

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Joshua A. Vargo,

Appellant,

v.

South Carolina Criminal Justice Academy,

Respondent.

Docket No. 25-ALJ-30-0367-AP

FINAL ORDER AND DECISION

RECEIVED

Jun 15 2026

SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) upon the appeal of Joshua Vargo (“Appellant”) from a final agency decision issued by the Law Enforcement Training Council (“LETC or Council”) of the South Carolina Criminal Justice Academy (“SCCJA” or “Respondent”) to permanently deny Appellant a law enforcement certification. This Court has jurisdiction pursuant to S.C. Code Ann. Section 1-23-600(D) (Supp. 2025); *see also* S.C. Code Ann. § 1-23-505(2) (Supp. 2025). After careful consideration, the Court affirms the final decision of the LETC.

BACKGROUND

Appellant was employed by the South Carolina Department of Public Safety (“Department”) as a police officer for approximately ten years. On February 6, 2024, he was scheduled to pick up his patrol car and work. However, he contacted his supervisor, Corporal Albert, to inform him that Appellant’s daughter had become sick. Corporal Albert instructed Appellant that he could claim the time spent picking up his patrol car as work time and the remainder of the day as family sick leave. Appellant was also scheduled for work the next day but did not report to work or call. When Corp. Albert noticed that Appellant had not signed in or called, he texted Appellant. Appellant responded “FSL,” or, in other words, family sick leave. However, the Department later discovered that Appellant was actually absent because he was attending a scheduled job interview with the South Carolina Law Enforcement Division (SLED). The job interview lasted five and a half to six hours. Despite the fact that Appellant was at a job interview, he entered sick leave for his absence that day.



As part of the application process for the SLED job, Appellant filled out a questionnaire.

The questionnaire asked Appellant:

Have you ever used/tried any illegal drug(s) other than marijuana or abused any **prescription drugs** prescribed for yourself or for someone else. Yes () No (); if Yes, circle the appropriate drug(s): cocaine, LSD, amphetamine, hashish, k2spice/synthetic marij., crack, heroin, peyote, pain killers, barbiturates, rohyphnol, opium, mushrooms, oxycontin, valium, ketamine, ecstasy, sleeping pills, hydrocodone, Xanax, mescaline, salvia, methadone, codeine, methamphetamine, GHB, PCP, adderall/ritalin, morphine, other (not listed), and inhalants: glue, paint, acetone, nitrous oxide or any similar substance.

(emphasis added). Appellant checked yes and circled Adderall and Oxycontin. In the explanatory section, Appellant stated that the first time he tried these medications was 2012-2013 and he used them a “few” times. He also stated,

[he] took one ‘puff’ of marijuana prior to [law enforcement]. In college I took Adderall a few times to help with exams/late study nights. Taken Oxy[contin] after surgeries, always prescribed and never abused it. 2012-2013 took Adderall approximately 20 times, purchased from my neighbor at \$10 a pill.

SLED forward this questionnaire to the Department. Appellant’s answers on the questionnaire differ from answers he provided on a similar questionnaire on August 19, 2013, when he was applying for his position at the Department. The 2013 questionnaire asked Appellant:

Have you used/and or experimented with any **controlled substance** within the last 10 years (excluding marijuana)?

(emphasis added). Appellant answered “No” to this question. The questionnaire also asked:

Have you ever used and/or experimented with any **prescribed medication not prescribed to you?**

(emphasis added). Appellant responded, “maybe childhood f[rom] mother.” Appellant also denied the use of illegal drugs, specifically marijuana. Appellant underwent a polygraph examination on October 2, 2013. One question asked during the polygraph examination was:

Have you ever used any of the following drugs or narcotics listed below?

Appellant answered “No.” Adderall was not one of the specifically listed drugs.

Additionally, during his background interview with J.C. Rikard on October 24, 2013, Appellant was asked whether he “ever used **someone else’s prescription drug?**” (emphasis added). J.C. Rikard notated that Appellant indicated “maybe in childhood from his mother.” Appellant did not mention the use of Adderall in any other Department questionnaire or form.

