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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Administrative Law Court Court Judge

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Appellate Case No. 2020-001689
Case No. 2020ALJ300064AP

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South Carolina Technical College System, ..... Appellant,

v.

Carla Jackson and South Carolina
Department of Administration, ..... Respondents,

Of Whom, Carla Jackson is the..... Respondent.

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**RECORD ON APPEAL - VOLUME 1 of 3**

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**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| South Carolina Technical College System,<br><br>Appellant,<br><br>vs.<br><br>Carla Jackson and South Carolina Department of Administration,<br><br>Respondents. | ) | Docket No. 20-ALJ-30-0064-AP<br><br>**ORDER** |

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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

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[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 Transitionary 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

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| South Carolina Technical College System,<br><br>Appellant,<br><br>vs.<br><br>Carla Jackson and South Carolina Department of Administration,<br><br>Respondents. | ) | Docket No. 20-ALJ-30-0064-AP<br><br><br><br>**AMENDED ORDER** |

This Amended Order is being issue pursuant to a Motion for Rehearing (Motion) filed by the South Carolina Technical College System (SCTCS) pursuant to Rules 40 and 68 of the Rules of Procedure for the Administrative Law Court (SCALC Rules) and Rule 59(e) of the South Carolina Rules of Civil Procedures (SCRCP). SCTCS asserts the Administrative Law Court (ALC or Court) overlooked or misapprehended some of the matters before it when it issued its order in this case on September 23, 2020. Respondent Carla Jackson (Jackson) filed a response to the Motion. Based upon the Court's review of the Motion and the parties' filings in this case, I find it necessary to issue this amended order that responds to some of SCTCS's concerns.

## PROCEDURAL HISTORY

This case was most recently before the Court on an appeal by SCTCS after the South Carolina Department of Administration (Department or DOA), via the State Employee Grievance Committee (the Committee), found that Jackson was classified as an Administrative Coordinator I when she was terminated from her employment with Denmark Technical College (DTC). SCTCS had previously filed another appeal with this Court challenging the Committee's prior 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

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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.

In its Notice of Appeal in this matter, SCTCS requested, by way of a motion contemporaneously filed with its appeal, to submit a supplemental brief. SCTCS also stated that "[t]o the extent that [SCTCS's] present challenge to the [Committee's finding] may be viewed as a stand-alone appeal, SCTCS requests that it be consolidated with the preexisting appeal of this case pursuant to SCALC Rule 19(D) and that [SCTCS's] forthcoming brief be incorporated into Appellant's argument in this case to date."

SCTCS attached to its Notice of Appeal a "Motion to File Supplemental Brief and Motion for an Order Directing the South Carolina Department of Administration to Supplement the Record on Appeal" (Motion). In this Motion, SCTCS sought to (1) file a supplemental brief challenging the Committee's finding pursuant to the Remand and (2) to supplement the Record with documents associated with the Remand. SCTCS did not similarly attach a Motion to Consolidate or thereafter otherwise file a Motion to Consolidate.

After the Notice of Appeal and Motion were filed, Jackson's counsel requested clarification concerning the deadlines in the Notice of Assignment issued by the Court. In response to this query, the Court sent an email to all the parties informing them that it would not consider the Motion until the Record was filed, but there was no reason the parties could not get together to discuss the contents of the Record before it was filed. In response to the Court's email, Jackson's counsel told SCTCS's counsel that he was free to reach out to her to discuss what SCTCS wanted supplemented. The Court heard nothing further from the parties before or after the Record on Appeal was filed on May 26, 2020.

On June 9, 2020, SCTCS filed a Motion for Enlargement of Time to File Initial Brief, which the Court granted. Thereafter, SCTCS filed its Appellant's Brief, Jackson filed a Respondent's Brief, and SCTCS filed a Reply Brief. On September 23, 2020, the Court issued its order.

## 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 an MBA at American

Intercontinental University Online (AIUO). This application was sent to Jackson's immediate 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.

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[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.

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 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:

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[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.

> 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 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.
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> * * *
>
> 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;
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> (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

### Unresolved Motions

Pursuant to its Motion for Rehearing, SCTCS argues it was prejudiced because the Court failed to rule on (1) its Motion to File a Supplemental Brief and (2) its "request" to consolidate the previous 2018 appeal with this appeal and "otherwise incorporate all the arguments it had made to date." SCTCS cites to Rule 68 of the Rules of Procedure for the Administrative Law Court (SCALC Rules) to argue the Court may, in its discretion, apply Rule 214 of the South Carolina Appellate Court Rules (SCACR), which provides that "[w]here there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be

consolidated." SCALC Rule 68 (providing the South Carolina Appellate Court Rules "may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by [the ALC's] rules").

The Court finds SCTCS was not prejudiced. First, SCTCS never made a formal motion to consolidate the cases. *See*, *e.g.*, SCALC Rule 19(D) ("When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the administrative law judge may upon motion by any party or on his own motion order that a consolidated hearing be conducted."). Without a motion, the Court had nothing to grant from which SCTCS could be prejudiced by its failure to do so. Rather, SCTCS merely included a sentence in its Notice of Appeal requesting consolidation, and never followed up on the request. SCTCS argues that any ruling on its request would have clued it in on whether to re-raise the issues from the 2018 Appeal in the current case before the Court and, because there was no ruling, it did not know to re-raise the issues from the 2018 appeal which prejudiced it in the current appeal. However, if SCTCS was not sure what issues it needed to raise again, if any, it would seem prudent to have raised any and all possible issues, or filed a formal motion, rather than to have relied on a one-sentence request in a Notice of Appeal. To the extent SCTCS was prejudiced, the prejudice resulted from its own actions, or rather, inactions.

SCTCS also argues it was prejudiced because this Court failed to rule on its Motion to File a Supplemental Brief and to Supplement the Record. SCTCS argues that "[d]ue to the absence of any ruling, SCTCS was not aware that the Court would dispose of the 2020 Matter without having considered all the arguments SCTCS raised in the 2018 Appeal." It is true the Court did not issue an order on the Motion. However, the Court was under the impression the parties had worked together to resolve what would be supplemented. After the Notice of Appeal and Motion were filed, Jackson's counsel requested clarification concerning the deadlines in the Notice of Assignment issued by the Court. In response to this query, the Court sent an email to all the parties informing them that it would not consider the Motion until the Record was filed, but there was no reason the parties could not get together to discuss the contents of the Record before it was filed. In response to the Court's email, Jackson's counsel told SCTCS's counsel that he was free to reach out to her to discuss what SCTCS wanted supplemented. The Court heard nothing further from the parties and the Record on Appeal was filed on May 26, 2020 without issue; the Court presumed the parties had resolved the issue or it would have heard further from them.

Regardless, in SCTCS's Notice of Appeal, as part of its explanation of its Motion, SCTCS asked that it be allowed to submit a supplemental brief "on the issues identified herein." The issues SCTCS identified were the issues it wanted to raise with regard to the Committee's decision on Remand, which it then proceeded to raise in its Appellant's Brief filed on July 27, 2020. Therefore, SCTCS was not prejudiced by this Court's failure to rule on its Motion because SCTCS raised the issues it sought permission to raise in a supplemental brief in its Appellant's Brief and those issues were thoroughly considered by this Court and ruled upon in its September 2020 order.

In particular, in its Appellant's Brief filed in the current case, SCTCS attacked the Committee's Remand Decision on two grounds. First, SCTCS argued the Committee's decision was clearly erroneous and tainted by errors of law. Second, SCTCS argued 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. In its Motion for Rehearing, SCTCS argues the Court's decision on these issues misapprehended the law or the facts; however, upon reviewing SCTCS's arguments, the Court finds no reason to deviate from its previous decision on these issues, which are discussed below.

**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 and 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 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.[4]

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

[4] In its Motion for Rehearing, SCTCS further cites to at *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999) for the principle that parties are judicially bound by their pleadings. I do not find *Towles* is significantly different from *Postal* such that it adds nuance to this principle in a way that changes my decision in this matter.

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 Transitionary 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 in 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.

**Underlying Merits of Jackson's Termination**

In this Court's initial order in this matter, the Court noted SCTCS failed to raise the merits of Committee's decision to terminate Jackson as an issue in the current appeal. In its Motion for Rehearing, SCTCS argues this Court erred in failing to address the underlying merits of Jackson's termination in its order. SCTCS contends it never abandoned its arguments from the 2018 Appeal that DTC had valid reasons to terminate Jackson and there was substantial evidence in the Record to support DTC's decision to terminate Jackson. SCTCS asserts these arguments on the underlying merits of the case were raised and briefed in the 2018 Appeal, and the ALC should have considered them and ruled on the merits. More particularly, SCTCS argues that despite the remand of the 2018 case, the ALC retained jurisdiction and SCTCS was not required to raise the issues from the 2018 case again; rather, the issues survived the remand and this Court should have addressed them in the current appeal. SCTCS cites to *Bobo v. Marshane Corp.*, 302 S.C. 86, 88, 394 S.E.2d 2, 4 (Ct. App. 1990) in support of its position.

In *Bobo*, a three-member panel of the Workers' Compensation Commission overturned the single commissioner's award of benefits to Betty Bobo. 302 S.C. at 87, 394 S.E.2d at 3. Bobo appealed the case to the circuit court, which found the Commission's decision failed to set forth separate findings of fact and conclusions of law in compliance with section 1-23-350. *Id.* at 87-88, 394 S.E.2d at 3-4. The circuit court therefore remanded the case to the full Commission with specific instructions to bring its order into compliance section 1-23-350. *Id.* Instead of simply bringing the order into compliance, the full Commission essentially held another *de novo* hearing and reversed the decision of the three-member panel. *Id.* at 87, 394 S.E.2d at 3. The circuit court then upheld the full Commission's new decision. *Id.* On appeal, the South Carolina Court of Appeals held the Commission should not have conducted a *de novo* hearing, and it also held the

case remained pending in the circuit court while the case was on remand to the Workers' Compensation Commission because the case was remanded for the limited purpose of further developing the Commission's order to bring it into compliance with section 1-23-350. *Id.* at 88, 394 S.E.2d at 4. The Court of Appeals' decision suggests that when a case is remanded for a limited purpose that does not require a *de novo* review, the appellate court retains jurisdiction. *See id.*

However, *Bobo* was decided in the context of workers' compensation case, and the case cited by the Court of Appeals in support of its determination that the circuit court case was still pending is a Pennsylvania workers' compensation case in which a Pennsylvania law specifically stated a case would remain pending if the record was remitted to remedy a defect. *Id.* (citing *Driscoll v. McAlister Brothers*, 294 Pa. 169, 144 A. 89 (1928)). Outside of *Bobo* and its unique circumstances, the Court was unable to find any case law supporting SCTCS's contention that an appellate court retains jurisdiction over a remanded case. Therefore, the Court does not find *Bobo* persuasive. It is not this Court's habit to retain jurisdiction after a remand unless jurisdiction is specifically reserved, and it was not in this case. *See Leviner v. Sonoco Prod. Co.*, 339 S.C. 492, 494, 530 S.E.2d 127, 128 (2000) ("Under Rule 59(e), SCRCP, the trial judge has only ten days from entry of judgment to alter or amend an earlier order on his own initiative *absent a "reservation" of jurisdiction* in the form order." (emphasis added)); *id.* (holding the circuit court's order issued more than ten days after its order remanding the case was a nullity because the circuit court "no longer had jurisdiction over the matter").

SCTCS also argues this Court retained jurisdiction because it did not issue a remittitur to the Committee. This Court does not issue remittiturs. Further, with regard to Rule 221(b), SCARC, discussing remittiturs, it is within this Court's *discretion* to apply the South Carolina Appellate Court Rules. *See* SCALC Rule 68 (providing the South Carolina Appellate Court Rules "may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by [the ALC's] rules"); Rule 221(b), SCACR (discussing the issuance of a remittitur upon a court "finally disposing of the appeal"); *see also Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) ("When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter.").

Additionally, SCTCS argues its 2020 appeal of the Committee's new finding on remand should not have been adjudicated as a stand-alone appeal because the Committee's finding on

remand only related to the position Jackson was in when she was terminated from DTC and did not dispose of the entire action. This misconstrues the effect of a remand and subsequent appeal. The Committee had already resolved the underlying merits of Jackson's termination when it first came before this Court in 2018; however, the Committee's subject matter jurisdiction was raised for the first time in the appeal and a further factual finding from the Committee was necessary to resolve the jurisdictional issue. Thus, a remand was required. The remand divested this Court of jurisdiction without a ruling on the merits and returned jurisdiction to the Committee. *Cf. Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 352 (Ct. App. 2001) (noting "the South Carolina Supreme Court held that despite the issuance of the remittitur and the fact that the case was not expressly 'remanded' to the circuit court, the circuit court was still vested with jurisdiction to hear the appellant's motion for restitution."). Essentially, it sent the case back to the Committee level; therefore, when SCTCS appealed the Committee's decision after remand, SCTCS should have treated it like any other appeal and raised all its issues, regardless of whether the issues arose before or after the remand. Even if SCTCS was unsure of the procedural posture of the case, it would appear to the Court to be prudent to raise all possible issues rather than risk not raising an important issue.

Similarly, any misapprehension of the effect of this Court's remand in the context of the statutory approval process for challenging the Committee's determination on Remand pursuant to section 8-17-340 of the South Carolina code is not dispositive of whether this matter is a new appeal before the ALC.

Finally, while the ALC can take judicial notice of its own records, files, and proceedings, judicial notice is not a vehicle for retaining jurisdiction or bootstrapping issues from previous appeals to new appeals. *See Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (1984) (observing that "a court can take judicial notice of its own records, files, and proceedings for all proper purposes").

**Reconsideration of Committee's Decision on Remand**

In its Motion for Rehearing, SCTCS also argues it was prejudiced by being denied the opportunity to submit to the Committee a motion to reconsider the Committee's determination upon Remand because the Department of Administration proceeded at all relevant times as though (1) the ALC retained jurisdiction in the 2018 Appeal after it issued its Remand Order and (2) the Committee thus had no jurisdiction to consider such a motion once it had issued its findings to the

ALC. Again, any failure on the Department's behalf to recognize the effect of a Remand from this Court does not change the fact that the appeal currently before the Court is a new appeal and SCTCS cannot rely on the Department's actions (or lack thereof) to excuse its own failure to conduct its appeal appropriately. More importantly, SCTCS has pointed out no legal prejudice that resulted from the Committee's failure to hear its arguments on reconsideration.

**Conclusion**

Having considered SCTCS's Motion for Rehearing, the Court concludes it addressed all issues properly raised to it in SCTCS's Appellant's Brief filed on July 27, 2020. New issues may not be raised in a Motion for Rehearing. *State v. Hamilton*, 333 S.C. 642, 648, 511 S.E.2d 94, 97 (Ct. App. 1999) ("[I]t is improper to argue new matter in a motion for reconsideration."). Therefore, because the Committee's determination that Jackson was a covered employee was supported by substantial evidence in the Record and SCTCS failed to appeal the Committee's underlying decision on the merits of the termination, the Court concludes the Committee's decision must be affirmed.

**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

December 1, 2020
Columbia, South Carolina

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

December 1, 2020
Columbia, South Carolina

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | |
|---|---|
| South Carolina Technical College System,<br><br>Appellant,<br><br>vs.<br><br>Carla Jackson and South Carolina Department of Administration,<br><br>Respondents. | **APPELLANT'S NOTICE OF APPEAL OF THE STATE EMPLOYEE GRIEVANCE COMMITTEE'S FINDING OF FACT ON REMAND**<br><br>Docket No. 18-ALJ-30-0341-AP |

Please take notice that Appellant South Carolina Technical College System ("Appellant" or "SCTCS") hereby appeals and otherwise challenges the State Employee Grievance Committee's ("Committee") February 3, 2020 finding on remand ("Finding") as follows:

1. Appellant received the Committee's Finding in this case on February 4, 2020.

2. By letter dated February 19, 2020, Appellant submitted two questions to the Department of Administration ("DOA") in connection with this case: (1) whether it viewed the Committee as having jurisdiction to reconsider the Finding and (2) whether it deemed its approval as necessary under S.C. Code § 8-17-340(F) for Appellant to appeal or otherwise challenge the Finding. (Appellant's letter attached as Exhibit "A.")

3. On March 4, 2020, DOA notified Appellant's counsel via e-mail that it answered both of the foregoing questions in the negative.[1] (E-mail from H. Keever attached as Ex. "B.")

[1] DOA's position that SCTCS "does not need approval . . . to pursue an appeal of the Committee's ruling concerning the remand" leaves open the question as to whether the procedural posture of this case is such that Appellant's present challenge to the Finding constitutes an extension of the preexisting appeal of this case (for which permission to appeal was given previously by DOA) or could be viewed as a stand-alone appeal. This appears to be largely a matter of form over substance, inasmuch as SCTCS has filed a motion contemporaneously with this Notice in which it (1) proposes to submit a brief in support of its challenge to the Finding and (2) requests that the Record on Appeal be supplemented with relevant documents, regardless of which situation applies.

4. To the extent that Appellant's present challenge to the Finding may be viewed as an extension of the preexisting appeal of this case, SCTCS requests by way of a motion filed contemporaneously with this Notice that it be permitted to submit a supplemental brief on the issues identified herein. To the extent that Appellant's present challenge to the Finding may be viewed as a stand-alone appeal, SCTCS requests that it be consolidated with the preexisting appeal of this case pursuant to SCALC Rule 19(D) and that its forthcoming brief be incorporated into Appellant's arguments in this case to date.

5. Accordingly, Appellant now challenges the Finding based on the following grounds:

(1) The Finding was clearly erroneous and tainted by errors of law. The Committee was instructed that (a) "parties are judicially bound by their pleadings"; (b) "a party cannot subsequently take a position contradictory of, or inconsistent with, his or her pleadings"; (c) "the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the case"; (d) 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." The Committee failed to follow these instructions, insofar as its Finding neglected to address that Respondent Carla Jackson's ("Jackson") State Appeal Form identifying herself as an "Interim Dean" meant she was judicially bound by that statement for purposes of this case.

(2) The Finding was arbitrary and capricious because it improperly disregarded the directions of the June 25, 2019 Administrative Law Court's ("ALC") Order of Remand ("ALC Order") and the case-specific instructions that were given by the

Committee Attorney at the January 14, 2020 hearing on remand. The Committee was instructed that it was "to determine whether at the time of [Jackson's] termination she was *functioning* as an Interim Dean or as an Administrative Coordinator." Likewise, the ALC Order directed the Committee to make a finding as to whether Jackson was "*functioning* in a covered FTE position" in addition to the uncovered Interim Dean position. Instead, the Committee disregarded evidence concerning the position in which she was actually functioning by focusing on Jackson's "*classification* of Administrative Coordinator I" purportedly not having changed.

(3) The Committee failed to reach the only conclusion adequately supported by the relevant evidence. The ALC Order inventoried a number of facts in evidence supporting a finding that Jackson was functioning in an uncovered position as an Interim Dean at the time of her termination. Appellant's September 13, 2019 Brief on Remand that was submitted to the Committee contained numerous citations to the Record on Appeal corresponding to the facts noted in the ALC Order. The Finding improperly ignored the substantial evidence in the record and reached a conclusion contrary to such evidence.

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Attorney for SCTCS

March 5, 2020
Columbia, South Carolina

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | |
|---|---|
| South Carolina Technical College System,<br><br>Appellant,<br><br>vs.<br><br>Carla Jackson and South Carolina Department of Administration,<br><br>Respondents. | **APPELLANT'S NOTICE OF MOTION AND MOTION TO FILE SUPPLEMENTAL BRIEF AND MOTION FOR AN ORDER DIRECTING THE SOUTH CAROLINA DEPARTMENT OF ADMINISTRATION TO SUPPLEMENT THE RECORD ON APPEAL**<br><br>Docket No. 18-ALJ-30-0341-AP |

Appellant South Carolina Technical College System ("Appellant" or "SCTCS") hereby makes the following motion before the Administrative Law Court ("ALC"):

1. Pursuant to the ALC's Order of Remand ("Order of Remand") issued June 25, 2019, the State Employee Grievance Committee ("Committee") reconvened on January 14, 2020, for a hearing on remand ("Remand Hearing") for the limited purpose of rendering a factual finding ("Finding") in connection with the present appeal.

2. The Committee subsequently issued its Finding, which Appellant received on February 4, 2020.

3. By letter dated February 19, 2020, Appellant (1) notified the Department of Administration ("DOA") that it intended to make a motion before the ALC to allow supplemental briefing so that its grounds for challenging the Finding could be set forth in detail and (2) asked DOA to clarify procedural issues related to the mechanism by which an appeal or other challenge to the Finding could be made. (Appellant's letter attached as Exhibit "A.")

4. On March 4, 2020, DOA notified Appellant's counsel via e-mail that its approval was not needed "to pursue an appeal of the Committee's ruling concerning the remand." (E-mail from H. Keever attached as Exhibit "B.")

5. By Notice of Appeal filed contemporaneously with the present Motion, Appellant has appealed the Finding on the grounds identified therein.

6. As reflected in Appellant's February 19, 2020 letter to DOA (Ex. A), "the Finding is a new matter and SCTCS's grounds to challenge it therefore are in addition to those argued in this case to date."

7. Accordingly, Appellant requests permission to submit a supplemental brief setting forth in detail the grounds upon which it appeals or otherwise challenges the Finding.

8. In addition, a number of documents which have come into existence since the Order of Remand was issued bear on Appellant's challenge to the Finding and are relevant to this case.

9. Therefore, Appellant requests an order directing DOA to prepare a supplement to the Record on Appeal consisting of records identified in SCALC Rule 36(B) generated by DOA, the Committee Attorney, and the parties since issuance of the Order of Remand. These documents include but are not necessarily limited to:

(1) DOA correspondence dated August 21, 2019, concerning the submission of additional briefs;

(2) Appellant's Brief on Remand dated September 13, 2019[1] (attached as Exhibit "C");

---

[1] SCTCS resubmitted its Brief on Remand to DOA on September 20, 2019, to add as an attachment a single page from the Record on Appeal that inadvertently had been omitted from the initial submission.

(3) Appellant's Motion *in Limine*/Motion to Strike Portions of Carla Jackson's Brief ("Motions") dated September 20, 2019;

(4) Committee Attorney's November 25, 2019 Order on Appellant's Motions;

(5) DOA correspondence dated December 5, 2019, concerning the format of the Remand Hearing (attached as Exhibit "D");

(6) Appellant's proposed instructions for the Committee ("Appellant's Instructions") (attached as Exhibit "E"); and

(7) DOA correspondence dated January 7, 2020, notifying SCTCS that Appellant's Instructions would be given at the Remand Hearing (attached as Exhibit "F").

10. No argument was permitted from the parties[2] at the Remand Hearing (as reflected in Ex. D), which essentially consisted of Appellant's Instructions and other standard instructions being given to the Committee, whereupon the Committee went straight into deliberations.

11. Insofar as no evidence was permitted to be introduced at the Remand Hearing (per the Committee Attorney's November 25, 2019 Order), there was no "testimony taken at the proceeding" required for inclusion in the Record on Appeal under SCALC Rule 36(B)(6).

12. Consequently, Appellant requests that (1) it not be required to prepare or otherwise pay for the cost of a transcript[3] of the Remand Hearing and (2) the records SCTCS seeks to be added to the Record on Appeal (as identified in Paragraph 9 above) be admitted for the purpose of showing that Appellant's Instructions were in fact given to the Committee.

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2 DOA did not even require the parties to attend the Remand Hearing. See Ex. D.

3 Due to this request, at this time Appellant is not providing a copy of the request for a transcript pursuant to SCALC Rule 33(D).

For the foregoing reasons, Appellant respectfully requests the relief sought herein.

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E-mail: ganjehsani@sctechsystem.edu

Attorney for SCTCS

March 5, 2020
Columbia, South Carolina

NOA.AP OTH
July 2016

# STATE OF SOUTH CAROLINA
# ADMINISTRATIVE LAW COURT

South Carolina Technical College System,

Appellant,

vs.

Carla Jackson,

Respondent.

**NOTICE OF ASSIGNMENT**
**(Appeal)**

DOCKET NO. 20-ALJ-30-0064-AP

NOTICE IS GIVEN that a notice of appeal seeking review of agency action was filed on March 5, 2020. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2019), the **Honorable Ralph King Anderson, III,** Chief Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550. Pursuant to SCALC Rule 4A, all future filings must be filed directly with the above assigned Judge and shall include the docket number.

FURTHER, NOTICE IS GIVEN that the parties are required to meet the following deadlines, unless otherwise ordered by the assigned Administrative Law Judge:

| | |
|---|---|
| **Record on Appeal** | Due within forty-five (45) days of the date of this Notice **(to be filed by the agency)** |
| **Appellant's Brief** | Due within thirty (30) days after the Record on Appeal is filed |
| **Respondent's Brief** | Due within thirty (30) days after the Appellant's Brief is filed |
| **Reply Brief** | Due within ten (10) days after the Respondent's Brief is filed |

The parties are directed to the relevant provisions of the Rules of Procedure regarding these deadlines and other requirements applicable to the appeal process. Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, **www.scalc.net**.

This the twelfth day of March 2020.

Ralph King Anderson, III
Chief Administrative Law Judge

By: Jana E. Shealy

Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED
MAR 12 2020
SC ADMIN. LAW COURT

**From:** Stephanie Perez
**To:** Shannon Polvi; Ganjehsani, Warren; Heather.Keever@admin.sc.gov
**Subject:** RE: SC Technical College System v. Carla Jackson and SC Department of Administration; Dkt No. 18-ALJ-30-0341-AP
**Date:** Tuesday, March 24, 2020 9:57:10 AM

**[External Email]** ***Open attachments and follow links with caution.***

Good morning,

I'm sorry for the delay in responding. The Court is not going to review the motions until after the record is filed. Also, as for the motion to supplement the record, there is no reason that the parties could not get together to discuss the contents of the record prior it being filed. If you have any questions, please let me know!

Sincerely,
Stephanie Michelle Perez
Law Clerk to Judge Ralph King Anderson, III
S.C. Administrative Law Court
803-734-6409

**From:** Shannon Polvi <Shannon@CBPHlaw.com>
**Sent:** Thursday, March 19, 2020 4:56 PM
**To:** Stephanie Perez <sperez@scalc.net>; Ganjehsani, Warren <ganjehsaniw@sctechsystem.edu>
**Cc:** Heather.Keever@admin.sc.gov
**Subject:** SC Technical College System v. Carla Jackson and SC Department of Administration; Dkt No. 18-ALJ-30-0341-AP

Good afternoon,

I called the Administrative Law Court today and spoke to Stephanie this afternoon seeking clarification of the Notice of Assignment deadlines in the above referenced matter (see attached).

The Appellant filed a Notice of Appeal contemporaneously with a Motion to File Supplemental Brief and Motion for an Order Directing the SC Department of Administration to Supplement the Record on Appeal.

Because the Notice of Appeal and the Motion were filed together and the deadlines in the Notice of Assignment do not delineate otherwise, it is my understanding that the Record on Appeal will be due first. Per the attached 3/17/20 letter from the Department of Administration, the transcript will be available after April 10, 2020. Then, after receipt of the Record on Appeal, Appellant has the Brief deadline and then the Respondents' Briefs will be due.

Because both my client and the Department of Administration are named as Respondents, I am seeking clarification of the Notice of Assignment deadlines. The Appellant's Motion is intertwined

with its Notice of Appeal, so my assumption is that all substantive arguments of the appeal and motion are truly one appeal and will be briefed and heard in accordance with the Notice of Assignment and the motion and the appeal will not be heard separately or need to be separately briefed. Is that correct?

You said you would need to discuss this with Judge Anderson and be back in contact. Thank you for assisting with clarifying these complicated matters.

Sincerely,
Shannon

**Shannon Polvi**
**Cromer Babb Porter & Hicks, LLC**

1418 Laurel St., Suite A (29201) | P.O. Box 11675 | Columbia, SC 29211
Phone 803.799.9530 | Fax 803.799.9533
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**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| South Carolina Technical College System,<br><br>Appellant,<br><br>vs.<br><br>Carla Jackson,<br><br>Respondent. | **SOUTH CAROLINA TECHNICAL COLLEGE SYSTEM'S NOTICE OF MOTION AND MOTION FOR REHEARING**<br><br>Docket No. 20-ALJ-30-0064-AP |

Appellant South Carolina Technical College System ("SCTCS") respectfully petitions the Administrative Law Court ("ALC" or "Court") for a rehearing of its September 23, 2020 Order ("Order") pursuant to SCALC Rule 40 based upon the following points overlooked or misapprehended by the Court:

## PROCEDURAL HISTORY & RELEVANT FACTS

Respondent Carla Jackson ("Respondent") began her employment with Denmark Technical College ("DTC") on January 4, 2011, as an Administrative Coordinator I ("Coordinator") to provide support to the DTC President's Office. [R. p. 6.] Respondent described her primary duties in this role as "basically manag[ing]" the DTC President's Office to assist the DTC President "with the executive level documents" and "to assist the executive staff as well." [R. p. 442.]

Respondent testified that on October 1, 2013, she applied for tuition reimbursement assistance from DTC in connection with a master's degree in business administration ("MBA") that she was seeking at American Intercontinental University ("AIU"). [R. pp. 444-447.] She stated that her supervisor at the time was Dr. Joann Boyd-Scotland, DTC's President, and that Theresa Mack was DTC's Title III director. [Id.] DTC's Institutional Advancement Policy No. 2-1-008

("DTC's Policy") set forth the conditions to which faculty and staff seeking professional development were required to comply to receive Title III funds for tuition reimbursement. [R. pp. 862-863.] DTC's Policy mandated that a six-step process be followed for approval of tuition reimbursement assistance, including obtaining the signatures of at least five different DTC officials (in addition to the applicant) on the application in a specific sequence. [R. pp. 862-867.]

DTC's former president and Respondent's supervisor (subsequent to Dr. Boyd-Scotland), Dr. Leonard McIntyre, testified that five signatures were required on the application and had to be obtained in the following order: those of the applicant-employee's "immediate supervisor," "[the] department head" or dean, "the VP or the division head," the "director of grants and contracts," and finally DTC's president. [R. p. 385.] It was evident from Respondent's testimony and the application she submitted that the mandated process was not followed by her or DTC because her application lacked some of the necessary signature authorizations. [R. pp. 471-474, 862-867.] Respondent signed the application, thereby attesting to her agreement with all applicable conditions which had to be met to obtain tuition reimbursement. [Id.]

Respondent enrolled at AIU in November 2013. [R. p. 740.] Respondent's AIU tuition and fee schedule reflected a two-year MBA program consisting of four quarters of instruction. [R. pp. 741-743.] Section VI(B) of SCTCS Procedure 8-10-100.1 ("System Advancement Policy") limited tuition assistance to "no more than six (6) credit hours per academic term per employee." [R. p. 803.] Section VI(F)(4) of the System Advancement Policy provided that "[e]mployees requesting tuition assistance w[ould] be notified of approval/disapproval as soon as possible *before the class start date*." [R. p. 805 (emphasis added).] Section VI(F)(5) of the System Advancement Policy required an employee seeking tuition assistance to "present official documentation of the *grade achieved* for the course *from the college or university attended*" in order "to be reimbursed." [Id.]

The System Advancement Policy further required that a grade of "B" or above be received to qualify for tuition reimbursement for graduate-level courses. [R. p. 804.]

Respondent sought and received payment from DTC for two courses – "**MGT600**" (Business Research for Decision Making) and "**MGT680**" (Strategic Management) – for which her official AIU transcript reflected that no "Grade" or "Quality Points" were awarded, because these "courses" were *transfer credits* (as indicated thereon by the letters "TC") for coursework completed at another educational institution. [R. pp. 548-552, 890-907.] Although Respondent testified that the transfer credits were from "Strayer University," her transcript reflected that they were from "Springfield College." [R. pp. 445, 479, 896-899.]

Despite the fact Respondent's transcript showed that she earned no grade or Quality Points for these two courses, she submitted documents to DTC reflecting that (1) she earned an "A" grade in MGT600 at AIU but no Quality Points and (2) she earned what appeared to be an "A" grade in MGT680 at AIU (under a column entitled "Actions") and six Quality Points – though for reasons unknown this same document reflected the number "6.000" under the "Letter Grade" column. [R. pp. 892, 894.] Respondent obtained tuition "reimbursement" from DTC by submitting a Direct Expenditure Voucher ("DEV") dated **April 5, 2015** for MGT600 and another DEV dated **May 1, 2015** for MGT680. [R. pp. 890-895.] Each of the two DEVs was in the amount of $3,492.00, for a total of $6,984.00. [Id.] Documents Respondent submitted in connection with the DEVs reflected that both were *AIU* courses that started on **October 6, 2014** and ended on **December 14, 2014** – yet neither MGT600 nor MGT680 appeared on her AIU transcript corresponding to those (or any other) dates. [R. pp. 890-899.] Respondent also appeared to have taken another course that began and ended on those October-December 2014 dates, BUS610 ("Economics for the Global Manager"), which meant these documents collectively suggested that she took **three** courses

during the October to December 2014 term for a total of **18 credit hours** – twelve hours more than was permitted by policy. [R. pp. 803, 898.] DTC business manager Jamie Wise ("Ms. Wise") testified that the DEVs for MGT600 and MGT680 appeared to have been falsified. [R. pp. 548-549.]

Respondent admitted that transfer credits accounted for some of the credit used toward obtaining her MBA, which enabled her to complete the AIU two-year program in one year – sometime in 2014. [R. pp. 475-480.] Respondent admitted that DTC paid her the cost of *two years' worth of instruction* at AIU despite her having only completed one year of instruction there. [R. pp. 475-480, 890-895, 903-907.] Respondent received $27,936.00 – the total cost of the AIU degree program – from DTC in connection with her obtaining an MBA. [R. pp. 475-480, 890-907.] Respondent testified that she realized that SCTCS Procedure 8-0-105.1 ("System Ethics Policy") and the State Ethics Act (S.C. CODE ANN. § 8-13-700, *et seq.*) prohibited an employee such as her from using her position for personal gain. [R. pp. 499-500, 764-768, 807-813.]

Respondent was in the Coordinator position until October 1, 2015, when she became Interim Dean of Transitional Studies and Distance Education. [R. p. 494.] She testified that she no longer performed the Coordinator duties or worked in the President's Office as of October 1, 2015, except for a brief period of three months or less immediately thereafter to assist the person who "fill[ed]" her "old position" to transition into this role. [R. pp. 494-496.] Gwendolyn Bamberg filled Respondent's previous role as Coordinator when Respondent vacated it to become Interim Dean of Transitional Studies. [Order p. 2.]

In October 2016, Respondent became the Interim Dean of Business, Computers and Related Technologies ("BCRT"). [R. p. 387.] An "Interim Dean" position description for Respondent described her duties as providing "curricular leadership in relation to . . . academic

programs," supervising "the administration of and ensur[ing] the academic quality of academic advising and special programs," and being "[r]esponsible for human resource management of unit faculty and staff." [R. pp. 855-856.]

In 2016, SCTCS received several complaints through its fraud hotline alleging incidents of self-dealing, abuse, and mismanagement at the "highest levels" of DTC, and Respondent was the focal point of many of these allegations. [R. pp. 8, 640.] Respondent was suspended pending an investigation on February 15, 2017. [R. p. 8.] In April 2017, a report generated in connection with SCTCS's investigation recommended that Respondent be terminated from DTC for willful violations of written rules, regulations, or written policies. [R. pp. 640-642.]

By letter dated May 11, 2017, Respondent was terminated retroactive to her February 15, 2017 suspension date for "willful violation of rules, regulations, and written policies, which constitute conduct unbecoming a state employee," including improper receipt of tuition payments and using her position for personal gain in violation of the State Ethics Act. [R. p. 8; Order pp. 2-3.] After Respondent exhausted SCTCS's internal grievance procedures,[1] she initiated a grievance of her termination by submitting a State Appeal Form ("Appeal Form") to the State Human Resources Director ("Director") on July 5, 2017, and Respondent identified her job thereon as an "Interim Dean" of BCRT.[2] [R. pp. 599-602.]

The Director forwarded Respondent's appeal to the State Employee Grievance Committee ("Committee"). [R. pp. 827-829.] A four-day hearing on the merits occurred before the Committee over the course of November 28, 2017; February 1-2, 2018; and March 2, 2018. [R. p. 6.] The

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1 Appellant's agency procedures provide that it must issue the Step Three/final agency decision for grievances of terminations and certain disciplinary actions administered by the State's sixteen technical colleges, including DTC.

2 The full title is cut off, but the description given is "Interim Dean of Business, Computers and Rel."

Committee issued its final decision ("Original Decision") on March 22, 2018, wherein it reversed Respondent's termination. [R. pp. 6-14.] The Committee's conclusions of law contained in the Original Decision included the following:

> • "the former DTC President Boyd-Scotland, the Title III Director, and [Respondent's] immediate supervisor at the time all approved [Respondent's] request for tuition assistance";
>
> • "Ms. Wise's testimony regarding her tuition assistance application and approval process was very similar to [Respondent's] testimony regarding her tuition assistance application and approval process";
>
> • "Ms. Wise's completed Request for Professional Development Assistance form ha[d] the same authorizing signatures (DTC President, Title III Director, and immediate supervisor) as [Respondent's] request";
>
> • "DTC [was] on notice regarding the possibility of [Respondent's] transfer credits being accepted towards her degree at AI[U]" and "it was DTC's responsibility to assess if it would reimburse [Respondent] for her transfer credits";
>
> • "DTC should have been aware of [Respondent's] transfer credits from Springfield College to AI[U] based on her transcript and [her] reimbursement for the entire cost of her degree"; and
>
> • "The Committee did not find that [Respondent] violated any rules or regulations concerning her . . . tuition reimbursements, therefore, the Committee finds [Respondent] was not unethical in th[is] matte[r]."

[Id.]

On April 19, 2018, SCTCS submitted a Motion for Reconsideration of the Original Decision. [R. pp. 44-57.] The Committee denied the Motion for Reconsideration in a decision issued August 1, 2018. [R. pp. 17-27.] SCTCS subsequently appealed the Original Decision to the ALC, which assigned Docket No. 18-ALJ-30-0341-AP to that appeal ("2018 Appeal"), and the parties submitted appellate briefs therein. [Order p. 1.]

In the briefs SCTCS submitted in the 2018 Appeal seeking reversal of the Committee's decision, SCTCS argued that the Committee lacked subject matter jurisdiction to render the

Original Decision because Respondent was not a covered employee under the State Employee Grievance Procedure Act ("Act") and had no right to a hearing before the Committee under the Act. SCTCS further argued that Respondent's termination was valid because (1) her purported "reimbursement" from DTC for tuition expenses violated applicable policies and the State Ethics Act and (2) Respondent used her position at DTC to obtain financial gain for herself.

Instead of ruling upon the merits of the 2018 Appeal, including whether Respondent engaged in improprieties concerning her tuition "reimbursement" or otherwise violated rules and policies as provided in her termination letter, the ALC issued a limited order of remand ("Remand Order") on June 25, 2019, instructing the Committee to consider on remand only the specific issue of fact regarding which position – Coordinator or Interim Dean – Respondent occupied at DTC at the time of her termination. [R. pp. 30-35.]

Pursuant to the Remand Order, a limited hearing ("Remand Hearing") was held by the Committee on January 14, 2020. [R. pp. 37-42.] SCTCS was not permitted to make any argument at the Remand Hearing. [R. pp. 215-216.] On February 3, 2020, the Committee issued its finding on remand ("Finding") that Respondent was functioning as a Coordinator at the time of her termination from DTC. [R. pp. 37-42.] The Committee transmitted its Finding directly to the ALC and copied the parties. [Id.] SCTCS received the Finding on February 4, 2020. [R. p. 43.]

By letter dated February 19, 2020, SCTCS submitted two questions to the South Carolina Department of Administration ("DOA"): (1) whether it viewed the Committee as having jurisdiction to reconsider the Finding and (2) whether it deemed DOA's approval as necessary under S.C. CODE ANN. § 8-17-340(F) for SCTCS to appeal or otherwise challenge the Finding. [R. pp. 913-914.] SCTCS's February 19, 2020 letter also observed that "the appeal itself has at all times remained pending before the ALC, notwithstanding the limited remand that was given for

the Committee to make its finding." [Id.] The Court was copied on this correspondence via e-mail. [Id.] On March 4, 2020, DOA notified SCTCS's counsel via e-mail that it answered both the foregoing questions in the negative. [R. p. 915.]

On March 5, 2020, SCTCS filed (1) a "Motion for Supplemental Brief and Motion for an Order Directing the South Carolina Department of Administration to Supplement the Record on Appeal" under the 2018 Appeal's docket number ("Motion for Supplemental Brief") and (2) a "Notice of Appeal of the State Employee Grievance Committee's Finding of Fact on Remand" ("Notice"). The Notice provided that "[t]o the extent that SCTCS's present challenge to the Finding may be viewed as a stand-alone appeal, **SCTCS requests that it be consolidated with the preexisting appeal** of this case . . . and that its forthcoming brief be **incorporated into SCTCS's arguments in this case to date.**" [Notice p. 2.] SCTCS's Motion for Supplemental Brief likewise provided that "the Finding is a new matter and SCTCS's grounds to challenge it therefore are in addition to those argued in this case to date." [Motion for Supplemental Brief p. 2.]

The Court issued a Notice of Assignment on March 12, 2020, assigning a new case number to SCTCS's March 5, 2020 challenge to the Finding ("2020 Matter") but not otherwise acknowledging SCTCS's foregoing requests contained in the Notice or Motion for Supplemental Brief. In an e-mail to the Court on March 19, 2020, Respondent's counsel observed that SCTCS's Notice and Motion for Supplemental Brief were "intertwined" and sought clarification as to how the Motion would be handled. [E-mail attached as Exhibit "A."] On March 24, 2020, Court staff informed the parties' counsel via e-mail that "motions" would not be reviewed "until after the record is filed." [Id.] By e-mail to DOA on April 7, 2020, SCTCS notified DOA and Respondent that it "expected the ALC w[ould] consolidate these appeals eventually." [R. p. 579.] The Record on Appeal ("Record") was served on the parties by DOA on May 26, 2020. [R. p. 916.]

As required by the Court's March 12, 2020 Notice of Assignment in the 2020 Matter, the parties subsequently briefed the issue of fact determined in the Finding concerning Respondent's position at DTC when she was terminated. No ruling was ever issued on SCTCS's Motion for Supplemental Brief or its request to consolidate contained in the Notice. On September 23, 2020, the Court issued its Order in which it observed that "in this appeal SCTCS has not challenged the Committee's underlying decision that Jackson was terminated without cause." [Order p. 12, n.4.] This Motion for Rehearing follows.

## ARGUMENT

1. SCTCS never abandoned its arguments that DTC had valid reasons to terminate Respondent and there was substantial evidence in the Record for DTC to have done so. These arguments were raised and briefed in the 2018 Appeal, and the ALC should have considered them and ruled on the merits.

Although the Order implies otherwise, the ALC never lost jurisdiction over the 2018 Appeal. Where a case has been remanded from an appellate court to an administrative tribunal with specific directions, the tribunal "must proceed in accordance with those directions." Bobo v. Marshane Corp., 302 S.C. 86, 88, 394 S.E.2d 2, 4 (Ct. App. 1990). More significantly, "**[t]he appeal, however, remains pending in the [remanding] court while it awaits the [administrative tribunal's] compliance with the order of remand.**" Id. (Emphasis added.) In a November 25, 2019 ruling on an SCTCS Motion *in Limine*, the Committee Attorney cited the foregoing principles from Bobo in recognizing that the 2018 Appeal remained pending at the ALC. [R. pp. 176-177.]

DOA's direct transmittal of the Finding to the ALC likewise recognized that the Court retained jurisdiction of the 2018 Appeal, since otherwise there would have been no reason to send

the Finding immediately to the Court. See, e.g., Bruce v. Entertainment Partners, et al., Case No. 0705175, 2010 WL 3280133, at *3 (S.C. Workers' Comp. Comm'n June 16, 2010) (ordering "that since the issues on remand from the Circuit Court have been answered . . . , this matter is returned to that Court").[3] The Order's suggestion that the ALC lost jurisdiction over the 2018 Appeal post-remand is erroneous and prejudicial to SCTCS's presentation of its case. The merits of the 2018 Appeal remain pending and should be addressed accordingly.

2. SCTCS was prejudiced by no ruling ever having been made on its (1) Motion for Supplemental Brief and (2) request to consolidate the 2018 Appeal with the 2020 Matter and otherwise incorporate all the arguments it had made to date. See Rule 214, SCACR (providing that "[w]here there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated"); SCALC Rule 68 (acknowledging that the South Carolina Appellate Court Rules "may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by [ALC] rules" concerning appeals).

In response to a March 19, 2020 inquiry from Respondent's counsel about how the ALC would handle certain matters going forward, Court staff signaled to the parties that a ruling on the "motions" would follow submission of the Record – but no such ruling ever came. [Ex. "A."] Regardless of whether the ALC ultimately may have denied both the request to consolidate and the Motion for Supplemental Brief if they had been ruled upon, a ruling of any kind would have alerted SCTCS to the Court's expectation that issues which were argued in the 2018 Appeal about

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[3] Federal courts follow the same approach. See, e.g., Friends of the Earth, Inc. v. Gaston Copper Recycling Corp., 263 Fed. Appx. 348, 356 (4th Cir. 2008) (ordering a limited remand to the South Carolina District Court for it to "resolve [certain] factual issues" and directing "a response from the district court as soon as practical").

the substantial evidence supporting DTC's termination of Respondent needed to be raised again and reargued in the 2020 Matter.

Due to the absence of any ruling, SCTCS was not aware that the Court would dispose of the 2020 Matter without having considered all the arguments SCTCS raised in the 2018 Appeal. SCTCS therefore has been prejudiced by being denied the opportunity to reassert arguments in the 2020 Matter supporting the valid reasons for Respondent's termination that were raised previously in the 2018 Appeal. See Krusinki v. United States Dep't of Agriculture, 4 F.3d 994, 1993 WL 346858, at *3 (6th Cir. 1993) (finding that the court abused its discretion in failing to consider a motion that the moving party had "valid reasons" for making).

3. The ALC did not take sufficient judicial notice of the 2018 Appeal in considering the 2020 Matter, including all of SCTCS's arguments concerning DTC's valid reasons for terminating Respondent that were raised in the former proceeding. See Freeman v. McBee, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (1984) (observing that "a court can take judicial notice of its own records, files, and proceedings for all proper purposes").

4. The ALC retained jurisdiction over the 2018 Appeal after issuing its Remand Order because it did not send a remittitur to the Committee. See Rule 221(b), SCACR (identifying remittitur as the act by which an appellate court "finally dispos[es] of an appeal").

5. SCTCS was prejudiced by being denied the opportunity to submit to the Committee a motion to reconsider the Finding because DOA proceeded at all relevant times as though (1) the ALC retained jurisdiction in the 2018 Appeal after it issued its Remand Order and (2) the Committee thus had no jurisdiction to consider such a motion once it had issued the Finding to the ALC. See S.C. CODE ANN. § 8-17-340(F) (providing that an agency may request reconsideration

"within thirty calendar days from receipt of [a Committee's] decision").[4]

6. The Committee's Finding should not have been adjudicated as a stand-alone appeal, because the Finding related only to the position Respondent was in when she was terminated from DTC and did not dispose of the entire action. See S.C. CODE ANN. § 1-23-380 ("A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy."); Ex parte S.C. Prop. and Cas. Ins. Guar. Ass'n, 411 S.C. 501, 504, 768 S.E.2d 670, 672 (2018) (concluding that an order by an administrative agency is not a "final decision" reviewable under § 1-23-380 "unless it resolves the entire action").

7. The Order's affirmance of the Finding that Respondent held a covered Coordinator position when she was terminated was erroneous, insofar as Respondent was serving exclusively as an Interim Dean at the time of her termination from DTC. Specifically, the Order was contrary to the substantial evidence in the Record and the applicable law in the following particulars:

(a) the Order did not recognize or otherwise address the "law of the case" doctrine and its binding effect on the instructions given to the Committee at the Remand Hearing, namely:

> (1) The Committee's only authority on remand is to determine whether at the time of SCTCS's termination she was functioning as an Interim Dean or as an Administrative Coordinator and issue a decision reporting this finding of fact to the Administrative Law Court;

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[4] DOA's view that the ALC retained jurisdiction over the 2018 Appeal was underscored by the fact that it did not require Appellant to go through the statutory approval process for challenging the Finding that otherwise would have been required if it had been a "new" appeal. See S.C. CODE ANN. § 8-17-340(F) ("Only after an agency submits a written request to the Office of Human Resources seeking approval of [DOA] may the agency file a notice of appeal seeking appellate review to the [ALC]," and "the agency may perfect the appeal only upon approval of [DOA].")

(2) It is a question of law, not fact, whether the Committee has subject matter jurisdiction to hear an employee's grievance appeal and whether the State Human Resources Director is correct in determining that an action is grievable to the Committee. Whether the State Human Resources Director correctly forwarded this appeal to the Committee and whether the Committee had subject matter jurisdiction to hear this appeal are ultimately questions of law that only the Administrative Law Court can decide. Thus, the State Human Resources Director's decision to forward SCTCS's appeal to the Committee for a hearing is not a "fact" upon which the Committee can rely in determining the position SCTCS was functioning in at the time of her termination;

(3) Furnishing documentation to an employee indicating that she has grievance or appeal rights does not confer jurisdiction to the Committee to hear her appeal if such rights do not otherwise exist as a matter of law. The Committee's consideration of any such documentation in the Record therefore must be restricted to its proper scope, because whether the Committee had subject matter jurisdiction to hear this appeal is question of law the Committee is not permitted to determine on remand. Accordingly, references in documents from Denmark Technical College and the Agency about SCTCS's ability to file a grievance or appeal of her suspension and termination are not to be considered as evidence of the position she was functioning in at the time of her termination. Statements of this nature made by counsel for either party during the Committee appeal hearing likewise cannot be considered as evidence of the position in which SCTCS was functioning;

(4) 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; and

(5) The Record reflects that SCTCS was placed on investigatory suspension as of February 15, 2017. A suspension is an enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes. The termination of SCTCS's employment was retroactively effective to the first day of her suspension on February 15, 2017. As a result, SCTCS's suspension and her appeal of that suspension were rendered moot. Consequently, the Committee must consider February 15, 2017, as the "time of her termination" for the purpose of determining whether she was functioning as an Interim Dean or an Administrative Coordinator.

(b) the Order did not address Towles v. United Healthcare Corp., 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999), in which evidence inconsistent with a party's pleading

was disregarded based on the rule quoted therein from Postal v. Mann, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992). Consideration of Towles would have better informed the Court's analysis of Postal and Fisher v. South Carolina Dep't of Health and Envtl. Control, 309 S.C. 10, 419 S.E.2d 794 (Ct. App. 1992). Pursuant to Towles, SCTCS maintains that representations as to Respondent's position at DTC on documents in the Record other than her Appeal Form (which reflected only that she was an "Interim Dean" at the time of her termination) should have been disregarded accordingly.

(c) the Order did not address the Committee's failure to reconcile its conclusion that Respondent was still serving as a Coordinator when she was terminated with the substantial evidence establishing that she was serving exclusively as an Interim Dean.

8. It would serve the interests of justice and judicial economy for the ALC to consolidate the 2018 Appeal and 2020 Matter and address the merits of both at this juncture. Cases should be decided on the merits "in the interests of justice" when deficiencies can be easily corrected, because "[j]udicial economy is not served when a case, ripe for decision, is decided on a procedural technicality." Pertuis v. Front Roe Restaurants, Inc., 423 S.C. 640, 649 n.3, 817 S.E.2d 273, 277 n.3 (2018). To that end, SCTCS restates and addresses below the substantial evidence supporting DTC's termination of Respondent for cause set forth previously in its briefs from the 2018 Appeal.[5]

(a) The Committee's Original Decision was not supported by substantial evidence because it was based on *ultra vires* acts by Respondent and others.

The Committee's Original Decision relied on the clearly erroneous and arbitrary view that decisions made by Respondent and others at DTC about her tuition reimbursement were

[5] Appellant has edited and condensed the substantive arguments from its briefs submitted in the 2018 Appeal, but it has cited no new legal authorities not previously set forth therein.

authorized, when in fact they were in direct contravention of policy and impermissible *ultra vires* acts. DTC's payments of Respondent's tuition could not as a matter of law have been properly authorized because they patently departed from DTC's Policy and the System Advancement Policy. "When a public officer acts outside the scope of his or her legal authority, that act is 'ultra vires,' meaning that it is unauthorized and beyond the power of the actor." Op. S.C. Att'y Gen., 2016 WL 3946153, at *2 n.3 (July 5, 2016). Therefore, "attempts by an agency" or officials acting on its behalf to perform *ultra vires* acts "beyond the scope of [their] authority" would be "invalid," "unenforceable," and "null and void." Op. S.C. Att'y Gen., 2011 WL 2214062, at *4 (May 11, 2011).

Where public entities have been found to have engaged in *ultra vires* acts, such acts have been enjoined or invalidated accordingly. See South Carolina Pub. Interest Found. v. South Carolina Dep't of Transp., 421 S.C. 110, 123-124, 804 S.E.2d 854, 861-862 (2017) (determining that an agency's inspections of privately-owned bridges were improper and *ultra vires*); City of Rock Hill v. Public Service Comm'n of South Carolina, 308 S.C. 175, 417 S.E.2d 562 (1992) (ruling that a city's provision of electrical service to a private entity outside its city limits was "illegal and *ultra vires*"). Hence, a purported practice, acquiescence to ongoing activity, or course of dealing by a public official or agency cannot be used to justify past misconduct or subvert the plain language of an institutional policy or requirement.

As a threshold matter, the Committee misconstrued the SCTCS's general oversight authority of DTC and its employees and the corresponding duties imposed on employees such as Respondent. SCTCS's policymaking jurisdiction extends by law to "all state-supported technical institutions and their programs." Specifically, § 59-53-20 provides as follows:

> **All personnel employed in the institutions** and programs within the jurisdiction and control of the [SCTCS] are designated state employees whether paid in whole or in part by state funds and **are subject to the regulations, guidelines, and policies of the [SCTCS]**, the Department of Administration, and the state personnel system.

S.C. CODE ANN. § 59-53-20 (emphasis added).

Accordingly, state law provides that SCTCS "shall establish statewide policies and procedures necessary to insure educational and **financial accountability** for operation of the technical education institutions and their programs." S.C. CODE ANN. § 59-53-51 (emphasis added). Consequently, a violation of an SCTCS policy by an employee of one of the state's technical colleges can give rise to disciplinary action. It follows that neither Respondent nor her superiors were ever authorized to circumvent or override an SCTCS policy, and any attempt to have done so would have been *ultra vires*. A DTC policy (so long as it was not inconsistent with an SCTCS policy) likewise would be binding on DTC personnel and could not be disregarded without consequences. The Committee's Original Decision arbitrarily and erroneously suggested otherwise.

There were a number of *ultra vires* acts and policy violations committed by Respondent and others that resulted in her receiving $27,936.00 (the total program cost) in connection with her obtaining an MBA from AIU. [R. pp. 640-642.] Furthermore, DTC lacked the authority to lawfully "reimburse" Respondent for the $6,984.00 in AIU tuition expenses that she never actually incurred at that institution. [R. pp. 890-899.] Respondent's contention that it was somehow appropriate for her to seek after-the-fact approval for the Springfield College courses was unavailing, insofar as courses taken at an institution other than AIU were never authorized for tuition reimbursement. The Committee acknowledged that Respondent "transferred credits from Springfield College for courses MGT600 and MGT680." [R. p. 10.] However, the Committee failed to recognize that the absence of Springfield College appearing on Respondent's tuition assistance application as an

institution she would be attending *in the future* meant that "reimbursements" to her for courses already having been taken there "should not have been paid." [R. pp. 548-549.] Furthermore, there was testimony presented to the Committee that Respondent's submissions associated with the "reimbursements" for these two courses appeared to have been falsified. [Id.]

Respondent conceded that DTC Policy was not followed on her tuition reimbursement application because it was missing required signature authorizations. [R. pp. 471-474, 862-867.] Respondent also failed to comply with the System Advancement Policy by seeking and obtaining reimbursement for two AIU courses in which she did not earn a "B" letter grade (as required) because she had *previously* completed the courses *at another school* and received only transfer credits as a result. [R. pp. 475-480, 890-907.] Respondent testified that she realized that System Ethics Policy and the Ethics Act prohibited an employee such as her from using her position for personal gain, yet she clearly derived an improper benefit by claiming and receiving monies from DTC for coursework she admittedly did not take at (or receive a grade from) AIU in violation of the System Advancement Policy. [R. pp. 499-500.]

By willfully ignoring the mandates of DTC's Policy and the System Advancement Policy, Respondent obtained thousands of dollars in alleged "reimbursements" unlawfully. The fact that the Committee concluded another DTC employee may also have had a tuition reimbursement application approved without all necessary signatures does not absolve Respondent of wrongdoing for her own actions.[6]

---

[6] The Committee was instructed that "[a] penalty that is within the authority of the agency is not rendered invalid in a particular case solely because it is more severe than sanctions imposed in other cases[,] and the mere unevenness in application of the sanction does not render its application in a particular case unwarranted in the law." [R. p. 573.]

In sum, it was clear from the evidence that DTC's payment of these funds to Respondent was for courses that were not taken at an institution for which tuition reimbursement had been previously requested and approved, were based on documents lacking reliable indicia that the requisite letter grade had been earned, and relied upon submissions by Respondent that were riddled with obvious signs that they had been doctored. The payments manifestly departed from applicable policies, thereby rendering them *ultra vires* and invalid. The Committee's failure to recognize as much was clearly erroneous.

(b) There is no evidence to support a finding that DTC had notice of Respondent's transcript at the time it made payments to her for tuition "reimbursement."

The Committee erred in concluding that DTC "[was] on notice regarding the possibility of [Respondent's] transfer credits being accepted towards her degree at AI[U]," that "DTC should have been aware of [Respondent's] transfer credits from Springfield College to AI[U] based on her transcript and [her] reimbursement for the entire cost of her degree," and that "it was DTC's responsibility to assess if it would reimburse [Respondent] for her transfer credits." [R. pp. 6-14.]

The Committee's finding that notice of the transfer credits was imputable to DTC when it issued Respondent's tuition "reimbursement" payments is flawed because there is no such testimony in the Record. See Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 441-443, 458 S.E.2d 76, 82-83 (Ct. App. 1995) (noting that findings of fact "may not be based upon surmise, conjecture, or speculation"). Instead, the Committee erroneously accepted as fact a statement by Respondent's counsel in reference to the AIU transcript in which she volunteered that she would "gladly let the [Committee] know that [Respondent] had a transcript that they had in their possession." [R. p. 547.] No fact witness ever made any admissible statement imputing knowledge of the AIU transcript to DTC at the time of the tuition "reimbursements." See Fontaine v. Peitz,

291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) (finding that an abuse of discretion occurs when a ruling purportedly based upon factual conclusions "is without evidentiary support"); South Carolina Dep't of Transp. v. Thompson, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) (recognizing that "[a]rguments made by counsel are not evidence").

Moreover, Respondent's position is directly contravened by the testimony of DTC's business manager, who testified that there was no "indication that [DTC] was notified that the payment[s] w[ere] for Springfield College." [R. p. 549.] The Record therefore is bereft of any evidence as to when DTC first came into possession of Respondent's AIU transcript or whether anyone involved in approving Respondent's tuition reimbursement requests had access to it at the time such payments were made.

(c) Respondent's obtaining funds from DTC for courses she did not complete at AIU constituted unauthorized compensation and the use of her position to obtain an economic interest for herself.

The Committee erred in determining that Respondent was not unethical in connection with her obtaining tuition "reimbursements," because a public employee's receipt of improper "extra" compensation constitutes the wrongful use of public funds for private purposes. See Op. S.C. Att'y Gen., 2003 WL 21040136, at *4-5 (Feb. 21, 2003) (declaring that receipt of money by public employees over and above that to which they are entitled would be *ultra vires* and potentially a breach of the Ethics Act). The South Carolina Attorney General's recognition that it is improper for public employees to receive compensation that is not actually due to them has been acknowledged by the South Carolina Ethics Commission ("Ethics Commission"), which has made clear that public officials cannot use their position for financial gain.

The Ethics Commission illustrated this principle in an opinion in which it observed that a public official must not charge a public entity "for staying in his own house while attending [a]

convention." Op. S.C. St. Ethics Comm'n, SEC AO95-002 (Sept. 21, 1994) (considering a county councilman's request for the county to pay him the single occupancy rate charged by a convention site hotel, which he maintained was less than the rental rate for his house where he would be staying during the convention). The Ethics Commission reached this conclusion by relying upon S.C. CODE ANN. § 8-13-700(A)'s prohibition against using one's official office to obtain an "economic interest," which is defined as an "interest distinct from that of the general public" in a "transaction or arrangement involving property or services in which a public official . . . may gain an economic benefit of fifty dollars or more." S.C. CODE ANN. § 8-13-100(11).

The Ethics Commission reasoned that "since the councilman would not attend the conference in question but for his membership on county council, the receipt of this income appear[ed] inextricably linked to [his] public office." Op. S.C. St. Ethics Comm'n, SEC AO95-002, at *2. Critically, even though "no additional public expense would result from paying the councilman to stay in his own house" since the county would have compensated him for his expenses if he had stayed in a hotel, paying him **for an expense that was never incurred** would be inconsistent with the requirements of the Ethics Act (S.C. CODE ANN. § 8-13-700, *et seq.*). Id.

Thus, the central issue is not whether Respondent would have been entitled to reimbursement from DTC for the two courses *had she in fact taken them* at AIU. Rather, the issue is the propriety of her having sought reimbursement for courses she clearly had not taken at AIU and her receipt of funds for those courses from DTC amounting to compensation that was not due. There is no dispute that Respondent would not have been eligible to seek or obtain tuition reimbursement from DTC but for her employment there, so her receipt of funds from DTC under the guise of such reimbursement was "inextricably linked" to her position within the meaning of the foregoing Ethics Commission opinion.

Respondent's obtaining funds from DTC for tuition that she admittedly never paid to AIU constituted use of her position for her own economic benefit, which violated the System Ethics Policy and the Ethics Act. See Op. S.C. Att'y Gen., 1980 WL 81911, at *1 (Mar. 7, 1980) (construing the predecessor ethics statute to S.C. CODE ANN. § 8-13-700 and concluding that a public employee's use of his official position to obtain financial gain for himself amounted to a statutory ethics violation). Rather than properly viewing these acts as evidence of Respondent's unjust enrichment for knowingly violating applicable policies, the Committee erroneously ignored that Respondent's testimony evinced an awareness of her wrongdoing and excused her acts due to a perceived lack of institutional due diligence by DTC. This was clear error under the *ultra vires* doctrine, and the Committee's wholesale disregard of this evidence rendered its conclusions fundamentally flawed. See Callen v. Callen, 365 S.C. 618, 623-624, 620 S.E.2d 59, 62 (2005) (reversing and remanding a court's decision because its "findings of fact [we]re so tainted by errors of law"); Mullinax, 318 S.C. at 441-443, 458 S.E.2d at 82-83 (finding legal error under the APA based on a tribunal's ignoring evidence in the record).

Reversal of the Committee's Original Decision is thus warranted based upon any one of the foregoing policy violation grounds alone, as the basis for Respondent's termination was willful violation of rules, regulations, and written policies. See Bowers v. Coll. of Charleston, No. 2011-UP-569, 2011 WL 11736338, at *2 n.1 (S.C. Ct. App. Dec. 20, 2011) (affirming a college's termination of an employee for violating an agency policy, thereby rendering it unnecessary to consider "other grounds asserted by the College as justification for its decision"). Therefore, the Committee's failure to uphold Respondent's termination was clearly erroneous and otherwise arbitrary, capricious, or an abuse of discretion in light of the substantial evidence in this case.

## CONCLUSION

For the reasons set forth herein, SCTCS respectfully requests that the Court grant its Motion for Rehearing, issue an Amended Order addressing the merits of the 2018 Appeal, and reverse the Committee's decision to reinstate Respondent's employment with DTC.

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Attorney for SCTCS

October 5, 2020

## Ganjehsani, Warren

**From:** Stephanie Perez <sperez@scalc.net>
**Sent:** Tuesday, March 24, 2020 9:57 AM
**To:** Shannon Polvi; Ganjehsani, Warren; Heather.Keever@admin.sc.gov
**Subject:** RE: SC Technical College System v. Carla Jackson and SC Department of Administration; Dkt No. 18-ALJ-30-0341-AP

[External Email] ***Open attachments and follow links with caution.***

Good morning,

I'm sorry for the delay in responding. The Court is not going to review the motions until after the record is filed. Also, as for the motion to supplement the record, there is no reason that the parties could not get together to discuss the contents of the record prior it being filed. If you have any questions, please let me know!

Sincerely,
Stephanie Michelle Perez
Law Clerk to Judge Ralph King Anderson, III
S.C. Administrative Law Court
803-734-6409

**From:** Shannon Polvi <Shannon@CBPHlaw.com>
**Sent:** Thursday, March 19, 2020 4:56 PM
**To:** Stephanie Perez <sperez@scalc.net>; Ganjehsani, Warren <ganjehsaniw@sctechsystem.edu>
**Cc:** Heather.Keever@admin.sc.gov
**Subject:** SC Technical College System v. Carla Jackson and SC Department of Administration; Dkt No. 18-ALJ-30-0341-AP

Good afternoon,

I called the Administrative Law Court today and spoke to Stephanie this afternoon seeking clarification of the Notice of Assignment deadlines in the above referenced matter (see attached).

The Appellant filed a Notice of Appeal contemporaneously with a Motion to File Supplemental Brief and Motion for an Order Directing the SC Department of Administration to Supplement the Record on Appeal.

Because the Notice of Appeal and the Motion were filed together and the deadlines in the Notice of Assignment do not delineate otherwise, it is my understanding that the Record on Appeal will be due first. Per the attached 3/17/20 letter from the Department of Administration, the transcript will be available after April 10, 2020. Then, after receipt of the Record on Appeal, Appellant has the Brief deadline and then the Respondents' Briefs will be due.

Because both my client and the Department of Administration are named as Respondents, I am seeking clarification of the Notice of Assignment deadlines. The Appellant's Motion is intertwined with its Notice of Appeal, so my assumption is that all substantive arguments of the appeal and motion are truly one appeal and will be briefed and heard in accordance with the Notice of Assignment and the motion and the appeal will not be heard separately or need to be separately briefed. Is that correct?



You said you would need to discuss this with Judge Anderson and be back in contact. Thank you for assisting with clarifying these complicated matters.

Sincerely,
Shannon

**Shannon Polvi**
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**THE STATE OF SOUTH CAROLINA**

**ADMINISTRATIVE LAW COURT**

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South Carolina Technical College System,

Appellant,

v.

Carla Jackson,

Respondent.

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

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**RESPONDENT'S RESPONSE IN OPPOSITION TO APPELLANT'S MOTION FOR REHEARING/RECONSIDERATION**

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## ARGUMENT[1]

### I. The Administrative Law Court ruled on all the issues on appeal.

Additional rulings from this Court are unnecessary in this case. Rule 40, SCALC, states, "[m]otions for rehearing may be allowed in the discretion of the presiding administrative law judge." Motions for reconsideration, motions for rehearing, and petitions for rehearing are analogous. See e.g. Rule 59(e), SCRCP. "[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when [it] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

Appellant relies on *Bobo v. Marshane Corp.* in its Motion for Reconsideration. *Bobo v. Marshane Corp.*, 302 S.C. 86, 394 S.E.2d 2 (Ct. App. 1990). Such reliance is misplaced. The facts and procedural history of *Bobo* and this case are converse. The sole issue on appeal in *Bobo*, "is whether the circuit court erred in affirming an order of the South Carolina Workers' Compensation Commission where the full commission, following a remand of the case to the full commission for it to state separately findings of fact and conclusions of law in accordance with Section 1–23–350 of the South Carolina Code Annotated (1976) (Rev.1986), conducted a *de novo* hearing and reversed a decision of the majority of a three-member panel denying a claimant benefits under the South Carolina Workers' Compensation Act." *Bobo*, 302 S.C. at 87, 394 S.E.2d at 3. The

[1] Respondent also craves reference to her arguments in the record on appeal, including but not limited to her prior briefing before the State Employee Grievance Committee and the Administrative Law Court in Case No. 18-ALJ-30-0341-AP.

procedural history that resulted in the appellate decision of that issue is materially different than the procedural history in this case.

In *Bobo*, the procedural history that preceded the appeal sourced from an initial decision by a single commissioner. *Id.* The commissioner awarded Betty Bobo total disability benefits due to a heart attack she allegedly suffered while working for Marshane Corporation. *Id.* Thereafter, the majority of a three-member commissioner panel reversed the single commissioner's award and denied Bobo's claim for benefits. *Id.* Bobo appealed that panel decision to the circuit court. *Id.* The circuit court remanded the decision to the full commission, not just a panel of three commissioners, for a decision. *Id.* On remand, the six-member full commission reheard the appeal from the single commissioner and, by an evenly divided vote, affirmed the single commissioner's decision awarding Bobo benefits, thereby reversing the three commissioner panel's decision denying her benefits. *Id.* The circuit court thereafter affirmed the full commission's decision. *Id.* The insurance carrier appealed that decision. *Id.*

The Court of Appeals of South Carolina held in *Bobo*, "[w]here a case that has been appealed is remanded by the court to the workers' compensation commission with specific directions, the commission must proceed in accordance with those directions." *Id.*, 302 S.C. at 88, 394 S.E.2d at 4 citing 101 C.J.S. *Workmen's Compensation* § 790 at 37 (1958). "In such a case, the order limits the authority of the commission." *Id.* Applying that principle to this case, is the remand from the Administrative Law Court to the State Employee Grievance Committee ("Committee"). *Bobo* applies to the remand because in *Bobo* the Court of Appeals found that "the full commission exceeded the authority granted it under the order of remand."

Here, the Committee did not exceed its authority in any way, and it ruled on the remand issue sent to the Committee from this Court. On March 22, 2018, the Committee issued a decision

overturning Carla Jackson's termination. On August 1, 2018, the Committee reaffirmed its decision in response to a request for reconsideration filed by Appellant. In response to Appellant's 2018 appeal, this Court issued a June 25, 2019 Order of Remand which states in part, that "the Court finds it necessary to remand this case for the Board to determine whether Jackson was an Interim Dean at the time of her termination (uncovered employee) or whether Jackson was also functioning in a covered FTE position." In accordance with this Court's remand order, this question was reviewed and decided by the Committee. On February 3, 2020, the Committee found that Carla Jackson was functioning in the covered full-time FTE position, Administrative Coordinator I, at the time of her termination.

The Committee complied with this Court's remand order, therefore, the one sentence from the *Bobo* decision that has any application to Appellant's Motion for Reconsideration is as follows, "[t]he appeal, however, remains pending in the circuit court while it awaits the commission's compliance with the order of remand." *Bobo*, 302 S.C.at 88, 394 S.E.2d at 4 (internal citations omitted). Thus, this Court should consider whether there are any unaddressed issues or errors relevant to the Appellant's position.

**A. There are no unaddressed errors by the Administrative Law Court.**

This Court received the briefing from the respective parties and thereafter ruled on the issues, both in the 2018 decision and in the 2020 decision. Accordingly, there are no issues left undecided.

**Appellant's 2018 Statement of the Issues on Appeal are as follows:**

I. The State Human Resources Director erred in forwarding Respondent's appeal of her termination to the State Employee Grievance Committee, because Respondent was not an employee covered by the State Employee Grievance Procedure Act.

A. The State Human Resources Director's determination was clearly erroneous.

B. The erroneousness of the Director's determination is evidence by the South Carolina District Court's finding that the exemption contained in S.C. Code Ann. § 8-17-370(10) applied to Respondent.

