

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS15112-RO-8 (03/23)

Short Title: ALJ Final Decision Authority.

(Public)

Sponsors: Senator Hartsell.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE ADMINISTRATIVE LAW JUDGES TO MAKE FINAL
3 ADMINISTRATIVE DECISIONS IN CONTESTED CASES COMMENCED UNDER
4 ARTICLE 3 OF THE ADMINISTRATIVE PROCEDURE ACT.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 150B-2(5) reads as rewritten:

7 "(5) "Party" means any person or agency named or admitted as a party or
8 properly seeking as of right to be admitted as a party and includes the agency
9 as appropriate. ~~This subdivision does not permit an agency that makes a final~~
10 ~~decision, or an officer or employee of the agency, to petition for initial~~
11 ~~judicial review of that decision."~~

12 **SECTION 2.** G.S. 150B-23(a) reads as rewritten:

13 "(a) A contested case shall be commenced by paying a fee in an amount established in
14 G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except
15 as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who
16 files the petition shall serve a copy of the petition on all other parties and, if the dispute
17 concerns a license, the person who holds the license. A party who files a petition shall file a
18 certificate of service together with the petition. A petition shall be signed by a party or a
19 representative of the party and, if filed by a party other than an agency, shall state facts tending
20 to establish that the agency named as the respondent has deprived the petitioner of property, has
21 ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced
22 the petitioner's rights and that the agency:

- 23 (1) Exceeded its authority or jurisdiction;
24 (2) Acted erroneously;
25 (3) Failed to use proper procedure;
26 (4) Acted arbitrarily or capriciously; or
27 (5) Failed to act as required by law or rule.

28 The parties in a contested case shall be given an opportunity for a hearing without undue delay.
29 Any person aggrieved may commence a contested case hereunder.

30 A local government employee, applicant for employment, or former employee to whom
31 Chapter 126 of the General Statutes applies may commence a contested case under this Article
32 in the same manner as any other petitioner. The case shall be conducted in the same manner as
33 other contested cases under this Article, ~~except that the State Personnel Commission shall enter~~
34 ~~final decisions only in cases in which it is found that the employee, applicant, or former~~
35 ~~employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the~~



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1 ~~General Statutes or in any case where a binding decision is required by applicable federal~~
2 ~~standards. In these cases, the State Personnel Commission's decision shall be binding on the~~
3 ~~local appointing authority. In all other cases, the final decision shall be made by the applicable~~
4 ~~appointing authority. Article."~~

5 **SECTION 3.** G.S. 150B-33(b) reads as rewritten:

6 "(b) An administrative law judge may:

7 ...

8 (12) ~~Except as provided in G.S. 150B-36(d), accept a remanded case from an~~
9 ~~agency only when a claim for relief has been raised in the petition, and the~~
10 ~~decision of the administrative law judge makes no findings of fact or~~
11 ~~conclusions of law regarding the claim for relief, and the agency requests~~
12 ~~that the administrative law judge make findings of fact and conclusions of~~
13 ~~law as to the specific claim for relief. The administrative law judge may~~
14 ~~refuse to accept a remand if there is a sufficient record to allow the agency to~~
15 ~~make a final decision."~~

16 **SECTION 4.** G.S. 150B-34 reads as rewritten:

17 **"§ 150B-34. Decision of administrative law judge. Final decision or order.**

18 (a) ~~Except as provided in G.S. 150B-36(c), and subsection (c) of this section, in~~ In each
19 contested case the administrative law judge shall make a final decision or order that contains
20 findings of fact and conclusions of law and return the decision to the agency for a final decision
21 in accordance with G.S. 150B-36 law. The administrative law judge shall decide the case based
22 upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and
23 expertise of the agency with respect to facts and inferences within the specialized knowledge of
24 the agency. ~~All references in this Chapter to the administrative law judge's decision shall~~
25 ~~include orders entered pursuant to G.S. 150B-36(c).~~

26 (b) Repealed by Session Laws 1991, c. 35, s. 6.

