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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Samuel L. Johnson, Administrative Law Court Judge

Appellate Case No. 2025-002575
Case No. 24-ALJ-04-0161-AP

Roger Curtis, #143635, ... Respondent,

v.

South Carolina Department of Corrections, ... Appellant.

INITIAL BRIEF OF APPELLANT

ANDREW F. LINDEMANN
LINDEMANN LAW FIRM, P.A.
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

Counsel for Appellant

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S.C. Code Ann. § 24-3-430(D).

STATEMENT OF ISSUES ON APPEAL

I. Did the Administrative Law Court err in rejecting the Appellant's exhaustion of administrative remedies defense based on the provisions of Section 12.1 of SCDC Policy ADM-15.13 titled "Inmate Pay" both on the merits and by asserting *sua sponte* arguments not asserted by the Respondent?

This issue includes the following sub-issues for appeal:

Did the Administrative Law Court err in ruling that the Appellant's Step One Grievance involved "ongoing PIP work" when the record shows beyond dispute that the Respondent was not engaged in Prison Industries work on January 30, 2023, when the Step One Grievance was submitted?

Did the Administrative Law Court err in *sua sponte* adjudging any claim for back pay beyond the date of the Step One Grievance and in awarding relief through May 21, 2024?

STATEMENT OF THE CASE

This is an appeal from the November 25, 2025 Order issued by the South Carolina Administrative Law Court ("ALC") whereby the ALC decided with finality the Appellant's exhaustion of administrative remedies defense based on the provisions of Section 12.1 of SCDC Policy ADM-15.13 titled "Inmate Pay."

On January 30, 2023, the Respondent Roger Curtis filed a Step One Grievance claiming he was not paid in accordance with the former prevailing wage statute in effect at that time, S.C. Code Ann. § 24-3-430. The Step One Grievance was denied on February 3, 2023, with the following explanation:

> Pursuant to SCDC Policy ADM-15.13 Inmate Pay, it establishes criteria for determining eligibility for inmate pay and ensures proper handling of all matters pertaining thereto. An employee is designated specifically to enter inmate pay data, provided by PI, into the Inmate Pay System. Inmates entering a PI program receives pay at that program's current rate. Problems in pay must be identified within 15 days of the payroll date error. Record of electronic notification must be retained. Failure to notify the Agency in writing and within 15 days, forfeits back pay.

The Respondent subsequently submitted a Step Two Grievance on February 8, 2023. The Step Two Grievance was later denied by SCDC, and the Respondent filed an appeal to the ALC challenging SCDC's final decision denying his Step Two Grievance based on a failure to timely exhaust his administrative remedies under Policy ADM-15.13.

By Order dated November 25, 2025, the ALC rejected that exhaustion of administrative remedies defense *as a matter of law*. Specifically, the ALC ruled as follows:

> [T]he Court is not convinced that ADM-15.13 plays any role with respect to prevailing wage grievances seeking backpay for historic work under PIP. While ADM-15.13 appears to apply to the correction of individualized pay errors for ongoing inmate employment (including payroll errors related to Prison Industries

> work), by its terms and in practice it is not an avenue for an inmate to pursue back payment up to the prevailing wage for PIP work. Consequently, ADM-15.13's deadline of fifteen days from the payroll error date does not apply here, nor does ADM-15.13 play[] any role in the "proper exhaustion" of the instant appeal. The Department therefore erred in denying Appellant's grievance based on ADM-15.13, and the Court rejects the Department's contention that Appellant failed to exhaust his administrative remedies.

(Order, p. 12). Ultimately, the ALC remanded to SCDC with directions that the agency "calculate and offer to remit to Appellant the additional pay owed to Appellant under the prevailing wage statute, S.C. Code § 24-2-430(D), for the period of September 1, 2006 through May 21, 2024." (Order, p. 12). The ALC further directed that SCDC "shall issue and serve upon Appellant a corrected, substantive, and appealable Step 2 response that sets forth -- with sufficient detail and clarity to permit meaningful consideration by Appellant -- the Department's calculations of the total underpayment amount owed to Appellant, allowing Appellant the opportunity to accept the Department's calculations or appeal them to the ALC if he disagrees with them." (Order, p. 12).

