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SC Court of Appeals

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**Appeal from Administrative Law Court
The Honorable Robert L. Riebold, Administrative Law Judge**

Appellate Case No.: 2026-001360

Joshua A. Vargo

Appellant,

vs.

South Carolina Criminal Justice Academy,

Respondent,

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER APPELLANT HAS MET HIS BURDEN OF CONVINCINGLY PROVING THAT THE FINAL DECISION OF THE LAW ENFORCEMENT TRAINING COUNCIL REGARDING MAKING A FALSE STATEMENT WAS CLEARLY ERRONEOUS**
- II. WHETHER APPELLANT HAS MET HIS BURDEN OF CONVINCINGLY PROVING THAT THE FINAL DECISION OF THE LAW ENFORCEMENT TRAINING COUNCIL REGARDING MAKING A FALSE STATEMENT WAS CLEARLY ERRONEOUS**
- III. WHETHER THE USE OF CERTAIN QUESTIONAIRES BY THE LAW ENFORCEMENT TRAINING COUNCIL TO SUPPORT ITS FINDINGS COMPORTS TO LEGAL FAIRNESS AND WERE APPROPRIATE CONSIDERATIONS IN REACHING A FINAL AGENCY DECISION**
- IV. WHETHER THE LAW ENFORCEMENT TRAINING COUNCIL CAN ISSUE A FINDING OF MISCONDUCT FOR AN ACT OCCURRING OVER TEN YEARS AGO**
- V. WHETHER THE LAW ENFORCEMENT TRAINING COUNCIL'S FINAL DECISION WAS AN ABUSE OF DISCRETION**
- VI. WHETHER THE FAILURE OF THE LAW ENFORCEMENT TRAINING COUNCIL TO NOTE WHETHER AND/OR HOW IT CONSIDERED MITIGATING FACTORS REQUIRES MODIFICATION AND/OR REVERSAL OF ITS FINAL DECISION**

STATEMENT OF THE CASE

On May 1, 2024, the South Carolina Department of Public Safety (DPS) submitted a Personnel Change in Status form to the South Carolina Criminal Justice Academy (Academy). The form advised a DPS law enforcement employee and Master Trooper, Joshua A. Vargo (Appellant), had been separated from DPS for misconduct. According to DPS, the nature of the misconduct was two-fold. First, DPS alleged Appellant willfully made 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. This allegation corresponds to S.C. Code Ann. § 23-23-150(3)(i). Second, DPS alleged Appellant willfully provided 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. This allegation corresponds to S.C. Code Ann. § 23-23-150(3)(k).

The misconduct allegations submitted by DPS revolve around Appellant's use, recording or attribution of leave for a day in February 2024, and false statements and/or information provided to DPS during his hiring process concerning prior use of a prescription drug that belonged to someone else. Appellant duly filed a request for a contested case hearing (Hearing Request) and such a hearing was convened on September 25, 2024. At the hearing DPS introduced seven exhibits and called one witness, Captain John Boehm of DPS's Office of Professional Responsibility. Appellant testified on his own behalf but otherwise offered no other witnesses or exhibits (R. pp. 112 -304).

On December 30, 2024, the hearing officer issued Recommended Findings of Fact and Recommended Conclusions of Law (R. pp. 100 - 111). The hearing officer found DPS had not met its burden of proof regarding the misconduct allegation concerning Appellant's leave. The hearing officer did find that DPS had met its burden regarding the misconduct allegation concerning Appellant's alleged failure to disclose his prior use of another's prescribed drug, Adderall. In doing

so the hearing officer found DPS had met its evidentiary burden to prove Appellant had engaged in misconduct through willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form. Also, the hearing officer found DPS had met its evidentiary burden to prove Appellant had engaged in misconduct by misrepresenting employment related information.

On January 23, 2025, Appellant filed a Motion in Opposition to the Hearing Officer's Recommendation (R. pp. 91 - 99). On January 30, 2025, DPS filed a Motion in Support of and in Opposition to the Hearing Officer's Recommendations (Motion in Support). Appellant's Motion complained that the hearing officer unduly made unspecified conclusions regarding Appellant's supposed responses to questions proffered to him as part of a polygraph examination conducted by DPS during his hiring process. Appellant also contended he was entitled to a jury trial and a finding of misconduct, coupled with a permanent removal of his certification, would violate his rights under the South Carolina Constitution. As for DPS, it contested the hearing officer's finding that DPS had not met its burden concerning the allegation of misconduct predicated on Appellant's use of leave.

