STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hester Wright, Personal Representative for Isaac Richardson, #232574, Appellant, v. South Carolina Department of Corrections, Respondent.	Docket No. 25-ALJ-04-0358-AP **ORDER**

The above-captioned matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Douglas Westbook on behalf of Hester Wright, Personal Representative for Isaac Richardson, an inmate formerly incarcerated with the South Carolina Department of Corrections (SCDC or Department).[1] The Personal Representative for Appellant[2] disputes his pay for work performed from 1998 to 2003[3] in the Prison Industries Project (project) facilitated through Lieber Correctional Institution (Lieber)[4] by the Department. *See* S.C. Code

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1 Hester Wright, as the Personal Representative for Isaac Richardson, signed a fee agreement with Mr. Westbook on November 9, 2018, authorizing Mr. Westbrook to "file motion(s) in the Department of Corrections and/or the Administrative Law Court, or otherwise seek to have you substituted as a party in this matter, and if you are substituted as a party, to pursue the claim on your behalf in the Department of Corrections and the Administrative Law Court." Thereafter, Mr. Westbrook filed a Motion for Substitution of Party to substitute Mr. Wright as Appellant, which the ALC granted on February 27, 2019. Although the Court still questions whether the original fee agreement signed by Isaac Richardson on September 22, 2004, authorized Mr. Westbrook to file the appeal on his behalf in 2007, Mr. Westbrook nevertheless obtained authorization from Isaac Richardson's Personal Representative to file the current appeal **before the appeal was filed.** Moreover, the challenged Department decision arose from a grievance originally filed by Isaac Richardson.

2 Isaac Richardson shall hereinafter be referred to as Appellant.

3 Appellant requested back pay for work performed from 1998 to 2003, however, according to the Record on Appeal, he worked from October 11, 1999 to April 23, 2012. While the Record includes wages paid to Appellant for work performed from June 2008 to April 2012, the Department only calculated wages owed for work performed until July 23, 2007, which is after the original notice of appeal was filed with the ALC. Importantly, the Department conceded, by email, to the inclusion of those wages. Accordingly, the calculations discussed below are for wages for work performed from October 11, 1999 to July 23, 2007.

Interestingly, Mr. Westbrook responded to that concession, on behalf of Appellant, by raising additional arguments by email; however, these arguments were not properly raised. Therefore, those arguments were not considered.

4 Williams Technologies, Inc. (WTI), now operating as Caterpillar, Inc., acted as the private industry sponsors.

Ann. § 24-3-430(D) (1995) (providing that inmates in the project shall be paid no less than "the prevailing wage for work of [a] similar nature in the private sector.").

PROCEDURAL HISTORY

This controversy has persisted for over twenty years and, as a result, the appellate courts have issued three decisions concerning the underlying issue raised in this appeal. *Darrell Williams, Class Representative, et al., v. S.C. Dep't of Corr. and Williams Technologies, Inc.*, 372 S.C. 255, 641 S.E.2d 885 (S.C. 2007); *Francis Ackerman, et al., v. S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (S.C. Ct. App. 2016), *cert. denied* (May 30, 2017); and *Fred Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 309, 785 S.E.2d 600 (S.C. Ct. App. 2016), *cert. denied* (May 30, 2017).[5] Before addressing the appeal now before the Court, a review of the history behind these appellate cases is helpful.

Prior Court Review of Prevailing Wage Claims

In early 2001, Darrell Williams[6] filed a Step 1 Grievance with the Department disputing his pay for work performed in the project. Upon the denial of the Step 1 Grievance, Inmate Williams filed a Step 2 Grievance which was also denied. Inmate Williams then filed an appeal with the ALC which was dismissed.[7] Then, in 2002, Douglas Westbook filed a class action on behalf of approximately 200 inmates, listing Williams as the class representative.[8] The civil action sought back pay for the inmates based upon the provisions of subsection 24-3-430(D) of the South Carolina Code; Appellant was one of these inmates.

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[5] Other relevant prevailing wage decisions include *Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51 (2004) (no private right of action to prevailing wage claims but inmates may seek remedy by filing inmate grievance); *Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56 (2004) (holding no claim for civil damages yet inmates may pursue prevailing wage claims through the grievance processes); and *Torrence v. S.C. Dep't of Corr.*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), *reh'g denied* (Aug. 4, 2021), *cert. denied* (Aug. 3, 2022) (Department must determine mean average wage for occupation using records and data from Department of Employment and Workforce).

