

The State of South Carolina
In The Court of Appeals

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Appeal From Administrative Law Court

John D. McLeod Administrative Law Judge

SC Court of Appeals

CASE NO.: 2015-001253

Van Starling Appellant,

v.

South Carolina Department of Corrections Respondent.

Appellant's Initial Brief

Dated: June 25, 2015

Pro se litigant
Van Starling #222109
430 Oaklawn Rd.
Pelzer, S.C. 29569

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Table of Authorities

I . Cases:

- Al-Shabazz v. State, 336 S.C. 354, 521 S.E.2d 742 (2000)
- Lake v. Reedex Constr. Co., 330 S.C. 242, 446, S.E.2d 650 (Ct. App. 1995) . . .
- Lark v. Bi-Lo, INC., 276 S.C. 130, 276 S.E.2d 304 (1981)
- Pearson v. JPS Convertex & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997)
- Wearlex v. South Carolina Coastal Council, 423 S.E.2d 340 (Ct. App. 1992) . .
- Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1996) . .
- Durant v. S.C. Dept. of Health & Environment Control, 361 S.C. 416, 420 S.E.2d 704 (Ct. App. 2004)

II . Statutes:

- S.C. Code Ann § 1-23-610
- S.C. Code Ann § 1-23-360

III . SCDC Policy/Procedure

Policy GA-01.12, "Inmate Grievance System".

Statement OF The ISSUES ON Appeal

- I. Was Appellant Afforded all constitutionally required due process?
- II. Is Respondents final agency decision supported by Substantial evidence?
- III. Did Administrative Law Judge's in decision to dismiss Appellants Appeal?
- IV. Did Respondents follow their own rules, policy and procedure stipulated in S.C.D.C. Policy GA-01.12, "Inmate Grievance System"?

Statement of Case

This matter comes before this Honorable Court pursuant to the appeal of Van Starling ("Appellant"), an inmate incarcerated with the South Carolina Department of Corrections ("S.C.D.C."). Appellant was denied due process following K.C.I. Inmate Grievance Coordinator failing to adequately investigate Appellant's Step one Grievance under S.C.D.C. Policy GA-10.12, "Inmate Grievance System". And the same caused the Appellant to be deprived of his medically approved Andis T-Edge clippers.

Appellant filed a Step one grievance on January 1, 2013, that was sent straight to the Inmate Grievance Branch because of condition of the case against a IGC. This grievance was supposedly investigated but denied for no substantial reason. The Appellant did not have to file a Step two grievance because of the matter of the case. Appellant filed Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 336 S.C. 354, 527 S.E.2d 742 (2000).

The ALC affirmed S.C.D.C.'s final decision, finding the Appellant does not have a liberty or property interest in his 'medically' approved T-Edge clippers on May 14, 2015.

Appellant now seeks review of the ALC's decision. For the reasons that follow, Appellant respectfully requests that the ALC's decision be reversed.

Standard of Review

S.C. Code Ann § 1-23-610(B) Provides the applicable Standard of Review:

The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because of the finding, conclusion, or decision is:

- (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.

See also S.C. Code Ann § 1-23-760(5), *Lake V. Peeder Const. Co.*, 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1993)

In an appeal of the final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by See S.C. Code Ann § 1-23-610(B).

A reviewing court shall not substitute its judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions which are controlled by error of law or are clearly erroneous in view of the substantial evidence on the record as a whole. Id. In determining whether the ALC's decision was supported by substantial evidence, the court need only find considering the record as a whole, evidence from which reasonable minds could reach the same conclusion that the ALC reached. Durant v. S.C. Dept. of Health & Environmental Control, 361 S.C. 46, 42, 604 S.E.2d 704, 706 (Ct. App. 2004). The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence. Id.

Argument And Citation of Authority

I. Was Appellant Afforded ALL constitutionally Required Due Process?

Prison grievance cases are not barred from procedural due process rights stipulated by the Federal Constitution, S.C. State Constitution or the South Carolina Statutes. Although prison grievance cases are not criminal documents in nature, but they should still be treated with strict scrutiny. The Appellant has rules to abide by as well as the Respondents. Due Process requires the following, but not limited to, in prison grievance cases:

- (a) The Institutional coordinator will receive grievances from the employee designated by the warden, and will investigate, resolve and/or recommend disposition;
- (b) South Carolina Dept. of corrections Agency Policy/Procedure GA-01.12, Inmate Grievance System;
- (c) IGC will conduct an investigation;
- (d) IGC will talk with the appropriate staff or inmates;
- (e) IGC will review all documents and/or reports et.c.
- (f) IGC will make recommendations to the warden as to the evidence relied upon.

The requirements in Policy GA-01.12, I.d. at paragraph 5.1, were not adequately and effectively complied with in this case. Where IGC, failed to talk with L.C.I. formal warden Padula, L.C.I. Property control officer (P.C.O.) Ms. Williams where Appellant again approved and possession of his medically approved T-Fiber clippers. And furthermore, Appellant's medical files were not properly reviewed by IGC. Appellant was provided with an response of the IGC's arbitrary findings.

