

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 WARREN G. SMITH, CAROLYN G.)
 SMITH, DELAWARE COUNTY BANK,)
 a Corporation, COUNTY TREASURER,)
 Delaware County, Oklahoma, and)
 BOARD OF COUNTY COMMISSIONERS,)
 Delaware County, Oklahoma,)
)
 Defendants.)

CIVIL ACTION NO. 78-C-418-C

FILED

FEB 28 1979

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

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 28th
day of February, 1979, the Plaintiff appearing by Robert P.
Santee, Assistant United States Attorney; the Defendants, County
Treasurer, Delaware County, Oklahoma, and Board of County Commis-
sioners, Delaware County, Oklahoma, appearing by their attorney,
Larry Oakes, Assistant District Attorney; and, the Defendants,
Warren G. Smith, Carolyn G. Smith, and Delaware County Bank, a
Corporation appearing not.

The Court being fully advised and having examined
the file herein finds that Defendants, Warren G. Smith and
Carolyn G. Smith, were served by publication as shown on the
Proof of Publication filed herein; and that Defendants, Delaware
County Bank, a Corporation, County Treasurer, Delaware County,
Oklahoma, and Board of County Commissioners, Delaware County,
Oklahoma, were served with Summons and Complaint on September 13,
1978, all as appears on the United States Marshal's Service herein.

It appearing that the Defendants, County Treasurer,
Delaware County, Oklahoma, and Board of County Commissioners,
Delaware County, Oklahoma, have filed their Waiver of Summons,
Entry of General Appearance, and Answer to Petition in which
they ask the Court to hear and determine the merits of said

cause without further notice issued or served upon them; and, it appearing that the Defendants, Warren G. Smith, Carolyn G. Smith, and Delaware County Bank, a 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 Delaware County, Oklahoma, within the Northern Judicial District of Oklahoma:

A piece, part or parcel of land located in the NW 1/4 of NW 1/4 of NW 1/4 of Section 21, Township 23 North, Range 24 East, more particularly described as follows, to-wit: Beginning at a point in the West boundary of the NW 1/4 of NW 1/4 of NW 1/4 238.57 feet North of the SW corner; thence East 208.71 feet; thence North 196.22 feet; thence West 208.71 feet; thence South 196.22 feet to the point of beginning, containing 0.94 acres, more or less, less that part taken for County Road right-of-way, which is 16.5 feet along the West side thereof, Delaware County, Oklahoma.

THAT the Defendants, Warren G. Smith and Carolyn G. Smith, did, on the 7th day of July, 1976, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the sum of \$15,600.00 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, Warren G. Smith and Carolyn G. Smith, 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 \$17,207.91 as unpaid principal with interest thereon at the rate of 8 1/2 percent per annum from October 20, 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, Warren G. Smith and Carolyn G. Smith, in rem, for the sum of \$17,207.91 with interest thereon at the rate of 8 1/2 percent per annum from October 20, 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, Delaware County Bank, a 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 appraisement 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.


UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. SANTEE
Assistant U. S. Attorney

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

26

CHARLES HOBART TUTTLE, a minor,
by and through his next friend, CHARLES
T. TUTTLE,

Plaintiff,

vs.

No. 77-C-103-B

CHARLES DOHN, DARREL GOURLEY, JOHN PAUL
CHAMBERS, and ROGER STEEL,

Defendants,

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED AND AGREED by and between the under-
signed attorney for Plaintiff and the undersigned attorney for
the Defendant, JOHN PAUL CHAMBERS, that pursuant to Rule 41(a)(1)
(i) of the Federal Rules of Civil Procedure, that the above entitled
action be and the same hereby is discontinued and the complaint dis-
missed with prejudice as to the Defendant, JOHN PAUL CHAMBERS.

DATED THIS _____ DAY OF FEBRUARY, 1979.

ATTORNEY FOR PLAINTIFF

ATTORNEY FOR DEFENDANT, JOHN PAUL CHAMBERS

FILED

FEB 20 1979

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

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

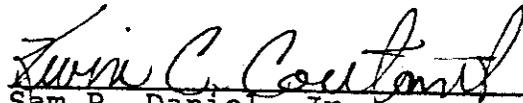
SALMON CORPORATION,)
 a corporation,)
)
 Plaintiff,)
)
 vs.)
)
 BURTON D. SALMON, individually,)
 ans as Personal Representative)
 of the Estate of Elizabeth)
 Davy Gillet, Deceased,)
)
 Defendant.)

No. 78-C-88-B

STIPULATION
OF DISMISSAL

IT IS HEREBY STIPULATED that the above entitled action
be and the same hereby is dismissed with prejudice and without
costs to either party.

Dated:

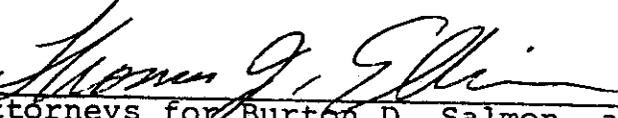


Sam P. Daniel, Jr.
Kevin C. Coutant
Doerner, Stuart, Saunders, Daniel
& Langenkamp
1200 Atlas Life Building
Tulsa, Oklahoma 74103

Attorneys for Plaintiff Salmon
Corporation, a corporation

GIDEON H. SCHILLER
St. Louis County National Bank Building
11 South Meramec Avenue
St. Louis, Missouri 63105

UNDERMAN, UNGERMAN, MARVIN, WEINSTEIN
& GLASS
Sixth Floor - Wright Building
Tulsa, Oklahoma 74103

By 
Attorneys for Burton D. Salmon, as
personal representative of the Estate
of Elizabeth Davy Gillet, Deceased.

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

REPUBLIC POWDERED METALS, INC.,)
an Ohio corporation,)
)
Plaintiff,)
)
-vs-)
)
ROBERT E. BROWN, an individual,)
and BUILDING RESTORATION OF TULSA,)
INC., an Oklahoma corporation,)
)
Defendants.)

FILED

FEB 23 1979

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

No. 78-C-312-C

ORDER OF DISMISSAL

NOW on this 23rd day of February, 1979, the Joint Application for Dismissal With Prejudice of the parties hereto comes on for consideration. The Court finds that the various causes of action have been amicably settled and fair and reasonable consideration paid in full settlement, release and satisfaction of both the plaintiff's causes of action as set forth in it's Complaint, First Amended Complaint and Second Amended Complaint and the defendants' Counter Claim and that the plaintiff has accepted said sum in full satisfaction, release and discharge of its causes of action and the Court finds that said Dismissal With Prejudice should be approved.

IT IS THEREFORE ORDERED that the causes of action as asserted by both the plaintiff and the defendant be, and the same are hereby dismissed with prejudice.

18/H. Dale Cook
UNITED STATES DISTRICT JUDGE

APPROVED:

KOTHE, NICHOLS & WOLFE,

By: _____
Thomas P. Nally,
Attorneys for Plaintiff

JONES, GIVENS, BRETT, GOTCHER,
DOYLE & BOGAN, INC.

By: _____
Philip J. Eller,
Attorneys for Defendants

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

FILED

FEB 22 1973

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

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
-vs-)
)
UNIVERSAL OIL PRODUCTS, INC.,)
)
Defendant.)

CIVIL ACTION NO. 78-C-563-C ✓

ORDER OF DISMISSAL WITH PREJUDICE

THIS MATTER came before the Court on the Joint Stipulation of the parties for voluntary dismissal, with prejudice, of this cause of action and Complaint, pursuant to Rule 41(a)(1), of the Federal Rules of Civil Procedure, and the Court has therefore,

ORDERED, ADJUDGED AND DECREED that this cause of action and Complaint are dismissed, with prejudice.


UNITED STATES DISTRICT JUDGE

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

ROYAL NEIGHBORS OF AMERICA,)
a corporation,)
)
Plaintiff,)
)
vs.)
)
WILLIAM R. LAWRENCE, et al.,)
)
Defendants.)

