

F I L E D

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

DEC 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ROBERT M. WATKINS,)
)
 Petitioner,)
)
 vs.)
)
 RON CHAMPION, Warden, and)
 THE ATTORNEY GENERAL OF)
 THE STATE OF OKLAHOMA,)
)
 Respondents.)

Case No. 89-C-593-B

ENTERED ON DOCKET

DATE 12-18-98

ORDER

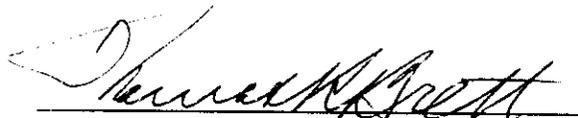
Before the Court is Petitioner's "motion to vacate judgement and/or order pursuant to: Rule 60, Sub'd. B(4), 28 USCA 2241(d)" (#13) filed in this matter on October 1, 1998.

According to the Court's record for this case, Petitioner filed his § 2254 petition for writ of habeas corpus on July 27, 1989. This Court denied the petition on April 23, 1990. Petitioner appealed and the United States Court of Appeals for the Tenth Circuit affirmed on January 16, 1991. Petitioner now seeks Rule 60(b) relief from the April 23, 1990 Order denying his petition for writ of habeas corpus by alleging that this Court lacked jurisdiction, pursuant to 28 U.S.C. § 2241(d), to consider his petition. However, the Court finds that Petitioner's Rule 60(b) motion constitutes a second or successive habeas corpus petition under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). See Lopez v. Douglas, 141 F.3d 974 (10th Cir. 1998); Felker v. Turpin, 101 F.3d 657, 661 (11th Cir.), *cert. denied*, --- U.S. ---, 117 S.Ct. 451, 136 L.Ed.2d 346 (1996) (stating that "Rule 60(b) cannot be used to circumvent restraints on successive habeas petitions"). Since Petitioner filed his second § 2254 petition after April 24, 1996, the effective date of the AEDPA, he

is required to comply with the AEDPA's relevant provisions and must obtain prior authorization from the Tenth Circuit Court of Appeals before filing a second or successive petition in this district court. 28 U.S.C. § 2244(b). Petitioner has failed to obtain the required authorization. As a result, this Court lacks jurisdiction to consider the instant petition. Lopez, 141 F.3d at 975-76. Therefore, the Court concludes that Petitioner's motion to vacate judgment, construed as a second or successive petition for writ of habeas corpus, should be dismissed for lack of jurisdiction.

ACCORDINGLY, IT IS HEREBY ORDERED that Petitioner's motion to vacate judgment (#13) is a second or successive petition for writ of habeas corpus, and is dismissed for lack of jurisdiction.

SO ORDERED THIS 15th day of dec, 1998.


THOMAS R. BRETT, Senior Judge
UNITED STATES DISTRICT COURT

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

FILED
DEC 16 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ANDREA CAGLE,

Plaintiff,

v.

AIR PRODUCTS AND CHEMICALS,
INC.,

Defendant.

Civil Action No. 98-CV-0279K(M) ✓

ENTERED ON DOCKET

DATE 12-17-98

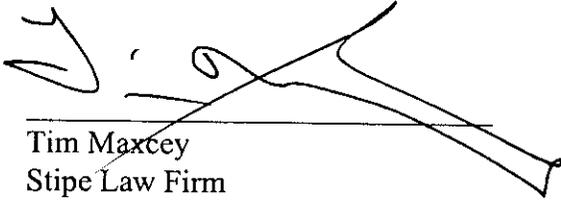
STIPULATION OF VOLUNTARY DISMISSAL

It is hereby stipulated, by and between counsel for Plaintiff Andrea Cagle and Defendant Air Products and Chemicals, Inc., that this action and all of the claims set forth in Plaintiff's Complaint are hereby dismissed with prejudice pursuant to Fed. R. Civ. P. 41(a)(1).

The parties shall bear their own costs.



Joseph J. Costello, Esquire
Morgan, Lewis & Bockius LLP
2000 One Logan Square
Philadelphia, PA 19103



Tim Maxcey
Stipe Law Firm
P.O. Box 1368
Muskogee, OK 74502

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

REPRODUCTIVE SERVICES, on behalf)
of itself, its staff, and its patients,)
)
Plaintiff,)

v.)

FRANK KEATING, in his official capacity)
as Governor of the State of Oklahoma;)
DREW EDMONDSON, in his official capacity as)
Attorney General of the State of Oklahoma;)
CHARLES L. RICHARDSON, in his official capacity)
as District Attorney for Tulsa County and as)
representative of the class of all District Attorneys)
in the State of Oklahoma; and)
JERRY R. NIDA, N.D., M.P.H., in his official)
capacity as Commissioner of the Oklahoma)
Department of Health, and their agents and successors)
in office,)
)
Defendants.)

ENTERED ON DOCKET

DATE 12-17-98

Case No. 98-CV-447-H ✓

FILED

DEC 16 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

STIPULATION AND ORDER

This matter comes on pursuant to Plaintiff's motion to permanently enjoin the enforcement of 63 Okla. Stat. § 1-731(B) and that provision's implementing regulations promulgated by the Oklahoma Department of Health (Docket # 1, 3). The undersigned parties hereby stipulate and agree as follows:

1. The Stipulation of Relevant Facts entered into by the parties and filed on December 15, 1998, is specifically incorporated by reference and made a part of this Stipulation and Order.

2. The statute at issue in this case is virtually identical to that held to be unconstitutional by the United States Supreme Court in City of Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416 (1983).

57

3. The Supreme Court has not overruled City of Akron's invalidation of second-trimester hospitalization requirements. See City of Akron, 462 U.S. at 432-33.

4. If the case were controlled by Planned Parenthood of Southeast Pennsylvania v. Casey, 505 U.S. 833 (1992), the evidence would not support a claim that the instant statutes are constitutional when analyzed under the framework set forth in Planned Parenthood.

5. 63 Okla. Stat. § 1-731(B) is unconstitutional. See City of Akron, 462 U.S. at 433; Planned Parenthood, 505 U.S. at 875-878; see also Jane L. v. Bangerter, 102 F.3d 1112, 1116 (10th Cir. 1996), cert. denied, 117 S. Ct. 2453 (1997).

6. Okla. Admin. Code §§ 310.600-1-1 et. seq. is not to be applied or interpreted in any way to require that second-trimester abortions be performed in general hospitals.

7. Defendants should be enjoined from enforcing the statute at issue.

8. An order enjoining Defendants from enforcing the statute at issue will be binding on all law enforcement officials in the State of Oklahoma and effectively prohibits any law enforcement official in Oklahoma from enforcing such statute.

9. This action, and all claims asserted herein by Plaintiff against all Defendants, is hereby dismissed with prejudice.

10. This Court shall retain jurisdiction over this action for the purposes of 1) interpreting, implementing, or enforcing this judgment, 2) enforcing the provisions of the injunction, and 3) considering Plaintiff's request for attorney's fees, costs, and expenses.

Based on the above, the Court hereby declares 63 Okla. Stat. § 1-731(B) to be violative of the United States Constitution pursuant to and in accordance with the stipulations and agreements herein above and applicable law. Defendants are hereby permanently enjoined from enforcing the statute. The Court further declares that Okla. Admin. Code §§ 310.600-1-1 et seq.

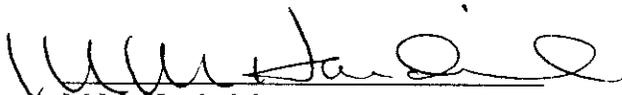
shall not be applied or interpreted in any way to require that second-trimester abortions be performed in general hospitals.

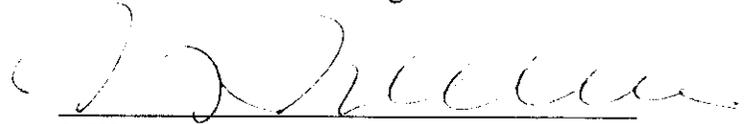
This stipulation and order is binding on all law enforcement officials in the State of Oklahoma. Accordingly, Plaintiff's Motion for Certification of Defendant Class (Docket # 18) is unnecessary, and accordingly should be and is hereby denied.

IT IS SO ORDERED.

This 16TH day of December, 1998.


Sven Erik Holmes
United States District Judge


M.M. Hardwick
Priscilla Smith
Simon Heller
Suzanne J. Levitt
Counsel for Plaintiff Reproductive Services


J. Warren Jackman
Judy A. Terry
Counsel for Defendants Frank Keating and
Jerry R. Nida


Linda L. Samuel-Jaha
Guy Lee Hurst
Counsel for Defendant Drew Edmondson


Dick Austin Blakeley
Linda Kay Greaves
Charles L. Richardson
Counsel for Defendant Charles L. Richardson

SJM
12/16/98

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

FILED

DEC 14 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 SABRINA A. GOODWIN,)
)
 Defendant.)

CASE NO. 98CV657BU(M) ✓

ENTERED IN COURT
DATE DEC 16 1998

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.
2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.
3. The defendant hereby agrees to the entry of Judgment in the principal sum of \$11,018.34, plus accrued interest of \$9,359.99, plus interest thereafter at the rate of 9% per annum until judgment, plus filing fees in the amount of \$150.00, plus interest thereafter at the legal rate 4.513 until paid, plus costs of this action, until paid in full.

2

4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay the amount of indebtedness in full and the further representation of the defendant that Sabrina A. Goodwin will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 15th day of December, 1998, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$200.00, and a like sum on or before the 15th day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Financial Litigation Unit, 333 West 4th Street, Suite 3460, Tulsa, Oklahoma 74103-3809.

(c) Each said payment made by defendant shall be applied in accordance with the U.S. Rules, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. § 1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

(d) The defendant shall keep the United States currently informed in writing of any material change in her financial situation or ability to pay, and of any change in her employment, place of residence or telephone number. Defendant shall provide such information to the United States Attorney at the address set forth above.

(e) The defendant shall provide the United States with current, accurate evidence of her assets, income and expenditures (including, but not limited to her Federal income tax returns) within fifteen (15) days for the date of a request for such evidence by the United States Attorney.

5. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

6. The parties further agree that any Order of Payment which may be entered by the Court pursuant hereto may thereafter be modified and amended upon stipulation of the parties; or, should the parties fail to agree upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

7. The defendant has the right of prepayment of this debt without penalty.

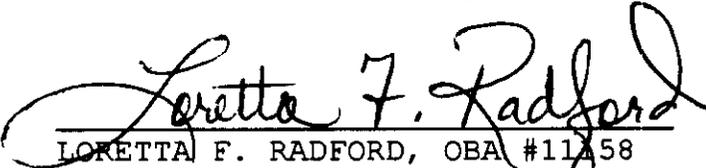
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Sabrina

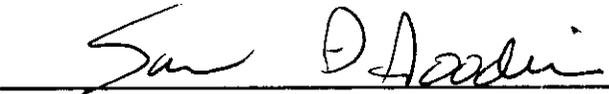
A. Goodwin, in the principal amount of \$11,018.34, plus accrued interest in the amount of \$9,359.99, plus interest at the rate of 9 until judgment, plus filing fees in the amount of \$150.00, plus interest thereafter at the current legal rate of 4.513 percent per annum until paid, plus the costs of this action.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Stephen C. Lewis
United States Attorney


LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney


SABRINA A. GOODWIN

LFR/llf

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

FILED

DEC 14 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

WENDELL T. PHILLIPS, JR.,)
)
 Plaintiff,)
)
 v.)
)
 OKLAHOMA TURNPIKE AUTHORITY,)
)
 Defendant.)

Case No. 97-CV-1130-K (W) ✓

ENTERED ON DOCKET
DATE DEC 16 1998

JOINT STIPULATION OF DISMISSAL

Plaintiff Wendell Phillips and defendant Oklahoma Turnpike Authority (OTA), pursuant to Rule 41(a)(1)(ii), FED.R.CIV.P., jointly stipulate that the plaintiff's action against the defendant OTA be dismissed with prejudice. Each party is to bear its respective costs and fees connected with this lawsuit.

Dated this 10 day of ^{December} ~~November~~, 1998.

Respectfully submitted,



R. Lawrence Roberson, OBA # 14076
ROBERSON LAW OFFICE
5555 South Peoria Avenue
Tulsa, OK 74105-6840
(918) 712-1994

Attorneys for Plaintiff Wendell T. Phillips


Wendell T. Phillips, Plaintiff

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Karen L. Long, OBA #5510
ROSENSTEIN, FIST & RINGOLD
525 South Main, Suite 700
Tulsa, Oklahoma 74103
(918) 585-9211

Attorneys for Defendant,
Oklahoma Turnpike Authority

ke

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

SANDY EDMISTON,)
)
Plaintiff,)
)
vs.)
)
SEARS ROEBUCK, INC., a New York)
Corporation, and STEVEN L. BRUCE)
and J. MICHAEL MORGAN, as)
individuals and the PARTNERSHIP of)
BRUCE AND MORGAN, Attorneys)
at Law,)
)
Defendants.)

No. 97 CV 731H ✓

FILED
DEC 14 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
DATE DEC 16 1998

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to 41 F.R.C.P., the parties jointly stipulate that this matter is dismissed with prejudice to refiling.

Respectfully submitted,



Monty C. Pritchett, OBA #14384
PRITCHETT & JEFFERS, P.C.
1861 East 15th Street
Tulsa, Oklahoma 74104-4610
918/747-4600 Phone
918/744-6300 Fax
ATTORNEY FOR PLAINTIFF



Joseph R. Farris, OBA #2835
FELDMAN, FRANDEN, WOODARD & FARRIS
525 South Main, Suite 1000
Tulsa, Oklahoma 74103
918/583-7129 (Phone)
918/584-3814 (Fax)
ATTORNEYS FOR DEFENDANTS

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

LUIS V. GOROSPE, M.D.,)

Plaintiff,)

v.)