[6] Darrell Williams is one of the Appellants in the underlying consolidated cases.

[7] The Court notes that it is unclear whether the ALC's prior dismissal precludes Inmate Williams from challenging his pay in the underlying matter. *See Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("Under the doctrine of res judicata, '[a] litigant is barred from raising any issues which were adjudicated in the former suit *and* any issues which might have been raised in the former suit.'") (quoting *Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n of S.C.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). Nonetheless, since the Department has not raised this defense, I have addressed the issues raised.

[8] The matter was filed in Dorchester County and later assigned to Honorable Judge Goodstein. On January 8, 2005, Judge Goodstein issued an order of certification of the class.

During the pendency of this class action, individual grievances were filed with the Department on or around September 22, 2004.[9] Of relevance to this case, Appellant filed a Step 1 Grievance on September 23, 2004, requesting back pay for work performed in the project at Lieber from 1998 to 2003. More specifically, Appellant stated that "lawsuit has been filed, court order to file a grievance by the court; Wicker v. SCDC and Adkins v. SCDC." On October 28, 2004, the Department denied his grievance. Appellant then filed a Step 2 Grievance on November 3, 2004, stating that "Adkins and Wicker do require payment of prevailing wages." Although the grievances were administrative matters, Judge Goodstein then stayed the processing of those grievances during the pendency of the class action.

On July 1, 2005, Judge Goodstein dismissed the class action, decertified the class, and lifted the stay she had imposed. The inmates then appealed the dismissal of the class action which again halted the processing of the individual grievances before the Department. On February 4, 2006, Appellant submitted an amendment to his grievance. On February 26, 2007, the South Carolina Supreme Court affirmed the dismissal of the class action. *Darrell Williams, Class Representative, et al., v. S.C. Dep't of Corr. and Williams Technologies, Inc.*, 372 S.C. 255, 641 S.E.2d 885.

Thereafter, the Department resumed the processing of the grievances. On May 14, 2007, the Department denied Appellant's Step 2 Grievance principally finding that the grievance was not filed within the fifteen-day time period required under Paragraph 13.1 of GA-01.12. Then, on June 6, 2007, Appellant, through his attorney Mr. Westbook, appealed to the ALC. In Appellant's notice of appeal to this Court, Appellant requested prevailing wages including overtime pay, pre/post judgment interests, costs and attorney fees.[10] On July 26, 2012, the ALC issued its final decision. Significantly, the ALC found Appellant, along with the majority of the other inmates had untimely filed their grievances. Appellants appealed to the South Carolina Court of Appeals.

On February 10, 2016, the Court of Appeals reversed the ALC's decision and remanded the consolidated cases for consideration of the merits of the grievances. *Ackerman, et al., v. S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (S.C. Ct. App. 2016), *cert. denied* (May 30, 2017)

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[9] *See Adkins v. S.C. Dep't of Corr.*, 360 S.C. 413, 602 S.E.2d 51; *see Wicker v. S.C. Dep't of Corr.*, 360 S.C. 421, 602 S.E.2d 56.

[10] Importantly, overtime pay, pre/post judgment interests, costs and attorney fees were not raised in either the Step 1 or Step 2 Grievance.

(holding inmates wages under a Prison Industries Enhancement Certification Program (PIECP) contract fall within the "policies/procedures" as contemplated 13.9 of Policy GA–01.12. and are not subject to the fifteen-day time limit for filing). On June 13, 2017, the ALC remanded the matter back to the Department to issue a new final decision.

Between 2017 and 2025, the parties raised multiple legal disputes and also participated in two rounds of mediation in an effort to resolve this decades long controversy. The mediation was unsuccessful; consequently, on May 12, 2025, the Department issued a new final decision. This appeal followed.[11]

Appellant's brief was filed on October 1, 2025.[12] Then, on November 3, 2025, the Department filed its brief. Appellant's reply brief was later filed on November 12, 2025. On December 17, 2025, the parties convened at the Court's offices in Columbia, South Carolina for oral arguments.[13]

