

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Administrative Law Judge

RECEIVED

Case No. 14-ALJ-30-0538-AP
Appellate Case No. 2015-001548

MAY 18 2017

SC Court of Appeals

William Henry Chapman, Appellant,

v.

South Carolina Department of Social Services, Respondent.

PETITION FOR REHEARING

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Pursuant to Rules 219(a), 221(a) and 240 of the South Carolina Appellate Court Rules, Respondent, South Carolina Department of Social Services ("Respondent"), files this Petition for Rehearing in the above-referenced matter, which resulted in Opinion Number 5482 filed on May 3, 2017 ("opinion"), and requests, consideration given to the exceptional importance of the potential impact of the Court's ruling prospectively on other actions by agencies of the State of South Carolina, that the matter be heard by the Court *en banc*.

Respondent respectfully submits that rehearing and issuance of a new opinion denying the relief sought by the Appellant, and affirming the decision of the Administrative Law Court ("ALC") in this matter, is required based on the grounds that the Court in its opinion overlooked substantial evidence in the record that supported the decision of the Administrative Law Court and misconstrued statutory and regulatory provisions pertinent to the opinion in the case.

In support of its Petition, Respondent would respectfully offer as follows:

I. The Court's reliance on selected language of S.C. Code Ann. § 8-17-330 as supporting the Appellant's position misconstrues the requirements of the statute read as a whole and ignores legislative intent

The Court's opinion notes as follows:

Section 8-17-330 of the South Carolina Code states in part, "Each agency shall establish an agency employee grievance procedure... The procedure must provide that all grievances... must be initiated internally by such employee within fourteen calendar days..."

Beyond the language excerpted in the opinion, the statute also requires that the agency employee grievance procedure "must be reduced to writing and submitted for approval to the Office of Human Resources" and that "[a] copy of the approved agency grievance procedure must be made available to covered employees of the agency."

The statutory language requiring that every agency establish its own “internal grievance procedure” can only be read as clearly contemplating a legislative intention that different agencies will develop different procedures as appropriate for their operational needs to insure compliance with the minimal requirements set forth in the language of the statute.

The Court’s opinion, holding that the statute requires only that a grievance be initiated internally within fourteen calendar days, in no apparent form or fashion, effectively renders meaningless the statutory mandate that that “[e]ach agency **shall** establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources.” (Emphasis supplied)

II. The opinion’s reliance on selected language in the Grievance Procedure Model Policy as supporting the Appellant’s position does not consider the policy fully and is misplaced

The Court’s opinion notes as follows:

The Grievance Procedure Model Policy provides a “grievance must be in writing and must be received... within 14 calendar days of the effective date of the action or 14 calendar days from when the employee is notified of the action, whichever is later.”

The extended language of the Grievance Procedure Model Policy was cited by the

Appellant in his brief to the Court, however, and states as follows:

A covered employee who wishes to file a grievance must initiate the grievance with the agency’s Human Resources Office. The grievance must be in writing and must be received (or, if mailed, postmarked) within 14 calendar days of the effective date of the action or 14 calendar days from when the employee is notified of the action, which is later. The employee should include a written summary of the facts of the grievance and the relief sought. (Grievance Procedure Model Policy, Revised and effective 4/8/2013) (Emphasis supplied)

The additional model policy language is critical because it requires that a grievance must be initiated "with the agency's Human Resources Office." The Court's opinion, however, provides as follows:

We find Chapman complied with the applicable regulations at the time of his grievance **by initiating his grievance in his attorney's letter** within the required fourteen-calendar-day limit. (Emphasis supplied)

The opinion's conclusion that Appellant's counsel's letter properly initiated the grievance in accordance with the requirements of the Grievance Procedure Model Policy is not supported by either the record or the language of the policy, as both the Appellant's brief to the Court and the Final Order and Decision of the Administrative Law Court clearly state that Appellant's counsel's letter of June 12, 2014, was not directed to the DSS Human Resources Office but, instead, was forwarded to the Clarendon County DSS Office. As stated by Appellant in his brief to the Court:

The record reflects that **Appellant initiated his grievance internally by Counsel's letter to the Clarendon County Interim Director dated June 12, 2014** - five (5) days prior to the expiration of the June 17, 2014, fourteen-day cut-off period. (Emphasis supplied)

Further, the Court's opinion notes:

By separate letter dated June 3, 2014, DSS notified Chapman, "Employees must initiate a grievance within 14 calendar days of the effective day of the grievable action." **This letter indicated a copy of DSS Form 1449, a copy of the Employee Grievance and Appeal Form, and a copy of the DSS Human Resources Policy and Procedure Manual, Chapter 6 (the Manual) were included with the letter.** (Emphasis supplied)

Accordingly, when Appellant's counsel sent his letter on June 12, 2014, his client was in possession of both the DSS Form 1449 as well as the specific DSS Manual guidance detailing

that the grievance was required to be filed with the DSS Human Resources Management Director.

The opinion provides further:

Chapman retained counsel, who responded by letter dated June 12, 2014. **The letter stated that pursuant to section 600 of the DSS grievance procedure, Chapman "desire[d] to grieve the termination."** Chapman believed this letter was sufficient to grieve his termination. **Between June 12 and June 20, 2014, Chapman learned he needed to file a Form 1449.**

Contrary to the above language, both the Court's opinion and the "Statement of Events" set forth in the Final Decision of the State Human Resources Director included in the record, clearly establish that Appellant was already in possession of both the DSS Manual and DSS Form 1449 which had been provided to him in the letter of June 3, 2014 sent by a representative of the DSS Human Resources Management Office, and did not first become aware of the need to file the DSS Form 1449 "between June 12 and June 20, 2014." As the State Human Resources Director's "Statement of Events" noted:

[B]y letter dated June 3, 2014, Ms. Kristen-L. Johnson, M.A. HRM, Respondent's Employee Relations Specialist, advised Appellant that "**[e]mployees must initiate a grievance within 14 calendar days of the effective day of the grievable action.**" [Emphasis in original.] In addition, Ms. Johnson provided Appellant with DSS Form 1449, Employee Grievance and Appeal Form and a copy of Respondent's Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal.

Thus, irrespective of whether Appellant filed a DSS Form 1449 timely, as the Court has concluded he was not obligated to do, he did not comply with the requirements of either the DSS Manual or the Grievance Procedure Model Policy, which he cited for the Court as supporting for his position, inasmuch as no written grievance was timely initiated with the DSS Human Resources Office.

Further, Appellant's counsel's letter of June 12, 2014, stated that "pursuant to section 600 of the DSS grievance procedure," Appellant wished to grieve. Accordingly, by Appellant's counsel's own admission, in citing to the provisions of the grievance procedure in the DSS Manual, he was already aware of not only the time frame for submitting his grievance but, as well, the requirement that the grievance was required to be submitted to the DSS Human Resources Management Director.

In his brief to the Court, the Appellant specifically cites his awareness of the requirements for initiating the grievance internally as follows:

*The South Carolina Department of Social Services Human Resources Policy and Procedure Manual, Chapter 6, Procedure for Grievance and Appeal, effective 01/22/2010, Section 606, Procedure to File a Grievance, in Step One provides 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." (DSS Human Resources Policy and Procedure Manual) (Emphasis supplied)*

Further, in his brief to the Court, Appellant also references his awareness of the requirements for initiating an internal grievance under the Grievance Procedure Model Policy:

... [T]he Grievance Procedure Model Policy (*Revised and Effective 4/8/2013*), under *Procedure, Step One*, states as follows:

A covered employee who wishes to file a grievance **must initiate the grievance with the agency's Human Resources Office**. The grievance must be in writing and must be received (or, if mailed, postmarked) within 14 calendar days of the effective date of the action or 14 calendar days from when the employee is notified of the action, which is later. The employee should include a written summary of the facts of the grievance and the relief sought.