VICKI HAYMAN,)

Defendant,)

and)

VICKI HAYMAN,)

Defendant and
Third Party Plaintiff,)

v.)

PROVIDER MEDICAL
PHARMACEUTICAL, INC., and)
JOHNSON BROKERS AND)
ADMINISTRATORS, INC.,)

Third Party Defendants.)

Case No. 98-CV-0566B(J) ✓

ENTERED ON DOCKET
DATE DEC 16 1998

FILED
DEC 15 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

STIPULATION FOR DISMISSAL WITHOUT PREJUDICE

COMES NOW Defendant and Third Party Plaintiff, Vicki Hayman, to dismiss without prejudice all claims Plaintiff has alleged and has against the Third Party Defendants, Provider Medical Pharmaceutical, Inc. and Johnson Brokers and Administrators, Inc., each party to be responsible for its own costs and attorney fees incurred herein.

14

C/J

Dated this 15 day of December, 1998.

Donald G. Hopkins by *DAW*
Donald G. Hopkins, Attorney for Defendant
And Third Party Plaintiff, Vicki Hayman

Ron White
Ron White, Attorney for Third Party Defendant
Provider Medical Pharmaceutical, Inc. and
Johnson Brokers and Administrators, Inc.

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

DEC 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CHRISTY DUNCAN,

Plaintiff,

v.

KENNETH S. APFEL,
Commissioner of Social Security
Administration,

Defendant.

Case No. 96-CV-782-C

ENTERED ON DOCKET

DATE DEC 16 1998

ORDER

This Court reversed the Commissioner's decision denying plaintiff's claim for Social Security disability benefits and remanded the case to the Commissioner for an award of benefits. No appeal was taken from this Judgment and the same is now final.

Pursuant to plaintiff's application for attorney fees under the EAJA, 28 U.S.C. § 2412(d), filed on or around November 25, 1998, the parties have stipulated that an award in the amount of \$4,312.50 for attorney fees and no costs for all work done before the district court is appropriate.

WHEREFORE, IT IS ORDERED that plaintiff's counsel be awarded attorney fees of \$4,312.50 and no costs under the Equal Access To Justice Act in the amount of \$4,312.50.



H. Dale Cook
United States ~~Magistrate~~ Judge



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

F I L E D

DEC 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

RONALD K. THOMAS,

Plaintiff,

VS.

DENNY'S RESTAURANTS, INC.,

Defendant.

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)

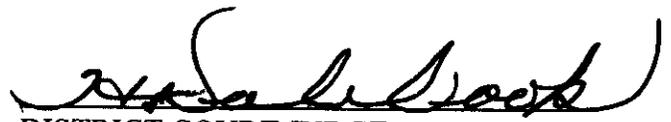
CASE NO. 91-C-715-C

ENTERED ON DOCKET
DATE DEC 16 1998

ORDER

Before the Court for consideration is the Joint Stipulation of Dismissal with Prejudice, filed by the parties. For good cause shown, the Court finds that the motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-captioned matter is dismissed with prejudice, and each party shall bear its own costs and attorneys' fees.


DISTRICT COURT JUDGE

214

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

FILED

DEC 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

AUGUSTUS HENDERSON,)
)
Plaintiff,)
)
vs.)
)
CIGNA GROUP)
INSURANCE & UNUM LIFE INSURANCE)
COMPANY OF AMERICA, et al.)
)
Defendants,)
)

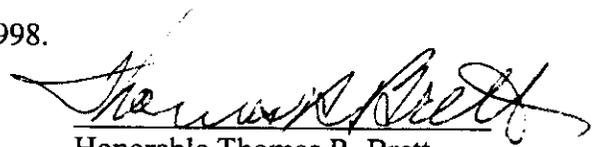
No. 98-CV-120-B

ENTERED ON DOCKET
DATE DEC 16 1998

ORDER OF PARTIAL DISMISSAL WITH PREJUDICE

Plaintiff, Augustus Henderson, and Defendants, Life Insurance Company of North America, improperly named as CIGNA Group Insurance in the case style and UNUM Life Insurance Company of America, having stipulated to the dismissal of this action with prejudice as to Defendants, Life Insurance Company of North America, improperly named as CIGNA Group Insurance in the case style, and UNUM Life Insurance Company of America, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the Court finds that this action shall be and hereby is dismissed with prejudice to the refiling thereof as to Life Insurance Company of North America, improperly named as CIGNA Group Insurance in the case style, and UNUM Life Insurance Company of America.

DATED this 14 day of Dec, 1998.


Honorable Thomas R. Brett
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
on behalf of the Secretary of Housing and Urban Development,)

Plaintiff,)

v.)

THE UNKNOWN HEIRS, EXECUTORS,)
ADMINISTRATORS, DEVISEES,)
TRUSTEES, SUCCESSORS AND)
ASSIGNS OF LEE W. JENKINS)
aka Lee Wallace Jenkins, Deceased;)
CHARLES W. JENKINS, JR.;)
STATE OF OKLAHOMA *ex rel.*)
Oklahoma Tax Commission;)
COUNTY TREASURER, Tulsa County,)
Oklahoma;)
BOARD OF COUNTY COMMISSIONERS,)
Tulsa County, Oklahoma,)

Defendants.)

FILED

DEC 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
DATE DEC 16 1998

CIVIL ACTION NO. 98-CV-438-C (M)

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15 day of Dec, 1998.

The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; that the Defendant, Charles W. Jenkins, Jr., appears *pro se*; that the Defendant, State of Oklahoma *ex rel.* Oklahoma Tax Commission, appears by Kim D. Ashley, Assistant General Counsel; and the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased, appear not, but make default.

B

The Court being fully advised and having examined the court file finds that the Defendant, Charles W. Jenkins, Jr., was served with Summons and Complaint by certified mail, return receipt requested, delivery restricted to the addressee on July 6, 1998.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning August 13, 1998, and continuing through September 17, 1998, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased, and service cannot be made upon said Defendants by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully

exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on August 20, 1998; that the Defendant, Charles W. Jenkins, Jr., filed his Answer on July 22, 1998; that the Defendant, State of Oklahoma *ex rel.* Oklahoma Tax Commission, filed its Answer on July 29, 1998; and that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot Sixteen (16), Block Six (6) SUNRISE TERRACE,
addition to the City of Tulsa, Tulsa County, State of
Oklahoma according to the recorded Plat thereof.

The Court further finds that this a suit brought for the further purpose of judicially determining the death of Lee W. Jenkins aka Lee Wallace Jenkins and judicially determining the heirs of Lee W. Jenkins aka Lee Wallace Jenkins.

The Court further finds that Lee W. Jenkins is also known as Lee Wallace Jenkins (hereinafter referred to by either name) and became the record owner of the real property involved

in this action by virtue of that certain General Warranty Deed dated August 26, 1983, from Luther E. Moore and Diana G. Moore, husband and wife, to Lee W. Jenkins, a single person, which Warranty Deed was filed of record on August 30, 1983, in Book 4722, Page 597, in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on August 26, 1983, Lee W. Jenkins executed and delivered to Charles F. Curry Company his mortgage note in the amount of \$60,950.00, payable in monthly installments, with interest thereon at the rate of 12.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Lee W. Jenkins, a single person, executed and delivered to Charles F. Curry Company, a real estate mortgage dated August 26, 1983, covering the above-described property, situated in the State of Oklahoma, Tulsa County. This mortgage was recorded on August 30, 1983, in Book 4722, Page 673, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 29, 1989, Charles F. Curry Company assigned the above-described mortgage note and mortgage to the Secretary of Housing & Urban Development. This Assignment of Mortgage was recorded on September 15, 1989, in Book 5207, Page 2279, in the records of Tulsa County, Oklahoma.

The Court further finds that Lee Wallace Jenkins died on October 15, 1991. Upon the death of Lee Wallace Jenkins, the subject property vested in his surviving heirs by operation of law. Certificate of Death No. 023707 issued by the Oklahoma State Department of Health certifies Lee Wallace Jenkins' death.

The Court further finds that Lee W. Jenkins aka Lee Wallace Jenkins, now deceased, made default under the terms of the aforesaid note and mortgage by reason of his failure

to make the monthly installments due thereon, which default has continued, and that by reason thereof Plaintiff alleges that there is now due and owing under the note and mortgage, after full credit for all payments made, the principal sum of \$59,480.38, plus administrative charges in the amount of \$1,740.42, plus penalty charges in the amount of \$1,985.97, plus accrued interest in the amount of \$48,847.54 as of March 20, 1998, plus interest accruing thereafter at the rate of 12.5 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that Plaintiff, United States of America, is entitled to a judicial determination of the death of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased, and to a judicial determination of the heirs of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of 1993 personal property taxes in the amount of \$26.00 which became a lien on the property as of June 23, 1994. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Charles W. Jenkins, Jr., claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma *ex rel.* Oklahoma Tax Commission, claims no estate tax liens against the subject real property. Tax warrant liens of record, if any, were not identified and are not affected by this Judgment of Foreclosure.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lee W. Jenkins aka Lee Wallace

Jenkins, Deceased, are in default and therefore have no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the death of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased, be and the same hereby is judicially determined to have occurred on October 15, 1991 in the City of Tulsa, Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the only known heir of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased, is Charles W. Jenkins, Jr., and that despite the exercise of due diligence by Plaintiff and its counsel, no other known heirs of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased, have been discovered and it is hereby judicially determined that Charles W. Jenkins, Jr. is the only known heir of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased, and that Lee W. Jenkins aka Lee Wallace Jenkins, Deceased, has no other known heirs, executors, administrators, devisees, trustees, successors and assigns; and the Court approves the Certificate of Publication and Mailing filed on November 10, 1998 regarding said heirs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment **in rem** against all named and unnamed Defendants in the principal sum of \$59,480.38, plus administrative charges in the amount of \$1,740.42, plus penalty charges in the amount of \$1,985.97, plus accrued interest in the amount of \$48,847.54 as of March 20, 1998, plus interest accruing thereafter at the rate of 12.5 percent per annum until

judgment, plus interest thereafter at the current legal rate of 4.513 percent per annum until fully paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property, plus any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$26.00 plus penalties and interest by virtue of 1993 personal property taxes which became a lien on the property as of June 23, 1994.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Lee W. Jenkins aka Lee Wallace Jenkins, Deceased; Charles W. Jenkins, Jr.; and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma *ex rel.* Oklahoma Tax Commission, has no estate tax liens against the subject real property. Tax warrant liens of record, if any, were not identified and are not affected by this Judgment of Foreclosure.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the judgment rendered herein in favor of the Defendant, County Treasurer, Tulsa County, Oklahoma.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

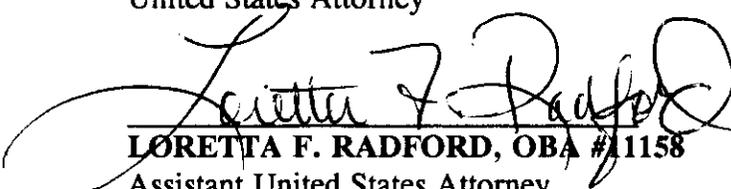
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


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Attorney for Defendants,

County Treasurer and Board of County Commissioners,

Tulsa County, Oklahoma

Judgment of Foreclosure

Case No. 98-CV-438-C (M) (Jenkins)

LFR:css

Charles W Jenkins Jr.

CHARLES W. JENKINS, JR., pro se

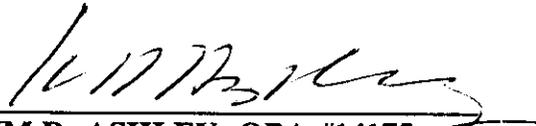
5304 Vale

Greenville, Texas 75401

Judgment of Foreclosure

Case No. 98-CV-438-C (M) (Jenkins)

LFR:css


KIM D. ASHLEY, OBA #14175

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Attorney for Defendant,

State of Oklahoma ex rel. Oklahoma Tax Commission

A 92-237

Judgment of Foreclosure

Case No. 98-CV-438-C (M) (Jenkins)

LFR.css

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

F I L E D

DEC 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

MARILYN D. KENDALL,
SSN: 441-58-9564,

Plaintiff,

v.

KENNETH S. APFEL,
Commissioner of the Social Security
Administration,

Defendant.

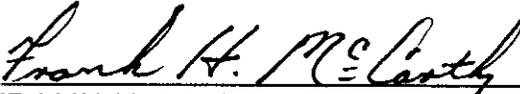
CASE NO. 97-CV-299-M

ENTERED ON DOCKET

DATE DEC 16 1998

JUDGMENT

Judgment is hereby entered for Plaintiff and against Defendant. Dated
this 15th day of Dec., 1998.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

16

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

F I L E D

DEC 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

MARILYN D. KENDALL,
441-58-9564

Plaintiff,

vs.

Case No. 97-CV-299-M

KENNETH S. APFEL,
Commissioner,
Social Security Administration,

Defendant.

ENTERED ON DOCKET

DATE DEC 16 1998

ORDER

Plaintiff, Marilyn D. Kendall, seeks judicial review of a decision of the Commissioner of the Social Security Administration denying Social Security disability benefits.¹ In accordance with 28 U.S.C. §636(c)(1) & (3) the parties have consented to proceed before a United States Magistrate Judge.