The South Carolina Law Enforcement Training Council (LETC) took up the matter on March 17, 2025 (R. pp. 305 - 339). After listening to oral arguments and discussion, LETC voted to find that Appellant had engaged in misconduct and his law enforcement certification would be permanently denied. LETC agreed with the hearing officer that DPS had not met its burden with regard to the allegation of misconduct related to Appellant's leave. However, LETC differed from the hearing officer's recommendations regarding Appellant's non-disclosure of Adderall usage along two fronts. First, LETC found DPS had met its burden in proving Appellant had willfully made false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, law enforcement agency or a representative of a law enforcement agency per S.C. Ann. Code § 23-23-150(A)(3)(i). Second, LETC found DPS had met its burden in proving Appellant had willfully

provided false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form per S.C. Ann. Code § 23-23-150(A)(3)(k).

As a result of its findings, LETC then decided to permanently deny Appellant a law enforcement certification in South Carolina. The findings, conclusions of law and sanctions were issued by LETC on April 25, 2025 (R. pp. 72 - 81). Appellant filed a notice of appeal. This Court subsequently issued an Order of Remand on September 19, 2025 (R. pp. 62 - 71). In response, LETC issued another Final Agency Decision on November 5, 2025, which found misconduct as denoted in the first Final Agency Decision and permanently denied Appellant his law enforcement certification. (R. pp. 50 - 61). Appellant then filed another Notice of Appeal on November 25, 2025 (NoA to ALC). On April 28, 2026, the ALC filed a final order affirming LETC's final agency decision. On May 6, 2026, Appellant filed a motion for reconsideration with the ALC. On June 1, 2026, that motion was denied. (R. pp. 5 – 30) On June 15, 2026, Appellant filed a notice of appeal with this Court.

STATEMENT OF FACTS

Testimony of Captain Boehm:

Capt. Boehm works within the Office of Professional Responsibility for DPS and was assigned to investigate allegations against Appellant (R. 134 - 135). Appellant was scheduled to take a polygraph examination with South Carolina Law Enforcement Division (SLED) on February 7, 2024, as part of the hiring process for a position there. Prior to taking the polygraph examination Appellant was required to answer a questionnaire. In the questionnaire, Appellant disclosed that in 2012-2013 he took Adderall approximately 20 times which he purchased from a neighbor at \$10 dollars a pill. His answers to that questionnaire were forwarded to DPS by SLED. (R. pp. 150 - 152, and Ex. 4) This type of disclosure when he applied to DPS would have disqualified him from being hired. Capt. Boehm compared the questionnaire from SLED with Appellant's DPS questionnaires and employment application from 2013. On the relevant DPS questionnaire, Appellant stated he never used or experimented with any controlled substances within the last ten years, excluding marijuana. (R. pp. 152 - 155) During an at home interview for the position at DPS Appellant did not admit to the Adderall use when asked if he had ever used or experimented with any prescribed medication not prescribed to him. (R. pp. 155 - 157, and Ex. 6) Appellant also filled out a questionnaire with DPS in October 2013 wherein he was asked "Have you ever used someone else's prescription drug?" Appellant answered "no". These three documents and/or events were part of the employment process Appellant went through to be hired by DPS in 2013. Appellant did not mention Adderall in any of those documents. (R. pp. 157 - 159) When Capt. Boehm asked Appellant about the discrepancy between his answers to the Department and to SLED, Appellant proffered he "didn't think he thought about it when he was taking a polygraph with the Department of Public Safety or the highway patrol." He said, "It likely wasn't

weighing on his conscious at the time”, despite it being a recent and frequent occurrence. (R. p. 162)

On cross-examination, Capt. Boehm explained that SLED contacted highway patrol and then the highway patrol asked OPR to investigate. Appellant was employed by the Department for a little over ten years at this point. (R. p. 163) When Appellant spoke with Capt. Boehm, he admitted he did not remember the Adderall until the SLED interview. Capt. Boehm was not told by Appellant that he was being interviewed at SLED by people he knew from school. (R. p. 169)