(Grievance Procedure Model Policy, Revised and effective 4/8/2013)
(Emphasis supplied)

The Court's opinion references the final decision of the State Human Resources Director, stating as follows:

By Final Decision dated September 4, 2014, the Director denied Chapman's appeal. **Relying on the fourteen-day time limit to initiate grievances pursuant to section 8-17-330 of the South Carolina Code, the Director found Chapman failed to file his grievance within the required time frame.** The Director also cited section 603 of the Manual in finding the grievance was not timely filed because the Form 1449 was not filed within fourteen days. The order found because Chapman failed to timely file his grievance, he failed to exhaust his administrative remedies, and the merits of the case were not reviewed. (Emphasis supplied)

However, the opinion then concludes that Appellant was inappropriately denied relief by the State Human Resources Director, which denial was upheld by the Administrative Law Court, based upon the Appellant's not having filed a DSS Form 1449 within the required time frame in order to initiate his grievance. That conclusion is not consistent, however, with the substantial evidence in the record before the Court.

The Final Decision of the State Human Resource Director, in the record before the Court, stated in its Analysis, in part, as follows:

According to the record, Appellant was notified via hand-delivered letter on June 3, 2014, that his employment was terminated effective June 3, 2014. **Appellant initiated a grievance concerning his termination via facsimile which was received by Respondent's Human Resources Management Office on June 20, 2014.** The date Appellant's grievance was submitted, June 20, 2014, is seventeen (17) calendar days from the effective date of the action, June 3, 2014. (Emphasis supplied)

On the record before this Court, Appellant was aware, under both the DSS Manual grievance provisions and the Grievance Procedure Model Policy, that his grievance was required to be filed with the agency Human Resources Office, not with the Clarendon County DSS Office or with any other office or individual within the agency.

And again, irrespective of the form in which Appellant's written notification of grievance appeared; it is clear on the record that Appellant provided no written notification of any sort to the agency's Human Resources Management Office regarding his intention to grieve until after the fourteen calendar day period for filing the grievance had expired.

The Final Decision of the State Human Resources Director, which was upheld by the Administrative Law Court, was not contingent *solely* upon Appellant not having filed the Form 1449 as the opinion would suggest but, as well, as the record fully demonstrates, on the fact that Appellant did not provide notice of his intention to grieve with the time period required by the State Employee Grievance Procedure Act. The State Human Resource Director, in his Final Decision, noted as follows:

Section 8-17-330 of the S.C. Code of Laws of 1976, as amended, states in part that, "all grievances of agency actions affecting a covered employee must be initiated internally by such employee within fourteen calendar days of the effective date of the action...." This timeframe is also noted in Respondent's Procedure for Grievance and Appeal which Ms. Johnson provided to Appellant. **Appellant's grievance was submitted beyond this fourteen calendar day timeframe.** (Emphasis supplied)

Thus, even accepting the Court's opinion that the Appellant was not required to submit a DSS Form 1449 to initiate his internal grievance, he still failed to submit any written grievance notification to the agency Human Resources Office within the required fourteen calendar day timeframe, as is required by both the DSS Manual and Grievance Procedure Model Policy.

As such, the Court's opinion that Appellant's counsel's June 12, 2014 letter timely initiated Appellant's grievance cannot be supported on the record, irrespective of the determination that no specific form may be required for the initiation of an internal grievance.

Appellant simply did not timely file any form of a written grievance with the agency Human Resources Office, as even his own brief acknowledges he was required to do.

III. Conclusion

The Court's opinion does not accurately construe the language of S.C. Code Ann. § 8-17-330 and disregards the legislative mandate that State agencies must develop their own written internal employee grievance procedures which must be submitted to, and approved by, the State Office of Human Resources. Likewise, the opinion does not consider, *in pari materia*, the language of S.C. Code Ann. § 8-17-350, which requires that the State Human Resources Director "shall assemble all records, reports, and documentation of the earlier proceedings on the grievance and review the case to ascertain that there has been full compliance with established grievance policies, procedures, and regulations within the agency involved."