II. The State Employee Grievance Committee Lacked Subject Matter Jurisdiction to consider Respondent's appeal of her termination, because Respondent was not an employee covered by the State Employee Grievance Procedure Act.

A. Respondent's position description established that she was an academic administrator who was not a covered employee at the time of her termination.

B. Respondent's non-covered job status deprived the Committee of subject matter jurisdiction when it purported to adjudicate her grievance.

C. Since the Committee lacked subject matter jurisdiction to adjudicate Respondent's grievance, its decision to reverse Respondent's termination exceeded its statutory authority and must be vacated.

III. In the alternative, even if subject matter jurisdiction existed the State Employee Grievance Committee's decision was not supported by substantial evidence because it was based on *ultra vires* acts.

**Appellant's 2020 Statement of the Issues on Appeal are as follows:**

I. The Committee's Remand Decision was clearly erroneous and tainted by errors of law.

A. Respondent's Appeal Form established conclusively that she was an Interim Dean and was not functioning as a Coordinator.

B. The binding effect of Respondent's statements on her Appeal Form made it improper for the Committee to consider matters appearing in the Record that were purportedly inconsistent with such statements.

II. The Committee abused its discretion by failing to reach the only conclusion adequately supported by the relevant evidence, and the Committee rendered an arbitrary and capricious decision that improperly disregarded the instructions it was given in the Remand Order and the Remand Hearing.

The Court's discussion on pages 6 through 10 of the September 23, 2020 Order addressed the first and second issues in the 2018 appeal and the first issue in the 2020 appeal. The Court addressed subject matter jurisdiction on pages 11 and 12 of the September 23, 2020 Order thereby also again ruling on the second issue in the 2018 appeal. The Court's discussion on pages 10 through 11

addressed the second issue in the 2020 appeal and the third issue in the 2018 appeal. Thus, the Court's Orders on June 25, 2019 and September 23, 2020 issued decisions on each of the Appellant's issues on appeal.

## II. The State Employee Grievance Committee's decision should be upheld.

Respondent is entitled to the relief granted by the Committee. The hearing of Ms. Jackson's grievance before the Committee spanned four days on November 28, 2017, February 1-2, 2018, and March 2, 2018. Thereafter, the Committee found that Ms. Jackson established that the College's decision prejudiced her substantial rights and met one or more of the elements contained in S.C. Code Ann. § 8-17-340(E)(2). Given the totality of the circumstances presented and the evidence provided, the Committee correctly found that Appellant's decision to terminate Respondent is unsupported and granted Ms. Jackson the relief permitted by the State Employee Grievance Procedure Act.

Pursuant to S.C. Code Ann. § 1-23-380(5), this Court should uphold the Committee's decision. Appellant, as the party challenging the Committee's decision, has the burden of proving convincingly that the Committee's decision is unsupported by substantial evidence and reversable under one of the S.C. Code Ann. § 1-23-380(5)(a-f). See *Waters v. S.C. Land Rs. Conservation Comm'n*, 312 S.C. 219, 467 S.E.2d 913 (1996). Substantial evidence is not a mere scintilla of evidence nor the evidence 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 agency. *Friends of the Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 692 S.E.2d 910 (2010). 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, 466 S.E.2d 357 (1996). Appellant cannot show that the State Employee Grievance Committee's decision was

reversible. The Committee's Decision passes all permissible scrutiny under S.C. Code Ann. § 1-23-380(5).

Respondent reiterates that the evidence has continuously shown that the College prejudiced Ms. Jackson's substantial rights and that she met one or more of the required elements for the reversal of the College's termination of her employment. Ms. Jackson was an employee of Denmark Technical College from January of 2011 until her termination on May 11, 2017. During Ms. Jackson's employment at the College, she served as the Administrative Coordinator in the President's Office, Interim Dean of Transitional Studies/ Distance Education, and Interim Dean of Business, Computer, and Related Technologies. Ms. Jackson also taught courses as an Adjunct Professor, and she also performed the duties of Executive Assistance to the College Board. Contrary to Appellant's arguments in the record and in its October 5, 2020 Motion for Reconsideration, Ms. Jackson did not improperly use her position for financial gain.

Ms. Jackson appealed her termination pursuant to S.C. Code Ann § 8-17-340(E)(2)(a), (b), (c), (d), (e), and (f) as the facts and circumstances leading to Ms. Jackson's termination are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in the view of the reliable, probative and substantial evidence on the whole record; and arbitrary and capricious and characterized by an abuse of discretion and clearly an unwarranted exercise of discretion. As reflected by the Findings of Fact in the Final Decision, the Committee heard from several witnesses and reviewed a series of documents supplied by Ms. Jackson and the College in support of their respective arguments.

At the State Employee Grievance Hearing, Ms. Jackson argued that the facts and circumstances leading to her termination are in violation of constitutional or statutory provisions.

Ms. Jackson argued that she was denied due process on the basis that the agency failed to provide Ms. Jackson any notice for the grounds of a suspension that they termed an "investigatory suspension". [R. 666]. Ms. Jackson was never given grounds for such "investigatory suspension" in writing. Ms. Jackson's suspension letter simply said that Ms. Jackson was placed on an investigatory suspension without pay effective immediately for allegations surrounding her alleged involvement in improper conduct with regard to college operations. Yet, Ms. Jackson received no explanation beyond that vague phrase alleging "involvement in improper conduct with regard to college operations". [Id.]. The total lack of information given to Ms. Jackson deprived Ms. Jackson of an opportunity to defend herself and to rebut the allegations of "involvement in improper conduct with regard to college operations". [Id.].

Ms. Jackson participated in every grievance meeting in which she was given an opportunity to attend. [*See* R. pp. 599-670]. The College deliberately manipulated Ms. Jackson's suspension and grievance process by: failing to provide her with the specific charges made against her; failing to allow her to confront her witnesses and accusers; by pre-judging her grievance; and by failing to allow her a fair and impartial avenue of redress, including the finders of fact who were not themselves tainted in the process. [*Id.*].

Ms. Jackson was terminated from employment for "willful violation of rules, regulations and written policies, which constitute conduct unbecoming a state employee." [R. p. 621]. Ms. Jackson argued that such grounds are unfounded, and Ms. Jackson was not given documentation supporting the accusations against her. [See R. pp. 228-575]. Ms. Jackson did not violate any rules, regulations, or written policies. [Id.]. Contrary to Appellant's *ultra vires* act arguments (see Appellant's Motion for Reconsideration pp. 14-21), the record before the Committee and this Court is clear that the termination is unsupported and violates Ms. Jackson's rights.

The first alleged ground for Ms. Jackson's termination relates to tuition reimbursement she received. [R. p. 621]. Ms. Jackson proved that her receipt of tuition reimbursement payments years ago was proper, was approved, and the documentation reflects her completion of her application, degree, and reimbursement with approval of the required necessary approvers. [*See* R. pp. 865-867; R. pp. 869-911]. That the College argues that such matters were grounds to terminate her employment is ridiculous, and Ms. Jackson proved such matters through the testimony of the witnesses and the documentation presented to the Committee. [See R. pp. 6-14; see also R. pp. 228-575]. Ms. Jackson expressly articulated that she applied for tuition reimbursement and was granted tuition reimbursement. [R. pp. 442-507].

Appellant focuses much of its October 5, 2020 Motion for Consideration on ethics. That facts in the record before the Committee prove that Ms. Jackson was an employee of the College when she applied for and received tuition reimbursement, and Ms. Jackson's education was directly related to her employment with the College as clearly evidenced by her positions as an Interim Dean of the College since October 2015, as an adjunct instructor for multiple years, and continuously as Administrative Coordinator. Ms. Jackson's receipt of reimbursements was proper and was for the completion of her degree as required for reimbursement. [See R. pp. 442-507]. The documents reviewed during the hearing clearly show that the documentation and numbers line up and support the conclusion that Ms. Jackson did nothing wrong. [Id.]. Ms. Jackson did nothing wrong in such actions to apply for and to receive tuition reimbursement as Ms. Jackson applied for and was approved for tuition reimbursement by the following department heads: Director of Grants/Contracts, VP of Finance, and the College Presidents. [Id.; see also R. pp. 6-14].

Ms. Jackson proved to the Committee that the second alleged ground to terminate her is equally preposterous. [Id.]. The second claim in Ms. Jackson's termination notice stated, "in your

role as Administrative Coordinator I (to the President), you received pay increases, which were approved using the President's stamp, but had no supporting documentation. Your conduct in this matter violated all reasonable controls in our system and, I believe, violated the South Carolina Ethics Act which prohibits a public employee from using his/her position for personal gain." [R. p. 621]. Ms. Jackson confirmed at the hearing, as she had previously done at her suspension grievance hearing, when asked about the President's stamp, Ms. Jackson expressly denied that she ever used the President's stamp on any of her own personnel documents. This was confirmed by the President of the College during his testimony at the hearing. [R. pp. 376-413].

The Committee heard for themselves that Ms. Jackson was paid for duties that she performed, that she was actually underpaid for such duties in that paying her to do an Interim role was cheaper for the College than hiring a permanent Dean at a higher salary, and that all pay adjustments for additional duties given to Ms. Jackson were properly approved by the supervisors above Ms. Jackson. [R. p. 382]. Ms. Jackson had no part in paying herself. [See i.e. R. pp. 382-384].

Ms. Jackson expressly informed College representatives that the President's stamp is used by each of the recent sitting Presidents of Denmark Technical College and is used for high volume documentation and at the express instruction of the sitting President. [R. pp. 297-314]. Ms. Jackson expressly informed the Agency representatives that she used the President's stamp at the instruction of the former President of Denmark Technical College and the stamp was never used on her own documentation. [Id.]. Ms. Jackson never used the stamp for personal gain. [Id.; see also R. pp. 451-454]. Further, Ms. Jackson testified, and the evidence showed, that she did not receive a pay increase; she received supplemental pay when she performed additional duties. Any

and all supplements in Ms. Jackson's pay were expressly authorized by the supervisory chain above Ms. Jackson and by Human Resources.

The College's arguments fail, and the Committee properly determined that Ms. Jackson was wrongfully terminated. [R. pp. 6-14]. Ms. Jackson did not claim that a stamp was never used on her own documents. [R. p. 452]. In fact, Ms. Jackson testified that "she" never used a stamp on her own documents. [Id.]. Ms. Jackson would have no personal knowledge of anyone else's actions with regard to the stamp. [Id.]. The issue of whether or not a stamp was used to approve Ms. Jackson's supplemental pay is moot as Dr. McIntyre testified at the hearing that he authorized and approved all of Ms. Jackson's personnel documents and pay. [R. pp. 376-413]. Dr. McIntyre testified that he used the stamp on documents. [Id.]. Dr. McIntyre testified that he did not have any written procedure in place for the use of the stamp. [Id.]. The College failed to prove or show that there is a policy or procedure that requires, enforces, or have made deem necessary for all presidents or administrators to have a stamp procedure. [R. pp. 6-14]. The stamp was clearly a common practice by the College President's and to question the use of a hand-written signature or a stamped signature on an approved document is unlawfully punitive to Ms. Jackson's employment when there is incontrovertible evidence that Ms. Jackson's supplemental pay was approved by supervisors, not approved by herself, and was received for duties performed.

The College accused Ms. Jackson of allegedly improperly receiving tuition reimbursement and allegedly stamping her own pay increases documentation. [R. p. 621]. Both accusations factually date back several years and are untimely grounds to terminate Ms. Jackson and such allegations were wholeheartedly denied and the evidence supported Ms. Jackson's account that she had done nothing wrong in receiving supervisory approved tuition reimbursement and supervisory approved supplemental pay.

Ms. Jackson's suspension that culminated in her termination was her first such reprimand and Ms. Jackson showed that the action taken against her violated the Agency's progressive discipline policy. [R. p. 463].

The Committee heard testimony from Mr. Williams, the former Board Chair. [R. pp. 326-372]. Mr. Williams testified that he asked and requested for Dr. Hall, the Interim College President and Ms. Jackson's supervisor at the time, to provide the Board with evidence to substantiate the decision to take disciplinary actions against Ms. Jackson. [Id.]. Mr. Williams also testified that Dr. Hall could not produce any evidence supporting the action taken against Ms. Jackson and Dr. Hall indicated to Mr. Williams that he did not have any evidence against Ms. Jackson. [Id.]. Mr. Williams testified that Dr. Hall stated that he was following the instructions of SCBTE President, Dr. Hardee. [Id.]. The College's own rebuttal witness to Mr. Williams' testimony, Ms. Bright, also testified that she did not know why the action was taken against Ms. Jackson. [R. pp. 526-532].

The Committee did not even hear from the decision maker, Dr. Hall, the Interim President of Denmark Technical College. Dr. Hall was only at the College campus for about 10 days prior to him suspending Ms. Jackson. Comparatively, the Committee did hear from Dr. McIntrye, the President of Denmark Technical College during the timeframe relevant to the College's allegations against Ms. Jackson. Dr. McIntyre affirmed to the Committee that these grounds the College brought against Ms. Jackson are baseless.

Oddly, the College seemingly admitted to a violation of State Board policies and procedure in its prior Motion for Reconsideration; which further shows that Ms. Jackson is not at fault for the things charged as a basis for her termination. [See R. pp. 45-55]. If the College has a different interpretation of the policies and procedures enforced by SCBTE, then it is the SCBTE's duty and responsibility to ensure that the College Administrators are carrying them out properly. The

employees cannot supersede the President's decisions, nor can Ms. Jackson be held accountable for the Administrators' error, if any.

Moreover, the prior Motion for Reconsideration argued that there was weakness in practices established by Dr. McIntyre, Mr. Williams, and also Dr. Boyd-Scotland, who worked at the College for at least 17 years with the same practices, yet the SCBTE never addressed any such alleged violations. [See R. pp. 45-55]. The evidence before the Committee showed that the College's own witness at the hearing, Jamie Wise, also received tuition assistance, was still employed with the College. [R. pp. 539-563].

The Committee did not err in its decision as the College was on notice about Ms. Jackson's transfer courses. Ms. Jackson's application and program of study clearly included and identified the courses she would complete. Therefore, the College was made aware of and approved Ms. Jackson's completed courses. Ms. Jackson used tuition assistance for a program that was related to her position, per Dr. McIntyre and Dr. Drammeh's testimonies; both of whom were in the supervisory chain above Ms. Jackson. Ms. Jackson's tuition assistance application included the details of her job positions and rationale for applying. Ms. Jackson's application was approved by Teresa Mack, the Director of Grants and Contracts and the College President, Dr. Boyd-Scotland, who also supervised Ms. Jackson.

The College has argued that Ms. Jackson knowingly, willfully, and intentionally applied for and received 100% reimbursement when the policy only allows 85% maximum. In fact, the Title III Funds policy (page 2, section 6) indicates otherwise. It states "[s]hould employee elect the more costly courses, he/she will need to negotiate an agreement or contract for the Title III Program to defray no less than 75% and no more than 85% of the total cost of courses." Ms. Jackson's courses costs were comparable to other institutions and/or enrolled in exact institutions

other employees attended and received tuition reimbursement, such as Jamie Wise. Seemingly, like the College's other arguments, Appellant is making an argument that has no basis.

No evidence was shown that the College has ever been cited or rebuked for violating or misinterpreting its tuition assistance polices. Yet, out of all employees that received tuitions assistance under these common practices, seemingly only Ms. Jackson has been accused of violating the tuition assistance policies and procedures. This, yet again, reinforces that targeted and arbitrary nature of the College's actions toward Ms. Jackson and validates that no ethical violations occurred. The Committee properly found that the College's decision prejudiced Ms. Jackson's substantial rights and met one or more of the elements contained in S.C. Code Ann. § 8-17-340(E)(2). [R. pp. 6-14]. Thus, the Committee's decision in Ms. Jackson's favor should be upheld.

## CONCLUSION

For the foregoing reasons and those argued earlier in the record before this Court, Respondent Carla Jackson asks this Court to maintain its prior ruling upholding the Decision of the State Employee Grievance Committee.

Respectfully submitted,

**CROMER BABB PORTER & HICKS, LLC**

BY:_____

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October 29, 2020
Columbia, South Carolina

**THE STATE OF SOUTH CAROLINA**

**ADMINISTRATIVE LAW COURT**

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The Honorable Ralph King Anderson, III, Chief Administrative Law Judge

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**Case No. 20-ALJ-30-0064-AP**

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South Carolina Technical College System (SCTCS),

Appellant,

vs.

Carla Jackson,

Respondent.

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**RECORD ON APPEAL**
**VOLUME 1 of 1**

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admin
THE SOUTH CAROLINA
DEPARTMENT *of* ADMINISTRATION

Henry McMaster, *Governor*
Marcia S. Adams, *Executive Director*

DIVISION *of* STATE HUMAN RESOURCES
Kim Aydlette, Director
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March 22, 2018

CERTIFIED MAIL

Ms. Shannon Polvi
Cromer Babb Porter & Hicks
P.O. Box 11675
Columbia, South Carolina 29211

Re: Carla Jackson v. S.C. Technical College System (SCTCS)

Dear Ms. Polvi:

In accordance with the State Employee Grievance Procedure Act, you are hereby advised of the final decision of Ms. Carla Jackson's appeal against SCTCS to the State Employee Grievance Committee. Pursuant to the Act, within twenty calendar days of the conclusion of the hearing, the State Employee Grievance Committee shall render its decision on the appeal. The Committee's decision is enclosed for your file.

Please advise us if you have any questions.

Sincerely,

Kim Aydlette
Director

Enclosure

c: Dr. Tim Hardee
Mr. Charles Boykin

admin
THE SOUTH CAROLINA
DEPARTMENT *of* ADMINISTRATION

Henry McMaster, *Governor*
Marcia S. Adams, *Executive Director*

DIVISION *of* STATE HUMAN RESOURCES
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March 22, 2018

CERTIFIED MAIL

Dr. Tim Hardee, President
SC Technical College System
111 Executive Center Drive, Enoree Building
Columbia, South Carolina 29210

Re: Carla Jackson v. S.C. Technical College System (SCTCS)

Dear Dr. Hardee:

In accordance with the State Employee Grievance Procedure Act, you are hereby advised of the final decision on the appeal of Carla Jackson v. SCTCS to the State Employee Grievance Committee. Pursuant to the Act, within twenty calendar days of the conclusion of the hearing, the State Employee Grievance Committee shall render its decision on the appeal. A copy of our letter to Ms. Jackson's attorney, Ms. Shannon Polvi, and the Committee's decision are enclosed for your file.

Please advise us if you have any questions.

Sincerely,

Kim Aydlette
Director

Enclosures

c: Mr. Charles Boykin

**State Employee Grievance Committee**

Final Decision

APPELLANT'S NAME: Carla Jackson
JOB CLASSIFICATION: Administrative Coordinator I
AGENCY: S.C. Technical College System
DATE OF HEARING: November 28, 2017, Feb. 1-2, 2018, March 2, 2018
NATURE OF CASE: Termination

FINDINGS AND RECOMMENDATIONS

Based on documentary evidence and testimony presented at the hearing of Carla Jackson v. South Carolina Technical College System (SCTCS) held in Columbia, South Carolina, on the following dates: November 28, 2017, February 1-2, 2018, and March 2, 2018, the State Employee Grievance Committee (Committee) finds:

FINDINGS OF FACT

1. Ms. Carla Jackson (Appellant) began her employment with the Denmark Technical College (DTC) on January 4, 2011, as an Administrative Coordinator I to assist DTC's President. (Committee Exhibit #1, pp. 7-10.)

2. Appellant received an acceptance letter from American InterContinental University Online (AIUO) dated September 29, 2013. (Committee Exhibit #1, p. 142) Appellant then submitted a "Request for Professional Development Assistance" [1] on October 1, 2013, to then DTC President and Appellant's immediate supervisor, Dr. Joann Boyd-Scotland (President Boyd-Scotland) for $27,936.00. Appellant's application was approved by Ms. Tarshura Mack (Ms. Mack), Title III Director, and President Boyd-Scotland. (Committee Exhibit #1, pp. 148-151.)

3. On February 1, 2015, Appellant received a pay increase for assuming additional duties as the Assistant to the Area Commissioners, which is the Governing Board for DTC. (Committee Exhibit #1, pp. 97-98.)

4. In March of 2015, Appellant received her Master's Degree in Business Administration from AIUO. (Agency Exhibit #5.)

[1] Also referred to as "tuition assistance" or "tuition reimbursement" in the record and during testimony.

5. Effective May 18, 2015 to June 30, 2015, in addition to her Administrative Coordinator I position, Appellant was hired as an instructor to teach a Professional Development (AOT 133-28) course. (Committee Exhibit #1, p. 100)

6. On September 14, 2015, in addition to her Administrative Coordinator I position, Appellant was hired as a temporary faculty member to teach two courses, Keyboarding (AOT 105-27) and Professional Development (AOT 133-27) within the Business, Computers and Related Technologies Department at DTC. Appellant's commitment would be eight (8) hours per week from September 14, 2015, through December 9, 2015, with a total compensation of $3,000. According to the "Request for Adjunct Faculty" form, this action was approved by Ms. Tia Wright-Richards (Ms. Wright-Richards), Dean of Business, Computers, and Related Technologies; Dr. Valerie Fields (Dr. Fields), V.P. for Academic Affairs; Ms. Alfredia Boyd (Ms. Boyd), DTC Director of Human Resources; Mr. Ram'on Wideman (Mr. Wideman), V.P. for Fiscal Affairs; and then President of DTC, Dr. Leonard McIntyre (President McIntyre). (Committee Exhibit #1, pp. 101 & 102.)

7. On September 15, 2015, Appellant was informed via a letter from President McIntyre that she would receive a temporary salary adjustment effective October 1, 2015, for serving as Interim Dean of Transitional Studies. According to the "DTC Departmental Request for Personnel/Payroll Action Form," this action was requested and authorized by Ms. Mack. Other authorizing signatures on the form include Mr. Wideman, Ms. Boyd, and President McIntyre. (Committee Exhibit #1, pp. 103-105.)

8. Effective September 21, 2015 to October 31, 2015, in addition to Interim Dean of Transitional Studies, Appellant was hired as a Workshop Facilitator with a pay rate of $50 per hour. (Committee Exhibit #1, p. 104.)

9. On February 25, 2016, Ms. Wright-Richards requested via letter that Appellant be hired as a temporary faculty member to teach a course, BUS 101-27 - Introduction to Business, in the Business, Computers, and Related Technologies Department. The effective dates of employment for Appellant concerning this course were March 7, 2016, through May 7, 2016. The total commitment for Appellant was 6.2 hours per week with a total compensation of $1,500. According to this letter, Ms. Wright-Richards's request for Appellant to teach the course was approved by Dr. Fields, Mr. Wideman, and President McIntyre. (Committee Exhibit #1, p. 99.)

10. Effective October 3, 2016, Appellant was named Interim Dean of the Business, Computers and Related Technologies Department at DTC. According to the "DTC Departmental Request for Personnel/Action Form,"

this action was requested by Ms. Wright-Richards, who was the Interim V.P. of Academic Affairs at the time of this request. According to this form, the action was authorized by Ms. Wright-Richards, Mr. Wideman, Dr. Lamin Drammeh (Dr. Drammeh), Vice President for IRPD and Special Assistant to the President, and President McIntyre. (Committee Exhibit #1, p. 238.)

11. In May of 2016, SCTCS received complaints concerning alleged incidents of mismanagement and abuse activities taking place at the highest levels of DTC. Subsequently, on January 30, 2017, DTC's Area Commissioners voted to end its employment relationship with President McIntyre. (Committee Exhibit #1, p. 7.)

12. According to SCTCS, Appellant was the focal point of many of the allegations received; therefore, effective February 15, 2017, Appellant was suspended pending the conclusion of an investigation. (Committee Exhibit #1, pp. 2 & 23.)

13. By letter dated May 11, 2017, Dr. Christopher Hall (Dr. Hall), DTC's Interim President, sent a letter to Appellant dated May 11, 2017, which terminated Appellant's employment retroactively effective the first day of her suspension, February 15, 2017. According to the termination letter, Appellant was terminated for:

    - "willful violation of rules, regulations, and written policies, which constitute conduct unbecoming a state employee;"
    - her receipt of tuition payments in the amount of $26,000 for an educational 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;
    - her 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.

    (Committee Exhibit #1, p. 23.)

14. According to Dr. Drammeh's testimony, he was aware that Appellant was pursuing her Master's Degree and it was his opinion her degree was relevant to her position would benefit DTC. Dr. Drammeh also testified that DTC employees could not give themselves pay increases because the employee's supervisor would have to initiate the process. In addition, other departments within DTC would also have to authorize the pay increase. Regarding Appellant's use of President McIntyre's signature stamp, Dr. Drammeh

testified that he had knowledge of President McIntyre giving Appellant the authority to use his signature stamp on documents.

15. Mr. Thomas Williams (Mr. Williams), Chairman of the Board for the DTC Area Commissioners at the time of the Appellant's termination, confirmed that Presidents generally authorized certain people to use the President's signature stamp. Mr. Williams also stated that normally, this authorization would be reserved for one or two people in the President's office.

16. President McIntyre testified that he was DTC's President from March 2014 through January 31, 2017. President McIntyre also testified that he approved Appellant to use his signature stamp. President McIntyre also stated that he authorized each of Appellant's pay increases. (Committee Exhibit #1, pp. 97-106.) In addition, President McIntyre stated that the degree Appellant was seeking would benefit DTC and that it was appropriate for her to receive tuition assistance. President McIntyre further stated that the cost of her degree was a normal amount for tuition assistance. Dr. McIntyre indicated that the tuition assistance program was funded from a United States Department of Education Title III grant. Dr. McIntyre further testified that a DTC employee would be unable to give themselves a pay increase due to the "checks and balances of the institution."

17. Appellant testified that receiving tuition assistance from DTC was normal for staff and the Administration of DTC would make staff aware of the resource. During her testimony, Appellant indicated that the purpose for furthering her education was to enhance her skills in management. Appellant testified that she was not aware of anyone ever being disciplined for receiving tuition assistance. Appellant further testified that, during the time she was receiving tuition assistance, there were approximately four audits that occurred and nothing was ever indicated as being improper. She also testified that President McIntyre had given her, as well as three others, authorization to use his signature stamp. Appellant testified that it is not possible for her to give herself a pay increase. Further, Appellant testified that all documentation of the pay increases she received while employed at DTC were never initiated by her.

18. Ms. Jamie Wise (Ms. Wise), Business Manager at DTC, testified that she was in charge of tuition reimbursement payments at DTC. Ms. Wise also testified that she applied for and received tuition assistance while employed at DTC. Ms. Wise testified she was never disciplined for reasons related to her tuition assistance application. In addition, she was not aware of any other DTC employee being disciplined for reasons related to tuition assistance. Ms. Wise testified that her application for tuition assistance (Appellant Exhibit #1) was substantially similar to Appellant's application for tuition assistance as indicated in the record. (Committee Exhibit #1, pp.

148-151.) Ms. Wise further testified that her application for tuition assistance was approved by her immediate supervisor, the Title III Director, and the DTC President. (Appellant Exhibit #1)

19. The records submitted by SCTCS reflect a notice from AIUO regarding Appellant's tuition and fee schedule for a "Master of Business Administration: Management" degree. The notice indicates, effective January 7, 2013, the total cost for the degree was $27,936.00 or $582.00 per credit hour. The notice states in part: "[p]lease note that costs listed are based upon standard program length. Actual program length and costs may vary due to transferred credit and/or repeated classes. The order in which classes are scheduled may vary by student. Please note that all of the following information is being provided strictly for use by employers that require such information to administer employer reimbursement programs for AIU Online students." The courses listed in the notice for AIUO's "Master of Business Administration: Management" degree include: MGT600, MKT640, FIN630, BUS610, MGT615, MGT625, MGT656, and MGT680. (Committee Exhibit #1, p. 143.) According to her AIUO transcript, Appellant transferred credits from Springfield College for courses MGT600 and MGT680. (Agency Exhibit #5.)

20. SCTCS contends that Appellant's Master's degree in Business Administration was not necessary for her position at DTC and she should not have received tuition reimbursement. SCTCS also contends that Appellant gained a personal advantage from her position by using the President's signature stamp for several of the documents in her personnel file related to her pay increase and salary adjustments. SCTCS further contends that there is a lack of supporting documentation to accompany Appellant's pay increase and salary adjustments. SCTCS contends that Appellant personally benefited from the salary adjustments and tuition reimbursements and violated the State Ethics Act. Therefore, SCTCS contends that Appellant was terminated for "willful violation of rules, regulations, and written policies, which constitute conduct unbecoming a state employee." (Committee Exhibit #1, pp. 8-10)

21. Appellant contends that President Boyd-Scotland approved her "Request for Professional Development Assistance" and that her education was directly related to her employment with DTC because of her positions as Interim Dean, Adjunct Instructor, and as Administrative Coordinator. Appellant contends that she used the President's signature stamp at the instruction of President McIntyre and denies that she ever used the stamp on her own personnel documents. Appellant also contends that any supplements in her pay were expressly authorized by the supervisory chain above her and by DTC Human Resources. Appellant also contends that there was no ethical violation because she was receiving salary adjustments based upon the

duties she was performing. Therefore, Appellant contends that she did not violate any rules, regulations, or written policies. (Committee Exhibit #1, pp 1-3.)

22. SCTCS's Procedure 8-5-100.1 "Disciplinary Action," lists the offenses of "Willful Violation of Written Rules, Regulations or Written Policies" and "Improper Conduct or Conduct Unbecoming a State Employee." The Procedure states in part that: "[a]t the time of the occurrence of any of the listed offenses, or any not listed, the appropriate discipline shall be determined after the particular circumstances of the case have been considered." (Committee Exhibit #1, pp. 179-186.)

23. SCTCS's Procedure 8-0-105.01, Ethics Requirements for Employees and Public Officials, states, in part, "[t]he rules of conduct...prohibit employees from using their official position or office to obtain an economic interest for the employee...." The legal authority for this Procedure is based on the State Ethics Act, which states in part that, "public employment is a public trust...." (Committee Exhibit #1, p. 168.)

The State Employee Grievance Procedure Act (Grievance Act) creates the Grievance Committee as a quasi-judicial review body that conducts hearings of certain specified state employee grievance appeals. S.C. Code Ann. § 8-17-340 (1976). In addition, the Grievance Act provides the following:

(E) The committee may sustain, reject, or modify a grievance hearing decision of an agency as follows:

(1) In cases involving actual or threatened abuse, neglect, or exploitation, to include those terms as they may be defined in § 43-35-10 or 20-7-490, of a patient, client, or inmate by an employee, the agency's decision must be given greater deference and may not be altered or overruled by the committee, unless the covered employee establishes that:

(a) The agency's finding that the covered employee abused, neglected, or exploited or threatened to abuse, neglect, or exploit a patient, client, or inmate is clearly erroneous in view of reliable, probative, and substantial evidence;

(b) The agency's disciplinary action was not within its established personnel policies, procedures, and regulations; or

(c) The agency's action was arbitrary and capricious.

(2) In all other cases, the committee may not alter or overrule an agency's decision, unless the covered employee establishes that the agency's decision is one or more of the following and prejudices substantial rights of the covered employee:
(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 discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 8-17-340(E).

This case is governed by § 8-17-340(E)(2), which establishes that Appellant has the burden of proof to demonstrate that the decision to terminate her was wrong for the reasons articulated.

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

SCTCS argued that Appellant's pursuit of a Master's degree in Business Administration was not necessary for her current job at DTC and she should not have received tuition reimbursement. The record shows that the former DTC President Boyd-Scotland, the Title III Director, and Appellant's immediate supervisor at the time, all approved Appellant's request for tuition assistance. The Committee believes that since President Boyd-Scotland approved Appellant's request for tuition assistance, Appellant's Master's Degree must have been relevant to her position at DTC. Moreover, President McIntyre and Dr. Drammeh both testified that Appellant's Master's degree was relevant to her position. In addition, the Committee noted that Ms. Wise's testimony regarding her tuition assistance application and approval process was very similar to Appellant's testimony regarding her tuition assistance application and approval process. Moreover, Ms. Wise's completed Request for Professional Development Assistance form has the

same authorizing signatures (DTC President, Title III Director, and immediate supervisor) as Appellant's request. Because of these signatures on the form, the Committee concludes that if the approving authorities at DTC believed that Appellant's Master of Business Administration degree was not relevant to her job, they would not have approved Appellant's request for tuition assistance.

SCTCS also contends that Appellant should not have been reimbursed for her transfer credits from Springfield College that counted towards her AIUO Master of Business Administration degree. The Committee notes that SCTCS submitted Appellant's transcript from AIUO and AIUO's notice regarding its tuition and fee schedule. The Committee believes that this information put DTC on notice regarding the possibility of Appellant's transfer credits being accepted towards her degree at AIUO and, that it was DTC's responsibility to assess if it would reimburse Appellant for her transfer credits. The Committee finds DTC should have been aware of the transfer credits from Springfield College to AIUO based on her transcript and Appellant's reimbursement for the entire cost of her degree. Therefore, the Committee finds SCTCS's argument not persuasive.

SCTCS contends that Appellant used the President's signature stamp on her own personnel documents to give herself pay increases. President McIntyre however, testified that he authorized all of Appellant's salary adjustments. Since President McIntyre confirmed that he authorized all of Appellant's personnel actions contained in the record, the Committee concludes that Appellant did not misuse President McIntyre's signature stamp to give herself pay increases. SCTCS did not provide any written procedures regarding how salary requests are processed and authorized at DTC. The Committee relied on the testimony of other DTC employees with knowledge of the approval process. The Committee also relied on Dr. Drammeh's and President McIntyre's testimony, which it deemed to be credible, that DTC employees could not give themselves salary adjustments based on the approval process for personnel actions at DTC. The Committee noted that DTC personnel forms required several individuals to review and authorize any salary adjustments. The Committee believes that the appropriate process was followed in this instance since the required signatures are present on the forms or letters.

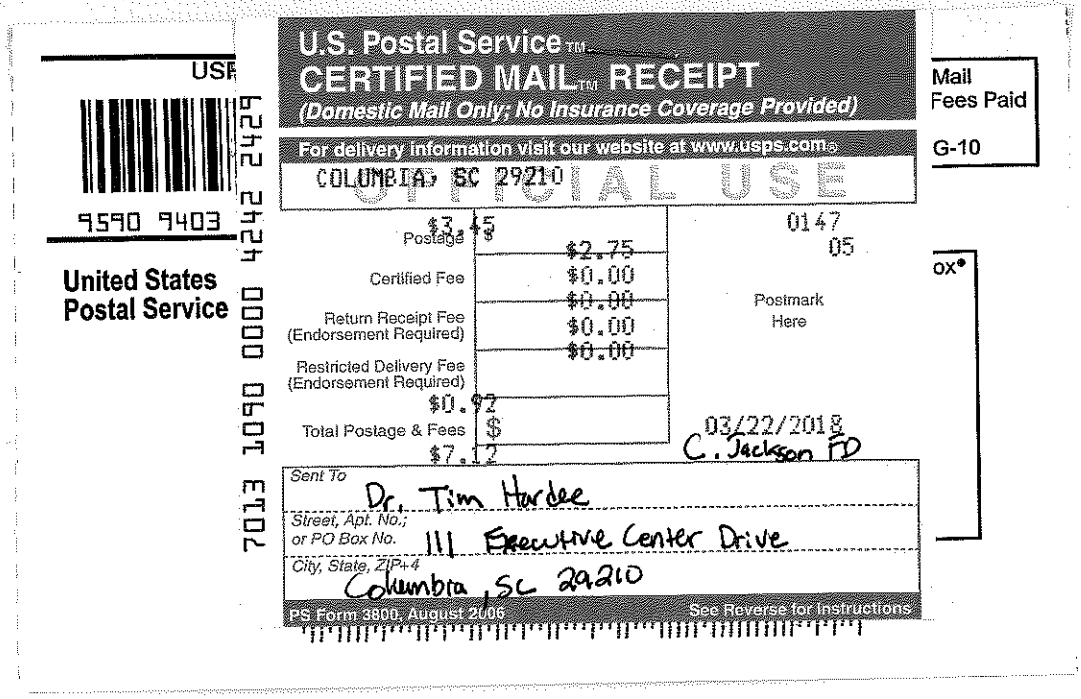
The Committee did not find that Appellant violated any rules or regulations concerning her salary adjustments or tuition reimbursements, therefore, the Committee finds Appellant was not unethical in these matters.

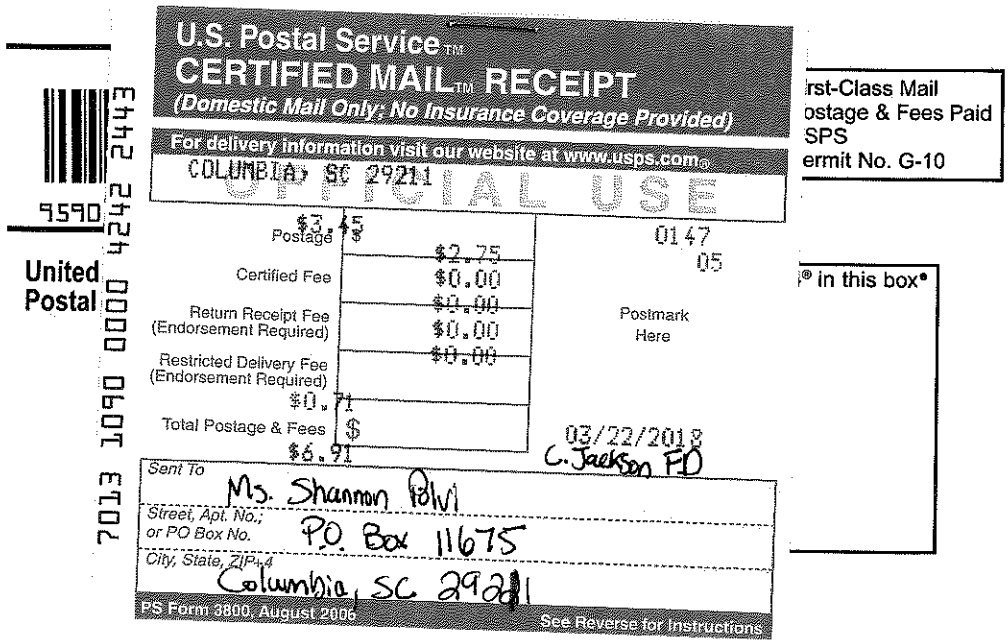
Given the totality of the circumstances presented and the evidence provided, the Committee finds that SCTCS's decision to terminate Appellant is unsupported.

## DECISION

The Committee finds Appellant established that SCTCS's decision prejudiced her substantial rights and met one or more of the elements contained in S.C. Code Ann. 8-17-340(E)(2). Therefore, the Committee rejects the decision to terminate Appellant and grants the relief permitted by the Grievance Act.

For the Committee _____ Date: 3/22/18


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United States Postal Service
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U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com®
COLUMBIA SC 29210
OFFICIAL USE
Postage $3.45
Certified Fee $2.75 $0.00
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Total Postage & Fees $7.12
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03/22/2018
C. Jackson FD
Sent To Dr. Tim Hardee
Street, Apt. No.; or PO Box No. 111 Executive Center Drive
City, State, ZIP+4 Columbia, SC 29210
PS Form 3800, August 2006
See Reverse for Instructions
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U.S. Postal Service™
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For delivery information visit our website at www.usps.com®
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Postage $3.45
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Total Postage & Fees $6.71
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C. Jackson FD
Sent To Ms. Shannon Polvi
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**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits. C. Jackson FD

1. Article Addressed to:

Dr. Tim Hardee, President
S.C. State Technical College System
111 Executive Center Dr., Enoree Building
Columbia, SC 29210

9590 9403 0916 5223 7557 43

2. Article Number *(Transfer from service label)*

7013 1090 0000 4242 2429

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* [illegible] C. Date of Delivery 3-23

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RECEIVED
MAR 26 2018
DIVISION OF HUMAN RESOURCES

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
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- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits. C. Jackson FD

1. Article Addressed to:

Ms. Shannon Polvi
Cromer Babb Porter & Hicks
P.O. Box 11675
Columbia, SC 29211

9590 9403 0916 5223 7557 29

2. Article Number *(Transfer from service label)*

7013 1090 0000 4242 2443

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X [signature] ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* Iris Ray C. Date of Delivery 3-26-18

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RECEIVED
MAR 28 2018
DIVISION OF STATE HUMAN RESOURCES

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
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- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

admin
THE SOUTH CAROLINA
DEPARTMENT *of* ADMINISTRATION

**Henry McMaster**, *Governor*
**Marcia S. Adams**, *Executive Director*

**DIVISION *of* STATE HUMAN RESOURCES**
Karen Luchka Wingo, Director
8301 Parklane Road, Suite A220
Columbia, SC 29223
803.896.5300
803.896.5050 Fax

August 1, 2018

**CERTIFIED MAIL**

Mr. Charles Boykin, Esquire
S.C. Technical College System
111 Executive Center Drive
Columbia, South Carolina 29210

Ms. Shannon Polvi
Cromer Babb Porter & Hicks
P.O. Box 11675
Columbia, South Carolina 29211

Re: Carla Jackson v. S.C. Technical College System (SCTCS)

Dear Mr. Boykin and Ms. Polvi:

In accordance with the State Employee Grievance Procedure Act, you are hereby advised of the reconsideration decision on the appeal of Carla Jackson v. SCTCS to the State Employee Grievance Committee. The Committee's decision is enclosed for your file.

Please advise us if you have any questions.

Sincerely,

Karen Luchka Wingo
Director

c: Dr. Tim Hardee

# State Employee Grievance Committee

Reconsideration Decision

APPELLANT'S NAME: Carla Jackson
JOB CLASSIFICATION: Administrative Coordinator I
AGENCY: S.C. Technical College System
DATE OF RECONSIDERATION: July 9, 2018
NATURE OF CASE: Termination

On March 22, 2018, the State Employee Grievance Committee (Committee) issued a written decision on the termination appeal of Carla Jackson (Appellant) v. S.C. Technical College System (Respondent). Subsequently, the Committee received, and has reviewed a Request for Reconsideration from Respondent dated April 19, 2018, pursuant to S.C. CODE ANN. § 8-17-340 (F). The Committee also reviewed Appellant's response received dated April 27, 2018, through her attorney, Ms. Shannon M. Polvi. The Committee reconvened on July 9, 2018, to consider the Request for Reconsideration from Respondent and Appellant's response. Following deliberations, the Committee decided to uphold its original decision.

**In its Request for Reconsideration, Respondent contends the following:**

"I. As an initial matter, the Committee's decision improperly views the evidence in the whole record and improperly concludes that SCTCS's decision to end its employment relationship with Appellant prejudiced her substantial rights and met one or more of the elements contained in S. C. Code Ann. 8-17-340 (E)(2). Appellant is not entitled to reinstatement with full back pay and benefits as explained below:

a. Appellant did not establish that Respondent's decision to terminate her employment violated a constitutional or statutory provision;
b. Appellant did not establish that Respondent's decision to terminate her employment was in excess of the statutory authority of the agency;
c. Appellant did not establish that Respondent's decision to terminate her employment was made upon unlawful procedure;
d. Appellant did not establish that Respondent's decision to terminate her employment was affected by other error of law;
e. Appellant did not establish that Respondent's decision to terminate her employment was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
f. Arbitrary or capricious or characterized by abuse discretion or clearly unwarranted exercise of discretion.

South Carolina law is well settled that the Committee must affirm the decision of a State Agency if the record contains substantial evidence on the record as a whole which

supports the Agency's decision. Moreover, the Committee may not substitute its judgement for the Agency, Nucor Steel v. S.C. Public Serv. Com, 310 S.C. 539, 542, 426 S.E. 2d 319, 321 (1992). This case is governed by 8-17-340 (E)(2), which provides that the Appellant has the burden of proof to demonstrate that the decision to terminate her employment was in error. However, it appears that the Committee shifted the burden of proof to the Respondent..

II. The State Employee Grievance Committee erred when it reversed the employment termination decision of the Agency and voted in favor of the Appellant, thereby not acknowledging the oversight authority of the State Board for Technical and Comprehensive Education (SBTCE) by not taking into account all facts in the whole record. The State Employee Grievance Committee's decision seemingly reverses the oversight authority of (SBTCE) and by allowing Denmark Technical College (DTC) to violate the SBTCE's policies and procedures by exploiting weaknesses in practices established by Dr. McIntyre and former Commission Chair Thomas Williams (See Richland County v. South Carolina Department of Revenue III, Appellate Case No. 2016 — 001839, Opinion 27775 citing Charleston Cty. Sch. Dist. v. Charleston Cty. Election Comm'n, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999).) The SBTCE is the entity with jurisdiction and authority for statewide governance of the Technical College System and therefore must be given deference in its interpretation of statutes and regulations in this matter.

III. The Committee erred when it concluded that DTC was on notice of transfer courses when the Agency found that the evidence on the record shows that Appellant knowingly and willfully submitted fraudulent reimbursement requests. In addition, the Agency found that she used tuition assistance for a program of study unrelated to her position; and knowingly, willfully and intentionally applied for and received 100% reimbursement when the policy only allowed a 85% reimbursement at maximum.

IV. The Committee erred when it allowed Appellant to change her issue on appeal after she claimed in her Notice Of Appeal that the stamp was 'never' used on her own documents and Respondent terminated her employment because the evidence showed that the stamp was used on her documents and without supporting documentation. The Committee further erred in its summary when it stated, 'SCTCS contends that Appellant used the President's signature stamp on her own personnel documents to give herself pay increases'. As noted in Dr. Hall's letter (See Committee Exhibit 1, page 23), the Respondent contended that Appellant received pay increases, which were approved using the President's stamp, but had no supporting documentation. The point of contention is not that the Appellant used the stamp on her own personnel documents, but the fact that the Presidents [sic] stamp was indeed used on Appellant's documents to receive pay increases as confirmed by Dr. McIntyre's testimony, in which he admitted that he had no procedure in place to develop supporting documentation on the use of the stamp. However, Dr. McIntyre testified that Ms. Jackson was the typical user of the stamp.

V. The Committee erred in accepting testimony from a deposed chair who admitted to violating SACSCOC accreditation standards by involving himself in the day- to- day operations of the institution. The Agency relied on the fact that Mr. Williams had been deposed as Chair by a Commission of his peers because he violated SACSCOC accreditation standards and jeopardized DTC's accreditation. Refer to testimony of Ms. Gwendolyn Bright held on March 2, 2018 and Agency Exhibit 3."

**In Appellant's response to Respondent's Request for Reconsideration, Appellant contends the following:**

"The College's arguments in its Motion for Reconsideration remain the same arguments it made during the hearing. Nothing has changed; the evidence clearly shows that the College prejudiced Ms. Jackson's substantial rights and that she met one or more of the required elements for the reversal of the College's termination of her employment.

Ms. Jackson was an employee of Denmark Technical College from January of 2011 until her termination on May 11, 2017. During Ms. Jackson's employment at the College, she served as the Administrative Coordinator in the President's Office, Interim Dean of Transitional Studies/ Distance Education, and Interim Dean of Business, Computer, and Related Technologies. Ms. Jackson also taught courses as an Adjunct Professor, and she also performed the duties of Executive Assistance [sic] to the College Board.

Ms. Jackson appealed her termination pursuant to S.C. Code of Laws Ann § 8-17-340(E)(2)(a), (b), (c), (d), (e), and (f) as the facts and circumstances leading to Ms. Jackson's termination are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in the view of the reliable, probative and substantial evidence on the whole record; and arbitrary and capricious and characterized by an abuse of discretion and clearly an unwarranted exercise of discretion. As reflected by the Findings of Fact in the Final Decision, the Committee heard from several witnesses and reviewed a series of documents supplied by Ms. Jackson and the College in support of their respective arguments.

Ms. Jackson argued that the facts and circumstances leading to her termination are in violation of constitutional or statutory provisions, including, but not limited to, wage and whistleblower laws. Ms. Jackson argued that she was denied due process on the basis that the agency failed to provide Ms. Jackson any notice for the grounds of a suspension that they termed an 'investigatory suspension'. Ms. Jackson was never given grounds for such 'investigatory suspension' in writing. Ms. Jackson' s suspension letter, found on page 68 of the Record on Appeal, simply said that Ms. Jackson was placed on an investigatory suspension without pay effective immediately for allegations surrounding her alleged involvement in improper conduct with regard to college operations. Yet, Ms. Jackson received no explanation beyond that vague phrase alleging 'involvement in improper conduct with regard to college operations'. Ms. Jackson was an Interim Dean of the College and as such, her entire job entailed 'college operations'. The total lack of

information given to Ms. Jackson deprived Ms. Jackson of an opportunity to defend herself and to rebut the allegations of 'involvement in improper conduct with regard to college operations'.

Ms. Jackson participated in every grievance meeting in which she was given an opportunity to attend. The College deliberately manipulated Ms. Jackson's suspension and grievance process by: failing to provide her with the specific charges made against her; failing to allow her to confront her witnesses and accusers; by pre-judging her grievance; and by failing to allow her a fair and impartial avenue of redress, including the finders of fact who were not themselves tainted in the process.

Ms. Jackson was terminated from employment for 'willful violation of rules, regulations and written policies, which constitute conduct unbecoming a state employee.' Ms. Jackson argued that such grounds are unfounded, and Ms. Jackson was not given documentation supporting the accusations against her. Ms. Jackson did not violate any rules, regulations, or written policies.

The first alleged ground for Ms. Jackson's termination relates to tuition reimbursement she received. Ms. Jackson argued that her receipt of tuition reimbursement payments years ago was proper, was approved, and the documentation reflects her completion of her application, degree, and reimbursement with approval of the required necessary approvers. That the College argues that such matters were grounds to terminate her employment is ridiculous, and Ms. Jackson proved such matters through the testimony of the witnesses and the documentation presented to the Committee. Ms. Jackson expressly articulated that she applied for tuition reimbursement and was granted tuition reimbursement.

Ms. Jackson was an employee of the College when she applied for and received tuition reimbursement, and Ms. Jackson's education was directly related to her employment with the College as clearly evidenced by her positions as an Interim Dean of the College since October 2015, as an adjunct instructor for multiple years, and previously as Administrative Coordinator. Ms. Jackson's receipt of reimbursements was proper and were for the completion of her degree as required for reimbursement. Each of the classes Ms. Jackson sought reimbursement for were based on fact. The documents reviewed during the hearing clearly show that the documentations and numbers line up and support the conclusion that Ms. Jackson did nothing wrong. Ms. Jackson did nothing wrong in such actions to apply for and to receive tuition reimbursement as Ms. Jackson applied for and was approved for tuition reimbursement by the following department heads: Director of Grants/Contracts, VP of Finance, and the College Presidents.

Ms. Jackson proved to the Committee that the second alleged ground to terminate her is equally preposterous. The second claim in Ms. Jackson's termination notice stated, 'in your role as Administrative Coordinator I (to the President), you received pay increases, which were approved using the President's stamp, but had no supporting documentation. Your conduct in this matter violated all reasonable controls in our system and, I believe,

violated the South Carolina Ethics Act which prohibits a public employee from using his/her position for personal gain.' Ms. Jackson confirmed at the hearing, as she had previously done at her suspension grievance hearing, when asked about the President's stamp, Ms. Jackson expressly denied that she ever used the President's stamp on any of her own personnel documents. This was confirmed by the President of the College during his testimony at the hearing.

The Committee heard for themselves that Ms. Jackson was paid for duties that she performed, that she was actually underpaid for such duties in that paying her to do an Interim role was cheaper for the College than hiring a permanent Dean at a higher salary, and that all pay adjustments for additional duties given to Ms. Jackson were properly approved by the supervisors above Ms. Jackson. Ms. Jackson had no part in paying herself.

Ms. Jackson expressly informed College representatives that the President's stamp is used by each of the recent sitting Presidents of Denmark Technical College and is used for high volume documentation and at the express instruction of the sitting President. Ms. Jackson expressly informed the Agency representatives that she used the President's stamp at the instruction of the former President of Denmark Technical College and the stamp was never used on her own documentation. Ms. Jackson never used the stamp for personal gain.

Further, Ms. Jackson testified, and the evidence showed, that she did not receive a pay increase; she received supplemental pay when she performed additional duties. Any and all supplements in Ms. Jackson's pay were expressly authorized by the supervisory chain above Ms. Jackson and by Human Resources. The accusation that Ms. Jackson somehow gave herself raises is utterly absurd. Ms. Jackson was not even employed in the President's Office after October 2015 when she was promoted to her first Interim Dean.

The College's arguments in the Motion for Reconsideration fail. Ms. Jackson did not claim that a stamp was never used on her own documents. In fact, Ms. Jackson testified that 'she' never used a stamp on her own documents. Ms. Jackson would have no personal knowledge of anyone else's actions with regard to the stamp. The issue of whether or not a stamp was used to approve Ms. Jackson's supplemental pay is moot as Dr. McIntyre testified at the hearing that he authorized and approved all of Ms. Jackson's personnel documents and pay. Dr. McIntyre testified that he used the stamp on documents. Dr. McIntyre testified that he did not have any written procedure in place for the use of the stamp. The College failed to prove or show that there is a policy or procedure that requires, enforces, or have made deem necessary for all presidents or administrators to have a stamp procedural [sic]. The [use of the] stamp was clearly a common practice by the College President's [sic] and to question the use of a hand-written signature or a stamped signature on an approved document is unlawfully punitive to Ms. Jackson's employment when there is incontrovertible evidence that Ms. Jackson's supplemental pay was approved by supervisors, not approved by herself, and was received for duties performed.

The College accused Ms. Jackson of allegedly improperly receiving tuition reimbursement and allegedly stamping her own pay increases documentation. Both accusations factually date back several years and are untimely grounds to terminate Ms. Jackson and such allegations were wholeheartedly denied and the evidence supported Ms. Jackson's account that she had done nothing wrong in receiving supervisory approved tuition reimbursement and supervisory approved supplemental pay.

Ms. Jackson's suspension that culminated in her termination was her first such reprimand and Ms. Jackson showed that the action taken against her violated the Agency's progressive discipline policy.

The Committee did not err in accepting testimony from Mr. Williams, the former Board Chair who the Agency alleged violated the SACSCOC accreditation standards, by involving himself in the day-to-day operation. Mr. Williams testified that he asked and requested for Dr. Hall, the Interim College President and Ms. Jackson's supervisor at the time, to provide the Board with evidence to substantiate the decision to take disciplinary actions against Ms. Jackson. Mr. Williams also testified that Dr. Hall could not produce any evidence supporting the action taken against Ms. Jackson and he indicated that he did not have any evidence against Ms. Jackson. Mr. Williams testified that Dr. Hall stated that he was following the instructions of SCBTE President, Dr. Hardee. The College's own rebuttal witness to Mr. Williams' testimony, Ms. Bright, also testified that she did not know why the action was taken against Ms. Jackson.

The Committee did not even hear from the decision maker, Dr. Hall, the Interim President of Denmark Technical College. Dr. Hall was only at the College campus for about 10 days prior to him suspending Ms. Jackson. Comparatively, the Committee did hear from Dr. McIntyre, the President of Denmark Technical College during the timeframe relevant to the College's allegations against Ms. Jackson. Dr. McIntyre affirmed to the Committee that these grounds the College brought against Ms. Jackson are baseless.

The College's Motion for Reconsideration argues that the Committee erred in its decision. It appears that the College admits to a violation of State Board policies and procedure in its Motion for Reconsideration; which further shows that Ms. Jackson is not at fault for the things charged as a basis for her termination. If the College has a different interpretation of the policies and procedures enforced by SCBTE, then it is the SCBTE's duty and responsibility to ensure that the College Administrators are carrying them out properly. The employees cannot supersede the President's decisions, nor can Ms. Jackson be held accountable for the Administrators' error, if any.

Moreover, the Motion for Reconsideration argues that there was weakness [sic] in practices established by Dr. McIntyre, Mr. Williams, and also Dr. Boyd-Scotland, who worked at the College for at least 17 years with the same practices, yet the SCBTE never addressed any such alleged violations. The Motion for Reconsideration seems an attempt

to throw the previous College Administrations 'under the bus' in order to somehow show that its egregious conduct toward Ms. Jackson is somehow merited in fact, which it is not. The evidence before the Committee showed that the College's own witness at the hearing, who also received tuition assistance, was still employed with the College.

The Committee did not err in its decision as the College was on notice about Ms. Jackson's transfer courses. Ms. Jackson's application and program of study clearly included and identified the courses she would complete. Therefore, the College was made aware of and approved Ms. Jackson's completed courses. Ms. Jackson used tuition assistance for a program that was related to her position, per Dr. McIntyre and Dr. Drammeh's testimonies; both of whom were in the supervisory chain above Ms. Jackson. Ms. Jackson's tuition assistance application included the details of her job positions and rationale for applying. Ms. Jackson's application was approved by Teresa Mack, the Director of Grants and Contracts and the College President, Dr. Boyd-Scotland, who also supervised Ms. Jackson.

The College again misdirects the Committee when in its Motion for Reconsideration it argues that Ms. Jackson knowingly, willfully, and intentionally applied for and received 100% reimbursement when the policy only allows 85% maximum. In fact, the Title III Funds policy (page 2, section 6) indicates for only instances that 'Should employee elect the more costly courses, he/she will need to negotiate an agreement or contract for the Title III Program to defray no less than 75% and no more than 85% of the total cost of courses.' Ms. Jackson's courses costs were comparable to other institutions and/or enrolled in exact institutions other employees attended and received tuition reimbursement, such as Jamie Wise. Seemingly, the College is making an argument that has no basis because no audit or finding was made that there was any wrongdoing in Ms. Jackson's receipt of tuition assistance, or any other employee for that matter.

No evidence was shown that the College has ever been cited or rebuked for violating or misinterpreting its tuition assistance polices [sic]. Yet, out of all employees that received tuitions [sic] assistance under these common practices, seemingly only one has been accused of violating the tuition assistance policies and procedures. This, yet again, reinforces that [sic] targeted and arbitrary nature of the College's actions toward Ms. Jackson.

Herein by reference, Ms. Jackson contests all stated basis for reconsideration asserted by the College. Based on the foregoing and all of the evidence put before the State Employee Grievance Committee, Ms. Jackson's requests that the College's Motion for Reconsideration be denied."

## STATEMENTS OF POLICY AND CONCLUSIONS OF LAW

Section 8-17-340(F) of the S.C. Code of Laws, as amended, provides in part that: "[t]he decision of the committee members must be transmitted in writing to the employee and the employing agency and is final in terms of administrative review. As a result of this

decision, either the covered employee or the agency may request a rehearing or reconsideration within thirty calendar days from receipt of the decision."

Although an administrative body such as the Committee has the power to reconsider its rulings, this power is not arbitrary and "should be exercised only when there is justification and good cause; i.e. newly discovered evidence, fraud, surprise, mistake, inadvertence or change or conditions." Bennett v. City of Clemson, 293 S.C. 64, 66-67, 358 S.E. 2d 707, 709 (1987); compare Rule 60 (b), SCRCP, (allowing relief from judgment or order for mistake, inadvertence, surprise, newly discovered evidence, and fraud).

The Committee considered Respondent's Request for Reconsideration. After reviewing the arguments submitted by both parties, it was determined the information presented did not provide new information or legal errors that warrant altering the Committee's original March 22, 2018 decision.

Respondent's first contention indicates that the Committee's decision improperly viewed the evidence in the whole record. In addition, Respondent contends the Committee improperly concluded that Respondent's decision to terminate Appellant prejudiced her substantial rights. Also, the Committee shifted the burden of proof from Appellant to the Respondent contrary to § 8-17-340 (E) (2).

Regarding Respondent's first contention, the Committee finds that its original decision was specifically based on the evidence presented by both parties. As a result of the evidence presented, the Committee found that Appellant met her burden of proof and established that the termination was not supported by the record. Therefore, since the Committee's decision was based on the evidence presented in the whole record the Committee finds Respondent's argument is not valid.

Respondent's second contention states the Committee erred when reversing Appellant's termination thereby not acknowledging SBTCE's oversight authority concerning DTC. In addition, Respondent contends the Committee erred by not taking into account all facts in the whole record. Respondent also contends the Committee's decision reversed its oversight authority and allowed DTC to violate SBTCE's policies and procedures. Further, Respondent contends that SBTCE must be given deference in its interpretations of statutes and regulations since it has jurisdiction and authority for statewide governance of the Technical College System.

Concerning Respondent's second contention, the Committee did acknowledge SBTCE's oversight authority by considering all evidence presented by Respondent to include documentation and testimony. If indeed SBTCE has oversight authority, the Committee finds that no evidence was provided to indicate DTC was cited for violation of SBTCE's tuition reimbursement or personnel action policies. Specifically, no credible evidence was presented to show a violation of those policies during the time Appellant was receiving reimbursements and salary adjustments. Rather, the evidence presented shows

that Appellant followed established procedures at DTC. Based on evidence presented by both parties, the Committee finds it was clear Appellant was following DTC's established practices as directed by those in authority at the college. Further, the Committee finds that Appellant should not have been terminated for properly following established practices at DTC. Therefore, the Committee concludes that Respondent's contentions are not persuasive.

In its third contention the Respondent argues that the Committee erred when it concluded that DTC was on notice of transfer courses when Respondent found that the evidence on the record showed that Appellant knowingly and willfully submitted fraudulent reimbursement requests. In addition, Respondent found that Appellant used tuition assistance for a program of study unrelated to her position; and knowingly, willfully and intentionally applied for and received 100% reimbursement when the policy only allowed an 85% reimbursement at maximum.

Regarding the Respondent's third contention, the Committee finds that Appellant did not submit fraudulent reimbursement requests concerning her transfer credits since DTC was aware in her transcript from AIUO that credits were being transferred from Springfield College. In addition, DTC was aware of the transfer of credits since Appellant was reimbursed for the entire costs associated with her degree. Appellant provided documentation to indicate that all required signatures for the reimbursement requests were in accordance with DTC protocol. As stated in the original decision, the Committee concluded that the approving authorities at DTC believed that Appellant's program of study was relevant to her job as indicated by signatures from management at DTC authorizing her requests. As for Appellant receiving 100% reimbursement, Respondent failed to demonstrate that Appellant could have taken less costly courses, in accordance with its policy, or that less expenses courses were even available. In addition, no evidence was presented to indicate that Appellant did not seek the "most cost efficient program" as stated in the tuition reimbursement guidelines. Furthermore, the Committee finds DTC was ultimately responsible for determining the percentage of the reimbursement and not Appellant.

Respondent's fourth contention indicates the Committee erred when it allowed Appellant to change her issue on appeal after she claimed in her Notice of Appeal that the stamp was "never" used on her own documents.

The Committee finds the relevant issue here is that Appellant's personnel actions were reviewed and authorized by the President, in addition to others, and not at the sole discretion of Appellant. Even if the stamp was used by Appellant, it appears there was no misuse of the stamp since the President, along with others, reviewed and authorized her personnel actions. Moreover, the Committee notes that Appellant was not the only employee in the President's office who had access and authority to use the President's signature stamp at his direction.

Respondent contends in its fifth contention that the Committee erred in accepting testimony from a deposed chair, Mr. Thomas Williams, who admitted to violating SACSCOC accreditation standards by involving himself in the day-to-day operation of the institution.

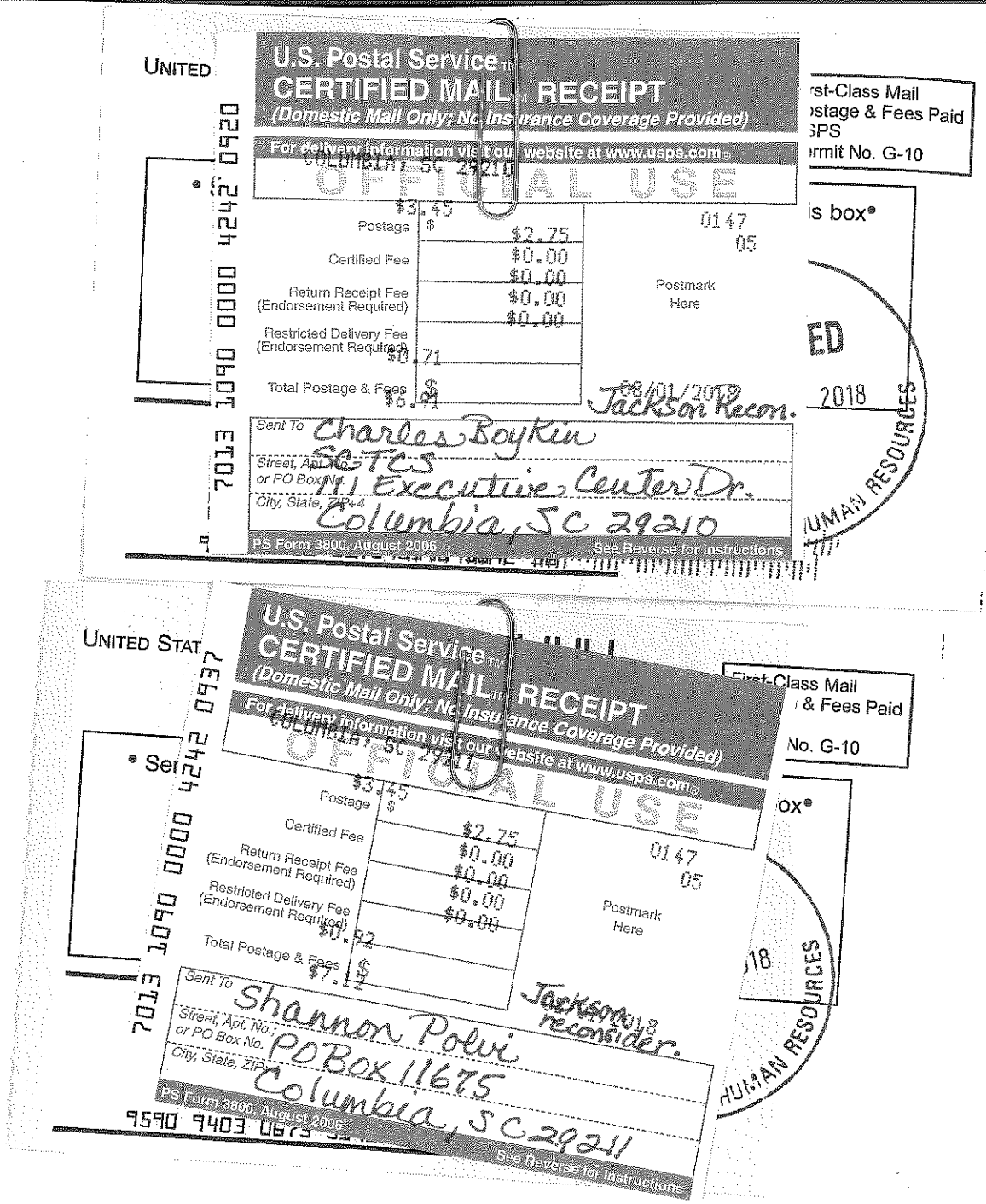
The Committee finds that, although Mr. Williams testified that certain individuals were authorized by the President to use his signature stamp, the Committee's deliberations and decision were not based on Mr. William's testimony. Rather, the Committee's decision was based upon the documentation presented and testimony of the President and Dr. Drammeh who both indicated that DTC employees could not give themselves salary adjustments based on DTC's approval process.

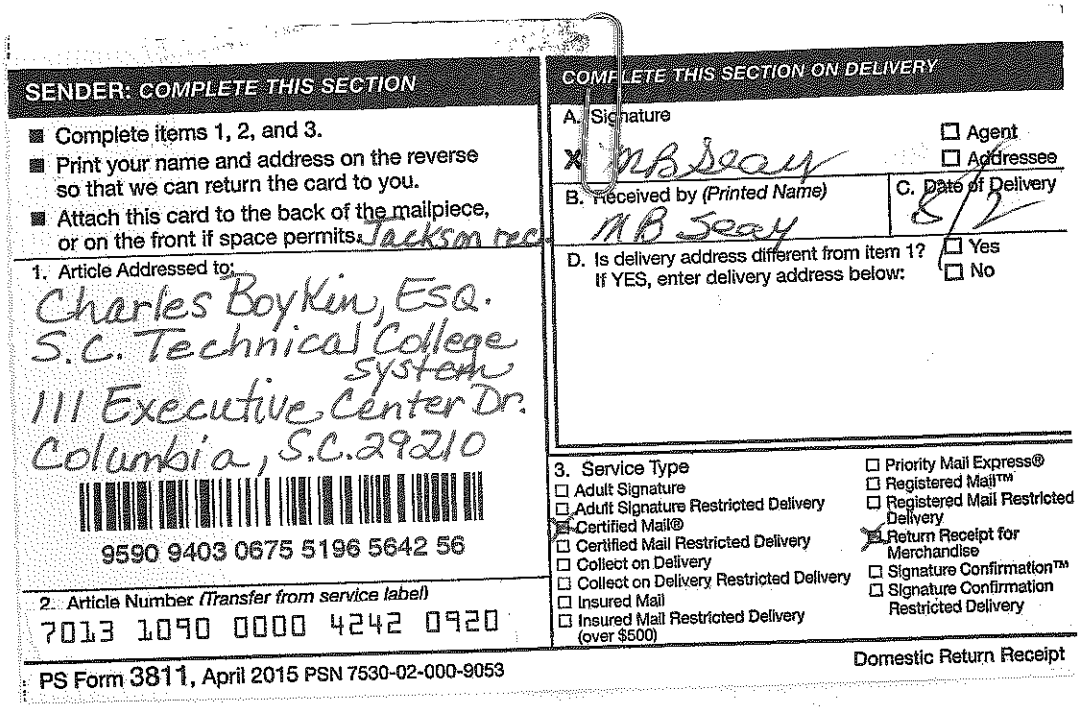
## DECISION

Respondent's motion does not raise newly discovered evidence, fraud, surprise, mistake, inadvertence or change of conditions. Moreover, the arguments submitted do not introduce new evidence or legal arguments that were not brought to the Committee's attention as part of the original decision-making process. Therefore, the Committee reaffirms its March 22, 2018 Final Decision to reject Respondent's decision to terminate Appellant. For the foregoing reasons, Respondent's Request for Reconsideration is denied.

