

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Alicia Bolden,)
)
Appellant,)
)
v.)
)
South Carolina Department of Disabilities)
and Special Needs,)
)
Respondent.)
_____)

Docket No. 18-ALJ-30-0182-AP

FINAL ORDER

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SC Court of Appeals

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed by Alicia Bolden (Appellant) on May 21, 2018. The Appellant seeks review of the final decision of the State Employee Grievance Committee (Committee) upholding the South Carolina Department of Disabilities and Special Needs (Department or Respondent) decision to terminate the Appellant's employment with the Department.

BACKGROUND

The Appellant began her employment with the Department as a Human Services Assistant II on March 2, 2008. On October 6, 2009, the Appellant was promoted to a Human Services Specialist II at the Coastal Regional Center (CRC). On February 23, 2017, the Appellant received a Written Warning for "Conduct Unbecoming a State Employee" based on a telephonic interaction with Ms. Claudette Fields, CRC Director of Residential Programs, that occurred on February 15, 2017 and was witnessed by another employee. During this incident the Appellant called Ms. Fields and began to raise her voice with Ms. Fields when she was not satisfied with Ms. Fields' response to her question. In the Recommendation for Disciplinary Action, Ms. Fields noted that the Appellant had been exhibiting some concerning behavior, to include forwarding emails regarding politics and religion as well as excessive tardiness. Ms. Fields asserted that the behavior had been occurring since July 2016, and that several meetings had been held with the Appellant in an attempt to address those concerns. Based upon this, the Appellant's problems with tardiness and attendance and her unbecoming telephone conduct resulted in an Oral Warning and a Written Reprimand.

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SC ADMIN. LAW COURT

On February 23, 2017, the Appellant received a memorandum from Ms. Fields directing her to adhere to her agreed upon assigned work hours (8:30 a.m. to 5:00 p.m. or 10:00 a.m. to 6:30 p.m.) and, effective immediately, to sign in and out of work at the switchboard. The Appellant was given the written directive due to her failure to adhere to her assigned work hours and excessive tardiness. The Appellant was advised that further tardiness would result in disciplinary action. The Appellant refused to sign the directive. Although the Appellant did sign out at the switchboard on February 23, 2017, she failed to sign in or out again as she had been directed to do.

On March 15, 2017, the Appellant was issued a Written Warning for “Insubordination” as a result of her continued failure to comply with the February 23, 2017 written directive. Then on April 10, 2017, in accordance with SCDDSN Directive 413-01-DD, Standards of Disciplinary Action, the Appellant was issued a three (3) day suspension for “Failure to Observe Assigned Work Hours” and “Refusal to Accept a Reasonable and Proper Assignment from an Authorized Supervisor.” The Appellant’s suspension was effective April 18 through 20, 2017. The Appellant was also advised that failure to demonstrate immediate and sustained improvement may result in further corrective action, to include termination.

The Appellant was terminated on June 20, 2017 for an accumulation of three (3) offenses within two (2) years where the first offense calls for a written reprimand in accordance with the Department’s Standards of Disciplinary Actions. The Appellant appealed her termination to Rebecca Hill, Facility Director, CRC. Ms. Hill upheld the termination on July 17, 2017. The Appellant next appealed to the Department’s State Director, Dr. Beverly Buscemi, who also upheld the Appellant’s termination on September 8, 2017. The Appellant then filed an appeal with the Department of Administration, Director, Division of Human Resources. A hearing before the State Employee Grievance Committee was held on April 3, 2018 and in a decision dated April 23, 2018, the Committee upheld the Appellant’s termination. This appeal followed.

STANDARD OF REVIEW

“In an appeal from the decision of an administrative agency, the [APA] provides the appropriate standard of review.” *Chapman v. S.C. Dep't of Soc. Servs.*, 420 S.C. 184, 188, 801 S.E.2d 401, 403 (Ct. App. 2017), *reh'g denied* (July 17, 2017). Section 1-23-380(5) of the South Carolina Code (Supp. 2017) provides the standard used by appellate bodies to review

agency decisions under the Administrative Procedures Act. *See* S.C. Code Ann. § 1-23-600(D) (directing administrative law judges to conduct appellate review in the same manner prescribed in section 1- 23-380). That section states:

The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (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.

§ 1-23-380(5).

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). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency’s findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, “a reviewing court will not overturn a finding of fact by an administrative agency ‘unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.’” *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C 348, 353, 461 S.E.2d 388, 391 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency’s decision is unsupported by

substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

On appeal, the Appellant contends that her due process rights were violated and that the findings and decision of the Committee are unsupported by substantial evidence and are clearly erroneous.

