

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Technical College System,

Appellant,

vs.

Carla Jackson and South Carolina Department of Administration,

Respondents.

Docket No. 20-ALJ-30-0064-AP

ORDER

RECEIVED

Dec 29 2020

SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal by the South Carolina Technical College System (SCTCS). SCTCS filed this appeal after the South Carolina Department of Administration (Department or DOA), via the State Employee Grievance Committee (the Committee), found that Carla Jackson (Jackson) was classified as an Administrative Coordinator I when she was terminated from her employment with Denmark Technical College (DTC). SCTCS previously filed an appeal with this Court challenging the Committee's determination that Jackson was fired without cause on the basis that the Committee had no jurisdiction to hear Jackson's grievance under the State Employee Grievance Procedure Act (Act). *See S.C. Technical College System v. Carla Jackson & S.C. Dep't of Admin.*, Docket No. 18-ALJ-30-0341-AP (S.C. Admin. Law Div. Jan. 25, 2019). Specifically, in the former appeal, SCTCS argued Jackson was not a covered employee under the Act. *See id.* This Court remanded that appeal to the Committee to make a specific factual finding as to what position Jackson held at the time she was terminated from DTC. *See id.* Pursuant to the remand, the Committee issued the decision that is now the subject of this appeal.

BACKGROUND

Jackson began her employment with Denmark Technical College (DTC) as an Administrative Coordinator on January 4, 2011. Her primary duties were managing the office of the DTC President and assisting the DTC executive staff. On October 1, 2013, Jackson applied for tuition reimbursement in the amount of \$27,936.00 for the cost of a MBA at American Intercontinental University Online (AIUO). This application was sent to Jackson's immediate

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supervisor and then-DTC-President, Dr. Joann Boyd-Scotland. Her application was approved by Title III Director Tarshura Mack (Mack) and President Boyd-Scotland.

On February 1, 2015, Jackson assumed the duties of Assistant to the Area Commissioners, which is the Governing Board for DTC, but retained her position as Administrative Coordinator I. She received a pay increase for this additional work. Then, from May 18, 2015, to June 30, 2015, Jackson was temporarily employed as an instructor at DTC teaching Professional Development. Her dual employment form lists her home agency as DTC and her primary employment as Administrative Coordinator I.

From September 14, 2015, through December 9, 2015, Jackson was employed as a temporary faculty member teaching two courses for eight weeks: Keyboarding and Professional Development. She received a total compensation for these courses in the amount of \$3,000.

On October 1, 2015, Jackson began serving as Interim Dean of Transitional Studies but retained her current position/classification of Administrative Coordinator I with a temporary salary adjustment. From September 21, 2015, to October 31, 2015, in addition to her position as Interim Dean of Transitional Studies, Jackson was employed as a Workshop Facilitator for DTC at a rate of \$50 per hour. Between March 7, 2016, through May 7, 2016, Jackson was also temporarily employed to teach a business course for a total compensation of \$1,500.

On October 3, 2016, Jackson was named Interim Dean of the Business, Computers and Related Technologies Department at DTC, but retained her current classification with a temporary salary adjustment. After Jackson was named Interim Dean on October 1, 2015, Gwendolyn Bamberg was hired to perform the duties of the Administrative Coordinator in the president's office at DTC.

In May of 2016, SCTCS received complaints about alleged incident of mismanagement and abuse within high level of DTC's administration. Subsequently, on January 30, 2017, DTC's Area Commissioners voted to end its employment relationship with then-President Dr. Leonard McIntyre. According to SCTCS, Jackson was a central figure in the allegations. Consequently, effective February 15, 2017, Jackson was suspended pending the conclusion of an investigation. After the investigation, in a letter dated May 11, 2017, Dr. Christopher Hall, DTC's Interim President, informed Jackson that her employment was terminated retroactive to the first day of her suspension, February 15, 2017. The termination letter provides that Jackson was fired for the following reasons:

- Willful violation of rules, regulations, and written policies, which constitute conduct unbecoming a state employee;
- Receipt of tuition payments in the amount of \$26,000 for an education program, which was unrelated to her position with DTC, even though she signed a statement acknowledging the requirement that the program must be related to her position;
- Receiving pay increases, which were approved using the President's stamp, but had no supporting documentation;
- Willful conduct which was done for the sole purpose of benefiting herself and, also violated the South Carolina Ethics Act which prohibits a public employee from using his/her position for personal gain.

