

CLOSED

FILED

OCT 20 1992

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

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STOREBRAND INSURANCE CO.,)
(U.K.) LTD.,)
)
Plaintiff,)
)
vs.)
)
I.P.I. SERVICES, INC.,)
et al.,)
)
Defendants.)

No. 91-C-597-E

ENTERED ON DOCKET
DATE OCT 20 1992

ORDER
AND JUDGMENT

The Court has before it for consideration Plaintiff's Motion for Summary Judgment. Summary judgment is authorized if the movant establishes that there is no genuine dispute about any material fact and that as a matter of law he is entitled to judgment. Fed.R.Civ.P. 56(c). Summary judgment cannot be awarded when there exists a genuine issue as to a material fact. Adickes v. Kress, 90 S.Ct. 1598 (1970).

Factually, Defendants without consent, physically converted personal property of TDW for their own use. Defendants contend T. D. Williamson ("TDW"), the Plaintiff in the underlying state court case, was injured as a result of Defendants' advertising and therefore there is coverage under the Storebrand policy ("policy"). In response Plaintiff asserts: (1) no advertising injury resulted from advertising activities, and therefore there is no coverage under the facts pled by TDW; and (2) Defendants' failure to timely file written notice with Plaintiff is grounds barring coverage.

In determining whether coverage exists under the policy, the

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Court must first examine TDW's original complaint ("complaint") filed in state court. Upon review, the court finds the complaint, on its face, makes no reference by name or description to any advertising injury; rather, the gravamen of the complaint was for the theft of trade secrets which did not arise out of the Defendants' "advertising activities." Madison v. Grasant Manufacturing Co., 1990 WL 13290 (W.D.N.Y.).

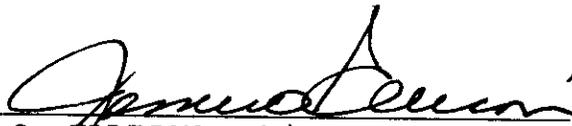
In addition, there is no casual connection between the advertising injury and Defendants' advertising activities; here, Defendants' advertising activities were implemented after the theft and therefore incidental to Defendants' conduct which caused the injury. Bank of the West v. The Superior Court, 833 P.2d 545 (Cal. 1992). Analogous to the reasoning of Bank, the Court is convinced that Defendants' conduct does not constitute "unfair competition" or "piracy" within the policy language. The policy language is unambiguous and coverage is not warranted.

Lastly, the Court finds Defendants failed to give timely notice under the policy. Alfalfa Electric Corp., Inc. v. Travelers Indemnity Co., 376 F.Supp. 901 (W.D. Okla. 1973). Such a delay is inherently prejudicial as a matter of law. Cotton States v. Int. Surplus Lines, Inc., 652 F.Supp. 851 (N.D.Ga. 1986).

After careful review of the record, the Court finds coverage for Defendants under said policy is not warranted. Defendants' conduct did not arise out of Defendants' advertising activities. Accordingly, there is no coverage for theft of trade secrets under said policy.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Summary Judgment is hereby GRANTED.

ORDERED this 20th day of October, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

CLOSED
ENTERED ON DOCKET

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA DATE ~~OCT 20~~ 1992

MELISSA STITES, BY
NEXT FRIEND TAMMY STITES,

Plaintiff,

vs.

OKLAHOMA DEPARTMENT OF HUMAN SERVICES;
BENJAMIN DEMPS JR., DIRECTOR OF
OKLAHOMA DEPARTMENT OF HUMAN SERVICES,

Defendants.

Case No. 91-C-497-B

FILED

OCT 15 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

JUDGMENT

Pursuant to the Order entered October 15, 1992, sustaining the defendants' Motion for Summary Judgment and denying the plaintiff's Motion for Summary Judgment, the Court hereby enters judgment in favor of the defendants, the Oklahoma Department of Human Services and Benjamin Demps Jr., the Director of the Oklahoma Department of Human Services, and against the plaintiff Melissa Stites, by Next Friend Tammy Stites. Costs are assessed against the plaintiff if timely applied for pursuant to Local Rule 6. The parties are to pay their own respective attorney fees.

IT IS SO ORDERED this 15th day of October, 1992


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

of Human Services.

5. [Neither] Melissa Stites nor anyone on her behalf filed a written application for services under the "waivered services" program.

6. Melissa Stites made an oral request for services under the Oklahoma Medicaid's "waivered services" program on March 7, 1990.

7. On March 7, 1990, DHS officials were told that Melissa Stites was not mentally retarded.

8. On March 27, 1990, DHS officials responded to the oral request for services stating:

At this time, the State of Oklahoma limits recipients of waived services to people who have been determined to be mentally retarded. Mental retardation is defined as a condition characterized by significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

In talking with Melissa's mother, if it were determined she did not have mental retardation, we normally would not continue with the application process.

If there is something to show Melissa would meet our criteria for Waivered Services, she may contact us and we will forward her the application packet.

9. [Neither] Melissa Stites nor anyone on her behalf has filed an administrative appeal regarding the decision DHS made on March 27, 1990.

10. Services provided by DHS under the Medicaid Act are solely limited to those contained in DHS's State Plan for assistance.

11. Services provided by DHS under its Waivered Services Plan are limited to those services enumerated in DHS's Waivered Services Plan.

12. The services DHS failed to provide are those services Melissa

Stites and Tammy Stites requested on March 7, 1990.

The plaintiff contends that DHS's refusal to provide Oklahoma Medicaid's Home and Community Based Waivered Services program (hereinafter "Waivered Services") to her constitutes discrimination solely on the basis of handicap in violation of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 et seq.¹ She also asserts that DHS's failure to provide the services to her is in violation of the definition of developmental disability contained in the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6001(1)-(5) (1988).

Pursuant to Fed.R.Civ.P. 56, summary judgment is appropriate when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); Widon Third Oil and Gas v. Fed. Deposit Ins. Corp., 805 F.2d 342, 345 (10th Cir. 1986). cert. denied 480 U.S. 947 (1987). In Celotex, it is stated:

"[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

¹ The Office for Civil Rights made a determination that DHS did not violate § 504 of the Rehabilitation Act in denying services to the plaintiff. When this finding was issued the plaintiff dismissed her action against the United States Department of Health and Human Services and now maintains the action against only Oklahoma DHS and its director.

477 U.S. at 322.

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material fact ..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to material facts." Matsushita v. Zenith, 475 U.S. 574, 585-86, 106 S.Ct. 1348, 1355, 89 L.Ed.2d 538 (1986).

A party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials of his pleadings, but must affirmatively prove specific facts showing there is a genuine issue of material fact for trial. In Anderson v. Liberty Lobby, Inc., supra the Court stated that:

"The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff."

Anderson, 477 U.S. at 252.

The Tenth Circuit requires "more than pure speculation to defeat a motion for summary judgment" under the standards set by Celotex and Anderson. Setliff v. Memorial Hosp. of Sheridan County, 850 F.2d 1384, 1393 (10th Cir. 1988).

Plaintiff's allegation that DHS's denial of Waivered Services was in violation of § 504 of the Rehabilitation Act must fail because she cannot meet her burden of proof on this issue. In this case the only services that the plaintiff sought were those provided for in the Oklahoma Medicaid Act's Waivered Services plan. In Oklahoma one must be mentally retarded in order to receive Waivered Services.

Mental retardation as a requirement for eligibility to receive

Waivered Services is specifically allowable. If an "agency furnishes home and community-based services ... the waiver request must ... [b]e limited to one of the following target groups or any subgroup thereof that the state may define: ... (ii) Mentally retarded or developmentally disabled, or both." 42 C.F.R. 441.301(b)(6) (1992).

The Tenth Circuit has stated:

"The standards for determining the merits of a case under § 504 are contained in the statute. First, the statute provides that the individual in question must be an 'otherwise qualified handicapped individual;' second, the statute provides that a qualified handicapped individual may not be denied admission to any program or activity or denied the benefits of any program or activity receiving federal financial assistance 'solely' on the basis of handicap."

Pushkin v. Regents of Univ. of Colorado, 658 F.2d 1372, 1384 (10th Cir. 1981).

The parties agree that the plaintiff is handicapped; however she is not a "qualified handicapped person" for purposes of receiving the Waivered Services she requested. A "qualified handicapped person" is defined as a "person who meets the essential eligibility requirements for the receipt of such services." 45 C.F.R. 84.3 (k)(4) (1992). The plaintiff does not meet the eligibility requirements for receipt of aid from Oklahoma's Waivered Services plan because she is not mentally retarded. Plaintiff's rejection was clearly not based solely on her handicap. Therefore, as a matter of law, there has been no violation of § 504 of the Rehabilitation Act.

The plaintiff has also failed to meet her burden of proof on her claim that DHS violated the definition of Developmental

Disability contained in the Developmental Disability Assistance and Bill of Rights Act. 42 U.S.C. § 6001(5) (1988). The plaintiff cites no authority for this contention. The Court finds that the defendants are correct in their assertion that the Developmental Disability Assistance and Bill of Rights Act does not require state funding of medical care to the developmentally disabled. In addition, the Court agrees that the Act does not command a change in the Medicaid Act. Finally, their assertion that the Act's definition section does not create substantive rights the Plaintiff may sue upon is also correct. Defendants' reliance on the case of Pennhurst State School & Hosp. v. Halderman, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981) is appropriate and unchallenged by the plaintiff.

The Plaintiff, who is not a pro se plaintiff, did not set forth sufficient evidence in her Motion for Summary Judgment to support a judgment in her favor. The brief in support of her motion merely mirrors the allegations in her complaint without any substantiation. "The moving party carries the burden of showing beyond a reasonable doubt that it is entitled to summary judgment" Eaton v. Jarvis Prod. Corp., 965 F.2d 922, 925-26 (10th Cir. 1992) citing Hicks v. City of Watonga, 942 F.2d 737, 743 (10th Cir. 1991) (quoting Ewing v. Amoco Oil Co., 823 F.2d 1432, 1437 (10th Cir. 1987)). The plaintiff has completely failed to meet this burden.

It should be noted that the plaintiff filed her Motion for

Summary Judgment out of time.² In addition, the defendants' timely Motion for Summary Judgment was unopposed by the plaintiff. Rule 15A of the United States District Court for the Northern District of Oklahoma provides that failure to file opposing memoranda within the proper time frame "will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings." Notwithstanding the plaintiff's failure to adequately prosecute this matter, the Court has analyzed the pertinent federal law and applied it to the uncontested facts, concluding that the defendants' motion should be granted.

For the reasons stated above, the Motion for Summary Judgment of the defendants, DHS and Benjamin Demps, Jr. is hereby SUSTAINED. For the reasons stated above, the Motion for Summary Judgment of the plaintiff, Melissa Stites is hereby DENIED.

A separate Judgment will be filed contemporaneous herewith in keeping with the provisions of this Order.

IT IS SO ORDERED this 15th day of October, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT COURT

² On March 2, 1992 this Court filed an order mandating that each party submit motions for summary judgment by no later than June 30, 1992. The plaintiff did not file her motion until July 31, 1992.

DATE ~~OCT 20 1992~~

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

OCT - 8 1992
FILED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA
M.W.

INDEPENDENT SCHOOL DISTRICT NO. 1)
OF PAWNEE COUNTY, OKLAHOMA a/k/a)
THE PAWNEE PUBLIC SCHOOLS,)
)
Plaintiff,)
)
vs.)
)
DEBRA A. EAVES)
)
Defendant.)

CASE NO. 92-C-466-B/

O R D E R

This matter comes on for consideration of Plaintiff's, Independent School District No. 1 of Pawnee County, Oklahoma a/k/a The Pawnee Public Schools (hereinafter Pawnee School), Motion To Remand.

On May 5, 1992, Pawnee School filed a state claim (abuse of process) action against the parent of several former Pawnee Public School students, alleging the parent engaged in a pattern of harassment and intimidation against Pawnee School and its employees under the guise of seeking a due process hearing pursuant to §1415 of the Education of the Handicapped Act.¹ Pawnee School alleged the parent, Defendant Debra Eaves (Eaves), delayed the due process hearing which had been initially requested by Eaves, failed to cooperate with the due process hearing examiner and refused to provide information requested under the due process hearing. Pawnee School seeks "damages in excess of \$3500 for attorney fees, and

¹ 20 U.S.C. §1400 *et seq.*

8

costs in the defense of the due process hearing". Pawnee School also sought punitive damages based upon an allegation that Eaves had "abused the process of the Education of the Handicapped Act in every school district in which she has resided for the same purpose of intimidate(sic), and harassment".

On May 28, 1992, Eaves removed the action to this Court, citing 28 U.S.C. §1331 (federal question) as a jurisdictional basis. On July 2, 1992, Pawnee School filed its Motion To Remand, arguing no federal question exists and the Court therefore lacks subject matter jurisdiction.

