

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 EHR 00662

Eun Suk Jeoung)
Petitioner)

vs.)

Division of Environmental Health, Orange)
County,)
Respondent)

**FINAL DECISION
ORDER OF DISMISSAL**

THIS MATTER COMES to be heard, via the undersigned's own motion, *sua sponte*, on the grounds that Petitioner failed to comply with G.S. 150B-23 by failing to file the requisite filing fee within 60 days of the date the contested case petition was filed.

ISSUE

Whether the Office of Administrative Hearings has subject matter jurisdiction over Petitioner's contested case petition when Petitioner failed to file the requisite filing fee?

FINDINGS OF FACT

1. On January 16, 2014, Petitioner filed a petition for a contested case hearing with the Office of Administrative Hearings (OAH) alleging that Respondent required them to renovate a storage area, and if they are not allowed to complete such renovation by February 5, 2014, they will be shut down and lose their business. (Petition)

2. By letter dated and mailed on January 28, 2014, OAH Deputy Clerk Maria Erwin advised Petitioner that its petition was received and considered filed on January 16, 2014, but it did not pay the filing fee. Ms. Erwin advised Petitioner that it must pay a \$20.00 filing fee with OAH "within 60 days of the date the petition was filed." She further explained that:

The Office of Administrative Hearings permits a late payment of the filing fee to be made within 60 days of the date the petition was filed. If the filing fee is not paid as provided herein, the petitioner has failed to comply with statutory provisions and the petition shall be dismissed by the presiding administrative law judge, except upon proof by the petitioner of financial hardship, excusable neglect or other equivalent circumstances.

3. As of today's date, Petitioner has failed to file the required \$20.00 filing fee with the Office of Administrative Hearings, or proven financial hardship, excusable neglect, or other equivalent circumstances.

CONCLUSIONS OF LAW

1. This contested case is subject to dismissal pursuant to Rules 12(b) of the North Carolina Rules of Civil Procedure and N.C.G.S. § 150B-23.2(a).

2. N.C. Gen. Stat. § 150B-23.2 requires:

(a) Filing Fee. - In every contested case commenced in the Office of Administrative Hearings by a person aggrieved, the petitioner shall pay a filing fee, and the administrative law judge shall have the authority to assess that filing fee against the losing party, in the amount of one hundred twenty-five dollars (\$125.00), unless the Office of Administrative Hearings establishes a lesser filing fee by rule.

(b) Time of Collection. - All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected by the Office of Administrative Hearings at the time of commencement of the contested case except as may be allowed by rule to permit or complete late payment or in suits in forma pauperis.

3. 26 NCAC 03 .0103 COMMENCEMENT OF CONTESTED CASE: NOTICE AND FILING FEE provides:

(a) A contested case in the Office of Administrative Hearings is commenced by the filing of a petition as required by G.S. 150B-23 and payment of the appropriate filing fee (if a fee is required by G.S. 150B-23.2) . . .

(d) In contested cases commenced by a person aggrieved which do not involve the causes of action listed in Paragraph (c) of this Rule, the petitioner shall pay a fee of twenty dollars (\$20.00).

(e) The filing fee shall be waived in a contested case in which the petition is filed in forma pauperis and supported by such proofs as are required in G.S. 1-110. A petitioner seeking to have the filing fee waived under this Paragraph shall file the appropriate OAH form with the chief hearings clerk simultaneously when filing the petition for a contested case.

4. In this case, Petitioner was required to file a \$20 filing fee within 60 days of the date it filed its petition, or within 60 days of January 16, 2014. Petitioner failed to comply with N.C. Gen. Stat. § 150B-23.2(a) by failing to file the required filing fee within

60 days of January 16, 2014, the date Petitioner filed its contested case petition. By failing to file the required filing fee, Petitioner failed to comply with N.C. Gen. Stat. § 150B-23.2 and 26 NCAC 03 .0103. For that reason, the OAH lacks subject matter jurisdiction over Petitioner's contested case petition.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby **DISMISSES** this contested case petition with prejudice.

NOTICE AND ORDER

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

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 22nd day of April, 2014.

Melissa Owens Lassiter
Administrative Law Judge