

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 31 1979

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 78-C-530-B
	)	
JERRY D. PARNELL,	)	
	)	
Defendant.	)	

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

DEFAULT JUDGMENT

This matter comes on for consideration this 30<sup>th</sup> day of January, 1979, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Jerry D. Parnell, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Jerry D. Parnell, was personally served with Summons and Complaint on October 31, 1978, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Jerry D. Parnell, for the sum of \$927.00, plus the costs of this action accrued and accruing.

Cecilia E. Barrow  
UNITED STATES DISTRICT JUDGE

APPROVED:

Robert P. Santee  
ROBERT P. SANTEE  
Assistant United States Attorney

JAN 31 1979

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MICHAEL LEROY CONRADY, )  
 )  
 Defendant. )

CIVIL ACTION NO. 78-C-600-B

DEFAULT JUDGMENT

This matter comes on for consideration this 30 day of January, 1979, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendant, Michael Leroy Conrady, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Michael Leroy Conrady, was personally served with Summons and Complaint on December 14, 1978, as appears on the United States Marshal's Service herein, and that Defendant has failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that the time within which the Defendant could have answered or otherwise moved as to the Complaint has expired, that the Defendant has not answered or otherwise moved and that the time for the Defendant to answer or otherwise move has not been extended, and that Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Michael Leroy Conrady, for the sum of \$1,284.00, plus the costs of this action accrued and accruing.

Allen E. Barrow  
UNITED STATES DISTRICT JUDGE

APPROVED:

Robert P. Santee  
ROBERT P. SANTEE  
Assistant United States Attorney





FILED

JAN 31 1979

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 78-C-591-B
	)	
ROBERT E. SNIDER,	)	
	)	
Defendant.	)	

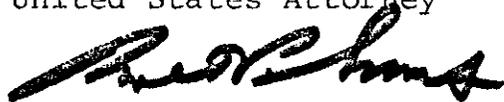
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 31st day of January, 1979.

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney



ROBERT P. SANTEE  
Assistant United States Attorney

FILED

JAN 31 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 78-C-601-B
	)	
LARRY G. McCOMB,	)	
	)	
Defendant.	)	

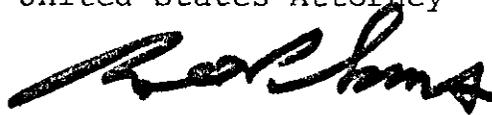
NOTICE OF DISMISSAL

COMES NOW the United States of America, Plaintiff herein, by and through its attorney, Robert P. Santee, Assistant United States Attorney for the Northern District of Oklahoma, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action, without prejudice.

Dated this 31st day of January, 1979.

UNITED STATES OF AMERICA

HUBERT H. BRYANT  
United States Attorney



ROBERT P. SANTEE  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 31 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

WALTER L. WARD, )  
 )  
 Petitioner, )  
 )  
 vs. ) No. 76-CR-91-C  
 ) No. 78-C-614-C  
 UNITED STATES OF AMERICA, )  
 )  
 Respondent. )

O R D E R

Petitioner herein moves this Court pursuant to the provisions of Title 28 U.S.C. § 2255 to vacate the sentence imposed by it upon him on November 3, 1976.

The petitioner was charged by indictment in Case No. 76-CR-91 with a violation of Title 18 U.S.C. § 1014, in that he knowingly made a false statement or willfully overvalued property for the purpose of influencing the action of a federally insured bank on a loan application. Petitioner entered a plea of not guilty to the charge, and was convicted by a jury on September 17, 1976. Petitioner's conviction was affirmed on appeal. United States v. Walter L. Ward, No. 76-2099 (10th Cir., April 6, 1978).

The petitioner's motion is based upon newly discovered evidence. The factual basis for the charge against the petitioner was that he pledged a bonded warehouse receipt for 40 net tons of graphitic shist ore as security on a loan, and alleged that the ore contained \$200,000.00 worth of silver, when it in fact contained only trace amounts of silver. The petitioner has recently had an assay performed on the ore which shows that it should produce approximately \$50,000.00 gross revenue per ton of ore, which would give the 40 tons a value of approximately \$2,000,000.00. The assay report dated October 19, 1978 is the newly discovered evidence upon which the petitioner bases his motion. Exhibit

"B". He contends that this newly discovered evidence demonstrates the truth of the statements made on the loan application.

"Newly discovered evidence, in order to establish a basis for granting a § 2255 motion, must meet the following criteria: it must not have been discoverable with reasonable diligence prior to trial; it must be more than impeaching or cumulative; it must be material to the issues involved; and it must be such as would probably produce an acquittal. . . . Additionally, newly discovered evidence must be credible." Steel v. United States, No. 75-1597 (10th Cir., June 8, 1976) (Citations omitted). See also Franklin v. United States, 428 F.Supp. 1184 (E.D. Okla. 1977).

Petitioner's newly discovered evidence does not meet the requirement that it be material to the issues involved. During the course of petitioner's trial, a substantial amount of testimonial and documentary evidence was introduced to establish the value of the subject ore. Given the substantial increase in the value of precious metals over the past two years, and the probable increase in the efficiency of the technology of extracting those metals, the Court has no doubt that petitioner's ore is worth more today than it was five years ago when petitioner applied for the loan. On the other hand, this is exactly why the October 19, 1978 assay report is immaterial. What the ore is worth today proves nothing about the value of the ore in 1973. Furthermore, the truth or falsity of petitioner's representations must be judged in light of the information that was available to him at the time he made those representations. Their truth or falsity cannot be judged retrospectively on the basis of information that is now available to him.

In Steel, supra, the 10th Circuit held that the trial court should have held an evidentiary hearing to test the credibility of the newly discovered evidence. The court in Franklin, supra, held that it was required to hold an evidentiary hearing based upon Steel. However, the Court sees no need for an evidentiary hearing in the instant case. In

both Steel and Franklin, credibility was an issue. Credibility is not an issue here.

For the foregoing reasons, it is therefore ordered that petitioner's motion to vacate sentence is hereby denied.

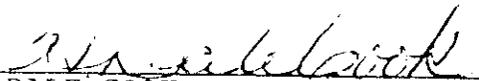
It is so Ordered this 30<sup>th</sup> day of January, 1979.

  
H. DALE COOK  
United States District Judge



plaintiffs' Motion for a New Trial is hereby overruled.

It is so Ordered this 30<sup>th</sup> day of January, 1979.

  
H. DALE COOK  
United States District Judge

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 30 1977

Jack C. Sibson, Clerk  
U. S. DISTRICT COURT

N. J. and K. L. DIEFFENBACH,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION
	:	
UNITED STATES OF AMERICA,	:	NO. 77-C-10-C
	:	
Defendant.	:	

STIPULATION OF DISMISSAL

It is hereby stipulated by and between the parties that the captioned suit be dismissed with prejudice, each party to bear its own costs.

*N. J. Dieffenbach*  
 \_\_\_\_\_  
 N. J. DIEFFENBACH  
 Plaintiff

*K. L. Dieffenbach*  
 \_\_\_\_\_  
 K. L. DIEFFENBACH  
 Plaintiff

HUBERT H. BRYANT  
United States Attorney

By *John F. Murray*  
*[Signature]*  
 \_\_\_\_\_  
 JOHN F. MURRAY  
 Attorney  
 Tax Division  
 Department of Justice

Attorneys for Defendant.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

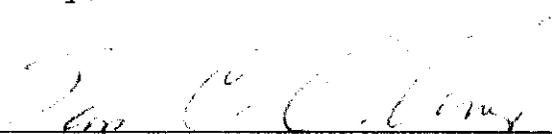
HILARY COPE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SOUTHWESTERN PETROLEUM CORPORATION, ) NO. 78-C-570-C  
 a Texas Corporation, and )  
 CECIL FOX, an Individual, )  
 )  
 Defendants. )

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

NOTICE OF DISMISSAL

Plaintiff Hilary Cope dismisses the captioned styled and numbered case with prejudice before either defendant has served an answer or motion for summary judgment in said case.

Dated this 7<sup>th</sup> day of January, 1979.

  
\_\_\_\_\_  
Sam C. Oliver  
4815 S. Harvard, Suite 138  
Tulsa, Oklahoma 74135  
(918) 743-8931

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

RE: )  
 )  
PETTY ENTERPRISES, INC., )  
 )  
Bankrupt, ) M-791  
 )  
JAMES F. MILLER, Trustee, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TROY PETTY and CINDY PETTY, )  
 )  
et al., )  
 )  
Defendants. )

FILED

JAN 30 1979

Jack C. Smith, Clerk  
U. S. DISTRICT COURT

ORDER

The Court has for consideration the following:

1. Motion for Relief from Judgment, Writ of Execution and Notice of Sale of Lands Under Execution; filed by defendants;
2. Motion for Stay of Execution Pending Disposition of Motion Addressed to Judgment filed by the defendants;
3. Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted filed by the Trustee in Bankruptcy, James F. Miller;
4. Findings and Recommendation of the Magistrate;
5. Petition to Set Aside Findings and Recommendation of Magistrate filed by the defendants, Troy Petty and Cindy Petty;
6. All briefs, affidavits and exhibits.

The Court has carefully perused the entire file, and, being fully advised in the premises, finds:

This is an action brought by the defendants pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, directed to an Execution on a foreign judgment.

The file reveals that plaintiff is the appointed Trustee in Bankruptcy in an action brought in the United States District Court for the Eastern District of Arkansas, Fayetteville Division.

Troy and Cindy Petty were the sole officers of the corporate

bankrupt, Petty Enterprises, Inc., and were Defendants in an adversary proceeding brought against them by the Trustee to recover money judgments and property belonging to and owned by the bankrupt estate. The cause was tried for one week before the Honorable Arnold M. Adams, United States Bankruptcy Judge, whose opinion is attached to the defendants' brief as Exhibit "D". Pursuant to the Memorandum Opinion filed September 23, 1977, three separate judgments were entered, two of which were money judgments in the amounts of \$2,648 and \$380.50. The third judgment was a money judgment for the sum of \$15,000, which judgment designated that \$10,000 of the \$15,000 judgment was a purchase money judgment lien to be enforceable by execution against property owned by Troy Petty and Cindy Petty in the State of Oklahoma. On Page 19 of said opinion the Court stated:

The Court, however, finds as a fact, that the disposition of the assets by the Pettys was fraudulent as between the Pettys and the trustee and that the trustee is entitled to judgment for the sum of \$15,000.00 against Troy Petty and Cindy Petty, individually.

Furthermore, in view of the Pettys testimony that \$10,000.00 of the proceeds from the sale of this asset were used to purchase a dwelling in Rogers County, Oklahoma, the Court should award a purchase money judgment in the sum of \$10,000.00 against Troy and Cindy Petty; and that said judgment lien shall be enforceable by execution against the dwelling.

There is no language contained therein that in any way attempt by judgment to award title to the property in Rogers County to the Trustee. A money judgment does not give the judgment creditor an estate or interest in the judgment debtor's land, but gives him the right to have the land appropriated to the satisfaction of the judgment. *First National Bank v. Hasty*, 410 F.Supp. 482 (E.D.Mich. 1976).

Subsequently, all three judgments were duly registered with the Clerk of the United States District Court for the Northern District of Oklahoma in the proper form and on October 26, 1977, Writs of Execution were issued. The United States Marshal served execution of the \$10,000 purchase money judgment on the property owned by Troy Petty and Cindy Petty, which is described as:

Lot Six (6), Block One (1) of Woodcrest Heights Addition, to Rogers County, Oklahoma, according to the recorded plat thereof.

It was stipulated by the parties at the hearing before the Magistrate that the property described above at the time of the execution and during all relevant times to this hearing was the above described property as well as the homestead of the Defendants, Troy Petty and Cindy Petty.

A sale of the property to enforce the Arkansas judgment was scheduled for the 31st day of March, 1978, and upon Application by the Defendant, this Court issued an Order staying such execution until such time as a decision by the Court on the merits could be rendered.

The Court finds, after a review of all the evidence, that the Stay heretofore entered by this Court should be dissolved, and that the Motion to Dismiss for Failure to State a Cause of Action filed by the Trustee, James F. Miller, Plaintiff, should be sustained for the following reasons:

Article IV, §1 of the United States Constitution provides that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state;" The essentials of a valid judgment are jurisdiction of the subject matter, jurisdiction of the parties and jurisdiction or power to render the particular judgment. U.S. v. U.S. Fidelity & Guaranty Co., 24 F.Supp. 961 (E.D.Okla. 1938); reversed on other grounds, 60 S.Ct. 653, 309 U.S. 506, 84 L.Ed. 894 (1940).

Troy Petty and Cindy Petty attack the judgment on the grounds that the Bankruptcy Court did not have subject matter jurisdiction, but the facts appear to be that the Petitioners were the ones who initiated, on behalf of the corporate bankrupt, a voluntary petition and sought the jurisdiction of the Arkansas Bankruptcy Court. Once a petition has been filed, the (Bankruptcy) court's exclusive and paramount jurisdiction extends to all of the bankrupt's property except as otherwise provided in the act, whether

within or without the district where the proceedings are commenced. *Issacs v. Hobbs Tie and Timber Co.*, 282 U.S. 734 (1931).

Troy Petty and Cindy Petty were represented throughout the proceedings by Arkansas counsel. If, in fact, the decision of the Arkansas Court was in error, then Petitioners' remedy was by appeal. *U.S. v. U.S. Fidelity & Guaranty*, supra. The provisions of 60(b) of the Federal Rules of Civil Procedure are not to be used as a substitute for appeal, *Lubben v. Selective Service System*, 453 F.2d 645 (1st Cir. 1972). Troy Petty and Cindy Petty failed to show any lack of jurisdiction on the part of the Bankruptcy Court and the evidence, in fact, shows that the Arkansas Court had jurisdiction.

Troy Petty and Cindy Petty further attack the Arkansas judgment on the grounds that the property sought to be executed upon is exempt because of its homestead character. A debtor's homestead is normally exempt from execution proceedings by virtue of the provision of the Oklahoma Constitution, Section 2, Article 12. However, the homestead exemption does not apply where the indebtedness in question is for purchase money thereof or a part of such purchase money. *Zehr v. May*, 67 Okl. 97, 169 P. 1077 (1917); 31 O.S.A. §5.

Troy Petty and Cindy Petty further challenge the Judgment entered in Arkansas on the ground that the judgment does not specifically describe the homestead property upon which the \$10,000 judgment constitutes a purchase money judgment.

They argue at page 2 of their brief:

....He appeared at the trial and was there for the entire trial and testified. He relates in his Affidavit that Judge Adams made certain comments for the record and thereupon the court reporter discontinued taking down the proceedings and the attorney for the Trustee, James E. Mixon, spoke to Judge Adams and inquired whether a judgment could be obtained against the home in Rogers County in Oklahoma, if evidence could be given tracing money in the amount of \$10,000.00 into the property in Oklahoma. He relates that thereupon Judge Adams stated to the effect that if the Trustee could trace the money he could proceed against the property. He stated that he conferred with his attorney, Mr. Slinkard and Mr. Slinkard said no money could be traced into it and not to be concerned about it. He

relates that there was no mention made during the trial of any proceedings to assert a judgment against the Rogers County property. He relates facts which would, in fact, entitle him to homestead exemption from execution under Oklahoma law. The proceedings which have been noted by counsel in this matter do not show at any place where the Plaintiff-Trustee in the action against the Pettys before the Bankruptcy Court sought to assert any interest in the homestead property of the Defendants in Rogers County. Again it is uncontroverted that no mention was made of this property during the trial and the evidence presented by way of the Affidavit of Troy Petty shows conclusively that Judge Admas stated that if evidence could be given tracing the money in the amount of \$10,000.00 into the property in Oklahoma Judgment relating thereto could be granted, but the Plaintiff has not sought to make any proof whatsoever that such evidence was ever presented to Judge Adams. The Court does not mention the said property in his Comments, noted as Defendants' Exhibit "C", and the description of the property is not noted in the Memorandum Opinion, Defendants' Exhibit "D". In his Comments on what is shown as "128" of Defendants' Exhibit "C" the Court stated, "Mr. Nixon, you will prepare and submit to me a proposed Memorandum Order." Up to that point nothing had been said about the homestead property in Rogers County, Oklahoma. This only appears in the Memorandum Opinion which was entered one month after the trial. It would appear that the Defendants had no warning through the pleadings that any claim would be asserted to their homestead property and that this was an afterthought and that even at the time of the preparation of the Memorandum Opinion the legal description was not known to the Plaintiff or the Court. By the levy of the Writ of Execution, the appointment of custodians and the Notice of Sale of Lands Under Execution, actually, three items of "property" are sought to be affected by the Judgment, two tracts of real estate and a motor vehicle. What has occurred is that a Judgment has been granted on subject matter which was not even before the Court at the time of trial and at the time the Judge handed down his ruling from the bench.

The Plaintiff-Trustee argues in his brief:

....All of Troy Petty's and Cindy Petty's property, other than their homestead, is subject without questions, to the judgment lien of Plaintiff, and only that portion of Troy Petty's and Cindy Petty's property which was used in the purchase of their homestead and which belongs to the Trustee (\$10,000) is sought to be executed on in this action. Admittedly, in hindsight, it would have been better to specifically describe the property referred to in the Judgment, but it should be pointed out that if Troy Petty and Cindy Petty feel aggrieved by the lack of description, then it would be a simple matter to apply to the Court which issued the Judgment and request that the specific description to which it was intended that the judgment apply be entered on an amended Judgment. This, of course, the Court in the Western District of Arkansas has the authority to do....

The Exhibits submitted reveal that the Memorandum Opinion and the three judgments were entered by the Bankruptcy Court in Arkansas on September 23, 1977. It is further revealed that the

Judgement rendered in the sum of \$15,000, which included the \$10,000 purchase money judgment recited the following:

IT IS FURTHER ORDERED, that \$10,000.00 of the \$15,000.00 judgment shall be a purchase money judgment insofar as it affects property owned by Troy Petty and Cindy Petty in Oklahoma and that if said judgment be not paid within ten days from its entry, that plaintiff may have execution.

The three Judgments rendered in Arkansas were filed in this Court on October 17, 1977. Execution was issued on October 26, 1977, and was served on October 26, 1977. It was not until April 20, 1978, that defendants, Troy Petty and Cindy Petty, moved to stay the execution pending disposition of a Motion filed that same date, directed to a "sale of property under execution" as "noticed by Carl W. Gardner, United States Marshal, in this mater on the 31st day of March, 1978".