While the ALC directed that "additional pay" is owed to the Respondent from September 1, 2006 through May 21, 2024, the Step One and Step Two Grievances do not seek back pay for that duration. In fact, that range of back pay identified by the ALC is beyond the date of Step One Grievance submitted on January 30, 2023, and the date of the Step Two Grievance submitted on February 8, 2023.

The Appellant SCDC timely filed the current appeal to this Court.

STANDARD OF REVIEW

The standard of review for questions of law is *de novo*. The appellate court "may reverse where the decision is affected by any error of law." *Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454, 457 (Ct. App. 2011). The appellate court is "free to decide matters of law with no particular deference to the fact finder." *Id*. Thus, the trial court's rulings "as a matter of law" are reviewed under a *de novo* standard.

<u>**ARGUMENTS**</u>

I. The Administrative Law Court erred in rejecting the Appellant's exhaustion of administrative remedies defense based on the provisions of Section 12.1 of SCDC Policy ADM-15.13 titled "Inmate Pay" both on the merits and by asserting *sua sponte* arguments not asserted by the Respondent.

In its final agency decision, the Appellant SCDC denied the Respondent Roger Curtis' grievance seeking back pay due to his failure to properly exhaust his administrative remedies under the provisions of Section 12.1 of SCDC Policy ADM-15.13 titled "Inmate Pay." Section 12.1 provides as follows:

> Inmates must report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error. The inmate should maintain a record of the ARTSM reference number. The inmate pay designee will review the case and determine whether any additional pay is owed. Payroll corrections will be limited to the following:
>
> - If the inmate fails to notify the agency in writing and within 15 days, no back pay will be given.
>
> - The pay rate will be adjusted to the proper rate amount for future payrolls in accordance with these procedures.
>
> - The inmate may receive any additional pay owed for the previous two (2) pay periods only.

In the case at bar, there is no record that the Respondent even submitted an Automated Request to Staff Member (ARTSM) related to his pay rate or any claim for back pay. In fact, the Respondent does not identify any ARTSM in the Step One and Step Two Grievances nor is any ARTSM included or identified in the ALC record. Accordingly, the Respondent did not comply with the requirement in Section 12.1 that he "report any problems in their pay to their institution's inmate pay designee utilizing the Automated Request to Staff Member (ARTSM) within 15 days of the payroll date error." Instead, the Respondent submitted a Step One Grievance in which he referenced this Court's decision in *Torrence v. South Carolina Dept. of Corrections*, 433 S.C. 633, 861 S.E.2d 36 (Ct. App. 2021), and made a general inquiry about back wages for Prison Industries work that he performed in the past. SCDC advised the Respondent in the adjudication of the Step Two Grievance that his Step One Grievance was submitted "approximately one year and seven months after the Court of Appeals issued its opinion." (R. ___). Thus, SCDC was correct in denying the Step One and Step Two Grievances and his claim for any back pay at a "prevailing wage" based on his failure to properly and completely exhaust his administrative remedies under Section 12.1.

Of significant note, the Respondent did not indicate in his grievances that he was engaged in Prison Industries work at the time the Step One Grievances was submitted, and in fact, the record shows he was *not employed at that time*, which is contrary to the ALC's finding. (R. ___). The record shows that the Respondent had no "pay date" between December 1, 2022 and February 16, 2023. (R. ___). Thus, the ALC was incorrect in stating that "[t]his appeal concerns the wage paid to Appellant for … ongoing PIP work at the time of Appellant's grievance." (Order, p. 7). There was, indeed, no "ongoing PIP work" on January 30, 2023, when the Step One Grievance was submitted. The record clearly shows that to be the case and that the ALC was mistaken in ruling otherwise.

As this Court has explained, "[r]elief is not generally available to one who has not exhausted administrative remedies." *Robinson v. South Carolina Department of Employment and Workforce*, 443 S.C. 63, 902 S.E.2d 41, 47 (Ct. App. 2024). "The general rule is that administrative remedies must be exhausted absent circumstances supporting an exception to application of the general rule." *Id*. Likewise, "[t]he failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction." *Holman v. South Carolina Education Lottery Commission*, 441 S.C. 18, 891 S.E.2d 701, 708 (Ct. App. 2023). "Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." *Id*.

