THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Carolyn Matthews

Case No. 11-ALJ-04-00992-AP

Shango Damballah, # 137525……..………………..……...Appellant,

v.

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

FINAL BRIEF OF RESPONDENT

January 25, 2013 South Carolina Department of Corrections

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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 Shango Damballah ("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.15) Appellant lost 500 days of good time due to the disciplinary conviction. (R.p. 15).

Appellant filed a Step One Grievance on June 14, 2011, challenging his conviction. This grievance was investigated and denied. (R.p. 25). Appellant filed a Step Two Grievance on July 15, 2011. The responsible official upheld the conviction but reduced the amount of disciplinary detention imposed. (R.p. 27). Appellant received the final agency determination on November 22, 2011. (R.p. 27).

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 and that the punishment was arbitrary and capricious. The ALC also ruled appellant's disciplinary conviction was supported by sufficient evidence and that he was afforded the due process required in a prison disciplinary proceeding. (R.p. 1-4).

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. 24). 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. 8-9). Furthermore, Appellant was afforded an opportunity to be heard at the June 6, 2011 hearing. (R.p.8-15). 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, 24).

There was ample evidence to support appellant's disciplinary conviction. Officer Lance reported that on the day in question, he was unable to get appellant to comply with his verbal directives. Officer Lance called for assistance, and Lieutenant Holsinger arrived to assist him. When Lieutenant Holsinger was unable to control appellant, Officer Lance attempted to pull his chemical munitions to administer. Before he could, appellant punched Officer Lance in his lower lip with a closed fist. Officer Lance then struck appellant with a closed hand strike in his temple. Appellant responded by punching Officer Lance in his right eye. At that time, Lieutenant Holsinger was able to gain control of appellant. (R.p. 10). Photographs of the multiple injuries suffered by Officer Lance were also made part of the record. (R.p.10)

Appellant has claimed there was insufficient evidence to support the charge of Assault and/or Battery of an SCDC Employee due to the type of injuries Officer Lance received. However, the offense does not require Officer Lance suffer a certain type of injury, as Appellant erroneously argues. If the victim of the assault receives any bodily injury, that element of the charge is met. 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 7-16). 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.27). The disciplinary hearing officer stated he found appellant was guilty based upon Officer Lance's report and testimony, as well as the photographs of the injuries. (R.p. 15).

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.

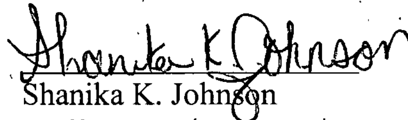
CONCLUSION

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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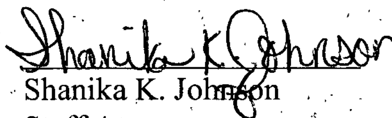
January 25, 2013

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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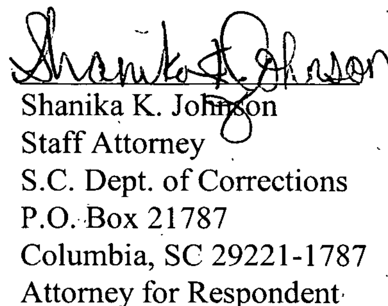
CERTIFICATE OF SERVICE

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 25, 2013, addressed to the Appellant as follows:

Shango Damballah, # 137525
Kershaw Correctional Institution
4848 Gold Mine Hwy
Kershaw, SC 29067



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