The discrepancies between Appellant's responses to SLED and to the Department and the Appellant's use of sick leave on February 7, 2024, prompted the Department to begin an investigation. Captain Boehm from the Office of Professional Responsibility interviewed Appellant and questioned him about the discrepancies in his responses to the questionnaires. Appellant responded that he did not think of the drug use when he was applying to the Department. According to Appellant, it was simply not on his mind at that time.

Appellant also stated that he did not knowingly or willfully lie about his leave and that he had plenty of leave to take. He explained that he originally planned on using holiday leave for the interview but when his daughter got sick, plans changed. He acknowledged he entered sick leave but stated that while he forgot to edit the time in the system his supervisor could have corrected it as he had in the past.

On May 1, 2024, the Department submitted a personal change in status report of separation form (PCS form) to the Criminal Justice Academy's Certification Unit. The separation action was listed as misconduct as defined under section 23-23-150 of the South Carolina Code (2025) and/or regulation 37-025 of the South Carolina Code of Regulations (Supp. 2025). On May 2, 2024, the Academy served Appellant with the misconduct allegation and notified him of his right to a contested case hearing. Appellant timely requested a contested case hearing. The hearing occurred on September 25, 2024.

The Hearing Officer issued findings and recommendations on December 30, 2024. The Hearing Officer's recommendation included sections entitled "Documentary and Testimonial Evidence," "Analysis," and "Recommended Findings of Fact." In the "Analysis" section, the Hearing Officer concluded that a preponderance of the evidence did not support the Department's allegation that Appellant committed misconduct when he reported he was staying home with a sick child on February 7, 2024, because Appellant "gave a consistent and credible explanation for the leave issue."

The Hearing Officer found the Department provided sufficient evidence that misconduct occurred as to the second allegation because Appellant admitted he used Adderall a few times in his college but did not disclose its use in his job application to the Department that he had used or experimented with controlled substance within the last ten years. The Hearing Officer further found support in Appellant's response to questioning during the background interview regarding whether he had ever used or experimented with any prescribed medication. Appellant did not

check the “yes” box but instead stated “maybe in childhood from his mother.” Appellant’s response during the polygraph examination that he had never used someone else’s prescription drug was additional supporting evidence.

The Hearing Officer recommended the LETC issue the following findings of fact:

- The allegation of misconduct against Officer, as reported in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided to the Academy by the Department, is supported by the evidence adduced at the contested case hearing held on September 25, 2024;
- The Department has not met its burden of showing by the “preponderance of evidence” that Officer engaged in misconduct through willfully making false, misleading, incomplete, deceitful, or incorrect, statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;
- The Department has met its burden of showing by the “preponderance of the evidence” that Officer engaged in misconduct through willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;
- The Department has met its burden of showing by the “preponderance of evidence” that Officer engaged in misconduct by the misrepresentation of employment related information as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy; and
- The allegation of misconduct against Officer as set forth in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) by the Department should be deemed substantiated by the evidence adduced at the hearing.

The Hearing Officer also recommended the LETC issue the following conclusions of law:

- Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council (‘‘Council’’) is authorized, *inter alia*, to “provide for suspension, revocation, or restriction” of law enforcement certification in accordance with the regulations promulgated by the Council;
- Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification “based on evidence satisfactory to the Council that the candidate has engaged in misconduct”;

- A review of the record in this matter discloses that there does not exist [a] preponderance of the evidence that the ‘Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (i), by willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State”
- A review of the record in this matter discloses that there exists [a] preponderance of evidence that Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (k), by having ”willfully made false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State” as was alleged and reported to the Academy by the Department;
- A review of the record in this matter discloses that there exists [a] preponderance of the evidence that Officer committed misconduct, pursuant to S.C. Code Ann. § 23-23-150 (A) (3) (h), by the misrepresentation of employment-related information; and
- The misconduct allegation reported by the Department has been proven by the preponderance of evidence and, pursuant to the provisions of S.C. Code Ann. Regs. 37- 107, Council may conclude that, based on the evidence adduced at the contested case hearing and applicable statutes and regulations, Officer has committed misconduct.

