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NO. COA14-375

NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2014

JOHN PRICE,
Petitioner,

v.

Wake County
No. 13 CVS 1932

STATE OF NORTH CAROLINA OFFICE OF
THE STATE AUDITOR,
Respondent.

Appeal by respondent from order entered 4 October 2013 by Judge Howard E. Manning, Jr., in Wake County Superior Court. Heard in the Court of Appeals 24 September 2014.

Attorney General Roy Cooper, by Assistant Attorney General Brandon L. Truman, for respondent-appellant.

The Law Offices of Michael C. Byrne, by Michael C. Byrne, for petitioner-appellee.

BRYANT, Judge.

Where the trial court properly applied and engaged in *de novo* review in adopting the decision of the administrative law judge, we affirm the decision of the trial court.

On 20 January 2011, petitioner John Price filed a petition for a contested case hearing in the Office of Administrative Hearings alleging that he had been discharged by respondent, State of North Carolina Office of the State Auditor, from his job without just cause. Hearings were held on 14–18 November 2011, and 15–16 February 2012, Administrative Law Judge Melissa Owens Lassiter (“ALJ”) presiding. The evidence presented at the hearings tended to show the following.

Petitioner was a career employee of respondent, having been initially hired by respondent in 1989. During his time with respondent, petitioner was promoted several times to positions including Assistant State Auditor I, II, and III, and Assistant State Auditor Supervisor. Petitioner also worked for a number of departments within respondent, including the Financial, Fraud, Performance Audit, and Non-Governmental divisions.

In September 2009, petitioner was reassigned from the Non-Governmental to the Performance division to fill a non-supervisory role. Prior to this reassignment, petitioner had received no disciplinary actions in twenty years with respondent. When petitioner underwent a performance evaluation in December 2009, his supervisor, Sarah Dozier, gave him a “Below Expectations” rating on every criterion.

On 15 January 2010, petitioner was assigned a new supervisor, Bill Styres, who, in an interim performance evaluation on 10 February, rated petitioner's performance as not meeting expectations. Petitioner was given a development plan to help him improve his job performance and advised that he would undergo another performance evaluation around 30 April.

On 8 June, petitioner underwent his yearly performance review in which he was rated as either "Below Expectations" or "Unsatisfactory" on every criterion. Petitioner was assigned another development plan and advised that he would be reevaluated on 31 August.

On 15 July, petitioner was assigned a third supervisor, Carla Jacobs, to help him improve his job performance. On 2 August, Jacobs issued a written warning to petitioner regarding his failure to correct deficiencies in his work performance.

On 8 September, petitioner received a new performance evaluation in which he was given "Unsatisfactory" ratings on every criterion. A second written warning was issued to petitioner on 14 September. A pre-disciplinary conference was held with petitioner on 15 October, and on 19 October, petitioner was dismissed for unsatisfactory job performance.

On 26 July 2012, the ALJ entered a decision reversing respondent's termination of petitioner's employment and ordering petitioner to be reinstated with back pay and attorneys' fees. In its order, the ALJ made the following pertinent findings of fact:

25. In May of 2009, Respondent transferred Petitioner to work in the Performance Audit Division. At that time, Petitioner had more than 20 years of service with Respondent, and had received no prior disciplinary actions.

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28. On May 28, 2009, Petitioner's supervisor in the Non-Governmental Division conducted an annual evaluation of Petitioner's job performance for the 2008-2009 year, and gave Petitioner an overall "Meets Expectation" rating. (Resp. Exh. 12)

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31. During Petitioner's prior 13 years in the Performance Audit Division, he received annual performance evaluations and interim performance evaluations. However, between May 2009 until his termination in October 2010, Petitioner received approximately five or six written performance evaluations. (T. pp. 1015, 1016) Petitioner received written evaluations from a supervisor in February 2010, May 2010, September 2010, and October 2010. (T. pp. 1015-16)

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37. Styres acknowledged at [the] hearing that Respondent's annual performance

management cycle begins in May of each year.

