

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Carolyn Matthews

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Case No. 11-ALJ-04-00993-AP

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Harold Mosley, # 137525.....Appellant,

v.

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

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**FINAL BRIEF OF RESPONDENT**

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January 15, 2013

South Carolina Department of Corrections

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SC Court of Appeals

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....ii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE .....2

STANDARD OF REVIEW .....3

ARGUMENT AND CITATION OF AUTHORITY.....4

**I. APPELLANT WAS AFFORDED ALL CONSTITUTIONALLY  
    REQUIRED DUE PROCESS.....4**

**II. RESPONDENT’S FINAL AGENCY DECISION IS SUPPORTED BY  
    SUBSTANTIAL EVIDENCE.....6**

CONCLUSION.....7

CERTIFICATE OF COMPLIANCE.....8

CERTIFICATE OF SERVICE.....9

## TABLE OF AUTHORITIES

### I. STATUTES

S.C. Code Ann. § 1-23-610.....	3
S.C. Code Ann. § 1-23-380.....	3

### II. CASES

<u>Al-Shabazz v. State</u> , 338 S.C. 354, 527 S.E.2d 742 (2000).....	2
<u>DuRant v. S.C. Dep't of Health &amp; Environmental Control</u> , 361 S.C. 416, 420, S.E.2d 704 (Ct. App. 2004).....	4
<u>Grant v. S.C. Coastal Council</u> , 319 S.C. 348, 461 S.E.2d 388 (1995).....	6
<u>Heater of Seabrook, Inc. v. Public Serv. Comm'n</u> , 332 S.C. 20, 503 S.E.2d 739 (1998).....	6
<u>Lake v. Reeder Constr. Co.</u> , 330 S.C. 242, 498 S.E.2d 650 (Ct. App. 1998).....	3
<u>Lark v. Bi-Lo, Inc.</u> , 276 S.C. 130, 276 S.E.2d 304 (1981).....	6
<u>Pearson v. JPS Converter &amp; Indus. Corp.</u> , 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997).....	6
<u>Porter v. S.C. Public Serv. Comm'n</u> , 333 S.C. 12, 507 S.E.2d 328 (1998).....	6
<u>Wolff v. McDonnell</u> , 418 U.S. 539 (1974).....	4

**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 Harold Mosley (“appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). Appellant was convicted of assault and/or battery of an SCDC employee or other government employee, contract employee, volunteer, or member of the public with means and/or intent to kill or injure, offense 801 under SCDC Policy OP-22.14, Inmate Disciplinary System, following a disciplinary hearing. (R.p. 13, line 15) Appellant lost 1,000 days of good time due to the disciplinary conviction. (R.p. 13, line 21).

Appellant filed a Step One Grievance on June 18, 2011, challenging his conviction. This grievance was investigated and denied. Appellant filed a Step Two Grievance on July 19, 2011, which was also denied. (R.p. 38-39). Appellant received the final agency determination on November 22, 2011. (R.p. 38).

After the parties filed briefs, the ALC affirmed SCDC’s final decision, finding the disciplinary hearing comported with due process. The ALC rejected appellant’s argument that he was denied the right to call witnesses, that he was punished twice for this conviction, that he received ineffective assistance from his counsel substitute, and that the punishment was arbitrary. The ALC also ruled appellant’s disciplinary conviction was supported by sufficient evidence. (R.p. 1-3).

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 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 of 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(5); Lake v. Reeder Constr. Co., 330 S.C. 242, 498 S.E.2d 650, 653 (Ct. App. 1998).

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.

## 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. 37). 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. 9-10). Furthermore, Appellant was afforded an opportunity to be heard at the June 13, 2011 hearing. (R.p.8-14). There was a neutral and detached hearing body at the hearing,

an SCDC disciplinary hearing officer. (R.p. 8). Appellant was provided with a counsel substitute, and there was disclosure of the written statement of the hearing officer's findings. (R.p. 8-10).

There was ample evidence to support appellant's disciplinary conviction. Lieutenant Holsinger reported that when she went to speak with appellant, he was loud and agitated. Lieutenant Holsinger was unsuccessful in getting appellant to calm down and comply with her directives. As Lieutenant Holsinger attempted to handcuff Appellant, he threw her to the floor, causing her to strike her head. (R.p. 10, line 2). At the disciplinary hearing, Lieutenant Holsinger further stated that she suffered bodily injuries. (R.p. 12, lines 18-22). Photographs of said injuries were provided at the hearing and considered as evidence against appellant. (R.p. 13, lines 18-19)

Appellant has claimed that he was charged twice for the same incident. With the present case, Appellant was charged for assaulting Lieutenant Holsinger. During that same incident, appellant engaged in physical contact with another officer, as well. If appellant was charged with his actions towards the second officer, it was based upon his actions towards two different employees, thereby negating his argument. Appellant further argues that he was not given the opportunity to call a witness; however, the disciplinary hearing officer provided that he never received a request from appellant. (R.p. 12, lines 5-6). The ALC subsequently ruled that appellant's conviction was sufficiently supported by the evidence. Moreover, there was nothing in the record to suggest the agency's decision was arbitrary, capricious, or the result of personal bias or prejudice.

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

A reviewing court will not disturb the findings of an administrative agency if those findings are supported by substantial evidence on record as a whole. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (Ct. App. 1997). "Substantial evidence" is evidence which, considering the record as a whole, would allow a reasonable mind to reach conclusion that the administrative agency reached to justify its action. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). 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. Public Serv. Comm'n, 332 S.C. 20, 503 S.E.2d 739 (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.p. 38). The disciplinary hearing officer stated he found appellant was guilty based upon Lieutenant Holsinger's report and testimony, as well as the photographs of the injuries. (R.p. 13).

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  
CORRECTIONS

Attorney for Respondent

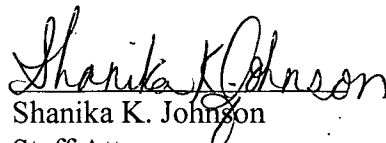


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January 15, 2013

**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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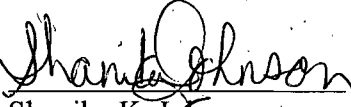
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**CERTIFICATE OF SERVICE**

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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, January 15, 2013, addressed to the Appellant as follows:

Harold Mosley, # 137525  
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