On July 5, 2017, Jackson filed the State Employee Grievance Procedure State Appeal Form with SCTCS, on which she listed her Job Classification as "Interim Dean of Business, Computers and Rel [sic]." ¹ In her explanation of her grievance on the appeal form, she represented herself as holding the position of Interim Dean of Business, Computers and Related Technologies. In its letter responding to the Jackson's grievance, SCTCS stated that Jackson held the position of Administrative Coordinator I. The Committee held a four-day hearing on the merits and issued its initial decision on March 22, 2018, in which it found the evidence did not support SCTCS's decision to terminate Appellant. ² The Committee found:

Based on the documents and testimony presented at the hearing, the Committee did not find substantial evidence to support SCTCS's decision to terminate [Jackson]. Therefore, the agency actions were clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; an arbitrary or capricious or characterized by abuse [sic] discretion or clearly unwarranted exercise of discretion.

Specifically, the Committee determined the evidence before it showed Jackson's pursuit of her MBA was relevant to her job because it was approved by several people at DTC, including the President, and the Committee further found the tuition reimbursement was approved in a manner consistent with another, uncontested tuition-reimbursement approval at DTC.

The Committee also determined that DTC was on notice of the possibility that some of Jackson's transfer credits could be accepted toward fulfilling her degree at AIUO and it was DTC's responsibility to assess if it would reimburse Appellant for her transfer credits. The Committee

¹ The State Employee Grievance Procedure State Appeal Form did not provide enough space for Jackson to provide the full description of her position, which was Interim Dean of Business, Computers and Related Technologies.

² Notably, the Committee's authority to hear the case does not appear to have been challenged during the hearing and whether Jackson held a covered position under the Act was not one of the central factual issues.

did not find SCTCS's argument that Jackson should not have been reimbursed for her transfer credits to be persuasive. Finally, the Committee recognized employees could not give themselves pay raises and determined Jackson's pay increases were properly authorized by DTC's President and Jackson did not misuse the President's stamp to give herself pay increases.

Overall, the Committee concluded Jackson did not violate any rules or regulations concerning her salary adjustment or tuition reimbursement and did not act unethically in these matters.

On April 19, 2018, SCTCS submitted a Motion for Reconsideration. After the Committee denied the Motion for Reconsideration, SCTCS appealed the Committee's decision to this Court. In that appeal, SCTCS argued Jackson was not a covered employee for the purposes of the State Employee Grievance Procedure Act and, therefore, had no right to a grievance hearing under the Act. Because this issue was not raised to the Committee below, the Committee had not made an express finding as to what position Jackson occupied when she was terminated—either covered or uncovered.³ As a result, the Court remanded the case to the Committee for a further factual finding in this regard.

On January 14, 2020, the Committee held a limited hearing pursuant to the Order of Remand. On February 3, 2020, the Committee issued its decision containing its findings pursuant to the remand. Specifically, the Committee found that, on the date of her termination, Jackson held the covered, FTE position of Administrative Coordinator I. In particular, the Committee concluded the following in its Remand Decision:

The Committee finds that [Jackson's] official state classification of Administrative Coordinator I never changed according to the documentation submitted in the record. There was no documentation which reflected an official personnel action which would have resulted in a change to [Jackson's] job classification. Specifically, there is no evidence to indicate [Jackson] was promoted, demoted or that the position she occupied was reclassified. The various Denmark Technical