38. Yet, on February 10, 2010, Styres issued Petitioner another performance evaluation; the performance evaluation that Sarah Dozier had completed in December 2009, but never [gave] to Petitioner. (T. p. 69) Styres reviewed that evaluation with Petitioner, wherein Petitioner's performance was rated at "Below Expectations" in the areas of determine/design audit procedures, gather/analyze/evaluate evidence, communication skills, leadership/influence, integrity/objectivity, and technical/professional knowledge. Styres' concerns with Petitioner's work included not providing work in a timely manner, not providing feedback or helping others, and the lack of work product being completed.

39. At [the] hearing, Styres explained that Petitioner had charged about 700 hours to the service contract audit, and only produced two work papers. (T. p. 123) However, in the Dozier evaluation of December 2009, the evaluation merely stated, "John fails to complete work in a timely manner." (Resp. Exh. 2, p. 69) The evaluation also made general statements, such as John "has not demonstrated an ability to determine or design audit procedures," or ["]John does not provide direction or training to other team members." No further specificity is provided in that evaluation regarding how Petitioner failed to perform these expectations. (Resp. Exh. 2, p. 66)

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48. A review of the June 2010 evaluation showed that Styres "cut and pasted" seven incidents, written by Dozier in her December 2009 evaluation, into his June 2010 annual

evaluation of Petitioner, even though Styres had no personal knowledge of those incidents as he was not supervising Petitioner in the fall of 20[09]. Styres used the same "result comment" to support "unsatisfactory" and "below expectations" ratings of Petitioner's work on different key responsibilities. For example, Styres wrote that Petitioner was not completing work in a timely manner and/or exceeded the time budget under both key responsibilities of "Planning" and "Auditing: Performing Audit Procedures." (T. p. 277; Resp. Exh. 3, pp. 44-45)

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51. In mid-July 2010, Styres asked Carla Jacobs to review some of Petitioner's work. On July 15, 2010, Styres assigned Ms. Jacobs to be Petitioner's supervisor. (Pet. Exh. 1, 16) At that time, Ms. Jacobs had been employed with Respondent for 1 year and 8 months, as Respondent had hired Jacobs in November 2008 as an Assistant State Auditor Advanced, or ASA3. Jacobs had never, in her employment with Respondent, performed an audit by herself as she had been assigned to work only on large scope and in-scale audits.

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53. In January 2010, Ms. Jacobs had started working in a "work against position for supervisor." When Ms. Jacobs began supervising Petitioner, Jacobs had not officially been promoted to supervisor. Kenneth Barnette, the Performance Division Manager, did not recommend Jacobs to be promoted to supervisor until September 13, 2010. Jacobs' official promotion to supervisor occurred on October 13, 2010, six days before Petitioner was dismissed from employment.

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55. Between January and October of 2010, Ms. Jacobs issued two written warnings to M.D., one of the employees she supervised in the DOT audit. After discussing M.D.'s performance evaluations with Bill Styres and Ken Barnette, "it was decided that disciplinary action was needed." (T. p. 629) Jacobs acknowledged at [the] hearing that she did not independently issue written warnings to M.D., but issued those warnings to M.D. with the concurrence of Styres and Barnette. (T. p. 629)

56. As of the fall of 2010, 2 o[f] the 3 employees whom Jacobs supervised were terminated from employment with Respondent.

57. On August 2, 2010, Styres issued a written warning to Petitioner for unsatisfactory job performance, even though Styres had stated in the June 2010 development plan that "John will be reevaluated as of August 31, 2010." (Resp. Exh. 3, p. 59; T. p. 288)

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61. Jacobs and Petitioner had difficult relations from the start of her supervision in mid-July 2010. Jacobs kept almost daily, detailed notes on Petitioner's performance, totaling approximately 13 pages. (Resp. Exh. 9) At [the] hearing, Jacobs noted that from August to October 2010, she could not point out one "non-negative" comment she made about Petitioner.