No. 77-C-375-B

FILED

FEB 21 1979

ORDER FOR DEFAULT JUDGMENT

Defendants William R. Lawrence and Lois Parris Dawson have been regularly served with process. Defendant William R. Lawrence has failed to appear and answer the Plaintiff's Complaint filed herein. The default of Defendant has been entered. Defendants are not infants nor incompetent persons. Affidavits of non-military service have been filed herein. It appears from the Affidavits that the Plaintiff is entitled to judgment.

IT IS ORDERED, ADJUDGED AND DECREED by the Court that the Defendant Lois Parris Dawson was, at the time of commencement of this action, and now is, the owner, and entitled to the proceeds of, Plaintiff's Certificate No. 880733, described in the Complaint on file herein; that the Defendant William R. Lawrence has no estate, interest, right, title, either legal or equitable, present or future, vested on contingent, or otherwise, in or to said Certificate No. 880733, or any part thereof, described in said Complaint. That Plaintiff Royal Neighbors of America is forever and completely discharged from any further liability whatsoever relating to the said insurance Certificate No. 880733, and that said Defendants and each of them, their agents, or their attorneys, are forever enjoined and restrained from commencing or prosecuting in any court any claim against Plaintiff for the recovery of said

monies payable under Certificate No. 880733, or any part thereof. That the Defendant William R. Lawrence should be and therefore is ordered to surrender Certificate No. 880733 to the Plaintiff, or in the event said certificate is not surrendered within five (5) days from the date of this judgment, said judgment will be deemed a cancellation of said Certificate No. 880733. That the registrar for the United States District Court For The Northern District of Oklahoma be and hereby is ordered to pay and deliver the proceeds of Certificate No. 880733, now in his custody, to Defendant Lois Parris Dawson, subject to the deduction of court costs in favor of the Plaintiff in the amount of \$ 48.90, and attorney fees in favor of the Plaintiff in the amount of \$279.90.

2-20-79
RW

Dated this 8th day of January, 1979, at Tulsa, Oklahoma.


 ALLEN E. BARROW
 United States District Judge

APPROVED:

FREESE, MARCH & KRIEGEL, P. A.

By: _____
 John M. Freese

CERTIFICATE OF MAILING

I, the undersigned do hereby certify that on the 8th day of January, 1979, a true and correct copy of the foregoing document was mailed, postage prepaid, addressed as follows:

Royal Neighbors of America
230 Sixteenth Street
Rock Island, Ill. 61201

Joseph Bonner, Esq.
Nowata, Oklahoma

FREESE, MARCH & KRIEGEL, P. A.

By: _____
Susan L. Frizzell

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

IN RE:)
)
MONTE W. STROUT,)
)
Bankrupt,) In Bankruptcy
) No. 77-B-375
JOHN B. JARBOE,)
)
Plaintiff-Appellee,)
)
vs.) Appeal No.
) 78-C-467-C
DAVID E. DEATHERAGE,)
)
Defendant-Appellant.)

FILED

FEB 20 1979

Jack C. Silvers
U. S. DISTRICT COURT

ORDER

This is an appeal from the Findings of Fact and Conclusions of Law and the Judgment entered by the Bankruptcy Judge on July 11, 1978. In the bankruptcy proceedings, the appellee-trustee asked that appellant's Claim No. 16 be ruled subordinate to the claim of the trustee in bankruptcy on the grounds that appellant's interest was unperfected. The trustee alleged that the property secured by Claim No. 16, a 1976 Webbcraft 22' boat, was "equipment" within the meaning of Article Nine of the Uniform Commercial Code, and that filing was proper in the county clerk's office in Oklahoma County, as per Title 12A, Okla. Stat. Annot. § 9-401(1)(c). Appellant filed only in Tulsa County, but argues that the boat was "consumer goods" at the time his interest attached, and that filing was therefore proper in Tulsa County as per Title 12A, Okla. Stat. Annot. § 9-401(1)(a). The Bankruptcy Court found in favor of appellee-trustee that the property was used as business goods, that no change had occurred in that status, and that the trustee therefore had priority over appellant, an unperfected creditor.

The scope of this Court's review of an order of the Bankruptcy Judge is very narrow. His factual findings are

binding upon this Court unless they are clearly erroneous. In re Sierra Trading Corporation, 482 F.2d 333 (10th Cir. 1973); Moran Bros., Inc. v. Yinger, 323 F.2d 699 (10th Cir. 1963); Washington v. Houston Lumber Company, 310 F.2d 881 (10th Cir. 1962). See Rule 52(a), Federal Rules of Civil Procedure.

"A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. United States Gypsum Co., 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948).

Appellant's contention is that, contrary to the Bankruptcy Court's findings, the 1976 Webbcraft boat changed status at the moment the bankrupt went out of business. Appellant reasons that since it could no longer be business equipment, it must be consumer goods. Appellant argues that "[u]nder the Bankruptcy Court's ruling it is inherent that use cannot change . . ." See Appellant's Brief, filed Oct. 24, 1978, p.5.

This Court does not agree. The Bankruptcy Court found that

"The use and classification of collateral may change, as may conditions of perfection, but no change occurred here." Findings of Fact and Conclusions of Law, p.4.

The Bankruptcy Court noted the bankrupt's testimony that no actual change in the use of collateral occurred. To counter that Court's finding that no change occurred, appellant simply argues that a change must occur since the boat could no longer be used for business. Such a conclusion would mean that all business property would be reclassified when business ceased. Just because the property here is a type that can also be of personal use does not mean that it is being put to that use.

Appellant also places importance in the time sequence, noting that he filed the financing statement on April 14, 1977, three days after bankrupt "went out of business" on

April 11, 1977. This ties into appellant's argument that the status of the goods necessarily changed after cessation of business, and that cessation, appellant argues, was on April 11, 1977. Appellee-trustee responds that business does not cease until the bankruptcy petition is filed, which in this case was 35 minutes after appellant filed his financing statement. Appellant is arguing, therefore, that the status of the 1976 Webbcraft boat changed by operation of law from equipment to consumer goods at the cessation of business on April 11, 1977; appellee is responding that if the status did change by operation of law, it was not until the petition in bankruptcy was filed on April 14, 1977.

The Bankruptcy Court correctly noted that a change in status is not a question of law, but a question of fact turning on an actual change in use. This change didn't occur.

For the foregoing reasons, the Findings of Fact and Conclusions of Law and the Judgment entered by the Bankruptcy Judge on July 11, 1978 are hereby affirmed.

It is so Ordered this 20th day of February, 1979.


H. DALE COOK
United States District Judge

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

3 ALCAN ALUMINUM CORPORATION,)
4 a New York corporation,)

CIVIL ACTION FILE

5 Plaintiff,)

No. 78-C-557-C

6 vs.)

7 QUALITY PORTABLE BLDG.)
8 CO., a suspended Oklahoma)
9 corporation; and LARRY)
BOYKIN, d/b/a QUALITY)
PORTABLE BLDG. CO.,)

JUDGMENT BY DEFAULT

FILED

10 Defendants.)

FEB 20 1979

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

13 This cause came on for hearing on the motion of
14 Plaintiff for a default judgment pursuant to Rule 55(b)(2)
15 Federal Rules of Civil Procedure, and it appearing to the
16 Court that the complaint was filed in this Court on the 13th
17 day of November, 1978 and that the summons and complaint was
18 duly served on the Defendant Quality Portable Building Co.
19 on the 16th day of November, 1978 and on the Defendant Larry
20 Boykin on the 14th day of December, 1978, and that no answer
21 or other defense has been filed by the said Defendants, and
22 that default was entered on the 14th day of February, 1979
23 in the office of the Clerk of this Court, and that no proceedings
24 have been taken by the said Defendants since said default
25 was entered, it is hereby ORDERED, ADJUDGED AND DECREED by
26 the Court that Plaintiff have judgment against the Defendants
27 and each of them for the sum of \$11,841.52 with interest at
28 the rate of 6% per annum from the 10th day of February, 1978
29 until the date of judgment and hereafter at the rate of 10%
30 per annum until paid, plus an attorney's fee of \$1500⁰⁰,
31 and the costs of this action, accrued and accruing, for all
of which let execution issue.

