

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Milton G. Kimpson

ALC Case No. 19-ALJ-04-0306-AP
Appellate Case No. 2019-001566

Jack Kuykendall, #355988.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENT

April 16, 2020

South Carolina Department of Corrections

Imani Diane Byas
Staff Attorney
Office of General Counsel
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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL BECAUSE HE DID NOT SERVE RESPONDENT WITH A NOTICE OF APPEAL?**

STATEMENT OF CASE

This matter comes before this Honorable Court pursuant to the appeal of Jack Kuykendall (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”). On March 15, 2019, Appellant filed a Step One Grievance alleging that there was insufficient evidence to convict him of Class II Escape, offense 902 of the SCDC disciplinary system. On March 20, 2019, SCDC denied the Step 1 grievance. Thereafter, on March 25, 2019, Appellant filed a Step 2 Grievance appealing the disposition of his Step One Grievance. On April 25, 2019, SCDC denied the Step 2 Grievance, and Appellant appealed to the Administrative Law Court. On August 6, 2019, Administrative Law Judge Milton G. Kimpson dismissed Appellant’s appeal for failing to comply with SCALC Rule 59. This appeal follows.

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 Administrative Law Court's (ALC) 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

I. THE ADMINISTRATIVE LAW COURT PROPERLY DISMISSED APPELLANT'S APPEAL BECAUSE HE DID NOT SERVE RESPONDENT WITH A NOTICE OF APPEAL.

Appellant failed to serve a notice of appeal on Respondent in compliance with South Carolina Administrative Law Court Rule 59. Even though Appellant served the ALC with a notice of appeal, Appellant was also required to serve the agency with a notice of appeal within thirty (30) days after receiving the final agency decision. Rule 59 provides, in pertinent part,

The notice of appeal from the final decision to be heard by the Administrative Law Court shall be filed with the Court and a copy served on each party, including the agency, within thirty (30) days of receipt of the decision from which the appeal is taken.

SCALC Rule 59. South Carolina Administrative Law Court Rule 62 states, “[u]pon motion of any party, or on its own motion, an Administrative Law Judge may dismiss an appeal . . . for failure to comply with any of the rules of procedure for appeals, . . .” Timely filing and service of a notice of appeal is a jurisdictional requirement and the ALC does not have the authority to extend or expand the time for filing a notice of appeal. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 15, 602 S.E.2d 772, 775 (2004) (citing Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985)). Judge Kimpson's August 6, 2019 order states “[a]ttached to Appellant's Notice of Appeal is a Certificate of Service which is blank.” Order of Dismissal August 6, 2019. Judge Kimpson properly exercised the discretion granted to him under Rule 62. Because the ALC lacked jurisdiction over the appeal, Judge Kimpson's August 6,

2019 dismissal of this appeal was proper.

CONCLUSION

WHEREFORE, for all the reasons stated above, the Court should affirm the Administrative Law Court's decision.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS**

Attorney for Respondent



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Columbia, South Carolina
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Administrative Law Judge Milton G. Kimpson

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Jack Kuykendall, #355988.....Appellant,

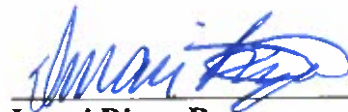
v.

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

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant a copy of Respondent's Amended Initial Brief by depositing a copy of same in the United States Mail, postage prepaid, April 16, 2020, addressed to the Appellant as follows:

Jack Kuykendall, # 355988
Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512



Imani Diane Byas
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South Carolina Department of Corrections
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Attorney for Respondent



SOUTH CAROLINA
DEPARTMENT OF CORRECTIONS
Safety, Service, and Stewardship

HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

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The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Jack Kuykendall, #355988, v. South Carolina Department of Corrections
Appellate Case No. 2019-001566

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent** and **Designation of Matter to be Included in the Record on Appeal** in the above captioned appeal, along with **Proof of Service**.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Imani Diane Byas
Staff Attorney
South Carolina Department of Corrections
S.C. Bar No. 103715

cc: Jack Kuykendall, # 355988
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610 Highway 9 West
Bennettsville, SC 29512