

State of Maryland
State Labor Relations Board

In the matter of:)
Johnny D. Holt,)
)
Petitioner,)
)
v.)
)
Pleasant Construction, Inc.)
c/o Dennis E. Lescalleet, Safety Director)
)
and)
)
Karen Shoemaker, RN, Nurse Care)
Consultant)
Respondents.)

SLRB ULP Case No. 13-U-02

Board Dismissal for Failure to State a Claim under Board Law or Regulations,
& Lack of Jurisdiction

On August 13, 2012, Petitioner Johnny D. Holt filed a complaint before the State Labor Relations Board ("Board"), pursuant to COMAR 14.32.05. In his complaint, Mr. Holt alleges that the above named Respondents had given him a medical release form, allowing for a return to full duty work, with a forged doctor's signature on it. Mr. Holt alleges that the doctor in question had no knowledge of the form, no knowledge of signing it, and in fact, the doctor would have recommended a much different return to work arrangement, given the nature of surgery that Mr. Holt had, than was actually given on the form. Due to this situation, Mr. Holt alleges that he shouldn't have been returned to full duty work, and as a result of being released to full duty work prematurely, his original injury was aggravated and a secondary surgery had to be done. As a result of the second surgery, Mr. Holt was placed on disability, and prior to July 2012 had been receiving temporary total disability payments. However, Mr. Holt states that those payments have now stopped entirely because his supervisor claimed Mr. Holt refused a light duty job without informing the proper individuals that he was still taking pain medication. Mr. Holt indicates that Pleasant Construction employees may not be under the influence of pain medication. Mr. Holt alleges that he will continue to suffer financial hardship due to the way in which his release back to work was handled, and that he is afraid to go back to work for Pleasant Construction due to the deliberate disregard for employee health he alleges was shown by Mr. Lescalleet and Ms. Shoemaker when they allegedly conspired to forge a physician's signature and release Mr. Holt to full duty work too early.

Petitioner's complaint is deficient in two respects. First, Petitioner fails to state a claim under the State Personnel and Pension Article §3-306, or under corresponding Board regulations at COMAR 14.32.05, upon which relief may be appropriately granted. Second, Petitioner's complaint fails to demonstrate that either of the named Respondents is an agency, department or branch of any of the units of state government described in State Personnel & Pensions Article §3-101(a)(1) through (4).

Accordingly, this complaint is dismissed, because of failure to state a claim under State law or regulations, and lack of Board jurisdiction to consider the complaint.

Please note that the State Labor Relations Board's jurisdiction is confined to certain labor/employment claims of individuals employed by the State of Maryland.

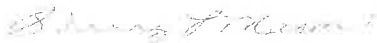
If there are any further questions regarding the above, please feel free to contact Joseph K. Pokempner, Esq., the Assistant Attorney General for the State Labor Relations Board. He may be reached at (410) 576-6962.

Issue Date: September 4, 2012

Glen Burnie, Maryland
For The State Labor Relations Board:



June M. Marshall, Chair



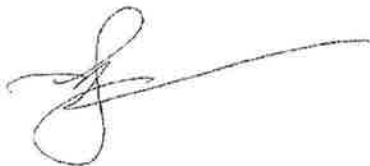
Sherry L. Mason, Member



Edward J. Gutman, Member



Susie C. Jablinske, Member



LeRoy A. Wilkison, Member

APPEAL RIGHTS

Any party aggrieved by this action of the SLRB may seek judicial review in accordance with Title 10, Subtitle 2 of the State Government Article, Annotated Code of Maryland, Sec. 10-222 (Administrative Procedure Act—Contested Cases), and Maryland Rules CIR CT Rule 7-201 *et seq.* (Judicial Review of Administrative Agency Decisions).