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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Robert L. Reibold, Administrative Law Judge

Administrative Law Court Docket No. 25-ALJ-04-0251-AP

Appellate Case No. _____

South Carolina Department of Corrections,

Respondent,

V.

Charles Hughes, #242931,

Appellant.

INITIAL BRIEF OF APPELLANT

Charles Hughes, #242931
Tyger River Correctional
Institution Unit 1-A-214
200 Prison Road
Enoree, S.C. 29335

Appellant, Pro Se

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STATEMENT OF ISSUES ON APPEAL

- I(A). Whether SCDC's refusal to process Appellant's grievance was "made upon unlawful procedure" because it relied on a false procedural ground, that Appellant was "represented by counsel"?
- I(B). Whether the ALC further erred by failing to remand for a decision on the merits once it recognized Appellant had no counsel of record?
- I(C). Whether the ALC improperly affirmed an agency decision that was arbitrary and capricious?
- I(D). Whether the argument that Appellant "failed to raise the issue in the "Statement of Issues"" is a basis to affirm?
- II. Whether remand is the proper remedy?

STATEMENT OF THE CASE

The Appellant in the instant matter, Charles Hughes ("Appellant"), challenged aspects of the pay remitted to him by the Respondent South Carolina Department of Corrections ("SCDC" or "Department") for work he performed in the Prison Industry Enhancement Certification Program ("PIECP) for the private industry sponsor Shaw Industry Group, Inc ("Shaw").

On June 19, 2023, Appellant filed a Step 1 grievance under the provisions of SCDC's Inmate Grievance Policy System, designated as Policy Number GA-01.12 ("GA-01.12"). In his grievance Appellant 1.12"), seeking a pay increase to prevailing wages and back pay. See Exhibit A. Appellant's Step 1 grievance was elevated to the Step 2 level of the grievance process, which was denied on October 27, 2023, based on the grounds that Appellant failed to report the error within 15 days of the payroll occurrence, pursuant to SCDC Policy ADM-15.13. (See Exhibit B). On November 17, 2023, Appellant appealed to the South Carolina Administrative Law Court ("ALC"). The appeal was assigned to the Honorable Deborah Brooks Durden, Administrative Law Judge. Thereafter, the Department sought remand to issue a supplemental Step 2 Decision on the merits of Appellant's claim, which was granted on February 10, 2025. (See Exhibits C and D).

On May 1, 2025, the Department issued its supplemental Step 2 decision on Remand, stating in pertinent part, "In your grievance, you inquire about your Prison Industry pay. The Office of General Counsel has been notified that you are represented by counsel, we cannot communicate with you regarding prevailing/inmate pay." (See Exhibit E).

On May 23, 2025, Appellant filed a Notice of Appeal with the ALC, appealing the Department's supplement Step 2 decision. The matter was assigned to the Honorable Robert L. Reibold ("Judge Reibold"), Administrative Law Judge, on June 5, 2025. On August 14, 2025, the Department filed the Record on Appeal upon the Appellant. Thereafter, Appellant filed his Initial Brief. Then on September 23, 2025, the Department filed its subsequent Respondent's Brief. On September 30, 2025, the Appellant filed his Reply (Final) brief. (See Exhibit F).

On October 27, 2025, the ALC's Judge Reibold issued his Final Order and Decision, thereby affirming the Department's May 1, 2025 Step 2 Grievance decision. (See ALC's Final Order, Exhibit G). The following appeal followed.

STANDARD OF REVIEW

Judicial review of a final decision of the South Carolina Administrative Law Court ("ALC") is governed by S.C. Code Ann. § 1-23-610(B). Under this standard, the Court of Appeals may reverse or modify the ALC's decision if the substantial rights of the appellant have been prejudiced because the ALC's findings, inferences, conclusions, or decisions are:

- "(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 by abuse of discretion or clearly unwarranted exercise of discretion." Id. § 1-23-610(B)(a)-(f).

The Court may not substitute its judgment for the ALC on questions of fact, but it owes no deference to the ALC's conclusions of law, including whether the ALC applied the correct legal standard or followed lawful procedures.

