

NCGS Article 3, Administrative Hearings, Chapter 150B, Administrative Procedure Act Decisions

150B-34 Decision of administrative law judge

(a) In each contested case—except *Certificate of need* cases, see 150B-34(c), and cases which are *appealable directly to superior court*, see 150B-36(c)—the ALJ will issue a decision containing findings of fact and conclusions of law. The ALJ will:

- Decide the case based on the preponderance of the evidence;
- Give due regard to the agency's specialized knowledge and expertise with respect to facts and inferences; and will
- Return his or her decision to the agency for a final decision.

(b) Repealed.

(c) In *Certificate of need* cases, [Article 9, Chapter 131E], the ALJ will make a **recommended** decision or order containing findings of fact and conclusions of law. The agency will then:

- Review the official record and shall make a final decision, in writing; and
- Shall recite and include all the facts set forth in the ALJ's recommended decision.
- For each finding of fact in the ALJ's decision that the agency does **not** adopt, the agency shall state the specific reason, based on the evidence, for not adopting it;
- The agency's findings shall be supported by substantial evidence admissible under 150B-29(a) *Rules of Evidence*; 150B-30 *Official Notice*; or 150B-31 *Stipulations*; and
- The provisions of 150B-36(b), (b1)-(b3) and (d) *Final decision*, and 150B-51 *Scope and Standard of Review*, do **not** apply to cases decided under this subsection.

(d) The provisions of this section regarding decisions of the ALJs shall apply only to agencies subject to Article 3 of this Chapter, despite any other provisions to the contrary relating to recommended decisions by ALJs.

- Exempt agencies are listed in 150B-1(c) and (e), *Policy and scope*.

150B-36 Final decision

(a) The agency will allow each party the opportunity to file exceptions to the ALJ's decision and present written arguments **before** the agency makes a final decision.

- A party may file in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of an agency member.
 - The agency shall determine the matter as a part of the record in the case;
 - And the determination is subject to judicial review at the conclusion of the case.

(b) In a contested case, the agency will review the official record, as defined in 150B-37(a), *Final decision*, and:

- Make a final decision in writing, including findings of fact and conclusions of law;
- Adopt each finding of fact contained in the ALJ's decision **unless** the finding is clearly contrary to the preponderance of the admissible evidence; and
- Give due regard to the opportunity of the ALJ to evaluate the credibility of the witnesses.
- For each finding of fact **not adopted** by the agency, the agency shall follow the procedure set forth in (b1), below; and
- For each finding of the fact **made by the agency** that is not contained in the ALJ's decision, the agency shall follow the procedures set forth in (b2), below.
- This provision does **not** apply to 150B-34(c) *Certificate of need* cases, or subsection (d) of this section, *judgment on the pleadings* pursuant to 1A-1, Rule 12(b) or *summary judgment* pursuant with 1A-1, Rule 56.

(b1) For each finding of fact **contained** in the ALJ's decision that is **not** adopted by the agency, the agency shall set forth separately and in detail:

- The reasons for not adopting the finding of fact; and
- The evidence in the record relied upon in not adopting the finding of fact.
- Any finding of fact not specifically rejected as required by this subsection shall be deemed accepted for purposes of judicial review of the final decision.

(b2) For each finding of fact made by the agency that is **not contained** in the ALJ's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency. Additionally,

- Any new finding of fact must be supported by a preponderance of the admissible evidence in the record; and
- In order for the agency to make a new finding of fact that is inconsistent with one contained in the ALJ's decision, the agency shall follow the steps to not adopt the ALJ's finding of fact as detailed in (b1), above.

150B-36 Final decision (cont'd)

(b3) The agency will adopt the decision of the ALJ **unless** the agency demonstrates that the ALJ's decision is clearly contrary to the preponderance of the admissible evidence in the record.

- If the agency does **not** adopt the ALJ's decision, the agency must include in its final decision:
 - Its reasoning for the final decision in light of the findings of fact and conclusions; and
 - Any exercise of agency discretion.
- In making a final decision, the agency may consider only the official record prepared pursuant to 150B-37, *Final decision*.
- A copy of the decision shall be served upon each party personally, or by certified mail;
- A copy shall be furnished to his or her attorney; and
- A copy shall be furnished to the OAH.
- This provision does **not** apply to 150B-34(c) *Certificate of need* cases.

(c) The final decisions made by ALJs in contested cases that are ***appealable directly to superior court*** under Article 4, *Judicial review* include:

- A determination that the OAH lacks jurisdiction;
- An order entered pursuant to the authority in 7A-759(e), OAH's *Role as deferral agency* for EEOC; and
- An order entered pursuant to a written prehearing motion that:
 - Dismisses the contested case for failure of the petitioner to prosecute, or
 - Grants the relief requested when a party does not comply with procedural requirements; or
 - Dismisses the contested case in accordance with 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.

(d) If it will dispose of all issues in the contested case, an ALJ may grant:

- Judgment pursuant to a motion made in accordance with 1A-1, Rule 12(c); or
- Summary judgment, pursuant to a motion made in accordance with 1A-1, Rule 56.
- In spite of subsection (b) of this section, a decision granting either a motion for judgment on the pleadings or summary judgment need **not** include findings of fact or conclusions of law, **unless** the ALJ determines it to be required or allowed by 1A-1, Rule 12(c) or Rule 56.
- The agency will make a final decision for any ALJ decision that grants judgment on the pleadings or summary judgment that disposes of all issues in the case.
- If the agency does **not** adopt the ALJ's decision, it shall:
 - Set forth the basis for failing to adopt; and
 - Remand the case to the ALJ for hearing.

- The party aggrieved by the agency's decision shall be entitled to immediate judicial review of the decision under Article 4, *Judicial review*.

150B-37 Official record

- (a) In a contested case, the OAH shall prepare an official record that includes:
1. Notices, pleadings, motions, and intermediate rulings;
 2. Questions and offers of proof, objections, and rulings thereon;
 3. Evidence presented;
 4. Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
 5. [Repealed];
 6. The ALJ's decision or order.
- (b) Oral evidence will be recorded at proceedings in which it is presented, but it need not be transcribed unless requested by a party.
- Each party shall bear the cost of the transcript, or copy of the transcript, or the part of the transcript or copy requested; and
 - The transcript shall be added to the official record as an exhibit.
- (c) The OAH shall forward a copy of the:
- *official record* to the agency making the final decision; and
 - the *ALJ's decision* to each party.
 - **If a petition for judicial review is filed, the superior court is sent:**
 - The official record *from the agency* that makes the final decision; and
 - The ALJ's final decision *from OAH*.