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The Georgia Office of State Administrative Hearings

By: Mark A. Dickerson*

Introduction

In 1994 the Georgia Office of State Administrative Hearings (OSAH) was created by the Georgia General Assembly as a new state agency. OSAH was assigned the responsibility for conducting the initial administrative hearings in all state agencies' contested cases required by the Georgia Administrative Procedures Act (APA) except for all cases before the Public Service Commission, the Health Planning Review Board, and the Health Planning Agency, and individual unemployment insurance claims heard by the Department of Labor.¹

OSAH'S Structure

OSAH is administered by the Chief State Administrative Law Judge (Chief ALJ) who is appointed by the Governor for a six year term and who may be removed by the Governor "for cause." O.C.G.A. 50-13-40(b). The Chief ALJ in turn appoints all of OSAH's Administrative Law Judges. These ALJs are generally full-time OSAH employees although the Chief ALJ may employ temporary or part-time ALJs or may contract with private attorneys to serve as ALJs in specific classes of cases. O.C.G.A. 50-13-40(e). All full-time ALJs are prohibited from otherwise practicing law or providing legal assistance to any state agency and are subject to the provisions of the Code of Judicial Conduct. All ALJs must have been admitted to the practice of law in Georgia for at least three years.

OSAH currently employs 31 full-time ALJs who conduct hearings for the Departments of Human Resources (benefit cases

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¹O.C.G.A. 50-13-41 (a) (1) and 42. OSAH began operations and assumed its hearing responsibilities on April 1, 1995.

including Medicaid), Labor, Natural Resources, Public Safety, Revenue, and Transportation as well as the Office of Consumer Affairs and School Readiness and the State Personnel Board. Cases are assigned to these ALJs on a geographic bases. Cases for the Professional Standards Commission (teacher certification), the Departments of Education, Labor and Medical Assistance (Medicaid provider cases), the Peace Officers Standard and Training Council, the Real Estate Commission, the Secretary of State, the Commissioner of Securities, and 35 professional licensing boards are currently assigned on a case by case basis to part-time ALJs who are assigned specific types of cases on a contract basis or to full-time ALJs who volunteer for extra work.

OSAH's full-time ALJs now start at just above \$45,000 per year, a salary that remains much too low but which is considerably above the less than \$30,000 starting salary in place when OSAH was created in 1995. This increase has been achieved via annual cost of living increases and two incremental pay increases approved by the Georgia General Assembly in 1997 and 1998. OSAH has proposed a further increase to \$56,000 which has just begun the review process in the executive and legislative branches necessary for approval.

All of OSAH's ALJs, full and part-time, are required to undergo 12 hours of continuing judicial education (CJE) every year. This training is provided by the Georgia Institute for Continuing Judicial Education which is affiliated with the University of Georgia Law School. In addition OSAH provides regular in-house CJE and sends ALJs to a wide variety of seminars and judicial training programs including programs at the National Judicial College. Prior to OSAH's creation there was no CJE requirement for the hearing officers and ALJs who held the hearings now held by OSAH ALJs, although those hearing officers or ALJs who were members of the Georgia Bar were required to take 12 hours of continuing legal education each year to maintain their bar membership.

OSAH's Case-Handling Procedures

OSAH has resolved in excess of 20,000 cases in each of the last

three years and anticipates resolving slightly over 24,000 cases in 1999. The majority of these cases involve modifications of child support orders, public assistance benefits, or the suspension of drivers' licences based on DUI charges. OSAH's FY 2000 budget is slightly in excess of \$4 million.

Typically an OSAH ALJ conducts an on-the-record de novo evidentiary hearing after which the ALJ enters an initial decision which is subject to review by the head of the agency for which the hearing was held. 2 O.C.G.A. 50-13-41 (d). However, in all matters referred by the Department of Natural Resources (DNR), including environmental matters, the decision of the OSAH ALJ is the final decision of DNR as a matter of statute. O.C.G.A. 12-1-2 (a). Agencies other than DNR may adopt a rule making the OSAH ALJ's decision the final agency decision which is subject only to judicial review. O.C.G.A. 50-13-41 (e) (3).² A few agencies including the Department of Public Safety (all cases including DUI license suspensions) and the Department of Human Resources (several types of cases including commitment cases, and food stamp fraud cases), have chosen this option. As a result, approximately one-half of OSAH's decisions are final administrative decisions not subject to agency review.

If the OSAH ALJ's decision is subject to referring agency review, the referring agency has 30 days following the "entry" of the decision to reject or modify it, although this time period may be extended for up to two additional 30 day periods where there are "unusual and compelling circumstances." O.C.G.A. 50-13-41 (e) (1) & (2). Failure of an agency to reject or modify an ALJ's decision within the original 30 day period, or within any extended review period, means the ALJ's decision is affirmed by operation of law. *Id.*

In the event the non-agency party desires agency review of an

²The reviewing agency must "give due regard" to the ALJ's opportunity to observe the witnesses and must explain in writing any change in the findings of fact. O.C.G.A. 50-13-41 (e).

ALJ's decision, that party must make an application for such review to the referring agency within 30 days "from the date of notice of the (ALJ's) decision." O.C.G.A. 50-13-17 (a) and 41(d). This time period for review by the referring agency at the request of the non-agency party appears inconsistent with the requirements stated in the preceding paragraph that the agency make any changes within 30 days of the entry of the decision. How this difference will be reconciled by Georgia's courts is now unknown.

If the OSAH ALJ's decision is not subject to referring agency review, the parties may seek judicial review in the Fulton County Superior Court or in the Superior Court of the county where the non-agency party resides. O.C.G.A. 50-13-17 (a) and (b). Any such petition for judicial review must be filed within 30 days after "service" of the ALJ's decision. *Id.* The filing of such a petition does not stay the ALJ's decision although either the court of the referring agency may grant a stay "for good cause shown." *Id.* at 19 (d).