

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DST 06428

CANDACE W. COLLINS,
Petitioner,

v.

NC RETIREMENT AGENCY,
Respondent.

**FINAL DECISION
ORDER OF DISMISSAL**

THIS MATTER comes before the Honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Respondent's Motion for Summary Judgment which was filed with the Office of Administrative Hearings ("OAH") on November 25, 2014.

The Petitioner's contested case petition contends in pertinent part that had she received various items of correspondence, then she would have changed her retirement option. It does not appear that there is any question that Petitioner retired effective May 1, 2007 and that she has been receiving retirement checks each month since that time. After cashing the first check Petitioner would have been precluded statutorily from changing the option she had initially selected. Respondent has provided a copy of the notarized Form 6E, Election of Benefits, dated March 16, 2007 which clearly shows that Petitioner selected Option Four.

Petitioner contends that she should be entitled to receive \$384.48 per month in retirement benefits from the Respondent. That amount is the amount she was given by Respondent in its first calculation of her retirement as shown in the attachment to the petition dated February 23, 2007, captioned "Estimated Retirement Benefits." This form also clearly shows the calculations according to Option 4 with monetary amounts both before and after she would reach age 62. The Disclaimer at the bottom points out that this is an estimate and subject to changes, but that ultimately the law dictates what the exact amount will be. However, the Respondent still has a duty to provide information which is as accurate as possible, which it did in this case.

Interestingly, included with the petition as well is a second Report of Estimated Retirement Benefits which was dated May 1, 2007, the effective date of her retirement and barely two months after the first report of February 23, 2007. This report shows that the amount she would receive after age 62 would be \$301.37. The Petitioner is currently receiving \$296.37, a difference of \$5.00 from the amount estimated in the May 1, 2007 report. Although every dollar is important, a difference of \$5.00 is a reasonably close estimate with an intervening seven years.

In as much as the cashing of the first check precludes contesting the selection of which option the Petitioner desired, the remaining issues raised by Petitioner are of no consequence to this decision. There does not seem to be any issue of the propriety of the Form 6E, Election of Benefits executed by Petitioner.

FINAL DECISION

Based upon the foregoing, it is found as fact and concluded as a matter of law that there remains no genuine question of material fact, and therefore, summary judgment is appropriate. It is therefore ORDERED that Respondent's Motion for Summary Judgment is **ALLOWED**, and this case is **DISMISSED**.

NOTICE

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 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.

IT IS SO ORDERED.

This the 2nd day of December, 2014.

Donald W. Overby
Administrative Law Judge