

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

6-30-97

F I L E D

JUN 30 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DOUGLAS J. ST. PIERRE and L. STEVE
WAIDE,

Plaintiffs,

vs.

Case No. 96CV1132K

MELVIN D. WILLIAMS, ALLEN J.
RADEMACHER and HERMAN BROS.,
INC.,

Defendants.

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on for hearing on the joint Stipulation of the Plaintiffs, Douglas J. St. Pierre and L. Steve Waide, and Defendants, Melvin D. Williams, Allen J. Rademacher, and Herman Bros., Inc., for a dismissal with prejudice of the above captioned cause. The Court, being fully advised, having reviewed the Stipulation, finds that the above entitled cause should be dismissed with prejudice to the filing of a future action as to Defendants, Melvin D. Williams, Allen J. Rademacher and Herman Bros., Inc., pursuant to said Stipulation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above entitled cause against Defendants, Melvin D. Williams, Allen J. Rademacher and Herman Bros., Inc., be and is hereby dismissed with prejudice to the filing of a future action against said Defendant, the parties to bear their own respective costs.

Dated this 30 day of June, 1997.


UNITED STATES DISTRICT COURT JUDGE

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

F I L E D

JUN 27 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

_____)
DANNY THOMAS,)
))
Plaintiff,)
))
v.)
))
KOCH ENGINEERING COMPANY, INC.,)
and JOHN ZINK COMPANY, a division of)
KOCH ENGINEERING COMPANY, INC.,)
))
Defendants.)
_____)

Civil Action No. 96-CV-556-W

ENTERED ON DOCKET
DATE JUN 30 1997

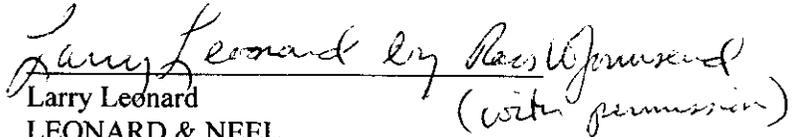
STIPULATION OF DISMISSAL

Pursuant to Fed. R. Civ. P. 41(a)(1)(ii), Plaintiff Danny Thomas and Defendants Koch Engineering Company, Inc. and John Zink Company a division of Koch Engineering Company, Inc., stipulate to the dismissal of Plaintiff's Complaint against Defendant with prejudice to refileing.



Fred V. Monachello
Law Offices of Fred V. Monachello
1516 South Boston
Suite 310
Tulsa, OK 74119
(918) 583-0909

Respectfully submitted,



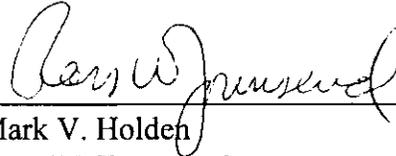
Larry Leonard
LEONARD & NEEL
1921 South Boston
Tulsa, OK 74119-5200
(918) 583-8700
Fax: (918) 582-3838

ATTORNEY FOR PLAINTIFF
DANNY THOMAS

23



-and-



Mark V. Holden

Ross W. Townsend

KOCH ENGINEERING COMPANY, INC.

4111 East 37th Street North

Wichita, KS 67220

(316) 828-3654

Fax: (316) 828-4780

ATTORNEYS FOR DEFENDANTS

KOCH ENGINEERING COMPANY, INC., and

JOHN ZINK COMPANY, a division of

KOCH ENGINEERING COMPANY, INC.

Dated: June 25, 1997

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

FILED
JUN 27 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL EUGENE THOMPSON,)
)
 Plaintiff,)
)
 vs.)
)
 DELAWARE COUNTY COURTHOUSE,)
 DELAWARE COUNTY JAIL,)
)
 Defendants.)

No. 97-CV-490-H (J)

ENTERED ON DOCKET
DATE JUN 30 1997

ORDER

Plaintiff filed a civil rights complaint and attempted to file a motion for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a), as amended by the Prison Litigation Reform Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996). On May 30, 1997, the Court directed Plaintiff to cure the deficiency concerning his motion for leave to proceed in forma pauperis. Specifically, the Court instructed Plaintiff to attach a certified copy of his trust fund account statement (or institutional equivalent) for the six-month period immediately preceding the filing of this action. Plaintiff has now responded by filing a corrected motion together with the Statement of Institutional Accounts signed by an authorized official of the penal institution, the Undersheriff of Delaware County. The authorized official signed the affidavit on June 5, 1997, indicating Plaintiff has zero in his institutional accounts, a zero average monthly deposit as well as a zero average monthly balance for the six-month period immediately preceding the filing of this action. Plaintiff also attached an inventory sheet, dated August 20, 1996, listing the items removed from his possession at the time he was placed in custody of the Delaware County Jail.

Relying upon the representations of the motion and affidavit, the Court construes the Statement of Institutional Funds and inventory sheet as an institutional equivalent for the trust fund accounting required by 28 U.S.C. § 1915(a)(2), and therefore, finds that Plaintiff should be granted leave to proceed in forma pauperis.

The Prison Litigation Reform Act of 1996, added a new section, 28 U.S.C. § 1915A, to the in forma pauperis statute, entitled "Screening." That section requires the Court to review prisoner complaints before docketing, or as soon as practicable after docketing, and "dismiss the complaint, or any portion of the complaint, if the complaint ... is frivolous, malicious, or fails to state a claim upon which relief may be granted." Id.

In the instant action, Plaintiff has named "Delaware County Courthouse" and "Delaware County Jail" as defendants. Plaintiff complains that, while "the courthouse was in full function and holding regular court sessions," he slipped "on moisture on the floor" and fractured his tailbone. Plaintiff alleges the negligence of the defendants resulted in his injury. The Court finds that Plaintiff's complaint must be dismissed pursuant to 28 U.S.C. § 1915A for failure to state a claim for the reasons discussed below.

First, Plaintiff's claims against the defendants must be dismissed since the county courthouse and county jail are not proper "persons" within the meaning of the Civil Rights Act, and therefore, are not proper defendants. See 42 U.S.C. §§ 1983, 1985(3). Numerous courts have held that such entities are not proper defendants in a section 1983 action. Martinez v. Winner, 771 F.2d 424, 444 (10th Cir. 1985); Johnson v. City of Erie, 834 F.Supp. 873, 878 (W.D. Pa. 1993); PBA Local No. 38 v. Woodbridge Police Dept., 832 F.Supp. 808, 826 (D.N.J. 1993). The Court could liberally construe Plaintiff's complaint to attempt to state a claim against the local municipality. See Haines

v. Kerner, 404 U.S. 519, 520 (1972). However, under 42 U.S.C. § 1983, a local government may be held liable for the constitutional violation of its employees only when employee "action pursuant to official municipal policy ... caused a constitutional tort." Monell v. New York City Dept. of Social Services, 98 S.Ct. 2018, 2036 (1978). To establish municipal liability, a plaintiff must show "(1) the existence of a municipal custom or policy and (2) a direct causal link between the custom or policy and the violation alleged." Jenkins v. Wood, 81 F.3d 988, 993-94 (10th Cir. 1996) (citing City of Canton v. Harris, 489 U.S. 378, 385 (1989)). Plaintiff's claims fail to establish either of these elements.

Secondly, Plaintiff's negligence claim fails to meet the Estelle v. Gamble, 429 U.S. 97 (1976), standard of "deliberate indifference to serious medical need." Under the Fourteenth Amendment Due Process Clause, pretrial detainees are entitled to the same degree of protection regarding medical care as that afforded convicted inmates under the Eighth Amendment cruel and unusual punishment clause. Martin v. Board of County Com'rs of County of Pueblo, 909 F.2d 402, 406 (10th Cir. 1990). It is unclear whether Plaintiff is a pretrial detainee, but nevertheless, the same standard applies to a convicted inmate as to a pretrial detainee. Thus, Plaintiff's negligence claim must be judged against the "deliberate indifference to serious medical needs" test as set out in Estelle, supra. See also Martin, 909 F.2d at 406. That test has two components: an objective component requiring that the pain or deprivation be sufficiently serious; and a subjective component requiring that the offending officials act with a sufficiently culpable state of mind. Wilson v. Seiter, 111 S. Ct. 2321, 2324 (1991). Neither negligence nor gross negligence satisfies the deliberate indifference standard required for a violation of the cruel and unusual punishment clause of the Eighth Amendment. Estelle, 429 U.S. at 104-05; Ramos, 639 F.2d at 575. Although pro se complaints are held to less stringent standards

than pleadings drafted by lawyers and the court must construe them liberally, Haines v. Kerner, 404 U.S. 519, 520 (1972), the court should not assume the role of advocate and should dismiss claims which are supported only by vague and conclusory allegations. Hall, 935 F.2d at 1110. The Court finds that Plaintiff's negligence claim against the Delaware County Courthouse and the Delaware County Jail fails to rise to the level of a constitutional violation and should, therefore, be dismissed for failure to state a claim.

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Plaintiff's motion for leave to proceed in forma pauperis is **granted**,
- (2) Plaintiff's complaint is **dismissed with prejudice** under § 1915A for failure to state a claim, and,
- (3) The Clerk is directed to "**flag**" this Order as a dismissal under 28 U.S.C. § 1915(e)(2) for failure to state a claim.

IT IS SO ORDERED.

This 27TH day of JUNE, 1997.



Sven Erik Holmes
United States District Judge

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

FILED

JUN 27 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL EUGENE THOMPSON,)

Plaintiff,)

vs.)

DELAWARE COUNTY COURTHOUSE,)
DELAWARE COUNTY JAIL,)

Defendants.)

No. 97-CV-490-H (J)

ENTERED ON DOCKET
DATE JUN 30 1997

ORDER

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v. Kerner, 404 U.S. 519, 520 (1972). However, under 42 U.S.C. § 1983, a local government may be held liable for the constitutional violation of its employees only when employee "action pursuant to official municipal policy ... caused a constitutional tort." Monell v. New York City Dept. of Social Services, 98 S.Ct. 2018, 2036 (1978). To establish municipal liability, a plaintiff must show "(1) the existence of a municipal custom or policy and (2) a direct causal link between the custom or policy and the violation alleged." Jenkins v. Wood, 81 F.3d 988, 993-94 (10th Cir. 1996) (citing City of Canton v. Harris, 489 U.S. 378, 385 (1989)). Plaintiff's claims fail to establish either of these elements.

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than pleadings drafted by lawyers and the court must construe them liberally, Haines v. Kerner, 404 U.S. 519, 520 (1972), the court should not assume the role of advocate and should dismiss claims which are supported only by vague and conclusory allegations. Hall, 935 F.2d at 1110. The Court finds that Plaintiff's negligence claim against the Delaware County Courthouse and the Delaware County Jail fails to rise to the level of a constitutional violation and should, therefore, be dismissed for failure to state a claim.

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Plaintiff's motion for leave to proceed in forma pauperis is **granted**,
- (2) Plaintiff's complaint is **dismissed with prejudice** under § 1915A for failure to state a claim, and,
- (3) The Clerk is directed to "**flag**" this Order as a dismissal under 28 U.S.C. § 1915(e)(2) for failure to state a claim.

IT IS SO ORDERED.

This 27TH day of JUNE, 1997.



Sven Erik Holmes
United States District Judge

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

FILED

JUN 27 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

GALINO LOPEZ,)
)
 Plaintiff,)
)
 vs.)
)
 JOHNNY THOMPSON, et al.,)
)
 Defendants.)

No. 95-C-907-H

ENTERED ON DOCKET
DATE JUN 30 1997

ORDER

Plaintiff, a state inmate appearing *pro se*, originally filed this action as a civil rights complaint pursuant to 42 U.S.C. § 1983. He alleged that his due process rights were violated during a prison disciplinary proceeding which resulted in the loss of 120 earned credits and 30 days of disciplinary segregation. As relief, Plaintiff asked the Court to direct the Oklahoma Department of Corrections (DOC) to expunge his misconduct and restore his revoked earned credits and to find that the DOC violated his due process rights.

On September 30, 1996, this Court recognized that the relief sought by Plaintiff was in the nature of habeas corpus and ordered that the complaint be treated as a petition for writ of habeas corpus. See Heck v. Humphrey, 512 U.S. 477 (1994); Preiser v. Rodriguez, 411 U.S. 475 (1973). The Court ordered Defendants to respond and show cause why the writ should not issue. In their response (Docket #18), Defendants argue that because the Court converted this case to a habeas corpus case, it must be dismissed because Plaintiff has not exhausted his available state remedies. Specifically, Defendants argue that the writ of mandamus provides a remedy to prisoners who allege that prison officials have violated due process rights during disciplinary

hearings. Canady v. Reynolds, 880 P.2d 391 (Okla. Crim. App. 1994); Waldon v. Evans, 86 P.2d 311 (Okla. Crim. App. 1993).

After Defendants filed their response seeking dismissal for failure to exhaust state remedies, Plaintiff filed a motion for disposition on the record (Docket #19) and a motion to advance cause (Docket #20). Plaintiff relies on the Court's finding that his due process rights were violated to argue that it would be futile to exhaust any state remedy.

After reviewing the applicable law, the Court finds merit in the Defendants' position. In Canady v. Reynolds, 880 P.2d at 400, the Oklahoma Court of Criminal Appeals confirmed that the writ of mandamus is the appropriate remedy for an inmate challenging the procedural due process afforded during a disciplinary hearing. In its Order of September 30, 1996, after conducting an *in camera* review of the reliability statement and the confidential informant statement submitted by Defendants, the Court found that those documents were inadequate to disclose a sufficient indicia of reliability to satisfy due process requirements. See Taylor v. Wallace, 931 F.2d 698, 701 (10th Cir. 1991). Thus, this Court has already determined that Plaintiff was not afforded due process¹ at his disciplinary hearing. Nonetheless, he must, pursuant to 28 U.S.C. § 2254(b)(1), exhaust his

¹The due process requirements for a prison disciplinary hearing are in many respects less demanding than those for criminal prosecution. In a prison disciplinary hearing involving the revocation of a state created liberty interest in good-time credits, an inmate must be afforded advance written notice of the claimed violation, a written statement by the fact finder as to the evidence relied on and the reasons for the disciplinary action, and the right to call witnesses and present documentary evidence in his defense when permitting him to do so would not be unduly hazardous to institutional safety or correctional goals. Waldon v. Evans, 861 P.2d 311, 312 (Okla. Crim. App. 1993) (quoting Wolff v. McDonnell, 418 U.S. 539 (1974)). In addition, the "requirements of due process are satisfied if some evidence supports the decision by the prison disciplinary board to revoke good time credits. This standard is met if 'there was some evidence from which the conclusion of the administrative tribunal could be deduced . . .'" Superintendent, Mass. Correctional Inst. v. Hill, 472 U.S. 445 (1985).

available state court remedies before seeking federal habeas relief.

The Supreme Court "has long held that a state prisoner's federal petition should be dismissed if the prisoner has not exhausted available state remedies as to any of his federal claims." Coleman v. Thompson, 111 S. Ct. 2546, 2554-55 (1991). To exhaust a claim, Petitioner must have "fairly presented" that specific claim to the Oklahoma Court of Criminal Appeals. See Picard v. Conner, 404 U.S. 270, 275-76 (1971). The exhaustion requirement is based on the doctrine of comity. Darr v. Burford, 339 U.S. 200, 204 (1950). Requiring exhaustion "serves to minimize friction between our federal and state systems of justice by allowing the State an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights." Duckworth v. Serrano, 454 U.S. 1, 3 (1981) (per curiam). Failure to satisfy the exhaustion requirement warrants dismissal of the federal habeas claims. Rose v. Lundy, 455 U.S. 508 (1982).

The record is clear in this case that Plaintiff has not exhausted his available state remedy, the writ of mandamus. The Court concludes, therefore, that this case must be dismissed without prejudice to allow Plaintiff to petition the state courts for a writ of mandamus.

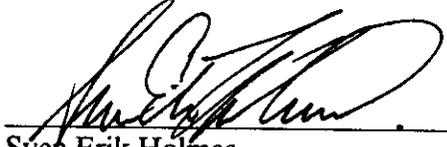
ACCORDINGLY, IT IS HEREBY ORDERED that:

1. Defendants' request that this case be dismissed (Docket #18) is **GRANTED**. This case is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust state remedies; and

2. Plaintiff's motions for disposition of the record (Docket #19) and to advance cause (Docket #20) are **DENIED** as moot.

IT IS SO ORDERED.

This 27TH day of JUNE, 1997.