A case is removable only if the Plaintiff's Petition establishes its removability. Oklahoma Tax Commission v. Graham, 109 S.Ct. 1519 (1989). The mere possibility of a federal issue or question is not sufficient. Graham, *supra*. The well-pleaded complaint can, in a proper case, defeat federal question jurisdiction. Caterpillar Inc. v. Williams, 107 S.Ct. 2425 (1987).

Defendant's Notice For Removal alleges Eaves "is entitled to remove this action inasmuch as the underlying action against her arises from an exercise by the defendant of a right established by the Laws of the United States, the exercise of which is guaranteed to said defendant by federal law and the Constitution of the United States of America, and further that the said State Court Action in retaliation for the exercise of a federally guaranteed right, also, gives rise to a cause of action in favor of the defendant back against the said plaintiff by way of counterclaim and cross-claims against third party defendants retaliating against the plaintiff

for exercising her rights and as next friend the rights of her minor children, which counterclaim and cross-claims against third party defendants, arise under federal law . . .". Eaves has filed no answer, counter-claim or cross-claim.

It is black-letter law that a removing party may not bootstrap federal question jurisdiction through the medium of an answer, counterclaim or cross-claim. Essentially, federal question jurisdiction, for the purposes of removal, rises and falls upon the allegations of the state court petition. Graham, *supra*.

In the instant case Pawnee School's Petition does reference a federal act, the Education of the Handicapped Act (EHA). However, it does not allege a cause of action against Eaves under that act. Rather, Pawnee School alleges that Eaves, under the guise of exercising her rights (and those of her children) under such act abused the legal process to the considerable damage and expense of Pawnee School. However, Pawnee School seeks no federal based claim.

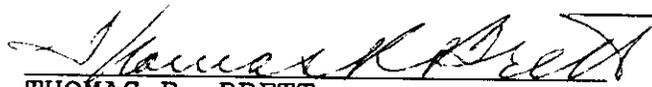
Abuse of process is a state claim which, had Pawnee School alleged a (federal jurisdiction) claim under EHA, would have been appropriately characterized as a pendent state claim. In that instance the abuse of process claim would have piggy-backed the federal claim under the recently enacted Supplemental Jurisdiction provisions found in 28 U.S.C. §1367 *et seq.*

Pawnee School has brought an action, under a tort theory, for recovery of its alleged losses based upon Eaves alleged abuse of

process conduct², which conduct Plaintiff claims arose during Eaves pursuit of rights under a federal disability statute. The Court concludes such state claim does not involve a federal question. Absent same, this Court has no subject matter jurisdiction.

The Court concludes Pawnee School's Motion To Remand should be granted and the same is hereby REMANDED to the District Court for Pawnee County, State of Oklahoma.

IT IS SO ORDERED this 8th day of October, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² The Court, although not addressing the merits of the abuse of process claim, concludes Pawnee School has a heavy burden to establish its claim under this tort theory. Abuse of process, under Oklahoma cases, typically involves misuse of, for example, the garnishment process (*General Supply Co. v. Pinnacle Drilling Fluids, Inc.*, 806 P.2d 71, 1991), the discovery process (*Big Five Community Services, Inc. v. Billy Jack, et al*, 782 P.2d 412, 1989), alleged process issued for an ulterior purpose (*Tulsa Radiology Associates, Inc. v. Hickman*, 683 P.2d 537 1984), and the like.

CLOSED

FILED

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

OCT 16 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

WESTSTAR BANK, N.A.,
Plaintiff,

vs.

FRANK VIRGINTINO and
PACK ST. CLAIR
Defendants.

Case No. 91-C-816-B

EOD 10/20/92

ORDER

Before the Court for consideration is the Plaintiff's Request to Reopen or Alternatively Dismiss Without Prejudice. An Order of Administrative Closure was entered in this case on July 25, 1992, staying proceeding for 60 days to allow the parties to work on a settlement. Prior to the expiration of the 60 days, the Plaintiff filed this motion informing the Court that a settlement has been reached with Defendant Frank Virgintino and asking the Court to dismiss this action without prejudice as to Defendant Pack St. Clair, who has no objection to this motion. The Court concludes that the Plaintiff's motion to dismiss this action without prejudice should be and the same is hereby GRANTED.

IT IS SO ORDERED THIS 16th DAY OF OCTOBER, 1992.

Thomas R. Brett
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

CLOSED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE OCT 20 1992

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 SHERRY MCKNIGHT,)
)
 Defendant.)

Civil Action No. 92-C-320-E

FILE

OCT 20 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DEFAULT JUDGMENT

This matter comes on for consideration this 20 day of October, 1992, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, SHERRY MCKNIGHT, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, SHERRY MCKNIGHT, was served with Summons and Complaint on August 21, 1992. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. 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 the Defendant, SHERRY MCKNIGHT, for the principal amount of \$2003.99, plus accrued interest of \$795.62 as of October 16, 1992, plus interest thereafter at the rate of 3 percent per annum until judgment, plus

costs in the amount of \$87.00, a surcharge of 10% of the amount of the debt in connection with the recovery of the debt to cover the cost of processing and handling the litigation and enforcement of the claim for this debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the current legal rate of 3.13 percent per annum until paid, plus costs of this action.

United States District Judge

Submitted By:



KATHLEEN BLISS ADAMS, OBA# 13625
Assistant United States Attorney
3900 United States Courthouse
333 West 4th Street
Tulsa, Oklahoma 74103
(918) 581-7463



ENTERED

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

FILED

OCT 20 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MOUNTAIN STATES FINANCIAL)
RESOURCES, CORP.,)
)
Plaintiff,)
)
vs.)
)
GENE P. DENNISON,)
)
Defendant.)

No. 91-C-439-E

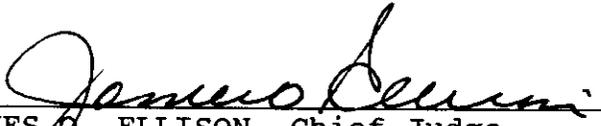
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DATE OCT 20 1992

O R D E R

Before the Court is Plaintiff's Application to Tax Attorney's Fees against Defendant. No objections thereto have been filed by Defendant. The Court has considered the submissions of Plaintiff in support of its Application and now finds that, pursuant to 12 O.S. §936, the Application should be granted.

IT IS THEREFORE ORDERED that Plaintiff be and it hereby is awarded attorney's fees in the sum of Five Thousand Three Hundred Fifty-four and 25/100 Dollars (\$5,354.25).

ORDERED this 19th day of October, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

25

CLOSED

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

F I L E D

OCT 19 1992

Richard L. Anderson, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

LARRY W. DUNN,

Plaintiff,

v.

LOUIS W. SULLIVAN, M.D.,
SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

91-C-717-E

EOD 10/20/92

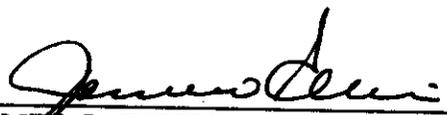
ORDER

The court has for consideration the Findings and Recommendations of the Magistrate Judge filed September 22, 1992, in which the Magistrate Judge recommended that the Secretary's decision that claimant was not disabled be affirmed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Findings and Recommendations of the Magistrate Judge should be and hereby are affirmed.

It is therefore Ordered that the Secretary's decision that claimant was not disabled should be and is hereby affirmed.

Dated this 16th day of October, 1992.



JAMES O. ELLISON, CHIEF
UNITED STATES DISTRICT JUDGE

CLOSED

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

LARRY BANGS, individually,)
)
 Plaintiff,)
)
 vs.)
)
 JACK J. KING, individually; ROBIN)
 A. KING, individually; KING)
 ASSOCIATES, INC., an Oklahoma)
 corporation,)
)
 Defendants.)

ENTERED ON DOCKET
DATE OCT 20 1992

Case No. 91-C-362-E

F Y E R D
1 1992

JUDGMENT

Now on this the 24th day of September, 1992, the above-entitled cause came on for oral argument respecting the parties' Proposed Findings of Fact and Conclusions of Law, and for the entry of judgment herein. Plaintiff was present and represented by his counsel, Theodore Q. Eliot. Defendants were present and represented by their counsel, Donald R. Bradford. The Court, having considered the evidence adduced at trial, and having heard the argument of counsel, makes the following Findings of Fact and Conclusions of Law:

1. This Court has subject matter jurisdiction hereof pursuant to 28 U.S.C. §1332 and in personam jurisdiction of the parties hereto. The venue of this action is properly laid in this Court.

2. In March 1984 plaintiff agreed to loan the defendants, and each of them, \$6,000 per month to cover their living expenses and the costs of starting a new business. The loan was to the defendant Jack King, the defendant Robin King and to a business entity to be created, King Associates, Inc. The Court finds that all defendants are liable for the loans made by plaintiff to defendants.

3. The Court finds that the statute of frauds, 15 Okla. Stat. §136 (1991), does not constitute a defense to plaintiff's recovery of the monies loaned to the defendants because the loan agreement, conceivably, could have been performed within one year.

4. The Court finds that plaintiff's claim for recovery on the loan agreement is not barred by the applicable statute of limitations.

5. The Court finds that there was no agreement between the parties as to interest or out-of-pocket costs. The parties did not mention interest.

6. The Court finds that 15 Okla. Stat. §263 (1991) is applicable to this case. It provides as follows:

Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing.

The Court finds that there is no writing expressly stipulating that the loan was to be interest free. Therefore, interest is presumed.

7. The Court finds that a reasonable rate of interest shall be applied with respect to the loan agreement. That reasonable rate of interest shall be the prime lending rate of the Bank of California, Los Angeles office, from the date of the first advance by plaintiff to defendants in March 1984.

8. The Court finds that the principal debt owing from the defendants to the plaintiff is \$11,577.44. The Court finds that interest on said amount should be paid to the plaintiff by the defendants from the date of the first advance to defendants March 29, 1984, to date of judgment at the aforesaid prime rate on simple interest. Compound interest is not to be charged. The total accrued interest to date of judgment is, therefore, \$9,070.33. Plaintiff is entitled to post-judgment interest at the rate of 3.13% per annum until this Judgment is paid.

9. The Court further finds that plaintiff has failed to carry his burden of proof with respect to his Second Cause of Action. The Court finds that the plaintiff is bound by Oklahoma corporate law on this claim. The defendant King Associates, Inc. is entitled to judgment on this claim.

10. The Court finds it shall retain jurisdiction of the defendant Jack King's counterclaim. That controversy shall be the subject of a separate order to be entered herein. However, the retention of jurisdiction as to that claim shall in no way affect the finality, or appealability of this Judgment and this Court finds that, in accord with Federal Rule of Civil Procedure No. 54(b), there is no just reason for delaying the entry of this Judgment on the loan and plaintiff's Second Cause of Action.

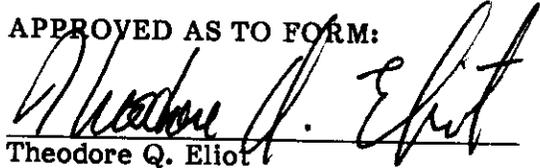
The aforesaid findings shall constitute the Court's Findings of Fact and, if mixed with conclusions of law, shall also constitute its Conclusions of Law herein.

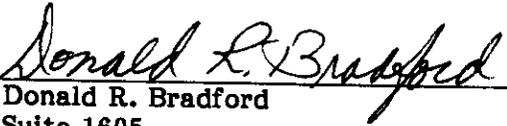
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against all defendants, jointly and severally, in the principal sum of \$11,577.44, together with accrued simple interest thereon from March 29, 1984 to September 24, 1992, of \$9,070.33. The Court reserves any finding or conclusion as to the parties' rights to costs in these actions until applications therefor are filed. This Judgment shall bear interest at the rate of 3.13% per annum until it is paid. Plaintiff is entitled to no relief on his Second Cause of Action herein and judgment is entered thereon for the defendant King Associates, Inc.

S/ JAMES O. ELLISON

United States District Court Judge

APPROVED AS TO FORM:


Theodore Q. Eliot
Gable & Gotwals
2000 Fourth National Bank Building
15 West Sixth Street
Tulsa, Oklahoma 74119-5447
Attorneys for Plaintiff


Donald R. Bradford
Suite 1605
320 South Boston Avenue
Tulsa, Oklahoma 74103
Attorney for Defendants

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

FILED

OCT 19 1992

RICHARD M. LAWRENCE
CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

ATLANTIC RICHFIELD COMPANY,)
)
Plaintiff,)
)
v.)
)
AMERICAN AIRLINES, INC., Et. Al.,)
)
Defendants.)

