STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Kristin Cosby, Appellant, vs. South Carolina Criminal Justice Academy, Respondent.	)	Docket No. 19-ALJ-30-0389-AP **ORDER**

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal by Kristin Cosby (Appellant) from the decision of the Law Enforcement Training Council (LETC), which permanently denied Appellant's law enforcement certification in the State of South Carolina. The ALC has jurisdiction to hear this matter pursuant to section 23-23-150 of the South Carolina Code (Supp. 2019) and section 1-23-600(E) of the South Carolina Code (Supp. 2019). Upon consideration of the briefs and Record, the LETC's decision is affirmed.

BACKGROUND

Appellant worked for the South Carolina Department of Probation, Parole, and Pardon Services (Department) for ten years and seven months. She also served in the Air Force Security Services for five years. As a result of her service in the military, she suffers from Post-Traumatic Stress Disorder (PTSD), anxiety, and depression. She receives treatment for those conditions. In 2006, she went to work for the Department but left in 2010 to work for the Greenville County Sheriff's Office. Appellant applied to return to the Department in 2012 but was told at that time that "[the Department] wanted a male for the position and not a female." The Equal Employment Opportunity Commission (EEOC) filed a gender discrimination lawsuit against the Department on her behalf and, as a result, in 2012, she was rehired by the Department and put in charge of the sex offender team.

In March 2018, Appellant recommended to Chadwick Gambrell (Gambrell), the Agent-in-Charge of the Department's Greenville County Office, that Agent Christina Worthy be appointed to her sex offender team. Gambrell told Appellant he felt she had "more than a professional relationship" with Agent Worthy, which Appellant denied. Gambrell testified he had concerns

and wanted to clarify that the relationship was purely professional before moving Agent Worthy to Appellant's team. He further testified he had concerns regarding what he felt were inappropriate relationships that Appellant was having "with people in the office under her supervision," and he had previously counselled Appellant regarding those concerns. Gambrell also spoke to the Regional Director about his concerns and was told that a disciplinary inquiry would not be initiated.

On November 8, Gambrell spoke with Appellant's subordinate, Agent Nicole Albany (Albany).[1] After speaking with Albany, he had further concerns "that there may have been an inappropriate relationship between [Albany] and [Appellant]." He then typed up his notes from his conversation with Albany and forwarded them to the Regional Director but when he did not hear back, he contacted the Department Director and explained his concern that Appellant's relationships could be "misconduct." Nevertheless, Gambrell testified that at the time that he expressed his concerns about relationships with subordinates, there was no departmental policy prohibiting such relationships or specifically proscribing those relationships as being misconduct. However, Gambrell believed having a sexual relationship with a subordinate violated the Department's "professionalism policy" because Gambrell considered such behavior to be "morally and ethically improper." Honeycutt, who was also involved in investigating this issue, testified "there was a lot of discussion why she was spending so much time with some of her subordinates."

Jeffrey Harmon (Harmon), the Director of the Department's Office of Professional Responsibility, was directed by the Director of the Department in late November 2018 to initiate an investigation into allegations that Appellant and a subordinate employee engaged in a sexual relationship in May 2015. The allegations involved conduct alleged to have occurred 3½ years prior his investigation and, at the time the alleged conduct took place, such a relationship would not have constituted a violation of Department policy. Harmon first spoke with Albany before he interviewed Appellant. Harmon also interviewed other agents. He started the interview with Appellant by providing her "Garrity" warnings. Furthermore, he began the interview with a statement from the Department Director that "no one had ever been terminated for an allegation

---

[1] During this timeframe, Appellant also filed a complaint with the Department in which she alleged sexual harassment by her then Agent in-Charge (Gambrell) and Assistant Agent-in-Charge, Robert Honeycutt (Honeycutt),on October 19, 2018. However, Gambrell testified Appellant never told him she felt she was being harassed by him or Honeycutt. In fact, Gambrell did not learn about the allegations until November 7, 2018. Ultimately, Appellant's allegations were investigated and determined to be "unfounded."

of consensual sexual relationships with a subordinate, and that she should be honest and truthful about the relationship and that if she [was] found to be untruthful and [lied], then she would be subject to disciplinary actions." Harmon asked Appellant if she had a sexual relationship with a subordinate named Nicole Albany and Appellant answered "No." He advised Appellant "that she could take some time to think about her statement and, if she had further information to offer, she could do that."

