STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dion O. Taylor, # 335089,	)	Docket No. 13-ALJ-04-0767-AP
	)	
Appellant,	)	
	)	
v.	)	**ORDER**
	)	
South Carolina Department of Corrections,	)	
	)	
Respondent.	)	
	)	

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to the appeal of Dion O. Taylor (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC), filed October 1, 2013. Appellant was convicted of violating SCDC Disciplinary Code § 809 – Threatening to Inflict Harm on an Employee and/or Members of the Public, under SCDC Policy OP-22.14, Inmate Disciplinary System. As a result of his conviction, Appellant received sanctions that included the loss of fifteen (15) days of "good-time" credit, 360 days of disciplinary detention, and a 180-day suspension of canteen/visitation/telephone privileges. Appellant is appealing this conviction.[1]

BACKGROUND

Corporal Marvin Bryant and Special Management Unit Officer Aiken Smart were escorting inmates for one (1) hour of recreation. They arrived at Appellant's cell to allow his cellmate out for recreation. Appellant told Cpl. Bryant that Appellant will "f--k [Cpl. Bryant" up, [that Cpl. Bryant is] a -itch ass ni--a," and that Appellant "will get [Cpl. Bryant]." While searching Appellant's cell, Officer Smart had to hold Appellant back because he was approaching Cpl. Bryant, acting as if he wanted to assault Cpl. Bryant. After Appellant and his cellmate were placed back in their cell, Appellant again stated that he "will get [Cpl. Bryant]."

[1] Appellant had previously filed with this Court a "Motion Compelling Discovery" and a "Supplemental Motion to Compel Production of Documents & Info" in this matter, on December 10 and 13, 2013, respectively. However, Appellant has cited no authority as a basis for this Court to entertain such motions in an appeal. Therefore the Court denies these motions.

Appellant was charged with offense 809, "Threatening to Inflict Harm on an Employee and/or Members of the Public." A disciplinary hearing was held on April 25, 2013 before disciplinary hearing officer (DHO) Rowe. Appellant had initially been assigned counsel substitute but later waived his right to assistance from counsel substitute. During the hearing, Appellant argued that he had submitted a request to have a witness present. However, the DHO had not received Appellant's alleged request by the time of the hearing.

While the DHO was reading Cpl. Bryant's statement, specifically: "[Appellant] stated he will f--k me up, I'm a -itch ass ni--a . . .," Appellant interrupted by saying, "He is," before the DHO continued reading the rest of the statement. Appellant also referred to Cpl. Bryant as a "coward" five times during the hearing, prompting the DHO to warn him about using that word and to instead refer to Bryant as "Corporal" or he would ask Appellant to step out of the hearing. Based on the evidence, including Cpl. Bryan't report and testimony and Officer's Smart's statement, the DHO convicted Appellant of offense 809 and imposed the following sanctions: the loss of fifteen (15) days of "good-time" credit, 360 days of disciplinary detention, and a 180-day suspension of canteen/visitation/telephone privileges.

On May 17, 2013, Appellant filed a Step 1 grievance seeking reversal of his April 25, 2013 conviction. On May 21, 2013, the Warden denied Appellant's Step 1 grievance. On May 30, 2013, Appellant filed a Step 2 grievance claiming that his conviction of the 809 offense should be overturned. On September 11, 2013, the Department denied Appellant's Step 2 grievance, and Appellant appealed to this Court.

STANDARD OF REVIEW

The Court's jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Al-Shabazz*, 338 S.C. at 377, 527 S.E.2d at 754. Consequently, the review in inmate grievance cases is limited to the record presented. *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2013) ("The review must be conducted by the court and must be confined to the record..."); *see also* S.C. Code Ann. § 1-23-600(E) (Supp. 2013) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). An Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5) (Supp. 2013). Furthermore, an Administrative

Law Judge may not reverse or modify an agency's decision unless substantial rights of the appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole record, arbitrary, or affected by an error of law. *See* Section 1-23-380(5); *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999); *S.C. Dep't of Labor, Licensing and Regulation v. Girgis*, 332 S.C. 162, 503 S.E.2d 490 (Ct. App. 1998). "Substantial evidence" is not a mere scintilla of evidence, nor evidence viewed blindly from one side, but is evidence which, when considering the record as a whole, would allow reasonable minds to reach the conclusion that the agency reached in order to justify its action. *Bursey v. S.C. Dep't of Health and Envtl. Control*, 360 S.C. 135, 600 S.E.2d 80 (Ct. App. 2004). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an Administrative Agency's finding from being supported by substantial evidence. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461 S.E.2d 388 (1995). The burden is on Appellants to prove convincingly that the agency's decision is unsupported by the evidence. *Id.* (quotation marks and internal citations omitted).

DISCUSSION

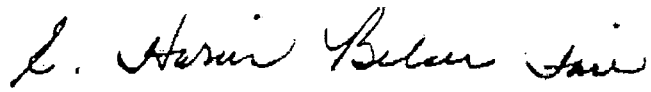
Appellant set forth the six (6) issues on appeal summarized as follows: (1) whether the DHO's sanction of a loss of 15 days of good-time-credit was excessive;[2] (2) whether the DHO violated Appellant's due process rights by not inquiring further in to why Appellant's witness was unavailable; (3) whether the Allendale Correctional Institution mail room is inadequate and is the reason that the DHO did not receive Appellant's witness request form; (4) whether the DHO violated SCDC policy when weighing the evidence presented; (5) whether the DHO erred, was arbitrary, or showed caprice and colluded with the mental health counselor by failing to inquire further into Appellant's mental health status; and (6) whether Appellant's mental health counselor was deliberately arbitrary in her findings and indifferent to Appellant's mental health status.

However, from the outset, the Court will not address Appellant's issue (3), because Appellant has not set forth any legal authority to support his arguments or to demonstrate that

[2] Appellant also included in his first issue whether the deprivation of his earned good-time credits implicated a state-created liberty interest. The Court need not discuss this issue in depth because the South Carolina Supreme Court has already held that "a matter is reviewable by the ALC where an inmate's appeal . . . implicates a state-created liberty or property interest, such as the loss of accrued sentence-related credits. . . ." *Howard v. S.C. Dep't of Corr.*, 399 S.C. 618, 630, 733 S.E.2d 211, 218 (2012). Therefore, the instant matter is reviewable as to the loss of Appellant's accrued good-time credits, as they relate to his sentence.

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair
Judicial Law Clerk

March 10, 2014
Columbia, South Carolina