

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

James L. West, #361673,

Docket No. 17-ALJ-04-0536-AP

Appellant,

vs.

South Carolina Department of  
Corrections,

Respondent.

ORDER

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SC Court of Appeals

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by James L. West (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (SCDC or Department). Appellant was convicted of violating SCDC Policy OP-22.14, Offense 903, "The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescriptions drugs, Inhalants, Intoxicants and Synthetics" following a Disciplinary Hearing (Hearing). As a result of his conviction, Appellant received the following sanctions: suspension of television for 360 days; loss of ninety (90) days of his "good-time" credit; suspension of his canteen, phone, and visitation privileges for ninety (90) days; and sixty (60) days of disciplinary detention. On October 12, 2017, Appellant filed this appeal with the Court.

**BACKGROUND**

On June 24, 2017, Officer Bethany Goodrich (Officer Goodrich) and Sergeant Moyd observed Appellant screaming, crying, and pacing erratically back and forth outside his cell. Thereafter, Appellant went back into his cell and Sergeant Moyd placed him in handcuffs and removed him from the cell. The officers did not administer a drug test to Appellant nor were any drugs found upon a search of his cell. After the incident, Officer Goodrich completed an Incident Report (Report) and submitted it to her supervisor, Sergeant Donovan Hodge. In the Report, Officer Goodrich detailed that based upon her training, from watching K-2<sup>1</sup> and drug videos, she

<sup>1</sup> K-2 is a type of synthetic marijuana. *Carter v. Citadel Bd. of Visitors*, 835 F. Supp. 2d 100, 102 (D.S.C. 2011) (noting that K2/Spice, a form of synthetic marijuana.) Kendall Fisher, Chapter 627: Not All Spice Is Nice, 48 U. Pac. L. Rev 708, 711 (2017) (detailing that synthetic cannabis is a drug goes by several

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believed that Appellant was under the influence of drugs at the time of the incident. Appellant was charged with violating SCDC Policy OP-22.14, Offense 903.

The Hearing was held on July 10, 2017, before a Disciplinary Hearing Officer ("DHO"). Appellant requested that his accuser, Officer Goodrich, be present at the Hearing. Officer Goodrich participated in the Hearing by way of speakerphone. Appellant denied being under the influence of any type of drug at the time of the incident. Instead, Appellant maintained that a spider got into his cell and crawled on him while he was sleeping, which caused him to exit his cell.<sup>2</sup> Appellant further stated that when he went back into his cell to look for the spider to kill it, the officers placed him in handcuffs. Officer Goodrich specified that the Report she completed was accurate and correct. Officer Goodrich also indicated that Appellant did not say anything to her about a spider being in his cell at the time of her initial contact with him that evening. In answer to a DHO question, however, Officer Goodrich acknowledged that Appellant did tell her about a spider sometime later "after he had been taken out of handcuffs."

At the conclusion of the Hearing, the DHO informed Appellant that he had been found guilty of violating SCDC Policy OP-22.14, Offense 903, and would be sanctioned with: Suspension of television for 360 days, loss of ninety (90) days of his "good-time" credit; suspension of his canteen, phone, and visitation privileges for ninety (90) days; and sixty (60) days of disciplinary detention. After the Hearing, the DHO completed a Major Disciplinary Report and Hearing Record, which documented the DHO's findings based upon the Report and Officer Goodrich's statements at the Hearing.

Appellant filed a Step 1 Grievance on July 12, 2017, seeking reversal of his conviction on the basis that he was not under the influence of any type of drug at the time of the offense but was instead reacting to a spider. The Warden denied his grievance. Appellant then filed a Step 2 Grievance on September 6, 2017, contending that there existed no evidence of any drug use or drugs at the time of the incident, which was also denied. Appellant now appeals to the ALC.

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names, including K-2) *See also*, NIDA, *Synthetic Cannabinoids (K2/Spice)* (April 7, 2016), <https://www.drugabuse.gov/drugs-abuse/synthetic-cannabinoids-k2spice>.

<sup>2</sup> In his Reply Brief, Appellant made reference to arachnophobia as he characterized his repulsion to spiders as a "phobia."