32 DONE THIS 20th DAY OF February, 1979.

33
34
35 1A/H Dale Cook

Judge

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

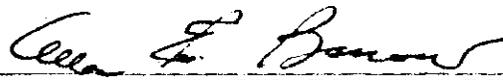
PARKHILL TRUCK COMPANY,)
)
 Plaintiff,)
)
 vs.) NO. 78-C-73-B
)
 ARKANSAS BANDAG CORPORATION and)
 THE KELLY-SPRINGFIELD TIRE)
 COMPANY,)
)
 Defendants.)

FILED
FEB 1 1979
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 16th day of February, 1979, the above styled and numbered cause come on for consideration by the Court upon the joint application of the parties hereto, for an Order of this Court dismissing the above styled cause with prejudice as to future filing. The Court being advised that the parties have fully and completely settled all matters now in controversy, as evidenced by the Release of Claims attached as Exhibit "A" to the parties' application, finds that the above styled cause should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled and numbered cause ^{of action & complaint} be and the same ~~is~~ ^{is} hereby dismissed with prejudice as to future filing.


CHIEF UNITED STATES DISTRICT JUDGE

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

United States of America,)
)
Plaintiff,)
)
v.)
)
City of Pawhuska, Oklahoma,)
a Municipal Corporation,)
)
Defendant.)

No. 72-C-11

FILED

FEB 16 1979

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

JOURNAL ENTRY OF JUDGMENT

This cause comes on for hearing on this 15th day of February, 1979, pursuant to the Amended Complaint filed herein on September 18, 1978, United States of America on behalf of the Osage Tribe of Indians appearing by and through Kenneth P. Snoke, Assistant United States Attorney for the Northern District of Oklahoma, and Cecil O. Wood, Jr., Field Solicitor, Pawhuska, Office of the Solicitor, Department of the Interior, and W. Robert Wilson, Attorney for the defendant, City of Pawhuska, Oklahoma.

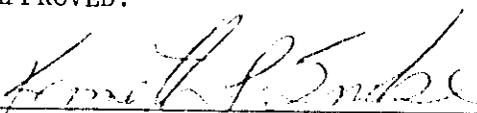
The court, being fully advised in the premises, finds that, predicated on the Amended Complaint filed herein, judgment should enter in favor of the plaintiff and against the defendant in the amount of \$14,193.00 plus interest as provided by law at the rate of ten per cent (10%) per annum from December 15, 1977, and any interest which the defendant may have in Osage oil or gas mining leases connected with Civil Action No. 72-C-11 is hereby terminated and released.

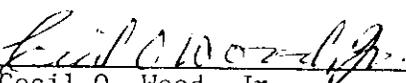
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this court that, predicated on the Amended Complaint filed herein, the plaintiff, United States of America, have and recover on behalf of

the Osage Tribe of Indians of and from the defendant, City of Pawhuska, the sum of \$14,193.00 plus interest as provided by law at the rate of ten per cent (10%) per annum from December 15, 1977, and any interest which the defendant may have in Osage oil or gas mining leases connected with Civil Action No. 72-C-11 is hereby terminated and released.


Luther Bohanon
United States District Judge

APPROVED:


Kenneth P. Snoke
Assistant United States Attorney


Cecil O. Wood, Jr.
Field Solicitor, Pawhuska
Office of the Solicitor, Department of the Interior


W. Robert Wilson
Attorney for City of Pawhuska, Oklahoma

IN THE DISTRICT COURT FOR THE NORTHERN DISTRICT
OF OKLAHOMA

SEAN ALLEN HANGARTNER, a minor)
appearing by and through his)
mother and next friend, MARSHA)
HANGARTNER, and MARSHA)
HANGARTNER, individually,)

Plaintiffs,)

vs.)

ALLSTATE INSURANCE COMPANY and)
ODIE L. SWEETEN,)

Defendants.)

NO. 77-C-309-B

FILED

FEB 18 1979

Jack C. ...
U. S. ...

ORDER ENTERING JUDGMENT AND REMANDING
CASE TO STATE COURT

The parties having settled the controversy asserted in this litigation, IT IS ORDERED as follows:

1. That all claims for and on behalf of Marsha Hangartner, individually, be and the same are hereby dismissed with prejudice, and by this Order, the cause of action and Complaint of Marsha Hangartner, individually, is dismissed with prejudice.

2. That judgment is entered in favor of Sean Allen Hangartner, a minor appearing by and through his mother and next friend, Marsha Hangartner, and against Odie L. Sweeten in the amount of TWENTY-THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$23,500.00), and in favor of Sean Allen Hangartner, a minor appearing by and through his mother and next friend, Marsha Hangartner, and against Allstate Insurance Company in the sum of SEVENTEEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$17,500.00), no other person, firm, or corporation having any right, title or interest therein, other than plaintiff's attorneys herein.

3. That this cause of action and Complaint and judgment are remanded to the District Court in and for Delaware County, Oklahoma, for administering said fund for the benefit of the minor,

Sean Allen Hangartner, pursuant to 12 O.S.A. §83.

ENTERED this 12th day of February, 1979.

Allen E. Berman

CHIEF UNITED STATES DISTRICT JUDGE

APPROVED:

GARY DEAN,

Gary Dean

Attorney for the Plaintiffs,

ALFRED B. KNIGHT,

By Richard D. Wagner

Attorney for Allstate Insurance Company,

JOSEPH A. SHARP,

By Joseph A. Sharp

Attorney for Odie L. Sweeten.

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

FILED

UNITED STATES OF AMERICA for the use)
and benefit of THE FIRESTONE TIRE AND)
RUBBER COMPANY, doing business under the)
assumed name and style of FIRESTONE TRUCK)
TIRE CENTER, a foreign corporation,)

Plaintiff,)

vs.)

UTILITY CONTRACTORS, INC., a foreign)
corporation; MID-STATES CONSTRUCTION OF)
DERBY, INC., a foreign corporation; and)
FEDERAL INSURANCE COMPANY, a foreign)
corporation,)

Defendants.)

FEB 13 1979

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

No. 78-C-539-B

JOURNAL ENTRY

This matter coming on before the undersigned Judge of the District Court upon the written motion of the Plaintiff to grant default judgment against the Defendant, Mid-States Construction of Derby, Inc., the Court having reviewed the file, heard counsel and being fully advised finds that the following order should issue:

, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that judgment be entered against the Defendant, Mid-States Construction of Derby, Inc. for Nine Thousand Seventy-Seven and Forty-nine/100's Dollar: (\$9,077.49) as prayed for in Plaintiff's Petition, interest thereon from July 7, 1978, plus all costs of this action for all which let execution issue.



Judge Of The U.S. District Court

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

February 14, 1979

JACK C. SILVER
CLERK

Ms. Patricia D. Howard
Judicial Panel on Multidistrict
Litigation
1030 15th Street N.W.
320 Executive Building
Washington, D.C. 20005

Re: Lavesta E. Parks
vs
Wyeth Laboratories, Inc., et al
77-C-1-B
W. A. Parks
vs
Wyeth Laboratories, Inc., et al
77-C-2-B

Dear Ms. Howard:

This is to advise you that this Court entered an Order
of Dismissal in the above described matters on February 13,
1979.

Yours very truly,

JACK C. SILVER, CLERK

By: *B. McLaughlin*
Deputy

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

IN RE:

ROBERT B. PHILLIPS and
MARILYN M. PHILLIPS,

Bankrupts.

ROBERT S. BAKER,
Trustee,

Appellant,

AND ROBERT B. PHILLIPS and
MARILYN M. PHILLIPS,
Bankrupts,

Appellants,

vs.

