

IN THE COURT OF COMMON PLEAS OF VENANGO COUNTY,  
PENNSYLVANIA

JOSEPH VANCE,	:	CIVIL DIVISION
Plaintiff,	:	
	:	No. 273-2009
v.	:	
	:	
VISIONQUEST NATIONAL, LTD.,	:	
Defendant.	:	

**OPINION OF COURT**

Before the Court for consideration is the Motion for Protective Order to Prohibit Pre-Complaint Discovery filed on behalf of the Defendant, VisionQuest National, Ltd. Argument was heard on said Motion, at which time both parties were represented by counsel. Based upon the arguments of counsel, briefs of the parties and the record, the Court enters the following Opinion of Court.

The Plaintiff initiated the instant action by filing a Praecipe for Writ of Summons on March 5, 2009. Thereafter, a Notice of Service of First Set of Interrogatories and Requests for Production of Documents Directed to Defendant was filed on behalf of the Plaintiff on April 9, 2009. In response thereto, the Defendant filed the instant Motion for Protective Order to Prohibit Pre-Complaint Discovery and a Praecipe for Rule to File Complaint on April 27, 2009.

Attached to the Defendant's Motion are the discovery requests filed on behalf of the Plaintiff. Said requests set forth in an Introductory Statement the following:

"Pursuant to the Pennsylvania Rules of Civil Procedure 4003.8, the above-captioned matter is a Whistle Blower/Wrongful Termination/possible Discrimination claim by the Plaintiff, who was a former employee at VisionQuest...

Plaintiff intends to make claims for wrongful termination, wage, and hour violations, under the Pennsylvania Whistleblower Law and such other claims arising from his termination.

Specifically, the Plaintiff is seeking information to prepare a Complaint in this matter to establish his wrongful termination, which occurred in November 2008. Plaintiff seeks information, including information from his personnel file, documented markings, performance evaluations, and such other specific information as is mentioned in the herein discovery requests for the purposes of obtaining discovery in this case.

Plaintiff certifies that the information herein is material and necessary to the filing of the Complaint and the discovery will not cause unreasonable annoyance, embarrassment, oppression, burden or expense as to the Defendant, as contemplated by Pa. R.C.P. 4003.8(a).

The discovery in this matter will materially advance the preparation of the Complaint, as Plaintiff does not have access to the requested information and such information is necessary and pertinent to allegations of wrongful termination and violations of the Pennsylvania Whistleblower Law, 43 P.S. §1421 et seq.

The Introductory Statement is followed by seventeen (17) Interrogatories seeking information regarding, *inter alia*, the identity of all witnesses who spoke with the Plaintiff concerning deficiencies in his work performance; copies of all employee benefit plans, employment policies and procedures, etc...; prior age discrimination claims and lawsuits against VisionQuest; information regarding written policies concerning staffing ratios as contemplated by Title 55 of the Pennsylvania Code; and the production of all documentation that refers or relates to the Plaintiff's complaints of staff ratio violations as contemplated by Title 55 of the Pennsylvania Code; and the Plaintiff's complete personnel file.

In its Motion for Protective Order, the Defendant submits that a review of the Plaintiff's "discovery requests reveals that they are no different than standard post-complaint discovery requests. As such this discovery is unwarranted until a Complaint is filed and the pleadings are closed." (Motion for Protective Order ¶5). Citing to the case of McNeil v. Jordan, 894 A.2d 1260, 1278 (2006), the Defendant submits that a plaintiff seeking pre-complaint discovery must meet two requirements: (1) he is required to aver that but for the discovery request, he will be unable to formulate a legally sufficient pleading; and (2) he must describe with reasonable detail the materials sought, and state with particularity probable cause for believing the information will materially advance his pleading. (Motion for Protective Order ¶8). It is the position of the Defendant that the Plaintiff cannot meet these requirements.

In his reply to the Defendant's Motion, the Plaintiff specifically avers that "the request for discovery and pleadings in this matter are expressly required in order to properly prepare Complaints in this case." (Reply ¶5). Additionally, the Plaintiff avers that "the precise reasons and circumstances surrounding his termination are set forth in his personnel file, which the Defendant has refused to produce." (Reply to Motion for Protective Order ¶9).

