

Exhibit

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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

* Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.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

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.

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.

Exhibit

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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.

Exhibit

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MTC-UC Centennial - Urgent Care

7061 Grand Montecito Pkwy
Las Vegas, NV 89149
(702) 750-3633

Patient: BALDWIN, LINDA

4325 W Rome Blvd
Apt 1184
North Las Vegas, NV 890845409

Age/Sex/DOB: 66 yrs F 09-Jan-1955

EMRN: 26420710

OMRN: 26420710

Home: (512) 779-0483

Work:

Results

Lab Accession # LV464645P

Ordering Provider: Devera, Ori

Performing Location: QUEST DIAGNOSTICS - LAS VEGAS
ELIZABETH D IOLE, MD, 4230 BURNHAM AVE
LAS VEGAS, NV 89119-5408

Collected: 8/16/2021 7:05:00AM

Resulted: 8/16/2021 9:00:00PM

Verified By: Devera, Ori

Auto Verify: N

* COVID - 19 39448 / Q39448

null

Stage: Final

Test

SARS CoV 2 RNA

Result

DETECTED

Units

Flag Reference Range

A NOT DETECTED