MAIN LaFRENTZ AND COMPANY,
CHARLES L. PARKER,
PRUESS, PHILLIPS AND ASSOCIATES,
INC., LEAKE TV INC., SOUTHWESTERN
SALES CORPORATION, CORINTHIAN
TELEVISION CORPORATION,
BANK OF OKLAHOMA N.A., KTEW,
SCRIPPS-HOWARD BROADCASTING
COMPANY, and THE F & M BANK AND TRUST
COMPANY,

Appellees.

78-C-152-B

FILED

FEB 13 1979

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

ORDER

At a disposition docket before the United States Magistrate on February 8, 1979, for failure of the parties to submit settlement papers, it appears that the parties agreed that this case should be remanded to the Bankruptcy Judge for finalizing settlement papers,

IT IS ORDERED that this case is remanded to the Bankruptcy Judge for finalizing of settlement papers.

ENTERED this 13th day of February, 1979.



CHIEF UNITED STATES DISTRICT JUDGE

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

LAVESTA E. PARKS,)	
Plaintiff,)	
vs.)	77-C-1-B
WYETH LABORATORIES, INC.,)	F I L E D
et al.,)	
Defendants.)	FEB 13 1979
W. A. PARKS,)	(ack 2:38 p.m. 2/13/79)
Plaintiff,)	U. S. DISTRICT COURT
vs.)	
WYETH LABORATORIES, INC.,)	77-C-2-B
et al.,)	
Defendants.)	

ORDER

Heretofore, and on June 21, 1977, this Court entered an Order Staying these cases pending an appeal to the United States Court of Appeals for the Tenth Circuit in the case of Donna J. Sparks v. Wyeth Laboratories, Inc., et al., Western District of Oklahoma, No. CIV 77-0173-B.

On February 8, 1979, this Court was advised by way of a written Report to the Court that an opinion had been rendered by the Tenth Circuit Court of Appeals in Spraks v. Wyeth Laboratories, Inc., 431 F.Supp. 411 (W.D.Okla. 1977) in the Tenth Circuit case number 77-1409 (10th Cir. Dec. 22, 1978).

Based on the opinion rendered by the Tenth Circuit Court of Appeals, adopting the opinion reported in 431 F.Supp. 411,

IT IS ORDERED that the Motion to Dismiss filed by the defendant, United States of America, be and the same is hereby sustained and the cause of action and complaint in 77-C-1-B and 77-C-2-B (Consolidated) be and the same are hereby dismissed.

ENTERED this 13th day of February, 1979.

Allen T. Bowen

CHIEF UNITED STATES DISTRICT JUDGE

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

FILED

THE HARTFORD INSURANCE GROUP,)
a Foreign Insurance Company,)
)
Plaintiff,)
)
v.)
)
MAR-VAC, INC., an Oklahoma)
corporation,)
)
Defendant.)

FEB - 9 1979

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

No. 78-C-475-C

JUDGMENT

The parties herein, by and through their respective counsel, having stipulated to the entry of Judgment in the form set forth below, and the Court otherwise being fully advised in the premises:

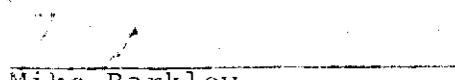
IT IS ORDERED, ADJUDGED AND DECREED, by the Court that the plaintiff have and recover judgment against and from the defendant, Mar-Vac, Inc. in the sum of Forty-Two Thousand Three Hundred Ninety-Five Dollars and 76/100 (\$42,395.76).

Dated this 9th day of February, 1979.

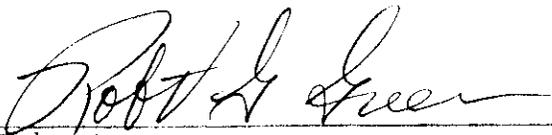


JUDGE OF THE DISTRICT COURT

APPROVED:



Mike Barkley
Hail, Estill, Hardwick, Gable,
Collingsworth & Nelson
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
ATTORNEY FOR PLAINTIFF



Robert G. Green
P.O. Box 1679
Tulsa, Oklahoma 74101
ATTORNEY FOR DEFENDANT

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

F I L E D

THEODORE TED McCOY and)
CAROLYN BROWN McCOY,)
)
Bankrupts,)
)
WARREN L. McCONNICO, Trustee,)
)
Plaintiff,)
)
vs.)
)
GENERAL MOTORS ACCEPTANCE)
CORPORATION,)
)
Defendant.)

FEB 1979 *fun*

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

No. 78-C-370-C ✓

No. 77-B-1141

J U D G M E N T

This is an appeal from a decision by the Bankruptcy Court for the Northern District of Oklahoma. The bankrupts Theodore Ted McCoy and Carolyn Brown McCoy filed their voluntary petition in bankruptcy on December 7, 1977, in which they claimed ownership of a 1977 Cadillac automobile, subject to a security interest held by General Motors Acceptance Corporation (GMAC). By amendment the bankrupts claimed as exempt "Equity in 1977 Cadillac-value claimed exempt \$1,500.00."

GMAC thereafter filed a Proof of Claim, which asserted its right to the automobile owing to what GMAC thought was a perfected security interest under Title 12A, Okla. Stat. Annot. §§ 9-109(1) and 9-401(1)(a). According to Section 9-401(1)(a), however, filing is necessary in the county where the debtor resides to perfect a security interest. The McCoys were residents of Osage County, Oklahoma; and GMAC filed in Tulsa County, Oklahoma. The latter's interest was therefore unperfected and subordinate to the rights of the trustee under § 70C of the Bankruptcy Act (Title 11, U.S.C. § 110). GMAC would nonetheless accomplish its goal if the automobile were held exempt, since the bankrupts would be

able to keep it out, but still have to pay GMAC since debts not scheduled (i.e. debts on exempt property) are not discharged by bankruptcy, as per § 17 of the Bankruptcy Act (11 U.S.C. § 35).

On February 2, 1977, the trustee in bankruptcy denied bankrupts' claim of exemption for the "equity in 1977 Cadillac, \$1,500.00" because "the vehicle is encumbered in excess of its value and, therefore, the bankrupts do not own any equity in said vehicle". The fair market value of the 1977 Cadillac was less than \$3,000.00 when the bankruptcy petition was filed, and its encumbrance was \$9,288.51. It was stipulated that the automobile was worth less than the debt against it. It was correct, then, that the bankrupts had no equity in the vehicle. The bankrupts filed a timely objection to the trustee's decision.

The trustee also filed a complaint against GMAC, alleging that GMAC had no right, title, or interest in the vehicle because of its incorrect filing of the security interest. GMAC answered that the property was exempt under Oklahoma law and not subject to administration by the trustee.

A hearing was held on March 17, 1978 to consider the bankrupts' objection to the trustee's denial of exemption, and the dispute of priority between the trustee and GMAC. At that hearing, the bankrupts' objection was sustained and the automobile ruled exempt from bankruptcy administration. The bankruptcy referee left the GMAC priority question pending until the order on exemption became final, so that GMAC could argue and appeal priority if the exemption ruling was later turned around. It should be noted at this point that at the March 17, 1978 hearing the referee considered the fact that bankrupts had claimed as exempt only the equity of the 1977 Cadillac, not the automobile itself, i.e., bankrupts claimed something of no value. Now that the case is on appeal to this Court, GMAC is arguing that the

automobile, not the equity, is exempt. Bankrupts have never amended their petition to claim the automobile exempt, but the referee resolved any potential problems with the following statement at the March 17, 1978 hearing:

"I would have to conclude in the first instance that this request in terms of equity in a 1977 Cadillac, \$1,500.00, was to be construed as effectively asserting whatever right to exemption the bankrupt has under Statutes of the State of Oklahoma."
Transcript of Proceedings on March 17, 1978,
pp.2-3.

Bankrupts may thenceforth be deemed to have claimed whatever exemption vis-a-vis the 1977 Cadillac that they were entitled to under Oklahoma law.

