

Appendix

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**United States Court of Appeals
for the Fifth Circuit**

United States Court of Appeals
Fifth Circuit

FILED

April 15, 2021

Lyle W. Cayce
Clerk

No. 20-50284

Summary Calendar

Linda Baldwin,

Plaintiff—Appellant,

versus

Office of Injured Employee Counsel,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas USDC
No. 1:19-CV-454

Before Higginbotham, Jones, and Costa, *Circuit Judges.*

Per Curiam:*

Linda Baldwin suffered an injury in 2006 while employed by Extended Stay America as a housekeeping attendant. She applied for workers' compensation benefits and sought assistance in March 2008 from the Office of Injured Employee Counsel (OIEC) Ombudsman Program, a state program

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* Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

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that provides assistance to unrepresented injured employees seeking workers' compensation.¹ In 2012 and 2016, Baldwin participated in contested case hearings before the Texas Department of Insurance Division of Workers' Compensation (DWC). The DWC denied her request for workers' compensation benefits, concluding that she did not sustain a compensable injury. It further determined that her employer's insurance carrier, Zurich American Insurance Company, was not liable for any workers' compensation benefits because Baldwin had failed to timely notify her employer of her injury or timely file a DWC claim.²

Baldwin filed suit against the OIEC, asserting claims under 42 U.S.C. § 1983, Title II of the Americans with Disabilities Act,³ and the Texas Tort Claims Act.⁴ The district court dismissed Baldwin's claims for lack of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), concluding that her claims were barred by sovereign immunity. Baldwin now appeals.

We review a district court's dismissal for lack of subject-matter jurisdiction *de novo*.⁵ Dismissal on this basis is appropriate if the claims asserted are barred by a state's sovereign immunity.⁶

It is undisputed that Baldwin brings her suit against a state agency, the

¹ See Tex. Labor Code Ann. § 404.151(b).

² See *id.* §§ 409.001–004.

³ 42 U.S.C. § 12131 *et seq.*

⁴ Tex. Civ. Prac. & Rem. Code Ann. § 101.021.

⁵ *Meyers ex rel. Benzling v. Texas*, 410 F.3d 236, 240 (5th Cir. 2005).

⁶ *Id.*

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OIEC.⁷ "Federal courts are without jurisdiction over suits against . . . a state

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agency . . . unless that state has waived its sovereign immunity or Congress has clearly abrogated it."⁸ After careful review of the briefs and the record, we agree with the district court that Baldwin fails to plead facts indicating that Texas's sovereign immunity from suit has been either waived or abrogated. Sovereign immunity, therefore, bars her claims, and she cannot establish federal jurisdiction over them.

⁷ See Tex. Labor Code Ann. § 404.002.

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⁸ *Moore v. La. Bd. of Elementary and Secondary Educ.*, 743 F.3d 959, 963 (5th Cir. 2014); see also U.S. CONST. amend. XI.

Appendix

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**United States Court of Appeals
for the Fifth Circuit**

No. 20-50284

LINDA BALDWIN,

Plaintiff—Appellant,

versus

OFFICE OF INJURED EMPLOYEE COUNSEL,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:19-CV-454

ON PETITION FOR REHEARING EN BANC

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service having requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

Appendix C

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LINDA BALDWIN,

Plaintiff,

v.

KENT SULLIVAN, *in his official capacity as the
Commissioner of the Texas Department of Insurance,*
TEXAS DEPARTMENT OF INSURANCE,
DIVISION OF WORKERS'
COMPENSATION; and OFFICE OF
INJURED EMPLOYEE COUNSEL;

Defendants.

1:18-CV-36-RP

ORDER

Plaintiff Linda Baldwin ("Baldwin") filed her Complaint on January 17, 2018. (Dkt. 1). On October 15, 2018, the Court granted motions to dismiss filed by Defendants Kent Sullivan and Texas Department of Insurance Division of Workers' Compensation. (Dkt. 44). At the time, Defendant Office of Injured Employee Counsel ("OIEC")—the only remaining defendant—had not yet been served or otherwise appeared in this action. Accordingly, the Court issued an order to show cause for Plaintiff's failure to timely effectuate service pursuant to Federal Rule of Civil Procedure 4(m). (Dkt. 44, at 12). The Court further warned that failure to do so may result in dismissal of this action against that defendant. (*Id.*).

