

STATE OF NORTH CAROLINA
COUNTY OF CRAVEN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DST 00053

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| <p>In the Matter of the Board of Trustees of Craven Community College Petitioner,</p> <p>v.</p> <p>The Department of the State Treasurer and The Board of Trustees of the Teachers and State Employees Retirement System Respondent.</p> | <p style="text-align: center;">FINAL DECISION ORDER OF DISMISSAL</p> |
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THIS MATTER is before the undersigned on Respondents' *Motion to Dismiss* the Petition pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(1), (2) and (6), and Rule 19 of the N.C. Rules of Civil Procedure, made applicable to contested case hearings by § 150B-33(3a) and 26 NCAC 03 .0101(a).

Respondents Department of State Treasurer and Board of Trustees of the Teachers' and State Employees' Retirement System (hereinafter, "TSERS"), move to dismiss the Petition on the grounds of "lack of personal and/or subject matter jurisdiction, sovereign immunity, and Petitioner's failure to state a claim; and, in the alternative, for failure to join a necessary party."

The Department's Retirement Systems Division administers the Disability Income Plan ("Plan"), governed by the Board of Trustees of TSERS. N.C. Gen. Stat. § 135-102. Petitioner Craven Community College was the "employer," within the meaning of the statutes governing the Plan, of "employee" Ms. Lorraine DiBella. N.C. Gen. Stat. §§ 135-1(10) and (11); 135-101(8) and (9). On November 24, 2015, Respondents approved the Plan's Short-Term Disability Benefits ("STD") for Ms. DiBella ("Employee") for the period August 30, 2015 through October 23, 2015, subject to extensions upon physician verifications. As her employer, Petitioner is obligated to fund the costs of Employee's STD, which can be extended for up to 365 days, although an employer may be reimbursed for these costs incurred after the first six months of disability. N.C. Gen. Stat. § 135-105(b) and (d). Petitioner is also bearing the unreimbursed cost of health insurance throughout Employee's period of disability. *See* Affidavit of Ms. Vickie Moseley-Jones, appended to *Petitioner's Response to Motion to Dismiss*. In the Office of Administrative Hearings ("OAH"), Petitioner seeks to contest Respondents' finding that the employee is disabled. For the purposes of the Plan, "disability" is defined as "the mental or physical incapacity for the further performance of duty of a [employee] participant or beneficiary." N.C. Gen. Stat. § 135-101(6).

A motion to dismiss pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(1) for lack of subject matter jurisdiction is not decided on the merits of the case, and matters outside the pleadings may be considered in resolving whether, as a matter of law, the case can be considered in this forum. *Copper ex rel. Copper v. Denlinger*, 667 S.E.2d 470, 193 N.C.App. 249 (2008); *Cline v. Teich for*

Cline, 92 N.C. App. 257, 264, 374 S.E.2d 462, 466 (1988). A motion to dismiss for “failure to state a claim upon which relief can be granted” pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) can only be granted if it is shown that the Petitioner cannot prevail at an evidentiary hearing. When ruling on a motion to dismiss under Rule 12(b)(6), “the trial court is to treat the [non-movant] plaintiff’s factual allegations as true. Furthermore, the complaint is to be liberally construed, and the trial court should not dismiss the complaint unless it appears beyond doubt that the plaintiff could prove no set of facts in support of his claim which would entitle him to relief. Thus ... we view the forecast of evidence in the light most favorable to plaintiffs, giving them the benefit of every reasonable inference that can be drawn therefrom.” *Turner v. Hammocks Beach Corp.*, 363 N.C. 555, 559, 681 S.E.2d 770, 774 (2009) (internal cites and quotation marks omitted). The facts cited above were taken from the Petition or Petitioner’s subsequent submissions.