STIPULATIONS

- **From September 1998 to June 30, 2001**
  - Section 24-3-430(D) of the South Carolina Code (1995) (amended by Act No. 192, § 1, eff. May 21, 2024), the "prevailing wage" statute, dictates the inmate's pay.
  - The deductions authorized under section 24-3-40 of the South Carolina Code apply to the above timeframe.
- **From July 1, 2001 to June 30, 2003**
  - The hourly wage is $4 based on two annual budget provisos and
  - The deductions authorized section 24-3-40 of the South Carolina Code apply to the above timeframe.
- **From July 1, 2003 to June 30, 2007**
  - The hourly wage is $4 based on four annual budget provisos, and

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[11] In total, there were 197 appeals filed challenging the Department's May 12 decision. (*See* Exhibit A). The cases were assigned on July 7, 2025 and consolidated on July 9, 2025. Thereafter, the Department filed a Motion to Dismiss in 58 appeals, including the underlying appeal. On October 13, 2025, the Court granted all but five of those Motions. (*See* Exhibit C). Thereafter, the Court dismissed 139 of the remaining appeals. (*See* Exhibit B). As a result, only five appeals, including this case, are pending before this Court. (*See* Exhibit D).

[12] Attorney Westbrook filed one brief and one reply brief for purpose of all of the 139 consolidated appeals.

[13] The Court permitted the parties to supplement the Record on Appeal (Record) at oral arguments with exhibits to support their arguments. The following documents were submitted and are now a part of the Record: 1) SCDC November 29, 2017 cover letter and updated Exhibit F, which consists of all Appellants' pay data; 2) George DuRant August 15, 2018 cover letter and calculations; 3) Appellant's October 28, 2022 Motion; 4) Appellant's September 14, 2004 fee agreement and accompanying signatures; and 5) SCDC 2014 brief caption and page 3. As such, issue number 6 has been amended to reflect that the Department's calculations have now been supplemented into the Record.

- The deductions authorized under section 24-3-40 of the South Carolina Code apply to the above timeframe.

- **From July 1, 2007 to July 31, 2007**
  - Section 24-3-430(D) of the South Carolina Code (1995), the prevailing wage statute dictates the inmate's pay and
  - The deductions authorized under section 24-3-40 of the South Carolina Code apply to the above timeframe.
- **From August 1, 2007 to Project's Conclusion**
  - The provisions of section 24-1-295 of the South Carolina Code, including schedule of deductions dictates pay apply to the above timeframe.

ISSUES ON APPEAL[14]

Appellant identified the following six (6) issues on appeal:

1. Did SCDC's final decisions deprive Appellant of property in violation of substantive due process under U.S. Constitution, Amendment 14, and S.C. Constitution, Article I, Section 3?
2. Did SCDC's final decisions deprive Appellant of property not by a mode of procedure prescribed by the General Assembly, in violation of S.C. Constitution, Article I, Section 22?
3. Did SCDC's final decisions not comply with, or enforce, statutes governing the Appellant's wages and attorney's fees, in violation of the separation of powers provision in S.C. Constitution, Article I, Section 8?
4. Did SCDC's final decisions, which denied overtime pay, pre-judgment interest, costs and attorney's fees, if those claims were not raised in grievances, violate substantive due process under U.S. Constitution, 14th Amendment, and thus any failure to raise these claims must, under U.S. Constitution, Article VI Supremacy Clause, yield to redress of the due process violation?
5. Did SCDC's final decisions deprive Appellant of the opportunity to be heard at a meaningful time and in a meaningful manner, in violation of due process under U.S. Constitution, 14th Amendment?
6. Did SCDC's err in its calculation of wages owed to Appellant for work performed in the project at Lieber from?

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

[14] Issues 1-5 on appeal are presented verbatim from the Appellant's Brief.

(2003). In *Al-Shabazz*, the Supreme Court set forth that the ALC has jurisdiction to review inmate appeals involving state-created liberty or property interests. *Al-Shabazz*, 338 S.C. at 376-77, 527 S.E.2d at 754. The Court reviews these matters in "an appellate capacity." *Id.* Furthermore, in *Wicker v. South Carolina Department of Corrections*, the South Carolina Supreme Court held this Court has jurisdiction to review grievances pertaining to an inmate's statutory right to the payment of prevailing wage. 360 S.C. 421, 423–24, 602 S.E.2d 56, 57 ("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