In the leading case of *Woodford v. Ngo*, 548 U.S. 81 (2006), the United States Supreme Court explained that an exhaustion of administrative remedies requirement mandates "proper exhaustion." The Supreme Court stated that "[a]dministrative law requires proper exhaustion of administrative remedies which means using all steps that the agency holds out, and doing so *properly* (so that the agency addresses the issues on the merits)." 548 U.S. at 90. (Emphasis in original). Failure to exhaust all levels of administrative review is not "proper exhaustion." *Id.* South Carolina law also requires "proper" and "complete" exhaustion.[1]

The ALC, however, rejected SCDC's assertion of an exhaustion of administrative remedies defense based on Section 12.1. In so doing, the ALC improperly raised and addressed several arguments that were never raised by the Respondent, and in doing so, the ALC improperly interjected itself as an advocate rather than an adjudicator of the arguments which were actually made by the Respondent. *See*, *City of North Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 599 S.E.2d 462, 464 (Ct. App. 2004) ("[i]t is an error of law for a court to decide a case on a ground not before it").

[1] The South Carolina Supreme Court has cited favorably the *Woodford v. Ngo* decision. *See*, *Rhame v. Charleston County School District*, 412 S.C. 273, 772 S.E.2d 159, 161 (2015).

For instance, the ALC, rather than the Respondent, questioned whether SCDC Policy ADM-15.13 is in contravention of Sections 24-3-315 and 24-3-430(D) of the Code of Laws. It is not. Although SCDC Policy ADM-15.13 has never been promulgated as a regulation under the Administrative Procedures Act (APA), it should still be regarded as having the "force of law." In the seminal cases of *Adkins v. South Carolina Dept. of Corrections*, 360 S.C. 413, 602 S.E.2d 51 (2004), and *Wicker v. South Carolina Dept. of Corrections*, 360 S.C. 421, 602 S.E.2d 56 (2004), the Supreme Court recognized that the Prison Industries inmates, like the Respondent, have no private, civil right of action to recover a "prevailing wage" owed under Section 24-3-430(D). However, the Supreme Court recognized that "[t]here are numerous issues relating to inmates which, although not giving rise to a private, civil cause of action, are nonetheless grievable through DOC's internal grievance processes." *Wicker*, 602 S.E.2d at 57. The Supreme Court further explained as follows: "We find no reason such procedures should not apply when an inmate challenges the wages he or she is being paid" and "[a]ccordingly, we hold that although Wicker has no claim for civil damages, he properly filed a grievance with the DOC." *Id*. In effect, in *Adkins* and *Wicker*, the Supreme Court concluded that the SCDC Grievance Policy, which itself is a *policy* and *not a regulation* promulgated under the APA, provides the *very procedural framework* that allows the Prison Industries inmates, including the Respondent, to make a claim for back pay. There is no reasonable argument that has been made or can be made that an SCDC policy provides the framework for the claim, as acknowledged by the Supreme Court, but that an SCDC policy cannot or does not establish the procedural parameters for such a claim.

The ALC also erroneously disregarded Section 24-3-390, which is a critical part of the statutory scheme governing the administration of the Prison Industries Program (Article 3 of

Chapter 3 of Title 24 of the Code of Laws). Section 24-3-390 provides: "The State Department of Corrections shall have power and authority to prepare and promulgate rules and regulations which are necessary to give effect to the provisions of this article with respect to matters of administration and procedure respecting it." S.C. Code Ann. § 24-3-390. Hence, the General Assembly has specifically directed and authorized SCDC to promulgate not only "regulations" but also "rules" governing the administrative process for the governance of the Prison Industries Program. Those "rules" include such policies as SCDC Policy ADM-15.13, which is intended to govern the program and includes rules, specifically Section 12.1, for reporting and challenging payment errors including errors in the "pay rate," which is at issue here. Clearly, Section 12.1 was authorized by the General Assembly, and most importantly, that provision is not in contradiction to any statutory provision including Sections 24-3-315 and 24-3-430(D). It presents a binding policy or "rule" which, as authorized by Section 24-3-390, is controlling with respect to the governance of the Prison Industries Program.