At argument on the instant Motion, in addition to arguing that the discovery sought by the Plaintiff is not necessary for the filing of a complaint in this matter, the Defendant submitted that it is a private employer and, therefore, is not subject to the Whistleblower Law. More specifically, citing to Krajsa v. Keypunch, Inc., 424 Pa.Super. 230, 622 A.2d 355 (1993), the Defendant asserted that a private entity that receives monies from the government as reimbursement for services rendered is not a public body

within the meaning of the Act. Citing to Denton v. Silver Stream Nursing and Rehabilitation Center, 739 A.2d 571 (1999), the Plaintiff countered that an entity which receives funds from the government, as remuneration or otherwise, falls within the purview of the Act.

The Whistleblower Law as contained in 43 P.S. §1421, et seq., provides in relevant part:

**Section 1423. Protection of Employees**

(a) **Persons not to be discharged.**—No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.

**Section 1422. Definitions**

**"Employee."** A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for a public body.

**"Employer."** A person supervising one or more employees, including the employee in question; a superior of that supervisor; or an agent of a public body.

**"Public Body."** All of the following:

- (1) A State officer, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of State government.
- (2) A county, city, township, regional governing body, council, school district, special district or municipal corporation, or a board, department, commission, council or agency.
- (3) Any other body which is created by Commonwealth or political subdivision authority or which is funded in any amount by or through Commonwealth or political subdivision authority or a member or employee of that body.

In Krasja, supra, an at-will employee brought a wrongful discharge claim against his former employer. In determining whether the Whistleblower Law was applicable to the case, the Pennsylvania Superior Court noted that the "Act's scope is limited to employees discharged from governmental entities or any other body which is created or funded by the government." Krasja, at 240, 622 A.2d at 360. The Court found that where there was no other evidence to suggest that the employer, a private company, was created or funded by a political body, the performance of governmental contracts alone was not sufficient to invoke application of the Whistleblower Law.

Subsequently, in Denton v. Silver Stream, supra, the Superior Court held that a defendant employer that received Medicaid funds through the state qualified as a "public body" for purposes of the Whistleblower Law. The Court specifically rejected the federal district case of Cohen v. Salick Health Care, 772 F.Supp. 1521 (E.D.Pa. 1991), in which it was determined that the statutory language "funded in any amount by or through the Commonwealth" was intended to apply only to funds specifically appropriated by legislative fiat." Id. at 1527. The Denton Court in determining the meaning of the statutory language in question stated:

"[A]n attempt to divine the intent of the legislature by reference to the common understanding of "public body" is not only unnecessary, it also begs the question. Notwithstanding the everyday meaning of "public body," this term was expressly defined by our legislature for purposes of the Whistleblower Law. "Where a statute provides internal definitions, we are bound to construe the statute according to those definitions."

The statute plainly and unequivocally makes any body "funded in any amount by or through Commonwealth ... authority" a public body for purposes of the Whistleblower Law. 43 P.S. §1422. Where the language of a statute is

unambiguous on its face, we are bound to give effect to that language.

The plain meaning of the language of the statute makes it clear that it was intended to apply to all agencies that receive public monies under the administration of the Commonwealth. We do not find that legislatively appropriated funds are the only monies that will create "public body" status under the Whistleblower Law. The statutory language differentiates between appropriated and "pass-through" funds and extends the law to cover both types: "[a]ny other body which is ... funded in any amount by *or through* Commonwealth..." 43 P.S. §1422 (emphasis added). The Law clearly indicates that it is intended to be applied to bodies that receive not only money appropriated *by* the Commonwealth, but also public money that passes *through* the Commonwealth.

Denton v. Silver Stream Nursing and Rehabilitation Center, 739 A.2d 571, 576 – 577 (Pa.Super. 1999) (internal citations omitted).

