

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 OSP 13440

THOMAS W WHEELER)
PETITIONER)

vs.)

NC DEPARTMENT OF)
TRANSPORTATION)
RESPONDENT)

FINAL DECISION

Upon consideration of Respondent's Motion to Dismiss, Petitioner's response thereto, and for good cause shown, the undersigned hereby **GRANTS** Respondent's Motion and **DISMISSES** this contested case as follows:

APPEARANCES

For Petitioner: Thomas W Wheeler
1621 Wimbledon Drive, Apt 42
Greenville, NC 27858

For Respondent: Thomas H Moore
Assistant Attorney General
1505 Mail Service Center
Raleigh, NC 27699-1505

ISSUE

Whether the Office of Administrative Hearings lacks subject matter jurisdiction over this case due to the mootness of Petitioner's claims?

FINDINGS OF FACT

1. Petitioner worked as a Processing Assistant IV in Respondent's Highway Division 2 offices in Greenville, North Carolina.
2. On June 15, 2011, Petitioner injured himself while at work for Respondent when he was unloading tires from a truck. Petitioner filed a worker's compensation claim based on that injury, and Respondent accepted liability for that claim.
3. Petitioner was out of work on worker's compensation leave from June 15, 2011 until July 18, 2011, when Petitioner's treating doctor cleared Petitioner to return

from work with restrictions. From June 15, 2011 through July 18, 2011, Petitioner received temporary total disability payments for his June 15, 2011 back injury.

4. On July 19, 2011, Petitioner allegedly was involved in another incident at work, wherein Petitioner claimed he was injured at work, and taken to the hospital for treatment.

5. On July 29, 2011, after concluding Petitioner attempted to stage another on-the-job injury, Respondent terminated Petitioner from employment for engaging unacceptable personal conduct. The specific conduct issues that were the basis for the termination were:

- a. Falsification of a workplace injury with intent to defraud the State;
- b. Conduct unbecoming a State employee detrimental to State service, and
- c. Conduct for which no reasonable person should expect to receive prior warning.

6. Petitioner appealed his dismissal through Respondent's internal grievance process.

7. On August 12, 2011, Respondent again began paying Petitioner temporary total disability payments every two weeks for \$719.86, because Petitioner was unable to work. The August 12, 2011 payment covered August 6, 2011 through August 9, 2011. Respondent continued paying Petitioner those temporary total disability payments through November 14, 2013.

8. On October 27, 2011, Respondent upheld Petitioner's dismissal by concurring with an Employee Relations Committee's findings and recommendations that management followed all pertinent policies and procedures concerning Petitioner's dismissal for unacceptable personal conduct.

9. On November 7, 2011, Petitioner filed a contested case petition with the Office of Administrative Hearings appealing his dismissal from employment, and alleging that (1) he was terminated from employment without just cause while he was on a doctor's care for work-related injury, (2) Respondent's management discriminated against him by using a false statement to terminate him, and (3) management harassed and intimidated him.

10. After a settlement conference on February 20, 2012, the parties sought a stay because of a pending investigation into a federal discrimination charge filed by Petitioner. On March 7, 2012, the undersigned issued an Order staying this contested case pending the resolution of Petitioner's federal discrimination charge. In August 2012, the federal Equal Employment Opportunity Commission issued Petitioner a right to sue letter. Petitioner did not exercise that right.

11. On April 24, 2013, at Petitioner's request, the undersigned stayed this case until after resolution of Petitioner's worker compensation case.

12. At a September 19, 2013 mediation, Petitioner settled his worker's compensation with Respondent. Petitioner executed a "Compromise Settlement Agreement, and Release and Resignation," and "Release" document with Respondent on October 28, 2013. In the Release and Resignation document, Petitioner agreed not to seek re-employment or accept employment with Respondent. In that Release, Petitioner also agreed that Respondent's agreement to pay the costs of the September 19, 2013 mediation session was adequate consideration to support his resignation from employment, and that Petitioner signed the Release and Resignation freely and voluntarily.

CONCLUSIONS OF LAW

1. This contested case is subject to dismissal pursuant to N.C. Gen. Stat. § 150B-33(b)(10), and 26 NCAC 3 .0105 and .0115.

2. "Subject matter jurisdiction is a pre-requisite for the exercise of judicial authority over any case or controversy." Shell Island Homeowners' Ass'n. Inc. v. Tomlinson, 134 N.C.App. 286, 290, 517b S.E.2d 401, 403-404 (1999).

3. Courts do not have subject matter jurisdiction when an issue is moot and the appropriate judicial course of action is to dismiss. Springer Eubank Co. v. Four County Elec. Membership Corp., 142 N.C.App. 496, 543 S.E.2d 197, 201 (2001)

4. The exclusion of moot questions in North Carolina state courts is a principle of judicial restraint. Ballard v. West, 121 N.C.App. 391, 465 S.E.2d 565, 567 (1996) That Court recognized that:

Whenever, during the course of litigation, it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, the case should be dismissed, for courts will not entertain or proceed with a cause merely to determine abstract propositions of law.

(Citing In re Peoples, 296 N.C. 100, 147, 250 S.E.2d 890, 912(1978), *cert. denied*, 442 U.S. 929, 99 S.Ct.2859, 61 L.E.2d 297(1979)).

5. By signing the Release and Resignation document, and agreeing not to seek or accept re-employment with Respondent, Petitioner waived his rights to reinstatement, and front pay, and there remains no controversy or dispute between Respondent and Petitioner.

6. By accepting worker's compensation temporary total disability payments from August 2011 until November 14, 2013, Petitioner is not entitled to back pay even if the undersigned ruled for Petitioner on the merits of this contested case.

7. Based on the foregoing, the Office of Administrative Hearings lacks subject matter jurisdiction over this case as there is no controversy remaining between the parties, and this case is moot.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **DISMISSES** this contested case for mootness.

NOTICE

Pursuant to N.C. Gen. Stat. § 150B-45, any party wishing to appeal a Final Decision may commence such an appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within thirty (30) days after the person is served a written copy of the Final Decision.

This 3rd day of December, 2013.

Melissa Owens Lassiter
Administrative Law Judge