On March 17, 2025, the LETC concluded that Appellant engaged in misconduct. In its Final Decision, the LETC adopted word for word the Hearing Officer’s “Documentary and Testimonial Evidence” and “Analysis” sections. The LETC also adopted the Hearing Officer’s recommended findings of facts with one exception. It disagreed with the Hearing Officer regarding a proposed finding of misconduct based upon allegations of false, misleading, or incomplete statements to law enforcement officers, agencies or representatives. It found in instead;

The Department met its burden of showing by a ‘preponderance of evidence’ that Officer engaged in misconduct through willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State, as was alleged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy.

The LETC then concluded that Appellant had violated subsections 23-23-150(A)(3)(i), (k) of the South Carolina Code (2025) and regulation 37-107 of the South Carolina Code of Regulations (Supp. 2025). Pursuant to its authority under regulation 37-108(A) of the South

Carolina Code of Regulations (Supp. 2025), the LETC permanently denied Appellant law enforcement certification.

Appellant then filed a Notice of Appeal with the Administrative Law Court. On September 29, 2025, the Honorable Ralph King Anderson, III, issued an order remanding the matter to the LETC to review its final agency decision for compliance with requirements that such an order contain specific, express findings of fact and conclusions of law.

The LETC issued a revised order on November 5, 2025. It concluded that a preponderance of the evidence indicated that Appellant had made false, incomplete or inaccurate statements to law enforcement officers and required documents.¹ The LETC permanently denied Appellant a certification as a law enforcement officer in the State of South Carolina.

Appellant once again filed a Notice of Appeal with the Administrative Law Court on November 26, 2025. The matter was assigned to the undersigned on December 5, 2025. The record on appeal has been filed and the matter has been fully briefed. It is now ripe for decision.

ISSUES ON APPEAL

Appellant's brief raises the following issues on appeal:

- I. Whether the Law Enforcement Training Council erred in rendering a Final Agency Decision that was not supported by substantial evidence?
- II. Whether the Law Enforcement Training Council's decision to permanently deny certification was arbitrary, capricious, and characterized by an abuse of discretion?
- III. Whether the forms relied on in this case are so unspecific, imprecise, and confusing as to be insufficient to allow them to serve as the basis of a finding of misconduct?
- IV. Whether the pursuit of this case should be barred by laches, estoppel, or waiver?
- V. Whether responses on a pre-employment application made by a person who is not trained and certified as a law enforcement officer can be used to support the Law Enforcement Training Council's decision?
- VI. Whether the existence of overwhelming mitigating circumstances dwarf any allegation of willfulness in this matter?

STANDARD OF REVIEW

¹ As Appellant correctly notes, the LETC's amended order did not rest upon a finding of misconduct involving the use of sick leave while participating in a job interview, and, accordingly, that issue is not before the Court.

The Respondent is an “agency” under the Administrative Procedures Act (APA). *See* S.C. Code Ann. §§ 1-23-310(2), -505(2), -600(A), (E) (Supp. 2025). Accordingly, the APA’s standard of review governs appeals from decisions of the Respondent. *See id.*; S.C. Code Ann. § 1-23-380 (Supp. 2025). The standard used by appellate bodies to review agency decisions is provided by Section 1-23-380(5) of the South Carolina Code. That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative 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.

§ 1-23-380(5); *see also* § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380).

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). In applying the substantial evidence rule, “a reviewing court will not overturn a finding of fact by an administrative agency ‘unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.’” *Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). When the evidence conflicts on an issue, the court’s substantial evidence standard of review defers to the findings of the fact-finder. *Risher v. S.C. Dep’t of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 435 (2011).

DISCUSSION

While Appellant enumerated six separate issues on appeal, the separate arguments set out in Appellant's brief do not directly correspond to these issues. The arguments as set out in Appellant's brief are as follows:

- I. The finding of misconduct based upon Appellant willfully making an incorrect statement is not supported by substantial evidence. To find so is an error of law and an abuse of discretion.
- II. The finding of misconduct based upon Appellant willfully making an incorrect statement on a form is not supported by substantial evidence. To find so is an error of the law and an abuse of discretion.
- III. The pre-employment forms used by SCDCCPS are not specific, imprecise, and confusing and should not give rise to the basis of Respondent's finding of misconduct. Reliance on these forms demonstrates that Respondent has failed to meet its burden of proof and is an abuse of discretion.
- IV. It is an error of law and an abuse of discretion to allow the pursuit of a misconduct proceeding based on an incident that occurred over ten years ago.
- V. The conduct of Appellant at issue in this case occurred prior to his being employed as a law enforcement. It is an error of law or abuse of discretion to use conduct that occurred be a mere job applicant to serve as the basis of a lifetime denial of law enforcement certification.
- VI. The failure of the LETC to make findings of the issue of mitigation in this case allows the issue to evade review for an abuse of process for failure to consider mitigating factors.

