

**APPENDIX A**

**[NORTH CAROLINA COURT OF APPEALS  
LETTERHEAD]**

No. COA17-299-1

THOMAS E. FREEMAN, JR.,  
Petitioner,

v.

NC DEPARTMENT OF HEALTH AND HUMAN  
SERVICES CENTRAL REGIONAL HOSPITAL  
and WHITAKER PRTH,  
Respondents.

From Office of Admin. Hearings  
16OSP10316 16OSP10316

**O R D E R**

NOTICE OF APPEAL BASED UPON A  
CONSTITUTIONAL QUESTION filed on the 12th of  
January 2018 was Dismissed Ex Mero Motu by order  
of the North Carolina Supreme Court on the 11th day  
of April 21348, and same, has been certified to the  
North Carolina Court of Appeals.

IT IS THEREFORE CERTIFIED to the Clerk of  
the Office of Admin. Hearings that the North Carolina

Supreme Court has Dismissed Ex Mero Motu the  
NOTICE OF APPEAL BASED UPON A  
CONSTITUTIONAL QUESTION filed by the  
Petitioner in this cause.

WITNESS my hand and official seal this the  
13th day of April 2018.

/s/

Daniel M. Home Jr.

Clerk, North Carolina Court of Appeals

Copy to:

Mr. Thomas E. Freeman, Pro Se, For Freeman,  
Thomas E. (Jr.)

Mr. Joseph E. Elder, Assistant Attorney General, For  
NC Department of Health And Human Services, et al

Copy to:

North Carolina Court of Appeals

Mr. Thomas E. Freeman, Jr., For Freeman, Thomas E.  
(Jr.) - (By Email)

Mr. Joseph E. Elder, Assistant Attorney General, For  
NC Department of Health And Human Services, et al  
- (By Email) West Publishing - (By Email)  
Lexis-Nexis - (By Email)

**APPENDIX B**

No. 18A18

TENTH DISTRICT

**Supreme Court of North Carolina**

THOMAS E. FREEMAN, JR.

v

NC DEPARTMENT OF HEALTH AND HUMAN  
SERVICES CENTRAL REGIONAL HOSPITAL  
and WHITAKER PRTF

From N.C. Court of Appeals  
(17-299)

From Office of Admin. Hearings  
(16OSP10316 16OSP10316)

**O R D E R**

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by Petitioner on the 12th of January 2018 in this matter pursuant to G.S. 7A-30 (substantial constitutional question), the following order was entered and is hereby certified to the North Carolina Court of Appeals: the notice of appeal is

"Dismissed Ex Mero Motu by order of the Court in conference, this the 5th of April 2018."

s/ Morgan, J.  
For the Court

WITNESS my hand and official seal of the  
Supreme Court of North Carolina, this the 11th of  
April 2018.

Amy L. Funderburk  
Clerk, Supreme Court of North Carolina

[SEAL]

/s/  
M.C. Hackney  
Assistant Clerk, Supreme Court of North Carolina

## APPENDIX C

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

### IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-299  
Filed: 5 December 2017

In the Office of Administrative Hearings, No. 16 OSP  
10316

THOMAS E. FREEMAN JR., Petitioner,

v.

NC DEPARTMENT OF HEALTH AND HUMAN  
SERVICES CENTRAL REGIONAL HOSPITAL and  
WHITAKER PRTF, Respondent.

Appeal by petitioner from order entered on or  
about 14 December 2016 by Judge Donald W. Overby  
in the Office of Administrative Hearings. Heard in the  
Court of Appeals 13 November 2017.

*Attorney General Joshua H. Stein by Assistant  
Attorney General Joseph E. Elder, for*

*respondent-appellee N.C. Department of Health and Human Services Central Regional Hospital.*

*Thomas E. Freeman, Jr., pro se, petitioner-appellant.*

STROUD, Judge.

