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APR 14 2016

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC Court of Appeals

Robert Wayne Batchelor,)
)
Appellant,)
)
v.)
)
South Carolina Department of Public)
Safety,)
)
Respondent.)
)

Docket No. 15-ALJ-30-0515-AP

ORD R AFFIRMING DECISION

SOUTH CAROLINA COURT

This appeal came before this Court from the decision of the State Employee Grievance Committee ("SEGC") to uphold the determination of the South Carolina Department of Public Safety ("SCDPS" or "Respondent") to terminate the employment of Robert Wayne Batchelor ("Appellant"). The appeal appears to be primarily based upon the SEGC's rejection of Appellant's objection to references in "Committee Exhibit I" to his failed polygraph examination. Appellant's second argument appears to be based on Appellant belief that the SEGC "commingled" evidence related to the failed polygraph examination with other evidence, and relied on the "commingled" evidence to support its decision.

For the reasons stated below, I find that the Appellant's arguments are not persuasive, and therefore, dismiss Appellant's appeal, and affirm the decision of the SEGC to uphold SCDPS's termination of Appellant's employment.

FACTUAL BACKGROUND

Appellant is a former Trooper who SCDPS terminated from employment on February 23, 2015. In his termination letter, he was cited for "Negligence in the Performance of Duty" and "Failure to Provide Truthful and Complete Information." SCDPS could have fired Appellant for either of these offenses alone.

The SEGC unanimously found that the "Appellant's actions, by his own admission, constituted Negligence in the Performance of Duty," and separately found that "Appellant committed the offense of Failure to Provide Truthful and Complete Information." Specifically, in support of its findings, the SEGC considered the following:

- Appellant was the responding Trooper of a one-car accident on the evening of Friday, February 19, 2015, in which the driver of the car was missing. SCDPS policy required the Appellant to check the registered owner's residence during his investigation of the accident. Appellant failed to check the residence.
- On Sunday, February 22, 2015, members of the driver's family visited the scene, conducted their own search of the area, and found the driver's deceased body in a nearby deer stand.
- Following the discovery of the deceased, First Sergeant Causey spoke with Appellant concerning the matter on February 22, 2015. During this conversation, Appellant told First Sergeant Causey that the hospital and the residence had been checked.
- When Appellant's comment was relayed to the deceased's family, they denied that Appellant – or anyone else – had visited the residence. Because of Appellant's untruthfulness, SCDPS disseminated incorrect information to the grieving family and the media.
- Later, Appellant admitted that he failed to check the residence of the vehicle's registered owner, as required by SCDPS policy. However, he denied that he told First Sergeant Causey that he had done so.
- On March 3, 2015, SCDPS issued its termination notice to Appellant. The termination was retroactive to Appellant's suspension, which began on February 23, 2015.

In finding that there was "substantial evidence to support the SCDPS's decision to terminate Appellant," the SEGC ruled that:

Appellant admits that he was negligent in the performance of his duties because he did not check Ms. Callahan's residence as required as part of his investigation of the collision on February 19, 2015. The Committee was not persuaded by Appellant's explanation that he failed to check the residence because he believed the procedures did not apply because a collision had occurred. The applicable procedures clearly refer to vehicles involved in collisions. Further... Appellant's assumptions did not negate his responsibility to fully carry out the requirements of the applicable procedures. Therefore, the Committee finds that Appellant's actions, by his own admission, constituted Negligence in the Performance of Duty.

With regard to Appellant's allegation that he was truthful when he spoke with First Sergeant Causey on February 22, 2015, the SEGC ruled as follows:

Given the inconsistencies of Appellant's testimony regarding the phone conversation with First Sergeant Causey on February 22, 2015, as well as

the inconsistencies of Appellant's statements regarding his adherence to SCDPS policy for towing abandoned vehicles, the Committee found sufficient reason to doubt the credibility of Appellant's claim that he did not tell First Sergeant Causey that he (Appellant) had checked Ms. Callahan's residence during the collision investigation on February 19, 2015. The Committee found First Sergeant Causey's statements to be consistent and credible.

The SEGC also specifically addressed its view of the evidence related to the polygraph examination:

While SCDPS provided the Committee with results of a polygraph examination, **the Committee did not consider these results in making their determination regarding the offense of Failure to Provide Truthful and Complete Information.**

(emphasis added).

OPINION

I. THE SEGC'S DECISION MUST BE AFFIRMED IN ITS ENTIRETY UNDER THE "TWO ISSUE RULE."

Appellant has admitted that his conduct was negligent, and it is undisputed that SCDPS has the authority to terminate an employee for such an offense. The two-issue rule requires an appellate court to affirm the lower decision where a decision is based on more than one ground, and the appellant did not appeal all grounds on which the decision was based. *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010).

For this reason alone, the decision of the SEGC must be affirmed in full.

II. THE SEGC'S COMMITTEE ATTORNEY PROPERLY RULED ON APPELLANT'S OBJECTIONS TO DOCUMENTS INCLUDED IN "COMMITTEE EXHIBIT I."

