

April 12, 1999

H 968. AMEND CONTESTED CASE PROCEDURE. TO MODIFY THE PROCEDURES CONCERNING FINAL ADMINISTRATIVE DECISIONS IN CONTESTED CASES HEARD BY THE OFFICE OF ADMINISTRATIVE HEARINGS. Clarifies that facts in a contested case must be established by a preponderance of the evidence. Amends 150B-36 to specify that a party has 30 days after agency receives the official record to file exceptions to the decision of the administrative law judge, and that the findings of fact made by the administrative law judge are binding on the agency if the findings are supported by substantial evidence in view of the entire record. Act effective Jan. 1, 2000 and applies to contested cases commenced on or after that date.

Intro. by Nesbitt, Wilson of Mecklenburg, and Redwine.

Ref. to Ways & Means

GS 150B

April 22, 1999

H 968. AMEND CONTESTED CASE PROCEDURE. Intro. 04/12/99. House committee substitute substantially rewrites 1st edition and makes the following changes to it: (1) amends GS 150B-2(5) to delete provision prohibiting an agency that makes a final decision or an officer or employee of the agency from petitioning for initial judicial review of that decision; (2) amends GS 150B-34(a) and adds new GS 150B-34(d) to provide that except for exemptions and the certificate of need determinations described below, all agencies subject to GS 150B, Art. 3, are subject to the requirement that the administrative law judge makes a final decision or order with findings of fact and conclusions of law; (3) Adds new GS 150B-34(c) to provide that in cases arising under GS Ch. 131E, Art. 9 (health care facility certificate of need determinations) the administrative law judge must make a recommended decision containing findings of fact and conclusions of law. The final decision must be made by the agency after reciting the facts set forth in the recommended decision. If the agency does not adopt a finding of fact, it must state the specific reason for doing so and the agency findings must be supported by substantial evidence; (4) amends GS 150B-35 to remove prohibition that a member or employee of the agency making the final decision may not become involved in an ex parte communication; (5) deletes all proposed changes to GS 150B-36 (final decisions); (6) amends GS 150B-37 to make conforming changes; (7) amends GS 150B-44 to delete provisions requiring agency to make decisions within certain time periods. Makes failure for an administrative law judge or an agency to make a final decision within 180 days after the close of the hearing grounds for a court order compelling action; (8) Makes conforming changes to GS 150B-47(records), 150B-49 (new evidence), and 150B-50 (review by superior court without jury); and (9) deletes GS 150B-51(a)(initial determination in certain cases). Makes other conforming changes

July 7, 2000

H 968. AMEND CONTESTED CASE PROC. Intro. 4/12/99. Senate committee substitute and amendment #1 makes the following changes to 2nd edition. Adds following two clauses to end of title: TO AUTHORIZE ADMINISTRATIVE LAW JUDGES TO AWARD REASONABLE ATTORNEY'S FEES IN CERTAIN CASES, AND TO AUTHORIZE THE COURTS TO AWARD REASONABLE ATTORNEY'S FEES FOR ADMINISTRATIVE HEARINGS. Amends GS 6-19.1 to permit court to award reasonable attorney's fees, including attorney's fees applicable to the administrative review portion of the case, in contested cases arising under GS Ch. 150B, Art. 3 (administrative hearings, generally). Specifically provides that attorney's fees are not authorized for the administrative review portion of a contested case arising under GS Ch. 131E, Art. 9 (health care certificates of need). Amends GS 150B-33(b) to permit an administrative law judge (ALJ) to order assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved in contested cases decided under GS Ch. 126 (state personnel matters) where the ALJ finds discrimination, harassment, or orders reinstatement or back pay.