Sven Erik Holmes
United States District Judge

ENTERED ON DOCKET
DATE 6-30-97

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

JAMES P. REED and LADONNA M. REED,)
)
)
Plaintiffs,)
)
)
vs.)
)
)
SUNBEAM CORPORATION, a)
corporation, and)
WAL-MART STORES, INC., a)
corporation,)
)
Defendants.)

No. 95-C-1210-K ✓

F I L E D

JUN 26 1997

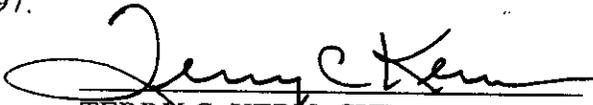
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

The Court, having been advised that the parties to this action have agreed to a settlement and dismissal with prejudice of all claims, finds that it is no longer necessary for this action to remain on the calendar of the Court. The Court hereby orders an administrative closing pursuant to N.D. LR 41.0.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within sixty (60) days that settlement has not been completed and further litigation is necessary.

ORDERED this 25 day of June, 1997.


TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

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

FILED

JUN 26 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DELBERT E. ARNOLD,)
SSN: 431-82-3181,)
)
Plaintiff,)
)
v.)
)
JOHN CALLAHAN, Acting)
Commissioner of the Social)
Security Administration,¹)
)
Defendant.)

Case No. 96-cv-415-M

ENTERED ON DOCKET
DATE JUN 27 1997

ORDER

Plaintiff, Delbert E. Arnold, seeks judicial review of a decision of the Commissioner of the Social Security Administration denying Social Security disability benefits.²

The role of the Court in reviewing the decision of the Commissioner under 42 U.S.C. §405(g) is limited to determining whether the decision is supported by substantial evidence and whether the decision contains a sufficient basis to determine

¹ President Clinton appointed John J. Callahan to serve as Acting Commissioner of Social Security, effective March 1, 1997, to succeed Shirley S. Chater. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, John J. Callahan should be substituted, therefore, for Shirley S. Chater, as defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

² Plaintiff's November 21, 1991 application for disability benefits was denied July 20, 1992 and affirmed on reconsideration. A hearing before an Administrative Law Judge (ALJ) was held March 3, 1993. The ALJ denied benefits on June 9, 1993. The Appeals Council remanded the claim to the ALJ for consideration of additional evidence submitted to the council. A supplemental hearing was held November 18, 1994. By decision June 27, 1995, the ALJ entered the findings which are the subject of this appeal. The Appeals Council affirmed the findings of the ALJ on April 10, 1996. The decision of the Appeals Council represents the Commissioner's final decision for purposes of further appeal. 20 C.F.R. §§ 404.981, 416.1481.

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that the Commissioner has applied the correct legal standards. *Winfrey v. Chater*, 92 F.3d 1017 (10th Cir. 1996); *Castellano v. Secretary of Health & Human Servs.*, 26 F.3d 1027, 1028 (10th Cir. 1994). Substantial evidence is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). The Court may neither reweigh the evidence nor substitute its discretion for that of the Secretary. *Casias v. Secretary of Health & Human Servs.*, 933 F.2d 799, 800 (10th Cir. 1991). The record of the proceedings has been meticulously reviewed by the Court.

Plaintiff claims inability to work since February 1, 1991 due to back problems, liver disease, heart problems, chronic obstructive pulmonary disease, pancreatitis and hiatal hernia. [R. 96, 103, 107 - 110]. In the June 27, 1995 decision, the ALJ concluded that Plaintiff has moderately severe chronic obstructive pulmonary disease, flare-ups of pancreatitis (when he uses alcohol or fails to follow his diet), and has had angioplasty, but that he has the residual functional capacity to engage in light or sedentary work activity. He found, therefore, that Plaintiff is not disabled as defined by the Social Security Act.

Plaintiff has appealed the determination of the ALJ, alleging that the decision is not supported by substantial evidence because the ALJ improperly rejected the reports of Plaintiff's treating physicians. Plaintiff also contends that the ALJ improperly assessed Plaintiff's credibility as to his allegations of disabling pain and that

his hypothetical question to the vocational expert at the hearing did not relate with precision all of Plaintiff's impairments and was, therefore, improper. The Court finds that the ALJ erred in not setting forth specific, legitimate reasons for rejecting the opinions of Plaintiff's treating physicians as required by *Frey v. Bowen*, 816 F.2d 508 (10th Cir. 1987) and *Byron v. Heckler*, 742 F.2d 1232, (10th Cir. 1984). Because the Court remands this case to the commissioner for reconsideration based upon this error, the remaining allegations of Plaintiff need not be addressed.

Medical Evidence

The record shows that Charles Stinnett, M.D. was Plaintiff's treating physician as far back as 1988. [R. 232]. On January 22, 1991, Plaintiff was examined by Dr. Stinnett for back pain he claimed was the result of an injury he incurred while working for the City of Siloam Springs, Arkansas as a garbage collector. [R. 231]. X-rays of Plaintiff's back were normal. [R. 234]. Dr. Stinnett referred Plaintiff to D. Luke Knox, M.D., a neurosurgeon, in February 1991. [R. 209, 231]. Dr. Knox arranged for Plaintiff to undergo an MRI and an evaluation through the physical therapy department at the Regional Hospital. [R. 208, 209]. Dr. Knox was unable to find the cause of Plaintiff's back pain. [R. 231]. He released Plaintiff to return to work with a 20 lb. weight lifting restriction and stated that he believed Plaintiff "to be less than truthful with his continued complaints and we will see how he tolerates his return to work here over the next month." [R. 207].

Dr. Stinnett examined Plaintiff in May and June 1991 and noted continuing complaints of back pain. He prescribed flexeril and ansaid and referred Plaintiff to

Susan L. Raben, M.D., an orthopaedic, for a "third and final opinion." [R. 230].

On June 20, 1991, Dr. Knox wrote letters to Dr. Stinnett and to Kenneth Martin, of the Municipal League, recommending that Plaintiff "close his Workers' Compensation claim as he would qualify for a 0% permanent partial disability." [R. 205, 206].

On July 8, 1991, Plaintiff began treatment with Dr. Raben. Physical examination revealed palpable tenderness in the midline lower lumbar spine, pain with extension and flexion, both slightly decreased, and X-rays showed a slight scoliotic curvature with convexity to the left in the lower lumbar regions with some rotation. Dr. Raben assessed "Lumbar syndrome" and started Plaintiff back in physical therapy. [R. 201-202]. On September 24, 1991, Dr. Raben noted that Plaintiff had not improved with therapy and commenced facet injections. [R. 196]. On October 3, 1991, Dr. Raben reported that Plaintiff had gained "absolutely no relief" from facet injections and stated that she doubted he would ever get back to doing his old job but that his capacity might be increased "to get him back to some meaningful employment." She set Plaintiff up for an FCE, (functional capacities evaluation). [R. 194]. On October 22, 1991, Dr. Raben reported that Plaintiff had "tested out on a sedentary level" and that she would try to set him up for work conditioning. [R. 193]. In November 1991, Dr. Raben wrote that Plaintiff had "not at all improved in work conditioning and could not really tolerate the program" and referred him back to Dr. Stinnett to put him back to work at his last level of FCE and put him into vocational rehabilitation. [R. 192].

Dr. Stinnett continued to see Plaintiff and recorded back pain complaints in January and February, 1992. [R. 227-228].

On February 22, 1992, Plaintiff was brought to the Springdale Memorial Hospital in Springdale, Arkansas by ambulance from Siloam Springs with diagnoses of Acute Myocardial Infarction, Inferolateral, Atherosclerotic Heart Disease and Alcohol Abuse, Continuous. [R. 327]. He was admitted to the hospital under the care of Bill F. Mears, M.D. [R. 216-217]. During the six day hospitalization period, Terry J. Ortego, M.D., was consulted for evaluation of Plaintiff's abnormal liver function tests. The test results were not consistent with alcoholic liver disease and hepatitis tests and liver profiles were ordered. [R. 211-212]. Plaintiff was discharged from the hospital on a cardiac diet, Lopressor, ASA (Ecotrin), Prilosec, TNG (as needed for chest pain) and Habitrol and a "strong recommendation" to abstain from alcohol. [R. 327-329]. Dr. Mears continued to treat Plaintiff for his heart condition and on April 6, 1992, admitted him back into the hospital for right and left heart catheterization, left ventricular angiography and selective coronary angiography. [R. 244-247, 332-336]. Plaintiff continued under Dr. Mears's care for complaints of shortness of breath and occasional chest pain and was diagnosed with chronic obstructive pulmonary disease on July 21, 1992. [R. 355]. Also in July 1992, Plaintiff returned to Dr. Stinnett with complaints of back pain and inability to sleep. [R. 345].

Plaintiff's attorney, meanwhile, had sent him to be examined by Richard D. Back, Ph.D., a Clinical Psychologist, in May 1992. Dr. Back conducted an MMPI and diagnosed Axis I: Somatoform Pain Disorder and recommended biofeedback treatment

for back pain. [R. 268-270]. In June 1992, Plaintiff was examined by Kathleen A. Dahlmann, M.D. [R. 258-262]. Her report contained a "Medical Assessment/Ability to Perform Work-Related Activities: This gentleman would be unable to participate in the labor force in any capacity at the present time due to his severe incapacitating pain which was obvious to this examiner from the moment he walked into the office." [R. 260].

On August 19, 1992, at the request of Plaintiff's attorney, Plaintiff was seen by Vincent B. Runnels, M.D., a neurosurgeon. Dr. Runnels reported that Plaintiff "has significant degenerative disc disease as well as other problems with alcohol and cigarettes and he may have some residual liver disease as well as heart disease. I'm not so certain he's harboring any surgical indications and he may well have some element of malingering." Dr. Runnels ordered a repeat MRI. [R. 284-285]. On September 10, 1992, Dr. Runnels reported to the Municipal League, Dr. Stinnett, the City of Siloam Springs and Plaintiff's attorney, that the MRI was normal and that he was releasing Plaintiff from follow up care as he did not find any permanent disability. [R. 278].

In an apparent complete "turn about", Dr. Runnels wrote a letter to Plaintiff's attorney on September 28, 1992 reporting that Plaintiff "has excruciating back pain and traveling to Miami, Oklahoma exacerbates his back pain." He stated it would be helpful to Plaintiff to move the Social Security hearing to Arkansas, a shorter distance for Plaintiff to travel. [R. 264]. Again, five months later, Dr. Runnels wrote a "To Whom It May Concern Letter" on behalf of Plaintiff, stating that Plaintiff "is

permanently disabled for gainful employment due to his back." He added: "At the present time, until he can be retrained, I do not think he can carry out his usual work. It would help him to follow a back exercise program, posture correction, heat, etc., that we have outlined for him here in the office in detail." [R. 43 and 287].

On March 23, 1993, a Pulmonary Function Study was conducted at Springdale Memorial Hospital. [R. 337-342]. The interpretation described a moderate restrictive ventilatory defect and a disproportionately reduced forced expiratory flow during the middle half of exhalation suggesting the possibility of a superimposed early obstructive pulmonary impairment. [R. 338]. Plaintiff continued under treatment by Dr. Mears through July 1993 [R. 253, 352- 354, 362]. On August 20, 1993, Dr. Mears wrote Plaintiff's attorney, stating that Plaintiff "is totally and permanently disabled from his pulmonary condition and is unable to be gainfully employed due to it." [R. 319]. The opinion in this letter is consistent with Dr. Mears's handwritten office notes from the same time period, containing observations that Plaintiff continued to complain of shortness of breath and chest pain and that, while his condition had stabilized, there was no significant improvement. Dr. Mears wrote: "Don't think patient able to work due mainly to severe COPD." [R. 349-351].

On November 16, 1994, Dr. Stinnett wrote Plaintiff's attorney, stating: "I feel with the diagnoses of chronic back degeneration, pancreatitis, coronary artery disease and COPD this man is totally and permanently disabled." [R. 403]. This letter was delivered to the ALJ at the November 18, 1994 hearing.

The ALJ's Decision

The ALJ summarized the medical evidence contained in the record. The February 23, 1993, August 27, 1992 and September 28, 1992 letters of Dr. Runnels, he said, are inconsistent with the doctor's earlier reports and are not supported by medical evidence of changes in the claimant's back. [R. 18]. He noted that Dr. Mears, Plaintiff's treating cardiologist, had recorded a complaint of occasional shortness of breath on April 29, 1992, but that the examination had reflected the lungs to be clear, with occasional wheeze. The ALJ stated that Dr. Mears had not prescribed medication. [R. 19]. The record, however, contains a medication chart provided by Dr. Mears's office, of 10 different medications prescribed, including Cardizem, TNG, ASA, and Habitrol, between April 9, 1992 and October 12, 1993. [R. 350]. In his decision, the ALJ noted that Dr. Mears had opined on August 20, 1993, that Plaintiff is totally and permanently disabled and unable to be gainfully employed and that he had repeated that opinion on May 11, 1994. [R. 20, 21]. The ALJ did not further address those statements. The remainder of the discussion of the medical evidence is summarization of the reports, tests and notes contained in the record.

The November 16, 1994 opinion of Dr. Stinnett that Plaintiff is totally and permanently disabled [R. 403] is not even mentioned in the ALJ's decision. The assumption, based upon this omission, is that the ALJ disregarded the opinion of Dr. Stinnett and, therefore, rejected it.

The only reason given by the ALJ for rejecting the opinions of Drs. Stinnett, Runnels and Mears is the following sentence:

Regarding functional restrictions, while the evidence reflects opinions that the claimant is totally disabled, there is no evidence to support these opinions, as set out above. [R. 26].

The ALJ relied heavily upon the testimony of the consultative medical expert, Dr. Harold Goldman, at the November 18, 1994 hearing and the earlier reports of Dr. Runnels in determining Plaintiff's residual functional capacity and in concluding that Plaintiff is not disabled. If the ALJ had weighed the reports of Drs. Runnels, Mears and Stinnett against the reports of Drs. Raben and Knox, also treating physicians, he did not explain in his decision that he had done so.

The "Treating Physician Rule"

It is well established that the Secretary must give controlling weight to the opinion of a treating physician if it is well supported by clinical and laboratory diagnostic techniques and if it is not inconsistent with other substantial evidence in the record, 20 C.F.R. §§ 404.1527 (d)(1) and (2); *Kemp v. Bowen*, 816 F.2d 1469 (10th Cir. 1987). A treating physician's opinion may be rejected if it is brief, conclusory and unsupported by medical evidence. However, good cause must be given for rejecting the treating physician's views and, if the opinion of the claimant's physician is to be disregarded, specific, legitimate reasons for rejection of the opinion must be set forth by the ALJ, *Frey v. Bowen*, 816 F.2d 508 (10th Cir. 1987); *Byron v. Heckler*, 742 F.2d 1232, (10th Cir. 1984) .

Here, the ALJ made only a conclusory statement that the consultative medical expert found no anatomical reason for the pain alleged by Plaintiff and that he could

find no objective reasons for the severe restrictions set forth by Dr. Snider, another consultative physician.

The ALJ also relied upon Dr. Runnel's statement that Plaintiff "may well have some element of malingering" in his August 27, 1992 letter as support for his decision. [R. 24]. However, in that same letter Dr. Runnels also stated that Plaintiff "has significant degenerative disc disease" as well as other problems. [R. 284]. The ALJ concluded that there "is no medical evidence in the record that the claimant has severe degenerative disk disease of the lumbar spine." In doing so, the ALJ relied upon one portion of Dr. Runnel's report and disregarded another portion of the same report. This, he may not do. See *Switzer v. Heckler*, 742 F.2d 382, 385-86 (7th Cir. 1984)("[T]he Secretary's attempt to use only the portions [of a doctor's report] favorable to her position, while ignoring other parts, is improper."); *Smith v. Bowen*, 687 F.Supp. 902, 904 (S.D.N.Y. 1988)("Although the ALJ is not required to reconcile every ambiguity and inconsistency of medical testimony, he cannot pick and choose evidence that supports a particular conclusion." (citing *Ferraris v. Heckler*, 728 F.2d 582, 587 (2d Cir. 1984); *Fiorello v. Heckler*, 725 F.2d 174, 175-76 (2d Cir. 1983); *Ceballos v. Bowen*, 649 F.Supp. 693, 700 (S.D.N.Y. 1986)). At a minimum, the ALJ would have to explain his reason(s) for rejecting part of the doctor's report. See *Garfield v. Schweiker*, 732 F.2d 605, 609 (7th Cir. 1984) (holding that if the ALJ and Appeals Council had reason to reject certain reports, "those reasons should have been stated").