There is no contention by the defendants that the property in question herein is not their homestead; nor have they asserted that the \$10,000 debt for which the judgment was rendered is not a purchase money debt subject to execution under the provisions of the Oklahoma law. The defendants are in effect attacking collaterally the decision and judgment of the Bankruptcy Court in Arkansas. This Court is not the proper place for such an attack.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion to Dismiss be and the same is hereby sustained and Defendants' Motion to Set Aside the purchase money judgment in favor of plaintiff be and is hereby denied and that the temporary stay of execution be and is hereby dissolved and that the plaintiff be permitted to proceed in accordance with the law.

IT IS FURTHER ORDERED that the Petition to Set Aside Findings and Recommendation of the Magistrate be and the same is hereby denied.

ENTERED this 30<sup>th</sup> day of January, 1979.



CHIEF UNITED STATES DISTRICT JUDGE



City of Philadelphia, 286 F.Supp. 143 (S.D.N.Y. 1968).

The above case was affirmed in a decision without published opinion by the Seventh Circuit Court of Appeals (1/31/75), 510 F.2d 976.

In Coleman v. Crisp, 444 F.Supp. 32 (USDC WD Okl.1977) it was said:

....Moreover, it further appears that the objection to venue is valid. The statute providing for jurisdiction of cases under the Civil Rights Act, 28 U.S.C. §1343 upon which the plaintiff relies has no special venue provision and therefore 28 U.S.C. §1391(b) applies. D'Amico v. Treat, 379 F.Supp. 1005 (N.D.Ill.1974); Walker v. Weaver, 266 F.Supp. 415 (M.D.Pa.1967). Since this action does not rest on diversity of citizenship, under 28 U.S.C. §1391(b) the plaintiff must bring his action in the judicial district where all the defendants reside or in which his claims arose....

See also Jones v. Bales, 58 F.R.D. 453 (USDC ND Ga.1972).

The Court, therefore, finds, that pursuant to Title 28 U.S.C. §1404(a) this case should be transferred to the United States District Court for the Eastern District of Oklahoma.

In the interests of justice, the Court finds that this case should not be dismissed at this time for improper venue.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss the Complaint filed by the defendant be and the same is hereby overruled.

IT IS FURTHER ORDERED that this cause of action and complaint be and the same are hereby transferred to the United States District Court for the Eastern District of Oklahoma.

IT IS FURTHER ORDERED that the Motion to Stay Submission of Pre-Trial Order not be ruled on by this Court but by the Court to which this case has been transferred.

ENTERED this 30<sup>th</sup> day of January, 1979.



CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ROBERT LaGRONE,

Plaintiff,

vs.

J. D. DANIELS,

Defendant.

)  
)  
) 78-C-118-B  
)  
)  
)  
)  
)  
)

FILED

JAN 11 1978

Joseph Silver, Clerk  
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Motion to Dismiss Complaint or for Change of Venue; and Motion to Stay Submission of Pre-Trial Order, the brief in support thereof; and having carefully perused the entire file, and, being fully advised in the premises, finds:

Plaintiff, Robert LaGrone is incarcerated at the Stringtown Vocational Training Center, located at Stringtown, Oklahoma; The defendant, J. D. Daniels, is a Parole Board Interviewer and resides at McAlester, Oklahoma. Plaintiff, in his civil rights action, pursuant to 42 U.S.C. §1983, alleges that the defendant, as the Parole Board Interviewer, is improperly applying Oklahoma H.B. 1918 to compute the plaintiff's sentence, thereby affecting the plaintiff's eligibility to appear before the Parole Board. The events which allegedly give rise to this cause of action and the plaintiff and defendant are all within the Eastern District of Oklahoma.

In D'Amico v. Treat, 379 F.Supp. 1004 (USDC ND Ill. ED 1974), at p. 1007 it is said:

There is no applicable law with regard to venue under the Civil Rights Act of 1871 which would exempt this case from the general provision of 28 U.S.C. §1391(b). See Keadle v. Benedict, 321 F.Supp. 1179 (E.D.Pa.1970); Jimenez v. Pierce, 315 F.Supp. 365 (S.D.N.Y.1970); Sutton v.

City of Philadelphia, 286 F.Supp. 143 (S.D.N.Y. 1968).

The above case was affirmed in a decision without published opinion by the Seventh Circuit Court of Appeals (1/31/75), 510 F.2d 976.

In Coleman v. Crisp, 444 F.Supp. 32 (USDC WD Okl.1977) it was said:

....Moreover, it further appears that the objection to venue is valid. The statute providing for jurisdiction of cases under the Civil Rights Act, 28 U.S.C. §1343 upon which the plaintiff relies has no special venue provision and therefore 28 U.S.C. §1391(b) applies. D'Amico v. Treat, 379 F.Supp. 1005 (N.D.Ill. 1974); Walker v. Weaver, 266 F.Supp. 415 (M.D.Pa. 1967). Since this action does not rest on diversity of citizenship, under 28 U.S.C. §1391(b) the plaintiff must bring his action in the judicial district where all the defendants reside or in which his claims arose....

See also Jones v. Bales, 58 F.R.D. 453 (USDC ND Ga.1972).

The Court, therefore, finds, that pursuant to Title 28 U.S.C. §1404(a) this case should be transferred to the United States District Court for the Eastern District of Oklahoma.

In the interests of justice, the Court finds that this case should not be dismissed at this time for improper venue.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss the Complaint filed by the defendant be and the same is hereby overruled.

IT IS FURTHER ORDERED that this cause of action and complaint be and the same is hereby transferred to the United States District Court for the Eastern District of Oklahoma.

IT IS FURTHER ORDERED that the Motion to Stay Submission of Pre-Trial Order not be ruled on by this Court but by the Court to which this case has been transferred.

ENTERED this 30<sup>th</sup> day of January, 1979.



CHIEF UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 24 1979

Jack C. Steep, Clerk  
U.S. DISTRICT COURT

FIRST NATIONAL BANK,  
CLAREMORE, OKLAHOMA,

Plaintiff,

vs.

No. 78-C-198-B

PAUL DOICE McDONALD,

Defendant,

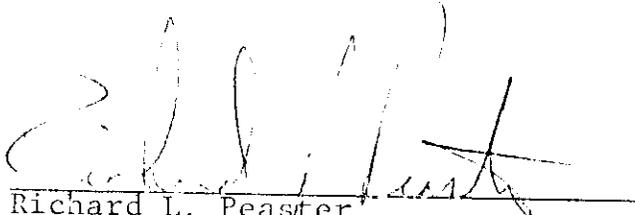
and

AMERICAN TANK AND TOWER  
P.O. Box 2395  
Joplin, Missouri 64801

Garnishee.

DISCHARGE OF GARNISHEE

COMES NOW THE PLAINTIFF by and through Richard L. Peaster,  
its attorney and discharges American Tank and Tower, garnishee  
in the above styled and numbered case, from the garnishment  
issued on the 4th day of May, 1978.



Richard L. Peaster  
Attorney for Plaintiff  
2626 East 21st Street  
Suite 10  
Tulsa, Oklahoma 74114  
(918) 743-6193

5/8/78

Richard L. Peaster  
Attorney for Plaintiff  
2626 E. 21st St., Suite 10  
Tulsa, Okla., 74114

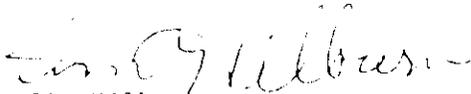
In re: Paul Doice McDonald, Summons 78-C-198-B  
(copy attached)

The above subject is not now, nor has he been within the past several months, employed by American Tank and Tower Co.

We are not indebted to the subject in any way, nor do we have any information as to his present location.

We are therefore unable to honor the Garnishment.

AMERICAN TANK AND TOWER CO.

  
Jim Hilburn

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 29 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 78-C-395-B
	)	
JAMES R. WARNER; IRITA F.	)	
WARNER; and MEDICAL SERVICE	)	
FINANCE CORPORATION, a	)	
corporation,	)	
	)	
Defendants.	)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 29th  
day of January, 1979, the Plaintiff appearing by  
Robert P. Santee, Assistant United States Attorney, and the  
Defendants, James R. Warner, Irita F. Warner and Medical Service  
Finance Corporation, appearing not.

The Court being fully advised and having examined the  
file herein finds that Defendants, James R. Warner was served  
with Summons and Complaint on August 22, 1978, as appears from  
the United States Marshal's Service herein and Summons and Amend-  
ment to Complaint to Add Party by publication as shown on Proof  
of Publication filed herein; Irita F. Warner was served with  
Summons and Complaint on August 22, 1978, as appears from the  
United States Marshal's Service herein and Summons and Amendment  
to Complaint to Add Party by publication as shown on Proof of  
Publication herein; Medical Service Finance Corporation was  
served with Summons/<sup>Complaint</sup>and Amendment to Complaint to Add Party on  
October 2, 1978, as appears by the United States Marshal's  
Service herein.

It appearing that the Defendants, James R. Warner,  
Irita F. Warner and Medical Service Finance Corporation, have  
failed to answer herein and that default has been entered by  
the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note upon the following described real property located in Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 7 and the West 22 1/2 feet of  
Lot 8 in Block 39 in the Town of  
Fairland, Ottawa County, Oklahoma,  
according to the recorded plat thereof.

THAT the Defendants, James R. Warner and Irita F. Warner, did, on the 3rd day of June, 1977, execute and deliver to the Farmers Home Administration, their mortgage and mortgage note in the sum of \$22,250.00 with 8 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, James R. Warner and Irita F. Warner, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly payments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$23,167.68 as unpaid principal with interest thereon at the rate of 8 percent per annum from July 3, 1978, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, James R. Warner and Irita F. Warner, in personam, for the sum of \$23,167.68 with interest thereon at the rate of 8 percent per annum from July 3, 1978, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendant, Medical Service Finance Corporation.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisalment the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

s/ Allen E. Barrow  
UNITED STATES DISTRICT JUDGE

APPROVED

  
\_\_\_\_\_  
ROBERT P. SANTEE  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT IN AND FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

BRUCE DUNCAN and SALLY DUNCAN, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 BOB QUINN, d/b/a BOB QUINN'S )  
 USED CARS; DEALERS AUTO )  
 AUCTION, INC.; GEORGE BINGHAM; )  
 R. H. (BOB) BEARD; EDWARD G. )  
 LANGENKAMP, d/b/a ED'S TEXACO, )  
 )  
 Defendants. )

No. 78-C-27-C ✓

JOURNAL ENTRY OF JUDGMENT

This action came on for trial pursuant to regular setting on January 15, 1979, before the Honorable H. Dale Cook, United States District Judge, presiding, all parties announcing ready for trial, and the issues having been duly tried before a jury of six (6) good people, and the jury having duly rendered a true verdict according to the evidence, and having returned a verdict in the amount of Three Hundred Fifty and No/100 Dollars (\$350.00) for actual damages on behalf of the Plaintiffs and against the Defendant George Bingham and the Defendant R. H. (Bob) Beard, and having returned a verdict in favor of the Defendant Bob Quinn, d/b/a Bob Quinn's Used Cars with regard to Plaintiffs' First Cause of Action, as well as a verdict in favor of the Plaintiffs and against the Defendant George Bingham and the Defendant R. H. (Bob) Beard in the amount of Five Thousand and No/100 Dollars (\$5,000.00) actual damages and punitive damages against George Bingham in the amount of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) and punitive damages against R. H. (Bob) Beard in the amount of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00); and having returned a verdict in favor of the Defendant Bob Quinn, d/b/a Bob Quinn's Used Cars against the Plaintiffs, all with regard to Plaintiffs' Second Cause of Action; and having

returned a verdict in favor of Defendant Bob Quinn, d/b/a Bob Quinn's Used Cars against the Defendant George Bingham on Defendant Bingham's Cross Claim.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiffs' claim for treble damages in accordance with the provisions of 15 U.S.C. §1989 is denied because of Plaintiffs' recovery of punitive damages under their Second Cause of Action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiffs, Bruce and Sally Duncan, have and recover from the Defendants George Bingham and R. H. (Bob) Beard, jointly and severally, the sum of Five Thousand and No/100 Dollars (\$5,000.00) actual damages and in addition have and recover the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) from Defendant George Bingham and the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) from the Defendant R. H. (Bob) Beard plus the cost of this action and reasonable attorney's fees; and that the Defendant George Bingham have and recover nothing against the Defendant Bob Quinn, d/b/a Bob Quinn's Used Cars by reason of his Cross Claim filed herein.

  
JUDGE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

RAY MARSHALL, Secretary of Labor, )  
United States Department of Labor, )  
 )  
Plaintiff )  
 )  
v. )  
 )  
CENTRAL AMBULANCE SERVICE, INC., )  
and E. PAT MACE, individually, )  
president, )  
 )  
Defendants )

Civil Action  
No. 76-C-183-B

FILED

JAN 25 1979

Jack G. Ether, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

Plaintiff has filed his complaint and defendants, without admitting that they violated the provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.), hereinafter referred to as the Act, have waived their defenses and have agreed to the entry of judgment without contest, it is, therefore, upon motion of the plaintiff and for cause shown,

ORDERED, ADJUDGED and DECREED that defendants, their officers, agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions of sections 15(a)(2) and 15(a)(5) of the Act in any of the following manners:

I

Defendants shall not, contrary to sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§207 and 215(a)(2), employ any employee in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than forty (40) hours, unless the employee receives compensation for his employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he

is employed.

II

Defendants shall not, contrary to sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§211(c) and 215(a)(5), fail to make, keep and preserve adequate and accurate records of the persons employed by them, and the wages, hours, and other conditions and practices of employment maintained by them as prescribed by regulations issued by the Administrator of the Employment Standards Administration, United States Department of Labor (29 C.F.R. Part 516).

It is further ORDERED that defendants be and they are hereby enjoined and restrained from withholding payment of overtime compensation in the total amount of \$9,000.00 which the Court finds to be due under the Act to defendants' employees. Payment of the \$9,000.00 will be in accordance with the following schedule:

Payment of \$9,000.00 in 18 equal consecutive monthly installments of \$500.00, with the first installment being due and payable on or before the same day of each succeeding month thereafter until all 18 installments have been paid.

It is further ORDERED that plaintiff, upon the receipt of such certified or cashier's checks from the defendants, shall promptly proceed to make distribution, less income tax and social security withholdings, to defendants' employees, or to the legal representative of any deceased person so named. If, after making reasonable and diligent efforts to distribute such amounts to the person entitled thereto, plaintiff is unable to do so because of inability to locate a proper person, or because of a refusal to accept payment

by any such person, plaintiff, pursuant to 28 U.S.C. §2041, shall deposit such funds with the Clerk of this Court. Any such funds may be withdrawn for payment to a person entitled thereto upon order of this court.

It is further ORDERED that in the event of default by the defendants in the payment of any of the above recited installments, the total balance remaining unpaid shall then become due and payable and interest shall be assessed against such remaining unpaid balance from the date of this judgment until the total amount is paid in full.

It is further ORDERED that the costs of this action be, and the same hereby are, taxed against defendants for which execution may issue.

Dated this 24<sup>th</sup> day of January, <sup>1979</sup> 1978.

  
UNITED STATES DISTRICT JUDGE

Defendants waive their defenses to plaintiff's complaint and consent to the entry of this judgment:

  
LARRY D. HENRY  
Attorney for Defendants

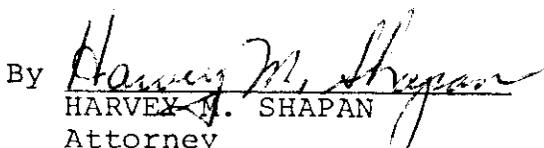
  
E. PAT MACE  
Defendant and president of  
Defendant CENTRAL AMBULANCE  
SERVICE, INC.,

Plaintiff moves for entry of this judgment:

CARIN ANN CLAUSS  
Solicitor of Labor

JAMES E. WHITE  
Acting Regional Solicitor

WILLIAM E. EVERHEART  
Counsel for Employment  
Standards

By   
HARVEY M. SHAPAN  
Attorney

Attorneys for Plaintiff

P. O. Address:

Office of the Solicitor  
U. S. Department of Labor  
555 Griffin Square Building  
Suite 501  
Dallas, Texas 75202

Telephone: 214/767-4902

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

SARAH HIGEONS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BILL PARESE, et al., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

No. 77-C-398-B

JAN 9 1979

O R D E R

The court has for consideration the Motion for Summary Judgment of the defendants Bill Williams, Bob Yock, Gerald Holt, Boyd Spencer and Don Thompson, referred to herein collectively as "Council Members", and the Motion for Dismissal of the plaintiff. The court has carefully reviewed the file, and briefs and the recommendations concerning these motions and after being fully advised finds:

The Motion for Dismissal of the plaintiff should be sustained conditional on the plaintiff paying costs and attorney's fees as set out below. The court further finds that the Council Members' Motion for Summary Judgment is moot.

The defendant Council Members moved for summary judgment on June 2, 1978, and filed a supporting brief. The plaintiff did not file a brief in opposition to this motion, but rather, filed a Motion for Dismissal pursuant to Rule 41(a)(2), F.R.C.P., requesting the court to dismiss the Council Members, only, from this case. The Council Members have requested the court to condition their dismissal from this case upon the payment by the plaintiff of their attorney's fees and costs incurred in this matter.

The plaintiff acknowledges that under Rule 41(a)(2) the court may in its discretion attach conditions to the Order of Dismissal such as granting the Motion for Dismissal only on the payment of fees and costs. However, the plaintiff asserts that no conditions should be attached in this case because she believes that although

there was a technical failure of proof of her action, she believes that she asserted a meritorious claim. In addition, she argues that persons seeking vindication of civil rights should not be discouraged by the imposition of costs and attorney's fees upon them.

The defendant Council Members argue that the deposition of the plaintiff indicates that she totally exculpated the Council Members from any liability to her and that she repeatedly admitted in her deposition that the Council Members had not deprived her of any civil rights. The Council Members assert that the plaintiff's deposition was in complete contradiction to her sworn Complaint filed in this case and that the plaintiff's own testimony demonstrates that her action against the Council Members was brought in bad faith. The defendant Council Members claim that they have been required to expend \$312.64 in fees and expenses and \$3,735 in legal fees in preparation of their defense against the plaintiff's bad faith Complaint. The Council Members assert that had their Motion for Summary Judgment been sustained they would have been entitled to recover these fees and costs against the plaintiff under 42 U.S.C. §1988.