27 (c) ~~Notwithstanding subsection (a) of this section, in cases arising under Article 9 of~~
28 ~~Chapter 131E of the General Statutes, the administrative law judge shall make a recommended~~
29 ~~decision or order that contains findings of fact and conclusions of law. A final decision shall be~~
30 ~~made by the agency in writing after review of the official record as defined in G.S. 150B-37(a)~~
31 ~~and shall include findings of fact and conclusions of law. The final agency decision shall recite~~
32 ~~and address all of the facts set forth in the recommended decision. For each finding of fact in~~
33 ~~the recommended decision not adopted by the agency, the agency shall state the specific~~
34 ~~reason, based on the evidence, for not adopting the findings of fact and the agency's findings~~
35 ~~shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or~~
36 ~~150B-31. The provisions of G.S. 150B-36(b), (b1), (b2), (b3), and (d), and G.S. 150B-51 do not~~
37 ~~apply to cases decided under this subsection.~~

38 (d) ~~Except for the exemptions contained in G.S. 150B-1(e) and (e), and subsection (c)~~
39 ~~of this section, G.S. 150B-1,~~ the provisions of this section regarding the decision of the
40 administrative law judge shall apply only to agencies subject to Article 3 of this Chapter,
41 notwithstanding any other provisions to the contrary relating to recommended decisions by
42 administrative law judges.

43 (e) An administrative law judge may grant judgment on the pleadings, pursuant to a
44 motion made in accordance with G.S. 1A-1, Rule 12(c), or summary judgment, pursuant to a
45 motion made in accordance with G.S. 1A-1, Rule 56, that disposes of all issues in the contested
46 case. Notwithstanding subsection (a) of this section, a decision granting a motion for judgment
47 on the pleadings or summary judgment need not include findings of fact or conclusions of law,
48 except as determined by the administrative law judge to be required or allowed by G.S. 1A-1,
49 Rule 12(c) or Rule 56."

50 **SECTION 5.** G.S. 150B-35 reads as rewritten:

51 **"§ 150B-35. No ex parte communication; exceptions.**

1 Unless required for disposition of an ex parte matter authorized by law, ~~neither—the~~
2 administrative law judge assigned to a contested case ~~nor a member or employee of the agency~~
3 ~~making a final decision in the case~~ may not communicate, directly or indirectly, in connection
4 with any issue of fact, or question of law, with any person or party or his representative, except
5 on notice and opportunity for all parties to participate."

6 **SECTION 6.** G.S. 150B-36 is repealed.

7 **SECTION 7.** G.S. 150B-37 reads as rewritten:

8 "**§ 150B-37. Official record.**

9 (a) In a contested case, the Office of Administrative Hearings shall prepare an official
10 record of the case that includes:

- 11 (1) Notices, pleadings, motions, and intermediate rulings;
- 12 (2) Questions and offers of proof, objections, and rulings thereon;
- 13 (3) Evidence presented;
- 14 (4) Matters officially noticed, except matters so obvious that a statement of them
15 would serve no useful purpose; and
- 16 (5) Repealed by Session Laws 1987, c. 878, s. 25.
- 17 (6) The administrative law judge's ~~decision, final decision~~ or order.

18 (b) Proceedings at which oral evidence is presented shall be recorded, but need not be
19 transcribed unless requested by a party. Each party shall bear the cost of the transcript or part
20 thereof or copy of said transcript or part thereof which said party requests, and said transcript or
21 part thereof shall be added to the official record as an exhibit.

22 (c) The Office of Administrative Hearings shall forward a copy of the ~~official record to~~
23 ~~the agency making the final decision and shall forward a copy of the~~ administrative law judge's
24 final decision to each party."

25 **SECTION 8.** G.S. 150B-43 reads as rewritten:

26 "**§ 150B-43. Right to judicial review.**

27 Any ~~person-party~~ who is aggrieved by the final decision in a contested case, and who has
28 exhausted all administrative remedies made available to ~~him—the party~~ by statute or agency rule,
29 is entitled to judicial review of the decision under this Article, unless adequate procedure for
30 judicial review is provided by another statute, in which case the review shall be under such
31 other statute. Nothing in this Chapter shall prevent any ~~person-party~~ from invoking any judicial
32 remedy available to ~~him—the party~~ under the law to test the validity of any administrative action
33 not made reviewable under this Article."