³ SCTCS's argument that Jackson was not a covered employee and could not grieve her termination under the Act is essentially an argument that the Committee and this Court do not have subject matter jurisdiction to review the termination. "Subject matter jurisdiction of a court depends upon the authority granted to the court by the constitution and laws of the state." *Paschal v. Causey*, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App. 1992). It refers to the "power to hear and determine cases of the general class to which the proceedings in question belong." *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004), *cert. denied*, 544 U.S. 1033 (2005) (quoting *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994)). Jackson complains that SCTCS has not preserved the issue of subject matter jurisdiction and this issue was uncontested for much of the grievance process. However, "[t]he lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court." *S.C. Dep't of Social Servs. v. Tran*, 418 S.C. 308, 792 S.E.2d 254 (Ct. App. 2016). Therefore, preservation is not necessary for SCTCS to raise this issue on appeal.

College Personnel/Payroll Action Forms in the record reflect that the changes to Appellant's job duties between her January 4, 2011, hire date and the date of her termination, were processed as either "dual" employment, "salary change" or "other." None of these actions would have resulted in a change to [Jackson's] position or her coverage status under the State Employee Grievance Procedure Act.

* * *

The Committee finds that while [Jackson] was temporarily performing the duties of an Interim Dean, her position classification was Administrative Coordinator I.

On February 19, 2020, after the Committee issued its Remand Decision, SCTCS submitted two questions to the Department. It inquired whether the Committee had jurisdiction to reconsider its Remand Decision and whether the Department's approval was necessary to SCTCS to appeal or otherwise challenge the Committee's Remand Decision. On March 4, 2020, the Department contacted SCTCS's counsel via email answering both questions in the negative. SCTCS thereafter appealed the Committee's Remand Decision to this Court.

STANDARD OF REVIEW

When sitting in its appellate capacity, the ALC reviews a final decision in the same manner prescribed by section 1-23-380 of the South Carolina Code. S.C. Code Ann. § 1-23-600(E) (Supp. 2018). Pursuant to section 1-23-380, when reviewing a final agency decision, "[t]he court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." § 1-23-380(5). The Court can affirm the decision of the agency, remand the case, or reverse or modify the decision "if substantial rights of the appellant have been prejudiced" because the 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.

Id.

"Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." *Trimmier v. S.C.*

Dep't of Labor, Licensing & Regulation, 405 S.C. 239, 246, 746 S.E.2d 491, 494 (Ct. App. 2013). 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

SCTCS attacks the Committee's Remand Decision on two grounds. First, SCTCS argues the Committee's decision was clearly erroneous and tainted by errors of law. Second, SCTCS argues the Committee abused its discretion by failing to reach the only conclusion adequately supported by the relevant evidence, and the Committee's decision was arbitrary and capricious and improperly disregarded the instructions it was given in the Order on Remand. The Court will address each issue in turn.

Clearly Erroneous and Tainted by Errors of Law

SCTCS argues the Committee's decision was clearly erroneous and tainted by errors of law because the Committee was judicially bound to find Jackson held the position of Interim Dean based upon Jackson's representation of the same on her appeal form. SCTCS asserts Jackson identified herself as "Interim Dean" on the Appeal Form and the Committee failed to adhere to the following instructions given by the Committee attorney when evaluating this evidence:

Parties are judicially bound by their pleadings. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party

cannot subsequently take a position contradictory of, or inconsistent with, his or her pleadings, and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the case. A "pleading" includes any required form used to initiate an appeal or other proceeding that constitutes a contested case under the Administrative Procedures Act, including the State Employee Grievance Procedure State Appeal Form.

Citing *Postal v. Mann*, SCTCS maintains that Jackson's Appeal Form was a "pleading" for the purposes of the case and the parties are judicially bound by their pleadings. 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) (holding "[i]t is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise"). In other words, SCTCS argues the Committee was bound, as a matter of law, to find that Jackson held the position of Interim Dean when she was terminated solely based upon her representations in her Appeal Form to the exclusion of any other evidence in the Record.