The March 17th Order declaring the automobile exempt was vacated by written Judgment, Findings of Fact and Conclusions of Law on July 5, 1978. Noting first that the law concerning automobile exemption [Title 31, Okla. Stat. Annot. §§ 1(10), 4 (Fourth)] has been in effect only since October 1, 1977, and that courts have rendered no interpretations of that exemption, the referee turned to comparable exemptions and their case law construction from neighboring states. This examination led to his ruling that the Oklahoma legislature had intended to exempt only the equity of an automobile, not to exceed \$1,500.00. The referee noted further that the Colorado case used for support had been approved by the Tenth Circuit. GMAC now appeals that decision and presents to this Court the question of whether Title 31, Okla. Stat. Annot. §§ 1 and 4 exempt the automobile, or the equity in that automobile.

Since this is nothing more than a question of statutory construction, the Court must first consider the statute in question and Oklahoma's rules for statutory construction. Title 31 Okla. Stat. Annot. § 1(10) provides:

"The following property shall be reserved to every person owning a home and residing therein or to the head of every family residing in the state, exempt from attachment

or execution and every other species of forced sale for the payment of debts except as herein provided.

10. One (1) motor vehicle having an equity value not to exceed One Thousand Five Hundred Dollars (\$1,500.00)."

Title 31, Section 4 provides the same exemption.

The Oklahoma Supreme Court has held repeatedly that when the language of a statute is plain and unambiguous, no room for construction exists. Oldham v. Drummond Board of Education, 542 P.2d 1309 (1975); In re Estate of Redwine, 445 P.2d 275 (1968); Patterson v. Willson, 11 Okla. 75, 65 P. 921 (1901). Here the language is clear that an automobile is exempted so long as its equity value does not exceed \$1,500.00. Neither is there a dispute as to the meaning of equity, or equity value -- it is the fair market value less outstanding encumbrances. Dallas Ceramic Company v. Morgan, 560 P.2d 197 (1977). Appellants correctly point out that had the legislature sought to exempt the equitable interest and not the res, the statute would read

"Equity value, not to exceed One Thousand Five Hundred Dollars (\$1,500.00) in one (1) motor vehicle."

The statute does not read thus, and it is therefore clear that the automobile is exempt to the trustee in the instant case.

While it is not necessary to consider legislative intent where the meaning of the statute is clear, this Court notes the Dallas case, supra, in the belief that it gives a much better indication of Oklahoma legislative intent regarding exempt property than In re Cummings, 413 F.2d 1281 (10th Cir. 1969), argued by the trustee and relied upon by the referee. In Dallas, a Texas creditor sought to enforce a Texas judgment for \$2,220.21 plus attorney fees in Oklahoma. After filing under the Uniform Enforcement of Foreign Judgments Act (Title 12, Okla. Stat. Annot. § 719 et seq.), appellant

Dallas Ceramic Company executed against appellee Morgan's 1973 GMC van, which was sold at sheriff's sale on May 6, 1974 (at the time Oklahoma had no exemption for automobiles). Dallas Ceramic thereafter sought execution on Morgan's homestead of .43 acres, appraised at \$8,460.00 with a mortgage of \$7,600.00, leaving Morgan with an equity interest of \$860.00. Morgan contended that his property was protected by the \$5,000.00 homestead exemption allowed in Title 31, Okla. Stat. Annot. § 2, which provided in part that the homestead "shall consist of not exceeding one acre of land . . ." and ". . . that the same shall not exceed in value the sum of five thousand dollars . . ."

Appellant Dallas Ceramic argued that the \$5,000.00 value limit referred to the fair market value, not the equity value, of the real estate; and thus, the creditor would be allowed to attach everything in excess of \$5,000.00 fair market value. Both the trial court and the Oklahoma Supreme Court disagreed, the latter borrowing from a Utah case to supply the reasoning:

"If such were not the law the claimant could not hold as exempt a homestead of the value stated in the statute, but could claim a homestead exemption only to the extent that the value exceeded the valid liens against it, and if such liens exceeded the value of his statutory exemption he would be allowed nothing. That is neither the law nor the spirit of statutes like ours." 560 P.2d at 200.

The Bankruptcy Court in the instant case drew from Dallas that only the equity is exempt and the total exemption shall not exceed \$5,000.00, and that the exemption was therefore analogous to the Colorado exemption discussed in Cummings. (See Findings of Fact and Conclusions of Law, pp. 5-6.) To the contrary, Dallas held that if the debtor's equity interest was within the \$5,000.00 exemption, the property was exempt from execution, no matter what its value.

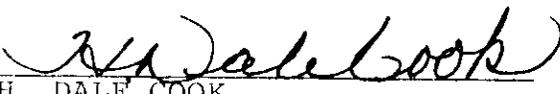
"The single question presented for review is whether, in applying 31 O.S. 1971, § 2, to determine the extent of the Appellee's real property exempted as his constitutional homestead, the Trial Court correctly construed 'value' to mean fair market value less outstanding encumbrances. If so, Appellee's property fell within the statutory limitation and was exempt from execution by Appellant." 560 P.2d at 198.

It must be concluded by analogy that if a debtor's equity value in an automobile is less than \$1,500.00, that automobile is exempt from execution.

The Bankruptcy Court also felt that its decision, and the decision in Cummings it was modeled after, accomplished an equitable result by "placing a monetary limit upon the value of exempted property", thus preventing a bankrupt from keeping an expensive automobile and paying a \$9,200.00 note on it, while general creditors collect only a fraction, if any, of their debts. While this argument may have merit, the law of Oklahoma is clear that the automobile, not the equity, is exempt, and, pending legislative revision, this Court must so rule.

It is therefore ordered that the decision of the Bankruptcy Court of July 5, 1978, be reversed insofar as it declares the Bankrupts' 1977 Cadillac automobile, Serial Number 6L4757Q103032 be subject to administration by the trustee in bankruptcy; that this automobile be held exempt under Title 31, Okla. Stat. Annot. § 1(10).

It is so Ordered this 9th day of February, 1979.


H. DALE COOK
United States District Judge

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

FILED

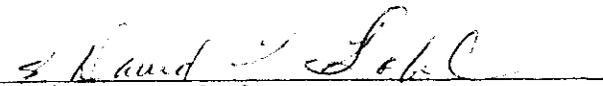
FEB 9 1979

CAMEO ATTRACTIONS, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.) Civil Action
) No. 78-C-460-B
)
CARUTH C. BYRD, d/b/a CARUTH)
C. BYRD PRODUCTIONS, INC., a)
forfeited Texas Corporation;)
and DATON BAKER.)
)
Defendants.)

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

NOTICE OF DISMISSAL

COMES NOW the Plaintiff herein, and hereby dismisses
without prejudice the above entitled matter.


David L. Sobel
SOBEL & MORAN
5310 East 31st, Suite 505
Tulsa, OK 74135
(918) 664-8390

Attorney for Plaintiff

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

FILED

FEB 9 1979

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

PHYLLIS JORDAN,)
)
 Plaintiff,)
)
 v.)
)
 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.)
)

Civil Action No.
78-C-49-B

STIPULATION FOR DISMISSAL

Plaintiff, Phyllis Jordan, having filed her complaint herein on February 1, 1978, and amended complaints on May 5, 1978 and October 4, 1978, and Plaintiff and Defendants by their respective attorneys having consented to the entry of this stipulation for dismissal without trial or adjudication of any issue of fact or law herein and without this stipulation for dismissal constituting any evidence of admission by any party with respect to any issue of law or fact herein, do now therefore

state before the taking of any testimony and without trial or adjudication of any issue of fact or law herein agree as follows:

I.

