

STATE OF NORTH CAROLINA
COUNTY OF BERTIE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DHR 02833

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| Joyce Ann Holley Petitioner, v. NC Department of Health and Human Resources Respondent. | FINAL DECISION |
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This contested case came on for hearing before John C. Evans, Administrative Law Judge, on March 22, 2023, at the Office of Administrative Hearings in Raleigh, NC.

APPEARANCES

For the Petitioner: W. Hackney High, Jr.
The Rask Group LLC
Post Office Box 92
Edenton, NC 27932

For the Respondents: John P. Barkley
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602

WITNESSES

For the Petitioner: Joyce Ann Holley, Petitioner

For the Respondents: Terra Ankrah, Director Division of Vital Records

EXHIBITS ADMITTED INTO EVIDENCE

| EXHIBIT # | EXHIBIT DESCRIPTION |
|------------------|----------------------------|
| 1 | Certificate of Live Birth |
| 2 | 1969-70 School Records |

- 3 1971-72 School Record
- 4 Printout from Social Security Office
- 5 2016 Social Security Statement
- 6 2017 Social Security Statement
- 7 Letter from NC Records
- 8 Letter to NC Vital Records

At the hearing, pursuant to N.C. Gen. Stat. § 150B-30, the Undersigned took Official Notice of 10A NCAC 41H .0903; 10A NCAC 41H .0910; and N.C. Gen. Stat. § 130A-118.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. § 130A-118, 10A NCAC 41H .0903; 10A NCAC 41H .0910.

ISSUE

Whether Petitioner met her burden to demonstrate that Respondent improperly denied Petitioner’s request to amend her date of birth from February 22, 1957 to January 18, 1957.

FINDINGS OF FACT

BASED UPON careful consideration of the sworn credible testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, the Parties’ Proposed Final Decisions, Supplemental Authority, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact and Conclusions of Law.

In making the Findings of Fact, the Undersigned has weighed all the evidence and assessed the credibility of the witnesses. The Undersigned has considered the appropriate factors for judging credibility of witnesses, including but not limited to the demeanor of the witness, and any interests, bias, or prejudice the witness may have. Further, the Undersigned has carefully considered the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case. After careful consideration of the sworn witness testimony presented at the hearing, the documents and exhibits admitted into evidence, the credible evidence, and the entire record in this proceeding, the Undersigned makes the following:

1. Joyce Ann Holley (“Petitioner”) requested that the North Carolina Department of Health and Human Resources (“Respondent”) correct her birth date from February 22, 1957 to January 18, 1957.

2. Petitioner's current birth certificate lists her date of birth as February 22, 1957. (Ex. 1)
3. Petitioner asserts that the February 22, 1957, date is in error and the correct date of birth should be January 18, 1957.
4. Petitioner testified that the discrepancy between February 22, 1957, and her actual date of birth of January 18, 1957, has caused and continues to cause, considerable difficulty and stress. Examples include difficulty in obtaining medical treatment and prescriptions as well as insurance coverage for the same.
5. On March 16, 2022, Respondent denied Petitioner's request due to conflicting information regarding her date of birth. (Ex. 7)
6. Petitioner requested an informal meeting with the State Registrar of Vital Records pursuant to 10A NCAC 41H .0910. (Stipulations of the Parties, ¶2).
7. On January 5, 2023, the requested informal meeting was held. Respondent determined there was "too much conflicting information" to amend Petitioner's birth certificate. (Stipulations of the Parties, ¶2).
8. Petitioner's school records from age 6 through 15 show varying dates of birth (January 18, 1957, February 10, 1957, August 10, 1957). (Ex. 2, 3, and 7).
9. The mother's maiden name of "Doris" in box 12 on the birth certificate is crossed out replaced with "Dorothy." (Ex. 1; box 12). Many years ago, when Petitioner requested a copy of her birth certificate at the Bertie County office, she asked the clerk to correct the name of her mother.
10. Box 19a on the birth certificate requires the Attendant certifying the live birth as an "M.D., Midwife, or Other." This box is marked as M.D. However, Petitioner was born at home and her birth was assisted by a midwife—not a doctor.
11. Box 19c on the birth certificate is entitled, "Date Signed" and is the date the Attendant signed the document. There is no date in Box 19c.
12. Petitioner and her family have always celebrated her birthday on January 18, 1957.
13. Documentation from the United States Social Security Administration shows the Petitioner's date of birth as January 18, 1957. (Ex.'s 4, 5, and 6)
14. Terra Ankrah, Director of the Division of Vital Records, testified that the integrity of the Vital Records system is reliant on reports provided by the witness to events (e.g., live birth).
15. If mistakes were made in the birth certificate and the mistakes were not caught at the time the record was made or by the Office of Vital Records, Respondent's Office of Vital Records would have incorrect information.

16. Petitioner followed the processes outlined in 10A NCAC 41J .0903 and .0910, by which an error to a vital record could be corrected.

17. Respondent asserts there is not sufficient evidence to support a correction to the Petitioner's birth certificate.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of the contested case.

2. To the extent the foregoing Findings of Fact contain Conclusions of Law, or that these Conclusions of Law are Findings of Fact, they should be so considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923 (2012).

3. Petitioner bears the burden of proving at an administrative hearing, by a preponderance of the evidence, that he or she is entitled to relief from the action of the administrative agency. *Richardson v. N.C. Dept. of Pub. Instr.*, 199 N.C. App. 219, 228, 681 S.E.2d 479, 485 (2009); *Overcash v. N.C. Dept. of Env't & Natural Res.*, 179 N.C. App. 697, 635 S.E.2d 442 (2006); *Peace v. Employment Sec. Comm'n*, 349 N.C. 315, 507 S.E.2d 272 (1988); N.C. Gen. Stat. §§ 150B-25.1(a), 150B-34(a).

4. The Undersigned finds both witnesses in this matter to be highly credible and their testimony reliable.

5. A birth certificate is a critical document in the process of determining the date of birth. In this instance, there are several errors and/or omissions contained in Petitioner's birth certificate so as to bring the document's reliability into question. These inconsistencies include a handwritten correction to the mother's maiden name; the lack of a signature date by the Attendant who, presumably witnessed the live birth; and the misidentification of the Attendant as a medical doctor. The items related to the Attendant are particularly troublesome because the integrity of the vital records system is reliant on the recordation of the person who witnessed the live birth.

6. Other available evidence supports Petitioner's claim that her date of birth is January 18, 1957. This evidence includes school records, the Social Security Administration's documentation, and Petitioner's life-long and consistent memory of her and her family celebrating her birthday on January 18, 1957.

7. Respondent did not act arbitrarily or capriciously in denying Petitioner's request. Rather Respondent carefully considered this case and adhered to the process outlined in the regulations for amending vital records. However, the Undersigned finds that Petitioner has met her burden of proof and the finds there is sufficient evidence to support the change requested.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby ORDERS Respondent to correct the error contained in their vital records by amending the date of birth from February 22, 1957, to January 18, 1957.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.**

In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 31st day of March, 2023.

A handwritten signature in blue ink that reads "John C. Evans". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

John C Evans
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

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Attorney For Respondent

This the 31st day of March, 2023.



Christine E Cline
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