

STATE OF NORTH CAROLINA
 COUNTY OF WAKE

IN THE OFFICE OF
 ADMINISTRATIVE HEARINGS
 17 OSP03161

JOSEPH VINCOLI,)	
Petitioner,)	
v.)	MOTION TO DISMISS
)	
N. C. DEPARTMENT OF PUBLIC SAFETY,)	
Respondent.)	

Pursuant to N.C.R.Civ.P. 12(b)(1), 12(b)(2) and 12(b)(4), 12(b)(5) and 12(b)(6), Respondent, North Carolina Department of Public Safety (“NCDPS”), moves to dismiss this action. In support, NCDPS states as follows:

STATEMENT OF THE CASE

This is the third time Petitioner has filed a contested case regarding NCDPS’s reclassification of his position. Petitioner was notified that his position was being classified as managerial exempt on October 1, 2013. On December 9, 2013 the Secretary of DPS ended Petitioner, Joseph Vincoli’s (“Petitioner”) appointment to the position of Special Assistant to the Secretary for Inmate Medical Services. Petitioner’s position was a managerial exempt position which meant that Petitioner was exempted from the just cause provisions of the State Human Resources Act. On May 20, 2014, Petitioner filed a complaint in Wake County Superior Court alleging that he was terminated due to engaging in protected activity as defined by N.C.G.S. ¶126-84. Petitioner asserted that his termination violates N.C.G.S. ¶126-85.

Petitioner filed a Petition For Contested Case on January 14, 2014. (“Petition 1”) This Court granted Respondent’s motion to dismiss. Petitioner failed to appeal that order. Petitioner then filed a Declaratory Action in Wake County Superior Court seeking to declare certain

