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CASE SUMMARIES

ADMINISTRATIVE LAW

Amisub (PSL), Inc. v. Colorado Department of Social Services, 879 F.2d 789
Author: Judge Brorby

Plaintiff, Amisub (PSL), Inc. (“Hospitals”), as Medicaid providers, appealed from a judgment that defendant, Colorado Department of Social Services (“Colorado”) and its executive director did not violate a provision of the Medicaid Act, 42 U.S.C. § 1396 (the “Act”), for reimbursement of inpatient hospital services.

The Tenth Circuit sustained the district court’s holding that jurisdiction was properly based on 28 U.S.C. § 1331 and not on the federal mandamus statute, 28 U.S.C. § 1361, which does not afford relief against states. The court also held that pursuant to 42 U.S.C. § 1396a(a)(13)(A), Hospitals had enforceable rights under 42 U.S.C. § 1983 and had standing to challenge the reimbursement rates under the Colorado Medicaid Plan. The court held, however, that the eleventh amendment barred suit against Colorado since Colorado did not waive sovereign immunity and Congress did not abrogate it by unmistakable language in the Act. Colorado was dismissed as a defendant, but the executive director was not.

The court held that the district court mistakenly applied the federal agency “arbitrary and capricious” standard of review to the executive director’s findings. The appropriate standard of review for a state agency’s decision is a determination as to whether it procedurally and substantively complied with the Act and its implementing regulations. The court reversed the district court, and held that the executive director should have engaged in a finding procedure that allowed her to assure that all federal requirements had been met. The court also held that the substantive results reached by the executive director did not reimburse Hospitals adequately. The court reversed and remanded.

Asarco, Inc. v. Federal Mine Safety and Health Review Commission, 868 F.2d 1195

Author: Judge McWilliams

A miner was injured while working at a mine site which was operated by defendant, Asarco. An inspector from the plaintiff, Federal Mine Safety and Health Review Commission (“Commission”), issued Asarco a citation for violating a mandatory safety standard. This citation was issued despite the fact that the injured miner was the violator of the safety standard. Asarco appealed the citation and civil penalty, claiming it was not at fault nor were its employees. The Commission upheld the decision of the safety inspector, and Asarco appealed.

The Tenth Circuit affirmed the Commission's ruling, finding that fault is not required by the Federal Mine Safety and Health Act of 1977. Consequently, when a mandatory safety standard has been violated, the operator of a mine is assessed a civil penalty regardless of fault. The Act provides, however that lack of negligence will be considered when determining the amount of the civil penalty.

Baker v. Bowen, 886 F.2d 289

Per Curiam

Plaintiff, Baker, appealed a determination by the Secretary of Health and Human Services ("Secretary"), as affirmed by the district court, that Baker was not disabled for the purposes of Supplemental Security Income benefits under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-85. Baker argued that the Secretary, acting through an administrative law judge ("A.L.J."), failed to consider certain x-rays and that the Secretary's decision was not supported by substantial evidence.

The Tenth Circuit reversed and remanded, directing the A.L.J. to procure consultative x-rays as well as Baker's medical records from her treating physician. The court held that the Secretary erred by not considering all relevant medical evidence and by not ordering medical tests and records. The court found ambiguity in whether the A.L.J. considered Baker's x-rays, and reversible error in the Secretary's assumption of what the A.L.J. considered. The Secretary failed to meet its burden to fully and fairly develop the record.

Colorado Department of Labor and Employment v. United States Department of Labor, 875 F.2d 791

Author: Judge Anderson

The Tenth Circuit affirmed the decision of the administrative law judge A.L.J. ordering the Colorado Department of Labor and Employment ("Colorado") to pay the United States Department of Labor ("DOL") \$405,659 for misspending of federal money granted the state agency under the Comprehensive Employment and Training Act of 1973 ("CETA"), as amended, 29 U.S.C. § 801, *et seq.* (repealed 1982). Following an audit of fourteen CETA grants, the DOL Grant Officer disallowed Colorado's expenditure of \$563,271 of CETA funds. Through negotiations, the disallowance was reduced to \$405,659. Colorado disputed the findings and appealed the A.L.J.'s decision ordering Colorado to pay this amount to the DOL.