The deposition of the plaintiff clearly exculpates the defendants from liability to her and is in direct contradiction to the plaintiff's own sworn Complaint. However, a balance needs to be maintained so that persons are not discouraged from seeking the vindication of their civil rights and while still preventing the filing of bad faith claims.

IT IS THEREFORE ORDERED that the plaintiff's Motion for Dismissal is sustained and the plaintiff's Complaint against the defendants, Bill Williams, Bob Yock, Gerald Holt, Boyd Spencer and Don Thompson, is dismissed without prejudice, but that this Order of Dismissal is conditioned on the plaintiff paying to these defendants the sum of \$312.64 in costs and the sum of \$500 for an attorney's fee all totalling \$812.64, which sum is hereby reduced to judgment in favor of said defendants.

IT IS FURTHER ORDERED that the Council Members' Motion for Summary Judgment is moot in view of their dismissal from this case.

DATED this 29<sup>th</sup> day of January, 1979.

  
CHIEF JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT  
OF OKLAHOMA.

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

PHYLLIS JORDAN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

CLIFFORD L. ALEXANDER, Secretary of  
the Army of the United States,

COL. ANTHONY SMITH, District Engineer,  
United States Army Corps of Engineers,  
Tulsa District, Tulsa, Oklahoma,

COL. ANTHONY SMITH, Individually,

UNITED STATES ARMY CORPS OF ENGINEERS,  
Tulsa District, Tulsa, Oklahoma,

KLON D. BUCKLES, Civilian Personnel  
Officer, United States Army Corps of  
Engineers, Tulsa District,

KLON D. BUCKLES, Individually,

DAVID CRAIG, Individually,

DON HOGGETT, Individually,

Defendants.

No. 73-C-49-B

FILED

JAN 2 1978

CLERK  
U.S. DISTRICT COURT

O R D E R

The Court has for consideration Defendant's Motion to Dismiss and to Strike and has reviewed the file, the briefs and all of the recommendations concerning the motion, and being fully advised in the premises, finds:

That the Defendant's Motion to Dismiss and to Strike should be sustained for the following reasons:

On April 27, 1978, Defendants filed a Motion to Dismiss and a Motion to Strike pursuant to Rule 12(b)(6) and (f) of the Federal Rules of Civil Procedure (F.R.C.P.) stating in support thereof that in employment discrimination actions involving federal employees, compensatory and punitive damages are non-recoverable, and the only proper party Defendant is the head of the agency involved. Plaintiff had sought damages in excess of two hundred thousand dollars (\$200,000) and had named as party Defendants, The United States of America, Clifford L. Alexander, Secretary of the Army of the United States officially and individually, the United States Corps of Engineers, Tulsa District, and Col. Anthony Smith, District Engineer, Klon Buckles,

Civilian Personnel Officer, David Craig and Don Hoggett officially and individually.

On May 5, 1978, Plaintiff filed an amended complaint, continued to name the aforementioned party Defendants and transferred the prayer for damages from the Title VII claim, Title 42, U.S.C. §2000e-16 et seq., to the Third Cause of Action based upon 42 U.S.C. §1983.

On June 5, 1978, Defendants refiled the Motion to Dismiss and to Strike and stated in support thereof at the hearing on the matter on September 18, 1978, that under Title VII, the basis for Plaintiff's statutory claim the only proper party Defendant is Clifford L. Alexander in his official capacity. Defendant relies upon Title 42, Section 2000e(b) which defines the term "employer" as being "...a person engaged in an industry affecting interstate commerce who has fifteen or more employees... but does not include (1) the United States, a corporation wholly owned by the Government of the United States...." as support for his Motion to Dismiss the United States as a party Defendant. Said section defines the employer-Defendant in employment discrimination suits involving federal employees.

Defendant next relies upon Section 2000e-16(a) which provides that personnel action as affecting employees of military departments as defined in Title 5, U.S.C. §102, included in which is the Department of the Army, shall be made free from any discrimination based on race or sex, and Section 2000e-16(c) which provides for a civil action upon alleged discrimination against the head of the department, unit or agency as appropriate.

In relying upon the two above-cited sections, Defendant argues that Plaintiff's appropriate department is the United States Department of the Army and its head is Clifford L. Alexander, Secretary thereof. Accordingly, the only proper party Defendant in Plaintiff's claim is Clifford L. Alexander.

Defendant relies upon Royal vs. Bergland, 428 F. Supp. 75 (D.C., DC, 1977); Keeler vs. Hill, 408 F. Supp. 386 (DC, GA 1975);

Stephenson vs. Simon, 427 F. Supp. 467 (D.C., DC 1976); Haire vs. Callaway, 385 F. Supp. 309 (E.D. MO 1974); Brown, Supra., which decisions have held that it is the head of the department and only in his or her official capacity who may be sued pursuant to Section 2000e. Accordingly, the Complaint Defendants argue should be dismissed as to the Defendants United States of America, the United States Army Corps of Engineers, Col. Anthony Smith, Klon Buckles, David Craig, and Don Hoggett and Clifford L. Alexander individually.

Defendants next argue in response to Plaintiff's Second and Third Causes of Action based upon 42 U.S.C. §1981, that even if the Complaint otherwise states a cause of action against Defendants individually, dismissal of the action against them is mandated because Congress has replaced any causes of action that may have existed with the right to sue the Secretary of the Army in his official capacity pursuant to the Equal Employment Opportunity Act of 1972 (EEOA), a right which Plaintiff has, in fact, exercised.

Title VII of the Civil Rights Act of 1964 was amended in 1972 with the passage of the EEOA which provides the exclusive remedy for government employees who have suffered employment discrimination and bars suits brought against officials in their individual capacities as well as suits brought against the government under more general statutes. Brown vs. General Services Administration, 425 US 820, 829 (1976); Richardson vs. Wiley, D.C. Cir. No. 76-2085, filed December 22, 1977; Gissen vs. Tacknen, 537 F. 2nd 784 (3rd Cir. 1976) (en banc). Defendants argue therefor that Plaintiff's Complaint should be dismissed as to her Section 1981 claim. In support for the Section 1981 claim and the claim for multiple Defendants, Plaintiff relies upon the case of Hunt v. Schlesinger, 389 F. Supp. 725 and Henry v. Schlesinger, 407 F. Supp. 1179, Plaintiff represents that said cases support the claim for injunctive relief and multiple Defendants under Title VII.

The Government argues that neither case dealt with said issues and accordingly do not bear control. In the Hunt

case, Supra., no injunctive relief was sought, and in response to the issue of indispensable parties, the Court held the additional persons were not proper party Defendants. In the Henry case, Supra., Plaintiff did not sue under Section 1981 and the Court was faced with pre-Act discriminatory acts in relation to Title VII. Such is not the factual picture presented by Plaintiff in this action, neither is the issue of exhaustion of administrative remedies which the Court in Henry addressed.

Plaintiff further relies upon a line of cases to support the claim that Section 2000e does not pre-empt remedies afforded under Section 1981. Walters v. Wisconsin Steel Works of the International Harvester Company, (1970, CA7 Ill.) 427 F2d 476, cert. denied 400 US 911, 27 L. Ed. 2d 151, 91 S. Ct. 137; Sanders v. Dobbshouse, Inc., (1970, CA5 Ga.) 431 F2d 1097, cert. denied 401 US 948, 28 L. Ed. 2d 231, 91 S. Ct. 935; Young v. International Telegraph and Telephone Company, (1971, CA3 Pa.) 438 F2d 757; Brady v. Bristol Meyers, Inc., (1972, CA8 Mo.) 459 F2d 621. The Government argues that none of said cases control here because all such cases concern themselves with the private sector rather than Government employment cases; further, said cases pre-date the 1972 amendment of the Civil Rights Act.

#### FINDINGS OF FACT

1. That Plaintiff has brought an action for employment discrimination against an agency of the Federal Government under Title 42, U.S.C. §2000e-16 et seq.

2. That Defendant Clifford L. Alexander is the head of a military department within the meaning of 42 U.S.C. §3000e-16(a) and Title 5, U.S.C. §102.

3. That Plaintiff is a federal employee with the Department of the Army within the meaning of 42 U.S.C. §2000e-16 et seq. and 5, U.S.C. §102.

#### CONCLUSIONS OF LAW

1. In the pleadings filed in the instant action and the arguments advanced at the hearing on the motions,

Plaintiff failed to state a claim upon which relief can be granted against Defendants, the United States of America, Clifford L. Alexander, individually, United States Army Corps of Engineers, Tulsa District and Col. Anthony Smith, Klon Buckles officially and individually, David Craig and Don Hoggett, individually. Title 42 U.S.C. Section 2000e(b); Royal vs. Bergland, 428 F. Supp. 75 (D.C., DC 1977), Keeler vs. Hill, 408 F. Supp. 386 (D.C. GA 1975); Stephenson vs. Simon, 427 F. Supp., 467 (D.C., DC, 1976); Brown vs. General Services Administration, 425 U.S. 820, 829 (1976).

2. The head of the United States Department of the Army, Clifford L. Alexander, Secretary in his official capacity, is the only proper party Defendant in an employment discrimination action of an employee in the Department of the Army. 42 U.S.C. Section 2000e-16(a), 5 U.S.C. Section 102, 42 U.S.C. Section 2000e-16(c); Brown, Supra; Haire vs. Callaway, 385 F. Supp. 309 (E.D. MO. 1974).

3. Title VII of the Civil Rights Act of 1964 as amended in 1972 with the passage of the Equal Employment Opportunity Act (EEOA) which provides the exclusive remedy for government employees who have suffered employment discrimination and bars suits brought against officials in their individual capacities as well as suits brought against the government under more general statutes. Brown, Supra at 829; Richardson vs. Wiley, D.C. Cir. No. 76-2085, filed December 22, 1977; Gissen vs. Tacknen, 537 F. 2nd 784 (3rd Cir. 1976) (en banc).

4. Plaintiff has failed to state a claim upon which relief can be granted under the Section 1981 claim. Brown, Supra, Richardson vs. Wiley, Supra, Gissen vs. Tacknen, Supra.

IT IS, THEREFORE, ORDERED that the Defendant's Motion to Dismiss and to Strike is hereby sustained.

Dated this 29<sup>th</sup> day of January 1979 ~~December 1978~~.

  
CHIEF JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 26 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

SUSAN BEATTY, SHERRY SUMMERALL )  
and AARON BEATTY, an infant, )  
by his next friend, Susan )  
Beatty, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
TRANS WORLD AIRLINES, INC., )  
a corporation, )  
 )  
Defendant. )

No. 78-C-34-C

JOURNAL ENTRY OF JUDGMENT

This action came on for trial before the Court and a jury, the Honorable H. Dale Cook, District Judge, presiding and the issues having been duly tried and the jury having duly rendered its verdict in favor of the Defendant, Trans World Airlines, Inc.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that the Plaintiffs take nothing, that the action be dismissed on its merits and that the Defendant, Trans World Airlines, Inc., recover of the Plaintiffs, Susan Beatty, Sherry Summerall and Aaron Beatty, its costs of action.

DATED at Tulsa, Oklahoma this 25<sup>th</sup> day of January, 1979.

UNITED STATES DISTRICT COURT CLERK  
JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 20 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

STEPHEN TIDWELL, as father and )  
next friend of SANDY G. TIDWELL, )  
and STEPHEN TIDWELL, individually, )  
Plaintiffs, )  
vs. )  
J. C. PENNEY COMPANY, INC., )  
Defendant. )

NO. 77 C 409 C

ORDER OF DISMISSAL WITH PREJUDICE

It appearing to the Court that the above entitled action has been fully settled, adjusted, and compromised, and based on stipulation;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above entitled action be and it is hereby dismissed with prejudice, with the costs of same to be paid by the defendant pursuant to the Clerk's order of June 14, 1978, on the plaintiffs' bill of costs.

Witness my hand this 20<sup>th</sup> day of January, 1979.

United States District Judge



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JERRY L. ROGERS, a minor by )  
his father and next friend, )  
BILLY JOE ROGERS, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
THE BOARD OF EDUCATION OF )  
WYANDOTTE, OKLAHOMA SCHOOL )  
DISTRICT, Lee Jeffery, )  
Robert Wilson, Betty Fields, )  
Dan Leisure, Jerry Strait, )  
Ellen Gourd, and Richard )  
Roark, )  
 )  
Defendants. )

No. 78-C-221-C

FILED  
JAN 2 1979  
U.S. DISTRICT COURT

O R D E R

The defendants herein are the Board of Education of the Wyandotte, Oklahoma School District, and several instructors at the Wyandotte Junior High School. The plaintiff is a student at the Wyandotte Junior High School. He alleges that the defendants were negligent in failing to supervise and control the faculty and students of the junior high school, and that such negligence led to a student "hazing" incident in which the plaintiff was severely injured. Jurisdiction is based upon diversity of citizenship. Now before the Court is the defendant Board of Education's Motion to Dismiss.

The defendant bases its Motion on two grounds: 1.) That as a government subdivision it is immune from suit; 2.) That it cannot be held liable under the doctrine of respondeat superior, or principles of agency.

The plaintiff argues that the defendant has waived its governmental immunity under the Oklahoma statutory provision authorizing boards of education to purchase liability insurance to indemnify their members and employees from civil liability. 70 O.S. § 5-136. The defendant represents that it does not

carry such liability insurance. The plaintiff therefore argues that the defendant was negligent in failing to procure liability insurance when the statute authorizes it to do so.

The Court would first note that the statute relied upon by the plaintiff was repealed effective July 1, 1978. 1978 Okla. Sess. Laws, c.203, § 21. It was superseded by 510.S. § 168, a provision of the Political Subdivision Tort Claims Act, 510.S. §§ 151 et seq. It was, however, still effective in August of 1977 when plaintiff's cause of action arose. The fact that the statute is couched in permissive rather than mandatory terms is also noteworthy. Section 5-136 provided that

"[b]oards of education of school districts are hereby authorized to provide, at school district expense, not to exceed Three Hundred Thousand Dollars (\$300,000.00), liability insurance to indemnify the members of the board of education, superintendents, principals, teachers and other employees, from civil liability, but in no event shall such insurance provide any protection for any of the aforesaid from prosecution on a criminal charge except vehicle-related felonies"  
1975 Okla. Sess. Laws, c.311, § 1.

Since the statute did not require boards of education to purchase liability insurance, the Court is unable to see how the plaintiff could predicate a finding of negligence on the defendant's failure to follow the statute.

The Court is also unable to accept plaintiff's contention that a statutory authorization to purchase liability insurance is a waiver of governmental immunity. In Oklahoma, governmental or sovereign immunity from tort liability is waived when liability insurance is secured. See Lamont Indep. School Dist. v. Swanson, 548 P.2d 215 (Okla. 1976). See also Mills v. Benton, 568 P.2d 276 (Okla. 1977). A mere authorization to secure liability insurance would not amount to a waiver. The defendant Board of Education is therefore immune from suit and should be dismissed from this lawsuit. It is

therefore unnecessary for the Court to deal with its second ground for dismissal based upon the inapplicability of the doctrines of respondeat superior and agency.

For the foregoing reasons, it is therefore ordered that the Motion to Dismiss of the defendant Board of Education is hereby sustained.

It is so Ordered this 23<sup>rd</sup> day of January, 1979.

  
H. DALE COOK  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

TODD EXPLORATION COMPANY, )  
an Oklahoma corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TODD EXPLORATION, INC. and )  
BOB COVINGTON, )  
 )  
Defendants. )

No. 78-C-415-C

FILED

JAN 2 - 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

It having been stipulated by and between counsel for  
the parties hereto, subject to the approval of this Court,

IT IS HEREBY ORDERED that the cause of action against  
the defendants, Todd Exploration, Inc. and Bob Covington,  
individually, as presented by the Complaint, be and hereby  
is dismissed without prejudice pursuant to Rule 41(a) of  
the Federal Rules of Civil Procedure.

DATED this 23<sup>rd</sup> day of January, 1979.

  
\_\_\_\_\_  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

CHARLES C. McCARTY and )  
CORA L. McCARTY, )  
 )  
Plaintiffs, )  
 )  
vs. ) No. 78-C-230-C  
 )  
FIRST OF GEORGIA )  
INSURANCE COMPANY, an )  
Insurance Company, )  
 )  
Defendant. )

FILED

JAN 2 1979

O R D E R

JAMES H. STUBBS, JR.  
U. S. DISTRICT COURT

The Court has before it defendant's Motion for Summary Judgment on the ground that plaintiffs have failed to initiate legal action within one year from the inception of the loss, as provided by Title 36, Okla. Stat. Annot. § 4803 B and G, and that the statute of limitations has therefore run on this cause of action.

For the purposes of this motion only, defendant has stipulated to the following facts:

1. That defendant issued Policy Number 440916 on plaintiffs' house, including a "fire and lightning" clause for \$15,000 coverage at \$50 deductible. The policy covered the period from May 12, 1976 to May 12, 1977.
2. That the house covered by this policy was destroyed by fire on or about May 18, 1976.
3. That defendant denied liability in a letter sent to plaintiffs on February 7, 1977, approximately nine months after the loss.
4. That plaintiffs filed a complaint with the Oklahoma Insurance Commission in February or March of 1977.
5. That the present action was commenced on May 1, 1978 in the District Court of Osage County, State of Oklahoma, and thereafter removed to this Court.

In accordance with Title 36, Okla. Stat. Annot. § 4803(b) and (g), plaintiffs' insurance policy contained a provision requiring that any legal action on the policy be initiated within one year of the loss:

"No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity . . . unless commenced within twelve months next after inception of the loss." Title 36, Okla. Stat. Annot. § 4803(G).