Appellant was indeed denied his due process right to a fair and just grievance investigation per the Agency Policy. As the Appellant stated in his "Brief" and Supporting "Affidavit" to the ALJ (see designation of Matter), No matter how much concrete evidence he put forth proving that Respondents ("S.C.C.") IGC's were all in error in accordance to K.C.I. warden McKie and IGC K. Hill's prepared April 16, 2011, response to Appellant's Step one Grievance # 0084-11, and furthermore, the Responsible Officials inadequate Step Two Grievance # 0084-11 response prepared by James E. Singh. Appellant has clearly proven these responses were found not to be true as provided through Exhibits C through G.

Therefore, Appellant was not afforded "All" constitutionally required due process.

II. IS Respondent's Final Agency Decision Supported By Substantial Evidence?

A reviewing court will not disturb the findings of an administrative agency if those findings are supported by substantial evidence on record as a whole.

Pearson v. JPS Context & Indus. Corp., 327 S.C. 393 (Ct. App. - 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Bilo, Inc., 216 S.E.2d 304 (1987). Reviewing court may reverse decision of administrative agency if substantial rights have been prejudiced because agency's findings, inferences, conclusion or decision violate constitutional or statutory provisions, exceed statutory authority of agency, are based upon unlawful procedure, are affected by other error of law, are clearly erroneous in light of reliable, probative, and substantial evidence on entire record, or are either arbitrary, capricious, or reflect abuse of discretion or other obvious unwarranted exercise of discretion. Welder v. South Carolina Coastal Council, 423 S.E.2d 340 (Ct. App. 1992); S.C. Code - 1976 § 1-23-360.

All evidence relied upon to confiscate Appellant's medically approved T-Edge clipper was arbitrarily and erroneously entered into the record. This is an undisputed fact.

III. Did Administrative Law Judge Err In Decision To Dismiss Appellant's Appeal?

On April 23, 2015, Appellant filed his Appellant's Brief to the Administrative Law Court and S.C.D.C. On May 13, 2015, the Respondent's filed their Brief/Record consisting of Inmate Grievance MSU 3-13, and a "Incident Report" that wasn't a part of the grievance investigation. On May 14, 2015, the Administrative Law Judge filed an order dismissing the Appellant's appeal. AJS McLeod supported the agency's findings.

Appellant can prove that this decision was arbitrarily, capriciously, erroneously made. Pursuant to rule 60(A) of the SCSAR (South Carolina Special Appeals Rules). The Appellant had sixty-five (65) days to file his brief, which was complied with. The Respondent had twenty (20) days after the filing of the Appellants brief to file their brief, which was complied with. The ALT showed that he was bias and unjust in his decision because pursuant to 60(A) of the SCSAR, the Appellant had ten (10) days from the date the Respondents filed their brief/record, to file an Reply brief. The ALT denied the Appellant the right to file an Reply brief. On May 13, 2015, the Respondents filed their brief/record. The Appellant had until May 18, 2015, to file an Reply brief, but the ALT dismissed the Appeal before so on May 14, 2015. (See designation of matter). Therefore, the ALT acted in his bias, prejudice, arbitrary decision to dismiss Appellants Appeal.

IV. Did Respondent's Follow Their own Rules, Policy And Procedure Stipulated In S.C.D.C. Policy GA-01.12 "Inmate Grievance System"?

Pursuant to S.C.D.C. Policy Procedure GA-01.12 "Inmate Grievance System" i.d. at section 51.

Grievance Coordinator ("G.C.") K. Hill and Responsible officials James E. Stigh, both clearly did not review all documents or reports. And they did not talk with any of the appropriate officials through out the Dept. This case is like an case where no true Bill was stamped on an indictment and no grand jury convened to indict an defendant.

Appellant has carried his burden of proving that that the decision of the Dept. and ALT is clearly erroneous, arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12 (1998). Consequently, S.C.D.C. and the ALT's decision should be remanded and reversed.

Conclusion

Wherefore, for all the reasons undisputedly stated above, this court should reverse and remand the ALJ's and Respondent's decision in this case.

Pelzer, South Carolina
June 25, 2015

Respectfully Submitted,
Van *Alina
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Proof of Service

I, Van Starling #226109, hereby certify that on June 25, 2015, I did serve a copy of Appellant's Initial Brief on the following agencies by depositing a copy of the same into the U.S. Mail, postage prepaid, to the following addresses:

- 1) S.C. Court of Appeals P.O. Box 11629 Columbia, S.C. 29211
- 2) SCDL Office of General Counsel P.O. Box 21787 Columbia S.C. 29221

June 25, 2015

/s/ Van Starling #226109
Van Starling #226109
430 Oaklawn Rd.
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June 25, 2015

South Carolina Court of Appeals
Jenny Abbott Kitchin, Clerk
Post Office Box 11629
Columbia, S.C. 29211

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SC Court of Appeals

Re: Van Starling v. S.C.D.C.
Appellate case No. 2015-001253

Dear Clerk:

Enclosed herein, please find the Appellant's Initial Brief for your filing in the above reflected matter.

This matter will be highly appreciated.

Sincerely,
Van Starling
Van Starling

Enclosures

cc: SCDL Office of General Counsel

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Service ---

20: South Carolina Court of Appeals
Jenny Abbott Kitchings, clerk
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