The four findings in dispute were that Colorado: (1) failed to document certain expenditures properly; (2) failed to receive authorization on a cost overrun covered by the federal government; (3) exceeded specific budget ceilings by more than fifteen percent without obtaining prior approval; and (4) failed to request prior approval from the regional administrator or grant officer for each purchase by a subrecipient of video equipment exceeding \$500 per unit. Upon review, the Tenth Circuit affirmed the A.L.J.'s decision on all four findings.

Colorado Interstate Gas Co. v. Federal Energy Regulatory Commission, 890 F.2d 1121

Author: Judge Seymour

Plaintiff, Colorado Interstate Gas Company ("CIG"), challenged conditions imposed by defendant, Federal Energy Regulatory Commission ("FERC"), on FERC's approval of three of CIG's applications for certificates of public convenience and necessity under section 7(c) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717f(c). In all three cases, FERC limited the duration of the certificates to either one year or until CIG accepted a blanket certificate, instead of approving the longer terms CIG had requested. Additionally, in one application, FERC required that CIG charge a higher transport rate than it had proposed. In the same application, FERC also refused to certify the firm transport service CIG requested and limited CIG to providing interruptible service only. CIG contended that all the conditions were arbitrary and capricious, and attacked the rate conditions as beyond FERC's statutory authority under the NGA.

The Tenth Circuit found that CIG could challenge the blanket certificate acceptance limitation on appeal because it did not argue this limitation's invalidity in its requests for rehearing below. Regarding the one-year fixed term limitation, the court held that CIG's acceptance of a blanket certificate prior to the running of the one-year limits in all three certificates rendered the issue moot. The rate condition imposed on one certificate's approval was also moot since the certificate expired when CIG accepted a blanket certificate. Lastly, the issue of denial of firm service was moot due to CIG's acceptance of blanket certificates. The court vacated the orders under review in each case.

Community Action of Laramie County, Inc. v. Bowen, 866 F.2d 347

Author: Judge Baldock

Plaintiff, Community Action of Laramie County ("CALC"), was a grantee agency of the federally funded Head Start program. The defendant, Department of Health and Human Services ("HHS"), funded and set regulations for each grantee agency. HHS terminated CALC's funding for violating federal regulation. After a series of unsuccessful administrative reviews, CALC appealed to the federal district court where it received a favorable ruling. HHS appealed.

The Tenth Circuit found that there was no law for the court to apply because no substantive guidelines existed for the agency to follow in deciding whether to withdraw funding. Consequently, the court held that it did not have the authority to review because it did not have standards against which to judge the exercise of discretion by HHS. Furthermore, the court stated that funding determinations are unsuitable for judicial review. The court reversed and remanded with instructions to dismiss the complaint for want of subject matter jurisdiction.

Dean v. Johnson, 881 F.2d 948

Author: Judge Moore

Plaintiff, Dean, sought a declaratory judgment that she is entitled to the proceeds of her deceased husband's Federal Employees' Group Life Insurance policy, although he had filed a change of designated beneficiary with his employer prior to his death. The district court found that federal law preempts a state court order prohibiting a change of designated beneficiary, and Dean appealed.

The Tenth Circuit affirmed the district court's finding that the Federal Employee's Group Life Insurance Act ("FEGLIA"), 5 U.S.C. §§ 8701-8716, established a preemptive scheme. The regulation accompanying FEGLIA, 5 C.F.R. 870.901 (1986), contains language stating that an employee's right to change beneficiaries cannot be waived or restricted. The court held that since the state court order restricted the federal insured's right to designate a beneficiary, it cannot be valid under FEGLIA. The court affirmed the district court's summary judgment in favor of defendants.

Dozier v. Bowen, 891 F.2d 769

Author: Judge McWilliams

Plaintiff, Dozier, sought review of the denial of his application for Social Security disability benefits. After his application was administratively denied on review by an administrative law judge A.L.J. whose decision became the Secretary's final decision in the matter. Dozier filed a request for additional time within which to file an action for judicial review in district court 125 days after the date of the Secretary's decision. The Appeals Council denied this request. Seven months after the date of the Secretary's decision, Dozier filed suit in district court under 42 U.S.C. § 405(g), seeking review of the Secretary's decision. The district court dismissed because the action had not been filed within sixty days of the Secretary's decision as required by section 405(g).