Testimony of Joshua A. Vargo (Appellant):

Appellant is thirty-four, married with two children and lives in Aiken. He was born and raised in the Aiken area. He finished college with a degree in accounting in 2013. During college he was a paid firefighter but switched to a volunteer when he joined Highway Patrol. He was officially hired by Highway Patrol in January of 2014. He was interviewed in Columbia and at his house. He was interviewed by a board, then at his home and then took a polygraph test. He was hired and assigned to Aiken County. (R. pp. 202 - 206)

When he applied to work for Highway Patrol in 2013, he first submitted an online application on August 19, 2013. To his knowledge he did not lie or falsify any information on that document. He took a polygraph examination on October 2, 2013. There was also a home interview conducted. Appellant recalled being asked about the use of drugs but does not recall further details other than telling the interviewer he took prescription medication that did not belong to him. (R. pp. 223 - 228) During the course of Appellant’s application process with SLED, he advised SLED while in college he used Adderall approximately 20 times between 2012 and 2013, although he found that declared number to be generous. (R. p. 245). Appellant took the Adderall to help him

study for the big tests during his last four semesters of college. He paid \$10 per pill, purchasing them from a neighbor. (R. pp.. 168, 247 - 248, and Ex. 4)

STANDARD OF REVIEW

The Law Enforcement Training Council (LETC) is the governing body of the South Carolina Criminal Justice Academy (Academy). S.C. Code Ann. § 23-23-20 (Supp. 2014). As the governing and adjudicative body of the Academy, an "agency" under the Administrative Procedures Act, the South Carolina Administrative Law Court (ALC) has jurisdiction to hear the appeal of a final decision of LETC in a contested case. S.C. Code Ann. § 1-23-600 (D) (Supp. 2018) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). Section 1-23-380 provides, in relevant part:

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 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 of the record; or
- f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-380(5); see also *Todd's Ice Cream, Inc. v. S.C. Employment Sec. Comm'n*, 315 S.E.2d 373, 375 (Ct. App. 1984).

The court reviewing an agency's decision must employ a deferential standard. See *In Re Application of Blue Granite Water Company*, 862 S.E.2d 887, 890-891, 434 S.C. 180, 187 (2021) and *Heater of Seabrook, Inc. v. Public Service Comm'n*, 332 S.C.20, 503 S.E.2d 739 (1998). As

for Appellant, he bears the burden of convincingly proving the decision is clearly erroneous, or arbitrary or capricious, or an abuse of discretion, in view of the substantial evidence of the record as a whole. *S.C. Energy Users Comm.*, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (citation omitted); S.C. Code Ann. § 1-23-380(5).

Within the context of S.C. Code Ann. § 1-23-380(e) cited above, “substantial evidence” is “something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981) (citation omitted). A decision is supported by substantial evidence when the record 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).

When an agency’s findings of fact are reviewed, those facts are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515-519, 466 S.E.2d 357, 359 (1996). Additionally, 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, 603-604, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo*, 267 S.C. at 136).

Last, the party challenging an agency’s action has the burden of proving convincingly that the agency’s decision is unsupported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm’n*, 321 S.C. 219, 226, 467 S.E.2d 913, 977 (1996).

ARGUMENT

I. APPELLANT HAS FAILED TO MEET HIS BURDEN OF PROVING CONVINCINGLY THAT LETC'S FINAL AGENCY DECISION REGARDING MAKING A FALSE STATEMENT WAS CLEARLY ERRONEOUS

LETC found Appellant committed misconduct as proscribed in S.C. Ann. § 23-23-150(A)(3)(i) by wilfully making a false, misleading, incomplete, deceitful, or incorrect statement to a law enforcement officer, a law enforcement agency or a representative of a law enforcement agency. This misconduct occurred during Appellant's background interview with DPS employee J.C. Rikard. As the substantial evidence reflects, via the testimony of Capt. Boehm, Exhibits 4 and 6 and the testimony of Appellant himself, Appellant did commit the alleged misconduct. Appellant's reference to the polygraph is misplaced as the falsehoods articulated in that arena were by way of Appellant's own hand as he supplied answers on a questionnaire. This amounts to misconduct by providing false information on a document, record, report or form and will be addressed under another argument within this brief.