Eleniese Elmore, DC
For the Committee

August 1, 2018
Date


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08/01/2018
Jackson Recon.
Sent To Charles Boykin
Street, Apt. No.; or PO Box No. 50TCS 711 Executive Center Dr.
City, State, ZIP+4 Columbia, SC 29210
PS Form 3800, August 2006
See Reverse for Instructions
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First-Class Mail
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Jackson 8/1/18 reconsider.
Sent To Shannon Polvi
Street, Apt. No.; or PO Box No. PO Box 11675
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PS Form 3800, August 2006
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1. Article Addressed to:

Charles Boykin, Esq.
S.C. Technical College System
111 Executive Center Dr.
Columbia, S.C. 29210

9590 9403 0675 5196 5642 56

2. Article Number (Transfer from service label)
7013 1090 0000 4242 0920

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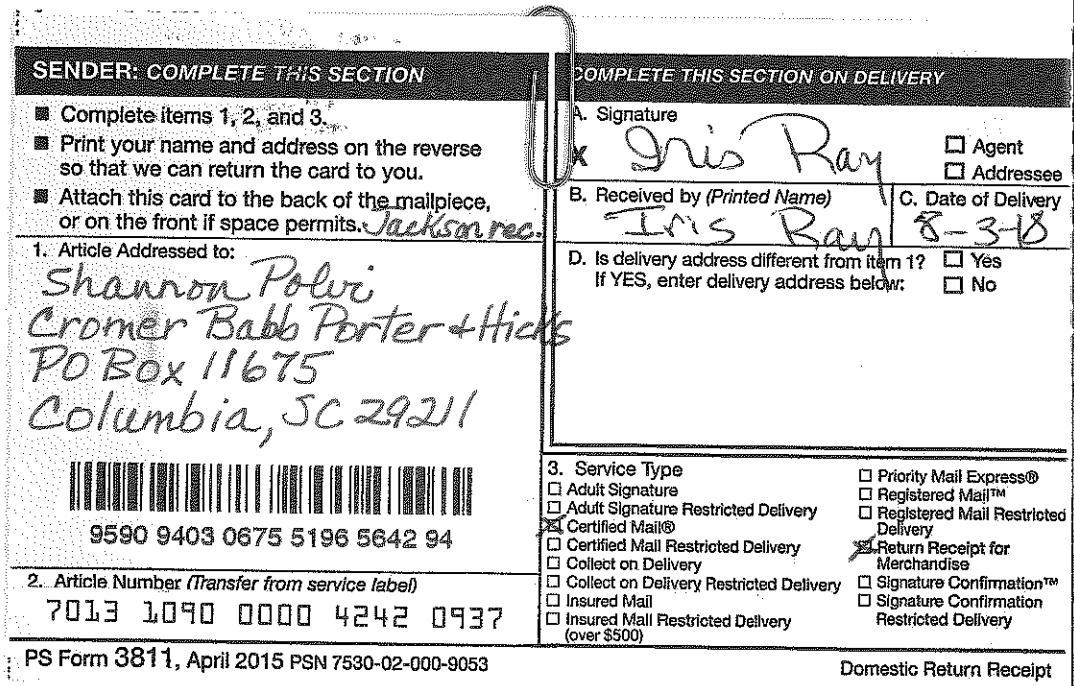
A. Signature
X MB Seay ☐ Agent ☐ Addressee

B. Received by (Printed Name) MB Seay
C. Date of Delivery 8/2

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
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☐ Collect on Delivery
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☐ Insured Mail Restricted Delivery (over $500)
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1. Article Addressed to:

Shannon Polvi
Cromer Babb Porter & Hicks
PO Box 11675
Columbia, SC 29211

9590 9403 0675 5196 5642 94

2. Article Number (Transfer from service label)
7013 1090 0000 4242 0937

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Iris Ray ☐ Agent ☐ Addressee

B. Received by (Printed Name) Iris Ray
C. Date of Delivery 8-3-18

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
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☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
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☐ Registered Mail Restricted Delivery
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☐ Signature Confirmation™
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**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

| | | |
|---|---|---|
| South Carolina Technical College System,<br><br>Appellant,<br><br>vs.<br><br>Carla Jackson and South Carolina Department of Administration,<br><br>Respondents. | ) | Docket No. 18-ALJ-30-0341-AP<br><br><br><br>**ORDER OF REMAND** |

This matter is before the South Carolina Administrative Law Court (Court or ALC) on an appeal by the South Carolina Technical College System (SCTCS). SCTSC filed this appeal after the South Carolina Department of Administration (Department or DOA) found that Carla Jackson (Jackson) was terminated from her employment at Denmark Technical College (DTC) without cause. SCTSC filed this appeal asserting that Jackson is not an employee covered by the State Employee Grievance Procedure Act (Act), and therefore had no right to a grievance hearing under the Act.

## FACTS

Jackson began her employment with Denmark Technical College (DTC) as an Administrative Coordinator on January 4, 2011. She described her primary duties as managing the office of the DTC President and assisting the DTC executive staff. On October 1, 2013, Jackson applied for tuition reimbursement for the cost of a master's degree at American Intercontinental University Online (AIUO). Title III Director, Tarshura Mack (Mack), and the President of DTC approved the tuition reimbursement. In March of 2015, Jackson received her Masters Degree in Business Administration from AIUO.

Between February 1, 2015, and October 3, 2016, Jackson took on additional duties, including administrative and instructional responsibilities, and received salary increases as follows:

- On February 1, 2015, Jackson assumed the duties of Assistant to the Area Commissioners, which is the Governing Board for DTC, but kept her position as Administrative Assistant.

FILED
JUN 25 2019
SC ADMIN. LAW COURT

- From May 18, 2015, to June 30, 2015, Jackson was employed as an instructor teaching Professional Development. Her dual employment form lists her home agency as DTC and primary employment at Administrative Coordinator.
- 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.
- On October 1, 2015, Jackson began serving as Interim Dean of Transitional Studies but retained her current position/classification of Administrative Coordinator 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
- Between March 7, 2016, through May 7, 2016, Jackson was employed to teach a business course.
- 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 replace her as the Administrative Coordinator in the president's office at DTC.
- On January 26, 2017, Jackson was listed as Executive Coordinator on a Personnel/Payroll Action form. The only signature on this form is that of the President of DTC, although several more signatures were required. In contrast, another form shows Appellant's title as Interim Dean and was signed by all necessary persons.

On February 15, 2017, Jackson was suspended from her employment at DTC pending the conclusion of an investigation. On May 11, 2017, SCTCS terminated Jackson's employment with DTC, effective February 15, 2017.

On July 5, 2017, Jackson filed the State Employee Grievance Procedure State Appeal Form, listing her Job Classification as "Interim Dean of Business, Computers and Rel [sic]"[1] with the SC Technical College Systems.

Jackson has two resumes in the Record on Appeal. One lists her position at DTC as "Interim Dean of Business Computers, Related Technologies and Interim Dean of Transitional

[1] The State Employee Grievance Procedure State Appeal Form did not provide enough space for Jackson to provide the full title of her position.

Studies/Distance Learning" from 2015 to present, and the second lists her position as "Executive Coordinator to the President/ Executive Assistant to the Board of Trustees" from 2011 to present.

**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 alleges that DOA, and thus this Court, do not have subject matter jurisdiction to hear this matter. "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). There are exceptions to this rule relevant to this case. Section 8-17-320(7) provides, in relevant part:

> "Covered employee" means a full-time or part-time employee occupying a part or all of an established full-time equivalent (FTE) position who has completed the probationary period and has a "meets" or higher overall rating on the employee's performance evaluation and who has grievance rights. **Instructional personnel** are

> covered upon the completion of one academic year **except for** faculty at state technical colleges of not more than two full academic years' duration.

(emphasis added). In addition, section 8-17-320(12) provides:

> "Instructional personnel" means employees of an agency that has primarily an educational mission, **excluding the state technical colleges** and excluding those employees exempted in Section 8-17-370(10) who work an academic year.

(emphasis added).

Finally, each agency is required to establish its own grievance procedure in compliance with the Act. S.C. Code Ann. § 8-17-330 (2019).[2]

Under Policy Number 8-6-100 of the State Board For Technical And Comprehensive Education, Statement of Policy, "[c]lassified employees, unclassified non-teaching personnel, and institutional officers, excluding the College President, attain covered status upon having satisfactorily completed their initial twelve (12) months probationary period." Furthermore, Procedure Number 8-6-100.1 provides, in part, that a "Covered Employee" is:

> a full-time or part-time employee occupying a part or all of an established full-time equivalent (FTE) position (excluding the College President) who has completed the probationary period of twelve (12) months and has a "successful" or higher overall rating on the employee's performance evaluation and who has grievance rights.

Here, the Record does not reflect that Jackson was preforming her duties as "Executive Coordinator" or "Administrative Coordinator" after she became the "Dean of Transitional Studies and Distance Education," which was the position she held when she was terminated. Indeed, she filed this case as "Interim Dean." In addition, the Record reflects another person, Gwendolyn Bamberg, was hired as Administrative Coordinator in the President's office *after Jackson was named Interim Dean*. The transcript also reflects that the position of "Interim Dean" is not an FTE position. Therefore, the evidence reflects that Jackson was employed as a covered employee initially but was subsequently promoted to a non-covered employee position.[3] Despite these facts in the Record, the Board never made a finding as to what position Jackson held at the time she was

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[2] SCTSC also contends that § 8-17-370 is applicable to this case. However, § 8-17-370(10) applies to "four-year post-secondary educational institutions," not a two-year institution like DTC.

[3] The Court notes that if Jackson committed an offense exhibiting bad character while she was previously a covered employee, but this offense was not discovered until a later date when she had moved on to an uncovered position, SCTCS could certainly terminate Jackson from the uncovered position. In this factual scenario, the Department's decision should not be upheld because Jackson would have been fired when occupying an uncovered position that would not entitle her to a grievance rights.

terminated from DTC. This finding is essential to a determination of whether this case was properly before the Department. This Court, sitting in its appellate capacity, cannot make this factual determination. *See Grant*, 319 S.C at 353, 461 S.E.2d at 391 (holding 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). Thus, the Court finds it necessary to remand this case for the Board to determine whether Jackson was an Interim Dean at the time of her termination (uncovered employee) or whether Jackson was also functioning in a covered FTE position.

**AND IT IS IS ORDERED.**

Ralph King Anderson, III
Chief Administrative Law Judge

June 25, 2019
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, 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).

E. Harvin Belser Fair
Judicial Law Clerk

June 25, 2019
Columbia, South Carolina

admin
THE SOUTH CAROLINA
DEPARTMENT *of* ADMINISTRATION

**Henry McMaster**, *Governor*
**Marcia S. Adams**, *Executive Director*

**DIVISION *of* STATE HUMAN RESOURCES**
Karen Luchka Wingo, Director
8301 Parklane Road, Suite A220
Columbia, SC 29223
803.896.5300
803.896.5050 Fax

February 3, 2020

CERTIFIED MAIL
The Honorable Ralph King Anderson, III
Chief Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: S.C. Technical College System v. Carla Jackson
Docket No. 18-ALJ-30-0341-AP

Dear Judge Anderson:

In accordance with your Order of Remand dated June 25, 2019, enclosed please find the State Employee Grievance Committee's Decision.

By copy of this letter I am notifying both parties' legal counsel that this decision has been forwarded to you in accordance with your Order of Remand.

Please advise us if you have any questions.

Sincerely,

Karen Luchka Wingo
Director

Enclosure

c: Mr. Warren Ganjehsani
Ms. Shannon Polvi

**State Employee Grievance Committee**

Final Decision

APPELLANT'S NAME: Carla Jackson
JOB CLASSIFICATION: Administrative Coordinator I
AGENCY: South Carolina Technical College System
DATE OF HEARING: January 14, 2020
NATURE OF CASE: Termination

On March 22, 2018, the State Employee Grievance Committee (Committee) issued a decision overturning Carla Jackson's termination. On August 1, 2018, the Committee reaffirmed its decision in response to a request for reconsideration filed by the South Carolina Technical College System (SCTCS). In response to SCTC's appeal to the South Carolina Administrative Law Court, Judge Ralph King Anderson, III. issued a June 25, 2019, Order of Remand in response to SCTCS's appeal to the State of South Carolina Administrative Law Court of the Committee's decision. Judge Anderson's order states, in part, that "the Court finds it necessary to remand this case for the Board[1] to determine whether Jackson was an Interim Dean at the time of her termination (uncovered employee) or whether Jackson was also functioning in a covered FTE position." In accordance with Judge Anderson's order, this question is now before the Committee for review.

Based on documentary evidence and testimony presented in the appeal of Carla Jackson v. SCTCS, the State Employee Grievance Committee (Committee) finds:

FINDINGS OF FACT

1. Carla Jackson (Appellant) began her employment as an Administrative Coordinator I to assist the President of Denmark Technical College on January 4, 2011. (Committee Exhibit #1, p. 8.) According to information supplied by SCTCS in its response to Appellant's appeal of her termination, her "state classification title is Administrative Coordinator I" and Appellant "has been in [this classification] since she was hired January 4, 2011." (Committee Exhibit #1, p. 9.)

2. An investigative report dated April 2017, states that Appellant's "state classification title is Administrative Coordinator I with a base salary of $49,897.00. It was also determined that [Appellant] was indeed serving as Executive Coordinator to the Area Commission at $550.00 per pay period and also as Interim Dean of Transitional Studies and Distance Education at $402.72 per pay period. (Committee Exhibit #1, p. 43.)

3. By letter dated February 1, 2015, Appellant was advised that she would "continue in the state position of, [sic] Administrative Coordinator to the President but, will have additional duties as of, [sic] February 1, 2015." The letter further stated that Appellant would "remain at [her] current salary position, [sic] and classification but, will assume additional duties as Assistant to the Area Commissioners. A temporary salary supplement will be made to

[1] During an August 15, 2019 conference call with David Avant, General Counsel for the SC Department of Administration, and representatives for both parties, Judge Anderson clarified that his reference to "the Board" in his decision was meant to refer to the State Employee Grievance Committee.

reflect an adjustment totaling ($550.00) [sic] per pay period. This amount will be attached to your current salary of $48,237." (Committee Exhibit #1, p. 97.)

4. A Denmark Technical College Request for Personnel/Payroll Action Form signed on February 2, 2015 reflects that effective February 1, 2015, Appellant would receive $550.00 per pay period to serve as Assistant to Area Commissioners. The form listed "Assistant to Area Commissioners" as the new position title but did not indicate that Appellant was being promoted or demoted and did not include position numbers. The human resources action indicated on this form is "Other." (Committee Exhibit #1, p. 98.)

5. A SCTCS Dual Employment Form signed on May 6, 2015, reflects a request from Appellant to be permitted to teach "AOT 133-28 Professional Development" from 7:30 pm to 9:15 pm from May 18, 2015 through June 30, 2015. Appellant's position was listed as Administrative Coordinator, Classification Code AH10, and her hours worked from 8:00 am through 6:00 pm. (Committee Exhibit #1, p. 100.)

6. In a letter dated September 14, 2015, to Denmark Technical College President Dr. Leonard McIntyre, Ms. Tia Wright-Richards, the Dean of Business, Computers and Related Technologies, requested that Appellant be hired as a temporary faculty member to teach two classes from September 14, 2015 through December 9, 2015. The time required included six hours per week for lecture and two hours per week of office hours. This request was approved by Dr. McIntyre and Dr. Valerie Fields, the Vice President for Academic Affairs. (Committee Exhibit #1, p. 101.)

7. A Denmark Technical College Request for Personnel/Payroll Action Form signed on September 16, 2015, reflected that effective September 21, 2015 through October 31, 2015, Appellant would be paid "$50.00 per hr. Workshop/(1 hr.) Preparation." The human resources actions indicated were "New Hire" and "Dual". (Committee Exhibit #1, p. 104.)

8. By letter dated September 15, 2015, Appellant was notified that she was being "appointed Interim Dean of Transitional Services effective October 1, 2015, until a new Dean of Transitional Services is hired." The letter further states: "You will remain at your current salary and in your current position/classification but will assume the additional duties of Interim Dean of Transitional Services and receive a temporary salary adjustment of 15% of your current salary...for the duration of your interim appointment." (Committee Exhibit #1, p. 251.)

9. A Denmark Technical College Request for Personnel/Payroll Action Form signed by various Denmark Technical College Officials between September 28, 2015 and October 12, 2015, reflected that Appellant would be paid $375.00 per pay period effective October 1, 2015 through September 30, 2016[2]. The current position title listed was "Transitional Studies Coordinator." The human resources action indicated was "Other". (Committee Exhibit #1, p. 250.)

10. In a letter dated February 25, 2016, to Denmark Technical College President Dr. Leonard McIntyre, Ms. Tia Wright-Richards, the Dean of Business, Computers and Related Technologies, requested that Appellant be hired as a temporary faculty member to teach one class from March 7, 2016 through May 7, 2016. The time required included 5.2 hours per week of lecture and one hour per week of office hours. This request was approved

[2] The actual date on the form is September 28, 2015, but this is presumed to be a typo.

by Dr. McIntyre, Dr. Valerie Fields, the Vice President for Academic Affairs and Mr. Ramon Wideman, Vice President of Fiscal Affairs. (Committee Exhibit #1, p. 106.)

11. By letter dated September 21, 2016, Appellant was notified that she was "being appointed Interim Dean of Business, Computers, and Related Technologies (BCRT) effective October 1, 2016, until a permanent Dean of BCRT is hired to provide leadership for the department." The letter further states: "You will remain at your current salary and in your current position/classification, [*sic*] but will assume additional duties of Interim Dean of BCRT. You will continue to receive a temporary salary adjustment of $415.81 for the duration of your interim appointment as a Dean. Your temporary salary adjustment for distance education will be end[ing] effective September 30, 2016." (Committee Exhibit #1, p. 255.)

12. A Denmark Technical College Request for Personnel/Payroll Action Form signed by various Denmark Technical College Officials between September 27, 2016 and October 20, 2016, reflected that Appellant would be paid $415.81 per pay period effective October 3, 2016. The current position title listed was "Interim Dean, TS" and the new position title was listed as "Interim Dean, BCRT." The human resources action indicated was "Dual". (Committee Exhibit #1, p. 238.)

13. A Denmark Technical College Request for Personnel/Payroll Action Form signed by Denmark Technical College President Dr. McIntyre on January 26, 2017, indicates that Appellant's position title is Executive Coordinator. (Committee Exhibit #1, p. 237.)

14. By memorandum dated February 14, 2017, from Dr. Christopher Hall, Denmark Technical College Interim President, Appellant was notified that effective February 16, 2017, "all supplemental pay will be suspended...You will continue to receive your annualized based pay for the position in which you were hired." (Committee Exhibit #1, p. 236.)

15. Appellant was suspended without pay effective February 15, 2017. (Committee Exhibit #1, p. 68.)

16. By letter dated May 11, 2017, Appellant was advised that she was being terminated retroactively effective to the first day of her suspension, February 15, 2017. (Committee Exhibit #1, p. 23.)

17. SCTCS contends the following:

    a. the record does not reflect that Appellant was performing her duties as Executive Coordinator or Administrative Coordinator after she became the Dean of Transitional Studies and Distance Education. Appellant was in the Administrative Coordinator Position until October 1, 2015, when she became Interim Dean of Transitional Studies and Distance Education;

    b. the record reflects that another person was hired as Administrative Coordinator in the President's Office after Appellant was named Interim Dean;

    c. Appellant referred to her position as "Interim Dean" in her appeal submission;

    d. The transcript of the initial hearing before the State Employee Grievance Committee reflects that the position of "Interim Dean" is not an FTE position. The

evidence reflects that Appellant was employed as a covered employee initially but was subsequently promoted to a non-covered employee position; and

e. On January 26, 2017, Appellant was listed as Executive Coordinator on a Personnel/Payroll Action form. The only signature on this form is that of the President of Denmark Technical College, although several more signatures were required. In contrast, another form shows Appellant's title as Interim Dean and was signed by all necessary persons.

18. Appellant contends the following:

a. Appellant was functioning in a covered FTE position when she was terminated;

b. Between February 1, 2015 and October 3, 2016, Appellant was asked to take on additional duties, including administrative and instructional responsibilities, and received salary increases accordingly;

c. Appellant always remained in her Administrative Coordinator position, throughout the temporary duty and again when she was appointed Interim Dean of Business;

d. Appellant intermittently taught courses as an Adjunct Professor. Appellant also performed the duties of Executive Assistant to the College Board;

e. Appellant continued to serve in a full-time capacity as an Administrative Coordinator;

f. On February 14, 2017, Appellant received a letter from Dr. Hall, Interim President for Denmark Technical College, notifying her that her supplemental pay had been suspended. Later that day she was suspended without pay. Therefore, as of February 15, 2017 and continuing until her termination, Appellant was in no other role and serving in no interim capacities. Appellant was to receive her annualized salary solely limited to her Administrative Coordinator position, her covered FTE position, in which she was classified throughout the entirety of her employment with the College;

g. The College has failed to provide any Human Resources documentation or other written evidence to validate that Appellant has a state job classification change or that she assumed a permanent, and no longer interim, position as dean; and

h. A logical conclusion from the witness testimony at the hearing before the State Employee Grievance Committee is that it is a standard practice of SCTCS for someone to maintain their current state position if they assume additional duties or interim roles until someone is hired permanently or reclassified into that vacant position. The employee serving in that interim role would receive a temporary supplement for additional duties during that period. Appellant was never keyed as a dean because she was never in that role. Appellant was performing additional duties on a temporary basis while maintaining her state Administrative Coordinator position.

## DISCUSSION

The Committee finds that Appellant'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 Appellant's job classification. Specifically, there is no evidence to indicate Appellant was promoted, demoted or that the position she occupied was reclassified. The various Denmark Technical 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 Appellant's position or her coverage status under the State Employee Grievance Procedure Act.

In addition, the letter dated September 15, 2015, notifying Appellant that she was being "appointed Interim Dean of Transitional Services effective October 1, 2015" clearly indicated that this appointment would be effective only "until a new Dean of Transitional Services is hired..." The letter further advised Appellant that her salary and position classification would remain unchanged but that she would "assume the additional duties of Interim Dean of Transitional Services and receive a temporary salary adjustment of 15% of [her] current salary...for the duration of [her] interim appointment."

The letter dated September 21, 2016, notifying Appellant that she was "being appointed Interim Dean of Business, Computers, and Related Technologies (BCRT) effective October 1, 2016, until a permanent Dean of BCRT is hired" also clearly indicated that Appellant would remain at her current salary and in her current position/classification and would continue to receive a temporary salary adjustment for the duration of her interim appointment as a dean.

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

## DECISION

The Committee finds that Appellant was functioning in the covered full-time FTE position, Administrative Coordinator I, at the time of her termination from the SCTCS.

For the Committee: G Denise Elmore/hmk Date: 2/3/2020

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Mr. Warren Gorjehsani
Chief Legal Counsel
SC Technical College System
111 Executive Center Drive
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Kim Aydlette, Director
South Carolina Department of Administration
Division of State Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

RE: Request for Reconsideration: Carla Jackson v. South Carolina Technical College System

Dear Ms. Aydlette:

Enclosed please find the Respondents Request for Reconsideration in the above referenced case. Ms. Shannon Polvi, Appellant's attorney is also being copied on this correspondence.

Please advise should you have any questions or concerns.

Sincerely,

Charles Boykin, Esq.

Enclosures

Cc: Shannon Polvi, Esq. (w/enclosures) – *via hand delivery*
Spencer Miller (w/enclosures)
Dr. Tim Hardee (w/enclosures)

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF RICHLAND<br>Carla Jackson,<br>Appellant,<br>v.<br>SC Technical College System,<br>Respondent. | BEFORE THE STATE EMPLOYEE GRIEVANCE COMMITTEE<br><br>RESPONDENT SC TECHNICAL COLLEGE SYSTEM NOTICE OF MOTION AND MOTION OF RECONSIDER |

TO: SHANNON POLVI, ESQ., ATTORNEY FOR APPELLANT

YOU WILL PLEASE TAKE NOTICE that Respondent, South Carolina Technical College System (hereinafter "SCTCS" or "the Agency"), by and through its undersigned counsel, moves before the Director of the Division of State Human Resources of the S. C. Department of Administration for reconsideration of the State Employee Grievance Committee's Order in this matter filed on March 22, 2018, and received by the Respondent on March 23, 2018. Pursuant to State Human Resources Regulation 19-718.07 (F)(10), the Respondent requests that the Director reconsider the decision of the State Employee Grievance Committee (hereinafter "Committee") for the following reasons:

I. As an initial matter, the Committee's decision improperly views the evidence in the whole record and improperly concludes that SCTCS's decision to end its employment relationship with Appellant prejudiced her substantial rights and met one or more of the elements contained in S. C. Code Ann. 8-17-340 (E)(2). Appellant is not entitled to reinstatement with full back pay and benefits as explained below:

   a. Appellant did not establish that Respondent's decision to terminate her employment violated a constitutional or statutory provision;

b. Appellant did not establish that Respondent's decision to terminate her employment was in excess of the statutory authority of the agency;
c. Appellant did not establish that Respondent's decision to terminate her employment was made upon unlawful procedure;
d. Appellant did not establish that Respondent's decision to terminate her employment was affected by other error of law;
e. Appellant did not establish that Respondent's decision to terminate her employment was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
f. Arbitrary or capricious or characterized by abuse discretion or clearly unwarranted exercise of discretion.

South Carolina law is well settled that the Committee must affirm the decision of a State Agency if the record contains substantial evidence on the record as a whole which supports the Agency's decision. Moreover, the Committee may not substitute it's judgement for the Agency, Nucor Steel v. S.C. Public Serv. Com, 310 S.C. 539, 542, 426 S.E. 2d 319, 321 (1992). This case is governed by 8-17-340 (E)(2), which provides that the Appellant has the burden of proof to demonstrate that the decision to terminate her employment was in error. However, it appears that the Committee shifted the burden of proof to the Respondent.

II. The State Employee Grievance Committee erred when it reversed the employment termination decision of the Agency and voted in favor of the Appellant, thereby not acknowledging the oversight authority of the State Board for Technical and Comprehensive Education (SBTCE) by not taking into account all facts in the whole record. The State Employee Grievance Committee's decision seemingly reverses the oversight authority of (SBTCE) and by allowing Denmark Technical College (DTC) to violate the SBTCE's policies and procedures by exploiting weaknesses in practices established by Dr. McIntyre and former Commission Chair Thomas Williams (See Richland County v. South Carolina Department of Revenue III, Appellate Case No. 2016 - 001839, Opinion 27775 citing Charleston Cty. Sch. Dist. v. Charleston Cty. Election Comm'n, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999).) The SBTCE is the entity with jurisdiction and authority for statewide governance of the Technical College System and therefore must be given deference in its interpretation of statutes and regulations in this matter.

III. The Committee erred when it concluded that DTC was on notice of transfer courses when the Agency found that the evidence on the record shows that Appellant knowingly and willfully submitted fraudulent reimbursement requests. In addition, the Agency found that she used tuition assistance for a program of study unrelated to her position; and knowingly, willfully and

intentionally applied for and received 100% reimbursement when the policy only allowed a 85% reimbursement at maximum.

IV. The Committee erred when it allowed Appellant to change her issue on appeal after she claimed in her Notice Of Appeal that the stamp was "never" used on her own documents and Respondent terminated her employment because the evidence showed that the stamp was used on her documents and without supporting documentation. The Committee further erred in its summary when it stated, "SCTCS contends that Appellant used the President's signature stamp on her own personnel documents to give herself pay increases". As noted in Dr. Hall's letter (See Committee Exhibit 1, page 23), the Respondent contended that Appellant received pay increases, which were approved using the President's stamp, but had no supporting documentation. The point of contention is not that the Appellant used the stamp on her own personnel documents, but the fact that the Presidents stamp was indeed used on Appellant's documents to receive pay increases as confirmed by Dr. McIntyre's testimony, in which he admitted that he had no procedure in place to develop supporting documentation on the use of the stamp. However, Dr. McIntyre testified that Ms. Jackson was the typical user of the stamp.

V. The Committee erred in accepting testimony from a deposed chair who admitted to violating SACSCOC accreditation standards by involving himself in the day- to- day operations of the institution. The Agency relied on the fact that Mr. Williams had been deposed as Chair by a Commission of his peers because he violated SACSCOC accreditation standards and jeopardized DTC's accreditation. Refer to testimony of Ms. Gwendolyn Bright held on March 2, 2018 and Agency Exhibit 3.

## DISCUSSION

For the reasons that follow, the Committee's decision in favor of the Appellant should be reversed.

I. As an initial matter, the Committee's decision improperly views the evidence in the record as less than "substantial evidence" to support the Respondent's decision to terminate Appellant by stating the Agency actions were clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and arbitrary or capricious or characterized by abuse discretion or clearly unwarranted exercise of discretion. The premise that the Committee did not find that Appellant violated any rules or regulations and therefore was

not unethical in these matters is misplaced. In making its decision in favor of the Appellant, the Committee erroneously relied on the testimony of persons whom, through admission of testimony, had been removed from their positions; rather than facts and policy relied upon by the Agency. Instead, the Committee merely draws the conclusion that since such persons testified of approving the actions through favorable testimony, that the actions must have been valid. The Committee in this regard gave no deference to the procedural guidelines, limits or parameters of Agency policy. The Committee's failure to consider and give deference to the Agency's position is an error of law.

II. In accordance with Section 59-53-20, the SC State Board for Technical and Comprehensive Education (hereafter "South Carolina Technical College System" or "SCTCS" has jurisdiction and authority over state supported technical institutions and programs within the South Carolina Technical Education (College) System. The statute further states "[a]ll personnel employed in the institutions and programs within the jurisdiction and control of the State Board for Technical and Comprehensive Education are designated state employees whether paid in whole or in part by state funds and are subject to the regulations, guidelines, and policies of the State Board for Technical and Comprehensive Education, the Department of Administration, and the state personnel system."

DTC, like the other fifteen technical colleges in South Carolina fall under the jurisdiction of the State Board for Technical and Comprehensive Education. (See section 59-53-20). Even though the former president of DTC and the former Chair of the Area Commission testified that Appellant's actions were appropriate, their testimony cannot prohibit the SCTCS from enforcing its system wide policies at DTC.

In its summary, the Committee states "since President Boyd-Scotland approved Appellant's request for tuition assistance, Appellant's degree "must have been" relevant to her position at DTC. Dr. Boyd-Scotland's approval does not override SBTCE's finding that the degree was unrelated to Appellant's position. Moreover, President McIntyre and Dr. Drammeh both testified that Appellant's Master degree was relevant to her position the Committee concludes that if the approving authorities at DTC believed that Appellant's Master of Business Administration degree was not relevant to her job, they would not have approved Appellant's request for tuition assistance." The Committee again ignored SCTCS's determination. Thus, it is the Respondent's belief that the Committee erred in its interpretation of the perceived authority held by the former presidents of DTC, the former Chair of the Area Commission and the former Vice President. Neither Dr. Boyd-Scotland, Dr.

McIntyre nor Dr. Drammeh can offer an interpretation of policy contrary to SCTCS's interpretation.

Under South Carolina law, SCTCS has a significant interest in the uniform application of its policies. See Camp v. Bd. of Pub. Works of Gaffney, 238 S.C. 461, 469-470, 120 S.E.2d 681,685(1961). "When a state agency has significant duties relating to the subject matter of the action, the agency's real and substantial interest in the case is established." Richland County v. South Carolina Department of Revenue III, Appellate Case No. 2016 - 001839, Opinion 27775 citing Charleston Cty. Sch. Dist. v. Charleston Cty. Election Comm'n, 336 S.C. 174, 181, 519 S.E.2d 567, 571 (1999) Thus, SCTCS has authority, under the provision of its enabling legislation, to review facts showing how policies are implemented at DTC and reach a decision which, in its judgment, can be implemented in the same manner at any of the Technical Colleges in South Carolina. The SCTCS is not bound by the policy interpretation offered by Dr. McIntyre or Mr. Williams. Further, the South Carolina General Assembly adopted S 480, which vested all powers and duties of the Denmark Technical Area Commission in the State Board of Technical and Comprehensive Education (SBTCE). This change took effect on May 1, 2017 and is expected to last until November 1, 2018[1]. The action of the State Legislature creates a second legal authority supporting the deference, which must be given to the SCTCS in matters of policy interpretation at DTC. The Committee is free to accept the testimony of any witness; however, it cannot based on the Court's holding in Richland County reject the law, which must be applied to the case.

In Richland County, the voters of the Richland County (County) approved a one penny sales tax to be used to support transportation in the County. The penny tax was to be collected by the South Carolina Department of Revenue (DOR) and administered by the DOR as it administered such programs in other counties. The County adopted an ordinance implementing the penny tax program, which allowed the County to spend the money on capital projects. The County, however, began using the money to pay for public relations and for mentoring services. DOR disagreed with the use of the money for non-capital projects such as public relations and mentoring. The Court found that DOR had correctly disallowed the non-capital expenditures because DOR is the agency responsible for implementing tax programs across the state. Appellant's case is no different from Richland County in that the SCTCS has the responsibility for adopting and enforcing policies governing post-

[1] S. 480 is currently being amended to allow the SBTCE control to end January 1, 2019.

secondary technical education across the state. Accordingly, SCTCS's application of its policies must be given deference.

III. In its summary, the Committee noted that the SCTCS submitted Appellant's transcript from American Intercontinental University Online (AIUO) and AIUO's notice regarding its tuition and fee schedule. However, the Committee in error believes that this information put DTC on notice regarding the possibility of Appellant's transfer credits being accepted towards her degree at AIUO and, that it was DTC's responsibility to assess if it would reimburse Appellant for her transfer credits. The Committee found that DTC should have been aware of the transfer credits from Springfield College to AIOU based on her transcript and Appellants reimbursement for the entire cost of her degree." The Agency found this analysis to be inaccurate because deference must be given to the Agency on its findings that the grade reports were not supported by the transcripts. Further, the Agency found that Appellant submitted fraudulent grade sheets for the transferred courses and the official transcript was not obtained until the completion of the degree program.

Dr. Hall terminated Appellant's employment because she violated policy when she pursued a program of study with the Tuition Assistance Program which was unrelated to her position at the time of her application to participate in the program. Further, the program according to the Explanation of Policy Statement as Applied to Use of Title III Funds in support of Policy Title: Institutional Advancement, Number 2-1-008was intended to be a percentage reimbursement program. See Committee Exhibit 1, pages 146 - 147. However, the Appellant received 100% reimbursement, which was a violation of the policy. Neither Dr. McIntyre nor Dr. Drammeh offered any testimony that the 100% reimbursement was supported by policy. The Agency finding of the violation must be given deference by the Committee.

No reasonable reading of the DTC tuition assistance program could support paying 100% of the $27,963.00 for attending a program. Further, DTC's program does not provide 100% of the cost of tuition of a program. Appellant, however, testified that she received the $27,963.00 to attend the program. The policy at paragraph 6, provides that a recipient may only receive between 75% and 85% of the program cost. See Committee Exhibit 1, page 147. Appellant, with the help of Dr. McIntyre, violated the Tuition Reimbursement Program. Appellant introduced no evidence that there is any Agency approved exemption or waiver which would have allowed her to receive 100% of the cost of tuition for the program. The evidence on the record shows that Appellant violated the Tuition Assistance Policy as stated by Dr. Hall.

The Committee correctly noted that Dr. Hall was only on the campus for a short period of time prior to placing Appellant on Investigatory Suspension and ultimately terminating her employment. However, the Committee's pointing to the short period as justification for reversing the employment decision is misplaced. Dr. Hall terminated Appellant's employment for her willful violation of certain policies. Any reasonable review of her submission for reimbursement reveals that she submitted false documents for payment for two courses. Her official transcript shows that MGT600 and MGT680 were taken at Springfield College. However, Appellant prepared and submitted two Student Invoices which claimed that the courses were taken at AIUO. In addition, she claimed that in these same two (2) courses taken supposedly at AIUO, to have earned grades of 'A' in each course on the Student Invoices while the official transcript shows the letters 'TC' in the grade column. The significance of the false grade is that the overarching system-wide SBTCE Policy 8-10-100 and its supporting procedure required a grade of 'B' or better to receive reimbursement. Ms. Jackson even admitted during her testimony that she did not need to attend the full two years, because she had courses transferred into the program for credit. College policies/guidelines can be more restrictive, but cannot under any circumstances supersede SBTCE policies and procedures. Thus, her conduct with the Tuition Reimbursement program was a willful violation of a policy that applies to every employee at every technical college in South Carolina. Her conduct was willful and justified the immediate termination of her employment.

IV. Ms. Jackson, in her Notice of Appeal wrote "[she] expressly informed the Agency representatives that she used the President's stamp at the instruction of the former President of Denmark Technical College and the stamp was never used on her own documentation." See Committee Exhibit 1, page 41. Dr. McIntyre's testimony that he approved Ms. Jackson's use of the stamp does not alter her Notice of Appeal as she had already expressly claimed that the stamp was never used on her own documents. Moreover, his admission that there was no written documentation to show his approval of the use of the stamp on her own documents reinforces the concerns raised by Dr. Hall's letter of May 11, 2017. During the hearing before the Agency, Ms. Jackson repeatedly represented that the stamp was never used on her own documents. In fact, she maintained this position until Dr. McIntyre's testimony during the Committee hearing. However, Dr. McIntyre's testimony cannot be used to change Ms. Jackson's position taken during her hearings before the Agency. The evidence of the stamp being used on her own documents is substantial and begins, in part, in the record beginning at page 97 continues through page 106.

The approval's were done by the President's stamp contrary to the assertions made by Ms. Jackson in her Notice of Appeal. Dr. McIntyre, Former

Commission Chair Thomas Williams and Ms. Jackson testified that she had access to and used the President's stamp. Thus, the use of the stamp in this instance, as was correctly stated by Dr. Hall, violated all reasonable controls and personally benefitted Ms. Jackson. Dr. McIntyre's testimony raised questions but did change the substantial evidence on the record that the stamp was used on Ms. Jackson's own documents, which compromised the College's ability to maintain reasonable controls. Initially Ms. Jackson stated that the stamp was never used, however, during the investigation, SCTCS found this was not true and the evidence to the contrary was mounting.

The Committee relied on the testimony of Mr. Williams, Dr. McIntyre and Dr. Drammeh, which offered an interpretation of SCTCS's policy that is contrary to the SCTCS's application as put forward in its decision to terminate the employment of the Appellant. Appellant took this position in her Notice of Appeal found on page three of the record. She also took the same position – the president's stamp was never used on her own documents – in the letter of May 18, 2017, to Dr. Hall found at pages 21 and 22 in Committee Exhibit 1. Dr. McIntyre testified that the DTC Departmental Request for Personnel/Payroll Action Form was approved using a stamp but he had approved the use. See Committee Exhibit 1, page 98 and Dr. McIntyre's testimony held on February 1, 2018. Dr. McIntyre's testimony did not go to the issue on appeal as it had been presented to the SCTCS. While Appellant repeatedly claimed that she did not know the reason for the termination of her employment, it is clear that she was asserting that the president's stamp was never used on her own documents. Thus, she clearly knew that the stamp on her own documents without supporting documentation was the concern. Dr. McIntyre admitted during his testimony that there would be no supporting documentation showing that he approved the use of the stamp on the documents at the time the approval was given. Dr. Hall's letter of termination clearly raised the harm that her conduct – accepting pay increases with a president's stamp as approval without supporting documentation - violated all reasonable controls in the System. See Committee Exhibit 1, page 23. However, during the hearing she came with a different position as expressed by Dr. McIntyre and Dr. Drammeh. This significant change in her position, if allowed by the Committee, will make it very difficult for the SCTCS to enforce it policies. The Respondents interest in applying its policies at DTC is as much for the protection of the students enrolled at DTC as it is for the policy's application to all other technical colleges.

The Committee in error, gave deference to DTC, Mr. Williams and Dr. McIntyre instead of the State Board for Technical and Comprehensive Education, which by statute has oversight and jurisdiction of the sixteen college system. This error will make it impossible for SCTCS to uniformly

enforce its policies at all technical colleges. Moreover, this error violates the very enabling legislation which creates the SCTCS. See Section 59-53-20, which provides, in pertinent part, that all technical colleges are under the jurisdiction of the SCTCS. The issue of reasonable control, among other things, is required by SACSCOC. See Agency Exhibit 3. The authority of SCTCS to compel compliance with these measures is essential to protect the accreditation of each institution. Dr. McIntyre demonstrated his lack of commitment to adequate control when he testified that there was no supporting documentation for the use of the stamp on Appellant's personnel documents; even though, she was the primary person he allowed to use the stamp. Mr. Williams demonstrated his lack of commitment to maintaining DTC's accreditation when he testified to his improper involvement in the daily operations of the college as well as unilaterally removing the Interim President who had been appointed by majority vote of the DTC Area Commission. Thus, the testimony of Dr. McIntyre and Mr. Williams was essentially admissions of policy violations at DTC. The SCTCS, therefore, is the Agency with the ultimate authority for the sound operation of the college and therefore must be given deference in its findings and decisions in this matter.

The Committee applied the wrong interpretation to the testimony of Dr. McIntyre, Dr. Drammeh and Mr. Williams as to the use of the stamp. Appellant has the burden of proof and therefore must provide evidence that the use of the stamp had supporting documentation as was raised by Dr. Hall's letter of May 11, 2017. Mr. Williams testified that he understood that "it was common practice" that other presidents used a stamp for their signature. Appellant, according to the evidence on file, has worked for three different presidents as an administrative assistant. However, Appellant nor Mr. Williams offered any proof of document bearing the stamped signature of any previous presidents, other than Dr. McIntyre. Moreover, Dr. McIntyre had no written procedure for the use of the stamp. However, Dr. McIntyre testified that she was the typical user of the stamp. Interestingly, Appellant "expressly" stated to Dr. Hall and Dr. Hardee at two different hearing levels that "the stamp was never used on her own documentation." See Committee Exhibit 1, State Employee Grievance Procedure State Appeal Form, page 3. She never told Dr. Hall or Dr. Hardee that Dr. McIntyre had approved the stamped pay actions. Instead, she changed her position during the hearing before the Committee. While the Committee can believe or disbelieve any witness, it cannot change the basis of an appeal simply by applying the wrong interpretation of testimony.

The record contains substantial evidence to support the charges raised by the Agency in support of the decision to terminate the employment of Ms. Jackson. Dr. Hall, the interim President, by letter dated May 11, 2017, wrote to Jackson, among other things, "in your role as Administrative Coordinator I (to the

President), you received pay increases, which were approved using the president's stamp, but had no supporting documentation. Your conduct in this matter violated all reasonable controls in our system and, I believe, violates the South Carolina Ethics Act which prohibits a public employee from using his/her position for personal gain." See Committee Exhibit 1, page 23. The record in this case contains six instances where the President's stamp was used to approve pay increases for Ms. Jackson without any supporting documentation for use of the stamp. In fact, during his testimony, Dr. McIntyre testified that there was no documentation to show that he had given her approval to use the stamp for the various pay increases. Additionally, Dr. McIntyre testified that ultimately, it was his signature that "confirms a pay action." Thus, Ms. Jackson's conduct threatened the College's ability to maintain adequate controls as raised in Dr. Hall's letter.

V. With regard to interpretation of accreditation standards, SCTCS is due deference. Commissioner Gwendolyn Bright, who serves on the SBTCE, was appointed by the SBTCE to serve on the Denmark Technical College Area Commission. Ms. Bright testified that Mr. Williams was removed as Chair because he had exceeded his authority by unilaterally removing Dr. Christopher Hall from the position of Interim President. Ms. Bright further testified that Mr. Williams' conduct was in violation of the accrediting standards of (SACSCOC) and could have caused the school to lose its eligibility to offer federal student financial aid to students who attend DTC. Ms. Bright's testimony included a copy of the accreditation standards, which was placed in the record. See Agency Exhibit 3. Mr. Williams admitted during his testimony that he would meet with employees and consider whether to hear or act on their concerns, thus, involving himself in the day-to-day operations of DTC in violation of SACSCOC standards. Refer to Mr. Williams testimony held on February 1, 2018. By accepting the testimony of a deposed chair, the committee failed to acknowledge the accrediting standards in which all institutions are bound, as well as the agency policies/procedures and raises a question about bias or prejudice. Mr. Williams testimony was an admission that he routinely violated SACSCOC standards as it relates to the Governing Board. In fact, he was removed from the position of chair for having acted in a manner that exceed his authority. Refer to Mr. Williams testimony held on Februrary 1, 2018. These types of actions jeopardizes the academic accreditation standards of the SACSCOC, which charges the Chief Executive Officer, ultimately responsible for and the exercising of appropriate controls over the institution's educational, administrative and fiscal programs and services. As Ms. Bright testified, the Commission, by SACSCOC standards had no involvement in the day to day operations of the college. The SCTCS has every right to expect members of Area Commissions, such as Mr. Williams to comply with the accreditation standards of the SACSCOC as it relates to governance.

## CONCLUSION

For the aforementioned reasons statutes, SBTCE policies and procedures, SACSCOC accreditation standards and matters of fact, the Agency respectfully requests that the Committee's decision be REVERSED in favor of the Respondent.

**[Signature Follows]**

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Respectfully submitted,

Charles J. Boykin
SC Technical College System
111 Executive Center Drive
Columbia, SC 29210
Telephone: (803) 896-5311
Boykinc@sctechsystem.edu

Attorney for Respondent SC Technical College System

April 19, 2018
Columbia, South Carolina

## Miller, Spencer

**From:** Kate Ray <Kate@cbphlaw.com>
**Sent:** Friday, April 27, 2018 4:44 PM
**To:** Miller, Spencer; boykinc@sctechsystem.edu
**Cc:** Shannon Polvi
**Subject:** Carla Jackson v. SC Technical College; Reconsideration
**Attachments:** 4-27-18 Ltr to Admin re Memo in Opp.pdf; Memo in Opp to Respondent's Motion for Reconsideration.pdf

Good afternoon Mr. Miller & Mr. Boykin:

Attached please find Appellant's Memorandum in Opposition to Respondent's Motion for Reconsideration regarding the above matter. A hard copy has also been placed in today's mail.

Please let me know if there are any questions or concerns.

Have a great weekend!

Kindest regards,

Kate M. Ray
*Litigation Paralegal to J. Paul Porter, Shannon M. Polvi, and Elizabeth M. Bowen*
CROMER BABB PORTER & HICKS, LLC

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CROMER BABB PORTER & HICKS, LLC

*Attorneys and Counselors at Law*

J. Lewis Cromer * Julius W. Babb, IV * J. Paul Porter * Ryan K. Hicks
Shannon M. Polvi * Samantha E. Albrecht * Elizabeth M. Bowen

April 27, 2018

**Via U.S. Mail and Email**
Mr. Spencer Miller
Division of State Human Resources
8301 Parklane Road, Suite A220
Columbia, SC 29223
Spencer.Miller@admin.sc.gov

**Re: Carla Jackson v. SC Technical College System**
**State Employee Grievance – Motion for Reconsideration**

Dear Counselors:

Enclosed please find Appellant's Memorandum in Opposition to Respondent's Motion for Reconsideration along with a Certificate of Service with regard to the above-referenced matter.

Should you have any questions or concerns, please do not hesitate to contact our office.

With kindest regards, I am

Sincerely,

Kate M. Ray
*Paralegal to Shannon M. Polvi*

/kmr
*Enclosures*

Cc: Charles Boykin, Esquire
111 Executive Center Drive
Columbia, SC 29210
boykinc@sctechsystem.edu

**BEFORE THE SOUTH CAROLINA**
**STATE EMPLOYEE GRIEVANCE COMMITTEE**

| | |
|---|---|
| Carla Jackson,<br><br>Appellant,<br><br>v.<br><br>Denmark Technical College,<br><br>Respondent. | **APPELLANT'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR RECONSIDERATION** |

Appellant, Carla Jackson, respectfully requests that Denmark Technical College's Motion for Reconsideration be denied. Denmark Technical College is a college within the South Carolina Technical College System ("the College") from which Ms. Jackson grieved her termination through the State Employee Grievance Procedures. The hearing of Ms. Jackson's grievance before the State Employee Grievance Committee ("the Committee") spanned four days on November 28, 2017, February 1-2, 2018, and March 2, 2018.

The Committee found that Ms. Jackson established that the College's decision prejudiced her substantial rights and met one or more of the elements contained in S.C. Code Ann. 8-17-340(E)(2). The Final Decision of the Committee was issued on March 22, 2018.

Ms. Jackson's requests that the decision issued on March 22, 2018 be confirmed and that the relief granted to Ms. Jackson through the State Employee Grievances Procedures be awarded to Ms. Jackson in the timeliest manner possible.

The College's arguments in its Motion for Reconsideration remain the same arguments it made during the hearing. Nothing has changed; the evidence clearly shows that the College prejudiced Ms. Jackson's substantial rights and that she met one or more of the required elements for the reversal of the College's termination of her employment.

Ms. Jackson was an employee of Denmark Technical College from January of 2011 until her termination on May 11, 2017. During Ms. Jackson's employment at the College, she served as the Administrative Coordinator in the President's Office, Interim Dean of Transitional Studies/ Distance Education, and Interim Dean of Business, Computer, and Related Technologies. Ms. Jackson also taught courses as an Adjunct Professor, and she also performed the duties of Executive Assistance to the College Board.

Ms. Jackson appealed her termination pursuant to S.C. Code of Laws Ann § 8-17-340(E)(2)(a), (b), (c), (d), (e), and (f) as the facts and circumstances leading to Ms. Jackson's termination are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in the view of the reliable, probative and substantial evidence on the whole record; and arbitrary and capricious and characterized by an abuse of discretion and clearly an unwarranted exercise of discretion. As reflected by the Findings of Fact in the Final Decision, the Committee heard from several witnesses and reviewed a series of documents supplied by Ms. Jackson and the College in support of their respective arguments.

Ms. Jackson argued that the facts and circumstances leading to her termination are in violation of constitutional or statutory provisions, including, but not limited to, wage and whistleblower laws. Ms. Jackson argued that she was denied due process on the basis that the agency failed to provide Ms. Jackson any notice for the grounds of a suspension that they termed an "investigatory suspension". Ms. Jackson was never given grounds for such "investigatory suspension" in writing. Ms. Jackson's suspension letter, found on page 68 of the Record on Appeal, simply said that Ms. Jackson was placed on an investigatory suspension without pay effective immediately for allegations surrounding her alleged involvement in improper conduct with regard

to college operations. Yet, Ms. Jackson received no explanation beyond that vague phrase alleging "involvement in improper conduct with regard to college operations". Ms. Jackson was an Interim Dean of the College and as such, her entire job entailed "college operations". The total lack of information given to Ms. Jackson deprived Ms. Jackson of an opportunity to defend herself and to rebut the allegations of "involvement in improper conduct with regard to college operations".

Ms. Jackson participated in every grievance meeting in which she was given an opportunity to attend. The College deliberately manipulated Ms. Jackson's suspension and grievance process by: failing to provide her with the specific charges made against her; failing to allow her to confront her witnesses and accusers; by pre-judging her grievance; and by failing to allow her a fair and impartial avenue of redress, including the finders of fact who were not themselves tainted in the process.

Ms. Jackson was terminated from employment for "willful violation of rules, regulations and written policies, which constitute conduct unbecoming a state employee." Ms. Jackson argued that such grounds are unfounded, and Ms. Jackson was not given documentation supporting the accusations against her. Ms. Jackson did not violate any rules, regulations, or written policies.

The first alleged ground for Ms. Jackson's termination relates to tuition reimbursement she received. Ms. Jackson argued that her receipt of tuition reimbursement payments years ago was proper, was approved, and the documentation reflects her completion of her application, degree, and reimbursement with approval of the required necessary approvers. That the College argues that such matters were grounds to terminate her employment is ridiculous, and Ms. Jackson proved such matters through the testimony of the witnesses and the documentation presented to the Committee. Ms. Jackson expressly articulated that she applied for tuition reimbursement and was granted tuition reimbursement.

Ms. Jackson was an employee of the College when she applied for and received tuition reimbursement, and Ms. Jackson's education was directly related to her employment with the College as clearly evidenced by her positions as an Interim Dean of the College since October 2015, as an adjunct instructor for multiple years, and previously as Administrative Coordinator. Ms. Jackson's receipt of reimbursements were proper and were for the completion of her degree as required for reimbursement. Each of the classes Ms. Jackson sought reimbursement for were based on fact. The documents reviewed during the hearing clearly show that the documentations and numbers line up and support the conclusion that Ms. Jackson did nothing wrong. Ms. Jackson did nothing wrong in such actions to apply for and to receive tuition reimbursement as Ms. Jackson applied for and was approved for tuition reimbursement by the following department heads: Director of Grants/Contracts, VP of Finance, and the College Presidents.

Ms. Jackson proved to the Committee that the second alleged ground to terminate her is equally preposterous. The second claim in Ms. Jackson's termination notice stated, "in your role as Administrative Coordinator I (to the President), you received pay increases, which were approved using the President's stamp, but had no supporting documentation. Your conduct in this matter violated all reasonable controls in our system and, I believe, violated the South Carolina Ethics Act which prohibits a public employee from using his/her position for personal gain." Ms. Jackson confirmed at the hearing, as she had previously done at her suspension grievance hearing, when asked about the President's stamp, Ms. Jackson expressly denied that she ever used the President's stamp on any of her own personnel documents. This was confirmed by the President of the College during his testimony at the hearing.

The Committee heard for themselves that Ms. Jackson was paid for duties that she performed, that she was actually underpaid for such duties in that paying her to do an Interim role

was cheaper for the College than hiring a permanent Dean at a higher salary, and that all pay adjustments for additional duties given to Ms. Jackson were properly approved by the supervisors above Ms. Jackson. Ms. Jackson had no part in paying herself.

Ms. Jackson expressly informed College representatives that the President's stamp is used by each of the recent sitting Presidents of Denmark Technical College and is used for high volume documentation and at the express instruction of the sitting President. Ms. Jackson expressly informed the Agency representatives that she used the President's stamp at the instruction of the former President of Denmark Technical College and the stamp was never used on her own documentation. Ms. Jackson never used the stamp for personal gain.

Further, Ms. Jackson testified, and the evidence showed, that she did not receive a pay increase; she received supplemental pay when she performed additional duties. Any and all supplements in Ms. Jackson's pay were expressly authorized by the supervisory chain above Ms. Jackson and by Human Resources. The accusation that Ms. Jackson somehow gave herself raises is utterly absurd. Ms. Jackson was not even employed in the President's Office after October 2015 when she was promoted to her first Interim Dean.

The College's arguments in the Motion for Reconsideration fail. Ms. Jackson did not claim that a stamp was never used on her own documents. In fact, Ms. Jackson testified that "she" never used a stamp on her own documents. Ms. Jackson would have no personal knowledge of anyone else's actions with regard to the stamp. The issue of whether or not a stamp was used to approve Ms. Jackson's supplemental pay is moot as Dr. McIntyre testified at the hearing that he authorized and approved all of Ms. Jackson's personnel documents and pay. Dr. McIntyre testified that he used the stamp on documents. Dr. McIntyre testified that he did not have any written procedure in place for the use of the stamp. The College failed to prove or show that there is a policy or

procedure that requires, enforces, or have made deem necessary for all presidents or administrators to have a stamp procedural. The stamp was clearly a common practice by the College President's and to question the use of a hand-written signature or a stamped signature on an approved document is unlawfully punitive to Ms. Jackson's employment when there is incontrovertible evidence that Ms. Jackson's supplemental pay was approved by supervisors, not approved by herself, and was received for duties performed.

The College accused Ms. Jackson of allegedly improperly receiving tuition reimbursement and allegedly stamping her own pay increases documentation. Both accusations factually date back several years and are untimely grounds to terminate Ms. Jackson and such allegations were wholeheartedly denied and the evidence supported Ms. Jackson's account that she had done nothing wrong in receiving supervisory approved tuition reimbursement and supervisory approved supplemental pay.

Ms. Jackson's suspension that culminated in her termination was her first such reprimand and Ms. Jackson showed that the action taken against her violated the Agency's progressive discipline policy.

The Committee did not err in accepting testimony from Mr. Williams, the former Board Chair who the Agency alleged violated the SACSCOC accreditation standards, by involving himself in the day-to-day operation. Mr. Williams testified that he asked and requested for Dr. Hall, the Interim College President and Ms. Jackson's supervisor at the time, to provide the Board with evidence to substantiate the decision to take disciplinary actions against Ms. Jackson. Mr. Williams also testified that Dr. Hall could not produce any evidence supporting the action taken against Ms. Jackson and he indicated that he did not have any evidence against Ms. Jackson. Mr. Williams testified that Dr. Hall stated that he was following the instructions of SCBTE President,

Dr. Hardee. The College's own rebuttal witness to Mr. Williams' testimony, Ms. Bright, also testified that she did not know why the action was taken against Ms. Jackson.

The Committee did not even hear from the decision maker, Dr. Hall, the Interim President of Denmark Technical College. Dr. Hall was only at the College campus for about 10 days prior to him suspending Ms. Jackson. Comparatively, the Committee did hear from Dr. McIntrye, the President of Denmark Technical College during the timeframe relevant to the College's allegations against Ms. Jackson. Dr. McIntyre affirmed to the Committee that these grounds the College brought against Ms. Jackson are baseless.

The College's Motion for Reconsideration argues that the Committee erred in its decision. It appears that the College admits to a violation of State Board policies and procedure in its Motion for Reconsideration; which further shows that Ms. Jackson is not at fault for the things charged as a basis for her termination. If the College has a different interpretation of the policies and procedures enforced by SCBTE, then it is the SCBTE's duty and responsibility to ensure that the College Administrators are carrying them out properly. The employees cannot supersede the President's decisions, nor can Ms. Jackson be held accountable for the Administrators' error, if any.

Moreover, the Motion for Reconsideration argues that there was weakness in practices established by Dr. McIntyre, Mr. Williams, and also Dr. Boyd-Scotland, who worked at the College for at least 17 years with the same practices, yet the SCBTE never addressed any such alleged violations. The Motion for Reconsideration seems an attempt to throw the previous College Administrations 'under the bus' in order to somehow show that its egregious conduct toward Ms. Jackson is somehow merited in fact, which it is not. The evidence before the Committee showed

that the College's own witness at the hearing, who also received tuition assistance, was still employed with the College.

The Committee did not err in its decision as the College was on notice about Ms. Jackson's transfer courses. Ms. Jackson's application and program of study clearly included and identified the courses she would complete. Therefore, the College was made aware of and approved Ms. Jackson's completed courses. Ms. Jackson used tuition assistance for a program that was related to her position, per Dr. McIntyre and Dr. Drammeh's testimonies; both of whom were in the supervisory chain above Ms. Jackson. Ms. Jackson's tuition assistance application included the details of her job positions and rationale for applying. Ms. Jackson's application was approved by Teresa Mack, the Director of Grants and Contracts and the College President, Dr. Boyd-Scotland, who also supervised Ms. Jackson.

The College again misdirects the Committee when in its Motion for Reconsideration it argues that Ms. Jackson knowingly, willfully, and intentionally applied for and received 100% reimbursement when the policy only allows 85% maximum. In fact, the Title III Funds policy (page 2, section 6) indicates for only instances that "Should employee elect the more costly courses, he/she will need to negotiate an agreement or contract for the Title III Program to defray no less than 75% and no more than 85% of the total cost of courses." Ms. Jackson's courses costs were comparable to other institutions and/or enrolled in exact institutions other employees attended and received tuition reimbursement, such as Jamie Wise. Seemingly, the College is making an argument that has no basis because no audit or finding was made that there was any wrongdoing in Ms. Jackson's receipt of tuition assistance, or any other employee for that matter.

No evidence was shown that the College has ever been cited or rebuked for violating or misinterpreting its tuition assistance polices. Yet, out of all employees that received tuitions

assistance under these common practices, seemingly only one has been accused of violating the tuition assistance policies and procedures. This, yet again, reinforces that targeted and arbitrary nature of the College's actions toward Ms. Jackson.

Herein by reference, Ms. Jackson contests all stated basis for reconsideration asserted by the College. Based on the foregoing and all of the evidence put before the State Employee Grievance Committee, Ms. Jackson's requests that the College's Motion for Reconsideration be denied.

**CROMER BABB PORTER & HICKS, LLC**

BY: _____

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***Attorney for Appellant***

April 27, 2018
Columbia, South Carolina

## Miller, Spencer

**From:** Miller, Spencer
**Sent:** Tuesday, November 21, 2017 3:14 PM
**To:** 'Shannon Polvi'; Boykin, Charles
**Cc:** 'peacock@sctechsystem.edu'
**Subject:** Jackson v. TECH - Order
**Attachments:** Carla Jackson v. South Carolina Technical College System (Order) (Nov. 2....pdf

Good Afternoon,

Please see the attached Order from the Committee Attorney regarding Ms. Jackson's *Motion in Limine*. I will send a copy of the new version of the record via mail as well.

Thanks,

Spencer Miller
*Consultant, Division of State Human Resources*

**The South Carolina**
**Department *of* Administration**
8301 Parklane Road, Suite A220, Columbia, SC 29223
(803) 896-5194 | (803) 896-5050 fax

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**STATE OF SOUTH CAROLINA**
**STATE EMPLOYEE GRIEVANCE COMMITTEE**

| | | |
|---|---|---|
| Carla Jackson,<br>Appellant,<br><br>vs.<br><br>South Carolina Technical College System,<br><br>Respondent. | ) | **ORDER** |

As the Committee Attorney for the South Carolina State Employee Grievance Committee, this issue is before me pursuant to S.C. Code Section 8-17-340(c). That section grants the Committee Attorney the authority to "rule on all motions, and all legal issues." Through a motion, Ms. Jackson asks the Committee Attorney to exclude certain pages from the South Carolina Technical College System's (Agency) proposed Exhibit One. The specific page ranges are pages 7-10, page 42-45, pages 73-95, and pages 107-131. For the reasons stated in this Order, the Committee Attorney grants Ms. Jackson's motion in part and denies it in part.

Pages 107-131 and pages 73-95 are excluded. Pages 7-10 and 42-45 are not excluded, but all references to one hundred thousand dollars will be redacted.

## I. Agency's Response To Appellant's Motion In Limine

Before turning to Ms. Jackson's motion, the Committee Attorney must first address the Agency's motion in opposition, which opposes the exclusion of the above page ranges. Spencer Miller, Consultant for the Division of State Human Resources, gave the Agency until 10:00 AM on Thursday, November 17 to respond to Ms. Jackson's motion. Mr. Miller did not receive a response, however, until 5:00 PM. The Agency missed its deadline, so the Committee Attorney

can deny its motion on that basis alone. In addition to its tardiness, the Agency's motion is unpersuasive.

Ms. Jackson argued that the above pages ranges should be excluded because they violate the South Carolina Rules of Evidence, Rules 802 (Hearsay Rule), 402 (Irrelevant Evidence Rule), and 403 (Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time). In addition, the information Ms. Jackson seeks to redact was not listed in the notice of termination. She argues that the lack of notice and the lack of an opportunity to rebut these previously unknown allegations violate her right to due process, presumably under the Federal and South Carolina constitutions. (Ms. Jackson does not specify).

The Agency says only the following about Ms. Jackon's Rules of Evidence arguments: "Appellant's Motion in Limine should be denied because the evidence she seeks to exclude is relevant and probative and must be considered by the panel." (Agency's Response to Motion to Exclude). That one sentence applies to Rules 402 and 403, but does not apply to Rule 802. The Agency does not offer an argument that opposes exclusion based on hearsay. The Agency, moreover, does not explain why the page ranges are relevant and probative, or why, even if relevant and probative, the probative aspect of the evidence is not substantially outweighed by some other consideration, such as prejudice. Rule 403, SCRE.

The bulk of the Agency's two-paragraph motion responds to Ms. Jackson's due process argument. The Agency argues that the Committee Attorney should not exclude the page ranges because it does not have to notify Ms. Jackson of every alleged violation of rules, regulations, and written policies, let alone give her a chance to rebut each of them. The Agency does not support its conclusion with any statutes, regulations, or case law.

The first of the Agency's two arguments is this: Because Ms. Jackson was told that her termination was supported by more facts than those listed in the notice of termination,[1] "it was not necessary to explain everything that was uncovered during the investigation in the notice of termination." (Agency's Response to Motion to Exclude). The question is, however, whether the Agency must give notice of each charge and an opportunity to rebut the allegations, before terminating Ms. Jackson. The fact that the agency told Ms. Jackson that there are undisclosed facts supporting her termination does not answer the question; rather, the use of the phrase, "the specific facts...include, but are not limited to," assumes that the Agency need not disclose every fact to her or provide her with an opportunity to respond. The Agency's argument does not answer the pertinent question. Consequently, its argument proves nothing.

The Agency's second argument is irrelevant. The argument is this: The Agency could not inform Ms. Jackson of every fact supporting her suspension, because "the investigation had just begun and the extent of the conduct was not known at that time." (Agency's Response to Motion to Exclude). That last clause is true: The Agency suspended Ms. Jackson on February 15, 2017,[2] but the Investigative Report was not completed until April of 2017.[3] The Grievance Committee, however, is only hearing the appeal of her termination. As stated in a letter to Ms. Jackson's attorney, "[t]he termination now effectively moots Ms. Jackson's suspension pending an investigation as well as the appeal of her suspension to the State Human Resources Director."[4] The Agency was copied on that letter.[5] What the Agency did or did not know at the time of Ms.

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[1] Committee Exhibit One, p. 23 ("the specific facts supporting this action include, but are not limited to...").
[2] Committee Exhibit One, p. 68
[3] Committee Exhibit One, p. 42
[4] Committee Exhibit One, p. 45
[5] Id.

Jackson's suspension in February is irrelevant; it has no bearing on the due process question concerning Ms. Jackson's termination. The Agency's second argument is unconvincing.

The Agency's motion was late and its contents were unpersuasive. The motion is denied.

## II. Due Process

Ms. Jackson does not say whether she is claiming a violation of substantive or procedural due process. She also fails to cite any statutes or case law that supports her position. Regardless, unless she had a property interest in continued employment, neither claim is possible. "The Fourteenth Amendment does not itself create property rights but rather affords a protection to them. Property rights are determined from sources independent of the constitution, such as, in this case, state law." Linton v. Frederick County Bd. Of County Com'rs, 964 F.2d 1436, 1438 (1992).

### *i. Property Interest In Continued Employment*

The Fourth Circuit has said that, when an employee can only be fired "for cause" under applicable State law, that employee gains a constitutionally protected property interest that cannot be deprived without due process." Id. 964 F.2d at 1439. Under South Carolina law, "covered employees" are entitled to retain their employment, unless they are terminated "for cause," or because of a proper "reduction in force." A "reduction in force" is a "determination made by an agency head to eliminate one or more filled positions in one or more organizational units within the agency due to budgetary limitations, shortage of work, or organizational changes." S.C. Code Ann. §8-17-320(21). An employee who loses employment due to a "reduction in force" may only appeal to the Grievance Committee, if "[the State Human Resources Director] determines there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan." S.C. Code Ann. §8-17-330.

The South Carolina Supreme Court has not said whether "covered employees" have a property interest in continued employment. Bell v. South Carolina Dept. of Corrections, 397 S.C. 320, 338, 724 S.E.2d 675, 684 (2012) (Declining to consider Appellants' argument that they, "[a]s covered employees, enjoyed the right to retain employment unless removed for cause or by proper reduction in force"). The Fourth Circuit, however, determined that a non-probationary employee under Virginia law, who could be discharged "for cause," as well as for "lack of work, reduction in work force, or job abolition," had a property interest in continued employment. Detweiler v. Com. Of Va. Dept. of Rehabilitative Services, 705 F.2d 557, 559 n. 2 (1983). The Fourth Circuit, moreover, described a body of Virginia law that resembles South Carolina law concerning the same subject:

> [A] nonprobationary employee does not serve at the will of the agency that employs him. The statute's distinction between probationary employees and nonprobationary employees, its distinction between disciplinary discharges and discharges for reduction in work force, the Standard's specifications of the breaches of discipline for which an employee may be discharged, and the authority conferred on an impartial panel to reverse the agency's decision and to order reinstatement with back pay establish that a nonprobationary employee has a property interest in continued employment that is created by the state.

Id. 705 F.2d at 559-60 (Citing Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); Perry v. Sindermann, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972)). Accordingly, Ms. Jackson has a property interest in continued employment under South Carolina law.

*ii. Pre-Termination "Hearing"*

Now the question becomes, what process is due to Ms. Jackson. Linton v. Frederick County Bd. Of County Com'rs, 964 F.2d 1436, 1439 (Citing Cleveland Bd. Of Educ. v. Loudermill, 470 U.S. 532, 541, 105 S.Ct. at 1491, 1493). "[T]he [U.S.] Supreme Court in Loudermill held that a public employee with a property interest in continued employment who is given post-termination

administrative procedures must nevertheless, before termination, be given 'oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story.'" Id. (Citing Cleveland Bd. Of Educ. v. Loudermill, 470 U.S. 532, 546, 105 S.Ct. at 1491, 1495). The pre-termination procedures, however, need not be elaborate. "When post-termination administrative procedures are afforded, such pretermination procedure functions only as 'an initial check against mistaken decisions—essentially, a determination of whether there are reasonable grounds to believe the charges against the employee are true and support the proposed action.'" Id. (Citing Cleveland Bd. Of Educ. v. Loudermill, 470 U.S. 532, 545-46, 105 S.Ct. at 1491, 1495).

*iii. Pre-Termination Due Process*

Pre-termination due process "does not mandate that all evidence on a charge or even the documentary evidence be provided," it requires only that a "descriptive explanation be afforded as to permit [the employee] to identify the conduct giving rise to the dismissal and thereby to enable [that employee] to make a response." Id. 964 F.2d at 1440 (Citing Gniotek, 808 F.2d at 244 (As stated by the Fourth Circuit, the court in Gniotek upheld the sufficiency of a Notice that was specific enough to allow the employee "the opportunity to determine what facts, if any, within his knowledge might be presented in mitigation of or in denial of the charges")). Previous warnings concerning the same sort of alleged conduct are further evidence that an employee has received adequate pre-termination notice of the allegations against him. Id. (Citing Seibert v. State of Okla. ex rel Univ. of Okla. Health Sciences Ctr., 867 F.2d 591, 598 (10th Cir.1989)).

Regarding the inclusion of general "catch all" allegations, the Fourth Circuit has said the following. "[W]hen a notice adequately details charges on which the termination is based and those charges justify the termination sanction, the notice is not rendered defective for due

process purposes by the inclusion of unspecific and generalized catch-all allegations." Id., 964 F2d. at 1441. (The Fourth Circuit did say, however, that "evidence that the specific charges were a pretext to conceal the real cause of the termination or that the employee was actually confused at the time the notice was given" would render the generalized language more than harmless surplusage). Id.

Two things become clear from the above. 1) An employee, for pre-termination due process purposes, must be given a "descriptive explanation" that allows her to "to identify the conduct giving rise to the dismissal and thereby to enable [her] to make a response." Id. 964 F2d. at 1440 (Citing Gniotek, 808 F.2d at 244). 2) Generalized catch-all allegations do not, by themselves, render a Notice of Dismissal defective for pre-termination due process purposes.

*iv. The Agency Violated Ms. Jackson's Pre-Termination Due Process Rights*

The Agency completed its investigation of Ms. Jackson's conduct in April of 2017.[6] The Investigative Report has four findings. The Agency met with Ms. Jackson and her attorney on May 4, 2017.[7] The Agency sent her a Notice of Dismissal on May 11, 2017.[8] The Notice stated she was terminated for "willful violation of rules, regulations, and written policies, which constitute conduct unbecoming a state employee."[9] The Notice also alleges that Ms. Jackson violated the South Carolina Ethics Act. The Notice, however, only specifically lists two of the Investigative Report's four findings, findings number 1 and 4. According to Ms. Jackson, she never knew of finding number 2 or finding number 3, prior to the Agency's reply to her "State HR appeal." (Appellant's Motion in Limine, p. 1). The Division of State Human Resources

[6] Committee Exhibit One, p. 42
[7] Committee Exhibit One, p. 23
[8] Id.
[9] Id.

received the Agency's reply on July 25, 2017,[10] more than two months after Ms. Jackson's termination.

Prior to her termination, Ms. Jackson was never given enough information to identify the conduct listed in findings number 2 and 3 of the Investigative Report, let alone an opportunity to respond to them. She did not know those allegations existed. Linton, 964 F.2d at 1440 (Citing Gniotek, 808 F.2d at 244) (Pre-termination due process "does not mandate that all evidence on a charge or even the documentary evidence be provided," it requires only that a "descriptive explanation be afforded as to permit [the employee] to identify the conduct giving rise to the dismissal and thereby to enable [that employee] to make a response"). The findings, furthermore, are not "fairly directed" to similar types of violations, which makes Ms. Jackson's case distinguishable from Linton. In Linton, the employee received a Notice of Dismissal that "was fairly directed to [1] [his] repeated authorizations of work without the necessary state permits and [2] his refusal to comply with specific directives to obtain such permits, which form an adequate basis for termination under [the applicable] law." Id. What is more, although the employee was only able to discuss one incident that gave rise to his termination, "this was but the last in a series of similar incidents listed in the notice of which [the employee] had personal knowledge." Id. (Citing Seibert v. State of Okla. ex rel Univ. of Okla. Health Sciences Ctr., 867 F.2d 591, 598 (10th Cir.1989) (As explained by the Fourth Circuit, the Tenth Circuit case considered an "extensive history of warnings," while determining whether the pre-termination due process requirements were met)).