The first, second, and third of these arguments relate generally to the question of whether the decision of the LETC is supported by substantial evidence and the Court will therefore address these issues simultaneously below. The remaining arguments will be addressed separately.

I. Was the LETC final decision supported by substantial evidence?

Appellant contends that the record does not contain substantial evidence to support the LETC's conclusion that Appellant committed misconduct by willfully making a false, misleading, incomplete, deceitful, or incorrect statement to a law enforcement officer in violation of S.C. Code Section 23-23-150(A)(3)(i). Appellant argues that only two witnesses could have provided an evidentiary foundation for such a conclusion – the polygrapher and the background interviewer – but neither of these witnesses was called to testify. In fact, no law enforcement officer testified

before the Hearing Officer or the LETC. Moreover, Appellant appears to have passed his polygraph examination.

Appellant also contends that the record does not contain substantial evidence to support the LETC's conclusion that Appellant committed misconduct by willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State in violation of Section 23-23-150(A)(3)(k). Appellant attacks each of the three documents which the Respondent contends contain false or incorrect statements: (1) the 2013 on-line employment application; (2) the 2013 Law Enforcement Polygraph Questionnaire; and (3) Exhibit 6.

Each of these arguments will be discussed below.

A. False Statements

Any evaluation of the record for substantial supporting evidence begins with the proposition that establishing that a determination is supported by substantial evidence is not a herculean task. The substantial evidence standard of review is a very deferential standard. *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 490, 697 S.E.2d 587, 589 (2010); *see In re Long Dei Liu*, No. 8:16-AP-01233-TA, 2020 WL 5543041, at *5 (C.D. Cal. Sept. 14, 2020) (the substantial evidence standard of review is generally considered the most difficult standard of review to meet). A finding that substantial evidence exists requires more than a scintilla of evidence, *Oakes v. Kijakazi*, 70 F.4th 207, 212 (4th Cir. 2023); *Charleston Cnty. Assessor v. Univ. Ventures, LLC*, 421 S.C. 194, 203, 805 S.E.2d 216, 221 (Ct. App. 2017), *aff'd as modified*, 427 S.C. 273, 831 S.E.2d 412 (2019). However, substantial evidence is less than a preponderance of the evidence. *Grayson v. Gulf Oil Co.*, 292 S.C. 528, 530, 357 S.E.2d 479, 480 (Ct. App. 1987). Substantial evidence is simply such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Scruggs v. Tuscarora Yarns, Inc.*, 294 S.C. 47, 49, 362 S.E.2d 319, 321 (Ct. App. 1987). Courts may not overturn a finding of fact by an administrative agency unless there is no reasonable probability the facts could be related by a witness upon whose testimony the finding was based. *Id.*

Here, Appellant asserts that there is no substantial evidence which establishes, as LETC was required to do, that Appellant willfully made a false statement. Appellant first questions the quantum of evidence in the record on this issue. Appellant notes that there were only two officers to whom Appellant could have given a false statement, the polygrapher and the background

interviewer, Officer Rikard. Neither of these individuals testified as a witness at the hearing. In fact, no law enforcement officer testified that he or she heard Appellant make a false or incorrect statement.

Respondent argues in response that there is substantial evidence that Appellant made false or incorrect statements were made to law enforcement. It relies specifically on statements made during Appellant's background interview with Officer Rikard.² Rikard verbally asked Appellant a variety of questions and recorded these responses on Exhibit 6 below, the following two of which are at issue here:

1. Have you ever used and/or experimented with any prescription medication not prescribed to you?
2. Have you ever used and/or experimented with any illegal drug or substance not mentioned above?