Appellant was then offered a polygraph examination. However, prior to the polygraph examination, Appellant contacted Harmon and stated that Albany had sent her photos but that she could not recall if any of the advances were physical. Harmon testified Appellant told him there was never "any other sexual conduct" with a subordinate. However, the following Monday, Appellant amended her statement again, indicating Albany had tried to initiate physical contact with her during a cookout and that a friend who was present told Albany that she was "being too aggressive." Appellant stated she was able "to kind of brush off" the physical contact. She also said Albany had "sexually come onto [Appellant] 3½ years prior" and that she had filed a complaint with her then Agent-in-Charge regarding those advances and asked that Albany be reassigned. Appellant testified she told Harmon that Albany had attempted oral sex on her, but Appellant had "stopped it."

A polygraph was then scheduled and administered to Appellant. Bryan Jones (Jones), the Chief Polygraph Examiner for the South Carolina Law Enforcement Division (SLED) State of South Carolina, contacted Harmon regarding conducting the polygraph examination. On December 17, 2018, he provided Appellant a "Consent to Interview with Polygraph" form, which she reviewed and signed. Jones testified he completed a pre-polygraph examination sheet for Appellant and Appellant told him she suffered from PTSD and was taking several medications at the time. He also testified he went over the questions to be asked of Appellant before the polygraph examination was administered and neither the pre-interview nor post-interview questions posed to Appellant were recorded.

Prior to starting the polygraph exam, Jones asked Appellant whether she had engaged in sexual activity with a subordinate to which she responded "No." After conducting the exam, he asked Appellant the same question to which she then admitted to having engaged in sexual activity with Albany. Appellant then described a scenario in which she had been at Albany's house in a room near the kitchen. Appellant said Albany was "coming onto her, trying to pull at her pants

and unzip her pants, and [Albany] was able to get [her] zipper down, pulled her pants down slightly and then performed oral sex on [Appellant]." Appellant further explained this consensual sexual encounter also involved another a male who had come into the room and put his penis in Appellant's hand. Afterwards, Appellant provided a handwritten statement to Harmon and he prepared a summary of the findings for the Office of Professional Responsibility's investigation of Appellant.

Albany testified she previously had a sexual relationship with Appellant and she had told both her Assistant Agent-in-Charge, Chad Gambrell, and Jeff Harmon about the relationship. She also said the relationship was consensual and that on May 2015 she and Appellant were involved in an encounter at her home in which "[w]e both went in there and were kissing, and one of my friends came in and [Appellant] performed oral on sex on him. . . . But, me coming on to her, no. It was mutual." She also explained the sexual relationship between her and Appellant consisted of the May 2015 incident and another incident prior to that time when she and Appellant kissed in public.

Albany further testified she did not "come on" to Appellant and, after that incident, Appellant began "correcting or changing a lot of documents that [Albany] would hand in to her" and was "trying to intimidate and use her authority over [her]" to make Albany feel like a lesser agent. When Albany asked Appellant questions, Appellant would tell her that she needed to do what she was told because Appellant was her supervisor. Albany later told Appellant she wanted to leave her team, and was eventually moved to another team and no longer interacted with Appellant. [2] Albany testified that after Gambrell approached her regarding her relationship with the Appellant, she made a report because "[Gambrell] knew that I never reported it officially in the beginning because of [the] environment of the office." Albany therefore "chose to . . . bring light to the situation when [Gambrell] asked [her]" about it on November 18, 2018.

Appellant resigned from her position with the Department on December 19, 2018. On January 3, 2019, the South Carolina Criminal Justice Academy (CJA) received a Personnel Change in Status Report Notification of Separation (PCS) form for Appellant from LCSO. LCSO asserted Appellant committed misconduct by making false statements to her employer. At Appellant's request, a contested case hearing was held on May 15, 2019. The Hearing Officer found

---

[2] That move occurred before Chad Gambrell became Agent-in-Charge of the Greenville Office.

misconduct and recommended Appellant be granted eligibility for certification with probation or with any additional requirements deemed just and proper. The Hearing Officer also recommended the Council consider mitigating circumstances. On September 16, 2019, the Law Enforcement Training Council (LETC) adopted the Hearing Officer's recommendation with the modification that appellant be permanently denied law enforcement certification in the State of South Carolina. On October 3, 2019, a Final Agency Decision was issued.

ISSUES ON APPEAL

1. Does substantial evidence support the Law Enforcement Training Council's final agency decision?
2. Does the Law Enforcement Training Council's final agency decision rely on the incorrect standard as to what constitutes "willful conduct?"
3. Is the Law Enforcement Training Council's final agency decision arbitrary and capricious, constituting an abuse and/or unwarranted exercise of discretion?