Substantive Due Process

Appellant argues that the Department's decision deprives him of property in violation of substantive due process under the Fourteenth Amendment to the United States Constitution, and Article I, Section 3 of the South Carolina Constitution. However, the majority of Appellant's substantive due process concerns are resolved by the parties' stipulations. For example, Appellant asserts that the Department's decision violates his due process rights because the Department arbitrarily applied the 2024 version of subsection 24-3-430(D) for the work which Appellant performed. Yet, the Department stipulated that the 1995 version of the statute applied, not the 2024 version, thus rendering Petitioner's argument moot. *Curtis v. State,* 345 S.C. 557, 567, 549

S.E.2d 591, 596 (2001) (Mootness arises when some event occurs, making it impossible for the reviewing court to grant effectual relief.).

Appellant, nonetheless, argues that the Department's decision was arbitrary because it failed to provide a basis for rejecting Dr. Benich's opinion regarding the hourly rate of pay. Here, however, the Department factually based its decision upon average wage data for the occupation at issue from the South Carolina Department of Employment and Workforce.[15] Its factual determination to use that data was based upon the decision in *Torrence v. S.C. Dep't of Corr.*, 433 S.C. 633, 648, 861 S.E.2d 36, 45 (Ct. App. 2021). Significantly, the Court of Appeals held in *Torrence* that for the purpose of calculating the prevailing wage for an industry, the Department "**must determine** the mean average wage for the occupation at issue using records and data from [South Carolina's] **Department of Employment and Workforce.**" *Id.* at 648, 861 S.E.2d at 45 (emphasis added). Furthermore, Appellant has failed to meet his burden to show that the respective pay rate used by the Department was inconsistent with records and data from the South Carolina Department of Employment and Workforce. Therefore, Appellant has failed to show that the Department's decision was arbitrary and that it erred in rejecting the opinion of Dr. Benich on what the hourly rate should be for Appellant's work in the project. *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").[16]

Article I, Section 22

Appellant argues that the Department's decision "deprive Appellants of property not by a mode of procedure by the General Assembly in violation of S.C. Constitution, Article I, Section 22." However, Appellant offered no substantive argument to support his claim. Indeed, the entirety of his argument is as follows:

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[15] While the Record on Appeal does not include evidence of the occupation at issue, Appellant does not challenge that the data used by the Department was for the occupation at issue.

[16] Appellant also argues that it is the law of the case that the gross wage for work in the project is $4/hour. In addition, Appellant contends the Department's decision is arbitrary because they failed to provide either an hourly rate or other rational basis to support that Appellant was paid in conformity with the applicable statutes. These issues will be discussed in my discussion of the calculation of wages owed. Lastly, Appellant argues the Department's decision is arbitrary because it did not provide adequate determining principles as to why Appellant was denied interest and attorney's fees. I will address this further below as part of my discussion of the Department's denial of overtime, pre-judgment interest and attorney fees.

> Concerning the mode of procedure, the General Assembly has enacted §§1-23-310/400. However, the Court in *Al Shabazz v. State* 338 S.C. 354, 375, 527 S.E. 2d 742 (S.C., 2000) declined to apply §§1-23-320, 330, 340, 360 to inmate custody/sentence challenges because an inmate grievance was adequate to raise the matter and create a record. When Al Shabazz was decided, there was still no grievance remedy for prevailing wage claimants, decided in *Adkins, et al. v. SCDC* 602 S.E. 2d 51 (S.C., 2004). Since *Adkins*, the General Assembly has not enacted other provisions to replace those not applied in *Al Shabazz*. As to deprivation of property, see discussion on pages 3-5 herein.

Appellant failed to show how or why these legal authorities apply, or how the mode of procedure prescribed by the Supreme Court is inadequate. He also failed to show why review under the Administrative Procedures Act as set forth in *Al-Shabazz* improperly deprived him of property. The absence of any cogent analysis renders Appellant's argument abandoned for appellate review. *State v. Hill*, 394 S.C. 280, 297, 715 S.E.2d 368, 377 (Ct. App. 2011) (considering a citation to a case "without any analysis whatsoever as to how or why [it] applies" insufficient to preserve an issue on appeal, and thus rendering that issue abandoned on appeal; *First Sav. Bank v. McLean,* 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting an issue is deemed abandoned where appellant fails to provide arguments or supporting authority for his assertion); *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.").