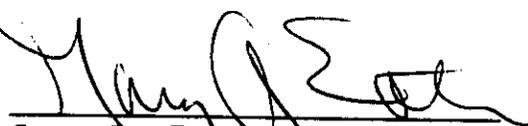
Consolidated Cases Nos.

89-C-868-B
89-C-869-B
90-C-859-B

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Now on this 19th day of October, 1992, all parties hereto please take notice that pursuant to Rule 41 (a)(1) of the Federal Rules of Civil Procedure and hereby dismisses without prejudice this action against the following Defendants only, and expressly reserves its causes of action against all other Defendants, not heretofore dismissed from this action:

BALLENTINE PRODUCE, INC.



Gary A. Eaton, OBA #2598
Attorney at Law
1717 East 15th St.
Tulsa, OK 74104
918 743 8781

CERTIFICATE OF MAILING

The undersigned certifies that October 9, 1992, a true and correct copy of the above instrument / pleading was mailed with postage prepaid to the following persons:

Mr. Larry Gutteridge, Co-Counsel for Plaintiff, 633 West 5th Street, 35th Floor, Los Angeles, California 90071

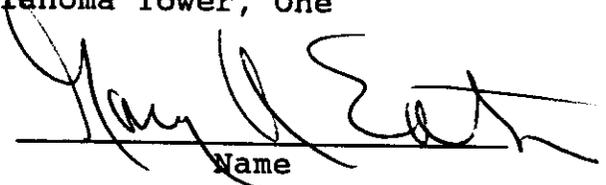
Mr. William Anderson, Attorney at Law and Liaison Counsel and Co-Lead Counsel for Owners and Non-Operator Lessees Group, 320 South Boston Building, Suite 500, Tulsa, OK 74103

Mr. John Tucker, Lead Counsel for Non Group Generators and Transporters, 2800 Fourth National Bank Building, Tulsa, OK 74119

Mr. Steven Harris, Attorney at Law and Lead Counsel for Operators Group, Suite 260 Southern Hills Tower, 2431 East 61st Street, Tulsa, OK 74136

Mr. Charles Shipley, Attorney at Law and Settlement Coordinator, 3600 First National Tower, Tulsa, OK 74103

Ms. Claire V. Eagan, Mr. Michael Graves, and Mr. Matthew Livengood, Attorneys at Law and Lead Counsel for the Sand Springs PRP Group, 4100 Bank of Oklahoma Tower, One Williams Center, Tulsa, OK 74172


Name

CLOSED

ENTERED ON DOCKET
OCT 19 1992
DATE _____

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

SHIRLEY D. BOUTZ,)
)
 Plaintiff,)
)
 vs.)
)
 THE CITY OF SAPULPA, OKLAHOMA,)
)
 Defendant.)

Case No. 91-C-328-C

FILED

OCT 15 1992

STIPULATION OF DISMISSAL WITH PREJUDICE Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

All the parties to this action hereby stipulate that any and all causes of action and claims against the Defendant, City of Sapulpa, are hereby dismissed with prejudice.


SHIRLEY D. BOUTZ, PLAINTIFF

By: 
CHARLES R. COX
1432 S. Carson
Tulsa, OK 74119

ATTORNEY FOR PLAINTIFF,
Shirley D. Boutz

ELLER AND DETRICH
A Professional Corporation

By: 
JOHN H. LIEBER, OBA #5421
2727 East 21st Street
Suite 200, Midway Building
Tulsa, Oklahoma 74114
(918) 747-8900

ATTORNEY FOR DEFENDANT,
The City of Sapulpa

CLOSED

FILED

OCT 16 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

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

SLURRY EXPLOSIVES CORPORATION,)
)
 Plaintiff,)
)
 v.)
)
 AUSTIN POWDER COMPANY, INC.,)
 SECO, INC., and)
 AUSTIN POWDER CANADA,)
)
 Defendants.)

No. 92 C 141 E

OCT 19 1992

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, it is hereby stipulated by the parties herein, that the causes of action for Patent Infringement, contained in paragraphs 7. through 21. of the First Amended Complaint filed in the above-entitled action be dismissed with prejudice.

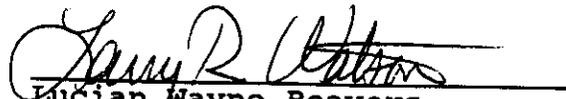
The parties further stipulate that the causes of action for Breach of Contract by Austin Powder Canada contained in paragraphs 22. through 30.(b) only of the First Amended Complaint filed herein, be dismissed with prejudice.

The parties further stipulate that the cause of action for Breach of Contract by Austin Powder Canada, contained in paragraph 30(c) of the First Amended Complaint filed herein, be dismissed without prejudice.

Each party will bear its own costs and attorney fees.


Jerry J. Dunlap
Mary M. Lee
DUNLAP, CODDING & LEE, P.C.
9400 N. Broadway, Suite 420
Oklahoma City, OK 73114
(405) 478-5344

Attorneys for Plaintiff


Lucian Wayne Beavers
Larry R. Watson
LANEY, DAUGHERTY, HESSIN
& BEAVERS
Two Leadership Square
211 N. Robinson, Suite 1400
Oklahoma City, OK 73102

Kenneth R. Adamo
JONES, DAY, REAVIS & POGUE
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114

Attorneys for Defendants

CLOSED

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

FILED

OCT 16 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

LINDA PARISH,)
)
 Plaintiff,)
)
 vs.)
)
 BANCOKLAHOMA CORP., d/b/a)
 BANK OF OKLAHOMA, CITY PLAZA,)
 now known as Bank of Oklahoma,)
 N.A.)
)
 Defendant;)
)
 and)
)
 LINDA PARISH,)
)
 Plaintiff,)
)
 vs.)
)
 BANK OF OKLAHOMA N.A., SUCC.)
 OF BOK, CITY PLAZA.)
)
 Defendant.)

No. 90-C-202-E

No. 91-C-884-E ✓

EOD 10/19/92

ORDER

COMES NOW before the Court the matter of whether this Court was prohibited under law from exercising its jurisdiction in granting (docket #24) the parties' Joint Motion for Reconsideration (docket #19) after this Court had already entered an Order of Remand (docket #17). For the reasons stated herein, the Court is compelled to conclude it was without jurisdiction to reconsider its Order of Remand.

The procedural history of this case requires careful review. On October 5th, 1990, this Court entered an Order remanding Case

No. 91-C-884-E to state court for further adjudication. Seventeen days later the parties filed a Joint Motion for Reconsideration which was supported by evidence suggesting that Plaintiff had decided to pursue her federal remedies. Based on the jointly submitted motion and evidence, the Court determined it was vested with jurisdiction. Only after a change of Plaintiff's counsel and nearly two years of litigation did Plaintiff raise the question of whether this court was properly vested with jurisdiction to reconsider its Order of Remand. Nonetheless, Plaintiff has now made it clear that she seeks only to pursue her state court remedies.

Although an order remanding a case to the State court from which it was removed pursuant to 28 U.S.C. §1443 can be reviewed, Robertson v. Ball, 534 F.2d 63 (C.A.Tex 1976) as can an order of remand based on grounds other than that the action was "removed improvidently and without jurisdiction", the general rule is that where a district court decides to remand a case on grounds of improvident removal and lack of jurisdiction, the order of remand is not reviewable on appeal or otherwise. 28 U.S.C. §1447(d) as interpreted in Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336, 96 S.Ct. 584, 46 L.Ed.2d 542 (1976). Not only is appellate review of a remand order generally barred, but also reconsideration of that order is improper. See Three J. Farms, Inc. v. Alton Box Bd. Co., 609 F.2d 112 (C.A.S.C. 1979), cert. denied, 445 U.S. 911, 100 S.Ct. 1090, 63 L.Ed.2d 327.

The philosophy behind this rather strict approach was well stated in Roche v. American Red Cross, 680 F.Supp 449, 451 (D.Mass.

1988) as follows:

A district court's decision to remand a case to state court is not reviewable on appeal or otherwise. Therefore, courts should be cautious about remand. Nevertheless, the trend of decisions is that removal statutes will be strictly construed and that doubts should be resolved against removal. There are two reasons for this trend. First, a plaintiff's choice of forum should not be denied lightly. Second, major inefficiencies result where a district court's decision that removal was proper is ultimately overturned on appeal after a full trial on the merits. [Citations Omitted].

After careful review of the Order of Remand (docket #17) entered by this Court on the 5th of October, 1990 and the circumstances thereof, this Court can only conclude that reconsideration of that Order was improper.

IT IS THEREFORE ORDERED that both Case No. 90-C-0202-E and Case No. 91-C-884-E be remanded for further adjudication thereof.

ORDERED this 15th day of October, 1992.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
OCT 19 1992

ENTERED

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

FILED

OCT - 6 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

SANDRA L. REED,
Plaintiff,

vs.

JAMES S. REED,
Defendant.

}
}
}
}
}
}
}
}

No. 91-C-375-B

ORDER

Before the Court is the motion of the Defendant James S. Reed, for attorney fees. Plaintiff Sandra L. Reed brought this action alleging in Count One breach of a Marital Settlement Agreement (the "Agreement") entered into when the parties divorced in 1985. Plaintiff also brought a second count alleging contempt of court on defendant's part for breaching the Agreement and thereby breaching the Divorce Decree.

Plaintiff filed her action in the District Court for Tulsa County. Thereafter, Defendant removed the action to this Court based upon diversity of citizenship, Defendant now being a resident of Florida.

Defendant moved for summary judgment as to Count One, which the Court ultimately granted, and for dismissal for failure to state a claim as to Count Two, which the Court also granted with the concurrence of Plaintiff as to the dismissal of Count Two.

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The pertinent facts as to Count One were that during divorce negotiations, plaintiff agreed that, in return for no alimony demand on her part, defendant would convey to plaintiff the "Stramiello" Note and Mortgage free of any interest of defendant. The Stramiello Note was originally made in favor of plaintiff and defendant as tenants in common in the amount of \$200,000.00. In December, 1982, defendant had assigned his interest in the Stramiello Note and Mortgage to Stillwater National Bank (the "Bank") as security for a loan. The facts of the assignment and loan were known to plaintiff at the time of the divorce.

The Agreement also provided that defendant would be responsible for the "Hi-Point Indebtedness", a principal debt of \$1,161,266.39 owed to the Bank by Hi-Point Isle Limited, an Oklahoma corporation, which debt had been personally guaranteed by both plaintiff and defendant.

Ultimately, defendant failed to pay the debt secured by the Stramiello Note and the Bank foreclosed its security interest in his 50% interest. The Court concluded that the language of the agreement was clear that plaintiff was entitled to receive the Stramiello Note and Mortgage free of any claim, right or interest of the defendant, not the Bank. Since it was undisputed that plaintiff knew of the Bank's interest when the Agreement was entered into, the Court concluded no possibility of fraud or

misunderstanding existed and further concluded that defendant did not breach the Agreement in that respect.

Defendant also defaulted on the Hi-Point indebtedness and the Bank sued plaintiff and defendant upon their personal guaranties. The Bank ultimately released the personal guaranties in a deed in lieu of foreclosure transaction. The Bank initially raised all its claims in a Delaware County petition. The claim regarding defendant's "personal loan" of \$100,000.00 was dismissed because of improper venue and refiled in Payne County. It apparently was the Payne County action which resulted in the loss to plaintiff of defendant's one-half interest in the Stramiello Note.

Plaintiff argued that defendant's characterization of the \$100,000.00 as a personal loan was misleading, because the money was immediately pledged to Hi-Point; thus, the provision in the Agreement that defendant shall be responsible for the "Hi-Point indebtedness" is ambiguous, and the term should include the \$100,000.00. The Court concluded that it was unnecessary to resolve the ambiguity question, because the Agreement contained no provision which would hold plaintiff harmless for the Hi-Point indebtedness, however that indebtedness was defined.

Defendant seeks attorneys fees based upon his status as a prevailing party.

The Agreement provided as follows:

Final Expression: This Agreement represents the entire and only agreement that there is between the parties and

it is agreed that in any action filed in any Court to enforce or avoid the provisions of this Agreement, the prevailing party shall be entitled to his costs, including a reasonable attorneys' fee, arising out of said action or any breach of this Agreement.

This matter is before the court based upon diversity of citizenship. In a diversity action the right to recover attorney's fees and costs depends upon state law. Power Lift, Inc. v. Weatherford Nipple-Up Systems, Inc., 871 F.2d 1082 (Fed.Cir.1989); Rockwood Ins. Co. v. Clark Equip. Co., 713 F.2d 577, 579 (10th Cir.1984). Oklahoma follows the "American Rule" which provides that attorneys' fees will be awarded if authorized by contract or statute. Kay v. Venezuelan Sun Oil Co., 806 P.2d 648 (Okla.1991); Walden v. Hughes, 799 P.2d 619 (Okla.1990). The Court concludes that Defendant, as the prevailing party, is entitled to an award of reasonable attorneys' fees.