Rikard recorded Appellant's answers to these questions. Rikard did not record a "Yes" or "No" response to the second question. Instead, a note in the margin states "maybe childhood from mother."³ Respondent contends that this response is false, incorrect, or incomplete because Appellant admitted when applying for a position with SLED that he had purchased approximately twenty Adderall pills from a neighbor at \$10 per pill during his final months of college. Appellant does not challenge these facts, but contends, as discussed in more detail below, that there is no evidence Appellant *willfully* made a false, incorrect, or incomplete statement.

Rikard recorded that Appellant answered "No" to the second question. Notably, Adderall was not an illegal drug or substance specifically mentioned in preceding questions, making the general catch all question potentially applicable. Appellant contends that his verbal response to this question is not substantial evidence which supports the LETC's determination because Adderall is not "an illegal drug." In other words, Appellant contends that this response to the question was truthful. Respondent counters that this argument ignores the fact the question asks about both "illegal drugs" and "substances" "not mentioned above." According to Respondent,

² Respondent, in its brief, also relies upon statements contained in certain documents submitted by Appellant. This argument intermingles references to false, misleading or incomplete statements law enforcement pursuant to section 23-23-150(A)(3)(i) with references to false, misleading or incomplete statements in a document, record, or report pursuant to section 23-23-150(A)(3)(k). The LETC made a finding of misconduct under both of these code sections. Accordingly, Appellant's statements in documents or reports will not be considered in the Court's analysis of whether false or misleading statements were made to law enforcement. They will instead be considered when the Court addresses Appellant's arguments with respect to Section 23-23-150(A)(3)(k).

³ The record of Appellant's responses to Rikard's verbal question was admitted as Exhibit 6 below.

even if Adderall is not considered an illegal drug, it should be considered a “substance,” particularly where, as here, a preceding question addressed prescription drugs in addition to other illegal drugs.

After considering the evidence in the record and the parties’ argument, the Court first concludes that there *is* substantial evidence in the record to support the LETC’s determination that Appellant made false, misleading, incomplete, or incorrect statements to law enforcement. There is no indication that Appellant’s response to the question regarding use of another’s prescription medication included a confession regarding Appellant’s Adderall use. Appellant also denied using a substance “not mentioned above,” when he had in fact used Adderall he had purchased from a neighbor at \$10 per pill. The Court does not discount Appellant’s arguments that these facts could be interpreted in an innocent manner. Appellant’s interpretation of the facts is plausible. The Court, however, also concludes that Respondent’s interpretation of the facts is plausible. In other words, a reasonable person could construe the facts in the same manner as did the LETC.

The Court now proceeds to address Appellant’s arguments that even if false, misleading, incorrect or incomplete statements were made, there is no evidence that such statements were made willfully. According to Appellant, he was not a law enforcement officer at the time of the statements in question and was simply naïve. He did not understand what he contends were vague questions and his Adderall use did not come to mind during the background interview. The Hearing Officer concluded that Appellant’s explanation was “plausible.” Respondent counters that it was proper for the LETC to infer that Appellant’s incorrect statements were made willfully because of the context in which they were made, *i.e.*, a job application in which a correct response may have negatively impacted Appellant’s chances of securing employment.

The Court agrees with Appellant and the Hearing Officer that Appellant’s argument against a finding of willfulness is “plausible.” Additionally, as Appellant notes, there is no direct evidence of willfulness. There does, however, appear to be circumstantial evidence in the record on the issue of intent. As the South Carolina Supreme Court has explained when discussing direct and circumstantial evidence:

Evidence can be divided into two basic categories: direct and circumstantial. Direct evidence is evidence based on actual knowledge and proves a fact without inference or presumption. Direct evidence immediately establishes the main fact to be proved. Circumstantial evidence immediately establishes collateral facts from which the main fact may be inferred and is typically characterized by inference or presumption.

State v. Salisbury, 343 S.C. 520, 524, 541 S.E.2d 247, 249 (2001) (internal citations omitted). “For circumstantial evidence to be sufficient to warrant a finding of a fact, the circumstances must lead to the conclusion with reasonable certainty and must have sufficient probative value to constitute the basis for a legal inference, not for mere speculation. *Gastineau v. Murphy*, 331 S.C. 565, 570 at n. 2, 503 S.E.2d 712, 714 at n. 2 (1998). The facts and circumstances shown should be assessed in the light of ordinary experience, and such conclusions deduced therefrom as common sense dictates. *Id.* Where these criteria are met, circumstantial evidence may be just as competent as is direct evidence.