The Court finds that the ALJ failed to articulate good cause for disregarding and rejecting the opinions of Plaintiff's treating physicians and his conclusory statement that their opinions were not supported by the evidence, is insufficient under the established precedent. *Frey*, p. 515. The Commissioner must apply the correct legal standards, and show that he has done so. *Winfrey*, p. 1019. Therefore, this case must be REMANDED FOR RECONSIDERATION.

In remanding this case, the Court does not dictate the result, nor does it suggest that the record is insufficient. Rather, remand is ordered to assure that a proper analysis is performed and the correct legal standards are invoked in reaching a decision based upon the facts of the case. *Kepler*, at 391.

Dated this 26th day of JUNE, 1997.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

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

DELBERT E. ARNOLD,)
)
Plaintiff,)
)
v.)
)
JOHN J. CALLAHAN, Acting)
Commissioner of the Social Security)
Administration,)
)
Defendant.)

CASE NO. 96-cv-415-M

FILED

JUN 26 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE JUN 27 1997

JUDGMENT

Judgment is hereby entered for Plaintiff and against Defendant. Dated
this 26th day of JUNE, 1997.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

(12)

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

FILED

JUN 26 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

RENDA HARTMAN,

Plaintiff,

vs.

WINDSHIELDS AMERICA, INC.
a Delaware corporation,
and GLOBE GLASS, SIGN & MIRROR CO.,
an Illinois corporation,

Defendants.

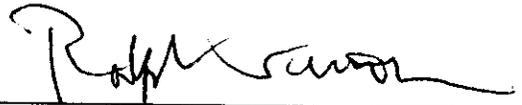
Case No. 96-CV-1137BU

ENTERED ON CLERK

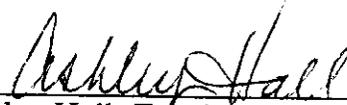
DATE JUN 27 1997

STIPULATION ^{of} ~~to~~ DISMISS

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the above-entitled cause be dismissed with prejudice and without costs to any party, all costs having been paid and all matters in controversy for which said action was brought having been fully compromised, settled and adjourned.



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(918) 582-9339
Counsel for Plaintiff



Ashley Hall, Esquire
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(312) 861-8000
Counsel for Defendants

DATED: June 3, 1997

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

FILED

JUN 25 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

PENNWELL PUBLISHING COMPANY,)
)
Plaintiff,)
)
vs.)
)
G. STIVAROS & PARTNERS)
(OVERSEAS) LTD.,)
)
Defendant.)

No. 97-CV-311-B ✓

ENTERED ON DOCKET

DATE 6-26-97

ORDER

The Court has for decision Defendant's motion to dismiss for want of *in personam* jurisdiction and improper venue pursuant to Fed.R.Civ.P. 12(b)(2) and (3) (docket #4).

Plaintiff, Pennwell Publishing Company, commenced this action for declaratory judgment under 28 U.S.C. § 2201, seeking a declaration Plaintiff has no contractual obligation to Defendant, G. Stivaros & Partners (Overseas) Ltd., a legal entity of the country of Cyprus. Plaintiff asserts diversity jurisdiction. Plaintiff obtained service on the Defendant under the service abroad of judicial documents of the Hague Convention - November 15, 1965.¹

The record reveals Plaintiff and Defendant carried on negotiations in 1996 regarding Defendant supplying Plaintiff with exhibition stands at a conference to be held in Libreville,

¹Shortly after the Plaintiff commenced this action herein on April 4, 1997, the Defendant commenced its action on said alleged contract on April 10, 1997, in the United States District Court for the Southern District of Texas, Houston Division, Civil Action No. H-97-1196.

Gabon, West Africa, to be hosted by Plaintiff. Plaintiff asserts the Defendant contends a binding contract arose from such negotiations, and the Plaintiff asserts to the contrary.

The record reveals the following undisputed facts: the negotiations took place between Plaintiff's representatives in its Houston, Texas division office and representatives of the Defendant abroad. The Plaintiff, Pennwell Publishing Company, is an Oklahoma corporation with its principal place of business in Tulsa, Oklahoma. Defendant is a Cyprus legal entity with its principal place of business in Cyprus. Defendant has not now nor ever had an office or representatives in the State of Oklahoma. None of the negotiations or communications concerning formation of the subject contract occurred in, to or from the State of Oklahoma or the Northern District thereof.²

Plaintiff urges 28 U.S.C. § 1391(d) as the basis for establishing venue and jurisdiction, and additionally argues Defendant's contacts with Oklahoma were sufficient to give the Northern District of Oklahoma *in personam* jurisdiction over Defendant. 28 U.S.C. § 1391(d) states: "An alien may be sued in any district." It is uncontroverted that Defendant is an alien.

Plaintiff's contention in essence is that § 1391(d) permits both venue and *in personam* jurisdiction over the Defendant. The Court's analysis of existing case law does not support Plaintiff's position. The cases cited by the Plaintiff in support of its "national contacts" theory are inapposite herein because there is no federal statute authorizing nationwide or

²After the alleged breach Defendant wrote a demand letter from Cyprus to Plaintiff in Tulsa, Oklahoma.

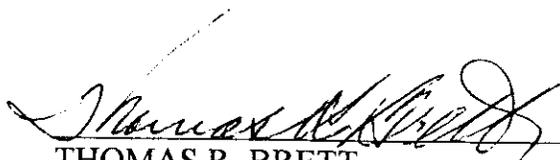
worldwide service on the Defendant. In Re Chase & Sanborn Corp., 835 F.2d 1341 (11th Cir. 1988), and Weinstein v. Norman M. Morris Corp., 432 F.Supp. 337 (E.D.MI. 1977).

Thus, the analysis of the cases of Fidelity & Casualty Co. of New York v. Philadelphia Resins Corp., 766 F.2d 440 (10th Cir. 1985), *cert.denied*, 474 U.S. 1082 (1986); Williams v. Bowman Livestock Equipment Co., 927 F.2d 1128 (10th Cir. 1991) (quoting Behagen v. Amateur Basketball Association, 744 F.2d 731 (10th Cir. 1984), Wilshire Oil Company of Texas v. Riffe, 409 F.2d 1277 (10th Cir. 1969); Rambo v. American Southern Insurance Co., 839 F.2d 1415 (10th Cir. 1988), and Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985), setting forth the minimum contacts analysis of the Defendant purposely availing itself of the privilege of conducting activities within the forum state must be employed herein. The Defendant's activity prior to nor during the negotiations concerning the alleged contract did not involve Oklahoma.

Implicit in § 1391(d) for the purposes of venue is that an alien corporation may be sued in any district so long as it is properly amenable to service of process in that district. For purposes of this case, the Northern District of Oklahoma may serve as a proper venue under § 1391(d) if the Defendant, G. Stivaros & Partners (Overseas) Ltd., had sufficient contact with the State of Oklahoma to support *in personam* jurisdiction. Naegler v. Nissan Motor Co., Ltd., 835 F.Supp. 1152 (W.D.Mo. 1993), and James Talcott, Inc. v. Allahabad Bank, Ltd., 444 F.2d 451 (5th Cir.), *cert. denied sub nom. City Trade and Indus., Ltd. v. Allahabad*, 404 U.S. 940, 92 S.Ct. 280, 30 L.Ed.2d 253 (1971), and Oil & Gas Ventures-First 1958 Fund, Ltd. v. Kung, 250 F.Supp. 744 (S.D.N.Y. 1966). Such contact is lacking.

Therefore, the Court sustains Defendant's motion to dismiss Plaintiff's complaint for lack of jurisdiction over the person and improper venue.³

DATED this 25th day of June, 1997.


THOMAS R. BRET
UNITED STATES DISTRICT JUDGE

³This renders moot Defendant's alternative forum convenience request, which the Court will leave in the capable hands of the Southern District of Texas pursuant to Plaintiff's request there.

6-26-97

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 26 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

PATRICIA D. MITCHELL,)
SS# 548-11-4396)

Plaintiff,)

v.)

SHIRLEY S. CHATER, Commissioner of)
Social Security Administration,)

Defendant.)

No. 95-C-1133-E

ORDER

Plaintiff, Patricia D. Mitchell, pursuant to 42 U.S.C. § 405(g), requests judicial review of the decision of the Commissioner denying Social Security benefits.^{1/} Plaintiff asserts error because (1) the Administrative Law Judge (ALJ) ignored the diagnoses of plaintiff's treating physicians, (2) the ALJ improperly found plaintiff to not be credible, (3) the ALJ failed to offer the vocational expert a proper hypothetical, and (4) the ALJ failed to consider the record as a whole. For the reasons discussed below, the Court affirms the Commissioner's decision.

I. PLAINTIFF'S BACKGROUND

Mitchell was born October 26, 1965, and completed the eighth grade. She

^{1/} Plaintiff filed an application for disability and supplemental security insurance benefits on January 21, 1994. [R. at 20]. The application was denied initially and upon reconsideration. A hearing before Administrative Law Judge Dana E. McDonald (hereafter, "ALJ") was held March 8, 1995. [R. at 20]. By order dated March 24, 1995, the ALJ determined that Plaintiff was not disabled. [R. at 27]. Plaintiff appealed the ALJ's decision to the Appeals Council. On September 21, 1995 the Appeals Council denied Plaintiff's request for review. [R. at 5].

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has worked as a car hop, machine operator, dishwasher and counter help. She alleges an inability to work since October 15, 1990 due to "grand mal" seizures.

II. SOCIAL SECURITY LAW & STANDARD OF REVIEW

The Commissioner has established a five-step process for the evaluation of social security claims.^{2/} See 20 C.F.R. § 404.1520. Disability under the Social Security Act is defined as the

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment

42 U.S.C. § 423(d)(1)(A). A claimant is disabled under the Social Security Act 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 in the national economy. . . .

42 U.S.C. § 423(d)(2)(A).

^{2/} Step one requires the claimant to establish that he is not engaged in substantial gainful activity (as defined at 20 C.F.R. §§ 404.1510 and 404.1572). Step two requires that the claimant demonstrate that he has a medically severe impairment or combination of impairments that significantly limit his ability to do basic work activities. See 20 C.F.R. § 1521. If claimant is engaged in substantial gainful activity (step one) or if claimant's impairment is not medically severe (step two), disability benefits are denied. At step three, claimant's impairment is compared with those impairments listed at 20 C.F.R. Pt. 404, Subpt. P, App. 1 (the "Listings"). If a claimant's impairment is equal or medically equivalent to an impairment in the Listings, claimant is presumed disabled. If a Listing is not met, the evaluation proceeds to step four, where the claimant must establish that his impairment or the combination of impairments prevents him from performing his past relevant work. A claimant is not disabled if the claimant can perform his past work. If a claimant is unable to perform his previous work, the Commissioner has the burden of proof (step five) to establish that the claimant, in light of his age, education, and work history, has the residual functional capacity ("RFC") to perform an alternative work activity in the national economy. If a claimant has the RFC to perform an alternate work activity, disability benefits are denied. See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987); Williams v. Bowen, 844 F.2d 748, 750-51 (10th Cir. 1988).

The Commissioner's disability determinations are reviewed to determine (1) if the correct legal principles have been followed, and (2) if the decision is supported by substantial evidence. See 42 U.S.C. § 405(g); Bernal v. Bowen, 851 F.2d 297, 299 (10th Cir. 1988); Williams, 844 F.2d at 750.

The Court, in determining whether the decision of the Commissioner is supported by substantial evidence, does not examine the issues *de novo*. Sisco v. United States Dept. of Health and Human Services, 10 F.3d 739, 741 (10th Cir. 1993). The Court will not reweigh the evidence or substitute its judgment for that of the Commissioner. Glass v. Shalala, 43 F.3d 1392, 1395 (10th Cir. 1994). The Court will, however, meticulously examine the entire record to determine if the Commissioner's determination is rational. Williams, 844 F.2d at 750; Holloway v. Heckler, 607 F. Supp. 71, 72 (D. Kan. 1985).

"The finding of the Secretary^{3/} as to any fact, if supported by substantial evidence, shall be conclusive." 42 U.S.C. § 405(g). Substantial evidence is that amount and type of evidence that a reasonable mind will accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971); Williams, 844 F.2d at 750. In terms of traditional burdens of proof, substantial evidence is more than a scintilla, but less than a preponderance. Perales, 402 U.S. at 401.

^{3/} Effective March 31, 1995, the functions of the Secretary of Health and Human Services ("Secretary") in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. For the purpose of this Order, references in case law to "the Secretary" are interchangeable with "the Commissioner."

Evidence is not substantial if it is overwhelmed by other evidence in the record. Williams, 844 F.2d at 750.

This Court must also determine whether the Commissioner applied the correct legal standards. Washington v. Shalala, 37 F.3d 1437, 1439 (10th Cir. 1994). The Commissioner's decision will be reversed when she uses the wrong legal standard or fails to clearly demonstrate reliance on the correct legal standards. Glass, 43 F.3d at 1395.

III. THE ALJ'S DECISION

In this case, the ALJ determined that Plaintiff has not engaged in substantial gainful activity since October 15, 1990 and that her impairment of seizure disorder is severe, but that she does not have an impairment or combination of impairments listed in the regulations. The ALJ further found that Mitchell's testimony regarding seizures is credible to the extent that it is consistent with the ability to perform work that does not require her to work around unprotected heights, dangerous moving machinery, or operate motorized vehicles. Lastly, the ALJ found that Mitchell had no past relevant work but can perform work which is available in the economy in significant numbers such as hand packer/packager and assembler. The ALJ therefore found Mitchell not to be disabled at the fifth sequential step.

IV. REVIEW

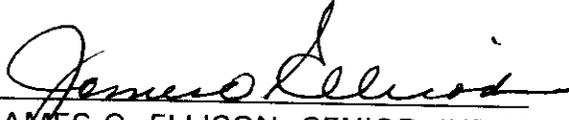
In essence, the ALJ found that plaintiff's only disability had to do with her seizures, that she has a history of failing to take her medication, and that "if her seizures were as constant and disabling as alleged, it is reasonable to assume that

she would exhaust every means possible to obtain at least partial relief of those seizures." Plaintiff argues that by reaching this conclusion, the ALJ improperly discounted her own and her boyfriend's testimony and failed to give great weight to the clinical findings of her treating and examining physicians. The evidence plaintiff asserts that the ALJ ignored is her own and her boy friend's testimony that she did not take medication because of her mother's religious beliefs, her inability to afford it, and the fact that it made her groggy. Further plaintiff argues that there is no evidence that plaintiff's seizures were under control with medication. Plaintiff relies on Social Security Ruling 82-59 which sets forth, as justifiable causes for failure to follow prescribed treatment, the claimant's religion, and the inability to afford treatment for which free community resources are unavailable.

In this instance, procurement of treatment is not against plaintiff's religion, but against her mother's. Moreover, it certainly is not clear that plaintiff exhausted all avenues for obtaining medication and follow up treatment. Her failure to pursue these avenues is dispositive of this issue. Galdean v. Chater, 74 F.3d 1249, 1996 WL 23199 (10th Cir. N.M.). There is no error in the ALJ's conclusions regarding plaintiff's failure to take medication. Similarly, the ALJ's conclusions regarding plaintiff's credibility are supported by the evidence, and it is notable that the ALJ performed the analysis required by Luna V. Bowen, 834 F.2d 161, 165 (10th Cir. 1987). [R. at 24]. Lastly, given that the conclusions of the ALJ regarding plaintiff's failure to take medication are supported by the record, the hypothetical proffered was appropriate.

Accordingly, the Commissioner's decision is **AFFIRMED**.

Dated this 25th day of June 1997.



JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

6-26-97

FILED

JUN 25 1997

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

CASS L. FILHIOL, an)
individual,)
)
Plaintiff,)
)
vs.)
)
DON CARLTON MITSUBISHI,)
an Oklahoma corporation, and)
MATT HALLUM, an individual,)
)
Defendants.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 96-CV-910-C

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(ii), Federal Rules of Civil Procedure, Plaintiff Cass L. Filhiol hereby dismisses the above lawsuit with prejudice.

