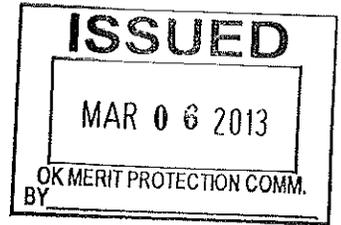


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

ROBERT DUANE JOHNSON,)
 Appellant,)
)
v.)
)
DEPARTMENT OF PUBLIC SAFETY,)
 Appellee.)
)

Case No. MPC 12-069
and 12-107



ORDER

THE ABOVE STYLED AND NUMBERED CAUSE came on before the undersigned Administrative Law Judge, Lydia Lee, upon Appellee’s Motion to Correct Final Order filed herein on February 26, 2013. The Appellee appears through counsel, Stephen Krise. The Appellant appears by and through counsel, Gary James.

The Appellee requests that the Final Orders issued in this consolidated case be corrected as set forth in the Appellee’s Motion. Each issue will be addressed below.

1. The Appellant’s Motion to Dismiss states that it is being made “pursuant to the written agreement of the parties”. The Appellee filed no pleading to concur with this statement until its filing of the instant Motion.
2. The Appellee incorrectly alleges that “Final Orders” were issued on February 26, 2013. The Order of Dismissal, issued on February 26, 2013, is not a “Final Order” as that term is used in the Administrative Procedure Act, 75 O.S. §312, as it does not contain Findings of Fact and Conclusions of Law, separately stated. The Dismissal Order disposed of the appeals without making a determination of the merits of the appeals. The Dismissal Order was issued, listing and including both of the consolidated appeals as indicated in the caption and was filed in each of the cases.
3. The Appellee incorrectly states that the Appellant filed two cases, only one of which was an “appeal”. The “Whistleblower” action is an “alleged violation appeal” pursuant to 455:10-3-10 (b). The term “appeal” is correct verbiage and is applicable in both of the cases herein. Furthermore, the two appeals were consolidated by order of the Executive Director on February 29, 2012.

4. The Appellee states that the Order inaccurately and unfairly represents the basis for the Dismissal to the detriment of the Appellee because it fails to note that the matter was settled to the satisfaction of both parties. No factual basis has been provided to support this allegation nor is there any evidence of detriment or prejudice to the Appellee. The settlement agreement was not filed nor has endorsement of the Commission been sought pursuant to 455:10-3-12. The terms of the settlement are unknown and are not part of the record in this case.
5. The Dismissal Order adequately addresses both of the consolidated appeals and reflects the assertions of the Appellant, who filed his Motion to Dismiss on January 25, 2013. The Appellee could have joined with the Appellant in jointly seeking the Dismissal, or could have filed a responsive pleading indicating its satisfaction with the terms of the settlement or its concurrence. It did not do so and, some thirty days later, the undersigned issued an Order of Dismissal based upon the filings of record in the case.
6. It is also noted that one of the Motions to Dismiss, filed by Appellant on January 15, 2013, contains an incorrect case number. The caption and the filings were correct, however it lists MPC-2012-109, rather than MPC-2012-107. This mistake was not noted by either party and does not affect the Order of Dismissal.

Having reviewed the Motion, it is determined that both of the appeals of Robert Duane Johnson have been properly dismissed with prejudice on February 26, 2013.

IT IS SO ORDERED THIS 5th DAY OF MARCH, 2013.



Lydia Lee, OBA # 10374
Administrative Law Judge