The Court concludes that there is sufficient circumstantial evidence in the record from which a reasonable person could draw the conclusion that Appellant’s conduct was willful.⁴ Again, something less than a preponderance of the evidence is sufficient for purposes of appellate review. One of Appellant’s answers was made in response to a question about prescription drugs. Appellant does not suggest that he did not know or should not have known that Adderall was a prescription drug. Moreover, because disclosure of the Adderall use would have disqualified him from the job he sought in 2013, a motive for nondisclosure existed. 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*, 321 S.C. at 226, 467 S.E.2d at 917. In circumstances like those presented here, the Court does not have the authority to overturn the LETC’s findings and/or conclusions.

B. False or Incorrect Statements in Documents.

Again, Appellant contends that there is no substantial evidence in support the LETC’s conclusion that Appellant committed misconduct by willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State in violation of Section 23-23-150(A)(3)(k). Appellant challenges each of the three documents which the Respondent contends contain false or incorrect statements.

⁴ Intent may be inferred from circumstantial evidence. *See, e.g., Dunlap v. TM Trucking of the Carolinas, LLC*, 288 F. Supp. 3d 654, 668 (D.S.C. 2017) (providing intent may be inferred through circumstantial evidence); *State v. Cherry*, 348 S.C. 281, 288, 559 S.E.2d 297, 300 (Ct. App. 2001) (providing circumstantial evidence alone is often sufficient to show criminal intent because the element of intent, being a state of mind or mental purpose, is usually incapable of direct proof).

Appellant also submitted a reply brief addressing two points. It emphasizes to the Court that the question is not whether Appellant should be reinstated to his prior position, but rather whether he may serve as a law enforcement officer in the State of South Carolina. Appellant argues that his ten-year record of service as a law enforcement officer answers this question in the affirmative. The brief also contends that, contrary to Respondent's assertion, certain matters are not "undisputed." Appellant asserts that there are factual disputes regarding such issues as to the proper interpretation of notes taken by Captain Rikard during his interview of the Appellant.

The Court will address each document attacked by Appellant below.

1. 2013 On-Line Employment Application

Question 14 of this application asks: "Have you ever used and/or experimented with any controlled substance within the last 10 years (excluding marijuana)?" Appellant replied "No." Appellant contends that this response is not evidence that Appellant willfully provided false, incomplete or incorrect information. According to Appellant, the application conflates the terms "illegal drugs," "prescription drugs," and "controlled substances"; the term "controlled substance" is not defined and does not have a commonly understood meaning; and the application does not expressly refer to Adderall.

Had the Court been the finder of fact in this instance, it may have accepted Appellant's arguments. The question before the Court, however, is whether a reasonable person could view this statement as a false, misleading, incorrect or incomplete statement made in a form or document. Viewed from this lens, the Court concludes that a reasonable person could perceive this statement as false or misleading. At all relevant times, Adderall was in fact a controlled substance.

2. 2013 Law Enforcement Polygraph Questionnaire

The second document in issue is the Law Enforcement Polygraph Questionnaire completed as part of Appellant's initial job application in 2013. This document asks "Have you ever used someone else's prescription drugs?" Appellant again answered "No." This statement is clearly incorrect and was made in a document submitted to law enforcement. Accordingly, there is substantial evidence in the record that Appellant made a false, misleading or incorrect statement in a document or form as contemplated by Section 23-23-150(A)(3)(k).

Appellant again argues that even though the statement was false or incorrect, there is no evidence that it was made willfully. The omission was, according to Appellant, merely a mistake

or an oversight. As explained above, however, there is circumstantial evidence in the record from which a reasonable person could infer intent.

Appellant makes a final argument. He asserts that even a willfully false statement to this question does not warrant decertification because the Highway Patrol did not rely on this response in determining whether to hire Appellant. However, Section 23-23-150 contains no statutory requirement that a false statement warranting decertification be material or have been relied upon by the hiring agency.

Appellant finally contends he cured any defect by informing Captain Rikard that he had possibly used his mother's prescription drugs while a child. This argument is unavailing. It relies on the premise that harm or injury must be inflicted as a result of the false or incorrect statement to warrant decertification. As discussed above, Appellant cites no authority for this proposition and the Court's own research has not located any authority in support of this argument.

