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## Administrative Law

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## Administrative Law

# Case Summaries

## ADMINISTRATIVE LAW

*Andrews v. Veterans Administration*, 838 F.2d 418

The president of the union local representing nurses employed at the Veterans Administration (VA) Medical Center requested copies of proficiency reports for all registered nurses at the center. Appellees, all registered nurses at the center, brought an action seeking to enjoin the VA from releasing these personnel records in an improperly sanitized condition, and sought damages, citing an intentional and willful violation of the Privacy Act of 1974. The district court found that the VA erred in failing to balance the interest of the parties prior to disclosure and found the nurses' privacy interests were substantial and the union's interest in obtaining the documents was minimal. Reversed.

The Tenth Circuit held that even if the Privacy Act is violated, no punishment may be imposed unless the agency acts in a manner that is intentional or willful, and the action is so patently egregious and unlawful that anyone undertaking the conduct should have known it to be unlawful. Applying this standard, the VA's conduct fell short of not only a willful or deliberate standard, but also the gross negligence standard applied by the district court.

*Brock v. R.J. Auto Parts and Service Co., Inc.*, 864 F.2d 677

Appellant Department of Labor appeals a district court decision dismissing its cause of action against the appellee as a discovery sanction. Reversed and remanded.

The Department of Labor brought suit against R.J. Auto Parts under the Fair Labor Standards Act for violations of minimum wage, overtime, and record keeping provisions. During discovery, R.J. Auto Parts requested the names of all the individuals who had made complaints to the Dept. of Labor. When the Dept. failed to provide these names, the district court dismissed the action. In reversing, the court of appeals noted that R.J. Auto Parts demonstrated no need for such a list, and that absent this showing of need, the Department of Labor was not required to prematurely identify the witnesses it was planning to call at trial.

*Director, Office of Worker's Compensation Programs v. Kaiser Steel Corporation*, 860 F.2d 377

The Black Lung Benefits Reform Act of 1977 liberalized eligibility requirements. The Act provided that if a miner had been denied benefits prior to March 1, 1978, he could reapply to have his eligibility determined under new criteria. The burden of paying benefits to such miners

was shifted from the employer to the Black Lung Disability Trust Fund. An Administrative Law Judge (ALJ) relied on affidavits from a claimant and transferred liability from the claimant's employer to the Fund. Finding that the transfer of liability was in error because there was no record of an earlier claim, the Director modified the ALJ's ruling. After a hearing, a new ALJ ruled that the Director had no authority to modify the previous decision.

The Tenth Circuit held that under 33 U.S.C. § 922, the Director is without authority to modify a compensation order for any mistaken determinations of fact other than his own. Since the ALJ made the mistake, and not the Director, there was no authority to modify the order.

*Gatson v. Bowen*, 854 F.2d 379

Plaintiff, who had originally been denied social security benefits, brought suit and won the right to those benefits. In this action, plaintiff brought suit under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, to recover her attorney's costs from the previous action.

On appeal, the court of appeals held that the EAJA standard to recover litigation costs from the United States had been met by the plaintiff. The court held that the Social Security Administration's total reliance upon the Administrative Law Judge's application of a subjective pain evaluation test was not substantially justified.

*Hill v. Department of Air Force*, 844 F.2d 1407

On appeal, defendant-appellant argues that the district court erred in granting appellee's motion for a preliminary injunction ordering appellant to restore appellee's security clearance and prohibiting appellant from releasing information on appellee's suitability for a security clearance.

The panel concluded that the district court improperly based its jurisdiction on constitutional grounds and evaluated the merits of the appellant's actions with respect to appellee's security clearance on those grounds. Based on *Dep't of the Navy v. Egan*, 108 S. Ct. 818 (1988), federal courts have no authority to review the merits of the grant or denial of security clearances; instead, these matters are within the discretion of the appropriate agency of the Executive Branch.

The panel found that the court did have general jurisdiction to review whether agency procedures were followed, but had no power to order a reinstatement of appellee's clearance or to grant the additional relief contained in the preliminary injunction granted to appellee. Moreover, the panel held that a further review of the procedures followed in suspending appellee's clearance and of the agency's refusal to continue to adjudicate the matter following appellee's removal for misconduct is unnecessary and inappropriate. The case is remanded to the district court with instructions to dissolve the preliminary injunction.