Plaintiff was born June 19, 1955, and was 40 years old at the time of the hearing. She has a high school education and formerly worked as an administrative assistant, teller and secretary. She claims to have been unable to work since July 23, 1993, as a result of chronic pain due to residuals from a 1985 motor vehicle accident in which her pelvic bone was crushed, and her sacrum fractured. She has been diagnosed with fibromyalgia, degenerative arthritis, and depression. The ALJ determined that although Plaintiff is unable to perform her past relevant work, she is

¹ Plaintiff's February 7, 1994, applications for disability benefits were denied. The denials were affirmed on reconsideration. A hearing before an Administrative Law Judge ("ALJ") was held October 11, 1995. By decision dated December 1, 1995, the ALJ entered the findings that are the subject of this appeal. The Appeals Council affirmed the findings of the ALJ on January 1, 1997. 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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capable of performing sedentary work limited by her ability to only occasionally bend, stoop, crouch, kneel, or crawl. Based on the testimony of the vocational expert, the ALJ determined that there are a significant number of jobs in the national economy that Plaintiff could perform with these limitations. The case was thus decided at step five of the five-step evaluative sequence for determining whether a claimant is disabled. *See Williams v. Bowen*, 844 F.2d 748, 750-52 (10th Cir. 1988) (discussing five steps in detail).

Plaintiff asserts that the ALJ's determination is not supported by substantial evidence. She raises the following points of error: (1) The trial judge failed to accept the diagnosis of the treating physicians and did not give an adequate rationale as to why he failed to do so; (2) the trial judge utilized her social activities to find that Plaintiff was not depressed; (3) the trial judge ignored the psychiatric findings; (4) the trial judge ignored the nexus between the numerous physical injuries and Plaintiff's report of severe pain; (5) the trial judge failed to consider the record as a whole. [R. 7, p. 2-3]. The Court construes Plaintiff's complaint as primarily alleging that the Commissioner failed to accord appropriate weight to the opinions of Plaintiff's treating physicians and failed to perform a proper pain and credibility analysis.

The orthopaedic injuries Plaintiff sustained in the 1985 motor vehicle accident were severe enough that on discharge, her orthopaedic surgeon, R. Clio Robertson, M.D., noted in the hospital record that Plaintiff's injuries were of such severity that she would be unable to return to work involving sitting or standing for a year from the date

of her surgeries. [R. 161]. In 1988, three years post accident, Plaintiff returned to Dr. Robertson for an evaluation because of continuing pain in her left SI joint which was gradually getting worse with time. An X-ray of the SI joint demonstrated degenerative changes of the SI joint, but no surgery was recommended. [R. 200]. The record contains voluminous entries reflecting Plaintiff's frequent (twice monthly) appointments for osteopathic manipulative therapy over a several year period beginning long before the alleged July 1993 onset date. At many of these appointments Plaintiff's physicians record objective indicia of pain such as muscle spasms and limited range of motion. Narcotic medications were prescribed for pain. Eventually her physicians suspected that Plaintiff had developed a dependency on narcotics, and she was weaned from narcotics to other analgesic medications. None of Plaintiff's treating doctor expressed any doubt as to her need for pain relief. In September 1995 she was referred to a neurological surgeon who performed facet blocks in an effort to determine whether performance of a facet rhizotomy would be of benefit to relieve her pain. [R. 387-391].

As permitted by the relevant regulations, 20 C.F.R. § 404.970(b), Plaintiff submitted additional records to the Appeals Council. Those records include a letter dated December 15, 1995, from Dr. Kenneth E. Graham, D.O. He states that Plaintiff has been a patient of his since 1984. According to Dr. Graham, secondary to the severe trauma of the 1985 auto accident, Plaintiff has developed severe degenerative arthritis of the lumbosacral spine and pelvis, knees and ankles. She has also developed traumatic fibromyalgia. In Dr. Graham's opinion, Plaintiff is completely disabled

secondary to her degenerative arthritis and the fibromyalgia. He explained that Plaintiff is only able to walk a short distance because of pain and that he has prescribed a wheelchair for her use. She is in constant pain due to severe muscle spasm throughout her back, pelvis, and legs. Dr. Graham stated that Plaintiff's long term prognosis is poor. He is hopeful that her condition will be stabilized through medications, heat and therapy. [R. 449].

The Appeals Council denied review of the case, stating:

The Appeals Council has also considered the contentions raised in your representative's letter dated January 12, 1996, as well as the additional evidence from . . . Kenneth E. Graham, D.O. dated October 2, 1995 through December, 1995, . . . but concluded that neither the contentions nor the additional evidence provides a basis for changing the Administrative Law Judge's decision.

[R. 5]. Although Dr. Graham's letter was not before the ALJ, the Tenth Circuit has ruled that "new evidence [submitted to the Appeals Council] becomes part of the administrative record to be considered [by the court] when evaluating the [Commissioner's] decision for substantial evidence." *O'Dell v. Shalala*, 44 F.3d 855, 859 (10th Cir. 1994).

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 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, 91 S.Ct. 1420, 1427, 28 L.Ed.2d 842 (1971) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). The Court may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Casias v. Secretary of Health & Human Servs.*, 933 F.2d 799, 800 (10th Cir. 1991).

Although reweighing the evidence is clearly proscribed, pursuant to *O'Dell*, 44 F.3d 855, this court is required to review Dr. Graham's letter to determine whether, even considering this new evidence, the ALJ's decision is supported by substantial evidence. The court is troubled that consideration of Dr. Graham's letter will necessarily involve some degree of speculation as to how the ALJ would have weighed this information had it been available for the original hearing. In a similar situation, the Eighth Circuit has stated that it "consider[s] this to be a peculiar task for a reviewing court." *Riley v. Shalala*, 18 F.3d 619, 622 (8th Cir. 1994).

The court views the Appeals Council's failure to discuss the new evidence as being directly contrary to the statutory requirement that the Social Security Administration discuss the evidence before it and explain the reasons for any unfavorable decision. 42 U.S.C. § 405(b) directs the Commissioner of Social Security to:

make findings of fact, and decisions as to the rights of any individual applying for a payment Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of

the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. [emphasis supplied].

Furthermore, the Court notes that the Commissioner's regulations require him to 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). Although a treating physician's opinion may be rejected, the Commissioner is required to give good cause for rejecting the treating physician's views and, specific, legitimate reasons for rejection of the opinion must be set forth. *Frey v. Bowen*, 816 F.2d 508 (10th Cir. 1987); *Byron v. Heckler*, 742 F.2d 1232, (10th Cir. 1984).

In this case, contrary to the statutory mandate that any unfavorable decision shall contain a discussion of the evidence, Dr. Graham's opinion is not discussed by anyone representing the Commissioner. Although this method of handling new evidence does not appear to be contrary to any regulation promulgated by the Commissioner, the court notes that the Congressional grant of authority to the Commissioner to make rules and regulations and to establish procedures is limited to those which are not inconsistent with the statutes. 42 U.S.C. § 405(a). In this Court's view, any procedure adopted by the Commissioner which permits the Appeals Council to receive an opinion of a treating physician that the claimant is disabled and yet affirm denial of benefits without any discussion of the opinion is inconsistent with

the §405(b) requirement that an unfavorable decision contain a discussion of the evidence and a statement of the reasons upon which the denial is based. Having concluded that the Commissioner's decision is inconsistent with § 405(b), the Court must either remand the case to the Commissioner, or conduct the analysis and discussion of the new evidence itself. The court's choice is dictated by *O'Dell*.

In *O'Dell*, new relevant evidence was submitted to the Appeals Council. The Appeals Council decided that the new evidence did not provide a basis for changing the ALJ's decision and denied review. On appeal the district court refused to consider the new evidence which was not before the ALJ. The Tenth Circuit held that the new evidence submitted to the Appeals Council pursuant to 20 C.F.R. § 404.970(b) becomes part of the administrative record to be considered by the court when evaluating the Commissioner's decision for substantial evidence. *Id.*, at 859. The Tenth Circuit then proceeded to evaluate the new evidence and concluded that it did not "undermine" the denial decision. *Id.*

The *O'Dell* opinion does not indicate whether the Appeals Council provided any analysis of the new evidence. It merely states: "The Appeals Council decided that the new evidence did not provide a basis for changing the ALJ's decision and denied review." *Id.*, at 857. Thus, *O'Dell* did not directly address the issue which concerns this court. Instead the court focused its attention on the question of whether the new evidence should be considered when evaluating the Commissioner's decision. However, the *O'Dell* opinion did mention the Seventh Circuit's holding in *Eads v. Sec. of Dept. of Health & Human Servs.*, 983 F.2d 815, 817-18 (7th Cir. 1993), that

appellate review for substantial evidence is restricted to the evidence before the ALJ. *O'Dell* also noted *Eads* concern for preserving the court's role as a reviewing court rather than factfinder. *O'Dell*, at 858. Since the Tenth Circuit mentioned *Eads* and apparently rejected its rationale, this court concludes that the Tenth Circuit has considered the court's proper role with regard to new evidence.² Therefore, despite the fact that this court regards the lack of analysis by the Appeals Council to be contrary to § 405(b), and despite the fact that consideration of the new evidence submitted to the Appeals Council forces the court to adopt the role of a factfinder, rather than a reviewing court, fidelity to *O'Dell* requires the court to proceed in that manner.

Dr. Graham states that Plaintiff has severe muscular spasms and describes her as enduring tremendous physical pain. [R. 449]. His opinion is directly contrary to the ALJ's finding that Plaintiff experiences only mild to moderate pain which would not interfere with her ability to perform sustained work activity. [R. 18]. 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). Although the record contains only a few entries generated by Dr. Graham, this Court finds his

² The Tenth Circuit has reversed and remanded at least one unpublished case because the Appeals Council failed to say that it considered additional evidence. *Lawson v. Chater*, 83 F.3d 432 (Table), 1996 WL 195124 (10th Cir. (Okla.)). There, the Appeals Council stated only that "[i]n reaching this conclusion [to deny review], the Appeals Council has considered the applicable statutes, regulations, and rulings in effect as of the date of this action."

opinion to be completely consistent with clinical findings and diagnosis found in the voluminous records generated by the many physicians who have treated Plaintiff. The Commissioner's regulations require that Dr. Graham's opinion be given controlling weight which would dictate a finding of disability. 20 C.F.R. § 404.1527(d)(1) and (2). The Court therefore finds that Dr. Graham's opinion significantly undermines the ALJ's decision.

Plaintiff also challenges the ALJ's conclusion that her complaints of continual severe pain are not credible. Such a decision is entirely within the province of the ALJ as the Commissioner is entitled to examine the medical record and to evaluate a claimant's credibility in determining whether the claimant suffers from disabling pain. *Brown v. Bowen*, 801 F.2d 361, 363 (10th Cir. 1986). Credibility determinations made by an ALJ are generally treated as binding upon review. *Talley v. Sullivan*, 908 F.2d 585, 587 (10th Cir. 1990). However, the ALJ's decision must contain an appropriate discussion of his credibility analysis.

The Court finds that the ALJ's discussion is inadequate. The Commissioner's regulations specifically instruct that an appropriate pain/credibility analysis will include discussion of the type, dosage, effectiveness, and adverse side-effects of any pain medication and the treatment other than medication for relief of pain. 20 C.F.R. § 404.1529(c)(3). Although the record reflects that Plaintiff's physicians continually prescribed pain medication, the ALJ's decision contains no discussion of the medications. Nor does the ALJ's credibility analysis mention Plaintiff's numerous

doctor visits or that she sought out the help from specialists in an attempt to find pain relief.

In his credibility analysis the ALJ stated:

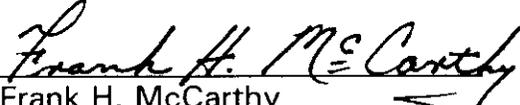
The claimant's statements concerning her impairments and their impact on her ability to work are not entirely credible in light of the claimant's own description of her activities and life style, the degree of medical treatment required, the reports of treating and examining practitioners, and the medical history.

[R. 16]. The ALJ does not state specifically what it is about the degree of medical treatment, medical reports and medical history that detract from Plaintiff's credibility. On review the Court finds these factors tend to support, rather than detract from Plaintiff's credibility. Concerning Plaintiff's activities, the ALJ stated that when Plaintiff lived with her disabled father, she did the housework, cleaning, cooking and laundry. [R. 17]. A review of the exhibit cited by the ALJ reveals that although Plaintiff indicated she cleaned the house, did laundry and other work around her father's house, she did it a little at a time, resting between chores, and had someone else sweep, mop and vacuum. [R. 136-37]. Although the ALJ characterized them as such, these statements are not a contradiction of Plaintiff's claim that she is disabled by pain. The Court concludes that the ALJ failed to consider appropriate factors in conducting his credibility analysis. Furthermore, the factors he relied upon are not supported by the record.

Were it not for the controlling opinion of Dr. Graham that Plaintiff is "completely disabled," 20 C.F.R. § 404.1527(d)(1)&(2), the Court would remand the case.

However, "outright reversal and remand for immediate award of benefits is appropriate when additional fact finding would serve no useful purpose." *Dollar v. Bowen*, 821 F.2d 530, 534 (10th Cir. 1987). The Court finds that in view of Dr. Graham's opinion and the overwhelming record support for Plaintiff's complaints of pain, additional fact finding would not be useful. Accordingly, the court exercises its discretion pursuant to 42 U.S.C. § 405(g) and REVERSES and REMANDS the case with directions to award disability benefits in accordance with Plaintiff's February 7, 1994, applications.

SO ORDERED this 15th Day of December, 1998.


Frank H. McCarthy
UNITED STATES MAGISTRATE JUDGE

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

FILED

DEC 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ANTHONY R. MATHIS,)
)
 Plaintiff,)
)
 vs.)
)
 SOONER PROCESS AND)
 INVESTIGATION, INC., an)
 Oklahoma corporation, d/b/a)
 S.P.I. SECURITY, INC.,)
 LARRY FERGUSON, an individual,)
 and PACIFIC MUTUAL LIFE)
 INSURANCE COMPANY d/b/a)
 PM LIFE INSURANCE COMPANY,)
)
 Defendants.)