The Tenth Circuit affirmed on the basis that the action was not filed within the statutory time limit. The court also held that the Appeals Council's denial of Dozier's request for additional time within which to seek judicial review was itself not subject to federal judicial review. Dozier did not fall under the exception that there may be federal judicial review when the Secretary's denial of a petition to reopen is challenged on constitutional grounds. The court found that the A.L.J. did not make his decision in an unconstitutional manner even though he used a post-hearing medical advisor which Dozier was not permitted to cross-examine. This was not unconstitutional because the interrogatories sent to the medical advisor were also made available to Dozier and no objection to the medical advisor's opinion was made on the record.

Drury Inn-Colorado Springs v. Olive Co., 878 F.2d 340

Author: Judge Moore

Plaintiff, Drury Inn, purchased a portion of a tract of land from the defendant, Olive Company. The purchase contract contained a restrictive covenant which provided that Olive would not sell any portion of the remaining land to potential competitors whose room rates were within twenty percent of Drury's rates.

Drury filed an action for damages for Olive's alleged breach of the restrictive covenant. The district court granted Olive's motion for summary judgment on the grounds that the restrictive covenant constituted a per se violation of the Sherman Act, 15 U.S.C. § 1, and Colo. Rev. Stat. § 6-4-101 (1973).

The Tenth Circuit held that per se violations of the Sherman Act are found in horizontal price fixing, boycotts, and tying arrangements. The court could not say that this particular restrictive covenant was a per se violation against price fixing. The court reversed the district court's order for summary judgment and remanded the case for disposition of the claim on Olive's alleged breach.

Fowler v. Bowen, 876 F.2d 1451

Per Curiam

Plaintiff, Fowler, appealed from an order of the district court which affirmed the Secretary of Health and Human Services' ("Secretary") determination that Fowler received an overpayment of Social Security Disability Insurance benefits. The Secretary also determined that Fowler was not without fault in causing the overpayment and therefore, the overpayment could not be waived. Fowler asserted that the decision was not based on substantial evidence.

The Tenth Circuit reviewed the Secretary's final decision only to determine whether the decision was supported by substantial evidence. The court noted that it could not weigh the evidence nor substitute its discretion for that of the agency. Giving great deference to the administrative law judge's (A.L.J.) determination of Fowler's credibility, the court held that there was substantial evidence to support the Secretary's determination that Fowler's initial application for benefits involved fraud or similar fault. The evidence also supported the A.L.J.'s finding that Fowler was engaged in substantial gainful activity as an insurance agent and as a manager of his corporation during the time he received benefits. Consequently, Fowler was not without fault in continuing to accept the disability benefits. The district court's decision was affirmed.

Gallegos v. Lyng, 891 F.2d 788

Author: Judge Brorby

The district court issued an order of summary judgment for defendant, Lyng, Secretary of United States Department of Agriculture ("Lyng"), in a complaint filed by plaintiff, Gallegos, Secretary of New

Mexico Human Service Department ("Gallegos"). The district court found that the Department of Agriculture's food stamp mail loss tolerance regulation, 7 C.F.R. § 274.3(c)(4), was not arbitrary or capricious and was promulgated by the Food and Nutrition Service ("FNS"), in accordance with law. The district court also issued an order prohibiting Lyng from charging the State of New Mexico interest on the unpaid amounts assessed under the regulation. Gallegos appealed the summary judgment, and Lyng cross-appealed the order prohibiting interest assessment.

The Tenth Circuit reviewed *de novo* the district court's legal conclusions, but limited the review of FNS's administrative action within the confines of the Administrative Procedure Act, 5 U.S.C. § 553 ("APA"). This section of the APA sets the arbitrary and capricious standard of review as not allowing the court to substitute its judgment for the judgment of the agency. The court held that the mail loss regulation was clearly consistent with the language of its authorizing statute, section 2016(f) of the Food Stamp Act, and reasonably related to its purposes. In addition, the court held that FNS satisfied the notice and comment requirements of the APA, and that the rule was supported by substantial evidence when considering the record as a whole. Moreover, the court stated that the Debt Collection Act of 1982, 31 U.S.C. §§ 3701(c), did not abrogate the FNS's federal common-law right to assess interest on outstanding debts incurred by New Mexico pursuant to the Food Stamp Act. The court reversed the district court's holding regarding the interest assessment issue, and the case was remanded for entry of judgment consistent with this opinion.