The regulations governing appeals to the State Employee Grievance Committee provide that the state agency must submit relevant documents to the State Human Resource Director for inclusion in "Committee Exhibit I." S.C. Code Ann. Regs. § 19-718.07(D)(1). A party may object to the inclusion of specific documents in Committee Exhibit I prior to the hearing. S.C. Code Ann. Regs. § 19-718.07(D)(3)(b). Specifically, the regulation states as follows:

The documents transmitted by the State Human Resources Director to the designated Committee panel and Committee Attorney must be marked into evidence as "Committee Exhibit I" during the Committee Chairman's

opening statement at the beginning of the hearing unless excluded by the Committee Attorney based on a prior objection raised by either party.

(emphasis added).

Prior to the hearing, Plaintiff raised objections to the following documents in Committee Exhibit I, all on grounds of “hearsay”:

- Pages 8-10: SCDPS’s response to the SEGC’s request for information to the agency regarding its termination of the Appellant.
- Pages 11-12: SCDPS’s termination letter to Appellant.
- Pages 13-15: SCDPS’s Personnel Change in Status Report to the South Carolina Criminal Justice Academy regarding its termination of Appellant.
- Pages 36-47: Sections of OPR’s investigative report into Appellant’s misconduct. This report includes references, on pages 41 and 42, to Appellant’s polygraph examination, and that the results indicated “deception indicated.”

Notably, Appellant did not object to the inclusion of the actual polygraph report summary, found at page 56 of Committee Exhibit I.

In its response to Plaintiff’s pre-hearing objections, SCDPS noted that S.C. Code Ann. Regs. § 19-718.05(D) requires the agency to furnish a copy of “all records, reports, and documentation of the earlier proceedings on the grievance within 15 calendar days” of the request of the State Human Resource Director with following the request.” In this case, as in all grievance appeals, the State Human Resources Director actually directed SCDPS to submit, *inter alia*, a brief summary of SCDPS’s position, Appellant’s employment records, and copies of findings and determinations at each step of the grievance procedure. Furthermore, SCDPS noted that relevant legal authority permitted – and even required – submission of these materials, even if the tribunal considered them to be hearsay.

Upon review of the arguments and documents in question, the Committee Attorney ruled that (1) the documents were not hearsay, and (2) were properly before the Committee. The Appellant fails to suggest in any way why this ruling is incorrect. For this reason alone, his argument fails, and the SEGC’s decision must be affirmed.

III. THE APPELLANT FAILED TO FILE A TIMELY OBJECTION TO THE INCLUSION OF THE POLYGRAPH REPORT IN COMMITTEE EXHIBIT I. FURTHERMORE, THE SEGC SPECIFICALLY EXCLUDED CONSIDERATION OF THE POLYGRAPH REPORT FROM ITS ORDER.

As noted above, the Polygraph Report regarding Appellant's examination appears at page 56 in Committee Exhibit I. Prior to the hearing before the SEGC, Appellant failed to object to its inclusion in Committee Exhibit I.¹

At the hearing, Appellant's counsel objected to the "admissibility of anything with reference to the polygraph, either through the written documentation provided already to the board or through any possible testimony. I believe it's inadmissible in our state, a polygraph, and really should not be admitted." Later, Appellant's counsel clarified that he was "renewing" his earlier objection, which was stated on grounds of hearsay. The Committee Attorney again overruled the objection.

In any event, the Committee Attorney's ruling on the objection, even if mistaken, was harmless. The SEGC did not reference the polygraph report when it found that the Appellant was, in fact, negligent in the performance of his duties, because he admitted that he did not check the residence of the registered owner of the vehicle. Moreover, as set forth above, the SEGC specifically noted that, in rejecting Appellant's contention that he was never untruthful in his responses to First Sergeant Causey, it specifically "did not consider the results [of the polygraph examination] in making [its] determination regarding the offense of Failure to Provide Truthful and Complete Information."

The admission of evidence is in the discretion of the tribunal, whose ruling will not be disturbed absent (1) an abuse of discretion amounting to an error of law, and (2) prejudice. Though testimony may constitute inadmissible hearsay evidence, no prejudice is shown when it merely corroborates other evidence admitted in the case. *Starkey v. Bell*, 281 S.C. 308, 315-16, 315 S.E.2d 153, 157 (S.C. App. 1984).

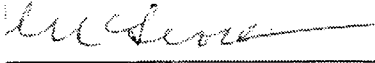
Because Appellant can show neither abuse of discretion nor prejudice, the SEGC's decision is affirmed.

¹ When asked whether he told First Sergeant Causey that he went by the subject's house following the collision, the polygraph indicated that Appellant's response was untruthful.

CONCLUSION

For the reasons stated above,² this Court **DISMISSES** the appeal of Appellant Robert Wayne Batchelor, and **AFFIRMS** the decision of the SEGC in full, with each side to bear its own costs and fees.

April 7, 2016
Columbia, SC



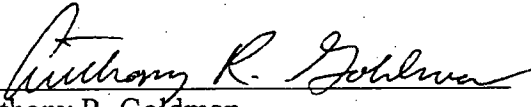
eod, Judge
South Carolina Administrative Law Court

² For reasons that are not clear, Appellant alleges in his brief that the “abuse of power and authority by the hearing officer was egregious in that the Appellant was *pro se* at the actual hearing and it was obvious, by a reading of the record, that he has little or no understanding as to the Rules of Evidence nor admissibility.” The record reflects that Appellant was clearly represented throughout the process by an attorney.

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, 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).

April 7, 2016
Columbia, S.C.



Anthony R. Goldman
Judicial Law Clerk