Article I, Section 8

Appellant appears to argue that the Department violated principles of separation of powers when it failed to carry out and enforce sections 24-3-40[17], 24-1-295[18] and subsection 24-3-430(D)[19] of the South Carolina Code. Said simply, Appellant seems to contend that the Department's rate of pay for Appellant's work in the project violated Article I, Section 8 because the amount paid does not comport with the requirements established by the Legislature. Yet, aside from citation to this legal authority, Appellant offers no argument or discussion to support his

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[17] Section 24-3-40 of the South Carolin Code (2000) proscribes statutory deductions that the Department shall deduct from gross wages earned by inmates.

[18] Section 24-1-295 of the South Carolina Code (2025) authorizes the Department to negotiate wages, which may be less than prevailing wage, for inmate labor provided under prison industry service and export work contracts. In addition, the statue requires deductions from gross earnings in addition to other required deductions.

[19] Subsection 24-3-420(D) of the South Carolina Code (1995) provides that no inmate shall earn less than prevailing wage.

claim that the Department assumed or discharged the duties of another branch of government. *First Sav. Bank v. McLean,* 314 S.C.at 363, 444 S.E.2d at 514; *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. at 164, 584 S.E.2d at 396. Indeed, to the contrary, in its final determination, the Department stated that it paid Appellant in accordance with the statutory provisions applicable to each of these designated time periods and Appellant failed to meet his burden to show that the Department did otherwise. *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008) (citing *Pressley v. Lancaster County,* 343 S.C. 696, 704, 542 S.E.2d 366, 370 (Ct. App.2001)) ("The party challenging a governmental body's decision bears the burden of proving the decision is arbitrary."). Nevertheless, a review of the Record supports Appellant's assertion that the Department failed to adhere to the requirements of section 24-3-40 for the time period from July 1, 2001 to June 30, 2007. Still, the parties stipulated that deductions must be consistent with the requirements of section 24-3-40 of the South Carolina Code and thus must be taken from the gross wages earned for work performed during that time period. As such, the Court has adjusted the Department's calculations to be consistent with the parties' stipulations.

Similarly, Appellant also argues the Department violated Article 1, Section 8 of the South Carolina Constitution by denying Appellant's claims for attorney's fees. However, as will be discussed below, Appellant has failed to meet his burden to show that he was entitled to such fees. *Id.*

Overtime Pay, Pre-Judgment Interest, Costs and Attorney's Fees

Appellant argues that the Department's denial of overtime, pre-judgment interest and attorney fees was arbitrary and capricious because overtime, interest, costs, and fees are required by statute. Appellant's argument lacks merit for several reasons.

Initially, Appellant failed to raise these issues in the Step 1 and Step 2 Grievance before the Department. *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 [fact finder] to be preserved for appellate review." (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998))). However, the Court of Appeals in *Gatewood* made it clear that an issue not raised to an administrative agency is not preserved for appellate review by the ALC. *Gatewood*, 416 S.C. at 323-24, 785 S.E.2d at 611–12. Consequently, these issues are not preserved for appellate review. *State v. Hill*, 394 S.C. at 297, 715 S.E.2d at 377.

Nonetheless, Appellant contends that he was not required to affirmatively plead for overtime, costs, interest and fees because they are required "as a matter of law." To support this assertion, Appellant cites to *Calhoun v Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000). However, Appellant failed to explain how this case relates to the matter before this Court. *State v. Hill*, 394 S.C. at 297, 715 S.E.2d at 377 (citation to a case "without any analysis whatsoever as to how or why [it] applies" is insufficient to preserve an issue on appeal, thus rendering that issue abandoned on appeal). Moreover, that case involved a divorce proceeding and specifically addressed the issue of the entitlement of interest.

However, even if these issues were preserved, they have since been abandoned. Indeed, Appellant only makes conclusory statements and allegations of error. *Potter v. Spartanburg School Dist. 7*, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011); *accord Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (finding that issues raised by the appellant were deemed abandoned because the arguments on those issues were conclusory); *State v. King,* 349 S.C. 142, 157, 561 S.E.2d 640, 648 (Ct.App.2002) (finding an argument conclusory and the issue abandoned when appellant merely argued the trial court's ruling was erroneous and prejudicial and cited an evidentiary rule); *First Sav. Bank v. McLean,* 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("Mere allegations of error are not sufficient to demonstrate an abuse of discretion. On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling.").