Garcia v. Director, Office of Workers' Compensation Programs, 869 F.2d 1413
Author: Judge Logan

Plaintiff, Mrs. Garcia, sought review of a decision of the Benefits Review Board ("Board") affirming the denial of black lung disability benefits to her late husband, Simon Garcia. Defendant, Director of the Office of Workers' Compensation Programs for the United States Department of Labor, claimed that the decision of the administrative law judge A.L.J. to deny benefits under the Federal Coal Mine Health and Safety Act of 1969 was proper because Mr. Garcia had failed to prove total disability as required by the Act. On appeal, the Board found the A.L.J.'s decision supported by substantial evidence and affirmed.

Under the 1969 Act, the Tenth Circuit noted that the "total disability" requirement that triggers payment of disability benefits is satisfied by abnormal results of either pulmonary function studies or arterial blood gas tests. The court found that since Garcia's blood gas test results were described as markedly and grossly abnormal by two physicians, and the Director failed to produce sufficient evidence to rebut the presumption of total disability, the Board erred in denying Garcia benefits. Thus, the Court reversed the Board's decision and remanded for further proceedings.

Hayes v. Unified School District No. 377, 877 F.2d 809

Author: Judge Tacha

Plaintiffs brought an action against the defendant, Unified School District No. 377 ("School District"), for the placement of their children in "time-out" rooms for in-school suspension. The district court granted the School District's motion for summary judgment and plaintiffs appealed. The School District cross-appealed contending that the action should be dismissed because plaintiffs failed to exhaust their administrative remedies as required by the Education of the Handicapped Act ("EHA"), 20 U.S.C. § 1415 (1970).

The Tenth Circuit held that the district court erred in proceeding to the merits of the federal constitutional and state law claims because the plaintiffs failed to exhaust their administrative remedies as required under the EHA. The Handicapped Children's Protection Act, 20 U.S.C. § 1415(f) (1986), states that the EHA is not the exclusive remedy available to handicapped students seeking public education benefits. This amendment, however, is clear in preserving the requirement that if relief can be sought under the EHA, exhaustion of the EHA's administrative remedies is necessary before an action can be brought in federal court.

The Tenth Circuit held that because proper conduct and education are intertwined, the discipline of a child in the classroom, including "time-out" periods, is a matter that relates to the public education of handicapped children and, therefore, falls within the scope of the EHA. Thus, the plaintiffs were required to present their complaints concerning the disciplinary action according to procedures set forth by the EHA. The court reversed and remanded, instructing the district court to dismiss the action for lack of jurisdiction.

Hill v. National Transportation Safety Board, 886 F.2d 1275

Author: Judge Tacha

Petitioner, Hill, sought review of a decision of the National Transportation Safety Board ("NTSB") upholding a Federal Aviation Administration ("FAA") order suspending his pilot certificate due to violations of 14 C.F.R. § 91.79(d), 91.9 (1988). Hill argued that the NTSB erred in dismissing because both of the incidents for which he was sanctioned involved purely intrastate flights and occurred outside the airspace controlled by the FAA, and therefore the FAA lacked jurisdiction to suspend his certificate.

The Tenth Circuit affirmed. The term "air commerce" is to be broadly construed and not restricted to interstate flights occurring in a controlled airspace. 49 U.S.C. app. § 1301(4) requires only the potential for pilot conduct to endanger safety to support the FAA's order of suspension. Hill also submitted to the FAA's jurisdiction by holding a pilot certificate issued by the FAA. 49 U.S.C. app. § 1429(a) gives the FAA broad discretion to suspend a pilot's certificate as a result of any exami-

nation where the Secretary of Transportation determines that safety in air transportation and public interest requires.