STANDARD OF REVIEW

Section 23-23-150 of the South Carolina Code (Supp. 2019) sets forth that the LETC enters the final agency decision. "Review by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the Administrative Law Court, must be in the same manner as prescribed in Section 1-23-380 for judicial review of final agency decisions . . . ." S.C. Code Ann. § 1-23-600(E) (Supp. 2019). Section 1-23-380(5) of the South Carolina Code (Supp. 2019) provides the standard used by appellate bodies to review agency decisions. *See* § 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

Substantial Evidence

Appellant argues the LETC's "decision is not supported by substantial evidence that Appellant engaged in the certification misconduct alleged by willfully providing incorrect or incomplete statements to the Department." Rather, Appellant asserts that she provided complete and accurate statements to the Department and that the "whole record in this matter clearly evidences the fact that, Appellant told the Department about Albany's attempt at performing oral sex on her in May of 2015 on three separate occasions prior the December 2018 polygraph."

Regulation 37-025 of the South Carolina Code of Regulations (Supp. 2019) provides that that LETC may deny law enforcement certification "based on evidence satisfactory to the Council that the candidate has engaged in misconduct." Misconduct means "[t]o willfully make false, misleading, incomplete, deceitful or incorrect statements to a law enforcement officer, a law

enforcement agency, or a representative, except when required by departmental policy or by the laws of this State during the course of an investigation." *Id.* If misconduct is found, the LETC has the authority to impose a number of sanctions; one such sanction being the permanent denial of a law enforcement certification. S.C. Code Ann. Regs. 37-108(A)(1) (2015 & Supp. 2019).

Here, the LETC found Appellant committed misconduct by "willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State." S.C. Code Ann. § 23-23-150(A)(3)(g) (Supp. 2019). The evidence in the record reflects that Appellant engaged in a sexual relationship with her subordinate and Appellant was thereafter untruthful to her supervisors when asked about the relationship on several occasions. Specifically, Harmon testified "a pattern developed of [Appellant] not telling the truth and then modifying the truth and then, finally, becoming truthful with the written statement of a consensual relationship with [Albany]." His testimony accurately summarized Appellant's conduct.

The record reflects Appellant was given every opportunity to tell the truth. Harmon began his investigation into the misconduct allegations by informing Appellant that "no one had ever been terminated for an allegation of consensual sexual relationships with a subordinate, and that she should be honest and truthful about the relationship and that if she [was] found to be untruthful and [lied], then she would be subject to disciplinary actions." Yet, Appellant told Harmon she did not engage in a sexual relationship with a subordinate, which was clearly untruthful. Subsequently, Appellant changed her story and stated that Albany had sent her photos but she could not recall if any of the advances were physical. This was another untruthful statement. Appellant also told Harmon that Albany had tried to initiate physical contact with her during a cookout but that she "brush[ed] off" the physical contact. Appellant further testified Albany had "sexually come onto [her] 3 ½ years prior" and she advised Harmon that she had filed a complaint with her then Agent-in-Charge at that time regarding Albany's advances and asked that Albany be reassigned.

However, Albany testified she did not "come on" to Appellant and that another incident took place where she and Appellant kissed. Moreover, Albany explained she was the one who told Appellant she wanted to get off her team. Furthermore, there was no evidence to support Appellant's testimony that she disclosed Albany's advances to her AIC in 2015; indeed, her testimony was contradicted by the other agents' testimonies.

Additionally, prior to the polygraph, Appellant was given the chance to be completely honest, but she was not. The "Consent to Interview" form was provided to her before the polygraph examination and the purpose of the exam was stated as being to determine "[w]hether or not you engaged in any sexual activity with Nicole Albany." Thus, the record reflects that Appellant knew what Jones was asking of her and she should have been truthful. However, it was not until after the polygraph was conducted that Appellant gave a complete and accurate statement to the Department that she engaged in consensual sexual relations with Albany.

Based upon the evidence in the Record, a reasonable person could conclude, like the LETC, that Appellant provided incorrect statements to the Department. Therefore, I find substantial evidence supports the LETC's finding that Appellant was untruthful to the Department. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency).