Appellant has not met his considerable burden to prove LETC's final decision was clearly erroneous per S.C. Code Ann. § 1-23-380(e). Whether LETC's decision was clearly erroneous depends upon whether it was based upon substantial evidence. An agency's 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 Earth v. Pub. Serv. Comm'n*, 387 S.C. 360, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, 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, 467 S.E.2d 913 (1996). Also, Appellant has the burden of proving convincingly that the decision of LETC is not supported by substantial evidence. *Id.*

In the "ANALYSIS" and "FINDINGS OF FACT" sections of LETC's Final Agency Decision, it cited as facts Appellant's oral responses to questions concerning the use of prescribed medications as

recorded within State's Exhibit 6. (R. pp. 300 - 304) Capt. Boehm and Appellant testified that during Appellant's hiring process in 2013, Appellant was interviewed at his home by a DPS investigator, J.C. Rikard. According to Capt. Boehm, Rikard asked Appellant, "Have you ever used and/or experimented with any prescribed medication not prescribed to you?" Appellant then answered, "Maybe childhood from mother." (R. pp. 155 - 157, 167 - 168, 181 - 182, and 300) Later in the interview Appellant was asked if he ever used and/or experimented with any illegal drug or substance not mentioned earlier. Appellant's recorded response was "no" (R. p. 300) That response was and is false. Appellant's illegal use of Adderall is not contested. The contemporaneous records of this interview do not reflect that Appellant provided any information concerning his Adderall use in college, just months prior. These are facts not subject to argument.

Appellant has testified and argued he forgot the Adderall incidents in college, that such was not on "his conscious" during the DPS application process. Therefore, the "wilfulness" element of the misconduct is missing. Appellant also posits he did speak to J.C. Rikard about using another's prescription. However, as articulated within its Final Agency Decision, LETC considered such explanations and found them incredible in light of other specific circumstances found within the record before it. (R. pp. 50 - 61) This fact finding, after weighing all of the evidence presented at the contested hearing, should be granted deference, as the law contemplates and left undisturbed.

Based upon all the evidence received at the hearing and a weighing of such to determine final credibility, there existed and still exists a reasonable probability that Appellant, twice, wilfully provided false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency. As such, Appellant has not met his substantial burden of demonstrating that LETC's decision was clearly erroneous.

II. APPELLANT HAS FAILED TO MEET HIS BURDEN OF PROVING CONVINCINGLY THAT LETC'S FINAL AGENCY DECISION REGARDING THE PROVISION OF A FALSE STATEMENT WAS CLEARLY ERRONEOUS

LETC also made of finding of misconduct against Appellant as per S.C. Code Ann. § 23-23-150(A)(3)(k) – wilfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form. Whether LETC's decision was clearly erroneous depends upon whether it was based upon substantial evidence. An agency's 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 Earth v. Pub. Serv. Comm'n*, 387 S.C. 360, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, 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). Also, Appellant has the burden of proving convincingly that the decision of LETC is not supported by substantial evidence. *Id.*

LETC's finding of misconduct was appropriately derived from evidence related to two separate events during Appellant's hiring process with DPS. In his initial online application, Appellant advised he never used or experimented with a controlled substance within the last ten years (R. p. 300). Later, on another DPS questionnaire, Appellant answered "no" as to whether he had ever used someone else's prescription drug (Ex. 6). These false responses were provided to DPS mere months after the Appellant used Adderall illegally.

In light of these repeated falsehoods, including the false statement addressed earlier, their temporal proximity to the relevant acts and the context in which they were provided, it is perfectly reasonable for LETC, as well as any other reasonable minds, to infer these false responses on the questionnaires were provided willfully and thus demonstrate misconduct as contemplated in the statute.

Even if, as Appellant suggests, he did not know what the technical definition of a “controlled substance” was, that term was only used in one of the questionnaires at issue here. The term “controlled substance” was only used in the initial, online job application (R. pp. 297 - 299). That term was not used in the polygraph questionnaire which asked, “Have you ever used someone else’s prescription drug?”. (R. p. 300) Any purported ignorance concerning the definition of “controlled substance”, however flimsy, does not provide comprehensive relief from the series of falsehoods provided by Appellant.

