

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHWESTERN DIVISION

FILED

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

v.

CASE NO. CV 99-B-1691-NW

CITY OF SHEFFIELD FIRE  
DEPARTMENT, et al.,

Defendants.

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GEORGE WHITNEY LOVE,

Plaintiff,

v.

CASE NO. CV 99-B-2995-NW

CITY OF SHEFFIELD, ALABAMA, et  
al.,

Defendants.

ENTERED

FEB - 6 2001



**MEMORANDUM OPINION AND ORDER**

This case is before the court on the Motion to Dismiss Amended Complaint Against Defendants, Civil Service Board of the City of Sheffield, James Box, Lena Long and John Stonecipher filed on July 10, 2000, in CV 99-B-1691-NW (“July 10, 2000, Motion”), and the Motion to Dismiss Amended Complaint Filed by Plaintiff, George Whitney Love Against Defendants, Civil Service Board of the City of Sheffield, James Box, Lena Long and John Stonecipher filed on September 19, 2000, in CV 99-B-2995-NW (“September 19, 2000, Motion”).<sup>1</sup> The EEOC filed a Complaint on behalf of Michael Kantor, Hoyt Holman, and Terry

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<sup>1</sup> The two Motions are identical in language except for an extra provision in the July 10, 2000, Motion which claimed insufficiency of service of process as grounds for dismissal. However, the EEOC alleges, and defendant does not dispute, that since that Motion was filed, counsel for the Civil Service Board and its members has agreed to accept service on behalf of his

Hall on June 30, 1999, against the City of Sheffield. George Whitney Love (“Love”) also filed a Complaint against the City of Sheffield on November 8, 1999. Both the EEOC and Love amended their Complaints, adding the Civil Service Board of the City of Sheffield (“Civil Service Board”) and the Civil Service Board members, James Box (“Box”), Lena Long (“Long”), and John Stonecipher (“Stonecipher”), in their individual and official capacities, as defendants. Both cases were brought pursuant to the Age Discrimination in Employment Act of 1967, 29 U.S.C. 621 *et seq.* (“ADEA”), alleging that Kantor, Holman, Hall, and Love were denied promotions to the position of Captain in the City of Sheffield Fire Department because of their age. The cases were consolidated pursuant to Fed. R. Civ. P. 42(a) by Order of the court entered on March 20, 2000. The court is of the opinion that the July 10, 2000, Motion is moot and the September 19, 2000, Motion is due to be denied.

The two Motions to Dismiss set out thirteen grounds on which defendants claim that the Amended Complaints should be dismissed. However, in defendants’ submission in support of the Motion to Dismiss, defendants only address those defenses related to the issue of Eleventh Amendment immunity. (*See* Memorandum Brief of Defendants, the Civil Service Board of Sheffield, James Box, Lena Long and John Stonecipher, in Support of Motion to Dismiss (“Defs.’ Br.”).) Defendants contend that (1) the Civil Service Board is a governmental agency created by the State of Alabama, (2) Box, Long, and Stonecipher are governmental agents as appointed members of the Civil Service Board, and (3) under *Kimel v. Florida Bd. of Regents*, 120 S.Ct. 631 (2000), defendants are immune from suit. (*See* July 10, 2000, Motion; September 19, 2000, Motion; Defs.’ Br. at 1-3; Response of Civil Service Board of Sheffield, James Box, Lena Long and John Stonecipher to EEOC’s Responsive Brief (“Defs.’ Reply Br.”) at 1-3.)

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clients by waiver, as provided by Federal Rule of Civil Procedure 4. Thus, any claim that the Amended Complaint should be dismissed for insufficiency of service of process is moot.

The EEOC argues that the Civil Service Board is not an entity entitled to Eleventh Amendment immunity. (Letter brief submitted to the court on November 20, 2000, by Naomi Hilton Archer (“EEOC Letter Br.”) at ¶¶ 8-9.) The EEOC also argues that even if the Civil Service Board and its members are entitled to the protections of the Eleventh Amendment, *Kimel* only bars suits by private individuals and does not set forth any restrictions on a cause of action brought by the United States government, in this instance, the EEOC. (See EEOC Letter Br. at ¶¶ 1-7; see also Response to Motion to Dismiss Filed by Defendants, the Civil Service Board of Sheffield, James Box, Lena Long and John Stonecipher (“EEOC Br.”) at 3-6.)