Lake Hefner Open Space Alliance v. Dole, 871 F.2d 943

Author: Judge McWilliams

Plaintiff, Lake Hefner Open Space Alliance ("Lake Hefner"), sought a reversal of a federal highway administrative decision allowing the construction of a six lane urban freeway in Oklahoma City. The district court granted defendants'; Elizabeth Dole, joined by the City of Oklahoma and the Oklahoma City Municipal Improvement Authority ("Oklahoma City"), motion for summary judgment. Lake Hefner appealed, arguing that the district court erred in indicating that Lake Hefner had some burden of proof.

The Tenth Circuit agreed that, in resisting a motion for summary judgment, the opposing party only has a burden to identify specific facts posing genuine issues of material fact. In response to Oklahoma City's motion, Lake Hefner did not set forth specific facts showing a genuine issue for trial. Because the court was not persuaded of Lake Hefner's issues raised as grounds for reversal, and because Lake Hefner did not raise any genuine issues of fact, the court affirmed the summary judgment.

Lombardi v. Small Business Administration, 889 F.2d 959

Author: Judge Daugherty, sitting by designation

Plaintiff, Lombardi, was terminated from his employment with the Small Business Administration. The district court dismissed his *Bivens* action for lack of subject matter jurisdiction because Lombardi was a federal employee whose claims were governed by the Civil Service Reform Act of 1978 ("CSRA").

The Tenth Circuit affirmed. The court recognized that *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), established a cause of action for damages against a federal official for unconstitutional conduct. However, based on United States Supreme Court precedent, the court declined to create a judicial remedy when a comprehensive statutory scheme, such as the CSRA, already provided meaningful remedies against the United States.

Lopez v. Sullivan, 882 F.2d 1533

Author: Judge Anderson

Plaintiff, Lopez, filed a motion for remand and reevaluation of his disability claim after denial of benefits by the Social Security Administration ("SSA"). Upon reevaluation, and pursuant to the new criteria of the Social Security Disability Reform Act of 1984, Pub L. No. 98-460, 98 Stat. 1794 ("Reform Act") (codified as amended in scattered sections of 42 U.S.C.), Lopez was found eligible for disability benefits. Upon a

favorable ruling by the SSA, Lopez filed a motion for attorney's fees, which was denied. Lopez subsequently appealed.

The Tenth Circuit concluded that the Reform Act did not require remand of those cases decided before its enactment. Therefore, the court stated that it was impossible to decide whether the remand was due to a misinterpretation of the Reform Act, or whether Lopez's successful remand was due to the merits of his case. Because it was impossible to decide whether Lopez's success was due to the merits of his case, the court was unable to determine whether Lopez was a "prevailing party" and thereby entitled to attorney's fees. The court remanded Lopez's case to determine if he would have prevailed on the merits, thus allowing an award of attorney's fees.

Mitchelson v. Director, Office of Workers' Compensation Programs, 880 F.2d 265

Author: Judge McWilliams

Plaintiff, Mitchelson, applied for benefits under the Black Lung Benefits Act, 30 U.S.C. § 901-45 ("Act"). He alleged total disability due to the contraction of pneumoconiosis during long-term employment in one of the nation's coal mines. The administrative law judge ("A.L.J.") determined that because Mitchelson met one of the four medical requirements, he was entitled to a rebuttable presumption that he was totally disabled due to pneumoconiosis. Defendant, Kemmerer Coal Company, introduced evidence rebutting Mitchelson's claim of eligibility. Mitchelson challenged the finding that he was not totally disabled by pneumoconiosis.

The Tenth Circuit held that the A.L.J.'s decision was supported by substantial evidence and was in accord with the statutory and regulatory law. Although Mitchelson was entitled to an initial presumption of total disability, he failed to prove either total or partial disability from his coal mine employment, as is required by the Act.