HOWARD, WIDDOWS, BUFOGLE & VAUGHN

By: W. Allen Vaughn
W. Allen Vaughn (OBA #14134)
Michael Staggs (OBA # 13782)
1500 Nations Bank Center
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Tulsa, Oklahoma 74119
(918) 744-7440

DOERNER, SAUNDERS, DANIEL & ANDERSON

By: Michael C. Redman
Michael C. Redman (OBA #13340)
320 South Boston, Suite 500
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Defendant
DON CARLTON MITSUBISHI

ENTERED ON DOCKET
6-26-97

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 25 1997

UNITED STATES OF AMERICA,)
)
 Plaintiff)
)
 v.)
)
 HOLLY CHANSLOR BRADY,)
)
 Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil Action No. 97CV 229E

CLERK'S ENTRY OF DEFAULT

It appearing from the files and records of this Court as of June 25, 1997 and the declaration of Loretta F. Radford, Assistant United States Attorney, that the Defendant, Holly Chanslor Brady, against whom judgment for affirmative relief is sought in this action has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure; now, therefore,

I, PHIL LOMBARDI, Clerk of said Court, pursuant to the requirements of Rule 55(a) of said rules, do hereby enter the default of said defendant.

Dated at Tulsa, Oklahoma, this 25 day of June, 1997.

PHIL LOMBARDI, Clerk
United States District Court for
the Northern District of Oklahoma

By A. Schwelke
Deputy Court Clerk for Phil Lombardi

RECEIVED ON DOCKET

FILED 6-26-97

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

FILED

JUN 25 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DOUGLAS J. ST. PIERRE and L. STEVE
WAIDE,

Plaintiffs,

vs.

Case No. 96CV1132K ✓

MELVIN D. WILLIAMS, ALLEN J.
RADEMACHER and HERMAN BROS.,
INC.,

Defendants.

STIPULATION FOR DISMISSAL WITH PREJUDICE

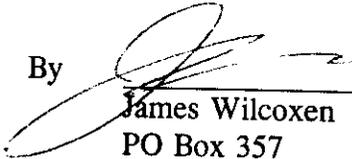
COME NOW the attorney for Plaintiffs, Douglas J. St. Pierre and L. Steve Waide, and the attorneys for the Defendants, Melvin D. Williams, Allen J. Rademacher and Herman Bros., Inc., and hereby stipulate and agree that the above captioned cause may, upon Order of the Court, be dismissed with prejudice to further litigation pertaining to all matters involved herein against Defendants, Melvin D. Williams, Allen J. Rademacher and Herman Bros., Inc., and the said parties hereby request the Court to dismiss said action against Defendants, Melvin D. Williams, Allen J. Rademacher and Herman Bros., Inc. with prejudice pursuant to this Stipulation.

7

OLJ

WILCOXEN, WILCOXEN & PRIMOMO

By


James Wilcoxen

PO Box 357

Muskogee OK 74402-0357

Attorneys for Plaintiffs, Douglas J. St.
Pierre and L. Steve Waide

RHODES, HIERONYMUS, JONES
TUCKER & GABLE

By


JOHN H. TUCKER, OBA #9110

PO Box 21100

Tulsa, Oklahoma 74121-1100

(918) 582-1173

Attorneys for Defendants, Melvin D.
Williams, Allen J. Rademacher and Herman
Bros., Inc.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 24 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

File No. 96-CV-520B

CHAUNCEY HOUSE,)
)
 Plaintiff,)
)
 vs.)
)
 RIO ALGOM, INC., a Delaware)
 corporation d/b/a VINCENT METAL)
 GOODS, TIM WARNER, individually)
 and as an employee of VINCENT)
 METAL GOODS, and BILL HIGHT,)
 individually and as an employee)
 of VINCENT METAL GOODS,)
)
 Defendants.)

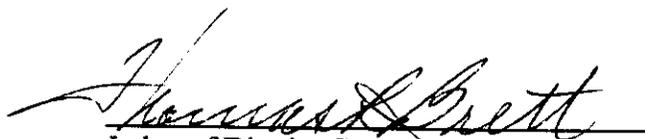
ENTERED ON DOCKET
JUN 26 1997
DATE _____

ORDER

Based upon the Stipulation of the parties, IT IS HEREBY ORDERED that the above-captioned matter is hereby dismissed with prejudice.

BY THE COURT

Dated: June 24, 1997



Judge of District Court

25-

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
JUN 24 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,
Plaintiff
v.
JAMES RAWLINGS,
Defendant.

Civil Action No. 97CV 234B

ENTERED ON DOCKET
DATE JUN 26 1997

DEFAULT JUDGMENT

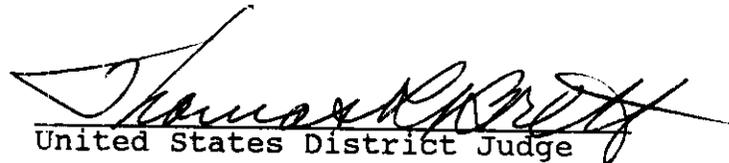
This matter comes on for consideration this 24th day of June, 1997, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, and the Defendant, James Rawlings, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, James Rawlings, was served with Summons and Complaint on March 18, 1997. 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.

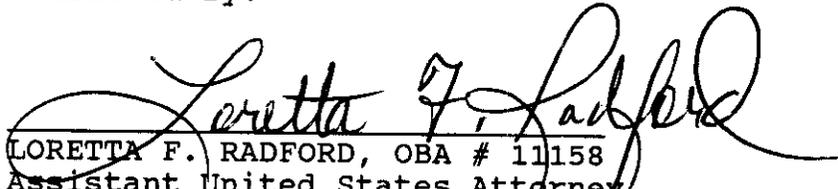
IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, James Rawlings, for the principal amounts of \$76.72 and \$1,034.21, plus accrued interest of \$805.93 and \$241.81, plus administrative charges in the amounts of \$38.22 and \$38.22, plus interest

ll

thereafter at the rate of 7% per annum and 3% per annum until judgment, 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 filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 5.65 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


LORETTA F. RADFORD, OBA # 11158
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103
(918) 581-7463

FILED

JUN 24 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff

v.

ISHMAEL E. CROSSLIN,

Defendant.

Civil Action No. 97CV 240B

ENTERED ON DOCKET

DATE JUN 23 1997

DEFAULT JUDGMENT

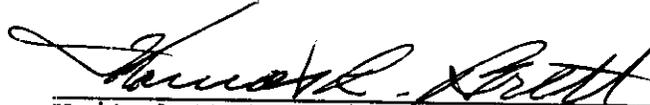
This matter comes on for consideration this 24th day of June, 1997, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, and the Defendant, Ishmael E. Crosslin, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Ishmael E. Crosslin, was served with Summons and Complaint on May 8, 1997. 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.

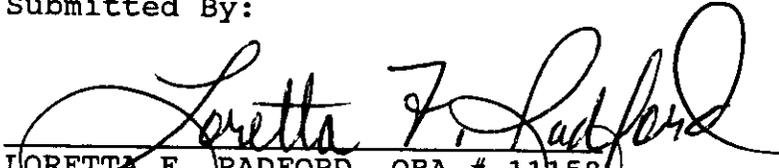
IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Ishmael E. Crosslin, for the principal amount of \$2,809.58, plus accrued interest of \$1,339.62, plus administrative charges in the amount of \$40.00, plus interest thereafter at the rate of 8 percent per annum

10

until judgment, 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 filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 5.65 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


LORETTA F. RADFORD, OBA # 11158
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103
(918) 581-7463

6/23/97

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

EDWARD L. BRUCE,)
Plaintiff,)
vs.)
JOHN J. CALLAHAN, ACTING)
COMMISSIONER OF THE SOCIAL)
SECURITY ADMINISTRATION,)
Defendant.)

No. 97CV 271BU

RECEIVED
JUN 20 1997
U.S. ATTORNEY
N.D. OKLAHOMA

FILED

JUN 25 1997
LC

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JOINT ORDER DISMISSING
COMPLAINT WITHOUT PREJUDICE

ENTERED ON DOCKET

DATE JUN 26 1997

NOW on this 25th day of June, 1997, there comes on before the undersigned Magistrate

Judge, Joint Application Dismissing Complaint without prejudice, and finds that:

1. In August, 1989, Claimant-Plaintiff filed for Title II and Title XVI disability benefits due to his chronic severe back pain, major depression and other medical problems resultant therefrom.
2. After a hearing and denial of benefits by an Administrative Law Judge, and a final decision of the Appeals Council, Mr. Bruce filed his first appeal to this Court in December 1991, Case No. 91 C 990 E; it was remanded on the Secretary's motion on March 18, 1993.
3. Since the remand, there have been two additional hearings before Administrative Law Judges at which Mr. Bruce was again denied benefits, with the latest being the decision issued on June 28, 1995.
4. On Plaintiff's appeal from said denial, the Appeals Council, by letter dated February 10, 1997, notified the Plaintiff that:

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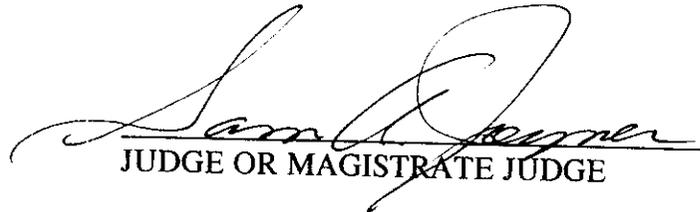
... We are assuming jurisdiction of this case.... We will review all issues considered in the Administrative Law Judge's decision, ...

Based on the present record, we are prepared to find that the claimant has been disabled since the date of his application for supplemental security income filed on August 14, 1989. However, the claimant was not under a disability at any time on or prior to December 31, 1988, the date he last met the disability insured status requirements of the Act and is therefore not entitled to a period of disability or disability insurance benefits.

5. Plaintiff has no objection to the proposed grant of supplemental security income benefits by the Commissioner, but appealed the finding that Plaintiff was not under a disability at any time on or prior to December 31, 1988 and therefore is not eligible for disability insurance benefits.
6. Plaintiff mistakenly believed the Appeals Council letter of February 10, 1997 matured into a final order at the end of thirty days from its date. Plaintiff filed the instant appeal or Complaint based on that mistaken belief.
7. Defendant filed his Motion to Dismiss, on May 23, 1997, on the grounds that the February 10, 1997 letter was not a final decision.
8. Plaintiff obtained an Order granting him an extension of time to respond to the Motion to Dismiss.
9. Plaintiff confesses the Motion to Dismiss on the ground the Commissioner's February 10, 1997 letter was not a final order.
10. The parties jointly agree to a dismissal of the Complaint without prejudice to or estoppel of Plaintiff filing another complaint appealing a final decision of the Commissioner.
11. The Commissioner agrees that upon remand Plaintiff may file exceptions presenting his arguments on the proposed denial of disability insurance benefits prior to issuing a final order.

Exceptions, in letter form, are attached hereto as Exhibit A.

IT IS THEREFORE SO ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint is dismissed without prejudice to or estoppel of Plaintiff refileing upon a final decision of the Commissioner of Social Security.


JUDGE OR MAGISTRATE JUDGE

APPROVED BY:



M. JEAN HOLMES, OBA # 13507
WINTERS, KING & ASSOCIATES, INC.
2448 E 81st St, Ste 5900
Tulsa OK 74137-4259
(918) 494 6868; fax 491 6297
e-mail: 10436.1104@compuserve.com
ATTORNEY FOR PLAINTIFF/CLAIMANT

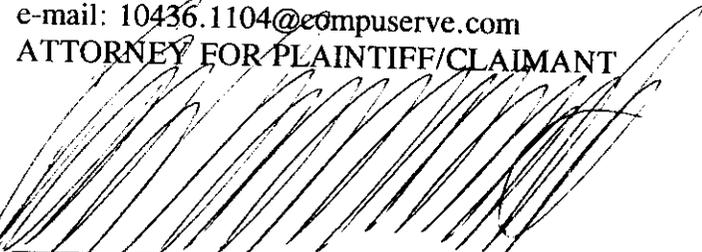

PETER BERNHARDT
ASSISTANT U S ATTORNEY
333 W FOURTH ST SUITE 3460
TULSA OK 74103
ATTORNEY FOR DEFENDANT

EXHIBIT A: EXCEPTIONS

Thomas J. Winters
Michael J. King
M. Jean Holmes
R. Thomas Irwin
Karen L. King
David M. Dyer
Joel A. LaCourse
J. Daniel Beirute
Marshal H. Wright

Winters, King & Associates, Inc.

Attorneys and Counselors at Law
2448 East 81st Street • Suite 5900
Tulsa, Oklahoma 74137-4259
Telephone (918) 494-6868
Facsimile (918) 491-6297

**Oklahoma City
Office**

3711 Classen Boulevard
Oklahoma City, OK 73118
Telephone (405) 557-1700
Facsimile (405) 524-5407

June 20, 1997

Appeals Council
Office of Hearings and Appeals
Social Security Administration
5107 Leesburg Pike
Falls Church VA 22041-3255

Re: EXCEPTIONS TO FEBRUARY 10, 1997 LETTER OF ADELAIDE EDELSON
& GABRIEL E. DePASS, ADM. APPEALS. JUDGES
Claimant: Edward L. Bruce Social Security No.: 448-50-1853
Claims: Disability Ins. Benefits & Supplemental Sec. Income

Dear Members:

This letter sets out the exceptions which my client, Edward L. Bruce, raises with the Council concerning the proposed denial of Disability Insurance Benefits as outlined in the above referenced letter dated February 10, 1997.

Claimant concurs with the proposed results relating to the SSI benefits, i.e. that he has been disabled since the date of his application for supplemental security income filed on August 14, 1989.

Claimant, Mr. Bruce, takes exception to the proposed finding that he was not disabled at any time on or prior to December 31, 1988, the date he last met the disability insured status requirements, and therefore is not entitled to a period of disability insurance benefits under Title II of The Social Security Act.

Again, we would re-urge and adopt by reference the letter brief submitted by the undersigned dated February 26, 1996, and all documents referenced therein.

We would call particular attention to the fact that the same evidence which supports a grant of SSI benefits from August 1989, also supports a grant of DIB benefits on or before December 31, 1988. There is no gap in evidence to support a denial of DIB to Claimant during that eight month period.

In this case we have a man who, in 1980, was struck by a 500+ lb. water heater in the back and knocked down. He was found to have "segmental instability" and intermittent severe pain bouts; he also developed hyperesthesia, or numbness in his legs. While the cause has not been determinable by the available testing methods, the clinical signs and symptoms have been abundant. This man had been told in the early 1980's that there was nothing further the medical profession could do for him. His application for Social Security disability was denied. The record shows that after 1984, Mr. Bruce was unable to sustain employment, he drank alcohol to kill his pain, and even after being persuaded in 1989 to try to obtain Social Security benefits through the aid of an attorney, Mr. Bruce as an indigent had to rely on available free medical treatment.

While Mr. Bruce worked intermittently until 1984, he has not worked since. He is currently subsisting on the public dole. He remains in chronic pain and depressed.

An example of the medical evidence of Mr. Bruce's severe pain bouts is contained in Ex 42 & 52, emergency room reports at a Pryor Oklahoma hospital described Mr. Bruce as being strapped to a back board grinding his teeth in pain and writhing in 1989; and the emergency room doctors always diagnosed Mr. Bruce as having chronic severe pain. Numerous witnesses, either by affidavit or at the three ALJ hearings, confirmed the reports of incapacitating pain bouts and symptoms of depression.

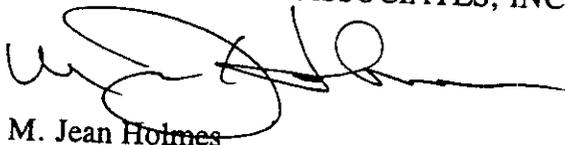
Three medical reports, two of which were treating sources, have stated that Mr. Bruce has been disabled from sustaining gainful activity since 1984 due to chronic severe pain in his back and major depression. (Ex. 88, 93, & 94) These are uncontroverted by any other report in the record of a treating medical provider. These reports contain clinical signs and symptoms which support the diagnosis. The combination of medically determined conditions must also be considered as severely limiting Mr. Bruce's ability to sustain gainful activity.

No vocational expert has testified that a person of Mr. Bruce age, education and medical symptoms is employable at any job available. The Commissioner has not met his burden of proof or stage five of the evaluation process.

In short, the evidence in this case supports a grant of DIB as well as SSI benefits. There is no evidence in the gap between Mr. Bruce's insured status ending after December 31, 1988 and his application for SSI in August 1989 which supports a denial of disability for Title II benefits.

