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Employment Law

Terminated Employees Can Inspect Records Under Personnel Files Act

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Every now and then an employment law decision will come down the pike that seems to come out of left field, leaving those of us who comment on these things to really scratch our heads. For every head-scratching decision, however, there is almost always one that seems like a no-brainer. That is exactly where the Commonwealth Court's recent decision—*Thomas Jefferson University Hospitals v. Pennsylvania Department of Labor and Industry, Bureau of Labor Law Compliance*, No. 2275 C.D. 2014 (Pa. Commw. Ct. Jan. 6, 2016)—involving the Pennsylvania Personnel Files Act (also known as the Inspection of Employment Records Law) seems to fall—in the no-brainer category.

According to the opinion, Elizabeth Haubrich attempted to avail herself of the little-known law that allows employees to request an opportunity to inspect their own personnel records from their employer. After getting stonewalled by her former employer, Thomas Jefferson University Hospitals (TJUH), Haubrich filed a complaint with the Department of Labor and Industry, Bureau of Labor Law Compliance, based on TJUH's failure and/or refusal to provide her with her records. The department is authorized by the act to enforce its provisions and to order access to the requesting employee's files. Here, the department granted Haubrich's request to inspect her personnel file.

TJUH refused to comply with the department's directive. Determined not to comply and instead engage in expensive litigation (for reasons that are beyond this writer's comprehension), TJUH petitioned the Commonwealth Court for review of the administrative determination by the Department of Labor and Industry.

The Personnel Files Act declares the purpose of the act is to acknowledge the right of both public and private employees to review files held by their employers that contain information about themselves. Under the law, an employer shall, at reasonable times, upon request of an employee, permit that employee to inspect his or her own personnel files used to determine his or her own qualifications for employment, promotion, additional compensation, termination or disciplinary action. Section 1 of the act defines an employee as "any person currently employed, laid off with re-employment rights or on leave of absence. The term 'employee' shall not include applicants for employment or any other person."

At the time of her request, Haubrich was no longer employed by TJUH. According to the Commonwealth Court decision, Haubrich was employed by TJUH until she was fired on Aug. 9, 2013. A week later, Haubrich made a request by and through counsel to inspect her TJUH personnel file. The seminal issue presented to the court by TJUH was whether Haubrich was a "current" employee entitled to protection under the act because she was no longer employed by TJUH at the time of her request.

Despite the law having been around since 1978, there have been few precedential decisions interpreting the act. The one exception was the decision in *Beitman v. Department of Labor and Industry*, 675 A.2d 1300 (Pa. Commw. Ct. 1996), which denied the request of an employee that was made two-and-a-half years after termination. Language in *Beitman* strongly suggested, however, that the court should not "interpret the phrase 'currently employed' in Section 1 of the act so stringently as to prohibit an individual from obtaining his or her personnel file when such request is made contemporaneously with termination or within a reasonable time immediately following termination."

Undeterred by this instructive guidance from the *Beitman* decision, TJUH nevertheless urged the Commonwealth Court to explore the legislative history along with longstanding principles of statutory construction to determine who qualified as a "current" employee. The court, using Merriam-Webster's definition of the term "current," first declared that Haubrich's employment, having terminated one week prior to her request, clearly qualifies as "presently elapsed" employment and/or "most recent" employment, thereby falling within the definition of "current" as well as the meaning of the statute.

Furthermore, the court added, an employee is expressly permitted to inspect one's personnel file to determine the basis for his or her employment termination. Notably, it would not be possible for one to inspect his or her file regarding his or her employment termination while one is currently employed. Again, this harkens back to the no-brainer realm of jurisprudence. In order to avoid an "absurd result," the court held that a recently discharged employee must be included in the definition of employee.

In a last-ditch effort to avoid producing Haubrich's personnel file under the act, TJUH contended that the determination of the Department of Labor and Industry was not supported by substantial evidence, thus her request should be denied. The basis for the contention was a finding of fact stating from the department that "[Haubrich] was employed by [TJUH] until Aug. 9, 2013, at which time she was discharged without advance notice." TJUH took issue with the use of the term "without advance notice," apparently forgetting that its own counsel stipulated that the date of the incident leading to Haubrich's discharge and the discharge itself were the same exact day. Therefore, the court wrote, a reasonable mind could conclude that Haubrich "was discharged without advance notice."

As the lead paragraph suggests, this is a decision that seems to be pretty easy. It is not entirely clear what motives TJUH had for preventing its former employee from getting her hands on her personnel file, or why it would put up such an expensive (unnecessary?) fight. It is not uncommon for employers to sometimes take repugnant legal positions in order to deter other employees from coming forward. The fear of the proverbial floodgates of litigation is alive and well. However, this employer seemed to be motivated by more than fear of the floodgates opening. Whatever its intentions were, there is now a clear legal precedent that will only help employees in their fight to

inspect their personnel records. Perhaps this was one where the employer should have just left it alone. •

Jeffrey Campolongo is the founder of the Law Office of Jeffrey Campolongo, which, for over a decade, has been devoted to counseling employees, working professionals and small businesses in employment discrimination and human resource matters. The law office also counsels aspiring and established artists and entertainers regarding various legal issues arising in the entertainment and media industries.
