

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LASHAWNDA WILLIAMS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 05-2580  
 )  
 DEPARTMENT OF HEALTH, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on September 30, 2005, at sites in Tallahassee and Miami, Florida.

APPEARANCES

For Petitioner: Lashawnda Williams, pro se  
6100 Southwest 68th Street  
South Miami, Florida 33143

For Respondent: Stephen W. Foxwell, Esquire  
Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1703

STATEMENT OF THE ISSUE

The dispute in this case arises out of Respondent's attempt to collect alleged salary overpayments from Petitioner, a former state employee who allegedly continued to be paid wages after resigning her position with Respondent.

PRELIMINARY STATEMENT

By letter dated May 24, 2005, Respondent Department of Health ("Department") notified Petitioner Lashawnda Williams ("Williams") of its contention that, after resigning from her position of employment with the Department, Williams had continued to receive salary payments from the Department as if she were still working there, in consequence of an administrative mistake on the Department's part. The Department demanded that Williams repay \$8,345.09—the alleged "total net amount of the [alleged] overpayment." The Department informed Williams that she could request an administrative hearing if she contested the Department's decision to collect from her the amount indicated.

Williams timely requested a formal hearing, and on July 15, 2005, the Department referred the matter to the Division of Administrative Hearings ("DOAH"), where an Administrative Law Judge ("ALJ") was assigned to conduct a formal hearing.

The hearing took place on September 30, 2005, as scheduled, with both parties present. The Department called two witnesses: Nereida Pena and Emily Kirkland. It also proffered seven Respondent's Exhibits, numbered 3, and 5-10, which were received in evidence. Williams testified on her own behalf and offered Petitioner's Exhibit 2, which was admitted into evidence.

At hearing, the undersigned asked the parties whether the Department has jurisdiction administratively to enforce a claim for "money had and received" against a former employee. No satisfactory answer was given. The undersigned invited the parties to address the issue in their respective Proposed Recommended Orders. Neither did.

The final hearing was recorded but not transcribed. Proposed Recommended Orders were due on October 31, 2005. The Department filed one but Williams did not. The Department's Proposed Recommended Order was considered.

Unless otherwise indicated, citations to the Florida Statutes refer to the 2005 Florida Statutes.

#### FINDINGS OF FACT

1. Having determined, for the reasons set forth below, that the Department lacks subject matter jurisdiction to adjudicate the instant claim for "money had and received" against its former employee, the undersigned declines to make findings of fact, as such would be a nullity.

#### CONCLUSIONS OF LAW

2. When asked at hearing whether the instant action is subject to administrative adjudication, the Department's counsel responded that Williams was entitled to a formal hearing under Sections 120.569 and 120.57, Florida Statutes, because the Department intended to determine her substantial interests, and

Williams had disputed facts material to the determination. By assuming, however, that the Department has the authority to determine the monetary interest at stake here—which authority, needless to say, is at the heart of the jurisdictional question—this answer merely begged the question.

3. It is axiomatic that the only subjects which "an agency may hear and determine [are those] within the framework of the powers conferred upon the agency." Vincent J. Fasano, Inc. v. School Bd. of Palm Beach, County, Fla., 436 So. 2d 201, 203 (Fla. 4th DCA 1983). In Fasano, the court, observing that contractual disputes are traditionally resolved in actions at law, held that a claim for "breach of contract is ordinarily a matter for judicial rather than administrative or quasi-judicial consideration." Id. at 202-03. The court found further that the agency in question, a district school board, possessed no authority to adjudicate claims arising under contracts for goods or services to which it was a party. Id. at 203. Thus, the court held that the final order under review—wherein the school board had refused to award damages to a contractor seeking recovery on a construction contract—was a "nullity" and "of no force and effect," leaving the contractor "at liberty to pursue his cause of action in the appropriate judicial forum." Id.

4. In the instant case, the Department's claim against Williams is indistinguishable in every respect from the common

law cause of action known as "money had and received." This "quasi-equitable" remedy at law exists to permit the recovery of "money erroneously paid [to] or received by a defendant when to permit the defendant to keep the money would unjustly deprive the plaintiff of his ownership of the money." Sharp v. Bowling, 511 So. 2d 363, 364-65 (Fla. 5th DCA 1987). An action for "money had and received" lies, among many other situations, when an employer mistakenly overpays an employee. See Watson Clinic, LLP v. Verzosa, 816 So. 2d 832, 834 (Fla. 2d DCA 2002)(Doctor whose employer had paid him double salary was required to disgorge the windfall because "[o]ne who mistakenly receives money must return it to its owner unless the recipient can assert some legal or equitable claim to the money.").