Moreover, in the context of applying for a job as a law enforcement officer, it is more likely than not, an applicant would be aware that any criminal activity, especially illegal drug use, would be a significant point of inquiry and require the utmost care in responding to same.

The facts relied upon by the LETC and the logical inferences of willful behavior from those facts support this finding of misconduct as the whole record would allow a reasonable mind to agree with LETC’s decision. Therefore, Appellant has not met his burden of showing LETC’s decision was not based on substantial evidence and, as such, was clearly erroneous.

III. LETC’S USE OF CERTAIN QUESTIONNAIRES TO SUPPORT ITS FINDING COMPORTS TO ANY NOTION OF LEGAL FAIRNESS AND WERE APPROPRIATE CONSIDERATIONS IN REACHING A FINAL AGENCY DECISION

Appellant’s contention that DPS’s application forms and/or questionnaires cannot be the basis of a misconduct charge and finding has no support in the law, is premised on an outlandish characterization of the questionnaires and is not an abuse of discretion. First, Respondent respectfully submits this argument should not receive substantive consideration by this Court because the argument is wholly conclusory and Appellant has not cited any legal underpinning for it. An argument is to be considered abandoned if no legal authority is cited or the argument is wholly conclusory. Please see *Potter v. Spartanburg School Dist.* 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011); *State v. Porter*, 389 S.C. 27, 35, 698 S.E.2d 237, 241 (Ct. App. 2010); *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994).

Appellant's argument lacks any legal citation and only offers a self-serving conclusion based upon what he cites as facts. As such, it should be considered abandoned and not used as a basis to disturb LETC's Final Agency Decision.

Nonetheless, LETC's decision survives any claim that it was an abuse of discretion. "An abuse of discretion occurs when a decision is controlled by an error of law or is based on unsupported factual conclusions." *Father v. South Carolina Dept. of Social Services*, 353 S.C. 254, 261, 578 S.E.2d 11, 14 (2003). Please see also *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 553 S.E.2d 110 (2001).

Appellant has not cited any specific error of law that controlled LETC's decision. That's because there isn't one. Also, LETC's decision is supported by factual conclusions. As noted earlier in this brief, LETC's decision was based upon various factual conclusions drawn from the contested case hearing and/or its own hearing of the matter, along with logical and rational inferences drawn from those facts. Namely, Appellant used Adderall, did not duly report such to DPS during the hiring process and he did so wilfully. While others may not arrive at those same conclusions, that is not the standard for review for this matter. Facts exist which do support LETC's decision and that satisfies the standard of review.

In the final analysis of Appellant's argument, it is apparent we are left with two distinct factual choices. One, being a college graduate, a certified firefighter, and having other certifications relating to hazardous materials and emergency medical responses (R. pp. 297 - 299) Appellant could not intellectually grasp a "controlled substance" included a prescribed drug he illegally purchased by the pill from another. This conclusion is very much opposed to Appellant's self-serving assertions about his competency as a law enforcement officer, previous employment and education. The second choice is Appellant understood the relevant questions and decided it would be more prudent to provide a false answer, and he did that time and time again. This is the rational conclusion LETC reached after weighting the evidence.

IV. IT IS NOT AN ABUSE OF DISCRETION TO FIND MISCONDUCT FOR EVENTS THAT HAPPENED OVER TEN YEARS PRIOR

Appellant contends the temporal gap between the actual misconduct and the contested hearing and derivative misconduct finding is an abuse of discretion, unfairly prejudiced him and in accordance with the principle of laches, the findings of LETC must be reversed. Again, this argument should not be considered due to a lack of cited legal authority and the issue was not preserved for review. Beyond that, the merits of the argument fail to support Appellant's burden.

An argument is to be considered abandoned if no legal authority is cited or the argument is wholly conclusory. Please see *Potter v. Spartanburg School Dist.* 7, 395 S.C. 17,24, 716 S.E.2d 123, 127 (Ct. App. 2011); *State v. Porter*, 389 S.C. 27, 35, 698 S.E.2d 237, 241 (Ct. App. 2010); *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994).

Appellant's argument lacks any legal citation and only offers a self-serving conclusion based upon what he cites as facts. As such, it should be considered abandoned and not used as a basis to disturb LETC's Final Agency Decision.