Thus, plaintiffs would have to commence any legal action by May 19, 1977, one year after the loss of their house. Plaintiffs did not file this action, however, until May 1, 1978, more than twenty-three months after the loss. Cases have held that where the insured prolonged negotiations in order to consume the one year period of filing an action, the time limit would be suspended until a reasonable time after the denial of liability by the insurance company. See Prudential Fire Ins. Co. v. Trave-Taylor Co., 152 P.2d 273, 194 Okla. 394, (1944); Insurance Co. of North America v. Bd. of Educ., 196 F.2d 901 (10th Cir. 1952). But even if defendant's actions here called for suspension of the one year limit until plaintiffs received notice of denial, this action still appears to be too late. Denial of liability was made by defendant in a letter dated February 7, 1977. This letter was received by plaintiffs in March or early April of 1977, that is, prior to plaintiffs' contacting the Oklahoma State Insurance Commission, according to the deposition of plaintiffs Charles C. McCarty, reprinted on page three of Plaintiffs' Brief in Opposition to Defendant's Motion for Summary Judgment. After the denial was received, plaintiff would have a reasonable time to initiate legal action, but as a matter of law, plaintiff could not have more than the time originally granted by statute. In addressing the question of what constituted a reasonable time after notice of denial was received, one court noted:

"Whether the insured thereafter institutes his action within a reasonable time may in some cases become a question of fact, but in any event he could not have more time than the time he would have had but for the dilatory acts of the Company, which was one year." Ins. Co. of N. Amer. v. Bd of Educ., supra, at 904.

Thus, plaintiffs had, at the most, one year from receipt of denial to institute court action. Denial was received, according to plaintiffs' brief in opposition, prior to contacting the State Insurance Commissioner in March or early April of 1977. This action was not filed until May 1, 1978. Clearly the one year limit was exceeded.

Plaintiffs seek to avoid this bar on prosecution of the action by means of Title 12, Okla. Stat. Annot., § 100, which provides that:

"If any action is commenced within due time, and a judgment thereon for the plaintiff is reversed, or if the plaintiff fail in such action otherwise than upon the merits, the plaintiff, or, if he should die, and the cause of action survive, his representatives may commence a new action within one year after the reversal or failure although the time limit for commencing the action shall have expired before the new action is filed."

Plaintiffs contend that filing a complaint with the State Insurance Commission within one year of the loss was sufficient to activate Section 100, giving them another year from the dismissal of the complaint by the State Insurance Commission. Plaintiffs are arguing, therefore, that a complaint filed with the State Insurance Commission is an "action" within the meaning of Section 100. This is incorrect. Action is defined for purposes of Title 12 (including Section 100) by Title 12, § 4, which states that:

"An action is an ordinary proceeding in a court of justice by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense." (emphasis added)

Plaintiff urges that "action" as used in Oklahoma statutes has been enlarged by Title 12A, Okla. Stat. Annot.

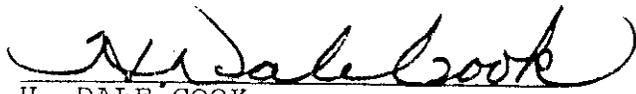
§ 1-201, which defines action in part as "any other proceedings in which rights are determined."

Section 1-201 is limited, however, to the subject matter of Title 12A, that is, specified commercial transactions, not including plaintiffs' insurance policy. Title 12A definitions do not apply to court procedure, which is governed here by Title 12. Contrary to plaintiffs' argument, Titles 12 and 12A are not inconsistent and do not overlap. Thus, plaintiffs did not institute an "action" in the meaning of Title 12 within the statutory time period, and Title 12, § 100 is therefore unavailable to them.

Plaintiffs make passing reference to a court action styled Gerald Grimes, Insurance Commissioner vs. First of Georgia Insurance Company and Implement Dealers Mutual Insurance Company and Ron Hutton, Agent, Respondents, Case No. 77-52. The sole reference to this case is in plaintiffs' Amended Complaint, and there is no other record of the action currently on file with this Court. It is an unproven allegation, and the Court will not consider whether such an action, filed on plaintiffs' behalf, would affect the statutory limitation period or invoke Title 12, § 100.

For the foregoing reasons, it is Ordered that defendant's Motion for Summary Judgment be sustained.

It is so Ordered this 23<sup>rd</sup> day of January, 1979.

  
H. DALE COOK  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

B-F-W CONSTRUCTION COMPANY, INC.,  
a Texas Corporation,

Plaintiff,

vs.

ROBERT L. BRASE, d/b/a OKLAHOMA  
CONCRETE PRODUCTS; J. HOYL LOCKETT,  
OKLAHOMA CONCRETE PRODUCTS; and  
PRE-ENGINEERED BUILDING PRODUCTS, INC.,  
an Oklahoma Corporation, d/b/a  
OKLAHOMA CONCRETE PRODUCTS,

Defendants.

FILED

JAN 23 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 78-C-216-C

ORDER DISMISSING ACTION AND  
COUNTERCLAIM WITHOUT PREJUDICE

ON the foregoing stipulation of the parties herein,  
Plaintiff B-F-W Construction Company, Inc., by its attorney  
of record, and Pre-Engineered Building Products, Inc., by  
its attorney of record,

IT IS HEREBY ORDERED that the above entitled action be,  
and it hereby is, dismissed without prejudice to either party,  
and that the counterclaim of Pre-Engineered Building Products,  
Inc. be, and it hereby is, dismissed without prejudice to  
either party.

DATED this 23<sup>rd</sup> day of January, 1979.

  
JUDGE OF THE UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAMES R. CYPHERT, )  
 )  
 ) Petitioner, )  
 )  
 vs. ) No. 78-C-540-C  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 ) Respondent, )

FILED

JAN 24 1979

O R D E R

Jack C. Sibley, Clerk  
U. S. DISTRICT COURT

Petitioner herein moves this Court pursuant to the provisions of Title 28 U.S.C. § 2255 to vacate the sentence imposed by it upon him on July 10, 1978.

The petitioner was charged by indictment in Case No. 76-CR-97 with a violation of Title 26 U.S.C. § 7212(b), in that he knowingly and intentionally forcibly rescued an automobile seized for collection of delinquent income taxes. Petitioner entered a voluntary plea of guilty to the indictment on June 12, 1978.

As the Court understands the petitioner's motion, he first challenges his sentence on the ground that his conduct did not amount to a crime. He contends that since he was not the delinquent taxpayer, his rescue of the seized automobile was not a violation of Section 7212(b).

It is well-established that when a voluntary plea of guilty has been entered, a sentence is not subject to a Section 2255 collateral attack on the ground that, as a factual matter, the petitioner was not guilty of the offense charged. A Section 2255 motion is not a substitute for direct appeal. See Payton v. United States, 436 F.2d 575 (10th Cir. 1970).

The petitioner also challenges his sentence on the ground that the I.R.S. agents who seized the automobile from him had no authority to do so because he was not the delinquent

taxpayer. He alleges that he was the owner of the automobile, that he had provided the I.R.S. agents proof of his ownership before their seizure of the automobile, and that therefore the agents' failure to secure a warrant to seize the automobile was a violation of the petitioner's Fourth Amendment rights.

A lawful seizure is an essential element that must be alleged and proven when a violation of Section 7212(b) is charged. See United States v. Harris, 521 F.2d 1089 (7th Cir. 1975); United States v. Oliver, 421 F.2d 1034 (10th Cir. 1970); United States v. Scolnik, 392 F.2d 320 (3rd Cir. 1968). So the question of whether the seizure of the petitioner's automobile was lawful or not would be another question relating to the fact of petitioner's guilt, or relating to the sufficiency of the indictment, and would therefore not be a proper ground for a Section 2255 Motion. See Payton v. United States, supra.

For the foregoing reasons, it is therefore ordered that the petitioner's motion to vacate sentence is hereby denied.

It is so Ordered this 23<sup>rd</sup> day of January, 1979.

  
H. DALE COOK  
United States District Judge

FILED

IN THE UNITED STATES DISTRICT COURT IN AND FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

JAN 19 1979 *rm*

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ALLAN BURKE and PEGGY BURKE, )  
and NORTHWEST HEALTHCARE, )  
Plaintiffs, )  
vs. )  
THE GENERAL TIRE AND RUBBER )  
COMPANY, )  
Defendant. )

NO. 78 C 72 C

APPLICATION FOR DISMISSAL

COME now the plaintiffs and defendant and would show the Court that their differences have been compromised and settled and that nothing further remains to be done in this litigation and therefore moves this Court for an order of Dismissal with Prejudice.

*[Signature]*  
Attorney for Plaintiffs

*[Signature]*  
Attorney for Defendant

ORDER OF DISMISSAL

Now on this 23<sup>rd</sup> day of January, 1979, the court having received an Application for Dismissal from the parties hereto, finds that their differences have been compromised and that this case should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this case be and the same is hereby dismissed with prejudice.

*[Signature]*  
JUDGE OF THE DISTRICT COURT

FILED

IN THE UNITED STATES DISTRICT COURT IN AND FOR

THE NORTHERN DISTRICT OF OKLAHOMA

JAN 19 1979 *rm*

MILDRED BEEM, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE GENERAL TIRE AND RUBBER )  
 COMPANY, )  
 )  
 Defendant. )

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

NO. 78 C 71 C ✓

APPLICATION FOR DISMISSAL

COMES now the plaintiff and defendant and would show the Court that their differences have been compromised and settled and that nothing further remains to be done in this litigation and therefore moves this Court for an order of Dismissal with Prejudice.

*Paul J. [Signature]*  
Attorney for Plaintiff

*Joseph F. [Signature]*  
Attorney for Defendant

ORDER OF DISMISSAL

Now on this *23<sup>rd</sup>* day of January, 1979, the court having received an Application for Dismissal from the parties hereto, finds that their differences have been compromised and that this case should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this case be and the same is hereby dismissed with prejudice.

*W. Dalebook*  
JUDGE OF THE DISTRICT COURT

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 19 1979

ROSE LOISELLE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WAL-MART STORES, INC., )  
 )  
 Defendant. )

NO. 78 C 147 C

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES now the plaintiff and defendant and would show the Court that their differences have been compromised and settled and that nothing further remains to be done in this litigation and therefore moves this Court for an order of Dismissal with Prejudice.

*Rose Loiselle*  
Rose Loiselle, Plaintiff

FILED

*Jack C. Silver*  
Attorney for Plaintiff

JAN 2 1979

Attorney for Defendant

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

NOW on this 23<sup>rd</sup> day of January, 1979, the Court having received a Stipulation of Dismissal with Prejudice from the parties hereto, finds that their differences have been compromised and that this case should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this case be and the same as hereby dismissed with prejudice.

*Jack C. Silver*  
UNITED STATES DISTRICT JUDGE



Plaintiff then alleges that "the actions of defendant Rockefellers and Chase Manhattan Bank, were and are a willful exercise in corruption and treason in criminal violation of Oklahoma Election Laws and Title 18 sections 595, 241, 242, title 42, title 5, etc."

Plaintiff alleges "that the defendants Rockefeller and Chase Manhattan Bank engaging in total corruption and total treason willfully and criminally caused the false arrest and false jailing of plaintiff without bail because plaintiff was and is a Presidential Candidate the Rockefellers cannot own or control who will expose the Rockefellers for the murder of John F. Kennedy."

Plaintiff goes on to allege that these actions have caused him harm, suffering and damage and have destroyed his legal and lawful business.

In his prayer for relief the following items are sought by the plaintiff:

1. That immediate Jury Trial Be Held.
2. That Plaintiff a Political Prisoner be ordered freed.
3. That new Presidential elections be ordered held for the State of Oklahoma.
4. That defendants Rockefellers and Chase Manhattan Bank be ordered jointly and severally to pay Plaintiff 300 Billion Dollars (\$300,000,000,000) in compensatory and punitive damages.
5. That a Grand Jury Investigation be ordered.
6. That Plaintiff be allowed to proceed in forma pauperis without costs.

The allegations in plaintiff's civil rights complaint are basically similar to those contained in the "Bill of Complaint".

On page 4 of said complaint, subdivision "D" wherein the plaintiff is requested to delineate all previous lawsuits and administrative relief sought involving the same action, plaintiff answered "suits initiated in all fifty states". He notes that the same plaintiff and the same defendants are involved except that he has in each suit named the Secretary of State in each State.

A careful reading of plaintiff's complaint can only lead to one conclusion. This action is frivolous, and must be dismissed for failure to state a cause of action upon which relief can be granted.

IT IS, THEREFORE, SUA SPONTE, ORDERED that this cause of action and complaint be and the same are hereby dismissed for failure to state a cause of action upon which relief can be granted.

ENTERED this 22nd day of January, 1979.

*Allen E. Burton*

---

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
GUY THOMAS BURGESS; MARY )  
FRANCES BURGESS; CHARLOTTE )  
CHRISTEN BURGESS; ST. FRANCIS )  
HOSPITAL, INC., a corporation;) )  
and JOSEPH A. MCCARTHY, )  
Attorney at Law, )  
 )  
Defendants. )

CIVIL ACTION NO. 78-C-435-B

FILED

JAN 23 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 22nd  
day of January, 1979, the Plaintiff appearing by Robert P. Santee,  
Assistant United States Attorney; and the Defendants, St. Francis  
Hospital, Inc., appearing by its attorney, T. J. Sinclair, and  
Joseph A. McCarthy appearing pro se; and, the Defendants, Guy Thomas  
Burgess, Mary Frances Burgess and Charlotte Christen Burgess, appear-  
ing not.

The Court being fully advised and having examined the  
file herein finds that Defendants, Mary Frances Burgess and Charlotte  
Christen Burgess were served by publication as shown on Proof of  
Publication filed herein; that Defendant Guy Thomas Burgess was  
served with Summons and Complaint on September 18, 1978, and Summons  
and Amendment to Complaint to Add Party on September 20, 1978, as  
appears from the United States Marshal's Service herein.

It appearing that the Defendants, St. Francis Hospital,  
Inc. and Joseph A. McCarthy, have filed a Disclaimer, October 24,  
1978, and October 13, 1978, respectively; and that Defendants,  
Guy Thomas Burgess, Mary Frances Burgess, and Charlotte Christen  
Burgess, have failed to answer herein and that default has been  
entered by the Clerk of this Court.

The Court further finds that this is a suit based upon  
a mortgage note and foreclosure on a real property mortgage secur-  
ing said mortgage note upon the following described real property  
located in Tulsa County, Oklahoma, within the Northern Judicial  
District of Oklahoma:

Lot Three (3), Block Seven (7)  
LAKE-VIEW HEIGHTS AMENDED ADDITION  
to the City of Tulsa, County of  
Tulsa, State of Oklahoma, according  
to the recorded plat thereof.

THAT the Defendants, Guy Thomas Burgess and Mary Frances Burgess, did, on the 28th day of June, 1971, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$9,500.00 with 7 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Guy Thomas Burgess and Mary Frances Burgess, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of \$8,955.28 as unpaid principal with interest thereon at the rate of 7 1/2 percent per annum from November 1, 1977, until paid, plus the cost of this action accrued and accruing.

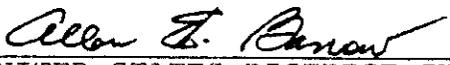
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Guy Thomas Burgess, in personam, and Mary Frances Burgess, in rem, for the sum of \$8,955.28 with interest thereon at the rate of 7 1/2 percent per annum from November 1, 1977, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment, in rem, against Defendants, Charlotte Christen Burgess, St Francis Hospital, Inc., and Joseph A. McCarthy.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal

for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

  
UNITED STATES DISTRICT JUDGE

APPROVED

  
ROBERT P. SANTEE  
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PETROWELL, INC.,

Plaintiff,

vs.

GENE C. CARPENTER, and  
CAR-CON DEVELOPMENT, INC.,

Defendants.

NO. 78-C-76-C ✓

FILED

JAN 19 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER OF DISMISSAL  
WITH PREJUDICE

NOW on this 19<sup>th</sup> day of January, 1979, there comes before the Court the Joint Stipulation and Application for Dismissal with Prejudice signed by the attorneys of record for all parties in the above-captioned civil action.

WHEREFORE, having reviewed said Stipulation and Application, it is hereby Ordered that the above-captioned civil action is dismissed with prejudice as to all claims for relief asserted therein by the several parties.

SO ORDERED.

John D. [Signature]  
United States District Judge

APPROVED AS TO FORM  
AND CONTENT:

Richard T. Sonberg  
Attorney for Plaintiff

Stan P. Boyle  
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AMALGAMATED MEAT CUTTERS AND  
BUTCHER WORKMEN OF NORTH  
AMERICA, LOCAL NO. 644,

Plaintiff,

-vs-

WAREHOUSE MARKET, INC.,

Defendant.

JAN 18 1979

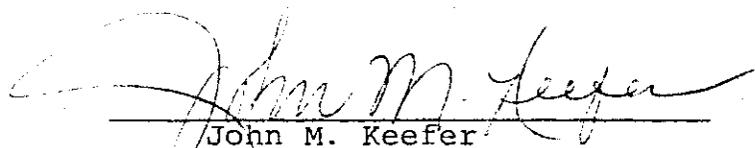
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 78-C-633-B

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Comes now Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 644, Plaintiff above-named, by and through its attorney of record, John M. Keefer, and pursuant to the provisions of F.R.C.P. Rule 41(a)(1), hereby dismisses the above-captioned cause without prejudice to the filing of a new action based upon the same facts at a later date, no Answer or Motion for Summary Judgment having been filed in this proceeding by the Defendant herein as of this date.

DATED this 18th day of January, 1979.

  
John M. Keefer

CHAPEL, WILKINSON, RIGGS, ABNEY  
& KEEFER  
Third Floor, 1401 South Boulder  
Tulsa, Oklahoma 74119  
(918) 587-3161

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

REPUBLIC POWDERED METALS, INC., )  
an Ohio Corporation, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
BUILDING RESORATION OF TULSA, )  
INC., an Oklahoma corporation, )  
 )  
Defendant. )

No. 78-C-312-C

FILED

JAN 17 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

The Court has for consideration the Stipulation for dismissal, agreed to by all the parties and being fully advised in the premises, finds:

IT IS ORDERED that the Stipulation for dismissal is hereby approved pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure and the causes of action complained are dismissed without prejudice as against the defendant, Robert E. Brown, individually, with each party to bear its own costs and attorney's fees concerning each claim.

DATED THIS 17<sup>th</sup> day of January, 1979.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ALMA L. GILES, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 78-C-526-C  
 )  
 SOUTHWESTERN BELL TELEPHONE )  
 COMPANY, INC., )  
 )  
 Defendant. )

FILED

JAN 17 1979

ORDER

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

Plaintiff herein seeks to recover termination pay from the defendant. This action was removed from the District Court for Ottawa County, Oklahoma because it is a suit for the violation of a contract between an employer and a labor organization falling under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. The defendant has moved the Court for Summary Judgment. The plaintiff has responded by confessing the defendant's motion.