Case No. 97 CV 757 BU(W)

ENTERED ON DOCKET
DATE DEC 16 1998

JOINT STIPULATION OF DISMISSAL

The parties, Anthony R. Mathis, ("Plaintiff"), and Sooner Process and Investigation, Inc., d/b/a S.P.I. Security, Inc., Larry Ferguson, and Pacific Mutual Life Insurance Company d/b/a PM Life Insurance Company, ("Defendants"), pursuant to FRCP 41(1) and (c) hereby jointly dismiss all claims against all parties with prejudice to re-filing.

Respectfully submitted,

HOWARD, WIDDOWS, BUFOGLE
& VAUGHN, P.C.

Mark T. Hamby

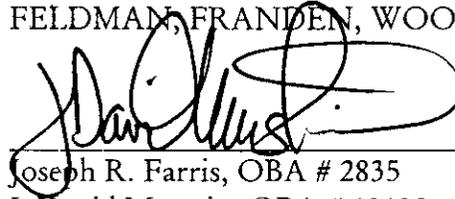
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 918/ 744-7440

ATTORNEY FOR PLAINTIFF, ANTHONY R. MATHIS

35

c/v

FELDMAN, FRANTZEN, WOODARD & FARRIS



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918/ 747-9654

ATTORNEYS FOR DEFENDANTS,
SOONER PROCESS AND INVESTIGATION,
INC. AND LARRY FERGUSON

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

DEC 15 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE DEC 16 1998

UNITED STATES OF AMERICA,)
on behalf of the Secretary of Veterans Affairs,)

Plaintiff,)

v.)

BILLY E. BROOMHALL, JR.)

aka BILLY EDWARD BROOMHALL, JR.;)

GINGER BROOMHALL aka Ginger R. Broomhall)

aka Ginger Renee Broomhall aka Ginger Ramey;)

COUNTY TREASURER, Tulsa County,)

Oklahoma;)

BOARD OF COUNTY COMMISSIONERS,)

Tulsa County, Oklahoma,)

Defendants.)

CIVIL ACTION NO. 98-CV-704-BU (J)

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15 day of Dec,
1998. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern
District of Oklahoma, through Cathryn D. McClanahan, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County
Commissioners, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District
Attorney, Tulsa County, Oklahoma; that the Defendants, Billy E. Broomhall, Jr. aka Billy
Edward Broomhall, Jr. and Ginger Broomhall aka Ginger R. Broomhall aka Ginger Renee
Broomhall aka Ginger Ramey, appear not, but make default.

The Court being fully advised and having examined the court file finds that the
Defendant, Billy E. Broomhall, Jr. aka Billy Edward Broomhall, Jr., was served with
Summons and Complaint by certified mail, return receipt requested, delivery restricted to the
addressee on October 31, 1998; that the Defendant, Ginger Broomhall aka Ginger R. Broomhall

aka Ginger Renee Broomhall aka Ginger Ramey, was served with Summons and Complaint by certified mail, return receipt requested, delivery restricted to the addressee on September 22, 1998.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on October 13, 1998; that the Defendants, Billy E. Broomhall, Jr. aka Billy Edward Broomhall, Jr. and Ginger Broomhall aka Ginger R. Broomhall aka Ginger Renee Broomhall aka Ginger Ramey, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on January 3, 1994, Billy Edward Broomhall, Jr. filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 94-00005-W. The subject real property was made a part of the bankruptcy estate as is evidenced by the property being listed on Schedule A of the bankruptcy schedules. On April 25, 1994, a Discharge of Debtor was entered discharging the debtor from all dischargeable debts. Subsequently, Case No. 94-00005-W, United States Bankruptcy Court, Northern District of Oklahoma, was closed on June 24, 1994.

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

The West Fifty (50) feet of the South One Hundred Twenty-seven and Five-tenths (127.5) feet of Lot Forty-four (44), of SPRINGDALE ACRE LOT ADDITION to the City of Tulsa, County of Tulsa, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that Billy E. Broomhall, Jr. aka Billy Edward Broomhall, Jr. and Ginger Broomhall aka Ginger R. Broomhall aka Ginger Renee Broomhall aka Ginger Ramey are now both single persons being granted a divorce on January 8, 1997 by Decree of Divorce, Case No. FD-96-1667, District Court, Tulsa County, State of Oklahoma.

The Court further finds that on July 24, 1987, Billy E. Broomhall, Jr. and Ginger Broomhall executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$15,000.00, payable in monthly installments, with interest thereon at the rate of 10 percent per annum.

The Court further finds that as security for the payment of the above-described note, Billy E. Broomhall, Jr. and Ginger Broomhall, husband and wife, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a real estate mortgage dated July 24, 1987, covering the above-described property, situated in the State of Oklahoma, Tulsa County. This mortgage was recorded on July 28, 1987, in Book 5041, Page 2532, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendants, Billy E. Broomhall, Jr. aka Billy Edward Broomhall, Jr. and Ginger Broomhall aka Ginger R. Broomhall aka Ginger Renee Broomhall aka Ginger Ramey, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof Plaintiff alleges that there is now due and owing under the note and mortgage, after full credit for all payments made, the principal sum of \$13,710.19, plus administrative charges in the amount of \$532.00, plus penalty charges in the amount of \$38.88, plus accrued interest in the amount of \$1,429.40 as of December 8, 1997, plus

interest accruing thereafter at the rate of 10 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$10.00 (fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendants, Billy E. Broomhall, Jr. aka Billy Edward Broomhall, Jr. and Ginger Broomhall aka Ginger R. Broomhall aka Ginger Renee Broomhall aka Ginger Ramey, are in default and therefore have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, on behalf of the Secretary of Veterans Affairs, have and recover judgment *in rem* against Defendants, Billy E. Broomhall, Jr. aka Billy Edward Broomhall, Jr. and Ginger Broomhall aka Ginger R. Broomhall aka Ginger Renee Broomhall aka Ginger Ramey, in the principal sum of \$13,710.19, plus administrative charges in the amount of \$532.00, plus penalty charges in the amount of \$38.88, plus accrued interest in the amount of \$1,429.40 as of December 8, 1997, plus interest accruing thereafter at the rate of 10 percent per annum until judgment, plus interest thereafter at the current legal rate of 4.512 percent per annum until fully paid, plus the costs of this action in the amount of \$10.00 (fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property, plus any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Billy E. Broomhall, Jr. aka Billy Edward Broomhall, Jr.; Ginger Broomhall aka Ginger R. Broomhall aka Ginger Renee Broomhall aka Ginger Ramey; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ MICHAEL BURRAGE

UNITED STATES DISTRICT JUDGE

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Billy E. Broomhall, Jr. aka Billy Edward Broomhall, Jr.; Ginger Broomhall aka Ginger R. Broomhall aka Ginger Renee Broomhall aka Ginger Ramey; and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

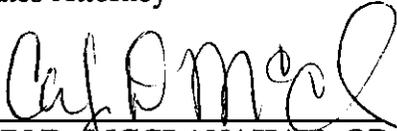
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

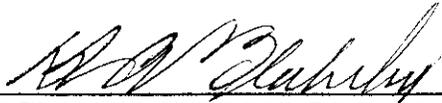

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



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Attorney for Defendants,
County Treasurer and Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Case No. 98-CV-704-BU (J) (Broomhall)

CDM:css

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

FILED
DEC 14 1998

G. KERRY KNOWLTON,)
)
Plaintiff,)
vs.)
)
DAVID RODERICK, an individual,)
et al.,)
)
Defendants.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 98-CV-523-BU ✓

ENTERED ON DOCKET

DATE 12-15-98

ADMINISTRATIVE CLOSING ORDER

As the parties have reached a settlement and compromise of this matter, it is ordered that the Clerk administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceedings for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the proceedings.

If the parties have not reopened this case within 30 days of this date for the purpose of dismissal pursuant to the settlement and compromise, Plaintiff's action shall be deemed to be dismissed with prejudice.

Entered this 14th day of December, 1998.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
KENNEY F. MOORE,)
COLLEN MOORE,)
WAYNE R. GUNWALL, Trustee,)
BLUE RIVER TRUST, and)
WESTSTAR BANK,)
)
Defendants.)

Case No. 97-CV-49H ENTERED ON DOCKET
DATE 12-15-98

FILED
DEC 14 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

Upon application of the United States and for good cause shown, it is hereby
ORDERED, ADJUDGED and DECREED that, pursuant to the settlement entered into
between the United States and the defendants Kenney F. Moore and Colleen Moore, this case is
dismissed with prejudice.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

CHARLES P. HURLEY
Trial Attorney
Tax Division
U.S. Department of Justice
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044
(202) 514-6498

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

UNITED STATES OF AMERICA;
DONNA GLOVER, Revenue Agent,
Internal Revenue Service,

Petitioners,

v.

BOB WEEDN; JUANITA WEEDN,

Respondents.

ORDER

FILED

DEC 14 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. ~~98-CV-603-H~~
98-CV-604-H

ENTERED ON DOCKET

DATE 12-15-98

This order comes on pursuant to the Court's order filed November 1, 1998 granting respondents Bob Weedn and Juanita Weedn's Motions to Quash (Docket # 27). In that order, the Court granted Petitioners three weeks within which to submit reasons why this matter should not be terminated. Petitioners have not responded. Accordingly, the Court finds that this matter should be and is hereby terminated.

IT IS SO ORDERED.

This 14TH day of December, 1998.


Sven Erik Holmes
United States District Judge

28

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

MARY CAUGHRON,

Plaintiff,

v.

THE GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA, a New
York corporation,

Defendant.

ENTERED ON DOCKET

DATE 12-15-98

Case No. 97-CV-874-H ✓

FILED

DEC 14 1998

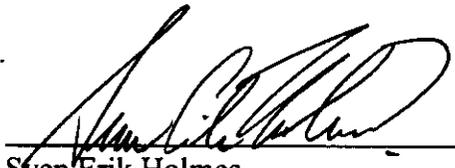
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

This matter comes before the Court on a stipulation of dismissal by Plaintiff Mary Caughron (Docket # 20). Pursuant to this stipulation and for good cause shown, this action is hereby dismissed with prejudice.

IT IS SO ORDERED.

This 14TH day of December, 1998.


Sven Erik Holmes
United States District Judge

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

FILED

DEC 14 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

STEVEN CORBIN,

Plaintiff,

vs.

QUIKTRIP CORPORATION and
AIR EXPERT,

Defendant.

No. 96-C-238-C

ENTERED ON DOCKET
DATE DEC 15 1998

STIPULATION OF DISMISSAL

COME NOW the Plaintiff, Steven Corbin, and the Defendants Quiktrip Corporation and Air Expert, 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 against the Defendant, Air Expert, only, with prejudice for the reason that all matters, causes of action and issues in the case between the Plaintiff and Defendant, Air Expert, have been settled, compromised and released herein, including post and pre-judgment interest.

JOSEPH F. CLARK, JR.

Joseph F. Clark, Jr.

Attorney for Plaintiff

HARRY A. PARRISH

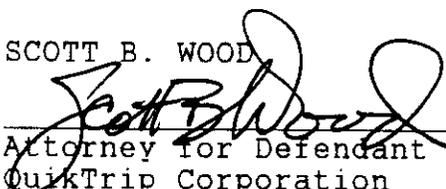
Harry A. Parrish

Attorney for Defendant
Air Expert

D13
C1J

104

SCOTT B. WOOD


Attorney for Defendant
QuikTrip Corporation

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

FILED
DEC 14 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

HAROLD D. COOKSEY,)
)
Petitioner,)
)
vs.)
)
L. L. YOUNG, Warden,)
)
Respondent.)

Case No. 95-CV-1141-E
"BASE FILE"
Case No. 97-CV-632-E

ENTERED ON DOCKET

ORDER

DATE DEC 15 1998

Before the Court in this consolidated 28 U.S.C. § 2254 habeas corpus action are the single claim raised by Petitioner in the petition for writ of habeas corpus filed in Case No. 95-CV-1141-E and the four claims identified by Petitioner in his amended petition filed in Case No. 97-CV-632-E. For the reasons discussed below, the Court finds Petitioner's requests for habeas corpus relief should be denied.

BACKGROUND

By Information filed September 11, 1991 in Comanche County District Court, Case No. CRF-91-346, Petitioner was charged with Larceny of Merchandise from a Retailer. The Information alleged that Petitioner took more than \$50 in merchandise from a K-Mart. Petitioner was arraigned on August 24, 1992. The record from the arraignment indicates that a preliminary hearing was scheduled for "September 22, 1991." (#36, Ex. C at 2). However, Petitioner failed to appear for preliminary hearing on September 22, 1992. His bond was ordered forfeited and Petitioner was alleged to have failed to surrender within 30 days of the forfeiture. As a result, Petitioner was

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charged by Information on December 22, 1992, in Comanche County District Court Case No. CRF-92-533 with the offense of Incurring Bail Forfeiture, After Former Conviction of Two or More Felonies. On page 2 of that Information, two former felony convictions, including a 1990 felony conviction from Coke County, Texas, were identified. Also, on September 22, 1992, an Amended Information was filed in Case No. CRF-91-346, alleging that the alleged larceny took place after former conviction of two or more felonies. Page 2 of that Amended Information identified 11 prior felony convictions, including the 1990 Coke County, Texas, conviction.