The Court, in its conclusion that it is reviewing "whether an agency may add requirements to a statute," has ignored the mandate imposed upon State agencies by the General Assembly that they develop procedures to implement the requirements of the statute.

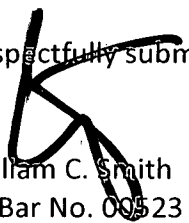
Further, the present case is not comparable to either *Paschal v. Price* or *Trowell v. S.C. Department of Public Safety* in that those cases both involved instances of the respective public agencies imposing arbitrary procedures to effect filing. To the contrary, the grievance procedure in place in this matter clearly informed Appellant at the outset of the requirements for filing both as to form and location for the filing of his grievance. While the Court may dismiss any specific form of filing, and hold that Appellant's internal grievance was not required to be initiated on DSS Form 1449, that holding does not save Appellant from the fact that he did not file any form of written grievance, as both the DSS Manual and Grievance Procedure Model

Policy require, with the agency Human Resources Office within the time frame specified by statute.

The Court's opinion in its current form would effectively permit any potential grievant in a State agency to simply provide written notice of a desire to grieve to any employee or office of the agency without following the specific procedure developed by the agency pursuant to the legislative mandate of S.C. Code Ann. § 8-17-330. The ramifications of such a decision would be to engender an unstructured approach to the filing and handling of internal grievances in State agencies that would create a wholly unmanageable process for determining when and where a grievance was filed, thus confounding the ability of State agencies to meet the strict time guidelines for responding to internal grievances as specified under the provisions of the State Employee Grievance Procedure Act.

For the above reasons, the Respondent respectfully requests that it be provided a rehearing *en banc* of the Court's current decision.

Respectfully submitted,

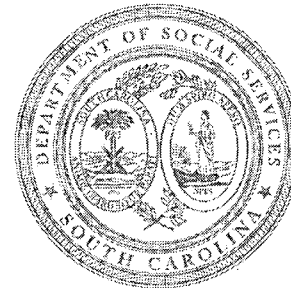


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May 18, 2017

DSS SOUTH CAROLINA
DEPARTMENT of SOCIAL SERVICES

HENRY McMASTER, GOVERNOR
V. SUSAN ALFORD, STATE DIRECTOR



May 18, 2017

VIA HAND DELIVERY

Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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MAY 18 2017

SC Court of Appeals

Re: Petition for Rehearing
William Henry Chapman v. South Carolina Department of Social Services
Appellate Case Number 2015-001548
Opinion No. 5482 (Heard February 13, 2017 – Filed May 3, 2017)

Dear Ms. Kitchings:

Enclosed for filing are the original and six (6) copies of the Respondent's Petition for Rehearing in the above referenced matter and Proof of Service of the same.

Please file and date stamp one copy of each of the above documents, which are herewith enclosed, and return them to me in the enclosed self-addressed postage prepaid envelope. I have also served copies of this letter and the above referenced items upon Appellant's counsel of record, Dwight C. Moore.

Thank you for your assistance.

Sincerely,


William C. Smith
Assistant General Counsel

Enclosures

cc: Dwight C. Moore, Esquire
Moore Law Firm, L.L.C.
26 North Main Street
Sumter, South Carolina 29151-1229

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Carolyn C. Matthews, Administrative Law Judge

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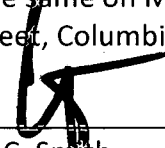
South Carolina Department of Social Services, Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's Petition for Rehearing upon the Appellant's attorney of record via electronic mail to moorelawfirm@ftc-i.net and by depositing a copy of the Respondent's Petition for Rehearing with the U.S. Postal Service at Columbia, South Carolina, with proper postage attached, on May 18, 2017, addressed as follows:

Dwight C. Moore, Esquire
Moore Law Firm, L.L.C.
26 North Main Street
Sumter, South Carolina 29151-1229

I further certify that I have served the Respondent's Petition for Rehearing upon the Clerk of the South Carolina Court of Appeals by hand delivering a copy of the same on May 18, 2017, to the Clerk of the South Carolina Court of Appeals at 1220 Senate Street, Columbia, SC 29201.


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