Likewise, this issue should not be reviewed because it is being proposed in an untimely manner. Raising the defense of laches at this point in the proceedings is not allowed and it should not be considered. Only issues raised at the trial court level are capable of appellate review. *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000).

Appellant never specifically cited or raised laches before this appeal. Therefore, this issue was not preserved for appellate review and should not be considered.

This Court may only reverse or modify LETC's final ruling for certain reasons codified in S.C. Code Ann. § 1-23-380(5). Making a finding the equitable doctrine of laches is available and this matter necessitates this equitable remedy, is not among the reasons allowed by the legislature. Likewise, S.C. Code Ann. §§ 1-23-600 and 630 also do not contemplate this Court's use of such an equitable mechanism. *S.C. Dept. of Consumer Affairs v. Foreclosure Specialists, Inc.*, 390 S.C. 182, 700 S.E.2d 468 (2010).

As to the merits of the argument, the facts of this case do not allow the invocation of laches. Appellant must show that DPS unreasonably delayed its assertion of a right, resulting in prejudice to him. *Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2d 465 (2007). Any delay in DPS formally bringing misconduct allegations was due solely to Appellant's obfuscation of the truth during his hiring process. Because of that, any "delay" attributable to DPS was perfectly reasonable.

Further, Appellant has not articulated how he was prejudiced, let alone proven he has been prejudiced by the delay. He speaks of certain records and/or tapes being destroyed. He does not proffer how the absence of those records and/or tapes prejudiced him. He also complains that a certain state employee, J.C. Rikard, was not called as a witness by the state. However, Appellant could have called him as a witness but did not. These circumstances do not amount to prejudice.

Also, the doctrine of laches is inapplicable in this matter because of the predicated acts by the Appellant, who is trying to invoke the remedy. It is a well-known maxim that "he who seeks equity must come with clean hands". Laches is only available as a defense to those who themselves are not guilty of some wrongdoing. This wrongdoing could be behavior that was dishonest and/or fraudulent. *Williams v. Jeffcoat*, 444 S.C. 224, 906 S.E.2d 588 (2024). In this case, Appellant certainly does fit that description. As discussed previously, he willfully provided false information numerous times and those acts precipitated this whole proceeding. Appellant cannot now profit from his initial misconduct. The defense of laches is not available to him.

As to Appellant's abuse of discretion claim, "An abuse of discretion occurs when a decision is controlled by an error of law or is based on unsupported factual conclusions." *Father v. South Carolina Dept. of Social Services*, 353 S.C. 254, 261, 578 S.E.2d 11, 14 (2003). Please see also *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 553 S.E.2d 110 (2001).

Appellant has not cited any specific error of law that controlled LETC's decision. That's because there isn't one. Also, LETC's decision is supported by factual conclusions. As noted earlier in this brief, LETC's decision was based upon various factual conclusions drawn from the contested case hearing and/or

its own hearing of the matter, along with logical and rational inferences drawn from those facts. Namely, Appellant used Adderall, did not duly report such to DPS during the hiring process and he did so wilfully. While others may not arrive at those same conclusions, that is not the standard for review for this matter. Facts exist which do support LETC's decision and that satisfies the standard of review.

Last, Appellant's argument regarding the length of time from misconduct to state action goes against the objectives of the relevant statutes passed by the state legislature regarding policing the police. The South Carolina legislature, in passing the relevant statutes creating LETC and giving it significant authority, noted it was doing so "In order to ensure the public safety and general welfare of the people of this State, and to promote equity for all segments of society, a program of training for law enforcement officers and other persons employed in the criminal justice system in this State is hereby proclaimed and this chapter must be interpreted to achieve these purposes principally through the establishment of minimum and advance standards in law enforcement selection and training." S.C. Code Ann. § 23-23-10(A). Further, "It is the intent of the General Assembly in creating a facility and a governing council (LETC) to maximize training opportunities for law enforcement officers and criminal justice personnel, to coordinate training, and to set standards for the law enforcement and criminal justice service, all of which are imperative to upgrading law enforcement to professional status." S. C. Code Ann. § 23-23-10(C) (parenthetical added).