The Judgments and Sentences entered by the state trial court indicate that on April 6, 1993, Petitioner was convicted by a jury of Larceny of Merchandise from a Retailer, After the Former Conviction of Two or More Felonies, and of Incurring Bail Forfeiture, After the Former Conviction of Two or More Felonies, in Comanche County District Court, Case Nos. CRF-91-346 and CRF-92-533, respectively. Following a second stage sentencing proceeding, the jury recommended that Petitioner be sentenced to twenty (20) years imprisonment on the larceny conviction and to ten (10) years imprisonment on the bail forfeiture conviction. On April 27, 1993, the trial court sentenced Petitioner according to the jury's recommendations and directed that the sentences were to be served consecutively. See Judgments and Sentences attached to petition for writ of habeas corpus, Case No. 95-CV-211-B.

Petitioner failed to appeal timely his convictions and sentences. However, Petitioner filed an application for post-conviction relief in the trial court where the requested relief was denied on March 22, 1994. Petitioner filed his petition in error in the Oklahoma Court of Criminal Appeals on May 31, 1994. On June 23, 1994, that court dismissed the appeal as untimely. See Case No. 95-C-211, #1, Order attached at p. 24.

Petitioner filed a petition for writ of habeas corpus in this district court,¹ Case No. 95-C-211-B, claiming he had been denied a direct appeal through no fault of his own. This Court agreed and, on November 21, 1995, conditionally granted the writ, directing the State of Oklahoma to allow Petitioner a direct appeal out of time. Petitioner proceeded with his direct appeal and on April 28, 1997, the Oklahoma Court of Criminal Appeals affirmed the Comanche County convictions and sentences.

During the pendency of Case No. 95-CV-211-B in this district court, Petitioner filed a petition for writ of habeas corpus in the United States District Court for the Northern District of Texas challenging the validity of his Coke County, Texas, conviction. That court found Petitioner was not in custody pursuant to the challenged conviction and transferred the case to this district court where it was assigned Case No. 95-CV-1411-E.²

After the Oklahoma Court of Criminal Appeals affirmed the Comanche County convictions and sentences on direct appeal, Petitioner submitted a third petition for writ of habeas corpus, assigned Case No. 97-CV-632-E, raising the following four (4) issues:

¹At the time Petitioner filed his petition in Case No. 95-C-211-B, he was incarcerated at Dick Conner Correctional Center located in Osage County, Oklahoma. Osage County is in the territorial jurisdiction of this district court, 28 U.S.C. § 116(a), conferring concurrent jurisdiction in this Court. 28 U.S.C. § 2241(d). Although Petitioner has since been transferred to John Lilley Correctional Center located in Okfuskee County, Oklahoma, outside the territorial jurisdiction of this district, that subsequent transfer does not cause a loss of habeas corpus jurisdiction in this district court. Santillanes v. United States Parole Comm'n, 754 F.2d 887 (10th Cir. 1985); Weeks v. Wyrick, 638 F.2d 690 (8th Cir. 1981); Laue v. Nelson, 279 F. Supp. 265 (N.D. Cal. 1968).

²Petitioner claims in the instant action that his Coke County conviction has been invalidated. However, he provides no supporting evidence and the Court finds nothing in the record supporting that contention. To the contrary, one of the Orders issued by the United States District Court for the Northern District of Texas states "[i]n June 1990, petitioner pleaded guilty to an unspecified criminal offense in the 51st Criminal District Court for Coke County, Texas. Punishment was subsequently assessed at a term of ten years imprisonment. The Texas Court of Appeals subsequently affirmed his conviction and sentence. Petitioner also sought relief in state court by filing an action for a state writ of habeas corpus pursuant to Tex. Code Crim. Proc. Ann. § 11.07 (Vernon 1989). Upon the unsuccessful conclusion of that proceeding, he filed the instant petition for a writ of habeas corpus pursuant to Title 28, United States Code, Section 2254." See Case No. 95-CV-1141-E, #1, Ex. 5 (footnote omitted).

1. The trial court erred in allowing the state to introduce prior convictions of misdemeanors in the larceny of merchandise case; and further erred in failing to give the jury a limiting instruction on the use of the misdemeanors.
2. The failure of the state to put Mr. Cooksey on notice that it was relying on misdemeanor convictions to "stack" the prior felonies, and the trial court subsequently admitted them for jury consideration, requires reversal of the sentences and a remand for resentencing.
3. The trial court improperly allowed the state to present evidence of information concerning a dismissed charge that was part of the same transaction as the prior conviction alleged in that count.
4. The evidence was insufficient to show Mr. Cooksey was guilty of the crime alleged in CRF-92-533, incurring bail forfeiture.

(Amended Petition, Case No. 97-CV-632-E, #3). These issues are identical to those presented to the state appellate court on direct appeal. On November 19, 1997, Case Nos. 95-CV-1411-E and 97-CV-632-E were consolidated because Petitioner challenges the same convictions in each case.

On December 3, 1997, this Court found that the single claim raised by Petitioner in Case No. 95-CV-1141-E was procedurally barred and that the claim would be denied on that basis unless Petitioner demonstrated "cause and prejudice" or a "fundamental miscarriage of justice" in order to overcome the bar. On December 22, 1997, Petitioner filed his brief addressing "cause and prejudice" and "fundamental miscarriage of justice" (#26). Also in the December 3, 1997 Order, Respondent was directed to file a response to the claims raised by Petitioner in Case No. 97-CV-632-E. However, Respondent filed a motion to dismiss those claims, arguing that the petition filed in Case No. 97-CV-632-E was a "second or successive" petition filed without authorization from the Tenth Circuit Court of Appeals as required by 28 U.S.C. § 2244(b), as amended by the Antiterrorism and Effective Death Penalty Act ("AEDPA"). On August 12, 1998, the Court denied Respondent's motion to dismiss and again directed Respondent to respond to Petitioner's claims. Respondent has

now complied, without abandoning his claim that the petition filed in Case No. 97-CV-632-E is a "second or successive" petition (#36). Petitioner has replied to Respondent's response (#37).

ANALYSIS

A. Petitioner's claim raised in Case No. 95-CV-1141-E should be denied as procedurally barred

The doctrine of procedural default prohibits a federal court from considering a specific habeas claim where the state's highest court would decline to reach the merits of that claim on independent and adequate state procedural grounds, unless a petitioner "demonstrate[s] cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate[s] that failure to consider the claim[] will result in a fundamental miscarriage of justice." See Coleman v. Thompson, 501 U.S. 722, 724 (1991); see also Maes v. Thomas, 46 F.3d 979, 985 (10th Cir.); Gilbert v. Scott, 941 F.2d 1065, 1067-68 (10th Cir. 1991). "A state court finding of procedural default is independent if it is separate and distinct from federal law." Maes, 46 F.3d at 985. A finding of procedural default is an adequate state ground if it has been applied evenhandedly "'in the vast majority of cases.'" Id. (quoting Andrews v. Deland, 943 F.2d 1162, 1190 (10th Cir. 1991)).

Applying these principles to the instant case, the Court concludes Petitioner's claims are barred by the procedural default doctrine. In the December 3, 1997 Order, this Court determined that Petitioner did not fairly present his improper enhancement challenge to the Comanche County sentences in his direct appeal before the Oklahoma Court of Criminal Appeals.³ Furthermore, this

³Petitioner claims that the prior conviction entered in Coke County, Texas, was invalid since he was not represented by counsel at the time the conviction was entered. As a result, any use of that conviction to enhance the Comanche County, Oklahoma, convictions was improper.

Court found it would be futile to require Petitioner to return to the state courts to raise this claim in an application for post-conviction relief since the Court of Criminal Appeals routinely bars claims which were not but could have been raised on direct appeal.

Because of his procedural default, this Court may not consider Petitioner's claim unless he is able to show cause and prejudice for the default, or demonstrate that a fundamental miscarriage of justice would result if his claims are not considered. See Coleman, 510 U.S. at 750. The cause standard requires a petitioner to "show that some objective factor external to the defense impeded . . . efforts to comply with the state procedural rules." Murray v. Carrier, 477 U.S. 478, 488 (1986). Examples of such external factors include the discovery of new evidence, a change in the law, and interference by state officials. Id. As for prejudice, a petitioner must show "'actual prejudice' resulting from the errors of which he complains." United States v. Frady, 456 U.S. 152, 168 (1982). A "fundamental miscarriage of justice" instead requires a petitioner to demonstrate that he is "actually innocent" of the crime of which he was convicted. McCleskey v. Zant, 499 U.S. 467, 494 (1991).

In his brief filed December 22, 1997 (#26), Petitioner fails to demonstrate "cause" for his failure to raise the instant claim on direct appeal. Petitioner simply continues to argue that "[a]t every stage of the proceedings the issue of illegal use of any Afterformers [sic] were presented to each Court in its proceedings. The State of Oklahoma's Appellate Court refused to address the issues at bar." (#26 at 2). However, although Petitioner did challenge on direct appeal the use of his prior convictions to enhance the Comanche County convictions, this Court has already determined that the instant issue concerning the use of an allegedly invalid prior Texas conviction to enhance was

not fairly presented to the Oklahoma Court of Criminal Appeals.⁴ Petitioner's continued insistence to the contrary does not constitute cause to excuse the procedural default.

Petitioner also attempts to demonstrate that a fundamental miscarriage of justice will result if this claim is not considered by claiming that he is innocent of all charges. To satisfy this narrow exception to procedural bar, Petitioner must do more than make an unsupported assertion of factual innocence. See Klein v. Neal, 45 F.3d 1395, 1400 (10th Cir. 1995); Brecheen v. Reynolds, 41 F.3d 1343, 1353 (10th Cir. 1994). He must present evidence sufficient to undermine this Court's confidence in the outcome of the trial. See Schlup v. Delo, 513 U.S. 298, 316 (1995). Petitioner in the instant case offers no evidence to support his claim of innocence, arguing only that the State's witness was a "preposterous [sic] liar." The Court finds Petitioner's unsupported claim insufficient to undermine confidence in the outcome of the trial and concludes that Petitioner has failed to make the showing necessary to overcome the procedural bar.

The Court finds that Petitioner has failed to demonstrate either "cause and prejudice" or a "fundamental miscarriage of justice" to overcome the procedural bar and concludes that habeas corpus relief should be denied on the ground raised in the petition filed in Case No. 95-CV-1411-E.

⁴As the Court recognized in the December 3, 1997, Order, Petitioner did challenge on direct appeal the enhancement of his sentence based on the Coke County, Texas conviction. However, the issue raised on direct appeal was that the trial court erred in allowing the jury to view both the Judgment and Sentence as well as the indictment from Coke County. Petitioner did not allege in his direct appeal, as he does in the instant case, that the conviction from Coke County was invalid because he was not represented by counsel at the time he entered his guilty plea thereby rendering improper the enhancement of his Comanche County sentences based on the allegedly invalid Coke County conviction.

B. Petitioner's request for relief based on the claims asserted in the amended petition filed in Case No. 97-CV-357-E should be denied.

1) Applicable Standard of Review

In his response to Petitioner's claims identified in the amended petition filed in Case No. 97-CV-632-E, Respondent asserts the claims should be denied based on the standards found in the habeas corpus statute as amended by the Antiterrorism and Effective Death Penalty Act ("AEDPA"). The AEDPA was enacted on April 24, 1996, prior to the conclusion of Petitioner's direct appeal and prior to his filing of Case No. 97-CV-632-E on July 8, 1997. However, in the interest of judicial economy, this Court consolidated the claims raised in Case No. 97-CV-632-E with the claim raised in Case No. 95-CV-1141-E, a case filed prior to enactment of the AEDPA. Therefore, it could be argued that this Court should apply pre-AEDPA standards in evaluating all of Petitioner's claims. It could also be argued that Petitioner should not receive the benefit of the pre-AEDPA standards simply because of the unusual procedural posture of his habeas filings.⁵ However, the Court need not resolve this issue because even if Petitioner is given the benefit of the more favorable pre-AEDPA law, his claims should be denied.

2) Petitioner's first and third claims raise issues of state law which are inappropriate for habeas corpus relief

Petitioner's first and third claims challenge the propriety of the enhancement of his sentences through the use of prior convictions. Respondent argues that enhancement issues are matters of state

⁵The Court notes that the state's review of Petitioner's convictions and sentences on direct appeal was not concluded until April 28, 1997, one year after enactment of the AEDPA. Therefore, his current claims were unexhausted when the petition assigned Case No. 95-CV-1141-E was transferred to this Court from the United States District Court for the Northern District of Texas.

law not reviewable by a federal court in a habeas corpus action. This Court agrees. A federal court's power is not unlimited. When reviewing a state court conviction, a federal court is limited to violations of federal constitutional and statutory law. A federal court has no authority to review a state's interpretation or application of its own laws. Estelle v. McGuire, 502 U.S. 62, 67-68 (1991); Lujan v. Tansy, 2 F.3d 1031, 1036 (10th Cir. 1993).

Petitioner's argument in support of his first and third grounds for relief as identified in his amended petition and reply contain absolutely no mention or citation to any article or amendment of the United States Constitution. Petitioner's discussion of these claims rests instead on the interpretation of Oklahoma law. Cf. Johnson v. Cowley, 40 F.3d 341 (10th Cir. 1994) (claim that trial court failed to make an independent determination of the voluntariness of the stipulation to the prior convictions raised a federal constitutional claim); Camillo v. Armontrout, 938 F.2d 879 (8th Cir. 1991) (when enhanced punishment depends on evidence of prior criminal convictions, defendant has due process right to be personally present at the proceeding).