Unlike the situation in Linton, Ms. Jackson is accused of giving herself pay raises without permission (Finding 1), initiating unauthorized disciplinary actions against fellow employees

[10] Committee Exhibit One, p. 7

(Finding 2), failing to properly fill out sick leave on SCEIS (Finding 3), and improperly agreeing to tuition reimbursement (Finding 4).[11] Although these are all describable as "willful violations of rules," each involves different processes and procedures. Each finding requires a wholly separate response and explanation from Ms. Jackson. In addition, the Committee Attorney is unaware of evidence that indicates Ms. Jackson had been previously warned about any of the specific allegations, let alone knowledge of findings 2 and 3, prior to the State HR appeal.

The Agency claims that each of the four findings supports its decision to terminate Ms. Jackson's employment. (Agency's Response to Motion to Exclude). Prior to her termination, Ms. Jackson did not know of two of findings and had no opportunity to respond to either of those two findings. This is a violation of Ms. Jackson's pre-termination due process rights, guaranteed by the Fourteenth Amendment to the U.S. constitution.[12]

*v. Exclusion Of Evidence Is Not A Remedy For A Procedural Due Process Violation*

"A violation of plaintiff's procedural due process rights is typically remedied by either injunctive relief or a court order instructing that the plaintiff be afforded the process he was denied." Seabrook v. Knox, 369 S.C. 191, 197, 631 S.E.2d 907, 911 (2006). (Providing pre-termination process is impossible now; Ms. Jackson has been terminated). A due process treatise does not list exclusion of evidence as a remedy for a procedural due process violation. Ivan E. Bodensteiner and Rosalie Berger Levinson, 1 *State and Local Government Civil Rights Liability*, §1:18 (Constitutional violations—Procedural due process) (November 2017 Update). Although Ms. Jackson requests the exclusion of certain pages based on a due process violation, she does not cite any authority that supports exclusion as a remedy for such a violation. The Committee

[11] Committee Exhibit One, pp. 42-44

[12] The Committee Attorney will not address the inclusion of generalized allegations, because a violation of Ms. Jackson's pre-termination due process rights has been found.

Attorney, consequently, denies her request to exclude evidence because of a procedural due process violation.

## III. Appellant's Motion In Limine To Exclude Certain Evidence Based On SCRE

### *i. Pages 107-131*

Both parties agree to exclude pages 107-131. These pages are excluded and testimony regarding them is prohibited.

### *ii. Pages 73-95*

Pages 73-95 are complaints against Ms. Jackson. Fellow employees of the Agency seem to have filed the complaints. Some of the complainants are anonymous. The Committee Attorney excludes these pages under Rules 402, SCRE.

Regarding Rule 402, "[r]elevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." State v. McEachern, 399 S.C. 125, 140, 731 S.E.2d 604, 611 (Ct. App.2012). In addition, a court "has broad discretion in determining the relevancy of evidence and its decision to admit or exclude evidence will not be reversed on appeal absent an abuse of discretion and a showing of prejudice." Id.

Ms. Jackson was terminated for her "willful violation of rules, regulations [,] and written policies, which constitute conduct unbecoming a state employee."[13] The Agency also believes Ms. Jackson violated the State Ethics Act.[14] Although the complainants allege Ms. Jackson violated rules, etc., the fact that these complainants think or believe Ms. Jackson violated rules is irrelevant; that is, it does not tend to make the existence of actual violations more or less

[13] Committee Exhibit One, p. 23
[14] Id.

probable. If pages 73-95 contained statements from individuals who did not think Ms. Jackson's conduct violated rules, those statements would be excluded on the same basis.

The motion to exclude pages 73-95, therefore, is granted. Nevertheless, the Agency may state, generally, that allegations were made against Ms. Jackson, and these allegations led to the opening of an investigation that ultimately resulted in her termination. In addition, this ruling does not prevent the parties from calling Ms. Jackson's fellow employees as witnesses.

*iii. Pages 7-10 And 42-45*

Pages 42-45 is the Investigative Report that details the Agency's findings. Pages 42-45 is the Agency's response to Ms. Jackson's State HR appeal. Both detail factual findings and allegations that were not presented to Ms. Jackson prior to her termination; consequently, she never had a meaningful opportunity to respond to them. The due process concern is discussed above; here, we address Ms. Jackson's motion to exclude these pages or portions of these pages, based on the SCRE.

First, Ms. Jackson asks to exclude these pages because they contain hearsay. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Rule 801(c), SCRE. The Agency, however, does not have the burden of proof at the Grievance hearing. S.C. Code Ann. §8-17-340(E)(2) ("[T]he Committee may not alter or overrule an agency's decision, *unless the covered employee establishes* that the agency's decision is...") (emphasis added). The Agency is not offering these pages to prove the truth of any matter asserted within them; they offer these pages to show what the Agency relied upon in making its decision. Consequently, the pages are not hearsay and cannot be excluded on that basis.

Second, Ms. Jackson seeks to exclude these pages because they are irrelevant under Rule 402. They certainly contain relevant information, however. Ms. Jackson was terminated for

"willful violation of rules, regulations and written policies, which constitute conduct unbecoming a State employee." The above page ranges contain examples of, what are purported to be, willful violations of rules, etc. Thus, the pages are not excludable under Rule 402.

Third, Ms. Jackson seeks to exclude the above page ranges based upon Rule 403, SCRE. Rule 403 allows the exclusion of relevant evidence, when the probative value of that relevant evidence is substantially outweighed by some other consideration, such as prejudice or confusion of the issues. The Committee Attorney will not exclude these pages in toto; however, all references to receiving supplemental pay of over one hundred thousand dollars are excluded.

The issue is whether Ms. Jackson had the authority to receive additional compensation, not the amount of compensation received. Although the fact Ms. Jackson received such a substantial sum is probative and relevant concerning her authority to receive additional compensation, the danger of focusing the Committee on the amount of money rather than the question concerning her authority substantially outweighs the probative value of that fact. Consequently, all references to one hundred thousand dollars will be redacted.

**THEREFORE**, the Committee denies Ms. Jackson's motion in part and grants it in part. Pages 107-131 and pages 73-95 are excluded. Pages 7-10 and 42-45 are not excluded, but all references to one hundred thousand dollars will be redacted.

Kevin Desmond Maroney
Kevin Desmond Maroney
Committee Attorney

November 21, 2017
Columbia, SC

C | B | P | H

CROMER BABB PORTER & HICKS, LLC

*Attorneys and Counselors at Law*

J. Lewis Cromer * Julius W. Babb, IV * J. Paul Porter
Ryan K. Hicks * Shannon M. Polvi * Samantha E. Albrecht

November 10, 2017

***Via Email & US Postal Service***

Mr. Spencer Miller
Division of State Human Resources
8301 Parklane Road, Suite A220
Columbia, SC 29223
Spencer.Miller@admin.sc.gov

**Re: Carla Jackson v. SC Technical College System**
**Appeal Hearing: November 28, 2017**

Dear Spencer:

Please find enclosed Appellant's Motion in Limine.

Please note that the State Employee Grievance Committee should not be sent the Committee Exhibit 1, with the pages at issue, until the Motion in Limine has been ruled upon.

Also, enclosed with this letter is Ms. Jackson's updated List of Names of Witnesses Form.

Ms. Jackson also asked that I inquire about whether her mother may attend the State Employee Grievance Hearing.

All of this information is also being sent by mail to Ms. Peacock's attention and to Mr. Boykin by email.

With kind regards, I remain

Sincerely,

Shannon Polvi

Enclosures: Motion in Limine and Witness List

cc: Charles Boykin, Attorney for Agency (via email)

Ms. Kandy Peacock, Vice President and Chief Human Resources Officer (via US Mail)
Division of Human Resources Management
SC Technical College Systems
111 Executive Center Drive, Enoree Building
Columbia, SC 29210

Harley Kirkland, Esquire (Cover Letter and Motion in Limine via email)
South Carolina Attorney General
Hkirkland@scag.gov

Carla Jackson (via email)

## Miller, Spencer

**From:** Shannon Polvi <Shannon@CBPHlaw.com>
**Sent:** Friday, November 10, 2017 4:31 PM
**To:** Boykin, Charles; Miller, Spencer; HKirkland@scag.gov
**Subject:** Carla Jackson v. Denmark Technical College
**Attachments:** 11-10-17 Ltr re Motion in Limine, additional witness.pdf

Dear Spencer, Charles, and Harley,

Please see the attached documents including Appellant's Motion in Limine.

Sincerely,
Shannon

Shannon Polvi
CROMER BABB PORTER & HICKS, LLC

1418 Laurel St., Suite A (29201) | P.O. Box 11675 | Columbia, SC 29211
Phone 803.799.9530 | Fax 803.799.9533
shannon@cbphlaw.com
www.cbphlaw.com

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THE STATE OF SOUTH CAROLINA

BEFORE THE SOUTH CAROLINA
STATE EMPLOYEE GRIEVANCE COMMITTEE

| | |
|---|---|
| In the Matter of<br><br>Carla Jackson,<br><br>Appellant,<br><br>v.<br><br>South Carolina Technical College System,<br><br>State Agency. | **APPELLANT'S MOTION IN LIMINE TO EXCLUDE CERTAIN EVIDENCE** |

Appellant Carla Jackson, through the undersigned counsel, submits this Motion in Limine to Exclude Certain Evidence.

Appellant seeks to exclude the following pages from Committee Exhibit 1 as submitted by the State Agency: pages 7-10, 42-45, 73-95, and 107-131.

Pages 7-10, 42-45, and 107-131 refer to allegations that were not brought in Ms. Jackson's grievance for her suspension, nor were they brought in Ms. Jackson's grievance for her termination. *See* the Termination Notice at page 23 of Committee Exhibit 1 and the Suspension Notice at page 68 of Committee Exhibit 1. No such allegations were presented to Ms. Jackson prior to the State HR appeal. Allegations beyond the ones listed in the suspension and termination notices were not brought to Ms. Jackson. Ms. Jackson had no opportunity to rebut such false allegations. Accordingly, the State Agency's efforts to now use such allegations for this grievance amounts to a denial of Ms. Jackson's due process rights.

Appellant seeks to exclude all testimony, exhibits, and references of any sort referring to the allegations against Ms. Jackson in pages 7-10, 42-45, and 107-131 that are not listed in Ms.

Jackson's suspension and termination notices. *See* the Termination Notice at page 23 of Committee Exhibit 1 and the Suspension Notice at page 68 of Committee Exhibit 1.

Appellant also seeks to exclude pages 107-131, entitled *Attachment C*, as it appears to be attorney-client billing information that may have been unintentionally produced. Alternatively, if pages 107-131were intentionally produced, such documents should be excluded on the basis that such documents between the State Agency and its attorneys is irrelevant and prejudicial.

The above information Appellant seeks to exclude is not relevant to any issue properly before the State Employee Grievance Committee and such information would be used by the State Agency to prejudice Appellant. *See* S.C. R. Evid. 402 (Evidence which is not relevant is not admissible.) *See also* S.C. R. Evid. 403 (Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the [State Employee Grievance Committee].)

All testimony, exhibits, and references of any sort concerning false allegations of abuse of authority, creating a hostile for employees, abuse of annual/sick leave, receiving supplement pay increasing to her salary to over 100k, usurping the President by initiating personnel actions of subordinates, and so forth, as outlined in pages 7-10, 42-45, and 107-131 of Committee Exhibit 1, should be excluded because such statements were not cited as grounds for Ms. Jackson's suspension or termination. *See* the Termination Notice at page 23 of Committee Exhibit 1 and the Suspension Notice at page 68 of Committee Exhibit 1.

Such information found in pages 7-10, 42-45, and 107-131 and testimony about it is inadmissible, hearsay, irrelevant, and unduly prejudicial. *See* S.C. R. Evid. 402, 403, 801, and 802; *see also State v. Rivera*, 402 S.C. 225, 245, 741 S.E.2d 694, 704 (2013).

For the foregoing reasons, Appellant requests that the Court exclude pages 7-10, 42-45, 73-95, and 107-131 from Committee Exhibit 1 as submitted by the State Agency and preclude the State Agency from making any reference to the aforementioned evidence during the State Employee Grievance Committee hearing, including during its opening and closing statements and the calling of the witnesses.

**CROMER BABB PORTER & HICKS, LLC**

BY: _____

Shannon M. Polvi (SC Bar #101837)
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

*Attorney for Appellant*

November 10, 2017
Columbia, South Carolina

admin
THE SOUTH CAROLINA
DEPARTMENT *of* ADMINISTRATION

**Henry McMaster**, *Governor*
**Marcia S. Adams**, *Executive Director*

**DIVISION *of* STATE HUMAN RESOURCES**
Karen Luchka Wingo, Director
8301 Parklane Road, Suite A220
Columbia, SC 29223
803.896.5300
803.896.5050 Fax

August 21, 2019

**Via Email and US Mail**
Mr. Warren V. Ganjehsani
General Counsel
South Carolina Technical College System
111 Executive Center Drive
Columbia, South Carolina 29210

Ms. Shannon Polvi
Cromer Babb Porter & Hicks
P.O. Box 11675
Columbia, South Carolina 29211

Re: Carla Jackson v. South Carolina Technical College System

Dear Mr. Ganjehsani and Ms. Polvi:

On June 25, 2019, Judge Ralph King Anderson, III issued an Order of Remand in response to the South Carolina Technical College System's appeal to the State of South Carolina Administrative Law Court of the decision issued by the State Employee Grievance Committee concerning Ms. Jackson's appeal of her termination.

Judge Anderson's order states, in part, that this case is remanded to "the Board to determine whether Jackson was an Interim Dean at the time of her termination (uncovered employee) or whether Jackson was also functioning in a covered FTE position." In a conference call on August 15, 2019, facilitated by the David Avant, the SC Department of Administration's General Counsel, and attended by you both, Judge Anderson clarified that his reference to "the Board" in his decision was meant to refer to the State Employee Grievance Committee.

In accordance with Judge Anderson's order, a panel of State Employee Grievance Committee members will be assigned to address the issue identified in the order of remand. The panel will be provided with all exhibits included in the Record on Appeal, a copy of the transcript of the previous hearing, documents related to the reconsideration request and will be provided with access to the hearing recordings. The panel will also be provided with a copy of Judge Anderson's Order.

You are both asked to submit a brief summarizing your position on this matter and a list of any witnesses you intend to call during this hearing. These briefs will be provided to the panel. This information should be submitted to this office no later than **5:00 p.m. on Tuesday, September 10, 2019**.

Upon receipt of your briefs you will be contacted concerning the scheduling of a hearing date.

If both parties would like to resume the mediation process, a mutually agreed upon resolution could still be reached prior to this hearing. If you would like to resume mediation, please contact me via email at heather.keever@admin.sc.gov or by phone at 803-896-5088.

If you have any questions, please call me.

Sincerely,

Heather Keever

Heather Keever
Alternative Dispute Resolution Program

## Keever, Heather

**From:** Keever, Heather
**Sent:** Tuesday, September 10, 2019 9:24 AM
**To:** Ganjehsani, Warren; shannon@cbphlaw.com
**Cc:** Borchers, Amanda
**Subject:** Extension Request In RE: Carla Jackson v. TECH

Good Morning All,

Ms. Polvi request for an extension is granted and the deadline for both parties to submit their briefs has been extended to 5:00pm on Friday, September 13, 2019.

If you have any questions please let me know.

Sincerely,
Heather Keever
Program Manager, Division of State Human Resources

The South Carolina
Department of Administration
8301 Parklane Road, Suite A220, Columbia, SC 29223
803-896-5088
Lead.Collaborate.Innovate.

-----Original Message-----
From: Ganjehsani, Warren <ganjehsaniw@sctechsystem.edu>
Sent: Monday, September 9, 2019 8:22 PM
To: Keever, Heather <Heather.Keever@admin.sc.gov>
Cc: shannon@cbphlaw.com; Holloway, La'Tonia <HollowayL@sctechsystem.edu>
Subject: [External] Re: Extension Request In RE: Carla Jackson v. TECH

Heather-

I am agreeable to Shannon's request as long as the same extension (until September 13th at 5 p.m.) is provided to SCTCS.

Regards,

Warren

Sent from my iPhone

> On Sep 9, 2019, at 8:11 PM, Shannon Polvi <Shannon@cbphlaw.com> wrote:
>

>
>
> [External Email] ***Open attachments and follow links with
> caution.***
>
>
>
> Dear Heather,
>
> I request, on Carla Jackson's behalf, an extension of the 5pm September 10th deadline referenced in the attached letter issued on August 21, 2019.
>
> I am still in the office at this time with some time sensitive matters requiring my attention and I have a hearing tomorrow that I anticipate could take all day. There's a draft of the material together, but it is not in a final form that I am comfortable putting my name on in such an unedited form. I will be able to put in more time on finishing the draft later this week in order to complete it, so I'm only asking for a short extension to 5pm on Friday, September 13th.
>
> Thank you for your understanding.
>
> Sincerely,
> Shannon
>
> Shannon Polvi
> CROMER BABB PORTER & HICKS, LLC
> 1418 Laurel St., Suite A (29201) | P.O. Box 11675 | Columbia, SC 29211
> Phone 803.799.9530 | Fax 803.799.9533 shannon@cbphlaw.com
> https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.c
> bphlaw.com&data=02%7C01%7CHeather.Keever%40admin.sc.gov%7C171fdb06
> fe48432136d608d73584dc13%7Ce9f8d01480d84f27b0d6c3d6c085fcdd%7C1%7C0%7C
> 637036717066795946&sdata=73EFs%2FHzn78yJIY4K6UfaM5%2FAZvdfHs110ztn
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>
>
>
> -----Original Message-----
> From: Keever, Heather <Heather.Keever@admin.sc.gov>
> Sent: Wednesday, August 21, 2019 12:15 PM
> To: Shannon Polvi <Shannon@CBPHlaw.com>; Ganjehsaniw@sctechsystem.edu
> Subject: Carla Jackson v. TECH
>
> Please see the attached letter concerning the above-referenced appeal.
>
> Sincerely,
> Heather Keever
> Program Manager, Division of State Human Resources
>
> The South Carolina
> Department of Administration

> 8301 Parklane Road, Suite A220, Columbia, SC 29223
> 803-896-5088
> Lead.Collaborate.Innovate.
>
>
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> _____
>
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> <8-21-19 Ltr from DOA re Remand.pdf>

**STATE OF SOUTH CAROLINA**
**BEFORE THE STATE EMPLOYEE GRIEVANCE COMMITTEE**

| | |
|---|---|
| South Carolina Technical College System,<br><br>vs.<br><br>Carla Jackson, | **SOUTH CAROLINA TECHNICAL COLLEGE SYSTEM'S BRIEF ON REMAND FROM THE ADMINISTRATIVE LAW COURT** |

Pursuant to the Administrative Law Court's ("ALC") June 25, 2019 Order of Remand ("Remand Order") and the August 21, 2019 letter from the Department of Administration ("DOA"), the South Carolina Technical College System ("SCTCS") submits this brief to the State Employee Grievance Committee ("Committee") to guide the Committee in discharging its narrow duty on remand. The Remand Order set forth the procedural history of this action in detail, so only a limited recitation thereof appears below. All pages cited herein from the Record on Appeal ("Record") are attached.

ARGUMENT

SCTCS asked the ALC to review the Committee's decision on Carla Jackson's ("Jackson") appeal of her termination ("Appeal") from Denmark Technical College ("DTC") because SCTCS maintained that the Committee had no subject matter jurisdiction to have heard Jackson's Appeal. So that the ALC can reach a decision on this legal issue, the ALC has sent this Appeal back to the Committee to make the following single finding of fact: "whether Jackson was an Interim Dean at the time of her termination (uncovered employee) or whether Jackson was also functioning in a covered FTE position." [Remand Order p. 6 (underscore added).] To that end, the ALC directed

the Committee's attention to several items in the Record demonstrating that Jackson was functioning exclusively as an Interim Dean at the time she was terminated from DTC:

1. **"[T]he Record does not reflect that Jackson was performing her duties as 'Executive Coordinator' or 'Administrative Coordinator' after she became the 'Dean of Transitional Studies and Distance Education' . . . ."** [Remand Order p. 5.].

The ALC made clear that the evidence shows Jackson's Interim Dean position *took the place of the Administrative Coordinator position entirely* rather than just adding to it. The ALC's view of this issue undermines Jackson's repeated efforts to characterize her Interim Dean position as merely the performance of "additional" duties on top of her former Administrator Coordinator position. Accordingly, the ALC has directed the Committee to focus on the position Jackson was **actually performing** in at the time of her termination to determine if the Interim Dean position supplanted rather than supplemented the Administrative Coordinator position.

Jackson was initially hired by DTC in January 2011 as an Administrative Coordinator ("Coordinator") in the DTC President's office. [R. p. 288.] Jackson described her primary duties in the Coordinator role as being to "basically manage the operation of the [DTC President's] office[,] to assist the president with the executive level documents in operation of the college, and to assist the executive staff." [R. p. 288.] Jackson was in the Coordinator position until October 1, 2015, when she became Interim Dean of Transitional Studies and Distance Education. [R. p. 340.] She admitted that she no longer performed the Coordinator duties or worked in the President's office as of October 1, 2015, except for a brief period of three months or less immediately thereafter to assist the person who "fill[ed]" her "old position" with the transition into it. [R. pp. 340-342.]

Jackson's supervisor was DTC's President, Dr. Leonard McIntyre ("Dr. McIntyre"), who likewise testified that Jackson left the Coordinator position once she became Interim Dean and no

longer performed the duties of the former position. [R. p. 250.] Jackson represented that she had "previously" served as "Administrative Coordinator" in the DTC President's Office but that she "ha[d] not . . . been employed" in that capacity "since October 2015 when she was *promoted to Interim Dean*." [R. pp. 428-430 (emphasis added).]

2. **"In addition, the Record reflects another person, Gwendolyn Bamberg, was hired as Administrative Coordinator in the President's office *after Jackson was named Interim Dean*."** [Remand Order p. 5 (italics in original).]

The ALC also emphasized that another person – Gwendolyn Bamberg – filled the Coordinator position once Jackson vacated it. [R. pp. 121-122, 228.] This development further illustrated that Jackson was not performing any of the duties of her former position.

3. **"Indeed, she filed this case as 'Interim Dean.'"** [Remand Order p. 5.]

The ALC ascribed significance to the fact that Jackson's filings with DOA *never* referenced that she was occupying the Coordinator position or was otherwise performing the duties of a Coordinator at the time of her termination. Jackson became the Interim Dean of Business, Computers and Related Technologies ("BCRT") in October 2016. [R. p. 233.] When Jackson submitted her Grounds for Appeal form to DOA, she identified her job on the document's first page only as an "Interim Dean" and made no mention of being a "Coordinator." [R. p. 428.] Her narrative statement to DOA further amplified the fact that she was exclusively an Interim Dean at the time of her termination. Specifically, she maintained that she was "an Interim Dean of [BCRT]," that she had been a "Dean of the College" whose "entire job entail[ed] 'college operations,'" and that she had served as "an Interim Dean of the College since October 2015." [R. p. 429.]

4. **"The transcript also reflects that the position of 'Interim Dean' is not an FTE position. Therefore, the evidence reflects that Jackson was employed as a covered employee initially but was subsequently promoted to a non-covered employee position."** [Remand Order p. 5.]

Testimony from Jackson's supervisor showed definitively that Jackson was not functioning as both an Interim Dean and a Coordinator and that her Interim Dean position was "not covered" as a "protected State employee" under the State Employee Grievance Procedure Act. [R. p. 269.]

Jackson's Interim Dean position description reflected that her duties included providing "curricular leadership in relation to . . . . academic programs," supervising "the administration of and ensur[ing] the academic quality of academic advising and special programs," and being "[r]esponsible for human resource management of unit faculty and staff." [R. pp. 684-685.] When Jackson's Interim Dean position description was compared with her former Coordinator position description during Dr. McIntyre's questioning by Jackson's counsel, he testified that Jackson's duties were dramatically different between the two jobs. [R. pp. 267-268.] Most critically, Dr. McIntyre testified that Jackson "absolutely" *could not have been* serving in both roles simultaneously:

> Jackson's counsel: [A]s the former President of a college, what would be the differences between what she was performing as an Administrative Coordinator and what might merit her receiving more pay for performing these Interim Dean roles.
>
> Dr. McIntyre: Well, certainly these duties required more credentials, in terms of ... The qualifications. And more accountability, more responsibility. That's basically what I can tell you. There's a big difference between what is expected from one position to the next.
>
> Jackson's counsel: And would it be ... As common sense, that **someone couldn't be performing all of these full time roles at the same time, that even if Miss Jackson was keyed as one position she, as a full time job, would only have been doing one of these?**
>
> Dr. McIntyre: **Absolutely, only one**.

[R. p. 268 (emphasis added).]

5. **On January 26, 2017, Jackson was listed as Executive Coordinator on a Personnel/Payroll Action form. The only signature on this form is that of the President of DTC, although several more signatures were required. In contrast, another form shows [Jackson's] title as Interim Dean and was signed by all necessary persons.** [Remand Order p. 2.]

Jackson's January 2017 Personnel/Payroll Action form is invalid on its face and inaccurately reflects Jackson as a Coordinator at that time, and the ALC signaled that the Committee must disregard it accordingly. The January 2017 form contains only one signature – a fatal defect the ALC seized upon by pointing out that "several more signatures were required." [R. p. 664; Remand Order p. 2.] Tellingly, Jackson introduced *no testimony* about this form, nor did she offer any legal foundation for the Committee to treat it as a valid document or otherwise be given any evidentiary weight.

In contrast, the Personnel/Payroll Action form reflecting Jackson's move from Interim Dean of Transitional Studies to Interim Dean of BCRT was signed by the required DTC administrators in September/Octobter 2016, and Jackson's counsel elicited testimony about it. [R. pp. 131-133, 665.] Moreover, Dr. Lamin Drammeh – a former DTC Vice President and Chief of Staff – underscored the fact that multiple signatures were required on this document and that the sequence in which the signatures were obtained was important. [R. pp. 118, 131-133.] Consequently, the ALC took particular note of the fact that this document was "signed by **all necessary persons**" and is the only one that should be given legal effect. [Remand Order p. 2 (emphasis added).]

## CONCLUSION

The Committee cannot plausibly find that Jackson's position as Interim Dean of BCRT – the "highest paid dean" at DTC according to Dr. McIntyre – coexisted with her Coordinator position such that she functioned in both positions simultaneously. [R. p. 234.] The overwhelming

evidence in the Record – including Jackson's own testimony – made clear that she had long since ceased serving as a Coordinator at the time of her termination. Hence, she was not in fact performing duties that were *in addition to* those of the Coordinator position.

Had Jackson truly believed she was still a Coordinator, she would have initiated her grievance appeal to DOA in that capacity. Instead, she represented in her filings to DOA that she served as a Coordinator only up until the time of her "promotion" to Interim Dean. She testified that she was an Interim Dean when she was terminated, and the witnesses who were asked about her duties all stated that she served as an Interim Dean once she left her Coordinator position. Any effort by Jackson to backpedal on this point and argue otherwise therefore rings hollow.

The ALC has provided guideposts for the Committee to follow in reaching the only conclusion that reasonably can be drawn from the evidence. South Carolina Dep't of Mental Health v. Moore, 295 S.C. 42, 45, 367 S.E.2d 27, 28-29 (1988) (affirming reversal of a Committee decision because "the Committee failed to reach the only conclusion adequately supported by the relevant evidence"). Thus, there is only one finding of fact that the evidence compels the Committee to make: Jackson was solely an Interim Dean at the time of her termination.

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September 13, 2019

Shannon Polvi: Doctor Drammeh, I'll be asking you questions first today. And though I'll be asking you questions, try to direct your answers to the Committee. We'll start off by, I'd like to ask you what is your educational background?

Lamin Drammeh: I have a Doctorate in Educational Administration. I have training in Educational Leadership and Management. I'm an expert in assessment and development.

Shannon Polvi: When did you earn your doctorate degree?

Lamin Drammeh: I completed my study in 2013.

Shannon Polvi: Were you previously employed by Denmark Technical College?

Lamin Drammeh: Yes, I have.

Shannon Polvi: What was the time-frame of your employment?

Lamin Drammeh: I came on-board June 1st and my last day at Denmark, it was June 30, 2017.

Shannon Polvi: And for the June 1st date of your start date, which year was that?

Lamin Drammeh: In 2014, June.

Shannon Polvi: During the about three years' time-frame of your employment with Denmark Technical College, what positions did you hold?

Lamin Drammeh: I came in as Executive Director in a capacity of Chief of Staff and Special Assistant to the President.

Shannon Polvi: Did you remain in that role throughout the three years of employment with Denmark Technical College?

Lamin Drammeh: The President reassigned me sometime in the second year, I think, of my appointment to the Vice President for Research, Planning, and Development, and Special Assistant to the President.

Shannon Polvi: Let's talk about your first role, the Executive Director, Chief of Staff position. What did your duties or responsibilities entail in that role?

Lamin Drammeh: It's a support to the Executive Director, which is the President, the CEO. That position requires tremendous challenges, because when I came on-board at Denmark Technical College they were facing reaffirmation for SACS and they have 37 non-compliances. Nine of them are code requirements. Each and every one of those requirements is eligible to put the college on probation or even shut down.

Shannon Polvi: During your interactions with Miss Jackson, did she abide by the rules and policies that you understood to be in place?

Lamin Drammeh: Yeah.

Shannon Polvi: When Miss Jackson was in the interim Dean roles, did you also interact with her?

Lamin Drammeh: When shew as in the interim Dean role I interact with her because I was the Chair of the Strategy Planning Committee. In those meetings I wanted to understand you know, and facilitating and development, the strategy plan of the college what is important for each area and unique division, so we have meetings. She participated in those meetings and then you know, there are activities and events that involve the college. She maybe on those meetings with me and then she was still you know, working in that capacity. Yeah and-

Shannon Polvi: During those interaction while Miss Jackson was interim Dean, did you observe whether she followed the rules and policies of the school?

Lamin Drammeh: I have not had any complaints in terms of following the rules and policies at the school, so I would assume that would be correct.

Shannon Polvi: Jumping back to the President's office. When a President is in office as serving as the President, is it in your experience normal for the President to have a stamper that has a signature?

Lamin Drammeh: That's correct, yes that's normal.

Shannon Polvi: Who would have access to the stamper?

Lamin Drammeh: The President's office assistant has access to that stamp, Miss Jackson does.

Shannon Polvi: And would other individuals also in that role, the executive administrator role, or excuse me, an administrative coordinator role have access to the stamper?

Lamin Drammeh: From within the President's office?

Shannon Polvi: Yes.

Lamin Drammeh: There is one executive coordinator in the President's office, Miss Jackson, she has access to, yeah.

Shannon Polvi: And after Miss Jackson became the interim Dean, was there not someone else that filled the role of the administrative coordinator?

Lamin Drammeh: Yes, that's correct.

Shannon Polvi: Who was that?

Lamin Drammeh: Miss Gwendolyn Bamberg came on-board as an interim because Miss Jackson went into an interim position as the Dean's position. Miss Bamberg came in, she worked in the President's office.

Shannon Polvi: And is it your understanding that when Miss Jackson became an interim Dean that Miss Bamberg was filling those roles of Executive Coordinator? Or excuse me, Administrative Coordinator?

Lamin Drammeh: Yes.

Shannon Polvi: President's office.

Lamin Drammeh: Yes, she was, the President relocated her with the office. I'm sorry, I thought I turned this off. I'm sorry, I turn it off but I must put in my password. I did not. My apologies.

Shannon Polvi: When the President stamp is used for signatures, does it require the authorization of the President prior to it being used?

Lamin Drammeh: That's my understanding.

Shannon Polvi: And do you know of any time that Miss Jackson ever used the stamp or she was not authorized to do so?

Lamin Drammeh: No.

Charles Boykin: Object. He would have no way of knowing that every time. He's not with her all the time or the President all the time to know that, so that has to be beyond his knowledge Mr. Chair.

Kevin Maroney: I think the question was does he know of any time she had used it and I believe he was about to answer. I think that's an acceptable question. It's not a general I know, do you ever, have you ever heard of it. Does he know of anytime she has not. He, does he know of any time that she has not.

Charles Boykin: Okay. Thank you.

Lamin Drammeh: No I'm never aware of it.

Shannon Polvi: When an employee, during the time frame of your employment with Denmark Technical College, were you privy to when employees received supplemental pay?

Lamin Drammeh: Where, yes sometimes I am because I in the latter part of my you know, employment at Denmark Tech I would be aware when people have

Lamin Drammeh: I discussed earlier that a personnel action form originates from the source of home domain. And-

Charles Boykin: Asked and answered. He prefaced, he discussed earlier, which meant you asked the question earlier.

Lamin Drammeh: No. What I meant to say, I have-

Shannon Polvi: Hold on one second.

Kevin Maroney: One second. Dr. Drammeh are you going to be giving additional information?

Lamin Drammeh: Yes. I'm providing additional context because the question is different. In my response, I predicated that personnel action originates from a home or a domain. It matriculate to perform to signatures justification to the President's office where the final signature resides.

Lamin Drammeh: For Miss Jackson to have an increase it has to originate from somewhere and it has to matriculate all the way to the President's office. In that capacity, no person at the institution can just give themselves an increase. That's different from whether somebody you know, can get a raise. And that was the question before because you can get an increase by doing additional supplemental work. And then adjunct professor can be given additional workload that you are compensated for.

Lamin Drammeh: But the system will not allow me to give myself a raise, even though I'm the Vice President. Nobody, somebody have to initiate it the paperwork, and that's the process at Denmark Technical College when I was there.

Shannon Polvi: Now I'd like to.

Kevin Maroney: Dr. Drammeh, Counsel realized that this can be kind of testy. Let's try to keep decorum, keep our tongues lowered as we proceed forward okay.

Shannon Polvi: Yes. If you can check, turn to page 238.

Lamin Drammeh: Ma'am.

Shannon Polvi: This document is entitled at the top, DTC Departmental Request for Personnel and Payroll action form. Are you familiar with this form?

Lamin Drammeh: Yes. I was familiar with it.

Shannon Polvi: And is this form a standard form used by Denmark Technical College?

Lamin Drammeh: Yeah and this is the, this one describe what I explain. It's exactly what I explained. As an originator of the signature and it went all the way down to the President, so that's the process.

Shannon Polvi: And when we look, if you'll just scroll just a little bit more for me. Thank you, appreciate it, just a little bit more. That number six, is that your signature?

Lamin Drammeh: That's correct.

Shannon Polvi: And would this type of signature be needed for personnel documentation, be it somebody above Miss Jackson approving?

Lamin Drammeh: Yes. Miss Jackson's supervisor was the original signature on line number one. Miss Jackson's signature is also the original signature for line number two. And it went to the Vice President for Finance to make sure the money is there. The Vice President Finance signs. And it goes to you know, Human Resources but before it get to Human Resources to process, it come to my desk to see 'cause it will be in excess of $500 to see whether that funding is there.

Lamin Drammeh: And when the Vice President of Finance sign, I am convinced because we made it clear to him, he only sign when the money's there that the funds are available. The funds is available, I want to make sure point number two, whether the action being taken is warranted. If the Vice President of Academic Affairs signed that paperwork, that tells me it is warranted and that's item number one and two on this document. I sign. And when I sign I ask those questions.

Shannon Polvi: And looking up if we can scroll up just a little bit. Sorry, yeah the other, thank you. When we look at the sections four, or excuse me, six and seven, it says current position information, new position information. What is your understanding of what that means within the document area there? Which might be easier to see one in front of you.

Lamin Drammeh: Can you tell me where you are looking at?

Shannon Polvi: The box six and seven for current position and new position. What does that information mean to you as in the acronyms, things of that sort?

Shannon Polvi: I can better clarify if that can help.

Lamin Drammeh: Yes, please.

Shannon Polvi: Sure. Is it under the current position box there's a position on title listed, it says interim Dean, comma TS. Is it your understanding that that would be the at this time of the document, Miss Jackson was in the interim Dean for Transitional Studies position?

Lamin Drammeh: Yes, mm-hmm (affirmative).

Shannon Polvi: And then looking at the column just to the right of that it says new position. It says interim Dean-

Charles Boykin: I object, she's testifying. He's not familiar with the form. But she's having to explain to him what it means and he says, "Well, yes." This is getting far field Mr. Chair, Madame Chair.

Kevin Maroney: I believe that Mr., that Dr. Drammeh said that he is familiar with the form. The questions could be restated a little more open ended.

Charles Boykin: Sure.

Kevin Maroney: Make a better practice of that going forward. But I don't think there's anything inappropriate in Dr. Drammeh's testimony so far.

Shannon Polvi: Before the column under the new position it says interim Dean and it has the initials BCRT. What is your understanding of what that means?

Lamin Drammeh: If the question is the difference between the two, the difference is one is previous position, the other is a new location, new position, new unit within the college. Transitional Studies and BCRT is different, so she's moving from one to another or she's doing and move position.

Shannon Polvi: What type of responsibilities would change when Miss Jackson changed from being the interim Dean of Transitional Studies to the interim Dean of Business Computer and Related Technologies?

Lamin Drammeh: It's two different departments.

Shannon Polvi: And what the, I'm sorry.

Lamin Drammeh: Doing two different functions. One is to assist on a studies, the other one is business computer analytic technologies. One is remedial causes, the other one is in a associate degree program. With certificate programs within the department.

Shannon Polvi: And would it be appropriate for Miss Jackson to receive a pay increase for changing the position?

Lamin Drammeh: That this is how we do the Presidents, that this will be, yeah that would be appropriate. That would be Admin Head, that would be appropriate as well. If we be the Vice President of Academic Affairs, it would all be appropriate because it's more responsibility, more duties.

Shannon Polvi: Was Miss Jackson's pay for her interim Dean roles commensurate with other interim Dean and Deans in those roles at the college?

Leonard McIntyre: Oh, yes.

Shannon Polvi: Looking at the next paragraph it identifies the change in salary and compensation to Ms. Jackson. It indicates that she received a temporary salary adjustment of 15% from her present salary at the time of $48,327 to $55,576. Was that appropriate for the additional duties that she was receiving?

Leonard McIntyre: Yes, because that position ... This is the position for interim dean of transitional services. That position was held by an individual who also received additional pay for serving as the distance learning coordinator. I asked Ms. Jackson if she would assume those duties as well because she also had certification for distance learning.

Shannon Polvi: When Ms. Jackson took on this appointment to the interim dean of transitional services, is it accurate that someone else fulfilled her previous role as the administrative coordinator in the president's office?

Leonard McIntyre: Yes.

Shannon Polvi: Who was that?

Leonard McIntyre: That was Ms. Bamberg.

Shannon Polvi: When Ms. Jackson was performing the interim dean of transitional services position, what were her primary duties?

Leonard McIntyre: Well, she was the department head in her role as dean for transitional studies, and she primarily supervised the faculty and staff in that department of transitional studies. Her role was to supervise and evaluate personnel in that department.

Shannon Polvi: Just for clarity of that for the board, what is the transitional studies department division?

Leonard McIntyre: It's where students who aren't quite ready to perform on a level with those also entering the institution and are assigned so that they can receive additional academic support and programs that are designed to ameliorate their academic deficiencies, and basically that would be in reading, writing, and mathematics. They were remedial type courses but we call them developmental.

Shannon Polvi: By appointing Ms. Jackson to the position in lieu of some other type of measure, was that a cost savings measure to the school?

Leonard McIntyre: It most definitely was and at that time I was very concerned about cost savings. In fact, I developed a cost savings plan that actually saved the institution 1.5 million dollars. When the person who was in the position resigned I saw it as an opportunity as well to save some money there.

Shannon Polvi: Through that program was it a resource available to employees to further develop management and education skills?

Leonard McIntyre: It was. The program was funded out of the Title III grant. The Title III grant actually wrote the program into the grant so that the funding would be available. The funding was actually available through Title III.

Shannon Polvi: Would the Title III grants and contracts director be responsible for monitoring essentially applications to ensure they complied with the grant procedures?

Leonard McIntyre: Yeah. Well, her signature indicates that.

Shannon Polvi: That would be Ms. Mack?

Leonard McIntyre: Yes. If I saw her signature, it said to me that this individual met all of the criteria.

Shannon Polvi: Jumping back to Ms. Jackson's tenure as interim dean of transitional studies, was that for about the time period of about a year?

Leonard McIntyre: Yes.

Shannon Polvi: Once she performed those duties, what were your observations of her performance as interim dean of transitional studies?

Leonard McIntyre: In her capacity as interim dean for transitional studies I did not supervise her directly, but of course, I was very much aware of her performance and often communicated through my VPs about the performance of the deans. Many times I had an opportunity to meet with them to share what I believe would be the appropriate programs and services that I want them to offer so that we could meet our goals as a college.

Shannon Polvi: Well, let me back track. Are you aware of Ms. Jackson being appointed to the interim dean of business computer and related technologies?

Leonard McIntyre: Mm-hmm (affirmative).

Shannon Polvi: I'm sorry. For the record?

Leonard McIntyre: Yes. Yes, yes, yes. Sorry about that.

Shannon Polvi: Did that occur around October 15, 2016?

Leonard McIntyre: Yeah.

Shannon Polvi: What was the process of her being appointed to that interim dean role?

Leonard McIntyre: It was recommended to me by the vice president of academic affairs at the time, Tia Richards. It was a position that Tia Richards herself was actually serving in before she was appointed as interim VP for academic affairs. It came as an opportune time kind of thing because we were reorganizing transitional studies into another area and we needed a dean for business and Ms. Jackson was considered an ideal person for the position, especially because of her degrees and her experience.

Shannon Polvi: When Ms. Jackson-

Leonard McIntyre: Again, it was a cost savings measure.

Shannon Polvi: That actually segues right into my next question, is when Ms. Jackson took on the role of interim dean of business computer and related technologies, would it be accurate to say that her salary was less than the person who had filled it prior to her?

Leonard McIntyre: To my recollection, yes.

Shannon Polvi: If Ms. Jackson were to receive a pay increase, would that have been appropriate for a change in her duties?

Leonard McIntyre: Yeah, the dean of business is always the highest paid dean in the institution, so yes it would've been appropriate.

Shannon Polvi: What were Ms. Jackson's accomplishments in that role?

Leonard McIntyre: Well, she wasn't in that role very long because when you factor in the fact that you have a Thanksgiving break and then you have the Christmas break and the break between the semesters and what have you, and she started October 15th and then she was out. Then after we came back from the holidays I was terminated on January the 30th. I didn't have a whole lot of opportunity but I can tell you that she did institute some courses that were new to the department and I believe those courses were online. She was able to use her background in distance learning to do so.

Shannon Polvi: In regards to the pay that Ms. Jackson was receiving, during your tenure as president, did she at any time receive income that wasn't authorized by you?

Leonard McIntyre: Not to my knowledge.

Shannon Polvi: Let's turn back to the termination notice that's located on page 23. We referenced initially in your testimony earlier about the president's stamp being used, do you know at any time did Ms. Jackson ever authorize her own pay increases?

Dean of Transitional Services and receive a temporary salary adjustment" and so forth. Okay.

Charles Boykin: You testified earlier, so I want to make sure I understand your testimony.

Leonard McIntyre: Mm-hmm (affirmative)

Charles Boykin: Once she became Interim Dean she no longer performed the duties of the original position.

Leonard McIntyre: Mm-hmm (affirmative)

Charles Boykin: This [crosstalk 00:24:29], if you'll permit me to ask the question then you can answer, if that's okay?

Charles Boykin: This seems to suggest that she maintained her current job, plus. My reading of this, is it true that she continued to be the Presidents Assistant, a full time position, as she assumed the duties of the Interim Dean? That's a yes or no.

Leonard McIntyre: No.

Charles Boykin: So, she left the President's Assistant position is what you're saying.

Leonard McIntyre: Mm-hmm (affirmative)

Charles Boykin: How long, Dr. McIntyre, well, let me ask this way. Was she gone from that position for more than six months?

Leonard McIntyre: How long?

Charles Boykin: No, I've struck that --

Leonard McIntyre: Okay.

Charles Boykin: and I asked, was she performing the duties of Interim Dean for more than six months?

Leonard McIntyre: Her start date was October 1, 2015. She was there until October, before October 15, 2016.

Charles Boykin: So that would be more than six months, wouldn't it?

Leonard McIntyre: Yes.

Charles Boykin: In fact, according to your earlier testimony she didn't return to the Presidents Assistant, did she?

Shannon Polvi: The idea.

Leonard McIntyre: It was a Board Chair at the time. And it was discussed with the Board members.

Shannon Polvi: Is it accurate that ... Or I can clarify. Is that when we've talked about, during your testimony, we've talked about multiple pay changes that Miss Jackson had during the many years that she was employed at the college. Were those different pay changes initiated by different people?

Leonard McIntyre: Yeah.

Shannon Polvi: And would they have been appropriate for the duties she was performing?

Leonard McIntyre: Mm-hmm.

Shannon Polvi: Sorry, for the record.

Leonard McIntyre: Yes.

Shannon Polvi: Okay, you were asked a series of questions about the, I guess an apartment at the school.

Leonard McIntyre: Mm-hmm.

Shannon Polvi: Was it accurate that that was not anything related to Miss Jackson?

Leonard McIntyre: Oh, yes.

Kevin Maroney: Miss Polvi, be careful with the leading questions.

Shannon Polvi: I'd like to draw your attention towards the back of the record, 256.

Shannon Polvi: Yes, 256.

Leonard McIntyre: 256.

Shannon Polvi: This document is a ... It's a tad blurry, but still I believe legible. This is a State of South Carolina position description. Is it your understanding ... Or, what is your understanding of this document?

Leonard McIntyre: Let's see.

Leonard McIntyre: This is a position description for the Administrative Assistant's position.

Shannon Polvi: Within it, does this describe the type of duties the Administrative Coordinator, or Administrative Assistants in the President's Office were performing?

Leonard McIntyre: That's the purpose of the document.

Shannon Polvi: Do you see any mention here within that those duties would include working with the Board Commission, the Area Commission?

Leonard McIntyre: Whoo. I don't ... See, I don't see anything.

Shannon Polvi: And then looking, you know we just looked at the Coordinator position. Next, Page 257, 258 is an Interim Dean position description. What do you observe are the differences between those positions?

Leonard McIntyre: Well, the requirements.

Charles Boykin: Object. These documents are unsigned.

Kevin Maroney: They've been admitted into Exhibit One. And I think the question was about what they ...

Shannon Polvi: What differences there are in terms of the duties.

Charles Boykin: They don't apply. Okay, withdrawn.

Shannon Polvi: And you by no means have to read it verbatim. Just kind of your ... What you note as the former President of a college, what would be the differences between what she was performing as an Administrative Coordinator and what might merit her receiving more pay for performing these Interim Dean roles.

Leonard McIntyre: Well, certainly these duties required more credentials, in terms of ... The qualifications. And more accountability, more responsibility. That's basically what I can tell you. There's a big difference between what is expected from one position to the next.

Shannon Polvi: And was Miss Jackson capable of performing the duties of both roles?

Leonard McIntyre: She proved that, yes.

Shannon Polvi: And would it be ... As common sense, that someone couldn't be performing all of these full time roles at the same time, that even if Miss Jackson was keyed as one position she, as a full time job, would only have been doing one of these?

Leonard McIntyre: Absolutely, only one.

Shannon Polvi: Those are all my questions.

Glenise Elmore: Okay.

Charles Boykin: Just a couple of questions on re-cross for me.

Charles Boykin: With regard to 257, Doctor McIntyre.

Leonard McIntyre: Yes, sir.

Charles Boykin: That position was not covered as a protected State employee for Miss Jackson, is it?

Leonard McIntyre: It's not protected?

Charles Boykin: It was at will, was it not?

Leonard McIntyre: That would be correct.

Charles Boykin: In fact, as we stand here today, the only current position is the Assistant to the President, isn't that correct?

Leonard McIntyre: Mm-hmm.

Charles Boykin: The Assistant to the Area Commission wasn't covered, was it, Doctor McIntyre?

Leonard McIntyre: No.

Charles Boykin: Okay. The Adjunct Faculty is not covered, is it Doctor McIntyre?

Leonard McIntyre: No.

Charles Boykin: Okay. The Interim Dean is not covered, is it?

Leonard McIntyre: Right.

Charles Boykin: Okay. Now, Doctor McIntyre you testified a couple of times that you would have Interim Deans with no teaching load. Is that correct? Is that your testimony earlier?

Leonard McIntyre: Well, no, not necessarily. I was trying to state that the only Dean's position that did not require a teaching load was that of the Dean for Transitional Studies. All of the other Deans are required to teach.

Charles Boykin: Okay. Madam Chair, there is a State policy that requires the academic load for all Deans. And I would like to give ...

Shannon Polvi: Objection. This is, you're essentially testifying to the Board about ...

Charles Boykin: I'm saying, the policy will speak for itself, but I'm laying the foundation for producing it. And I'm happy to hand it to you. And I'd just like to get it into the record. We have copies for the entire panel.

Kevin Maroney: Very briefly, for the panel. Two motions were made while the panel is out. You heard what some of them were. They have been resolved. There was a contemplation of a continuance by Ms. Jackson, but she has elected to move forward with the hearing today, so she is on the stand and ready to give her testimony.

Glenise Elmore: Okay.

Kevin Maroney: I think Ms. Jackson, you've already taken the oath on the first day, I believe. Okay, so we can move forward.

Glenise Elmore: All right. Ms. Jackson, will you state your full name for the record?

Carla Jackson: Carla Nikita Jackson.

Glenise Elmore: All right Ms. Jackson, that microphone is on to get your testimony, so if you could speak up loud enough for that, and to compensate for our little fan back here that we've got going. All right.

Shannon Polvi: Hello, Ms. Jackson. I'm gonna be asking you some background questions about your employment with Denmark Technical College. When did your employment start?

Carla Jackson: January of 2011.

Shannon Polvi: What position did you begin with Denmark Technical College?

Carla Jackson: Administrative Coordinator.

Shannon Polvi: What were your primary duties?

Carla Jackson: My primary duties were to supervise the office staff, to monitor the department budgets, basically manage the operation of the office to assist the president with the executive level documents in operation of the college, and to assist the executive staff as well.

Shannon Polvi: How long were you an Administrative Coordinator in the president's office?

Carla Jackson: From 2011 until 2015.

Shannon Polvi: And what was your role in 2015?

Carla Jackson: In 2015, I became the Interim Dean of Transitional Studies and Distance Education.

Shannon Polvi: How long were you in that role?

Charles Boykin: Okay. So your pay continued to elevate during this period of time. Do you recall how much you were taking home annually from the college with these adjustments?

Carla Jackson: No.

Charles Boykin: You don't? Okay. But it's safe to say that you were responsible for performing all of these duties?

Carla Jackson: At the set time as listed?

Charles Boykin: See, I don't have the set time that's listed. I have these duties performed. Let me ask the question of you this way then. Does the distance education director, transitional studies coordinator, does that position, is that performed after you do your duties as administrative coordinator one?

Carla Jackson: It's performing after? I'm sorry.

Charles Boykin: Okay. Maybe I misunderstood you, but your suggestion that you would perform certain duties at certain times. Did I understand you correctly?

Carla Jackson: That's correct.

Charles Boykin: Okay. And I'm saying the duties then of distance education director, transitional studies coordinator, for which you were compensated approximately $9,000 for the year, that was done ... Okay, your base job was administrative coordinator one, is that correct?

Carla Jackson: That's before I got into position as a interim dean of transitional studies and distance ed.

Charles Boykin: Okay. So you're saying on October 1, 2015, when you became interim dean of transitional studies that you no longer perform the duties of administrative coordinator.

Carla Jackson: That's correct.

Charles Boykin: Okay. That's your testimony? And so what was your base salary there?

Carla Jackson: What do you mean, there?

Charles Boykin: As interim dean of transitional studies, what was your base salary?

Carla Jackson: I'm not sure what my base salary was at that time.

Charles Boykin: Okay. So did you perform any work at all as assisting the president during that time? During the time that you were the interim dean.

Carla Jackson: Only during the transitional period, that was the only time.

Charles Boykin: Tell me, when you say transitional period, tell me how much time. It can be weeks, it can be months. But tell me, how much time is the transitional period?

Carla Jackson: I'm not sure exact the time, but it could've been, like, two, three months. Could've been.

Charles Boykin: Two to three months. And during that time, you would've been a person who would have access to the president's stamp, is that correct?

Carla Jackson: I would have been.

Charles Boykin: And you would've used the president's stamp, is that correct?

Carla Jackson: If he authorized me to do so.

Charles Boykin: Okay, right. So if you took the academic, the interim dean of transitional services and distance education on October 1, then by your testimony, by the end of January 2016, you would've been exercising no more duties as the president's assistant, is that correct?

Carla Jackson: That's correct.

Charles Boykin: Okay, so you would've had no reason to have the president's stamp. Is that correct?

Carla Jackson: That's correct.

Charles Boykin: Okay. You would've had no reason to maintain an office in the executive suite. Is that correct?

Carla Jackson: That's correct.

Charles Boykin: Okay. No reason to have your personal belongings there, pictures there, key total access to just your own office, is that correct?

Carla Jackson: I disagree.

Charles Boykin: Okay. You're saying that there was a reason to maintain an office in the executive suite. Is that your testimony?

Carla Jackson: Yes.

Charles Boykin: Okay. All right. And so but by your testimony, you were not performing any duties, is that correct?

Carla Jackson: That's correct.

Charles Boykin: Okay.

Carla Jackson: I was assisting the transition because there was someone filling in my old position, so I assisted with them until they was able to transition into that position.

Charles Boykin: Okay, and you said that was about three months.

Carla Jackson: Approximately. I'm not sure about timing but I'm just estimating. It could've been shorter, but I'm not sure.

Charles Boykin: Could've been shorter, but there was no reason for you to maintain any presence in the president's office because you were now an interim dean. Isn't that correct?

Carla Jackson: That's correct.

Charles Boykin: Okay. And we move to 2016, okay? And March 7th to May 7th, you received a $1500 adjunct faculty salary for one course. Is that correct?

Carla Jackson: What course?

Charles Boykin: It was a business course is what it says. Business 101-27.

Carla Jackson: That sounds possibly correct.

Charles Boykin: Okay. March 18th to June 3rd, you receive adjunct pay for two courses of $3,000.

Carla Jackson: That sounds correct.

Charles Boykin: Okay. We're in 2016, right? May 16th-June 30th, you received adjunct pay for $1500 for one course. Okay. And then May 16th-June 30th, you received compensation for serving as dean of transitional studies and distance education for $2500.

Carla Jackson: Repeat that again.

Charles Boykin: May 16 to June 30th, you received compensation for serving as dean of transitional studies and distance education to the amount of $2500.

Carla Jackson: June 30th of what year?

Charles Boykin: It's 2016.

# State Employee Grievance Procedure State Appeal Form

To appeal the decision of the Agency concerning a grievance under the State Employee Grievance Procedure Act to the State Human Resources Director, the employee or representative initiating the appeal must complete this form and return it to the Division of State Human Resources.

Forms and additional documentation can be submitted via email to grievance@admin.sc.gov, via facsimile to 803-896-5050, or by mail to the address below.

Division of State Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29223

** Required Information*

**Employee's Name:*** Carla Jackson

**Job Classification:*** Interim Dean of Business, Computers and Rel **Agency*:** SC Technical College Systems

**Home Address:*** PO Box 1351 (Street) Fairfax (City) SC (State) 29827 (Zip Code)

**Telephone:*** (Home) (803) 308-7606 (Cell) (Office)

**Do you have an attorney or other representative?*** ☒ Yes ☐ No

If yes, please provide the contact information for your attorney or representative below:

**Representative's Name:** Shannon Polvi, Cromer Babb Porter & Hicks, LLC

**Address:** PO Box 11675 (Street) Columbia (City) SC (State) 29201 (Zip Code)

**Telephone:** (803) 799-9530

1. Has the employee completed twelve (12) months of satisfactory service with the state?* ☒ Yes ☐ No
2. What disciplinary action taken against the employee is being appealed?* Termination and previous suspension without pay
3. Has the employee received a final decision from the agency?* ☐ Yes ☒ No
   If yes, what date did the employee receive the final decision?*
4. What date did the employee initiate the grievance within the agency's internal grievance procedure?*
   May 18, 2017



COMMITTEE'S EXHIBIT 1

Employee's Name*: Carla Jackson

## APPEAL

**Please specify why the employee contends that the agency's decision concerning the grievance is unfair and state relevant facts and issues to support that position. (Attach additional pages if necessary.): ***

Ms. Jackson was an Interim Dean of Business, Computers and Related Technologies at Denmark Technical College. Ms. Jackson was a valued employee at Denmark Tech with an excellent performance review record.

Ms. Jackson was suspended on February 15, 2017. Ms. Jackson grieved her suspension on February 17, 2017. Ms. Jackson was terminated in a letter dated May 11, 2017. Ms. Jackson grieved her termination on May 18, 2017.

Ms. Jackson properly grieved both her suspension and termination and has had multiple grievance hearings to date. The last grievance hearing was with Dr. Hall, Interim President. A decision has not yet been issued by Dr. Hardee, the SC Technical College Systems President; however, it is within 55 days since Ms. Jackson's initial grievance with the Agency.

Ms. Jackson repeatedly requested an explanation for the ground(s) substantiating the investigation suspension she was facing. Ms. Jackson has received no explanation beyond a vague phrase alleging "involvement in improper conduct with regard to college operations". Ms. Jackson is a Dean of the College and as such her entire job entails "college operations".

Ms. Jackson met with Dr. Hall on two separate occasions and with Dr. Hardee on one occasion during the "investigative suspension" from February 15, 2017 to May 11, 2017. Ms. Jackson fully cooperated throughout the "investigation". Ms. Jackson was verbally asked questions about a variety of matters during the hearing with Dr. Hardee and Ms. Peacock. Ms. Jackson was very open and responsive to all questions asked. Ms. Jackson took no action in any way adverse to the school. Her suspension and termination was without cause.

Ms. Jackson was terminated from employment for "willful violation of rules, regulations and written policies, which constitute conduct unbecoming a state employee." Such grounds are unfounded and Ms. Jackson has not been given a single document supporting the accusations against her. Ms. Jackson did not violate any rules, regulations or written policies.

The first alleged ground for Ms. Jackson's termination relates to tuition reimbursement she received; that because Ms. Jackson received tuition reimbursement payments years ago is somehow grounds to terminate her employment now is ridiculous. Ms. Jackson expressly articulated during her suspension grievance that she applied for tuition reimbursement and was granted tuition reimbursement. Ms. Jackson did nothing wrong in such actions to apply for and to receive tuition reimbursement. Ms. Jackson was an employee of the College when she applied for and received tuition reimbursement and Ms. Jackson's education was directly related to her employment with the College as clearly evidenced by her positions as an Interim Dean of the College since October 2015, as an adjunct instructor for multiple years, and previously as Administrative Coordinator.

**Please specify the relief that the employee is seeking by this appeal. (Attach additional pages if necessary.):***

Ms. Jackson requests that she be reinstated to employment in her position held at the time she was suspended, all adverse documentation relating to her "investigative suspension" and termination be removed from her personnel file, she be paid back pay and benefits, a lump sum for the damages she has sustained as a result of the suspension and termination, and for attorney's fees and costs.

Signature: _____ Date: July 5, 2017

Attorney for Grievant

Revised June 2016

**Carla Jackson State Employee Grievance Procedure State Appeal Form Attachment**

**July 5, 2017**

The second alleged ground to terminate Ms. Jackson is equally preposterous. The second claim is "In your role as Administrative Coordinator I (to the President); you received pay increases, which were approved using the President's stamp, but had no supporting documentation. Your conduct in this matter violated all reasonable controls in our system and, I believe, violated the South Carolina Ethics Act which prohibits a public employee from using his/her position for personal gain." During her suspension grievance hearing when asked about the President's stamp, Ms. Jackson expressly denied that she ever used the President's stamp on any of her own personnel documents.

Ms. Jackson expressly informed College representatives at the hearing that the President's stamp is used by each of the recent sitting Presidents of Denmark Technical College and is used for high volume documentation and at the express instruction of the sitting President. Ms. Jackson expressly informed the Agency representatives that she used the President's stamp at the instruction of the former President of Denmark Technical College and the stamp was never used on her own documentation. Ms. Jackson expressly informed the Agency representatives that she never used the stamp for any personal gain.

Further, Ms. Jackson did not receive a pay increase; she received supplemental pay when she performed additional duties. Any and all supplements in Ms. Jackson's pay were expressly authorized by the supervisory chain above Ms. Jackson and by Human Resources. The accusation that Ms. Jackson somehow gave herself raises is utterly absurd. Ms. Jackson has not even been employed in the President's Office since October 2015 when she was promoted to Interim Dean.

Retract Kristy J. Hall 4/4/17

# DTC Departmental Request for Personnel/Payroll Action Form

Please complete all sections

**I. EMPLOYEE PERSONNEL DATA**

1. Employee Name Last: Jackson, First: Carla MI:

This section to be completed by HR only

| 2. Employee ID # or SSN | Date of Birth | 4. Sex | |
|---|---|---|---|
| 104403 | | | Male |
| | | | Female |

**II. REQUESTING DEPARTMENT DATA**

Department Name

Requestor's Position: President

Requestor's Name: Dr. Leonard McIntyre

Requestor's Signature

**III. TYPE OF ACTION REQUESTED**

| | | |
|---|---|---|
| New Hire | Merit Increase | Retirement |
| Rehire | X Salary Change 10 % | Leave without Pay |
| Transfer | Title Change | Request to Hire |
| Promotion | Change of Funding | Dual |
| Demotion | Re-allocation of funding | Other (Specify) |
| Separation | | |

Justification:

**IV. POSITION TYPE**

| | |
|---|---|
| X Faculty | Staff |
| Student Worker | Contract |

**V. ASSIGNMENT**

| | |
|---|---|
| X Full Time | Part Time |
| Temporary | |

**VII. CURRENT POSITION INFORMATION**

Current Position Title: EXECUTIVE COORDINATOR

Position Number: 103363

Annual Salary/Hourly Rate: $49,897.00

FTE: 1.0 .75

Effective Date:

**VI. NEW POSITION INFORMATION**

New Position Title: EXECUTIVE COORDINATOR

New Position Number: 103363

Annual Salary/Hourly Rate: $54,886.70

FTE: 1.0 .75

Effective Date: January 16, 2017

**VII. VALUATION OF FUNDS**

| Account Fund | Amount or % |
|---|---|
| | |
| | |
| | |
| | |
| | |

**IX. SOURCE OF FUNDING**

Department Name: President's Office

Division: Executive Coordinator

Departmental Budget #: 10-6510000-50158-0

**X. Required Completion in Chronological Order) AUTHORIZATIONS**

| | | |
|---|---|---|
| 1. Dean/Department Head (Print Name) | Signature | Date |
| 2. Division Vice President (Print Name) | Signature | Date |
| 3. Grants and Contracts (If Applicable) (Print Name) | Signature | Date |
| 4. Vice President for Fiscal Affairs (Print Name) | Signature | Date |
| 5. Director of Human Resources (Print Name) | Signature | Date |
| 6 President | Signature L. McIntyre | Date 1-26-17 |

DTC Departmental Request for Personnel/Payroll Action Form

Please complete all sections

**I. PERSONNEL DATA**

1. Employee Name Last: First: MI:
Jackson, Carla

This section to be completed by HR only

2. Employee ID # or SSN | Date of Birth | 4. Sex ___ Male ___ Female

**II. DEPARTMENT DATA**

Department Name: Academic Affairs

Requestor's Position: Interim Vice President Academic Affairs

Requestor's Name: Tia Wright-Richards

Requestor's Signature:

**III. TYPE OF ACTION**

| | | |
|---|---|---|
| ___ New Hire | ___ Merit Increase | ___ Retirement |
| ___ Rehire | ___ Salary Change | ___ Leave without Pay |
| ___ Transfer | ___ Title Change | ___ Request to Hire |
| ___ Promotion | ___ Change of Funding | x Dual |
| ___ Demotion | ___ Re-allocation of funding | ___ Other (Specify) |
| ___ Separation | | |

**IV. POSITION TYPE**

| | |
|---|---|
| x Faculty | ___ Staff |
| ___ Student Worker | ___ Contract |

**V. ASSIGNMENT**

| | |
|---|---|
| ___ Full Time | ___ Part Time |
| x Temporary | |

Justification:
Interim Dean of BCRT – see attachments

**VI. CURRENT POSITION INFORMATION**

Current Position Title: Interim Dean, TS
Position Number: 136422
Annual Salary/Hourly Rate: $301.95
FTE: 1.0 x .75
Effective Date: 08/20 15

**VII. NEW POSITION INFORMATION**

New Position Title: Interim Dean, BCRT
New Position Number: 135887
Annual Salary/Hourly Rate: $415.81
FTE: 1.0 .75
Effective Date: 10/3/2016

**VIII. ALLOCATION OF FUNDS**

| Account Fund | Amount or % |
|---|---|
| | 100% |

**IX. SOURCE OF FUNDING**

Department Name: Business, Computers, and Related Technologies
Division: Academic Affairs
Departmental Budget #: 10-2110100-50177-0

**X. (Please Complete in Chronological Order) AUTHORIZATIONS**

| | | |
|---|---|---|
| 1. Dean/Department Head (Print Name) Tia L. Wright-Richards | Signature | Date 9/27/16 |
| 2. Division Vice President (Print Name) Tia L. Wright-Richards | Signature | Date 9/27/16 |
| 3. Grants and Contracts (If Applicable) Teresa Mack | Signature | Date |
| 4. Vice President for Fiscal Affairs Ram'on Wideman | Signature | Date 10/12/16 |
| 5. Director of Human Resources Cheryl Washington | Signature | Date |
| 6. Vice President for IRPD & Special Asst. to the President Dr. Lamin Drammeh | Signature | Date 10/12/16 |
| 7. President Dr. Leonard McIntyre | Signature Leonard McIntyre | Date 10/20/16 |

# STATE OF SOUTH CAROLINA POSITION DESCRIPTION

## GENERAL INFORMATION

0 0 0 1 0 3 2 6 3 — Position Number

5 5 0 — Agency Code

Denmark Technical College — Agency Name

President's Office — Division / Section / Unit

Denmark/Bamberg — City / County

Employee Name

0 5 — County Code

X — Y/N: Is Position in General Office?

Administrative Assistant — Current State Title

A A 7 5 — Alphanumeric Code

0 0 0 4 — Slot

0 4 — Band

F 5 2 — Full / Part Time Indicator

3 7 . 5 0 — Hours Per Week

1 9 5 0 — Base Hours

College President — Supervisor State Title

0 A 2 0 — Alphanumeric Code

0 0 0 1 — Slot

## SOURCE OF FUNDING

1 0 0 — State %

0 0 — Federal %

Other %

☐ OHR COPY ☐ AGENCY COPY

## OFFICE OF HUMAN RESOURCES

B 6 0 — Agency Code

A E 2 0 — Alphanumeric Code

0001 — Slot

10 16 2010 — Authorized Date

☒ Delegated ☐ New Position ☐ Prototype

☒ Some Title Changes ☐ Update

Administrative Coordinator I — Approved State Title

Tonika Bynes JRB — Approval Signature

09/24/2010 — Date Approved

## REQUESTED ACTION INFORMATION

Reclassification — Requested Action

Administrative Coordinator I — Requested State Title

A E 2 0 — Alphanumeric Code

E — FLSA Designation

Supervisor's Signature — Date — Other Required Signature — Date 9/24/10

## THE FOLLOWING SECTION OF THE POSITION DESCRIPTION IS TO BE COMPLETED BY THE SUPERVISOR

1. What are the minimum requirements for the position (Minimum requirements must at least meet the state minimum requirements for classified classes but may include additional requirements)?

A bachelor's degree and two (2) years of relevant experience in business management, public administration, or administrative services; or an associate degree and four (4) years of relevant experience in business management, public administration, or administrative services.

2. What knowledge, skills, and abilities are needed by an employee upon entry to this job including any special certification or license?

Thorough knowledge of principles and practices of public and business administration, thorough knowledge of modern office practices, including the use of equipment and working knowledge of word processing and data processing. The ability to carry out complex oral and written instructions. The ability to type 55 corrected words per minute and the use of dictation. The ability to work independently and to solve special situations of a non-recurring nature. Must have the ability to establish and maintain good interpersonal relationships and possess a positive attitude.

3. Describe the guidelines and supervision an employee receives to do this job, including the employee's independence and discretion.

Under general supervision of the College President serves as administrative coordinator. Must have the ability to work independently and demonstrate sound judgement, maintain confidentiality, be diplomatic and ethical.

4. Indicate additional comments regarding this position (e.g., work environment, physical requirements, overnight travel).

Ability to work in a fast pace environment with some travel required.

## MISCELLANEOUS DATA

Employee Number

Position Dept. Number

257

0684
0122

# STATE OF SOUTH CAROLINA POSITION DESCRIPTION

## GENERAL INFORMATION

0000 — Position Number
H60 — Agency Code
Denmark Technical College — Agency Name
Academic Affairs/BCRT — Division / Section / Unit
Denmark/Bamberg — City / County
Carla Jackson — Employee Name
05 — County Code
N — Y/N Is Position in Central Office?
Interim DEAN — Current State Title
UD09 — Alphanumeric Code
Slot
06 — Band
F39 — Full / Part Time Indicator
03750 — Hours Per Week
1560 — Base Hours
Vice President for Academic Affairs — Supervisor State Title
UC07 — Alphanumeric Code
0000 — Slot

## SOURCE OF FUNDING

100 — State %
00 — Federal %
Other %

☐ OHR COPY ☐ AGENCY COPY

## OFFICE OF HUMAN RESOURCES

H6Q — Agency Code
UD09 — Alphanumeric Code
0010 — Slot
Authorized Date
☒ Delegated ☐ New Position ☐ Prototype
☐ State Title Changes ☒ Update
DEAN — Approved State Title
Approval Signature
Date Approved

## REQUESTED ACTION INFORMATION

UPDATE - Interim — Requested Action
DEAN — Requested State Title
UD09 — Alphanumeric Code
E — FLSA Designation
Supervisor's Signature
Date
Other Required Signature
Date

## THE FOLLOWING SECTION OF THE POSITION DESCRIPTION IS TO BE COMPLETED BY THE SUPERVISOR

**1. What are the minimum requirements for the position (Minimum requirements must at least meet the state minimum requirements for classified classes but may include additional requirements.)?**

A master's degree plus three (3) years of progressively responsible related work/teaching experience. Some positions will require discipline related licenses or certifications. All faculty must meet SACSCOC guidelines. The Dean must also meet all professional requirements, State Tech, and Denmark Technical College policies and have appropriate certification, license, etc., as required.

**2. What knowledge, skills, and abilities are needed by an employee upon entry to this job including any special certification or license?**

Must demonstrate willingness to work cooperatively with others and independently, along with the ability to learn and adapt to new ideas/techniques in support of instructional responsibilities, the mission and goals of the institution are essential. Must exhibit high level of ethics, good judgment, personnel skills, cooperative attitude and skills in planning and achieving college divisional goals and objectives. Ability to effectively use interpersonal and communications skills and to assess and prioritize multiple tasks, projects, and requests.

**3. Describe the guidelines and supervision an employee receives to do this job, including the employee's independence and discretion.**

The Dean works under the direct supervision of the Vice President for Academic Affairs and is guided by the policies set forth in the Faculty Orientation Manual of the College, the established operating policies and procedures of the College, the division, the instructional area and the State Board for Technical and Comprehensive Education.

**4. Indicate additional comments regarding this position (e.g., work environment, physical requirements, overnight travel).**

May require some local travel and extended work hours during registration.

