

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOURDEAN LORAH,)
)
 Claimant-Appellant,)
)
 v.) C.A. No. 07A-05-001 JRS
)
 DEPARTMENT OF LABOR,)
 DIVISION OF INDUSTRIAL)
 AFFAIRS, and TATNALL SCHOOL,)
)
 Appellee.)

Date Submitted: December 14, 2007

Date Decided: January 31, 2008

*Upon consideration of
Appellee's Motion to Dismiss.*

GRANTED.

ORDER

This 31st day of January, 2008, the Department of Labor, Division of Industrial Affairs (“Department”)¹, having moved to dismiss the appeal filed by Jourdean Lorah (“Ms. Lorah”), it appears to the Court that:

1. On February 28, 2007, Ms. Lorah, a resident of Delaware, filed a charge of discrimination against Tatnall School (“Tatnall”) with the Discrimination Unit of the Department of Labor.

¹ Appellee, Tatnall School, Inc., has filed a joinder in the Department’s motion.

2. Pursuant to 19 *Del. C.* §§ 712(a)(1) and 712(c)(2), the Department investigated the charge and determined that there was no reasonable cause to believe that an unlawful employment practice had occurred. On April 20, 2007, the Department issued Ms. Lorah a No Cause Determination along with a Delaware Right to Sue Notice. According to 19 *Del. C.* §710(12), a “No cause determination” means that the Department completed its investigation, found no unlawful employment practice, and provided Ms. Lorah a Delaware Right to Sue Notice. A Delaware Right to Sue Notice lets Ms. Lorah know that the Department has done all it can do to help her and advises her of her “right to commence a lawsuit in Superior Court” under 19 *Del. C.* § 710(4).

3. Ms. Lorah has appealed the Department’s decision, arguing that the case “was dismissed without an investigation/ or assigned investigator” and that she was denied proper administrative process.² She argues that she has not received an adequate administrative remedy from the Equal Employment Opportunity Commission or the Department of Labor.³ Ms. Lorah asks this Court for a “waiver to sue the State and Tatnall School.”⁴

4. The Department argues that this Court does not have subject matter

² Complaint at ¶ 1.

³ Response to Motion to Dismiss at ¶ 12.

⁴ *Id.* at ¶ 13.

jurisdiction over Ms. Lorah's Appeal pursuant to 29 *Del. C.* §§ 10142(a) and 10161. It also argues that Lorah improperly named the Department as a defendant in her civil rights action. Lastly, the Department argues that the doctrine of sovereign immunity bars Ms. Lorah's claim against the Department.

5. The decision of the Department of Labor is final because it is not appealable under Delaware law. Pursuant to 29 *Del. C.* § 10142(a), a party may appeal an agency decision. According to 29 *Del. C.* § 10161(a), §10142(a), the right to appeal applies only to decisions of the agencies listed in the statute. The Department of Labor is not listed. Pursuant to 29 *Del. C.* § 10161(b), agencies not listed are not subject to appeal under § 10142.

6. Although Ms. Lorah argues that the Department did not fully investigate her charges of discrimination, a No Cause Determination is a final determination which ends the administrative process under 19 *Del. C.* § 710(12). Therefore, Ms. Lorah's dealings with the Department are final with regard to her charge against Tatnall; she is precluded by statute from challenging the Department's decision on appeal.

7. Ms. Lorah asks this Court for a "waiver to sue the state and Tatnall School." While the No Cause Determination and Delaware Right to Sue Notice do not allow Ms. Lorah to sue the Department, they do inform Ms. Lorah of her right to pursue a direct claim (as opposed to an administrative appeal) against Tatnall. Whether or not

such a claim would be viable as a matter of law is a question to be determined on another day.⁵

8. Based on the foregoing, Appellee’s Motion to Dismiss the Appeal is **GRANTED.**

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary

⁵ See 19 Del. C. § 714(b) (“the Delaware Right to Sue Notice shall include authorization for the charging party to bring a civil action under this chapter in Superior Court by instituting suit within 90 days of its receipt . . .”).