Sincerely yours,

WINTERS, KING & ASSOCIATES, INC.



M. Jean Holmes
for Claimant

cc: Ed Bruce

corpus relief because he had not been brought to trial within 180 days from the filing of the information. The Court of Appeals denied the habeas corpus claim as premature.

The court recognizes that the writ of habeas corpus is generally to provide a petitioner with post-conviction relief. A habeas corpus petition under 28 U.S.C. § 2241 is used to challenge the execution of a sentence, while a habeas corpus petition under 28 U.S.C. § 2254 or § 2255 is used to challenge the validity of a judgment and sentence. Bradshaw v. Story, 86 F.3d 164, 166 (10th Cir. 1996); Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 503-504 (1973). However, § 2241 has been recognized as a potential source of habeas review for state pretrial detainees. Id., Dickerson v. Louisiana, 816 F.2d 220, 224 (5th Cir.), cert. denied, 484 U.S. 956 (1987).

In order to have the claims reviewed, a state pretrial detainee must establish that he is "in custody" within the meaning of the federal habeas statute, 28 U.S.C. § 2241(c). Capps v. Sullivan, 13 F.3d 350, 353 (10th Cir. 1993). And, although not jurisdictional, he must also establish that he has exhausted his available state remedies. Id. at 353-354. In relation to the exhaustion requirement, a federal court should "abstain from the exercise of [habeas] jurisdiction if the issues raised in the petition may be resolved either by trial on the merits in the state court or by other state procedures available to the petitioner." Id. at 354 n.2 (quoting, Dickerson, 816 F.2d at 225).

The exhaustion requirement differs depending on the nature of the habeas

claims raised by a petitioner. Capps, 13 F.3d at 354. Where a petitioner's claims would not be dispositive of state criminal charges, the claims may be exhausted by pretrial presentment to the state court. Included in this category is a claim seeking a speedy state court trial. Braden, 410 U.S. at 491-492. As the claim does not dispose of the state criminal charge, the federal court will review the claim prior to trial, provided it was first presented to the state court. Id. The reason for the differing exhaustion requirement is due to federalism and comity. Id. at 490-491.

This court need not address the custody and exhaustion requirements because a docket sheet provided by the Osage County Court Clerk shows that petitioner received a jury trial in Case CF-95-217 on June 5, 1997 (Exhibit "A"). It is also clear from the docket sheet that any delay in the trial of his case was the result of his actions. To summarize, his original case CF-94-25 was dismissed without prejudice because the parties were not ready for the preliminary hearing on August 14, 1995. On September 6, 1995, a new information was filed in Case No. CF-95-217. Respondent's motion to stay proceedings was granted on January 16, 1996. While the case was stayed, he continued to flood the court with pleadings, and he was arraigned on July 24, 1996. He asked to represent himself, and a status conference was set for August 2, 1996. He failed to appear on that date. The status conference was reset for August 5, 1996, and petitioner appeared and asked again to represent himself. Counsel was appointed to consult with him, and a hearing on some thirteen motions he filed that day was set for August 23, 1996. On that date, his motion to stay the case was granted. On September 27, 1996, the stay was lifted, and a

preliminary hearing was set for December 16, 1996. The hearing was held and continued on March 31, 1997, and the court found probable cause and arraignment was set on April 7, 1997. On that date, claimant entered a plea of not guilty, and a trial was set for June 3, 1997. The trial was held from June 3 to June 5, 1997, and petitioner was found guilty by the jury of possession of marijuana and unlawful possession of a firearm after former conviction of a felony.

The issues raised in petitioner's petition for a writ of habeas corpus are therefore moot. Petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 (Docket #1) should be denied and Respondent's Motion to Dismiss for Failure to be in State Custody (Docket #12) should be granted. The Motion to be Released on Personal Recognizance and Jury Trial Demanded (Docket #5), Petitioner's Motion to Dismiss (Docket #9), Defendant's Motion for Discovery (Docket #11), Petitioner's Objection to Respondent's Motion to Dismiss and Alternative Demand for Trial of the Merits (Docket #14), and Petitioner's Application to Stay the Proceedings (Docket #15) are moot.

Pursuant to 28 U.S.C. § 636(b)(1)(C), the parties are given ten (10) days from the above filing date to file any objections with supporting brief to these findings and recommendations. Failure to object within that time period will result in waiver of the right to appeal from a judgment of the district court based upon the findings and recommendations of the Magistrate Judge.

Dated this 2nd day of June, 1997.



JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

s:\r&r\vann.rr

CRIMINAL APPEARANCE DOCKET

SE-1 Me 283 (1968) Mid West, Seoulo

TITLE OF CAUSE	NATURE OF OFFENSE	ATTORNEYS
95-217 State of Oklahoma vs. Tony Lamar Vann	Transferred from page 257	District Attorney. For Defendant.

DATE	Return day _____ 19__ Answer day _____ 19__	ITEMS RECORDED BOOK PAGE REEL IMAGE	CLERK'S COSTS	SHERIFF'S COSTS	MISC. FEES	DEPOSIT IN CASE	DISBURSED	BALANCE CASH ON HAND
6 10 96	To file at minute (6-10-96)							
6 21 96	To file appl. for writ of HC ad Prosequendum							
6 21 96	To issue writ of HC ad Prosequendum							
6 28 96	To file copy of petition for writ of mandamus							
7 24 96	Before Judge Pearson, John Boggs for State. Comes on for arraignment. Deft. in person. Deft. requests to represent himself. Deft. acknowledges receipt of information, waives reading & Deft. enters not guilty plea. Status conference set 8-2-96 @ 9:00 A.M. Bond set at \$3000.00.							
7 24 96	To file defts. writ of HC ad Subjucundum							
7 24 96	To file defts. motion to suppress evidence							
7 24 96	To file defts. motion to dismiss							
7 24 96	To file defts. motion to dismiss counsel							
7 24 96	To file defts. motion to set aside indictment or information							
7 24 96	To file defts in-camera request for judicial recusal							
7 24 96	To file defts motion for disqualification of Judge							
7 24 96	To file defts request for re-hearing of motion for disqualification of Judge							
7 24 96	To file defts. motion questh for insufficient evidence							
7 24 96	To file States motion to produce							
7 25 96	To file appl. for writ of HC ad Prosequendum							
7 25 96	To issue writ of HC ad Prosequendum							
7 26 96	To file & rec. set. writ of HC ad Prosequendum	2519 2520						4240
8 2 96	95-217 STATE OF OKLAHOMA VS TONY VANN Before Judge Pearson. Comes on for status conference. No one appears. Matter set for 8-5-96 @ 1:00 P.M.							
8 5 96	To file defts motion to dismiss							
8 5 96	To file defts motion to suppress evidence							
8 5 96	To file defts. motion to stay proceedings							
8 5 96	To file defts. motion to dismiss							
8 5 96	To file defts. motion for access to courts							
8 5 96	To file defts. motion to suppress evidence							
8 5 96	To file defts. motion to compel discovery							
8 5 96	To file defts. motion to demur to indictment of info.							
8 5 96	To file defts motion of objection to order denying motions to set on the accelerated docket & for final disposition & order recasting & sustaining as motion for trial							
8 5 96	To file defts appl for change of Venue							
8 5 96	To file appl. for writ of mandamus							
8 5 96	To file defts. entry of appearance & motion to proceed pro se							
8 5 96	To file defts petition for writ of HC motion to dismiss & appl. for writ of mandamus							
8 5 96	Before Judge Gambill. Rene Henry for State. Deft. in person. Comes on for status conference. Deft. requests to represent himself. Court appoints IDE to represent Deft. for consultation as to Deft.'s request to proceed pro se. Hearing set 8-23-96 @ 1:00 P.M. hearing on motion. Deft. moves for case to be dismissed-to be taken up on 8-23-96 @ 1:00 P.M.							

No. CA 95-217	TITLE OF CAUSE State of Oklahoma vs. Jony Lamar Varn	NATURE OF OFFENSE <i>Transferred from page 258</i>	ATTORNEYS District Attorney For Defendant
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DATE Mo. De. Yr.	Return day _____ 19 ____ Answer day _____ 19 ____	ITEMS RECORDED BOOK PAGE REEL IMAGE	CLERK'S COSTS	SHERIFF'S COSTS	MISC. FEES	DEPOSIT IN CASE	DISBURSED	BALANCE CASH ON HAND
8 12 96	Before Judge Mattingly, Petitioner's Objection signed by Petitioner on 8-9-96, assigned to this Court by the Hon. J. F. Peckman, Administration Judge of the 10th Judicial District, for rulings on Petitioner's allegations of "off the record rulings, status hearings, in-camera request for Judicial Recusal, attempt to force Petitioner to have court-appointed attorney, etc" are all respectfully & summarily overruled without hearing; this Court further respectfully refuses to recuse.							
8 12 96	To file ct minute (8 12 96)							
8 13 96	To file ct minute w/ writ of HC ad Prosequendum	547						
8 19 96	Before Judge Mattingly, This Court hereby acknowledges receipt this date of "In-Camera Request for Judicial Recusal" filed herein on 7-24-96, marked Exhibit A, attached hereto & made a part hereof; this Court hereby summarily and without hearing respectfully refuses to recuse or disqualify itself from hearing any & all matters before this Court, if any, or any future matters which may come before this Court in this cause.			22.40				
8 19 96	To file ct minute (8-19-96)							
8 23 96	To file delts motion to dismiss							
8 23 96	Before Judge Gambill, Sheila Edgerton, ct reporter present, Rene Henry for State, Deft. in person pro se & along with L.W. Woodyard. Comes on for status conference & Deft's request to represent himself. Court orders L.W. Woodyard remain as consulting attorney for Deft. Court makes rulings on Deft's motions as follows: 1. Deft's Motion to Dismiss filed 1-16-96 is denied. 2. Deft's Motion of Protest filed 2-5-96 is denied. 3. Deft's Motion to Quash for Insufficient Evidence filed 3-14-96 is premature. 4. Deft's Motion to Set Aside Indictment or Information filed 3-14-96 is denied. 5. Deft's Motion to Suppress filed 3-14-96 is denied. 6. Deft's Motion to Dismiss filed 3-14-96 is denied. 7. Deft's request for Re-hearing of Motion for Disqualification of Judge is denied for reasons Judge Mattingly responded to same. 8. Deft's Motion to Suppress Evidence filed 3-14-96 is denied. 9. Deft's Motion to Dismiss filed 7-24-96 is denied. 10. Deft's Motion to Dismiss County Trial 7-24-96 is moot. 11. Deft's Motion to Set Aside Indictment or Information filed 7-24-96 is denied. 12. Deft's In-Camera Request for Judicial Recusal filed 7-24-96 is denied. 13. Deft's Motion to Quash filed 7-24-96 is denied as premature. 14. Deft's Motion to Dismiss filed 8-5-96 is denied. 15. Deft's Motion to Suppress filed 8-5-96 is denied in conjunction with prelin hrg. 16. Deft's Motion to Stay filed 8-5-96 is denied. 17. Deft's Motion to Dismiss filed 8-5-96 is denied. 18. Deft's Motion for Access to Court's filed 8-5-96 is moot. 19. Deft's Motion to Suppress Evidence filed 8-5-96 is denied in conjunction with prelin hrg. 20. Deft's Motion to Compel Discovery filed 8-5-96 Ct. reserves ruling. 21. Deft's Motion to Demur to Indictment or Information filed 8-5-96 is denied. 22. Deft's Motion of Objection to Order Denying Motion to Set on Accelerated Docket & For Final Disposition is denied. 23. Deft's Application for Change of Venue filed 8-5-96 is denied as premature. 24. Deft's Application For Writ of Mandamus filed 8-5-96 is denied. 25. Deft's Entry of Appearance & Motion to Proceed Pro Se filed 8-5-96 granted. 26. Deft's Petition for Writ of Habeas Corpus & Motion to Dismiss & Application for Writ of Mandamus & Brief in Support filed 8-5-96 is denied. Deft. moves to stay proceedings. State has no objection. Court adopts Judge Mattingly's ruling of 8-12-96 at 2:45 P.M. Court orders motion to stay proceedings is granted without objection as requested by Deft. Review hearing set 9-27-96 @ 11:00 P.M. to see if stay has been filed. Deft. requests transcript at public expense. Court can't grant request because he has stayed all proceedings. Deft's request for motion to compel - Court orders matter is stayed.							
8 23 96	To enter ct reporter fee					2000		
8 23 96	To file ct minute (8-23-96)							
8 27 96	To file Judge Gambill's copy of in-camera request for judicial recusal							
8 27 96	To file motion to stay proceedings Rule 4 (g)							
9 4 96	To file ct minute w/ writ of HC ad Prosequendum	508 1472						
9 6 96	To file order granting writ of mandamus to the Hon. G.R. Pearson, Presiding Judge	1472		22.40				
9 9 96	To file Removal of Case from St. Cowley by Jury Trial Demanded							
9 12 96	To file Response of the District Ct.							
9 27 96	Before Judge Gambill, Matter set for review of Deft's oral motion to stay granted 8-12-96; Court examines Court appearance docket & file & determines that no other court has assumed jurisdiction and therefore the stay order is lifted. Matter ordered set for preliminary hearing on 12-16-96 @ 9:30 A.M.							
9 27 96	To file ct minute (9 27 96)							
10 4 96	To file order denying petition for writ of HC + writ of prohibition under district clerk of this court to apply this case under 096-916 + instructing clerk on handling of future pro se pleadings filed by petitioners							
12 3 96	To file appl to stay the proceedings							
12 3 96	To issue subpoena by Boyd Peters of DA's office to go Ann Varn							
12 4 96	To file appl for writ of HC ad Prosequendum							
12 4 96	To issue writ of HC ad Prosequendum							

CRIMINAL APPEARANCE DOCKET

SD01 No 281 (1968) Mid West, Sapulpa

FILE NO	TITLE OF CAUSE	NATURE OF OFFENSE	ATTORNEYS
95-217	State of Oklahoma vs. Yong Jaman Varn	Transferred from page 258 A	District Attorney For Defendant.