3. Exhibit 6

The final document is Exhibit 6. The LETC relied upon Appellant's negative answer to the question "Have you ever used and/or experimented with any illegal drug or substance not mentioned above?" in finding that a preponderance of the evidence indicated that Appellant had willfully provided incorrect information on a document. Appellant argues that he did not fill out this form. Instead, it appears that the Exhibit was completed by an officer who recorded Appellant's verbal responses to the set of questions contained in the exhibit.

Appellant argues that because he did not complete the form, it cannot satisfy the requirements of Section 23-23-150(A)(3)(k). The Court agrees with Appellant in this regard; however, as discussed above, Exhibit 6 is evidence of a false or incorrect statement which can authorize decertification pursuant to Section 23-23-150(A)(3)(i).

II. Ten Year Old Incident

Appellant argues that it is an error of law and an abuse of discretion to allow the pursuit of a misconduct proceeding based on an incident that occurred over ten years ago. This argument rests on principles of laches, estoppel, unclean hands, and waiver. Appellant contends that the Department of Public Safety failed to retain the polygraph tapes, failed to produce a transcript of the background interview and failed to require its employee to take comprehensive notes of the background interview. Appellant believes that this failure to preserve evidence has prejudiced his defense in this matter.

Respondent makes a number of arguments in response. It first contends that this argument was not preserved for review. Next, Respondent asserts that the argument should be deemed abandoned pursuant to Rule 37, SCALCR, because it is conclusory and does not include supporting authority. Respondent also argues that the Administrative Law Court lacks the authority to apply laches, estoppel, or waiver in an appeal. It contends that Appellant's own unclean hands bar his invocation of laches and estoppel. It asserts that Appellant cannot establish prejudice, as required to support such arguments. Finally, it contends that the use of such defenses is inconsistent with the purpose of the relevant statutes.

The Court has reviewed the record and agrees with Respondent that this argument is not properly preserved for review and therefore may not be reached by the Court. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (providing if review of the record establishes that an issue is not preserved, then an appellate court should not reach it). To be preserved for review, an issue must have been both raised to and ruled upon by the trial court. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("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 trial judge to be preserved for appellate review."). While it appears that Petitioner raised this argument in a very general fashion to the Hearing Officer, it is clear that the Hearing Officer did not rule on the argument. Moreover, Appellant filed a Motion in Opposition to the Hearing Officer's Recommendation pursuant to S.C. Code Section 23-23-150(E). This motion did not raise any argument relating to estoppel, waiver, laches, or delay. Finally, Appellant did not raise this issue to the LETC, and the LETC did not rule on the issue.⁵

III. Conduct which Occurred Prior to Employment as a Law Enforcement Officer

Appellant asserts that it is an error of law or an abuse of discretion to allow conduct that occurred by a mere job applicant to serve as the basis of a lifetime denial of law enforcement certification. He contends that if the misconduct had been discovered at the time of the application, he would simply not have been hired and would not have been subject to permanent decertification. He compares this situation to one in which a dental student improperly lists grades on a school

⁵ Because the Court concludes that this argument is not preserved for review, it need address the other arguments related to the ten-year period which elapsed between the misconduct and the decertification.

application and suggests it would be improper for the Board of Dentistry to later revoke the student's dental license even though the student had finished at the top of his or her class and become board certified.⁶

Respondent makes a number of arguments in response, one of which is that this argument is not preserved for review. The Court has reviewed the record below. The Hearing Officer did not rule on the argument. Appellant's Motion in Opposition to the Hearing Officer's Recommendation pursuant to Section 23-23-150(E) did not raise this argument. Appellant also failed to raise this issue to the LETC. Finally, the LETC did not rule on the issue. Accordingly, this argument is not preserved for review. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693 (holding to be preserved for review, an issue must have been both raised to and ruled upon by the trial court).