After considering the defendant's Motion, and the plaintiff's response thereto, and being fully advised in the premises, the Court hereby orders that defendant's Motion for Summary Judgment is sustained.

It is so Ordered this 16<sup>th</sup> day of January, 1979.

  
H. DALE COOK  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DAVID MARRS, )  
)  
Plaintiff, )  
)  
v. )  
)  
LAKE COUNTRY BEVERAGE, INC., )  
an Oklahoma corporation, )  
)  
Defendant. )

No. 75-C-512-B

**FILED**

JAN 17 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law  
filed this date, IT IS ORDERED AS FOLLOWS:

Judgment be and is hereby entered in favor of the  
Defendant, Lake Country Beverage, Inc., and against the  
Plaintiff, David Marrs, on his Complaint. It is further  
ordered that the defendant recover its costs.

Entered this 17<sup>th</sup> day of January,  
1979.

Allen E. Barrow  
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DAVID MARRS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LAKE COUNTRY BEVERAGE, INC., )  
 an Oklahoma corporation, )  
 )  
 Defendant. )

**FILED**

No. 75-C-512-B

JAN 17 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

This cause was submitted by agreement of the parties for determination by the United States Magistrate without trial to be decided upon the pleadings, depositions, statements of counsel, Plaintiff's Admissions and Stipulations and Defendant's Response to such Admissions and Stipulations. On November 27, 1978 the United States Magistrate filed his Findings of Fact and Conclusions of Law and recommendation to this Court.

The Court has carefully reviewed the Findings of Fact, Conclusions of Law and Recommendations of the Magistrate, and, having carefully perused the entire file and being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. This is an action brought by the Plaintiff, David Marrs, for an injunction and damages for the alleged violation of the Fair Labor Standards Act of 1938 as Amended (27 U.S.C.A. §§201, et seq.).
2. Plaintiff is, and was at all times material hereto, a resident and citizen of the State of Oklahoma.
3. The Defendant is, and was at all times material hereto, incorporated under the laws of the State of Oklahoma, having its principal place of business in the City of Tulsa, Tulsa County, State of Oklahoma.

4. Plaintiff was hired by Defendant on or about September 5, 1973 as a Route Supervisor in the Muskogee plant of Defendant. Plaintiff's starting salary was \$185.00 per week with no understanding as to a specific number of hours that Plaintiff would work in any week -- except that Plaintiff would work whatever number of hours in any workweek necessary to adequately perform the duties of Route Supervisor.

5. Plaintiff served as a Route Supervisor from September 5, 1973 until June 30, 1974 at which time he became the Manager of the Muskogee plant of the Defendant at a salary of \$215.00 per week. Plaintiff continued as Plant Manager until October 20, 1974 at which time he again became a Route Supervisor without reduction in salary. Plaintiff continued as a Route Supervisor until January 29, 1975. On this latter date Plaintiff became a Route Salesman and continued as such until he terminated his employment with Defendant on May 22, 1975.

6. Plaintiff's claim has been limited, by a previous ruling of this Court, to the period from November 7, 1973 to June 30, 1974.

7. Plaintiff at all material times supervised four routes and the drivers of those routes during the time in question; Plaintiff frequently accompanied the drivers in the servicing of their routes; Plaintiff would direct and instruct his route drivers in the servicing of the routes; Plaintiff had the power to discipline the drivers, the power to discharge and hire drivers, and/or the power to recommend the hiring or firing of drivers and Plaintiff's recommendations were given particular weight; Plaintiff customarily and regularly exercised these discretionary powers; Plaintiff would assist the drivers in the servicing of their

routes but such assistance was closely and directly related to Plaintiff's position of Route Supervisor.

8. Plaintiff did not devote more than twenty percent (20%) of his hours of work in any workweek to activities which were not directly and closely related to the performance of his work described in the immediate preceding paragraph.

#### CONCLUSIONS OF LAW

1. The Court has jurisdiction of this action and of the parties.

2. The Plaintiff failed to prove the allegations of his Complaint by a preponderance of the evidence.

3. The Plaintiff was, at all material times, exempt from the provisions of the Fair Labor Standards Act of 1938 as Amended (29 U.S.C.A. §§201, et seq.) and the General Regulations of the Wage Hour Law. The Plaintiff was an "Executive" within the meaning of such Act and General Regulations promulgated thereunder -- particularly §541.1 of such General Regulations.

4. Plaintiff is not entitled to damages from the Defendant.

5. Defendant is entitled to judgment against the Plaintiff on Plaintiff's cause of action, and Defendant is entitled to recover its costs.

#### ORDER

IT IS, THEREFORE, ORDERED that Judgment be entered by separate instrument this date in conformity with the Findings of Fact and Conclusions of Law herein.

Dated this 17<sup>th</sup> day of January,  
1979.

Allen E. Benson  
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE **F I L E D**  
NORTHERN DISTRICT OF OKLAHOMA

JOYCE ANN BALLINGER, Administratrix )  
of the Estate of Virgil E. Ballinger, )  
Deceased, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MICHAEL B. DELANEY, )  
 )  
Defendant. )

JAN 17 1979

Jack C. Silber, Clerk  
U. S. DISTRICT COURT

No. 78-C-506-B

JOURNAL ENTRY OF JUDGMENT

This matter came on before the duly appointed Special Master herein on this 17th day of January, 1979. The plaintiff appeared in person and through her attorney, Sam Withiam, of Cushing, Oklahoma, and the defendant appeared by and through his counsel, Thomas R. Brett of Tulsa, Oklahoma. After counsel announced ready to proceed with the hearing witnesses were sworn and testimony duly taken and the Court having heard the evidence in the case, statements of counsel, and considered the files and records herein and being fully advised in the premises finds:

That Joyce Ann Ballinger is the duly qualified, acting and appointed administratrix of the estate of Virgil E. Ballinger, Deceased, and brings this action for and on behalf of herself individually and Lora Sue Ballinger, age 4 years, and Matthew Paul Ballinger, age 3 years, under her first cause of action for the wrongful death of her late husband, Virgil E. Ballinger. That the said Joyce Ann Ballinger and said minor children all have suffered a direct pecuniary loss as a result of the death of Virgil E. Ballinger, deceased, departing this life on August 20, 1978 at the age of 28 years, and the said parties are the only persons who have sustained any monetary or pecuniary loss as a result of his death.

That the parties hereto have entered into a compromise and settlement of the claims asserted in the complaint of the plaintiff and by reason thereof have agreed that this Court may enter judgment against the defendant as hereinafter set forth.

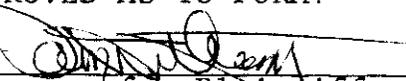
That said settlement involves a total payment of Seventy-Five Thousand Dollars (\$75,000.00) by and on behalf of the defendant, Michael B. DeLaney, to the plaintiff in her representative capacity of which Seventy Four Thousand Dollars (\$74,000.00) is to be allocated to the plaintiff's first cause of action and One Thousand Dollars (\$1,000.00), is to be allocated to the plaintiff's second cause of action.

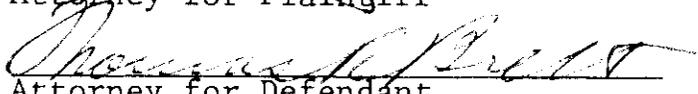
That the compromise and settlement effected by the parties is fair and reasonable, fully protects the rights of all of the parties, also including the minor children, and is hereby approved by the Court. That said sum as the Court hereinafter orders, adjudges and decrees is fair and equitable and is to be paid into the District Court of Creek County, Probate/Administration proceedings, and distributed according to the laws of descent and distribution of the State of Oklahoma, or as said Court may properly direct after awarding proper costs and attorney's fees in keeping with the agreement of the parties.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff, Joyce Ann Ballinger, Administratrix of the Estate of Virgil E. Ballinger, Deceased, have and she hereby has judgment against the defendant on said first cause of action in the sum of Seventy Four Thousand Dollars (\$74,000.00) and on said second cause of action in the sum of One Thousand Dollars (\$1,000.00), and it is further ordered that the plaintiff have and she hereby has judgment against the defendant for her costs herein expended.

  
\_\_\_\_\_  
CHIEF JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Attorney for Plaintiff

  
\_\_\_\_\_  
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MILDRED P. (BARBARA) BISHOP, )  
 )  
 ) Plaintiff, )  
 )  
 vs. )  
 )  
 THE FIRST NATIONAL BANK AND TRUST )  
 COMPANY OF TULSA, OKLAHOMA, R. )  
 MICHAEL DUNCAN, AND HOWARD B. )  
 BULLARD, III, Individually and as )  
 Executors of the Estate of Edgar )  
 F. Bullard, deceased, HOWARD )  
 BULLARD, DORIS DUNCAN, JACK C. )  
 DUNCAN and BRECK G. DUNCAN, )  
 )  
 Defendants. )

No. 78-C-433-B

FILED

JAN 17 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER DISMISSING CERTAIN DEFENDANTS

Plaintiff having filed her Notice of Dismissal as to certain Defendants and the Plaintiff and the Defendants having agreed upon the dismissal of the Complaint filed herein as to the remaining Defendants in their individual capacities only and the entry of an Order effectuating their agreement, and having filed their Stipulation herein, now on motion of counsel for both parties requesting entry of this Order, it is ORDERED, ADJUDGED AND DECREED that:

1. The Complaint <sup>and cause of action</sup> be, and ~~it is~~ <sup>they are</sup> hereby, dismissed, without prejudice, as against Defendants The First National Bank and Trust Company of Tulsa, R. Michael Duncan and Howard B. Bullard, III, in their individual capacities only.

2. This action be henceforth maintained only as to The First National Bank and Trust Company of Tulsa, R. Michael Duncan and Howard B. Bullard, III, as co-Executors of the Estate of Edgar F. Bullard, deceased and that the remaining Defendants shall have thirty days from the date hereof to further plead or answer.

Dated this 17th day of January, 1979.

  
ALLEN E. BARROW  
CHIEF JUDGE

APPROVED:

  
Lawrence A. G. Johnson  
Attorney for Plaintiff

  
John S. Athens  
Conner, Winters, Ballaine,  
Barry & McGowen  
Attorneys for Defendants

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 17 1979

John C. Silver, Clerk  
U. S. DISTRICT COURT

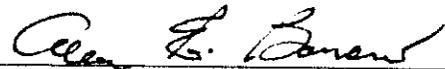
UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BETTY JO HUDSON, et. al., )  
 )  
 Defendants. )

CIVIL ACTION NO. 78-C-286-B

O R D E R

NOW, on this 17<sup>th</sup> day of January, 1979, there came on for consideration the Notice for Dismissal filed by the United States of America. The Court finds that said Notice for Dismissal is appropriate and well taken.

NOW, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Federal Land Bank of Wichita, Kansas, be and the same is herewith dismissed from this action, free of costs, with prejudice.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNIT RIG & EQUIPMENT COMPANY, )  
 )  
 ) Plaintiff, )  
 )  
 vs. )  
 )  
 LOCAL 790 OF THE INTERNATIONAL )  
 ASSOCIATION OF MACHINISTS AND )  
 AEROSPACE WORKERS, a labor )  
 organization, and JAMES HAMILTON )  
 an individual, )  
 )  
 ) Defendants. )

No. 78-C-271-C

**FILED**

JAN 16 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

Plaintiff brings the above-captioned action under Section 301 of the Labor Management Relations Act (29 U.S.C. § 185) for an order vacating an arbitration award entered pursuant to the terms of a collective bargaining contract between the plaintiff and the defendant union, or in the alternative remanding said award to the arbitrator for clarification thereof. Now before the Court is the defendants' motion to drop the individual defendant, James Hamilton, pursuant to the provisions of Rule 21 of the Federal Rules of Civil Procedure. The defendants have styled their motion as a motion to dismiss. However, Rule 21 does not refer to dismissal, but rather to the dropping or adding of parties.

Defendants base their motion on two grounds: 1.) That Section 301 actions may not be maintained against individual union members. 2.) That the individual defendant is not otherwise a necessary and proper party defendant in this action.

Defendants' first contention is without merit. The Supreme Court has held that an action for damages against individual union members does not state a claim under Section 301. See Atkinson v. Sinclair Refining Co.; 370 U.S. 238, 82 S.Ct. 1318, 8 L.Ed.2d 462 (1962). However, the Court

limited its holding to failure to state a claim. It noted that jurisdiction of such a suit was proper under Section 301. 370 U.S. at p.247, n.6. See also Hines v. Anchor Motor Freight, 424 U.S. 554, 96 S.Ct. 1048, 47 L.Ed.2d 231 (1976). In any event, the plaintiff in the instant case is not requesting an award of damages. So the Court cannot agree with the defendants' very general contention that suits brought under Section 301 cannot be maintained against individual union members.

However, the Court does agree with the defendants' second contention. An examination of the Complaint and the arbitrator's award convinces the Court that the individual defendant is not a necessary and proper party to this suit.

The plaintiff requests the vacation of an arbitrator's award. Because the arbitrator ruled in favor of the defendants herein, the Court presumes that they would argue for the enforcement of the arbitrator's award.

Section 301 authorizes suits by individual employees "for breach of a promise embedded in the collective-bargaining agreement that was intended to confer a benefit upon the individual." Amalgamated Ass'n of Street, Elec. Ry, & Motor Coach Emps. v. Lockridge, 403 U.S. 274, 298-9, 91 S.Ct. 1909, 29 L.Ed.2d 473 (1971).

"Section 301 contemplates suits by and against individual employees as well as between unions and employers; and contrary to earlier indications § 301 suits encompass those seeking to vindicate 'uniquely personal' rights of employees such as wages, hours, overtime pay, and wrongful discharge." Hines v. Anchor Motor Freight, Inc., *supra* at p.562. See also Schultz v. Owens-Illinois, Inc., 560 F.2d 849 (7th Cir. 1977).

There are no rights "uniquely personal" to the individual defendant which are at stake in the instant case. The individual defendant did file the grievance which gave rise to the arbitrator's award. The grievance questioned whether the collective bargaining agreement permitted the employer

to substitute an employee for an absent worker on an intermittent basis. The arbitrator's outline of the events leading up to the grievance demonstrates that the individual defendant was not personally affected by the activities leading up to the grievance. He simply observed such activities with respect to other employees. Exhibit "A", pp. 5, 6.

In Schultz, supra, the court notes that "uniquely personal" rights possess two unifying themes.

"First, the employment benefit is mandatory under the collective bargaining agreement if certain circumstances have occurred. Second, a factual predicate which is unique and personal to a particular employee establishes these necessary and sufficient circumstances." 560 F.2d at p.854.

As the Court indicated above, there was no "factual predicate . . . unique and personal" to the individual defendant giving rise to the pertinent provisions of the collective bargaining agreement. Exhibit "A", pp. 3, 4.

It is the Court's view that the dispute in this case is solely between the plaintiff and the defendant union. Any interest that the individual defendant may have in the outcome of this lawsuit can be adequately represented by the union. The Court cannot foresee any prejudice to the plaintiff if the individual defendant is dropped from this lawsuit.

For the foregoing reasons, it is therefore ordered that the defendants' motion to drop the individual defendant James Hamilton is hereby sustained.

It is so Ordered this 16<sup>th</sup> day of January, 1979.

  
H. DALE COOK  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

NORMAN CLELL HENSLEY, )  
 )  
 Plaintiff, )  
 )  
 vs. ) 78-C-429-C  
 )  
 H. W. STEGE, Chief of Police, )  
 of Tulsa, Oklahoma, et al., )  
 )  
 Defendants. )

**FILED**

JAN 15 1979

Jack C. Sizer, Clerk  
U. S. DISTRICT COURT

O R D E R

Petitioner herein has filed a complaint under Title 42 U.S.C. § 1983. The Court ordered a review of the subject matter of the Complaint by the appropriate officials of the Tulsa Police Department so that it could more effectively deal with the preliminary issues of jurisdiction and the merit of petitioner's claim under Title 28 U.S.C. § 1915. That Order has been complied with. The defendant has applied for a protective order with respect to certain documents furnished pursuant to that Order. However, based upon the affidavit and supporting documentary evidence which have been supplied, the Court finds that petitioner's claim does not rise to constitutional dimensions. It must therefore be dismissed for lack of jurisdiction and because it is frivolous under Section 1915(d) as appears more fully hereinafter.

The petitioner is serving a custodial sentence in the state correctional facility at Lexington, Oklahoma. He alleges that he has requested the names of his arresting officers from the defendant, and that the defendant has twice refused to give him this information even though it is public information. It is apparent from the defendant's affidavit and Exhibit II attached thereto that the petitioner desired the names of his arresting officers so that he could

file some type of lawsuit against them.

Petitioner has not alleged which of his constitutional rights has been violated. But under these facts, the only right that could be involved would be the petitioner's right of access to the courts. This right has been extended to require the provision of legal assistance to indigent inmates in the preparation of habeas corpus and civil rights actions. See Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974); Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969). Most recently, the Supreme Court held that

"the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Bounds v. Smith, 430 U.S. 817, 828, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

In a related group of cases, Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956) and its progeny, the Court has consistently upheld the indigent defendant's right to a trial transcript for the purpose of appellate review. However, the Court has also held that a transcript need not be provided where "adequate alternatives" to a transcript are available. Britt v. North Carolina, 404 U.S. 226, 92 S.Ct. 431, 30 L.Ed.2d 400 (1971).

The legal assistance cases referred to above also gave the defendants therein the benefit of alternatives, and the Court must do so in the instant case. If a defendant has foreclosed all avenues of access to the courts, then a deprivation of the right of access has been established. It follows from this that if a defendant has not foreclosed all avenues of access, there has been no deprivation. Defendant's affidavit notes that the names of petitioner's arresting officers could have been obtained from the Tulsa County District Attorney through the listing of witnesses required

to be endorsed on the information at the time the crime was charged. If the petitioner is contemplating some type of state court proceedings, he could file his action without designating the names of the defendants. 12 O.S. § 320. So under those circumstances, the names of his arresting officers would not initially be required. Furthermore, it is certainly conceivable that the attorney appointed to represent the petitioner during the criminal proceedings would have the names of the arresting officers. Legal assistance of some type would appear to the Court to be the most effective alternative available to the petitioner for the preparation of a lawsuit. This is all that the Constitution requires.