DATE	RETURN DAY	ANSWER DAY	ITEMS RECORDED	CLERK'S COSTS	SHERIFF'S COSTS	MISC. FEES	DEPOSIT IN CASE	DISBURSED	BALANCE CASH ON HAND
12 4 96	Return day	19	Answer day	19					
12 4 96			To issue subp by Tulsa Cty. sheriff to P.M. Chism, T.L. Clark, K. Jones, Paul Downe, T. Vallely, Sgt. D.A. Brown						
12 4 96			To file letter from deft. to						
12 4 96			To file letter from deft. to Ct. Clerk on DA's office						
12 4 96			To file defts motion for discovery						
12 16 96			To file ret subp not heard Yaman Varn deft						
12 16 96			To file motion for production of documents + transcript						
12 16 96			To file Deft motion for discovery						
12 16 96			To file Ales motion for speedy trial or dismissal of charges						
12 16 96			To file Challenge to array						
12 16 96			To file objection						
12 16 96			To file ret subp serving D.M. Chism, T.L. Clark, K. Jones, Paul Downe, T. Vallely, Sgt D.A. Brown all on 12-06-96 no fee enter						
12 16 96			Before Judge Gambill: Rene Henry for State. Deft. present Pro Se., having been found competent to represent himself at this own request. Case comes on for Prel. Hrg. Court reporter Sheila Edgerton. Deft. makes oral objection to Prel. Hrg. Deft. makes oral motion to Spec. Judge hearing Prel. Hrg. Deft. makes oral motion to Dismiss. Deft. argues Motions. Court Order: Objection to Prel. Hrg. noted. Objection to Spec. Judge noted. Motion to Dismiss. Denied. Deft. Demurs--overruled, exception granted. Rule invoked at defts request. Parties announce Ready. State's witness s/t: Tracy Lynn Clar, TPD. (for bal. of minute see transcript) balance of minute not given to Clerk						
12 16 96			To enter Ct reporter fee			20.00			
12 24 96			To file letter from deft. to Judge Matthews						
12 23 96			To file & rec. ret. writ of HC ad Prosequendum	591-592		20.00			
12 24 96			To file letter from deft. to Judge Harbill						
1 9 97			To file tort claim						
1 9 97			To file tort claim						
1 9 97			To file grievance - Favoral Complaint						
1 9 97			To file motion for transfer & analysis						
1 9 97			To file defts appl. to subpoena witnesses						
1 9 97			To file motion to dismiss						
1 9 97			To file motion to dismiss						
1 9 97			To file defts demurrer to indictment on information						
1 9 97			To file defts response to states motion to produce						
1 30 97			To file letter from deft to Judge Pearson						
2 18 97			To file Request from deft to Judge Harbill						
3 6 97			To issue subp by Gary Ruddick - T.P.D. - U.D.N. to Paul Downe + T. Vallely						
3 31 97			To file defts motion to be released on personal recognizance						
3 31 97			To file defts motion for certification of question of law						
3 31 97			To file defts motion to record testimony and notice						
3 31 97			To file defts grievance/tort claim						
3 31 97			Bel Judge Harbill. Ct ordered the Ct Clerk to file defts grievance/tort						

No CF 95-217	TITLE OF CAUSE State of Oklahoma vs. Jony Opas Ramn	NATURE OF OFFENSE Transferred from pg. 258 B	ATTORNEYS District Attorney For Defendant
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DATE Mo. Da. Yr.	Return day _____ 19 ____ Answer day _____ 19 ____	ITEMS RECORDED BOOK PAGE REEL (IMAGE)	CLERK'S COSTS	SHERIFF'S COSTS	MISC. FEES	DEPOSIT IN CASE	DISBURSED	BALANCE CASH ON HAND
3-31-97	Before Judge Gashill. Sheila Edgerton, ct reporter present. Rene Henry for state. Deft in person pro se & with advisory counsel L.M. Woodyard. Comes on for balance of preliminary hearing. State announces ready as set out. Deft. announces ready & requests warrants to issue for witnesses who do not appear & moves to dismiss for failure of witness to attend, denied. Deft's motion to dismiss on grounds of statute of limitations, denied. Deft's motion to certify question of law, denied. Deft's motion to appeal is denied on question of law. State's case: Officer Thomas Vallely (SIT). Deft. moves to strike, denied. Deft moves for contempt, denied. Deft moves for appeal & mandamus, denied. Deft. moves to dismiss, denied. Paul Dome (SIT). Deft. moves to Speech, denied. Deft moves to dismiss, denied. State rests. Sworn & testified for Deft: Rene Henry. Deft. rests. State rests. Deft's motions to suppress are all denied. Deft's motions to dismiss are denied. Court finds crime was committed as alleged & probable cause to believe Deft. committed same & Deft. is bound over for DCA before William N. Mattingly on 4-7-97 @ 9:00 A.M. Deft's motion for transcript is premature as Deft. has not filled out application for indigency. Deft's request for tort claim, denied. Deft's motion for jury trial, denied only for reason that it is premature having been accorded of right in front of Dist. Judge to whom the case is assigned. Deft. moves for an order of an order denying his oral motion for certified question, denied.							
3-31-97	To enter ct reporter fee				2000			
4-4-97	To file order for transcript of ct fund expense							
4-4-97	By Judge Mattingly. Ct orders that Sheila Edgerton, ct reporter prepare the transcripts of the hys held 3-31-97 & 12-16-96; further that the Ct. fund pay for the expense of preparing same.							
4-4-97	To file original & 2 copy of transcript of PH held 3-31-97							
4-4-97	To file notice of filing							
4-4-97	To file original & 2 copy of transcript of PH held 12-16-96							
4-4-97	To file notice of filing							
4-7-97	Before Judge Mattingly. Denise Cole present. Comes on for hearing district court arraignment. Rene P. Henry, Jr. for state. Deft in person pro se with L.M. Woodyard as advisory counsel. Deft. ack. rec of copy of Information & Supplemental Information. Requests same be read. Information & Supplemental Informations read by Rene Henry, Jr. Deft. enters plea of not guilty to all counts as alleged, reserves right to file motions, requests jury trial. Order of Court: Jury trial set for 9:00 A.M. 6-3-97 lat up. Pre-trial set for 9:30 A.M. May 1, 1997. Any & all plea bargaining must be disposed of by no later than 5:00 P.M. May 23, 1997. Any & all proposed instructions due by no later than 5:00 P.M. May 29, 1997.							
4-7-97	To enter ct reporter fee				2000			
4-7-97	To file ct minute (4-7-97)							
4-7-97	To file order setting trial							
4-8-97	To issue defts subp by Juba Cty sheriff to Opas Ramn							
4-8-97	To issue defts subp by sheriff to Rene Henry							
4-8-97	To issue defts subp duces tecum by sheriff to Rene Henry							
4-8-97	To issue defts subp by Kay Cty sheriff to Robert Halbraith							
4-8-97	To issue defts subp duces tecum by Kay Cty sheriff to Robert Halbraith							
4-8-97	To issue defts subp by Juba Cty sheriff to Waldo E. Jones							
4-8-97	To issue defts subp duces tecum by Juba Cty sheriff to Waldo E Jones							
4-8-97	To issue defts subp duces tecum by Juba Cty sheriff to Sgt. D.A. Brown							
4-8-97	To issue defts subp by Juba Cty sheriff to Sgt. D.A. Brown							
4-8-97	To issue defts subp duces tecum by Juba. Cty sheriff to T. Vallely							
4-8-97	To issue defts subp by Juba Cty sheriff to T. Vallely							
4-8-97	To issue defts subp duces tecum by Juba Cty sheriff to Paul Downe							
4-8-97	To issue defts subp by Juba Cty sheriff to Paul Downe							

CRIMINAL APPEARANCE DOCKET

2001 No 203 (1968) Mid West, Sapulpa

TITLE OF CAUSE	NATURE OF OFFENSE	ATTORNEYS
<p>A-95-217</p> <p>State of Oklahoma</p> <p>vs.</p> <p>Jonny Lamar Vann</p>	<p>Transferred from pg. 258c</p>	<p>District Attorney.</p> <p>For Defendant.</p>

DATE	Return day _____ 19__ Answer day _____ 19__	ITEMS RECORDED BOOK PAGE REEL IMAGE	CLERK'S COSTS	SHERIFF'S COSTS	MISC. FEES	DEPOSIT IN CASE	DISBURSED	BALANCE CASH ON HAND
4 8 97	To issue defts subp duces tecum by Tulsa Cty sheriff to K. Jones							
4 8 97	To issue defts subp by Tulsa Cty sheriff to K. Jones							
4 8 97	To issue defts subp duces tecum by Tulsa Cty sheriff to D.M. Chism							
4 8 97	To issue defts subp by Tulsa Cty sheriff to D.M. Chism							
4 8 97	To issue defts subp duces tecum by Tulsa Cty sheriff to T.L. Clark							
4 8 97	To issue defts subp by Tulsa Cty sheriff to T.L. Clark							
4 8 97	To file defts for deft							
4 8 97	To file certification of questions of law							
4 9 97	To file defts ret. subp serving Rene Henry			2000				
4 10 97	To file defts ret. subp duces tecum serving Rene Henry			2000				
4 10 97	To issue defts subp by sheriff to Mary Anderson							
4 10 97	To issue defts subp duces tecum by sheriff to Mary Anderson							
4 10 97	To issue defts subp by sheriff to Denise Cole							
4 10 97	To issue defts subp duces tecum by sheriff to Denise Cole							
4 10 97	To file defts appl. for copy & motary							
4 10 97	To file defts notice of intent to appeal							
4 11 97	To file appl. to withdraw							
4 11 97	To file order	5274/2600						
4 11 97	By Judge Mattingly. Ct orders that LW Woodyard is authorized to withdraw as advisory atty of record for the deft.							
4 15 97	To file defts ret. subp & enter fee serving Mary Anderson			2000				
4 15 97	To file defts ret. subp duces tecum serving Mary Anderson			2000				
4 16 97	To file defts ret subp serving Sgt. D.A. Brown (no fee indicated)							
4 16 97	To file defts ret subp duces tecum serving Sgt. D.A. Brown (no fee indicated)							
4 16 97	To file defts ret. subp & enter fee serving T.L. Clark (no fee indicated)							
4 16 97	To file defts ret subp & enter fee serving D.M. Chism (no fee indicated)							
4 16 97	To file defts ret subp duces tecum serving T.L. Clark (no fee indicated)							

No. Off-95-217	TITLE OF CAUSE State of Oklahoma vs. Joy Laman Ramm	NATURE OF OFFENSE Transferred from page 258 f	ATTORNEYS District Attorney For Defendant
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DATE Mo. Da. Yr.	Return day _____ 19__ Answer day _____ 19__	ITEMS RECORDED BOOK PAGE REEL IMAGE	CLERK'S COSTS	SHERIFF'S COSTS	MISC. FEES	DEPOSIT IN CASE	DISBURSED	BALANCE CASH ON HAND
5 19 97	Before Judge Gambill. Court orders that the State of Oklahoma may endorse as an additional witness on said information the name of Anthony Goldman.							
5 24 97	To file defts request for jury pool to list							
5 27 97	To file defts jury instructions							
5 27 97	To file defts motion of protest							
5 27 97	To file defts objection							
5 27 97	To file defts motion to quash							
5 27 97	To file defts motion to suppress evidence							
5 27 97	To file defts motion for transfer & analysis	OK 402						
5 27 97	To file & rec. order dismissing appeal & prohibiting petitioner from filing further appeals under section X of this Court's Rules in forma pauperis	5027-677-679						
5 29 97	To file notice of delivery of material							
5 29 97	To file copy of letter from Ct. Clerk to deft. with attachment							
5 28 97	To file defts motion to dismiss							
5 28 97	To file letter from deft to Ct. Clerk							
5 28 97	To file net subp. card #P495024128 signed by Andy Dwan on 5-21-97							
5 29 97	To file defts request for transcripts							
5 29 97	To issue defts subp duces tecum by sheriff to Oage Jail Administrator Don Jones							
5 29 97	To file notice of filing							
5 29 97	To file original & 2 copies of transcript of pretrial motion hearing held 5-1-97							
5 29 97	To file Receipt							
5 29 97	To issue notice of delivery of material by sheriff							
5 30 97	Before Judge Mattingly. Denise Cole, ct reporter present. Rene Henry for State. Deft in person pro se. Comes on for further pre-trial. Court makes following rulings on motions: (1) Def't's Motion for Contempt filed 5-2-97 is overruled, exception noted & allowed; (2) Def't's Petition for Mandamus filed 5-2-97 is not before this Court for ruling; (3) Def't's Motion for Access to Court- Ct refuses to rule on this motion; (4) Def't's Request for Jury Pool List filed 5-27-97 is denied as far as Jurors addresses & Court provides Def't another list of Jurors names as previously provided by Court Clerk; (5) Def't's Suggested Jury Instructions filed 5-27-97 - Court reserves ruling without objection of either party; (6) Def't's Motion of Protest - sustained as set out; (7) Def't's Objection filed 5-27-97 - overruled, exception noted & allowed; (8) Def't's Motion to Quash Jury Panel - overruled, exception noted & allowed; (9) Def't's Motion to Suppress Evidence filed 5-27-97 overruled, exception noted & allowed; (10) Def't's Motion to Dismiss filed 5-28-97 - Court reserves ruling.							
5 30 97	To file enter ct reporter fee							
5 30 97	To file net subp & enter fee serving Rommie Stevens & Boyd Peters							2000
5 30 97	To file defts net subp duces tecum serving Don Jones							2000
5 30 97	To file net subp & enter fee serving Don Jones							2000
5 30 97	To file & rec. appl. to endorse witness & order	5227/857/857						
5 30 97	Before Judge Mattingly. Ct orders that the Ct of Okla may endorse as additional witnesses upon said info the names of Rommie Stevens, Boyd Peters, Don Jones, Anthony D. Cole							

No.	TITLE OF CAUSE	NATURE OF OFFENSE	ATTORNEYS
CF 95-217	State of Oklahoma vs. Tony Lamar Vann	Transferred from Page 258 H	District Attorney For Defendant

DATE	RETURN DAY	ANSWER DAY	ITEMS RECORDED	CLERK'S COSTS	SHERIFF'S COSTS	MISC. FEES	DEPOSIT IN CASE	DISBURSED	BALANCE CASH ON HAND	
6 5 97	Return day 19	Answer day 19	CF-95-117 STATE OF OKLAHOMA VS TONY LAMAR VANN Before Judge Mattingly: Rene Henry for State, Deft. present Pro SE. Continuation of Jury Trial. Court reporter: Denise Cala. In Camera: Court reserved ruling on State's Exh. #14 & #15--Deft. allowed to file additional documents in Court Clerk's office. Juror, Janas Kirby injured & requests to be excused. State & Deft. agree that she can be excused from trial due to said injury. Alternate juror, Connie Pollard replaces JAMES KIRBY by agreement of State & Deft. Jury in Box. States witnesses continue: 6. Don Jones, OCSO. Court admits St's Exh. #16 (deleted Justice Dept. record), made part of the record but not to go to the Jury. State rests. Jury excused for In Camera Hearing. Deft. (1) moves for directed verdict on Ct #1 & #2 and moves to dismiss the Counts--all overruled, exceptions noted & allowed. Jury in Box. Deft's witnesses are sworn & testify: 1. Troy Ambler 2. Tony Lamar Vann. Deft. rests @ 2:25 PM. State offers no rebuttal. Jury in Box. Parties waive court reporter taking instructions on the record. Court reads 30 instructions 2:55 PM. to 3:20 PM. State's 1st Closing: 3:20-3:23 PM. Deft's Closing 3:23 PM. to 3:38 PM. State's 2nd closing: 3:38 PM. to 4:00 PM. Bailiff sworn by the Clerk. Jury retires for deliberations at 4:00 PM. In Camera: Deft moves to Dismiss case & everything that does with it and moves for Directed Verdict of Not Guilty on Both Counts. --motions overruled, exception allowed. Deft. requests to be excused to return to the OCJ. Granted. Note from bailiff at 4:23 PM--Verdict rendered--Jury in Box 3:27 PM--Verdicts as follows: Ct #1 UNLAWFUL POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE. Deft. found GUILTY of POSSESSION OF MARIJUANA, the issuer included written punishment set at 1 year confinement and a fine of \$1,000. Ct #2: UNLAWFUL POSSESSION OF A FIREARM AFTER FORMER CONVICTION OF A FELONY. Deft. Found GUILTY & Sentenced on 10 years Imprisonment and a fine of \$10,000. Jury polled at State's request. All concur in the Verdict. Court reads instruction #31 read by Court to Jury. Jury excused. Deft. waives PSI and requests immediate Sentencing. No objection from State. Court finds Deft. Guilty of Both Counts in Compliance with the Jury Verdicts and Sentences him to 1 year in Osage Co. Jail on Ct #1 and a fine of \$1,000. Deft. requests concurrent sentences. No objection from State. Deft. sentenced to 10 years DOC on Ct #2 and pay fine of \$10,000. All court costs to be paid when calculated. Jail time in Ct #1 to run concurrent to DOC time in Ct #2. Fines do not run concurrent. Deft. advised Court that he would not appeal if sentences be suspended. Court advised deft. that Court cannot legally suspend the sentences. When Court began to advise deft., Court was interrupted by deft. and advised by Deft. that he would file Intent to Appeal & Designation of Record Within the statutory time. Deft. requests appeal bond. Bond denied pursuant to statutes. Court emphasized that deft. will serve remainder of the sentence he is presently serving & at conclusion deft. to begin serving those sentences. Deft. is ordered to reappear 9:30 AM. Tues. 6/10/97 to make certain he has properly prepared notice & intent.							
6 5 97	do file Court Minute									
6 5 97	do file & record Instructions #1 - #31									
6 5 97	do file & record Verdict									
6 5 97	do enter Victims Comp.									
6 5 97	do enter Clerk						80.00			
6 5 97	do enter Apis						8.00			
6 6 97	CRF-93-233 STATE OF OKLAHOMA VS TONY VANN CF-94-25 CF-95-217 Before Judge Pearman. Tony Vann, Deft. in all the above numbered cases, is hereby ordered to return, immediately upon receipt of this Order, all transcripts now in his possession from all of these cases.						6.00			
6 6 97	do file Court Minute									
6 9 97	do file letter from Tony Vann to Judge Mattingly stating that he does Not Ground to Appeal									
6 9 97	do issue Judg. & Sentences									

OF OKLAHOMA }
COUNTY OF OSAGE } SS.
SHARON CASEBOLT, COURT CLERK, in and for
Osage County, Oklahoma, do hereby certify that the
above and foregoing is a true, correct and complete
copy of the original now on file in my office at
Ardmore, Oklahoma, as the same appears of record.
Witness my hand and official seal this 9
day of June 1997
SHARON CASEBOLT, COURT CLERK
Angele C. Steffen

re
2/11/97
man

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

F I L E D
JUN 24 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DALE COMPANY, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 POLYMER ENGINEERING)
 CORPORATION,)
)
 Defendant.)

