

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Joshua Cramer, #251406,

Appellant,

vs.

South Carolina Department of Corrections,

Respondent.

Docket No. 14-ALJ-04-0282-AP

Grievance No. BRCI 594-07

ORDER **RECEIVED**

OCT 13 2014

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court ("ALC") pursuant to the Notice of Appeal filed March 6, 2014 by Joshua Cramer ("Appellant"), who is incarcerated with the South Carolina Department of Corrections ("SCDC"). The case was assigned on March 27, 2014. The Record on Appeal was filed on May 6, 2014. Appellant filed his Brief on May 27, 2014. SCDC filed Respondent's Brief on August 29, 2014.

BACKGROUND

Appellant participated in the prison industries project operated by SCDC at the Broad River Correctional Institution, in which R.M. Design participates as the private industry sponsor. SCDC began to pay Appellant on or about July 15, 2005 for the labor Appellant provided. SCDC remitted its final payment to Appellant on or about January 1, 2010.

Appellant filed his Step One Grievance on April 26, 2007. Appellant claimed that S.C. Code Ann. § 24-3-430(D) created a liberty interest in the difference between the prevailing wage paid by the private sector employer and the wage paid by SCDC during the course of Appellant's private sector employment. Appellant further claimed a liberty interest in the difference between the prevailing overtime wage paid by the private sector employer and the wage paid by SCDC during the course of Appellant's employment. Appellant also claimed a liberty interest in the interest earned on the amounts complained of the difference in wages. Appellant next claimed a liberty interest in escrowed wages under S.C. Code Ann. §§ 24-3-430(A)(5) and 24-3-430(B)(2), in that Appellant "is entitled to complete and immediate access to the amount of his escrowed wages to distribute them to persons or entities of his choice." Finally, Appellant claims a liberty interest on the interest earned on the amount of escrowed wages. This Grievance was denied on June 7, 2012. SCDC determined that Appellant did not submit his Step One Grievance within fifteen (15) "days of the incident upon which you anchored the claims you presented." SCDC

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SC ADMIN. LAW COURT

also stated that “no special exception applies to prison industries pay disputes. Consequentially, the deadline applies to your grievance.”

Appellant filed his Step Two Grievance on July 16, 2012. Appellant stated that he did not want to pursue the issues regarding prevailing wage and overtime pay, but did wish to pursue the issue regarding escrowed wages. SCDC again denied Appellant’s Grievance, stating Appellant “did not submit [his Step One Grievance] within 15 days of the incident upon which [Appellant] anchored the claims...”

Appellant filed his appeal before the ALC on March 6, 2014. Appellant argues that “SCDC’s denial of Appellant’s Grievance based on the ‘fifteen day deadline’ conflicts with it’s own policy GA-01.12 ¶ 13.9.” Appellant further contends that SCDC’s denial of Appellant having immediate access to escrow wages is against the statutory authority of S.C. Code Ann. §§ 24-3-40(A)(5), 24-3-40(B)(2), and 24-3-315. Finally, Appellant contends that SCDC denied Appellant a fair interest rate in wages escrowed for his benefit under S.C. Code Ann. § 24-3-40(A)(5).

STANDARD OF REVIEW

The ALC’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). The standard used by appellate bodies to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2013). Section 1-23-380(5) reads:

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.

S.C. Code Ann. § 1-23-380(5) (Supp. 2013).

DISCUSSION

Appellant, an inmate serving a life sentence, claims that he is entitled to immediate access to wages escrowed under S.C. Code Ann. §§ 24-3-40(A)(5), 24-3-40(B)(2), and 24-3-315. S.C. Code Ann. § 24-3-40(A)(5) determines that SCDC must deduct ten percent from the gross wages of the inmate and hold “in an interest bearing escrow account for the benefit of the prisoner.” S.C. Code Ann. § 24-3-40(B) states:

The Department of Corrections, or the local detention or correctional facility, if applicable, shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

* * *

(2) A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

Inmates possess a right to file grievances concerning their prison industries pay. See Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004); see also Torrence v. S.C. Dep't of Corr., 373 S.C. 586, 646 S.E.2d 866 (2007). In Torrence, the inmates claimed that they are entitled to immediate access to wages put in escrow. The Court determined that the inmates can present this claim via the inmate grievance procedure. Torrence at 595, 646 S.E.2d at 870.

Appellant filed his Step One Grievance on April 27, 2007. In response to the Step One Grievance, SCDC concluded that Appellant did not file his grievance within the fifteen day deadline under the Inmate Grievance System Policy.

According to GA-01.12, “Inmate Grievance System” Jan. 1, 2006 ¶13.1, “[i]f informal resolution is not possible, the grievant will complete Form 10-5, Step 1, which is located in common areas, i.e., living areas, libraries, etc. and will submit the Form to an employee designated by the Warden (not the Inmate Grievance Coordinator) within 15 days of the alleged incident.” However, ¶13.10¹ of the “Inmate Grievance System” states “[e]xceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures.”