SCTCS further cites to *Fisher v. South Carolina Department of Health and Environmental Control*, in which the South Carolina Court of Appeals held that an employee was bound to her statement in her complaint that she had "probationary" status when arguing she was entitled to a grievance hearing. 309 S.C. 10, 419 S.E.2d 794 (Ct. App. 1992). SCTCS contends that, as a result of finding the employee was bound to her complaint, the Court of Appeals disregarded evidence that might tend to show the employee did not have a probationary status and the Committee should have likewise disregarded evidence contrary to Jackson's representation that she held the position of Interim Dean. *Id.* at 12-13, 419 S.E.2d at 795.

First, I do not find *Fisher* to be sufficiently analogous to the case at bar to be probative. In *Fisher*, the issue was whether the employee was entitled to a grievance hearing as a probationary employee. *Id.* at 12, 419 S.E.2d at 795. The employee in *Fisher* did not try to disclaim that she was a probationary employee, but rather she attempted to argue that probationary employees had grievance rights in certain circumstances based upon a probationary employee having been entitled to a grievance hearing at the Finance Commission. *Id.* at 13, 419 S.E.2d at 795. The Court of Appeals noted the employee was bound to her pleadings, but also differentiated the procedures and rights that accrue to a Finance Commission employee from the agency at issue in *Fisher*, which was DHEC. Ultimately, it does not appear that *Fisher* dealt with a disagreement about the status of the employee seeking the grievance, but rather what her status conferred upon her in terms of rights. In this case, there is a disagreement as to Jackson's status or position at the time of her termination.

Nevertheless, it is true that on her State Employee Grievance Procedure State Appeal Form Jackson described her position as Interim Dean of Business, Computers and Related Technologies. However, as the evidence in the Record reveals, the Interim Dean position was just that—an *interim, temporary* position. Jackson correctly stated the position she was temporarily performing at the time of her termination, but she was not permanently in the position of dean and that was not her classified position. Therefore, I do not find that binding Jackson to her representations in her appeal form necessarily results in the Committee finding that Jackson was classified as a dean at the time of her termination.

Moreover, it would be incongruent to bind Jackson to her representations without also holding SCTCS to its assertions, which are in conflict with Jackson's. Specifically, in response to Jackson's appeal form, SCTCS submitted a letter in which it characterized Jackson's position as follows: "Through our review it was determined that Ms. Jackson's state classification title is Administrative Coordinator I with a base salary of \$49,897." SCTCS ignores its own "answer" to Jackson's "complaint" in this matter and seeks to bind only Jackson to her statements and not itself. To hold Jackson to her characterization of her position, but not hold SCTCS to its characterization of Jackson's position would be unfair and inconsistent with the decision in *Postal*, which bound the pleader where there was no evidence in the Record contrary to the assertion plead. 308 S.C. 385, 387, 418 S.E.2d 322.

Further, while *Postal* states the general rule that parties are bound to their pleadings, there are exceptions to this rule. For example, a "court is not bound by the pleader's characterization of his or her claims, because substance prevails over form and a party is not bound by admissions or averments of legal conclusions in his or her pleadings." 71 C.J.S. Pleading § 89. In this case, SCTCS attempts to use Jackson's characterization of her position as "Interim Dean" as a concession of her employment status prompting the conclusion that Jackson is not a covered employee. However, the substance of Jackson's claim is factual: that she was performing the duties of an interim dean when she was terminated. This does not necessarily merit the legal conclusion that she was classified in an uncovered position for the purposes of the Act. Moreover, "[n]otwithstanding allegations to the contrary in his or her pleadings, a party is not precluded from showing the facts to be as they really are where his or her allegations are due to an honest mistake or ignorance as to the facts." *Gary v. Lowcountry Med. Transp., Inc.*, 424 S.C. 18, 22, 817 S.E.2d 291, 294 (Ct. App. 2018), *reh'g denied* (Aug. 16, 2018), *cert. denied* (Jan. 10, 2019) (quoting 71