The prosecution of matters related to the suitability of someone to become or remain a certified law enforcement officer is surely a task that cannot be bound by an arbitrary limit in time. As the evidence in this case shows, sometimes relevant issues regarding suitability to be a law enforcement officer may not become apparent for years. Applicants can and do provide false or misleading information. Law enforcement agencies and LETC cannot be forced to waive their abilities to investigate and rule on these important matters when they finally learn of such. Maintaining a professional law enforcement cadre is a matter that requires constant vigilance.

When a relevant issue does appear, it must be addressed as opposed to allowing a questionable individual to continue to perform such an important task – maintaining public safety, perhaps through force and the taking of essential freedoms, while upholding our rights.

**V. A PERMANENT REVOCATION OF A CERTIFICATION
FOR ACTIONS OCCURRING BEFORE THE ISSUANCE OF
THAT CERTIFICATION IS NOT AN ABUSE OF DISCRETION
AND IS OTHERWISE LEGAL**

Appellant has put forward categorical objections to the possibility that “a law enforcement license” could be permanently revoked due to actions occurring before the issuance of the license. Appellant contends such a possibility is an abuse of discretion and is an “illegal Constitutional seizure or cruel and unusual punishment.” (Appellant’s Brief, pg 20) Again, this argument should not be considered due to a lack of cited legal authority and the issue was not preserved for review. Beyond that, the merits of the argument fail to support Appellant’s burden.

An argument is to be considered abandoned if no legal authority is cited or the argument is wholly conclusory. Please see *Potter v. Spartanburg School Dist.* 7, 395 S.C. 17,24, 716 S.E.2d 123, 127 (Ct. App. 2011); *State v. Porter*, 389 S.C. 27, 35, 698 S.E.2d 237, 241 (Ct. App. 2010); *Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994).

Appellant’s argument lacks any legal citation and only offers a self-serving conclusion. As such, it should be considered abandoned and not used as a basis to disturb LETC’s Final Agency Decision.

Likewise, this issue should not be reviewed because it is being proposed in an untimely manner. Raising these categorical objections based upon a possible outcome for someone at this point in the proceedings is not allowed and it should not be considered. Only issues raised at the trial court level are capable of appellate review. *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (2000). This prohibition also includes the untimely raising of constitutional questions

not raised in the trial court. Please see also *Eagerton v. Eagerton*, 265 S.C. 90,96, 217 S.E.2d 146,148 (1975) and *Grant v. S.C. Coastal Council*, 319 S.C. 348, 356, 461 S.E.2d 388, 392 (1995).

Appellant never specifically cited or raised these categorical objections before the Hearing Officer and LETC. Therefore, this issue was not preserved for appellate review and should not be considered.

However, the merits of Appellant's argument are unpersuasive. Appellant contends actions preceding application for or receipt of a law enforcement certification that later result in the denial of such certification is an abuse of discretion. "An abuse of discretion occurs when a decision is controlled by an error of law or is based on unsupported factual conclusions." *Father v. South Carolina Dept. of Social Services*, 353 S.C. 254, 261, 578 S.E.2d 11, 14 (2003). Please see also *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 553 S.E.2d 110 (2001).

Appellant has not cited any specific error of law that controlled LETC's decision. S.C. Code Ann. §§ 23-23-60 and 23-23-150 and S.C. Code Ann. Reg. 37-025 codify certain acts during and before an application that could be the basis for a denial of certification. The relevant statutes creating LETC and the adjudication of misconduct allegations afford LETC substantial purview and authority. Part of that authority includes permanently revoking the certification required to be a law enforcement officer in this state. S.C. Ann. Code § 23-23-80(6) and S.C. Code Ann. Reg. 37-108.

The relevant statutory scheme clearly allows for what Appellant has characterized as an abuse of discretion. Since there is no error of law controlling in Appellant's proffered scenario, there is no abuse of discretion. Moreover, as explained earlier in this brief, LETC's eventually decision regarding Appellant was supported by factual conclusions. Therefore, there was not abuse of discretion and LETC's final decision should stand.

Likewise, arguments based upon "Constitutional" (Respondent does not know if Appellant is citing the United States Constitution, the South Carolina Constitution, or both) illegal seizure or cruel and unusual

punishment (Appellant's Brief, pg 20) cannot be heard by this Court within the context of an administrative ruling denying a certification. Those rights are native to criminal law jurisprudence, not administrative law. A seizure deprives an individual of dominion over his person or property. Please see *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011) (quoting *Horton v. California*, 496 U.S. 128,133, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990)).

