

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SOUTH CAROLINA ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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

Alicia Bolden,

RECEIVED
Appellant,

vs.

APR 23 2019

South Carolina Department of Disabilities and Special Needs,

SC Court of Appeals

Respondent.

INITIAL BRIEF OF RESPONDENT

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South Carolina Department of
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Appellant.

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STATEMENT OF ISSUES ON APPEAL

- I Was the decision of the Administrative Law Court (ALC) supported by reliable, probative and substantial evidence?
- II Were the other issues raised by Appellant preserved for review by this Court?

STATEMENT OF THE CASE

Respondent, the South Carolina Department of Disabilities and Special Needs, terminated the employment of Appellant, Alicia Bolden on June 20, 2017. The termination was for an accumulation of three offenses within two years where the first offense calls for a written reprimand in accordance with the South Carolina Department of Disabilities and Special Needs Standards of Disciplinary Actions.

Appellant appealed the termination to Rebecca Hill, the Facility Director at the Coastal Center. Ms. Hill upheld the termination on July 17, 2017. Appellant next appealed to the State Director of the South Carolina Department of Disabilities and Special Needs, Dr. Beverly Buscemi, who also upheld the termination on September 8, 2017. On October 6, 2017, Appellant filed an appeal to the Department of Administration, Division of Human Resources Director. A hearing before the State Employee Grievance Committee (Committee) was held on April 3, 2018. The decision of the Committee was dated April 23, 2018 and upheld the termination of Appellant from employment with the South Carolina Department of Disabilities and Special Needs in a five to zero vote.

Appellant filed an appeal to the Administrative Law Court (ALC) on May 21, 2018. The ALC upheld the final decision, of the State Employee Grievance Committee, that terminated Appellant from her employment with the South Carolina Department of Disabilities and Special Needs in its order filed January 23, 2019, finding substantial evidence supported the decision of the State Employee Grievance Committee. The case was decided without argument.

Appellant appealed the order of the ALC by filing a notice of appeal, dated February 20, 2019 with this court.

STANDARD OF REVIEW

The Standard of Review for this court to review the decision of the ALC is the Administrative Procedures Act S.C. Code Ann. § 1-23-610(B) (Supp.2018).

ARGUMENT I

The decision of the ALC to uphold the decision of the State Employee Grievance Committee was supported by reliable, probative and substantial evidence.

The ALC found there was substantial evidence to support the decision of the Employee Grievance Committee (Committee) to uphold the termination of the employment of Appellant. Additionally, the ALC found that the “Appellant provided no credible evidence to support her position.” ALC order page 5.

The basis of the decision by the South Carolina Department of Disabilities and Special Needs to terminate Appellant was the fact that she repeatedly failed to sign in and out in a designated notebook as required by her supervisors. Appellant was given numerous opportunities to follow this simple procedure. Appellant demonstrated she knows how to do this as she did it exactly one time. (Transcript p. 0207).

Appellant was given the proper disciplinary notices when she failed to comply with the established procedure for signing in and out. Written Warning Notice dated March 10, 2017 (Transcript p. 0203); Suspension Notice dated April 10, 2017. (Transcript p. 0211). In addition, she was given a written warning notice dated February 22, 2017 for Conduct Unbecoming a State Employee. (Transcript p. 0195).

Most telling of all is that Appellant admitted that she refused to follow the orders of her supervisors to sign in and out in her testimony (Transcript p. 0037, lines 8-25) (Transcript p. 0038, lines 1-6, 21-25) (Transcript p. 0039, lines 1-13). Appellant writes in her brief that she refused to follow the directions of her supervision. (Appellant’s brief pp. 22, 25 and 29)

Appellant repeatedly claims in her brief that the request by her supervisors that she sign in and out was discriminatory. Yet she offered no testimony to contradict that of the South Carolina Department of Disabilities and Special Needs employees who testified that such practice was used not only at the Coastal Center, but agency wide. The practice is used to ensure that employees adhere to their assigned work schedules. (Transcript p. 0094, lines 13-25) (Transcript p. 0095, lines 1-12) (Transcript p. 0071, lines 16-25) (Transcript p. 0072, lines 1-7) (Transcript p. 0081, lines 11-25) (Transcript p. 0082, lines 1-11).