34 **SECTION 9.** G.S. 150B-44 reads as rewritten:

35 "**§ 150B-44. Right to judicial intervention when decision unreasonably delayed.**

36 Unreasonable delay on the part of any agency or administrative law judge in taking any
37 required action shall be justification for any person whose rights, duties, or privileges are
38 adversely affected by such delay to seek a court order compelling action by the agency or
39 administrative law judge. ~~An agency that is subject to Article 3 of this Chapter and is not a~~
40 ~~board or commission has 60 days from the day it receives the official record in a contested case~~
41 ~~from the Office of Administrative Hearings to make a final decision in the case. This time limit~~
42 ~~may be extended by the parties or, for good cause shown, by the agency for an additional~~
43 ~~period of up to 60 days. An agency that is subject to Article 3 of this Chapter and is a board or~~
44 ~~commission has 60 days from the day it receives the official record in a contested case from the~~
45 ~~Office of Administrative Hearings or 60 days after its next regularly scheduled meeting,~~
46 ~~whichever is longer, to make a final decision in the case. This time limit may be extended by~~
47 ~~the parties or, for good cause shown, by the agency for an additional period of up to 60 days. If~~
48 ~~an agency subject to Article 3 of this Chapter has not made a final decision within these time~~
49 ~~limits, the agency is considered to have adopted the administrative law judge's decision as the~~
50 ~~agency's final decision. Failure of an administrative law judge subject to Article 3 of this~~
51 ~~Chapter or failure of an agency subject to Article 3A of this Chapter to make a final decision~~

1 within 120 days of the close of the contested case hearing is justification for a person whose
2 rights, duties, or privileges are adversely affected by the delay to seek a court order compelling
3 action by the agency ~~or, if the case was heard by an administrative law judge, or~~ by the
4 administrative law judge. The Board of Trustees of the North Carolina State Health Plan for
5 Teachers and State Employees is a "board" for purposes of this section."

6 **SECTION 10.** G.S. 150B-47 reads as rewritten:

7 "**§ 150B-47. Records filed with clerk of superior court; contents of records; costs.**

8 Within 30 days after receipt of the copy of the petition for review, or within such additional
9 time as the court may allow, the ~~agency that made the final decision in the contested~~
10 ~~ease~~ Office of Administrative Hearings shall transmit to the reviewing court the original or a
11 certified copy of the official record in the contested case under review together with: ~~(i) any~~
12 ~~exceptions, proposed findings of fact, or written arguments submitted to the agency in~~
13 ~~accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order.~~ review. With the
14 permission of the court, the record may be shortened by stipulation of all parties to the review
15 proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by
16 the court for such additional costs as may be occasioned by the refusal. The court may require
17 or permit subsequent corrections or additions to the record when deemed desirable."

18 **SECTION 11.** G.S. 150B-49 reads as rewritten:

19 "**§ 150B-49. New evidence.**

20 ~~An aggrieved person~~ A party who files a petition in the superior court may apply to the
21 court to present additional evidence. If the court is satisfied that the evidence is material to the
22 issues, is not merely cumulative, and could not reasonably have been presented at the
23 administrative hearing, the court may remand the case so that additional evidence can be taken.
24 If an administrative law judge did not make a final decision in the case, the court shall remand
25 the case to the agency that conducted the administrative ~~hearing~~ hearing under Article 3A of
26 this Chapter. After hearing the evidence, the agency may affirm or modify its previous findings
27 of fact and final decision. If an administrative law judge made a final decision in the case, the
28 court shall remand the case to the administrative law judge. After hearing the evidence, the
29 administrative law judge may affirm or modify his previous findings of fact and final decision.
30 ~~The administrative law judge shall forward a copy of his decision to the agency that made the~~
31 ~~final decision, which in turn may affirm or modify its previous findings of fact and final~~
32 ~~decision.~~ The additional evidence and any affirmation or modification of a final decision of the
33 ~~administrative law judge or final decision~~ shall be made part of the official record."

34 **SECTION 12.** G.S. 150B-50 reads as rewritten:

35 "**§ 150B-50. Review by superior court without jury.**

36 The review by a superior court of ~~agency~~ administrative decisions under this Chapter shall
37 be conducted by the court without a jury."

