

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
15OSP04607

<p>MICHAEL GLENN DAVIS PETITIONER,</p> <p>V.</p> <p>NC DEPARTMENT OF PUBLIC SAFETY, ADULT CORRECTION AND JUVENILE JUSTICE RESPONDENT.</p>	<p><b>FINAL DECISION</b></p>
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Michael Glenn Davis (“Petitioner”) commenced this action for discrimination and contesting his termination from employment with the North Carolina Department of Public Safety (“Respondent”) on June 25, 2015. Before the undersigned is Respondent’s Motion to Dismiss and Motion for Summary Judgment filed pursuant to Rule 41(b) and Rule 56 of the North Carolina Rules of Civil Procedure and N.C. Admin. Code 03.0114. For the following reasons, Respondent’s motions are **GRANTED**.

#### **FINDINGS OF FACT**

1. Petitioner filed the petition on June 25, 2015;
2. A Notice of Contested Case and Assignment and an Order for Prehearing Statements were filed and served on Petitioner on July 8, 2015;
3. Respondent filed a prehearing statement within thirty (30) days as ordered. Petitioner failed to file and serve a prehearing statement as ordered;
4. The undersigned issued a Second Order for Prehearing Statement to the Petitioner on August 19, 2015 requiring Petitioner to file and serve a prehearing statement by August 31, 2015. Petitioner failed to serve a Prehearing Statement;
5. Respondent served discovery requests (interrogatories, requests for production and requests for admission) on Petitioner on July 23, 2015. Discovery responses from Petitioner were due on or before August 10, 2015. Petitioner failed to respond;
6. Respondent filed its Motion to Dismiss on September 1, 2015 and its Motion for Summary Judgment on September 2, 2015. The undersigned issued an order on September 4, 2015 requesting a response from the Petitioner on or before September 21, 2015. The Petitioner failed to respond.

### **CONCLUSIONS OF LAW**

7. Under N.C.G.S. § 150B-33(b)(10) and 26 NCAC 3 .0105 and .0114, the administrative law judge has clear authority, and the duty, to dismiss this Petition for Petitioner's failure to respond to proper discovery requests.
8. Petitioner's refusal to respond to discovery has deprived Respondent of any reasonable avenue to respond to the allegations that may underlie the Petition in any meaningful way in accordance with deadlines established by the Office of Administrative Hearings. Respondent has been prejudiced by Petitioner's failure.
9. Petitioner's failure to obey orders for prehearing statement constitutes a basis for dismissal pursuant to Rule 41(b).

### **FINAL DECISION**

Petitioner has wholly failed to prosecute this action. **IT IS THEREFORE ORDERED** that Respondent's motion to dismiss and Motion for Summary Judgment is **GRANTED**. The petition for contested case hearing is hereby dismissed with prejudice.

### **NOTICE**

This **Final Decision** is issued under the authority of N.C.G.S. § 150B-34.

Pursuant to N.C.G.S. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. § 7A-29 (a). The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

This the 24<sup>th</sup> day of September, 2015.

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J. Randall May  
Administrative Law Judge