5. The parties have not cited, and undersigned is not aware of, any law authorizing the Department to adjudicate its own claim against a former employee for "money had and received." Like the breach of contract claim at issue in Fasano, the dispute over money here is of the kind traditionally settled in the state courts, where the agency as a creditor would be treated as any other citizen. There being no known legal warrant for the Department to decide the instant claim, it follows that, as in Fasano, any administrative decision on the merits of this matter would be void for want of jurisdiction.

6. To be sure, the First District Court of Appeal once in a dictum expressed its belief that, where a state employee contests the decision of her agency employer to recover salary overpayments resulting from an administrative or clerical error, she properly should be afforded an administrative hearing. See Department of Corrections v. Career Service Com'n, 429 So. 2d 1244, 1246 (Fla. 1st 1983)("Kelly").<sup>1</sup> But even if the Kelly dictum were good law (as perhaps it is), that case is plainly distinguishable from this one because unlike Williams, the state employee in Kelly had received the alleged salary overpayments while she was employed by the state.<sup>2</sup>

7. The significance of this distinction can be seen by supposing that the Department were inadvertently to transfer funds into the bank account of "John Doe," a man who is not, and never was, a state employee. While the Department properly could ask Mr. Doe to return the money, the agency could not enter a legally effective final order requiring him to do so, because no law (known or cited to the undersigned, at any rate) grants the Department general jurisdiction to award itself the equivalent of a money judgment against a private citizen with whom it has no consensual or regulatory relationship. The Department's recourse, like anyone else's in that situation, would be to sue the recipient of the windfall in circuit court,

where claims for "money had and received," unjust enrichment, restitution, and the like are traditionally heard and decided.

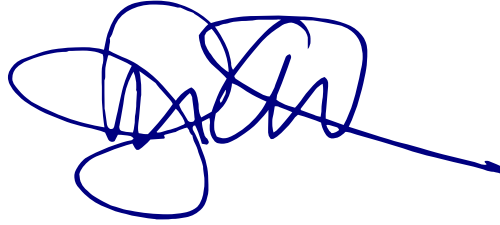
8. Williams, who never received an alleged overpayment until after leaving her job with the Department, is analogous to the hypothetical Mr. Doe. The only difference between them is her status as a former state employee. But this fact, which underscores the absence of a legal relationship between the Department and Williams at the time of the alleged overpayments, is relevant only insofar as it helps explain how the Department erroneously gave Williams money; it provides no jurisdictional leverage and is, therefore, an immaterial distinction.<sup>3</sup>

9. It is concluded that the Department lacks jurisdiction to enter a final order requiring Williams to repay funds which she allegedly received from the Department, in consequence of a mistake, at times when she was not employed by the Department.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department enter a final order dismissing this administrative proceeding for lack of subject matter jurisdiction.

DONE AND ENTERED this 4th day of November, 2005, in  
Tallahassee, Leon County, Florida.



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JOHN G. VAN LANINGHAM  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 4th day of November, 2005.

ENDNOTES

<sup>1/</sup> The court held in Kelly that the Career Service Commission did not have jurisdiction to adjudicate a dispute arising from a state agency's attempt to recover salary overpayments from an existing employee named Kelly. Id. The court's suggestion that Ms. Kelly seek redress "by way of a 120.57 proceeding" was in no way essential to its holding.

<sup>2/</sup> In fact, not only had Ms. Kelly been a state employee when she received the alleged salary overpayments, but also she had remained an employee of the state throughout the litigation stemming from the state's attempt to recoup the disputed payments. In other words, at all relevant times Ms. Kelly had continued in a consensual relationship with the state, pursuant to which she arguably had consented to the administrative resolution of grievances relating to wages. Thus, the circumstances there presented the strongest possible case—albeit not, in the undersigned's opinion, an airtight one—for supposing the availability of an administrative remedy.



<sup>3/</sup> Boyd v. Department of Children and Family Services, DOAH Case No. 03-4286, 2004 WL 440840 (Fla.Div.Admin.Hrgs. Mar. 5, 2004), is somewhat analogous to this one. There, a state agency sought to recover alleged salary overpayments made to a former employee who disputed the state's claim. Some of the alleged overpayments had been made during the former employee's tenure with the state, and some were the result of wages having been paid to her after the state had terminated her employment. The matter was referred to DOAH for a formal hearing.

The ALJ who heard the case apparently grounded administrative jurisdiction in § 17.04, Fla. Stat., which prescribes the powers and duties of the Chief Financial Officer ("CFO") in connection with the auditing and adjustment of the accounts of state officers and others indebted to the state. That statute authorizes the CFO to bring and prosecute "proceedings, criminal or civil, at law or in equity, against such persons [who fail to satisfy debts payable to the state], according to law." Id. It says nothing about administrative proceedings.

The undersigned finds no support in § 17.04, Fla. Stat., for administrative jurisdiction in the instant case. To the extent Boyd suggests otherwise, the undersigned is not persuaded and must respectfully disagree therewith.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.