STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

William Henry Chapman, Appellant, vs. South Carolina Department of Social Services, Respondent.	Docket No. 14-ALJ-30-0538-AP **FINAL ORDER AND DECISION** The Honorable Carolyn C. Matthews June 16, 2015

For the Appellant: Dwight C. Moore, Esquire
For the Respondent: William C. Smith, Esquire

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC") for a final order and decision following a contested case hearing pursuant to S.C. Code Ann. § 1-23-380 (1976, as amended). The South Carolina Department of Social Services ("Department" or "DSS") terminated the employment of William Henry Chapman ("Appellant") on June 3, 2014 for substandard job performance. Appellant maintains that he exhausted all agency procedures before appealing to this Court on November 20, 2014. An Order Governing Procedure was issued by this Court on December 4, 2014. Appellant filed his Brief on January 21, 2015; Respondent filed its Brief on February 25, 2015 and Appellant filed a Reply Brief on March 9, 2015. After carefully weighing all the evidence, this Court must affirm the decision of the State Human Resources Director.

FINDINGS OF FACT

Having taken into consideration the record on appeal, the briefs of the parties, and the burden of persuasion by the parties, the court makes the following Findings of Fact by the existence of substantial evidence:

1. On June 3, 2014, Appellant was terminated from employment with the Clarendon County Division of the South Carolina Department of Social Services ("DSS") for substandard job performance. He was notified of this termination via a hand-delivered letter signed by Robin H. Layton, Interim Director of Clarendon County.

2. On June 12, 2014, Appellant's attorney, Dwight C. Moore, wrote to Ms. Layton a letter containing the following language: "Please be advised that I am representing Mr. Chapman in

regard to the above-referenced matter. Pursuant to § 600 of the South Carolina Department of Social Services grievance procedure, I desire to grieve the termination handed down on June 3, 2014. Please advise as to date and time as to any proceedings." This letter was not included in the record produced by Budget and Control Board, but it was included as an exhibit to Appellant's Brief. It was not referenced in the Department's Brief. However, Appellant looks to this letter as being his official notice of grievance or appeal.

3. Between June 12 and June 20, 2014, Appellant was somehow informed or learned that he needed to submit DSS Form 1449 as part of his grievance paperwork. This was sent to Glenise Elmore, Employee Relations Director of Respondent's Office of Human Resources via facsimile to the office of Appellant's counsel. As with the June 12 letter, this form and its cover letter were not included in the record, though they were included by the Appellant as an exhibit to his Brief. They were not referenced by the Department in its Brief, though the Department acknowledges receiving Appellant's DSS Form 1449 on June 20, 2014.

4. A letter dated July 7, 2014 and received by Appellant's counsel on July 9, 2014 from Funneaser "Neisie" Jacobs, Director of Human Resources Management Division of DSS, outlined the grievance process for the Department and included Appellant's Grievance and Appeal information. This letter was addressed to Leigh Bolick, Director of Child Care Services for DSS, and outlined what she should expect as the grievance reviewer for this matter. This letter was not contained in the record, but was attached as an exhibit to Appellant's Brief. It was not referenced by the Department in its Brief.

5. On July 25, 2014, Amber Gillum, as Acting State Director, sent a letter via certified mail directly to Appellant that included the Decision of the State Director (DSS Form 1449-2, Grievance Decision Form), which upheld his termination. This letter informed Appellant that he had the ability to appeal the decision, and it was carbon copied to Robin Layton, County Director, Clarendon County DSS; William Smith, Esq., Office of General Counsel; and Dwight C. Moore, Esq., Moore Law Firm, LLC. Appellant's counsel received the letter on July 29, 2014, and replied on August 4, 2014 to the address provided in order to notify the Department that the decision would be appealed, and to request that all correspondence be directed to him. He carbon copied Amber Gillum and Robin Layton. This letter was not included in the record, but it was addressed by Respondent in its Brief, in which the Department acknowledges it as initiating an appeal.[1]

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1 "By letter postmarked August 4, 2014, Appellant initiated an appeal to the State Human Resources Director."

6. On September 4, 2014, the State Human Resources Director, Samuel L. Wilkins, issued his Final Decision denying Appellant's appeal because of Appellant's failure to file his original grievance within fourteen (14) calendar days as required. Consequently, because the timeline was not followed, Appellant argues that he cannot be determined to have exhausted his administrative remedies and, therefore, the merits of the case cannot be reached and reviewed. Appellant filed a request for reconsideration of this decision by letter dated September 18, 2014, and was denied by Mr. Wilkins via letter dated October 16, 2014, which received by Appellant's counsel on October 22, 2014. The instant appeal was filed with this Court on November 20, 2014. The case was assigned on December 3, 2014, and the record was filed by South Carolina Budget and Control Board on December 19, 2014.