On 21 October 2016, petitioner filed a petition for a contested case hearing in the Office of Administrative Hearings ("OAH"), alleging that a 28 October 2015 written warning for unacceptable personal conduct due to attendance issues was arbitrary and capricious and thus his rights to due process and equal protection under the Fifth and Fourteenth Amendments to the United States Constitution were violated. Respondents filed a motion to dismiss on the grounds that OAH lacked jurisdiction over the matter; petitioner failed to state a claim upon which relief can be granted; petitioner failed to properly serve respondent; and OAH could not exercise personal jurisdiction over respondent. OAH entered a final decision on or about 14 December 2016 dismissing the case with prejudice finding that it lacked subject matter jurisdiction. Petitioner purports to appeal from the final decision.

We must dismiss petitioner's appeal because the record before us is insufficient to vest our Court with jurisdiction to consider the appeal as petitioner failed to file a notice of appeal. *See Brooks, Com'r of Labor v. Goodell*, 69 N.C. App. 701, 707, 318 S.E.2d 348, 352 (1984) ("Without proper notice of appeal, this Court acquires no jurisdiction."). Without a notice of appeal,

this Court has no jurisdiction to review petitioner's appeal. *See id.* This appeal is dismissed.

**DISMISSED.**

**Chief Judge McGEE and Judge DILLON concur.**

**Report per Rule 30(e).**

**APPENDIX D**

**FILED  
OFFICE OF ADMINISTRATIVE HEARINGS  
12/14/2016 1:50 PM**

**STATE OF NORTH CAROLINA  
COUNTY OF DURHAM**

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
16 OSP 10316**

**Thomas E Freeman Jr.  
Petitioner,**

**v.**

**NC Department of Health and Human Services  
Central Regional Hospital and Whitaker PRTF  
Respondent.**

**FINAL DECISION  
ORDER OF DISMISSAL**

**THIS MATTER is before the honorable Donald W. Overby, Administrative Law Judge presiding, for consideration of Respondent's Motion to Dismiss filed with the Office of Administrative Hearing ("OAH") on December 1, 2016, as well as Petitioner's response thereto filed with OAH on December 12, 2016. Having**



considered the respective filings of the parties and matters of record proper for consideration, the undersigned finds as follows:

Petitioner's contested case petition avers, among other things, potential violations of the 5th and 14th Amendments to the United States Constitution. The Office of Administrative Hearings is an agency created by statute and only has those powers and authority as granted specifically by statute.

By its creation, OAH provides the procedural due process for matters within its jurisdiction. In as much as Petitioner's contentions raised in the contested case petition center on a written warning, the central question then is whether or not OAH has jurisdiction over such matters, to which the answer is no. N. C. Gen. Stat. §126-34.02 is the State Human Resources Act, and it specifically enumerates personnel matters which may be brought before the OAH, and matters alleged herein are not covered. Therefore, OAH lacks subject matter jurisdiction. Petitioner recites often in his response reference to the State Personnel Manual and therein lies his recourse, if any, to his concerns with the written warning.

Now, therefore, this matter is properly before this Tribunal for consideration, and dismissal is appropriate under the facts and circumstances of this contested case. Thus, it is hereby ORDERED that this matter is DISMISSED with prejudice.

#### **NOTICE AND ORDER**

This Final Decision is issued under the authority of N.C.G.S. § 150B-34. Pursuant to N.C.G.S. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. 7A-29(a).

The appeal must be filed within 30 days of receipt of this Final Decision. The notice of appeal must also be filed with the Office of Administrative Hearings, and served on all parties to the contested case hearing.

This the 14th day of December, 2016.

/s/  
Donald W Overby  
Administrative Law Judge

## **CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

Thomas E Freeman  
1138 Raynor Street  
Durham NC 27703  
Petitioner

Joseph Edward Elder  
NC Dept. of Justice  
Office of the Attorney General  
jelder@ncdoj.gov  
Attorney For Respondent

This the 14th day of December, 2016.

/s/  
Lisa J Garner  
North Carolina Certified Paralegal  
N. C. Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh NC 27699-6700  
Phone: 919-431-3000