

COMMONWEALTH OF PENNSYLVANIA

GEORGE DALIE : BEFORE THE BOARD OF CLAIMS  
 :  
VS. :  
 :  
COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF CORRECTIONS : DOCKET NO. 4150

---

**OPINION**

On August 31, 2016, Plaintiff George Dalie (“Dalie”), a prisoner currently incarcerated at the State Correctional Institution (S.C.I. Greene), filed a Statement of Claim (“Complaint”) against Commonwealth of Pennsylvania, Department of Corrections (“DOC”).<sup>1</sup> Mr. Dalie also filed a request for leave to proceed in forma pauperis in lieu of paying the filing fee.

Mr. Dalie’s petition to proceed in forma pauperis is filed pursuant to Rule 240 of the Pennsylvania Rules of Civil Procedure, which sets forth the standards under which a court may grant an indigent individual the opportunity to proceed with an action without payment of the usual costs. However, Rule 240(j)(1) provides, in relevant part, as follows:

If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed in forma pauperis, the court, prior to acting on the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

Pa. R.C.P. 240(j)(1).

---

<sup>1</sup> On August 22, 2016, the Board received a Statement of Claim together with a request for leave to proceed in forma pauperis in lieu of a filing fee from Mr. Dalie. On August 23, 2016, the Board issued a deficiency notice to Mr. Dalie because his claim lacked proper proof of service. On August 29, 2016, Mr. Dalie filed an additional copy of his Statement of Claim, but it still lacked proper proof of service. On August 30, 2016, the Board issued a second deficiency notice to Mr. Dalie regarding the continuing failure to file a proof of service. On August 31, 2016, Mr. Dalie filed a proper proof of service. Accordingly, August 31, 2016 is the filing date for his claim. See 62 Pa. C.S. § 1725(a).

An action is considered “frivolous” if it lacks any basis in law or fact. Robinson v. Pa. Bd. of Prob. & Parole, 582 A.2d 857, 860 (Pa. 1990). An individual seeking to proceed in forma pauperis has the responsibility to present viable causes of action. Conover v. Mikosky, 609 A.2d 558, 560 (Pa. Super. 1992). Rule 240 (j) requires that the Board review the action to determine frivolity prior to addressing the merits of the motion. Ocasio v. Prison Health Servs., 979 A.2d 352, 355 (Pa. Super. 2009). Accordingly, we must examine Plaintiff’s Complaint to determine whether or not it is frivolous.

### **Factual and Procedural Background**

Mr. Dalie is an inmate at a state correctional institution and has brought this claim against the DOC. As we understand his allegations, he alleges that there is a provision of the Administrative Code, 37 Pa. Code Sec. 93.4,<sup>2</sup> which authorizes his friends and family members to purchase commissary items for him from approved outside vendors and that those items can then be shipped directly from the vendor to him Cmpl. ¶ 6. Mr. Dalie alleges that the DOC has entered into contracts with certain outside vendors which give them the “exclusive rights to sell goods and services to prisoners.” Cmpl. ¶ 7. Mr. Dalie alleges this is a change of policy and procedure formerly followed by the DOC under 37 Pa. Code Section 93.4 and said change is caused by the terms of the exclusive contracts the DOC executed with the outside vendors. Cmpl.

---

<sup>2</sup> 37 Pa. Code Section 93.4 provides:

Section 93.4. Purchase for inmates by family and friends

- (a) Family and friends who are on the inmate’s approved visiting list, may purchase approved items for inmates under this section. The facility may disapprove and decline to accept any purchase which does not meet this section.
- (b) Only those items listed on the current Approved Master Commissary List may be purchased from approved vendors. Copies of the list are provided to the inmates. Publications may be purchased by means of this procedure, but shall be subject to section 93.2 (relating to inmate correspondence).
- (c) Purchases shall be approved prior to the time the item is received by the facility.
- (d) Only those items shipped directly from the vendor to the facility will be accepted.
- (e) Unauthorized or disapproved items will be returned to the sender at the expense of the inmate.