C.J.S. Pleadings § 89 (2011)). Here, even if Jackson truly believed the Interim Dean position was a permanent position (which would be contradictory) when she submitted her appeal form, that belief does not sweepingly result in the legal conclusion that she held the position of Dean when ample evidence exists in the Record to show her belief was mistaken, including SCTCS's own characterization of Jackson's position during the grievance process.

Therefore, while I do not find Jackson is bound by her representation on the appeal form in this case, even if she was bound, she is merely bound to the admission that she was temporarily fulfilling the duties of a dean while remaining employed full time in the Administrative Coordinator I position. Specifically, substantial evidence in the Record exists to support the Committee's finding that Jackson remained in the Administrative Coordinator I position when she was terminated despite temporarily functioning as an interim dean and taking on other temporary duties and assignments that afforded her extra pay. *See Trimmier*, 405 S.C. at 246, 746 S.E.2d at 494 ("Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action."). In particular, the Committee made the following findings, among others, that are supported by the Record: (1) SCTCS itself described Jackson as holding the Administrative Coordinator I position when the grievance was initiated, (2) an investigative report dated April 2017 concluded Jackson's classification title was Administrative Coordinator I, (3) the DTC letter notifying Jackson that she was temporarily appointed to the position of Interim Dean of Transitional Studies specified that she would remain in her same position/classification, (4) the DTC letter notifying Jackson that she was temporarily appointed to the position of Interim Dean of Business, Computers, and Related Technologies specified that she would remain in her same position/classification, and (5) several payroll action forms characterized Jackson's pay for additional duties as "dual" or "salary" or "other" and did not reflect a change in her official classification.

While it is true Gwendolyn Bamberg was hired by DTC to perform Jackson's administrative duties after Jackson took on the duties of the two interim dean positions, there is evidence in the Record that Bamberg was hired on a temporary basis and, even if testimony and evidence exists in the Record that could support two inconsistent conclusions, that does not mean the Committee's determination is unsupported by substantial evidence. *See 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).

SCTCS further argues that the binding effect of Jackson's statements in her appeal form made it improper for the Committee to "consider matters appearing in the Record that were purportedly inconsistent with such statements." The Court does not find the Committee was bound by Jackson's representations on her appeal form such that it could not consider the evidence in the Record before it, particularly when SCTCS never objected to evidence that was contrary to Jackson's "admissions" in her "pleading," and when SCTCS, itself, characterized Jackson as holding the Administrative Coordinator I position.

Abuse of Discretion and Arbitrary and Capricious

SCTCS argues the Committee abused its discretion because it ignored this Court's instructions on remand and failed to "reach the only conclusion supported by the evidence." SCTCS further asserts the Committee's disregard for this Court's instructions rendered its decision capricious and failed to conduct the analysis instructed by the Court. In particular, SCTCS contends the Committee ignored this Court's instruction to determine what role Jackson was "functioning" when she was terminated and, instead, focused on Jackson's classification at the time of her termination.

The Court's Order on Remand asked the Committee to determine in what role Jackson was "functioning" when she was terminated. The term "functioning," though perhaps unartfully worded, was meant to elicit the type of determination rendered by the Committee on remand. The Court sought a factual determination of the exact nature of Jackson's position at the time of her termination. To the extent SCTCS interpreted the Court's Order on Remand to suggest the official classification of Jackson's position was not part of the Court's request or instruction, SCTCS read the Court's order too narrowly. The Court does not find the Committee's Remand Decision ignored or disregarded this Court's Order on Remand; accordingly, the Court does not find the Committee's decision constitutes an abuse of discretion or a capricious decision. Moreover, as noted above, substantial evidence in the Record supports the Committee's factual finding that Jackson was in the covered position of Administrative Coordinator I when she was terminated even if she was temporarily performing the duties of another position. SCTCS complains that the Committee gave improper weight to a January 2017 Personnel/Payroll Action form instead of giving more weight to a September/October 2016 Personnel/Payroll Action form; however, it is