Appellant claims that he is not grieving an incident, but is grieving SCDC’s policy and procedure which prohibits Appellant access to his escrowed wages. Appellant therefore argues that the fifteen day period to file a grievance is not applicable to him. However, this argument has been previously rejected by this Court. See Ackerman v. S.C. Dep't of Corr., ALC Docket No. 07-ALJ-04-0444 (July 26, 2012). In Ackerman, the ALC determined that “prevailing wage

¹ In GA-01.12, “Inmate Grievance Systems” Oct. 1, 2010. ¶13.10 exception is under ¶13.9.

claims do not constitute grievances concerning ‘policies/procedures’ under Paragraph 13.9 of GA-01.12. Rather, I find that prevailing wage claims are ‘incident’ grievances and thus must be filed within the fifteen-day timeframe set forth in Paragraph 13.1.” Id. Here, Appellant is not arguing about prevailing wages, but rather whether he is entitled to immediate access to escrowed wages. However, the same logic is present. If the Court agreed with Appellant that the fifteen day deadline is inapplicable because Appellant is challenging Policy and Procedure, then there would never be a deadline to file a grievance in regards to inmates’ right to access escrowed wages. Therefore, the general rule of a fifteen day time limit to file a grievance would be swallowed by the expansive view of policy and procedure articulated by Appellant. The claim that SCDC denies Appellant access to escrowed wages is an incident grievance, and therefore the Paragraph 13.10 exception is not applicable to this case, as it was not applicable in Ackerman.

The argument supplied by Appellant also does not align itself with public policy. As stated in Ackerman, “The Department has a legitimate interest in investigating grievances while they are still new, and thus public policy calls for the application of some limitations period to the Appellants’ prevailing wage claims.” Id. (citing Johnson v. Johnson, 385 F.3d 503, 519 (5th Cir. 2004)). Here, Appellant would have received notice that he would not have access to his escrowed wages when he received his initial pay on or around July 15, 2005. If this Court would rule in favor of Appellant, then any inmate could file a grievance claiming access to escrowed wages at any time. Further, as noted in Ackerman, this Court has long held that wage claims do not involve SCDC’s Policies and Procedures. Id. (citing Lawson v. S.C. Dep’t of Corr., ALC Docket No. 06-ALJ-04-0823-AP (Feb. 12, 2007); Wright v. S.C. Dep’t of Corr., ALC Docket No. 06-ALJ-04-0114-AP, 2006 WL 1430140 (Apr. 28, 2006)).

Appellant also argues that the fifteen day limit is not applicable because Appellant filed his Step One Grievance during the term of his employment. This same issue was discussed in Ackerman. In Ackerman, the Court concluded “that the Appellants should have filed a grievance within fifteen days after being informed of the Department’s decision to pay them less than the prevailing wage.” The Court in Ackerman cited Wallace v. Burbury, 305 F. Supp. 2d 801 (N.D. Ohio 2003) for support. In Wallace, the court stated:

To allow a filing deadline to toll with a continuous violation, however, would undermine the very purpose of the deadline, which is to limit the time to file a claim. The event giving rise to the complaint was the date in March, 2002, when plaintiff first learned that NCCI would not honor his request to observe Passover. All subsequent grievances stem from that initial event. The filing of plaintiff’s informal grievance was therefore

untimely, and failure to file a timely grievance does not constitute an exhaustion of available administrative remedies.

Wallace at 806.

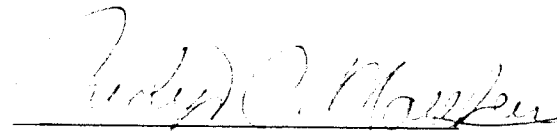
This Court will follow the conclusions reached in Ackerman and Wallace. Appellant should have filed his grievance contending that he should have immediate access to escrowed funds within fifteen days of being informed that he was not given immediate access to all of his funds. Logically, the day he received his first payment for his work, on or about July 15, 2005, was the day he had notice that he did not have immediate access to escrowed funds. Therefore, Appellant had fifteen days from the date he first received payment to file a grievance contesting access to escrowed funds. Appellant did not file his Step One Grievance until April 27, 2007, which is well past the fifteen day deadline.

Appellant failed to file his Grievance within the fifteen day time period as provide by Policy Number GA-01.12, and this Court has no authority to expand the time in which the request for review must be filed. See Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

Accordingly, since Appellant did not timely file his Grievance, SCDC's decision must be affirmed.

ORDER

IT IS HEREBY ORDERED that SCDC's decision in this matter is **AFFIRMED**.
AND IT IS SO ORDERED.

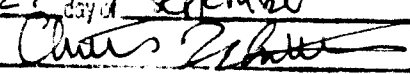


CAROLYN C. MATTHEWS
Administrative Law Judge

September 23, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the party(ies) or their attorney(s).

This 23rd day of September
BY: 
Administrative Law Clerk