Plaintiff challenges Defendant's motion for attorneys' fees essentially on the grounds that the records submitted are not sufficiently specific to ascertain reasonableness; the records show travel time from Vinita at the attorney's hourly rate; the records show duplication of services by the Defendant's law firm; and the requested fee amount (\$7,767.50) is not warranted by the type case involved.

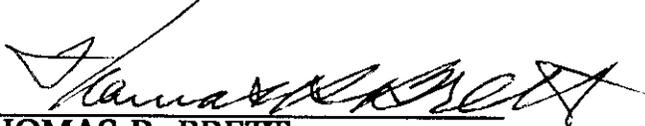
The Court notes Plaintiff sought damages in Count One of \$70,140.27 thereby warranting the Court's conclusion that the amount of the requested attorneys' fees in relationship to the

relief sought does not operate to shock the conscience of the Court. Further, the amount of attorney time for the items listed does not, in the Court's opinion, suggest unreasonableness. However, several entries appear where Defendant has charged attorney time for travel time to Tulsa to file a pleading in the case. On December 16, 1991, Defendant charges 1.50 hours of attorney time to have RLR (attorney Robert Lee Rode whose billing rate is \$95.00 per hour) travel to Tulsa "to file documents in Northern District" and "deliver copies to opposing counsel's office". Also, on February 10, 1992, RLR travelled to Tulsa to "file response to Application For Extension Of Time returned by Court Clerk of TJM's signature" at a billed time of 1.00 hours.

The Court concludes Defendant is entitled to an award of attorneys' fees in the amount of \$7,767.50, less the sum of \$237.50 for attorneys' fee travel time to file documents, for a net award of \$7,530.00.

A Judgment in accord with this Order will be entered simultaneously herein.

IT IS SO ORDERED this 6th day of October, 1992.


THOMAS R. BRETT
United States District Judge

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

MARY JANETTE CARR, and JOSEPH E.
and IRMA L. CARR, Guardians Ad
Litem for BRANDEN CARR and
STACI CARR, Minors,

Plaintiffs,

vs.

AETNA LIFE INSURANCE COMPANY,
a Delaware Corporation,

Defendant.

Case No. 91-C-846-E

EUD 10/19/92

FINAL ORDER AND DISTRIBUTION OF FUNDS

On this 13th day of October, 1992, this Court finds that all issues have been resolved in these proceedings except for (1) the Court's approval of the annuities to be actually purchased in this case for the benefit of the two minor children, Branden James Carr and Staci Len Carr, and (2) the distribution of \$54,297.48 interplead by Aetna Life Insurance Company with this Court on the 10th day of March, 1992. This Court finds that the annuities to be purchased in this case are slightly different from those set forth in the parties' Joint Application to Approve Settlement Agreement and in this Court's Order Approving Settlement, and that said difference is occasioned by the seven months that have transpired since the terms were originally provided to this Court by Defendant Aetna Life Insurance Company on March 2, 1992, and because of the intervening decrease in interest rates. The Court further finds that all parties have

✓ MCM

agreed to the terms of the annuities to be purchased in this case as set forth on the attached Exhibit "A".

For good cause shown, the Court approves the annuities to be purchased in this case for the two minor children, Branden James Carr and Staci Len Carr, as set forth on Exhibit "A" attached hereto.

The Court finds that the \$54,297.48 interplead by Defendant Aetna Life Insurance Company should be and hereby is distributed as follows:

1. \$22,000.00 to purchase an Annuity for Branden James Carr;
2. \$22,000.00 to purchase an Annuity for Staci Len Carr;
3. \$6,693.36 (together with 65% of the remaining interest earnings as per paragraph 5 below) to the law firm of Chapel, Riggs, Abney, Neal & Turpen for attorneys' fees;
4. \$3,604.12 (together with 35% of the remaining interest earnings as per paragraph 5 below) to the law firm of Feldman, Hall, Franden, Woodard & Farris for attorneys' fees; and
5. After deducting the Registry Fee required by Rule 67 of the Federal Rules of Civil Procedure, 65% of the interest earnings to the law firm of Chapel, Riggs, Abney, Neal & Turpen, and 35% of the interest earnings to the law firm of Feldman, Hall, Franden, Woodard & Farris.

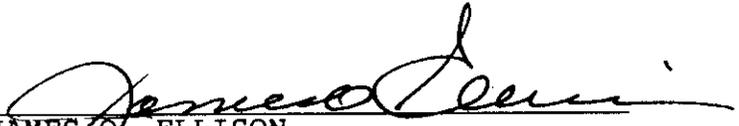
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the annuities to be purchased in this case for the two minor children as set forth on Exhibit "A" attached hereto and to be purchased pursuant to the terms of this Final Order and Distribution of Funds are hereby approved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of the United States District Court for the Northern District of Oklahoma is hereby directed on or before October 19, 1992, to:

- 1) Sign both Annuity Applications attached hereto as Exhibit "A";
- 2) Photocopy all pages of the signed Applications (including the copies of the minor childrens' birth certificates), and replace the original Exhibit "A" attached hereto with said photocopies;
- 3) Execute a check in the amount of \$44,000.00 made payable to the order of Structured Benefits Inc. and drawn on the funds interplead in this case by Defendant Aetna Life Insurance Company for the purchase of the two annuities set forth on Exhibit "A" attached hereto;
- 4) Place the original of both Annuity Applications (including the copies of the minor children' birth certificates), together with the aforesaid \$44,000.00 check, in an envelope addressed to Structured Benefits, Inc., 4830 West Kennedy Boulevard, Suite 645, Tampa, Florida 33609; seal the envelope; affix sufficient first class postage thereon; and place said envelope in the U.S. mail;
- 5) Deduct the Registry Fee from the interest earnings required by Rule 67 of the Federal Rules of Civil Procedure;

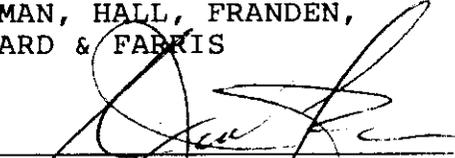
- 6) Execute a check in the amount of \$6,693.36, plus 65% of the remaining interest earnings, made payable to the order of Chapel, Riggs, Abney, Neal & Turpen and drawn on the funds interplead in this case by Defendant Aetna Life Insurance Company;
- 7) Place the aforesaid check in an envelope addressed to M. David Riggs and Douglas A. Wilson, Chapel, Riggs, Abney, Neal & Turpen, 502 West Sixth Street, Tulsa, Oklahoma 74119-1010; seal the envelope; affix sufficient first class postage thereon; and place said envelope in the U.S. mail;
- 8) Execute a check in the amount of \$3,604.12, plus 35% of the remaining interest earnings, made payable to the order of Feldman, Hall, Franden, Woodard & Farris and drawn on the remaining funds interplead in this case by Defendant Aetna Life Insurance Company;
- 9) Place the aforesaid check in an envelope addressed to R. Jack Freeman, Feldman, Hall, Franden, Woodard & Farris, 525 South Main, Suite 1400, Tulsa, Oklahoma 74103; seal the envelope; affix sufficient first class postage thereon; and place said envelope in the U.S. mail; and
- 10) File with this Court, and serve upon the parties hereto, a Certificate of Compliance certifying the date upon which the Clerk performed the duties commanded of him in this Final Order and Distribution of Funds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that counsel presenting this order shall serve a copy thereof on the Clerk of this Court or the Chief Deputy personally. Absent the aforesaid service, the Clerk is hereby relieved of any personal liability relative to compliance with this Order.


JAMES O. ELLISON
Judge of the United
States District Court

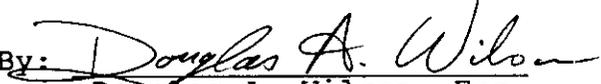
APPROVED AS TO FORM:

FELDMAN, HALL, FRANDEN,
WOODARD & FARRIS

By: 

R. Jack Freeman
525 South Main, Suite 1400
Tulsa, Oklahoma 74103
Attorneys for Plaintiffs,
Joseph E. and Irma L. Carr

CHAPEL, RIGGS, ABNEY, NEAL & TURPEN

By: 

Douglas A. Wilson, Esq.
502 West Sixth Street
Tulsa, Oklahoma 74119-1010
Attorneys for Mary Janette Carr

CARRMAord:DAW/ssp-10/12/92

First Colony Life Insurance Compa.

APPLICATION FOR

(Referred to as the Company)

~~SINGLE~~ PREMIUM SETTLEMENT ANNUITY P.O. Box 6158, Lynchburg, Virginia 24505

1. PROPOSED MEASURING LIFE M F

BRANDEN JAMES CARR
First Middle Last
3526 EAST 5TH PLACE
Residence Address

TULSA OK 74112
City State Zip Code

Birthdate: 09 / 28 / 83 (Proof of age required)
Month Day Year

Social Security No.: 444-94-0981

2. PROPOSED JOINT MEASURING LIFE M F

First Middle Last
Residence Address

City State Zip Code

Birthdate: / / (Proof of age required)
Month Day Year

Social Security No.:

3. OWNER

Full Name: U.S. DISTRICT COURT FOR NORTHERN DISTRICT OF OKLAHOMA - TRUSTEE
Address: 333 WEST 4TH STREET TULSA OK 74103 S.S. or Tax I.D. No.

4. PAYEE*

Full Name: SAME AS ABOVE S.S. or Tax I.D. No.:
Birthdate: / /
Month Day Year

Address:

Address that CHECKS should be sent to if other than above:

5. CONTINGENT PAYEE* (Give Full Name, Social Security No. and Birthdate)

STACI LEN CARR 444-94-0884 10/23/85

*If two or more payees or contingent payees are designated and their respective interests are not specified, payment of their interests will be made equally or to the survivor. For any payment described in Section 6 in which no contingent payee(s) is named, any remaining *guaranteed/certain* payments will be made to the estate of the last surviving payee(s).

PLEASE COMPLETE THE REVERSE SIDE OF THIS APPLICATION

THE APPLICATION MUST BE COMPLETED IN FULL IN ORDER TO BE PROCESSED

CERTIFICATE OF LIVE BIRTH

STATE OF OKLAHOMA - DEPARTMENT OF HEALTH

135 - 83-039429

LOCAL REG. NO.		STATE FILE NO.			
1. CHILD NAME <i>(Type or Print)</i> Branden James Carr			2. DATE OF BIRTH September 28, 1983		3. HOUR 10:44 A.M.
4. SEX Male		5a. THIS BIRTH SINGLE <input checked="" type="checkbox"/> TWIN <input type="checkbox"/> TRIPLET <input type="checkbox"/>		5b. IF TWIN OR TRIPLET, WAS CHILD BORN 1st <input type="checkbox"/> 2d <input type="checkbox"/> 3d <input type="checkbox"/>	
6a. CITY, TOWN, OR LOCATION OF BIRTH Tulsa		6b. INSIDE CITY LIMIT Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		6c. HOSPITAL - NAME <i>(If not in hospital, give street and number)</i> Saint Francis Hospital	
7. MOTHER MAIDEN NAME Mary Janette Ashe			8. AGE <i>(at time of this birth)</i> 18		9. BIRTHPLACE <i>(State or foreign country)</i> Oklahoma
10a. RESIDENCE - STATE Oklahoma		10b. COUNTY Tulsa		10c. CITY, TOWN, OR LOCATION Tulsa	
		10d. INSIDE CITY LIMIT Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		10e. STREET ADDRESS Apt. 203 2507 East 88th Street	
11. FATHER NAME Eric Lance Carr			12. AGE <i>(at time of this birth)</i> 21		13. BIRTHPLACE <i>(State or foreign country)</i> California
14a. INFORMANT SIGNATURE OF EITHER PARENT <i>Mary Janette Ashe Carr</i>					14b. IF UNABLE TO OBTAIN ONE OF PARENTS SIGNATURE, STATE REASON THEREFORE.
15. MOTHER'S MAILING ADDRESS 2507 East 88th Street		STREET or R.F.D. NO. POSTOFFICE Apt. 203 Tulsa, Oklahoma		STATE ZIP CODE NO. 74137	
16a. WAS BLOOD OF THIS CHILD'S MOTHER TESTED FOR SYPHILIS? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		16b. DATE TEST MADE 4-18-83		16c. IF NO TEST, STATE REASON THEREFORE	
17. WEIGHT OF CHILD AT BIRTH 7 LBS. 11 OZS.			18. WAS PROPHYLACTIC DRUG USED IN BABY'S EYES? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
I hereby certify that this child was born alive on the date stated above.		19a. SIGNATURE OF ATTENDANT <i>James H. Mitchell</i>		19b. DATE SIGNED 9/28/83	
		19c. NAME OF ATTENDANT <i>(Print or Type)</i> James H. Mitchell		19d. ATTENDANT AT BIRTH M.D. <input checked="" type="checkbox"/> D.O. <input type="checkbox"/> D.C. <input type="checkbox"/> Midwife <input type="checkbox"/> Other <input type="checkbox"/> <i>(Specify)</i>	
20a. ADDRESS OF ATTENDANT 6161 South Yale Avenue		STREET or R.F.D. NO. POSTOFFICE Tulsa Oklahoma		STATE ZIP CODE NO. 74136	
20b. DATE REC'D. BY LOCAL REG. OCT 05 1983		20c. LOCAL REGISTRAR'S SIGNATURE <i>[Signature]</i>		21. DATE RECEIVED BY STATE REGISTRAR OCT 11 1983	
22a. DATE CORRECTIONS MADE		22b. ITEMS CORRECTED		22c. AUTHORITY	
22d. CLERK					



State Department of Health
State of Oklahoma

CERTIFIED COPY MUST
HAVE EMBOSSED SEAL

ROGER C. PIRRONG
STATE REGISTRAR OF VITAL STATISTICS
OKLAHOMA CITY, OKLAHOMA 73152

hereby certify the foregoing to be a true and correct copy, original of which is on file in this office. In testimony whereof, I have hereunto subscribed my name and caused the official seal to be affixed, at Oklahoma City, Oklahoma, this 29th day of August, 1991.