62. On September 8, 2010, Jacobs issued another performance evaluation to Petitioner covering a work period from August 2, 2010 to September 3, 2010. (Resp. Ex. 5)

a. In this review, Jacobs gave Petitioner "Unsatisfactory" ratings, the lowest rating possible, because Petitioner was not able to identify internal controls and differentiate between processes and control activities. Jacobs issued a development plan, giving Petitioner 30 days to improve his performance. In this evaluation, significant verbiage was "lifted" or excerpted directly from previous performance reviews conducted by Styres and Dozier.

b. In this evaluation, Jacobs criticized Petitioner because (1) he "brought his daughter to the office due to school transportation issues," and failed to notify her in advance, and (2) for failing to follow leave procedures when Petitioner left work early to take his mother to the emergency room.

c. There was no evidence at [the] hearing that Respondent considered Petitioner's response to this evaluation. Petitioner explained that his daughter came to his office afterschool on 3 days, for approximately 20 minutes each. Respondent's personnel director Charles Duckett told Petitioner he was unaware of any questions concerning an employee's children stopping by the office.

d. When Jacobs first issued this evaluation to Petitioner, she used another employee's name in the evaluation. After Petitioner pointed out this error, Jacobs changed the name in the evaluation to Petitioner, but

kept the remaining language. The employee Jacobs named was one of the employees she supervised, and later dismissed from employment. (T. p. 1018-1019)

63. Six days later, on September 14, 2010, Jacobs issued Petitioner a second written warning for unsatisfactory job performance. (Resp. Ex. 6) This was the second written warning for unsatisfactory job performance Respondent issued Petitioner in less than forty days. This written warning was also less than 30 workdays after the first written warning.

a. In this evaluation, Jacobs listed different areas of improvement for Petitioner, than those areas Styres had listed in the August 2, 2010 written warning. Two of the four areas listed for improvement by Jacobs were issues regarding sick leave procedures and scheduling time for personal issues; issues unmentioned by Styres.

b. Jacobs ordered Petitioner to complete work in a timely manner. Her request was based solely [upon] a time budget that had been "blown," or-significantly exceeded, well before Jacobs became Petitioner's supervisor, and which could not be retroactively fixed.

c. Jacobs cited Petitioner for lacking "leadership" by not reviewing others' work. Yet, Petitioner was the only person working on the Nursing Home Audit, and did not work with any other employees on other audits. She criticized Petitioner's "leadership" for failing to inform her of vacation leave, and failing to inform her that his daughter would come to the office due to school transportation issues.

d. Jacobs found fault with Petitioner for not demonstrating a "commitment to achieving office goals" by failing to follow leave procedures, and having difficulty recording accurate time in TRS and BEACON, systems that record one's time.

e. Approximately 50% of this warning faulted Petitioner for matters that appeared tangential to the actual performance of his audit duties.

64. On October 14, 2010, 30 days after the issuance of the second written warning, Jacobs issued Petitioner another performance evaluation. (Resp. Exh. 7) Jacobs cited Petitioner for exceeding the time budget of the Nursing Home Audit, not completing the associated work papers, and having difficulty identifying internal controls and differentiating between what is a "control" and what is an "activity." (Resp. Exh. 7, p. 6) As of Petitioner's October 2010 performance evaluation, Petitioner charged 584 hours or 73 days to the survey segment for the Nursing Home audit, thereby being 511 hours over budget, with other work remaining incomplete. The time budget for this audit was 73 hours.

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77. In one evaluation, Styres criticized Petitioner for not advising Styres that the service contract audit team had changed their approach to their audit. Yet, Petitioner was never the Auditor in Charge of that audit team, and there was no evidence that Petitioner was in a position with that audit team that required him to notify Styres about the team's changed approach to the service contract audit.

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79. Yet, Styres also conceded that he did not think Petitioner had used the Excel worksheet [for such time recording] before, as Petitioner "seemed to be lost within the spreadsheet, and not understanding where he was." Styres sat down with Petitioner, and showed him how to record time worked into the spreadsheet. (T. pp. 77-78)

80. In her evaluations, Jacobs similarly criticized Petitioner for not entering his work time and leave into BEACON. BEACON is a time management system used by numerous state employees statewide. It is widely known among State employees that BEACON is neither the most efficient, expedient, or easiest system to manage one's working time, nor do many users of that system like using the BEACON system. Yet, Jacobs found fault with Petitioner in the September 14, 2010 written warning for having "difficulty recording accurate time" in BEACON. (Resp. Exh. 6, p. 199)

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82. There is no dispute that Petitioner exceeded the time budgets of the service contract audit and the planning phase of the Nursing Home audit. Some evidence at hearing showed that some of the time that Petitioner charged to the planning phase of the Nursing Home audit was spent on numerous coaching discussions and other job performance related discussions with his supervisors. The extensive personal notes kept by Styres and Jacobs certainly lends credence to Petitioner's explanation.