Willful Conduct

Appellant argues the "[f]inal Decision is erroneous in that the factual findings of the hearing officer, which were adopted by the Agency, specifically acknowledge the lack of substantial evidence to establish willful conduct under the correct legal standard." She further argues the LETC's "decision fails to include any discussion and/or reference to any such 'willful' conduct on Appellant's part." Appellant claims "those errors resulted in substantial prejudice to the Appellant, including a finding that she had engaged in the certification misconduct alleged – specifically that she had willfully made false, misleading and/or incorrect statements to the Department –and that she was being permanently denied law enforcement certification as a result." S.C. Code Ann. Regs. 37-107(C) & (D) (Supp. 2019) provide that:

> C. In order for a candidate/officer/operator to have a final decision issued finding that they did commit misconduct pursuant to R.37-025, R.37-026, R.37-073 and/or R.37-074, the Council must find misconduct has been proven by substantial evidence.
>
> D. The Council shall issue a final decision based on the evidence accepted during the contested case hearing and the applicable statutes and regulations. The Council **may** consider the hearing officer's recommendation. The Council's final decision must include the following:
>
> 1. Findings of Fact;
>
> 2. Conclusions of Law; and

3. If appropriate, sanction(s) pursuant to R.37-108.

The Council **may** adopt the hearing officer's recommendation as the Council's final decision.

(emphasis added). Pursuant to section 23-23-150(A)(3)(g) of the South Carolina Code (Supp. 2019), misconduct includes "**willfully** making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State." (emphasis added). "A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong." WILLFUL, Black's Law Dictionary (11th ed. 2019).

Here, in the Hearing Officer's analysis, he expounded that "incomplete or incorrect statements could have come about as a result of Appellant's 'inexcusable carelessness.'" His analysis also concluded that Appellant's statements were "more likely, due to her medical afflictions and medication usage during the course of the investigation." He went on to say that "(n)o evidence adduced at the hearing . . . appears to support that [Appellant] entertained any 'conscious wrong or evil purpose'" Appellant contends these statements in the Hearing Officer's analysis establish that "the agency's factfinder found that there was no evidence that Appellant acted willfully." Appellant also argues that willfulness is a required element of the alleged misconduct and the "Agency fails to discuss what standard they applied but rather, the only discussion thereof by the Agency is the erroneous standard contained in the hearing officer's findings and recommendation."

Appellant misapprehends the relationship of the Hearing Officer's statements to the LETC's findings. The Hearing Officer did not include these statements in either his findings of fact or his conclusions of law. Rather, these statements were made as part of his Analysis, which was not adopted by the LETC and is not included in the final agency decision. Moreover, the Hearing Officer's recommended conclusions of law stated that a "review of the record in the matter discloses that there does exist substantial evidence that [Appellant] provided incorrect or incomplete statements, such as would constitute misconduct pursuant to S.C. Code Ann. § 23-23-150(A)(3), as reported by the Department[.]" The LETC's decision adopted the Hearing Officer's recommended findings of fact but did not adopt his recommended disposition of the case or include the hearing officer's analysis in its decision. The LETC found the record supported the allegation that Appellant committed misconduct pursuant to section 23-23-150(A)(3) just as the Hearing

Officer did in his conclusions of law. Importantly, as quoted above, this statute provides that misconduct includes **willfully** making incomplete statements. *See* § 23-23-150(A)(3)(g) (emphasis added). Therefore, the LETC implicitly found Appellant had **willfully** made false, misleading, and/or incorrect statements to the Department when it found a violation of this statute. *See id.* Thus, the LETC did not rely on an incorrect legal standard and the LETC did not abuse its discretion.

Appellant also argues that even if she did provide incomplete or incorrect statements to the Department, her conduct only rises to "the level of the certification misconduct alleged if done so **willfully**." Initially, the Court has difficulty understanding how Appellant could give so many misstatements regarding a simple issue and not be willful in giving them. Indeed, the record reflects that Appellant was asked the same question multiple times by different supervisors and she changed her answer numerous times. Appellant testified her memory of the incident referenced in May 2015 was not clear because she does not "have a very good memory." However, she was able to give Jones a detailed account of that day after the polygraph was conducted; thus, it is difficult to believe her memory is not good, especially when that incident occurred more than three years earlier. Appellant also claims she did not understand the scope of the question Jones asked. Nevertheless, the record reflects Jones explained what was being asked of her and the purpose of the polygraph. Moreover, Appellant was truthful after the polygraph was conducted without needing further clarification.

Altogether, there is evidence in the record by which the LETC could find Appellant's actions rose the level of consciously making "false, misleading, incomplete, deceitful, or incorrect" statements to the Department. *See* § 23-23-150(A)(3)(g); WILLFUL, Black's Law Dictionary (11th ed. 2019) (defining an act as willful, in part, when it involves "conscious wrong"). Therefore, I find the LETC's decision is supported by substantial evidence. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion as the agency); *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (holding 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).