Because the petitioner has failed to allege a deprivation of any constitutional right as is required by Section 1983, this Court lacks jurisdiction over his claim. Furthermore, under the facts, the petitioner could not make any "rational argument on the law or facts in support of his claim." Bennett v. Passic, 545 F.2d 1260, 1261 (10th Cir. 1976). His claim is therefore frivolous under Title 28 U.S.C. § 1915(d).

For the foregoing reasons, it is therefore ordered that the petitioner's Complaint is hereby dismissed. It is further ordered that defendant's application for a protective order is moot.

It is so Ordered this 15<sup>th</sup> day of January, 1979.

  
H. DALE COOK  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

PEORIA PLUMBING AND SUPPLY, )  
INC., an Oklahoma )  
corporation, and CARL D. )  
McKINNEY, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
BRYANT PLASTICS, INC., a )  
Missouri corporation, L. )  
BROWN and JACK GILL, )  
 )  
Defendants. )

No. 77-C-330-B

FILED  
JAN 15 1979  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

On this 15<sup>th</sup> day of January, 1979, upon joint Application and Stipulation of the plaintiffs, Peoria Plumbing and Supply, Inc., an Oklahoma corporation, and Carl D. McKinney, and the defendants, Bryant Plastics, Inc., a Missouri corporation, L. Brown and Jack Gill, and for good cause shown:

IT IS ORDERED that the Complaint <sup>in violation of Fed. R. Civ. P. 12(b)(7)</sup> herein filed by the plaintiffs and the "Cross-Complaint" <sup>in violation of Fed. R. Civ. P. 12(b)(7)</sup> filed herein by the defendants, should be, and are hereby dismissed with prejudice.

Allen E. Barrow  
ALLEN E. BARROW, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ROBERT F. VANCE, Individually, )  
and ROBERT F. VANCE d/b/a )  
VANCO CONSTRUCTION COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JAMES W. SMITH, Individually, )  
DELTA PIPELINE CONSTRUCTION )  
COMPANY, INC., and G. B. BOOTS )  
SMITH TRUCKLINE COMPANY, INC., )  
 )  
Defendants. )

No. 76-C-56-C ✓

FILED

JAN 15 1979 *rm*

O R D E R

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

The Court has before it a motion by plaintiff to vacate the Order of Dismissal for want of prosecution entered on November 15, 1978. Plaintiff alleges nothing in his supporting brief to move the Court to reverse its judgment. It is clear from the pleadings that plaintiff's failure to cooperate with his original attorneys in the matter, James L. Edgar and Darrell L. Bolton, and his failure to initiate and pursue discovery procedures when requested by his attorneys, are the causes of the dismissal for failure to prosecute. That plaintiff's new attorneys have had little time to prepare is the fault of plaintiff alone. This action was filed on February 11, 1976, and was thereafter impeded by plaintiff's non-cooperation. Plaintiff must now accept the results of his lengthy delay.

It is therefore ordered on this 15<sup>th</sup> day of January, 1979, that plaintiff's Motion to Vacate the Order of Dismissal be overruled.

*H. Dale Cook*  
H. DALE COOK  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JACK RICHARD CHAMBERS, )  
#90910 )  
 )  
Petitioner, )  
 )  
v. ) No. 78-C-391-C  
 ) No. 78-C-454-C  
NORMAN B. HESS, Warden, )  
 )  
Respondents. )

**FILED**

JAN 15 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

The Court has before it for consideration the Findings and Recommendations of the Magistrate, in which it is recommended that the Petitions for Writs of Habeas Corpus be denied.

After careful consideration of all the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is hereby Ordered that the Petitions for Writs of Habeas Corpus be denied.

It is so Ordered this 15<sup>th</sup> day of January, 1979.

  
H. DALE COOK  
United States District Judge



CLERK'S OFFICE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA  
WASHINGTON, D. C. , 20001  
Jan. 09, 1979

RECEIVED

Honorable Jack C. Silver, Clerk  
United States District Court  
for the District of Oklahoma (Northern)  
Rm. 411, U.S. Cthse.  
Tulsa, Oklahoma 74103

JAN 10 1979  
U.S. DISTRICT COURT  
TULSA, OKLAHOMA

IN RE: SWINE FLU IMMUNIZATION PRODUCTS  
LIABILITY LITIGATION

Dear Mr. Silver,

Enclosed is a certified copy of Conditional Transfer Order entered by the Judicial Panel on Multidistrict Litigation. The order became effective on 1-08-79 . We have assigned individual civil action number(s) to your case(s) to be transferred to us as listed below.

Please send us your file(s) along with a certified copy of your docket entries. When you send your file(s) please refer to our civil action number(s).

<u>Title of Case(s)</u>	<u>Your Number(s)</u>	<u>Our Number(s)</u>
Sue A. McCann, etc. v. U.S.A.	C.A. 78-C-578-C	C.A. 79-0064

Sincerely,

JAMES F. DAVEY, Clerk

by: *Harry B. Deavers*

Deputy Clerk

Enclosure

cc: Patricia D. Howard, Clerk of the Panel  
Miscellaneous File 78-0040  
Civil Action File(s) 79-0064  
Judge Gerhard Gesell

DOCKET NO. 330

DEC 16 1978

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE SWINE FLU IMMUNIZATION PRODUCTS LIABILITY LITIGATION

Sue A. McCann, etc. v. United States of America, 79- 0064  
N.D. Oklahoma, Civil Action No. 78-C-578-C

CONDITIONAL TRANSFER ORDER

On February 28, 1978, the Panel transferred 26 related civil actions to the United States District Court for the District of the District of Columbia for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, more than 175 additional actions have been transferred to the District of the District of Columbia. With the consent of that court, all such actions have been assigned to the Honorable Gerhard A. Gesell.

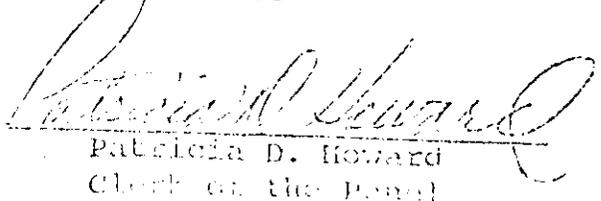
It appears from the pleadings filed in the above-captioned action that it involves questions of fact which are common to the actions previously transferred to the District of the District of Columbia and assigned to Judge Gesell.

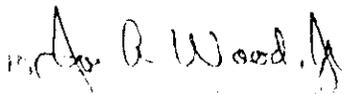
Pursuant to Rule 9 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 78 F.R.D. 561, 567-68 (1973) the above-captioned tag-along action is hereby transferred to the District of the District of Columbia on the basis of the hearings held on January 27, 1978, May 26, 1978 and September 28, 1978, and for the reasons stated in the opinions and orders of February 28, 1978, 446 F. Supp. 244 and July 5, 1978, 453 F. Supp. 648, and with the consent of that court assigned to the Honorable Gerhard A. Gesell.

This order does not become effective until it is filed in the office of the Clerk for the United States District Court for the District of the District of Columbia. The transmittal of this order to said Clerk for filing shall be stayed fifteen days from the entry thereof and if any party files a Notice of Opposition with the Clerk of the Panel within this fifteen-day period, the stay will be continued until further order of the Panel.

inasmuch as no objection  
is presented at this time,  
this stay is lifted and  
this order becomes effective

FOR THE PANEL:

  
Patricia D. Howard  
Clerk of the Panel



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

PAULETTE FORDE, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 78-C-240-C  
 )  
 GENERAL TELEPHONE COMPANY )  
 OF THE SOUTHWEST, )  
 )  
 Defendant. )

FILED

JAN 12 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

Plaintiff brings this action pursuant to the provisions of Title VII of the Civil Rights Act of 1964, as amended, Title 42 U.S.C. §§ 2000e, et seq., and Title 42 U.S.C. § 1981. (Plaintiff repeatedly refers to Title 42 U.S.C. § 1911, but it is clear from the content of the action that § 1981, not § 1911, is intended.) The defendant has moved for summary judgment, citing plaintiff's failure to file within the allotted time, as to both the Section 2000e claim and the Section 1981 claim.

The only issue before the Court as to each claim is whether the filing was within the time allotted, and if not, whether the actions are therefore barred.

On March 3, 1978, plaintiff received a Notice of Right to Sue by certified mail from the Equal Employment Opportunity Commission (EEOC), as a response to a complaint she had filed against the defendant in 1974. Plaintiff had ninety days from the receipt of the EEOC notice to file a complaint in United States District Court, in accordance with Title 42 U.S.C. § 2000e-5(f)(1), which states, in pertinent part:

"If a charge filed with the Commission [EEOC] . . . is dismissed by the Commission . . . the Commission shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved. . . ."

Plaintiff contends that her complaint was filed with the Court Clerk after the close of business on June 1, 1978, which was the ninetieth day following her receipt of notice from the EEOC. Plaintiff further explains that the deadline for filing was awaited, thereby risking a bar on her claim, because she did not have the money for the filing fee until her salary check was received on June 1, 1978. The claim was filed on June 2, 1978, ninety-one days from the March 3rd receipt of the Notice of Right to Sue.

It is clear that the ninety-day limitation is jurisdictional and cannot be extended. See Melendez v. Singer-Friden Corp., 529 F.2d 321 (10th Cir. 1976); Archuleta v. Duffy's Inc., 471 F.2d 33 (10th Cir. 1973); Hankins v. Fansteel Metals, Inc., 452 F.Supp 509 (E.D. Okla. 1978); Swails v. Service Container Corp., 404 F.Supp. 835 (W.D. Okla. 1975). Plaintiff argues, however, that certain equitable considerations mandate acceptance of this action in spite of its untimely filing: first, that the EEOC office in Oklahoma City, Oklahoma had been slow in furnishing a report of its findings on her application, and second, that she didn't have the money for court filing until June 1, 1978, which was the last day that she could have filed. Cases cited by plaintiff do not support her argument. In Gates v. Georgia-Pacific Corporation, 492 F.2d 292 (9th Cir. 1974), the issue of timely filing arose because the letter from the EEOC advising the complainant that the EEOC would not act on her complaint failed to advise her of the thirty-day limitation for filing an action in District Court. (The limit was extended to ninety days in 1972). This situation also occurred in Coles v. Penny, 531 F.2d 609 (D.C. Cir. 1976), also cited by plaintiff, and in both cases, the court held that complainants had not received effective notice of the limitation on their right to sue. This defect has been cured in EEOC Form 161-A, which states in bold type "IF YOU

DECIDE TO SUE, YOU MUST DO SO WITHIN NINETY (90) DAYS FROM THE RECEIPT OF THIS NOTICE OF RIGHT TO SUE; OTHERWISE YOUR RIGHT TO SUE IS LOST." EEOC Form 161-A is the notice received by the plaintiff on March 3, 1978, and is attached to the complaint. The defect in the notice to plaintiffs in Gates and Coles is clearly not present in the instant case.

Plaintiff also refers to Huston v. General Motors Corporation, 477 F.2d 1003 (8th Cir. 1973). In that case, plaintiff Huston did not file within the allowed thirty days because he was waiting for the court to appoint counsel. On appeal, the court held that plaintiff had initiated court action in a timely manner in that he had filed a request for court-appointed counsel within the thirty-day period. In the instant case, plaintiff initiated no court action with the allowed time.

Plaintiff further cites Love v. Pullman Co., 404 U.S. 522, 92 S.Ct. 616, 30 L.Ed.2d 679 (1972). In that case, the delay in filing was due to the action of the EEOC, which had undertaken to represent the plaintiff; thus, the delay was beyond the control of the plaintiff, and as such, constituted administrative delay. Furthermore, the actions of the EEOC were held to be in accordance with procedure for filing on behalf of a complainant after exhaustion of state remedies as required by 42 U.S.C. § 2000e-5(b).

Plaintiff also cites Stebbins v. Nationwide (sic, Nationwide) Mutual Insurance Co., 469 F.2d 268 (4th Cir. 1972). In that case, a "professional litigator" failed to persuade the court that an action with a thirty-day limit could be filed seventeen months later.

Plaintiff also contends that her unanswered requests for documents from the EEOC office in Oklahoma City amounted to administrative delay, and, as such, are equitable considerations which ought to toll the ninety-day time limit.

While it is true that administrative delay is grounds

for the tolling of the time period (see Hankins v. Fansteel Metals, Inc., supra, at 512), the delay must impede the initiation of court action. As stated in Hankins:

"The matters leading to the delay in filing this suit were not matters beyond the control of the plaintiff, as plaintiff admits being noticed by the E.E.O.C. in April of his right to sue defendant Fansteel within 90 days."  
Id. at 512.

The failure of the EEOC to furnish the requested documents had no effect on plaintiff's ability to file the action. The materials could have been obtained after the action was filed -- their absence did not prevent the action's filing.

Plaintiff Forde also asserts a claim under 42 U.S.C. § 1981 which accrued in 1974. Whether the statute of limitations on Section 1981 is two years, as held in Person v. St. Louis-San Francisco Ry. Co., 428 F.Supp. 1148 (W.D. Okla. 1976), or three years as held in Wright v. St. John's Hospital, 414 F.Supp 1202 (N.D. Okla. 1976), it is clear that time had expired by the filing of this claim on June 2, 1978. Plaintiff urges, however, that the filing of her complaint with the EEOC in 1974 tolled the running of the statute. In Johnson v. Railway Express Agency, Inc., 421 U.S. 454, 95 S.Ct. 1716, 44 L.Ed.2d 295 (1975), the Supreme Court held that an EEOC complaint does not toll the running of the time limitation. Thus, plaintiff's Section 1981 is clearly barred by either a two or three year limitation period.

It is therefore ordered that the defendant's Motion for Summary Judgment be sustained as to both the Section 2000e-5 claim and the Section 1981 claim for lack of jurisdiction in this Court.

It is so Ordered this 12<sup>th</sup> day of January, 1979.

  
H. DALE COOK  
United States District Judge

IN THE UNITED STATES DISTRICT COURT WITHIN AND FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

DEB HENSON, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOSEPH SHELFO, et al., )  
 )  
 Defendants. )

No. 78-C-52-C  
78-C-191-C  
(Consolidated)

JAN 13 1979  
Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

On the foregoing stipulation between the Plaintiff herein, Deb Henson, and the Defendant, City Club, Inc., filed on the 11th day of January, 1979.

It is hereby Ordered that the above-entitled action between the Plaintiff, Deb Henson, and the Defendant, City Club, Inc., be, and it hereby is Dismissed with Prejudice.

Dated this 11th day of January, 1979.



JUDGE OF THE UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ED ERNST, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 TOM INMAN TRUCKING, INC., )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

CIVIL ACTION NO. 78-C-195-B

FILED

JAN 10 1979

ORDER

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

The Court has for consideration the Joint Stipulation For Dismissal,  
and being fully advised in the premises, finds:

IT IS ORDERED that the Joint Stipulation for Dismissal is hereby  
approved pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil

Procedure *and the Court of Justice 10/10/78 as the Clerk is well  
with prejudice*

DATED THIS 10<sup>th</sup> day of January, 1979.

Allen E. Barron  
UNITED STATES DISTRICT JUDGE

**FILED**

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 10 1979

JAMES A. READ and MARY READ, husband )  
and wife d/b/a READ'S ZIP TRIP, )

Plaintiffs, )

vs. )

THOMAS J. THOMPSON, d/b/a PYRAMID OIL )  
COMPANY, )

Defendant. )

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

No. 78-C-625-B

*Notice of* DISMISSAL

Come now the Plaintiffs and hereby dismiss the above cause  
without prejudice.

Dated this 10th day of January, 1979.

---

DAVID NELSON  
Attorney for Plaintiffs  
328 West Kenosha  
Broken Arrow, Oklahoma 74012  
918 258-5521

FILED

JAN 9 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

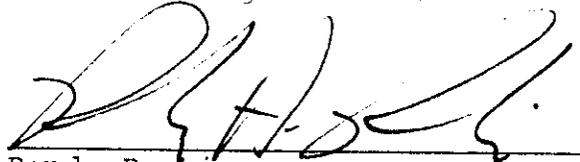
IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

A. J. GRASGRIN, )  
)  
Plaintiff, )  
)  
vs. )  
)  
BILL SATTERFIELD, )  
)  
d/b/a CLASSIC AUTOS; )  
)  
ERNIE A. BAIL; )  
)  
CHRIS NIKEL'S AUTOHAUS, )  
)  
an Oklahoma corporation; and )  
)  
SIGGI-GRIMM MOTORS, INC., )  
)  
an Oklahoma corporation, )  
)  
Defendants. )

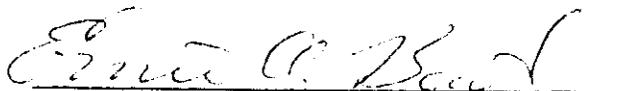
No. 78-C-143-C

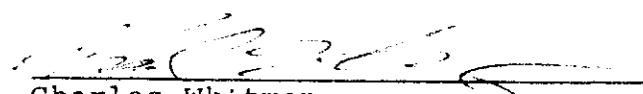
STIPULATION OF DISMISSAL

COMES NOW the Plaintiff, above named, by his attorney,  
Charles Whitman, and with the above named Defendants by their  
respective attorneys and Ernie A. Bail, pro se, hereby stipulates  
to the dismissal of this cause of action with prejudice to any  
future filing of same.

  
Randy Rankin  
Attorney for Bill Satterfield  
1634 South Boulder  
Tulsa, Oklahoma 74119

  
Bill Selman  
Attorney for Chris Nikels' Autohaus  
2900 Fourth National Bank Building  
Tulsa, Oklahoma 74119

  
Ernie A. Bail, Pro Se  
2512 South 106th East Avenue  
Tulsa, Oklahoma 74129

  
Charles Whitman  
Attorney for A. J. Grasgrin  
1141 East 37th Street  
Tulsa, Oklahoma 74105

~~DISTRICT COURT  
FILED  
JAN 9 1979~~

**FILED**

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 5 1979

HOWARD TEDDER, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 METCO, INC., )  
 )  
 Defendant. )

No. 77-C-449-B

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

O R D E R

The Court has for consideration Defendant's Motion to Dismiss and has reviewed the file, the briefs and all of the recommendations concerning the motion, and being fully advised in the premises, finds:

That the Defendant's Motion to Dismiss should be sustained without prejudice for the following reasons:

In his complaint plaintiff alleges that while working for Trans World Airlines in Kansas City, Missouri he had occasion to use certain metal coatings made by defendant containing deleterious ingredients unknown to the plaintiff. It is further alleged that as a result of exposure to such materials plaintiff suffered poison injury. Plaintiff seeks both compensatory and punitive damages as a result of his alleged injuries.