At any rate, the Court concludes that the Judgments and Sentences which the State introduced during the second stage proceeding were sufficient to impose the sentences entered. Petitioner contends that the trial court judge, Judge Smith, disallowed the first conviction entered on page 2 of the Information of the bail jumping charge, leaving only one "stale" prior conviction to be used to enhance his sentence, but that Judge Smith declined to "disturb" the larceny charge. (#26 at 1-2). Petitioner provides no evidence to support his version of the facts. However, regardless of whether the trial court allowed or disallowed the use of the 1990 Coke County, Texas, conviction either for enhancement or as a "revitalizing" conviction for purposes of the older "stale" felony convictions identified in the Information and Amended Information, the evidence of prior misdemeanors

involving moral turpitude ⁶ presented by the State was sufficient to revitalize the "stale" felony convictions pursuant to Oklahoma law. See Okla. Stat. tit. 21, § 51A. Thus, the sentences imposed were justified. See Okla. Stat. tit. 21, § 51(A)(2) (imposition of a ten (10) year sentence on the bail forfeiture conviction justified); Okla. Stat. tit. 21, § 51(B) (imposition of a twenty (20) year sentence on the larceny conviction justified); see also Robinson v. State, 806 P.2d 1128 (Okla. Crim. App. 1991); Venable v. State, 567 P.2d 1006 (Okla. Crim. App. 1977).

Accordingly, Petitioner is not entitled to habeas corpus relief on his first and third grounds for relief.

3) *Petitioner is not entitled to habeas corpus relief on his second claim*

As his second ground of error, Petitioner complains that he was not informed that his prior misdemeanor convictions would be used by the state to revitalize prior "stale" felony convictions for purposes of enhancement and that this error constitutes a due process violation. This Court disagrees. Both the Amended Complaint and Information filed in CRF-91-346 and the Complaint and Information filed in CRF-92-533 provide notice to Petitioner that he was charged with committing crimes "after former conviction of two or more felonies." In order for the allegedly

⁶In his amended brief filed in the Oklahoma Court of Criminal Appeals during his direct appeal, Petitioner states that during the sentencing phase of his trial while in chambers, the state prosecutor entered into evidence a judgment and sentence from Taylor County, Texas, showing Petitioner had been found guilty of Theft by Check and had received a 30-day county jail sentence; a certified copy of a Judgment and Sentence issued on October 5, 1988, by Tarrant County, Texas, showing Petitioner had been convicted of "theft" and had received a six-month sentence; a certified copy of a Judgment and Sentence in Tarrant County, Texas, showing Petitioner had been convicted of theft on August 21, 1985, and was sentenced to 60 days in the county jail; an "exemplified" copy of a Taylor County, Texas, judgment and sentence entered February 23, 1990, showing Petitioner had been convicted of theft by check and sentenced to 30 days in the county jail; as well as four (4) "pen packs" from the State of Texas Department of Corrections, containing mug shots and copies of judgment and sentences issued from various counties. See #36, Ex. A at 7.

"stale" prior convictions identified on page 2 of the CRF-91-346 Information to be used to enhance, the State was required to prove, pursuant to Okla. Stat. tit. 21, § 51A, that Petitioner had "in the meantime, been convicted of a misdemeanor involving moral turpitude or felony." The complained of misdemeanors themselves could not be used to enhance, only to revitalize the older prior felonies which were identified on the Information. Thus, the Court finds that based on the Information and Amended Information, Petitioner clearly had notice of the "after former conviction of two or more felonies" charge and that many of the prior felony convictions were "stale," i.e., that ten (10) or more years had elapsed since the completion of the sentence imposed on the former conviction. Also pursuant to statute, commission of a misdemeanor involving moral turpitude during the relevant time period can be used by the State to revitalize any stale prior felony convictions. The Court concludes Petitioner had sufficient notice of the prior felony convictions to be used to enhance and that the "stale" convictions could not be used to enhance absent evidence of either a misdemeanor involving moral turpitude or a felony conviction. As a result, Petitioner's due process challenge is without merit and habeas corpus relief should be denied.

4) *Petitioner is not entitled to habeas corpus relief on his fourth claim*

In his final ground of error asserted in the Amended Petition filed in Case No. 97-CV-632-E, Petitioner claims that the evidence was insufficient to support the bail forfeiture conviction. This claim is premised on the existence of a scrivener's error on the "back side" of the Complaint and Information, entered at Petitioner's arraignment on August 24, 1992, where the date for the preliminary hearing was inadvertently entered as September 22, 1991 rather than September 22, 1992. Petitioner argues that no evidence indicates that he was ever informed that the hearing was

actually scheduled for September 22, 1992.

Sufficient evidence exists to support a conviction if any rational trier would accept the evidence as establishing each essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979). In reviewing a sufficiency claim, the court must not weigh conflicting evidence or consider witness credibility. United States v. Davis, 965 F.2d 804, 811 (10th Cir. 1992), cert. denied, 507 U.S. 910 (1993). Instead the Court must view the evidence in the light most favorable to the prosecution, Jackson, 443 U.S. at 319, and "accept the jury's resolution of the evidence as long as it is within the bounds of reason." Grubbs v. Hannigan, 982 F.2d 1483, 1487 (10th Cir.1993).

Although the Court must apply a federal constitutional standard to determine whether the State presented sufficient evidence, the Court must look to Oklahoma law for the definition of the crime at issue, in this case, bail forfeiture. Pursuant to Okla. Stat. tit. 59, § 1335, "[w]hoever, having been admitted to bail for appearance before any district court in the State of Oklahoma, (1) incurs a forfeiture of the bail and willfully fails to surrender himself within thirty (30) days following the date of such forfeiture . . . shall be fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned not more than two (2) years, or both." Petitioner in this case challenges whether the evidence sufficiently demonstrates that his failure to surrender himself was willful. The evidence reveals that on August 24, 1992, the date of September 22, 1991 was entered as the date of Petitioner's preliminary hearing. See #36, Ex. C at 2. However, Petitioner signed his appearance bond on August 24, 1992, thereby acknowledging the appearance date of September 22, 1992, as it was written on the bond. See #36, Ex. C at 5. Furthermore, the District Court Clerk for Comanche County testified at trial that since Petitioner's arraignment took place on August 24, 1992, the entry

of September 22, 1991 as the preliminary hearing date was clearly a clerical error. (#36, Transcript at 145-151). On the basis of the evidence presented at trial, the Court finds that a reasonable juror could have found the evidence sufficient to conclude that Petitioner's failure to surrender himself within thirty (30) days of his September 22, 1992 forfeiture of bail was willful. Therefore, Petitioner's sufficiency of the evidence claim is without merit and the Court concludes that habeas corpus relief on this ground should be denied.

CONCLUSION

Petitioner has failed to demonstrate that he is in custody in violation of the Constitution or laws or treaties of the United States. Therefore, the petitions for writ of habeas corpus should be denied.

ACCORDINGLY, IT IS HEREBY ORDERED that the petitions for writ of habeas corpus filed in Case Nos. 95-CV-1141-E and 97-CV-632-E are **denied**. Any pending motion is **denied as moot**.

SO ORDERED THIS 14th day of December, 1998.



JAMES O. ELLISON, Senior Judge
UNITED STATES DISTRICT COURT

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

FILED
DEC 14 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

HAROLD D. COOKSEY,

Petitioner,

vs.

L. L. YOUNG, Warden,

Respondent.

Case No. 95-CV-1141-E
"BASE FILE"

Case No. 97-CV-632-E

ENTERED ON DOCKET
DATE DEC 15 1998

JUDGMENT

This matter came before the Court upon Petitioner's petitions for writ of habeas corpus as filed in these consolidated cases. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Respondent and against Petitioner.

SO ORDERED THIS 14th day of December, 1998.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

39/8

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

DEC 11 1998

**Phil Lombardi, Clerk
U.S. DISTRICT COURT**

SHANNON L. WILLIAMS,
SSN: 445-64-5223

Plaintiff,

v.

KENNETH S. APFEL, Commissioner
of Social Security Administration,^{1/}

Defendant.

No. 97-CV-1133-J

ENTERED ON DOCKET

DATE DEC 14 1998

ORDER^{2/}

Plaintiff, Shannon L. Williams, pursuant to 42 U.S.C. § 405(g), appeals the decision of the Commissioner denying Social Security benefits.^{3/} Plaintiff asserts that the Commissioner erred because (1) the ALJ listed semi-skilled jobs as jobs that Plaintiff could perform although Plaintiff had no skills, (2) the ALJ did not make appropriate findings of fact in regard to the transferability of skills, (3) the ALJ failed to develop the record with regard to Plaintiff's mental impairment, and (4) the ALJ's

^{1/} On September 29, 1997, Kenneth S. Apfel was sworn in as Commissioner of Social Security. Pursuant to Fed. R. Civ. P. 25(d)(1), Kenneth S. Apfel, Commissioner of Social Security, is substituted for Shirley S. Chater as the Defendant in this action.

^{2/} This Order is entered in accordance with 28 U.S.C. § 636(c) and pursuant to the parties' Consent to Proceed Before United States Magistrate Judge.

^{3/} Administrative Law Judge Jeffrey S. Wolfe (hereafter "ALJ") concluded that Plaintiff was not disabled by decision dated July 26, 1996. [R. at 8]. Plaintiff appealed to the Appeals Counsel. The Appeals Counsel declined Plaintiff's request for review on October 24, 1997. [R. at 4].

credibility analysis is not supported by substantial evidence. For the reasons discussed below, the Court **AFFIRMS** the Commissioner's decision.

I. PLAINTIFF'S BACKGROUND

Plaintiff was born October 11, 1964, and was 31 years old at the time of his hearing before the ALJ. [R. at 166]. Plaintiff obtained his GED. [R. at 167]. Plaintiff testified that he stopped working in November of 1994 and became disabled after he was involved in a car accident on February 17, 1995. [R. at 168].

An RFC assessment completed on June 7, 1995 indicated that Plaintiff could occasionally lift 50 pounds, frequently lift 25 pounds, and stand or walk for six hours out of an eight hour day. [R. at 50]. The assessment was "approved as written" on August 22, 1995. [R. at 50].

Plaintiff was admitted to the hospital on February 17, 1995 and discharged on March 4, 1995. Plaintiff was admitted after being involved in a motor vehicle accident. Plaintiff sustained numerous injuries and underwent surgery. [R. at 92-113].

On March 30, 1995, Plaintiff's surgeon noted that Plaintiff "is doing great. He is getting around well. He is not having any significant pain except the rubbing of his torso and buttocks from the orthosis. On examination, he looks wonderful. He moves about the room easily. His straight leg raise is negative. His wounds have healed nicely. He has superb strength and reflexes in the lower extremities. The x-rays look great and the alignment appears to be anatomic. He will follow up with me in one month's time. He will continue with his orthosis for at least one month." [R. at 135].

On May 2, 1995, the doctor wrote that Plaintiff "continues to do very well. He really has no back pain. He has no leg pain. His bladder control is good. He states that sexual function is good. On examination, he has no tenderness to palpitation. His straight leg raise is negative. He has normal strength and normal reflexes throughout the lower extremities. His x-rays look satisfactory. I see no change in the alignment of the spine. There is no kyphosis. He has stable but mild scoliosis in the A/P coronal plane. He will follow-up in two months." [R. at 135]. The record indicates that on July 6, 1995 Plaintiff did not show for his appointment. [R. at 135].

A social security examination on May 16, 1995 indicated that Plaintiff's gait was normal. Plaintiff complained of low back pain. The doctor noted that Plaintiff took only Tylenol. [R. at 131].

Plaintiff testified that he was disabled as a result of the car accident. Plaintiff stated that he suffered from excruciating pain in his back and neck, and numbness in his hands and legs. [R. at 173]. Plaintiff testified that he took Relafen and had taken Percocet. According to Plaintiff he could walk approximately two blocks, lift five to six pounds, sit for 20 - 25 minutes at a time, and stand for fifteen minutes. [R. at 181-82]. Plaintiff stated that on an average day he woke between 4:30 and 5:00. According to Plaintiff, he fixes himself a cup of coffee; gets dressed; rides the bus to the Salvation Army where he spends the day, and returns home in the evening. [R. at 182]. Plaintiff's pain is relieved only by kneeling in a certain position. Plaintiff additionally acknowledged that although his legs were numb in the morning he did manage to get dressed and ride the bus. [R. at 202].

II. SOCIAL SECURITY LAW & STANDARD OF REVIEW

The Commissioner has established a five-step process for the evaluation of social security claims.^{4/} 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).

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

^{4/} 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).

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^{5/} 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. Evidence is not substantial if it is overwhelmed by other evidence in the record. Williams, 844 F.2d at 750.

^{5/} 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."

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. REVIEW

SEMI-SKILLED VERSUS SKILLED JOBS

Plaintiff asserts that the ALJ found that Plaintiff was capable of performing only unskilled sedentary work. Plaintiff notes that the ALJ relied on the testimony of a vocational expert in concluding that jobs existed which Plaintiff was capable of performing. Plaintiff notes that the jobs include: assembly worker, machine operator, and product inspector. Plaintiff focuses on one isolated comment from the vocational expert that "I'm trying to stay away from unskilled jobs," as establishing that the jobs listed by the vocational expert were skilled jobs. Plaintiff concludes that since Plaintiff can perform only unskilled work, the evidence of the vocational expert was improperly relied upon by the ALJ.

The Court has reviewed the testimony of the vocational expert and the exchanges made with the ALJ. The record clearly indicates that the vocational expert understood that the ALJ was requesting jobs which were not skilled, and that the jobs provided by the vocational expert were not skilled.