Likewise, the ALC *sua sponte* questioned whether this Court in *Torrence, supra*, previously rejected the exhaustion of administrative remedies defense based on Section 12.1 of SCDC Policy ADM-15.13. It has not. In *Torrence*, this Court addressed the timeliness of the filing of the grievance per the requirements of Paragraph 13.1 of SCDC Policy GA-01.12 title "Inmate Grievance System." Paragraph 13.1 pertains to all grievances in general and is not specific to the Prison Industries Program. This Court in *Torrence* ultimately ruled that "Torrence's grievance falls within the exception enumerated in Paragraph 13.9 of the Department's Policy GA-01.12, and thus, Paragraph 13.1's fifteen-day filing rule does not apply." *Torrence*, 861 S.E.2d at 43. The same is true for *Ackerman v. South Carolina Dept. of*

Corrections, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), which also addresses the fifteen-day filing requirement of Paragraph 13.1 of SCDC Policy GA-01.12.

It is a longstanding principle of South Carolina appellate jurisprudence that an appellate court's silence on an issue does not mean the issue does not exist or is not meritorious. As former Chief Judge Alex Sanders so aptly stated, "appellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *State v. Austin*, 306 S.C. 9, 409 S.E.2d 811, 817 (Ct. App. 1991). *See also*, *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 564 S.E.2d 322, 323 (2001). Importantly, neither *Torrence* nor *Ackerman* addressed the application of Section 12.1 of SCDC Policy ADM-15.13. Hence, there is no binding precedent on this issue. Likewise, any silence in such appellate decisions as *Torrence* and *Ackerman* does not and cannot suggest that the exhaustion of administrative remedies defense based on Section 12.1 of SCDC Policy ADM-15.13 lacks merit. No such ruling has been made at the appellate level.

Additionally, without the Respondent raising the issue, the ALC *sua sponte* inquired how SCDC reconciles its citation to ADM-15.13 to bar inmate claims for back pay with Section 13.2 of Inmate Grievance Policy. The ALC was again acting as an advocate in raising this argument. Further, the ALC's reliance on this issue to reject SCDC's exhaustion of administrative remedies defense was in error.

Section 13.2 states in part: "Unless a separate SCDC policy requires filing a grievance within a shorter period of time, any and all grievances that involve a continuous matter (prison industries pay) must be filed within two (2) years of when the issue arose, or the grievant should have known about it." This language was added to SCDC Policy GA-01.12 with its amendment on September 1, 2023, and as a result, it is not even applicable to the Respondent's grievances at issue or his claim for back pay. As a reminder, the Step One Grievance was submitted on January 30, 2023. Thus, it was entirely erroneous for the ALC to *sua sponte* raise the issue. Quite clearly, Section 13.2 is an affirmative defense which has not been asserted as a basis for the denial of the Respondent's claim nor as a basis for an affirmance on appeal.

Nonetheless, in addition to being wholly inapplicable to this case, the ALC also erred in conflating a statute of limitations defense with an exhaustion of administrative remedies defense. The referenced language from Section 13.2 of SCDC Policy GA-01.12 is best characterized as a statute or rule of limitations, while in contrast, Section 12.1 of SCDC Policy ADM-15.13 presents an exhaustion of administrative remedies defense. While similar, they serve two distinct purposes and are both recognized in the law as distinct and separate affirmative defenses. Hence, there is no need to reconcile the two separate, distinct affirmative defenses. They should operate independent of one another, that is, in a case where they both have some applicability. In the case at bar, of course they do not, and accordingly, it was *clear error* for the ALC to *sua sponte* raise the issue in the first place. Moreover, to the extent there may be deemed some conflict between Section 13.2 of SCDC Policy GA-01.12 and Section 12.1 of SCDC Policy ADM-15.13, as the ALC appears to conclude, that is not a conflict that needs to be nor should be resolved in this case. It is pure *dicta*. This case is controlled by the law, including policy language, that existed prior to September 1, 2023, and hence, the ALC clearly erred in injecting an issue that *did not even exist* when the Respondent filed his grievances. If anything, the ALC's injection of this issue into this case further demonstrates that the ALC crossed the boundary from adjudicator to advocate, which is improper.