Service was obtained upon the defendant by serving its registered service agent in the State of New York in accordance with the provisions of Rule 4(e) of the Federal Rules of Civil Procedure. From a review of the file in this case it appears that plaintiff is a resident of the Northern District of Oklahoma. However, the alleged acts of negligence of the defendant occurred in the State of Missouri. Further it does not appear that the defendant had any contacts with the State of Oklahoma so as to confer in personam jurisdiction over the defendant in this Court. See George

v. Strick Corporation, 496 F.2d 10 (10th Cir. 1974). Crescent Corporation v. Martin, 443 P.2d 111, (Okla. 1968).

IT IS, THEREFORE, ORDERED that Defendant's Motion to Dismiss be and is hereby sustained without prejudice.

Dated this 5<sup>th</sup> day of January 1979.

  
CHIEF JUDGE, UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF  
OKLAHOMA.

FILED

JAN - 5 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 78-C-586-C
	)	
MALCOLM SANDERS and MARCIE	)	
SANDERS,	)	

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 5<sup>th</sup> day of January, 1979, the Plaintiff appearing by Robert P. Santee, Assistant United States Attorney; and the Defendants, Malcolm Sanders and Marcie Sanders, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Malcolm Sanders and Marcie Sanders were served with Summons and Complaint December 6, 1978, as shown on the Marshal's Service herein.

It appearing that the Defendants, Malcolm Sanders and Marcie Sanders, have failed to answer herein and that default has been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Four (4), Block One (1), YAHOLA HEIGHTS ADDITION to the City of Tulsa, Tulsa County, Oklahoma, according to the recorded plat thereof.

THAT the Defendants, Malcolm Sanders and Marcie Sanders, did, on the 16th day of November, 1977, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note in the sum of \$10,250.00 with 8 1/2 percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Defendants, Malcolm Sanders and Marcie Sanders, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof, the above-named Defendants are now indebted to the Plaintiff in the sum of \$10,225.08 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from May 1, 1978, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants, Malcolm Sanders and Marcie Sanders, in personam, for the sum of \$10,225.08 with interest thereon at the rate of 8 1/2 percent per annum from May 1, 1978, plus the cost of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisal the real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, both of the Defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof, specifically including any lien for personal property taxes which may have been filed during the pendency of this action.

15/14 Dale Cook  
UNITED STATES DISTRICT JUDGE

APPROVED

  
ROBERT P. SANTEE  
Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 4 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

United States of America,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 78-C-307-C
	)	
vs.	)	This action applies to all
	)	interests in the estate
20.00 Acres of Land, More or	)	taken in:
Less, Situate in Washington	)	
County, State of Oklahoma, and	)	Tract No. 164-B
Shell Oil Company, et al., and	)	
Unknown Owners,	)	
	)	(Included in D.T. filed in
Defendants.	)	Master File #400-13)

J U D G M E N T

1.

NOW, on this 5<sup>th</sup> day of January, 1979, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on a stipulation agreeing upon just compensation, and the Court, after having examined the files in this action and being advised by counsel for Plaintiff, finds:

2.

This judgment applies to the entire estate condemned in Tract No. 164-B, as such estate and tract are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and subject matter of this action.

4.

Service of Process has been perfected either personally or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause who are interested in subject property.

5.

The Acts of Congress set out in paragraph 2 of the Complaint herein give the United States of America the right, power and authority to condemn for public use the property described in such Complaint. Pursuant thereto, June 30, 1978,

the United States of America filed its Declaration of Taking of a certain estate in such described property, and title to the described estate in such property should be vested in the United States of America as of the date of filing the Declaration of Taking.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court, as estimated compensation for the taking of a certain estate in subject property a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 11.

7.

On the date of taking in this action, the owner of the estate taken in subject property was the defendant whose name is shown below in paragraph 11. Such named defendant is the only person asserting any interest in the estate taken in such property. All other persons having either disclaimed or defaulted, such named defendant is entitled to receive the just compensation awarded by this judgment.

8.

The owner of the subject property and the United States of America have executed and filed herein a Stipulation As To Just Compensation wherein they have agreed that just compensation for the estate condemned in subject tract is in the amount shown as compensation in paragraph 11 below, and such Stipulation should be approved.

9.

It Is, Therefore, ORDERED, ADJUDGED, and DECREED that the United States of America has the right, power and authority to condemn for public use the property particularly described in the Complaint filed herein; and such property to the extent of the estate described in such Complaint, is condemned, and title thereto is vested in the United States of America, as of June 30, 1978, and all defendants herein and all other persons interested in such estate are forever barred from asserting any claim to such property.

10.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking, the owner of the estate condemned herein in subject property was the defendant whose name appears below in paragraph 11, and the right to receive the just compensation for the estate taken herein in this property is vested in the party so named.

11.

It Is Further ORDERED, ADJUDGED and DECREED that the Stipulation As To Just Compensation mentioned in paragraph 8 above hereby is confirmed; and the sum thereby fixed is adopted as the award of just compensation for the estate condemned in subject property as follows:

TRACT NO. 164-B

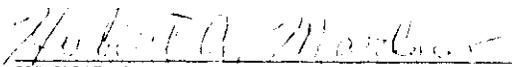
OWNER:

Shell Oil Company

<u>Award</u> of just compensation pursuant to Stipulation -----	\$360.00	\$360.00
<u>Deposited</u> as estimated compensation -----	<u>\$360.00</u>	
<u>Disbursed</u> to owner -----		<u>\$360.00</u>
<u>Balance</u> due to owner -----		None

  
UNITED STATES DISTRICT JUDGE

APPROVED:

  
HUBERT A. MARLOW  
Assistant U. S. Attorney

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN - 4 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JOE WILSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 78-C-297-C
	)	
FORD MOTOR COMPANY,	)	
a foreign corporation,	)	
	)	
Defendant.	)	

JOINT STIPULATION OF  
DISMISSAL WITHOUT PREJUDICE

Come now the parties and advise the Court that they jointly agree to a dismissal of plaintiff's cause without prejudice and request this Honorable Court to make and enter its Order of dismissal without prejudice.

DONE AND DATED this 20th day of December, 1978.

JOE WILSON, PLAINTIFF

FORD MOTOR COMPANY, DEFENDANT  
GREEN, FELDMAN, HALL & WOODARD

Mitchell E. Shamas  
Mitchell E. Shamas  
Attorney for Plaintiff  
P. O. Box 896  
Okmulgee, Oklahoma 74447

FILED

Wm S Hall

By  
Wm. S. Hall  
Attorneys for Defendant  
816 Enterprise Building  
Tulsa, Oklahoma 74103

JAN 4 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER

For good cause shown, the Court approves the foregoing Joint Application, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff's cause be, and the same is hereby dismissed without prejudice and at the cost of plaintiff.

DONE AND DATED this 4 day of <sup>January</sup>~~December~~, 1979.

H. Dale Cook  
H. DALE COOK, JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel )  
DEPARTMENT OF TRANSPORTATION )  
OF THE STATE OF OKLAHOMA, )

Plaintiff, )

vs. )

No. 77-C-513-C

CERTAIN PARCELS OF LAND IN )  
CREEK COUNTY CONTAINING 3.32 )  
ACRES, MORE OR LESS; WILSON )  
S. PITMAN, THE UNKNOWN HEIRS, )  
EXECUTORS, ADMINISTRATORS, )  
LEGATEES, DEVISEES, ASSIGNS )  
AND CREDITORS OF LUCINDA )  
PITMAN, DECEASED, CREEK ROLL )  
NO. 1833; HERMAN JOHNSON; )  
and COUNTY TREASURER OF )  
CREEK COUNTY, )

Defendants. )

FILED

JAN 4 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

ORDER CONFIRMING COMMISSIONERS' REPORT  
AND DISBURSING ASSESSED DAMAGES

On January 13, 1978 a Report of Commissioners was filed in the above-captioned case. The defendant Wilson S. Pitman now moves the Court for an Order confirming that report and disbursing the assessed damages to him. The plaintiff has responded that it has no objection to defendant's Motion or the Order requested therein.

After considering the defendant's Motion, and the plaintiff's Response thereto, and being fully advised in the premises, the Court hereby orders that the Report of Commissioners on file herein is confirmed. It is further ordered that the sum of \$4,484.00 on deposit with the Clerk of this Court be disbursed to the defendant Wilson S. Pitman, the same being the amount assessed by the Commissioners as the value of the real property taken and the amount of damages done to the remainder of the tract involved herein.

It is so Ordered this 4<sup>th</sup> day of January, 1979.

*H. Dale Cook*  
H. DALE COOK  
United States District Judge

1-5-79  
KW

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 4 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

BENEDICT OIL COMPANY, a )  
Delaware Corporation and )  
BENEDICT I. LUBELL, as )  
Trustee of the Jeanette and )  
Samuel Lubell Foundation, )  
NORMA R. LUBELL and FIRST )  
NATIONAL BANK AND TRUST )  
COMPANY OF TULSA, as )  
Co-Trustees of the Trust )  
for the Benefit of Ann )  
Lubell Margolis, NORMA R. )  
LUBELL and THE FIRST )  
NATIONAL BANK AND TRUST )  
COMPANY OF TULSA, as Co- )  
Trustees of the Trust for )  
the Benefit of John David )  
Lubell, BENEDICT I. LUBELL, )  
GRACE L. BRANDT, SHIRLEY L. )  
BLACK, JOHN DAVID LUBELL, )  
JAN BORGENICHT SCHWARTZ, )  
BERTA BORGENICHT KERR, LOIS )  
BORGENICHT, LEON DAVID )  
BLACK, JUDITH ELLEN BLACK )  
NADLER, ANN LUBELL MARGOLIS, )  
M. ROBERT GALLOP, as )  
Trustees of the Trust for )  
the Benefit of Leon David )  
Black, and M. ROBERT GALLOP, )  
as Trustee of the Trust )  
for the Benefit of Judith )  
Ellen Black Nadler, )  
 )  
Plaintiffs )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendant )

CIVIL NO. 75-C-57

JUDGMENT

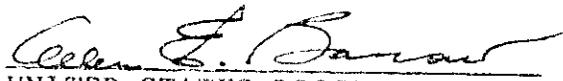
A judgment having been entered herein on July 9, 1976,  
and an appeal having been taken therefrom by the United States  
of America, defendant, and the United States Court of Appeals  
for the Tenth Circuit, in an opinion and judgment entered

August 17, 1978, having reversed and remanded the judgment of this Court for further proceedings; and the plaintiffs and defendant having agreed as to the amount of the judgment to which plaintiffs are entitled under the facts and opinion of the Tenth Circuit; it is hereby

ORDERED, ADJUDGED and DECREED that the judgment entered on July 9, 1976, be and the same is hereby vacated; it is further

ORDERED, ADJUDGED and DECREED that the plaintiffs have and recover of defendant the sum of \$25,472.49 in tax and \$20,128.68 in interest, representing interest through December 31, 1978, a total of \$45,601.17, plus interest as provided by law from December 31, 1978; and that each party bear its own costs.

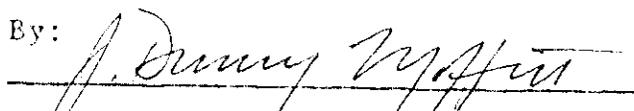
SIGNED this 4th day of January 1979.

  
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

CONNER, WINTERS, BALLAINE, BARRY & MCGOWEN

By:

  
2400 First National Tower  
Tulsa, Oklahoma 74103

ATTORNEY FOR PLAINTIFFS

HUBERT H. BRYANT  
United States Attorney

By:

  
WILLIAM W. GUILD  
Attorney, Tax Division  
Department of Justice  
Room 5B27, 1100 Commerce Street  
Dallas, Texas 75242  
(214) 749-1251

ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

GILBERT N. HARNEY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JOSEPH A. CALIFANO, JR., )  
Secretary of Health, Educa- )  
tion and Welfare )  
 )  
Defendant. )

CIVIL ACTION NO. 77-C-500-C

**FILED**

JAN 2 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

J U D G M E N T

This matter comes on for consideration of Findings and Recommendations of the Magistrate. For the reasons stated herein, the Court finds that the Findings and Recommendations of the Magistrate should be accepted and affirmed.

Plaintiff in this action has petitioned the Court to review a final decision of the Secretary of the Department of Health, Education, and Welfare denying him disability benefits after July, 1977, provided for in Sections 216 and 223 of the Social Security Act, as amended. 42 U.S.C. Sections 416, 423. He asks that the Court reverse this decision and award him the additional benefits he seeks.

This matter was first heard by an Administrative Law Judge of the Bureau of Hearings and Appeals of the Social Security Administration, whose written decision was issued July 20, 1977. The Administrative Law Judge found that Plaintiff was not entitled to disability benefits after July, 1977, under Sections 216 and 223 of the Social Security Act, as amended. Thereafter, that decision was appealed to the Appeals Council of the Bureau of Hearings and Appeals, which Council on October 3, 1977, issued its findings that the decision of the Administrative Law Judge was correct and that further action by the Council would not result in any change which would benefit the Plaintiff. Thus, the decision of the Administrative Law Judge became the final decision of the Secretary of the Department of Health, Education, and Welfare.

Plaintiff contends that the Secretary's decision that Plaintiff's disability ceased in May, 1977, and his entitlement to disability benefits ceased in July, 1977, is incorrect. Plaintiff maintains that he continued to be disabled past the time of cessation found by the Secretary.

Plaintiff's claimed disability is back pain associated with a spinal fusion in April, 1976. The record also reveals that in the past, Plaintiff has suffered from depression and alcoholism. The Secretary has determined that Plaintiff was disabled from February 19, 1976, the onset date Plaintiff alleged on his application, through May 16, 1977, but not thereafter.

The medical evidence supporting the Secretary's cessation date consisted of the objective evidence contained in a May 16, 1977, report from an orthopedic surgeon, Dr. Sisler. Dr. Sisler's X-rays and laminogram revealed that the spinal fusion appeared solid. Dr. Sisler found no neurological deficits and only moderate limitation of motion. The doctor noted "From an objective point of view, I find no reason why this patient could not engage in work of a light nature." See pages 133-134 of the administrative record. Plaintiff's treating orthopedist, Dr. Beck, had earlier indicated that when Plaintiff's fusion became solid, sedentary activities would be within Plaintiff's capabilities. See page 132.

The evidence on Plaintiff's problems with depression and alcoholism likewise supports the determination that by May, 1977, Plaintiff was no longer disabled. The record reveals that Plaintiff was an alcoholic for many years, but successfully stopped drinking for thirteen years. He began drinking again during the period from September, 1976, to March, 1977. During that period, Plaintiff's psychiatrist, Dr. W. R. Reid, hospitalized him twice for his depression. See pages 126-130. Dr. Reid's final diagnosis was depressive reaction, and by February 9, 1977, Plaintiff had responded well to treatment, had improved considerably, and was in an improved state. See page 128.

Plaintiff's testimony revealed that he was very active in Alcoholic's Anonymous during the 13-year period he did not drink. He also indicated that his inactivity and pain, contributed to his depression and resumption of drinking. By the time of the hearing on March 1, 1977, Plaintiff was only taking a mild tranquilizer and had stopped drinking again.

The record indicates that Plaintiff was 52 years old when he alleged he became disabled in February, 1976. He has a twelfth grade education, and he has a long work history with American Airlines. His testimony indicated that he started with American as a stock clerk. For the past several years, he has been a Crew Chief in the Supply Department and has supervised from nine to fifteen people.

Judicial review of the Secretary's denial of Social Security Disability Benefits is limited to a consideration of the pleadings and the transcript filed by the Secretary as required by 42 U.S.C. Section 405(g), and is not a trial de novo, Atteberry v. Finch, 424 F.2d 36 (10th Cir. 1970); Hobby v. Hodges, 215 F.2d 754 (10th Cir. 1954). The findings of the Secretary and the inferences to be drawn therefrom are not to be disturbed by the Courts if there is substantial evidence to support them. 42 U.S.C. Section 405(g); Atteberry v. Finch, supra. Substantial evidence has been defined as:

"more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson vs. Perales, 402 U.S. 389, 401, citing Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938).

It must be based on the record as a whole. See: Glasgow v. Weinberger, 405 F. Supp. 406, 508 (E.D. Cal. 1975). In National Labor Relas. Bd. v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300 (1939), the Court, interpreting what constitutes substantial evidence, stated:

"It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."

Cited in Atteberry v. Finch, *supra*; Gardner v. Bishop, 362 F.2d 917 (10th Cir. 1966). See also: Haley v. Celebrezze, 351 F.2d 516 (10th Cir. 1965); Folsom v. O'Neal, 250 F.2d 946 (10th Cir. 1957). However, even though the findings of the Secretary are supported by substantial evidence, a reviewing court may set aside the decision if it was not reached pursuant to the correct legal standards. See: Knox v. Finch, 427 F.2d 919 (5th Cir. 1970); Flake v. Gardner, 399 F.2d 532 (9th Cir. 1968); Branham v. Gardner, 383 F.2d 614 (6th Cir. 1967); Garrett v. Richardson, 363 F. Supp. 83 (D.S.C. 1973).

After carefully reviewing the entire administrative record, the pleadings, and the briefs and arguments of counsel, the Court finds that the administrative Law Judge applied the correct legal standards in making his findings on Plaintiff's claim for disability insurance benefits. The Court further finds that the record contains substantial evidence to support his findings.

An individual claiming disability insurance benefits under the Act has the burden of proving the disability. Valentine v. Richardson, 468 F.2d 588 (10th Cir. 1972). Plaintiff must meet two criteria under the Act:

1. That the physical impairment has lasted at least twelve months that prevents his engaging in substantial gainful activity; and
2. That he is unable to perform or engage in any substantial gainful activity. 42 U.S.C. Section 423; Alexander v. Richardson, 451 F.2d 1185 (10th Cir. 1971), cert. denied, 407 U.S. 911 (1972); Timmerman v. Weinberger, 510 F.2d 439 (8th Cir. 1975). The burden is not on the Secretary to make an initial showing on non-disability. Reyes Robles v. Finch, 409 F.2d 84 (10th Cir. 1969).

In addition, a claimant has the burden of proving that his disability continued past the time of cessation found by the Secretary. Alvarado v. Weinberger, 511 F.2d 1046 (1st Cir. 1975); McCarty v. Richardson, 459 F.2d 3 (5th Cir. 1972).