[Signature]
STATE REGISTRAR

First Colony Life Insurance Company

APPLICATION FOR

(Referred to as the Company)

~~SINGLE~~ PREMIUM SETTLEMENT ANNUITY P.O. Box 6158, Lynchburg, Virginia 24505

1. PROPOSED MEASURING LIFE M F

STACI LEN CARR

First Middle Last

3526 EAST 5TH PLACE

Residence Address

TULSA OK 74112

City State Zip Code

Birthdate: 10 / 23 / 85 (Proof of age required)
Month Day Year

Social Security No.: 444-94-0084

2. PROPOSED JOINT MEASURING LIFE M F

First Middle Last

Residence Address

City State Zip Code

Birthdate: _____ / _____ / _____ (Proof of age required)
Month Day Year

Social Security No.: _____

3. OWNER

Full Name: U.S. DISTRICT COURT FOR NORTHERN DISTRICT OF OKLAHOMA - TRUSTEE

S.S. or Tax I.D. No.

Address: 333 WEST 4TH STREET TULSA OK 74103

4. PAYEE*

Full Name: SAME AS ABOVE

S.S. or Tax I.D. No.: _____

Birthdate: _____ / _____ / _____
Month Day Year

Address: _____

Address that CHECKS should be sent to if other than above: _____

5. CONTINGENT PAYEE* (Give Full Name, Social Security No. and Birthdate)

BRANDEN JAMES CARR

444-94-0981

09/28/83

*If two or more payees or contingent payees are designated and their respective interests are not specified, payment of their interests will be made equally or to the survivor. For any payment described in Section 6 in which no contingent payee(s) is named, any remaining *guaranteed/certain* payments will be made to the estate of the last surviving payee(s).

PLEASE COMPLETE THE REVERSE SIDE OF THIS APPLICATION

THE APPLICATION MUST BE COMPLETED IN FULL IN ORDER TO BE PROCESSED

ENTERED ON DOCKET

DATE 10/19/92

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

OCT 16 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RICHARD LEON TEEMAN, et al.,

Defendants.

CIVIL ACTION NO. 92-C-535-E

ORDER

Upon the application of the Plaintiff, United States of America, acting on behalf of the Farmers Home Administration, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that the United States of America shall be allowed to file an Amended Complaint dismissing as a party Richard Leon Teeman who died on February 19, 1991, determining Richard Leon Teeman's death and terminating joint tenancy of Richard Leon Teeman and Mary Lou Teeman.

Dated this 16th day of Oct., 1992.

James A. Lewis
UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

THIS ORDER IS TO BE MAILED
TO ALL COUNSEL AND
PARTICIPANTS IMMEDIATELY
UPON RECEIPT.

5

CLOSED
FILED
OCT 1 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

JESSIE D. MYERS,)
)
 Plaintiff,)
)
 vs.) Case No. 91-C-755-B
)
 LOUIS W. SULLIVAN, M.D.,)
 Secretary of Health and)
 Human Services,)
)
 Defendants.)

O R D E R

Before the Court for consideration are the objections of the Plaintiff, Jessie D. Myers ("Myers"), to the Magistrate Judge's Findings and Recommendation ("F & R") to affirm the Administrative Law Judge's ("ALJ") denial of disability insurance benefits.

Myers filed an application for social security disability benefits (hereinafter "benefits") with the Defendant on October 28, 1987, based on residual back pain from a back injury which occurred on May 29, 1987. Myers application was denied on December 18, 1987, and Myers did not pursue the matter further.

Myers again filed for benefits on July 3, 1989, based on the same alleged "back problems". This application was originally denied on August 7, 1989, and again upon reconsideration on November 8, 1989. After an administrative hearing, the ALJ issued a denial Decision on November 14, 1990, and the Appeals Council denied the Plaintiff's request for review on July 26, 1991.

The Plaintiff filed this action on September 25, 1991, pursuant to 42 U.S.C. §405(g), seeking judicial review of the

administrative decision to deny benefits under §§216(i) and 223 of the Social Security Act. This matter was referred to the Magistrate Judge, who entered his F & R on July 30, 1992, recommending that the denial of benefits be affirmed.

Myers filed his objections to the F & R on August 10, 1992, and set forth three grounds for reversing the ALJ's denial of benefits:

- 1) The Findings of the Secretary of Health and Human Services are not based on substantial evidence.
- 2) The Administrative Law Judge's denial decision erroneously failed to follow the opinions of the plaintiff's treating physicians.
- 3) That the A.L.J. erroneously found that the plaintiff's allegations of pain were not credible.

The Social Security Act entitles every individual who "is under a disability" to a disability insurance benefit. 42 U.S.C.A. § 423(a)(1)(D) (1983). "Disability" is defined as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." Id. §423(d)(1)(A). An individual

"shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work."

Id. § 423(d)(2)(A).

The Secretary has established a five-step process for

evaluating a disability claim. See, Bowen v. Yuckert, 482 U.S. 137, 107 S.Ct. 2287, 96 L.Ed.2d 119 (1987). The five steps, as set forth in Reyes v. Bowen, 845 F.2d 242, 243 (10th Cir. 1988), proceed as follows:

- (1) A person who is working is not disabled. 20 C.F.R. § 416.920(b).
- (2) A person who does not have an impairment or combination of impairments severe enough to limit his ability to do basic work activities is not disabled. 20 C.F.R. § 416.920(c).
- (3) A person whose impairment meets or equals one of the impairments listed in the "Listing of Impairments," 20 C.F.R. § 404, subpt. P, app. 1, is conclusively presumed to be disabled. 20 C.F.R. § 416.920(d).
- (4) A person who is able to perform work he has done in the past is not disabled. 20 C.F.R. § 416.920(e).
- (5) A person whose impairment precludes performance of past work is disabled unless the Secretary demonstrates that the person can perform other work available in the national economy. Factors to be considered are age, education, past work experience, and residual functional capacity. 20 C.F.R. § 416.920(f).

If at any point in the process the Secretary find that a person is disabled or not disabled, the review ends. Reyes, 845 F.2d at 243; Talbot v. Heckler, 814 F.2d 1456, 1460 (10th Cir. 1987); 20 C.F.R. § 416.920.

The ALJ followed the five-step approach set forth in Reyes and concluded:

- 1) There was no evidence that Myers had performed substantial gainful activity since his alleged injury on May 29, 1987;
- 2) Myers does have a vocationally severe impairment;

- 3) Myers does not have a listed impairment; and
- 4) Myers is capable of performing past relevant work and is therefore not disabled.

The ALJ found that Myers had the "residual functional capacity to perform work-related activities, except for work involving occasional lifting of more than 20 pounds at a time, frequent lifting and carrying of objects weighing up to 10 pounds, repetitive bending, stooping, and kneeling, and operating dangerous machinery" (TR 18). He found that claimant's past relevant work as an assistant manager of a trucking company and a salesman did not require performance of work-related activities precluded by these limitations (Id.).

The Secretary's findings stand if such findings are supported by substantial evidence, considering the record as a whole. Bernal v. Bowen, 851 F.2d 297, 299 (10th Cir. 1988); Campbell v. Bowen, 822 F.2d 1518, 1521 (10th Cir. 1987). "Substantial evidence" requires "more than a scintilla, but less than a preponderance," and is satisfied by such relevant "evidence that a reasonable mind might accept to support the conclusion." Campbell v. Bowen, 822 F.2d at 1521; Brown, 801 F.2d at 362.

The Plaintiff has the burden to show that he is unable to return to the prior work he performed. Bernal, 851 F.2d at 299. The Plaintiff's argument for reversal is based solely on the ALJ's evaluation of the evidence. Plaintiff contends that there was not substantial evidence to support the ALJ's findings, that the ALJ improperly weighed the evidence of treating physicians and that the ALJ improperly evaluated the credibility of the Plaintiff.

Specifically, Plaintiff contends that the ALJ erroneously concluded that the Plaintiff could perform his past relevant work.

After a thorough review of the medical records and testimony, the Court does find substantial evidence in the record to support the ALJ's findings that Myers impairment does not prevent him from performing his past relevant work. The following is a brief summary of some of the relevant medical evidence presented to the ALJ.

The medical records indicate Myers was examined by David G. Carr, D.O., on June 25, 1987 (TR 343-344, 349-350). Dr. Carr reported that an examination of the lower extremities revealed no paresis, atrophy, fasciculations, tremors, or sensory deficits (TR 344). Deep tendon reflexes were equal, bilaterally, and no pathologic reflexes were present (TR 344, 349-350). Although Myers complained of pain around the sacroiliac joint caused by straight leg raising maneuvers, there were no radicular complaints and range of motion of the hips was normal (Id.). Myers was able to heel and toe walk successfully (Id.). Dr. Carr's reported impression included right sacroiliac strain (Id.). Dr. Carr reported there was no evidence of lumbar disk disease, and he recommended continued conservative treatment (TR 344, 349-350).

Myers was admitted to the hospital on August 4, 1987, for a lumbar myelogram and for evaluation of "intermittent" lower back pain (TR 349-351). The lumbar myelogram was essentially normal (TR 349, 351). Dr. Carr reported that a post myelogram computerized axial tomography (CAT) scan indicated the presence of (1) epidural

and perineural fibrosis, right L5-S1 level, with nerve root compression; and (2) bulging L4-5 disk (Id.). Dr. Carr indicated however, that differentiation of previous surgery changes from new findings on the CAT scan were unclear (Id.). Ultimately, Dr. Carr recommended continued conservative treatment together with epidural steroid injections (TR 15, 350).

On March 10, 1988, Myers was examined by M.R. Workman, M.D., (TR 356-368). Dr. Workman reported that he found no evidence of any nerve root irritation that would indicate that a disc was ruptured in May 1987 (TR 357-358). Dr. Workman concluded that claimant's condition was compatible with an aggravation of his past back problems and thus recommended a rehabilitative back care program (Id.). Once Myers reported that he had not received any benefit from the program, Dr. Workman discontinued the rehabilitative program on July 27, 1988 and referred claimant to Frank S. Letcher, M.D., a neurosurgeon, for further evaluation (TR 356, 359).

Myers was examined by Dr. Letcher on October 7, 1988. Dr. Letcher reported that Myers was able to rise from a seated position easily and walked with a normal gait and station (TR 420). Myers reported that any degree of bending forward caused him intolerable lower back pain, yet when asked to be seated on the floor, which involved similar bending, Dr. Letcher reported that he did so easily (Id.). When seated on the edge of the examining table, Myers was reportedly able to extend both legs fully, producing the equivalent of a 90 degree bend at the hips (Id.). Myers also demonstrated positive straight-leg raising bilaterally at 45

degrees, no detectable focal motor weakness, and no consistent sensory loss in the lower extremities (Id.). Dr. Letcher found no evidence of any significant nerve root irritation establishing a need for further neurological studies. He reported that there appeared to be evidence of a significant functional component to Myers pain (Id.).

Myers continued treatment for his chronic lower back pain from Dr. Ronald L. Heim in the summer of 1989 (TR 379-380). His medication included Extra Strength Tylenol and Tylenol 3 for "bad" days (Id.). Dr. Heim stated on August 16, 1990, that Myers daily back pain was "mild" with "occasional severe pain which requires bed-rest" (TR 425). However, Dr. Heim concluded that claimant could not perform light work on a sustained, full-time basis (TR 426).