83. Likewise, there is no dispute that Petitioner failed to complete work papers

relating to those audits. For example, Petitioner failed to document the objective of the Goals and Objective work paper, and the Audit approval work paper of the Nursing Home audit. (Resp. Exh. 9) Certainly, Petitioner exhibited some deficiencies in his performance in his job.

84. However, a review of these five work papers, and the attached review notes, demonstrated that in a majority of these review notes, Styres and Jacobs disapproved Petitioner's work because Petitioner did not complete the work papers to Styres' and/or Jacobs' satisfaction. Respondent focused on matters such as semantics, grammar, awkwardness, and spelling rather than fundamental audit principles. (Resp. Exh. 4; T. pp. 295-306) Respondent was dissatisfied with the specific wording, sentence structure, language or style of Petitioner's writing. (Resp. Exh. 9, pp. 318-321, 302-305)

a. In the Team Meeting work paper, Styres told Petitioner that, "The first sentence is not written well. . . The way I framed it is..." (Resp. Exh. 9, p. 316), and "I'd rather see a (hyper) text reference when you refer to other work papers. Get in the habit of doing it that way.... You need to rewrite this." (Resp. Exh. 9, p. 321) "I showed John multiple instances where sloppy data (e.g. wrong purpose, incorrect names) were left on the worksheet." (Resp. Exh. 9, p. 353)

b. Throughout this exhibit, Respondent included multiple copies of the same work paper to show Petitioner's "errors," and throughout its case, Styres and Jacobs used one example of Petitioner's "errors" to support

multiple unsatisfactory or below expectation ratings of Petitioner's work.

c. Even after Petitioner corrected a work paper to Jacobs' satisfaction, Jacobs further criticized that same section of Petitioner's work paper on a different point. (See Goals and Objective work paper, review notes Comment W(C) (1), then W[C]2, and W(C) (3).

85. Respondent, through Jacobs and Styres, issued two written warnings to Petitioner within one month apart, directing Petitioner to improve in different areas in each written warning. Yet, Respondent presented no credible testimony demonstrating the reasonableness of requiring Petitioner to improve those areas of performance within the 30 day time frame, as opposed to the 60 day timeframe required in 25 NCAC 011.2305. Neither did Respondent show that Petitioner failed to make reasonable efforts to improve or to meet those expectations.

86. Respondent claimed that Petitioner's responses to his performance evaluations generally failed to address the substantive issues identified in the performance evaluations directly. However, Styres' and Jacobs' testimony during their cross-examinations, and a review of Respondent's Exhibit 9, proved that Respondent's management team gave little to no consideration to the substance of Petitioner's written responses to his performance evaluations. Instead, Respondent continued its personal dissatisfaction with Petitioner's writing, but did not address the validity or substance of Petitioner's responses. (T. pp. 253-254; Resp. Exh. 9, pp. 300-306, 317-320)

a. In Styres' personal notes of his February 9, 2010 meeting with Petitioner, Styres characterized Petitioner's February 2010 rebuttal/response as, "generally explain situations, and then ask rhetorical questions. Some of the responses are awkward to read, and contain omission of words, typos, and/or errors in grammar."

b. In Styres['] personal notes of his February 5-15, 2010 meetings with Petitioner, Styres criticized Petitioner's "poor writing" in Petitioner's self-assessment, stating, "The awkward wording and grammar errors still existed." (Resp. Exh. 9, p. 352)

87. Most telling is the testimony of Ken Barnette during cross-examination by Petitioner's counsel. Mr. Barnette explained twice that Respondent expected Petitioner to fulfill [job] tasks to the complete satisfaction of his supervisors, Styres and Jacobs, and to comply with their directives to the fullest extent.

The ALJ then made the following conclusions of law:

8. In this case, Petitioner was an employee of longstanding service who had multiple promotions under many supervisors. Petitioner had no prior disciplinary action for poor job performances, and the last supervisor before returning to the Performance Division rated Petitioner as meeting the expectations of his job. Petitioner received multiple promotions as a member of the Performance Audit Division, the same division from which he was dismissed just months after returning to that Division.

