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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
SHARON R. SMITH)	
Employee)	
)	OEA Matter No.: 1601-0330-97
v.)	
)	Date of Issuance: September 19, 2006
DEPARTMENT OF HUMAN SERVICES)	
Agency)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Sharon R. Smith (“Employee”) began work as a Social Worker with the Department of Human Services (“Agency”) on March 31, 1986. At some point during her tenure, it became apparent to Agency that Employee lacked the appropriate level of licensure to practice social work in the District of Columbia. As a result, on October 9, 1996 Agency informed Employee that she would be removed from her position effective October 22, 1996.

Thereafter Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on October 28, 1996. Even though Employee admitted that her license

had expired, she claimed that Agency had not terminated three other social workers whose license had also expired. Agency countered this argument by introducing into evidence documentation to show that two of the three social workers did in fact have valid social work licenses and that the third social worker had been fired on the same day as Employee. Based on this evidence the Administrative Judge concluded that Employee had failed to show that Agency had subjected her to disparate treatment.

Notwithstanding the Administrative Judge's finding with respect to Employee's claim, Agency contended that OEA lacked jurisdiction to consider this appeal in the first instance. The U.S. District Court for the District of Columbia had placed several branches of the Department of Human Services into receivership. Among those branches placed into receivership was the Child and Family Services Agency ("CFSA"). Employee worked for the CFSA branch. According to Agency, once the CFSA was placed into receivership, it became an instrumentality of the federal district court and thus was no longer a District government agency subject to the laws of the District. The court-appointed receiver was immune to being sued and, according to Agency, the court had given the receiver very broad authority with respect to personnel matters. For these reasons, Agency claimed that OEA could not hear Employee's appeal.

To support its lack of jurisdiction claim, Agency began by citing to what it deemed the relevant section of the court order that established the receivership. That section provided that the receiver would have direct control and line supervisory authority over all activities and tasks including the creation and management of an independent personnel function with responsibility for hiring, retention, and other personnel actions. Also, Agency relied on three cases to further support its claim: *Fantasia v. Office of the*

Receiver of the Comm'n on Mental Health Services, No. 01-1079-LFO (D.D.C. filed Dec. 21, 2001); *Drew v. Baktash*, No. 00-1661 (D.D.C. filed Sept. 18, 2001); and *Jennings v. District of Columbia, et al.*, No. 02-314 (D.D.C. filed Dec. 10, 2002).

On October 29, 2003 the Administrative Judge issued an Initial Decision wherein he did an effective job addressing the jurisdiction issue. He relied on *Fantasia* to determine whether the receiver in this case was immune to being sued as Agency claimed. In *Fantasia* the court noted the difference between administrative functions, for which there is no immunity, and judicial functions performed by a receiver.

Fantasia involved the court-appointed receiver for the Commission on Mental Health Services and Mr. Fantasia, the Commission's Director. In order for the receiver to carry out his duties of overseeing the day-to-day operations of the Commission, he fired Mr. Fantasia. Mr. Fantasia sued the receiver. The court reasoned that because Mr. Fantasia's "termination was integral to carrying out the court's order, and [was] indeed the sort of substantive step that might be directly ordered by a judge in the absence of a receiver to manage the administration of the Commission[,]" the receiver was performing a judicial function when he fired Mr. Fantasia.¹ Thus the receiver was immune to being sued under those circumstances.

Applying that reasoning to the facts of this case, the Administrative Judge found that the receiver herein was performing an administrative function, not a judicial function, when he fired Employee. Apparently the Administrative Judge determined that

¹ *Fantasia v. Comm'n on Mental Health Services, et al.*, No. 01-1079-LFO, slip op. at 5 (D.D.C. filed Dec. 21, 2001).

the firing of Employee, a Social Worker, was not integral to carrying out the court's order. Therefore, the receiver was not protected by judicial immunity.

Although *Fantasia* was instructive on the point of distinguishing between a receiver's administrative and judicial functions, the Administrative Judge found that it was otherwise not on point with this case. He found that *Fantasia* concerned the "wrongful discharge of . . . an at-will employee who was the Director at the time the Receiver was appointed."² He went on to state that "the Receiver could not function as the court-appointed Director without first discharging Mr. Fantasia from his duties."³ Further, he noted that Employee's appeal was "an appeal by a subordinate employee whose employment [was] subject to . . . the CMPA [Comprehensive Merit Personnel Act], a local statute."⁴ For these reasons, the Administrative Judge determined that *Fantasia* did not apply to this case.

Likewise, the Administrative Judge held that neither *Drew* nor *Jennings* applied to the facts of this appeal even though both cases involved the action of a court-appointed receiver. With respect to *Drew* the Administrative Judge stated that it was inapplicable because it "pertained to a claim for civil damages on the issue of adoption, and not to the appeal of an employee who was dismissed by the Receiver and who is entitled to the protection of the CMPA."⁵ Concerning *Jennings*, the Administrative Judge found it to be inapplicable because it "pertained to a claim for civil damages on the issue of mental

² *Initial Decision*, p. 4.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 5.

facility mismanagement, and not to the appeal of an employee who was dismissed by the Receiver and who is entitled to the protection of the CMPA.”⁶

Also noted by the Administrative Judge in the Initial Decision was the fact that when the receiver terminated Employee, her notice of appeal rights provided that she could appeal Agency's action to OEA. Further noted was the fact that the receiver submitted to this Office a response to Employee's appeal. The Administrative Judge construed this to mean that “the Receiver meant to act in keeping with the CMPA”⁷ For these reasons, the Administrative Judge found that “Agency [had] not shown that this Office lacks jurisdiction over [Employee's] petition for appeal.”⁸ Consequently, Agency's removal action was upheld.

Even though the Administrative Judge found in favor of Agency, it nonetheless filed a Petition for Review on December 3, 2003.⁹ The only issue that Agency disputes is this Office's jurisdiction to consider Employee's appeal. Once again it argues that Employee was terminated by the receiver (not by the Agency) who acted as a federal official pursuant to a federal court order and thus has absolute judicial immunity. Moreover, Agency again uses the same three cases previously cited to support this claim.

Agency's argument before us is exactly the same as it was before the Administrative Judge. As we mentioned earlier, the Administrative Judge thoroughly addressed this issue and effectively distinguished each case relied upon by Agency. We believe the Administrative Judge used sound legal reasoning to arrive at the conclusion

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 6.

⁹ OEA Rule 634.1 provides that “[a]ny party to the proceeding may serve and file a petition for review of an initial decision with the Board”

that this Office has jurisdiction over Employee's appeal. We agree with that decision. Agency has not given us a compelling reason to hold otherwise. For this reason, we will uphold the Initial Decision and deny Agency's Petition for Review.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**.

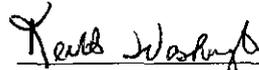
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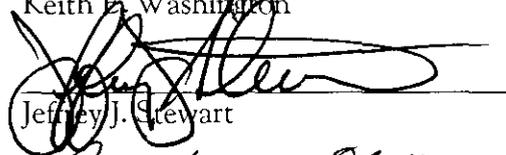
Brian Lederer, Chair



Horace Kreitzman



Keith E. Washington



Jeffrey J. Stewart



Barbara D. Morgan

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.