on the same grounds on October 27, 2023.

Pursuant to Rule 59 of the South Carolina Administrative Law Court Rules (SCALC Rules), the Department is required to file the Record on Appeal within seventy (70) days of

¹ "In 1995, our 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).



assignment, or February 9, 2024. In lieu of filing the Record, the Department filed a Motion for an Extension of Time on February 9, 2024. On May 21, 2024, the Court denied the Motion yet adjusted the scheduling order providing additional time to file the record and the briefs. On July 5, 2024, the Department's newly retained external counsel filed a Motion to Stay Further Proceedings for one hundred eighty (180) days. The Court denied the Motion to Stay on July 30, 2024, yet adjusted the scheduling order so the Record was due within thirty (30) days of the Order and the Department's brief was due within seventy (70) days of the Order. The Record was filed on August 29, 2024. Appellant filed his brief with the Court on October 10, 2024.

As of the date of this Order, the Department has not filed its brief. Thus, due to the Department failure to timely file a brief, the Court will resolve this matter based upon the Appellant's brief and the Record on Appeal pursuant to SCALC Rule 60.

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). Furthermore, in *Wicker v. South Carolina Department of Corrections*, the Supreme Court held this Court has jurisdiction to hear 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.”).

DISCUSSION

Appellant requests to be paid the prevailing wage for his work in the PIECP from January 2020 to present. The question before the Court 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 PIECP or whether some of his claim is barred under SCDC policies. As an initial matter, although Appellant requests to be paid from January 2020 to present, the Record indicates Appellant received his last paycheck May 16, 2022.

Failure to Exhaust Administrative Remedies

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 has been in effect since June 2014, provides the following:

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).

This SCDC policy has been in place since January 20, 1998. Appellant began participating in the program in January 2020. Therefore, the policy in effect regarding inmate pay includes the current version of SCDC Policy ADM-15.13. *See* SCDC Policy ADM-15.13.² 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 is foreclosed because Appellant failed to notify the Department of any problems with his prison industries pay within fifteen days.³ The Step 1 Grievance, included in the Record, contains no information about how, with whom, and when attempts were made to resolve the problem informally. In this case, Appellant did not follow the proper procedure as required by SCDC Policy ADM-15.13, Section 12.1, for reporting his payroll issue. Indeed, Appellant failed to report a problem with his pay to his institution fifteen days after the payroll error and before submitting a Step 1 Grievance as required by SCDC Policy ADM-15.13, Section

²This 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).

³Although the Department argues in the Step 2 Grievance that the fifteen-day period runs from the date *Torrence* was decided, and, thus, Appellant's claims are completely foreclosed, the policy specifically states it runs from the date of the payroll error. *See* 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.")

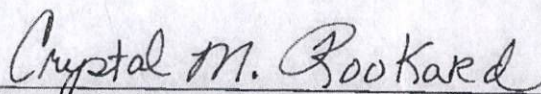
12. Therefore, he did not follow the proper administrative procedure for reporting his payroll issue. Appellant did not present evidence to establish his adherence to SCDC Policy ADM-15.13.

Based upon Appellant's failure to follow the proper procedure for submitting a wage claim under SCDC Policy ADM-15.13, Section 12.1, the Court finds Appellant has failed to exhaust his administrative remedies, and this matter is not ripe for this Court's review. *See* S.C. Code Ann. § 1-23-380 (Supp. 2023) ("A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1."); *Brown v. James*, 389 S.C. 41, 48, 697 S.E.2d 604, 608 (Ct. App. 2010) ("The doctrine of exhaustion of administrative remedies requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act." (quoting 2 Am. Jur. 2d *Administrative Law* § 595 (1962))).

ORDER

IT IS THEREFORE ORDERED that the Appellant's appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

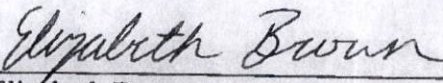


The Honorable Crystal M. Rookard
South Carolina Administrative Law Judge

October 28, 2024
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Elizabeth Brown, 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, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Elizabeth Brown
Judicial Law Clerk

October 28, 2024
Columbia, South Carolina