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13. In this case, Respondent failed to show that Petitioner did not perform his job duties with reasonable care, diligence, and attention. Instead, the preponderance of the evidence showed that Respondent dismissed Petitioner from his job, because Petitioner failed to complete his job related duties, ie. the work papers, to the complete and personal satisfaction of his supervisors, Styres and Jacobs. A preponderance of the evidence demonstrated that Petitioner's supervisors criticized Petitioner's work in the audit work papers for his poor grammar, awkward wording, spelling issues, and writing style, not the basic elements of auditing. Respondent appeared to use a substantial amount of "cut and paste" in reviewing Petitioner's performance, particularly in Ms. Jacobs' evaluations.

14. One of the employees in Walker was dismissed approximately a year and [a] half after first being warned for poor job performance. In this case, Respondent dismissed Petitioner from employment three months after the first written warning in August 2010. Respondent issued Petitioner's first written warning on August 4, 2010, even though Respondent had agreed, in Petitioner's June 2010 performance evaluation, that it would not reevaluate Petitioner's performance until August 31, 2010.

15. Here, Respondent technically complied with 25 NCAC 01J.0605 by giving Petitioner two written warnings for poor job performance before Respondent dismissed Petitioner from employment. However, Respondent failed to explain why it gave Petitioner only 30 days to improve his job

performance in two different written warnings that required improvement in different areas of responsibility, when the basis for that September 14, 2010 warning, had only tangential relevance to Petitioner's job performance as an auditor. Neither did Respondent show that Petitioner made no reasonable effort to meet his job expectations.

16. Taken in concert, Respondent's actions suggest an effort to simply remove Petitioner from the workplace under the banner of poor job performance at the earliest possible opportunity, instead of a deliberate, good faith process where the Petitioner was given a reasonable chance to improve.

17. Based on [the] foregoing factual circumstances, Respondent failed to offer sufficient evidence to support its decision that Petitioner should be dismissed from employment for engaging in unsatisfactory job performance.

18. Based on the foregoing facts and conclusions, Respondent lacked just cause to dismiss Petitioner from employment for unsatisfactory job performance.

Respondent appealed to the State Personnel Commission ("the Commission").

At a meeting on 13 December 2012, the Commission voted to adopt in part and modify in part the ALJ's findings of fact. The Commission then entered an order reversing the ALJ's order, finding that respondent's termination of petitioner's employment

should be affirmed because respondent "met its burden of proving that it had just cause to dismiss Petitioner."

Petitioner filed a petition for judicial review, and on 3 September 2013, the matter was heard in Wake County Superior Court, the Honorable Howard E. Manning, Jr., Judge presiding. By decision and order entered 4 October, the superior court reversed the decision of the Commission and adopted as its decision and order the order of the ALJ, finding that respondent "lacked substantive just cause for terminating Petitioner from employment with Respondent[.]" Respondent appeals.

In its sole argument on appeal, respondent contends the trial court erred by reversing the Commission's decision upholding petitioner's termination from his employment. We disagree.

"When this Court reviews appeals from superior court reversing the decision of an administrative agency, 'our scope of review is twofold, and is limited to determining: (1) whether the superior court applied the appropriate standard of review and, if so, (2) whether the superior court properly applied this standard.'" *Wetherington v. N.C. Dep't of Crime Control & Pub. Safety*, ___ N.C. App. ___, ___, 752 S.E.2d 511, 512 (2013)

(citing *Mayo v. N.C. State Univ.*, 168 N.C. App. 503, 507, 608 S.E.2d 116, 120 (2005)).

Respondent argues that the trial court erred by reversing the Commission's decision and reinstating petitioner's employment with respondent. In its decision and order, the trial court held that under the standard of review set forth in N.C. Gen. Stat. § 150B-51(c), "Respondent lacked substantive just cause for terminating Petitioner from employment with Respondent[.]"

North Carolina General Statutes, section 150B-51(c), provides that:

In reviewing a final decision in a contested case in which an administrative law judge made a decision, in accordance with G.S. 150B-34(a), and the agency does not adopt the administrative law judge's decision, the court shall review the official record, de novo, and shall make findings of fact and conclusions of law. In reviewing the case, the court shall not give deference to any prior decision made in the case and shall not be bound by the findings of fact or the conclusions of law contained in the agency's final decision. The court shall determine whether the petitioner is entitled to the relief sought in the petition, based upon its review of the official record. The court reviewing a final decision under this subsection may adopt the administrative law judge's decision; may adopt, reverse, or modify the agency's decision; may remand the case to the agency for further explanations under G.S. 150B-36(b1), 150B-36(b2), or

150B-36(b3), or reverse or modify the final decision for the agency's failure to provide the explanations; and may take any other action allowed by law.