It should first be noted that Respondents’ “alternative” argument -- that the Employee is a necessary party -- is meritorious. N.C. Gen. Stat. § 1A-1, Rule 19(a). At a hearing on the merits, it would be the Employee’s “rights which must be ascertained and settled before the rights of the parties to the suit can be determined.” *Dunn v. Cook*, 204 N.C. App. 332, 337, 693 S.E.2d 752, 756 (2010); *Wall v. Sneed*, 187 S.E.2d 454, 13 N.C. App. 719 (1972) (quoting *Assurance Society v. Basnight*, 234 N.C. 347, 352, 67 S.E.2d 390, 395 (1951)). Petitioner offers no argument that it does not owe the cost of STD for its disabled employees, only that *this employee*, Ms. DiBella, is not disabled. Should Petitioner succeed in compelling a reversal by Respondents, the Employee would have an immediate right to petition OAH directly to overturn that adverse decision. The potential for conflicting outcomes in the two contested cases in that scenario would likely be avoided by deeming Petitioner’s relief “null and void.” *Rice v. Randolph*, 96 N.C. App. 112, 113, 384 S.E.2d 295, 297 (1989).

However, it appears from the statutory scheme for administering the Plan’s disability benefits that this case resolves on the more fundamental jurisdiction issue raised by Respondents. In this instance, a Division in the Treasurer’s Department has been created for the purpose of determining the rules for distribution and eligibility for all State employees’ retirement and disability claims. In this respect, Chapter 135 is analogous to Chapter 126, the North Carolina Human Resources Act, which authorizes the Office of State Human Resources to oversee other terms and conditions of employment across multiple agencies.

Petitioner correctly argues that a state agency is capable of being a petitioner under the contested case provisions of the Administrative Procedure Act, and to seek relief as a “person aggrieved” when treated by another agency as it might a private person, firm or corporation. N.C. Gen. Stat. §§ 150B-2(5), (6) and (7); 150B-23(a). The question presented by this case is whether it was the intent of the Legislature to empower the “employer” agencies to litigate over employee benefits with an agency created to administer those benefits. While all agencies might appropriately take a “proprietary” attitude towards the taxpayer funds for which they are responsible, an appropriation does not give an agency a property interest in appropriated funds beyond the purposes that the Legislature has assigned them by statute. Petitioner’s defined role in the provision of STD benefits is specific and narrow.

Article 6 of Chapter 135 provides that the “Department of State Treasurer and the Board of Trustees [of TSERS] shall have the full power and authority to adopt rules for the administration

of the Plan;” that they “shall designate a Medical Board,” which “shall investigate the results of medical examinations, clinical evidence, all essential statements and certifications by and on behalf of applicants for benefits and shall report in writing to the Board of Trustees the conclusions and recommendations upon all matters referred to it;” and, “may provide the benefits according to the terms and conditions of the Plan[.]” N.C. Gen. Stat. §§ 135-101(4); 135-102(c), (d) and (e).

Article 6 also specifies the employer’s role in the administration of the Plan. In general, the provision and coordination of benefits described in N.C. Gen. Stat. § 135-105 “shall be administered by the employer.” N.C. Gen. Stat. § 135-105(d). An employee can begin receiving STDB if the “employer and attending physician shall certify” that the employee meets specified criteria. N.C. Gen. Stat. § 135-105(a). However, the employee is also allowed to directly “request the Board of Trustees to have the Medical Board make a determination of eligibility for the short-term disability benefits . . . or to make a preliminary determination of eligibility for the long-term disability benefits,” without any involvement by the employer, as Employee in fact did in this case. N.C. Gen. Stat. § 135-105(f).

Nowhere does the statute recognize the “employer” units of government as separate and distinct parties with interests divergent from those of the Department of State Treasurer and the Board of Trustees of TSERS. While there are ample opportunities for these “employers” to give Respondents information concerning their employees, there is no obligation for those bodies to afford an employer its own hearing.

It appears from the controlling statutes that the Legislature has chosen to entrust decisions about eligibility for the retirement system’s disability benefits to an office created for that purpose, rather than each “county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid.” N.C. Gen. Stat. §§ 135-1(11).

Consequently, for the foregoing reasons, and pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(1), the Petition must be, and hereby 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 11th day of May, 2016.

J Randolph Ward
Administrative Law Judge