Moreover, the Court has reviewed the DOT classifications of the jobs listed by the vocational expert. Of the jobs listed by the vocational expert, the DOT has

numerous job listings for each category. The Court noted several jobs with an SVP of two or three.^{6/} For example, DOT 733.685-010 (Assembler - pen and pencil) is an SVP rating of two; DOT 734.687-014 (Assembler - tex. prod., nec) is an SVP of two; DOT 734.687-026 (Buckle inspector) is an SVP of two; DOT 734.687-042 (Button reclaimer) is an SVP of two; DOT 369.687-010 (Assembler - laundry & rel.) is an SVP of three. The Court concludes that the jobs listed by the vocational expert include some unskilled work (in accordance with the DOT), and, considering the context of the testimony by the vocational expert and the questioning of the ALJ, the Court concludes that the vocational expert was providing unskilled jobs in answering the hypothetical question posed by the ALJ.

TRANSFERABILITY OF SKILLS

Plaintiff asserts that for the ALJ to find that Plaintiff is qualified to perform semi-skilled jobs at Step Five the ALJ must establish which skills are transferrable. Because the Court concludes that the ALJ and the vocational expert both focused on unskilled

^{6/} An SVP of "two" indicates that a job requires training consisting of anything beyond a short demonstration up to and including one month. An SVP of "three" indicates that a job requires more than one month and up to three months of training. In addition, this time "does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job." See Dictionary of Occupational Titles, at 1009 (4th ed. 1991).

The social security regulations provide that the administration takes "administrative notice" of "reliable job information available from various governmental and other publications . . . [including] the Dictionary of Occupational Titles." 20 C.F.R. § 404.1566(d). The social security regulations define "unskilled work" as "work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength . . . and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed." 20 C.F.R. 404.1569(a) (emphasis added). No specific "time guidelines" are provided for semi-skilled work or skilled work.

Therefore, in accordance with the regulations, the DOT classifications of "two" and "three" could include unskilled work.

jobs which Plaintiff would be able to perform, the Court concludes that transferability is not an issue.

Plaintiff, in making his transferability argument highlights the vocational expert's testimony that the only skills which Plaintiff possessed were related to his light delivery job. Plaintiff's highlighting of this testimony further underscores the context in which the vocational expert testified. The Court construes the testimony as clearly indicating that both the vocational expert and the ALJ were focused on unskilled jobs.

MENTAL IMPAIRMENT

Plaintiff asserts that the ALJ failed to properly develop the record in regard to Plaintiff's mental impairment. Plaintiff did not list a mental impairment as one of his disabling conditions in his application for social security. At the hearing, Plaintiff noted that he was depressed and that he had consulted one person four months prior to the hearing with regard to his depression but that the person informed him there was nothing that she could do. Plaintiff did not seek further assistance for a mental impairment.

The ALJ concluded that Plaintiff did not have a mental impairment. The ALJ completed the PRTF and explained his findings in his decision. Plaintiff's sole issue of error is that the ALJ should have further developed the record regarding the mental impairment and obtained the record referenced by Plaintiff.

Plaintiff did not assert that he suffered from a mental impairment in his application for social security. In addition, an individual's mere allegations of a complaint are insufficient to establish a mental impairment. The Court concludes that

the ALJ did not err by "failing" to further investigate a mental impairment. Plaintiff was additionally represented at the hearing by counsel, yet Plaintiff's counsel did not request that the record be supplemented by the record referred to by Plaintiff and did not request additional evaluations. Under the circumstances in this case, the ALJ was not under a duty to further investigate or develop the record as to whether or not Plaintiff suffered from a mental impairment.

CREDIBILITY DETERMINATION BY ALJ

Plaintiff's final assertion of error is that the ALJ's findings that Plaintiff's statements concerning his level of pain were not entirely credible were not supported by substantial evidence. Plaintiff asserts that his testimony was entirely consistent with the record. Plaintiff notes that his good reports from his doctors were during a time when he was taking Percotet, and that Plaintiff could not afford to seek further treatment.

The ALJ provided a detailed analysis of Plaintiff's credibility. The ALJ noted that Plaintiff was able to take the bus to the Salvation Army, spend the day there, and return home with little or no difficulty. The ALJ observed that Plaintiff was able to care for his own needs. Although Plaintiff states his hands and legs go numb, the ALJ noted that nothing in the record indicated that Plaintiff complained of this to his doctors or ever sought treatment for such complaints. During the hearing, the ALJ noted that although Plaintiff complained of numbness in his legs in the morning, he was able to dress and ride a bus downtown with "numb" legs. [R. at 202]. The ALJ noted that Plaintiff's treating physician stated Plaintiff was doing "great" and that

although Plaintiff indicated he was advised not to lift anything the record does not reveal any permanent restrictions. The ALJ considered that although Plaintiff complained of constant and disabling pain he took only Tylenol during a twelve month period, that he did not exhaust all available treatment options, that he sought medical treatment only four months before the hearing before the ALJ, and that he did not show for his last scheduled appointment with his treating physician.

The Court has reviewed the ALJ's credibility analysis and concludes that it is supported by substantial evidence.

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

Dated this 11 day of December 1997.


Sam A. Joyner
United States Magistrate Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

SHANNON L. WILLIAMS,
SSN: 445-64-5223

Plaintiff,

v.

KENNETH S. APFEL, Commissioner
of Social Security Administration,^{1/}

Defendant.

DEC 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 97-CV-1133-J

ENTERED ON DOCKET

DATE DEC 14 1998

JUDGMENT

This action has come before the Court for consideration, and an Order affirming the Commissioner's denial of benefits to Plaintiff has been entered. Judgment for the Defendant and against the Plaintiff is hereby entered pursuant to the Court's Order.

It is so ordered this 11th day of December 1998.


Sam A. Joyner
United States Magistrate Judge

^{1/} On September 29, 1997, Kenneth S. Apfel was sworn in as Commissioner of Social Security. Pursuant to Fed. R. Civ. P. 25(d)(1), Kenneth S. Apfel, Commissioner of Social Security, is substituted for Shirley S. Chater as the Defendant in this action.

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

LERoy MUSHRUSH and)
JUDY MUSHRUSH, and STATE FARM)
FIRE AND CASUALTY COMPANY,)
a foreign corporation,)

Plaintiffs,)

vs.)

GENERAL ELECTRIC)
COMPANY, a foreign corporation,)

Defendant and)
Third-party Plaintiff,)

vs.)

HAMILTON STANDARD CONTROLS,)
INC. and UNTIED TECHNOLOGIES)
CORPORATION,)

Third-party Defendants.)

FILED

DEC - 8 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. ⁹⁷CV-683-K (W) ✓

FILED

DEC 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE 12/14/98

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED pursuant to Fed. R. Civ. P. 41(a)(1), by and between the parties, by and through their undersigned attorneys, that all claims made in the above-styled action shall be dismissed with prejudice and on the merits, but without costs or attorney fees to any party, and that judgment of dismissal with prejudice and on the merits may be entered hereon and pursuant hereto without further notice.

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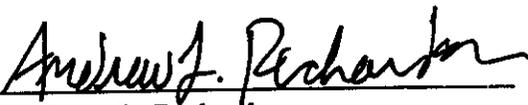
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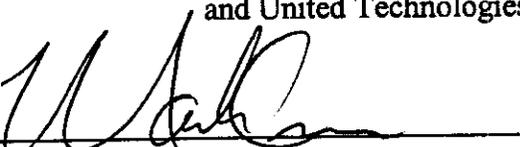
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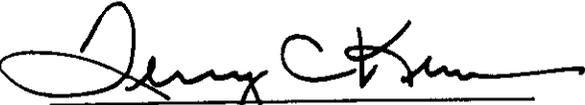
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Attorneys for Defendants, Hamilton Standard Controls
and United Technologies Corporation,

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Attorneys for Defendants, Hamilton Standard Controls
and United Technologies Corporation.

SO ORDERED, this 10 day of December, 1998.


United States Judge, Terry C. Kern

45

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

RUSSELL ALLSHOUSE,

Plaintiff,

v.

MASTER KRAFT TOOLING
CORPORATION,

Defendant.

ENTERED ON DOCKET

DATE 12-14-98

Case No. 98-CV-491 H(E) ✓

FILED

DEC 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

This action is before the Court on the Parties' Joint Stipulation of Dismissal, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. The Court finds that the above-entitled action should be dismissed with prejudice and on the merits but without costs or attorney's fees to either party.

IT IS THEREFORE ORDERED that the above-entitled action be dismissed with prejudice and on the merits but without costs or attorney's fees to either party.

DATED this 11TH day of December, 1998.


UNITED STATES DISTRICT COURT JUDGE

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

PROVIDENT LIFE AND ACCIDENT)
INSURANCE CO.; SOUTHWEST)
AIRLINES FUNDED WELFARE)
BENEFITS PLAN,)

Plaintiffs,)

v.)

CONNIE MARTIN, as guardian and next)
friend of SHANE F. MARTIN,)

Defendant.)

Case No. 98-CV-103-H ✓

FILED
DEC 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
DATE 12-14-98

JUDGMENT

This matter came before the Court on cross-motions for summary judgment. The Court duly considered the issues and rendered a decision in accordance with the order filed on December 7, 1998.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Defendant and against Plaintiffs.

IT IS SO ORDERED.

This 11TH day of December, 1998.



Sven Erik Holmes
United States District Judge

25

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

FILED

DEC 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.)
)
WILLIAM D. HUNT; SANDRA L. HUNT;)
PERRY G. BLOCKER REVOCABLE)
LIVING TRUST; PERRY G. BLOCKER;)
and HAZEL BLOCKER,)
)
Defendants.)
_____)

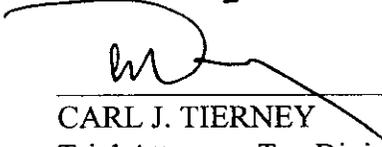
Civil No.98-C-308-K

ENTERED ON DOCKET
DATE DEC 14 1998

STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed that the complaint in the above-titled case be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses in this litigation.

Dated: 10 December 1998.



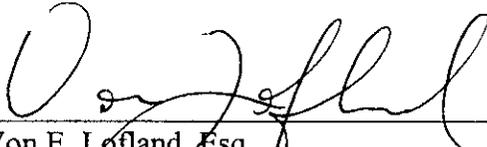
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(10)

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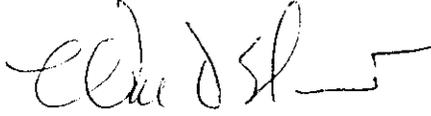
Dated: 9 December 1998.



Von E. Lofland, Esq.
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Blocker and the Perry G. Blocker Revocable
Trust

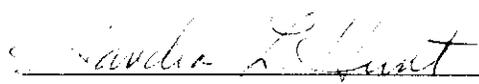
Dated: 9 December 1998.



William Hunt
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Owasso, OK 74055-6450

Pro se.

Dated: 9 December 1998.



Sandra Hunt
11423 E.99th St. N.
Owasso, OK 74055-6450

Pro se.

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

FILED

DEC 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

KRISTEN GLENN,)

Plaintiff,)

vs.)

THORN APPLE VALLEY, INC.)

Defendant.)

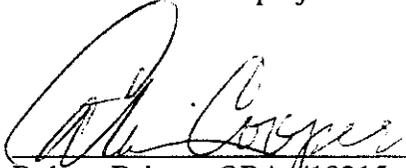
Case No. 97-CV-1078 H (E)

ENTERED ON DOCKET

DATE DEC 14 1998

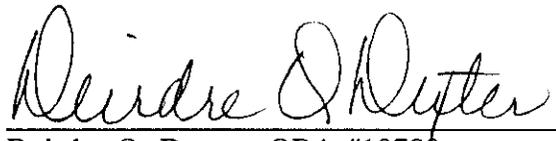
STIPULATION OF DISMISSAL WITH PREJUDICE

Come now Plaintiff Kristin Glenn and Defendant Thorn Apple Valley, Inc. through their respective attorneys and, pursuant to Rule 41(a)(1), hereby stipulate that the above-entitled cause be dismissed with prejudice.



Robert Briggs, OBA #10215
Catherine Cooper, OBA #3288
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ATTORNEYS FOR DEFENDANT

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

AUGUSTUS HENDERSON,)
)
Plaintiff,)
)
vs.)
)
CIGNA GROUP)
INSURANCE & UNUM LIFE INSURANCE)
COMPANY OF AMERICA, et al.)
)
Defendants,)
)

No. 98-CV-120-B ✓

ENTERED ON DOCKET
DATE DEC 14 1998

FILED *WJ*
DEC 11 1998
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JOINT STIPULATION OF PARTIAL DISMISSAL WITH PREJUDICE

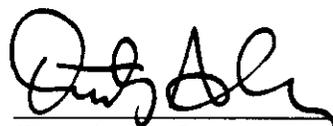
Plaintiff, Augustus Henderson, and Defendants, Life Insurance Company of North America, improperly named as CIGNA Group Insurance in the case style, and UNUM Life Insurance Company of America, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, hereby jointly stipulate for the dismissal of this cause with prejudice as to Defendants, Life Insurance Company of North America, improperly named as CIGNA Group Insurance in the case style, and UNUM Life Insurance Company of America.

DATED: December 11, 1998

Augustus Henderson
Augustus Henderson
PO Box 48521
Tulsa, OK 74148
PRO-SE PLAINTIFF

29

alt



Timothy A. Carney, OBA #11784
GABLE & GOTWALS
15 W. 6th Street, Suite 2000
Tulsa, OK 74119

ATTORNEYS FOR DEFENDANT,
UNUM Life Insurance Company of America



Eric Eissenstat
Scott Zingerman
FELLERS SNIDER
100 North Broadway, Ste. 1700
Oklahoma City, OK 73102

ATTORNEYS FOR Life Insurance
Company of North America

Certificate of Mailing

I hereby certify that on the 11th day of December, 1998, a true, exact and correct copy of the above and foregoing instrument was mailed, with proper postage thereon fully prepaid, to:

John E. Dorman
Senior Assistant City Attorney
200 Civic Center, Room 316
Tulsa, OK 74103



Timothy A. Carney

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

FILED

DEC 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

In re:)
OKLAHOMA PLAZA INVESTORS,)
)
Debtor,)
)
OKLAHOMA PLAZA INVESTORS,)
Appellee,)

Bankruptcy No.
BK-89-01236-C

(Chapter 11)

vs.