The ALJ considered this and other medical evidence and concluded that Myers could perform past relevant work. The findings of the Secretary as to any fact are conclusive if supported by substantial evidence. 42 U.S.C. §405(g). It is not the duty of this Court to reweigh the evidence or substitute its discretion for that of the ALJ. Hargis v. Sullivan, 945 F.2d 1482, 1486 (10th Cir. 1991); Casias v. Secretary of Health & Human Services, 933 F.2d 799, 800 (10th Cir. 1991). Although there are a wide range of opinions from various doctors as to Myers condition and ability to return to work, there certainly is substantial evidence to support the ALJ's finding that Myers is able to perform his past relevant work.

Myers next argues that the ALJ did not give the proper weight

to the opinions of the treating physicians (Dr. Heim and Dr. Page) and the vocational expert (Cheryl Mallon). A treating physicians opinion is entitled to extra weight unless it is contradicted by substantial evidence. Kemp v. Bowen, 816 F.2d 1469, 1476 (10th Cir. 1987); Frey v. Bowen, 816 F.2d 508, 513 (10th Cir. 1987); Turner v. Heckler, 754 F.2d 326, 329 (10th Cir. 1985); Mongeur v. Heckler, 722 F.2d 1033, 1039 (2nd Cir. 1983).

The ALJ considered the opinion of Dr. Heim and noted that on Aug. 16, 1990, Dr. Heim stated that Myers daily back pain was "mild" with only "occasional" severe pain which required bedrest (TR 16). However, the ALJ was more persuaded by the medical assessments of Dr. Workman, Dr. Letcher and Dr. Carr. The ALJ stated that he was not giving as much weight to Dr. Page's assessment that Myers was 100 percent disabled because Dr. Page, a general practitioner, had not treated Myers on a regular, continuous basis.

Determining the credibility of the witnesses and the evidence is solely the province of the ALJ. Williams v. Bowen, 844 F.2d 748, 755 (10th Cir. 1988). The ALJ can decide to believe all or any portion of any witness's testimony or evidence. In this case, the ALJ found the opinions of Dr. Workman, Dr. Letcher and Dr. Carr to be credible and to amount to substantial evidence contradicting the opinion of Dr. Heim, a treating physician.

The ALJ did not err by giving less weight to the opinions of Dr. Heim and Dr. Page. Likewise, the ALJ did not err in only

relying on portions of Cheryl Mallon's testimony¹.

Myers final argument is that the ALJ did not properly evaluate his claim that the pain he was suffering was disabling. The ALJ found that Myers testimony as to pain was not credible and that his pain was not disabling.

The Tenth Circuit has said that "subjective complaints of pain must be accompanied by medical evidence and may be disregarded if unsupported by clinical findings." Frey v. Bowen, 816 F.2d 508, 515 (10th Cir. 1987). The medical records must be consistent with the nonmedical testimony as to the severity of the pain. Huston v. Bowen, 838 F.2d 1125, 1131 (10th Cir. 1988).

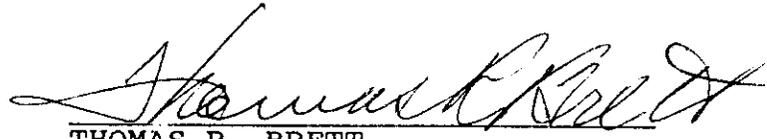
The ALJ considered all the evidence and the factors for evaluating subjective pain set forth in Luna v. Bowen, 834 F.2d 161, 165 (10th Cir. 1987), and concluded Myers pain was not disabling. The ALJ stated that the objective medical evidence showed no underlying medical condition so severe as to produce severe, disabling pain (TR 17). In addition, the ALJ noted that claimant's daily activities included driving his wife four miles to work, watching television, reading, grocery shopping, going to church, and visiting family members (TR 17, 54-55, 58-59). Such activities are inconsistent with a claim of incapacitating pain.

Substantial evidence supports the ALJ's conclusion that Myers' allegations of pain were not credible to the extent that they precluded returning to his past work.

¹ The ALJ did rely on portions of Mallon's testimony despite the fact that a vocational expert is not necessary when the ALJ determines that the claimant can return to past relevant work.

The Magistrate Judge found no error in the ALJ's evaluation and findings. Likewise, this Court finds that there is sufficient relevant evidence in the record to support the ALJ's ruling that the Plaintiff is able to perform his prior work. The Secretary's decision is, therefore, AFFIRMED.

IT IS SO ORDERED THIS 16th DAY OF OCTOBER, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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ENTERED ON DOCKET
DATE OCT 16 1992
FILED
OCT 08 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

MARGRETTE CARROLL,

Plaintiff,

vs.

CHARLES H. OSTRANDER, individually,
THE JAMES R. CARROLL, M.D., INC.
PENSION PLAN; THE PROFIT SHARING
PLAN OF JAMES R. CARROLL, M.D.,
INC., LISA L. CARROLL, an
individual; JAMES R. CARROLL, JR.,
an individual; and BRENT T.
CARROLL, an individual,

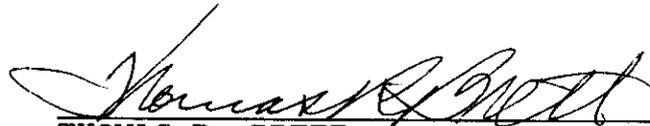
Defendants.

No. 90-C-736-B /

J U D G M E N T

In keeping with the Court's Findings of Fact and Conclusions of Law of this date concerning the issue of attorneys' fees and costs, Judgment is hereby entered in the amount of Sixty Eight Thousand Six Hundred Twenty-Eight and 75/100 Dollars (\$68,628.75), as and for attorneys' fees, in favor of the Defendants, Lisa L. Carroll, James R. Carroll, Jr., and Brent T. Carroll, and against the Plaintiff, Margrette Carroll. Costs in the amount of Two Thousand Three Hundred Forty and 24/100 (\$2,340.24) are likewise awarded in favor of said Defendant and against said Plaintiff. Post-judgment interest is awarded on each sum at the rate of 3.13% per annum.

DATED this 9th day of October, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED

FILED ON DOCKET
OCT 16 1992

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CURTIS D. BALL; JACKIE BALL;)
 GLENN R. TAYLOR; COUNTY)
 TREASURER, Tulsa County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Tulsa County,)
 Oklahoma,)
)
 Defendants.)

CIVIL ACTION NO. 91-C-0071-E

FILED
OCT 15 1992
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

DEFICIENCY JUDGMENT

This matter comes on for consideration this 15th day of October, 1992, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, for leave to enter a Deficiency Judgment. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, Curtis D. Ball, appears neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed by certified return receipt addressee restricted mail to Curtis D. Ball, 546 E. 55th St. North, Tulsa, Oklahoma 74126-2637, and by first-class mail to all answering parties and/or counsel of record.

The Court further finds that the amount of the Judgment rendered on November 12, 1991, in favor of the Plaintiff United

States of America, and against the Defendant, Curtis D. Ball, with interest and costs to date of sale is \$12,385.98.

The Court further finds that the appraised value of the real property at the time of sale was \$5,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered November 12, 1991, for the sum of \$4,490.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on

September 28, 1992.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Curtis D. Ball, as follows:

Principal Balance plus pre-Judgment Interest as of 11-12-91	\$10,521.48
Interest From Date of Judgment to Sale	296.85
Late Charges to Date of Judgment	161.28
Appraisal by Agency	300.00
Management Broker Fees to Date of Sale	506.50
Abstracting	231.00
Publication Fees of Notice of Sale	143.87
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$12,385.98
Less Credit of Appraised Value	- <u>5,000.00</u>
DEFICIENCY	\$ 7,385.98

plus interest on said deficiency judgment at the legal rate of _____ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Curtis D. Ball, a deficiency judgment in the amount of \$7,385.98, plus interest at the legal rate of 3.13 percent per annum on said deficiency judgment from date of judgment until paid.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney


KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

KBA/esr

CLOSED

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

FILED

MESA OPERATING LIMITED)
PARTNERSHIP,)
)
Plaintiff,)
)
vs.)
)
UNITED STATES DEPARTMENT)
OF THE INTERIOR,)
)
Defendant.)

OCT 15 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 92-C-843-E

FILED ON DOCKET
OCT 16 1992

ORDER AND JUDGMENT

Before the Court are the parties' cross motions for summary judgment¹ (docket #s 10 and 14). At issue is the proper application of 28 U.S.C. §2415 to DOI claims for royalty underpayments against mineral lessees producing gas from wells located on federal lands. The factual underpinnings and procedural history of this case have been exhaustively presented by the parties in this record and in that of the "Lake Charles litigation" (Mesa Operating Limited Partnership v. United States Department of the Interior, No. 88-0414LC, United States District Court for the Western District of Louisiana, Lake Charles Division) which is the precursor to the instant case. Therefore, the Court will take the liberty of presenting only the most abbreviated rendition of those records as relates to the dispositive matters under consideration

¹The DOI, in the Alternative, has requested the Court to transfer the case to the Western District of Louisiana. As stated in open court on September 28, 1992, it is this Court's view that it has subject-matter jurisdiction and that venue is proper pursuant to 28 U.S.C. §1331 and 43 U.S.C. §1349(b)(1), respectively.

29

herein.

This dispute arose over the results of an audit report prepared by the Minerals Management Service (MMS) of the Department of the Interior (DOI) which concluded that Mesa Operating Limited Partnership (Mesa) owed additional royalties on cost reimbursements it had received after July 25, 1980. By audit letter dated February 27, 1987 the MMS directed Mesa to compute and to pay the additional royalties. By letter dated April 9, 1987 Mesa appealed the directives of the February 27th letter on the basis that "MMS does not have statutory authority to collect royalties with respect to reimbursements of post production services". Plaintiff's Exhibit #6, docket #13. The results of Plaintiff's self-audit were transmitted to Defendant under letter dated June 12, 1987. The calculation was characterized by Plaintiff as "royalty and interest which would be due in the event the MMS may lawfully collect royalties on the cost reimbursements ..." See, Plaintiff's Exhibit #9; docket #13. In a letter to the agency, dated April 30, 1987, Mesa had asked for a stay pending appeal of the order and on July 17, 1987 MMS agreed to the stay on the condition that Mesa post bond or letter of credit in the amount of \$1,509,529.88 (thereafter, periodically increased to reflect interest accrued). In its July 17th letter the MMS identified the amount due and owing to be the sum of \$1,179,631.30. Plaintiff's Exhibit #10, docket #13. It is important to note that only the authority of MMS to assess and collect these royalties was challenged by Mesa; Mesa did not appeal or contest the amount of royalty underpayments assessed.

Pursuant to 30 C.F.R. Part 290, Mesa had 30 days from the July 17th MMS letter to file its notice of appeal on the issue of the amount assessed. Mesa has argued before this Court that it disputes the amount of the assessment set forth in the July 17th letter. That issue should have been raised on appeal at the administrative level, as it was clearly a matter for initial agency determination and review. Under well-settled principles requiring exhaustion of administrative remedies as a prerequisite to judicial review, the Court will not entertain Mesa's proposition. Indeed, the Court finds that Mesa's failure to raise that issue in a timely fashion during administrative proceedings foreclosed its opportunity to present the issue in judicial proceedings. See 30 C.F.R. Part 290.3; 5 U.S.C. §§701-706; Getty Oil Co. v. Clark, 614 F.Supp. 904 (D.C. Wyo. 1985). On appeal, first at the administrative level and then in federal district court (the Lake Charles litigation) the MMS order was affirmed. The district court's order, entered August 23, 1989, was affirmed by the Fifth Circuit on May 15, 1991. Mesa Operating Limited Partnership v. Dept. of the Interior, 931 F.2d 318 (5th Cir. 1991). Mesa's petition for writ of certiorari was denied. Mesa Operating Limited Partnership v. United States Department of the Interior, 112 S.Ct. 934 (1992).

Mesa has filed this suit asking for injunctive relief and a declaratory judgment that DOI cannot enforce its MMS order because it failed to file suit or counterclaim against Mesa on the assessment during the review process and, therefore, it is now time barred from asserting a claim as to most of the underpayments

pursuant to 28 U.S.C. §2415. That statute provides, in part, that:

[E]very action for money damages brought by the United States ... which is founded upon any contract ... shall be barred unless the complaint is filed within six years after the right of action accrues...