But even if the Court considered the merits, Appellant has failed to show entitlement to such costs and interests. First, the Record does not support that Appellant worked overtime. Additionally, the basis for Appellant's claim of statutory entitlement to interest and attorney fees is predicated upon sections 11-9-360[20] and 15-77-300[21] of the South Carolina Code. Yet, section

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[20] Providing that "[n]otwithstanding any limitation or restriction now existing by statute heretofore enacted, bonds or other obligations of the State, its agencies, or political subdivisions of the State shall bear interest at a rate or rates determined by the governing body of the entity issuing the bonds." S.C. Code Ann. § 11-9-360 (2011).

[21] The state action statute provides that "[i]n any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

(1) the court finds that the agency acted without substantial justification in pressing its claim against the party; and

(2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust." S.C. Code Ann. § 15-77-300 (2005).

11-9-360 of the South Carolina Code does not "entitle" Appellant to pre-judgment interest. Rather, section 11-9-360 merely establishes that interest shall be determined by the governing body of the entity issuing a bond. *See* S.C. Code Ann. § 11-9-360.

Furthermore, section 15-77-300 provides that "[i]n any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:

> (1) the court finds that the agency acted without substantial justification in pressing its claim against the party; and
>
> (2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust."

S.C. Code Ann. § 15-77-300. Here, however, even if this case could be construed as involving a **civil action** under section 15-77-300, Appellant has failed to show that the Department acted without substantial justification in pressing its claim. *See also Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008) (holding while separation of powers principles may substantially justify a state agency's defense of an unconstitutional statute, the substance and outcome of the matter litigated is ultimately determinative of whether there was substantial justification in pressing a claim); *see also First Sav. Bank v. McLean,* 314 S.C. at 363, 444 S.E.2d at 514 ("Mere allegations of error are not sufficient to demonstrate an abuse of discretion. On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling.").

Opportunity to be Heard in a Meaningful Time and Manner

Appellant argues that the Department's issuance of the final decision "12-26 years after appellants' work was done, over 20 years after they filed grievances, and over 7 years after the ALC remand[ed] to the [Department]" deprived him of the opportunity to be heard at a meaningful time and that he has been prejudiced because he died without payment. I disagree.

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." *Kurschner v. City of Camden Plan. Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (citing *Mathews v. Eldridge,* 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)). The fundamental requirements of due process include notice, an opportunity to be heard at a meaningful time and in a meaningful manner, and

judicial review. *Id.* (citing S.C. Const. art. 1, § 22; *Stono River Env't Protection Ass'n v. S.C. Dep't of Health and Env't Control,* 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991)); *S.C. Dep't of Soc. Servs. v. Wilson*, 352 S.C. 445, 574 S.E.2d 730 (2002). Additionally, "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer,* 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484, 494 (1972).

Significantly, the delayed issuance of the Department's final decision was attributable to the procedural history of this case. Indeed, as discussed above, this case was improperly brought by Appellant as a class action, and the Department delayed the initial processing of Appellant's administrative grievance based upon an unchallenged order of Judge Goodstein. Additionally, between 2017 to 2021, the parties were involved in multiple legal disputes relating to the underlying matter, many of which were initiated by Appellant. Naturally, these subsidiary claims delayed the Department's consideration of the issues in the underlying case. Then, from 2021 to 2023, the parties jointly engaged in mediation in an effort to resolve this decade's long controversy; in turn, further delaying the Department's consideration of Appellant's grievance. Furthermore, Appellant did not make a specific showing of the manner in which he was substantially prejudiced by the delay. *Leventis v. S.C. Dep't of Health and Env't Control,* 340 S.C. 118, 132, 530 S.E.2d 643, 650 (S.C. Ct. App. 2000) (citing, *Ogburn–Matthews,* 332 S.C. 551-561, 505 S.E.2d 598, 603 (citing *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n,* 282 S.C. 430, 319 S.E.2d 695 (1984)) ("[t]o prove the denial of due process in an administrative proceeding, a party must show that it was substantially prejudiced by the administrative process.").

