

13 NCAC 12 .0905 HEARINGS

(a) If after an investigation the Commissioner or her designee determines that a complaint is not false and frivolous, the matter shall be referred to hearing before a hearing officer designated by the Commissioner. The hearing officer shall conduct a hearing to determine if a violation of G.S. 64-26 has occurred.

(b) If, after a hearing, it is determined that a violation of G.S. 64-26 has occurred, one of the following actions shall be taken:

- (1) If the employee is currently employed, or has been discharged since commencement of the investigation, and it is found that the employer verified the employee's work authorization through the use of E-Verify after initiation of the investigation, the hearing officer shall:
 - (A) Issue a written order setting forth the violation;
 - (B) Order the employer to file the affidavit required by G.S. 64-31(a); and
 - (C) Order payment of any applicable civil penalty as set forth in G.S. 64-31 through G.S. 64-33.
- (2) If the employee is currently employed by the employer and the employer has not verified the employee's work authorization through the use of E-Verify since initiation of the investigation, the hearing officer shall:
 - (A) Issue a written order setting forth the violation;
 - (B) Order the employer to file the affidavit required by G.S. 64-31(a); and
 - (C) Order payment of any applicable civil penalty as set forth in G.S. 64-31 through G.S. 64-33.
- (3) If the employee is no longer employed by the employer and it is found during the investigation that the employer did not verify the employee's work authorization through the use of E-Verify at any time, the hearing officer shall:
 - (A) Issue a written order setting forth the violation;
 - (B) Order the employer to file, within three business days, a signed sworn affidavit stating that the employee is no longer employed by the employer, setting forth the employee's beginning and ending dates of employment, and acknowledging that the employer did not verify the employee's work authorization through the use of E-Verify during the period of employment or otherwise; and
 - (C) Order payment of any applicable civil penalty as set forth in G.S. 64-31 through G.S. 64-33.

(c) When an order is issued in accordance with Paragraph (b) of this Rule and the employer fails to submit the affidavit required by G.S. 64-31(a) or Part (b)(3)(B) of this Rule within three business days, the hearing officer shall issue a written order for the employer to pay a civil penalty in accordance with G.S. 64-31(b).

(d) If the hearing officer determines that no violation of G.S. 64-26(a) exists, the complaint shall be dismissed. Written evidence of the dismissal shall be entered into the case file, the file shall be closed, and no further action shall be taken.

(e) Hearings may be conducted in person or via telephone, at the discretion of the hearing officer.

History Note: Authority G.S. 64-37; 64-38;

Eff. October 1, 2012;

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.