Abuse of Discretion

Appellant contends the Department's final decision is "both arbitrary and capricious and represents an abuse and/or unwarranted exercise of discretion, especially in light of the fact that the Agency adopted all factual findings of the hearing officer, but failed to adopt his recommendations regarding dispensation of the case that were based on his actual findings." Appellant also argues the "Agency provided no basis for taking the harshest action it could against Appellant, even where the Agency's fact-finder noted the lack of evidence of willfulness and the presence of various mitigating circumstances." Respondent argues "there are no mitigating circumstances present in this case" and that "LETC adhered to the statutes and regulations that pertain to its ability to make a final agency decision, which established that its decision was not arbitrary and capricious."

An abuse of discretion occurs when a factfinder determination "is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2014) (quoting *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007)). Therefore, "the abuse of discretion standard of review does not allow [the appellate] court to reweigh the evidence or second-guess the [factfinder's] assessment of witness credibility." *Id.* at 316, 768 S.E.2d at 237-38. "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184–85, 332 S.E.2d 539, 541 (Ct. App. 1985)

The LETC found Appellant committed misconduct pursuant to section 23-23-150(A)(3). When considering whether to permanently deny certification for misconduct, regulation 37-025(B) provides that "the Council **may** consider the seriousness, the remoteness in time and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct." (emphasis added). Furthermore, as stated above, "[t]he Council **may** adopt the hearing officer's recommendation as the Council's final decision." S.C. Code Ann. Regs. 37-107(D) (Supp. 2019) (emphasis added). "The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute." *State v. Wilson*, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). In contrast, "[t]he term 'shall' in a statute means that the action is mandatory." *Johnston v. S.C. Dept. of LLR*, 365 S.C. 293, 296, 617 S.E.2d 363, 364 (2005). In other words, the LETC has

discretion and **may** consider the mitigating circumstances and **may** adopt the hearing officer's recommendation but it is not required to do so.

In this case, based on the evidence, the Hearing Officer **recommended** that certain factors should lessened the penalty for Appellant's acts. The LETC adopted the Hearing Officer's recommended findings of fact but disagreed with his conclusion as to the appropriate sanction as a result of those findings. As set forth in regulation 37-025(B), the LETC was not **required** to consider these mitigating circumstances.

Here, the LETC did not commit and error of law and, as the Court has thoroughly discussed in the previous sections, substantial evidence supports the LETC's conclusions and sanction in this case. Therefore, I do not find the LETC committed and abuse of discretion; nor do I find that its decision was arbitrary or capricious. *See Douglas*, 411 S.C. at 316, 768 S.E.2d at 237 (holding an abuse of discretion occurs when a factfinder determination "is based on an error of law or, when grounded in factual conclusions, is without evidentiary support"); *Deese*, 286 S.C. at 184–85, 332 S.E.2d at 541 ("A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.").

Appellant also cites to case law in her reply brief to assert that deference should have been given to the Hearing Officer's findings and recommendations and that the "Respondent fails to address the Agency's complete disregard for the factual findings of its hearing officer regarding willfulness and its failure to articulate its reason for doing so." At the outset, deference was not raised in Appellant's initial brief as an issue and therefore is not properly before the Court. *See Hunter v. Staples,* 335 S.C. 93, 103, 515 S.E.2d 261, 267 (Ct. App.1999) (finding that appellant was precluded from asserting an argument for the first time in its reply brief). Furthermore, even if the issue was properly raised, there was no abuse of discretion by the LETC. Here, the LETC was the finder of fact in this case and as such, it was not required to adopt the hearing officer's disposition or explain its reasonings in detail for its deviation. Instead, the LETC must find misconduct has been proven by substantial evidence and the final decision must include findings of fact, conclusions of law, and, if appropriate, sanctions. The LETC abided these requirements in this case. *See* S.C. Code Regs. Ann. 37-107(C) & (D). Although the LETC could have given deference to the Hearing Officer's recommendations, it was not required to do so.

In conclusion, the record does not reflect that LETC's decision was unreasonable in light of the record as a whole or that it failed to properly utilized its discretion when it came to a different conclusion, as to the disposition, than the Hearing Officer. I find there is substantial evidence in the record, including substantial testimony by Appellant's superiors, that supports the LETC's conclusion that Appellant was dishonest on numerous occasions, and that dishonesty was willful. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913.

CONCUSION

For the reasons stated above, the LETC's decision to permanently deny Appellant's law enforcement certification for the State of South Carolina is supported by substantial evidence.

ORDER

IT IS THEREFORE ORDERED that the LETC's decision is **AFFIRMED**.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

May 6, 2020
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Michelle Perez, 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, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

Stephanie Michelle Perez
Judicial Law Clerk

May 6, 2020
Columbia, South Carolina