within the authority of the Committee to judge the weight given to the evidence submitted and this Court cannot substitute its judgement for that of the Committee on questions of fact. *Grant*, 319 S.C. at 353, 461 S.E.2d at 391. Therefore, I do not find the Committee's decision failed to "reach the only conclusion supported by the evidence." *See 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).

Subject Matter Jurisdiction

SCTCS does not specifically raise the issue of subject matter jurisdiction in this second appeal following the Remand Decision; however, subject matter jurisdiction can be raised *sua sponte* by this Court. *Tran*, 418 S.C. at 308, 792 S.E.2d at 254. Nevertheless, because there would be no reason for SCTCS to attack the Committee's finding in its Remand Decision unless subject matter jurisdiction was an issue, and, indeed, subject matter jurisdiction was the issue raised that originally inspired the remand, the Court finds it necessary to address it to fully resolve this appeal. "Subject matter jurisdiction of a court depends upon the authority granted to the court by the constitution and laws of the state." *Paschal v. Causey*, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App. 1992). It refers to the "power to hear and determine cases of the general class to which the proceedings in question belong." *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331, 605 S.E.2d 506, 507 (2004), *cert. denied*, 544 U.S. 1033 (2005) (quoting *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994)). "This same principle applies to administrative agencies." *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). "The question of subject matter jurisdiction is a question of law." *Roper Hosp. v. Clemons*, 326 S.C. 534, 536, 484 S.E.2d 598, 599 (Ct. App. 1997); *Berry v. S.C. Dep't of Health & Envtl. Control*, 402 S.C. 358, 363, 742 S.E.2d 2, 4 (2013). Furthermore, "[t]he lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised *sua sponte* by the court." *S.C. Dep't of Social Servs. v. Tran*, 418 S.C. 308, 792 S.E.2d 254 (Ct. App. 2016). Moreover, "[l]ack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this [c]ourt." *Anderson v. Anderson*, 299 S.C. 110, 15, 382 S.E.2d 897, 900 (1989).

The State Employee Grievance Procedure Act (Act) provides a procedure by which certain state employees can grieve some adverse employment actions. S.C. Code Ann. § 8-17-310 *et seq.*

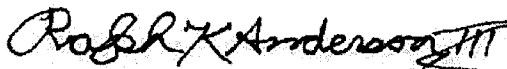
(2019). The general rule is that a state employee who holds a part or all of a full-time equivalent (FTE) position is “covered” by the State Employee Grievance Procedure. *See* S.C. Code Ann. § 8-17-320(7) (2019); S.C. Code Ann. § 8-17-330 (2019). In other words, the Committee and this Court would have subject matter jurisdiction to review an adverse employment action for a covered employee, but not an uncovered employee.

The parties do not disagree the position of Administrative Coordinator I at DTC is a covered position under the Act. In its Remand Decision, the Committee found that Jackson was classified in the position of Administrative Coordinator I when she was terminated. As explained above, substantial evidence supports the Committee’s finding. Therefore, the Court finds that Jackson held a covered position when she was terminated, and her grievance was properly before the Committee and is properly before this Court.⁴

ORDER

IT IS THEREFORE ORDERED that the Committee’s decision is **AFFIRMED**.

AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

September 23, 2020
Columbia, South Carolina

⁴ Notably, in this appeal SCTCS has not challenged the Committee’s underlying decision that Jackson was terminated without cause.

CERTIFICATE OF SERVICE

I, Stephanie 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 Perez
Judicial Law Clerk

September 23, 2020
Columbia, South Carolina