## MISCELLANEOUS DATA

Employee Number
Position Dept. Number

204

# STATE OF SOUTH CAROLINA POSITION DESCRIPTION

**1. Job Purpose:**

Under limited supervision of the Vice President for Academic Affairs, provides curriculur leadership in relation to College-wide goals in sustaining, delivering, or eliminated academic programs in accordance with strategic planning goals. The Dean must provide administrative effectiveness as defined and measured by the FPMS to meet College and State Tech policies and procedures. Ensures administration adheres to academic quality of academic advising and special programs, facilities, centers, or institutes assigned to the institution. Responsible for directing the development and operation of the Distance Learning Program and providing support to students and faculty.

| **2. Job Functions:** | Essential/ Marginal (E or M) | Percentage of Time |
|---|---|---|
| 1. Provides curricular leadership in relation to College-wide goals by initiating, sustaining, delivering, or eliminating academic programs and school core curricula in accordance with strategic planning goals. Supervises conveners in the construction of timely class schedules based on student needs and institutional resources including advisement and registration. | E | 20 |
| 2. Develops new curriculum and reviews and revises existing curriculum with conveners and unit faculty; teaches in the appropriate discipline. | E | 20 |
| 3. Ensures documented unit, program, and course assessment through development of student learning outcomes, appropriate strategies, and feedback to ensure academic excellence and integrity of programs. | E | 15 |
| 4. Supervises the administration of and ensures the academic quality of academic advising and special programs, facilities, centers, or institutes assigned to the school; supervises the operation of any labs, studios, or computer facilities in the school. | E | 15 |
| 5. Responsible for all fiscal matters at unit level. Initiates funding opportunities, plans for, requests, and disburses operational, travel, and other funds legally, responsibly, and fairly within given budget limitations. | E | 15 |
| 6. Participates in college-wide strategic planning activities, especially as related to academic matters. Develops/reviews academic policies and makes recommendations on all-college policies and procedures. | E | 5 |
| 7. Responsible for human resource management of unit faculty and staff. Develops long-range staffing plans to include new faculty hires, retirements, and adequate support staff that are aligned with program delivery, enrollment, and market projection; prepares job descriptions/ads and other documentation for all positions, appoints search committees; supervises seach processes; recommends appointment of appropriately qualified faculty and staff; renders timely, professional judgement on periodic evaluations, reappointments, tenure and promotion. | E | 10 |

**3. Position's Supervisory Responsibilities:**

*If this position includes supervisory responsibilities, please indicate the state title and number of positions of the three highest subordinates.*

| | STATE TITLE | NUMBER |
|---|---|---|
| (1) | Instructor | 6 |
| (2) | Administrative Specialist II | 1 |
| (3) | Program Assistant | 1 |

Number of employees directly supervised: 8

Total number supervised: 8

**4. Comments:**

Knowledge of traditional and online (web-based) instructional delivery from a generic viewpoint; knowledge of basic operations of LMS and CRM. Knowledge of current principles and practices of distance learning technology and applications in an educational environment. Ability to manage and implement organization-wide technology projects. Knowledge of technology system development principles and techniques and project planning and management principles.

**5. The above description is an accurate and complete description of this job.**

Employee's Signature _____ Date _____

**STATE OF SOUTH CAROLINA**
**BEFORE THE STATE EMPLOYEE GRIEVANCE COMMITTEE**

| | |
|---|---|
| South Carolina Technical College System<br><br>vs.<br><br>Carla Jackson | **AGENCY'S MOTION *IN LIMINE* AND MOTION TO STRIKE PORTIONS OF JACKSON'S BRIEF** |

In connection with the Administrative Law Court's ("ALC") June 25, 2019 Order of Remand ("Remand Order") and the August 21, 2019 letter from the Department of Administration ("DOA"), the South Carolina Technical College System ("SCTCS" or "Agency") submits this Motion *in Limine* requesting that the Committee Attorney for the State Employee Grievance Committee ("Committee") strike portions of Carla Jackson's ("Jackson") September 13, 2019 brief ("Brief") before providing it to the Committee and rule on certain legal issues prior to the Committee discharging its instructions from the ALC on remand.

ARGUMENT

I. THE AUTHORITY OF THE COMMITTEE ON REMAND IS RESTRICTED TO DETERMINING ONE FACT AND NOTHING MORE.

A. Jackson's Brief violates the Remand Order by arguing that the Committee can reconsider the entire case.

Jackson's Brief fundamentally misapprehends the purpose of the ALC's Remand Order and strays afield of what can be argued before the Committee at this stage. The sole reason for the remand to the Committee was for it to weigh the evidence as to what position Jackson was functioning in at the time she was terminated from Denmark Technical College ("DTC"). [Remand

Order p. 6.] In spite of this unambiguous instruction, Jackson asks in her Brief that the Committee essentially consider the entire case anew and that all of its findings and conclusions to date be "confirmed." This the Committee plainly cannot do, as the ALC has given no authority to the Committee to conduct an unrestricted reassessment of its March 22, 2018 Decision. Therefore, the Committee Attorney should strike those portions of Jackson's Brief that argue any matter other than the foregoing question of fact concerning the position Jackson was functioning in at termination. S.C. Code Ann. § 1-23-330(1) (requiring exclusion of "[i]rrelevant" or "immaterial" matters in proceedings governed by the South Carolina Administrative Procedures Act, such as Committee hearings).

The Committee likewise cannot opine on matters already decided by the Remand Order or reserved to the ALC for adjudication once the Committee has issued its limited finding of fact on remand. Where a case has been remanded from an appellate court to an administrative tribunal with specific directions, the tribunal "must proceed in accordance with those directions." Bobo v. Marshane Corp., 302 S.C. 86, 88, 394 S.E.2d 2, 4 (Ct. App. 1990). **"The appeal, however, remains pending in the [remanding] court while it awaits the [administrative tribunal's] compliance with the order of remand."** Id. (Emphasis added.) Thus, the Committee "has no authority to exceed the mandate of the appellate court on remand." South Carolina Dep't of Soc. Servs. v. Basnight, 346 S.C. 241, 250, 551 S.E.2d 274, 279 (Ct. App. 2001). Coextensive with this limitation is the principle that "[m]atters decided by the appellate court cannot be reheard, reconsidered, or relitigated" by the tribunal to which a case is remanded. Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (ruling that it was error for a trial court to have reconsidered the issue of liability where a remand had been made for a determination of damages only).

The present remand to the Committee is analogous to a remand to the Workers' Compensation Commission ("Commission") to make findings necessary for the remanding court to ultimately decide an issue. Fox v. Newberry Co. Mem'l Hosp., 319 S.C. 278, 461 S.E.2d 392 (1995) (remanding case to the Commission to make findings of fact in order for the court to determine if the claimant proved all six elements necessary to establish that she suffered from an occupational disease). Once the Committee makes the factual finding mandated by the Remand Order, it must report this finding to the ALC so the court can apply the law thereto. See, e.g., Mitchell v. Florence Co. Sch. Dist. No. 1, No. 2006-UP-417, 2006 WL 7287886, *2 (S.C. Ct. App. Dec. 18, 2006) (acknowledging that an administrative tribunal must issue "an order addressing [the facts]" when an appellate court remands a case for the purpose of making such findings); Bruce v. Entertainment Partners, et al.,WCC No. 0705175, 2010 WL 3280133 (S.C. Workers' Comp. Comm'n June 16, 2010) (ordering "that since the issues on remand from the Circuit Court have been answered . . . , this matter is returned to that Court").

Accordingly, the Committee Attorney should instruct the Committee that its only role is to determine and report the foregoing finding of fact to the ALC. All the arguments contained in Jackson's Brief that delve into other matters not squarely addressed by the Remand Order are irrelevant and therefore must be stricken.

B. Jackson's Brief argues legal issues that are reserved to the ALC for adjudication and are not relevant to the Committee's role on remand.

Jackson's Brief seeks to raise legal issues that are not properly before the Committee for a number of reasons. The Agency notes at the outset that the Remand Order inventoried several facts in the Record on Appeal ("Record") demonstrating that Jackson had clearly ceased functioning as an Administrative Coordinator ("Coordinator") at the time of her termination. Were it not for the prohibition on a court "substituting [its] judgment for that of the agency as to the weight of the

evidence on questions of fact," the ALC telegraphed that it would have made a factual finding that Jackson was functioning in an Interim Dean position at the time of her termination rather than remand this issue to the Committee. See Grant v. South Carolina Coastal Council, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). [Remand Order pp. 4, 6.] That notwithstanding, the ALC determined that "Interim Dean" is not a covered position under the Act.

Despite the evidence in the Record to the contrary, Jackson argues in her Brief that she never ceased being a Coordinator (a covered position). In furtherance of this argument, she (1) points to documents in the Record that she alleges conferred grievance rights to her under the Act and (2) impermissibly references the State Human Resources Director's ("Director") decision to forward her grievance appeal to the Committee.

First, furnishing documentation to an employee indicating that she has grievance rights cannot as a matter of law confer such rights if they do not otherwise exist. In Fisher v. South Carolina Dep't of Health and Envtl. Control, 309 S.C. 10, 419 S.E.2d 794 (Ct. App. 1992), a probationary state employee was provided a form by her employer mistakenly indicating that she had grievance rights under the Act. After the employee was terminated, she attempted to pursue a grievance with her employer based on the representations contained in the document she had been given. Fisher, 309 S.C. at 12, 419 S.E.2d at 795. The Court of Appeals found that this document was of no consequence and affirmed the denial of her grievance, because the employee was statutorily excluded from coverage under the Act. Fisher, 309 S.C. at 13, 419 S.E.2d at 795. Likewise, any documentation Jackson may have been provided by the Agency or DOA erroneously indicating that she had grievance rights does not establish that such rights existed as a matter of law.

Informing an employee that an appeal can be made to DOA similarly confers no right to a Committee hearing under the Act if that right does not otherwise exist. "DOA" includes the Director and the Committee, though only the Director is statutorily authorized to determine whether DOA as a whole has subject matter jurisdiction over an employee's appeal. S.C. Code Ann. § 8-17-350 (providing that the Director shall make such a determination "[w]hen an appeal is filed" by an employee); S.C. Code Ann. Regs. 19-718.05(D)(3) (specifying that the Director's duties include "[d]etermin[ing] whether the appeal . . . complies with the jurisdictional requirements of the Act"); 8 S.C. Jur. Public Officers and Public Employees § 62 (addressing the "subject matter jurisdiction of the State Employee Grievance Committee").

As the Remand Order observed, "SCTCS alleges that DOA, and thus this Court, do not have subject matter jurisdiction to hear this matter." [Remand Order p. 4.] Hence, SCTCS contends that the Committee had no jurisdiction over Jackson's appeal as an "Interim Dean" *and* that the Director never should have forwarded the appeal to the Committee for a hearing. Whether DOA had subject matter jurisdiction over Jackson's appeal is ultimately a question of law that only the ALC can decide. Chew v. Newsome Chevrolet, Inc., 315 S.C. 102, 103, 431 S.E.2d 631, 631 (Ct. App. 1993) ("The question of subject matter jurisdiction is a question of law for the court."). It therefore is improper for Jackson to argue that the Director's decision to send her appeal to the Committee is *factual* evidence of which position she was functioning in, since whether the Director's decision was in error is part of the *legal* issue remaining for the ALC's adjudication.

Consequently, references in Jackson's Brief to (1) communications from the Agency and/or DOA purportedly conferring her grievance rights under the Act and (2) the Director's decision to send Jackson's appeal to the Committee should be stricken.

C. Jackson raises arguments associated with her suspension and termination which are outside the scope of the Remand Order and otherwise moot.

Jackson seeks to resurrect clearly moot arguments in her Brief relating to her suspension and termination. As DOA notified Jackson by letter dated May 17, 2017, her termination "effectively moot[ed] [her] suspension pending investigation *as well as the appeal of her suspension*" to the Director that was pending at the time. [R. p. 472 (emphasis added).] If Jackson could not grieve her suspension in May 2017, she cannot now shoehorn arguments about it into this proceeding more than two years later.

Jackson likewise devotes considerable attention in her Brief to what she perceives as inadequacies in the process that led to her termination. As this issue was not even remotely touched upon in the Remand Order, it is not proper for the Committee to consider it on remand. Even if the issue were arguably now before the Committee, it is well settled that a "post-removal procedure which satisfie[s] due process sufficiently compensate[s]" for any alleged deficiencies in the employer's internal procedures associated with terminating an employee. Rose v. Beasley, 327 S.C. 197, 205, 489 S.E.2d 625, 629 (1997). Insofar as Jackson "was represented by counsel and had the opportunity to introduce evidence, cross-examine adverse witnesses, and argue h[er] case" to the Committee, she was afforded due process. Id. To the extent that Jackson is attempting to relitigate the foregoing matters, her arguments are irrelevant and beyond the mandate of the Remand Order.

D. Jackson's argument about tuition reimbursement and pay-related grounds for her termination being "untimely" is irrelevant and contravenes a finding made by the ALC in the Remand Order.

Jackson's Brief asserts that improprieties involving her obtaining tuition reimbursement and pay increases "date back several years and are untimely grounds" to have terminated her. Once more, assertions involving her pay and tuition reimbursement veer far outside the realm of what

the Remand Order directed the Committee to consider. Moreover, the ALC flatly refuted Jackson on this issue.

In the Remand Order, the ALC noted that "if Jackson committed any offense exhibiting bad character while she was previously a covered employee, but this offense was not discovered until a later date when she had moved on to an uncovered position, SCTCS could *certainly terminate* Jackson from the uncovered position." [Remand Order p. 5, n.3 (emphasis added).] Again, Jackson is attempting to inject irrelevant matters that have no bearing on the narrow remand issue – and she is doing so in defiance of the ALC. Jackson's argument in this regard necessarily must be stricken.

II. NO ADDITIONAL EVIDENCE OR WITNESS TESTIMONY SHOULD BE PRESENTED TO THE COMMITTEE, BECAUSE THE PARTIES HAVE EXPRESSED NO INTEREST IN DOING SO AND THE REMAND ORDER DOES NOT ALLOW IT.

Neither Jackson nor the Agency expressed any desire in their respective September 13, 2019 briefs to introduce additional testimony or other evidence on remand. The Committee has already received evidence over a four-day hearing and considered extensive testimony from a number of witnesses, culminating in a voluminous Record totaling 746 pages. The ALC also made clear that the Committee already had all the information it needed by observing that the subject finding of fact had not been made "[d]espite the evidence in the Record." [Remand Order p. 5.] Hence, it would be unduly repetitious for the Committee to require the submission of any additional evidence on remand. S.C. Code Ann. § 1-23-330(1) (declaring that "unduly repetitious evidence shall be excluded").

Had the ALC intended for the Committee to receive additional evidence, the Remand Order would have explicitly directed it to do so. See, e.g., Washington v. South Carolina Dep't of Corrections, 2013 WL 5422819, *3, 12-ALJ-30-0408-AP (S.C. Admin. Law Ct. Sept. 23, 2013)

(remanding case to a state agency "in order to take additional evidence" on whether an agency policy was violated). Neither an administrative tribunal nor a lower court can consider additional evidence on remand unless expressly authorized by the remanding appellate court. Porter v. South Carolina Pub. Serv. Comm'n, 333 S.C. 12, 32, 507 S.E.2d 328, 338 (1998); South Carolina Ins. Co. v. White, 301 S.C. 133, 139, 390 S.E.2d 471, 475 (Ct. App. 1990). Since the Remand Order made no mention of new evidence being necessary or even permitted, the Committee must make the remaining finding of fact on the basis of the Record without entertaining any new evidentiary matters.

## CONCLUSION

For the foregoing reasons, SCTCS asks that the Committee Attorney grant the relief requested herein.

Warren V. Ganjehsani
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Attorney for SCTCS

September 20, 2019

admin
THE SOUTH CAROLINA
DEPARTMENT *of* ADMINISTRATION

**Henry McMaster**, *Governor*
**Marcia S. Adams**, *Executive Director*

**DIVISION *of* STATE HUMAN RESOURCES**
Karen Luchka Wingo, Director
8301 Parklane Road, Suite A220
Columbia, SC 29223
803.896.5300
803.896.5050 fax

September 23, 2019

**Via Electronic Mail Only**
Ms. Shannon Polvi
Cromer Babb Porter & Hicks
P.O. Box 11675
Columbia, South Carolina 29211

Re: Carla Jackson v. South Carolina Technical College System

Dear Ms. Polvi:

This office has received the attached Motion in Limine and Motion to Strike dated September 20, 2019, from Mr. Warren Ganjehsani, Chief Legal Counsel for the South Carolina Technical College System.

Please respond to Mr. Ganjehsani's Motion in Limine and Motion to Strike by stating your position on this matter in writing to us no later than 5:00 p.m. on Friday, October 4, 2019. You may submit your response via facsimile to my attention at 803-896-5050 or via electronic mail to Heather.Keever@admin.sc.gov.

If we do not receive a response by the indicated date, a determination will be made by the Committee Attorney based on the information we have.

Please call if you have any questions.

Sincerely,

Heather Keever
Alternative Dispute Resolution Program

Enclosure

c: Mr. Warren Ganjehsani (via electronic mail only)

admin
THE SOUTH CAROLINA
DEPARTMENT of ADMINISTRATION

**Henry McMaster**, *Governor*
**Marcia S. Adams**, *Executive Director*

**DIVISION of STATE HUMAN RESOURCES**
Karen Luchka Wingo, Director
8301 Parklane Road, Suite A220
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October 9, 2019

**Via Email and US Mail**

Mr. Warren V. Ganjehsani
General Counsel
South Carolina Technical College System
111 Executive Center Drive
Columbia, South Carolina 29210

Re: Carla Jackson v. South Carolina Technical College System

Dear Mr. Ganjehsani:

This letter is in response to the Motion in Limine and Motion to Strike dated September 20, 2019, you submitted concerning the above-referenced appeal.

The Committee Attorney assigned to this appeal, Harley Kirkland, has requested that you provide a proposed order in Word format and a copy of the Appellant's brief marked with the redactions you are requesting. If possible, please submit the brief with the applicable text marked for redaction but without the redaction being applied. If this is not possible, a fully redacted version is acceptable.

Please submit these documents to my attention at heather.keever@admin.sc.gov no later than close of business on October 21, 2019.

If you have any questions, please call me.

Sincerely,

Heather Keever
Alternative Dispute Resolution Program

cc: Shannon Polvi

**STATE OF SOUTH CAROLINA**
**BEFORE THE STATE EMPLOYEE GRIEVANCE COMMITTEE**

| | |
|---|---|
| South Carolina Technical College System<br><br>vs.<br><br>Carla Jackson | **ORDER ON AGENCY'S MOTION *IN LIMINE* AND MOTION TO STRIKE PORTIONS OF APPELLANT'S BRIEF** |

This matter came before the undersigned pursuant to the South Carolina Technical College System's ("SCTCS" or "Agency") September 20, 2019 Motion in *Limine* and Motion to Strike ("Motion") requesting that portions of Appellant Carla Jackson's ("Appellant") September 13, 2019 brief ("Brief"') be stricken before being provided to the State Employee Grievance Committee ("Committee") and asking that certain legal issues be ruled upon prior to the Committee discharging its directive from the Administrative Law Court's ("ALC" ) June 25, 2019 Order of Remand ("Remand Order").

In a September 23, 2019 letter from the Department of Administration ("DOA"), Appellant was given until October 4, 2019 at 5 p.m. to respond to the Agency's Motion. DOA's letter further advised that if no response were received by the foregoing deadline, a determination would be made based on the information it had as of that time. Appellant did not submit a response to the Agency's Motion. Accordingly, Appellant waived the right to object to or otherwise oppose the Agency's Motion. After consideration of the Agency's Motion, I find and conclude as follows:

1. SCTCS states that Appellant's Brief veers far outside the scope of the ALC's remand by asking the Committee to reconsider the entirety of its March 22, 2018 Decision in this appeal, as

the sole reason for the remand was to have the Committee determine what position Appellant was functioning in at the time she was terminated from Denmark Technical College ("DTC"). See Remand Order p. 6. Where a case has been remanded from an appellate court to an administrative tribunal with specific directions, the tribunal "must proceed in accordance with those directions." Bobo v. Marshane Corp., 302 S.C. 86, 88, 394 S.E.2d 2, 3 (Ct. App. 1990). "The appeal, however, remains pending in the [remanding] court while it awaits the [administrative tribunal's] compliance with the order of remand." Id. Thus, I agree with SCTCS and find that the Committee "has no authority to exceed the mandate of the appellate court on remand." South Carolina Dep't of Soc. Servs. v. Basnight, 346 S.C. 241, 250, 551 S.E.2d 274, 279 (Ct. App. 2001).

2. SCTCS observes that the Committee similarly cannot weigh in on matters already decided by the Remand Order and must limit its decision to reporting a single finding of fact to the ALC. It is well settled that "[m]atters decided by the appellate court cannot be reheard, reconsidered, or relitigated" by the tribunal to which a case is remanded. Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (ruling that it was error for a trial court to have reconsidered the issue of liability where a remand had been made for a determination of damages only).

The ALC determined that "Interim Dean" is not a covered position under the State Employee Grievance Procedure Act ("Act") but that an "Administrative Coordinator" or "Executive Coordinator" ("Coordinator") position is covered. Once the Committee makes the factual finding about which position Appellant was functioning in, its only role is to report this finding to the ALC so the court can apply the law thereto. See, e.g., Mitchell v. Florence Co. Sch. Dist. No. 1, No. 2006-UP-417, 2006 WL 7287886, *2 (S.C. Ct. App. Dec. 18, 2006) (acknowledging that an administrative tribunal must issue "an order addressing [the facts]" when

an appellate court remands a case for the purpose of making such findings); Bruce v. Entertainment Partners, et al., No. 0705175, 2010 WL 3280133, *3 (S.C. Workers' Comm'n June 16, 2010) (ordering "that since the issues on remand from the Circuit Court have been answered . . . , this matter is returned to that Court").

The ALC has given no authority to the Committee to consider collateral issues or otherwise conduct an unrestricted reassessment of its March 22, 2018 Decision. I therefore conclude that portions of Appellant's Brief arguing any matter other than the aforementioned question of fact concerning the position Appellant was functioning in must be stricken. S.C. Code Ann. § 1-23-330(1) (requiring exclusion of "[i]rrelevant" or "immaterial" matters in Committee hearings and all other proceedings governed by the South Carolina Administrative Procedures Act).

3. SCTCS maintains that legal issues surrounding jurisdiction are reserved to the ALC for adjudication and are not within the Committee's authority to consider on remand. Specifically, SCTCS has asked the ALC to find that the Committee had no jurisdiction over the appeal Appellant filed as an "Interim Dean" and that the State Human Resources Director ("Director") never should have forwarded the appeal to the Committee for a hearing under the Act. Appellant argues in her Brief that she never ceased being a Coordinator and points to documents in the Record that she alleges conferred grievance rights to her, including documents referencing the Director's decision to forward her appeal to the Committee.

The Remand Order observed that the Agency "allege[d] that DOA, and thus this Court, do not have subject matter jurisdiction to hear this matter." See Remand Order p. 4. While "DOA" includes the Director and the Committee, only the Director is statutorily authorized to determine whether DOA as a whole has subject matter jurisdiction over an employee's appeal. S.C. Code Ann. § 8-17-350 (providing that the Director shall make such a determination "[w]hen an appeal

is filed" by an employee); S.C. Code Ann. Regs. 19-718.05(D)(3) (specifying that the Director's duties include "[d]etermin[ing] whether the appeal complies with the jurisdictional requirements of the Act"); 8 S.C. Jur. Public Officers and Public Employees § 62 (addressing the "subject matter jurisdiction" of the Committee).

Insofar as the Act controls who can pursue an appeal to DOA, jurisdiction cannot be conferred by furnishing documentation to an employee indicating that she has grievance rights if such rights do not otherwise exist. Fisher v. South Carolina Dep't of Health and Envtl. Control, 309 S.C. 10, 419 S.E.2d 794 (Ct. App. 1992) (concluding that a document issued by an employer mistakenly indicating that an employee had grievance rights was of no consequence, because the employee was statutorily excluded from coverage under the Act). Hence, whether DOA had subject matter jurisdiction over Appellant's appeal is ultimately a question of law that only the ALC can decide. Chew v. Newsome Chevrolet Inc., 315 S.C. 102, 103, 431 S.E.2d 631, 631 (Ct. App. 1993) ("The question of subject matter jurisdiction is a question of law for the court." ).

Whether the Director erred in sending Appellant's appeal to the Committee goes to the crux of the legal issue remaining for the ALC's adjudication. Therefore, I find that it would be improper for Appellant to argue to the Committee that the Director's decision in this regard is factual evidence of the position in which she was functioning. Any argument by Appellant about documents referencing grievance rights likewise would be irrelevant under Fisher, would improperly encroach upon the ALC's exclusive authority to rule on the issue of jurisdiction, and would confuse or mislead the Committee as to what it can consider on remand. Rule 403, SCRE (noting that otherwise relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of . . . confusion of the issues" or "misleading the [tribunal]"). Consequently, references in Appellant's Brief to (1) communications from DTC, the Agency

and/or DOA purportedly conferring grievance rights to her under the Act and (2) the Director's decision to forward her appeal to the Committee should be stricken.

4. SCTCS contends that Appellant's Brief raises arguments associated with her suspension and termination which are outside the scope of the Remand Order and otherwise moot, because they revolve around alleged inadequacies in the process that led to her termination. As this issue was not touched upon in the Remand Order, it is not proper for the Committee to consider it on remand. Moreover, since the hearing Appellant had before the Committee constituted a "post-removal procedure which satisfied due process," it "sufficiently compensated" for any alleged deficiencies in the Agency's internal procedures associated with her termination. Rose v. Beasley, 327 S.C. 197, 205, 489 S.E.2d 625, 629 (1997). As Appellant's arguments are irrelevant and beyond the mandate of the Remand Order, I find that they should be stricken.

5. SCTCS takes exception to Appellant's Brief delving into (1) whether she improperly obtained tuition reimbursement and used a DTC presidential stamp on documents involving her pay increases and, if so, (2) whether these were "untimely grounds" to have terminated her because they "date[d] back several years." The potential improprieties of such conduct and the timing of any associated disciplinary action are outside the scope of the Committee's specific fact to decide on remand. As a result, I find that these arguments must be stricken accordingly.

6. SCTCS notes that neither it nor Appellant have expressed any desire to introduce additional evidence on remand. The Committee has already received evidence over a four-day hearing and considered extensive testimony from a number of witnesses, culminating in a voluminous Record totaling 746 pages. SCTCS argues that the ALC has not authorized the Committee to take new evidence and that it would be unduly repetitious for the Committee to

require the submission of any other evidence on remand. S.C. Code Ann. § 1-23-330(1) (declaring that "unduly repetitious evidence shall be excluded").

I find that the Remand Order reflected that the Committee already had all the information it needed to make the subject finding of fact and made no mention of further evidence being allowed. Had the ALC intended for the Committee to receive more evidence, the Remand Order could have explicitly directed it to do so. See Washington v. South Carolina Dep't of Corrections, No. 12-ALJ-30-0408-AP, 2013 WL 5422819, *3 (S.C. Admin. Law Ct. Sept. 23, 2013) (remanding case to a state agency "in order to take additional evidence" on whether an agency policy was violated). Neither an administrative tribunal nor a lower court can consider additional evidence on remand unless expressly authorized by the remanding appellate court. Porter v. South Carolina Pub. Serv. Comm'n, 333 S.C. 12, 32, 507 S.E.2d 328, 338 (1998); South Carolina Ins. Co. v. White, 301 S.C. 133, 139, 390 S.E.2d 471, 475 (Ct. App. 1990). Since the Remand Order made no mention of new evidence being necessary or even permitted, the Committee must make the remaining finding of fact on the basis of the existing Record.

IT IS THEREFORE ORDERED THAT (1) Appellant's Brief attached hereto as Exhibit "A" shall have the highlighted portions thereof stricken in accordance with this Order before being provided to the Committee; (2) the Committee shall be instructed that its only authority on remand is to determine whether at the time of Appellant's termination she was functioning as an Interim Dean or as a Coordinator and issue a decision reporting this finding of fact to the ALC; and (3) Appellant shall not be permitted to make any argument to the Committee inconsistent with this Order.

_____
Harley Kirkland
Committee Attorney

_____, 2019

# EXHIBIT A

**BEFORE THE SOUTH CAROLINA**
**STATE EMPLOYEE GRIEVANCE COMMITTEE**

| | |
|---|---|
| Carla Jackson,<br><br>Grievant,<br><br>v.<br><br>Denmark Technical College,<br><br>State Agency. | **GRIEVANT'S BRIEF TO THE STATE EMPLOYEE GRIEVANCE COMMITTEE** |

## INTRODUCTION

The State Employee Grievance Committee ("the Committee") found that Ms. Jackson established that the termination decision of Denmark Technical College ("the College) prejudiced her substantial rights and met one or more of the elements contained in S.C. Code Ann. 8-17-340(E)(2). The Final Decision of the Committee was issued on March 22, 2018.

The College appealed the Final Decision of the Committee to the Administrative Law Court ("ALC"). The ALC did not affirm or overturn the Committee's decision, rather the ALC remanded the matter back to the Committee "…to determine whether Jackson was an Interim Dean at the time of her termination (uncovered employee) or whether Jackson was also functioning in a covered FTE position." (June 25, 2019 Order).

Ms. Jackson was functioning in a covered FTE position when she was terminated. Accordingly, Ms. Jackson requests that the decision issued on March 22, 2018 be confirmed with the Committee making the additional factual finding that Ms. Jackson was in a covered FTE position when she was terminated, and that the relief granted to Ms. Jackson through the State Employee Grievances Procedures be awarded to Ms. Jackson in the timeliest manner possible.

## STATEMENT OF FACTS[1]

Ms. Jackson began her employment with the College on January 4, 2011, upon being hired as an Administrative Coordinator to assist the College's then President, Dr. Joann Boyd-Scotland (President Boyd-Scotland). [Committee Final Decision p. 5]. Throughout the entirety of Ms. Jackson's employment at the College (January 4, 2011-May 11, 2017], Ms. Jackson was an Administrative Coordinator.

On October 1, 2013, Ms. Jackson submitted a "Request for Professional Development Assistance" to President Boyd-Scotland following her acceptance to American InterContinental University Online (AIUO) on September 29, 2013, which was approved by Tarshura Mack, the College's Title III Director, and President Boyd-Scotland. [*Id.*]. In March of 2015, Ms. Jackson received her Master's Degree in Business Administration from AIUO. [*Id.*].

Between February 1, 2015, and October 3, 2016, Ms. Jackson was asked to take on several additional duties, including administrative and instructional responsibilities, and received salary increases accordingly. [Committee Final Decision pp. 5-6]. On October 1, 2015, Ms. Jackson was appointed as the Interim Dean of Transitional Studies/ Distance Education. Ms. Jackson always remained in her Administrative Coordinator, throughout that temporary duty and again when she was appointed to Interim Dean of Business, Computer, and Related Technologies on October 15, 2016. At that time, Ms. Jackson ceased all duties as Interim Dean of Transitional Studies and began the duties of Interim Dean of Business. Ms. Jackson intermittently taught courses as an Adjunct Professor. Ms. Jackson also performed the duties of Executive Assistance to the College Board. During this transition of interim roles and thereafter and up to her termination, Ms. Jackson continued to serve in a full-time capacity as Administrative Coordinator.

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[1] Ms. Jackson craves reference to the Findings of Fact in the Final Decision of the State Employee Grievance Committee, Hearing Transcript, and Hearing Exhibits.

On February 14, 2017, Ms. Jackson received a letter from Dr. Hall, the Interim President of the College, stating that the supplemental pay Ms. Jackson was receiving was suspended. [Hearing Exhibits p. 236]. Following the suspension of her supplemental pay, Ms. Jackson filed a complaint with the South Carolina Department of Labor, Licensing and Regulation on February 15, 2017. Later that day, Ms. Jackson was instructed to come to Dr. Hall's office where she was given a letter informing her that she was suspended without pay. [Hearing Exhibits p. 68]. Therefore, as of February 15, 2017 and continuing until her termination, Ms. Jackson was in no other role and serving in no interim capacities.

Upon the suspension of her supplemental pay on February 14, 2017, Ms. Jackson was to receive her annualized salary solely limited to her Administrative Coordinator position, her covered FTE position, in which she was classified throughout the entirety of her employment with the College. [Hearing Exhibits p. 236]. Dr. Hall specifically wrote, "...You will continue to receive your annualized base pay for the state position to which you were hired." [*Id.*]. Ms. Jackson was suspended without pay from February 15, 2017 until her termination on May 11, 2017.

Following that investigation and a suspension beginning February 15, 2017, Ms. Jackson received a termination letter dated May 11, 2017 informing her that her employment had been terminated for various alleged violations of "rules, regulations and written policies." [Hearing Exhibits p. 23]. The College accused Ms. Jackson of using the President's Stamp on her own personnel records and that she violated policies with her receipt of tuition assistance. [*Id.*]. Both grounds were proven false during the hearing. [Committee Final Decision].

Ms. Jackson appealed her termination pursuant to S.C. Code of Laws Ann § 8-17-340(E)(2)(a), (b), (c), (d), (e), and (f) as the facts and circumstances leading to Ms. Jackson's termination are in violation of constitutional or statutory provisions; in excess of the statutory

authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in the view of the reliable, probative and substantial evidence on the whole record; and arbitrary and capricious and characterized by an abuse of discretion and clearly an unwarranted exercise of discretion. As reflected by the Findings of Fact in the Final Decision, the Committee heard from several witnesses and reviewed a series of documents supplied by Ms. Jackson and the College in support of their respective arguments.

Ms. Jackson argued that the facts and circumstances leading to her termination are in violation of constitutional or statutory provisions, including, but not limited to, wage and whistleblower laws. Ms. Jackson argued that she was denied due process on the basis that the College failed to provide Ms. Jackson any notice for the grounds of a suspension that they termed an "investigatory suspension". Ms. Jackson was never given grounds for such "investigatory suspension" in writing. Ms. Jackson's suspension letter simply said that Ms. Jackson was placed on an investigatory suspension without pay effective immediately for allegations surrounding her alleged involvement in improper conduct with regard to college operations. Yet, Ms. Jackson received no explanation beyond that vague phrase alleging "involvement in improper conduct with regard to college operations". Ms. Jackson entire job entailed "college operations". The total lack of information given to Ms. Jackson deprived Ms. Jackson of an opportunity to defend herself and to rebut the allegations of "involvement in improper conduct with regard to college operations".

Ms. Jackson was terminated from employment for "willful violation of rules, regulations and written policies, which constitute conduct unbecoming a state employee." [Hearing Exhibits p. 23]. Ms. Jackson argued that such grounds are unfounded, and Ms. Jackson was not given documentation supporting the accusations against her. Ms. Jackson did not violate any rules, regulations, or written policies.

The Committee heard that Ms. Jackson was paid for duties that she performed, that she was actually underpaid for such duties in that paying her to do an Interim role was cheaper for the College than hiring a permanent Dean at a higher salary, and that all pay adjustments for additional duties given to Ms. Jackson were properly approved by the supervisors above Ms. Jackson.

Further, Ms. Jackson testified, and the evidence showed, that Ms. Jackson did not receive a pay increase; she received supplemental pay when she performed additional duties. Any and all supplements in Ms. Jackson's pay were expressly authorized by the supervisory chain above Ms. Jackson and by Human Resources.

The College accused Ms. Jackson of allegedly improperly receiving tuition reimbursement and allegedly stamping her own pay increases documentation. Both accusations factually date back several years and are untimely grounds to terminate Ms. Jackson and such allegations were wholeheartedly denied and the evidence supported Ms. Jackson's account that she had done nothing wrong in receiving supervisory approved tuition reimbursement and supervisory approved supplemental pay.

Current and former employees of the College, including President McIntyre and Dr. Lamin Drammeh (Dr. Drammeh), testified to the contrary of such allegations. [Committee Final Decision, pp. 7-8]. Specifically, President McIntyre and Dr. Drammeh testified that Ms. Jackson's Master's Degree was relevant to her position, that the reimbursement she received was a normal amount for tuition assistance, and that Ms. Jackson would have been unable to authorize her own pay raises because of the internal structure in place for such salary increases. [Id.]. President McIntyre further testified that he had authorized all of Ms. Jackson's pay increases. [Committee Final Decision p. 8]. Further, the College was in receipt of Ms. Jackson's transcript from AIUO and AIUO's fee schedule for the program in which Ms. Jackson was enrolled, which informed the College of the

two transfer credits Ms. Jackson had from Springfield College and that the reported cost of the program may vary depending on the presence of such credits. [Committee Final Decision p. 9].

The Committee did not hear from the decision maker, Dr. Hall, the Interim President of the College. Dr. Hall was only at the College campus for about 10 days prior to him suspending Ms. Jackson. Comparatively, the Committee did hear from Dr. McIntrye, the President of the College during the timeframe relevant to the College's allegations against Ms. Jackson. Dr. McIntyre affirmed to the Committee that these grounds the College brought against Ms. Jackson are baseless.

Given the totality of the circumstances presented and the evidence provided, the Committee found that the College's decision to terminate Ms. Jackson is unsupported and granted Ms. Jackson the relief permitted by the State Employee Grievance Procedure Act. [Committee Final Decision pp. 12-13].

## ARGUMENT

Pursuant to S.C. Code Ann. § 8-17-340(A), the State Human Resources Director correctly determined that Ms. Jackson was a covered employee under the State Employee Grievance Procedure Act and forwarded Ms. Jackson's appeal to the State Employee Grievance Committee for a hearing after determining that the jurisdictional requirements had been met. Retroactively, the College now argues, after it lost the grievance, that Ms. Jackson does not have grievance rights.

The South Carolina Grievance Procedure Act provides grievance rights to covered state employees absent certain exemptions, none of which are applicable to Ms. Jackson. Ms. Jackson respectfully requests that the State Employee Grievance Committee make that same factual finding as the State Human Resources Director, that Ms. Jackson was a covered employee under the State Employee Grievance Procedure Act.

## I. Ms. Jackson was only in a position with State Employee Grievance rights when she was terminated.

There can be no other conclusion than that Ms. Jackson was covered employee at the time of her termination. The State Employee Grievance Procedure Act defines a covered employee as "a full-time employee occupying an established full-time equivalent position." SC Code Ann. §8-17-330(7). On February 14, 2017, Ms. Jackson's supplemental pay was suspended following a letter she received from Dr. Hall, the Interim President of the College. Because of that February 14, 2017 letter, Ms. Jackson's additional duties that she was performing on an interim basis were suspended; thus, as of February 14, 2017, Ms. Jackson had no other roles but her covered employee position. [Hearing Exhibits p. 236]. Dr. Hall's decision to suspend Ms. Jackson the next day makes it clear that as of the time of the suspension on February 15, 2017 and up to the termination Ms. Jackson was only in her covered state employee position. [*Id.*].

This argument section is brief, because the issue is uncomplicated. At the time of her termination on May 11, 2017, Ms. Jackson was ***only*** serving in an Administrative Coordinator role, per Dr. Hall's suspension of her additional duties on February 14, 2017. [*Id.*]. Therefore, Ms. Jackson was unquestionably in a covered full-time employee at the time of her termination and should be allowed the full enjoyment of the State Employee Grievance Act.

## II. Ms. Jackson was always a covered FTE employee within the meaning of the State Employee Grievance Procedure Act.

Ms. Jackson began working for the College in 2011 as an Executive Administrative Coordinator. In this position, Ms. Jackson worked full time for the College until her termination in 2017. Ms. Jackson was covered employee at the time of her termination. Though Ms. Jackson had temporarily assumed the additional responsibility of Interim Dean, Ms. Jackson continued to serve the College as a full-time employee classified as an Administrative Coordinator throughout

her employment for the College. Several documents in the Record support the finding that Ms. Jackson was continuously, up to her termination, classified as an "Administrative Coordinator". [*See*, for example, Ms. Jackson's "Job Classification: Administrative Coordinator I" listing on page 1 of the Grievance Committee's Final Decision; Ms. Jackson's "Job Title: Executive Administrative Coordinator" listed on her application to the College for Tuition Assistance on Hearing Exhibits. p. 267; and the State of South Carolina Position Description seen on Hearing Exhibits p. 256-258].

Ms. Jackson took on additional responsibilities while she was a full-time employee of the College. At no point in time did Ms. Jackson cease to be a full-time employee of the College. This is evidenced in a letter addressed to Ms. Jackson dated February 1, 2015. [Hearing Exhibits p. 97]. The substantive body of the letter states:

> Please be informed that **you will continue in the state position of, Administrative Coordinator to the President**, but will have additional duties attached as of, February 1, 2015.
>
> Your immediate supervisor will remain Dr. Leonard McIntyre; **you will remain at your current salary, position, and classification but, will assume additional duties** as Assistant to the Area Commissioners. A temporary salary supplement will be made to reflect an adjustment totaling ($550.00) per pay period. This amount will be attached to your current salary of $48,327.

[Id.](emphasis added). This letter specifically states that Ms. Jackson would remain at her current salary, position, and classification; Ms. Jackson remained in an FTE covered employee position. [Id.]. Additionally, the letter states that Ms. Jackson's salary would be supplemented to adjust for the temporary additional work that Ms. Jackson was performing. [*Id.*]. This letter clearly shows that it was the College's intent to keep Ms. Jackson in a covered full-time employee position while supplementing her income for the additional work she would be performing on a temporary basis. [*Id.*].

The College's intention of having Ms. Jackson remain in a full-time position is again evidenced when Ms. Jackson took on the duties of Interim Dean of Transitional Services. In a letter dated September 15, 2015, Dr. McIntyre states, "You will remain at your current salary and in your current position/classification, [Administrative Coordinator], but will assume the additional duties..." [Hearing Exhibits p. 103]. The letter also states that Ms. Jackson would receive supplemental income for the duration of her time served as Interim Dean. [*Id.*]. The temporary nature of Ms. Jackson's Interim Dean role is affirmed in the letter stating that interviews were being held to fill the Dean of Transitional Services position. Furthermore, later that Dean position was filled by another person, not Ms. Jackson, who remained in her position and classification while performing Interim Dean duties on a temporary basis.

The State Human Resources Director properly forwarded Ms. Jackson's appeal of her termination to the Committee, because Ms. Jackson was a covered by the State Employee Grievance Procedure Act. Ms. Jackson was hired by the College on Jan 4, 2011 as the Administrative Coordinator, her official state employee job classification. [Hearing Exhibits pp. 256-258]. Ms. Jackson became a covered state employee with grievance rights after one year of service, on Jan 4, 2012. Ms. Jackson was never hired permanently or reclassified to any role but Administrative Coordinator; she was only given a temporary supplement to assume appointed duties on an interim basis.

It is pivotal to consider that the College has failed to provide any Human Resource documentation or other written evidence to validate that Ms. Jackson had a state job classification change or that she assumed a permanent, and no longer interim, position as a dean. Further, the College failed to provide any official or signed position description showing that Ms. Jackson had a state position change during her employment. The College has failed to point to such evidence,

because none exists. The documents within the Record verify that Ms. Jackson maintained her Administrative Coordinator state positions/classification as a covered state employee while assuming temporary additional duties.

A logical conclusion from the witness testimony at the Hearing is that it is a standard practice of the State Technical College System, if someone assumes additional duties or interim roles; they would maintain their current state position until someone is hired permanently or reclassified into that vacant position. The employee serving in that interim role would receive a temporary supplement for additional duties during that period. Ms. Jackson was never keyed as dean, because Ms. Jackson was never in that role, she was simply performing additional duties on a temporary basis while maintaining her state Administrative Coordinator position.

**III. Ms. Jackson completed all grievance requirements.**

Ms. Jackson followed the grievance process according to SCBTE Policy 8-6-100, SCBTE Procedure 8-6-100-1. [Hearing Exhibits pp. 189-195]. Prior to determining whether the jurisdictional requirements were met, the State Human Resources Director requested all information surrounding Ms. Jackson's termination, to include policies and steps used for the grievance process. [Hearing Exhibits pp. 5, 229-231]. The College complied and had no objections to Ms. Jackson's entitlement to grievance rights.

Ms. Jackson was always keyed and classified as an Administrative Coordinator and she only held the Dean roles on an Interim basis. Supporting such a conclusion is Ms. Jackson's notification of such Interim role on September 21, 2016. [Hearing Exhibits p. 255]. The Letter from the College President states in pertinent part:

> Please be informed that you are being **appointed Interim** Dean of Business, Computers, and Related Technologies (BRCT) effective October 1, 2016, **until a permanent Dean of BCRT is hired** to provide leadership for the department.

> Your immediate supervisor will remain Mrs. Tia Wright-Richards, Interim Vice President for Academic Affairs. ***You will remain at your current salary and in your current position/classification***, but will assumed additional duties of Interim Dean of BCRT. You will continue to receive a ***temporary* salary adjustment**...

[*Id.*](emphasis added). Similar language is found in the 2015 letter, stating "you will remain at your current salary and in your current position/classification... and receive a temporary salary adjustment...for the duration of your interim appointment... When interviews are being held to fill the Dean of Transitional Services, please know that you are eligible to apply and be interviewed for the position." [Hearing Exhibits p. 103]. Ms. Jackson was not permanently hired for any Dean position. Ms. Jackson was never in any other position/classification than an Administrative Coordinator and individuals in such positions are entitled to State Employee Grievance rights.

The payroll action form documentation in the Record confirms Ms. Jackson received $375 per pay period for additional duties as Interim Dean on a temporary basis with no change to your position/classification. [Hearing Exhibits p. 105]. The College's last "DTC Departmental Request for Personnel/Payroll Action Form" listed Ms. Jackson as a "Executive Coordinator" synonymous with "Administrative Coordinator" with the Position Number "103363". [Hearing Exhibits p. 237]. This personnel action form validates that Ms. Jackson was still classified in her current state position one day prior to the suspension. [Hearing Exhibits p. 237]. Ms. Jackson was never classified as a Dean and for the College's arguments to succeed, that she was not a covered employee, the College would have had to hire Ms. Jackson as a Dean, not on a temporary or interim basis.

Dr. McIntrye was the College President during the time frame of the events that the College alleged were the basis of Ms. Jackson's termination (tuition reimbursement and use of the President's stamp). Dr. McIntyre testified before the Committee and stated, "When a person receives a new position as interim they maintain the old position on record until such time that

they are appointed full time and permanent to that new area position. In other words, if something were to happen that I would no longer want her to serve as interim then she has the right to go back to her permanent position. That's why the language is there about the current position classification." [Hearing Transcript p. 180].

While serving in an interim role, Ms. Jackson maintained her full-time employment status as an Administrative Coordinator. The temporary nature of Ms. Jackson's other duties that she performed between 2011 and 2017 are repetitively reinforced within the Record. [See Hearing Exhibits 23, 68, 97, 99, 100, 101, 103, 106, 162-163, 236]. The Record before the Committee is clear that Ms. Jackson was in the Administrative Coordinator position when she was terminated, and the Administrative Coordinator role is a covered FTE position. [See Hearing Exhibits p. 23; SC Code Ann. §8-17-330(7)].

## IV. The College has continuously acknowledged that Ms. Jackson has State Employee Grievance rights.

At all steps throughout her grievance, the College acknowledged that Ms. Jackson was an employee covered by the State Employee Grievance Procedure Act. At no less than eight separate days of grievance hearings - suspension grievances, termination grievances, and then State Employee Grievance Hearing dates - the College continuously acknowledged that Ms. Jackson was a covered employee.

The College acknowledges that Ms. Jackson has grievance rights because it initiated, corresponded, confirmed, and continued to guide the grievance process in the several steps of grievance prior to the hearing before the State Employee Grievance Committee. It is preposterous now for the College to make the argument that Ms. Jackson does not have grievance rights when after two years of appealing the State Human Resources Director and Committee's decisions, the College has never questioned that Ms. Jackson did not meet the jurisdictional requirement for the

grievance process. Moreover, the College terminated Ms. Jackson for allegations that were purportedly during the time she was doing daily duties as Administrative Coordinator, as stated in the termination letter. [Hearing Exhibits, p. 23].

Dr. Hall, the Interim President after Dr, McIntyre, sent a letter to Ms. Jackson on February 14, 2017. [Hearing Exhibits p. 236]. It shows that Dr. Hall suspended Ms. Jackson's supplement pay for the additional interim duties she was performing one day prior to placing her on an unpaid administrative suspension. [Hearing Exhibits. p. 236]. The letter from the head of the College expressly states, "You will continue to receive your annualized base pay for the state position to which you were hired." [Hearing Exhibits p. 236]. Thus, by the College's very own words, documents, and actions, it acknowledged that Ms. Jackson was in a state employee position with grievance rights.

There can be no clearer evidence for relevancy to this issue than the termination letter that confirms that the College validated Ms. Jackson had rights to grieve the actions taken and the termination letter also states Ms. Jackson's classified position, listed in the second paragraph as "Administrative Coordinator I." [Hearing Exhibits p. 23]. Thereafter, the termination letter specifically states, "you have the right to grieve this action should you desire." [*Id.*].

Dr. Hall, the College's Interim President, confirmed that Ms. Jackson had grievance rights in the First Step Grievance Letter. [Hearing Exhibits p. 12-15]. Ms. Jackson's first step grievance hearing was held on June 5, 2017. [Hearing Exhibits p. 15]. Thereafter, Dr. Hall issued his letter upholding Ms. Jackson's termination and within that letter Dr. Hall stated, "In accordance with the State Board for Technical and Comprehensive Education Policy No. 8-6-100, Grievance Appeal Procures and accompanying Procedure No. 8-6-100/1 Grievances, your client may grieve my decision to Dr. Tim Hardee..." [Hearing Exhibits p. 12].

Likewise, Dr. Hardee, SCTC System President, confirmed Ms. Jackson had grievance rights and copied Charles Boykins, legal counsel and Kandy Peacock, VP/Chief of HR on such correspondence. [Hearing Exhibits p. 26]. Dr. Hardee's Step Two Grievance decision stated in part, "This is the final agency decisions regarding this matter. **Ms. Jackson now has the right to appeal to the State Employee Grievance Committee** by writing to Ms. Kim Aydlette, Director, South Carolina Department of Administration, Division of State Human Resources." [*Id.*](emphasis added). This is again confirmed by correspondence from Kandy Peacock, VP/Chief HR. [Hearing Exhibits p. 29].

The College cannot argue that Ms. Jackson was not entitled to grievance rights when the College's own legal counsel acknowledged that Ms. Jackson was an Administrative Coordinator at the hearing. [Hearing Transcript p. 15]. The College's legal counsel stated, "In fact, the sole purpose that we are here today is the administrative coordinator's position is the only part that's covered." [*Id.*].

Thus, there can be no clearer evidence that Ms. Jackson was a covered employee then those described above, in summary: (1) the words of its own legal counsel, (2) all of the personnel documentation preceding Ms. Jackson's termination that continuously classified Ms. Jackson as a covered employee, (3) at all stages in the grievance proceeding the College acknowledged that Ms. Jackson was a covered employee as an Administrative Coordinator, and (4) the College's Personnel/Payroll Action Forms memorializing it classified Ms. Jackson as a covered employee. It is beyond the pail of equity for the College now to argue that Ms. Jackson is not a covered employee by the State Employee Grievance Procedure Act.

Ms. Jackson's state job classification reflected that she was an Administrative Coordinator at the time of her termination, not an academic dean; therefore, she was a covered employee.

Accordingly, the Committee had subject matter jurisdiction, pursuant to S.C. Code § 8-17-340, to adjudicate Ms. Jackson's grievance, because she was a covered employee. The Committee's decision to reverse Ms. Jackson's termination was within its statutory authority and should be upheld with the factual finding that Ms. Jackson was functioning in a covered FTE position when she was terminated.

## CONCLUSION

Ms. Jackson was only serving as an Administrative Coordinator, a position with grievance rights, when she was terminated. Ms. Jackson continued to maintain a full-time position as Administrative Coordinator throughout her employment with the College. Though Ms. Jackson took on additional duties, she maintained the Administrative Coordinator role throughout that time, and all temporary duties had been stripped from Ms. Jackson on February 14, 2017, the day before the investigatory suspension and about three months prior to her termination.

Ms. Jackson believes the information necessary for the Committee to make the factual finding that she was functioning in a covered FTE position when she was terminated is already available to the Committee and described herein, but Ms. Jackson is available to provide additional testimony to the State Employee Grievance Committee, if necessary.

Ms. Jackson should be awarded the full relief of the State Employee Grievance Procedure Act.

**CROMER BABB PORTER & HICKS, LLC**

BY:_____

Shannon M. Polvi (SC Bar #101837)
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533
***Attorney for Grievant***

September 13, 2019
Columbia, South Carolina

## Keever, Heather

**From:** Keever, Heather
**Sent:** Wednesday, October 30, 2019 2:54 PM
**To:** GANJEHSANIWSCTECHSYSTEM.EDU
**Cc:** Wingo, Karen; Shannon Polvi; HOLLOWAYLSCTECHSYSTEM.EDU; PEACOCKSCTECHSYSTEM.EDU
**Subject:** Re: [External] Re: Carla Jackson v. SCTCS

Mr. Ganjehsani,

I am responding to your email below on behalf of Ms. Wingo.

Your email was forwarded to the Committee Attorney for review, however, she is out of the office this week. A response will be provided when she returns to the office.

As the State Human Resources Director Ms. Wingo does not rule on Motions or Objections filed concerning appeals that have been forwarded to the Committee for review. Therefore, the Committee Attorney is the most appropriate person to respond to the concerns raised in your email. When she returns to the office I will follow up to determine when she anticipates being able to review and respond to your concerns. As soon as I receive an update I will let you and Ms. Polvi know.

If you have any other questions or concerns please let me know.

Heather Keever

Sent from my iPhone

> On Oct 30, 2019, at 1:57 PM, Ganjehsani, Warren <ganjehsaniw@sctechsystem.edu> wrote:
>
> Ms. Wingo-
>
> I sent the message below last Friday and to date have not receive any reply. As you can see, the Agency has grave concerns about the manner in which Appellant's long-overdue response to the Agency's motion was hastily granted without extending the Agency the courtesy of being heard on the issue.
>
> This warrants further discussion, and I would like to speak with you about the matter accordingly at your convenience. Opposing counsel is copied and is invited to participate.
>
> Regards,
>
> Warren V. Ganjehsani
> Chief Legal Counsel
> SC Technical College System
>
> 111 Executive Center Dr.
> Columbia SC 29210
> 803.896.5923
> ganjehsani@sctechsystem.edu
>
>

>
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>
>
>
> -----Original Message-----
> From: Ganjehsani, Warren
> Sent: Friday, October 25, 2019 2:06 PM
> To: 'Keever, Heather' <Heather.Keever@admin.sc.gov>
> Cc: Shannon Polvi <Shannon@CBPHlaw.com>; Holloway, La'Tonia <HollowayL@sctechsystem.edu>
> Subject: RE: [External] Re: Carla Jackson v. SCTCS
>
> Ms. Keever-
>
> The Agency objects to Appellant's untimely request at noon today to respond to the Motion in Limine/Motion to Strike ("Motion") that was submitted on September 20, 2019. The Division of State Human Resources ("DSHR") notified Appellant by letter dated September 23, 2019 that she had until October 4, 2019 to respond thereto "or a determination w[ould] be made by the Committee Attorney based on the information" already provided. Appellant did not submit any response or request an extension.
>
> Accordingly, DSHR notified the Agency on October 9, 2019, to submit a proposed order by October 21st, which it did. Now that three weeks have passed since the deadline for Appellant to respond to the Motion - and more than a month after the Motion was filed - she belatedly seeks to weigh in on the merits of the Motion and asks for yet more time (until November 1st) to do so. As of November 1st, Appellant will have had 42 days to respond to the Agency's Motion - triple the length of the original time period and 28 days after the DSHR-imposed deadline.
>
> Nothing in the correspondence from DSHR permitted Appellant to disregard the applicable deadlines or wait until after the Agency submitted a proposed order before finally addressing the issues involved. It is axiomatic that a party who does not timely respond to a motion is deemed to have waived the right to oppose it.
>
> Appellant's untimely request was granted little more than an hour after she made it. The Agency wishes to note for the record that it objects to a decision having been made without it first being given an opportunity to respond. Without waiving that objection, the Agency requests the right to submit a memorandum in response to whatever document Appellant eventually submits.
>
> Regards,
>
>
> Warren V. Ganjehsani
> Chief Legal Counsel
> SC Technical College System
>
> 111 Executive Center Dr.
> Columbia SC  29210
> 803.896.5923
> ganjehsani@sctechsystem.edu
>
>
>
>
> -----Original Message-----

> From: Keever, Heather <Heather.Keever@admin.sc.gov>
> Sent: Friday, October 25, 2019 1:08 PM
> To: Shannon Polvi <Shannon@CBPHlaw.com>; Holloway, La'Tonia <HollowayL@sctechsystem.edu>
> Cc: Ganjehsani, Warren <ganjehsaniw@sctechsystem.edu>
> Subject: RE: [External] Re: Carla Jackson v. SCTCS
>
> Ms. Polvi,
>
> The Committee Attorney has granted your request to submit a response by November 1, 2019.
>
> Sincerely,
> Heather Keever
> Program Manager, Division of State Human Resources
>
> The South Carolina
> Department of Administration
> 8301 Parklane Road, Suite A220, Columbia, SC 29223
> 803-896-5088
> Lead.Collaborate.Innovate.
>
>
>
>
>
>
> -----Original Message-----
> From: Shannon Polvi <Shannon@CBPHlaw.com>
> Sent: Friday, October 25, 2019 12:00 PM
> To: HOLLOWAYLSCTECHSYSTEM.EDU <HOLLOWAYL@SCTECHSYSTEM.EDU>; Keever, Heather <Heather.Keever@admin.sc.gov>
> Cc: GANJEHSANIWSCTECHSYSTEM.EDU <GANJEHSANIW@SCTECHSYSTEM.EDU>
> Subject: [External] Re: Carla Jackson v. SCTCS
>
> Good afternoon,
> Please pardon any typos as I am sending this out of pocket while out of the office. Now that we are on notice of the portions of the Brief at issue in the DTC's Motion in Limine, we can substantively respond. On behalf of the grievant, I request leave to respond with a deadline of Friday, November 1st.
> Sincerely,
> Shannon
> _____
> From: Holloway, La'Tonia <HollowayL@sctechsystem.edu>
> Sent: Monday, October 21, 2019 4:26:12 PM
> To: 'Heather.Keever@admin.sc.gov' <Heather.Keever@admin.sc.gov>
> Cc: Shannon Polvi <Shannon@CBPHlaw.com>; Ganjehsani, Warren <ganjehsaniw@sctechsystem.edu>
> Subject: Carla Jackson v. SCTCS
>
> Ms. Keever-
>
> Attached are the Agency's proposed order and a version of Appellant's Brief (designated as Exhibit "A") with corresponding redactions highlighted for reference, per your letter dated October 9, 2019.
>
> Regards,

>
> La'Tonia T. Holloway
> Paralegal
> SC Technical College System
> 111 Executive Circle Drive
> Columbia, SC 29210
> 803.896.5923| Telephone
> hollowayl@sctechsystem.edu|Email<mailto:hollowayl@sctechsystem.edu%7CEmail>
> [cid:image001.png@01D5882C.1D288130]
>
>
> _____
>
> CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it contain information from the South Carolina Department of Administration which may be confidential or privileged. It is intended solely for the use of the individual or entity to whom it is addressed. If you are not the named addressee, you should not disseminate, distribute, or copy this e-mail. Please notify the sender immediately if you have received this e-mail by mistake and delete this e-mail from your system and destroy all electronic and hard copies of the communication, including attachments. Please note that any views or opinions presented in this e-mail are solely those of the author and do not necessarily represent those of the South Carolina Department of Administration.

C | B | P | H
CROMER BABB PORTER & HICKS, LLC
*Attorneys and Counselors at Law*

J. Lewis Cromer * Julius W. Babb, IV * J. Paul Porter * Ryan K. Hicks
Shannon M. Polvi * Samantha E. Albrecht * Elizabeth M. Bowen * Creighton M. Segars

October 31, 2019

**Via U.S. Mail and E-Mail**
Heather Keever
Amanda Borchers
Dept. of Admin.
8301 Parklane Road, Suite A220
Columbia, SC 29223

**Re: Carla Jackson v. Denmark Technical College (SC Technical College System)**
**Before the State Employee Grievance Committee**

Dear Ms. Keever and Ms. Borchers:

Enclosed please find Grievant Carla Jackson's Response to Denmark Technical College's Proposed Strikes to Portions of Grievant's Brief to the State Employee Grievance Committee along with a Certificate of Service with regard to the above-referenced matter.

Should you have any questions or concerns, please do not hesitate to give us a call.

With kind regards, I am

Sincerely,

Kate M. Ray
*Litigation Paralegal*

/kmr
*Enclosures*

Cc: Warren V. Ganjehsani, Esquire
Client

**BEFORE THE SOUTH CAROLINA**
**STATE EMPLOYEE GRIEVANCE COMMITTEE**

| | |
|---|---|
| Carla Jackson,<br><br>Grievant,<br><br>v.<br><br>Denmark Technical College,<br><br>State Agency. | **JACKSON'S RESPONSE TO DENMARK TECHNICAL COLLEGE'S PROPOSED STRIKES TO PORTIONS OF GRIEVANT' S BRIEF TO THE STATE EMPLOYEE GRIEVANCE COMMITTEE** |

Denmark Technical College seeks to strike portions of the Grievant's Brief to the State Employee Grievance Committee. The strikes are identified by highlights in the October 21, 2019 submission from Denmark Technical College. Until Grievant Carla Jackson saw the proposed strikes, she had no standing to consent or oppose the unknown strikes. Now that the proposed strikes have been provided by Denmark Technical College, she respectfully opposes the strikes proposed by Denmark Technical College. Both the Grievant and State Agency put forth briefs for consideration. Pursuant to the State Employee Grievance Procedures Act, the Order of Remand from the Administrative Law Court, and the parties communications with the Department of Administration, the Grievant has an equal right, equal to the right of Denmark Technical College, to put her position before the State Employee Grievance Committee. S.C. Code Ann, § 8-17-310 *et seq*. None of the proposed strikes to Grievant's Brief are appropriate.

Grievant responds to each of the proposed strikes as follows:

**Proposed Strike No. 1:**

The State Employee Grievance Committee ("the Committee") found that Ms. Jackson established that the termination decision of Denmark Technical College ("the College) prejudiced

her substantial rights and met one or more of the elements contained in S.C. Code Ann. 8-17-340(E)(2). The Final Decision of the Committee was issued on March 22, 2018.

**Response:**

This is the first sentence of Grievant's Brief. It is factual in nature, essentially verbatim from the Grievance Committee's Final Decision. There is no basis for strike.

**Proposed Strikes No. 2-4 (highlighted portions):**

Accordingly, Ms. Jackson requests that the decision issued on March 22, 2018 be confirmed with the Committee making the additional factual finding that Ms. Jackson was in a covered FTE position when she was terminated, and that the relief granted to Ms. Jackson through the State Employee Grievances Procedures be awarded to Ms. Jackson in the timeliest manner possible.

**Response:**

Grievant is entitled to request the decision she is asking the Committee to reach and the relief she is requesting be granted to her.

**Proposed Strike No. 5:**

Following the suspension of her supplemental pay, Ms. Jackson filed a complaint with the South Carolina Department of Labor, Licensing and Regulation on February 15, 2017.

**Response:**

This is a factual statement established during the hearing before the State Employee Grievance Committee. *See* pg 252 in the Hearing Record, Carla Jackson Testimony on Hearing Transcript page 231 of 348, and Sherry Donaldson Testimony on Hearing Transcript page 88-90 of 348. Thus, there is no basis to strike this sentence.

**Proposed Strike No. 6:**

The College accused Ms. Jackson of using the President's Stamp on her own personnel records and that she violated policies with her receipt of tuition assistance. [*Id.*]. Both grounds were proven false during the hearing. [Committee Final Decision].

Ms. Jackson appealed her termination pursuant to S.C. Code of Laws Ann § 8-17-340(E)(2)(a), (b), (c), (d), (e), and (f) as the facts and circumstances leading to Ms. Jackson's termination are in violation of constitutional or statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in the view of the reliable, probative and substantial evidence on the whole record; and arbitrary and capricious and characterized by an abuse of discretion and clearly an unwarranted exercise of discretion. As reflected by the Findings of Fact in the Final Decision, the Committee heard from several witnesses and reviewed a series of documents supplied by Ms. Jackson and the College in support of their respective arguments.

Ms. Jackson argued that the facts and circumstances leading to her termination are in violation of constitutional or statutory provisions, including, but not limited to, wage and whistleblower laws. Ms. Jackson argued that she was denied due process on the basis that the College failed to provide Ms. Jackson any notice for the grounds of a suspension that they termed an "investigatory suspension". Ms. Jackson was never given grounds for such "investigatory suspension" in writing. Ms. Jackson's suspension letter simply said that Ms. Jackson was placed on an investigatory suspension without pay effective immediately for allegations surrounding her alleged involvement in improper conduct with regard to college operations. Yet, Ms. Jackson received no explanation beyond that vague phrase alleging "involvement in improper conduct with regard to college operations". Ms. Jackson entire job entailed "college operations". The total lack

of information given to Ms. Jackson deprived Ms. Jackson of an opportunity to defend herself and to rebut the allegations of "involvement in improper conduct with regard to college operations".

Ms. Jackson was terminated from employment for "willful violation of rules, regulations and written policies, which constitute conduct unbecoming a state employee." [Hearing Exhibits p. 23]. Ms. Jackson argued that such grounds are unfounded, and Ms. Jackson was not given documentation supporting the accusations against her. Ms. Jackson did not violate any rules, regulations, or written policies.

**Response:**

The College unreasonably seeks to strike more than a page of Grievant's Statement of Facts. Such a strike is utterly unreasonable considering these several paragraphs of the Statement of Facts at issue articulate the two parties' positions. Ms. Jackson describes the purported grounds for her termination as seen on page 23 of the Hearing Exhibits and describes her arguments in opposition in the Hearing Exhibits and this position is repeatedly seen within the Hearing Transcript.

**Proposed Strike No. 7:**

The College accused Ms. Jackson of allegedly improperly receiving tuition reimbursement and allegedly stamping her own pay increases documentation. Both accusations factually date back several years and are untimely grounds to terminate Ms. Jackson and such allegations were wholeheartedly denied and the evidence supported Ms. Jackson's account that she had done nothing wrong in receiving supervisory approved tuition reimbursement and supervisory approved supplemental pay.

Current and former employees of the College, including President McIntyre and Dr. Lamin Drammeh (Dr. Drammeh), testified to the contrary of such allegations. [Committee Final Decision,

pp. 7-8]. Specifically, President McIntyre and Dr. Drammeh testified that Ms. Jackson's Master's Degree was relevant to her position, that the reimbursement she received was a normal amount for tuition assistance, and that Ms. Jackson would have been unable to authorize her own pay raises because of the internal structure in place for such salary increases. [Id.]. President McIntyre further testified that he had authorized all of Ms. Jackson's pay increases. [Committee Final Decision p. 8]. Further, the College was in receipt of Ms. Jackson's transcript from AIUO and AIUO's fee schedule for the program in which Ms. Jackson was enrolled, which informed the College of the two transfer credits Ms. Jackson had from Springfield College and that the reported cost of the program may vary depending on the presence of such credits. [Committee Final Decision p. 9].

The Committee did not hear from the decision maker, Dr. Hall, the Interim President of the College. Dr. Hall was only at the College campus for about 10 days prior to him suspending Ms. Jackson. Comparatively, the Committee did hear from Dr. McIntrye, the President of the College during the timeframe relevant to the College's allegations against Ms. Jackson. Dr. McIntyre affirmed to the Committee that these grounds the College brought against Ms. Jackson are baseless.

Given the totality of the circumstances presented and the evidence provided, the Committee found that the College's decision to terminate Ms. Jackson is unsupported and granted Ms. Jackson the relief permitted by the State Employee Grievance Procedure Act. [Committee Final Decision pp. 12-13].

**Response:**

Again, the College seeks to remove huge swaths of Ms. Jackson's Statement of the Facts. Astonishingly, much of what the College wants removed from the Grievant's Brief are portions reiterating factual findings in the Committee's Final Decision.

**Proposed Strike No. 8:**

Pursuant to S.C. Code Ann. § 8-17-340(A), the State Human Resources Director correctly determined that Ms. Jackson was a covered employee under the State Employee Grievance Procedure Act and forwarded Ms. Jackson's appeal to the State Employee Grievance Committee for a hearing after determining that the jurisdictional requirements had been met. Retroactively, the College now argues, after it lost the grievance, that Ms. Jackson does not have grievance rights.

**Response:**

The College seeks to strike the entire first paragraph of Grievant's argument section of her brief. That paragraph is integral to the Grievant's argument that she is a covered employee and asks that the Committee find accordingly. The College is entitled to raise its arguments supporting its position on this issue and the Grievant is likewise entitled to raise her arguments supporting her position on this issue.

**Proposed Strike No. 9 (highlighted portions):**

The South Carolina Grievance Procedure Act provides grievance rights to covered state employees absent certain exemptions, none of which are applicable to Ms. Jackson. Ms. Jackson respectfully requests that the State Employee Grievance Committee make that same factual finding as the State Human Resources Director, that Ms. Jackson was a covered employee under the State Employee Grievance Procedure Act.

**Response:**

It can be an undisputed fact that the State Human Resources Director relayed Ms. Jackson's grievance to the State Employee Grievance Committee because the grievance hearing happened; thus, it is a consistent factual finding to determine that Ms. Jackson was a covered employee under the State Employee Grievance Procedure Act.

**Proposed Strike No. 10:**

The State Human Resources Director properly forwarded Ms. Jackson's appeal of her termination to the Committee, because Ms. Jackson was a covered by the State Employee Grievance Procedure Act.

**Response:**

This is Ms. Jackson's legal argument to which she is entitled to put forth before the State Employee Grievance Committee.

**Proposed Strike No. 11:**

**III. Ms. Jackson completed all grievance requirements.**

Ms. Jackson followed the grievance process according to SCBTE Policy 8-6-100, SCBTE Procedure 8-6-100-1. [Hearing Exhibits pp. 189-195]. Prior to determining whether the jurisdictional requirements were met, the State Human Resources Director requested all information surrounding Ms. Jackson's termination, to include policies and steps used for the grievance process. [Hearing Exhibits pp. 5, 229-231]. The College complied and had no objections to Ms. Jackson's entitlement to grievance rights.

**Response:**

The College proposes to strike the title header of the Grievant's third argument section and the first paragraph of that legal argument. It is Ms. Jackson's position that she completed all grievance requirements. This position is supported by the Hearing Exhibits given as citations.

**Proposed Strike No. 12 (highlighted portions):**

Dr. McIntrye was the College President during the time frame of the events that the College alleged were the basis of Ms. Jackson's termination (tuition reimbursement and use of the President's stamp).

**Response:**

These are the two listed reasons in the May 11, 2017 termination notice found on page 23 of the Hearing Exhibits.

**Proposed Strike No. 13:**

**IV. The College has continuously acknowledged that Ms. Jackson has State Employee Grievance rights.**

At all steps throughout her grievance, the College acknowledged that Ms. Jackson was an employee covered by the State Employee Grievance Procedure Act. At no less than eight separate days of grievance hearings - suspension grievances, termination grievances, and then State Employee Grievance Hearing dates - the College continuously acknowledged that Ms. Jackson was a covered employee.

The College acknowledges that Ms. Jackson has grievance rights because it initiated, corresponded, confirmed, and continued to guide the grievance process in the several steps of grievance prior to the hearing before the State Employee Grievance Committee. It is preposterous now for the College to make the argument that Ms. Jackson does not have grievance rights when after two years of appealing the State Human Resources Director and Committee's decisions, the College has never questioned that Ms. Jackson did not meet the jurisdictional requirement for the grievance process. Moreover, the College terminated Ms. Jackson for allegations that were purportedly during the time she was doing daily duties as Administrative Coordinator, as stated in the termination letter. [Hearing Exhibits, p. 23].