At the April 3, 2018 hearing with the State Employee Grievance Committee, Ms. Fields testified that as a direct service manager, the Appellant supervised twenty-three employees that she was responsible for training. Ms. Fields stated that the Department had a mandatory meeting every morning. Ms. Fields explained that this morning meeting was a communication meeting attended by the director of nursing, medical doctors, building managers, herself, the administrator of the day, and service coordinators where customers' medical or behavioral issues were discussed. These required communication meetings began at 8:45 a.m. every morning, Monday through Friday. However, the Appellant rarely attended these meetings therefore, Ms. Fields and the Appellant's immediate supervisor, Valerie Williams Bryant, had to remind the Appellant on several occasions of the importance of attending them.

Ms. Fields also testified that on February 15, 2017, the Appellant had called her office regarding a staff personnel issue and when Ms. Field informed the Appellant that she would discuss the matter later because she had someone in her office, the Appellant became irate and unprofessional. Ms. Fields testified that due to this incident and the Appellant's failure to adhere to her work schedule, on February 23, 2017 she had a documented conversation with the Appellant reminding her of her agreed upon hours, the time she was supposed to report to work, about submitting her schedule in a timely manner to her supervisor, and how critical it was for the Appellant to attend the morning meetings. Due to the Appellant's actions on February 15, 2017, the Appellant received a warning notice for conduct unbecoming of an employee because of her behavior. Additionally, in an effort to address the Appellant's excessive tardiness, the Appellant was instructed to sign in and out at the switchboard area. After initially signing out that day, the Appellant refused to sign in or out again.

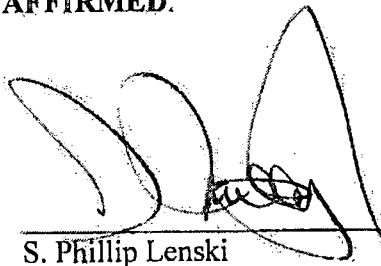
Ms. Fields testified that as a result of the Appellant's failure to sign in and out at the switchboard, on March 10, 2017 the Appellant received a written warning for insubordination. Thereafter, the Appellant then received a three (3) day suspension notice for April 18-20, 2017 for

refusing to accept a reasonable and proper assignment from an authorized supervisor. After the Appellant's continued refusal to sign in and out at the switchboard, on June 20, 2017 the Appellant was informed that her employment with the Department was terminated effective June 20, 2017 for an "Accumulation of Three Offenses Within Two (2) Years where the First Offense Calls for an Oral or Written Reprimand."

The Appellant acknowledges that she was repeatedly instructed to adhere to her authorized work schedule and to sign in and out at the switchboard every day and only argues that she failed to do so because she felt that the directive was discriminatory. However, the Appellant fails to provide any credible evidence to support her position. Alternatively, the Department provided testimony from several individuals who stated that requiring an employee to sign in and out at the switchboard was a common directive used to address tardiness or failure to adhere to an approved work schedule. Based on the foregoing, this court finds that the Department's decision was supported by substantial evidence.

IT IS HEREBY ORDERED that the Final Order of the State Employee Grievance Committee upholding the South Carolina Department of Disabilities and Special Needs' decision terminating the Appellant's employment is **AFFIRMED**.

AND IT IS SO ORDERED.




S. Phillip Lenski
Administrative Law Judge

January 23, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler
Judicial Law Clerk

January 23, 2019
Columbia, South Carolina



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK
V. CLAIRE ALLEN
DEPUTY CLERK

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February 26, 2019

Alicia Bolden
1115 Canegie Avenue
Charleston SC 29407

Re: Alicia Bolden v. SCDDSN
Appellate Case No. 2019-000301

Dear Ms. Bolden:

Upon reviewing your notice of appeal, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and this deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Tana G. Vanderbilt, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

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February 26, 2019

Alicia Bolden
1115 Carnegie Avenue
Charleston SC 29407

Re: Alicia Bolden v. SCDDSN
Appellate Case No. 2019-000301

Dear Ms. Bolden:

Upon reviewing your motion to proceed in forma pauperis, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and this deficiency must be corrected within ten (10) days of the date of this letter or your motion will not be considered:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Tana G. Vanderbilt, Esquire

**LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL**

March 4, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

RE: Alicia Bolden, Appellant, v. SCDDSN, Respondent,
Appellate Case No. 2019-000301

Dear Ms. Kitchings [Ms. Allen]:

Enclosed for filing in the above case are the following:

- (1) Proof of service of the Motion to Proceed in Forma Pauperis on the respondent[s].
- (2) A copy of the order[s] [judgment] which is [are] to be challenged on appeal.


s/ _____
Ms. Alicia Bolden
(Pro Se Appellant)
1115 Carnegie Avenue
Charleston, South Carolina 29407
(843) 709-5313

Alicia Bolden
1115 Carnegie Avenue
Charleston, SC 29407

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