Finally, the crux of the ALC's decision in rejecting SCDC's exhaustion of administrative remedies defense is again an issue never raised by the Respondent but rather one addressed *sua* *sponte* by the ALC for the first time in its order. In effect, the ALC addressed the issue without even first raising it in its Rule to Show Cause Orders to allow SCDC the opportunity to be heard as required by basic tenets of due process and fundamental fairness. At any rate, the crux of the decision is the ALC's restrictive definition of the term "payroll error." Citing two inapposite cases from federal district courts, the ALC concluded that "'payroll error' connotes an administrative mistake and excludes intentionally effectuated policies regarding wages." (Order, p. 10). Then, addressing the issue of subjective intent of a state agency with no record on which to make such a decision, the ALC nonetheless ruled that the setting of the pay rates prior to this Court's decision in *Torrence*, which clarified the law and provided a definition of "prevailing wage," was an "intentional act" and cannot be treated as a "mistake." Of court, errors of law (or mistakes of law) are made regularly within the American system of justice without being characterized as intentional or deliberate conduct. This Court and the Supreme Court overturn decisions of law made by lower court jurists on a regular basis, and no one suggests that those errors committed by judges were intentional or deliberate acts. In other words, errors of law are not necessarily intentional; they can result from a different reading or interpretation of statutory language. In short, the ALC's attempt to interject the notion of subjective intent into the definition of "payroll error" is both in error itself and, at any rate, should not have been raised by the ALC *sua sponte*.

In reality, the term "payroll error" has a much broader meaning as used in Section 12.1 of SCDC Policy ADM-15.13 than what the ALC suggests. A proper reading within the context of Section 12.1 should not be limited to an administrative or clerical error, such as an inputting mistake or an error in the calculation of an inmate's hours worked, as the ALC posits. In fact, Section 12.1, by its very terms, covers "adjustments of the pay rate." Indeed, the use of the term "pay rate" and the indication that the "pay rate will be adjusted to the proper rate amount" clearly demonstrate that Section 12.1 is intended to address precisely the subject matter of the Respondent's claim for back wages. The Respondent specifically alleges that he was denied the "proper rate," that being a "prevailing wage" as required by statute.

In sum, with respect to his claim for back wages, the law requires the Respondent to completely and properly exhaust his administrative remedies before pursuing his remedies in the ALC. As demonstrated by the record, the Respondent could have presented an ARTSM reporting a payroll error or challenging his "pay rate" at any time from September 2006 to December 16, 2022,[2] but he failed to do so. That is undisputed on this record. Accordingly, the Respondent did not exhaust his administrative remedies, and his grievances submitted in January and February 2023 were properly denied by SCDC. The ALC order reversing that final agency decision should itself be reversed and the final agency decision be reinstated.

As an alternative but closely related point, the ALC erred in *sua sponte* adjudging any claim for back pay *beyond the date of the Step One Grievance* and in thereby awarding relief through the date of May 21, 2024. There was no prospective relief requested by the Respondent, and there is no basis in law for the ALC to award relief that had not even accrued when the Step One Grievance was submitted. Indeed, from a purely logical standpoint, any remedy that had not accrued by January 30, 2023, could not have been exhausted by that date. That is an impossibility that the ALC clearly overlooked or disregarded.

[2] The Respondent's Step One Grievance was submitted on January 30, 2023. The record shows indisputably that his last "pay date" before January 30, 2023, was on December 1, 2022. (R. ___). There is no record, however, of any ARTSM reporting a payroll error or challenging the Respondent's "pay rate" by December 16, 2022, which would be within fifteen days of that December 1, 2022 pay date.

CONCLUSION

Based on the foregoing discussion and analysis, the Appellant South Carolina Department of Corrections respectfully requests that the Court reverse the Order of the Administrative Law Court rejecting SCDC's exhaustion of administrative remedies defense based on the provisions of Section 12.1 of SCDC Policy ADM-15.13 titled "Inmate Pay," and reinstate the final agency decision. Alternatively, the Court is asked to find that the Administrative Law Court erred in *sua sponte* adjudging any claim for back pay beyond the date of the Step One Grievance and in awarding relief through May 21, 2024.

Respectfully submitted,

LINDEMANN LAW FIRM, P.A.

BY: *s/ Andrew F. Lindemann*
ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 102
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920
Email: andrew@ldlawsc.com

Counsel for Appellant South Carolina Department of Corrections

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