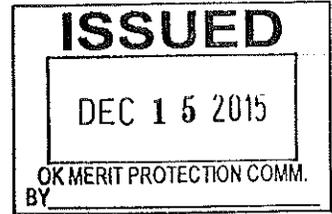


**OKLAHOMA MERIT PROTECTION COMMISSION  
STATE OF OKLAHOMA**

JOHNNY CHINN, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 OKLAHOMA TOURISM AND )  
 RECREATION DEPARTMENT, )  
 )  
 Appellee. )

Case No. MPC-15-061



**ORDER ON APPELLANT’S MOTION FOR SANCTIONS**

This matter comes on for consideration of the motion for sanctions against certain employees of Appellee filed herein by Appellant on November 20, 2015. The undersigned Administrative Law Judge, having reviewed the motion and the response filed by Appellee, having reviewed the case file, and being fully advised in the premises, finds as follows:

1. The undersigned Administrative Law Judge entered his Final Order in this case on August 12, 2015. The Final Order was filed on August 17, 2015. The Final Order provided, *inter alia*, that Appellee reinstate Appellant and pay all benefits lost to Appellant by imposition of the discharge.

2. Appellee’s Request for Reconsideration of the Final Order was denied by the Oklahoma Merit Protection Commission pursuant to the Commissioner’s Final Petition Decision filed herein on October 7, 2015.

3. Appellee returned Appellant to work after the appeal decision was entered, paid Appellant his annual leave and sick leave, and reinstated Appellant's benefits. Appellee has not yet paid Appellant's back pay because Appellee was unsure whether such payment should be reduced by unemployment benefits Appellant received between his termination and reinstatement.

4. Appellee sought clarification from the Merit Protection Commission staff and asked staff to seek clarification from the undersigned Administrative Law Judge. The undersigned advised staff that if Appellee wanted clarification, the matter should be addressed through written motion to which Appellant could respond. Appellee subsequently filed its Motion for Clarification in order to address the matter.

5. Appellant's motion for sanctions was filed after Appellee's Motion for Clarification, alleging that Appellee has refused to follow the Final Order entered herein. In his motion for sanctions, Appellant seeks (a) sanctions against Appellee's employees, Dick Dutton, Claudia Conner, and Brett Thomas, (b) liquidated damages pursuant to 40 O.S. § 165.3<sup>1</sup>, and (c) forfeiture of the positions of Mr. Dutton, Ms. Conner, and Mr. Thomas.

6. Appellee responded that sanctions are unwarranted because Appellee has complied with the Final Order as far as possible without clarification regarding deduction of unemployment benefits from back pay. Appellee further responded that the forfeiture provisions of 74 O.S. 840-6.9 B do not apply to the current circumstances and requested a finding that the motion for sanctions is frivolous and without reasonable basis.

7. 40 O.S. § 165.3, pursuant to which Appellant seeks liquidated damage, does not apply to the current circumstance. Rather, the statutory provision applies when an employer fails

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<sup>1</sup> Appellant's motion for sanctions asks for liquidated damage pursuant to 12 O.S. 160.3. However, 12 O.S. 160.3 does not exist, and the undersigned has treated the citation as an intended reference to 12 O.S. 165.3, which both exists and makes provision for sanctions under certain circumstances.

to pay an employee his earned wages at the time of the employee's termination. Such is not the case here, as the Final Order does not address wages that were earned but unpaid to Appellant at the time of his termination, and the matter was not an issue in the case. Appellant is not entitled to liquidated damage pursuant to 40 O.S. § 165.3.

8. Although 74 O.S. § 840-6.9 (A) allows for the imposition of fines against persons who fail or refuse within a reasonable time to follow a written order of the Commission after notice of such order, no administrative fine is appropriate in this circumstance. Appellee has sought clarification of the Final Order with regard to the amount of back due wages that it should pay to Appellant. An Order addressing the matter has been entered on even date herewith. Appellee has a reasonable time from the entry of the Order on Appellee's Motion for Clarification to comply with the terms of the Final Order as clarified.

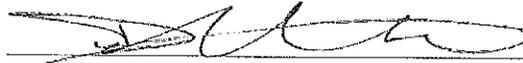
9. No employee of Appellee is subject to forfeiture of his or her position in this case. 74 O.S. § 840-6.9 (B) provides that forfeiture may be considered only after a person against whom an administrative fine has been levied continues the violation for an unreasonable time. No administrative fine has been levied against Mr. Dutton, Ms. Conner, or Mr. Thomas.

10. Given the time that has passed from entry of the Final Order, Appellant's motion for sanctions is not frivolous or without reasonable basis as it regards Appellant's attempt to receive the back pay that he is entitled to receive pursuant to the Final Order. However, Appellant's motion is frivolous and without basis with regard to Appellant's request for liquidated damage and with regard to his request that the named employees of Appellee be fined and forfeit their positions because no fact supports the requests, and no reasonable argument suggests that any statutory provision cited by Appellant applies.

**IT IS THEREFORE ORDERED** that Appellant's motion for sanctions filed herein on

November 20, 2015, is **DENIED**.

**Dated this 15<sup>th</sup> day of December, 2015.**



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Matt Hopkins  
Administrative Law Judge  
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