ARGUMENT

I. THE ALC ERRED BY AFFIRMING SCDC'S REFUSAL TO PROCESS THE GRIEVANCE BECAUSE THE RECORD ESTABLISHED THAT APPELLANT WAS A PRO SE LITIGANT AND NOT REPRESENTED BY COUNSEL

A. SCDC'S REFUSAL TO PROCESS APPELLANT'S GRIEVANCE WAS "MADE UPON UNLAWFUL PROCEDURE" BECAUSE IT RELIED ON A FALSE PROCEDURAL GROUND, THAT APPELLANT WAS REPRESENTED BY COUNSEL

SCDC denied Appellant's grievance under GA-01.12 (Inmate Grievance Policy) on the sole procedural ground that it purportedly "could not

communicate" with Appellant because he was "represented by counsel". This finding was factually wrong, contradicted by the Record on Appeal, and rebuked by the ALC itself, which recognized that Appellant was litigating the case pro se. See ALC Final Order and Decision, Exhibit G, p. 2 (footnote at #5).

Under § 1-23-610(B)(c), the reviewing court must reverse when an agency or the ALC relies on unlawful procedure. A refusal to process a grievance based on a procedural premise that is demonstrably false, and contradicted by the agency's own actions, qualifies as unlawful procedure.

The Record on Appeal ("ROA" or "Record") shows:

1. No Notice of Appearance was filed by any attorney on Appellant's behalf, as required by SCALC Rule 8. (See ALC Final Order and Decision, Exhibit G, p. 2)

2. The ALC Explicitly acknowledged that Appellant was proceeding pro se.

3. SCDC served its Record on Appeal and Respondent's Brief on Appellant directly, not on any counsel, conduct fundamentally inconsistent with SCDC's claim that Appellant was represented.

4. SCDC therefore knew Appellant was pro se, yet denied the grievance on the pretext that it could not communicate with him because he supposedly had counsel. (See Exhibit E, Supplemental Decision Response).

An agency cannot create a false procedural barrier to avoid addressing the merits of a grievance. See Kiawah Dev. Partners, II v. SCDHEC, 411 S.C. 16, 766 S.E.2d 707 (2014)(holding that agency acts inconsistent with its own procedures or unsupported by the record constitute unlawful procedure under the APA).

Because SCDC's refusal to process the grievance was based on an erroneous factual premise, the ALC's affirmance necessarily rested on an error of law and unlawful procedure, requiring reversal under § 1-23-610(B)(c)-(d).

B. THE ALC FURTHER ERRED BY FAILING TO REMAND FOR A DECISION ON THE MERITS
ONCE IT RECOGNIZED APPELLANT HAD NO COUNSEL OF RECORD

Once the ALC determined that no attorney had entered a Notice of Appearance under SCALC Rule 8, it was legally obligated to treat Appellant as a pro se litigant. Recognizing Appellant as pro se necessarily invalidated SCDC's stated basis for refusing to process the grievance.

Under South Carolina administrative law, when the ALC identifies a fundamental procedure error by an agency, the proper remedy is remand. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000)(holding that when SCDC fails to follow its own grievance procedures, the inmate is entitled to meaningful review, and remand is appropriate to ensure due process).

Here, the ALC acknowledged that Appellant was pro se, yet affirmed SCDC's decision that it "could not communicate with him" because he supposedly had an attorney. That contradiction cannot stand.

The ALC's affirmance of SCDC's decision:

- (1) ignored the agency's procedural error,
- (2) failed to apply Al-Shabazz;
- (3) ~~deprived~~ Appellant of meaningful review; and
- (4) allowed SCDC to rely on a pretext to avoid addressing the merits of a federally grounded prevailing wage claim. This violated S.C. Code Ann. § 1-23-610(B)(c)-(f) as a matter of law.

C. THE ALC IMPROPERLY AFFIRMED AN AGENCY DECISION THAT WAS ARBITRARY AND
CAPRICIOUS

An agency acts arbitrarily or capriciously when it:

- (1) bases its decision on facts that have no evidentiary support;
- (2) relies on false premise; or
- (3) acts inconsistently with its own conduct or policy.

See S.C. Dept. of Motor Vehicles v. Nelson, 364 S.C. 514, 613 S.E.2d 544 (Ct. App. 2005)(agency decision arbitrary and capricious when based on unfounded reasoning).

SCDC's conduct here was the definition of arbitrary:

(1) It claimed Appellant had counsel, yet it served all filings directly to him.

(2) It claim it could not communicate with him, yet it mailed official litigation documents to him.