The parties have not stipulated to the date when the statute, if applicable, ran as to any of the claims.² The Court need not determine when the statute ran as to each claim for royalty underpayment. It will suffice, for purposes of this analysis, to determine that the statute began to run prior to or during the pendency of the Lake Charles litigation. The court concurs with the case authority cited by Defendant that statutes of limitation are affirmative defenses which must be raised at the earliest practicable moment pursuant to Fed.R.Civ.P. 8(c). Failure to raise the statute at any time during the Lake Charles litigation results in a waiver of its protection. See, e.g. Stephens v. C.I.T. Group/Equipment Financing, Inc., 955 F.2d 1023 (5th Cir. 1992). And, as defendant points out, failure to raise any claim which could have been raised in litigation between the parties arising from the same cause of action or "transaction" is precluded in this circuit by application of the doctrine of res judicata. See, e.g. May v. Parker-Abbott Transfer and Storage, Inc., 899 F.2d 1007

²At the hearing on October 8, 1992, the parties agreed that at the latest the statute ran on the earliest claims between the date of the district court's decision rendered August 23, 1989 and the Fifth Circuit's order affirming, entered May 15, 1991. The earliest date that the statute could be said to have run (based upon an accrual date for Mesa's first underpayment of August 25, 1980) would fall prior to the February 22, 1989 filing of the Lake Charles litigation complaint.

(10th Cir. 1990). The only issue raised by Mesa in this transaction was the authority of MMS to assess the royalty payments; thus, all other claims or rights Mesa could have raised, including a challenge to the amount assessed or a time-bar to the enforcement of the MMS order are now foreclosed by operation of law. The result comports with common sense. As Judge Debevoise declared in United States v. General Electronics, 556 F.Supp. 801, 805 (D. N.J. 1983)

A general purpose of all statutes of limitations is to prevent a claimant from sleeping on his rights and failing to sue an unsuspecting defendant until memories have become dim and evidence lost.

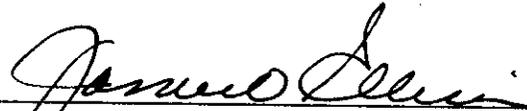
That case is not this case. Where, as here, the claim has been vigorously contested by the putative defendant, it should not be permitted to employ §2415 to play "gotcha." Indeed, as Judge Debevoise said in General Electronics, to require the claimant under these circumstances, "to file a protective suit to avoid the running of the statute of limitations during the period ... [of judicial] ... review ... would be a procedural trap for the unwary." The Court declines to reach beyond a common sense application of the law to encourage the sort of gamesmanship that would result from that construction of §2415.

The Court finds that Mesa failed to raise the application of §2415 in a timely manner, therefore its motion for summary judgment must be denied.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Summary Judgment is denied; Defendant's Motion for Summary Judgment is

granted; all remaining motions are rendered moot; parties to bear their respective costs herein; this matter is dismissed.

ORDERED this 15th day of October, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

FLINT ENGINEERING & CONSTRUCTION
CO., an Oklahoma corporation,

Plaintiff,

v.

HARTFORD ACCIDENT AND INDEMNITY
COMPANY, a corporation,

Defendant.

No: 90-C-428-B

JOINT STIPULATION FOR DISMISSAL

COME NOW the Plaintiff and Counter-Claim Defendant, Flint Engineering & Construction Co., and the Defendant and Counter-Claim Plaintiff, Hartford Accident and Indemnity Company, and respectfully request this Court to enter an Order of Dismissal with Prejudice in the above cause of action.

The above stated parties entered into a Settlement Agreement on the 1st day of October, 1992, and, therefore, request the Court to enter an Order of Dismissal with Prejudice as to the claims filed by Plaintiff, Flint Engineering & Construction Co., against Defendant, Hartford Accident and Indemnity Company and the claims filed by Counter-Claim Plaintiff, Hartford Accident and Indemnity Company against Counter-Claim Defendant, Flint Engineering & Construction Co.

Respectfully submitted,

RHODES, HIERONYMUS, JONES
TUCKER & GABLE

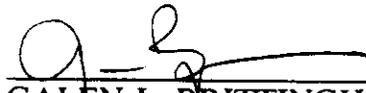
By



JOHN H. TUCKER, OBA #9110
2800 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-1173

THOMAS, GLASS, ATKINSON,
HASKINS, NELLIS & BOUDREAUX

By



GALEN L. BRITTINGHAM
525 S. Main
1500 ParkCentre
Tulsa, OK 74103
(918) 582-8877

ENTERED ON DOCKET
FILED
DATE

OCT 16 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

JESSIE D. MYERS,)
)
 Plaintiff,)
)
 vs.)
)
 LOUIS W. SULLIVAN, M.D.,)
 Secretary of Health and)
 Human Services,)
)
 Defendants.)

Case No. 91-C-755-B

ORDER

Before the Court for consideration are the objections of the Plaintiff, Jessie D. Myers ("Myers"), to the Magistrate Judge's Findings and Recommendation ("F & R") to affirm the Administrative Law Judge's ("ALJ") denial of disability insurance benefits.

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- 1) The Findings of the Secretary of Health and Human Services are not based on substantial evidence.
- 2) The Administrative Law Judge's denial decision erroneously failed to follow the opinions of the plaintiff's treating physicians.
- 3) That the A.L.J. erroneously found that the plaintiff's allegations of pain were not credible.

The Social Security Act entitles every individual who "is under a disability" to a disability insurance benefit. 42 U.S.C.A. § 423(a)(1)(D) (1983). "Disability" is defined as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment." Id. §423(d)(1)(A). An individual

"shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work."

Id. § 423(d)(2)(A).

The Secretary has established a five-step process for

evaluating a disability claim. See, Bowen v. Yuckert, 482 U.S. 137, 107 S.Ct. 2287, 96 L.Ed.2d 119 (1987). The five steps, as set forth in Reyes v. Bowen, 845 F.2d 242, 243 (10th Cir. 1988), proceed as follows:

- (1) A person who is working is not disabled. 20 C.F.R. § 416.920(b).
- (2) A person who does not have an impairment or combination of impairments severe enough to limit his ability to do basic work activities is not disabled. 20 C.F.R. § 416.920(c).
- (3) A person whose impairment meets or equals one of the impairments listed in the "Listing of Impairments," 20 C.F.R. § 404, subpt. P, app. 1, is conclusively presumed to be disabled. 20 C.F.R. § 416.920(d).
- (4) A person who is able to perform work he has done in the past is not disabled. 20 C.F.R. § 416.920(e).
- (5) A person whose impairment precludes performance of past work is disabled unless the Secretary demonstrates that the person can perform other work available in the national economy. Factors to be considered are age, education, past work experience, and residual functional capacity. 20 C.F.R. § 416.920(f).

If at any point in the process the Secretary find that a person is disabled or not disabled, the review ends. Reyes, 845 F.2d at 243; Talbot v. Heckler, 814 F.2d 1456, 1460 (10th Cir. 1987); 20 C.F.R. § 416.920.

The ALJ followed the five-step approach set forth in Reyes and concluded:

- 1) There was no evidence that Myers had performed substantial gainful activity since his alleged injury on May 29, 1987;
- 2) Myers does have a vocationally severe impairment;

- 3) Myers does not have a listed impairment; and
- 4) Myers is capable of performing past relevant work and is therefore not disabled.

The ALJ found that Myers had the "residual functional capacity to perform work-related activities, except for work involving occasional lifting of more than 20 pounds at a time, frequent lifting and carrying of objects weighing up to 10 pounds, repetitive bending, stooping, and kneeling, and operating dangerous machinery" (TR 18). He found that claimant's past relevant work as an assistant manager of a trucking company and a salesman did not require performance of work-related activities precluded by these limitations (Id.).

The Secretary's findings stand if such findings are supported by substantial evidence, considering the record as a whole. Bernal v. Bowen, 851 F.2d 297, 299 (10th Cir. 1988); Campbell v. Bowen, 822 F.2d 1518, 1521 (10th Cir. 1987). "Substantial evidence" requires "more than a scintilla, but less than a preponderance," and is satisfied by such relevant "evidence that a reasonable mind might accept to support the conclusion." Campbell v. Bowen, 822 F.2d at 1521; Brown, 801 F.2d at 362.

The Plaintiff has the burden to show that he is unable to return to the prior work he performed. Bernal, 851 F.2d at 299. The Plaintiff's argument for reversal is based solely on the ALJ's evaluation of the evidence. Plaintiff contends that there was not substantial evidence to support the ALJ's findings, that the ALJ improperly weighed the evidence of treating physicians and that the ALJ improperly evaluated the credibility of the Plaintiff.

Specifically, Plaintiff contends that the ALJ erroneously concluded that the Plaintiff could perform his past relevant work.

After a thorough review of the medical records and testimony, the Court does find substantial evidence in the record to support the ALJ's findings that Myers impairment does not prevent him from performing his past relevant work. The following is a brief summary of some of the relevant medical evidence presented to the ALJ.

The medical records indicate Myers was examined by David G. Carr, D.O., on June 25, 1987 (TR 343-344, 349-350). Dr. Carr reported that an examination of the lower extremities revealed no paresis, atrophy, fasciculations, tremors, or sensory deficits (TR 344). Deep tendon reflexes were equal, bilaterally, and no pathologic reflexes were present (TR 344, 349-350). Although Myers complained of pain around the sacroiliac joint caused by straight leg raising maneuvers, there were no radicular complaints and range of motion of the hips was normal (Id.). Myers was able to heel and toe walk successfully (Id.). Dr. Carr's reported impression included right sacroiliac strain (Id.). Dr. Carr reported there was no evidence of lumbar disk disease, and he recommended continued conservative treatment (TR 344, 349-350).

Myers was admitted to the hospital on August 4, 1987, for a lumbar myelogram and for evaluation of "intermittent" lower back pain (TR 349-351). The lumbar myelogram was essentially normal (TR 349, 351). Dr. Carr reported that a post myelogram computerized axial tomography (CAT) scan indicated the presence of (1) epidural

and perineural fibrosis, right L5-S1 level, with nerve root compression; and (2) bulging L4-5 disk (Id.). Dr. Carr indicated however, that differentiation of previous surgery changes from new findings on the CAT scan were unclear (Id.). Ultimately, Dr. Carr recommended continued conservative treatment together with epidural steroid injections (TR 15, 350).

On March 10, 1988, Myers was examined by M.R. Workman, M.D., (TR 356-368). Dr. Workman reported that he found no evidence of any nerve root irritation that would indicate that a disc was ruptured in May 1987 (TR 357-358). Dr. Workman concluded that claimant's condition was compatible with an aggravation of his past back problems and thus recommended a rehabilitative back care program (Id.). Once Myers reported that he had not received any benefit from the program, Dr. Workman discontinued the rehabilitative program on July 27, 1988 and referred claimant to Frank S. Letcher, M.D., a neurosurgeon, for further evaluation (TR 356, 359).

Myers was examined by Dr. Letcher on October 7, 1988. Dr. Letcher reported that Myers was able to rise from a seated position easily and walked with a normal gait and station (TR 420). Myers reported that any degree of bending forward caused him intolerable lower back pain, yet when asked to be seated on the floor, which involved similar bending, Dr. Letcher reported that he did so easily (Id.). When seated on the edge of the examining table, Myers was reportedly able to extend both legs fully, producing the equivalent of a 90 degree bend at the hips (Id.). Myers also demonstrated positive straight-leg raising bilaterally at 45

degrees, no detectable focal motor weakness, and no consistent sensory loss in the lower extremities (Id.). Dr. Letcher found no evidence of any significant nerve root irritation establishing a need for further neurological studies. He reported that there appeared to be evidence of a significant functional component to Myers pain (Id.).

Myers continued treatment for his chronic lower back pain from Dr. Ronald L. Heim in the summer of 1989 (TR 379-380). His medication included Extra Strength Tylenol and Tylenol 3 for "bad" days (Id.). Dr. Heim stated on August 16, 1990, that Myers daily back pain was "mild" with "occasional severe pain which requires bed-rest" (TR 425). However, Dr. Heim concluded that claimant could not perform light work on a sustained, full-time basis (TR 426).

The ALJ considered this and other medical evidence and concluded that Myers could perform past relevant work. The findings of the Secretary as to any fact are conclusive if supported by substantial evidence. 42 U.S.C. §405(g). It is not the duty of this Court to reweigh the evidence or substitute its discretion for that of the ALJ. Hargis v. Sullivan, 945 F.2d 1482, 1486 (10th Cir. 1991); Casias v. Secretary of Health & Human Services, 933 F.2d 799, 800 (10th Cir. 1991). Although there are a wide range of opinions from various doctors as to Myers condition and ability to return to work, there certainly is substantial evidence to support the ALJ's finding that Myers is able to perform his past relevant work.

Myers next argues that the ALJ did not give the proper weight

to the opinions of the treating physicians (Dr. Heim and Dr. Page) and the vocational expert (Cheryl Mallon). A treating physicians opinion is entitled to extra weight unless it is contradicted by substantial evidence. Kemp v. Bowen, 816 F.2d 1469, 1476 (10th Cir. 1987); Frey v. Bowen, 816 F.2d 508, 513 (10th Cir. 1987); Turner v. Heckler, 754 F.2d 326, 329 (10th Cir. 1985); Mongeur v. Heckler, 722 F.2d 1033, 1039 (2nd Cir. 1983).