Dr. Hall, the Interim President after Dr, McIntyre, sent a letter to Ms. Jackson on February 14, 2017. [Hearing Exhibits p. 236]. It shows that Dr. Hall suspended Ms. Jackson's supplement pay for the additional interim duties she was performing one day prior to placing her on an unpaid administrative suspension. [Hearing Exhibits. p. 236]. The letter from the head of the College

expressly states, "You will continue to receive your annualized base pay for the state position to which you were hired." [Hearing Exhibits p. 236]. Thus, by the College's very own words, documents, and actions, it acknowledged that Ms. Jackson was in a state employee position with grievance rights.

There can be no clearer evidence for relevancy to this issue than the termination letter that confirms that the College validated Ms. Jackson had rights to grieve the actions taken and the termination letter also states Ms. Jackson's classified position, listed in the second paragraph as "Administrative Coordinator I." [Hearing Exhibits p. 23]. Thereafter, the termination letter specifically states, "you have the right to grieve this action should you desire." [*Id.*].

Dr. Hall, the College's Interim President, confirmed that Ms. Jackson had grievance rights in the First Step Grievance Letter. [Hearing Exhibits p. 12-15]. Ms. Jackson's first step grievance hearing was held on June 5, 2017. [Hearing Exhibits p. 15]. Thereafter, Dr. Hall issued his letter upholding Ms. Jackson's termination and within that letter Dr. Hall stated, "In accordance with the State Board for Technical and Comprehensive Education Policy No. 8-6-100, Grievance Appeal Procures and accompanying Procedure No. 8-6-100/1 Grievances, your client may grieve my decision to Dr. Tim Hardee..." [Hearing Exhibits p. 12].

Likewise, Dr. Hardee, SCTC System President, confirmed Ms. Jackson had grievance rights and copied Charles Boykins, legal counsel and Kandy Peacock, VP/Chief of HR on such correspondence. [Hearing Exhibits p. 26]. Dr. Hardee's Step Two Grievance decision stated in part, "This is the final agency decisions regarding this matter. **Ms. Jackson now has the right to appeal to the State Employee Grievance Committee** by writing to Ms. Kim Aydlette, Director, South Carolina Department of Administration, Division of State Human Resources."

[*Id.*](emphasis added). This is again confirmed by correspondence from Kandy Peacock, VP/Chief HR. [Hearing Exhibits p. 29].

The College cannot argue that Ms. Jackson was not entitled to grievance rights when the College's own legal counsel acknowledged that Ms. Jackson was an Administrative Coordinator at the hearing. [Hearing Transcript p. 15]. The College's legal counsel stated, "In fact, the sole purpose that we are here today is the administrative coordinator's position is the only part that's covered." [*Id.*].

Thus, there can be no clearer evidence that Ms. Jackson was a covered employee then those described above, in summary: (1) the words of its own legal counsel, (2) all of the personnel documentation preceding Ms. Jackson's termination that continuously classified Ms. Jackson as a covered employee, (3) at all stages in the grievance proceeding the College acknowledged that Ms. Jackson was a covered employee as an Administrative Coordinator, and (4) the College's Personnel/Payroll Action Forms memorializing it classified Ms. Jackson as a covered employee. It is beyond the pail of equity for the College now to argue that Ms. Jackson is not a covered employee by the State Employee Grievance Procedure Act.

Ms. Jackson's state job classification reflected that she was an Administrative Coordinator at the time of her termination, not an academic dean; therefore, she was a covered employee. Accordingly, the Committee had subject matter jurisdiction, pursuant to S.C. Code § 8-17-340, to adjudicate Ms. Jackson's grievance, because she was a covered employee. The Committee's decision to reverse Ms. Jackson's termination was within its statutory authority and should be upheld with the factual finding that Ms. Jackson was functioning in a covered FTE position when she was terminated.

**Response:**

The College seeks to strike the entirety of the fourth section of Ms. Jackson's argument. This is a shocking approach to trying to silence Ms. Jackson's right to contest the College's disingenuous shift in their position as to whether Ms. Jackson is entitled to grievance rights. Ms. Jackson's position in the brief is repetitively supported by information already in the record, such as pages 23, 29, and 236 of the Hearing Exhibits, and quotations from the College's own legal counsel. It is baseless to seek to strike such arguments that are supported by the record before the State Employee Grievance Committee. The College is entitled to contest such arguments, as it has already done so in its own lengthy brief, but the College has no right to try to silence Ms. Jackson's arguments. It shows the College's further efforts to deprive Ms. Jackson of her due process rights.

**Proposed Strike No. 14 (highlighted portions):**

Ms. Jackson believes the information necessary for the Committee to make the factual finding that she was functioning in a covered FTE position when she was terminated is already available to the Committee and described herein, but Ms. Jackson is available to provide additional testimony to the State Employee Grievance Committee, if necessary.

Ms. Jackson should be awarded the full relief of the State Employee Grievance Procedure Act.

**Response:**

Again, this strike is inappropriate because Grievant is entitled to request the decision she is asking the Committee to reach and the relief she is requesting be granted to her.

## CONCLUSION

Ms. Jackson opposes the proposed strikes proffered by the College on October 21, 2019 and requests that the Grievant's Brief be presented to the State Employee Grievance Committee as filed on September 23, 2019.

Respectfully submitted,

**CROMER BABB PORTER & HICKS, LLC**

BY:_____

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***Attorney for Grievant***

October 31, 2019
Columbia, South Carolina

**BEFORE THE SOUTH CAROLINA**
**STATE EMPLOYEE GRIEVANCE COMMITTEE**

Carla Jackson,

Grievant,

v.

Denmark Technical College,

State Agency.

**CERTIFICATE OF SERVICE**

I certify that I, the undersigned employee of Cromer Babb Porter & Hicks, LLC, caused to have served Grievant's Response to the Agency's Proposed Strikes to Portions of Grievant's Brief on all counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on October 31, 2019, addressed to:

Heather Keever
Amanda Borchers
Dept. of Admin.
8301 Parklane Road, Suite A220
Columbia, SC 29223

Warren V. Ganjehsani, Esquire
Chief Legal Counsel - SCTCS
111 Executive Center Drive
Columbia, SC 29210

Kate M. Ray, Litigation Paralegal

October 31, 2019
Columbia, South Carolina

admin
THE SOUTH CAROLINA
DEPARTMENT *of* ADMINISTRATION

**Henry McMaster**, *Governor*
**Marcia S. Adams**, *Executive Director*

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November 25, 2019

**Via US and Electronic Mail**

Mr. Warren Ganjehsani
Chief Legal Counsel
SC Technical College System
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Ms. Shannon Polvi
Cromer, Babb, Porter, & Hicks LLC
Post Office Box 11675
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Re: South Carolina Technical College System v. Carla Jackson

Dear Mr. Ganjehsani and Ms. Polvi:

Please see the enclosed Order from Ms. Harley Kirkland, Committee Attorney, regarding Mr. Ganjehsani's September 20, 2019 Motion in *Limine* and Motion to Strike. Per the enclosed Order from the Committee Attorney, I have also enclosed a copy of Appellant's Brief with the applicable redactions.

Sincerely,

Heather Keever
Alternative Dispute Resolution

Enclosures

**STATE OF SOUTH CAROLINA**
**BEFORE THE STATE EMPLOYEE GRIEVANCE COMMITTEE**

| | |
|---|---|
| South Carolina Technical College System<br><br>vs.<br><br>Carla Jackson | **ORDER ON AGENCY'S MOTION *IN LIMINE* AND MOTION TO STRIKE PORTIONS OF APPELLANT'S BRIEF** |

This matter came before the undersigned pursuant to the South Carolina Technical College System's ("SCTCS" or "Agency") September 20, 2019 Motion in *Limine* and Motion to Strike ("Motion") requesting that portions of Appellant Carla Jackson's ("Appellant") September 13, 2019 brief ("Brief"') be stricken before being provided to the State Employee Grievance Committee ("Committee") and asking that certain legal issues be ruled upon prior to the Committee discharging its directive from the Administrative Law Court's ("ALC" ) June 25, 2019 Order of Remand ("Remand Order").

After consideration of the Agency's Motion, and Ms. Jackson's response, I find and conclude as follows:

1. SCTCS states that Appellant's Brief veers far outside the scope of the ALC's remand by asking the Committee to reconsider the entirety of its March 22, 2018 Decision in this appeal, as the sole reason for the remand was to have the Committee determine what position Appellant was functioning in at the time she was terminated from Denmark Technical College ("DTC"). See Remand Order p. 6. Where a case has been remanded from an appellate court to an administrative tribunal with specific directions, the tribunal "must proceed in accordance with

those directions." Bobo v. Marshane Corp., 302 S.C. 86, 88, 394 S.E.2d 2, 3 (Ct. App. 1990). "The appeal, however, remains pending in the [remanding] court while it awaits the [administrative tribunal's] compliance with the order of remand." Id. Thus, I agree with SCTCS and find that the Committee "has no authority to exceed the mandate of the appellate court on remand." South Carolina Dep't of Soc. Servs. v. Basnight, 346 S.C. 241, 250, 551 S.E.2d 274, 279 (Ct. App. 2001).

2. SCTCS observes that the Committee similarly cannot weigh in on matters already decided by the Remand Order and must limit its decision to reporting a single finding of fact to the ALC. It is well settled that "[m]atters decided by the appellate court cannot be reheard, reconsidered, or relitigated" by the tribunal to which a case is remanded. Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (ruling that it was error for a trial court to have reconsidered the issue of liability where a remand had been made for a determination of damages only).

The ALC determined that "Interim Dean" is not a covered position under the State Employee Grievance Procedure Act ("Act") but that an "Administrative Coordinator" or "Executive Coordinator" ("Coordinator") position is covered. Once the Committee makes the factual finding about which position Appellant was functioning in, its only role is to report this finding to the ALC so the court can apply the law thereto. See, e.g., Mitchell v. Florence Co. Sch. Dist. No. 1, No. 2006-UP-417, 2006 WL 7287886, *2 (S.C. Ct. App. Dec. 18, 2006) (acknowledging that an administrative tribunal must issue "an order addressing [the facts]" when an appellate court remands a case for the purpose of making such findings); Bruce v. Entertainment Partners, et al., No. 0705175, 2010 WL 3280133, *3 (S.C. Workers' Comp.

Comm'n June 16, 2010) (ordering "that since the issues on remand from the Circuit Court have been answered . . . , this matter is returned to that Court").

The ALC has given no authority to the Committee to consider collateral issues or otherwise conduct an unrestricted reassessment of its March 22, 2018 Decision. I, therefore, conclude that portions of Appellant's Brief asking the Committee to reassess its March 22, 2018 Decision or otherwise take an action outside the scope of the remand will be struck.

Proposed Strike 1 is DENIED. This sentence is factual in nature and nearly verbatim from the Grievance Committee's Final Decision and already part of the record before the Committee. Additionally, I find that it is not likely to confuse or mislead the Committee.

Proposed Strikes 2-4 are GRANTED. The Committee is limited to addressing the specific question on remand and cannot confirm their March 22, 2018 Decision or grant any relief to Ms. Jackson. Ms. Jackson has leave to submit an amended brief removing the redacted portions and editing the grammar to flow accordingly, should she so desire, within fifteen calendar days of this order.

Proposed Strike 5 is DENIED. This is a factual statement established during the hearing before the State Employee Grievance Committee; therefore it is already part of the record before the Committee. I also find that it is not likely to confuse or mislead the Committee.

Proposed Strikes 6 and 7 are DENIED. These are again factual statements established during the hearing before the State Employee Grievance Committee, and a summary of the parties' positions. These facts are already part of the record before the Committee and are not overly prejudicial or likely to confuse or mislead the Committee.

Proposed Strikes 8, 9, and 10 are DENIED. The Committee is well aware of the fact that the State Human Resources Director determined that Ms. Jackson was a covered employee, that

the College lost the grievance, and that Ms. Jackson's position is that she does have grievance rights. The fact that the State Human Resources Director forwarded Ms. Jackson's appeal to the committee, and that the College lost the grievance is already part of the record before the Committee. Appellant will be allowed to argue that they believe this is proper and that they believe Ms. Jackson is a covered employee. The Committee is capable of knowing this information and not being confused or mislead by it.

Proposed Strike 11 is DENIED. All of these facts are already before the Committee and I find that the content of the proposed strike is not likely to confuse or mislead the Committee.

Proposed Strike 12 is DENIED. These two reasons are listed in a document that is part of the evidence before the committee and not likely to confuse or mislead the Committee.

Proposed Strike 13 is GRANTED in part and DENIED in part. The final sentence shall be redacted to remove the request to uphold the Committee's prior decision, as the only issue before the Committee on remand is which position Ms. Jackson occupied. Ms. Jackson has leave to submit an amended brief removing the redacted portions and editing the grammar to flow accordingly, should she so desire, within fifteen calendar days of this order.

The remaining portion of proposed strike 13 is DENIED. I agree with SCTCS that jurisdiction cannot be conferred by furnishing documentation to an employee indicating that she has grievance rights if such rights do not otherwise exist. Fisher v. South Carolina Dep't of Health and Envtl. Control, 309 S.C. 10, 419 S.E.2d 794 (Ct. App. 1992) (concluding that a document issued by an employer mistakenly indicating that an employee had grievance rights was of no consequence, because the employee was statutorily excluded from coverage under the Act). Hence, whether DOA had subject matter jurisdiction over Appellant's appeal is ultimately a question of law that only the ALC can decide. Chew v. Newsome Chevrolet Inc., 315 S.C. 102,

103, 431 S.E.2d 631, 631 (Ct. App. 1993) ("The question of subject matter jurisdiction is a question of law for the court.").

However, the only question on remand before the Committee is what position Mr. Jackson was occupying at the time of her termination. Ms. Jackson will be allowed to make her arguments in this section as they apply to the factual question of which position she was occupying, which is the only issue on remand.

Proposed Strike 14 is GRANTED. SCTCS notes that neither it nor Appellant have expressed any desire to introduce additional evidence on remand, and while the text of this proposed strike was likely just an accommodating offer, the proposed strike is nonetheless granted. I find that the Remand Order reflected that the Committee already had all the information it needed to make the subject finding of fact and made no mention of further evidence being allowed. Had the ALC intended for the Committee to receive more evidence, the Remand Order could have explicitly directed it to do so. See Washington v. South Carolina Dep't of Corrections, No. 12-ALJ-30-0408-AP, 2013 WL 5422819, *3 (S.C. Admin. Law Ct. Sept. 23, 2013) (remanding case to a state agency "in order to take additional evidence" on whether an agency policy was violated). Neither an administrative tribunal nor a lower court can consider additional evidence on remand unless expressly authorized by the remanding appellate court. Porter v. South Carolina Pub. Serv. Comm'n, 333 S.C. 12, 32, 507 S.E.2d 328, 338 (1998); South Carolina Ins. Co. v. White, 301 S.C. 133, 139, 390 S.E.2d 471, 475 (Ct. App. 1990). Since the Remand Order made no mention of new evidence being necessary or even permitted, the Committee must make the remaining finding of fact on the basis of the existing Record. Ms. Jackson has leave to submit an amended brief removing the redacted portions, should she so desire, within fifteen calendar days of this order.

IT IS THEREFORE ORDERED THAT (1) Appellant's Brief attached hereto as Exhibit "A" shall be submitted to the Committee in its redacted form, or should Ms. Jackson submit an amended brief within fifteen days of this order removing the redacted portions, in that form; (2) the Committee shall be instructed that its only authority on remand is to determine whether at the time of Appellant's termination she was functioning as an Interim Dean or as a Coordinator and issue a decision reporting this finding of fact to the ALC.

Harley Kirkland
Committee Attorney

Nov 25, 2019

# EXHIBIT A

**BEFORE THE SOUTH CAROLINA**
**STATE EMPLOYEE GRIEVANCE COMMITTEE**

| | |
|---|---|
| Carla Jackson,<br><br>Grievant,<br><br>v.<br><br>Denmark Technical College,<br><br>State Agency. | **GRIEVANT'S BRIEF TO THE STATE EMPLOYEE GRIEVANCE COMMITTEE** |

## INTRODUCTION

The State Employee Grievance Committee ("the Committee") found that Ms. Jackson established that the termination decision of Denmark Technical College ("the College) prejudiced her substantial rights and met one or more of the elements contained in S.C. Code Ann. 8-17-340(E)(2). The Final Decision of the Committee was issued on March 22, 2018.

The College appealed the Final Decision of the Committee to the Administrative Law Court ("ALC"). The ALC did not affirm or overturn the Committee's decision, rather the ALC remanded the matter back to the Committee "…to determine whether Jackson was an Interim Dean at the time of her termination (uncovered employee) or whether Jackson was also functioning in a covered FTE position." (June 25, 2019 Order).

Ms. Jackson was functioning in a covered FTE position when she was terminated. Accordingly, Ms. Jackson requests that [redacted] the Committee making the additional factual finding that Ms. Jackson was in a covered FTE position when she was terminated, [redacted]

## STATEMENT OF FACTS[1]

Ms. Jackson began her employment with the College on January 4, 2011, upon being hired as an Administrative Coordinator to assist the College's then President, Dr. Joann Boyd-Scotland (President Boyd-Scotland). [Committee Final Decision p. 5]. Throughout the entirety of Ms. Jackson's employment at the College (January 4, 2011-May 11, 2017], Ms. Jackson was an Administrative Coordinator.

On October 1, 2013, Ms. Jackson submitted a "Request for Professional Development Assistance" to President Boyd-Scotland following her acceptance to American InterContinental University Online (AIUO) on September 29, 2013, which was approved by Tarshura Mack, the College's Title III Director, and President Boyd-Scotland. [*Id.*]. In March of 2015, Ms. Jackson received her Master's Degree in Business Administration from AIUO. [*Id.*].

Between February 1, 2015, and October 3, 2016, Ms. Jackson was asked to take on several additional duties, including administrative and instructional responsibilities, and received salary increases accordingly. [Committee Final Decision pp. 5-6]. On October 1, 2015, Ms. Jackson was appointed as the Interim Dean of Transitional Studies/ Distance Education. Ms. Jackson always remained in her Administrative Coordinator, throughout that temporary duty and again when she was appointed to Interim Dean of Business, Computer, and Related Technologies on October 15, 2016. At that time, Ms. Jackson ceased all duties as Interim Dean of Transitional Studies and began the duties of Interim Dean of Business. Ms. Jackson intermittently taught courses as an Adjunct Professor. Ms. Jackson also performed the duties of Executive Assistance to the College Board. During this transition of interim roles and thereafter and up to her termination, Ms. Jackson continued to serve in a full-time capacity as Administrative Coordinator.

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[1] Ms. Jackson craves reference to the Findings of Fact in the Final Decision of the State Employee Grievance Committee, Hearing Transcript, and Hearing Exhibits.

On February 14, 2017, Ms. Jackson received a letter from Dr. Hall, the Interim President of the College, stating that the supplemental pay Ms. Jackson was receiving was suspended. [Hearing Exhibits p. 236]. Following the suspension of her supplemental pay, Ms. Jackson filed a complaint with the South Carolina Department of Labor, Licensing and Regulation on February 15, 2017. Later that day, Ms. Jackson was instructed to come to Dr. Hall's office where she was given a letter informing her that she was suspended without pay. [Hearing Exhibits p. 68]. Therefore, as of February 15, 2017 and continuing until her termination, Ms. Jackson was in no other role and serving in no interim capacities.

Upon the suspension of her supplemental pay on February 14, 2017, Ms. Jackson was to receive her annualized salary solely limited to her Administrative Coordinator position, her covered FTE position, in which she was classified throughout the entirety of her employment with the College. [Hearing Exhibits p. 236]. Dr. Hall specifically wrote, "...You will continue to receive your annualized base pay for the state position to which you were hired." [*Id.*]. Ms. Jackson was suspended without pay from February 15, 2017 until her termination on May 11, 2017.

Following that investigation and a suspension beginning February 15, 2017, Ms. Jackson received a termination letter dated May 11, 2017 informing her that her employment had been terminated for various alleged violations of "rules, regulations and written policies." [Hearing Exhibits p. 23]. The College accused Ms. Jackson of using the President's Stamp on her own personnel records and that she violated policies with her receipt of tuition assistance. [*Id.*]. Both grounds were proven false during the hearing. [Committee Final Decision].

Ms. Jackson appealed her termination pursuant to S.C. Code of Laws Ann § 8-17-340(E)(2)(a), (b), (c), (d), (e), and (f) as the facts and circumstances leading to Ms. Jackson's termination are in violation of constitutional or statutory provisions; in excess of the statutory

authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in the view of the reliable, probative and substantial evidence on the whole record; and arbitrary and capricious and characterized by an abuse of discretion and clearly an unwarranted exercise of discretion. As reflected by the Findings of Fact in the Final Decision, the Committee heard from several witnesses and reviewed a series of documents supplied by Ms. Jackson and the College in support of their respective arguments.

Ms. Jackson argued that the facts and circumstances leading to her termination are in violation of constitutional or statutory provisions, including, but not limited to, wage and whistleblower laws. Ms. Jackson argued that she was denied due process on the basis that the College failed to provide Ms. Jackson any notice for the grounds of a suspension that they termed an "investigatory suspension". Ms. Jackson was never given grounds for such "investigatory suspension" in writing. Ms. Jackson's suspension letter simply said that Ms. Jackson was placed on an investigatory suspension without pay effective immediately for allegations surrounding her alleged involvement in improper conduct with regard to college operations. Yet, Ms. Jackson received no explanation beyond that vague phrase alleging "involvement in improper conduct with regard to college operations". Ms. Jackson entire job entailed "college operations". The total lack of information given to Ms. Jackson deprived Ms. Jackson of an opportunity to defend herself and to rebut the allegations of "involvement in improper conduct with regard to college operations".

Ms. Jackson was terminated from employment for "willful violation of rules, regulations and written policies, which constitute conduct unbecoming a state employee." [Hearing Exhibits p. 23]. Ms. Jackson argued that such grounds are unfounded, and Ms. Jackson was not given documentation supporting the accusations against her. Ms. Jackson did not violate any rules, regulations, or written policies.

The Committee heard that Ms. Jackson was paid for duties that she performed, that she was actually underpaid for such duties in that paying her to do an Interim role was cheaper for the College than hiring a permanent Dean at a higher salary, and that all pay adjustments for additional duties given to Ms. Jackson were properly approved by the supervisors above Ms. Jackson.

Further, Ms. Jackson testified, and the evidence showed, that Ms. Jackson did not receive a pay increase; she received supplemental pay when she performed additional duties. Any and all supplements in Ms. Jackson's pay were expressly authorized by the supervisory chain above Ms. Jackson and by Human Resources.

The College accused Ms. Jackson of allegedly improperly receiving tuition reimbursement and allegedly stamping her own pay increases documentation. Both accusations factually date back several years and are untimely grounds to terminate Ms. Jackson and such allegations were wholeheartedly denied and the evidence supported Ms. Jackson's account that she had done nothing wrong in receiving supervisory approved tuition reimbursement and supervisory approved supplemental pay.

Current and former employees of the College, including President McIntyre and Dr. Lamin Drammeh (Dr. Drammeh), testified to the contrary of such allegations. [Committee Final Decision, pp. 7-8]. Specifically, President McIntyre and Dr. Drammeh testified that Ms. Jackson's Master's Degree was relevant to her position, that the reimbursement she received was a normal amount for tuition assistance, and that Ms. Jackson would have been unable to authorize her own pay raises because of the internal structure in place for such salary increases. [Id.]. President McIntyre further testified that he had authorized all of Ms. Jackson's pay increases. [Committee Final Decision p. 8]. Further, the College was in receipt of Ms. Jackson's transcript from AIUO and AIUO's fee schedule for the program in which Ms. Jackson was enrolled, which informed the College of the

two transfer credits Ms. Jackson had from Springfield College and that the reported cost of the program may vary depending on the presence of such credits. [Committee Final Decision p. 9].

The Committee did not hear from the decision maker, Dr. Hall, the Interim President of the College. Dr. Hall was only at the College campus for about 10 days prior to him suspending Ms. Jackson. Comparatively, the Committee did hear from Dr. McIntrye, the President of the College during the timeframe relevant to the College's allegations against Ms. Jackson. Dr. McIntyre affirmed to the Committee that these grounds the College brought against Ms. Jackson are baseless.

Given the totality of the circumstances presented and the evidence provided, the Committee found that the College's decision to terminate Ms. Jackson is unsupported and granted Ms. Jackson the relief permitted by the State Employee Grievance Procedure Act. [Committee Final Decision pp. 12-13].

## ARGUMENT

Pursuant to S.C. Code Ann. § 8-17-340(A), the State Human Resources Director correctly determined that Ms. Jackson was a covered employee under the State Employee Grievance Procedure Act and forwarded Ms. Jackson's appeal to the State Employee Grievance Committee for a hearing after determining that the jurisdictional requirements had been met. Retroactively, the College now argues, after it lost the grievance, that Ms. Jackson does not have grievance rights.

The South Carolina Grievance Procedure Act provides grievance rights to covered state employees absent certain exemptions, none of which are applicable to Ms. Jackson. Ms. Jackson respectfully requests that the State Employee Grievance Committee make that same factual finding as the State Human Resources Director, that Ms. Jackson was a covered employee under the State Employee Grievance Procedure Act.

## I. Ms. Jackson was only in a position with State Employee Grievance rights when she was terminated.

There can be no other conclusion than that Ms. Jackson was covered employee at the time of her termination. The State Employee Grievance Procedure Act defines a covered employee as "a full-time employee occupying an established full-time equivalent position." SC Code Ann. §8-17-330(7). On February 14, 2017, Ms. Jackson's supplemental pay was suspended following a letter she received from Dr. Hall, the Interim President of the College. Because of that February 14, 2017 letter, Ms. Jackson's additional duties that she was performing on an interim basis were suspended; thus, as of February 14, 2017, Ms. Jackson had no other roles but her covered employee position. [Hearing Exhibits p. 236]. Dr. Hall's decision to suspend Ms. Jackson the next day makes it clear that as of the time of the suspension on February 15, 2017 and up to the termination Ms. Jackson was only in her covered state employee position. [*Id.*].

This argument section is brief, because the issue is uncomplicated. At the time of her termination on May 11, 2017, Ms. Jackson was ***only*** serving in an Administrative Coordinator role, per Dr. Hall's suspension of her additional duties on February 14, 2017. [*Id.*]. Therefore, Ms. Jackson was unquestionably in a covered full-time employee at the time of her termination and should be allowed the full enjoyment of the State Employee Grievance Act.

## II. Ms. Jackson was always a covered FTE employee within the meaning of the State Employee Grievance Procedure Act.

Ms. Jackson began working for the College in 2011 as an Executive Administrative Coordinator. In this position, Ms. Jackson worked full time for the College until her termination in 2017. Ms. Jackson was covered employee at the time of her termination. Though Ms. Jackson had temporarily assumed the additional responsibility of Interim Dean, Ms. Jackson continued to serve the College as a full-time employee classified as an Administrative Coordinator throughout

her employment for the College. Several documents in the Record support the finding that Ms. Jackson was continuously, up to her termination, classified as an "Administrative Coordinator". [*See*, for example, Ms. Jackson's "Job Classification: Administrative Coordinator I" listing on page 1 of the Grievance Committee's Final Decision; Ms. Jackson's "Job Title: Executive Administrative Coordinator" listed on her application to the College for Tuition Assistance on Hearing Exhibits. p. 267; and the State of South Carolina Position Description seen on Hearing Exhibits p. 256-258].

Ms. Jackson took on additional responsibilities while she was a full-time employee of the College. At no point in time did Ms. Jackson cease to be a full-time employee of the College. This is evidenced in a letter addressed to Ms. Jackson dated February 1, 2015. [Hearing Exhibits p. 97]. The substantive body of the letter states:

> Please be informed that **you will continue in the state position of, Administrative Coordinator to the President**, but will have additional duties attached as of, February 1, 2015.
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[Id.](emphasis added). This letter specifically states that Ms. Jackson would remain at her current salary, position, and classification; Ms. Jackson remained in an FTE covered employee position. [Id.]. Additionally, the letter states that Ms. Jackson's salary would be supplemented to adjust for the temporary additional work that Ms. Jackson was performing. [*Id.*]. This letter clearly shows that it was the College's intent to keep Ms. Jackson in a covered full-time employee position while supplementing her income for the additional work she would be performing on a temporary basis. [*Id.*].

The College's intention of having Ms. Jackson remain in a full-time position is again evidenced when Ms. Jackson took on the duties of Interim Dean of Transitional Services. In a letter dated September 15, 2015, Dr. McIntyre states, "You will remain at your current salary and in your current position/classification, [Administrative Coordinator], but will assume the additional duties..." [Hearing Exhibits p. 103]. The letter also states that Ms. Jackson would receive supplemental income for the duration of her time served as Interim Dean. [*Id.*]. The temporary nature of Ms. Jackson's Interim Dean role is affirmed in the letter stating that interviews were being held to fill the Dean of Transitional Services position. Furthermore, later that Dean position was filled by another person, not Ms. Jackson, who remained in her position and classification while performing Interim Dean duties on a temporary basis.

The State Human Resources Director properly forwarded Ms. Jackson's appeal of her termination to the Committee, because Ms. Jackson was a covered by the State Employee Grievance Procedure Act. Ms. Jackson was hired by the College on Jan 4, 2011 as the Administrative Coordinator, her official state employee job classification. [Hearing Exhibits pp. 256-258]. Ms. Jackson became a covered state employee with grievance rights after one year of service, on Jan 4, 2012. Ms. Jackson was never hired permanently or reclassified to any role but Administrative Coordinator; she was only given a temporary supplement to assume appointed duties on an interim basis.

It is pivotal to consider that the College has failed to provide any Human Resource documentation or other written evidence to validate that Ms. Jackson had a state job classification change or that she assumed a permanent, and no longer interim, position as a dean. Further, the College failed to provide any official or signed position description showing that Ms. Jackson had a state position change during her employment. The College has failed to point to such evidence,

because none exists. The documents within the Record verify that Ms. Jackson maintained her Administrative Coordinator state positions/classification as a covered state employee while assuming temporary additional duties.

A logical conclusion from the witness testimony at the Hearing is that it is a standard practice of the State Technical College System, if someone assumes additional duties or interim roles; they would maintain their current state position until someone is hired permanently or reclassified into that vacant position. The employee serving in that interim role would receive a temporary supplement for additional duties during that period. Ms. Jackson was never keyed as dean, because Ms. Jackson was never in that role, she was simply performing additional duties on a temporary basis while maintaining her state Administrative Coordinator position.

**III. Ms. Jackson completed all grievance requirements.**

Ms. Jackson followed the grievance process according to SCBTE Policy 8-6-100, SCBTE Procedure 8-6-100-1. [Hearing Exhibits pp. 189-195]. Prior to determining whether the jurisdictional requirements were met, the State Human Resources Director requested all information surrounding Ms. Jackson's termination, to include policies and steps used for the grievance process. [Hearing Exhibits pp. 5, 229-231]. The College complied and had no objections to Ms. Jackson's entitlement to grievance rights.

Ms. Jackson was always keyed and classified as an Administrative Coordinator and she only held the Dean roles on an Interim basis. Supporting such a conclusion is Ms. Jackson's notification of such Interim role on September 21, 2016. [Hearing Exhibits p. 255]. The Letter from the College President states in pertinent part:

> Please be informed that you are being **appointed Interim** Dean of Business, Computers, and Related Technologies (BRCT) effective October 1, 2016, **until a permanent Dean of BCRT is hired** to provide leadership for the department.

> Your immediate supervisor will remain Mrs. Tia Wright-Richards, Interim Vice President for Academic Affairs. ***You will remain at your current salary and in your current position/classification***, but will assumed additional duties of Interim Dean of BCRT. You will continue to receive a ***temporary* salary adjustment**...

[*Id.*](emphasis added). Similar language is found in the 2015 letter, stating "you will remain at your current salary and in your current position/classification... and receive a temporary salary adjustment...for the duration of your interim appointment... When interviews are being held to fill the Dean of Transitional Services, please know that you are eligible to apply and be interviewed for the position." [Hearing Exhibits p. 103]. Ms. Jackson was not permanently hired for any Dean position. Ms. Jackson was never in any other position/classification than an Administrative Coordinator and individuals in such positions are entitled to State Employee Grievance rights.

The payroll action form documentation in the Record confirms Ms. Jackson received $375 per pay period for additional duties as Interim Dean on a temporary basis with no change to your position/classification. [Hearing Exhibits p. 105]. The College's last "DTC Departmental Request for Personnel/Payroll Action Form" listed Ms. Jackson as a "Executive Coordinator" synonymous with "Administrative Coordinator" with the Position Number "103363". [Hearing Exhibits p. 237]. This personnel action form validates that Ms. Jackson was still classified in her current state position one day prior to the suspension. [Hearing Exhibits p. 237]. Ms. Jackson was never classified as a Dean and for the College's arguments to succeed, that she was not a covered employee, the College would have had to hire Ms. Jackson as a Dean, not on a temporary or interim basis.

Dr. McIntrye was the College President during the time frame of the events that the College alleged were the basis of Ms. Jackson's termination (tuition reimbursement and use of the President's stamp). Dr. McIntyre testified before the Committee and stated, "When a person receives a new position as interim they maintain the old position on record until such time that

they are appointed full time and permanent to that new area position. In other words, if something were to happen that I would no longer want her to serve as interim then she has the right to go back to her permanent position. That's why the language is there about the current position classification." [Hearing Transcript p. 180].

While serving in an interim role, Ms. Jackson maintained her full-time employment status as an Administrative Coordinator. The temporary nature of Ms. Jackson's other duties that she performed between 2011 and 2017 are repetitively reinforced within the Record. [See Hearing Exhibits 23, 68, 97, 99, 100, 101, 103, 106, 162-163, 236]. The Record before the Committee is clear that Ms. Jackson was in the Administrative Coordinator position when she was terminated, and the Administrative Coordinator role is a covered FTE position. [See Hearing Exhibits p. 23; SC Code Ann. §8-17-330(7)].

## IV. The College has continuously acknowledged that Ms. Jackson has State Employee Grievance rights.

At all steps throughout her grievance, the College acknowledged that Ms. Jackson was an employee covered by the State Employee Grievance Procedure Act. At no less than eight separate days of grievance hearings - suspension grievances, termination grievances, and then State Employee Grievance Hearing dates - the College continuously acknowledged that Ms. Jackson was a covered employee.

The College acknowledges that Ms. Jackson has grievance rights because it initiated, corresponded, confirmed, and continued to guide the grievance process in the several steps of grievance prior to the hearing before the State Employee Grievance Committee. It is preposterous now for the College to make the argument that Ms. Jackson does not have grievance rights when after two years of appealing the State Human Resources Director and Committee's decisions, the College has never questioned that Ms. Jackson did not meet the jurisdictional requirement for the

grievance process. Moreover, the College terminated Ms. Jackson for allegations that were purportedly during the time she was doing daily duties as Administrative Coordinator, as stated in the termination letter. [Hearing Exhibits, p. 23].

Dr. Hall, the Interim President after Dr, McIntyre, sent a letter to Ms. Jackson on February 14, 2017. [Hearing Exhibits p. 236]. It shows that Dr. Hall suspended Ms. Jackson's supplement pay for the additional interim duties she was performing one day prior to placing her on an unpaid administrative suspension. [Hearing Exhibits. p. 236]. The letter from the head of the College expressly states, "You will continue to receive your annualized base pay for the state position to which you were hired." [Hearing Exhibits p. 236]. Thus, by the College's very own words, documents, and actions, it acknowledged that Ms. Jackson was in a state employee position with grievance rights.

There can be no clearer evidence for relevancy to this issue than the termination letter that confirms that the College validated Ms. Jackson had rights to grieve the actions taken and the termination letter also states Ms. Jackson's classified position, listed in the second paragraph as "Administrative Coordinator I." [Hearing Exhibits p. 23]. Thereafter, the termination letter specifically states, "you have the right to grieve this action should you desire." [*Id.*].

Dr. Hall, the College's Interim President, confirmed that Ms. Jackson had grievance rights in the First Step Grievance Letter. [Hearing Exhibits p. 12-15]. Ms. Jackson's first step grievance hearing was held on June 5, 2017. [Hearing Exhibits p. 15]. Thereafter, Dr. Hall issued his letter upholding Ms. Jackson's termination and within that letter Dr. Hall stated, "In accordance with the State Board for Technical and Comprehensive Education Policy No. 8-6-100, Grievance Appeal Procures and accompanying Procedure No. 8-6-100/1 Grievances, your client may grieve my decision to Dr. Tim Hardee..." [Hearing Exhibits p. 12].

Likewise, Dr. Hardee, SCTC System President, confirmed Ms. Jackson had grievance rights and copied Charles Boykins, legal counsel and Kandy Peacock, VP/Chief of HR on such correspondence. [Hearing Exhibits p. 26]. Dr. Hardee's Step Two Grievance decision stated in part, "This is the final agency decisions regarding this matter. **Ms. Jackson now has the right to appeal to the State Employee Grievance Committee** by writing to Ms. Kim Aydlette, Director, South Carolina Department of Administration, Division of State Human Resources." [*Id.*](emphasis added). This is again confirmed by correspondence from Kandy Peacock, VP/Chief HR. [Hearing Exhibits p. 29].

The College cannot argue that Ms. Jackson was not entitled to grievance rights when the College's own legal counsel acknowledged that Ms. Jackson was an Administrative Coordinator at the hearing. [Hearing Transcript p. 15]. The College's legal counsel stated, "In fact, the sole purpose that we are here today is the administrative coordinator's position is the only part that's covered." [*Id.*].

Thus, there can be no clearer evidence that Ms. Jackson was a covered employee then those described above, in summary: (1) the words of its own legal counsel, (2) all of the personnel documentation preceding Ms. Jackson's termination that continuously classified Ms. Jackson as a covered employee, (3) at all stages in the grievance proceeding the College acknowledged that Ms. Jackson was a covered employee as an Administrative Coordinator, and (4) the College's Personnel/Payroll Action Forms memorializing it classified Ms. Jackson as a covered employee. It is beyond the pail of equity for the College now to argue that Ms. Jackson is not a covered employee by the State Employee Grievance Procedure Act.

Ms. Jackson's state job classification reflected that she was an Administrative Coordinator at the time of her termination, not an academic dean; therefore, she was a covered employee.

Accordingly, the Committee had subject matter jurisdiction, pursuant to S.C. Code § 8-17-340, to adjudicate Ms. Jackson's grievance, because she was a covered employee. The Committee's decision to reverse Ms. Jackson's termination was within its statutory authority [redacted] with the factual finding that Ms. Jackson was functioning in a covered FTE position when she was terminated.

## CONCLUSION

Ms. Jackson was only serving as an Administrative Coordinator, a position with grievance rights, when she was terminated. Ms. Jackson continued to maintain a full-time position as Administrative Coordinator throughout her employment with the College. Though Ms. Jackson took on additional duties, she maintained the Administrative Coordinator role throughout that time, and all temporary duties had been stripped from Ms. Jackson on February 14, 2017, the day before the investigatory suspension and about three months prior to her termination.

Ms. Jackson believes the information necessary for the Committee to make the factual finding that she was functioning in a covered FTE position when she was terminated is already available to the Committee and described herein, [redacted]

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September 13, 2019
Columbia, South Carolina

**BEFORE THE SOUTH CAROLINA**
**STATE EMPLOYEE GRIEVANCE COMMITTEE**

Carla Jackson,

Grievant,

v.

Denmark Technical College,

State Agency.

**GRIEVANT'S BRIEF TO THE STATE EMPLOYEE GRIEVANCE COMMITTEE**

## INTRODUCTION

The State Employee Grievance Committee ("the Committee") found that Ms. Jackson established that the termination decision of Denmark Technical College ("the College) prejudiced her substantial rights and met one or more of the elements contained in S.C. Code Ann. 8-17-340(E)(2). The Final Decision of the Committee was issued on March 22, 2018.

The College appealed the Final Decision of the Committee to the Administrative Law Court ("ALC"). The ALC did not affirm or overturn the Committee's decision, rather the ALC remanded the matter back to the Committee "...to determine whether Jackson was an Interim Dean at the time of her termination (uncovered employee) or whether Jackson was also functioning in a covered FTE position." (June 25, 2019 Order).

Ms. Jackson was functioning in a covered FTE position when she was terminated. Accordingly, Ms. Jackson requests that the Committee making the additional factual finding that Ms. Jackson was in a covered FTE position when she was terminated.

## STATEMENT OF FACTS[1]

Ms. Jackson began her employment with the College on January 4, 2011, upon being hired as an Administrative Coordinator to assist the College's then President, Dr. Joann Boyd-Scotland (President Boyd-Scotland). [Committee Final Decision p. 5]. Throughout the entirety of Ms. Jackson's employment at the College (January 4, 2011-May 11, 2017], Ms. Jackson was an Administrative Coordinator.

On October 1, 2013, Ms. Jackson submitted a "Request for Professional Development Assistance" to President Boyd-Scotland following her acceptance to American InterContinental University Online (AIUO) on September 29, 2013, which was approved by Tarshura Mack, the College's Title III Director, and President Boyd-Scotland. [*Id.*]. In March of 2015, Ms. Jackson received her Master's Degree in Business Administration from AIUO. [*Id.*].

Between February 1, 2015, and October 3, 2016, Ms. Jackson was asked to take on several additional duties, including administrative and instructional responsibilities, and received salary increases accordingly. [Committee Final Decision pp. 5-6]. On October 1, 2015, Ms. Jackson was appointed as the Interim Dean of Transitional Studies/ Distance Education. Ms. Jackson always remained in her Administrative Coordinator, throughout that temporary duty and again when she was appointed to Interim Dean of Business, Computer, and Related Technologies on October 15, 2016. At that time, Ms. Jackson ceased all duties as Interim Dean of Transitional Studies and began the duties of Interim Dean of Business. Ms. Jackson intermittently taught courses as an Adjunct Professor. Ms. Jackson also performed the duties of Executive Assistance to the College Board. During this transition of interim roles and thereafter and up to her termination, Ms. Jackson continued to serve in a full-time capacity as Administrative Coordinator.

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[1] Ms. Jackson craves reference to the Findings of Fact in the Final Decision of the State Employee Grievance Committee, Hearing Transcript, and Hearing Exhibits.

On February 14, 2017, Ms. Jackson received a letter from Dr. Hall, the Interim President of the College, stating that the supplemental pay Ms. Jackson was receiving was suspended. [Hearing Exhibits p. 236]. Following the suspension of her supplemental pay, Ms. Jackson filed a complaint with the South Carolina Department of Labor, Licensing and Regulation on February 15, 2017. Later that day, Ms. Jackson was instructed to come to Dr. Hall's office where she was given a letter informing her that she was suspended without pay. [Hearing Exhibits p. 68]. Therefore, as of February 15, 2017 and continuing until her termination, Ms. Jackson was in no other role and serving in no interim capacities.

Upon the suspension of her supplemental pay on February 14, 2017, Ms. Jackson was to receive her annualized salary solely limited to her Administrative Coordinator position, her covered FTE position, in which she was classified throughout the entirety of her employment with the College. [Hearing Exhibits p. 236]. Dr. Hall specifically wrote, "...You will continue to receive your annualized base pay for the state position to which you were hired." [*Id.*]. Ms. Jackson was suspended without pay from February 15, 2017 until her termination on May 11, 2017.

Following that investigation and a suspension beginning February 15, 2017, Ms. Jackson received a termination letter dated May 11, 2017 informing her that her employment had been terminated for various alleged violations of "rules, regulations and written policies." [Hearing Exhibits p. 23]. The College accused Ms. Jackson of using the President's Stamp on her own personnel records and that she violated policies with her receipt of tuition assistance. [*Id.*]. Both grounds were proven false during the hearing. [Committee Final Decision].

Ms. Jackson appealed her termination pursuant to S.C. Code of Laws Ann § 8-17-340(E)(2)(a), (b), (c), (d), (e), and (f) as the facts and circumstances leading to Ms. Jackson's termination are in violation of constitutional or statutory provisions; in excess of the statutory

authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in the view of the reliable, probative and substantial evidence on the whole record; and arbitrary and capricious and characterized by an abuse of discretion and clearly an unwarranted exercise of discretion. As reflected by the Findings of Fact in the Final Decision, the Committee heard from several witnesses and reviewed a series of documents supplied by Ms. Jackson and the College in support of their respective arguments.

Ms. Jackson argued that the facts and circumstances leading to her termination are in violation of constitutional or statutory provisions, including, but not limited to, wage and whistleblower laws. Ms. Jackson argued that she was denied due process on the basis that the College failed to provide Ms. Jackson any notice for the grounds of a suspension that they termed an "investigatory suspension". Ms. Jackson was never given grounds for such "investigatory suspension" in writing. Ms. Jackson's suspension letter simply said that Ms. Jackson was placed on an investigatory suspension without pay effective immediately for allegations surrounding her alleged involvement in improper conduct with regard to college operations. Yet, Ms. Jackson received no explanation beyond that vague phrase alleging "involvement in improper conduct with regard to college operations". Ms. Jackson entire job entailed "college operations". The total lack of information given to Ms. Jackson deprived Ms. Jackson of an opportunity to defend herself and to rebut the allegations of "involvement in improper conduct with regard to college operations".

Ms. Jackson was terminated from employment for "willful violation of rules, regulations and written policies, which constitute conduct unbecoming a state employee." [Hearing Exhibits p. 23]. Ms. Jackson argued that such grounds are unfounded, and Ms. Jackson was not given documentation supporting the accusations against her. Ms. Jackson did not violate any rules, regulations, or written policies.

The Committee heard that Ms. Jackson was paid for duties that she performed, that she was actually underpaid for such duties in that paying her to do an Interim role was cheaper for the College than hiring a permanent Dean at a higher salary, and that all pay adjustments for additional duties given to Ms. Jackson were properly approved by the supervisors above Ms. Jackson.

Further, Ms. Jackson testified, and the evidence showed, that Ms. Jackson did not receive a pay increase; she received supplemental pay when she performed additional duties. Any and all supplements in Ms. Jackson's pay were expressly authorized by the supervisory chain above Ms. Jackson and by Human Resources.

The College accused Ms. Jackson of allegedly improperly receiving tuition reimbursement and allegedly stamping her own pay increases documentation. Both accusations factually date back several years and are untimely grounds to terminate Ms. Jackson and such allegations were wholeheartedly denied and the evidence supported Ms. Jackson's account that she had done nothing wrong in receiving supervisory approved tuition reimbursement and supervisory approved supplemental pay.

Current and former employees of the College, including President McIntyre and Dr. Lamin Drammeh (Dr. Drammeh), testified to the contrary of such allegations. [Committee Final Decision, pp. 7-8]. Specifically, President McIntyre and Dr. Drammeh testified that Ms. Jackson's Master's Degree was relevant to her position, that the reimbursement she received was a normal amount for tuition assistance, and that Ms. Jackson would have been unable to authorize her own pay raises because of the internal structure in place for such salary increases. [Id.]. President McIntyre further testified that he had authorized all of Ms. Jackson's pay increases. [Committee Final Decision p. 8]. Further, the College was in receipt of Ms. Jackson's transcript from AIUO and AIUO's fee schedule for the program in which Ms. Jackson was enrolled, which informed the College of the

two transfer credits Ms. Jackson had from Springfield College and that the reported cost of the program may vary depending on the presence of such credits. [Committee Final Decision p. 9].

The Committee did not hear from the decision maker, Dr. Hall, the Interim President of the College. Dr. Hall was only at the College campus for about 10 days prior to him suspending Ms. Jackson. Comparatively, the Committee did hear from Dr. McIntrye, the President of the College during the timeframe relevant to the College's allegations against Ms. Jackson. Dr. McIntyre affirmed to the Committee that these grounds the College brought against Ms. Jackson are baseless.

Given the totality of the circumstances presented and the evidence provided, the Committee found that the College's decision to terminate Ms. Jackson is unsupported and granted Ms. Jackson the relief permitted by the State Employee Grievance Procedure Act. [Committee Final Decision pp. 12-13].

## ARGUMENT

Pursuant to S.C. Code Ann. § 8-17-340(A), the State Human Resources Director correctly determined that Ms. Jackson was a covered employee under the State Employee Grievance Procedure Act and forwarded Ms. Jackson's appeal to the State Employee Grievance Committee for a hearing after determining that the jurisdictional requirements had been met. Retroactively, the College now argues, after it lost the grievance, that Ms. Jackson does not have grievance rights.

The South Carolina Grievance Procedure Act provides grievance rights to covered state employees absent certain exemptions, none of which are applicable to Ms. Jackson. Ms. Jackson respectfully requests that the State Employee Grievance Committee make that same factual finding as the State Human Resources Director, that Ms. Jackson was a covered employee under the State Employee Grievance Procedure Act.

## I. Ms. Jackson was only in a position with State Employee Grievance rights when she was terminated.

There can be no other conclusion than that Ms. Jackson was covered employee at the time of her termination. The State Employee Grievance Procedure Act defines a covered employee as "a full-time employee occupying an established full-time equivalent position." SC Code Ann. §8-17-330(7). On February 14, 2017, Ms. Jackson's supplemental pay was suspended following a letter she received from Dr. Hall, the Interim President of the College. Because of that February 14, 2017 letter, Ms. Jackson's additional duties that she was performing on an interim basis were suspended; thus, as of February 14, 2017, Ms. Jackson had no other roles but her covered employee position. [Hearing Exhibits p. 236]. Dr. Hall's decision to suspend Ms. Jackson the next day makes it clear that as of the time of the suspension on February 15, 2017 and up to the termination Ms. Jackson was only in her covered state employee position. [*Id.*].

This argument section is brief, because the issue is uncomplicated. At the time of her termination on May 11, 2017, Ms. Jackson was ***only*** serving in an Administrative Coordinator role, per Dr. Hall's suspension of her additional duties on February 14, 2017. [*Id.*]. Therefore, Ms. Jackson was unquestionably in a covered full-time employee at the time of her termination and should be allowed the full enjoyment of the State Employee Grievance Act.

## II. Ms. Jackson was always a covered FTE employee within the meaning of the State Employee Grievance Procedure Act.

Ms. Jackson began working for the College in 2011 as an Executive Administrative Coordinator. In this position, Ms. Jackson worked full time for the College until her termination in 2017. Ms. Jackson was covered employee at the time of her termination. Though Ms. Jackson had temporarily assumed the additional responsibility of Interim Dean, Ms. Jackson continued to serve the College as a full-time employee classified as an Administrative Coordinator throughout

her employment for the College. Several documents in the Record support the finding that Ms. Jackson was continuously, up to her termination, classified as an "Administrative Coordinator". [*See*, for example, Ms. Jackson's "Job Classification: Administrative Coordinator I" listing on page 1 of the Grievance Committee's Final Decision; Ms. Jackson's "Job Title: Executive Administrative Coordinator" listed on her application to the College for Tuition Assistance on Hearing Exhibits. p. 267; and the State of South Carolina Position Description seen on Hearing Exhibits p. 256-258].

Ms. Jackson took on additional responsibilities while she was a full-time employee of the College. At no point in time did Ms. Jackson cease to be a full-time employee of the College. This is evidenced in a letter addressed to Ms. Jackson dated February 1, 2015. [Hearing Exhibits p. 97]. The substantive body of the letter states:

> Please be informed that **you will continue in the state position of, Administrative Coordinator to the President**, but will have additional duties attached as of, February 1, 2015.
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> Your immediate supervisor will remain Dr. Leonard McIntyre; **you will remain at your current salary, position, and classification but, will assume additional duties** as Assistant to the Area Commissioners. A temporary salary supplement will be made to reflect an adjustment totaling ($550.00) per pay period. This amount will be attached to your current salary of $48,327.

[Id.](emphasis added). This letter specifically states that Ms. Jackson would remain at her current salary, position, and classification; Ms. Jackson remained in an FTE covered employee position. [Id.]. Additionally, the letter states that Ms. Jackson's salary would be supplemented to adjust for the temporary additional work that Ms. Jackson was performing. [*Id.*]. This letter clearly shows that it was the College's intent to keep Ms. Jackson in a covered full-time employee position while supplementing her income for the additional work she would be performing on a temporary basis. [*Id.*].

The College's intention of having Ms. Jackson remain in a full-time position is again evidenced when Ms. Jackson took on the duties of Interim Dean of Transitional Services. In a letter dated September 15, 2015, Dr. McIntyre states, "You will remain at your current salary and in your current position/classification, [Administrative Coordinator], but will assume the additional duties..." [Hearing Exhibits p. 103]. The letter also states that Ms. Jackson would receive supplemental income for the duration of her time served as Interim Dean. [*Id.*]. The temporary nature of Ms. Jackson's Interim Dean role is affirmed in the letter stating that interviews were being held to fill the Dean of Transitional Services position. Furthermore, later that Dean position was filled by another person, not Ms. Jackson, who remained in her position and classification while performing Interim Dean duties on a temporary basis.

The State Human Resources Director properly forwarded Ms. Jackson's appeal of her termination to the Committee, because Ms. Jackson was a covered by the State Employee Grievance Procedure Act. Ms. Jackson was hired by the College on Jan 4, 2011 as the Administrative Coordinator, her official state employee job classification. [Hearing Exhibits pp. 256-258]. Ms. Jackson became a covered state employee with grievance rights after one year of service, on Jan 4, 2012. Ms. Jackson was never hired permanently or reclassified to any role but Administrative Coordinator; she was only given a temporary supplement to assume appointed duties on an interim basis.

It is pivotal to consider that the College has failed to provide any Human Resource documentation or other written evidence to validate that Ms. Jackson had a state job classification change or that she assumed a permanent, and no longer interim, position as a dean. Further, the College failed to provide any official or signed position description showing that Ms. Jackson had a state position change during her employment. The College has failed to point to such evidence,

because none exists. The documents within the Record verify that Ms. Jackson maintained her Administrative Coordinator state positions/classification as a covered state employee while assuming temporary additional duties.

A logical conclusion from the witness testimony at the Hearing is that it is a standard practice of the State Technical College System, if someone assumes additional duties or interim roles; they would maintain their current state position until someone is hired permanently or reclassified into that vacant position. The employee serving in that interim role would receive a temporary supplement for additional duties during that period. Ms. Jackson was never keyed as dean, because Ms. Jackson was never in that role, she was simply performing additional duties on a temporary basis while maintaining her state Administrative Coordinator position.

**III. Ms. Jackson completed all grievance requirements.**

Ms. Jackson followed the grievance process according to SCBTE Policy 8-6-100, SCBTE Procedure 8-6-100-1. [Hearing Exhibits pp. 189-195]. Prior to determining whether the jurisdictional requirements were met, the State Human Resources Director requested all information surrounding Ms. Jackson's termination, to include policies and steps used for the grievance process. [Hearing Exhibits pp. 5, 229-231]. The College complied and had no objections to Ms. Jackson's entitlement to grievance rights.

Ms. Jackson was always keyed and classified as an Administrative Coordinator and she only held the Dean roles on an Interim basis. Supporting such a conclusion is Ms. Jackson's notification of such Interim role on September 21, 2016. [Hearing Exhibits p. 255]. The Letter from the College President states in pertinent part:

> Please be informed that you are being **appointed Interim** Dean of Business, Computers, and Related Technologies (BRCT) effective October 1, 2016, **until a permanent Dean of BCRT is hired** to provide leadership for the department.

> Your immediate supervisor will remain Mrs. Tia Wright-Richards, Interim Vice President for Academic Affairs. ***You will remain at your current salary and in your current position/classification***, but will assumed additional duties of Interim Dean of BCRT. You will continue to receive a ***temporary* salary adjustment**...

[*Id.*](emphasis added). Similar language is found in the 2015 letter, stating "you will remain at your current salary and in your current position/classification... and receive a temporary salary adjustment...for the duration of your interim appointment... When interviews are being held to fill the Dean of Transitional Services, please know that you are eligible to apply and be interviewed for the position." [Hearing Exhibits p. 103]. Ms. Jackson was not permanently hired for any Dean position. Ms. Jackson was never in any other position/classification than an Administrative Coordinator and individuals in such positions are entitled to State Employee Grievance rights.

The payroll action form documentation in the Record confirms Ms. Jackson received $375 per pay period for additional duties as Interim Dean on a temporary basis with no change to your position/classification. [Hearing Exhibits p. 105]. The College's last "DTC Departmental Request for Personnel/Payroll Action Form" listed Ms. Jackson as a "Executive Coordinator" synonymous with "Administrative Coordinator" with the Position Number "103363". [Hearing Exhibits p. 237]. This personnel action form validates that Ms. Jackson was still classified in her current state position one day prior to the suspension. [Hearing Exhibits p. 237]. Ms. Jackson was never classified as a Dean and for the College's arguments to succeed, that she was not a covered employee, the College would have had to hire Ms. Jackson as a Dean, not on a temporary or interim basis.

Dr. McIntrye was the College President during the time frame of the events that the College alleged were the basis of Ms. Jackson's termination (tuition reimbursement and use of the President's stamp). Dr. McIntyre testified before the Committee and stated, "When a person receives a new position as interim they maintain the old position on record until such time that

they are appointed full time and permanent to that new area position. In other words, if something were to happen that I would no longer want her to serve as interim then she has the right to go back to her permanent position. That's why the language is there about the current position classification." [Hearing Transcript p. 180].

While serving in an interim role, Ms. Jackson maintained her full-time employment status as an Administrative Coordinator. The temporary nature of Ms. Jackson's other duties that she performed between 2011 and 2017 are repetitively reinforced within the Record. [See Hearing Exhibits 23, 68, 97, 99, 100, 101, 103, 106, 162-163, 236]. The Record before the Committee is clear that Ms. Jackson was in the Administrative Coordinator position when she was terminated, and the Administrative Coordinator role is a covered FTE position. [See Hearing Exhibits p. 23; SC Code Ann. §8-17-330(7)].

## IV. The College has continuously acknowledged that Ms. Jackson has State Employee Grievance rights.

At all steps throughout her grievance, the College acknowledged that Ms. Jackson was an employee covered by the State Employee Grievance Procedure Act. At no less than eight separate days of grievance hearings - suspension grievances, termination grievances, and then State Employee Grievance Hearing dates - the College continuously acknowledged that Ms. Jackson was a covered employee.

The College acknowledges that Ms. Jackson has grievance rights because it initiated, corresponded, confirmed, and continued to guide the grievance process in the several steps of grievance prior to the hearing before the State Employee Grievance Committee. It is preposterous now for the College to make the argument that Ms. Jackson does not have grievance rights when after two years of appealing the State Human Resources Director and Committee's decisions, the College has never questioned that Ms. Jackson did not meet the jurisdictional requirement for the

grievance process. Moreover, the College terminated Ms. Jackson for allegations that were purportedly during the time she was doing daily duties as Administrative Coordinator, as stated in the termination letter. [Hearing Exhibits, p. 23].

Dr. Hall, the Interim President after Dr, McIntyre, sent a letter to Ms. Jackson on February 14, 2017. [Hearing Exhibits p. 236]. It shows that Dr. Hall suspended Ms. Jackson's supplement pay for the additional interim duties she was performing one day prior to placing her on an unpaid administrative suspension. [Hearing Exhibits. p. 236]. The letter from the head of the College expressly states, "You will continue to receive your annualized base pay for the state position to which you were hired." [Hearing Exhibits p. 236]. Thus, by the College's very own words, documents, and actions, it acknowledged that Ms. Jackson was in a state employee position with grievance rights.

There can be no clearer evidence for relevancy to this issue than the termination letter that confirms that the College validated Ms. Jackson had rights to grieve the actions taken and the termination letter also states Ms. Jackson's classified position, listed in the second paragraph as "Administrative Coordinator I." [Hearing Exhibits p. 23]. Thereafter, the termination letter specifically states, "you have the right to grieve this action should you desire." [*Id.*].

Dr. Hall, the College's Interim President, confirmed that Ms. Jackson had grievance rights in the First Step Grievance Letter. [Hearing Exhibits p. 12-15]. Ms. Jackson's first step grievance hearing was held on June 5, 2017. [Hearing Exhibits p. 15]. Thereafter, Dr. Hall issued his letter upholding Ms. Jackson's termination and within that letter Dr. Hall stated, "In accordance with the State Board for Technical and Comprehensive Education Policy No. 8-6-100, Grievance Appeal Procures and accompanying Procedure No. 8-6-100/1 Grievances, your client may grieve my decision to Dr. Tim Hardee..." [Hearing Exhibits p. 12].

Likewise, Dr. Hardee, SCTC System President, confirmed Ms. Jackson had grievance rights and copied Charles Boykins, legal counsel and Kandy Peacock, VP/Chief of HR on such correspondence. [Hearing Exhibits p. 26]. Dr. Hardee's Step Two Grievance decision stated in part, "This is the final agency decisions regarding this matter. **Ms. Jackson now has the right to appeal to the State Employee Grievance Committee** by writing to Ms. Kim Aydlette, Director, South Carolina Department of Administration, Division of State Human Resources." [*Id.*](emphasis added). This is again confirmed by correspondence from Kandy Peacock, VP/Chief HR. [Hearing Exhibits p. 29].

The College cannot argue that Ms. Jackson was not entitled to grievance rights when the College's own legal counsel acknowledged that Ms. Jackson was an Administrative Coordinator at the hearing. [Hearing Transcript p. 15]. The College's legal counsel stated, "In fact, the sole purpose that we are here today is the administrative coordinator's position is the only part that's covered." [*Id.*].

Thus, there can be no clearer evidence that Ms. Jackson was a covered employee then those described above, in summary: (1) the words of its own legal counsel, (2) all of the personnel documentation preceding Ms. Jackson's termination that continuously classified Ms. Jackson as a covered employee, (3) at all stages in the grievance proceeding the College acknowledged that Ms. Jackson was a covered employee as an Administrative Coordinator, and (4) the College's Personnel/Payroll Action Forms memorializing it classified Ms. Jackson as a covered employee. It is beyond the pail of equity for the College now to argue that Ms. Jackson is not a covered employee by the State Employee Grievance Procedure Act.

Ms. Jackson's state job classification reflected that she was an Administrative Coordinator at the time of her termination, not an academic dean; therefore, she was a covered employee.

Accordingly, the Committee had subject matter jurisdiction, pursuant to S.C. Code § 8-17-340, to adjudicate Ms. Jackson's grievance, because she was a covered employee. The Committee's decision to reverse Ms. Jackson's termination was within its statutory authority with the factual finding that Ms. Jackson was functioning in a covered FTE position when she was terminated.

## CONCLUSION

Ms. Jackson was only serving as an Administrative Coordinator, a position with grievance rights, when she was terminated. Ms. Jackson continued to maintain a full-time position as Administrative Coordinator throughout her employment with the College. Though Ms. Jackson took on additional duties, she maintained the Administrative Coordinator role throughout that time, and all temporary duties had been stripped from Ms. Jackson on February 14, 2017, the day before the investigatory suspension and about three months prior to her termination.

Ms. Jackson believes the information necessary for the Committee to make the factual finding that she was functioning in a covered FTE position when she was terminated is already available to the Committee and described herein.

**CROMER BABB PORTER & HICKS, LLC**

BY:_____

Shannon M. Polvi (SC Bar #101837)
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

***Attorney for Grievant***

September 13, 2019
Columbia, South Carolina

SC TECHNICAL COLLEGE SYSTEM

December 4, 2019

Via E-mail to: Heather.Keever@admin.sc.gov
Ms. Heather Keever
Division of State Human Resources
8301 Parklane Road, Suite A220
Columbia, South Carolina 29229

Re: Carla Jackson v. SCTCS

Dear Ms. Keever:

Now that the Agency's Motion *in Limine* has been ruled upon, it is anticipated that a hearing on remand will be scheduled before the Committee in the foreseeable future. The Committee Attorney's November 25th Order directed that certain special instructions be given to the Committee prior to deliberations, and presumably the standard ones will be given as well.

The standard instructions that have been read to the Committee for the last several years include inquiring of counsel whether there are "any additional instructions requested or objections to the ones" already given. [See, e.g., R. pp. 419-420.] To alert the Committee Attorney to a matter that should be addressed outside the Committee's presence and aid DSHR in scheduling the hearing, the Agency is giving notice that it intends to request additional instructions and asking that a charge conference take place on the record accordingly.

To assist the Committee Attorney in this process, the Agency is agreeable to submitting its requested instructions in writing prior to the charge conference.

Thank you for your attention to this matter.

Sincerely,

Warren V. Ganjehsani
Chief Legal Counsel

WVG/lth

cc: Shannon Polvi, Esq. (via e-mail)

AFFORDABLE ACCESSIBLE RELEVANT SC TECHNICAL COLLEGE SYSTEM

admin
THE SOUTH CAROLINA
DEPARTMENT *of* ADMINISTRATION

Henry McMaster, *Governor*
Marcia S. Adams, *Executive Director*

DIVISION *of* STATE HUMAN RESOURCES
Karen Luchka Wingo, Director
8301 Parklane Road, Suite A220
Columbia, SC 29223
803.896.5300
803.896.5050 Fax

December 5, 2019

**Via US Mail Only**

Mr. Warren Ganjehsani
Chief Legal Counsel
SC Technical College System
111 Executive Center Drive
Columbia, South Carolina 29210

Ms. Shannon Polvi
Cromer, Babb, Porter, & Hicks LLC
Post Office Box 11675
Columbia, South Carolina 29211

Re: Carla Jackson v. South Carolina Technical College System

Dear Mr. Ganjehsani and Ms. Polvi:

On June 25, 2019, Judge Robert King Anderson, III, issued an Order of Remand, in response to the South Carolina Technical College System's (SCTCS) appeal to the State of South Carolina Administrative Law Court of the decision issued by the State Employee Grievance Committee concerning Ms. Jackson's appeal of her termination.

Judge Anderson's order states, in part, that "the Court finds it necessary to remand this case to the Board to determine whether Jackson was an Interim Dean at the time of her termination (uncovered employee) or whether Jackson was also functioning in a covered FTE position."

In accordance with Judge Anderson's order, a hearing is scheduled before the State Employee Grievance Committee on **January 14, 2020, at 9:00 AM, 8301 Parklane Road, Suite A220, Columbia, South Carolina** to make a determination concerning the issue identified in Judge Anderson's order.

Approximately two weeks prior to the hearing date, the Committee will be provided with the following:

- Exhibit Sheet from the initial hearing and the listed exhibits. This includes:
  - Committee Exhibit #1 submitted at the previous hearing;
  - Agency Exhibits #1 - 6 submitted at the previous hearing; and

  - Appellant Exhibit #1 submitted at the previous hearing
- Recordings of The Previous Committee Hearing and Reconsideration Hearing
- Transcript of the Appeal of Termination Hearing and Reconsideration Hearing
- State Employee Grievance Committee Final Decision Dated March 22, 2018
- SCTCS's Notice of Motion and Motion to Reconsider
- Ms. Jackson's Memorandum in Opposition to Respondent's Motion for Reconsideration
- State Employee Grievance Committee Reconsideration Decision dated August 1, 2018
- State of South Carolina Administrative Law Court Order of Remand
- SCTCS's Brief on Remand from the Administrative Law Court
- Grievant's Brief to the State Employee Grievance Committee

For your convenience enclosed is a CD with a copy of the information which will be provided to the Committee prior to the hearing with the exception of the hearing recordings.

The Committee will meet on January 14, 2020, to deliberate. Upon completion of their deliberations the Committee will render its decision concerning the appeal. Oral arguments will not be permitted at the hearing and you are not required to attend. You will be notified, in writing, of the Committee's decision within 20 days of the conclusion of the hearing.

If both parties would like to resume the mediation process, a mutually agreed upon resolution could still be reached prior to this hearing. If you would like to resume mediation, please contact me at 803-896-5088.

If you have any questions, please call me.

Sincerely,

Heather Keever

Heather Keever
Alternative Dispute Resolution Program

Enclosure

## Keever, Heather

**From:** Keever, Heather
**Sent:** Thursday, December 5, 2019 5:12 PM
**To:** GANJEHSANIWSCTECHSYSTEM.EDU
**Cc:** 'Shannon Polvi'
**Subject:** Carla Jackson v. SCTCS
**Attachments:** Keever_WVG-2019.4.12.pdf

Mr. Ganjehasani,

The attached correspondence has been provided to the Committee Attorney for review. She has asked that you submit your requested instructions in writing. Please submit the proposed instructions by Friday, December 13, 2019.

Please also be advised that a hearing date has been set for the Carla Jackson v. SCTCS remand hearing – January 14, 2020. A letter notifying you of this hearing date was sent via US Mail today to both you and Ms. Polvi.

Sincerely,
Heather Keever
Program Manager, Division of State Human Resources

**The South Carolina**
**Department of Administration**
8301 Parklane Road, Suite A220, Columbia, SC 29223
803-896-5088
**Lead.Collaborate.Innovate.**

Search openings at careers.sc.gov

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**From:** Holloway, La'Tonia <HollowayL@sctechsystem.edu>
**Sent:** Wednesday, December 4, 2019 3:27 PM
**To:** Keever, Heather <Heather.Keever@admin.sc.gov>
**Cc:** 'Shannon Polvi' <Shannon@CBPHlaw.com>; GANJEHSANIWSCTECHSYSTEM.EDU <GANJEHSANIW@SCTECHSYSTEM.EDU>
**Subject:** [External] Carla Jackson v. SCTCS

Good afternoon Ms. Keever:

Attached, please find a copy of correspondence from Mr. Ganjehsani.

Regards,

La'Tonia T. Holloway
Paralegal
SC Technical College System
111 Executive Circle Drive

Columbia, SC 29210
803.896.5923| Telephone
hollowayl@sctechsystem.edu|Email



**STATE OF SOUTH CAROLINA**
**BEFORE THE STATE EMPLOYEE GRIEVANCE COMMITTEE**

| | |
|---|---|
| South Carolina Technical College System<br><br>vs.<br><br>Carla Jackson | **SOUTH CAROLINA TECHNICAL COLLEGE SYSTEM'S PROPOSED INSTRUCTIONS FOR THE STATE EMPLOYEE GRIEVANCE COMMITTEE** |

Pursuant to the December 5, 2019 e-mail correspondence from the Division of State Human Resources, the South Carolina Technical College System ("Agency") submits the following five proposed instructions to be given to the State Employee Grievance Committee ("Committee") at the hearing on remand currently scheduled for January 14, 2020.

In the event the Committee Attorney modifies or declines to give any of these instructions, the Agency asks that its objection(s) thereto be heard on the record prior to the Committee's deliberations so that such objection(s) may be preserved for appellate review.

Warren V. Ganjehsani
Chief Legal Counsel
South Carolina Technical College System
111 Executive Center Drive
Columbia, SC 29210
(803) 896-5923
E-mail: ganjehsani@sctechsystem.edu

Attorney for the Agency

December 13, 2019

**Requested Instruction No. 1**

The Committee's only authority on remand is to determine whether at the time of Appellant's termination she was functioning as an Interim Dean or as an Administrative Coordinator and issue a decision reporting this finding of fact to the Administrative Law Court.[1]

[1] November 25, 2019 *Order on Agency's Motion in Limine and Motion to Strike Portions of Appellant's Brief* at pp. 2, 6.

**Requested Instruction No. 2**

It is a question of law, not fact, whether the Committee has subject matter jurisdiction to hear an employee's grievance appeal and whether the State Human Resources Director is correct in determining that an action is grievable to the Committee.[2] Whether the State Human Resources Director correctly forwarded this appeal to the Committee and whether the Committee had subject matter jurisdiction to hear this appeal are ultimately questions of law that only the Administrative Law Court can decide.[3] Thus, the State Human Resources Director's decision to forward Appellant's appeal to the Committee for a hearing is not a "fact" upon which the Committee can rely in determining the position Appellant was functioning in at the time of her termination.[4]

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[2] S.C. Code Ann. § 8-17-350 (providing that the State Human Resources Director "shall determine whether or not [an] action is grievable to the [C]ommittee or a mediator-arbitrator"); S.C. Code Ann. Regs. 19-718.05(D)(3) (specifying that the State Human Resources Director's duties include "[d]etermin[ing] whether the appeal complies with the jurisdictional requirements of the [State Employee Grievance Procedure] Act"); Chew v. Newsome Chevrolet Inc., 315 S.C. 102, 103, 431 S.E.2d 631, 631 (Ct. App. 1993) ("The question of subject matter jurisdiction is a question of law for the court."); 8 S.C. Jur. Public Officers and Public Employees § 62 (addressing the "subject matter jurisdiction" of the Committee).

