

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 OSP 00116

Tawana McLaurin,)	
Petitioner,)	
)	
vs.)	FINAL DECISION DISMISSING
)	CONTESTED CASE
North Carolina Department of Corrections,)	
Respondent.)	

This contested case was heard before Beecher R. Gray, Administrative Law Judge, on August 01, 2012, in the Sampson County Courthouse in Clinton, North Carolina. Respondent called, as its first witness, Petitioner Tawana McLaurin. At the close of Petitioner's testimony and following a subsequent but unsuccessful settlement negotiation between the parties, Respondent moved to dismiss Petitioner's appeal for lack of subject matter jurisdiction because she had failed to exhaust her administrative remedies by following Respondent's internal grievance procedure as required by G.S. 126-34. That motion orally was allowed and no further evidence was taken in this appeal.

APPEARANCES

Petitioner: Tawana McLaurin appeared *pro se*

Respondent: Yvonne B. Ricci, Assistant Attorney General and
Martin E. Moore, third year law student at UNC certified by the North
Carolina State Bar in the Practical Training of Law Students Program

Based upon the sworn testimony of Petitioner Tawana McLaurin and the documentary evidence admitted into the record, I make the following:

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated that notice was proper.
2. On June 04, 2011, Petitioner was one of two correctional officers assigned to Dormitory 2 security at the Sampson Correctional Institute. Petitioner had been employed at the Sampson Correctional Institute for the immediately preceding five (5) years. The two officers were responsible for approximately 134 inmates. The Officer in Charge on June 04, 2011, was Correctional Lieutenant Charles Holland. Lieutenant Holland was performing security rounds in Dormitory 2 at approximately 4:45 p.m. on June 04, 2011, when he found Petitioner in the Programs Office with the door shut while working on school work for her off-duty educational program.

3. Petitioner admitted during her testimony under oath in this hearing that she did not tell the Officer in Charge or anyone else that she was going to go to the Programs Office to work on homework on June 04, 2011, and did not ask permission to do so. She admitted that she was working on homework for her outside school attendance.
4. Petitioner does not remember whether she had her handheld radio with her during her time in the Programs Office but insisted that she had made her usual assigned rounds every 15 minutes.
5. Sampson Correctional Institution Standard Operating Procedures (“SOP’s”) “Custody and Security” Post Orders Dormitory Two Control Officer A & D Wing Officer B & C Wing Officer” states:

Assigned Correctional Officers are responsible for maintaining the safety and security of the staff and inmates in the dormitory. The officer will supervise inmates, ensuring orderly conduct, sanitary conditions, and safety. No Officer shall leave their post until approved by the OIC and they have been properly relieved. Officers shall be alert at all times and shall not engage in any activity which shall distract their attention from their responsibilities (i.e., books, magazines, newspapers, radios, etc.).

6. Following an internal investigation into Petitioner’s conduct on June 04, 2011, a pre-disciplinary conference was conducted with Petitioner on August 08, 2011. On September 06, 2011, Petitioner was served with a letter dismissing her from Respondent’s employment effective September 06, 2011, for unacceptable conduct because she failed to remain in her assigned work area in the dormitory or carry out her assigned duties on June 04, 2011.
7. Petitioner asked for an internal appeal in accordance with Respondent’s internal grievance appeal procedures. Petitioner’s step one appeal affirmed her dismissal. Petitioner submitted a written request on October 28, 2011, for a step two appeal as follows:

I Tawana McLaurin am writing because I was not satisfied with the results of the first appeal hearing. I feel that I deserve better options to resolve my issue. I am writing to continue to step two of the mediation process to discuss my options further. My contact information is as follows:
910-709-1203
3121 Lady Viola Dr.
Fayetteville, N.C. 28301

8. Respondent sent a notice of the step two hearing date, time, and location to Petitioner by certified mail on November 16, 2011. The step two notice was sent to Petitioner’s address which she used on her written request for the step two hearing: 3121 Lady Viola Dr. Fayetteville, N.C. 28301. This notice was listed on USPS Track and Confirm as undeliverable as addressed.

9. Petitioner testified under oath in this hearing that, after submitting the written step two grievance request, Petitioner moved to a different location in Fayetteville with a different address but that she did not call Respondent to give Respondent her new mailing address and did not tell Respondent that she had moved. Petitioner testified that she should have been notified by the United States Postal Service of the hearing because she had completed a change of address and had asked for mail forwarding. Petitioner did not appear for the step two grievance hearing.
10. At the time of Petitioner's dismissal, she had an active written warning issued on July 30, 2010, for failure to report for duty as scheduled.
11. A contested case petition in this matter was filed in the Office of Administrative Hearings on January 05, 2012. Petitioner indicated in her petition form that she sought a contested case hearing, stating the basis for her appeal as:

rescheduling for a step 2 appeal and [t]he following occurred due to discrimination and/or retaliation for opposition to alleged discrimination...training and/or termination

12. The form petition Petitioner submitted requires that she specify the type of discrimination alleged. Petitioner did not specify any type of discrimination alleged.
13. Petitioner stated in her required brief statement of facts showing how she believes she has been harmed by the State agency that:

I feel that I should be able to be rescheduled for the step two appeal due to me having to move and not receiving [sic] the letter for my hearing on time to attend the hearing.

14. North Carolina General Statute §126-34 provides, in pertinent part:

[u]nless otherwise provided in this Chapter, any career State employee having a grievance arising out of or due to the employee's employment and who does not allege unlawful harassment or discrimination because of the employee's age, sex, race, color, national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, shall first discuss the employee's problem or grievance with the employee's supervisor and follow the grievance procedure established by the employee's department or agency.

DECISION

As orally rendered at the hearing of this matter, the Office of Administrative Hearings does not have subject matter jurisdiction in this contested case appeal because Petitioner, a career State employee, as defined under Chapter 126 of the General Statutes of North Carolina, has not

followed Respondent's internal grievance appeal procedure as required by G.S. 126-34. Respondent's Motion to Dismiss this contested case petition for lack of jurisdiction is ALLOWED; this contested case petition is DISMISSED with prejudice.

NOTICE

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 Wake County or in the Superior Court of the county in which the party resides. **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 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on 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.

This the 21st day of August, 2012.

Beecher R. Gray
Administrative Law Judge