

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOT 05422

Linda George Petitioner, v. NC Quick Pass Respondent.	FINAL DECISION ORDER OF DISMISSAL
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Respondent NC Quick Pass (“Respondent”) filed a Motion for Summary Judgment on April 11, 2022. The Tribunal issued an order for Petitioner Linda George (“Petitioner”) to respond to the Motion. On April 15, 2022, Petitioner sent an electronic mail message to the Office of Administrative Hearings (“OAH”). The Motion is ripe for disposition.

SUMMARY OF UNDISPUTED MATERIAL FACTS

1. Findings of fact are neither necessary nor desirable when granting a motion for summary judgment, Hyde Ins. Agency, Inc. v. Dixie Leading Corp., 26 N.C. App. 138, 142, 215 S.E.2d 162, 165 (1975), and OAH decisions granting such motions need not include such findings. N.C.G.S. 150B-34(e). The Tribunal does not make findings of fact on motions for summary judgment; rather, the Tribunal summarizes material facts it considers to be uncontested. See, e.g., Vizant Techs., LLC v. YRC Worldwide, Inc., 373 N.C. 549, 551, 838 S.E.2d 616, 617 (2020). The Tribunal summarizes the following undisputed facts in its legal analysis to provide context for its ruling. Hyde Ins. Agency, Inc., 26 N.C. App. at 142, 215 S.E.2d at 165.
2. On December 20, 2021, Petitioner filed a petition for a contested case in OAH challenging assessment of toll fees by Respondent. In her Petition and Prehearing Statement, Petitioner denied receiving invoices from Respondent and further denies using the toll road in question, the Monroe Expressway, with the frequency claimed by Respondent.
3. Respondent’s motion for summary judgment is supported by the affidavit of one of its employees, Angela Queensland (“Affidavit”). The Affidavit demonstrates that Respondent sent 32 invoices to Petitioner at two addresses over a period from 2019 to 2021. Petitioner’s unverified Response does not contest that either of the two addresses listed is hers, or that the addresses themselves are otherwise valid methods of sending her mail.
4. As the Affidavit and exhibits demonstrate, each invoice to Petitioner showed a photo of a

North Carolina license plate number whose registered owner is the Petitioner. Petitioner's unverified Response does not contest that she is the owner of the vehicle with that license plate.

5. Further, Petitioner does not deny using the roadway in question, but only the frequency of travel. Petitioner's response does not explain, however, the presence of the license plate of a vehicle registered to her on each of the invoice dates cited by Respondent, and again supported by affidavit.

CONCLUSIONS OF LAW

1. On a motion for summary judgment, the question before the Tribunal is whether the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact, and that a party is entitled to judgment as a matter of law. Meadows v. Cigar Supply Co., Inc., 91 N.C. App. 404, 371 S.E.2d 765 (1988). Only a fact, resolution of which would prevent the party against whom it is resolved from prevailing, is material. Bone International, Inc. v. Brooks, 304 N.C. 371, 374, 283 S.E.2d 518, 520 (1981).
2. To the extent that the Findings of Fact contain Conclusions of Law, and vice versa, they should be so considered without regard to their given labels. Charlotte v. Heath, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946). A court, or in this case an administrative Tribunal, need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).
3. The burden of establishing a lack of any triable issue resides with the movant. Pembee Mfg. Corp. v. Cape Fear Constr. Co., Inc., 313 N.C. 488, 329 S.E.2d 350 (1985). Here, the burden rests with Respondent.
4. The burden of proof in cases where an agency attempts to impose a fine or civil penalty requires an agency showing by clear and convincing evidence that the person who was fined actually committed the act for which the fine or penalty was imposed. N.C.G.S. 150B-25.1. Otherwise, barring cases brought under N.C.G.S. Chapter 126, the burden of proof in any contested case brought under Article 3 of the Administrative Procedure Act rests with the Petitioner.
5. Review of Respondent's filings shows no evidence that Respondent imposed a fine or civil penalty on Petitioner, as opposed to a bill for use of what is undisputedly a toll road. This case is equally undisputedly not a personnel case arising out of N.C.G.S. Chapter 126. The burden of proof is thus on the Petitioner generally, but Respondent must still demonstrate its entitlement to summary judgment.
6. Here, Respondent has filed a detailed motion for summary judgment containing the invoices sent to Petitioner, each containing a photograph of Petitioner's license plate. The exhibits are authenticated and supported via an affidavit by Respondent's employee. This

is proper and admissible evidence supporting a summary judgment motion.

7. Once the party moving for summary judgment has met its burden, the opposing party may not rest on the mere allegations or denials of his pleading. N.C.G.S. 1A-1, Rule 56(e) (1983); Steel Creek Dev. Corp. v. James, 300 N.C. 631, 268 S.E.2d 205 (1980). Instead, the opposing party must set forth specific facts showing that there is a genuine issue for trial, either by affidavits or as otherwise provided in N.C.G.S. 1A-1, Rule 56. Gillis v. Whitley's Disc. Auto Sales, Inc., 70 N.C. App. 270, 274, 319 S.E.2d 661, 664 (1984).
8. While Petitioner's Response denies some of Respondent's allegations, it is unsupported by either an affidavit or other admissible evidence establishing a genuine issue of material fact preventing summary judgment. In essence, Petitioner's Response constitutes the "mere denials" specifically held not to create genuine issues of material fact by our appellate courts.
9. Petitioner is pro se. It is perhaps the case that Petitioner is not aware, or fully so, of the standards for properly responding to a supported summary judgment motion. However, our courts have emphasized that the Rules of Civil Procedure "must be applied equally to all parties to a lawsuit, without regard to whether they are represented by counsel." Goins v. Puleo, 350 N.C. 277, 281, 512 S.E.2d 748, 751 (1999). Further when a litigant "makes a voluntary and knowledgeable decision to represent himself he must be deemed to know the law which will govern the trial of his case and he must be expected to conduct himself in accordance with the rules established by the courts and legislature of this state." Cohen v. McLawhorn, 208 N.C. App. 492, 500, 704 S.E.2d 519, 525 (2010).
10. The Tribunal is not free to ignore the governing law on this issue. Further, Petitioner made a voluntary decision to represent herself by filing this contested case without the aid of an attorney. Petitioner is thus not in the position of a lawyerless defendant zealously pursued by competent counsel – she initiated this litigation herself, and thus, under the law, is charged with conducting it.
11. The Tribunal, providing all inferences in favor of the Petitioner and after careful scrutiny of Respondent's papers, concludes that there is no genuine issue of material fact and that Respondent has established its entitlement to judgment as a matter of law.

FINAL DECISION

Respondent's Motion for Summary Judgment is **ALLOWED**. This contested case is **DISMISSED** with prejudice.

NOTICE OF APPEAL

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 as indicated by 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.

SO ORDERED.

This the 22nd day of April, 2022.



Michael C. Byrne
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Linda George
604 Anne Street
N. Myrtle Beach SC 29582
Petitioner

Alan D McInnes
NC Department of Justice
amcinnnes@ncdoj.gov (served electronically on April 22, 2022)
Attorney For Respondent

This the 25th day of April, 2022.



Jerrod Godwin
Law Clerk
N.C. Office of Administrative Hearings
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