

STATE OF NORTH CAROLINA
COUNTY OF CHOWAN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 OSP 00401

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| William T. Culpepper III Petitioner, v. N.C. Office of Administrative Hearings Respondent. | FINAL DECISION |
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NOW COMES the Undersigned and incorporates herein by reference the Order on Respondent's Motion for Partial Dismissal of Amended Petition issued on 18 May 2022, wherein the Undersigned determined that this Tribunal lacked subject matter jurisdiction under N.C.G.S. § 126-34.02(b) to consider Petitioner's claims that Respondent violated his rights under various provisions of the United States Constitution and the North Carolina Constitution, and, pursuant to Rule 12(b)(1), dismissed those claims. The Tribunal lacked the authority under either N.C.G.S. § 126-34.02(a) or N.C.G.S. § 150B-33 to award Petitioner relief in the form of "actual and compensatory damages" in this contested case. The remaining issues in this contested case are disposed as follows:

THIS CAUSE came on for hearing before the undersigned on Respondent's Motion for Summary Judgment and was heard at the Wayne County Courthouse for the convenience of the parties and in the interest of justice without objection on 10 November 2022. Petitioner appeared and was represented by counsel, John D. Leidy of the Pasquotank County Bar. Respondent appeared through its counsel Joseph Finarelli, Special Deputy Attorney General, of the Wake County Bar. No objections were made regarding venue or jurisdiction. This contested case and Respondent's Summary Judgment Motion addressed two issues or claims; the first issue being that

Petitioner's designation as Managerial Exempt did not comport with existing law, and the second issue being that Petitioner was discriminated against on the basis of political affiliation. The Tribunal, having reviewed, in the light most favorable to the nonmovant, the Motion, Petitioner's Response, the parties' briefs, the affidavits and exhibits filed by the parties, the admissions on file, and the record proper of this proceeding; and having considered the arguments of counsel and the authorities cited, has determined that there is no genuine dispute as to any facts material to Petitioner's claim brought under N.C.G.S. § 126-5(h) challenging Respondent's action in designating, pursuant to N.C.G.S. § 126-5(c1)(27), Petitioner's position as Assistant Agency General Counsel I as a managerial exempt position as defined by N.C.G.S. § 126-5(b)(2) and claiming that such action substantially prejudiced Petitioner's rights and was taken without legal authority, was taken without following proper procedure, was arbitrary or capricious, and was not in compliance with law and erroneous (hereinafter the "Designation Claim") and that Petitioner, as nonmovant, is entitled to summary judgment in his favor on the Designation Claim as a matter of law. Further, the Tribunal finds that there is no genuine dispute as to any fact material to Petitioner's claim brought under N.C.G.S. § 126-34.02(b)(1) for discrimination on the basis of political affiliation, (hereinafter the "Discrimination Claim") and that Respondent is entitled to summary judgment in its favor on that claim as a matter of law.

WHEREFORE, it hereby is ORDERED, ADJUDGED, and DECREED as follows:

- A. Summary Judgment hereby is entered for Petitioner on the Designation Claim; Petitioner is entitled to be and hereby is reinstated to his status as a Career State Employee under N.C.G.S. § 126-1.1 and further that he be awarded back pay and benefits for any pay and benefits he has lost or loses before he is so reinstated;
- B. As to the second issue, Respondent's Summary Judgment Motion is ALLOWED as to

Petitioner's claim for discrimination on the basis of his political affiliation brought pursuant to N.C.G.S. § 126-34.02(b) and that claim hereby is dismissed, with prejudice;

C. The costs of this action are taxed to Respondent; and

D. Petitioner shall have forty-five (45) days from the entry of this Order to submit a petition with proper documentation for attorney's fees and related expenses.

Announced in open Court on the 10th day of November 2022 and signed this 2nd day of December 2022.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 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.

NOTICE OF APPEAL FOR DESIGNATION CLAIM¹

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**

¹ See N.C.G.S. § 126-5(h), 150B-45; *Wright v. N. Carolina Office of State Human Res.*, 264 N.C. App. 641, 824 S.E.2d 925 (2019).

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.

IT IS SO ORDERED.

This the 2nd day of December, 2022.



Beecher R Gray
Temporary 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.

John David Leidy
Hornthal, Riley, Ellis & Maland, LLP
jleidy@hrem.com
Attorney For Petitioner

Joseph Finarelli
NC Department of Justice
jfinarelli@ncdoj.gov
Attorney For Respondent

This the 2nd day of December, 2022.



Lisa J Garner
North Carolina Certified Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 984-236-1850