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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-49

No. COA20-357

Filed 2 March 2021

Office of Administrative Hearings, No. 17 OSP 08648

LINDA BETH GUPTON, Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, STATE HIGHWAY
PATROL, Respondent.

Appeal by Petitioner from final decision entered 13 February 2020 by
Administrative Law Judge Melissa Owens Lassiter in the Office of Administrative
Hearings. Heard in the Court of Appeals 10 February 2021.

Barry K. Henline for Petitioner-Appellant.

*Attorney General Joshua H. Stein, by Assistant Attorney General Norlan
Graves, for Respondent-Appellee.*

GRIFFIN, Judge.

¶ 1

Petitioner Linda Beth Gupton appeals from a final decision of the North Carolina Office of Administrative Hearings, which concluded that Respondent North Carolina Department of Public Safety discharged Petitioner from employment with just cause. Because Petitioner seeks review of constitutional claims that have not been decided on the merits by a tribunal with original jurisdiction, we dismiss her

appeal for lack of appellate jurisdiction.

I. Factual and Procedural Background

¶ 2 On 19 December 2017, Petitioner filed a petition for a contested case hearing with the Office of Administrative Hearings, challenging Respondent's decision to dismiss her from her position with the North Carolina State Highway Patrol. In a prehearing statement, Petitioner argued that Respondent's decision to discharge her from employment (1) was without just cause and (2) invaded her privacy interests in violation of the Fourteenth Amendment of the United States Constitution.

¶ 3 On 10 July 2019, Administrative Law Judge Melissa Owens Lassiter ("ALJ") issued an order granting in part Respondent's motion for summary judgment, finding that the Office of Administrative Hearings "lack[ed] jurisdiction over Petitioner's argument of infringement upon her constitutional right to privacy." Petitioner subsequently filed a "Motion for Preservation of Constitutional Issues", requesting that her claims of constitutional infringement "be preserved for consideration before the North Carolina Court of Appeals."

¶ 4 On 13 February 2020, the ALJ issued a final decision finding that Respondent had just cause to dismiss Petitioner from employment. Petitioner timely filed notice of appeal to this Court from the ALJ's final decision pursuant to N.C. Gen. Stat. §§ 7A-29 and 126.34.02(a).

II. Analysis

¶ 5 On appeal, Petitioner seeks review of whether Respondent’s conduct infringed upon her constitutional right to privacy pursuant to the Fourteenth Amendment of the United States Constitution. Because Petitioner’s claims have not been decided on the merits by a tribunal with proper jurisdiction, we dismiss Petitioner’s claims as outside the scope of appellate review.

¶ 6 Petitioner contends that “N.C. Gen. Stat. § 150B-51 specifically reserves jurisdiction [over constitutional] issues with a [c]ourt reviewing the decision of the Office of Administrative Hearings.” While the statute petitioner cites does outline the scope of appellate review of a final decision issued by the Office of Administrative Hearings, it does not permit this Court to decide constitutional claims that have not first been adjudicated on the merits by a trial tribunal.

¶ 7 N.C. Gen. Stat. § 150B-51(b) outlines the scope of appellate review of a final decision issued by the Office of Administrative Hearings:

The court reviewing a final decision may affirm the decision or remand the case for further proceedings. It may also reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge;
- (3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or

(6) Arbitrary, capricious, or an abuse of discretion.

N.C. Gen. Stat. § 150B-51(b) (2019).

¶ 8

Pursuant to the above scope of review, this Court may review whether an ALJ's "findings, inferences, conclusions, or decisions" were made "[i]n violation of constitutional provisions[.]" *Id.* Accordingly, while we may review constitutional issues resulting from an alleged error made by the ALJ, we cannot exercise appellate jurisdiction over constitutional claims that have not yet been decided on the merits. We therefore dismiss Petitioner's appeal as not properly before this Court.

III. Conclusion

For the foregoing reasons, Petitioner's appeal is dismissed for lack of appellate jurisdiction.

DISMISSED.

Judges DIETZ and ZACHARY concur.

Report per Rule 30(e).