“The bar of the Eleventh Amendment to suit in federal courts extends to States and state officials in appropriate circumstances, but does not extend to countries and similar municipal corporations.” *Mt. Healthy City School District Bd. of Education v. Doyle*, 429 U.S. 274, 280 (1977) (internal citations omitted), *superseded by statute on other grounds*. In *Kimel*, the Supreme Court held that, although the ADEA contained a clear statement of Congress’ intent to abrogate States’ immunity, the abrogation exceeded Congress’ authority under the enforcement clause of the Fourteenth Amendment. 120 S.Ct. at 639-50. The Supreme Court “[held] only that, in the ADEA, Congress did not validly abrogate the States’ sovereign immunity to suits by private individuals.” *Id.* at 650. Therefore, “the holding in *Kimel* abridges the ADEA only to the extent necessary to remedy the Eleventh Amendment offense.” *Horowitz v. Bd. of Education of Avoca*, 2000 WL 1100858, at \*3 (N.D. Ill. June 7, 2000); see also *Hornfeld v. City of Miami Beach*, 107 F. Supp. 2d 1359, 1362-64 (S.D. Fla. 2000).

The ability to partake of a State’s Eleventh Amendment immunity “depends, at least in part, on the nature of the entity created by state law.” *Mt. Healthy*, 429 U.S. at 280. Thus, the issue here turns on whether the Civil Service Board and its members are to be treated as an arm

or an agent of the State entitling them to State sovereign immunity under the Eleventh Amendment, or are instead to be treated as a local governing body or other political subdivision.

The court is of the opinion that the Civil Service Board can not legitimately claim to be an entity entitled to the protection of the Eleventh Amendment. The facts strongly indicate that the Civil Service Board, while created by state legislation, is not an arm or agent of the government of the State of Alabama. The EEOC noted:

It would appear from the legislation that the Defendant[s] [have] submitted in support of [their] Motion to Dismiss that the Civil Service Board is under no control by the State whatsoever. The legislation on which the Defendant[s] so heavily rel[y] sets out that Board members are selected by the City of Sheffield government. The Board members are paid by the City of Sheffield treasury, and the Board appears to receive no funding from State revenues. The Board members are advised and assisted whenever needed by the city attorney who is in turn paid by the City. The Board members are charged with the enforcement of the act which created it, and are given authority to make any rules and regulations necessary to carry out its purposes. No such enforcement or regulatory powers are retained by the State of Alabama in regard to this Board. The State of Alabama retained no avenue of review over this Board. The only entity that maintains any control in any form over the Board is the City of Sheffield in its ability to select its members and through the use of the city attorney to advise and assist in Board activities. The mere fact that the State was involved in creating an entity does not make that entity an arm or branch of the State.

(EEOC Letter Brief at ¶ 9.) The court agrees. Thus, the court is of the opinion that the Civil Service Board is not an agency of the State and, therefore, is not entitled to Eleventh Amendment immunity. Likewise, Box, Long, and Stonecipher are not agents of the State and are not entitled to Eleventh Amendment immunity. Having reached this conclusion, there is no need to reach the issue of whether the EEOC, as an agent of the United States government, can pursue a cause of action under the ADEA against the States as well as private individuals.

For the reasons discussed above, it is hereby **ORDERED** that the Motion to Dismiss Amended Complaint Against Defendants, Civil Service Board of the City of Sheffield, James Box, Lena Long and John Stonecipher, filed on July 10, 2000, in CV 99-B-1691-NW, is **MOOT**, and the Motion to Dismiss Amended Complaint Filed by Plaintiff, George Whitney Love

Against Defendants, Civil Service Board of the City of Sheffield, James Box, Lena Long and John Stonecipher on September 19, 2000, in CV 99-B-2995-NW, is **DENIED**.

**DONE** this 6th day of February, 2001.

*Sharon Lovelace Blackburn*

**SHARON LOVELACE BLACKBURN**  
United States District Judge