Peterson v. Wichita, 888 F.2d 1307

Author: Judge Seymour

Plaintiff, Peterson, brought an action under 42 U.S.C. §§ 2000e *et seq.* (1982) (Title VII), alleging that the City of Wichita, Kansas, had illegally discharged him on the basis of race. In Kansas, a deferral state, a Title VII claimant must file a discrimination charge within 300 days of the alleged unlawful act under oath or affirmation as required by 42 U.S.C. § 2000e-5(b). Peterson filed a timely complaint with the EEOC, but he did not verify the complaint until after 300 days had elapsed. The district court refused to apply an EEOC regulation implementing Title VII, which provides that an amendment to cure a defect in a charge, including failure to verify the charge, relates back to the date the charge was first received. Peterson appealed.

In reversing the district court's decision, the Tenth Circuit reasoned

that the EEOC regulation does not frustrate the purpose for the statute's verification requirement, which is to protect employers from frivolous claims, because the EEOC does not investigate a charge until it is verified. In addition, while satisfying section 2000e-5(b) is a jurisdictional prerequisite, filing a timely EEOC charge is not a jurisdictional prerequisite to suit. The court held that the regulation could be applied when, as here, the defendant alleges no prejudice from its operation.

Railroad Commission v. Federal Energy Regulatory Commission, 874 F.2d 1338

Author: Judge Tacha

Plaintiff Watkins, appealed a decision of the Federal Energy Regulatory Commission ("FERC"), which stated that Watkins violated the National Gas Policy Act ("NGPA"). The FERC found that Watkins sold natural gas at a price in excess of the statutorily established maximum price. Watkins objected, arguing that the FERC exceeded its statutory jurisdiction by inquiring into geological structures underlying the subject acreage, gas-oil contact within specific wells, and properties of hydrocarbons from those wells. Watkins also asserted that the FERC should not have been allowed to gather additional evidence when the administrative law judge previously ruled that the evidence against him was inconclusive. Watkins further asserted that the FERC's findings were not based on substantial evidence. Moreover, Watkins claimed that the FERC's conclusions of law were erroneous because the Railroad Commission of Texas' ("RCT") guidelines were satisfied.

The Tenth Circuit held that the FERC inquiries into production and gathering areas of Watkins gas-oil well operations were necessary. The court reasoned that these inquiries enabled the FERC to enforce its responsibilities. Furthermore, the court acted within its statutory jurisdiction. The court reasoned that the FERC had a duty to act on a record that was complete. Moreover, the FERC acted correctly in conducting an additional investigation. The FERC conclusions of law were found to be reasonable and rationally related to the facts. Also, the court found the FERC's decision to be based on relevant factors. The court noted that the FERC was not required to follow the RCT procedures. Consequently, the court affirmed FERC's finding of a NGPA violation.

Reppy v. Department of the Interior, 874 F.2d 728

Author: Judge Logan

Plaintiff, Reppy, appealed the district court's affirmance of the Interior Board of Land Appeals' ("Board") decision. The Board rejected Reppy's challenge to a denial of his oil and gas lease application. The Board reasoned that Reppy failed to comply with an administrative regulation. Reppy was the recipient of an oil and gas lease in a random computer drawing. His lease application was rejected by the Bureau of Land Management ("BLM") for failure to disclose the name of the filing service he used as required by BLM regulation 43 C.F.R. § 3112.2-4.

The Tenth Circuit first considered the Department of the Interior's claim that the request for judicial review was time-barred by the Mineral Lands Leasing Act, 30 U.S.C. § 226-2. This section states that no action contesting a decision of the Secretary of the Interior involving any oil or gas lease shall be maintained unless the action is commenced within ninety days after the Secretary's final decision. The court reasoned that a timely petition for reconsideration tolls the ninety-day limitations period, thus preserving the right to judicial review of an administrative decision while petitioning the agency for reconsideration. In so holding, the court overruled its decision in *Geosearch, Inc. v. Hodel*, 801 F.2d 1250 (10th Cir. 1986). The court next considered the merits of the case and held that the rejection of the lease application was proper. The court concluded that BLM's requirement of strict adherence to policies and procedures furthered the statutory purpose of operating the public leasing program in a fair and equitable manner, and was not applied to Reppy arbitrarily.