*Johansen v. The City of Bartlesville*, 862 F.2d 1423

Appellants appeal the dismissal of their civil rights claims brought under 42 U.S.C. § § 1983 and 1985(3). Appellants in district court alleged violation of rights to due process and equal protection due to inadequate notice of a meeting at which a rezoning settlement agreement was approved by less than the super majority vote required by statute. After the district court dismissed the case below, appellants were given adequate notice of and attended a meeting at which the rezoning of the property was approved by the requisite super majority vote. Subsequent to that meeting, the Oklahoma Court of Appeals invalidated the zoning change due in part to insufficient notice of the initial meeting. Addressing the issue of mootness, the Tenth Circuit held that appellants' claims fail to survive the test of mootness since this is not a class action and appellants fail to meet the two-part test of (1) a challenged action of duration too short to permit full litigation and (2) that there be a reasonable expectation that the same party will again be subjected to the same action. Here, there was full litigation of all matters and the court found nothing in the record to indicate that appellants had any reasonable expectation of a recurring controversy to which they would be parties.

The court also held that appellants were not entitled to punitive damages because they failed to meet the Rule 12(b)(6) threshold test of proving any facts to support a section 1983 claim entitling them to relief. Appellants' mere allegations of due process and equal protection violations are not sufficient to substantiate the required evil motive or intent or reckless indifference that underlie punitive damages.

Vacated and remanded for dismissal on mootness.

*Mustang Energy Corp. v. Federal Energy Regulatory Comm'n. (FERC)*, 859 F.2d 1447

Appellant Mustang petitions for review of orders of the FERC establishing "fair and equitable" rates for the transportation of natural gas. At issue is the FERC's determination of "fair and equitable" rates for intrastate transportation service. Affirmed in part, modified in part.

Mustang is an intrastate pipeline, transporting natural gas in Oklahoma. In 1981, Mustang entered into a Transportation Agreement with El Paso Natural Gas Company. The agreement provided for the initial transportation rate to be charged, and for any subsequent rate changes to be submitted to the FERC for approval. The agreement also included a "minimum bill" provision, whereby El Paso was required to pay for the transportation of a "minimum daily quantity" whether or not that volume was actually transported. On September 30, 1982, and again on May 23, 1983, Mustang filed a petition for approval of transportation rate increases. Both increases were collected from El Paso, subject to refund upon any disapproval by the FERC at the rate review proceedings. On June 4, 1985, the FERC issued an order setting fair and equitable rates to be charged by Mustang which were below those

requested. In addition, the FERC invalidated the minimum bill provision and ordered Mustang to make refund payments to El Paso.

Mustang appealed, alleging that (1) the rates approved by the FERC were not fair and equitable, (2) elimination of the minimum bill provision was not fair and equitable, (3) the FERC applied an improper methodology in reaching a fair and equitable transportation rate, (4) the refund was improperly ordered, and (5) the FERC's procedures denied Mustang due process of law. The court determined that under the statute, the transportation rate is fair and equitable if it is initially constructed to recover costs and allow for a profit. The risk of financial losses resulting from any variance from design projections and underutilization must be upon the intrastate pipeline. Accordingly, the rate ordered by the FERC was fair and equitable. FERC's use of actual cost data was also determined to be a proper methodology for determining transportation rates. However, the FERC's selective use of the actual cost data was deemed arbitrary and as a result the case is remanded.

*Republic Airlines v. United States Dep't of Transportation*, 849 F.2d 1315

Plaintiff airlines are seeking to overturn a decision by the Civil Aeronautics Board (CAB) refusing to apply recaptured subsidy overpayments for 1982-83 to their unmet "need" requirements of Federal Aviation Act section 406(b), (which provided federal subsidies to airlines flying unprofitable routes). The airlines would have to refund any tax subsidies paid which were in excess of actual liabilities at year's end. Plaintiffs are seeking to have such refunds applied against unmet need created by congressional appropriation limitations.

As part of the process of airline deregulation, Congress substantially amended and then terminated the airline subsidy program, limiting in the process the CAB's authority to pay subsidies for 1982 and prohibiting subsidies for fiscal 1983. The Tenth Circuit held that the CAB's refusal to apply overpayment refunds to unmet "need" of section 406(b) was in accord with law, and not an arbitrary or capricious abuse of discretion.

*Sierra Club v. Hodel*, 848 F.2d 1068

A Utah County planned to widen a road to accommodate more traffic through scenic wilderness and park lands. The Sierra Club sued the Secretary of the United States Department of the Interior, the Bureau of Land Management (BLM) and the county for an injunction, asserting that: (1) the county's proposed improvement would extend the roadway beyond the existing right-of-way; (2) such extension would encroach on federal land without the approval of the BLM as required; (3) the improvements will degrade the adjacent wilderness; and (4) the BLM violated the National Environmental Policy Act of 1969 (NEPA) by failing to study the environmental impact of the construction. The district court enjoined the county's project pending trial, after which it authorized the construction. The court found that all but a portion of the con-

struction would not extend beyond the present right-of-way. For the portion extending beyond, the court required that the county seek a Federal Land Policy Management Act (FLPMA) permit. Furthermore, the court ordered the BLM to conduct studies in order to locate and preserve plant life and archaeological sites. The court denied county's request for damages resulting from construction delays. Both sides appealed.