Clearly the State of South Carolina via LETC did not deprive Appellant dominion over his person or property. Appellant has offered no authority that a law enforcement certification is his property subject to a wrongful seizure claim under the Fourth Amendment to the United States Constitution and/or § 10 of the Constitution of the State of South Carolina. Likewise, a claim of cruel and unusual punishment under the Eighth Amendment to the United States Constitution and § 10 of the Constitution of the State of South Carolina is also inapplicable to this matter.

Also, administrative agencies are afforded wide latitude in making decisions as shown in the deferential standard of appellate review. *Heater v. Seabrook, Inc. v. Public Service Comm'n*, 332 S.C. 20, 503 S.E.2d 739 (1998).

The final agency decision in this case, as has been discussed herein, was based upon the testimony and exhibits, uncontroverted and otherwise, that led LETC to a final, rational decision. LETC has not abused the discretion provided by the legislature and its final decision should be upheld.

VI. THE LACK OF FINDINGS BY LETC CONCERNING MITIGATION DOES NOT SUPPORT REVERSAL OF ITS FINAL RULING

After LETC determined that Appellant had committed repeated forms of misconduct it had to decide the appropriate sanction. Per regulation, LETC has various sanction choices, to wit: permanent denial and/or revocation (withdrawal) of certification, denial and/or revocation (withdrawal) of certification for a specified period of time, certification granted with probation,

certification granted with any additional requirements deemed just and proper by LETC, and/or public reprimand. S.C. Code Ann. Reg. 37-108(A).

In this case, LETC decided to deny Appellant's certification under S.C. Code Ann. Reg. 37-025. Under subpart B of that regulation, LETC *may* consider the seriousness, the remoteness in time and any mitigating circumstances surrounding the misconduct. Thus, LETC's consideration of certain factors and mitigating circumstances is discretionary and failure to do so is not violative of the law.

Based on that foundation, Appellant submits LETC's decision to deny Appellant's certification without making findings regarding mitigating factors "allows the LETC to avoid review for an abuse of discretion on the issue of sanctions in this case." (Appellant's Brief pg 21) Respondent asserts that in this case, as with every review of a final decision by LETC, the sanction issued by LETC is subject to review regardless if LETC makes findings concerning mitigation. That review, if based on an abuse of discretion allegation, is still limited to determining if LETC's decision was controlled by an error of law or was based on unsupported factual conclusions. Please see *Father v. Dept. of Social Services*, 353 S.C. 254, 578 S.E.2d 11 (2003). Additionally, LETC's decision should be afforded deference. Please see *Heater v. Seabrook, Inc. v. Public Service Comm'n*, 332 S.C. 20, 503 S.E.2d 739 (1998).

In this case, there was no error of law because LETC is not mandated to consider mitigating factors as discussed above. Second, LETC's sanction was based on supported factual conclusions. Namely, an applicant for a law enforcement position lied, several times, to his future employer during the application process. Any notion that others reviewing this matter may reach a different conclusion is not determinative. "That other reasonable minds may differ" is not the standard of review for an abuse of discretion claim. We must simply ask if there are facts that support LETC's decision, and there are, so that ends the review. As such, LETC duly exercised its discretion and that decision should not be disturbed.

LETC's consideration of mitigating factors is purely discretionary under the law, as written, and the statute was not violated. The sanction decision was also not clearly erroneous as it was supported by substantial evidence. Appellant was found to have repeatedly lied during his application process.

The South Carolina legislature put a premium on the characteristic of honesty for law enforcement officers of this state. S.C. Code Ann. § 23-23-150 lists thirteen varieties of misconduct and six of those relate to honesty. As here, when an officer is adjudged guilty of misconduct involving repeated episodes of dishonesty, there is substantial evidence that finding should yield the highest penalty. Likewise, such a sanction in these circumstances is not arbitrary or capricious. Therefore, Appellant has not met his burden of demonstrating how LETC's decision regarding the ultimate sanction is subject to modification or reversal.

CONCLUSION

For the reasons stated, Respondent asks this Court to affirm the Final Agency Decision issued by the Law Enforcement Training Council. If this Court finds in favor of Appellant, Respondent asks that the case be remanded for a new contested case hearing.

Respectfully Submitted,

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