Baldwin responded to the Court's show cause order on October 24, 2018. (Dkt. 46). There, she clarifies that she only intended to sue Kent Sullivan in his official capacity; she never added the OIEC as a defendant, and including it was a "clerical error." (*Id.* at 1–2, 3). Baldwin explains that including the OIEC was only a reference to Sullivan's job description. (*Id.* at 1–2). Thus, she asks the Court to correct the clerical mistake pursuant to Federal Rule of Civil Procedure 60(a) ("The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is

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found in a judgment, order, or other part of the record.''). Based on this explanation, the Court construes Baldwin's response as a notice of voluntary dismissal against the OIEC under Federal Rule of Civil Procedure 41(a)(1)(A)(i). The OIEC has not been served, nor has it served an answer or a motion for summary judgment.

Accordingly, the Court **ORDERS** that all claims brought by Baldwin against Defendant OIEC in this action be **DISMISSED** without prejudice. *See* FED. R. CIV. P. 41(a)(1)(A)(i).

IT IS FURTHER ORDERED that this case is **CLOSED**; all open motions are **DENIED AS MOOT**.

SIGNED on October 25, 2018.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

Appendix

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LINDA BALDWIN,

Plaintiff,

v.

OFFICE OF INJURED EMPLOYEE
COUNSEL,

Defendant.

1:19-CV-454-RP

ORDER

Before the Court is Plaintiff Linda Baldwin's ("Baldwin") Motion to Vacate Order and Motion to Reopen. (Dkt. 38). Defendant Office of Injured Employee Counsel's ("OIEC") did not respond. On February 18, 2020, the Court granted OIEC's motion to dismiss Baldwin's second amended complaint, (Mot., Dkt. 27; Order, Dkt. 34), and entered final judgment against Baldwin the following day, (Dkt. 35). In its Order granting the motion to dismiss, the Court also ordered Baldwin to show cause "why she should not be barred from filing any further cases in federal court without obtaining prior approval from a federal district or magistrate judge no later than 14 days from the date of her receipt of this Order." (Dkt. 34). Baldwin received that Order on February 24, 2020. (Cert. Mail Receipt, Dkt. 37). Her motion, filed March 4, 2020, asserts that it is also a response to the order to show cause. (Dkt. 38 at 1).

After considering the record—including this and related cases' procedural histories and Baldwin's individual history as a litigant—as well as the facts and the relevant law, the Court denies Baldwin's motion and bars her from filing in this Court without obtaining prior approval from a federal district or magistrate judge.

Baldwin states that she seeks relief under Federal Rule of Civil Procedure 60(a), which governs corrections based on "clerical mistake[s]" or "mistake[s] arising from oversight or

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omission.” (See Mot., Dkt. 38, at 1, 13). But the omissions Baldwin alleges do not fall within the ambit of Rule 60(a). (See Mot., Dkt. 38, at 7–13). The alleged omissions or clerical errors—many of which are actually arguments that the Court incorrectly ruled against Baldwin—are on the whole illusory. Consequently, none have “cause[d] the judgment to inaccurately reflect the results of the court’s adjudication,” which could justify an amended judgment under Rule 60(a). *Rivera v. PNS Stern, Inc.*, 647 F.3d 188, 191 (5th Cir. 2011). Rule 60(b) allows for only “a specific and very limited type of relief”: when “the judgment simply has not accurately reflected the way in which the rights and obligations of the parties have in fact been adjudicated.” *Id.* at 192 (quoting *In re TransTexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002); *In re Frigimip Corp.*, 781 F.2d 324, 327 (2d Cir. 1986)). “Clerical mistakes, inaccuracies of transcription, inadvertent omissions, and errors in mathematical calculation are within Rule 60(a)’s scope; missteps involving substantive legal reasoning are not.” *Id.* at 194. Baldwin therefore cannot obtain this form of relief.

