

[Cite as *Baddour v. Rehab. Servs. Comm.*, 2004-Ohio-5440.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT BADDOUR :  
Plaintiff : CASE NO. 2002-04712  
v. : Judge Joseph T. Clark  
: Holly True Shaver, Magistrate  
REHABILITATION SERVICES : JUDGMENT ENTRY  
COMMISSION :  
Defendant :  
:.....

{¶ 1} This case was tried to a magistrate of the court. On July 12, 2004, the magistrate issued a decision recommending judgment for defendant.

{¶ 2} Civ.R. 53(E)(3)(a) provides in relevant part: “A party may file written objections to the magistrate’s decision within 14 days of the filing of a decision \*\*\*.” On July 27, 2004, plaintiff filed objections to the magistrate’s decision. On August 10, 2004, defendant filed both a motion to strike plaintiff’s objections for not being timely filed and a response to the objections. On August 23, 2004, plaintiff filed a brief in opposition to defendant’s motion to strike.

{¶ 3} Defendant argues that plaintiff filed his objections beyond the 14 days allotted by Civ.R. 53(E)(3). Upon review, the court finds that plaintiff’s objections were filed one day late. However, in the interest of justice this court will consider plaintiff’s objections. Therefore, defendant’s August 10, 2004, motion to strike plaintiff’s objections is DENIED.

{¶ 4} Plaintiff failed to state with particularity the grounds of the objections as required by Civ.R. 53(E)(3)(b). However, the court is able to discern three basic objections from plaintiff’s memorandum. The first two objections challenge factual findings made by the magistrate in support of the conclusions concerning plaintiff’s claims. However, Civ.R. 53(E)(3)(c) reads, in pertinent part: “\*\*\* Any objection to a finding of fact shall be supported by a transcript of all the evidence

submitted to the magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available. \*\*\*”

{¶ 5} Plaintiff has not filed a transcript of the proceedings in this case or an affidavit of that evidence in support of the objections as required by Civ.R. 53(E)(3)(c). Absent a transcript of proceedings in this case, the court is unable to conduct an independent review of the evidence in ruling upon the merits of plaintiff’s objections. See *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730 1995-Ohio-272; *Wade v. Wade* (1996), 113 Ohio App.3d 414, 418-419; *Ohio Edison Co. v. Gilmore* (1995), 106 Ohio App.3d 6, 10-11. Inasmuch as plaintiff has the burden under Civ.R. 53 of providing the court with evidentiary support for his objections, plaintiff’s first two objections are OVERRULED.

{¶ 6} In plaintiff’s third objection, plaintiff alleges that the magistrate erred in concluding that plaintiff had asserted a claim for relief under the Americans with Disabilities Act and then holding that this court did not have subject matter jurisdiction over plaintiff’s claim. However, upon review of plaintiff’s complaint and the magistrate’s decision it is clear that plaintiff has asserted a claim based upon an unfair labor practice. Additionally, it has been held that the State Employment Relations Board has exclusive jurisdiction to hear unfair labor practice disputes against state employers pursuant to R.C. 4117. See *State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Franklin Cty. Court of Common Pleas*, 76 Ohio St.3d 287, 1996-Ohio-424, citing *Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police, Capital City Lodge No. 9* (1991), 59 Ohio St.3d 167 at paragraph one of the syllabus. The court finds that the magistrate properly concluded that this court does not have subject matter jurisdiction over unfair labor claims. Therefore, plaintiff’s third objection is OVERRULED.

{¶ 7} Upon review of the record and the magistrate’s decision, the court finds that the magistrate determined the relevant facts, analyzed the issues, and applied the law to the facts. Therefore, the objections are OVERRULED and the court adopts the magistrate’s decision and recommendation as its own, including the findings of fact and conclusions of law contained therein.

Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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JOSEPH T. CLARK  
Judge

Entry cc:

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