SETTLEMENT AS TO PLAINTIFF

1. That Plaintiff, Phyllis Jordan, be retroactively promoted to the rank of GS-301-5, Step 4 within the United States Army Corps of Engineers, Tulsa District, as of June 26, 1977, until June 26, 1978, with all normal pay increases to be considered in said payment; that all payments toward back pay pursuant to this settlement agreement shall be treated as ordinary income in computing plaintiff's 1979 income tax return, and with all usual and necessary payroll deductions, such as state and federal taxes; that from and after June 26, 1978, for purposes of computing back pay, the Plaintiff's pay scale shall be computed at Civil Service Grade Level 6, Step 4; that all payments toward back pay pursuant to this settlement agreement shall be treated as ordinary income in computing plaintiff's 1979 income tax return, and with all usual and necessary payroll deductions, such as state and federal income taxes, and continue at said rate for a period of 154 days from and after June 26, 1978;

2. That Plaintiff, Phyllis Jordan, be temporarily detailed to the Oklahoma City Field Office of the United States Army Corps of Engineers, Tulsa District, at the Civil Service Grade Level 6, Step 4 for a period from and after October 11, 1978 through February 6, 1979, at which time said assignment shall become permanent;

3. That Plaintiff, Phyllis Jordan, from and after February 6, 1979, will assume the position of General Clerk (typing) 301-5, at the Civil Service Grade 5, Step 8, within the Oklahoma City Field Office.

4. Neither Defendants nor any official, supervisor or employee of the Corps shall engage in any reprisal or harassment of Plaintiff as a result of her filing either her administrative complaint or the present suit.

5. That Plaintiff be afforded the economic benefits attendant to a permanent transfer by the Corps of Engineers.

6. Plaintiff by entering into this agreement does not waive costs incurred by Plaintiff in the instant action, to and including reasonable attorney's fees to be assessed against the Defendants, which claims shall be treated separately from this agreement.

II.

SETTLEMENT AS TO DEFENDANTS

1. By agreement of the parties, Plaintiff, Phyllis Jordan, shall dismiss with prejudice Defendants, the United States of America, Col. Anthony Smith, District Engineer, United States Army Corps of Engineers, Tulsa District, Tulsa, Oklahoma, Col. Anthony Smith, Individually, the United States Army Corps of Engineers, Tulsa District, Tulsa, Oklahoma, Klon D. Buckles, Civilian Personnel Officer, United States Corps of Engineers, Tulsa District, Tulsa, Oklahoma, Klon D. Buckles, Individually, David Craig, Individually, and Don Hoggett, Individually, from this action, forever quieting the claims of said Plaintiff against said Defendants.

BARBARA ALLEN BABCOCK
Assistant Attorney General

HUBERT H. BRYANT
United States Attorney

Barbara B. O'Malley
BARBARA B. O'MALLEY

Terry Malloy

TERRY MALLOY
Attorney for Plaintiff
1924 South Utica
Suite 810
Tulsa, Oklahoma 74104

Eleanor Thompson

ELEANOR THOMPSON
Assistant United States Attorney
Attorneys for Defendants
Attorneys, Department of Justice
Washington, D. C. 20530
Telephone: (202) 633-3388

APPROVED:

Feb 9, 1979

Cleon E. Bennett

UNITED STATES DISTRICT JUDGE

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

FILED

GEDDY A. MATHIS,)
)
 Plaintiff,)
)
 vs.)
)
 WILLIAMS INTERNATIONAL)
 GROUP, INC., A Panamanian)
 Corporation,)
)
 Defendant.)

FEB 9 1979

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

No. 78-C-206-C

ORDER FOR DISMISSAL

FOR GOOD CAUSE SHOWN, the above-entitled cause is hereby
dismissed with prejudice.



JUDGE OF THE DISTRICT COURT

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

ALONZO HALL,)
)
 Plaintiff,)
)
 vs.)
)
 JOSEPH A. CALIFANO, JR.,)
 Secretary of Health,)
 Education and Welfare,)
)
 Defendant.)

CIVIL ACTION NO. 77-C-387-C ✓

FILED

FEB -7 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 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 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 January 13, 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 June 1, 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 on Plaintiff's vocational capabilities is not supported by substantial evidence. Specifically, Plaintiff argues that the testimony of the vocational expert at the administrative hearing did not support the Secretary's finding that jobs that do not require heavy manual labor work requiring frequent bending, lifting, stooping, or standing for long periods of time existing in significant numbers in the region where Plaintiff lives and in several regions of the country.

Plaintiff's claimed disabilities are problems with his back and legs. In July, 1967, Plaintiff was hospitalized and treated for burns to his face, arms, chest, back, and thighs received in a gasoline fire. See pages 231-236 of the administrative transcript. In May, 1973, Plaintiff injured his back, and a ruptured disc was removed in June, 1973. See pages 182-187 of the administrative transcript.

By March, 1974, X-rays of the back fusion appeared solid, and an exercise program was recommended. See pages 204-205.

In May, 1975, Plaintiff had another back operation, which relieved his pain. See pages 206-217. By December, 1975, Dr. Richard F. Tenney felt Plaintiff was significantly improved. The doctor concluded Plaintiff should avoid heavy manual labor, but he could do work not requiring heavy lifting. See page 220 of the administrative record.

Dr. Richard Reid, an internist, examined Plaintiff in February, 1976. Dr. Reid did not feel Plaintiff was disabled by his back trouble or burn grafts. See pages 222-225.

Dr. Cullen J. Manucuso, a psychologist and vocational counselor, testified about the existence of sedentary jobs that did not require heavy lifting or being on one's feet for extended periods of time. The expert stated that jobs such as industrial assembly worker, cabinet abrasive blast man, linen room attendant, company mail clerk, self-service gas station cashier, or parking lot cashier existed in Plaintiff's area of residence and in the national economy. See pages 79-86 of the administrative record.

The record indicates Plaintiff was only 37 years old in May, 1975, when he alleged he became disabled. He has a ninth grade education and has successfully completed a correspondence course in mechanics. He has a varied vocational background, including work as a farmer, dishwasher, cook, driver, attendant-salesman in an automobile service station, new car prepareman, bottling house machine attendant, and construction worker.

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, 214 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 v. 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, 408 (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 nondisability. Reyes Robles v. Finch, 409 F.2d 84 (10th Cir. 1969).

The medical reports reveal that Plaintiff does have a back problem and trouble from his burn injuries and skin grafts, but they are not of the requisite severity to entitle Plaintiff to disability benefits. Plaintiff's back surgeries have substantially remedied his problem, and the doctors agree that although Plaintiff should not do heavy manual labor, his back does not prevent his performing lighter, sedentary activities. The residual effects of Plaintiff's 1967 leg burns are likewise not of disabling severity; sedentary work would not require his being on his feet for extended periods of time. 20 C.F.R. Section 404.1507; Benson

v. Mathews, 554 F.2d 860 (8th Cir. 1977); Johnson v. Finch, 437 F.2d 1321 (10th Cir. 1971).

That Plaintiff's problems still prevent 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 attacked the Secretary's reliance on the vocational expert's testimony, the Court notes that Plaintiff's arguments largely deal with Plaintiff's "employability," not his capacity to perform work. In 1967, Congress significantly amended the Social Security Act, and the test of disability is the inability to work at all, not the inability to find a job. 42 U.S.C. Section 423(d)(2)(A); Gentile v. Finch, 423 F.2d 244 (3d Cir. 1969). The cases cited by Plaintiff that were decided under the pre-1967 Act therefore are of questionable continuing viability on that point.

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 continued disability benefits under the Social Security Act. Judgment is so entered on behalf of the Defendant.

It is so Ordered this 6th day of ~~January~~^{February}, 1979.


H. DALE COOK
United States District Judge

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

FILED

BURT H. McINTOSH,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES D. ASHLEY,)
)
 Defendant.)

No. 78-C-323-B

FEB - 5 1979

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

Notice of DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Burt H. McIntosh, by and through his attorneys, Hall, Estill, Hardwick, Gable, Collingsworth & Nelson, by J. Patrick Cremin, and herein dismisses the above-styled matter without prejudice since said Plaintiff has been unable to serve the Defendant in this matter.

HALL, ESTILL, HARDWICK, GABLE,
COLLINGSWORTH & NELSON

By



J. Patrick Cremin
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2677

FILED

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

FEB - 2 1979

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

IN RE: LETTER OF REQUEST)
FROM THE SUPERIOR COURT,)
PROVINCE OF QUEBEC,)
DISTRICT OF MONTREAL, CANADA,) CIVIL ACTION NO. 78-C-457-C ✓

O R D E R

NOW, on this 2nd day of February, 1979, there came on for consideration the Application of the United States for an Order dismissing the above-captioned case. The Court finds said Application is well taken.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the instant matter be and the same is hereby dismissed, without prejudice.