The medical reports indicate that Plaintiff does have a back problem, but his surgery in April, 1976, was successful. By May, 1977, the objective evidence showed that Plaintiff's fusion was solid, and he was capable of returning to sedentary work. Johnson v. Finch, 437 F.2d 1321 (10th Cir. 1971) Because Plaintiff's back problem was remediable and did in fact respond to the surgery by March, 1977, it was not disabling after that date. 20 C.F.R. Section 404.1507; McCarty v. Richardson, 459 F.2d 3 (5th Cir. 1972).

That Plaintiff's back condition still prevents his performing heavy, arduous work is of no moment, because the Social Security Act requires an inability to engage in any substantial gainful activity. Keller v. Mathews, 543 F.2d 624 (8th Cir. 1976); Waters v. Gardner, 452 F.2d 855 (9th Cir. 1971).

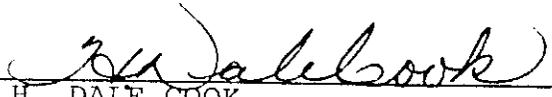
Plaintiff's emotional problems and history of alcoholism likewise do not support a finding that after May, 1977, he continued to be disabled. The medical evidence reveals that his depression was remedied by treatment and his alcoholism was not so deep seated that he lost the voluntary ability to control it. Adams v. Weinberger, 548 F.2d 239 (8th Cir. 1977); Russell v. Secretary of Health, Education and Welfare, 402 F. Supp. 613 (E.D. Mo. 1975), aff'd, 540 F.2d 353 (8th Cir. 1976).

Although Plaintiff argues that American Airlines would not hire him for any job (See page 6), the hiring practices of employers are not relevant in a disability determination. 20 C.F.R. Section 404.1502(b). Torske v. Richardson, 484 F.2d 59 (9th Cir. 1973), cert. denied, 417 U.S. 933 (1974).

Because the findings of the Administrative Law Judge are supported by substantial evidence and because said findings are based upon the correct legal standards, it is the determination of the Court that the Plaintiff is in fact not entitled to disability benefits under the Social Security Act and that the decision of the Secretary of Health, Education and Welfare

be affirmed. Judgment is so entered on behalf of the Defendant.

It is so Ordered this 2<sup>nd</sup> day of ~~December~~ January, 1979.



H. DALE COOK  
UNITED STATES DISTRICT JUDGE



Plaintiff contends that the Secretary's decision that Plaintiff's disability ceased in April, 1976, is incorrect. Plaintiff maintains that he continued to be disabled past the time of cessation found by the Secretary.

Plaintiff's claimed disability is back pain associated with back injury. The record also reveals that in the past, Plaintiff's doctors have recommended he have a spinal fusion, which Plaintiff refused. The Secretary has determined that Plaintiff was disabled from April, 1974, through April, 1976, but not thereafter.

The medical evidence supporting the Secretary's cessation date consisted of the objective evidence contained in a March 29, 1976, report from Dr. James C. Walker, a neurologist. Dr. Walker reported his neurological examination was entirely within physiological limits. Plaintiff did have spasm of the paraspinous muscles. X-rays only revealed moderate narrowing of the fourth lumbar disc, and there was some beginning osteosclerosis of the superior articular surface. Dr. Walker concluded that Plaintiff had some early arthritic changes, and that the lack of neurological dysfunction did not support the existence of any neurological disorder. See pages 117-122 of the administrative record.

The April 28, 1978, report of Dr. Donald D. Collins also supports the Secretary's finding. Dr. Collins reported that X-rays revealed only mild degenerative changes in Plaintiff's back. The doctor felt that Plaintiff could not return to his former heavy work, a construction laborer, bulldozer operator, and truck driver. See pages 122-124 and pages 36-37 of the administrative record.

The record also indicates that Dr. James E. White has, since 1971, recommended that Plaintiff have back surgery. It was felt that with the surgery, Plaintiff would be able to do even manual labor. See pages 112, 116. Plaintiff has, however, steadfastly declined to have the surgery, and at the administrative hearing, he again stated that he did not want back surgery. See page 30.

Dr. Worth M. Gross, an orthopedic surgeon, testified at the administrative hearing as a medical advisor. See pages 19-32 of the administrative record. Dr. Gross agreed that surgery would be necessary before Plaintiff could do heavy lifting, long standing, stooping, or stretching. He stated that the success rate for back surgeries is excellent. Dr. Gross noted that even without the surgery, however, Plaintiff could perform light and sedentary work activities.

Mrs. Belva D. Lester testified at the administrative hearing and delineated the existence of many light and sedentary jobs in the Tulsa area. See pages 44-51 of the administrative record.

The record indicates Plaintiff was only 43 years old when the Secretary determined Plaintiff could return to light or sedentary work in April, 1976. He has an eighth grade education and work experience in the construction industry.

Judicial review of the Secretary's denial of Social Security Disability Benefits is limited to a consideration of the pleadings and the transcript filed by the Secretary as required by 42 U.S.C. Section 405(g), and is not a trial de novo, Atteberry v. Finch, 424 F.2d 36 (10th Cir. 1970); Hobby v. Hodges, 215 F.2d 754 (10th Cir. 1954). The findings of the Secretary and the inferences to be drawn therefrom are not to be disturbed by the Courts if there is substantial evidence to support them. 42 U.S.C. Section 405(g); Atteberry v. Finch, supra. Substantial evidence has been defined as:

"more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson vs. Perales, 402 U.S. 389, 401, citing Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938).

It must be based on the record as a whole. See: Glasgow v. Weinberger, 405 F. Supp. 406, 508 (E.D. Cal. 1975). In National Labor Relas. Bd. v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300 (1939), the Court, interpreting what constitutes substantial evidence, stated:

"It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."

Cited in Atteberry v. Finch, supra; Gardner v. Bishop, 362 F.2d 917 (10th Cir. 1966). See also: Haley v. Celebrezze, 351 F.2d 516 (10th Cir. 1965); Folsom v. O'Neal, 250 F.2d 946 (10th Cir. 1957). However, even though the findings of the Secretary are supported by substantial evidence, a reviewing court may set aside the decision if it was not reached pursuant to the correct legal standards. See: Knox v. Finch, 427 F.2d 919 (5th Cir. 1970); Flake v. Gardner, 399 F.2d 532 (9th Cir. 1968); Branham v. Gardner, 383 F.2d 614 (6th Cir. 1967); Garrett v. Richardson, 363 F. Supp. 83 (D.S.C. 1973).

After carefully reviewing the entire administrative record, the pleadings, and the briefs and arguments of counsel, the Court finds that the administrative Law Judge applied the correct legal standards in making his findings on Plaintiff's claim for disability insurance benefits. The Court further finds that the record contains substantial evidence to support his findings.

An individual claiming disability insurance benefits under the Act has the burden of proving the disability. Valentine v. Richardson, 468 F.2d 588 (10th Cir. 1972). Plaintiff must meet two criteria under the Act:

1. That the physical impairment has lasted at least twelve months that prevents his engaging in substantial gainful activity; and

2. That he is unable to perform or engage in any substantial gainful activity. 42 U.S.C. Section 423; Alexander v. Richardson, 451 F.2d 1185 (10th Cir. 1971), cert. denied, 407 U.S. 911 (1972); Timmerman v. Weinberger, 510 F.2d 439 (8th Cir. 1975). The burden is not on the Secretary to make an initial showing on non-disability. Reyes Robles v. Finch, 409 F.2d 84 (10th Cir. 1969).

In addition, a claimant has the burden of proving that his disability continued past the time of cessation found by the Secretary. Alvarado v. Weinberger, 511 F.2d 1046 (1st Cir. 1975); McCarty v. Richardson, 459 F.2d 3 (5th Cir. 1972).

The medical reports indicate that Plaintiff does have a back problem, but by April, 1976, he could return to light or sedentary work. Johnson v. Finch, 437 F.2d 1321 (10th Cir. 1971). The remediable nature of Plaintiff's back problem and his refusal to have the surgery, are also factors the Secretary properly considered in reaching his decision to terminate Plaintiff's benefits. 20 C.F.R. Section 404.1507; Hall v. Gardner, 403 F.2d 32 (6th Cir. 1968).

That Plaintiff's back condition still prevents his performing heavy, arduous work is of no moment, because the Social Security Act requires an inability to engage in any substantial gainful activity. Keller v. Mathews, 543 F.2d 624 (8th Cir. 1976); Waters v. Gardner, 452 F.2d 855 (9th Cir. 1971). as attested to by the vocational expert, many light and sedentary jobs exist that are within Plaintiff's vocational capabilities. Trujillo v. Richardson, 429 F.2d 1149 (10th Cir. 1970).

Although Plaintiff has alternatively prayed for remand of this case, it is clear that the good cause requirements for remand under 42 U.S.C. Section 405(g) demand more than a desire to relitigate the same issues. Bradley v. Califano, 573 F.2d 28 (10th Cir. 1978).

Because the findings of the Administrative Law Judge are supported by substantial evidence and because said findings are based upon the correct legal standards, it is the determination of the Court that the Plaintiff is in fact not entitled to disability benefits under the Social Security Act and that the decision of the Secretary of Health, Education and Welfare be affirmed. Judgment is so entered on behalf of the Defendant.

It is so Ordered this 2<sup>nd</sup> day of January, 1978.

  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAMES D. RAGLAND, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JOSEPH A. CALIFANO, JR., )  
 Secretary of Health, Educa- )  
 tion and Welfare, )  
 )  
 Defendant. )

CIVIL ACTION NO. 77-C-480-C

**FILED**

JAN 2 1979

Jack C. Silver, Clerk  
U. S. DISTRICT COURT

JUDGMENT

This matter comes on for consideration of Findings and Recommendations of the Magistrate. For the reasons stated herein, the Court finds that the Findings and Recommendations of the Magistrate should be accepted and affirmed.

Plaintiff in this action has petitioned the Court to review a final decision of the Secretary of the Department of Health, Education and Welfare denying him the disability benefits provided for in Sections 216 and 223 of the Social Security Act, as amended. 42 U.S.C. Sections 416 and 423. He asks that the Court reverse this decision and award him the benefits he seeks.

This matter was first heard by an Administrative Law Judge of the Bureau of Hearings and Appeals of the Social Security Administration, whose written decision was issued September 12, 1977. The Administrative Law Judge found that Plaintiff was not entitled to disability benefits under Sections 216 and 223 of the Social Security Act, as amended. Thereafter, that decision was appealed to the Appeals Council of the Bureau of Hearings and Appeals, which Council on October 27, 1977, issued its findings that the decision of the Administrative Law Judge was correct and that further action by the Council would not result in any change which would benefit the Plaintiff. Thus, the decision of the Administrative Law Judge became the

final decision of the Secretary of the Department of Health, Education and Welfare.

Plaintiff contends that the Veterans Administration report at page 107 of the transcript, the medical report from Dr. Ramakrishnan at page 110 of the transcript, and the medical reports from Drs. Lee and Boyer at page 111 of the transcript support his claim that he is totally disabled within the meaning of the Act.

Plaintiff claimed disabilities are nervousness, ulcers, neuritis and arthritis. Plaintiff attributes many of his problems to his military experiences, which included receiving gunshot wound in his left arm during World War II, and being a prisoner of war in Japan. As the Administrative Law Judge noted in his decision, however, Plaintiff was discharged from the Army over thirty-one years ago, and he has successfully worked for many years despite his history of nervousness and impaired left arm.

Dr. Lee, a psychiatrist who examined Plaintiff in 1959 and 1977, diagnosed chronic anxiety reaction. In his progress notes at pages 100-102, Dr. Lee described Plaintiff's mental status as oriented in all three spheres, with no defect of memory or sensorium and no gross evidence of organic brain syndrome. Plaintiff showed no sign of psychosis, no thought disorder, no psychotic change or affect, no hallucinations, no delusions and no autism. Dr. Lee also noted that Plaintiff had not sought psychiatric care and was afraid of it.

Dr. Boyar, a psychologist and Chief of the Veterans Administration Mental Health Clinic, agreed Plaintiff's problems could be helped by medication and psychotherapy. The psychologist's notes at pages 103-106 indicate that although medications were prescribed and follow-up appointments scheduled, Plaintiff was not taking his medicine and last sought treatment in May, 1977. The psychologist expressed the opinion that at that time, Plaintiff was not employable. The evidence on Plaintiff's emotional

problems does not reveal a severely disabled mental impairment. Furthermore, Plaintiff failed to seek psychiatric help and failed to take the medication prescribed to alleviate his depression and anxiety.

The medical evidence indicates Plaintiff's neuritis and arthritis were no more than moderately troublesome. The February, 1977, medical report of Dr. Dandridge at pages 98-99 contains little objective evidence of a severe orthopedic problem. X-rays disclosed some arthritis in the upper and lumbar spine, as well as a deformity of the left elbow from Plaintiff's World War II gunshot wound. No neurological defects were noted in either of Plaintiff's legs.

Plaintiff also received treatment for prostatitis from Dr. Leonard in May and June, 1976. See pages 116-117. An X-ray of the lumbar spine was negative for fracture or disc pathology, and there was no evidence of arthritis or neuritis. The prostatitis was not considered disabling.

Although mention was made of a duodenal ulcer, the record indicates that it did respond to treatment. Dr. Ramakrishnan reported in February, 1977, that Plaintiff's ulcer had not bothered him for two years. See pages 109-110. Dietary measures successfully alleviated all ulcer symptoms.

Plaintiff's vocational history includes working in all phases of the aircraft industry. He was a sheet metal worker, assembly worker, inspector and finally a supervisor for thirteen years. Plaintiff's formal education extends to the tenth grade and included in his background is his military service in World War II. Plaintiff testified that he was laid off by the Lear Jet Company in March 1976, at the age of 56. On his application for disability benefits, Plaintiff stated that he became unable to work because of his disability in March, 1976.

Judicial review of the Secretary's denial of Social Security Disability Benefits is limited to a consideration of the pleadings and the transcript filed by the Secretary as required

by 42 U.S.C. Section 405(g), and is not a trial de novo, Atteberry v. Finch, 424 F.2d 36 (10th Cir. 1970); Hobby v. Hodges, 215 F.2d 754 (10th Cir. 1954). The findings of the Secretary and the inferences to be drawn therefrom are not to be disturbed by the Courts if there is substantial evidence to support them. 42 U.S.C. Section 405(g); Atteberry v. Finch, supra. Substantial evidence has been defined as:

"'more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Richardson vs. Perales, 402 U.S. 389, 401, citing Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938).

It must be based on the record as a whole. See: Glasgow v. Weinberger, 405 F. Supp. 406, 508 (E.D. Cal. 1975). In National Labor Relas. Bd. v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300 (1939), the Court, interpreting what constitutes substantial evidence, stated:

"It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."

Cited in Atteberry v. Finch, supra; Gardner v. Bishop, 362 F.2d 917 (10th Cir. 1966). See also: Haley v. Celebrezze, 351 F.2d 516 (10th Cir. 1965); Folsom v. O'Neal, 250 F.2d 946 (10th Cir. 1957). However, even though the findings of the Secretary are supported by substantial evidence, a reviewing court may set aside the decision if it was not reached pursuant to the correct legal standards. See: Knox v. Finch, 427 F.2d 919 (5th Cir. 1970); Flake v. Gardner, 399 F.2d 532 (9th Cir. 1968); Branham v. Gardner, 383 F.2d 614 (6th Cir. 1967); Garrett v. Richardson, 363 F. Supp. 83 (D.S.C. 1973).

After carefully reviewing the entire administrative record, the pleadings, and the briefs and arguments of counsel, the Court finds that the administrative Law Judge applied the correct legal standards in making his findings on Plaintiff's claim for disability insurance benefits. The Court further finds that the record contains substantial evidence to support his

findings. An individual claiming disability insurance benefits under the Act has the burden of proving the disability. Valentine v. Richardson, 468 F.2d 588 (10th Cir. 1972). Plaintiff must meet two criteria under the Act:

1. That the physical impairment has lasted at least twelve months that prevents his engaging in substantial gainful activity; and

2. That he is unable to perform or engage in any substantial gainful activity. 42 U.S.C. Section 423; Alexander v. Richardson, 451 F.2d 1185 (10th Cir. 1971), cert. denied, 407 U.S. 911 (1972); Timmerman v. Weinberger, 510 F.2d 439 (8th Cir. 1975). The burden is not on the Secretary to make an initial showing on non-disability. Reyes Robles v. Finch, 409 F.2d 84 (10th Cir. 1969).

The medical reports reveal that Plaintiff does have an emotional problem, but it is not of the requisite severity to entitle Plaintiff to disability benefits. Furthermore, if an individual fails to follow a prescribed course of treatment that would alleviate his problem, the presence of that impairment is not a basis for the award of disability benefits. 20 C.F.R. Section 404.1507; Hall v. Gardner, 403 F.2d 32 (6th Cir. 1968).

Similarly, Plaintiff's ulcer and prostatitis were demonstrated to be remediable impairments and not disabling. 20 C.F.R. Section 404.1507; McCarty v. Richardson, 459 F.2d 3 (5th Cir. 1972).

Plaintiff's problems with his left arm have existed since he was injured in World War II. He worked successfully for many years despite his arm problems. It has been recognized that if a claimant has worked with an alleged impairment over a period of years, and there has been no significant deterioration in that impairment, he cannot claim it disabling at the present. Johnson v. Finch, 437 F.2d 1321 (10th Cir. 1971); Fishburn v. Gardner, 452 F.2d 1004 (3rd Cir. 1971).

Plaintiff also alleges that he is disabled by his arthritis, but the functional limitations imposed by Plaintiff's arthritis are not severe enough to render him totally disabled. Hemphill v. Weinberger, 483 F.2d 1137 (5th Cir. 1973); Woods v. Finch, 428 F.2d 469 (3rd Cir. 1970).

Because the findings of the Administrative Law Judge are supported by substantial evidence and because said findings are based upon the correct legal standards, it is the determination of the Court that the Plaintiff is in fact not entitled to disability benefits under the Social Security Act and that the decision of the Secretary of Health, Education and Welfare be affirmed. Judgment is so entered on behalf of the Defendant.

It is so Ordered this 2<sup>nd</sup> day of January, 1978.

  
H. DALE COOK  
UNITED STATES DISTRICT JUDGE