[3] November 25, 2019 *Order on Agency's Motion in Limine and Motion to Strike Portions of Appellant's Brief* at pp. 4-5 (citing Chew v. Newsome Chevrolet Inc., 315 S.C. 102, 103, 431 S.E.2d 631, 631 (Ct. App. 1993)).

[4] S.C. Code Ann. § 8-17-340(A) ("The State Human Resources Director shall forward to the [C]ommittee for a hearing all appeals **which meet jurisdictional requirements**. . . .") (emphasis added).

**Requested Instruction No. 3**

Furnishing documentation to an employee indicating that she has grievance or appeal rights does not confer jurisdiction to the Committee to hear her appeal if such rights do not otherwise exist as a matter of law.[5] The Committee's consideration of any such documentation in the Record therefore must be restricted to its proper scope,[6] because whether the Committee had subject matter jurisdiction to hear this appeal is question of law the Committee is not permitted to determine on remand.[7] Accordingly, references in documents from Denmark Technical College and the Agency about Appellant's ability to file a grievance or appeal of her suspension and termination are not to be considered as evidence of the position she was functioning in at the time of her termination.[8] Statements of this nature made by counsel for either party during the Committee appeal hearing likewise cannot be considered as evidence of the position in which Appellant was functioning.[9]

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[5] November 25, 2019 *Order on Agency's Motion in Limine and Motion to Strike Portions of Appellant's Brief* at p. 4 (citing Fisher v. South Carolina Dep't of Health and Envtl. Control, 309 S.C. 10, 419 S.E.2d 794 (Ct. App. 1992)).

[6] Rule 105, SCRE ("When evidence which is admissible . . . for one purpose but not admissible . . . for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly."); S.C. Code Ann. § 1-23-330(1) ("[T]he rules of evidence as applied in civil cases in the court of common pleas shall be followed.").

[7] November 25, 2019 *Order on Agency's Motion in Limine and Motion to Strike Portions of Appellant's Brief* at pp. 4-5 (citing Chew v. Newsome Chevrolet Inc., 315 S.C. 102, 103, 431 S.E.2d 631, 631 (Ct. App. 1993)).

[8] Yoho v. Thompson, 345 S.C. 361, 367, 548 S.E.2d 584, 586 (2001) (remanding a case with the directive that a party "if it so requests, is entitled to a limiting instruction" so that certain evidence is admissible only to a narrow extent); Doe ex rel. Roe v. Orangeburg Co. Sch. Dist. No. 2, 335 S.C. 556, 559 n.5, 518 S.E.2d 259, 261 n.5 (1999) (noting "numerous situations in this state" where a tribunal is "instructed that it may consider the evidence only for [a] limited purpose").

[9] Epps v. City of Lake City, et al., No. 0608969, 2010 WL 3280112, *6 (S.C. Workers' Comp. Comm'n July 21, 2010) (ruling that it was error for a commissioner to have relied on a statement of counsel made during a hearing, because such statements are not "evidence upon which a finding of fact can be made").

**Requested Instruction No. 4**

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.[10] A "pleading" includes any required form used to initiate an appeal or other proceeding that constitutes a contested case under the Administrative Procedures Act,[11] including the State Employee Grievance Procedure State Appeal Form.[12]

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[10] Postal v. Mann, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) (citing Elrod v. All, 243 S.C. 425, 134 S.E.2d 410 (1964)); see also Fisher v. South Carolina Dep't of Health and Envtl. Control, 309 S.C. 10, 419 S.E.2d 794 (Ct. App. 1992) (citing Elrod in finding that a plaintiff claiming that she had grievance rights was bound by the statements in her pleadings).

[11] Piers v. Rock Hill Sch. Dist., et al., No. 1521215, 2017 WL 5255904, *6 (S.C. Workers' Comp. Comm'n Aug. 30, 2017) (citing Postal and Elrod in finding that a workers' compensation claimant was judicially bound by statements made on her Form 50); State Accident Fund, et al. v. South Carolina Second Injury Fund, No. 9515109, 2009 WL 6522259, *4 (S.C. Workers' Comp. Comm'n Jan. 14, 2009) (observing that a "proceeding under the Workers' Compensation Act is a contested case, governed by the South Carolina Administrative Procedures Act, pursuant to S.C. Code Ann. § 1-23-320"); S.C. Code Ann. Regs. 67-203 (declaring that the Workers' Compensation Commission "prepares and approves all required forms," and designating "Form 50" as the form by which an employee initiates a "Notice of Claim and/or Request for Hearing" under the Workers' Compensation Act).

[12] South Carolina Dep't of Corrections v. Bryant, No. 12-ALJ-30-0014-AP, 2013 WL 4680801, *4 (S.C. Admin. Law Ct. Aug. 28, 2013) (acknowledging that "State employee grievance appeals are 'contested cases' under the Administrative Procedures Act"); S.C. Code Ann. Regs. 19-718.05(C) (providing that the Division of State Human Resources "shall develop standard forms to be used in all appeal procedures"); S.C. Code Ann. Regs. 19-718.05(D)(2) (referring to "the standard appeal application form" to be used in grievance appeals submitted to the State Human Resources Director); *State Employee Grievance Procedure State Appeal Form* (directing that the "employee or representative initiating the appeal **must complete this form**") [R. p. 428 (emphasis added)].

**Requested Instruction No. 5**

The Record reflects that Appellant was placed on investigatory suspension as of February 15, 2017.[13] A suspension is an enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes.[14] The termination of Appellant's employment was retroactively effective to the first day of her suspension on February 15, 2017.[15] As a result, Appellant's suspension and her appeal of that suspension were rendered moot.[16] Consequently, the Committee must consider February 15, 2017, as the "time of her termination" for the purpose of determining whether she was functioning as an Interim Dean or an Administrative Coordinator.[17]

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13 R. p. 495.

14 S.C. Code Ann. Regs. 19-700 (defining "suspension").

15 R. p. 472.

16 Id.; see also Nolas Trading Co., Inc. v. South Carolina Dep't of Health and Envtl. Control, 289 S.C. 345, 347, 345 S.E.2d 507, 508 (Ct. App. 1986) (recognizing that courts and other tribunals are "not to give opinions on abstract questions, but to decide actual controversies . . . affecting the rights of some party to the litigation; accordingly, issues which have become moot are not a proper subject of review").

17 November 25, 2019 *Order on Agency's Motion in Limine and Motion to Strike Portions of Appellant's Brief* at pp. 2, 6.

admin
THE SOUTH CAROLINA
DEPARTMENT *of* ADMINISTRATION

**Henry McMaster**, *Governor*
**Marcia S. Adams**, *Executive Director*

**DIVISION *of* STATE HUMAN RESOURCES**
Karen Luchka Wingo, Director
8301 Parklane Road, Suite A220
Columbia, SC 29223
803.896.5300
803.896.5050 fax

December 17, 2019

Ms. Shannon Polvi
Cromer Babb Porter & Hicks
P.O. Box 11675
Columbia, South Carolina 29211

Re: Carla Jackson v. South Carolina Technical College System

Dear Ms. Polvi:

This office has received the enclosed South Carolina Technical College System's Proposed Instructions for the State Employee Grievance Committee concerning the above-referenced appeal.

Please advise this office no later than 5:00 p.m. on Friday, December 27, 2019, if you have any objections to the Proposed Instructions. You may submit your response via facsimile to my attention at 803-896-5050 or via electronic mail to Heather.Keever@admin.sc.gov.

If we do not receive a response by the indicated date, a determination will be made by the Committee Attorney based on the information we have.

Please call if you have any questions.

Sincerely,

Heather Keever

Heather Keever
Alternative Dispute Resolution Program

Enclosure

c: Mr. Warren Ganjehsani (without enclosure)

admin
THE SOUTH CAROLINA
DEPARTMENT of ADMINISTRATION

Henry McMaster, *Governor*
Marcia S. Adams, *Executive Director*

DIVISION of STATE HUMAN RESOURCES
Karen Luchka Wingo, Director
8301 Parklane Road, Suite A220
Columbia, SC 29223
803.896.5300
803.896.5050 Fax

January 7, 2020

**Via Electronic and US Mail**

Mr. Warren Ganjehsani
Chief Legal Counsel
SC Technical College System
111 Executive Center Drive
Columbia, South Carolina 29210

Ms. Shannon Polvi
Cromer, Babb, Porter, & Hicks LLC
Post Office Box 11675
Columbia, South Carolina 29211

Re: Carla Jackson v. South Carolina Technical College System (SCTCS)

Dear Mr. Ganjehsani and Ms. Polvi:

On December 13, 2019, this office received Proposed Instructions for the State Employee Grievance Committee concerning the above-referenced appeal from SCTCS. Ms. Polvi was asked to provide any objection she had to the proposed instructions by Friday, December 27, 2019. No response was received from Ms. Polvi. Therefore, the Committee Attorney has determined that the Proposed Instructions provided by SCTCS will be used during the hearing on January 14, 2020.

In addition, as you were advised in my December 5, 2019 letter, documents previously submitted as part of the appeal process and the recordings of the initial hearing of Ms. Jackson's appeal and the subsequent reconsideration request have been provided to the Committee for review. You were previously provided with a CD containing these relevant documents. After providing these documents it was discovered that two documents contained bates numbering. The bates numbering on these two documents has been removed to avoid confusion. For your convenience I have included a CD with all of these documents which have been provided to the Committee. These documents do not differ substantively from the documents previously provided but the bates numbering has been removed.

If you have any questions, please call me.

Sincerely,

Heather Keever
Alternative Dispute Resolution Program

Enclosure

Glenise Elmore: Good morning. This is the hearing of the appeal of termination instituted by Carla Jackson against South Carolina Technical College System. Being held in Columbia, South Carolina, this 28th day of November 2017. A record is being made of the hearing. For the record, my name is Glenise Elmore, Department of Social Services, and other members of the State Employee Grievance Committee present are:

Glenise Elmore: Chrissy Wicker, Department of Motor Vehicles

Glenise Elmore: Cliff Miller, Criminal Justice Academy

Glenise Elmore: Tracy Houston, Department of Health and Environmental Control

Glenise Elmore: Melvin Warren, Department of Public Safety.

Glenise Elmore: The committee attorney is Kevin Maroney, Attorney General's Office.

Glenise Elmore: The State Employee Grievance and Appeals Regulation 19-718.07E(7) provides that each party shall provide to the secretary, a list of representatives and witnesses at the beginning of the hearing. At this time, the secretary will accept representative and witness lists from both parties.

Glenise Elmore: [inaudible 00:01:12]

Charles Boykin: It's been submitted earlier. [crosstalk 00:01:15]

Glenise Elmore: Sorry, for me. Alright, no changes.

Shannon Polvi: This list that I've also submitted, but I have other copies if need be. I have these. [crosstalk 00:01:22]

Glenise Elmore: Alright. The appellant is represented by attorney Shannon Polvi.

Shannon Polvi: Yes.

Glenise Elmore: Is it Polvi?

Shannon Polvi: Yes.

Glenise Elmore: Okay. The employing agency is represented by general counsel, Charles Boykin.

Charles Boykin: Yes, ma'am.

Glenise Elmore: Your attention is called to the fact that this hearing will be conducted as informally as is compatible with an equitable presentation of both sides of the case and in compliance with The Administrative Procedures Act. I am the presiding officer of this committee, and it is my duty to take whatever action is

necessary to ensure an equitable, orderly, and expeditious hearing. We will be bound by the rules of evidence. The committee attorney shall determine the order and relevance of the testimony and the appearances of witnesses, and shall rule on all motions and objections.

Glenise Elmore: The Division of State Human Resources has furnished to the members of the committee a copy of the records, reports, and documentation of the earlier proceedings on the grievance. These documents were provided to the State Human Resources by the agency and by the appellant. These documents will be considered by the committee as the record on appeal during this hearing, and according to Section 8-17-350 of the State Employee Grievance Procedures Act, will now be marked into evidence as Committee Exhibit One.

Glenise Elmore: [crosstalk 00:02:44].

Glenise Elmore: The appellant and the agency may, if they so desire, make an opening statement before the presentation of their cases. Then, the appellant may call and examine witnesses from their appellant list of witnesses. After the appellant has finished, the agency may present its case. Each side will be given the opportunity, at the appropriate time to ask questions of any witness. The presiding officer, any member of the committee, or the committee attorney may direct questions to any party or witness at any time during the proceedings.

Glenise Elmore: Before closing the hearing, the presiding officer will allow both parties to present a brief summary or closing statement, if they so desire. The appellant will have the option of closing first or last. I wish to point out that only testimony and evidence pertinent to the grounds on which the appeal is based or pertinent to the charges on which the agency's action is based will be allowed. Testimony or evidence which is repetitive or cumulative will not be permitted. Are there any questions by either party?

Shannon Polvi: No. Thank you.

Charles Boykin: No, from the agency.

Glenise Elmore: Witnesses are asked not to discuss this case either before or after testifying until they are excused. This is not intended to preclude the parties from entering into discussion with their respective witnesses. Does any witness not understand this?

Glenise Elmore: Witnesses are to remain available after testifying until they are excused by the presiding officer. After the opening statement, witnesses may not remain in the hearing room except when called to testify. Witnesses will be asked to testify under oath. And, I do understand that there are several witnesses that will be called, one at a time, and given an oath. But, at this time, our secretary will call for witnesses currently in the room and give them the oath.

Secretary: Okay. If you will- All witnesses to testify please stand and raise your right hand.

Secretary: Give me your names, please?

Carla Jackson: Carla Jackson

Kandy Peacock: Kandy Peacock

Mary Oakman Lon: Mary Oakman Long

Secretary: Do you swear or affirm that the testimony you will give today is the whole truth and nothing but the truth?

Carla Jackson: I do.

Kandy Peacock: I do.

Mary Oakman Lon: I do.

Shannon Polvi: Thank you.

Kandy Peacock: Thank you.

Glenise Elmore: The appellant, the agency, witnesses, or anyone else are not to discuss the case with any member of the State Employee Grievance Committee before, during, or after the hearing until the final decision is reached, and the matter is no longer pending before the committee. A matter is still considered to be pending before the committee during the time involved in a request for a reconsideration of the committee's decision or until the time has passed for an appeal to administrative law court. The only time the case is to be discussed is during the formal hearing procedures. After hearing this appeal, the committee will report its findings and decision in writing to the employee, and the employing agency within 20 calendar days of the conclusion of the hearing. The decision shall be final in terms of administrative review.

Glenise Elmore: Assisting the committee is Spencer Miller, Division of State Human resources, new committee members observing today are:

Glenise Elmore: Shannon Wiley, Secretary of State

Glenise Elmore: Nathan Hoge, Department of Administration

Glenise Elmore: Jawanda Collier, Department of Mental Health.

Glenise Elmore: No pictures, videos, or voice recordings except the recording made as the official record will be taken in the hearing room. All individuals are now asked to silence

or turn off their cell phones they may have in their possession during this proceeding.

Glenise Elmore: The requirement that public written notice of the time, date, place and the agenda for this hearing has been met. Pursuant to the Freedom of Information Act, in order for this committee to go into executive session to hear this appeal, we must take a vote, in open session, of this intent and the reason why.

Glenise Elmore: I will now entertain a motion that the committee will enter executive session.

Secretary: Madam Chairperson, I move that this committee go into executive session to hear the appeal of termination instituted by Carla Jackson against South Carolina Technical College System and to receive any necessary legal advice from the committee attorney.

Glenise Elmore: All in favor, signify by saying “Aye.”

Committee: (Collectively) Aye

Glenise Elmore: Alright, we're now ready to hear open statements.

Glenise Elmore: Alright.

Shannon Polvi: And, I would say we have some initial motions if... if we may?

Glenise Elmore: Okay.

Kevin Maroney: Do we need to-

Shannon Polvi: It's in regards to some witnesses. So, I leave it up to you as whether the committee should be present or not. [crosstalk 00:07:42]

Secretary: Has Glenise stepped out for a minute?

Kevin Maroney: I'm going to step out. [crosstalk 00:07:59]

Kevin Maroney: Your motion.

Shannon Polvi: Yes, thank you. And just as a kind of housekeeping matter. Do you mind if we sit during the hearing, or do you prefer we stand when we're speaking?

Kevin Maroney: It's totally up to you. I think sitting is fine. I'm not gonna take any offense.

Shannon Polvi: Okay. Well, in regards to the witnesses that have been designated by the agency there are 15 on the witness list. And we object to 12 of those as being not relevant and I can kind of go one by one in terms of why their testimony is objectionable.

Kevin Maroney: I have a list of 18. Is your list different from mine?

Shannon Polvi: Yes. We received a list of 15.

Kevin Maroney: Is this the ...

Charles Boykin: Why don't we just publish. If you have 18, she has 15, if you would be so kind as to publish the 18 and see if she has objections and go from there if that's okay.

Kevin Maroney: That's fine with me.

Charles Boykin: It may have included at least these two, and third witness from our office as well.

Kevin Maroney: Okay. Well, I'll go through this list, and then ...

Shannon Polvi: And when was that designated? Was that within the time frame of the ...

Kevin Maroney: That was gonna be my follow up question. But, I don't know when this was published. This was part of Exhibit One.

Charles Boykin: It was sent to us via email with the subpoena request. Or was it with the subpoena request?

Kevin Maroney: Is that ...

Charles Boykin: It was within the time frame to us, yeah. I don't know about ... I can't speak to the other side.

Kevin Maroney: Okay.

Shannon Polvi: The 15 was, but not the 18. I haven't seen the revised one. I could have missed it as an attachment to something. But, we received the 15 in a timely manner within the time frame. But, I don't know about the 18 list.

Kevin Maroney: Was that ... What was the date that you received yours? And then what was the date that you received the email list?

Charles Boykin: Look at the file. [crosstalk 00:02:04]

Kevin Maroney: Can I see the list of 15 please? [crosstalk 00:02:37].

Shannon Polvi: I think the list of 15, I had separated it out on my notes in terms of each one individually. But let's ... I think I don't have their 15 one printed. I've just got my cross-examinations planned out with the 15 names.

Shannon Polvi: Yeah, I do too.

Shannon Polvi: Yeah, it's nice ...

Kevin Maroney: Miss Polvi does not appear to have been copied on that email. Would you have sent the list of 18 to her, Mr. Boykin?

Charles Boykin: We probably didn't do it, from that. If I might, it just might resolve the matter. She can publish the names of the people that she objects to. The three other people that I think would be agency employees. Two of them are sitting right here, from that standpoint. If we want to cut the other one off, that's fine. And then she can name everybody individually she wants to exclude. And we can argue that, so that we can expedite this. If that's okay with you, sir.

Kevin Maroney: I don't think that's ... I don't think that's a wrong way to go about it. I do think that Miss Polvi though has a technical objection to the 18. So, I guess I'll leave it up to her.

Shannon Polvi: Well, I guess, as a start, let's start with the three that are in addition that I have had no opportunity to prepare cross-examinations for. I have ... You know, as a procedural matter they should not be allowed. I had no opportunity to prepare, and my client hasn't been properly notified in advance that such witnesses would appear on behalf of the agency. So, the three, I don't even know who the additional three are. But, I can tell you who the 15 ...

Charles Boykin: If you can publish the list that you have.

Kevin Maroney: This is the list that was sent on November 16th.

Charles Boykin: Okay. We have Kandy Peacock. We have Mary Oakman Long . Christopher Greggs. Cheryl Gina. Betty Dowling. Margaree Bonnette. Avis Gathers. Tia Wright Richards, Jamie Wise, Elton Shuler, Shatika Spearman, Shirley Young, Gwendolyn Bamberg, Cheryl Washington, Dwayne Ennis, Marvin Dawson, Michael Singleton, Gwen Bright. I can go over this list and tell you who won't be here. That'll save us time. And then we can go and argue over the substantive issues.

Kevin Maroney: Well, before we do that, who are the three that were added?

Shannon Polvi: If I might see the list, I can tell you. I have the 15.

Charles Boykin: Certainly.

Shannon Polvi: Thank you.

Kevin Maroney: It's good to know that there are those who will not be here.

Charles Boykin: Yes. We'll try to pare back as much as possible and go from there.

Shannon Polvi: [crosstalk 00:06:04]. Okay.

Charles Boykin: This was sent out on November 16th.

Kevin Maroney: The list of 18? Oh, this was sent out to Miss ...

Charles Boykin: She was copied on that.

Kevin Maroney: Did you ... Okay. This was the agency's response to your motion to exclude evidence. There was, according to this copy, there was a copy of the list of 18.

Shannon Polvi: I didn't see it attached. I can look up in my email. I did get their motion response though.

Kevin Maroney: Okay, why don't we check the email. See if they, may have perhaps, there was an oversight. Which are the three, in case [crosstalk 00:07:21]?

Shannon Polvi: Kandy Peacock, Mary Oakman-Long, and Christopher Gregg.

Kevin Maroney: Okay.

Shannon Polvi: Just for expediting, what was the date on that? I'll see if it ...

Charles Boykin: It was November 16th.

Kevin Maroney: I do believe that it was in my ... The email that I received from the agency as well. See if I can check that.

Kevin Maroney: Just gonna ask you had your laptop.

Charles Boykin: Actually, I don't think you're gonna find it. I think it was mailed to you from what I'm told.

Shannon Polvi: Right, and that's what I ... That's ... I was gonna say, I don't have any email from that date.

Charles Boykin: It was mailed to you.

Shannon Polvi: Mailed, US Mail, to you?

Charles Boykin: Yeah, US Mail.

Shannon Polvi: See if it comes ....

Kevin Maroney: Well, if it wasn't emailed, then we should perhaps move to the substantive objections.

Shannon Polvi: Sure, well, and I would say that with mailing-wise, I still wouldn't have gotten it within the time frame of when they were supposed to be designated. I guess that's the problem with mailing. Because I genuinely don't believe I received that. If it was mailed I have not seen it come through our actual inbox. But, nonetheless, we can move forward. I'll just say that I had not seen it for the first three.

Shannon Polvi: Then the 12 that we're objecting to from the other 15 are Cheryl Gina, Shatika Spearman, Margaree Bonnette, Avis Gathers, Jamie Wise ...

Kevin Maroney: Sorry, they're not in order. Avis Gathers, okay. I'm following.

Charles Boykin: Avis Gathers will not be here, so there's nothing to argue with that.

Kevin Maroney: Okay.

Shannon Polvi: Jamie Wise. Elton Shuler. Shirley Young. Cheryl Washington. Marvin Dawson.

Charles Boykin: Shirley Young will not be here. Marvin Dawson will not be here. Although we reserve the right to call him if the hearing goes beyond today.

Kevin Maroney: Okay, then we'll leave him on.

Charles Boykin: Yeah, we don't have to make the ... However, but if it goes beyond today, and into another hearing, we'd like to be able to call him.

Kevin Maroney: Okay, then we'll leave him on. I think what we're trying to ... I think what you're intending to do is set the witness list now.

Shannon Polvi: Yes.

Kevin Maroney: For any period of time in the future. So.

Charles Boykin: I respectfully understand.

Kevin Maroney: Okay.

Shannon Polvi: And I think we left off at Marvin Dawson. Michael Singleton.

Charles Boykin: Michael Singleton won't be here.

Kevin Maroney: And will he be ... Would you like to call him in the future.

Charles Boykin: Yes. Let's leave him on, because if it goes beyond today.

Shannon Polvi: And I would, respectfully, that we should establish the witnesses. That would give the agency an unfair advantage to be able to plan their witnesses further, just because we're extending beyond a day.

Kevin Maroney: We're gonna set the ...

Charles Boykin: No one is arguing that we don't. I just said, keep him on. We'll argue for him today. He's not here today, but if we need him, and it goes beyond today. You know, we set the list, he's on it. We don't have to make...

Kevin Maroney: Just for the sake of clarity, I think. I understand just the ... Let's just get the list that you want to object to, then Mr. Boykin can you ...

Charles Boykin: Certainly. I'll respond.

Shannon Polvi: Gwen Bright. And Tia Wright Richards.

Kevin Maroney: The names that I did not have ... All right, the names that I have are Cheryl Gina, Margaree Bonnette, Avis Gathers, Tia Wright Richards, Jamie Wise, Elton Shuler, Shatika Spearman, Shirley Young, Cheryl Washington, Marvin Dawson, Michael Singleton, and Gwen Bright.

Shannon Polvi: That's correct.

Kevin Maroney: So the names you do not object to are Dwayne Ennis and Betty Dowling?

Shannon Polvi: And Gwendolyn Bamberg.

Kevin Maroney: And Gwendolyn Bamberg.

Kevin Maroney: And your objection is ...

Shannon Polvi: I can go each, individually why they're objectionable, however you want to.

Charles Boykin: I would need to hear the basis of her objection before I could respond.

Kevin Maroney: So, you have individual reasons. Please go ahead. Wherever you'd like to start.

Shannon Polvi: Right. Cheryl Gina, she's a current administrative assistant. She was formerly supervised by my client. She had no supervisory decisions at any point in regards to her suspension or termination. Any testimony she gives would be irrelevant and would be potentially unduly prejudicial for the committee to hear, because she's a disgruntled employee that was upset with my client. But, had no supervisory input as to the actual suspension or termination. And she is not listed as a ground in either the termination or the suspension letters with any reason as to why my client was suspended or terminated.

Kevin Maroney: Okay. Mr. Boykin?

Charles Boykin: With all due respect, if the standard is going to be that a person has been dismissed for being disgruntled then I would move to dismiss Dr. McIntyre because he was discharged by the college. Mr. Williams, Thomas Williams, because he was removed, not just by his colleagues as chair, but he was removed from the Board by the General Assembly. So, I'd ask that they be excluded. Then we will go to Mr. ... The gentleman, Drammeh, he has a settlement agreement where certain terms apply. Thus he should be excluded.

Charles Boykin: My point is not that I'm seeking to have those individuals excluded. Because she needs to be able to put up her case. Miss Gina worked directly with the Appellant. There were things that she observed. She has every right, we have every right, the agency has every right, to have the benefit of her testimony. The panel is well able to decide how much weight to give. Now, we can argue about those things. Or we can proffer these things when they come in, to see whether the testimony is going to be relevant. Or we're gonna spend several hours this morning bickering over the theory of my case, which I have every right to bring.

Charles Boykin: She's had ample time. So, I'm not sure what this dilatory tactic is, but my attitude is that we have a right to bring our case. She worked with her. No one is saying that she made a decision. And the rules do not require that only the decision makers come here. It requires that those persons with facts relevant, that would be probative, more likely than not to prove or disprove it, that they come and sit here, under oath, and deliver their testimony. That's what the rules require. This is a standard that she is seeking to impose that does not exist.

Kevin Maroney: Miss Polvi, your objection I think has to do with the fact that she was under Miss Jackson and couldn't speak to any supervisory authority. I do think you'll be able to make an objection during the testimony that the witness is not qualified to make an observation of that nature if you are able to make such an objection. So for the moment, I'm tending to say that this should stay on the list.

Shannon Polvi: Well, respectfully, it's just that, I mean 18 witnesses or 15 is highly cumulative, and that's why I ... I have reasons for each one as to why ... Like, we've excluded from the list as to who we're contesting three people who would have any input as to directly related to the reasons. I mean, why we're here today is the

termination letter, which is on 23 of the record, and it's specifically cites as grounds to terminate my client for her receiving tuition reimbursement and for her in regards to a President's stamper, and use of allegedly paying herself benefits. So, any of the witnesses who can't testify about that information wouldn't be relevant, and it's cumulative. And it is an undue waste of the committee's time. It's a narrowly scoped type of review that they're looking at.

Charles Boykin: With all due respect, can I respond?

Kevin Maroney: You may.

Charles Boykin: The grounds are stated in the first paragraph. We cited some facts that we relied on, but not all of the facts. You're not required to put all evidence in the statement of termination. The grounds were pretty clear. It says grounds, that's a signal, for this action are your willful violation of rules, regulations, and written policies which constitute conduct unbecoming. And so ... I think it's a tactical move to say we're going to limit the grounds to the evidentiary examples that were cited to in the letter. There is no basis in law or procedure that we should do that.

Charles Boykin: So, the observations ... The question is, do they have relevant information that this committee should consider which talks about Miss Jackson's conformance to policies and procedures? Because the grounds are her willful violation. Those are the grounds. But, to bootstrap it by saying the grounds are only these illustrations that are used I think would be highly inappropriate.

Kevin Maroney: Go back to my original statement. I do think, Miss Polvi, that if Miss Gina strays from testimony regarding rules, or violations of rules, or she wouldn't have any knowledge of what the rules were, you can object at that time. And should be able to cut it down. I mean, I understand what you're attempting to do is streamline the process, and I can appreciate that. But, I do think that Mr. Boykin is correct. The general rule violations is the ground given by the agency. If a witness does not have knowledge to speak about rules, or does not have a basis upon which to make statements about whether some conduct conforms to a policy, then you can object at that time. And if we could go over the rule 402 or 403 at that moment. So, for Miss Gina, I think I'll leave her on the list for the moment.

Shannon Polvi: Can I go to the next one?

Kevin Maroney: Of course.

Shannon Polvi: Shatika Spearman. She's the current Vice President of Finance. She had no working relationship with my client. She was employed after her termination. So, she has absolutely no knowledge about my client's employment.

Kevin Maroney: No personal knowledge?

Shannon Polvi: Exactly.

Charles Boykin: All due respect, she's the Vice President for Finance. Some of these items that we, the facts that we've alluded to here deal with self-benefit, and she was the person who looked at the investigatory report, and looked at the financial documents, and she can speak to what she found. She certainly will be here to be cross-examined, and the panel can give whatever weight to her testimony it chooses, but the agency has an obligation to bring it, and has the right to have it heard.

Kevin Maroney: She's called to speak to, I'm thinking specifically of the reimbursement issue?

Charles Boykin: She'll be called to speak to any type of finance that might have gone to Miss Jackson, the circumstance of which it went to her and whether or not it comported with rules and regulations.

Kevin Maroney: So, she's not gonna be speaking about anything ... Regarding Miss Jackson in the sense of what Miss Jackson did. She'll be speaking about the rules themselves and whether actions would comport with a rule?

Charles Boykin: The paperwork, business records, which is an exception to the hearsay. These are records that she would routinely deal with. She will speak as to what her observations were, whose signatures were on it, and things of that nature. And certainly she'll be there to be cross-examined by, and the panel can give whatever weight it chooses to give. But, I think that the agency has a right to put that testimony before the panel, and let the panel decide what it wants to decide. And Miss Polvi has an obligation, a right to cross-examine her.

Shannon Polvi: And if I may add, I mean, that same testimony is gonna come in from either, potentially, 17 or 15, or some there number less of other witnesses that would be able to speak to that. There are several leaders from the agency who would have the same knowledge about those documents as this witness, who has no knowledge of my client's employment.

Kevin Maroney: I think it's probably ... That's a valid objection. I do think though that once someone has spoken to the issues, if another witness is called who is going to be repeating the same things, that would be a time to make the objections when they're on the stand. Because until I hear, and until the committee hear, what exactly they're testifying to I can't say for certain it'll be cumulative. Granted that, you know, probably could be. But, I can't know for certain until they're actually testifying.

Kevin Maroney: So, for the moment, I think Miss Spearman will also stay on. And again, from my understanding, it's to speak to financial practices and rules that are in place at the Denmark College. So, I think that that would be acceptable.

Charles Boykin: We, Miss Polvi has every right to proceed this way. If we want to streamline it, we can proffer the witness testimony before it comes in in this format, and then make the objection at that time. Or she can move to object, to exclude, or to stop whatever they're saying. Or she can cross-examine them on that. But, the ... And maybe there's an objection ... She's foretelling my theory of the case. And I think she has every right to present her case the way she sees fit. And I think I have that same obligation.

Shannon Polvi: Respectfully, almost every committee hearing that I've been involved with previously, witnesses have been excluded both from my side and the agency's, so I'm just proceeding in the same manner in which I've been in several other committee hearings.

Kevin Maroney: I don't think there's anything wrong with moving to exclude beforehand.

Charles Boykin: Yeah. I'm ... If I understood the goal to be to streamline the process I just made a suggestion. And that suggestion was we can proffer when the witness comes in rather than going through this. Because I'm inclined to move to exclude ... Well, we'll go through hers, then I will go through hers.

Shannon Polvi: Respectfully, is that it would like what we touched base on before. It's just an undue advantage if they get to choose their witnesses later, and if not we've established them in the beginning. Because the amount of testimony that's going to be coming in potentially, there's no way we'll do this in one day. And that would give the agency a ... It already has an advantage by having their case in chief at later time. But, even more so if their witnesses aren't streamlined to what testimony actually has to be in place.

Kevin Maroney: Mr. Boykin, your point is well taken about the proffer. And if Miss Polvi was agreeable, I would certainly move forward. But, she has every obligation and ...

Charles Boykin: That's fine.

Kevin Maroney: And would like to continue as she is. Miss Polvi please continue.

Shannon Polvi: Thank you. The next one's Margaree Bonnette. She's the current Student Enrollment Counselor. She had no supervisory role in regards to my client. She was a subordinate, not even under her position, that was my client's my last position. She was not a subordinate of my client's since 2015.

Kevin Maroney: She was under ... Miss Bonnette was under Miss Jackson prior to 2015, not afterward?

Shannon Polvi: Right, during the time frame that she was the Interim Dean of Transitional Studies.

Kevin Maroney: Never had supervisory authority.

Shannon Polvi: Right.

Kevin Maroney: Okay. Mr. Boykin?

Charles Boykin: She reported directly to Miss Jackson. She dealt with Miss Jackson on policies and rules of the agency. And she can certainly testify as to her observations, first-hand knowledge, facts, from that standpoint.

Kevin Maroney: Let's limit her testimony to 2015, to when she was actually with Miss Jackson. Okay. Let's ... I'm sure you would.

Charles Boykin: Be more than happy to do that. Because, I started by saying, she worked with directly. And so she's gonna talk what she knows directly.

Kevin Maroney: I'm sure you would have done that anyways, but let's just, in advance, let's just make it so that it's only regarding her time under Miss Jackson.

Charles Boykin: Yes.

Shannon Polvi: And the next one's Avis Gathers. She's the ... This is one that I think Mr. Boykin indicated he did not intend to call. So, I don't need to speak to her as ...

Kevin Maroney: I wasn't certain if ... You're not calling her today, or are you just striking her from the list?

Charles Boykin: Since we're gonna do this, let's go ahead and let her put forward her objection, let me respond to it.

Kevin Maroney: Okay. We'll proceed as if she is intending to remain on the list. Go ahead.

Shannon Polvi: She did not supervise my client. My client was formerly supervised by the VP of Student Services, who was not Avis Gathers. Avis Gathers was the next VP of Student Services. And did not supervise my client, so would not have any personal knowledge about her performance in her roles, or whether she followed rules and regulations.

Charles Boykin: Respectfully disagree. She interacted with Miss Jackson on a number of occasions in her position. Getting approvals and things of that nature. So she could testify about Miss Jackson's conduct and her compliance with policies.

Kevin Maroney: What is her role?

Charles Boykin: She is like an assistant Vice President for Student Services handling a lot of student activities across the campus.

Shannon Polvi: And my client was formerly supervised by Doctor Valerie Fields when she was the VP of Student Services.

Kevin Maroney: Okay. It's hard to ... In advance to exclude ... I will put a tick by the name. I don't see necessarily what the relevance is, but I don't want to say that she doesn't have something to say, because I don't know the testimony. So, I would, for the moment, I'll leave her on and we'll just see what happens.

Charles Boykin: Just a point of reference. Miss Jackson worked, at any one time, in two to three different capacities. She interacted with people in two to three different capacities. It is disingenuous for someone to sit here and say that they had no supervisory responsibility when she ... Her job was always Executive Assistant to the President, which meant that she interacted with most of the supervisory people in the campus. Not as them supervising her, her supervising them, but as in a liaison capacity. So, to ... A lot of what my good sister, Miss Polvi, is saying is suggesting that it's from the Dean position, from the Dean position. But, no. She was also an administrative coordinator.

Charles Boykin: In fact, the sole purpose that we are here today is the administrative coordinator's position is the only part that's covered. The items that are being objected to primarily are non-covered items. When she talks about the Interim Dean position, that's not covered. As a matter of fact, the Commission should not see that. They should look at her from a covered standpoint. That's the only thing that brings her through the door. She doesn't get to come in and then expand it. Because she is talking about preservation of at will parts of her job that were never covered.

Kevin Maroney: I did understand the agency to be alleging that part of the reason for Miss Jackson's termination was that she was outside of the bounds of the administrative assistant, doing things and getting so ... And that is part of the case that they made, that she is acting outside of her authority.

Charles Boykin: The point that I was making to the Court is simply that we are moving away from the administrative coordinator's duty, which was much more expansive than the narrow Interim Dean's position. And if you look at that when you come to Miss Gathers, you will see that, "Oh, well, it may not be for the Dean, but may be for purposes of the Administrative Assistant to the President, there might have been interactions there."

Kevin Maroney: Well, and I think that would come out in the testimony. As I said, if there's testimony being given that's not based on the knowledge, or it's not discussing rules that the witness would know about, then I think that would be an objectionable point.

Charles Boykin: And point of fact, it would be an objection at any point in time, for any witness, if the testimony is irrelevant, if the witness doesn't have anything to share. That would be an appropriate objection at any time.

Kevin Maroney: That's correct. And I do think Miss Polvi is ... I don't. Just to clarify, I don't think you meant this disrespectfully, but I don't think anyone's being disingenuous on your side or hers. I just think it best ...

Charles Boykin: Shannon and I go way back.

Kevin Maroney: To set her list. Certainly. I didn't think there was a problem, but just put it out there.

Charles Boykin: Yeah. Shannon and I have crossed paths a lot.

Shannon Polvi: True. The next witness is Jamie Wise. Is the current Business Manager, but during the time frame relevant to what this grievance will be about she was a Senior Accountant, and she doesn't supervise any of the areas that potentially could be related to this, i.e., accounts payable, payroll, procurement, accounts receivable. And she had no supervisory authority over my client. And wouldn't be able to speak to the things that are referenced again in the grounds listed as to why my client was terminated.

Charles Boykin: With all due respect, as an accounts payable accounting person she would be able to speak to things that we believe will show her propensity for compliance with the rules and regulations of the college.

Shannon Polvi: She specifically doesn't supervise accounts payable. That's the opposite of what I said, is that she doesn't supervise those areas.

Kevin Maroney: So, what were her job duties at this time?

Shannon Polvi: Is that she was an accountant. A ...

Kevin Maroney: And you're gonna be ... Why would you be calling her, Mr. Boykin?

Charles Boykin: She, in her role now, as Miss Spearman's role now, looking at the documents she'll be able to speak to the documents and whether those documents involving Miss Jackson comported with the rules and regulations and policies of the institution.

Kevin Maroney: So, she would be speaking just to whether a document complied with the rules that were in place at the time Miss Jackson ... When these documents were signed, or-

Charles Boykin: That would be one. Also she had gone through the tuition reimbursement program, tuition assistance program. And she could speak to that, in comparison with the documents that are there concerning Miss Jackson. Clearly on the farm, clearly what we're talking about.

Kevin Maroney: For the moment, I'm gonna leave Miss ...

Shannon Polvi: Wise.

Kevin Maroney: Miss Wise on the list.

Shannon Polvi: Okay. The next one's Elton Shuler, the current Chief of Public Safety. He had absolutely nothing to do with my client's employment in any kind of supervisory or supervised role. The only interaction that he would at all have any personal knowledge about would be simply he's the person that was instructed to walk my client off the facility, or out of the facility.

Kevin Maroney: Mr. Boykin?

Charles Boykin: As the Chief of Security he was on the campus 50 to 60 hours per week. There are observations, conduct, that he's aware of involving not just Miss Jackson, but some of Miss Jackson's witnesses as well that will go to credibility. I believe we have every right to do that. It all depends on how Miss Jackson testifies. It depends on how her witnesses testify, as to whether or not ...Their truthfulness. And so ...

Kevin Maroney: You're right. It would depend on ... You were to call him for cross-examination.

Charles Boykin: Yes.

Kevin Maroney: So, right now, I'll strike him from the list. However, if there is something that happens in testimony that Mr. Boykin would like to counteract, then he can call the witness at that time.

Charles Boykin: Okay, so he's not struck. It's just that there's a proffer required before he's allowed to come in. He remains on the list subject to ... So, we're not taking him off, are we?

Kevin Maroney: Well, you're not going to be able to call him, unless you need to use ...

Charles Boykin: There'll be a foundation laid to call him. And I mean, that's understandable.

Shannon Polvi: So, to clarify, he's only gonna be for impeachment purposes.

Kevin Maroney: He is only, exactly. He's only going to be for impeachment purposes. So, when I say strike, I just mean as a primary witness.

Charles Boykin: Okay. Thank you.

Shannon Polvi: The next one's Shirley Young. She was the former Administrative Assistant of the President's Office. She's no longer employed with Denmark Tech. She had been part of a reduction in force. She had worked in the office for less than a year. And during the time frame that she was employed this was several years prior to my client's termination.

Kevin Maroney: This was Shirley Young?

Shannon Polvi: Yes.

Kevin Maroney: Okay.

Charles Boykin: She had worked during the time with Miss Jackson. And her separation, we believe that Miss Jackson was somewhat involved in. Miss Jackson's testified as to earlier that she had no involvement in certain things. And so, we can put her on the list for possible impeachment.

Kevin Maroney: Did you say she wasn't employed by Miss Jack- I'm sorry. I misunderstood something. She was there when Miss Jackson was?

Shannon Polvi: Yeah, but when Miss Jackson was in her role two years ago. So, it's not at all relevant to any of the time frame in which my client was terminated.

Kevin Maroney: Well, Mr. Boykin said she'll be there for impeachment purposes. So ...

Charles Boykin: Yes.

Kevin Maroney: We'll leave her there for that.

Shannon Polvi: The next is Cheryl Washington. She also was employed at the college less than a year, and was the Interim HR Director during an earlier time period, and was not at all privy to the suspension or termination of my client.

Kevin Maroney: Okay, Mr. Boykin.

Charles Boykin: Cheryl Washington.

Kevin Maroney: Yes.

Charles Boykin: Was the Human Resources person who was involved in how various policies were comported with. I believe Miss Jackson's had several salary increases, adjustments, things of that nature, would have all gone through Human Resources. So, the agency, how it does its business and who's aware of how those things work, you shouldn't be denied of that testimony.

Kevin Maroney: I'm gonna leave ... Well, your response Miss Polvi?

Shannon Polvi: Again, I would say that a lot of these witnesses, the ones I've listed, don't have personal knowledge of my client's suspension and termination, and if the agency ... As part of our rebuttal, what we're gonna put on, is with the agency citing stuff that happened years ago that has nothing to do with the time frame in which she was dismissed.

Kevin Maroney: Sure. And I think, as I understand Mr. Boykin though, these witnesses are going to be called to discuss rules, and then say how this conduct allegedly did not comport with the rules. They're not testifying to personal interaction with Miss Jackson. At least a lot of them. If anything goes beyond that, then of course you can object on that ground. And at that time, I think barring something else, would be sustained. But, for the moment, I think the purpose that they are going to be calling these witnesses is proper. So, I'm not going to strike them.

Shannon Polvi: The next is listed as Marvin Dawson. That was one of the ones you indicated you weren't gonna call, but I want to clarify.

Charles Boykin: Well, we'd like to leave Mr. Dawson. You can go ahead and state your objection, and I'll respond. We're gonna keep him, so you can go ahead and object.

Shannon Polvi: My understanding is he's being proffered, and again, I have no knowledge of this individual. He had no employment with my client. But, my understanding is he's being proffered as a forensic handwriting specialist. He's never analyzed any of my client's documents or done any type of discovery. And there's no opportunity for my client to provide to him a normal, what would be considered a handwriting expert sample. I have a separate case, not this one, that involves a handwriting expert, and they needed to see 20 some documents in order to analyze all of those signatures, and to establish foundation. None of that's been produced prior to this hearing. So, any testimony he's gonna give is literally out of left field, unknown to us as to what he may or may not testify about.

Kevin Maroney: Mr. Boykin?

Charles Boykin: Mr. Dawson is a retired forensic handwriting person from SLED. We were able to present him with a series of documents and he is able to testify as to the authenticity of the signature. Whether it's the true signature or not. The standard for an expert in South Carolina is whether or not the expert can assist the trier of fact in understanding the issue that's before them. And we would bring him for that purpose.

Shannon Polvi: No discovery has been produced whatsoever about anything that he's analyzed.

Charles Boykin: We've comported with the rules of discovery ... Sorry.

Kevin Maroney: Did you request information from the agency about the handwriting expert?

Shannon Polvi: We didn't even know he existed. So we did a subpoena about her personnel files and records related to her termination. I'm happy to look at the subpoenas, but it well would have included production of any handwriting analysis for the subpoenas that we did.

Kevin Maroney: So what was the subpoena that you requested? What was the request I guess? Let's just ... Let me see the request first.

Shannon Polvi: It's easier for me to read it off if that's okay.

Kevin Maroney: That's fine.

Shannon Polvi: Is that the subpoenas were for personnel file, shift file, shadow file, and any other employee file maintained on Carla Jackson, first and foremost. That is very inclusive of maintained on Carla Jackson. If this is a handwriting analysis about Carla Jackson it should be most definitely included within that description. And then I also did all documents referencing Carla Jackson's tuition reimbursement, all documents regarding tuition reimbursements applied for and received by employees at Denmark Technical College in the last 10 years, all documents, and these are separate ones. All documents that Denmark Technical College alleges on which Carla Jackson used the President's stamp. This request is specifically requesting all documents which are the basis of the accusation in the termination notice dated May 11, 2017, specifically stating additionally, "In your role as Administrative Coordinator I to the President you received pay increases which were pre-approved using the President's stamp, but had no supporting documentation. Your conduct in this matter violated all reasonable controls in our system and, I believe, violates that South Carolina Ethics Act which prohibits a public employee from using his or her position for personal gain." And then, the last one is in regards to my client's LLR complaint, which wouldn't be related to the handwriting expert.

Shannon Polvi: But, I would say, most importantly, that fourth one I just read to you and the first one would encapsulate production of any handwriting analysis.

Kevin Maroney: Mr. Boykin, and then I have a question.

Charles Boykin: We're not ... Obviously we weren't trying to narrow. We responded to what we thought she was asking there. That clearly, from us, it simply wasn't clear to us that she was asking for anything other than what we had on Carla Jackson. From that standpoint. We took documents, and we had the documents analyzed as a part of our inquiry.

Kevin Maroney: Is it in the file on Carla Jackson?

Kevin Maroney: It's in the documents that were in her personnel file?

Charles Boykin: We analyzed documents in her personnel file, but the analysis was not a part of her personnel file. And the reason it would not have become a part of her personnel file is because of the nature of it. If somebody had requested the personnel file that wouldn't have been something that would have been disclosed. You would not expect that to be in a personnel file.

Kevin Maroney: Miss Polvi. I mean ... Okay. It's a broad request. I don't personally know whether things like that are kept in personnel files.

Shannon Polvi: Well, this fourth one had nothing to do with personnel file. It says all documents that Denmark Technical College alleges on which Carla Jackson used the President's stamp. This request is specifically requesting all documents which are the basis of the accusation in the termination notice. If they're assessing all those documents it's related to, I mean, I would say that this request encapsulates it, and at the very least they know that we would have no knowledge that they were requesting a handwriting expert. But for ...

Kevin Maroney: All documents for ... Can you read that again to me?

Shannon Polvi: Sure. All documents that Denmark Technical College alleges on which Carla Jackson used the President's stamp, and that's like period. This request is specifically requesting all documents which are the basis of the accusation in the termination notice dated May 11, 2017.

Kevin Maroney: Well, so the first sentence is definitely just the documents themselves with the stamp on it. And then I think the second sentence is following on the first, seems more like more documents that are the basis of the allegation, which would, in that context seem more to me to be the documents that were stamped allegedly improperly. I'm not sure I read that and think handwriting analysis. Going to the first one I would say, it's close. I just don't know whether things like that would be put in a personnel file.

Mary Oakman Lon: They're not.

Shannon Polvi: Well, they're asserting, part of their position is they're asserting that this handwriting expert reinforces their decision, or even potentially that they made their decision about the handwriting expert.

Kevin Maroney: It certainly reinforces their position if documents were stamped improperly. But, I think what we're talking about is the request. And I think the request itself is for the actual documents that are alleged to have been stamped improperly. Now, at least for number four. For the first one, I ... It's a close call. I just don't have any knowledge that would say that it's not kept in a personnel file. Can you read the first one again to me, please?

Shannon Polvi: Sure. Personnel file, shift file, shadow file, and any other employee file maintained on Carla Jackson. That is maintained on Carla Jackson.

Charles Boykin: May I respond?

Kevin Maroney: Yes, Mr. Boykin.

Charles Boykin: If the handwriting expert's report was in a normal personnel file it would become a part of our business records and I could use someone else to come in and testify to it. Or either hire him, and have him come in and testify to it. There's a reason why we don't put these kinds of things in personnel files. Has

not been adjudicated. Allegations of confidentiality, allegations of defamation, all of those things tend to flow if they somehow get out inappropriately. So, from a legal standpoint, and we're all of us talking about this, to protect your client, those things are kept separate and apart. So, you would not routinely find an investigation and some other type materials that would be sensitive in the personnel file.

Kevin Maroney: That's true. But, the any other file catch all language perhaps ... I think I have a solution to this. I have no doubt that this hearing is going to have to be continued to another day. Not saying we're not gonna get to the actual meat of the case, but I have no doubt that we're going to have to go to a second day. The second day will likely be scheduled weeks in advance. I think that that handwriting analysis should have been responded to. But, if it's going to be weeks out or months out, would that satisfy you, Miss Polvi, if you were able to get a copy of it and to review it more in advance of the next hearing? In which case, I would say to Mr. Boykin, he cannot call the handwriting expert until the next hearing.

Charles Boykin: May I add to that?

Kevin Maroney: Yes.

Charles Boykin: To overcome the objection that is forthcoming, then we will have Miss Jackson produce her handwriting to him so that he can meet the standard that Miss Polvi is suggesting, if she's saying that the standard has not been met.

Kevin Maroney: I don't. I appreciate your thinking outside the box. I don't think we can do that at this point. Because the Exhibit One has been closed. Miss Polvi, I think you had something to say.

Shannon Polvi: It was that ... I would just still, the standing objection to his being proffered as a witness at all. But, it's your decision on how you ...

Kevin Maroney: I think that the solution that I've given is perhaps not satisfactory to anybody, but that evidence does seem to be relevant. Perhaps. So, for the moment, for today Mr. Dawson will not be called. If the second day of this hearing is scheduled too close for you, or Miss Polvi, then we can address this issue again. But, I would like Miss Polvi and her client to receive that analysis.

Shannon Polvi: Can we stipulate ... Can you set a date? Because obviously we don't have the hearing date yet, but can you set a date in which they need to produce it to us? So we don't get it days before.

Kevin Maroney: They need to send it ... It needs to be sent today.

Mary Oakman Lon: Yes.

Shannon Polvi: Okay.

Charles Boykin: We will hand deliver it. Do we have a copy we can give her?

Mary Oakman Lon: I don't have a copy ...

Charles Boykin: Okay, we will hand deliver it, Your Honor, today. Next couple of days.

Shannon Polvi: Okay. The next one, Michael Singleton, would list that he was terminated prior to my client's suspension and termination. So he had no knowledge of the time relevant to my client's, why we're grieving, for the termination notice. He was a subordinate of my client previously, in her prior Interim Dean role, and he had no supervisory role over my client at any time to ascertain whether she did or did not follow any, you know, the listing of I guess these, the college ... I guess the conduct unbecoming a state employee, he would have no personal knowledge of that in a role where she is his supervisor and holding him to that standard. And he was terminated, in his own right, by the President of the college.

Charles Boykin: Miss Polvi admits that Mr. Singleton reported to her client. Thus, any termination action would have been initiated by her client. Whether that termination action, or whether the treatment, or whether Mr. Singleton's dealings with her comported with policy, and conduct of a state employee, Mr. Singleton can testify to. And Your Honor, if you would allow me to set a little bit of context here, that is properly before the committee. And that is that Denmark Technical College is in a precarious situation where the key decision makers at the institution within a span of maybe three months were all discharged, all separated from the institution for whatever reason. And the State Tech system is taken over by act of the General Assembly in order to try to salvage the institution. So there was a lot of things going on at the institution.

Charles Boykin: So, to approach it from the standpoint of, it was approved, it was okay ... there was a reason the General Assembly, by act, said the institution was not being run okay, and someone else should go in. And some of what we are hearing, and I have a lot of respect for Miss Polvi, and if I were sitting in her seat I would do the same thing. But, some of what we are hearing defies the actual facts that the institution finds itself, prior to, during, and after the suspension of Miss Jackson.

Charles Boykin: Now, having said that, as far as Mr. Singleton is concerned, we believe that Mr. Singleton has testimony that this panel should hear. We also believe that the panel can decide what weight to give that as far as Miss Jackson's respect for, her willingness to abide by and comport with policies.

Kevin Maroney: So, if I understand what happened. Mr. Singleton was terminated by Miss Jackson?

Shannon Polvi: No, not at all. By the President of the college.

Kevin Maroney: The President of the college. And Miss Jackson's ... What will he be testifying to about Miss Jackson?

Charles Boykin: He reported directly to Miss Jackson.

Kevin Maroney: Okay.

Charles Boykin: And it would be ... And that's why the HR person's report ... It would be unusual for any personnel action to initiate above her by the President, just unilaterally firing someone. This ... And the jury, the panel will use their common sense. And I should be able to ask. So, the organization is such that the President just sua sponte says, "You're fired." It doesn't work that way. If, whatever a person has done, the President is going to go to the immediate supervisor and say, "These are my concerns." And there will be a discussion.

Charles Boykin: If there is no discussion, then that's probative to, for the panel to understand. And if that's the case, if that's what they're saying, I think he needs to come in and they need to object on that basis and say, "Well, the President just decided to pluck him out and fire him." That's what they need to hear. That's a part of the evidence of my case. That is conforming with the rules and policies. The rules and policies would be the immediate supervisor would initiate the action. If we're saying the immediate supervisor was not involved in the action, that's telling. That's evidence that needs to be come- I don't get to tell them that's what happened. They get to have it demonstrated, that's what's happened. She can't deny me of that.

Shannon Polvi: Respectfully if I may, is that, from Mr. Boykin's statements that he just gave you, he's purporting as if it's a grievance for Mr. Singleton. And that's not at all why we're here. We're about why my client, Miss Jackson, was terminated, which was well after Mr. Singleton was terminated. And his termination has absolutely nothing, listed or ever questioned, as to why my client was terminated. So, it's become this like shifting of all these other reasons and Mr. Singleton has no personal knowledge whatsoever as to why my client was terminated or suspended.

Charles Boykin: With all due respect, whether or not Mr. Singleton's employer continuous in separation comported with the policies and rules of the State he can testify to. The panel can give whatever weight to it ...

Kevin Maroney: To make it a little easier for me to understand, are you saying that he's going to be brought to say that the President that Miss Jackson was serving under didn't comply with the rules, and that she was a part of that? I'm just not understanding what his testimony will be.

Charles Boykin: Well, okay. His testimony will be his interactions with Miss Jackson. I do not want to telegraph my entire case with the motions. I understand the motions piece. I don't want to telegraph my entire case, or his testimony. I'm saying, you know, as an advocate, and also to the Court, that his testimony is relevant. With all due respect to Miss Polvi what she's saying is, "I can't see how this is relevant." Well, she gets to object, that's what objections during testimony is for. But, you don't exclude a witness because you may have an objection to one thing the witness has to say. This ...

Charles Boykin: I'm having now to get into arguing for each witness, and reviewing, this may go over a couple of days. She gets to sit on her theory of the case. I have to reveal my theory, how each piece fits. And I think that's prejudicial. I need some water here.

Shannon Polvi: Well, the scope of this grievance is not the scope of a civil law suit.

Charles Boykin: No. I would concede that, but the same point I'm making. I have every right to bring my witnesses. And she's looking at a name ...

Kevin Maroney: Limited by the rules of evidence. And one of the things that I'm hearing Miss Polvi say is that his testimony is irrelevant. And I haven't heard specifically from you what he will be. Now, I'm not asking you to reveal your theory of the case. But, what exactly is Mr. Singleton going to be talking about?

Charles Boykin: You're asking me exactly. And with all due respect, may I respond generally?

Kevin Maroney: As best as you are able, but please answer that question.

Charles Boykin: I will answer the question. May I state the grounds first, and then tie what I believe his testimony to the grounds?

Kevin Maroney: Yes.

Charles Boykin: The grounds for this action are your willful violation of rules, regulations, and written policies which constitute conduct unbecoming a State employee. Mr. Singleton, not arguing for his grievance, dealt directly with Miss Jackson. And he can talk about her compliance with policies. The policies that he was familiar with. The policies that she was supposed to have enforced. He can talk to that. I think it would be unfair to me to have to specify the conduct in the policies because that gets into exactly my case.

Kevin Maroney: What was Mr. Singleton's role? What policies will he be testifying about? I think you can say that without.

Charles Boykin: With all due respect, I would like to reserve that. I think it would be inappropriate for me at this point, at this level of the case, to make an admissibility determination when we're talking about the witness's testimony. I

think that's what the objections are for. If he's saying something that's irrelevant, I think that's when you object. But, I do believe it's inappropriate, Your Honor. With all due respect, to disqualify a witness based on the temporal arguments that are being made.

Kevin Maroney: Again, I ... He worked with Miss Jackson as a subordinate. Now, Miss Gina was allowed to ... Is allowed to remain on the list because she worked directly with her and perhaps spoke to some of the activities. Is that what Mr. Singleton will be doing? Is talking about his interactions with Miss Jackson and how he ... If he has any knowledge of rules or that can be crossed?

Charles Boykin: Precisely. Precisely.

Kevin Maroney: But, if he doesn't have knowledge of rules, or objected at that time.

Charles Boykin: Precisely. He will be putting forth that testimony. Certainly objections will be made, and offered, sustained or overruled. Either way. But that's what he will be doing. Things that he has first hand knowledge of from that standpoint.

Shannon Polvi: Well then, ascertaining from that, my previous objection still stands. But, then, if that's truly what it's being proffered for and limited to that then that's cumulative. Then we're just hearing over the same thing, theoretically.

Kevin Maroney: Well, if Mr. Singleton is in a different role than Miss Gina, and I agree with you that this is all ... The possibility of this being cumulative is great. But, if you ... If something is being said in the testimony that is cumulative you can object and I will probably sustain it, obviously.

Charles Boykin: Yes. I'm aware of that standard in putting forth my case.

Kevin Maroney: As long as the witness is able to talk about interactions with Miss Jackson, or about rules and policies. Now, maybe the knowledge of the rules and policies is not sufficient. That can be brought up on cross. But, as long as either of those two things is present, I do believe the witness has relevant testimony. How much relevance is obviously able to be dealt with on cross-examination or other witnesses on your side.

Shannon Polvi: The next one is Gwen Bright. She's a former Commissioner, a Board member. And she is not the authorizing authority on the decision to terminate my client. It's Dr. Hall, the Interim President. So she would have no knowledge about the decision, and all of her testimony would be hearsay, because she has no personal knowledge about the decisions.

Kevin Maroney: Well, I believe ... So, the hearsay objection, and I realize that this is somewhat difficult. But, this was dealt with in the motion in limine. The agency doesn't have the burden of proof. So, part of the definition of hearsay is offered for the truth of the matter asserted. Nothing that the agency will be putting up is to

prove conduct. It's to show what they relied upon. So, I don't think the hearsay objection can be sustained. But, what the first part of it was that she had no knowledge, she had no interaction with Miss Jackson.

Shannon Polvi: Correct. The decision maker on both the suspension letter and the termination letter, and there's no indication whatsoever that the Board had a part in this decision. It's, succinctly, I'll show you the letters that I'm talking to. Is that the decisions that we're grieving are strictly the decision maker is Dr. Hall. This is the identified decision maker. And if there are other decision makers, then that's a whole 'nother aspect of the argument. But, the identifiable, what's been produced to the record on appeal prior to this grievance hearing, that is Dr. Hall is the decision maker, not the Board.

Kevin Maroney: Generally though, decision makers still talk with others, and review things within ... Not necessarily a formal committee, but they generally do interact with others. Is the basis of your objection that Miss Bright is not listed on the letters so ...

Shannon Polvi: Or anywhere in the record. I mean, she's not identified in any of the record here, so why would she have any personal knowledge to be able to speak to? If, in 200, almost 300 pages she's not an identified person being involved with any of the decision.

Kevin Maroney: Well, they don't have to ... They don't have to identify their witnesses until this certain point in time. I don't ... Mr. Boykin.

Charles Boykin: Yes.

Kevin Maroney: Will you respond to that, please.

Charles Boykin: The question is whether or not Miss Bright has any probative evidence, is I believe what she's asking. Because she's a Board member. A part of Miss Jackson's duties was to work, or not work, but to provide some type of assistance to the Area Commission. Miss Bright was an Area Commissioner. So, she can certainly testify as to those interactions from that standpoint, from a first-hand knowledge. That's just one. I would not agree to limit her testimony, because I think that there are other things that she knows about first hand, that would help the committee understand what's going on.

Kevin Maroney: Will she be testifying to a violation of rules? Or just her interactions.

Charles Boykin: Her testimony, Your Honor, as an officer of the Court I will say her testimony will conform to the grounds that are set forth. And she may also be used because Mr. Williams is called, who is a Commissioner for, on behalf of, Miss Jackson. And he's being called. We may, for the same grounds. I'm gonna object because I need to hear the rationale for a Commissioner, if Miss Bright is unable to. But,

the ... She will be testifying for what she knows, and based on she's subject to cross-examination. But based on her involvement with the institution.

Kevin Maroney: I don't think she can be objected just because her name doesn't appear in a record. You know, there are a number of witnesses on both that don't appear in the record. I hear your concern about cumulativeness and whether she actually can speak to anything. I believe you're more than capable of either objecting in the middle of testimony, or cross-examining her. We'll go from there.

Shannon Polvi: Then the last one is Tia Wright Richards. She's the current Interim VP of Academic Affairs, and did not supervise my client or ... I apologize, I was misspeaking on that one. Is that she did actually supervise my client. But, is not the recommending authority on suspending or terminating my client's employment.

Kevin Maroney: I'm gonna ... The only basis is that she wasn't the recommending authority? Is that the only objection?

Shannon Polvi: Is that ... I would say she has no knowledge of whether my client, in terms of when her employment occurs, is that the cited reasons in the termination refer to tuition reimbursement, and the use of a President's stamp on pay increases. I don't believe she has personal knowledge as to either of those.

Charles Boykin: I don't believe she has personal knowledge. I'm sorry. Beg the Court's pardon.

Kevin Maroney: All right. Let's let Miss Polvi finish, and ... Counsels I understand that this is a trying case, but let's keep our decorum, please.

Shannon Polvi: And she was not the supervisor at the time that either of those occurred, and those are the two instances that are listed in my client's termination notice.

Kevin Maroney: I ... She did supervise Miss Jackson. If she does not have knowledge of those specific incidents you're gonna be able to object in the moment of her testimony or cross-examine to bring all that to light. So, overruled.

Shannon Polvi: And then in regards to the other three ...

Kevin Maroney: And these are the three that were added?

Shannon Polvi: Right.

Kevin Maroney: So, now we've come full circle to where we began. Okay.

Shannon Polvi: Right.

Kevin Maroney: Miss Peacock, Mary Oakland Long, and Christopher Greggs.

Shannon Polvi: And Miss Peacock and Miss Oakland Long are both being proffered in terms of the HR capacity. At the very least, their testimony would be cumulative. It's kind of a one or the other situation. And we've already had another, third, HR person earlier, Michelle Washington. So, I would say the three of their testimonies are repetitive. There should only be one HR designee for the agency, of those three. So, I'm willing to stipulate that they get an HR representative, but it should be one of the three, not all three.

Kevin Maroney: Okay. Mr. Boykin?

Charles Boykin: Your Honor, I would like to be able to present my case understanding the cumulative nature of testimony. And will be called down by both the Court and opposing counsel if that happens. But, I have prepared my case, with the understanding of the cumulative nature in mind, and would ask for the latitude as a professional to be able to comport with the rules rather than being hamstrung beforehand with someone speculating that I'm not complying with the rules. I think that's unfair to me as an officer of the Court, Your Honor.

Shannon Polvi: And respectfully, actually, let me add I believe actually Christopher Gregg is HR as well. I'm not as familiar with what his testimony would even be about, but then that's four HRs if he's also put on for that reason.

Charles Boykin: He is HR as well. However, there is no limitation on HR. There's a limitation on the nature of the testimony. And understanding that, and the people that I will be bringing, Your Honor, with all due respect, will testify as to their particular aspect. It will not be cumulative. They won't take the stand and say the same thing. I understand that if I did that I would be subject to an objection and to be admonished by the Court. I understand that. But I think it's ... I just suggest that it's wholly unfair.

Kevin Maroney: I ... I don't ... I mean, I won't. I'm going to overrule. Not on the basis of unfairness, but that Mr. Boykin is correct. I'm going to be active, it seems, in this hearing as well on the cumulativeness. I will keep an ear out. I'm sure you will do the same. And I'm sure Mr. Boykin will do the same in his questioning to avoid that from happening. So, for the moment I'm going to overrule and they will be allowed to remain on.

Shannon Polvi: And in regards to one of our witnesses, Miss Teresa Mack, she just started a new job and was unable to come, and she's produced an affidavit. It has the questions of her testimony. That's the only way we're able to essentially get her testimony today, being that she just started a job and didn't have any leave time accumulated to be able to get out.

Kevin Maroney: Okay. If I'd ... Let's put her at the bottom of the list. I do not anticipate us finishing today. But, if we do, and ... That issue comes up, why don't we just address that then. We've taken a lot of time. For the moment, that'll be fine.

But, more than likely we're gonna have to reschedule, so she can just be ... If it's not a burden, I'd prefer her to just be at the bottom of your list.

Shannon Polvi: Okay. Those are all the witnesses we've gone through.

Kevin Maroney: Okay.

Charles Boykin: I would object to Thomas Williams. He is the former Chair of the Board of the Area Commission. And ... The Chair of the Commission has no responsibility for personnel at all. And so, I'm not sure what relevant testimony Mr. Williams is able to bring.

Kevin Maroney: Before responding Miss Polvi, the Area Commission is?

Charles Boykin: Is the governing body. Yes.

Kevin Maroney: Governing the Denmark Tech, okay.

Charles Boykin: Yeah, it's the governing body.

Shannon Polvi: Well, first and foremost, if Gwen Bright can appear, then he also. But, I would say he has far more relevant first hand testimony because he directly questioned Dr. Hall as to why my client was suspended. And Dr. Hall could not produce a single reason as to why my client was suspended. So, thus Dr. Hall was terminated from his Interim President role, was later brought back. But, nonetheless was terminated for not having a reason for suspending my client.

Charles Boykin: I would object to the relevance of that. Having the burden of proof, they're proffering that he is going to give hearsay testimony, and ...

Kevin Maroney: Well, I don't know if she's saying it's gonna be hearsay. But, connect that to one of the grounds for overturning the agency decision. Are you saying that it was ...

Shannon Polvi: It was that in regards to I mean the grounds that we have for ... Is that it exceeded the statutory authority of the agency, was made upon unlawful procedure, and constituted a violation of my client's Constitutional and statutory rights. [inaudible 01:12:04] by error of law. Clearly erroneous beyond the reliable, probative, and substantial evidence. And was arbitrary and capricious, if they can't even give a reason as to why my client was suspended. And then later come up with one in a termination notice.

Kevin Maroney: For the moment, the arbitrary and capricious, and the substantial evidence. You're gonna be able to, as I've said, cross-examine him. Bring out all those points you just made, and perhaps more. So, I'm going to allow him to stay on for the moment. But, please continue.

Charles Boykin: This grievance deals with the termination. We're now going back to a suspension that's not properly before the Tribunal.

Kevin Maroney: But, the termination in terms of arbitrary and capricious, and I'm not speaking for you I don't think, but that's ... The definition of that is not following a course of reasoning, gone about by one's will. I think that testimony is, whatever weight needs to be given, but it kind of goes to that type of theory of the case. That it wasn't done for a course of reason. Please continue.

Charles Boykin: My second point is that because Dr. Hall did not respond to Mr. Williams's question doesn't mean he was unable. It just meant he did not respond. He may have been unwilling. Didn't mean he didn't have grounds. He may have chosen not to engage him on that point. But, to have that bootstrapped into some type of persuasive or probative evidence I ... Yes, I can object, but ... He's not in his mind. And there is no evidence that she has suggested that would have said that he, that Dr. Hall, was in some obligation to respond. The moral of the story, or the end of the story, is that Mr. Williams did discharge Dr. Hall for not responding to his question on a Friday. 12 o'clock on Monday Dr. Hall was reinstated, and Mr. Williams who was then Chair of the Commission was removed.

Charles Boykin: So, it's ... It's a slippery slope when we get into speculating as to why this was done or why that was done. And all that Mr. Williams can bring is speculative testimony about his belief about Dr. Hall. And that belief doesn't constitute probative evidence under these circumstances, Your Honor.

Kevin Maroney: Let's as ... I think my initial ruling will stand. I think you are able to bring all that out on cross. I also think that you'll have the opportunity to bring out what testimony you want to give from him. All the objections that are possible, that we talked about with Miss Polvi's objections around your witnesses are possible here. As well as the cross-examination. And the description you just gave, that would also be brought out. So. Miss Polvi, he'll stay.

Charles Boykin: Sherry Donaldson.

Kevin Maroney: Yes.

Charles Boykin: She was just a temporary, part-time person, and working in ... She was working in HR, but with no HR background. I'm not sure what relevance her presence here would be.

Kevin Maroney: Temporary HR, and then she was removed? She was either let go or ...

Shannon Polvi: Not at all. It that ... And they're putting on four HRs, we could at the very least put on one. But, nonetheless, she had 20 years of experience, so she's not an inexperienced representative, and she can directly speak to testimony about my client's suspension, which culminated in her termination. She will have first-

hand knowledge about communications with the decision maker about her suspension, and the termination. And not just the hearsay aspect, but things that she herself physically did. Not just things that were told to her. Things that she heard herself, in the sense of actions, participating. And again, I'm not intending to give my full theory of the case as well. But, nonetheless, Miss Donaldson has direct, first-hand knowledge of about actions that she herself had taken in regards to personnel files with my client, as well as things that she had been asked to do.

Kevin Maroney: It seems like you recognize that there is a hearsay concern there. I think for the moment, Mr. Boykin, I'm going to allow her to stay.

Charles Boykin: Theresa Mack. She did not supervise, and she was not involved in the separation, so I don't know what she brings. It's a waste of time. Excuse me, I apologize, Your Honor.

Shannon Polvi: Is that, quite to the contrary, is that the guiding principle of this grievance is the termination notice, and the very first thing that they reference as an actual reason for terminating my client was her tuition reimbursement. Theresa Mack is the authority who granted that. So, she's a signing signator on these documents. She's a person who has direct first-hand knowledge about my client's tuition reimbursement. Which is listed as one of the ground to fire my client, explicitly.

Kevin Maroney: Is she currently at Denmark? Just to ...

Shannon Polvi: No, she was the former Grant Director.

Kevin Maroney: But she directly signed off on Miss Jackson's reimbursement?

Shannon Polvi: Yes.

Kevin Maroney: Okay. Mr. Boykin, I think I'm gonna leave her on. If you cross-examine whether that was appropriate, that's obviously something that can be done. But, I think that's relevant adding this.

