STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge S. Phillip Lenski

ALC Case No. 15-ALJ-04-0313-AP
Appellate Case No. 2015-002114

WILLIAM FORD, # 232122,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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STATEMENT OF THE CASE

This matter comes before this Court pursuant to the appeal of William Ford, an inmate in the custody of the South Carolina Department of Corrections. On December 9, 2014, Appellant filed a Step One Grievance complaining about certain actions of South Carolina Department of Corrections personnel in regard to a scheduled transfer which was subsequently canceled. The grievance was investigated and denied on December 28, 2014. Appellant then filed a Step Two Grievance which was denied on May 28, 2015. Appellant filed an appeal to the Administrative Law Court on July 1, 2015, and Administrative Law Judge S. Phillip Lenski issued an order denying and dismissing the appeal on September 25, 2015. Judge Lenski's order concluded that dismissal was appropriate because Appellant's complaints did not involve a state-created liberty or property interest. This appeal follows.

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 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.

S.C. Code Ann. § 1-23-380(5).

In an appeal of a final decision of an administrative agency, the standard of appellate review is whether the ALC's findings are supported by substantial evidence. S.C. Code Ann. § 1-23-610(B). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). A reviewing court shall not substitute its own judgment for that of the ALC as to findings of fact, but it may reverse or modify decisions that are controlled by errors of law or that are clearly erroneous in view of the substantial evidence on the record as a whole. Id.

ARGUMENT

THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED THE APPEAL BECAUSE APPELLANT'S COMPLAINTS DO NOT INVOLVE A STATE-CREATED LIBERTY INTEREST OR PROPERTY INTEREST.

The ALC's jurisdiction to hear this matter is derived entirely from the decision of the South Carolina Supreme Court in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). When reviewing SCDC's decisions in inmate grievance matters, the ALC sits in an appellate capacity. Id. at 377, 527 S.E.2d at 754. Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Sullivan v. S.C. Dep't of Corr., 355 S.C. 437, 586 S.E.2d 124 (2003). In affirming, as modified, the ALC's *en banc* decision of McNeil v. S.C. Dep't of Corr., 02-ALJ-04-00336-AP (September 5, 2001), the Supreme Court held the ALC's jurisdiction was limited to (1) cases in which an inmate contends prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; (2) cases in which SCDC has taken an inmate's state-created liberty interest in major disciplinary hearings; and (3) cases in which an inmate's confinement implicates a state-created liberty interest. See Sullivan, 355 S.C. at 443, 586 S.E.2d at 127 (emphasis added).

Moreover, regarding categories (2) and (3) above, the Supreme Court has consistently emphasized that the liberty or property interest implicated must be one that is state created. See Wicker v. S.C. Dep't of Corr., 360 S.C. 421, 602 S.E.2d 56 (2004) (emphasizing that the ALC's jurisdiction extends only to those cases involving the denial of "state created liberty interests" and that the Court's holding [*i.e.*, in Wicker] "is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance."); Slezak v. S.C. Dep't of Corr., 361 S.C. 327, 605 S.E.2d 506 (2004) (holding that the ALC "may summarily dismiss those appeals that

do not implicate an inmate's state created liberty or property interest") (emphasis added).

The ALC should 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 & Ind. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). Stated differently, an Administrative Law Judge may not substitute his judgment for that of an agency "as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(5). Additionally, an Administrative Law Judge may not reverse or modify an agency's decision unless substantial rights of the Appellant have been prejudiced because the decision is clearly erroneous in view of the substantial evidence on the whole Record, arbitrary or affected by an error of law. See S.C. Code Ann. § 1-23-380(5) (e); see also Marietta Garage, Inc. v. S.C. Dep't. of Pub. Safety, 337 S.C. 133, 522 S.E.2d 605 (1999); S.C. Dep't. of Labor, Licensing & Regulation v. Girgis, 332 S.C. 162, 503 S.E.2d 490 (1998).

"Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach the same conclusion that the administrative agency reached. Hendley v. S.C. State Budget & Control Bd., 325 S.C. 413, 481 S.E.2d 159 (Ct. App. 1996). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Grant v. S.C. Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995). Administrative agencies are afforded wide latitude in making decisions, as shown in the deferential standard of appellate review. Heater of Seabrook, Inc. v. Pub. Svc. Comm'n of S.C., 332 S.C. 20, 503 S.E.2d 739 (1998).

Finally, in deciding appeals from inmate grievances, the ALC must consider that prisons officials are in the best position to decide inmate disciplinary matters. In Al-Shabazz,

the Supreme Court underscored that since prison officials are in the best position to decide inmate disciplinary matters, the courts adhere to a "hands off" approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA. Al-Shabazz, 338 S.C. at 382, 527 S.E.2d at 757 (stating that "[c]ourts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters . . . .")); see also Pruitt v. State, 274 S.C. 565, 266 S.E.2d 779 (1980) (referring to the traditional "hands off" approach of South Carolina courts regarding internal prison discipline and policy).

In this case, it was proper for the Administrative Law Court to summarily dismiss Appellant's appeal because Appellant's complaints regarding the conduct of prison staff plainly do not implicate any state-created liberty or property interests. See Slezak, 361 S.C. at 333, 605 S.E.2d at 509. Further, even assuming, for argument's sake, that SCDC officials violated SCDC policy in some respect, this alone does not constitute a violation of Appellant's constitutional rights. See Myers v. Klevenhagen, 97 F.3d 91, 94 (5th Cir. 1996) ("[A] prison official's failure to follow the prison's own policies, procedures or regulations does not constitute a violation of due process, if constitutional minima are nevertheless met."). Additionally, Appellant's requests for money damages to compensate him for his emotional distress and anxiety are misplaced since the Administrative Law Court has no authority to grant monetary relief. See Al-Shabazz, 338 S.C. at 382, 527 S.E.2d at 757. Therefore, Respondent respectfully requests that the order of the Administrative Law Judge be upheld.

CONCLUSION

For the foregoing reasons, the Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

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BY: _____

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March 23, 2016

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on today's date I mailed a copy of the **Final Brief of Respondent** to Appellant, addressed as follows: **William Ford, # 232122,** MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, South Carolina, 29472.

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