IV. Findings of Mitigation

Appellant argues that the LETC has authority to consider factors in mitigation of decertification pursuant to S.C. Code Ann. Regs. § 38-004.⁷ He further contends that a number of mitigating factors are present this case, including but not limited to:

- Appellant did not violate his oath as a law enforcement officer;
- He did not violate the Department's drug policy;
- He did not violate his training;
- The actions in question occurred over 10 years ago;
- Appellant was not a law enforcement officer at that time the actions were taken;

⁶ Appellant makes other arguments in this section of his brief in a cursory fashion. He contends that withdrawing his certification is tantamount to an unconstitutional seizure or cruel and unusual punishment. He also argues that the LETC abused its discretion in selecting decertification, the most severe penalty possible, when it could have selected a lesser sanction. These arguments are made at most in one or two sentences without supporting authority and are therefore deemed to be abandoned. *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 139, 796 S.E.2d 165, 172-73 (Ct. App. 2016) ("When an appellant provides no legal authority regarding a particular argument, the argument is abandoned and the court can decline to address the merits of the issue.").

⁷ This citation appears to be a scrivener's error. Regulation 38-004 was transferred to another section of the Code of Regulations on June 2, 2015. Former section 38-004 addressed the denial of certification for a law enforcement officer. It is currently codified as section 37-025. Moreover, because this case involved the withdrawal of a certification rather than the denial of an initial application for a certification, it is actually governed by section 37-026. In any event, both section 37-025 and 37-026 permit consideration of mitigation factors. Section 37-026 provides that "in considering whether to withdraw certification based on misconduct, the Council may consider the seriousness, frequency and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct."

- Appellant did admit that he had used some prescription drugs to the Department in connection with his initial job application;
- Appellant was honest in dealings with SLED;
- The Department never specifically asked Appellant about Adderall; and
- Appellant was an exemplary, award-winning officer.

According to Appellant, the LETC should have made findings of fact regarding mitigating factors. He believes he is prejudiced by the absence of such findings because, without them, this Court and other appellate courts cannot review the LETC's actions for an abuse of discretion in selection of the appropriate penalty.

Respondent makes two arguments in opposition. It asserts that the LETC is not required to consider mitigating factors. It also contends that even if an abuse of discretion review were to occur, this Court would be required to affirm because the LETC committed no error of law and its conclusions are supported by the facts in the record.

After consideration of these arguments, the Court agrees with Respondent. Respondent is correct that the LETC is not required to consider mitigating factors. *See* S.C. Reg. 37-025(B) (“In considering whether to deny certification based on misconduct, the Council *may* consider the seriousness, the remoteness in time[,] and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct.” (emphasis added)); *see also Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352-53, 549 S.E.2d 243, 250 (2001) (“The use of the word ‘may’ [in a statute] signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute.”). Because the LETC is permitted to decline to consider mitigating factors in their entirety, the failure to make findings of fact regarding mitigating factors is not reversible error.

Notably, the two cases Appellant cites in support of his argument, *Ragsdale v. S.C. Criminal Justice Academy*, No. 19-ALJ-30-344-AL (Jan. 7, 2020) and *Elkin v S.C. Criminal Justice Academy*, No. 15-ALJ-30.0246, 210 WL 9256631, work against the Appellant. It is certainly true that in *Ragsdale*, Judge Lenski expressed concern about the gravity of the sanction imposed by the Council; however, Judge Lenksi actually *affirmed* the sanction imposed by the Council. Additionally, while Judge Robinson reversed the sanction imposed by the Council in *Elkin*, Judge Robinson was herself reversed by the Court of Appeals, which reinstated the sanction.

Elkin v. S.C. Crim. Just. Acad., No. 2016-000034, 2017 WL 6508871, at *1 (S.C. Ct. App. Dec. 20, 2017).⁸

ORDER

IT IS HEREBY ORDERED that the decision below is **AFFIRMED**.⁹

AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

April 28, 2026
Columbia, South Carolina

⁸ Because the Court agrees with Respondent's first argument, it need not consider the second argument advanced. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing appellate court need not address remaining issues when disposition of prior issue is dispositive).

⁹ The Court has thoroughly reviewed the record in this case and the arguments of the parties. The factual discrepancies highlighted by Appellant, along with his other arguments, were not overlooked. However, when serving an appellate role, this Court has limited authority to disturb decisions made below as explained above.

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on 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).



Jared Thompson
Judicial Law Clerk

April 28, 2026
Columbia, South Carolina