The Tenth Circuit addressed the following jurisdictional issues: (1) whether BLM's refusal to act under FLPMA was committed to agency discretion and therefore exempt from judicial review and (2) whether or not the Sierra Club has rights of action against BLM and the county. The court also addressed the following issues: (1) whether and to what extent the county's plans fall within the existing right-of-way; (2) whether and to what extent the plans affect adjacent wilderness areas; (3) whether and to what extent major federal action as defined in NEPA is involved by BLM's activities or responsibilities under FLPMA; and (4) whether and to what extent BLM must conduct further environmental studies under NEPA. Last, the court addressed the validity of the district court's decision to: (1) order the county to apply for a permit to relocate part of the road; (2) make the BLM conduct an inventory of plant life along the trail; and (3) deny the county damages of the construction delays.

On the jurisdictional issues, the court held that Congress has provided applicable law in the form of standards imposed on BLM via FLPMA and therefore BLM's refusal to act is judicially reviewable; and Plaintiff may sue BLM under section 702 of the Administrative Procedure Act which permits actions against an agency even when no implied right of action exists and Plaintiff may also sue the county since under F.R.C.P. 19 the county would have been joined anyway as a third-party defendant. Regarding the issues pertaining to the merits of the case, the court held that: (1) the county's plans fell within the parameters of the existing right-of-way; (2) unless the BLM moves for reconsideration based on a showing of the road's degradation of adjacent wilderness areas, the district court's order will stand; (3) major federal action as defined in NEPA is involved by BLM's activities under FLPMA and that BLM has the duty to determine if there are less degrading alternatives and impose them if so; and (4) that BLM on remand must issue an environmental assessment and either a finding of no significant impact or an environmental impact statement. Regarding the denial of damages, the Tenth Circuit held that Sierra Club's claims had high public interest and were litigated in good faith, thus making the denial of damages within the district court's discretion.

*Texaco Producing Co. v. Hodel*, 840 F.2d 776

Appellant Texaco appeals a district court order upholding a decision by the Interior Board of Land Appeals to vacate a prior approval to drill in a national forest. Affirmed.

In affirming, the court of appeals noted that a failure to consider a "no action" alternative in the original environmental impact statement warranted the preparation of a supplemental environmental impact statement.

*Torix v. Ball Corporation*, 862 F.2d 1428

Appellant applied for, and was denied, disability benefits under a pension plan organized by appellee corporation under the provisions of the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461 (1982). After administrative review of the denial, appellant filed this action. The district court granted judgment for the appellees, finding that appellant failed to sustain his burden of showing that the Plan's Pension and Insurance Committee had proceeded improperly.

On appeal, the panel followed the reasoning of the Eleventh Circuit as expressed in *Helms v. Monsanto Co.*, 728 F.2d 1416 (11th Cir. 1984), and held that a reasonable interpretation of a claimant's entitlement to payment based on a claim of "total disability" must consider the claimant's ability to pursue gainful employment in light of all the circumstances. The panel instructed that the standard to be applied will require the claimant to establish a physical inability to follow any occupation from which the claimant can earn a reasonable income. Although the income may be less than the amount earned prior to the disability, the panel specified that the earnings possible must rise to the dignity of a livelihood. The panel stated that if appellant meets this burden, he may not be denied recovery based on overly restrictive interpretation of the plan's language. Because the committee may have used an unduly restrictive interpretation of the plan's provisions to deny an award of benefits, the panel reversed and remanded the case for a new trial.

*Twin Pines Coal Company v. United States Department of Labor*, 854 F.2d 1212

In this appeal the Twin Pines Coal Company (Twin Pines) challenges the Benefits Review Board's decision affirming the grant of Black Lung Benefits to Charles L. White, an employee.

Twin Pines was assessed liability for black lung benefits by the Department of Labor. They challenge on four grounds: First, because White already receives total disability benefits from the Social Security Administration and the State of Colorado, he cannot also receive total disability benefits under the black lung program. Second, the interim regulations under which White was awarded benefits had expired and were thus improperly invoked by the Administrative Law Judge (ALJ). Third, the interim presumption was improperly invoked on the basis of a doctor's study of White. Finally, the determination that White is totally disabled due to pneumoconiosis is not supported by medical evidence.



The Tenth Circuit held that the ALJ failed to consider adequately the doctor's opinion. Moreover, the court held that miners who are disabled due to pneumoconiosis whether or not they are disabled from a different cause may still claim benefits.

The court rejected the argument that the case was wrongfully adjudicated because the ALJ applied the interim regulations, rather than the final regulations. The court held that the requirement that final regulations be published within six months does not require that the final regulations become effective six months after the passage of amendments. The court concluded that the ALJ failed to consider the doctor's opinion before determining whether invocation of the interim regulations based on the qualifying ventilatory study was proper. The court remanded the case to the Benefits Review Board.