¶¶ 7, 9. Under the change in policy and procedure, the DOC now only allows prisoners (and not friends or family members) to make purchases from these outside vendors, and prisoners can only use money for these purchases which is already in their prisoner accounts. Cmpl. ¶ 8. Mr. Dalie next alleges that DOC's change of policy has "unlawfully compelled Plaintiff (and all Commonwealth prisoners), his friends, and family to be parties and adherents to the terms of said contracts/agreements," but at the same time Mr. Dalie avers he has not "knowingly or willingly consented to" the terms of these agreements. Cmpl. ¶¶ 10, 11. Mr. Dalie concludes that the DOC's policy and procedure "implies that there is an existing contract between Plaintiff, his family and friends, the Defendant and the private service providers" and that such implied contract is a contract of adhesion which is not validly formed because it does not contain the necessary contract elements. Cmpl. ¶¶ 12, 13. Mr. Dalie does not attach copies of any alleged vendor contracts to his Complaint and avers all such contracts are in the possession of the DOC. Cmpl. ¶ 14. In his final paragraph, Mr. Dalie states:

#### **IV. CAUSE OF ACTION**

16. The acts and omissions of the Defendant are in violation of Plaintiff's state and federal statutory and constitutional rights.

Cmpl. ¶ 16.

#### **Discussion**

It is well settled that the Board has exclusive jurisdiction over claims for money damages arising out of a contract with a Commonwealth agency. 62 Pa. C.S. § 1724(a).<sup>3</sup> See also,

---

<sup>3</sup> Sec.1724. Jurisdiction

(a) Exclusive jurisdiction.- The board shall have exclusive jurisdiction to arbitrate claims arising from...

(1) A contract entered into by a Commonwealth agency in accordance with this part and filed with the board in accordance with section 1712.1 (relating to contract controversies).

62 Pa. C.S. § 1724(a).

Employers Ins. of Wausau v. DOT, 865 A.2d 825 (Pa. 2005); Hanover Ins. Co. v. State Workers' Ins. Fund, 35 A.3d 849 (Pa. Cmwh. 2012). Further, the Board has jurisdiction to determine whether a contract has been “entered into” for the purpose of invoking its jurisdiction. Shovel Transfer & Storage v. Simpson, 565 A.2d 1153 (Pa. 1989). Additionally, the Board “remains the arbiter of whether a contract exists.” Scientific Games Int’l, Inc. v. Commonwealth, 66 A.3d 740, 756 (Pa. 2013).

In order to determine whether or not the Board has jurisdiction over a cause of action, the focus must be on the nature of the underlying claim. That is to say, does the gravamen of the claim arise from contract or from some other basis such as a violation of statute or regulation. See Dep’t of Pub. Welfare v. Presbyterian Med. Ctr. Of Oakmont, 826 A.2d 34 (Pa. Cmwlth. 2003), appeal granted in part 842 A.2d 915 (Pa. 2003). Many types of claims have been ruled outside the jurisdiction of the Board because they are not claims “arising” from a contract. These include claims for statutory violations<sup>4</sup> as well as claims arising from violations of rules and regulations.<sup>5</sup>