W. J. Salubook
UNITED STATES DISTRICT JUDGE

cl

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

FILED
40
U. S. DISTRICT COURT

THOMAS H. McDANIEL and
BESSIE M. McDANIEL

Plaintiffs

v

No 78 C-411-B

JIM WALTER HOMES, INC.

Defendant

STIPULATION FOR DISMISSAL

The parties herein do hereby stipulate and agree that this *cause of*
and complaint action may be dismissed with prejudice to any further action
for the reasons that the parties have mutually settled their
dispute herein upon full compromise and settlement.

FILED

FEB - 2 1979

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

Thomas H. McDaniel
Thomas H. McDaniel

Bessie M. McDaniel
Bessie M. McDaniel

Lawrence D. Taylor
Lawrence D. Taylor
attorney for the Plaintiffs

Lawrence A. Johnson
Lawrence A. Johnson
Attorney for Jim Walter Homes, Inc.

ORDER

On this *2nd* day of *February*, 1979, the court finds and Orders
that the above captioned *cause of action & complaint* be dismissed with prejudice to
any further action for the reason the parties have fully com-
promised and settled all issues in this action.

Celia E. Barrow

Judge, United States District Court
for the Northern District of Oklahoma

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

FILED

TERRY COLLINS,)
)
Plaintiff,)
)
vs.)
)
DACO CONSTRUCTION COMPANY,)
)
Defendant.)

FEB - 2 1979

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

No. 78-C-130-B

St. Petersburg
DISMISSAL

Comes now the Plaintiff, TERRY COLLINS, and hereby
dismisses the above cause with prejudice.

Dated this 26th day of January, 1979.

Terry Collins

TERRY COLLINS, Plaintiff

Lantz McClain

LANTZ McCLAIN, Attorney for
Plaintiff

W. J. Berry

W. J. BERRY, Clerk

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

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

INDUSTRIAL FABRICATING COMPANY,
a/k/a INDUSTRIAL FABRICATING
SALES,

Defendant.

No. 78-C-487-C

FILED

FEB - 2 1979

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

STIPULATED JUDGMENT

This matter having come before this Court pursuant to request of the parties hereto, and the parties having stipulated that judgment in this action be entered upon the bases set forth below, and the Court being fully advised in the premises, enters the following findings and Order, to wit:

1. This Court has subject matter jurisdiction of this action, and has jurisdiction over the parties to this action.

2. This Judgment is entered pursuant to stipulation of the parties, and does not constitute an admission by the Defendant or a finding by this Court that Defendant has engaged in, or is engaging in, any violation of 42 U.S.C. Section 2000e, et seq.

3. The parties having advised the Court that, as a part of this Stipulated Judgment, Defendant has agreed to enter into a private settlement of the claims of one Samuel L. Bell, Jr., presented on his behalf by Plaintiff herein, and the parties having further advised the Court that Mr.

Bell has agreed to such a settlement and the release of his claims against Defendant, this Court finds that the claims presented by Plaintiff on behalf of Mr. Bell should be dismissed with prejudice.

4. Pursuant to stipulation of the parties, this Court further finds that this Judgment fully resolves any and all claims against Defendant by Plaintiff in the Complaint as to Defendant's employment policies and practices at its Tulsa facility prior to the date of this Judgment, and this Court further finds that dismissal of this action with prejudice is proper.

It is, therefore, ORDERED, ADJUDGED and DECREED THAT:

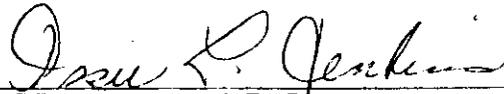
1. This action be, and hereby is, DISMISSED WITH PREJUDICE, with each party to bear its own costs.

2. Defendant immediately pay to Mr. Bell the sums designated in the private settlement between the parties and Mr. Bell, and Mr. Bell immediately execute a release in favor of Defendant of his claims against Defendant, in a form satisfactory to Defendant.

SO ORDERED this 2nd day of February, 1979.

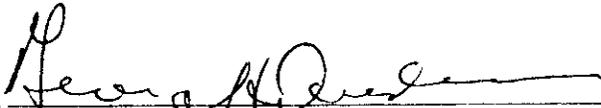
W. Dale Cook
U. S. District Court Judge

AGREED TO:

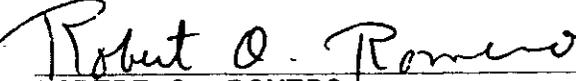

ISSIE L. JENKINS
General Counsel (Acting)

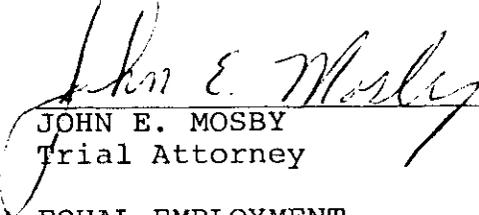

WILLIAM B. ROBINSON
Associate General Counsel

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Office of General Counsel
2401 "E" Street, N.W.
Washington, D.C. 20506

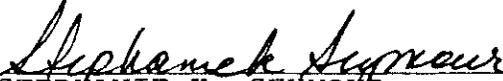

GEORGE H. DARDEN
Assistant General Counsel

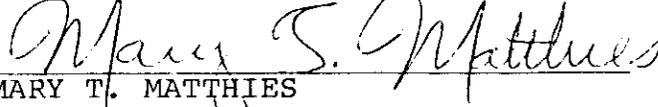

WILLIAM H. LEWIS
Supervisory Trial Attorney


ROBERT O. ROMERO
Senior Trial Attorney


JOHN E. MOSBY
Trial Attorney

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Denver Regional Office of General Counsel
1531 Stout Street, 6th Floor
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SAM P. DANIEL, JR.
Doerner, Stuart, Saunders,
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100 Atlas Life Building
Tulsa, Oklahoma 74101


MARY T. MATTHIES
Matthies & Associates
2600 Fourth National Bank Building
Tulsa, Oklahoma 74119

Counsel for Defendant

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

FILED

UNITED ALPINE LUMBER CO.,)
Division of L & H Lumber Co.,)
a corporation,)

FEB - 2 1979

Plaintiff,)

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

vs.)

No. 78-C-593-B

CLOVERLEAF LUMBER COMPANY, INC.,)
a corporation, and JAMES W.)
COTTINGIM,)

Defendants.)

J U D G M E N T

The Defendant, James W. Cottingim, having been regularly served with process, and having failed to appear and answer the Plaintiff's Complaint filed herein, and the default of said Defendant having been duly entered, and it appearing that said Defendant is not a infant, or incompetent person, nor a member of any military service, and it appearing by the affidavit that Plaintiff is entitled to judgment herein,

IT IS ORDERED AND ADJUDGED that the Plaintiff have and recover from Defendant, James W. Cottingim, the sum of \$19,724.93, with interest thereon at the rate of 10 % per annum from JUNE 5, 1978, until paid, together with costs in the sum of \$ 30.00.

Dated this 2 day of February, 1979.

Jack C. Silver, Clerk


Deputy UNITED STATES DISTRICT COURT CLERK

FEB - 2 1979

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES L. PADDOCK,)
)
 Defendant.)

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

CIVIL ACTION NO. 78-C-606-B

DEFAULT JUDGMENT

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

The Court being fully advised and having examined the file herein finds that Defendant, James L. Paddock, was personally served with Summons and Complaint on December 13, 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, James L. Paddock, for the sum of \$1,673.83, plus the costs of this action accrued and accruing.