38 **SECTION 13.** G.S. 150B-51 reads as rewritten:

39 "**§ 150B-51. Scope and standard of review.**

40 (a) ~~In reviewing a final decision in a contested case in which an administrative law~~
41 ~~judge made a recommended decision and the State Personnel Commission made an advisory~~
42 ~~decision in accordance with G.S. 126-37(b1), the court shall make two initial determinations.~~
43 ~~First, the court shall determine whether the applicable appointing authority heard new evidence~~
44 ~~after receiving the recommended decision. If the court determines that the applicable~~
45 ~~appointing authority heard new evidence, the court shall reverse the decision or remand the~~
46 ~~case to the applicable appointing authority to enter a decision in accordance with the evidence~~
47 ~~in the official record. Second, if the applicable appointing authority did not adopt the~~
48 ~~recommended decision, the court shall determine whether the applicable appointing authority's~~
49 ~~decision states the specific reasons why the applicable appointing authority did not adopt the~~
50 ~~recommended decision. If the court determines that the applicable appointing authority did not~~

1 state specific reasons why it did not adopt a recommended decision, the court shall reverse the
2 decision or remand the case to the applicable appointing authority to enter the specific reasons.

3 ~~(a1) In reviewing a final decision in a contested case in which an administrative law
4 judge made a decision, in accordance with G.S. 150B-34(a), and the agency adopted the
5 administrative law judge's decision, the court shall determine whether the agency heard new
6 evidence after receiving the decision. If the court determines that the agency heard new
7 evidence, the court shall reverse the decision or remand the case to the agency to enter a
8 decision in accordance with the evidence in the official record. The court shall also determine
9 whether the agency specifically rejected findings of fact contained in the administrative law
10 judge's decision in the manner provided by G.S. 150B-36(b1) and made findings of fact in
11 accordance with G.S. 150B-36(b2). If the court determines that the agency failed to follow the
12 procedure set forth in G.S. 150B-36, the court may take appropriate action under subsection (b)
13 of this section.~~

14 (b) ~~Except as provided in subsection (c) of this section, in reviewing a final decision,~~
15 The court reviewing a final decision may affirm the decision of the agency or remand the
16 case to the agency or to the administrative law judge for further proceedings. It may also
17 reverse or modify the agency's decision, or adopt the administrative law judge's decision if the
18 substantial rights of the petitioners may have been prejudiced because the agency's findings,
19 inferences, conclusions, or decisions are:

- 20 (1) In violation of constitutional provisions;
- 21 (2) In excess of the statutory authority or jurisdiction of the agency;
- 22 (3) Made upon unlawful procedure;
- 23 (4) Affected by other error of law;
- 24 (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a),
25 150B-30, or 150B-31 in view of the entire record as submitted; or
- 26 (6) Arbitrary, capricious, or an abuse of discretion.

27 (c) ~~In reviewing a final decision in a contested case in which an administrative law
28 judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the
29 administrative law judge's decision, the court shall review the official record, de novo, and shall
30 make findings of fact and conclusions of law. In reviewing the case, the court shall not give
31 deference to any prior decision made in the case and shall not be bound by the findings of fact
32 or the conclusions of law contained in the agency's final decision. The court shall determine
33 whether the petitioner is entitled to the relief sought in the petition, based upon its review of the
34 official record. The court reviewing a final decision under this subsection may adopt the
35 administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may
36 remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2),
37 or 150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the
38 explanations; and may take any other action allowed by law.~~ case, the court shall determine
39 whether the decision is supported by substantial evidence admissible under G.S. 150B-29,
40 150B-30, or 150B-31 in view of the entire record. If the court determines that the decision is
41 not supported by substantial evidence in the record, the court may reverse the decision or
42 remand the case to the administrative law judge if the case was heard under Article 3 of this
43 Chapter or to the agency if the case was heard under Article 3A of this Chapter for entry of a
44 decision in accordance with the evidence in the official record.

45 (d) In reviewing a final agency decision allowing judgment on the pleadings or
46 summary judgment, or in reviewing an agency decision that does not adopt an administrative
47 law judge's decision allowing judgment on the pleadings or summary judgment pursuant to
48 G.S. 150B-36(d), the court may enter any order allowed by G.S. 1A-1, Rule 12(c) or Rule 56. If
49 the order of the court does not fully adjudicate the case, the court shall remand the case to the
50 administrative law judge for such further proceedings as are just."

1 **SECTION 14.** This act becomes effective January 1, 2012, and applies to contested
2 cases commenced on or after that date.