---

<sup>4</sup> See Delaware River Port Authority v. Thornburgh, 493 A.2d 1351, 1354-1355 (Pa. 1985). At issue in Thornburgh was whether the Board of Claims or the Commonwealth Court was the proper forum to hear the action of the Delaware River Port Authority (DRPA) to compel the Commonwealth to build a highway leading to an already-constructed bridge according to the terms of the contract between them. The contract was created under the authority of an interstate compact among Pennsylvania, New Jersey and DRPA. The Supreme Court ruled that jurisdiction over exclusively contractual matters lies in the Board of Claims, but that here the obligation derives from statute rather than from contract and the action is properly entertained by the Commonwealth Court. 493 A.2d at 1355. See also Holloway v. Cohen, 1987 Pa. Commw. LEXIS 2642, \*18 (no Board jurisdiction because dispute over amount owed for SSI benefits arise from statutory rights, not contract); Nason v. Commonwealth, 494 A.2d 499 (Pa. Cmwlth. 1985)(no Board jurisdiction in an action by mentally disabled adult for payment under a welfare statute); Delaware County v. Commonwealth, Dep’t of Public Welfare, 383 A.2d 240, 242 (Pa. Cmwlth. 1978)(no Board jurisdiction because claim arise from obligations under the Public Welfare Code); Finkbiner v. Medical Prof’l Liab. Catastrophe Loss Fund, 546 A.2d 1327 (Pa. Cmwlth. 1988), *aff’d per curiam* 565 A.2d 157 (1989) (court held that because health care provider’s participation in the CAT fund is not consensual, but instead required by statute, there is no mutual consent between the parties and therefore no contractual relationship and no Board of Claims jurisdiction).

<sup>5</sup> See e.g. Pa. Dep’t of Pub. Welfare v. River St. Assocs., 798 A.2d 260 (Pa. Cmwlth. 2002)(no Board of Claims jurisdiction where claims derived from DPW regulations and not from provisions of contract); Yurgosky v. Admin. Office of Pa. Courts, 722 A.2d 631, 634 (Pa. 1998) (transfer of case to the Board refused because no Board jurisdiction over claims for violations of rules of judicial administration); Miller v. Commonwealth, Dep’t of Environmental Resources, 578 A.2d 550 (Pa. Cmwlth. 1990) *app. den.*, 584 A.2d 324 (Pa. 1990) (no Board jurisdiction over claim relating to revocation of an environmental regulatory permit). Dubaskas v. Dep’t of Corrections, BOC Docket 4062,

Mr. Dalie's Complaint asks the Board to determine whether the DOC's current policy and procedures regarding the ability of prisoners and/or their family member to purchase commissary items from outside vendors has violated the Pennsylvania Administrative Code provision he cites or any other of his state or federal statutory and constitutional rights. Cmpl. ¶ 16. Because the gravamen of his Complaint is that the DOC violated some duty it owes to him under a statute regulation or constitutional mandate, the claims made by Mr. Dalie are not within the Board's jurisdiction.

The basis of Board jurisdiction can only stem from claims arising from a contract between a claimant and a Commonwealth agency. 62 Pa. C.S. sec. 1724(a). Because Mr. Dalie presents no cognizable contract claim in his Complaint, the Board has no subject matter jurisdiction over the action.<sup>6</sup> Accordingly, his claim before the Board has no basis in law or fact, and is thus found to be "frivolous" under Rule 240(j). The request for leave to proceed in forma pauperis is denied, and the action is dismissed with prejudice.

---

Op. Mar. 15, 2013 (no Board jurisdiction because claims derived from violation of state regulations regarding pay scale changes).

<sup>6</sup> See Commonwealth, Dep't of Corrections v. Board of Claims, 580 A.2d 923 (Pa. Cmwlth. 1990) (in a case where a prisoner's property was confiscated, the mutual assent necessary for the formation of a contract was absent and the Board of Claims was without jurisdiction over the prisoner's claim because there was no contractual relationship with the Department of Corrections).

**ORDER**

**AND NOW**, this 13<sup>th</sup> day of September 2016, upon consideration of the Request for Leave to Proceed In Forma Pauperis filed by Plaintiff George Dalie and review of the Complaint accompanying the request, it is hereby **ORDERED** and **DECREED** that the Request is **DENIED** and the Complaint is **DISMISSED WITH PREJUDICE** under Rule 240(j) of the Pennsylvania Rules of Civil Procedure.

BOARD OF CLAIMS

ORDER SIGNED

\_\_\_\_\_  
Jeffrey F. Smith  
Chief Administrative Judge