

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
08 OSP 01153

<p>Linda K Huggins Petitioner,</p> <p>v.</p> <p>Department of Administration, N.C. Human Relations Commission,</p> <p>Respondent.</p>	<p>DECISION</p>
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THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Respondent's Motion for Summary Judgment filed with the Office of Administrative Hearings ("OAH") on April 25, 2014. By Order from this Court, Petitioner was given until May 8, 2014 within which to respond; however that order was sent by regular U.S. Postal Service mail to the Petitioner's last known address, and was returned to OAH. Petitioners have an affirmative duty to keep OAH apprised of their current mailing address and contact information. Petitioner responded on May 29, 2014 which was accepted even though it was filed late based upon the foregoing, and her response has been considered in rendering this decision. On June 5, 2014, Petitioner filed additional documents with OAH captioned "Petitioner's Request to Add Three Exhibits that were Inadvertently Omitted," with voluminous exhibits attached, asking for these documents to be considered as part of Petitioner's response to the motion for summary judgment. That filing was reviewed and considered in rendering this decision.

The contested case petition was filed on May 2, 2008, contending that Petitioner was discriminated against based upon religion and/or sex, and she was retaliated against. By Order dated September 3, 2008, this contested case was stayed because Petitioner sought redress in EEOC. Since that date this matter has been continuously stayed as Petitioner pursued her grievances first through EEOC and then through the federal courts.

Petitioner vigorously pursued her remedies through the federal courts. Her writ for certiorari was denied by the United States Supreme Court on October 6, 2014. Thus, she has pursued her remedies to the highest court in the United States and was denied. The fact that her writ was denied was not communicated to this Tribunal until December 31, 2014. Petitioner having exhausted her appeals in the federal courts, this matter is now appropriate for disposition in this Tribunal.

In the federal court proceedings, Petitioner's claims for which she sought relief were identical to those raised at OAH. N. C. Gen. Stat. §150B-33 provides that a contested case shall be stayed when "other litigation or administrative proceedings will determine the position, in

whole or in part, of the agency in the contested case.” Petitioner raised several claims for relief in the federal courts which were not brought in OAH, including wrongful termination, unlawful workplace harassment, inaccurate and misleading performance evaluations, and retaliation in the written warnings she received.

In Petitioner’s response to the motion for summary judgment which was filed on May 29, 2014, Petitioner contends in part that the claims against individuals should survive the Order of Judge Louise Flanagan who allowed summary judgment against her in federal court. Contested cases in OAH are limited to claims against agencies and not against individuals. N. C. Gen. Stat. § 150B-1(e), §150B-23. Petitioner acknowledges Judge Flanagan’s order but further claims that this Tribunal should go behind Judge Flanagan’s order and examine “overlooked” evidence. This Tribunal does not go behind the decisions of the courts of superior jurisdiction.

On December 4, 2014, Petitioner filed with OAH a Motion for Declaratory Judgment. The Office of Administrative Hearings is without authority to enter declaratory judgments.

Based upon the foregoing statement of the case and mixed conclusions of law, it is hereby **ORDERED** as follows:

1. This contested case has been continuously stayed while Petitioner pursued her remedies through EEOC and the federal courts. Petitioner has exhausted her appeals through EEOC and the federal courts, and it is now appropriate for this Tribunal to dispose of this contested case. Now, therefore, the stay heretofore issued is **LIFTED**.
2. Petitioner’s request that claims against named individuals should survive is **DENIED**.
3. Petitioner’s Motion for Declaratory Judgment is **DENIED**.
4. Any and all claims of any nature not specifically plead in the contested case petition but now asserted are **DENIED**.
5. Petitioner’s request that this Tribunal go behind the Order from U. S. District Court Judge Louise Flanagan is **DENIED**. Petitioner’s claims before the Office of Administrative Hearings have been determined in whole by the federal courts and are thus estopped by the doctrine of *res judicata*.
6. There is no genuine issue of material fact; therefore, summary judgment is appropriate. Respondent’s Motion for Summary Judgment is **ALLOWED** and this contested case is **DISMISSED**.

ORDER AND NOTICE

The North Carolina State Personnel Commission will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. § 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and

furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 23rd day of January, 2015.

DONALD W. OVERBY
ADMINISTRATIVE LAW JUDGE

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
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08 OSP 01153

<div>Linda K Huggins Petitioner, v. Department of Administration Human Relations Commission, Respondent.</div>	<div>ORDER AMENDING DECISION</div>
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Pursuant to 26 NCAC 3.0129, for the purpose of correcting a clerical error, IT IS HEREBY ORDERED that the above-captioned Decision, issued from this Office on January 23, 2015 is amended as follows:

ORDER AND NOTICE

The State Human Resources Commission will make the Final Decision in this contested case. N.C. Gen. Stat. § 150B-36(b), (b1), (b2), and (b3) enumerate the standard of review and procedures the agency must follow in making its Final Decision, and adopting and/or not adopting the Findings of Fact and Decision of the Administrative Law Judge.

Pursuant to N.C. Gen. Stat. § 150B-36(a), before the agency makes a Final Decision in this case, it is required to give each party an opportunity to file exceptions to this decision, and to present written arguments to those in the agency who will make the Final Decision. N.C. Gen. Stat. § 150B-36(b)(3) requires the agency to serve a copy of its Final Decision on each party, and furnish a copy of its Final Decision to each party's attorney of record and to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 28th day of January, 2015.

Donald W. Overby
Administrative Law Judge