

§ 126-34.02. Grievance appeal process; grounds.

(a) Once a final agency decision has been issued in accordance with G.S. 126-34.01, an applicant for State employment, a State employee, or former State employee may file a contested case in the Office of Administrative Hearings under Article 3 of Chapter 150B of the General Statutes. The contested case must be filed within 30 days of receipt of the final agency decision. Except for cases of extraordinary cause shown, the Office of Administrative Hearings shall hear and issue a final decision in accordance with G.S. 150B-34 within 180 days from the commencement of the case. In deciding cases under this section, the Office of Administrative Hearings may grant the following relief:

- (1) Reinstate any employee to the position from which the employee has been removed.
- (2) Order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied.
- (3) Direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improper action of the appointing authority.

An aggrieved party in a contested case under this section shall be entitled to judicial review of a final decision by appeal to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. 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.

(b) The following issues may be heard as contested cases after completion of the agency grievance procedure and the Office of State Human Resources review:

- (1) Discrimination or harassment. – An applicant for State employment, a State employee, or former State employee may allege discrimination or harassment based on race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation if the employee believes that he or she has been discriminated against in his or her application for employment or in the terms and conditions of the employee's employment, or in the termination of his or her employment.
- (2) Retaliation. – An applicant for State employment, a State employee, or former State employee may allege retaliation for protesting discrimination based on race, religion, color, national origin, sex, age, disability, political affiliation, or genetic information if the employee believes that he or she has been retaliated against in his or her application for employment or in the terms and conditions of the employee's employment, or in the termination of the employee's employment.
- (3) Just cause for dismissal, demotion, or suspension. – A career State employee may allege that he or she was dismissed, demoted, or suspended for disciplinary reasons without just cause. A dismissal, demotion, or suspension which is not imposed for disciplinary reasons shall not be considered a disciplinary action within the meaning of this section. However, in contested cases conducted pursuant to this section, an employee may appeal an involuntary nondisciplinary separation due to an employee's unavailability in the same fashion as if it were a disciplinary action, but the agency shall only have the burden to prove that the employee was unavailable. In cases of such disciplinary action the employee shall, before the action is taken, be furnished with a statement in writing setting forth the

specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal under the agency grievance procedure. However, an employee may be suspended without warning pending the giving of written reasons in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons.

- (4) Veteran's preference. – An applicant for State employment or a State employee may allege that he or she was denied veteran's preference in violation of the law.
- (5) Failure to post or give priority consideration. – An applicant for State employment or a State employee may allege that he or she was denied hiring or promotion because a position was not posted in accordance with this Chapter; or a career State employee may allege that he or she was denied a promotion as a result of a failure to give priority consideration for promotion as required by G.S. 126-7.1; or a career State employee may allege that he or she was denied hiring as a result of the failure to give him or her a reduction-in-force priority.
- (6) Whistleblower. – A whistleblower grievance as provided for in this Chapter.

(c) Any issue for which an appeal to the Office of Administrative Hearings has not been specifically authorized by this section shall not be grounds for a contested case hearing.

(d) In contested cases conducted pursuant to this section, the burden of showing that a career State employee was discharged, demoted, or suspended for just cause rests with the employer. In all other contested cases, the burden of proof rests on the employee.

(e) The Office of Administrative Hearings may award attorneys' fees to an employee where reinstatement or back pay is ordered or where an employee prevails in a whistleblower grievance. The remedies provided in this subsection in a whistleblower appeal shall be the same as those provided in G.S. 126-87.

(f) The Office of Administrative Hearings shall report to the Office of State Human Resources and the Joint Legislative Administrative Procedure Oversight Committee on the number of cases filed under this section and on the number of days between filing and closing of each case. The report shall be filed on a semiannual basis. (2013-382, ss. 6.1, 9.1(c); 2014-115, s. 55.3(d).)