UNITED STATES DISTRICT JUDGE

APPROVED:


ROBERT P. SANTEE
Assistant United States Attorney

10-10-78 made

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

FILED

FEB - 2 1979

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

WARNER R. ODENTHAL,)
)
Plaintiff,)
)
vs.)
)
RICKELSON OIL AND GAS COMPANY,)
an Oklahoma corporation, REALTO)
P. CLINTON, ELEANOR F. CLINTON,)
ROBERT P. CLINTON, JULIAN STOOPLER)
and PRESCOTT, BALL & TURBEN,)
)
Defendants.)

No. 78-C-300-C

OCT 27 1978

STIPULATION AND ORDER OF DISMISSAL

The parties hereto, by and through their respective attorneys, hereby stipulate that the above entitled action may be dismissed in its entirety with prejudice.

Dated: January 31, 1979

COLLETTE & ERICKSON

By *John V. Erickson*
John V. Erickson

Attorneys for Plaintiff
Warner R. Odenthal

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By *Rickelston*

Attorneys for Plaintiff
Warner R. Odenthal

BOONE, ELLISON & SMITH

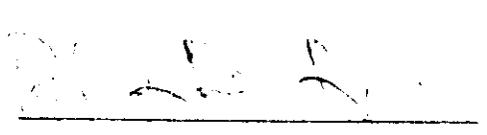
By *James Ellison*

Attorneys for Defendants
Rickelson Oil and Gas Company,
Realto P. Clinton, Eleanor F.
Clinton and Robert Paul Clinton

Burton J. Channing

Attorney for Defendant
Julian I. Stoopler

JONES, DAY, REAVIS & POGUE

By 

Attorneys for Defendant
Prescott, Ball & Turben

ORDER

Pursuant to the foregoing stipulation, this action
is hereby dismissed in its entirety with prejudice.


United States District Judge

Dated: February 2, ~~January 2,~~ 1979

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

FILED

78-0160

WARREN G. FANNIN,)
SSAN 466-46-2703,)
)
Plaintiff,)
)
vs.)
)
JOSEPH A. CALIFANO, JR.,)
Secretary of Health, Education)
and Welfare of the United)
States of America,)
)
Defendant.)

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

CIVIL ACTION NO. 78-C-51-C

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 provided for in Sections 216 and 223 of the Social Security Act, as amended. 42 U.S.C. §§ 416, 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 August 5, 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 November 1, 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.

In the past, Plaintiff has filed similar applications for disability benefits. Plaintiff's January, 1968, application resulted in an award of benefits from August, 1967, to March, 1970, when he returned to work. See pages 76-79, 151-156, 161-164 and 171-172 of the Administrative Transcript. Later, in March, 1975, Plaintiff filed another application, which was denied administratively on September 29, 1975. See pages 173-182, 230-235 and 240 of the administrative record. Plaintiff failed to further appeal that determination.

Plaintiff contends that the Secretary's decision in this case on Plaintiff's vocational capabilities is not supported by substantial evidence. Specifically, Plaintiff argues that the testimony of the vocational expert at the administrative hearing did not support the Secretary's finding that jobs that do not require heavy manual labor work requiring frequent bending, lifting, stooping or standing for long periods of time existing in significant numbers in the region where Plaintiff lives and in the national economy.

Plaintiff's claimed disability is back trouble. The medical evidence relevant to the period at issue includes reports from Dr. John C. Dague, an orthopedic surgeon, Dr. Carl H. Bailey, an internist, and Dr. Terrill Simmons, an orthopedic surgeon.

Dr. Dague performed a consultative examination of Plaintiff at government expense on January 30, 1976. Dr. Dague diagnosed chronic lumbosacral myofascitis secondary to back surgery. He felt Plaintiff was capable of performing sedentary activity. See pages 268-269 of the record.

Dr. Bailey reported that he had treated Plaintiff since November 26, 1975, for a back problem and arthritis. He thought Plaintiff's disability would last longer than one year. See pages 267 and 270 of the transcript.

Dr. Terrill Simmons reported on October 28, 1976, that Plaintiff complained of back and neck pain. Dr. Simmons described Plaintiff as a very muscular man who walked with a stiff gait.

Osteoarthritis of the spine was diagnosed, and Plaintiff was prescribed medicine for pain relief. See pages 303-309 of the record.

Plaintiff testified at the administrative hearing about his back pain. Plaintiff said that he did not generally take pain medication, except as needed. He was able to drive his car, and to do his own laundry, cleaning, shopping and cooking. See pages 32 to 46 of the record.

Plaintiff was only 44 years old in May, 1975, when he alleged he became disabled. He has a high school education and served two years in the military. After his discharge from the service, he attended night school classes in radio and television training. Plaintiff's vocational history includes work experience in trucking driving, welding and weld grinding. See pages 35-41 of the record.

A vocational expert testified at the hearing about the existence of sedentary jobs permitting alternate sitting and standing and requiring no lifting or continuous bending, stooping or squatting. These jobs included electronics assembly work, operating an engraving machine, deburring, filter assembly work, assembling fishing equipment, assembling control valves, inspecting materials and photocopying. The expert noted that these jobs existed in substantial numbers with various manufacturers in the Tulsa area and in the national economy. See pages 52 to 61 of the Administrative Transcript.

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. § 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. § 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 v. 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, 408 (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. § 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 nondisability. Reyes Robles v. Finch, 409 F.2d 84 (10th Cir. 1969).

The medical reports reveal that Plaintiff does have a back problem, but it is not of the requisite severity to entitle Plaintiff to disability benefits. Although Plaintiff should not do heavy manual labor, his back does not prevent his performing lighter, sedentary activities. That Plaintiff's problems still prevent 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 attacked the Secretary's reliance on the vocational expert's testimony, the Court notes that Plaintiff's arguments largely deal with Plaintiff's "employability," not his capacity to perform work. In 1967, Congress significantly amended the Social Security Act, and the test of disability is the inability to work at all, not the inability to find a job. 42 U.S.C. § 423(d)(2)(A); Gentile v. Finch, 423 F.2d 244 (3rd Cir. 1969). The cases cited by Plaintiff that were decided under the pre-1967 Act, therefore, are of questionable continuing viability on that point.

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

continued disability benefits under the Social Security Act.

Judgment is so entered on behalf of the Defendant.

IT is so Ordered this 3/rd day of January, 1979.

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

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

UNITED STATES OF AMERICA,)
and GARY W. BENUZZI, Special)
Agent, Internal Revenue)
Service,)
)
Petitioners,)
)
vs.)
)
SUNMARK INDUSTRIES and)
JERRY McALLISTER,)
)
Respondents.)

No. 78-C-580-C

FILED

JAN 13 1979

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

ORDER DISCHARGING RESPONDENTS
AND DISMISSAL

On this 31st day of January, 1979, Petitioners' Motion to Discharge Respondents and for Dismissal came for hearing and the Court finds that Respondents have now complied with the Internal Revenue Service Summons served upon them July 13, 1978, that further proceedings here are unnecessary and that the Respondents, Sunmark Industries and Jerry McAllister, should be discharged and this action dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT that the Respondents, Sunmark Industries and Jerry McAllister, be and they are hereby discharged from any further proceedings herein and this cause of action and Complaint are hereby dismissed.

14/14 Dale Cook
UNITED STATES DISTRICT JUDGE

FILED

FEB - 1 1979

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA
Jack C. Silver, Clerk
U. S. DISTRICT COURT

DOMINIQUE ANNE HESS,Plaintiffs,)
)
vs.)
)
PATRICIA E. DOWHOWER,)
a/k/a BETH DOWHOWER,)
and CONNI OHLER,Defendants.)

No. 78-C-568-B

NOTICE OF DISMISSAL

COMES now the Plaintiff herein, DOMINIQUE ANNE HESS, by and through her counsel herein, and dismisses the above styled and numbered action with prejudice to refiling.

DATED this 1st day of February, 1979.

DOMINIQUE ANNE HESS

BUTLER, STEINKE & LINGER
Counsel for Plaintiff

By: 

JAMES C. LINGER
1710 South Boston Avenue
Tulsa, Oklahoma 74119
#585-2785