

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Carolyn C. Matthews

Case No. 11-ALJ-04-0397-AP

Timotheus Hemingway, # 286667.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

FINAL BRIEF OF RESPONDENT

*S.C. DEPT. OF CORRECTIONS
AUG 6 2 2012*

July 31, 2012

South Carolina Department of Corrections

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STATEMENT OF THE ISSUES ON APPEAL

- I. WAS APPELLANT AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS?**

- II. IS RESPONDENT'S FINAL AGENCY DECISION SUPPORTED BY SUBSTANTIAL EVIDENCE?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Timotheus Hemingway (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant was convicted of an inmate disciplinary offense for threatening to inflict harm on an employee, offense 809 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. Appellant lost 90 days of good time due to the disciplinary conviction. (R.p.10).

Appellant filed a Step One Grievance on January 4, 2011, challenging his conviction. This grievance was investigated and denied. (R.p.11). Appellant filed a Step Two Grievance on January 27, 2011, which was also denied. (R.p.12). Appellant received the final agency determination on April 26, 2011. (R.p.15).

Appellant filed a Notice of Appeal in the Administrative Law Court (ALC), pursuant to Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000), claiming his conviction should be overturned. (R.p.15). After the parties filed briefs, Administrative Law Judge Carolyn C. Matthews affirmed the disciplinary conviction, finding that it was supported by substantial evidence and that the proceeding had complied with due process requirements. (R.p.4).

Appellant now seeks review of the ALC’s decision. For the reasons that follow, SCDC respectfully requests that the ALC’s decision be affirmed.

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 court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals 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 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. § 1-23-380(A)(5); Al-Shabazz v. State, 338 S.C. 354, 380, 527 S.E.2d 742, 756 (2000).

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 substantial evidence. 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. Dep't of Health & Environmental Control, 361 S.C. 416, 420, 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. at 420.

ARGUMENT AND CITATION OF AUTHORITY

I. APPELLANT WAS AFFORDED ALL CONSTITUTIONALLY REQUIRED DUE PROCESS.

Prison disciplinary cases are not criminal trials in federal or state courts. Instead, they are administrative hearings in an institutional setting. Therefore, Due Process in prison disciplinary hearings is substantially less than would be required in a criminal trial before a court. Due Process requires the following in prison disciplinary cases:

- a) notice of charges;
- b) disclosure of evidence against defendant (may be limited);
- c) opportunity to be heard;
- d) no right to confront and cross-examine adverse witnesses;
- e) neutral and detached hearing body;
- f) aid of counsel substitute or other substitute aid where inmate is illiterate or complex case (not attorney);
- g) written statement by the fact-finder as to the evidence relied upon.

Wolff v. McDonnell, 418 U.S. 539, 566 (1974).

The requirements enumerated in Wolff were complied with in this case. The Disciplinary Report and Hearing Record demonstrate that appellant had notice of the charge. (R.p.10). The record also reveals there was proper disclosure of evidence due to the fact that the Disciplinary Offense Report was read at the disciplinary hearing. (R.p.5).

Furthermore, appellant was afforded an opportunity to be heard at the December 8, 2010

hearing. (R.p.5). There was a neutral and detached hearing body at the hearing, an SCDC disciplinary hearing officer. (R.p.5). Appellant was provided a written statement of the hearing officer's findings, and he was ineligible for counsel substitute. (R.p.10).

There was ample evidence to support appellant's disciplinary conviction. Officer Glover reported that while she was conducting a standing count, appellant said, "You are a hateful bitch, and I want you to come across me the wrong way; I want you to do something to me and I swear to God." (R.p.5). At the hearing, Officer Glover explained she felt threatened because of the way appellant walked up the door at the time. (R.p.8). In view of Glover's report, the disciplinary conviction was fully supported by the evidence.

Because appellant's disciplinary conviction comported with all due process requirements, SCDC respectfully requests the decision of the ALC

II. RESPONDENT'S FINAL AGENCY DECISION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A reviewing court will not disturb findings of an administrative agency if those findings are supported by substantial evidence on the record as a whole. Pearson v. JPS Converter & Industry Corp., 327 S.C. 393, 396, 489 S.E.2d 219, 220 (Ct. App. 1997).

"Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the conclusion that the administrative agency reached to justify its action. Laws v. Richland County Sch. Dist. No. 1, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported

by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Public Svc. Comm'n, 332 S.C. 20, 27, 503 S.E.2d 739, 742 (1998).

All credible evidence presented at appellant's hearing indicates appellant was guilty of this disciplinary offense. The record conclusively establishes that the "substantial evidence on the whole record" supports respondent's final agency decision. (R.pp.5-8). The disciplinary hearing officer stated she found appellant was guilty based upon Glover's report and testimony. (R.p.8).

Appellant has not carried his burden of proving that the decision of the Department is clearly erroneous, or arbitrary or capricious, or an abuse of discretion. See Porter v. S.C. Public Serv. Comm'n, 333 S.C. 12, 507 S.E.2d 328 (1998). Consequently, SCDC's decision should be upheld.

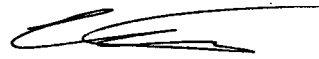
CONCLUSION

WHEREFORE, for all the reasons stated above, this Court should affirm the Department of Corrections' decision in this case.

Respectfully submitted,

SOUTH CAROLINA DEPARTMENT OF
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April 2, 2012

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR and the Supreme Court's order of August 13, 2007.



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CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Final Brief by depositing a copy of same in the United States Mail, postage prepaid, on July 31, 2012, addressed to the Appellant as follows:

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