N.C. Gen. Stat. § 150B-51(c) (2010).¹

[The superior court may] reverse or modify the agency's decision, or adopt the [ALJ's] decision if the substantial rights of the petitioner[] may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;
- (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.

Id. § 150B-51(b).

As the trial court's conclusion that respondent failed to meet its burden of proving it had just cause to dismiss

¹ The General Assembly amended N.C.G.S. § 150B-51 in 2011 to repeal subsections (a) and (a1). See 2011 N.C. Sess. Laws ch. 398 § 27. The amended statute applies only to "contested cases commenced on or after" 1 January 2012. 2011 N.C. Sess. Laws ch. 398 § 63. The petition for a contested case hearing in this case was filed 20 January 2011.

petitioner refers to a error of law in the Commission's decision, the trial court was required to engage in *de novo* review. See *Wetherington*, ___ N.C. App. at ___, 752 S.E.2d at 513 (citing *N.C. Dep't of Env't & Natural Res. v. Carroll*, 358 N.C. 649, 659, 599 S.E.2d 888, 895 (2004)). Under the *de novo* standard of review, the superior court "consider[s] the matter anew[] and freely substitutes its own judgment for the agency's." *Id.*

Here, the trial court indicated in its decision and order that the applicable standard of review was set out in N.C.G.S. § 150B-51(c). As cited above, this statute clearly sets forth a *de novo* standard of review for the trial court in reviewing the decision of a State agency which has reversed the decision of an administrative law judge. Further, both parties acknowledged and discussed with the trial court during the hearing that *de novo* was the proper standard of review. Therefore, we find that the trial court utilized the appropriate standard of review – *de novo*. See *id.* at ___, 752 S.E.2d at 512 (citation omitted).

The second step is to determine whether the trial court correctly applied a *de novo* standard of review. Respondent contends the trial court's decision and order reversing the decision of the Commission finding that petitioner was dismissed

for just cause was erroneous because the "trial court adopted findings of fact that are inconsistent with each other and that do not support its conclusions of law." Specifically, respondent argues that the trial court erred in "finding and concluding that [petitioner] was dismissed due to his unsatisfactory performance of tangential auditing duties when the evidence showed that [petitioner] was dismissed primarily due to his continued failure to satisfactorily perform fundamental auditing duties."

Pursuant to N.C.G.S. § 150B-51(c), "[t]he court reviewing a final decision [of a State agency] under this subsection may adopt the administrative law judge's decision [in its entirety.]" N.C.G.S. § 150B-51(c) (2010). Here, the trial court did indeed adopt as its findings of fact and conclusions of law the decision of the ALJ which found that respondent had terminated petitioner's employment without just cause. Although respondent contends the trial court could not adopt the ALJ's decision because it contained "findings of fact that are inconsistent with each other and that do not support its conclusions of law[,] " we are not persuaded. The record before this Court indicates that the trial court followed N.C.G.S. § 150B-51(c) properly by applying and engaging in a *de novo*

standard of review before concluding that it should reverse the Commission's decision and adopt the ALJ's decision. Moreover, despite respondent's contentions that the trial court erred as to its findings of fact and conclusions of law, under N.C.G.S. § 150B-51(c) the trial court was not required to make new findings of fact or conclusions of law; rather, the trial court could, in its discretion, chose to adopt the decision of the ALJ in its entirety. Further, the record does not support respondent's argument that the trial court erred in its *de novo* review under N.C.G.S. § 150B-51(c). See *State v. Fennell*, 307 N.C. 258, 262, 297 S.E.2d 393, 396 (1982) (holding that in the absence of any evidence supporting a finding of error by the trial court, "it will be presumed that the trial court acted correctly in performing [its] judicial acts and duties." (citations omitted)). Finally, we conclude that the trial court's findings of fact have adequate evidentiary support and support its decision in petitioner's favor. Accordingly, the decision of the trial court is affirmed.

Affirmed.

Judges ELMORE and ERVIN concur.

Report per Rule 30(e).