In addition, Appellant contends that he was deprived of the opportunity to be heard in a meaningful manner because the Department failed to provide him with its calculations of wages owed to Appellant. Yet, Appellant acknowledged in his brief that the Department later provided its calculations of wages owed to Appellant on October 31, 2019,[22] thus rendering Petitioner's argument moot. *Curtis v. State,* 345 S.C. at 567, 549 S.E.2d at 596. Moreover, Appellant has failed to show how he was prejudice by the delay in receipt of these calculations.[23] *Leventis v. S.C. Dep't of Health and Env't Control,* 340 S.C. at 132, 530 S.E.2d at 650.

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[22] The Department also explained during oral argument that it excluded specific pay data from its final decision due to concerns regarding whether Mr. Westbrook was the attorney of record. The legitimacy of the Department's concern is evinced by this Court's Order of dismissal of 192 of the consolidated appeals.

[23] Importantly, Appellant's expert, George DuRant, CPA, had a copy of the Department's calculations, at the latest, by November 29, 2017.

Calculation of Wages Owed

Appellant further requests that the Court calculate monies owed to Appellant based upon "the circumstances, the great age of this case, and the need for judicial economy." As stated above, the May 12, 2025 Department decision did not include calculations of monies owed. However, the Department's data was subsequently provided by Appellant and is now a part of the Record. Ultimately, the Department determined that Appellant was owed backpay for work performed in the project. Specifically, the Department found that Appellant did not receive the prevailing wage for the specific job he performed from October 11, 1999 to June 30, 2001 and from July 1, 2007 to July 23, 2007[24] nor did he receive $4.00 per hour for work performed from July 1, 2001 to June 30, 2007. As a result, the Department determined that Appellant was entitled to a net total of $54,164.94 in back pay.[25]

Appellant argues the Department's calculation is incorrect and that he is entitled to $284,791.98 in wages. To support this contention, Appellant's counsel, Mr. Westbrook, provided accounting records of George DuRant, CPA. Yet, Mr. DuRant's calculations of monies owed were predicated upon the "varying base and overtime rates per hour **as instructed by [Mr. Westbrook]**" and Appellant has failed to show that the base pay rate provided to Mr. DuRant was consistent with records and data from [South Carolina's] Department of Employment and Workforce." (emphasis added). In addition, Mr. DuRant's calculations included overtime pay and interest which, as discussed above, Appellant has failed to show he was entitled to receive. *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. at 260, 659 S.E.2d at 235 (citing *Pressley v. Lancaster County,* 343 S.C. at 704, 542 S.E.2d at 370) ("The party challenging a governmental body's decision bears the burden of proving the decision is arbitrary."). Finally, Mr. DuRant included wages for work performed until April 2012, which is beyond the scope of this appeal.

Basis of the Calculation of Appellant's Wages

The Department calculated the monies owed Appellant based upon data from South Carolina's Department of Employment and Workforce. Significantly, Appellant has not shown

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[24] The Record on Appeal reflects that the average prevailing wage for the job Appellant performed from October 1999 to June 30, 2001 was $5.15 yet the Department only paid Appellant an hourly rate of twenty-five cents to fifty cents per hour.

[25] As we discussed further below, this figure does not include any statutory deductions from gross wages for the pay periods between June 27, 2001 to June 30, 2003 nor does it include the statutory deduction for escrow and savings account for the pay periods between July 1, 2003 to June 30, 2007.

that the Department's use of this data made its evidentiary determination erroneous. Indeed, as set forth above, in *Torrence* the Court of Appeals not only found the data reliable but directly indicated its use was mandatory. *Torrence v. S.C. Dep't of Corr.*, 433 S.C. at 648, 861 S.E.2d at 45 (providing that Department "must determine the mean average wage for the occupation at issue using records and data from [South Carolina's] Department of Employment and Workforce.") (emphasis added). Furthermore, Appellant has failed to meet his burden to show that the respective pay rates used by the Department did not adequately reflect the occupation at issue. Accordingly, the pay rate used by the Department is supported by substantial evidence. *See Se. Res. Recovery, Inc. v. S.C. Dep't of Health & Env't Control*, 358 S.C. 402, 407, 595 S.E.2d 468, 470 (2004) *quoting in part, Lark v. Bi–Lo*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) ("Substantial evidence is 'evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.'").