Case No. 96-CV-1037-H /

ENTERED ON DOCKET
DATE JUN 26 1997

ORDER AND JUDGMENT

This matter came before the Court for hearing on Plaintiff's Motion for Partial Summary Judgment on the 27th day of May, 1997. Plaintiff appeared by its attorney of record, Richard A. Paschal, and Defendant appeared by its attorney of record, Richard B. Noulles. The Court thereupon found and ordered as follows:

1. Plaintiff's action is based upon a written agreement under which Plaintiff was appointed manufacturer's agent for Defendant in the states of Texas, Louisiana, Arkansas, Oklahoma, Kansas and Missouri. The agreement was in full force and effect on December 18, 1995.

2. On December 18, 1995, Defendant wrote Plaintiff regarding "territory revision", stating as follows:

In follow-up to our conversation regarding the captioned subject, after further consideration, we have decided to reassign the coverage of the states of Kansas and Missouri to another agency.

10

Therefore, we are providing this thirty-day notice to cease and desist the servicing, of the accounts, on our behalf in these two states (the actual date of this termination shall be January 25, 1996). The balance of your territory, namely the states of Texas, Oklahoma, Arkansas and Louisiana, shall remain unchanged.

If you should have any further questions or comments regarding this matter please feel free to contact me.

3. The December 18, 1995 letter, by its terms, pertained solely to the contract then in existence and was not a notice of termination of that contract. The December 18, 1995 letter was, in effect, an offer to amend the existing contract.

4. Counsel for both parties represented to the Court on the record during the May 27, 1997 hearing that after the termination date specified in the December 18, 1995 letter Plaintiff did not continue acting as Defendant's agent in Kansas and Missouri, although Plaintiff did object to the termination of Kansas and Missouri from its territory.

5. The Defendant has cited, and properly so, the case out of Texas, *L. G. Balfour & Co. v. Brown*, which in turn cites *Robinson v. Phillips Petroleum Co.*, 54 P.2d 322 (Okla. 1936). *Balfour* provides as follows:

When appellant made this change in appellee's compensation at variance with the contract, he was called upon to elect whether he would accept the modified contract or rely upon the old and sue for its breach. He could not continue his services under the new or modified contract and later rely upon the terms of the old. His election must have been made within a reasonable time after the condition arose. Appellee continued in appellant's services with full knowledge of the new schedule of commissions and bonuses provided for in the letter of August 22, 1934; but of course this continued service was not without protest. However, an earnest protest was not

sufficient. He was called upon to act. This he did by continuing in the service.

6. The parties have represented it is uncontroverted that in this case the Plaintiff continued to act. Therefore, it is clear, based on *Balfour* and, more importantly, only because it's Oklahoma authority, *Robinson v. Phillips Petroleum*, that the Plaintiff did not choose to terminate the contract and sue for breach at that time, but rather accepted the offer of modification; therefore, as of the time of that suggested modification which was accepted by conduct, there was a slightly modified contract in full force and effect. Again, underscoring that the notice itself states that the balance of the contract remains in full force and effect.

Therefore, at the time that we reach the fall period in 1996, we have a contract in full force and effect which happens to be a contract that deletes the Kansas and Missouri territory, but the remaining provisions of that contract are in effect, and included in those remaining provisions are the renewal provisions or duration provision which are clearly set forth in the contract. Specifically, those duration provisions then in effect:

This contract remains in full force and effect for one year and may not be terminated, except by mutual consent, unless 90 days' notice of intention to cancel is given by either party in advance of the expiration date. In the event that no notice is given, the same contract is automatically renewed for another year on the same basis. An additional 30 days' notice is required for each successive year agreement, remaining in effect - up to a maximum of seven months.

7. In this case, the parties have not contested that the seven months was in fact required, nor have they contested that before the date, that notice was not given seven

months before the expiration date of this contract, that is, June 1, 1997. Therefore, the Court finds that that contract has renewed itself in accordance with its terms. Those provisions were not only unchanged by the communications between the parties, but in fact reinforced by the communication of December 18, 1995. Plaintiff proceeded ahead under the new terms rather than to sue for breach and therefore accepted that modification as part of the existing agreement.

8. Now, as a result, the contract that is now in force and effect is the original contract as modified by the December 18, 1995 notice agreement.

Following the pronouncement of the Court's ruling, Plaintiff orally moved, without objection by Defendant to the making of such oral motion but reserving all objections to the Court's ruling, to amend its Motion for Partial Summary Judgment so as to request in the alternative, but without prejudice to its claim of entitlement to the full relief requested in its Motion for Partial Summary Judgment, that judgment be entered in its favor declaring that the contract has renewed itself in accordance with its terms as to the states of Texas, Oklahoma, Arkansas and Louisiana as of June 1, 1997, and is in full force and effect as to those four states; and Defendant orally moved, without prejudice to its position that Plaintiff was not entitled to any of the relief requested in its Motion for Partial Summary Judgment, and without objection by Plaintiff to the making of such oral motion but reserving all objections to the Court's ruling, for the entry of judgment in Defendant's favor on Plaintiff's claim for damages for commissions on sales of

Defendant's products in Kansas and Missouri subsequent to January 25, 1996. The Court thereupon granted the parties' oral motions.

The Court recognizes that the making by the parties of the oral motions described above was done at the Court's invitation and is not an admission by either party that the Court's analysis and rulings are correct. Both parties reserve their right to appeal any and all provisions of this Order and Judgment.

Accordingly, **IS IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. The Court hereby declares that the June 1, 1984 agreement entered into between Plaintiff and Defendant, as modified by the December 18, 1995 notice agreement, has renewed itself in accordance with its terms as to the states of Texas, Arkansas, Louisiana and Oklahoma, and is in full force and effect as to those four states only.

2. Defendant is hereby awarded judgment on Plaintiff's claim for damages for commissions on sales of Defendant's products in the states of Kansas and Missouri after January 25, 1996.

DATED this 23RD day of JUNE, 1997.



SVEN ERIK HOLMES,
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Richard A. Paschal

Richard A. Paschal, OBA #6927

LIPE GREEN PASCHAL & TRUMP

3700 First National Tower

15 East 5th Street

Tulsa, Oklahoma 74103

(918) 599-9400

ATTORNEY FOR PLAINTIFF, DALE COMPANY, INC.

Richard B. Noulles

Richard B. Noulles, OBA #6719

GABLE GOTWALS MOCK SCHWABE

KIHLE GABERINO

2000 Boatmen's Center

15 West Sixth Street

Tulsa, Oklahoma 74119-5447

(918) 582-9201

**ATTORNEY FOR DEFENDANT,
POLYMER ENGINEERING CORPORATION**

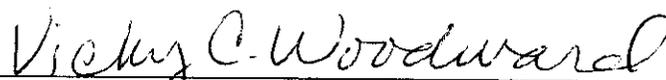
The Court further finds that, with the dismissal of Plaintiff's claim under the TCPA, there being no diversity of citizenship between the parties, the Court has no independent federal jurisdiction of Defendant's counterclaim against Plaintiff, which asserts a claim only under the laws of the State of Oklahoma. Principles of ancillary or pendant jurisdiction are inappropriate for application in this instance. Therefore, Defendant's motion to dismiss its Counterclaim under Rule 41(a)(2) of the Federal Rules of Civil Procedure is moot.

Accordingly, IT IS HEREBY ORDERED THAT this action be dismissed in its entirety for lack of subject matter jurisdiction in this Court.

DONE THIS 23RD DAY OF JUNE, 1997.


SVEN ERIC HOLMES
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


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Douglas J. Shelton, OBA # 8159
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(918) 584-6700

ATTORNEYS FOR DEFENDANT

Luke Wallace, OBA # 16070
THE HUMPHREYS LAW FIRM
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Tulsa, Oklahoma 74119-4455

ATTORNEYS FOR PLAINTIFF

ENTERED ON DOCKET
6-25-97

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

FILED

PERCY L. PALMER,)
)
Plaintiff,)
)
v.)
)
MARVIN T. RUNYON, Postmaster)
General, United States Postal Service,)
)
Defendant.)

No. 96-CV-1190-H ✓

JUN 23 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

This matter comes before the Court on Plaintiff's motion to dismiss. Plaintiff's case is hereby dismissed without prejudice.

IT IS SO ORDERED.

This 23rd day of June, 1997.


Sven Erik Holmes
United States District Judge

7

Order should be 24

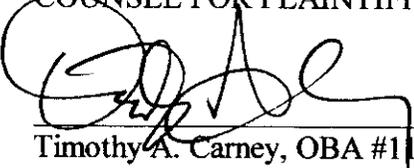


JUDGE SVEN ERIK HOLMES
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

TENDERED AND APPROVED AS TO FORM:



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(918) 582-9201 *telephone*
(918) 586-8383 *facsimile*
COUNSEL FOR DEFENDANTS

6-25-97

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

FILED

JUN 23 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CHRISTOPHER M. BELLER,)
)
Plaintiff,)
)
vs.)
)
STANLEY GLANZ, et al.)
)
Defendants.)

No. 97-CV-193-H /

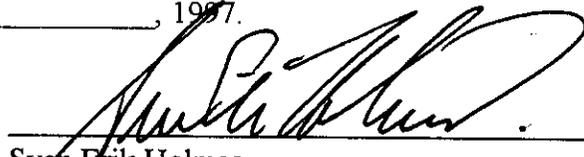
ORDER

Plaintiff filed this civil rights action pursuant to 42 U.S.C. § 1983. On March 17, 1997, the Court granted Plaintiff's motion to proceed in forma pauperis. On May 30, 1997, pursuant to 28 U.S.C. § 1915(b)(2), the Court entered an Order directing the agency having custody of Plaintiff, the Tulsa City County Jail (TCCJ), to collect and forward payments on behalf of Plaintiff in order to pay the \$150 filing fee. On June 9, 1997, that Order was returned, marked "refused" and "NIC" (not in custody). On that same date, the Court received a letter from Larry's Commissary advising that Plaintiff was no longer in custody at (TCCJ) having been released on March 20, 1997. Plaintiff has not notified the Court of his new address. Therefore, the Court finds that this case should be dismissed without prejudice for failure to prosecute.

ACCORDINGLY, IT IS HEREBY ORDERED that this action is **dismissed without prejudice** for failure to prosecute.

IT IS SO ORDERED.

This 23RD day of JUNE, 1997.



Sven Erik Holmes
United States District Judge

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

FILED

JUN 24 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOHN F. ROURKE,

Plaintiff,

vs.

Case No.96-CV-629-M

JACK GRAHAM, d/b/a AUTO
SHOWCASE ONE; and OLD REPUBLIC
SURETY COMPANY as Issuer of Bond
No. LSC1016625,

Defendants.

ENTERED ON DOCKET

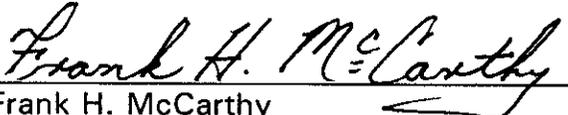
DATE JUN 25 1997

JUDGMENT

This action came on before the Court and a jury, Honorable Frank H. McCarthy, United States Magistrate Judge, presiding by consent of the parties. The issues having been tried and the jury having rendered its verdict,

IT IS ORDERED AND ADJUDGED that the Plaintiff, John F. Rourke, recover from Defendant, Jack Graham, d/b/a Auto Showcase One, the sum of \$7,600.00 plus costs and attorneys fees as provided by law.

DATED this 24th day of June, 1997.


Frank H. McCarthy
UNITED STATES MAGISTRATE JUDGE

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

FILED

RONALD W. SMITH,
Plaintiff,

vs.

ALLEN GOODING d/b/a GOODING RV
CENTER and his employee, MARTIN
ELI KETOLA,

Defendants.

No. 96-C-711-BU

JUN 24 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE JUN 25 1997

STIPULATION OF DISMISSAL

COME NOW the Plaintiff, Ronald W. Smith, and the Defendants, Allen Gooding d/b/a Gooding RV Center and Martin Eli Ketola, by and through their respective attorneys, and in accordance with Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedures, hereby stipulate to the dismissal with prejudice of all claims and causes of action involved herein with prejudice for the reason that all matters, causes of action and issues in the case have been settled, compromised and released herein, including post and pre-judgment interest.

THOMAS E. BAKER

Tom E. Baker

Attorney for Plaintiff

MARK A. WARMAN

Mark A. Warman

Attorney for Defendants

24

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 20 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

FRED E. WASHINGTON,)
)
Petitioner,)
)
vs.)
)
DAMON CANTRELL, and CHAD GREER,)
)
Respondent.)

Case No. 97-C-100-E /

ENTERED ON DOCKET

DATE JUN 24 1997

REPORT & RECOMMENDATION

Plaintiff filed a motion for leave to proceed in forma pauperis on January 31, 1997, which was granted by the Court. Plaintiff was instructed to pay an initial filing fee of \$6.13 by February 28, 1997. By Order dated March 17, 1997, Plaintiff was instructed to show cause for his failure to pay the initial filing fee. Plaintiff was cautioned that a failure to respond to the Order to show cause could result in the dismissal of his case without further notice. As of June 13, 1997, Plaintiff has still not paid his initial filing fee of \$6.13, and has not notified the Court of any reason for his failure to pay such a fee.

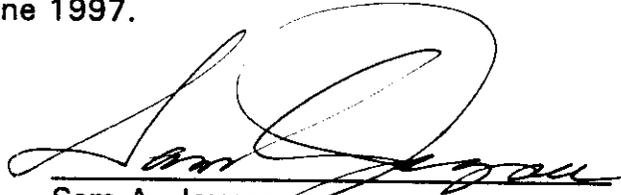
RECOMMENDATION

The United States Magistrate Judge recommends that the District Court dismiss Plaintiff's action without prejudice due to Plaintiff's failure to pay the requisite filing fee.

Any objection to this Report and Recommendation must be filed with the Clerk of the Courts within ten days of service of this notice. Failure to file objections within

the specified time will result in a waiver of the right to appeal the District Court's legal and factual findings. See, e.g., Talley v. Hesse, 91 F.3d 1411, 1412 (10th Cir. 1996), Moore v. United States, 950 F.2d 656 (10th Cir. 1991).

Dated this 20 day of June 1997.



Sam A. Joyner
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the

24 day of June, 1997.
C. T. Talley, Deputy Clerk.

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE **JUN 23 1997**
NORTHERN DISTRICT OF OKLAHOMA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ELDON E. ROSE,)
)
Plaintiff,)
)
v.)
)
JOHN J. CALLAHAN,)
Commissioner of Social Security, ¹)
)
Defendant.)

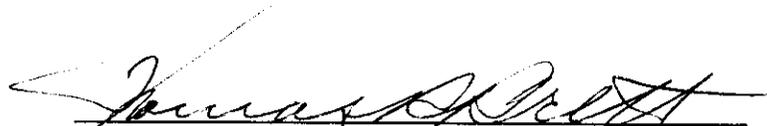
Case No: 96-C-138-B

ENTERED ON DOCKET
DATE JUN 24 1997

JUDGMENT

Judgment is entered in favor of the Commissioner of Social Security in accordance with this court's Order filed June 16, 1997.

Dated this 23rd day of June, 1997.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹Effective March 1, 1997, pursuant to Fed.R.Civ.P. 25(d)(1), John J. Callahan, is substituted for Shirley S. Chater, Commissioner of Social Security, as defendant in this action. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

FILED

JUN 23 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

SHELBY L. TRUITT,)
)
Plaintiff,)
vs.)
)
BILL MCKENZIE, ET AL.,)
)
Defendants.)