ENTERED ON BOOKS
DATE DEC 14 1998

WAL-MART STORES, INC.,)
Appellant.)

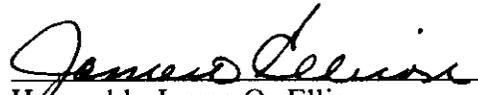
Adversary Proceeding
No. 90-0151-C
District Court No. 97CV607-E(M)

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes on for hearing on Plaintiff's and Defendant's Stipulation of Dismissal With Prejudice, the Court having considered the matter and being of the opinion that good cause exists to allow such dismissal, finds the Order should be granted.

IT IS THEREFORE ORDERED, that pursuant to Plaintiff's and Defendant's Stipulation of Dismissal With Prejudice, the Court hereby orders that this entire case is DISMISSED WITH PREJUDICE, with each party to bear their own costs and all attorney fees.

DATED this 11th day of Dec, 1998.


Honorable James O. Ellison
United States District Judge

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

FILED

DEC 11 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ST. JOHN MEDICAL CENTER, INC.,)
And TULSA RADIOLOGY ASSOCIATES)
INC.,)

Plaintiffs,)

v.)

Case No. 98-CV-537B(J)

VICKI HAYMAN and KENNETH)
HAYMAN,)

Defendants,)

and)

VICKI HAYMAN and KENNETH)
HAYMAN,)

Defendants and)
Third Party Plaintiffs,)

v.)

PROVIDER MEDICAL)
PHARMACEUTICAL, INC., and)
JOHNSON BROKERS AND)
ADMINISTRATORS, INC.,)

Third Party Defendants.)

ENTERED ON DECEMBER
LINE DEC 14 1998

**STIPULATION OF DISMISSAL WITHOUT PREJUDICE OF
DEFENDANTS and THIRD PARTY PLAINTIFFS, VICKI HAYMAN AND
KENNETH HAYMAN, AGAINST PROVIDER MEDICAL
PHARMACEUTICAL, INC. AND JOHNSON BROKERS AND
ADMINISTRATORS, INC, THIRD PARTY DEFENDANTS**

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, the Defendants and Third Party Plaintiffs, Vicki Hayman and Kenneth Hayman, hereby dismiss without prejudice their claims against Third Party Defendants, Provider Medical Pharmaceutical, Inc. and Johnson Brokers and Administrators, Inc.

Dated this 10 day of December, 1998.

Donald G. Hopkins
Donald G. Hopkins, Attorney for Defendant
And Third Party Plaintiff, Vicki Hayman

Ron A. White
Ron White, Attorney for Third Party Defendant
Provider Medical Pharmaceutical, Inc. and
Johnson Brokers and Administrators, Inc.

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

LUIS V. GOROSPE, M.D.,)

Plaintiff,)

v.)

VICKI HAYMAN,)

Defendant,)

and)

VICKI HAYMAN,)

Defendant and
Third Party Plaintiff,)

v.)

PROVIDER MEDICAL)
PHARMACEUTICAL, INC., and)
JOHNSON BROKERS AND)
ADMINISTRATORS, INC.,)

Third Party Defendants.)

Case No. 98-CV-0566B(J)

ENTERED ON DOCKET
DATE DEC 14 1998

FILED

DEC 11 1998

Francis J. Conzardi, Clerk
U.S. DISTRICT COURT

STIPULATION FOR DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, the parties herein stipulate that the Plaintiff's, Lewis V. Grosby, M.D.'s, cause of action against the Defendant, Vicki Hayman, should be dismissed with prejudice for all claims the Plaintiff has alleged against the Defendant. Each party to be responsible for its own costs and attorney fees incurred herein.

Dated this ___ day of December, 1998.

Luis V. Gorospe, M.D. by and through
his attorney of record, Curtis W. Kaiser

Vicki Hayman, by and through her
Attorney of record, Donald G. Hopkins

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA ENTERED ON DOCKET

DATE DEC 11 1998

In re:)
OKLAHOMA PLAZA INVESTORS,)
)
Debtor,)
)
OKLAHOMA PLAZA INVESTORS,)
Appellee,)

Bankruptcy No.
BK-89-01236-C

(Chapter 11)

FILED

DEC 10 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

vs.

WAL-MART STORES, INC.,)
Appellant.)

Adversary Proceeding
No. 90-0151-C
District Court No. 97CV607-E(M)

STIPULATION FOR DISMISSAL OF ENTIRE ACTION WITH PREJUDICE

IT IS HEREBY STIPULATED by and between all parties to the above-captioned action that the entire case, including all cross-claims and counterclaims shall be dismissed with prejudice with each party being responsible for the own costs and attorney fees incurred herein.

DATED: December 9, 1998.

WOSKA & HASBROOK, P.C.

By: A. Daniel
A. Daniel Woska, Esq.
2720 First National Center
120 N. Robinson
Oklahoma City, OK 73102

Attorney for Oklahoma Plaza Investors, Ltd.

DATED: December 28, 1998.

By: Jon B. Comstock
WAL-MART STORES, INC.
Jon B. Comstock
Sr. Corporate Litigation Counsel
702 S.W. 8th St.
Bentonville, Arkansas 72716-8095

Attorney for Wal-Mart Stores, Inc.

28

mail
old
PMT

Woska & Hasbrook

*An Association of Professionals
Attorneys & Counselors at Law*

A. Daniel Woska, P.C.
T. David Hasbrook, PLLC
G. Stephen Martin II
Don S. Strong, P.C.
Don Cooke, of Counsel

2720 First National Center
120 North Robinson Avenue
Oklahoma City, Oklahoma 73102

(405) 235-1551
Fax (405) 239-2112
Fax (405) 235-1572
AWOSKA@aol.com

December 9, 1998

Ms. Anita Caldwell
United States District Court
for The Northern District of Oklahoma
333 W. 4th Room 411
Tulsa, OK 74103

RECEIVED

DEC 10 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Re: Oklahoma Plaza Investors, Ltd. v. Wal-Mart Stores, Inc., United States
District Court, Northern District of Oklahoma, Case No. 97-CV-607-E(M),
Appeal from the Bankruptcy Court.

Dear Anita:

Enclosed herewith are an original and 3 copies of Stipulation For Dismissal of Entire Action With Prejudice and Order of Dismissal With Prejudice. Please file the original Stipulation and forward onto Judge James O. Ellison for signature and filing of the Order. Once the Stipulation and Order have been filed, please return a copy to this office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation in this matter. If you have any questions or need any additional information, please do not hesitate to call.

Very truly yours,



Jennifer O'Toole
Legal Secretary
For the Firm

:jlo

cc: Mr. Mark Ross
F:\Client Files\OPI\CAT.APP\CLERK11.wpd

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 10 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JOSUE BELLO,)
)
Plaintiff,)

vs.)

Case No. 98-CV-0004-B (EA)

John Hardison Properties, Inc.;)
H2O Treatment & Transfer, Inc.;)
Silver Spurs Cafe, Inc.;)
West Highlands Laundry, Inc.;)
all are Oklahoma corporations;)
and, John Hardison, an)
individual,)

ENTERED ON DOCKET
DATE DEC 11 1998

Defendants.)

Third party plaintiff)
John Hardison,)

vs.)

Patricia Bello,)
an individual,)

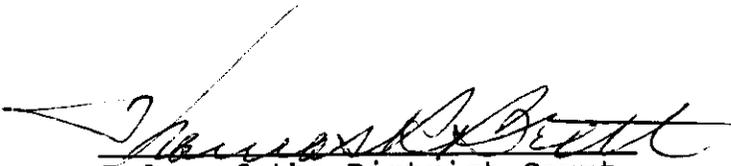
Third party)
defendant.)

ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 10th day of December, 1998, the Court upon
Motion for Dismissal With Prejudice of the plaintiff and
being fully advised of the premises herein finds that this
matter should be dismissed with prejudice since same has been
settled.

Handwritten mark

WHEREFORE, this matter is dismissed with prejudice to
refiling.


Judge of the District Court

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

ROBERT POWELL,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

No. 98 CV 653B(E)

FILED

DEC 10 1998

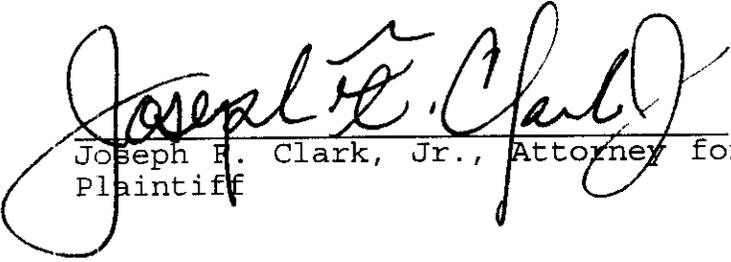
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
DATE DEC 11 1998

JOINT STIPULATION
OF DISMISSAL WITH PREJUDICE

It is hereby stipulated that the above-entitled action may be dismissed with prejudice, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

DATED this 8th day of December, 1998.


Joseph F. Clark, Jr., Attorney for
Plaintiff


John R. Woodard, III, Attorney for
Defendant

04550178/lb

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

FILED

DEC 2 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

AMERICAN STATES INSURANCE)
COMPANY, INC., an Indiana corporation,)

Plaintiff,)

v.)

Case No. 98-CV-0729E(M)

IDEAL AUTO SALES, INC., an)
Oklahoma corporation,)

Defendant.)

ENTERED ON DOCKET

DEC 11 1998

AGREED TO ORDER TRANSFERRING CASE TO
THE DISTRICT COURT OF KAY COUNTY, OKLAHOMA

Pursuant to agreement of the parties the Court hereby orders this case to be transferred to the District Court in and for Kay County, Oklahoma.

IT IS SO ORDERED.

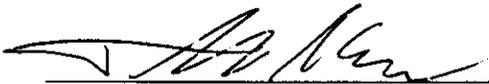

JUDGE OF THE DISTRICT COURT

5

APPROVED AS TO FORM:



EUGENE ROBINSON, OBA #10119
THE ROBINSON LAW FIRM
15 West Sixth Street, Suite 1850
Tulsa, OK 74119
Attorneys for Plaintiff
American States Insurance Company



THOMAS S. EVANS, OBA #10642
PO Box 2646
Ponca City, OK 74602
Attorney for Defendant
Ideal Auto Sales, Inc.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
DEC - 9 1998

Phil Lombardi, Clerk
U.S. DISTRICT COURT

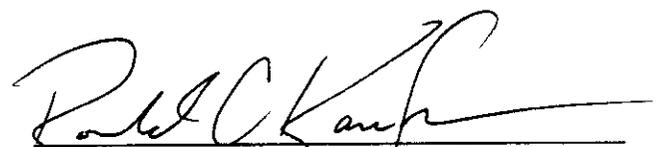
LARRY BRUSE,)
)
 Plaintiff,)
)
 vs.)
)
 KIM DELATIN, LEE HOUSEWIRTH,)
 and LKL GATHERING, INC.,)
)
 Defendants.)
)
 and BEVERLY HOUSEWIRTH,)
)
 Additional Defendant,)
)
 and)
)
 U.S. GAS SERVICES, L.L.C.)
 an Oklahoma Limited)
 Liability Company,)
)
 Intervenor.)

Case No. 98-CV-0928K(E)

ENTERED ON DOCKET
DATE 12-11-98

DISMISSAL

COMES NOW the Plaintiff, Larry Bruse, and hereby dismisses the above cause without prejudice against the Defendant, Beverly Housewirth, but reserves it cause of action against all other Defendants.


Ronald C. Kaufman OBA #17657
5310 E. 31st Street, Suite 1100
Tulsa, OK 74135
(918) 664-0800

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was placed in the U. S. Mail, postage

Handwritten initials

Handwritten number 3

Handwritten initials

prepaid, to:

M. Chad Trammell
Jones, Jackson & Moll, PLC
401 North 7th Street
P. O. Box 2023
Fort Smith, AR 72902-2023

John R. Paul
The Paul Law Firm
9 East Fourth Street, Ste. 400
Tulsa, OK 74103

on this 9 day of December, 1998.



120198b/ml

FILED
DEC 10 1998

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

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JANET THORNTON

Plaintiff

v.

EMCARE OF NORTH TEXAS, INC.
(f/k/a Gould Group, Inc.)

Defendants.

§
§
§
§
§
§
§
§
§
§

No. 98CV0514K (J)

ENTERED ON DOCKET

DATE 12-11-98

JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, Janet Thornton, and Defendant, EmCare of North Texas, Inc. (f/k/a Gould Group, Inc.), pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, hereby jointly stipulate for the dismissal of this cause without prejudice. The parties further stipulate that should any claims be refiled, they shall be refiled in this Court only.

The parties are to bear their own attorneys' fees and costs.

Dated: December 10, 1998.

By: Jeff Martin
Jeff Martin, OBA #15573
624 S. Denver Ave., Suite 202
Tulsa, Oklahoma 74119
Counsel for the Plaintiff

By: James Rusher
James Rusher, Esq.
2600 NationsBank Center
15 West Sixth Street
Tulsa, Oklahoma 74119
Counsel for Defendant

By: Kirt Kinser
Kirt Kinser, Esq.
Liddell, Sapp, Zivley, Hill & LaBoon, L.L.P.
2001 Ross Avenue, Suite 3000
Dallas, Texas 75201
Counsel for Defendant