### JURISDICTION AND STANDARD OF REVIEW

The Court'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). The ALC's appellate jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 369, 527 S.E.2d at 750. In this case, the Department revoked ninety (90) days of Appellant's accrued "good time" credits, thereby implicating a liberty interest for which due process is required. *See Id.* at 369-70, 527 S.E.2d at 750 (citing *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974) ("The statutory right to sentence-related credits is a protected "liberty" interest under the Fourteenth Amendment, entitling an inmate to minimal due process to ensure the state-created right was not arbitrarily abrogated.") As such, this Court has jurisdiction over his appeal.

When, as here, the Department revokes an inmate's good-time credits as punishment in a "major disciplinary hearing" involving "more serious rule violations," prison officials must provide that inmate with "minimal due process." *Al-Shabazz*, 338 S.C. at 369, 527 S.E.2d at 750. Consequently, specific administrative procedures must be followed before depriving an inmate of statutorily created earned credit, including:

[(1)] that advance written notice of the charge be given to the inmate at least twenty-four hours before the hearing; (2) that factfinders must prepare a written statement of the evidence relied on and reasons for the disciplinary action; (3) that the inmate should be allowed to call witnesses and present documentary evidence, provided there is no undue hazard to institutional safety or correctional goals; (4) that counsel substitute (a fellow inmate or a prison employee) should be allowed to help illiterate inmates or in complex cases an inmate cannot handle alone; and (5) that the persons hearing the matter, who may be prison officials or employees, must be impartial. The Supreme Court also held that the inmate does not have a constitutional right to confront and cross-examine witnesses who testify against him, although prison officials have the discretion to grant that right in appropriate cases. Furthermore, the inmate does not have a constitutional right to retained or appointed counsel at a disciplinary hearing.

*Id.* at 371, 527 S.E.2d at 751 (citing *Wolff*, 418 U.S. at 563-72, 94 S.Ct. at 2978-82).

In reviewing the Department's decisions in inmate grievance matters, the Court sits in an appellate capacity. *Id.* at 377, 527 S.E.2d. at 754. Accordingly, the Court's review is limited to the Record presented. 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(A)(5) (Supp. 2017). Furthermore, 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 Id.*; *see also Marietta Garage, Inc. v. S.C. Dep't of Pub. Safety*, 337 S.C. 133, 137, 522 S.E.2d 605, 607 (Ct. App. 1999); *see also S.C. Dep't. of Lab., Licensing and Reg. v. Girgis*, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998). A decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). Accordingly, 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, 353, 461 S.E.2d 388, 391 (1995). Moreover, in *Al-Shabazz*, the South Carolina Supreme Court underscored that since prison officials are in the best position to decide inmate disciplinary matters, the courts and therefore this tribunal adhere to a "hands off" approach to internal prison disciplinary policies and procedures when reviewing inmate appeals under the APA. *Id.* at 382, 527 S.E.2d at 757; *see also Pruitt v. State*, 274 S.C. 565, 567-68, 266 S.E.2d 779, 780 (1980) (stating the traditional "hands off" approach of South Carolina courts regarding internal prison discipline and policy).

### DISCUSSION

Appellant contends that a spider crawled on him causing him to exit his cell, not that he was under the influence of drugs at the time of the incident. Appellant further argues that the DHO erred because Officer Goodrich stated in the Report that she relied on her "belief" that he was under the influence of drugs instead of her "training and experience". Appellant maintains that "belief is mere suspicion while training and experience is a factual matter." Lastly, Appellant contends in his Reply Brief that substantial evidence does not exist to support his charge and conviction. The Court disagrees on all grounds.<sup>3</sup>

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<sup>3</sup> Because the Department revoked 90 days of Appellant's good-time credits as punishment at the Hearing, the prison officials must have provided him with "minimal due process." *Al-Shabazz*, 338 S.C. at 369, 527

In *Superintendent, Massachusetts Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773, 86 L. Ed. 2d 356 (1985), the U.S. Supreme Court held that the revocation of good time must be supported by “some evidence in the record.” However, “[a]scertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence in the record that could support the conclusion reached by the disciplinary board.” *Id.* at 455–56, 105 S. Ct. at 2774. Moreover, “[t]he fact finder is imbued with broad discretion in determining credibility or believability of witnesses.” *Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997). Therefore, it was the DHO's prerogative to decide what part of each witness' testimony she believed or disbelieved.