Makes following changes to amendments of the contested case procedure. Adds to statement of the purpose of the Office of Administrative Hearings in GS 7A-750 the following: to ensure that administrative decisions are made in a fair and impartial manner to protect the due process rights of citizens who challenge administrative action. Amends GS 7A-754 (qualifications

and standards of conduct for administrative law judges) to require that these judges comply with the Model Code of Judicial Conduct for State Administrative Law Judges, except that existing statutes addressing private practice of law and political activity apply instead of the relevant Code provisions. Provides that failure to comply with Code may constitute cause for disciplinary action and grounds for removal from office. Provides that violation of GS 7A-754 may constitute just cause for disciplinary action.

Amends GS 150B-34 (final decisions) to provide that an ALJ shall decide a case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences with the specialized knowledge of the agency. Adds to amendment of GS 150B-34(c) that final agency decisions in health care certificate of need cases must be in writing.

Amends GS 150B-36 (prior version repealed this statute) as follows. Outlines standards for final agency decisions except in decisions about health care certificates of need. Requires that an agency adopt each finding of fact in an ALJ decision unless the finding is clearly contrary to the preponderance of the admissible evidence, giving due regard to the ALJ's opportunity to evaluate the credibility of witnesses. Provides that an agency that does not adopt findings must, for each finding rejected, state separately and in detail the reason for not adopting the finding and state the evidence in the record relied upon to reach a different decision. Provides that findings not specifically rejected as required by the statute shall be deemed accepted for purposes of judicial review. Requires that when an agency makes a finding of fact not contained in the ALJ's decision, it must set forth separately and in detail the evidence relied upon; such findings must be supported by a preponderance of the evidence in the record. Prohibits agency from making new findings that are inconsistent with the ALJ's findings unless those findings were rejected as required above. Provides that agency shall adopt an ALJ decision unless the agency demonstrates the decision is clearly contrary to the preponderance of the evidence in the record. Clarifies that final ALJ decisions under GS 150B-36(c) are appealable directly to superior court. Adds new subsection (d) permitting an ALJ to grant judgment on pleadings or summary judgment that disposes of all issues in a case. Provides that these decisions need not have findings of fact or conclusions of law, except as the ALJ determines to be required or permitted by the rules of civil procedure. Requires that an agency make a final decision in such cases; if the agency rejects the ALJ's decision, it must set forth the basis for not adopting the decision, and it shall remand the case to the ALJ for a hearing. Provides that an aggrieved party is entitled to immediate judicial review of the final agency decision.

Amends GS 150B-51 (scope and standard of judicial review of final agency decisions) as follows. Adds advisory decisions by the State Personnel Comm'n to decisions covered by the statute. Adds standard for court to apply when an agency adopts an ALJ's decision, which includes a determination of whether the agency heard new evidence after receiving the decision and an evaluation of whether the agency followed statutory rules about adopting and rejecting ALJ findings of fact and decisions. Requires that the court conduct a de novo review when an agency does not adopt the ALJ's decision. In such instances, provides direction for when a court may adopt the ALJ's decision, adopt or modify an agency's decision, or remand a case for agency or ALJ action. Amendment #1 revises section about judicial review of final decisions on judgment on pleadings or summary judgment to clarify that the reviewing judge may enter any order allowed by Civil Procedure Rule 12(c) or Rule 56. Amendment #1 further provides that if the court's order does not fully adjudicate the case, the court must remand the case to the administrative law judge for further proceedings. Adds abuse of discretion as a factor that permits a reviewing court to reverse or modify an agency decision.

Amends GS 150B-52 to provide that an appellate court reviewing a superior court decision shall apply the same scope of review as for other civil cases. Changes time periods in GS 150B-44 (judicial intervention in delay). Response times of 90 days are shortened to 60 days. Shortens time period in which an agency must make a final decision from 180 days to 120 days. Deletes prior version's addition of a definition of "party," as well as references to the term. Amends GS 126-35 to provide that the burden of showing that a career state employee subject to the State Personnel Act was discharged, suspended, or demoted for just cause rests with the employer. Changes effective date to Jan. 1, 2001, from Jan. 1, 2000.