The ALJ considered the opinion of Dr. Heim and noted that on Aug. 16, 1990, Dr. Heim stated that Myers daily back pain was "mild" with only "occasional" severe pain which required bedrest (TR 16). However, the ALJ was more persuaded by the medical assessments of Dr. Workman, Dr. Letcher and Dr. Carr. The ALJ stated that he was not giving as much weight to Dr. Page's assessment that Myers was 100 percent disabled because Dr. Page, a general practitioner, had not treated Myers on a regular, continuous basis.

Determining the credibility of the witnesses and the evidence is solely the province of the ALJ. Williams v. Bowen, 844 F.2d 748, 755 (10th Cir. 1988). The ALJ can decide to believe all or any portion of any witness's testimony or evidence. In this case, the ALJ found the opinions of Dr. Workman, Dr. Letcher and Dr. Carr to be credible and to amount to substantial evidence contradicting the opinion of Dr. Heim, a treating physician.

The ALJ did not err by giving less weight to the opinions of Dr. Heim and Dr. Page. Likewise, the ALJ did not err in only

relying on portions of Cheryl Mallon's testimony¹.

Myers final argument is that the ALJ did not properly evaluate his claim that the pain he was suffering was disabling. The ALJ found that Myers testimony as to pain was not credible and that his pain was not disabling.

The Tenth Circuit has said that "subjective complaints of pain must be accompanied by medical evidence and may be disregarded if unsupported by clinical findings." Frey v. Bowen, 816 F.2d 508, 515 (10th Cir. 1987). The medical records must be consistent with the nonmedical testimony as to the severity of the pain. Huston v. Bowen, 838 F.2d 1125, 1131 (10th Cir. 1988).

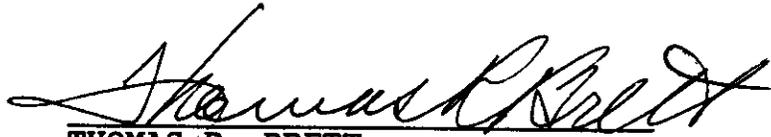
The ALJ considered all the evidence and the factors for evaluating subjective pain set forth in Luna v. Bowen, 834 F.2d 161, 165 (10th Cir. 1987), and concluded Myers pain was not disabling. The ALJ stated that the objective medical evidence showed no underlying medical condition so severe as to produce severe, disabling pain (TR 17). In addition, the ALJ noted that claimant's daily activities included driving his wife four miles to work, watching television, reading, grocery shopping, going to church, and visiting family members (TR 17, 54-55, 58-59). Such activities are inconsistent with a claim of incapacitating pain.

Substantial evidence supports the ALJ's conclusion that Myers' allegations of pain were not credible to the extent that they precluded returning to his past work.

¹ The ALJ did rely on portions of Mallon's testimony despite the fact that a vocational expert is not necessary when the ALJ determines that the claimant can return to past relevant work.

The Magistrate Judge found no error in the ALJ's evaluation and findings. Likewise, this Court finds that there is sufficient relevant evidence in the record to support the ALJ's ruling that the Plaintiff is able to perform his prior work. The Secretary's decision is, therefore, AFFIRMED.

IT IS SO ORDERED THIS 16th DAY OF OCTOBER, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED

FILED ON DOCKET

OCT 16 1992

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

FILED

OCT 15 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

NATALIE JOHNSON, et al.)
)
Plaintiffs,)
)
v.)
)
INDEPENDENT SCHOOL DISTRICT NO. 4)
OF BIXBY, TULSA CO., OKLA., et al)
)
Defendants.)

92-C-238-E

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed September 16, 1992 in which the Magistrate Judge recommended that the State Department of Education's Motion to Dismiss should be granted.

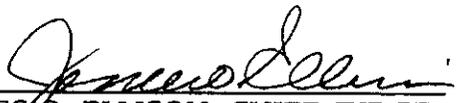
No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the recommendations of the Magistrate Judge are hereby adopted as set forth above, and Defendant, State Department of Education is hereby dismissed from this action.

13

SO ORDERED THIS 14th day of October, 1992.



JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

1992

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

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

JEFFERY E. POLAND,
Plaintiff,

v.

TULSA CABLE TELEVISION, INC.,
an Oklahoma corporation, d/b/a
UNITED ARTISTS CABLE OF OKLAHOMA,
and UNITED ARTISTS ENTERTAINMENT
COMPANY, a foreign corporation,
Defendants.

CASE NO. 92-C-190-E

EDD 10/15/92

**JOINT STIPULATION OF
DISMISSAL WITH PREJUDICE**

COME NOW Plaintiff and Defendants, all as above named, and stipulate to the dismissal of the above-styled and numbered cause with prejudice to refiling, the claims of Plaintiff against each Defendant.

CORNISH & VILES, INC.

By 
Fred C. Cornish, OBA #1924
Jack S. McCalmon, OBA #14506
321 S. Boston Ave., Suite 917
Tulsa, Oklahoma 74103-3321
(918) 583-2284

ATTORNEYS FOR PLAINTIFF

NORMAN & WOHLGEMUTH

By 
Joel L. Wohlgemuth, OBA #9811
William W. O'Connor, OBA #13200
2900 Mid-Continent Tower
Tulsa, Oklahoma 74103

and

John Raymond Trapnell
Joseph M. Freeman
ELARBEE, THOMPSON & TRAPNELL
800 Peachtree-Cain Tower
229 Peachtree Street, N.E.
Atlanta, Georgia 30303

ATTORNEYS FOR DEFENDANTS

CLOSED
ENTERED ON DOCKET

DATE ~~OCT 15 1992~~

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

FILED

OCT 13 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BROCK A. ADAMS, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 LOUIS W. SULLIVAN, M.D.,)
)
 Defendants.)

Case No. 91-C-246-B

ORDER

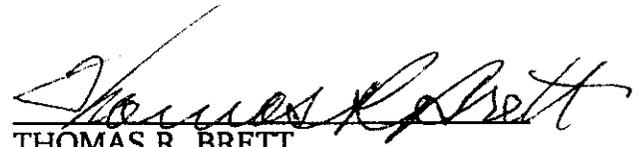
The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed September 14, 1992 in which the Magistrate Judge recommended that the Secretary's decision be affirmed.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the recommendations of the Magistrate Judge are hereby adopted as set forth above.

SO ORDERED THIS 13th day of Oct., 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

15

CLOSED

FILED

OCT 14 1992

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

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

KINARK CORPORATION, a Delaware corporation,

Plaintiff,

v.

PAULINE B. WALKER, individually,
as Executrix of the Estate of
Robert G. Walker, Deceased, and
as Trustee of the Robert G. and
Pauline B. Walker Revocable Trust,

Defendant.

Case No. 92-C-355-E

FILED ON DOCKET
OCT 15 1992

DISMISSAL WITH PREJUDICE

Plaintiff Kinark Corporation hereby dismisses its cause of action against Defendant Pauline B. Walker, individually, as Executrix of The Estate of Robert G. Walker, Deceased, and as Trustee of the Robert G. and Pauline B. Walker Revocable Trust, with prejudice to its refiling.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By: Claire V Egan
Claire V. Egan, OBA #554
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2735

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I the undersigned do hereby certify that on the 14th day of October, 1992, a true and correct copy of the above and foregoing document was hand-delivered to the following counsel of record:

Ralph C. Perry-Miller
Perry-Miller, Beasley & Hume
Regency Plaza, Suite 1475
3710 Rawlins Street, LB 40
Dallas, Texas 75219

Claire V. Egan

CLOSED

ENTERED ON DOCKET

DATE OCT 14 1992

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

BRUCE P. LANG,)
)
 Plaintiff,)
)
 v.)
)
 INSURANCE COMPANY OF NORTH)
 AMERICA,)
)
 Defendant.)

No. 90-C-486 C

FILED
Richard L. ...
U. S. District Court
Northern District of Oklahoma

JUDGMENT

This action came on for trial before the Court, Honorable H. Dale Cook, District Judge, presiding. The issues were duly tried and the jury rendered its verdict in favor of the Defendant on September 29, 1992.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff, Bruce Lang, take nothing from Defendant, Life Insurance Company of North America, and that Defendant recover from the Plaintiff its costs of the action.

DATED this 7 day of Oct, 1992.

H. Dale Cook

H. DALE COOK
DISTRICT JUDGE

47

CLOSED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

KINARK CORPORATION, a Delaware Corporation,

Plaintiff,

vs.

PAULINE B. WALKER, individually, as Executrix of the Estate of Robert G. Walker, Deceased, and as Trustee of the Robert G. and Pauline B. Walker Revocable Trust,

Defendant.

ENTERED ON DOCKET
DATE OCT 14 1992

CASE NO. 92-C-355-E

FILE

OCT 13 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Upon Joint Application by the parties for an Order Approving Settlement, this Court has reviewed the Compromise and Settlement Agreement and Mutual Release of Claims ("Agreement") executed by the parties. This Court, having considered the terms of the settlement and being fully informed in the premises, it is hereby

ORDERED that the settlement entered into by the parties, as represented by the Compromise and Settlement Agreement and Mutual Release of Claims, is hereby approved by this Court. This Court finds that the terms of the Agreement are reasonable, and this Court specifically authorizes the exercise of the subject stock options by Defendant Pauline B. Walker according to the terms set forth in the Agreement.

DATED this 13 day of October, 1992.

W. JAMES O. ELLISON

JAMES O. ELLISON
CHIEF UNITED STATES DISTRICT JUDGE

CLOSED

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

FILED

600
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BEATRICE WILKERSON, individually)
and as next of kin of)
WILLIAM E. WILKERSON,)
)
Plaintiff,)
)
vs.)
)
BOARD OF COUNTY COMMISSIONERS OF)
CREEK COUNTY, OKLAHOMA;)
DOUG NICHOLS, individually and in)
his official capacity as Creek)
County Sheriff; JIM PINSON and)
R.T. "FUZZY" FRANKLIN,)
)
Defendants.)

Case No. 91-C-631-B

200 10/13/92

O R D E R

Before the Court for consideration is the Plaintiff's motion to dismiss this cause of action.

Plaintiff, Beatrice Wilkerson ("Wilkerson"), filed this suit August 19, 1991, alleging that Deputy Sheriff R.T. "Fuzzy" Franklin used excessive force while arresting Wilkerson's husband, William E. Wilkerson. Plaintiff's counsel, Greg Bledsoe and Randy Rankin, filed an application to withdraw¹ on August 3, 1992, and the application was granted August 5, 1992.

Wilkerson filed this motion to dismiss² on September 15, 1992, stating that she had been unable to retain new counsel and thus could not proceed with this action at this time. The Defendants

¹ The application stated that "Plaintiff's counsel and Plaintiff have reached a mutual decision that Plaintiff should retain new counsel."

² The pleading is titled "Request For Dismissal."

have not responded to the Plaintiff's motion.

For these reasons, Plaintiff motion to dismiss this cause of action without prejudice is hereby GRANTED.

IT IS SO ORDERED THIS 6th DAY OF OCTOBER, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

JOANN SELF,

Plaintiff,

v.

Case No. 91-C-751 E

BOULDER HOLDINGS, INC., an
Oklahoma corporation, d/b/a
PINNOCHIO'S CHILD CARE CENTER,
and S. CARL MARK,

Defendants.

FILED

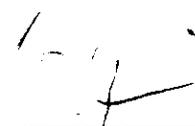
OCT 7 1992

EDD 10/13/92

STIPULATION OF DISMISSAL WITH PREJUDICE

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

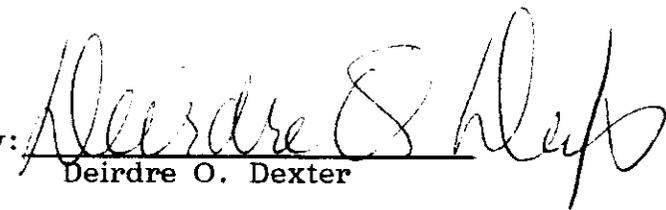
Plaintiff JoAnn Self, by and through her attorney of record Steven R. Hickman, and Defendant S. Carl Mark, by and through his attorney of record, Deirdre O. Dexter, hereby stipulate to the Dismissal with Prejudice of the above-styled cause pursuant to Fed.R.Civ.P. 41(a)(1).



Steven R. Hickman

FRASIER & FRASIER
1700 Southwest Blvd.
Tulsa, Oklahoma 74107

Attorney for Plaintiff,
JOANN SELF

By: 

Deirdre O. Dexter

CONNER & WINTERS,
A Professional Corporation
2400 First National Tower
15 East 5th
Tulsa, Oklahoma 74103-4391

Attorneys for Defendant,
S. CARL MARK