SCDC Policy OP-22.14 Offense 903, entitled “The Trafficking, Use, and/or Possession of Narcotics, Marijuana, or Unauthorized Drugs, including prescriptions drugs, Inhalants, Intoxicants and Synthetics” sets forth, in pertinent part:

[T]he observation and documentation by institutional staff of inmates exhibiting behavior such as paranoia, panic attacks, giddiness, agitation, hallucinations, psychosis, unexplained hypertension (high blood pressure), tachycardia (increased heart rate), vomiting, seizures, foaming at the mouth, blurred vision, total memory loss, inability to feel pain, suicidal thoughts, uncontrollable aggression or any other symptoms which through the staff members training and experience would lead them to reasonably believe the inmate is under the influence of a drug or intoxicant would be sufficient to justify this charge.

The Record establishes that based upon Officer Goodrich's training, which included K-2 and drug videos, Appellant's exhibited behavior – “screaming, crying, and pacing irritably [sic] back and forth”— caused Officer Goodrich to believe that Appellant was under the influence of drugs. Despite Appellant's denial that he was under the influence of any type of drug at the time

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S.E.2d at 750. I find that Appellant was afforded all process due to him pursuant to *Al-Shabazz* and *Wolff* at the Hearing. Appellant received written notice of the charges against him on July 6, 2017, which was in excess of twenty-four (24) hours prior to the Hearing on July 10, 2017. The hearing was held before an impartial DHO. In addition, Appellant was afforded the opportunity to present witnesses and documentary evidence when he testified on his own behalf and questioned Officer Goodrich. Appellant did not request the aid of counsel substitute. After the DHO determined that the Appellant was guilty of the charged offense, she prepared a written report detailing the evidence she relied upon and the penalty assessed in finding the Appellant guilty of the disciplinary infraction. Accordingly, the Department complied with the specific administrative procedures outlined in *Wolff* before depriving him of 90 days of his good time credit. *See Id.* at 563-72, 94 S.Ct. at 2978-82.

of the incident and his explanation that his behavior resulted from his arachnophobia, when viewed in light of the DHO's discretion regarding witness credibility, the Record contains sufficient evidence to uphold the conclusion that Appellant was under the influence of an unauthorized drug at the time of the incident. *See Grant*, 319 S.C. at 353, 461 S.E.2d at 391 ("the possibility of drawing two inconsistent conclusions from the evidence, however, does not prevent an administrative agency's finding from being supported by substantial evidence.")

Accordingly, I find that there is substantial evidence to support Appellant's conviction of violating SCDC Policy OP-22.14, Offense 903.

**ORDER**

**IT IS THEREFORE ORDERED** that the appeal of Appellant is **DISMISSED** and the Final Decision of the Department is **AFFIRMED**.

**AND IT IS SO ORDERED.**

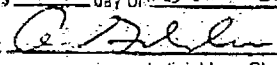
February 27, 2018  
Columbia, S.C.

  
Milton G. Kimpson, Judge  
South Carolina Administrative Law Court

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 27 day of February, 2018

By:   
Judicial Law Clerk

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

Milton G. Kimpson, Administrative Law Judge

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ALC Case No.: 17-ALJ-04-0536-AP

Appellate Case No. 2018-000397

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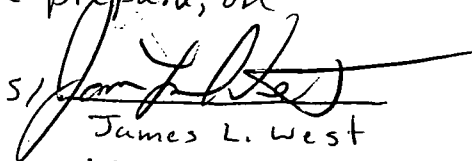
CERTIFICATE OF SERVICE

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I hereby certify that I have served a copy of the foregoing copy of the decisions to be challenged on appeal to Respondent and S.C. Administrative Law Court Judge, Milton G. Kimpson by depositing a copy of same in the U.S. Mail, postage prepaid, on March 28, 2018, addressed as follows:

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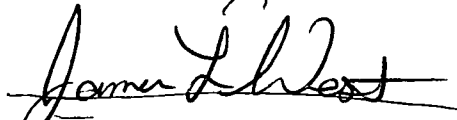
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SC Court of Appeals

Re: App. Case No. 2017-000175 (James L. West,  
361673 v. South Carolina Dept. of Corrections)

Dear Madam Clerk:

Enclosed, please find my copy of the  
decisions to be challenged on appeal.

Sincerely,

  
James L. West

Enclosure

cc: S.C. Dept. of Corrections  
Attorney, Annie Laurie Runkler

cc: S.C. Admin. Law Court  
The Honorable Milton G. Kimpson