Walker Operating Corp. v. Federal Energy Regulatory Commission, 874 F.2d 1320

Author: Judge Tacha

Plaintiff, Walker Operating Corporation ("Walker"), oil well operators, petitioned for review a ruling of the Federal Energy Regulatory Commission ("FERC"). This ruling stated that Walker violated the National Gas Act ("NGA"), by diverting natural gas dedicated to interstate commerce and selling that gas at a price exceeding the statutory maximum. Walker appealed, arguing that the FERC exceeded its statutory jurisdiction and impermissibly impinged upon areas reserved for state regulation. In particular, Walker argued that: (1) the FERC was precluded from inquiring into the scope of the Walker's natural gas reserves, which were dedicated to interstate commerce; (2) the FERC was precluded from inquiring into the scope of Texas' pricing determinations covering its wells; (3) the FERC's conclusions were not based on substantial evidence that Walker was producing oil above the gas-oil contact line; and (4) the FERC erred in its conclusion concerning the definition of "casinghead" gas under Texas law.

First, the Tenth Circuit found sufficient evidence to establish that Walker violated the NGA by producing gas dedicated to interstate commerce and selling it at rates above the ceiling. Second, the court ruled that the FERC reasonably interpreted the definition of "casinghead" gas under Texas law as being gas below the gas-oil contact. Third, the court held that the FERC had jurisdiction to inquire into the scope of an interstate natural gas producer's reserves above the gas-oil contact. Fourth, the court held that the FERC had jurisdiction to inquire into the scope of Texas' pricing determinations covering oil wells located on the same surface. The court held that such examination was necessary background to the application of relevant federal statutes. The court, therefore, affirmed the FERC finding of an NGA violation.

Wall v. United States, 871 F.2d 1540 Author: Judge McWilliams
Dissent: Judge Seymour

Plaintiff, Wall, filed an action in district court based on age discrimination and handicap discrimination following termination of his employment from the Department of Health and Human Services ("Department"). Wall sought review of the Merit Systems Protection Board's ("Board") holding that Wall "voluntarily" left his employment with the Department. The Board dismissed Wall's claim for lack of jurisdiction because voluntary retirement is not an adverse action which is appealable. Wall appealed the district court's subsequent dismissal of his action for lack of subject matter jurisdiction.

The Tenth Circuit found that Wall's voluntary retirement gave the court exclusive jurisdiction to review the Board's ruling, pursuant to 5 U.S.C. §§ 7702-7703(b)(1)-(2). Affirming the decree, the court found that the district court properly construed the statutes, and properly dismissed Wall's *de novo* action in the district court.

Webb v. Hodel, 878 F.2d 1252
Author: Judge Brorby

Plaintiff, Webb, brought an action against defendants to reinstate her deceased husband's mining claims located on federal land. The claims were previously voided by the Bureau of Land Management ("BLM") because of Webb's employment with the BLM. Defendants appealed the district court's denial of their motion for summary judgment.

The Tenth Circuit recognized that to set aside the Interior Board of Land Appeals' ("IBLA") decision, it must find that their actions were arbitrary and capricious and an abuse of discretion. The court considered the plain meaning of the statute 43 U.S.C. § 11 in determining congressional intent on the scope of control the IBLA and the BLM were meant to have over employee spouses. The court found no such authority in either the statute or regulation 43 C.F.R. § 20.735. Therefore, the revocation of the mining claims by the IBLA under the regulation was arbitrary and capricious as there was insufficient evidence to establish the "indirect interest" required under the statute. Finally, the court stated that even if the employee of BLM had the indirect interest needed, it would grant the authority to void only the employee's claims, and not her spouse's.

Williams Natural Gas Co. v. City of Oklahoma, 890 F.2d 255
Author: Judge Brorby

An Oklahoma state court enjoined construction of a pipeline by plaintiff Williams Natural Gas Company ("Williams"), despite the authority of a Federal Energy Regulatory Commission ("FERC") certificate directing Williams to construct the pipeline. The federal district court refused to contravene the state court injunction.

The Tenth Circuit reversed and remanded, finding that the district court erred. Specifically, the court held that judicial review under section 19(b) of the Natural Gas Act, 15 U.S.C. § 717r(b), is exclusive in the federal courts of appeal once the FERC certificate issues. Thus, the statute barred collateral attack in either the state or federal district courts of those issues that could have been raised in the FERC proceeding or appeal.