7. Appellant's first argument centers on the fact that the letter from his counsel on June 12, 2014 should be viewed as a notice of appeal for purposes of satisfying the requirement of S.C. Code Ann. § 8-17-330 (1976, as amended). He contends that this letter included the same information required on the DSS Form 1449 that the Department requires. The code section states only that the procedure "must be initiated internally by such employee within fourteen calendar days of the effective date of the action." Appellant admits that the SC DSS Human Resources Policy and Procedure Manual section 603, which would bind him as a DSS employee, states that "[t]he grievance of an adverse employment action must be filed in writing on DSS Form 1449 Grievance and Appeal Form with the Human Resources Management Director within fourteen (14) calendar days of the effective date of the employment action." Appellant analogizes this to the main issue of Paschal v. Price, 380 S.C. 419, 670 S.E.2d 374 (Ct. App. 2008), in which the Court of Appeals held that failure to include a coversheet with a filing when that coversheet was not required by statute did not deprive the ALC of jurisdiction. The Court cites to Skinner v. Westinghouse Elec. Corp., 668 S.E.2d 795, 797 (S.C.2008) for the proposition that "[o]ur jurisprudence confirms that jurisdictional appealability issues are governed by statute, and not by the rules of civil procedure." By this reasoning, the letter from Appellant's counsel would have been satisfactory to initiate the appeal within DSS, and Appellant could not now be viewed as having exhausted his administrative remedies.

8. Alternatively, Appellant argues that even if he had failed to exhaust his administrative remedies, the Respondent, by its own actions, constructively waived the time line under consideration and it is, therefore, estopped from barring the Appellant from a hearing on the

merits of the case. As he otherwise explains it, "[s]ince the HR Director's Final Decision was based upon the onset of the grievance process; i.e., the actual filing and his determination that no grievance appeal had been filed, all events occurring thereafter would be irrelevant. Under the present state of the record, we have dual proceedings – both of which have been pursued to the conclusion of their respective phases."

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the court concludes the following as a matter of law:

1. Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to S.C. Code Ann. § 1-23-600(D) (Supp. 2007). As such, the Administrative Law Judge sits in an appellate capacity under the Administrative Procedures Act rather than as an independent finder of fact. The abilities of an Administrative Law Judge in such a role are dictated by S.C. Code Ann. § 1-23-380(5) (2014):

> (5) 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:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;
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> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
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> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

2. "Substantial evidence" has been defined both as "evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its

action"[2] and requiring "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[3] The fact that the record, when considered as a whole, presents "[t]he possibility of drawing two inconsistent conclusions from the evidence will not mean the agency's conclusion was unsupported by substantial evidence." Waters v. South Carolina Land Resources Conservation Comm'n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996); *see also* Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

3. If substantial evidence exists for a certain agency decision, that decision may not be disturbed unless there is an abuse of discretion evidenced by a showing that the action of the agency was arbitrary or unlawful. S.C. Code Ann. § 1-23-600(A) (Supp. 2014). "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." Deese v. South Carolina State Bd. Of Dentistry, 286 S.C. 182, 184-5, 332, S.E.2d 539, 541 (Ct.App. 1985).

4. The agency employee grievance plans as contained in S.C. Code Ann. § 8-17-330 (2014), provide timelines for every step of the grievance process. This section also contains language that mandates each agency to "establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources." There has been no allegation that the Appellant was not provided with the approved DSS Human Resources Policy and the DSS Form 1449. Therefore, the Appellant knew or should have known the appropriate form and timeline to grieve his termination.

5. The Court finds Appellant's argument persuasive, in that the same information contained in the DSS Form 1449 was included in the notice of appeal from Appellant's counsel. A simple letter such as this may serve as a notice of appeal in other courts but, when such specific agency guidelines are in place, they must be adhered to until the agency or legislature mandates otherwise. The Agency's final determination that Appellant's grievance was not timely filed affirms this position.

6. It is unfortunate that Appellant has effectively dealt with two (2) grievance procedures simultaneously due to confusion and delay within DSS. For this reason, Appellant understandably

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2 Lark v. Bi-Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981).
3 Midlands Utility, Inc. v. S.C. Dep't of Health and Environmental Control, 298 S.C. 66, 69, 378 S.E.2d 256, 258 (1989).

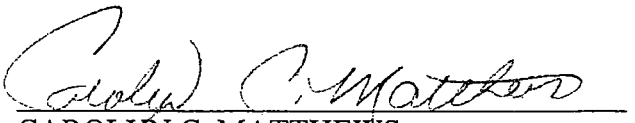
asks for consideration of the balance of equity in this matter. This Court, though, may not reach this argument, as it is bound by the Administrative Procedures Act and sits in an appellate capacity. Because it must defer to the determination of the agency, it is limited to the record and the determinative issue of whether Appellant's initial grievance was timely filed. I find that it was not.

ORDER

Based upon the Findings of Fact and Conclusions of Law stated above, it is

ORDERED that the Department's decision stands and this matter is concluded.

IT IS SO ORDERED.



June 16, 2015
Columbia, South Carolina

CAROLYN C. MATTHEWS
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Jessica E. Kinard, hereby certify that I have, on 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).

June 16, 2015
Columbia, South Carolina

Jessica E. Kinard
Judicial Law Clerk