Not can Baldwin obtain a more general relief of reconsideration or vacating the final judgment. To the extent that this is the form of relief she requests, “the Federal Rules of Civil Procedure do not recognize a general motion for reconsideration.” *St. Paul Mercury Ins. Co. v. Fair Grounds Corp.*, 123 F.3d 336, 339 (5th Cir. 1997). A motion made under Rule 59(e)—that is, one requesting a new trial or for the court to alter or amend its judgment—“is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment.” *Temple v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004). Instead, it serves “the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence.” *Id.* (quoting *Waltman v. Int’l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989)). Courts must consider the tension between “the need to bring litigation to an end” and “the need to render just decisions on the basis of all the facts.” *Id.* The Fifth Circuit has cautioned that

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"[r]econsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly." *Id.*

Here, there is no meaningful difference between Baldwin's claims in this case at the time the Court granted OIEC's motion to dismiss and her claims as she describes them now. The reasoning in the Court's Order, (Dkt. 34) applies with equal force here. Baldwin's motion does not present any "manifest errors of law or fact" or "newly discovered evidence." *Temple*, 367 F.3d at 479. She has not met the high threshold necessary to vacate the judgment.

Additionally, the Court concludes that Baldwin has not shown adequate cause "why she should not be barred from filing any further cases in federal court without obtaining prior approval from a federal district or magistrate judge." (Dkt. 34 at 12). The Court has repeatedly and expressly warned Baldwin that continuing to file frivolous, vexatious, harassing, or duplicative cases would lead to sanctions or a pre-filing injunction. (*Id.* at 11). As the Court previously stated, "[u]nless Baldwin can show cause otherwise, an injunction is wholly appropriate here." (*Id.*).

Accordingly, **IT IS ORDERED** that Baldwin's Motion to Vacate Order and Motion to Reopen, (Dkt. 38), is **DENIED**.

IT IS FURTHER ORDERED that Baldwin is **BARRED FROM FILING** complaints, removing cases, or otherwise hindering litigation in the Western District of Texas without obtaining prior approval from a federal district or magistrate judge in the District. Baldwin may not file anything further in this case except, if she chooses, a notice of appeal.

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IT IS FINALLY ORDERED that the Clerk's Office mail a copy of this Order to Baldwin
via certified mail at her provided address: 3629 Cedar town Street, Las Vegas, NV 89129.

SIGNED on March 24, 2020.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

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Appendix E

Disp Parties: _____
Disp code: CVD/CLS _____
Redirect page: _____
Judge: RGH Clerk: BWT

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CAUSE NO. D-1-GN-13-001281

LINDA BALDWIN,

Plaintiff,

vs.

ZURICH AMERICAN INSURANCE
COMPANY,

Defendant.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

Filed in The District Court
at Travis County, Texas

JUL 17 2013 DS

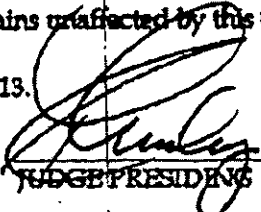
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Annelis Rodriguez-Mendoza, Clerk

**ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY
JUDGMENT ON THE AFFIRMATIVE DEFENSE OF RES JUDICATA**

CAME ON for consideration Defendants Zurich American Insurance Company's Motion for Partial Summary Judgment on the Affirmative Defense of Res Judicata. The Court having considered such matters; evidence presented; the documents, pleadings, and motions on file with the Court in *Linda Baldwin v. Zurich American Insurance Company*, Cause No. D-1-GN-12-003139 in the District Court of Travis County, Texas, 353rd Judicial District; and Plaintiff's response, evidence, and arguments in opposition, if any, enters the following order:

It is ORDERED, ADJUDGED AND DECREED that Defendant Zurich American Insurance Company's Motion for Partial Summary Judgment on the Affirmative Defense of Res Judicata should be, and hereby is, GRANTED as to all claims, except for the appeal of Ms. Baldwin's worker's compensation claims from the Texas Department of Insurance, Division of Workers Compensation, which remains unaffected by this Order.

SIGNED this 17 day of July, 2013.


JUDGE PRESIDING

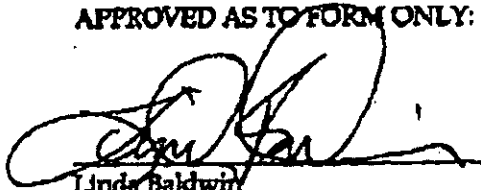
Order

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APPROVED AS TO FORM ONLY:



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