Charles Boykin: Doctor Drammeh.

Kevin Maroney: Yes.

Charles Boykin: He is not ... He was separated from the institution. He's clearly disgruntled. Was not involved in her suspension, nor is he involved in the termination. It does not appear to me that he would have any relevant testimony.

Shannon Polvi: He essentially was the second in command to the President. He was privy to tuition reimbursements. He was privy to the use of the President's stamp. He was actually a signator on, I believe, some of the tuition reimbursements that

were issued to my client. So, he has first-hand knowledge about the termination listed information.

Kevin Maroney: So he was second in command to the President when Miss Jackson was the assistant to the President?

Shannon Polvi: That's correct.

Kevin Maroney: Okay. I'm gonna let him remain on the list.

Charles Boykin: No further, Judge, objections on the witness list, Your Honor.

Kevin Maroney: Okay. Thank you both for working through that. We will probably take a five minute break.

New Speaker: Let's do 10.

Kevin Maroney: 10, okay. 10 minute, yeah. Grab some water.

Charles Boykin: One question. Do we have other objections pre-trial?

Shannon Polvi: No. Those were it.

Kevin Maroney: Okay.

Charles Boykin: Yeah, the ...

Kevin Maroney: Do you have another?

Charles Boykin: Oh yeah.

Kevin Maroney: Oh, okay, we can do it now.

Shannon Polvi: So when we come back we'll do opening statements?

Kevin Maroney: Yes. We'll proceed.

Glenise Elmore: Alright, we are now ready to hear opening statements. We have the appellant going first.

Shannon Polvi: Thank you. And for you members, I just wanted to greet you first and foremost and say I've asked Mr. Maroney for permission to just sit, is that okay with all of you, as we go? Making a little bit of a comfortable and informal process today, and likely into a second day later.

Shannon Polvi: But thank you for your time and attention here today.

Shannon Polvi: My client was an employee at Denmark Technical College. It's one of the colleges within the South Carolina Technical college system. And she held several positions with the college while she was employed there, and so we're going to talk about that initially before I talk about what our grounds for this appeal are.

Shannon Polvi: Is that my client started employment with Denmark Technical College in January of 2011, and her termination occurred on May 11th, 2017, so we're going to be talking about that time period during her employment.

Shannon Polvi: Most relevant and important is to focus on what are going to be in the termination letter and we're going to talk about that later.

Shannon Polvi: But first and foremost, my client was the administrative coordinator in the president's office of the college. So she was involved with the leadership within the school throughout her time frame of employment with Denmark Technical College. Later in 2015 she was promoted to an interim Dean position, and she was the interim Dean of Transitional Studies and Distance Education for about a year. And then around October of 2016, she filled the role of interim Dean of Business Computer and Related Technologies. So during the time frame of when my client was suspended, that culminated in a termination was while she was preforming the duties of that last interim Dean position.

Shannon Polvi: In addition to the interim Dean roles, my client was essentially in an assistant role and executive assistant role to the board of the college. So she was directly in communication with board members, with leadership of the school and she also performed duties as an adjunct professor, she taught a couple of courses at the school.

Shannon Polvi: So from all these different positions, you can ascertain that she was very involved with leadership, and had excellent employment with the college. To have received those promotions and been put in those levels of leadership within the school.

Shannon Polvi: We're here today to grieve what is a termination, is that my client is no longer employed with Denmark Technical College she is seeking to be re-employed with Denmark Technical College and wants to be reinstated to that role that she

was performing. Part of what we had our initial motions was about, was about witnesses and I'm not going to go into the depth of what our motions were, but you will be hearing from several witnesses both from ones that we're proffering as well as witness that are being proffered by the agency. Those witnesses are going to be talking about a sundry of testimony, and I'm not going to make promises about what that testimony will or won't be, but I really what I want your focus to be on, is to look at page 23 of the record on appeal. And that is the actual termination notice, that's the most important document that both the agency and myself will be talking about through the testimony of our witnesses as well as in our opening and closing statements.

Shannon Polvi: Is that, that is the guide for why... this is the guide for why Dr. Hall, who was the interim President of the College stated that he terminated my client's employment. We're going to talk in greater depth about that shortly.

Shannon Polvi: But what it culminates in is that the facts and circumstances leading to my client's termination violate all of the different sub-categories, under the statute of which a client can grieve, a grievant can grieve. And I'm going to list those out though I'm sure you all are familiar with it.

Shannon Polvi: That the facts and circumstances violate her constitutional and statutory provisions, her rights under those provisions. It was in excess of the statutory authority of the agency. It was made under an unlawful procedure, it was affected by other area of law, error of law. Clearly erroneous in view of the reliable probative and substantial evidence of the whole record and was arbitrary and capricious and characterized by an abuse of discretion and clearly unwarranted based on the facts.

Shannon Polvi: And we're going to be addressing all of the things that are accused of my client in this letter, but what is important for you to note is that Dr. Hall was actually the decision maker isn't going to be appearing before you. So you're going to have to hear about, from all the other witnesses, about why that decision was made but not from the actual decision maker himself.

Shannon Polvi: So let's look at the first paragraph. That first paragraph has, the second to last sentence it says, the grounds for this action are your willful violations of rules, regulations and written policies which constitute conduct unbecoming a State employee. We all understand that that's a catch-all sentence. That conduct constituting a State employee, is every single thing that they do while they're employed by the State.

Shannon Polvi: And so what we rely on, and what any employee would rely on, is what am I being accused of. What am I being told I did wrong? Why in the world would I be terminated? And what we rely on is in that next paragraph. Which states; the specific facts supporting this action include, but are not limited to, your receipt of tuition payments in the amount of 26,000 dollars for an educational program which was unrelated to your position for the college. Even though you signed a

statement acknowledging the requirement the program must be related to your position with the college.

Shannon Polvi: First and foremost, you'll hear testimony from several witnesses, my client submitted an application for tuition reimbursement. That application was approved, not by my client, but by the grants coordinator, by the President of the College. She completed her Master's Degree. Earned the degree upon which she had requested the application for and was properly reimbursed. All of it was approved years prior to this termination notice. What employee wouldn't think that that was an approved and proper position.

Shannon Polvi: My client was in the executive coordinator role, at the time that she received her tuition reimbursement. That leadership role was involved with the management of the school, management of the business, coordinating with board members, coordinating with executors of the school, with students, the a sundry list of what would it constitute a technical college institute within this state, a Master's in Business would most definitely benefit the role in which she was preforming.

Shannon Polvi: And benefit the college even further that after she received her Master's Degree in Business education.... Administration, she was able to perform an adjunct role. She was able to fulfill the dean positions, which assisted the college, because ultimately when these dean roles became vacant, needing an interim is that in lieu of having to seek and find and hire a whole new employee, my client was able to fill that role for a cheaper price than hiring a whole new employee for those roles.

Shannon Polvi: So all of that business education, administration degree that she received directly benefited the college while my client was in the executive coordinator role, as well as for her to be able to facilitate to further help the college in her additional roles that she later performed.

Shannon Polvi: Next, we look at the secondary kind of fact supporting what Dr. Hall's decision is, and it says, it lists, that sentence starts: additionally, in your role as administrator coordinator one to the president, you received pay increases which were approved using the president's stamp, but no supporting documentation.

Shannon Polvi: First and foremost, my client was receiving pay increases because she was doing additional duties. My client in no way paid herself. Is that, you'll see in the documents and the record show that she received supplemental pay for doing the interim roles, for doing adjunct professor positions. She was performing additional roles and there are several signatures above my client's authorization to receive that pay, so there's no ethical violation when someone’s performing a duty and their supervisor designates to pay them more for that additional duty.

Shannon Polvi: My client's pay did not increase beyond what all would be standard if anything it was on the low end. And you'll be able to see that within the record on the documents that are in the record on appeal. As to what pay increases occurred, and who were the signatory authorities above my client doing those.

Shannon Polvi: By no way did my client pay herself, or do any form of an ethical violation in terms of receiving authorized pay for duties performed.

Shannon Polvi: So when you look at this letter, this is the guiding letter, and you're going to hear from other witnesses who are going to talk about theoretically other rules or violations that may or may not be accused of my client, but all of those were debunked. And that's exactly why this termination letter doesn't even reference things that you may hear about later in the testimony because these are the only information that have any documentation related to them and both of those are entirely inaccurate and you'll be able to see, hear that from testimony from witnesses as well as documents in record on appeal.

Shannon Polvi: Very importantly I want to draw your attention to one of the aspects of this appeal is related to a denial of due process and you know, that it doesn't follow the statutory rights of my client. If you turn to page 68 of the record on appeal, that is my client's suspension notice. Is that the suspension here was termed here, you'll see it says: you are being placed on an investigatory suspension without pay effective immediately for allegations surrounding your involvement in improper conduct with regard to college operations. That suspension which occurred on February 15th of 2017, is what culminated, my client was suspended on February 15th, 2017, and then later fired on May 11, 2017.

Shannon Polvi: So this is the action that culminates in my client's termination. And when you look at this document, this is the first reprimand of any sort, that my client had ever received. My client had been an employee since 2011, there's a progressive discipline policy that the agency is required to follow.

Shannon Polvi: There's no progressive discipline whatsoever prior to this investigatory suspension. And then my client is suspended for three months, without pay for only a sentence that says: surrounding your involvement in improper conduct with regard to college operations. My client's entire job involved college operations. No employee at the college would be able to ascertain from that sentence what they were being suspended for.

Shannon Polvi: My client asked repetitively, why am I being suspended? Why am I not allowed to work? No explanation was given. My client received no further documentation outlining the accusations that she had been accused of. She's suspended for three months without pay, a single mother, not able to pay for things and not knowing why.

Shannon Polvi: And so, when we look at this investigatory suspension no grounds were given to my client in writing. And you'll note that my client had an opportunity to have a grievances prior to the State HR Grievance.

Shannon Polvi: Before the committee today is that she had grievances involving her suspension and then when the termination occurred there was also termination grievances, internal before we get to this level of procedure. During none of those grievances was my client told why she was being suspended, verbal or writing.

Shannon Polvi: My client was asked a laundry list of questions by, during one of the grievance hearings from Dr. Hall, and then one of the grievance hearings with Dr. Hardee who is the head of the Technical college system within the State.

Shannon Polvi: Those questions related to a laundry list of things, I mean related to her performance in her interim dean roles, in her performance with her communications with the board, about her tuition reimbursement, her pay, everything that could possibly be related to what she was doing with the college. There's no way for her to ascertain even what she's begin accused of.

Shannon Polvi: My client testified truthfully, honestly, openly to all of the questions that she was asked of by Dr. Hall and Dr. Hardee but the only thing she ever received in writing prior to her termination, is this document. And so that deprives my client of a due process claim to be able to even rebut these accusations which later you'll see, I'll put on page, the termination letter on page 23.

Shannon Polvi: Respectfully, I would argue that my client's suspension and grievance was manipulated, in a way, by the agency to make sure that she wasn't able to know what she was being accused of, or able to rebut that or respond to it and that the decision makers in those grievances prior to your level were the very people who were involved with putting my client on the suspension and did not want to give her the opportunity to rebut and essentially contest these later allegations of why she actually was terminated for.

Shannon Polvi: One thing you're going to see today, and likely on another day, is that the individuals who were involved with the termination or the facts that were put in the termination notice, the tuition reimbursement and the president's stamper, the most important witnesses are going to be Carla Jackson herself. Did she receive tuition reimbursement? Yes. Was it authorized? Yes. Was it in accordance with the policies and procedures? Yes. Has there been any reprimand to Denmark Tech or South Carolina Technical College System, for my client receiving tuition reimbursement? No.

Shannon Polvi: Next question is that it regards to the president stamper. Did you have... was there a president stamper? Yes. Did you have authority to use the president stamper? Yes. Did you give yourself any increases in pay? No. Were all increases in pay you received authorized by the president and the leadership above you? Yes.

Shannon Polvi: That will be ascertained, those key questions that about relate to tuition and relate to the president stamper will be heard from Carla Jackson as well as Dr. McIntyre who was the president of the college during this time frame. Dr. McIntyre will specifically tell you that she was authorized to receive the pay she received. And that it was authorized by him and the leaders below him. And he'll also tell you that in regards to tuition reimbursement, that her role was vital to the college and that any furthering in education and a Master's in Administration assisted the college.

Shannon Polvi: There's going to be other witnesses that will give you relevant testimony, but those are the two most important that directly relate to why the college says it terminated my client.

Shannon Polvi: It's important to note that the grounds for termination are succinctly put there. And there is a sentence, I'm sure my colleague will point to it, to you. Is that it says, include but not limited to, but we have to look at what is the articulated reasons? What did the college tell my client she was fired for? If they come up with all these other reasons, or all these other things that had been accused of, if there had been any validity to it, she would have had an opportunity to rebut it and they would have listed it in the reasons for why she was fired.

Shannon Polvi: Any other testimony outside of what's relevant to the suspension letter which puts her for this investigation, and then the ultimate termination is not relevant, for your review of why my client is no longer employed with Denmark Technical College.

Shannon Polvi: And we ask that you consider that Dr. Hall, who you will not hear from today or in the later days, he had just become an interim president at the college when he suspended my client. He'd only been at the campus about ten days prior to deciding to suspend her. What could he have known in ten days, which did not, which would relate to tuition reimbursements and president stampers. This is a new president getting to a college that needs to be focused on college leadership and is then listing other things that happened years prior. That he would have no knowledge of and that he would have to have come from other people and who were authorized by the leaders at the time.

Shannon Polvi: My client even applied for her tuition reimbursement under another president, Dr. Boyd who will not be able to appear before you. And so in regards to Dr. Boyd I believe she has since passed and so that's the reason why we cannot call Dr. Boyd, but in regards to the two presidents who have any personal knowledge about that, will be Dr. McIntyre and Dr. Boyd and Dr. Boyd understandably would not be able to debunk this. But you will identify that her signature is on the application authorization.

Shannon Polvi: So the president at the time that my client applied for this tuition reimbursement authorized it.

Shannon Polvi: I know I can be lengthy, and I will have lots of testimony coming from other witnesses so I want to end on the note that I ask you to reinstate my client to Denmark Technical College and to grant her all the authority that you're allowed to in terms of making her whole.

Glenise Elmore: Thank you.

Shannon Polvi: Thank you for your time.

Charles Boykin: Madam Chair. Panel Members. I appreciate Ms. Polvi's opening statement; after we're given the privilege of either standing or sitting, and I'm going to bore you by standing, I apologize for that beforehand.

Charles Boykin: This case is Ms. Jackson's appeal of her termination by the state technical system, technical college system. I come to you in a very unusual posture and will have to ask that you indulge me throughout the presentation of our case.

Charles Boykin: Primarily because right to the timeline that Ms. Polvi has said is actually truthful, timeline, not relying facts, actually truthful. Dr. Hall, ten days took some actions. But we need to back up, you see Dr. McIntyre that you will hear from, either today or another day, was the president. But his tenure as president ended at the end of January 2017. It ended by a vote of the board.

Charles Boykin: Along with the motion that ended Dr. McIntyre's tenure was also a motion to invite the state technical college in to help provide leadership and to review what is going on at Denmark Technical College. They're going to have to go back further though, than the end of January. Because if we go back to May of 2016 we'll understand that there were complaints filed by employees with the college or persons alleging to be employees with the college, talking about different types of things that were being done improperly and that complaint was filed with the Office of the Inspector General.

Charles Boykin: That office referred the complaint to the state tech system. And the state tech system and you will hear testimony as it began to investigate the complaints it started running into resistance from the college. Responses such as, we don't have to give you this. We don't have to follow or respond to state tech's questions. Those are some of the kinds of things that were coming out.

Charles Boykin: It had gotten to the point where the complaints continued to bubble up where the General Assembly became aware and early in January, the General... excuse me, prior to that because we coming from May, we're talking about the summer and fall of 2016 when the state tech system was in the process of investigating what was going on at Denmark Technical College based on the allegations that were made and trying to verify whether there was truth to them or not.

Charles Boykin: We received communications from the General Assembly, further inquiring about what was happening at Denmark Technical College. Now, we come back

to Dr. McIntyre, Dr. McIntyre tenure ends at the end of... around the end of January and with the authority that the commission voted to give the state board, we came in to commit a more thorough review without the resistance coming from the president's office going down into the organization, to see what was going on.

Charles Boykin: While we're doing this, yes, we did uncover various kinds of things, and you'll hear about that, and I'm going to get to the grounds here in just a minute. But, I needed to give you the context of what was happening because you will hear from Dr. McIntyre, the next person to him, Dr. Drammeh, you will hear from them. You will hear from Mr. Thomas Williams, who had been the chair of the area commission. You will hear from them.

Charles Boykin: There is one thing that will be consistent that you will hear from them, is that they are no longer connected to Denmark Technical College, that's what you will hear from them, as they testify, you know, from that standpoint.

Charles Boykin: The grounds would be in the first paragraph and it starts with, the grounds for this action are, your willful violation of rules and regulations and written policies which constitute, okay, we move down, we'll say specific facts, that would be the evidence that we're looking at. Include, but not limited to, but we're not required to list all of our evidence in that notice.

Charles Boykin: Now, when you talk about the kinds of... then you move down to where it says, your conduct in this matter violated all reasonable controls in our system and I believe violates the South Carolina ethics act, which prohibits a public employee from using his or her position for personal gain. That's pretty specific. But the question is when you talk about progressive discipline and you have to decide would be, can you remediate that, well, then a remedial set of circumstances, that would be the question that would be up to the jury to decide.

Charles Boykin: Now, when we look at the position what Ms. Jackson had, well, let me finish procedural piece and I'll come back to the substantive if you'll permit me.

Charles Boykin: Procedurally, the General Assembly understood, as we spoke with representatives of them, that the area commission had invited the state tech system in to operate the college. And that was because the state tech system recognized from the audit that the college was facing a potential deficit of well over half a million dollars.

Charles Boykin: That would have had far reaching implications, not just for the college, but for every other technical college in South Carolina, from that standpoint. The General Assembly recognized that the area commission could come in, at any time and decide, we'll change our vote. So on May 1 a statute was adopted that gave the state tech system authority to operate Denmark Technical College until November 1, 2018.

Charles Boykin: So essentially you have about a year and a half to get the college in shape, to keep it open, if that were possible. So that was the procedure and then that is why you will hear names that weren't there during this period of time, but were there during that period, you will hear that. I will concede that right now, that's what the evidence will show. But you will hear that those people, we can call the Johnny come lately's, you may hear that. But those people were brought in as experts, trained individuals to look at what had happened at the institution that brought it to this point, where it's very future was in question. They had tough decisions to make. So that is what you will see from that standpoint.

Charles Boykin: Now, Ms. Jackson certainly was employed by the college. She rose as the record will show, from an administrative assistant to the president to an interim dean in a span of just a few years. The record will show that, not only did she do that, but she also had several pay increases, separate and apart from anyone else at the institution.

Charles Boykin: It will show that she had five or six full time jobs at the same time, the record will show that. It will show that there were stamps applied to personnel actions. The record will show that the absence of supporting documentation.

Charles Boykin: Now, there's an interesting thing, what will be evident, I believe, from the record is that Ms. Jackson enjoyed the trust and confidence, based on her job with the president's office, of the key decision makers. One bit of evidence that you'll see shortly that you will even hearing about right now from Ms. Polvi is that the president, who's discharged who will also testify that he has litigation pending against the college, you'll hear that.

Charles Boykin: But you will also hear... you will hear from the president coming in and you get to determine his credibility. You get to listen to his rationale for making the decisions that he made, from that standpoint. So you'll get to hear from his executive assistant or top administrator when he's not there. Dr. Drammeh, you'll get to hear from him, okay, he's no longer at the institution either, but you'll get him.

Charles Boykin: You get to weigh their credibility, from that standpoint and you have to weigh it against that backdrop. I think when you consider all of the facts that you'll hear and consider the positions of trust that individuals had for keeping the college open. I want you to remember one thing, just one thing. That one thing is this, Denmark Technical College sits in Bamberg County, it serves Bamberg, Barnwell and Allendale Counties, three of the poorest counties in this state. That college employs a number of people and as a population whose lives can be changed if persons working at that college operate it for the benefit of the people who depend on it, and not for their personal use.

Charles Boykin: I want you to remember that one thing throughout this testimony because the students sitting in a class in high school, right now, cannot afford to go to Clemson or Carolina, their path to a better life will be through Denmark

Technical College, they depend on the professional, ethical behavior of every employee of that institution so that it can be preserved for their use. I think when you look at all of the evidence and you consider what is at stake you will recognize that the behavior of Ms. Jackson left the state tech system no alternative but to end that employee relationship and you'll return that decision.

Charles Boykin: Thank you.

Glenise Elmore: Thank you. Alright I believe we are ready to hear first witness testimony, please call your first witness.

Shannon Polvi: We're going to call Dr. Lamin Drammeh.

Glenise Elmore: All right, before I ask you to stand to be administered the oath, I'm going to read some instructions to you, if that's okay.

Lamin Drammeh: Yes, Ma'am.

Glenise Elmore: All right. Would you state your name please, sir.

Lamin Drammeh: Doctor Lamin Drammeh.

Glenise Elmore: All right, Mr. Drammeh.

Lamin Drammeh: Yes, ma'am.

Glenise Elmore: Witnesses are asked not to discuss this case either before or after testifying until they are excused. This is not intended to preclude the parties from entering into discussion with respective witnesses. Is this something that you understand, sir?

Lamin Drammeh: Yes, ma'am.

Glenise Elmore: Okay. The appellant, the agency, witnesses, or anyone else related to the case are not to discuss the case with any member of the State Employee Grievance Committee before, during, or after the hearing until the final decision is reached, and the matter is no longer pending before the Committee. The matter is still considered to be pending before the Committee during the time involved in a request for a reconsideration of the Committee's decision, or until the time has passed for an appeal to the Administrative Law Court. The only time the case is to be discussed is during the formal hearing procedures.

Glenise Elmore: Okay, sir, at this time, if you'll stand our secretary will administer the oath.

Secretary: If you'll raise your right hand. Do you swear or affirm that the testimony you will give today is the whole truth and nothing but the truth?

Lamin Drammeh: I do.

Glenise Elmore: All right, you may have a seat.

Lamin Drammeh: Thank you.

Glenise Elmore: And sir, that microphone up there is gonna pick up your testimony, so if you could speak loudly enough for that. You'll be asked to refer to that book in front of you, which is the record, okay?

Lamin Drammeh: Okay.

Glenise Elmore: Alright, thank you sir.

Shannon Polvi: Doctor Drammeh, I'll be asking you questions first today. And though I'll be asking you questions, try to direct your answers to the Committee. We'll start off by, I'd like to ask you what is your educational background?

Lamin Drammeh: I have a Doctorate in Educational Administration. I have training in Educational Leadership and Management. I'm an expert in assessment and development.

Shannon Polvi: When did you earn your doctorate degree?

Lamin Drammeh: I completed my study in 2013.

Shannon Polvi: Were you previously employed by Denmark Technical College?

Lamin Drammeh: Yes, I have.

Shannon Polvi: What was the time-frame of your employment?

Lamin Drammeh: I came on-board June 1st and my last day at Denmark, it was June 30, 2017.

Shannon Polvi: And for the June 1st date of your start date, which year was that?

Lamin Drammeh: In 2014, June.

Shannon Polvi: During the about three years' time-frame of your employment with Denmark Technical College, what positions did you hold?

Lamin Drammeh: I came in as Executive Director in a capacity of Chief of Staff and Special Assistant to the President.

Shannon Polvi: Did you remain in that role throughout the three years of employment with Denmark Technical College?

Lamin Drammeh: The President reassigned me sometime in the second year, I think, of my appointment to the Vice President for Research, Planning, and Development, and Special Assistant to the President.

Shannon Polvi: Let's talk about your first role, the Executive Director, Chief of Staff position. What did your duties or responsibilities entail in that role?

Lamin Drammeh: It's a support to the Executive Director, which is the President, the CEO. That position requires tremendous challenges, because when I came on-board at Denmark Technical College they were facing reaffirmation for SACS and they have 37 non-compliances. Nine of them are code requirements. Each and every one of those requirements is eligible to put the college on probation or even shut down.

Lamin Drammeh: I came at the heart of that. So I was the point person to help the President go through that process, so we wanted to bring in order, structure, processes. And we were successful with no findings and no recommendations after the onsite visits, seven months later. And we got reaffirmed for 10 more years.

Lamin Drammeh: It's a viable institution of higher learning, catering to a community in critical need. At that time, Denmark Technical College ... You know never had an executive director position. We are working as a team and I was leading and every function I have was an extension of the President's authority taken to me to help facilitate a process in a collaborative manner. And we did that as a team effort.

Lamin Drammeh: Other than the President, I was responsible as he delegate those authorities through me. To steer the ship and then we are able to successfully mitigate those challenges. And the 37 non-compliances that were in the compliance report, were in the result of the focus report, and the onsite visit and SACS reaffirmed with no findings and no recommendations. That was a great day for the community, great day for Denmark Technical College. Great day for Technical College System.

Shannon Polvi: And is that process that you were just describing also what some people might more commonly known as the accreditation process?

Lamin Drammeh: That's correct. As an opinion, known as the accreditation process.

Shannon Polvi: And with the second position that you were re-assigned to during your second year, were you essentially the second in command to the President of the college at that time?

Lamin Drammeh: I have the Special Assistant authority and the President considered me his assistant. In that case I have duties outside of my principal duty of the Vice President for Research, Planning and Development.

Shannon Polvi: In your leadership roles at Denmark Technical College, did you supervise individuals?

Lamin Drammeh: In my position as Vice President for Research Planning I have units and individuals under me. As Executive Director, I don't have a direct report to me. I was working directly for the President. I worked collaboratively, individuals from various department that he find necessary to mitigate challenges.

Lamin Drammeh: We were in a deep hole, 37 non-compliances, I have no time to waste. The first onsite visit was in October. I came on-board June 2, June 1st was my start date. I think June 1st was on a weekend. The work that was done and the advantage of not having people report to me is that we are looking at what is the best interest for the college to mitigate those challenges.

Lamin Drammeh: The President have his responsibility of making sure the accreditation process was successful. That first and committees were set up. I led some, some other people led as an expertise and then we work as a team. But that was no individual reporting directly to me.

Shannon Polvi: And in your roles, including the last one with the VP of Research and Planning and Development and the Special Assistant to the President role, were you directly involved with the school operations?

Lamin Drammeh: Yes.

Shannon Polvi: And how did the leadership structure within the President's office work during your employment?

Lamin Drammeh: The President have his staff and he have divisions report to him to their VP's. The President staff, one of them is the Executive Assistant to the President, a Coordinator, that would be Miss Jackson. That's another support staff in that office. When I was Executive Director, I was a support staff to the President.

Lamin Drammeh: When I became Vice President for Research, I have my own division. At that time, those structures changed. Of course we conformed to this.

Shannon Polvi: And you referenced knowing Miss Jackson. How do you know Miss Jackson?

Lamin Drammeh: When the President hired me at Denmark Technical College, I was introduced to Miss Jackson because she's working in the President's office when I arrived.

Shannon Polvi: What did you understand her primary duties and responsibilities to be?

Lamin Drammeh: She was the Assistant to the President, Dr. McIntyre inherited that position, inherited Miss Jackson with that position. And she maintained that position when I was working in Denmark Technical College. She was a support staff to the President, to the executive and leadership team. She worked directly for the President.

Shannon Polvi: And in your experience, what type of things did she work on to assist the President?

Lamin Drammeh: She was an executive support, she worked closely with Vice Presidents. She worked to push the agenda of the President. She scheduled meetings, she facilitate activities that the President wanted her to facilitate out of his office. She have done a great job when I was there with her to enable me to settle into the college. Understand my way around, you know guiding me through that process. I was new there. She provided those assistance to me as well as other individuals because she worked for the President.

Shannon Polvi: During your interactions with Miss Jackson, did she abide by the rules and policies that you understood to be in place?

Lamin Drammeh: Yeah.

Shannon Polvi: When Miss Jackson was in the interim Dean roles, did you also interact with her?

Lamin Drammeh: When shew as in the interim Dean role I interact with her because I was the Chair of the Strategy Planning Committee. In those meetings I wanted to understand you know, and facilitating and development, the strategy plan of the college what is important for each area and unique division, so we have meetings. She participated in those meetings and then you know, there are activities and events that involve the college. She maybe on those meetings with me and then she was still you know, working in that capacity. Yeah and-

Shannon Polvi: During those interaction while Miss Jackson was interim Dean, did you observe whether she followed the rules and policies of the school?

Lamin Drammeh: I have not had any complaints in terms of following the rules and policies at the school, so I would assume that would be correct.

Shannon Polvi: Jumping back to the President's office. When a President is in office as serving as the President, is it in your experience normal for the President to have a stamper that has a signature?

Lamin Drammeh: That's correct, yes that's normal.

Shannon Polvi: Who would have access to the stamper?

Lamin Drammeh: The President's office assistant has access to that stamp, Miss Jackson does.

Shannon Polvi: And would other individuals also in that role, the executive administrator role, or excuse me, an administrative coordinator role have access to the stamper?

Lamin Drammeh: From within the President's office?

Shannon Polvi: Yes.

Lamin Drammeh: There is one executive coordinator in the President's office, Miss Jackson, she has access to, yeah.

Shannon Polvi: And after Miss Jackson became the interim Dean, was there not someone else that filled the role of the administrative coordinator?

Lamin Drammeh: Yes, that's correct.

Shannon Polvi: Who was that?

Lamin Drammeh: Miss Gwendolyn Bamberg came on-board as an interim because Miss Jackson went into an interim position as the Dean's position. Miss Bamberg came in, she worked in the President's office.

Shannon Polvi: And is it your understanding that when Miss Jackson became an interim Dean that Miss Bamberg was filling those roles of Executive Coordinator? Or excuse me, Administrative Coordinator?

Lamin Drammeh: Yes.

Shannon Polvi: President's office.

Lamin Drammeh: Yes, she was, the President relocated her with the office. I'm sorry, I thought I turned this off. I'm sorry, I turn it off but I must put in my password. I did not. My apologies.

Shannon Polvi: When the President stamp is used for signatures, does it require the authorization of the President prior to it being used?

Lamin Drammeh: That's my understanding.

Shannon Polvi: And do you know of any time that Miss Jackson ever used the stamp or she was not authorized to do so?

Lamin Drammeh: No.

Charles Boykin: Object. He would have no way of knowing that every time. He's not with her all the time or the President all the time to know that, so that has to be beyond his knowledge Mr. Chair.

Kevin Maroney: I think the question was does he know of any time she had used it and I believe he was about to answer. I think that's an acceptable question. It's not a general I know, do you ever, have you ever heard of it. Does he know of anytime she has not. He, does he know of any time that she has not.

Charles Boykin: Okay. Thank you.

Lamin Drammeh: No I'm never aware of it.

Shannon Polvi: When an employee, during the time frame of your employment with Denmark Technical College, were you privy to when employees received supplemental pay?

Lamin Drammeh: Where, yes sometimes I am because I in the latter part of my you know, employment at Denmark Tech I would be aware when people have

supplemental pay because it originates from the area. The division of supplemental pay could be you know, additional classes to teach. The supplemental pay could be an action, personnel action form that originate from somewhere.

Lamin Drammeh: The President wanted to provide some control over how those process is made and he put me in a position. Anything over $500 I could put an ey on it before it get to his pathways and that was intended to control cost as well as address challenges. Any dollar value more than $500 supposed to come by my office and I normally take a look at those, yes. But to say it is mainly to answer, to ask a simple question whether the need from the services there from the originating agency or department or unit or not to.

Charles Boykin: I'm gonna object. He needs to respond to the question. He's testifying about something that wasn't asked. It was almost in that yes and no question and he's going into something totally different.

Lamin Drammeh: I said yes.

Kevin Maroney: It's, Mr. Boykin, he's answered yes and he's giving some sort of background on where it originated from. I think he can go forth with that.

Charles Boykin: Thank you.

Lamin Drammeh: Yeah.

Shannon Polvi: Did you have anything further before I ask you the next question?

Lamin Drammeh: You can ask me another one.

Shannon Polvi: Okay. In regards to the policy that you just mentioned that Doctor McIntyre put in place in regards to further oversight for costs over $500, what was the purpose of that? That he communicated to you or that you understood it to be?

Lamin Drammeh: Well, we inherited some challenges at the college. There are some policy changes at Federal level called the 150% rule. Which requires individuals who enroll in the technical college to graduate within two years. Many of individuals, our students were at Denmark Tech where they are in excess of three years.

Lamin Drammeh: Their eligibility for financial aid was non-existent. They had to pay out of their pockets to go to college because they stayed longer. We have lost a lot of students who are caught in the process, so the enrollment precipitously dropped. And to maintain the viability of the institution, to safeguard the financial fiduciary responsibility and to make sure we are not spending we don't have, it become necessary for the President as he envisioned to have another set of eyes. And he thought I would do a good job to take a look at it and make

sure we control that part as we look at the enrollment that was dropping to see how we can fix it.

Lamin Drammeh: We lost about 928 students who couldn't come back. Who were eligible last semester. They can't come back this semester because they don't have no aid; exhausted their aid. They were there five, six, seven years. Moved from one program to another. They are no longer could come.

Lamin Drammeh: We have individuals who are in full employment occupations. There's a new policy at the Federal level that if you graduate from welding, you need to get a job in welding. If you are in Footlocker, that is not gainful employment. That impact the program that you graduate from. The funding for those programs are financial aid, Denmark Technical College is 97.9% financial aid eligible institution.

Lamin Drammeh: If you are faced with those challenges, you have to safeguard your cost infrastructure. And that was the basis for it. Funding you know, was, will be impacted so we look at those, so I put an eye on to cut back unnecessary expenditure to look ahead. That's why the decision was made by the President. I said, cost saving measure as we develop the strength strategy for increasing enrollment and diversify the means of having no students. Which is the backbone for the college. Because students are a source of revenue.

Shannon Polvi: And once Dr. McIntyre asked that costs over 500 be earmarked with some further identification, is it your understanding that that was for the expectation to try to monitor those calls?

Lamin Drammeh: That was it. I don't have enough time, I was busy doing so many things. Additional set of eyes on a task is just mainly for safeguarding the, not to harden the bureaucracy process, so it's pure only to make sure you know we can look at those first.

Shannon Polvi: And when Miss Jackson was placed into the interim Dean role, was that to fill a vacancy from someone else leaving the role?

Lamin Drammeh: That's my understanding, yes ma'am.

Shannon Polvi: When Miss Jackson was placed in the interim Dean for Transitional Studies role, did that prevent the need of meeting the hire, a new hire into that role?

Lamin Drammeh: That was part of the thinking.

Shannon Polvi: Was that a cost saving measure?

Lamin Drammeh: At the time for the institution it would be.

Shannon Polvi: And at the time Miss Jackson was promoted to the interim Dean role at Transitional Studies, were you aware of her completing her master's degree?

Charles Boykin: I'm gonna object to this continuous leading of the witness mainly. You know she can ask a question but these questions that suggest an answer, wholly inappropriate on direct.

Kevin Maroney: I don't know if you can restructure your questioning a little bit.

Shannon Polvi: When Miss Jackson was in the Executive Coordinator role, are you aware of her pursuing a master's in business administration?

Lamin Drammeh: When I came on to Denmark Technical College in June 2014, by the middle of the summer I was aware that she's pursuing a Master's degree.

Shannon Polvi: And what if any benefit to the college would Miss Jackson receiving a master's in business administration have?

Lamin Drammeh: I thought it was an accomplishment. She was doing it before we got there. She have a lot to offer. She taught classes you know. As an Adjunct and you know, as a Coordinator in the President, management experience is very important in executive leadership. I thought that's an asset as well. You know, facilitating meetings and coordinating efforts, she have done that. And to much of her success is part of it.

Shannon Polvi: How was her performance in regards to the college based on your personal observations?

Lamin Drammeh: Very instrumental. When I came there, they have 37 non-compliances. I know how to do to fix them, we have to rely on so many people. She worked with us on issues that are important. I set a task force to mitigate multiple challenges. She coordinated some of that with me, I delegated responsibilities to her to help me conduct meetings. I was new there, so she supported me and the college is better for it.

Lamin Drammeh: If you have no findings and no recommendations, after 37 compliance by lessons, you don't do that by yourself. You do it with a group and I think happened to be so that was in it.

Shannon Polvi: Are you aware of whether there was an application process for tuition reimbursement?

Lamin Drammeh: I'm not aware of that as much as when I came she was already in the program.

Shannon Polvi: What is your understanding of the tuition reimbursement program at Denmark Technical College?

Lamin Drammeh: Very little knowledge, other than the fact that I know it exists.

Shannon Polvi: What employees are you aware of who have utilized the tuition reimbursement program?

Lamin Drammeh: I know Miss Jackson had it because she get her master's degree, I was already on-board. I also heard individuals at the college has participated in the programs before.

Charles Boykin: Object, he's getting into hearsay.

Lamin Drammeh: I do know one person. I do know one person.

Kevin Maroney: Doctor Drammeh.

Lamin Drammeh: Yes, sir.

Kevin Maroney: If you know of a person.

Lamin Drammeh: Yeah, I do know one person who's paperwork came to my office who had a tuition reimbursement. Had to call it, who was a doctoral program and that was the first time and I questioned what is the criteria for it. I know one person who has participated in the program.

Kevin Maroney: I have authority to ask a question. A clarifying question. Do you know that other staffers used the-

Lamin Drammeh: Yes, I know one staffer used-

Kevin Maroney: The reimbursement program?

Lamin Drammeh: One staffer have used reimbursement program that I'm aware of.

Shannon Polvi: May I ask a follow up? Who was the staffer you have personal knowledge of?

Lamin Drammeh: Her name is Teresa Mack.

Shannon Polvi: And what was her role at that time?

Lamin Drammeh: Miss Mack was the Director of Title Three Programs at Denmark Technical College. And at one time she has served as interim Vice President for Student Affairs.

Shannon Polvi: And I think you mentioned just previously that you saw some paperwork. What type of paperwork did you see?

Lamin Drammeh: It was a, there was a payment for courses taken.

Shannon Polvi: And would that be the reimbursement authorization?

Lamin Drammeh: It could be, yes.

Shannon Polvi: If I draw your attention to page 149 of the record.

Lamin Drammeh: Yes, ma'am.

Shannon Polvi: This document is from 149 to 151 is entitled a request for professional development assistance with the name of the applicant being Carla Jackson. Had you received this type of form before?

Kevin Maroney: And it's on the screen if you'd like to look up there Dr. Drammeh.

Lamin Drammeh: I'm not familiar with it.

Shannon Polvi: And would the tuition assistance or developmental assistance type of request go to which office within the Denmark Technical College?

Lamin Drammeh: The President's office.

Shannon Polvi: And looking at the division that's listed here, it says President's office. Is that the same that you're referring to?

Lamin Drammeh: Yes, ma'am.

Shannon Polvi: And were you aware of whether the college had any type of written oversight in regards to-

Charles Boykin: I'm gonna object to this entire line of questions for this witness. This is clearly before he joined the college. He's reading from the form. It has to be somebody with better evidence than him. And I think that his testimony is not competent under these circumstance. And it would prove cumulative, unless you would stipulate that she will not use this form with anyone else again. Because all he's doing is reading from the form and explaining it.

Shannon Polvi: Not at all, I'm just identifying what as he being the second in command of the President, what part of the tuition reimbursement he has in it. By no means would I stipulate that I'm not gonna ask other witnesses about it. That's directly vital to the grounds listed for my client's termination.

Kevin Maroney: She's asking questions about the form about his knowledge. If he doesn't know anything about the form or the questions being asked, he will say that. And that's just out there. It's not cumulative just his testimony.

Charles Boykin: Accept the Chair's rule but ask about, remind the Chair of the cumulative testimony piece.

Kevin Maroney: Keep it in mind.

Shannon Polvi: In regards to tuition reimbursement, how common was it at Denmark Technical College to the best of your knowledge?

Lamin Drammeh: Not that common, not common to my knowledge.

Shannon Polvi: And would an applicant have to have a reason to assist the college in order to request tuition reimbursement?

Lamin Drammeh: That would be the motivation.

Shannon Polvi: In regards to the President's stamper ... How often did you observe it being used when you were physically in the President's office?

Lamin Drammeh: Not that much.

Shannon Polvi: When you were in the President's office, did you ever observe the President give permission to anyone within the staffing to use the stamper?

Lamin Drammeh: Yeah, he have given permission to Miss Jackson, mm-hmm (affirmative).

Shannon Polvi: How would you describe the frequency of documents that come in on a daily basis for the President to need to address attention to?

Lamin Drammeh: The ... The President's office no matter where you are, small college, large college, it's a busy place. A lot of things come to President's office and you know, that's why you have support staff in there. It will be very common and frequent that a lot of documents will come to the President's office.

Shannon Polvi: I'd like to turn your attention to page 68 of the record.

Lamin Drammeh: Yes ma'am.

Shannon Polvi: This is a document dated February 15th, 2017.

Lamin Drammeh: Mm-hmm (affirmative).

Shannon Polvi: And it places Miss Jackson on investigatory suspension without pay.

Lamin Drammeh: Mm-hmm (affirmative).

Shannon Polvi: Effective immediately for allegations surrounding your involvement in improper conduct with regard to college operations. In regard to this document, did-

Charles Boykin: Madame Chair, either he can identify the document or he can't. Just-

Shannon Polvi: I'm just about to ask him if he's ever seen it.

Charles Boykin: Testifying from the document.

Kevin Maroney: Get to the question and then we'll make a ruling.

Shannon Polvi: Right. My next question was gonna be have you ever seen this document before?

Lamin Drammeh: Not this particular document but I'm familiar with this language.

Shannon Polvi: And did Dr. Hall who's the signator here speak with you about this document at any time prior to today?

Lamin Drammeh: On a matter of Carla Jackson, no.

Shannon Polvi: And did, were you asked at any time whether Miss Jackson had engaged in any type improper conduct with regard to college operations?

Lamin Drammeh: In my capacity-

Charles Boykin: I object. The date on this, I think we need to establish whether or not he was even physically at the college during this time.

Kevin Maroney: What was the question Miss Polvi?

Shannon Polvi: Whether prior to this date, February 15th, 2017 he had been asked whether Miss Jackson had engaged in improper conduct with regard to college operations?

Kevin Maroney: During his time at the college?

Shannon Polvi: Right. This that he's testified that his employment ended on June 30th, 2017. This is February 15th, 2017. He was an employee of Denmark Technical College.

Kevin Maroney: Please answer the question Dr. Drammeh.

Lamin Drammeh: What's the question one more time?

Shannon Polvi: Sure. Is that in regards to that last phrase in the first paragraph, were you ever asked about whether Miss Jackson engaged in improper conduct with regard to college operations?

Lamin Drammeh: As the most Senior Vice President, no I was not consulted on the matter.

Shannon Polvi: I'd like to draw your attention to page 23 in the record.

Lamin Drammeh: Yes, ma'am.

Shannon Polvi: This document is dated May 11th, 2017. It's a termination, it is to Miss Jackson. Have you ever seen it prior to today?

Lamin Drammeh: No.

Shannon Polvi: In this sentence, the second to last sentence in the first paragraph I'm gonna ask you whether you were asked about it prior to Miss Jackson's termination. Were you ever asked about whether Miss Jackson had engaged in willful violation of rules, regulations and written policies which constitute conduct unbecoming a state employee?

Lamin Drammeh: No.

Shannon Polvi: And looking at the second paragraph relates to a receipt of tuition payments. Prior to the end of your employment with Denmark Technical College, were you asked about Miss Jackson receiving tuition payments?

Lamin Drammeh: No, ma'am.

Shannon Polvi: And same question in regards to this later sentence, which talks about the sentence that starts with additionally. It says within your role as Administrator Coordinator I to the President, you received pay increases which were approved using the President's stamp. But had no supporting documentation. Were you asked about that accusation?

Lamin Drammeh: No. None of that I was asked.

Shannon Polvi: To the best of your knowledge, was Miss Jackson's receipt of tuition reimbursement authorized by the college?

Lamin Drammeh: Yes.

Shannon Polvi: And to the best of your knowledge, did Miss Jackson ever engage in issuing herself pay increases?

Lamin Drammeh: No.

Shannon Polvi: And look at page-

Lamin Drammeh: She can't pay herself an increase. No institutions work like that.

Shannon Polvi: What were the measures in place to ensure that someone else did issue the pay increase?

Lamin Drammeh: I discussed earlier that a personnel action form originates from the source of home domain. And-

Charles Boykin: Asked and answered. He prefaced, he discussed earlier, which meant you asked the question earlier.

Lamin Drammeh: No. What I meant to say, I have-

Shannon Polvi: Hold on one second.

Kevin Maroney: One second. Dr. Drammeh are you going to be giving additional information?

Lamin Drammeh: Yes. I'm providing additional context because the question is different. In my response, I predicated that personnel action originates from a home or a domain. It matriculate to perform to signatures justification to the President's office where the final signature resides.

Lamin Drammeh: For Miss Jackson to have an increase it has to originate from somewhere and it has to matriculate all the way to the President's office. In that capacity, no person at the institution can just give themselves an increase. That's different from whether somebody you know, can get a raise. And that was the question before because you can get an increase by doing additional supplemental work. And then adjunct professor can be given additional workload that you are compensated for.

Lamin Drammeh: But the system will not allow me to give myself a raise, even though I'm the Vice President. Nobody, somebody have to initiate it the paperwork, and that's the process at Denmark Technical College when I was there.

Shannon Polvi: Now I'd like to.

Kevin Maroney: Dr. Drammeh, Counsel realized that this can be kind of testy. Let's try to keep decorum, keep our tongues lowered as we proceed forward okay.

Shannon Polvi: Yes. If you can check, turn to page 238.

Lamin Drammeh: Ma'am.

Shannon Polvi: This document is entitled at the top, DTC Departmental Request for Personnel and Payroll action form. Are you familiar with this form?

Lamin Drammeh: Yes. I was familiar with it.

Shannon Polvi: And is this form a standard form used by Denmark Technical College?

Lamin Drammeh: Yeah and this is the, this one describe what I explain. It's exactly what I explained. As an originator of the signature and it went all the way down to the President, so that's the process.

Shannon Polvi: And when we look, if you'll just scroll just a little bit more for me. Thank you, appreciate it, just a little bit more. That number six, is that your signature?

Lamin Drammeh: That's correct.

Shannon Polvi: And would this type of signature be needed for personnel documentation, be it somebody above Miss Jackson approving?

Lamin Drammeh: Yes. Miss Jackson's supervisor was the original signature on line number one. Miss Jackson's signature is also the original signature for line number two. And it went to the Vice President for Finance to make sure the money is there. The Vice President Finance signs. And it goes to you know, Human Resources but before it get to Human Resources to process, it come to my desk to see 'cause it will be in excess of $500 to see whether that funding is there.

Lamin Drammeh: And when the Vice President of Finance sign, I am convinced because we made it clear to him, he only sign when the money's there that the funds are available. The funds is available, I want to make sure point number two, whether the action being taken is warranted. If the Vice President of Academic Affairs signed that paperwork, that tells me it is warranted and that's item number one and two on this document. I sign. And when I sign I ask those questions.

Shannon Polvi: And looking up if we can scroll up just a little bit. Sorry, yeah the other, thank you. When we look at the sections four, or excuse me, six and seven, it says current position information, new position information. What is your understanding of what that means within the document area there? Which might be easier to see one in front of you.

Lamin Drammeh: Can you tell me where you are looking at?

Shannon Polvi: The box six and seven for current position and new position. What does that information mean to you as in the acronyms, things of that sort?

Shannon Polvi: I can better clarify if that can help.

Lamin Drammeh: Yes, please.

Shannon Polvi: Sure. Is it under the current position box there's a position on title listed, it says interim Dean, comma TS. Is it your understanding that that would be the at this time of the document, Miss Jackson was in the interim Dean for Transitional Studies position?

Lamin Drammeh: Yes, mm-hmm (affirmative).

Shannon Polvi: And then looking at the column just to the right of that it says new position. It says interim Dean-

Charles Boykin: I object, she's testifying. He's not familiar with the form. But she's having to explain to him what it means and he says, "Well, yes." This is getting far field Mr. Chair, Madame Chair.

Kevin Maroney: I believe that Mr., that Dr. Drammeh said that he is familiar with the form. The questions could be restated a little more open ended.

Charles Boykin: Sure.

Kevin Maroney: Make a better practice of that going forward. But I don't think there's anything inappropriate in Dr. Drammeh's testimony so far.

Shannon Polvi: Before the column under the new position it says interim Dean and it has the initials BCRT. What is your understanding of what that means?

Lamin Drammeh: If the question is the difference between the two, the difference is one is previous position, the other is a new location, new position, new unit within the college. Transitional Studies and BCRT is different, so she's moving from one to another or she's doing and move position.

Shannon Polvi: What type of responsibilities would change when Miss Jackson changed from being the interim Dean of Transitional Studies to the interim Dean of Business Computer and Related Technologies?

Lamin Drammeh: It's two different departments.

Shannon Polvi: And what the, I'm sorry.

Lamin Drammeh: Doing two different functions. One is to assist on a studies, the other one is business computer analytic technologies. One is remedial causes, the other one is in a associate degree program. With certificate programs within the department.

Shannon Polvi: And would it be appropriate for Miss Jackson to receive a pay increase for changing the position?

Lamin Drammeh: That this is how we do the Presidents, that this will be, yeah that would be appropriate. That would be Admin Head, that would be appropriate as well. If we be the Vice President of Academic Affairs, it would all be appropriate because it's more responsibility, more duties.

Shannon Polvi: Was Miss Jackson's pay for her interim Dean roles commensurate with other interim Dean and Deans in those roles at the college?

Lamin Drammeh: I would assume.

Shannon Polvi: When a new position is obtained and a payroll action form of this sort is signed and authorized, what happens next?

Lamin Drammeh: The signature process is initiated. The paper get to human resources and it is processed.

Shannon Polvi: And in regards to Miss Jackson's pay increases for the supplemental duties, did she initiate those processes to the best of your knowledge?

Lamin Drammeh: When documents get to my office for any document, it is clearly stated where it originate from. The Department of Transitional Studies and the Department of Business Computer Analytic Technologies are under the Division of Academic Affairs and there is a Division Head. That person initiates the paperwork and according to this document here, that has been what I'm tell, and that's why my signature is on it.

Shannon Polvi: To the best of your knowledge, has Miss Jackson ever violated any rule or procedure warranting a reprimand?

Lamin Drammeh: I'm not aware of any. No.

Shannon Polvi: Those are all my questions and Mr. Boykin may have questions for you. It's his opportunity to do so.

Glenise Elmore: Before we start, quick question sir. How long did you believe your questioning might take? If you had to guess.

Charles Boykin: Thirty to forty five minutes at the outside.

Glenise Elmore: Then we may have crossed. How about this, since we're gonna be wrapping up at 3:30 I believe today, let's go ahead and break for lunch. And we can start back with your cross.

Charles Boykin: Okay.

Glenise Elmore: That okay? All right, so right now it is 12:25. Let's reconvene at 1:30.

Glenise Elmore: All right. Go ahead now with the agency.

Charles Boykin: Dr. Drammeh.

Dr. Drammeh: Good afternoon, sir.

Charles Boykin: How are you, sir? You have a good lunch?

Dr. Drammeh: Yes, indeed.

Charles Boykin: Wonderful.

Dr. Drammeh: I haven't had anything, but I'm good.

Charles Boykin: Okay. That's good. You were Vice President of Research at the institution, at Denmark Tech, is that correct?

Dr. Drammeh: That's one of the positions I held there when I was there.

Charles Boykin: That was one of the positions you held last. Is that right?

Dr. Drammeh: Yes, sir.

Charles Boykin: Okay. You had the position because of your skills in the area of research. Isn't that true?

Dr. Drammeh: I'm an expert in the area.

Charles Boykin: You're an expert in the area. That's a "yes." Okay. You were paid a base salary for performing the duties of that position. Isn't that correct?

Dr. Drammeh: I would assume.

Charles Boykin: You would assume. That base salary would have been how much? Just for the record, Dr. Drammeh.

Dr. Drammeh: Not off my head directly.

Charles Boykin: I'm sorry?

Dr. Drammeh: I said, "Not off my head directly."

Charles Boykin: You don't remember how much you were making? Okay. That's all right. Now, you were given a supplemental research assignment, weren't you?

Dr. Drammeh: Supplemental research assignment at the college? Yes.

Charles Boykin: Yes. Okay. That research assignment ... You were also given a supplemental salary for that, weren't you?

Dr. Drammeh: Yeah. The President assigned a supplemental salary for that assignment.

Charles Boykin: To make sure we're together ... You don't recall what your base salary was. Is that correct?

Dr. Drammeh: I don't recall my base salary offhand right now.

Charles Boykin: Okay but you would acknowledge that you were paid an additional $15,000 to perform supplemental research. Isn't that correct?

Dr. Drammeh: I was assigned to be paid $15,000.

Charles Boykin: Okay. In fact, you prepared the payment schedule to give to the college telling you when you were to be paid that $15,000. Isn't that correct?

Dr. Drammeh: I provided a proposed breakdown of the salary amount into the year.

Charles Boykin: Okay. Madam Chair, I had no idea what the witness would testify to. I have documents evidencing that. I'd like to see if you could identify them on behalf of the ... Show them to opposing Counsel. Let's see can we put this in the record.

Shannon Polvi: I don't believe they're already in the record on appeal.

Charles Boykin: They're not?

Shannon Polvi: Why don't we just object to their relevance in terms of for this witness, though I am willing to stipulate to its inclusion if the same latitude is given to me later in terms of some other documents.

Kevin Maroney: Well to clarify, Exhibit 1 has been set. No neither party is prevented from introducing documents at this hearing. Of course you'd be able to introduce documents as well.

Charles Boykin: The admissibility would be subject on the probative value of the document, I would assume, which is standard for admissibility.

Kevin Maroney: That's correct. I don't think Ms. ... The lawyer is objecting. Are you objecting to its inclusion?

Shannon Polvi: Well I guess it's just in term ... I'm objecting to its probative value on his pay. I mean, his pay isn't relative to the issues of why we're here today.

Kevin Maroney: If this is for impeachment purposes ...

Charles Boykin: This is for ... It's not exactly impeachment. A part of the grounds deals with the ethical behavior of Ms. Jackson. We're not impeaching him but they get to measure his credibility because he's participated in the same type situation. His base job is institutional planning research and something else.

Charles Boykin: Here, another document I'm going to give to her deals with the supplemental research assignment that he had to receive $15,000 in excess of what his base salary was for doing what he was hired to do. I think that that is quite probative when he comes to testify on behalf of somebody else on their ethical consideration before this panel.

Kevin Maroney: Yes, that'd be Rule 608(c) Evidence of Bias. We'll go ahead and look unless you have an objection.

Charles Boykin: I'll let you take a look at both if it's okay with Madam Chair. Let her take a look at both so she can look closer, object if she chooses.

Shannon Polvi: Just to clarify, there's something in here that says, "See Attached," is this what the "See Attached" is?

Charles Boykin: Yes.

Shannon Polvi: Or is this the incomplete-

Charles Boykin: That would be the attached.

Shannon Polvi: Okay.

Charles Boykin: I apologize for just walking without asking for permission.

Shannon Polvi: That's all right. I would object on relevance. I don't think it's an impeachment issue. I stand up my objection just being that it's irrelevant.

Charles Boykin: It's a bias-

Shannon Polvi: And outside the scope of direct examination.

Charles Boykin: Latitude on cross and it goes to bias which is appropriate.

Kevin Maroney: I think this falls within Rule 608(c). If it starts to stray beyond that, I will interject.

Charles Boykin: Okay.

Kevin Maroney: If you want.

Shannon Polvi: All right.

Charles Boykin: At this juncture, I move to have this admitted into the record.

Shannon Polvi: I'll need copies as well, based on however you rule but still even if they're made proffered I should have copies.

Kevin Maroney: Yes.

Charles Boykin: Yes.

Kevin Maroney: Okay. I'm going to allow it for the moment, see where the questioning goes.

Shannon Polvi: What are they going to be marked as? Agency One?

Kevin Maroney: Agency One.

Charles Boykin: For introduction, I'm moving away from this document but mainly I wanted the document in to show his participation in some of the very things that we're concerned about.

Shannon Polvi: Okay I'm sorry but he's let it in. You can't tell them what you want. You need to do it as questions.

Charles Boykin: Oh.

Kevin Maroney: Yeah. I'm-

Charles Boykin: Well if it's in ... Okay. You can see where it goes.

Kevin Maroney: It's let in, it's new. I'm sure Ms. Polvi-

Shannon Polvi: Right.

Kevin Maroney: ... knows that she can address it-

Charles Boykin: Okay.

Kevin Maroney: ... on reexamination because it's a new subject. She will have the ability to recall or to ask questions. Yes, you may continue your questioning.

Charles Boykin: Now Ms. Jackson was assigned additional duties but she never gave up the position of Executive Assistant to the President. Is that correct Dr. Drammeh?

Dr. Drammeh: What's the question, Mr. Boykin?

Charles Boykin: I'm sorry?

Dr. Drammeh: What's your question, sir?

Charles Boykin: Okay. Ms. Jackson was assigned additional duties while she was employed with the college but she never gave up her primary position as Executive Assistant to the President. Isn't that correct?

Dr. Drammeh: I'm not aware.

Charles Boykin: Okay. You have no knowledge of that?

Dr. Drammeh: Correct.

Charles Boykin: You testified that deficiencies existed at the college in the area of its re-accreditation efforts. I believe you gave a number. Is that correct?

Dr. Drammeh: That's correct, sir.

Charles Boykin: Okay, and that those deficiencies existed when you arrived.

Dr. Drammeh: They were inherited. We found them there. I came on June 1st. The compliance report that came passed 37 non-compliances.

Charles Boykin: Okay. You found Ms. Jackson there in the President's office and you came as well on June 1st, didn't you?

Dr. Drammeh: Yeah. When I came on-board, Ms. Jackson was working in the President's office.

Charles Boykin: Those deficiencies occurred while she was in the President's office. Is that correct?

Shannon Polvi: Object on the form he'd have no personal knowledge.

Dr. Drammeh: I wouldn't know. I wasn't there.

Kevin Maroney: I think the ... Wait, well he's on cross so he can give a leading question. The question is would those have been existed during the time Ms. Jackson was there to the best of your knowledge. You can answer accordingly.

Dr. Drammeh: I would assume.

Charles Boykin: Now it's fair to say that Ms. Jackson had a very important position at the college. I believe that was your testimony. Is that correct?

Dr. Drammeh: Don't put words in my mouth, sir. I said she was a support staff to the President, and I'm assuming that position is important.

Charles Boykin: Is it correct that she had an important position at the college?

Dr. Drammeh: As an assistant to the President. Assistant Coordinator, I believe, that would be correct, sir.

Charles Boykin: Okay. That position would require her to have the trust of the President. Would you agree?

Dr. Drammeh: Yes, sir.

Charles Boykin: It would require her to have the President's confidence. Would you agree?

Dr. Drammeh: I would assume.

Charles Boykin: It would require her to be able to handle a significant amount of complex activity. Would you agree to that?

Dr. Drammeh: I would assume.

Charles Boykin: Would you also agree that it required her to behave or to conduct her affairs in an ethical manner?

Dr. Drammeh: Every employee should.

Charles Boykin: Okay. My question is would it require Ms. Jackson to conduct herself as an employee of the college in an ethical manner.

Dr. Drammeh: Yes, sir.

Charles Boykin: As an ethical person, Ms. Jackson would be expected to avoid even the appearance of putting her self-interest above the college. Isn't that correct?

Dr. Drammeh: Any position of authority should have ethical values.

Charles Boykin: Okay. Let me say it again. Maybe it wasn't clear. As an ethical person, Ms. Jackson would be expected to avoid the appearance of putting her self-interest above the college. Isn't that correct?

Dr. Drammeh: Before her self-interest?

Shannon Polvi: Objection. Asked and answered.

Kevin Maroney: I'll go with Asked and Answered. Let's move on to the next question.

Charles Boykin: While you were at Denmark Tech, how many times did you see a person rise directly from the position of Administrative Coordinator to the position of Dean?

Dr. Drammeh: I have not been at Denmark Tech long enough. That's subjective.

Charles Boykin: Okay. My question is-

Kevin Maroney: Dr. Drammeh if you don't have a basis on which to answer definitively say, "Unaware" but I think that's a fair question in testimony.

Dr. Drammeh: Okay.

Charles Boykin: Okay. I will restate the question so that the panel can hear his answer for the record. Is that okay?

Kevin Maroney: That's totally acceptable.

Charles Boykin: Okay. While you were at Denmark Tech, how many times did you see a person rise directly from the position of Administrative Coordinator to the position of Interim Dean?

Dr. Drammeh: Not that I'm aware of.

Charles Boykin: I'm sorry?

Dr. Drammeh: I said, "Not that I'm aware of."

Charles Boykin: Not that you're aware of.

Dr. Drammeh: Mm-hmm (affirmative).

Charles Boykin: But the testimony here is that Ms. Jackson was an Administrative Coordinator in the President's office. Isn't that correct?

Dr. Drammeh: That's correct.

Charles Boykin: She became an Interim Dean. Isn't that correct?

Dr. Drammeh: That's correct.

Charles Boykin: Okay. We know from that testimony that you are aware of at least one. Isn't that correct?

Dr. Drammeh: That's correct.

Charles Boykin: Okay. Are you aware of any others, Dr. Drammeh?

Dr. Drammeh: Not to my knowledge.

Charles Boykin: Okay. Not only did Ms. Jackson rise to the point of Interim Dean in one program, she moved from that program to become Interim Dean in another program. Isn't that correct?

Dr. Drammeh: That's correct.

Charles Boykin: Okay. Dr. Drammeh, you were second to the President at the college, weren't you?

Dr. Drammeh: I'm an Assistant to the President.

Charles Boykin: Okay. Would it be fair to say you were second in command at the college?

Dr. Drammeh: Not at the time I left.

Charles Boykin: I-

Dr. Drammeh: I said, "Not at the time I ... " had departed the college.

Charles Boykin: Okay.

Dr. Drammeh: And you know that, Mr. Boykin.

Kevin Maroney: Dr. Drammeh.

Dr. Drammeh: Yes, sir.

Kevin Maroney: On cross-examination-

Dr. Drammeh: Okay.

Kevin Maroney: ... please just respond to his question.

Dr. Drammeh: Okay. Not at the time I left the college, sir.

Charles Boykin: Okay. Well when did you leave the college?

Dr. Drammeh: June 30.

Charles Boykin: You left June 30th. What was your position?

Dr. Drammeh: I was Vice President of Research Planning as an Assistant to the President.

Charles Boykin: Did you get something saying that your responsibilities were relieved of being second in command?

Dr. Drammeh: I will no longer have the position of Executive Director.

Charles Boykin: Okay. That's what changed. Okay. How many courses does Denmark Tech require a Dean to teach?

Dr. Drammeh: I don't know.

Charles Boykin: Okay. Would you disagree with me if I said that a dean was required to teach two courses per semester?

Dr. Drammeh: I don't have no opinion. I don't know.

Charles Boykin: You have no basis to disagree with me on that?

Dr. Drammeh: I have no comment. I don't know.

Charles Boykin: Are you aware of any courses that Ms. Jackson taught?

Dr. Drammeh: I have seen paperwork receipt of some classes.

Charles Boykin: Okay. Having seen paperwork that she taught classes, what paperwork ... Well let me put it this way, that makes you aware that she taught classes then?

Dr. Drammeh: I have saw Personnel Action Form.

Charles Boykin: Okay. If you saw a Personnel Action Form, that would mean that she was getting paid for those courses, wouldn't it?

Dr. Drammeh: Everybody who taught class, it's there.

Charles Boykin: Okay. If two classes were required for a Dean, then you would believe that a dean would be required to be paid supplementally as well?

Dr. Drammeh: I don't understand your question, sir.

Charles Boykin: Okay. If I understood the premise of what you just said, that everybody who taught got paid extra.

Dr. Drammeh: That's not the question. You asked me whether-

Charles Boykin: Okay. I'm not asking you the question. I'm-

Dr. Drammeh: You asked the question whether Ms. Jackson was paid for teaching supplemental courses. That's what your question was.

Charles Boykin: Yes. You said everyone who taught got paid supplementally. That is not how you answered me. I don't want to argue with you. Let me just move on. Yeah.

Kevin Maroney: Gentleman, please. Mr. Boykin is entitled to ask questions. Dr. Drammeh please just answer them to the best of your ability unless an objection is made by your attorney or something is said by me.

Dr. Drammeh: Yes, sir.

Charles Boykin: Thank you. Okay. We are at the point where you're saying that you saw paperwork where Ms. Jackson was paid for teaching courses. Okay. My question is are you aware, or excuse me, strike that. If a dean is required to teach two courses, would that dean receive supplemental pay?

Dr. Drammeh: I don't know.

Shannon Polvi: I would object to that question as putting he hasn't testified whether deans have to teach courses or not. You're putting a false assumption in the question based on taking his context out of what his testimony was.

Kevin Maroney: I think Mr. Boykin asked if deans had to ... I mean, yes, there is a premise that Mr. Drammeh did testify to, he said he doesn't know. But Mr. Boykin asked if deans have to teach two courses, would they then be paid supplementally for teaching the courses.

Dr. Drammeh: I said I don't know.

Charles Boykin: Okay. That's a fair answer. Dr. Drammeh, does ethics ever require a person to say thanks but no thanks?

Shannon Polvi: Object to the form. I mean, that's speculation in terms that it's not clear to me what you're asking.

Kevin Maroney: Ethics is undefined but Dr. Drammeh can answer whether he understands or answer as best you can the question.

Dr. Drammeh: I don't understand his question.

Charles Boykin: Okay. As an expert in leadership, are persons expected to avoid conflicts of interest?

Dr. Drammeh: I would assume, yes.

Charles Boykin: Did you ever evaluate Ms. Jackson during her term or during your employment with the college?

Dr. Drammeh: She is not my direct report.

Charles Boykin: Okay. When you, say, talk about the job she did that was afar. Wasn't it?

Dr. Drammeh: Pardon?

Charles Boykin: When you spoke about her performance in her position, that was an observation from afar. Wasn't it?

Dr. Drammeh: No.

Charles Boykin: You had firsthand knowledge about her performance.

Dr. Drammeh: We have 37 non-compliances that the college has to address that involve both the executive leadership as well as the board. She played a role in facilitating those. I am speaking from that perspective, not as an evaluator. But as an observant of her contribution to an effort to mitigate 37 non-compliances. That was a success and I think she ... I'm crediting that as many others.

Charles Boykin: Okay. You testified that Teresa Mack participated in the college's tuition reimbursement program. Is that correct?

Dr. Drammeh: I said I am aware of her participating, submitting the documentation for a tuition payment.

Charles Boykin: Okay. Are you aware of the source of funds for the tuition reimbursement program?

Dr. Drammeh: No.

Charles Boykin: Okay. No idea. Okay. But Teresa Mack was ... You testified earlier that her position was Director of Title III. Isn't that correct?

Dr. Drammeh: I indicated that Ms. Mack was Director of Title III but she also has served as Interim Vice President for Student Affairs.

Charles Boykin: Okay.

Dr. Drammeh: You will see that right here.

Charles Boykin: If she participated in the tuition reimbursement program, would it be ethical for her to sign off as a Title III Director on her tuition reimbursement?

Dr. Drammeh: I don't know.

Charles Boykin: You have no opinion about that. Could we go to Forms 149 and I'm going to really go to 151, or 149 puts us into context. Let's go to 151 now because that's the signature page. If we stop right here, the signature that's above Title III Director, who's signature would that be?

Dr. Drammeh: I wasn't there when it happened.

Charles Boykin: Okay.

Dr. Drammeh: I don't know.

Charles Boykin: I'm not asking where you were. I'm asking can you read who's signature it is.

Dr. Drammeh: I cannot read little ... No, I don't recognize the signature, sir.

Charles Boykin: Okay. Would you disagree with me if I said it's Teresa Mack?

Dr. Drammeh: I wouldn't disagree with you on anything you said was on the form.

Charles Boykin: Thank you. Okay, great. Okay. In your judgment would it be an ethical violation if on Ms. Mack's request, her signature shows up on the Title III line for herself?

Shannon Polvi: Object to the form. This is entirely irrelevant to why we're here today about Ms. Mack's ... How her forms are signed. Whether they're relevant or ... I mean, if they're not even in the record at this point.

Charles Boykin: Madam Chair, on cross-examination I should be given-

Kevin Maroney: Boykin, on evidentiary examples, I'm going to be making the rules.

Charles Boykin: Well I'm talking to you, but for the record I must address Madam Chair unless I address the chairman correctly. I'll be happy to talk directly to you-

Kevin Maroney: It's fine to address the Chair.

Charles Boykin: But I'm addressing the Chair.

Kevin Maroney: But just so you know that I'll be making the ruling. It's fine to address the Chair for-

Charles Boykin: The rules are clear that you'll be making the ruling but they're also clear that objections should be addressed to the Chair. That's why I keep referencing Madam Chair in that situation.

Charles Boykin: On cross-examination, I'm asking for the latitude that would be afforded to test to his credibility and to test his veracity. Here there is no question that one of the bases that we're relying on is ethical considerations, and persons coming into this room to talk about the behavior and the conduct, I think I should have every right to probe them on their ethical standards, their judgment when it comes to ethics.

Charles Boykin: That's what I'm seeking to do. I'm not arguing with him, I just put a question to him. He can answer it however he chooses and I expect you all to give it whatever value you choose to give it. But I think it's my job to get an answer and that's why I just raised the question that way. I recognize that Mr. Mulroney will be conferring with you to get the answer, but for the record and just to protect the record for myself I'm saying that latitude is what I'm asking.

Charles Boykin: I'm not badgering him. I'm just laying it out so that when it comes time to argue the case at close, I can point to various pieces that went in the record so that I'll get my perspective. I'm certain Ms. Polvi will be able to give hers. That's all I'm asking.

Kevin Maroney: Ms. Polvi, can you restate your objection again for me please?

Shannon Polvi: Is it ... Well it's outside the scope of what's relevant to this case both my direct ... I've tried to give Mr. Boykin some latitude but this is ... He just asked a question about documents that aren't even in the record and haven't been produced as an exhibit to speculate and give an answer about.

Shannon Polvi: There's several objections wrapped into one on this line of questioning about Ms. Mack's documentation, not the documentation that we're looking at here which is Ms. Jackson's documentation.

Kevin Maroney: Regarding the reimbursement, the allegation of the agency is that Ms. Jackson received reimbursement inappropriately. Part of her case has been put up. Dr. Drammeh has said that the reimbursement was approved.

Kevin Maroney: You addressed some forms that I assume Ms. Polvi will ask about or perhaps you're going to ask about again where Dr. Drammeh was signing off on forms for own supplemental pay. The ethics question is you haven't done ...

Kevin Maroney: There is nothing right now that the State Ethics Act has not been put into record. I don't know where that question is going and the general question of is it ethical for someone to do this. You're referring to State Ethics Act. Is there a specific provision you're pointing to that ...

Charles Boykin: For purposes of this witness, what I'm seeking to do is to probe into his understanding of the application of ethics because he's testified regarding the propriety of her involvement in use of the stamp. That's what he's testified. He's testified to that on direct. At some point, my case will come together. I can't put it together all at cross-examination.

Charles Boykin: There are two points, if the court will permit me, there are two point. Ms. Polvi objects because she said that it exceeds the scope of direct. I believe that the lawyer on cross gets wider latitude than direct. Other than that, impeachment would never be possible. That's the one point.

Charles Boykin: The second point is I believe that in testing the witness's propensity for truth as well as his general veracity, I get to ask these type questions that are germane. They are directly relevant to the issues before this court. I get to ask those questions and the panel gets to hear his response and determine the probative value of his response.