There is no evidence of record regarding how the Defendant, VisionQuest, is funded. However, this Court's research reveals that the Defendant meets the definition of "public body" as defined by the Act, 43 P.S. §1422, and as interpreted by the Superior Court in Denton v. Silver Stream. The Admissions page of the Defendant's website found at <http://www.vq.com/admissions/admissions.html>, states in relevant part that "[m]ost young people are placed with us through juvenile courts, mental health, or child welfare agencies. In these situations the cost of care is paid by the placing county or state." Based on this statement, this Court finds that the Defendant is funded, at least in part, by public monies passing through the Commonwealth. As such, this Court finds

that the Defendant meets the definition of a "public body" and is, therefore, subject to the Whistleblower Law<sup>1</sup>.

Having found that the Defendant is subject to the Whistleblower Law, and consequently that, as a prior employee of the Defendant, the Plaintiff is entitled to the protections afforded by the Whistleblower Law, we must now determine whether the Plaintiff is entitled to pre-complaint discovery. Pre-complaint discovery is governed by Pennsylvania Rule of Civil Procedure 4003.8 which provides:

- (a) A plaintiff may obtain pre-complaint discovery where the information sought is material and necessary to the filing of the complaint and the discovery will not cause unreasonable annoyance, embarrassment, oppression, burden or expense to any person or party.
- (b) Upon a motion for protective order or other objection to a plaintiff's pre-complaint discovery, the court may require the plaintiff to state with particularity how the discovery will materially advance the preparation of the complaint. In deciding the motion or other objection, the court shall weigh the importance of the discovery request against the burdens imposed on any person or party from whom the discovery is sought.

Pa. R.C.P. 4003.8.

After weighing the importance of the discovery requests against the burden imposed on the Defendant, this Court finds that two (2) of the Plaintiff's pre-complaint discovery requests meets the criteria established by Rule 4003.8. In paragraphs nine (9) and ten (10) of the Plaintiff's First Set of Interrogatories and Requests for Production of Documents, the Plaintiff seeks to obtain information that would be contained within the Plaintiff's personnel file. The information detailed within such file is material and

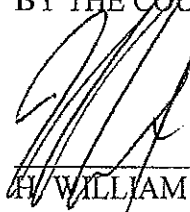
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<sup>1</sup> This finding is based on the limited information available to the Court at this time, and is not to be construed as a final adjudication on the applicability of the Whistleblower Law to the instant matter. This issue may be revisited in a Motion for Summary Judgment or other appropriate motion.

necessary to the preparation of a legally sufficient complaint for violations of the Whistleblower Law and/or claims for wrongful termination and/or discrimination, as this file would contain information directly relating to the termination of Plaintiff's employment, i.e., whether the Plaintiff was discharged because of a report he made to his employer or other authority regarding an instance of wrongdoing or waste. Additionally, the Defendant would not be unduly burdened by such a request as the Plaintiff's personnel file is an existing file which would not require significant time, effort or expense to produce.

The Court will issue an appropriate Order.

BY THE COURT,



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WILLIAM WHITE, Senior Judge  
Specially Presiding

cc: Erin J. McLaughlin, Esquire, (412) 562-1041  
Rolf Louis Patberg, Esquire, (412) 281-8656

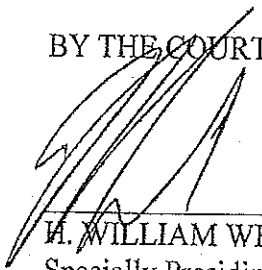
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Defendant.	:	

ORDER OF COURT

AND NOW, July 28<sup>th</sup>, 2009, in accordance with the foregoing Opinion of Court, it is hereby ORDERED and DECREED that the Defendant's Motion for Protective Order to Prohibit Pre-Complaint Discovery is Granted in part and Denied in part. The Motion for Protective Order as to Interrogatories nine (9) and ten (10) is Denied. The Defendant shall have thirty (30) days from the date this Order is filed to provide full and complete responses to Interrogatories nine (9) and ten (10) of the Plaintiff's First Set of Interrogatories and Requests for Production of Documents. The Motion for Protective Order as to Interrogatories one (1) through eight (8) and eleven (11) through seventeen (17) is Granted.

BY THE COURT,




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H. WILLIAM WHITE, Senior Judge  
Specially Presiding

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