(3) It claimed he was represented, yet there was no filing in the entire record indicating a Notice of Appearance had been filed pursuant to SCALC Rule 8, authorizing outside counsel to represent Appellant before the ALC.

An agency may not rely on a known falsehood to deny access to an administrative review process. Where SCDC's stated basis was contradicted by its own actions and by the ALC's findings, the decision was arbitrary and capricious under S.C. Code Ann. § 1-23-610(B)(f), and the ALC erred by affirming it.

D. ANY ARGUMENT THAT APPELLANT "FAILED TO RAISE THE ISSUE IN THE STATEMENT OF ISSUES" IS NOT BASIS TO AFFIRM

Any argument that Appellant "failed to raise the issue in the Statement of Issues" is not a basis to affirm because the ALC addressed the representation issue and the record demonstrates it was fully preserved.

Even though Appellant did not list SCDC's "representation by counsel" error as a separate Issue on Appeal, he addressed it in part in the body of his brief, thereby preserving it. See Exhibit F, Reply (Final) Brief, p.3. South Carolina appellate courts hold that arguments clearly presented in the body of a brief are preserved, even if not labeled as separate issues. See Doe v. S.C. Dept. of Health & Human Servs., 398 S.C. 623, 731 S.E.2d 272 (Ct. App.

2012).

Furthermore, The ALC itself discussed the lack of a Notice of Appearance and indicated Appellant was pro se.

Once the ALC addressed the issue, it was preserved as a matter of law. See Atl. Coast Builders & Contractors v. Lewis, 398 S.C. 323, 728 S.E.2d 41 (Ct. App. 2012).

Thus, the representation issue was properly before the ALC, and the ALC's failure to correct it is fully reviewable by this Court.

II REMAND IS THE PROPER REMEDY

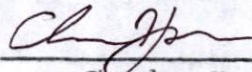
Because the ALC's affirmance rests on unlawful procedure, error of law, clearly erroneous factual premises, and arbitrary and capricious reasoning, the Court should reverse and remand with instructions for SCDC to process and adjudicate the grievance on the merits. This remedy aligns with:

- (1) Al-Shabazz (inmates must receive meaningful access to the grievance process);
- (2) S.C. Code Ann. § 1-23-610(B); and
- (3) South Carolina administrative due process principles.

CONCLUSION

For the above reasons, the ALC's decision should be reversed, and this matter remanded to the South Carolina Department of Corrections with instructions to process Appellant's prevailing wage grievance on the merits.

Respectfully Submitted,

/s/ 

Charles Hughes, #242931
Appellant, Pro Se
Tyger River Correctional
Institution Unit 1-A-214
200 Prison Road
Enoree, S.C. 29335

DATE: Dec. 12, 2025

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

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Robert L. Reibold, Administrative Law Judge

Administrative Law Court Docket No. 25-ALJ-04-0251-AP

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South Carolina Department of Corrections,

Respondent,

v.

Charles Hughes, #242931,

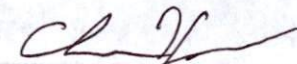
Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant on Appeal on the above-named Respondent by depositing a copy of it in the United States Mail, postage prepaid on Dec. 12, 2025, to the Respondent's Counsel as follows:

General Counsel
South Carolina Department of Corrections
P.O. Box 21787
Columbia, S.C. 29221-1787

DATE: Dec. 12, 2025

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Tyger River Correctional
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200 Prison Road
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SC Court of Appeals

The Honorable Jenny ~~Abbott~~ Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

RE: South Carolina Department of Corrections, Respondent, vs. Charles Hughes,
#242931, Appellant
Appellate Case No.


Dear Ms. Kitchings:

Enclosed for filing is Appellant's Initial Brief in connections with the above case. Also enclosed are the following:

- (1) Proof of Service of Appellant's Initial Brief;
- (2) Appellant's Designation of Matter To Be Included in the Record on Appeal; and
- (3) Proof of Service of Designation of Matter To Be Included in the Record on Appeal.

Thank you for your assistance in this matter.

Sincerely,

/s/ 

Charles Hughes, #242931
Tyger River Correctional
Institution Unit 1-A-214
200 Prison Road
Enoree, S.C. 29335

Appellant, Pro Se

Enclosures

cc: Sydney Keese, Esquire
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Attorney for Respondent

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