As to the amount of wages owed for the timeframe for which Appellant performed work, there is no dispute that the monies owed to Appellant must be calculated consistent with the stipulations set forth above. Furthermore, based upon those stipulations, Appellant was entitled to prevailing wage for work performed from October 1999 to June 30, 2001 and from July 1, 2007 to July 23, 2007. On the other hand, Appellant was entitled to the contractual hourly rate of $4.00 an hour for the work which he performed from July 1, 2001 to June 30, 2007.

October 1999 to June 30, 2001[26]

As to the calculations of the amount owed to Appellant based on the work he performed, the Record shows that Appellant completed 2.565.25 regular hours in the project from October 1999 to June 27, 2001. The average prevailing wage for work performed for that time period was $5.15 yet, Appellant was only paid an hourly rate of twenty-five cents, for a total of $1,343.09. As such, substantial evidence shows that Appellant was entitled to $4,601.88 (($5.15 x 2.565.25 = $13,211.04) less $7,266.07 (statutory deductions for Victim Restitution, Room and Board, Escrow

[26] While Appellant is entitled to prevailing wage for work performed from October 11, 1999 to June 30, 2001, the Department's accounting of monies owed identifies the pay period as "Beginning to June 27, 2001" and "6/27/2001 to 6/30/2002." Significantly, the Record reflects that Appellant was paid on June 18, 2001 and July 2, 2001. Importantly, Appellant presented no argument or evidence to show that that the Department failed to include any pay owed for work performed between June 27, 2001 and June 30, 2001 as part of its accounting of pay owed for the pay periods "Beginning to June 27, 2001."

and Savings Account))[27] = $5,944.97 less $1,343.09 (wages previously paid) = $4,601.88 in backpay for the difference between the pay received and the prevailing wage for hours worked from October 11, 1999 to June 30, 2001.

July 1, 2001 to June 30, 2007

Appellant worked a total of 17,001.53 regular hours at a rate of pay of fifty cents per hour; resulting in $8,500.78 in paid wages. However, the hourly wage that the Department should have paid for work performed during this time period was $4.00 an hour. Thus, Appellant should have been paid a gross wages of $30,602.75 (($4.00 x 17,001.53= $68,006.12) less statutory deductions ((.20 x $68,006.12 = $13,601.23) + (.25 x $68,006.12 = $17,001.53) + (.10 x $68,006.12 = $6,800.61) = $37,403.37))[28] for a net total of $30,602.75. Subtracting this net total from the wages previously paid results in an adjusted net total of $22,101.97 in backpay owed for work performed in the project from July 1, 2001 to June 30, 2007.

July 1, 2007 to July 23, 2007

As to the calculations of the amount owed to Appellant based on the work he performed, the Record shows that Appellant completed 312.37 regular hours in the project from July 1, 2007 to July 23, 2007. The average prevailing wage for work performed from July 1, 2007 to July 23, 2007 was $5.15 yet, Appellant was only paid an hourly rate of fifty cents, for a total of $156.18. As such, substantial evidence shows that Appellant was entitled to $567.75 (($5.15 x 312.37 = $1,608.72) less statutory deductions ((.20 x $1,608.72 = $321.74) + (.25 x $1,608.72 = $402.18) + (.10 x $1,608.72 = $160.87) = $884.79)[29] = $723.93; $723.93 - $156.18 (wages previously paid) = $567.75 in backpay for the difference between the pay received and the prevailing wage for hours worked from July 1, 2007 to July 23, 2007.

Total Amount of Backpay Owed

In sum, Appellant is owed $27,271.60 in backpay for work performed in the project from 1999 to 2007.

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[27] S.C. Code Ann. § 24-3-40 (1995).

[28] S.C. Code Ann. § 24-3-40 (2000).

[29] S.C. Code Ann. § 24-3-40 (2000).

Conclusion

Accordingly, I conclude that Appellant failed to carry his burden of proving that the Department's decision was either arbitrary or capricious, founded on an error of law or unlawful procedure, or unsupported by the evidence. *See Porter*, 333 S.C. at 20, 507 S.E.2d at 332. As such, the Department shall remit the backpay owed consistent with the calculations in this Order.

ORDER

For the reasons set forth in this Order,

IT IS ORDERED that the Department's final agency decision is **AFFIRMED, IN PART** and Appellant is owed a total of $26,071.59 in backpay for work performed in the project from 1999 to 2007.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

January 23, 2026
Columbia, South Carolina

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

January 23, 2026
Columbia, South Carolina