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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
CHANNAVAJJAL M. PRASAD)	
Employee)	
)	OEA Matter No.: 1601-0158-00
v.)	
)	Date of Issuance: September 19, 2006
COMMISSION ON MENTAL HEALTH)	
SERVICES)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Channavajjal M. Prasad (“Employee”) worked as a Medical Officer (Psychiatry) at St. Elizabeth’s Hospital. On August 18, 2002, the Commission on Mental Health Services (“Agency”), through its receiver, terminated Employee for the causes of fraud and inexcusable absence without leave.¹ The charges stemmed from Employee’s failure to report to work on January 25, 2000. On that day Employee was due to report to work at 5:00 p.m. and be on duty until 8:00 a.m. the following day. However, due to a snowstorm

¹ At the time of this incident, Agency was operating under a receivership.

he was unable to go to work. Agency charged Employee with inexcusable absence without leave because he failed to report his absence to his supervisor as required.

Nevertheless, realizing that he had patients in his care, Agency claims that Employee called the nurse on duty at that time and arranged for her to call him every few hours to report on the status of his patients. Agency alleged that Employee's plan was to complete each patient's chart when he returned to work and backdate the charts to make it appear as if he had examined the patients at the date and time indicated on their chart. According to Agency Employee did in fact follow through with this plan when he went to the hospital on the following day. Hence, Agency charged Employee with fraud.

On September 22, 2000 Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). During the course of the proceedings Agency filed a motion to dismiss Employee's appeal on the basis that OEA lacked jurisdiction to consider the appeal. Agency claimed that because the Commission was in receivership at the time of Employee's termination, OEA could not hear his appeal. Agency based its argument on three points: the receivership was ordered by a federal court and an action by a federal court takes precedence over that of a local administrative agency; the federal court granted the receiver plenary power with regard to employment matters; and the receiver was acting as an arm of the court and had absolute judicial immunity.

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 two 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); and *Drew v. Baktash*, No. 00-1661 (D.D.C. filed Sept. 18, 2001).

On June 3, 2003 the Administrative Judge issued an Order Denying Agency's Motion to Dismiss for Lack of Jurisdiction. Within that order the Administrative Judge did an effective job addressing the jurisdiction issue. He relied on *Fantasia* to determine whether the receiver, under the facts of this appeal, was immune to being sued as Agency claimed.

Fantasia involved the court-appointed receiver for the Commission on Mental Health Services (as does this case) and Mr. Fantasia, the Commission's Financial Director. In *Fantasia* the court noted the difference between administrative functions, for which there is no immunity, and judicial functions performed by a receiver. 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.² 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

² *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).

function, when he fired Employee. Apparently the Administrative Judge believed that the firing of Employee, a Medical Officer, 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."³ He went on to state that "the Receiver could not function as the court-appointed Director without first discharging Mr. Fantasia from his duties."⁴ 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."⁵ For these reasons, the Administrative Judge determined that *Fantasia* did not apply to this case.

Likewise, the Administrative Judge held that *Drew* did not apply to the facts of this appeal even though it also 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."⁶ Thus Agency could not reasonably rely on that case.

³ *Order Denying Agency's Motion to Dismiss for Lack of Jurisdiction and Order for Status Conference*, at 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Also noted by the Administrative Judge in his order was the fact that when the receiver terminated Employee, his notice of appeal rights provided that he 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, the Administrative Judge proceeded to render a decision on Employee's appeal.

Having disposed of that issue the Administrative Judge went on to conduct an evidentiary hearing on August 27, 2003. There were only two witnesses. The first witness testified as to the hospital's policy regarding the care of dangerous or aggressive patients. The second witness testified as to what action an employee deemed essential was to take if he or she could not report to work. That was the entirety of Agency's case. Accordingly, the Administrative Judge found that Agency had "not produce[d] any evidence to show what Employee did or failed to do . . . [nor did it produce] any evidence to show that Employee was guilty of any wrongdoing."⁹ Thus in an Initial Decision issued October 15, 2003 the Administrative Judge held that Agency had failed to meet its burden of proof so he reversed Agency's removal action.

Thereafter Agency filed a Petition for Review. 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

⁷ *Id.*

⁸ *Id.* at 3.

⁹ *Initial Decision* at 4.

official pursuant to a federal court order and thus has absolute judicial immunity. Moreover, Agency again uses the same two cases previously cited to support this claim.

Agency's argument before us is exactly the same as it was before the Administrative Judge. The only additional point that Agency makes is that the case of *Jennings v. District of Columbia, et al.*, No. 02-314 (D.D.C. filed Dec. 10, 2002) is decisive on the jurisdictional issue. As we mentioned earlier, the Administrative Judge thoroughly addressed this issue and effectively distinguished each case relied upon by Agency. With respect to *Jennings*, we find that it is not on point with the facts of this case 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. We believe the Administrative Judge used sound legal reasoning to arrive at the conclusion 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**.

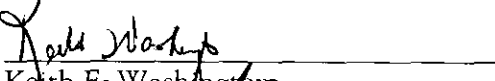
FOR THE BOARD:



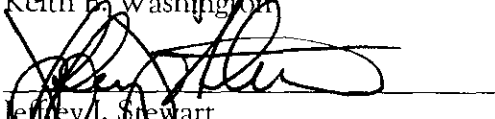
Brian Lederer, Chair




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.