The standard for appellate review of the decision of the ALC is defined by the Administrative Procedures Act S.C. Code Ann § 1-23-610(B) (Supp. 2018). The section of the statute that applies in this case is:

(B) The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals 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 the finding, conclusion, or decision is:

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

The decision of the ALC should not be overturned unless the appellate court finds that the decision was not supported by substantial evidence.

Substantial evidence, as defined by case law, is not a mere scintilla of evidence, nor the evidence when viewed blindly from one side of the case, but is evidence which, considering the record as a whole would allow reasonable minds to reach the same conclusion as the ALC. *Sanders v S.C. Dept. of Motor Vehicle*, (S. C. App 2019) citing *Original Blue Ribbon Taxi Corp. v. S.C. Dept. of Motor Vehicles*, 380 S.C. 600, 604, 670 S. E.2d 674, 676 (Ct. App. 2008)

The decision of the ALC to uphold the termination was based upon substantial evidence as stated in its decision (Order p. 10).

Therefore, the decision of the ALC was based on substantial evidence, including the admissions of Appellant, and so this court must affirm that decision.

ARGUMENT II

Were the other issues raised by the Brief of Appellant preserved for review by this Court?

Appellant raises many issues on appeal that were not ruled upon by the ALC. Appellant failed to file a Motion for Rehearing pursuant to South Carolina Administrative Law Court Rule 40.

According to South Carolina Administrative Law Court Rule 40, the ALC may affirm on any ground or grounds appearing in the record and does not need to address any point that has no merit.

The ALC declined to address issues raised by Appellant except for the finding that the decision was supported by substantial evidence.

In order to preserve the other issues raised by Appellant in her brief that were not ruled upon by the ALC, Appellant should have filed a Motion for Rehearing pursuant to South Carolina Administrative Law Court Rule 40.

This procedure is set forth in *I'on, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (S.C. 2000). The court in *I'on* held “If the losing party has raised an issue in the lower court but the lower court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellant review.”

This procedure to preserve issues for appeal was again reiterated in *Turner v. Kellet* (S.C. App., 2019).

Therefore, the only issue this court may review is whether or not there was substantial evidence upon which the ALC could base its decision to uphold the decision of the Committee.

As stated in Argument I, there was such evidence.

CONCLUSION

Much of the Brief of Appellant is arguments based on rulings that were not made by the ALC in its decision and that Appellant failed to seek a further review upon by way of a South Carolina Administrative Law Court Rule 40 Motion. Therefore those issues are not before this court.

The decision of the ALC to uphold the termination of Appellant is validated by the substantial, reliable and probative evidence presented at the hearing before the Committee and supported by the record on appeal.

Appellant failed to establish that the decision of the ALC to affirm the decision of the State Employee Committee upholding her termination by The South Carolina Department of Disabilities and Special Needs violated any of the provisions of S.C. Code Ann.

§ 1-23-610(B)(Supp. 2018)

Therefore, the decision of the ALC must be affirmed.

Respectfully Submitted,



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PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent on Alicia Bolden, 1115 Carnegie Avenue, Charleston, SC 29407, by depositing a copy of it in the United States Mail, postage certified mail, on April 22, 2019.

Date: April 22, 2019

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SC Court of Appeals

Ms. Jenny Abbott Kitchings
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 1220 Senate Street
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RE: Alicia Bolden v. S.C. Department of Disabilities and Special Needs
 Appellate Case No.: 2019-000301

Dear Ms. Kitchings:

Enclosed please find the original and two copies of the Respondent's Initial Brief in regard to the above referenced matter. Also enclosed is the Proof of Service as well as the Designation Of Matter To Be Included In The Records Of Appeal. By copy of this letter with enclosure, I am serving same upon all parties involved.

If you have any questions, please do not hesitate to contact me at 898-9683 or by email at tvanderbilt@ddsn.sc.gov. Please return a filed copy in the enclosed self-addressed stamped envelope. Thank you.

Sincerely,

Tana Vanderbilt
 General Counsel

Encls.

cc: Ms. Alicia Bolden, Appellant via certified mail 7017 0190 0000 9625 8218

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