Case No. 95-C-901-BU

ENTERED ON DOCKET
DATE JUN 24 1997

ORDER

On December 23, 1996, this Court entered an Order sustaining in part and overruling in part the Report and Recommendation of U.S. Magistrate Judge issued by United States Magistrate Judge John Leo Wagner. In the decision, the Court construed Plaintiff's action originally filed against Defendants in their individual capacities under 42 U.S.C. § 1983 as a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Although recognizing that exhaustion of state remedies was required prior to seeking habeas relief, the Court concluded that exhaustion would be futile based upon the unavailability of habeas relief to inmates not entitled to immediate release and the unavailability of mandamus relief in cases concerning calculation of earned credits. See, *Canady v. Reynolds*, 880 P.2d 391, 397 (Okla. Crim. App. 1994). Upon review of the record, the Court found that Plaintiff's due process rights were violated by prison officials in the subject disciplinary proceeding. However, acknowledging that it was premature to grant a writ of habeas corpus in the same order that converted the action from § 1983 to § 2254, the Court granted the

State an opportunity to show cause why the writ should not issue.

This matter now comes before the Court upon Defendants' Objection to the Granting of Plaintiff's Petition for Writ of Habeas Corpus. In the objection, Defendants contend that the petition should not be granted because the Court erred in finding that exhaustion of state remedies would be futile. Defendants contend that Plaintiff is not complaining about the calculation of earned credits. Rather, he is complaining about the lack of procedural due process. Citing *Canady, supra.*, and *Waldon v. Evans*, 861 P.2d 311 (Okla. Crim. App. 1993), Defendants argue that a writ of mandamus is available to Plaintiff to require the prison officials to provide him with procedural due process. Because exhaustion would not be futile, Defendants contend that Plaintiff's petition should be dismissed.

Upon further review of the record and applicable law, the Court concurs with Defendants that Plaintiff has a state remedy and that exhaustion of that remedy is required prior to the Court considering and/or granting the petition for a writ of habeas corpus.

In *Waldon, supra.*, the Oklahoma Criminal Court of Appeals held that an inmate could use the writ of mandamus to force prison officials to provide him with the procedural due process requirements enunciated in *Wolff v. McDonnell*, 418 U.S. 539 (1974). The Court re-affirmed its holding in *Canady*, and re-emphasized that the writ of mandamus was only available for a due process review.

It was not available to challenge the prison officials' decision to revoke lost credits.

Plaintiff, in the instant case, has not alleged that Defendant failed to provide him with the procedural due process requirements set forth in *Wolff*.¹ Rather, he has alleged that the findings of the prison officials, which resulted in the revocation of his earned credits, were not supported by "some evidence in the record" as required by *Superintendent, Mass. Correctional Institution at Walpole v. Hill*, 472 U.S. 445 (1985). Specifically, Plaintiff has alleged the confidential informant was unreliable and no other evidence linked Plaintiff to the group disruption.

In *Edwards v. Balisok*, 117 S.Ct. 1584 (1997), the Supreme Court noted that the "some evidence in the record" requirement of *Hill* was additional to the requirements enunciated in *Wolff*. Although *Waldon* and *Canady* did not specifically address whether a writ of mandamus would be available to review a *Hill* challenge, the Court opines that such remedy is available. Both *Waldon* and *Canady* conclude that the mandamus remedy can be used for a due process review. "Some evidence in the record" is a procedural due process requirement under *Hill*. The Court, therefore, concludes that

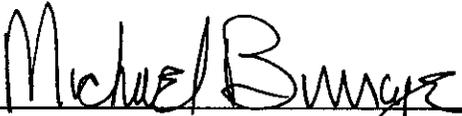
¹In *Wolff*, the Supreme Court held that due process requires (1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement of the evidence relied on and the reasons for the disciplinary action. *Id.* at 564-566.

Plaintiff may use the writ of mandamus to require the prison officials to provide him with this procedural due process requirement.

As Section 2254(b)(1) of Title 28 of the United States Code requires a petitioner to exhaust state remedies before seeking habeas relief and Plaintiff has a state remedy which can be exhausted, the Court finds that Plaintiff's action against Defendants in their individual capacities under 42 U.S.C. § 1983 which has previously been converted into a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, must be dismissed for failure to exhaust state remedies.

Accordingly, Plaintiff's action against Defendants in their individual capacities under 42 U.S.C. § 1983 which has previously been converted into a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED WITHOUT PREJUDICE**.

ENTERED this 23rd day of June, 1997.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

FILED *cl*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA JUN 23 1997

JUDY WHITED,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED AIRLINES, INC.,)
)
 Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 96-C-131-E /

ENTERED ON DOCKET

DATE JUN 23 1997

J U D G M E N T

In accord with the Order filed this date sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant, United Airlines, Inc., and against the Plaintiff, Judy Whited. Plaintiff shall take nothing of her claim. Costs may be awarded upon proper application.

Dated, this 20th day of June, 1997.

James O. Ellison

JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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FILED

JUN 23 1997

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

JUDY WHITED,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED AIRLINES, INC.,)
)
 Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 96-C-131-E

ENTERED ON DOCKET

O R D E R

DATE JUN 23 1997

Now before the Court is the Motion for Summary Judgment (Docket #17) of the Defendant United Airlines (United).

Plaintiff Judy Whited (Whited) worked as a customer service representative from June 25, 1990 until her termination on January 28, 1994. She contends in her Complaint that her employment was plagued by continual sexual harassment from co-workers and that her termination was motivated by sexual discrimination, all in violation of Title VII of the Civil Rights Act of 1964. United contends that plaintiff did not perform her job in a satisfactory manner and that plaintiff was terminated because of an incident on January 25, 1994 in which plaintiff, due to inattention and unsafe operating procedures, endangered two co-workers when they were attempting to move two coffins into the cargo bay of a plane. United seeks summary judgment, arguing that certain of her claims are barred by the statute of limitations, that she fails to make a prima facie case of sex discrimination, that there is no proof that the articulated reasons for her termination were pretextual, and that, as a matter of law, she cannot prove sexual harassment.

Legal Analysis

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate

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where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The 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."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

Defendant first argues that plaintiff fails to make a prima facie case of sex discrimination. In order to make her claim for intentional discrimination, plaintiff must prove: 1) that she is a member of a protected class; 2) that she was qualified for the employment position held at the time of her discharge (or adverse employment decision) and was satisfactorily performing the requirements of that position; 3) that despite her satisfactory job performance, she was discharged; and 4) that the person chosen to replace her was not a member of the protected class. Rea v. Marin Marietta Corp., 29 F.3d 1450, 1454 (10th Cir. 1994). After the

plaintiff establishes her prima facie case, the defendant has the burden of articulating a legitimate nondiscriminatory reason for the employment decision. Id. Once the defendant meets its burden, the burden shifts back to the plaintiff to establish that the legitimate nondiscriminatory reason is actually a pretext for discrimination. Id. Plaintiff must "show that [gender] actually played a role in the defendant's decision making process and had a determinative influence on the outcome." Id.

Defendant asserts that plaintiff cannot make a prima facie case of discrimination because she cannot prove that she was satisfactorily performing the requirements of her position, and in the alternative that there is no proof that its nondiscriminatory reason for discharge (poor performance compounded by the incident on January 25, 1994) is pretextual. Defendant supports these arguments with numerous performance reviews that indicate that plaintiff was not performing her job adequately and with documentation that her termination ultimately occurred because of the safety violation. Defendant also argues that there is no intentional discrimination, and no pretext, by relying on plaintiff's own statement that she does not have any evidence that Mr. Gordon considered her gender in deciding to discharge her.

Plaintiff controverts the evidence regarding her capability to perform her job with her own affidavit, her contemporaneous notes and letters concerning her disagreement with her performance evaluations, and with performance reviews that were favorable. Defendant attempts to dismiss this evidence as conclusory and self-

— serving, arguing that such evidence is not sufficient to withstand a motion for summary judgment. Gross v. Burggraf Const.Co., 53 F.3d 1531, 1546 (10th Cir. 1995). The Court disagrees and finds that a genuine issue of fact exists with respect to the plaintiff's performance on the job.

The same is not true, however, with respect to the ultimate decision to terminate plaintiff. While plaintiff provides evidence that she disagrees with the version of events adopted by her supervisor, she does not have any evidence that "a discriminatory reason more likely motivated the employer or . . . that the employer's proffered explanation is unworthy of credence." Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981). Defendant's Motion for Summary Judgment on plaintiff's claim of intentional discrimination is granted.

— Plaintiff's second claim is for a hostile work environment. She claims that three of her co-workers subjected her to sexual comments, lewd jokes, and offensive language; that despite her complaints, those co-workers were not disciplined; and these co-workers were put in a position to impact her performance evaluations and influence her supervisors. Defendant argues that to demonstrate a hostile work environment, plaintiff must prove "the workplace is permeated with `discriminatory intimidation, ridicule, and insult' . . . that is `sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" Lowe v. Angelo's Italian Foods, Inc., 87 F.3d 1170, 1175 (quoting Meritor Savings Bank v.

Vinson, 477 U.S. 57, 65 (1986)).

Defendant asserts that plaintiffs complaints are not sufficiently pervasive to state a claim in light of Plaintiff's statement in October, 1993 that there was no harassment against her at that time and she was "very glad to see the current management stand on sexual harassment and harassment in general." Plaintiff enumerates instances in 1991, 1992, and 1994 when she claims she was harassed. She admits there were no instances of harassment in 1993, and her only claim in 1994 is that on January 5, 1994, a co-employee used vulgar words in telling her to "get out of there." These instances, taken together, simply do not constitute the permeation of the workplace with "discriminatory intimidation, ridicule and insult" which is required by Meritor.

Defendant's Motion for Summary Judgment (Docket #17) is granted.

IT IS SO ORDERED THIS 20th DAY OF JUNE, 1997.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

SA

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
6-23-97

CHAUNCEY HOUSE,)
)
Plaintiff,)
)
vs.)
)
RIO ALGOM, INC., a Delaware)
corporation d/b/a VINCENT METAL)
GOODS, TIM WARNER, individually)
and as an employee of VINCENT)
METAL GOODS, and BILL HIGHT,)
individually and as an employee)
of VINCENT METAL GOODS,)
)
Defendants.)

File No. 96-CV-520B ✓

STIPULATION FOR DISMISSAL
WITH PREJUDICE

FILED

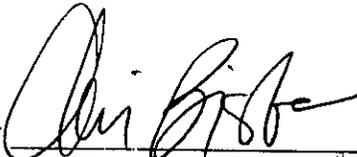
JUN 20 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

The parties hereto, by and through their counsel, hereby stipulate that the above-entitled matter shall be dismissed with prejudice.

STIPE LAW FIRM

Dated: 6/13/97

By 
Cheryl Bisbee OSA # 15726
2417 East Skelly Drive, P.O. Box 701110
Tulsa, Oklahoma 74170-1110
(918) 749-0749

ATTORNEYS FOR PLAINTIFF

24

dlf

FELHABER, LARSON, FENLON & VOGT

Dated: June 5, 1997

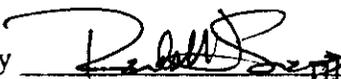
By 

Robert L. Bach

601 Second Avenue South, Suite 4200
Minneapolis, Minnesota 55402-4302
(612) 339-6321

CROWE & DUNLEVY

Dated: 6/10/97

By 

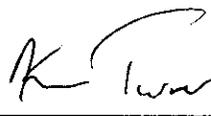
Randall Snapp DBA #11169

500 Kennedy Building
321 South Boston
Tulsa, Oklahoma 74103-3313
(918) 592-9800

ATTORNEYS FOR VINCENT METAL GOODS
AND BILL HIGHT

NEWTON, O'CONNOR, TURNER & AUER

Dated: 6-20-97

By 

W. Kirk Turner

2700 Boatmen's Center
15 West Sixth Street
Tulsa, Oklahoma 74119
(918) 587-0101

ATTORNEYS FOR TIM WARNER

WJ

REGISTERED ON DOCKET

6-23-97

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 20 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARY J. GUSTAFSON,

Defendant.

Civil Action No. 97CV331B(W) ✓

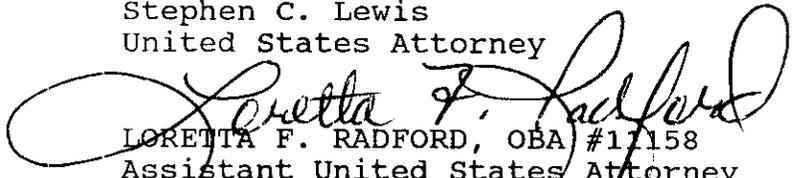
NOTICE OF DISMISSAL

COMES NOW the United States of America by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Loretta F. Radford, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 20th day of June, 1997.

UNITED STATES OF AMERICA

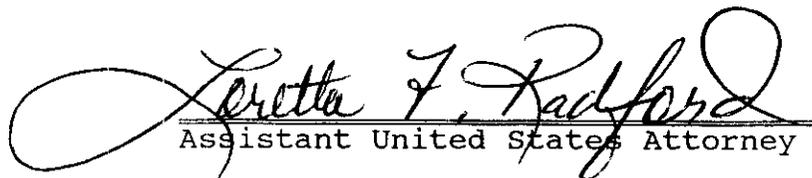
Stephen C. Lewis
United States Attorney



LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
333 W. 4th Street, Suite 3460
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 20th day of June, 1997, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Mary J. Gustafson, 12717 E. 113th N., Owasso, OK 74055.



Assistant United States Attorney

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crs

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

ENTERED ON DOCKET
6-23-97
FILED

JUN 29 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DIANA C. SCHWAB,)

Plaintiff,)

vs.)

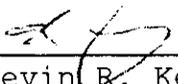
Case No. 96-C-632-B ✓

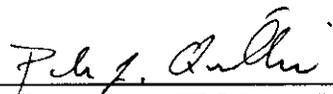
SIGHT 'N SOUND APPLIANCE CENTERS,)
INC., an Oklahoma Corporation,)
d/b/a COST WAREHOUSE, f/k/a HOUSE)
OF SIGHT 'N SOUND, INC., an)
Oklahoma Corporation, d/b/a COST)
WAREHOUSE, and)
RONNIE ROCHELLE, an individual,)

Defendants,)

STIPULATION OF DISMISSAL, WITH PREJUDICE

COME NOW each of the parties hereto, by and through their respective attorneys of record, pursuant to Federal Rule of Civil Procedure 41 (a) (1) (ii), and hereby stipulate that this action should be, and the same is hereby dismissed, with prejudice. Each party is to bear their own respective attorney's fees and costs.


Kevin R. Kelley, #11889
16 E. 16th St., Suite 302
Tulsa, OK 74119-4461
(918) 592-4000
Attorney for Plaintiff


Paula J. Quillin, #7368
Joseph R. Farris, #2835
FELDMAN, FRANDEN,
WOODARD, FARRIS & TAYLOR
525 S. Main, Suite 1400
Tulsa, OK 74103-4523
(918) 583-7129
Attorneys for Defendant
Sight 'N Sound Appliance
Centers, Inc.

John J. Garvey
John J. Garvey, # 3272
721 North Ann Arbor
Oklahoma City, OK 73127
(405) 942-0311
Attorney for Defendants

6-23-97

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

JUN 20 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)

Plaintiff,)

vs.)

Civil No.: 97-cv-234-B ✓

JAMES RAWLINGS)

Defendant.)

CLERK'S ENTRY OF DEFAULT

It appearing from the files and records of this Court as of June 20, 1997 and the affidavit of Loretta F. Radford, that the defendant, James Rawlings, against whom judgment for affirmative relief is sought in this action, has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure; now, therefore,

I, PHIL LOMBARDI, Clerk of said Court, pursuant to the requirements of Rule 55(a) of said rules, do hereby enter the default of said defendant.

Dated at Tulsa, Oklahoma on June 23, 1997

PHIL LOMBARDI,

Clerk, U.S. District Court



S. Schwebke, Deputy Clerk

RECORDED ON BOOK 117
6-23-97

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

UNITED STATES OF AMERICA)
)
)
 Plaintiff,)
 vs.)
)
 ISHMAEL E. CROSSLEN)
)
 Defendant.)

JUN 20 1997
Phil Lombardi, Clerk
U.S. DISTRICT COURT

Civil No.: 97-cv-240-B

CLERK'S ENTRY OF DEFAULT

It appearing from the files and records of this Court as of June 20, 1997 and the affidavit of Loretta F. Radford, that the defendant, Ishmael E. Crosslen, against whom judgment for affirmative relief is sought in this action, has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure; now, therefore,

I, PHIL LOMBARDI, Clerk of said Court, pursuant to the requirements of Rule 55(a) of said rules, do hereby enter the default of said defendant.

Dated at Tulsa, Oklahoma on June 23, 1997

PHIL LOMBARDI,
Clerk, U.S. District Court
S. Schwebke
S. Schwebke, Deputy Clerk