

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

CHRIS CASSADY,

Plaintiff,

v.

CASE NO. 4:14cv213-RH/CAS

FLORIDA OFFICE OF INSURANCE
REGULATION,

Defendant.

_____ /

**ORDER DISMISSING THE CLAIMS AGAINST
THE DEPARTMENT OF FINANCIAL SERVICES
AND AMENDING THE CASE STYLE**

The plaintiff Chris Cassady alleges in his first amended complaint that he was terminated as an employee of the Florida Office of Insurance Regulation (“OIR”) in violation of the federal Rehabilitation Act and state law. Mr. Cassady names as defendants both OIR and a related agency, the Florida Department of Financial Services (“DFS”). DFS has moved to dismiss, asserting it did not employ or terminate Mr. Cassady and that he has not otherwise alleged facts supporting a claim against DFS. This order grants the motion.

Florida Statutes § 20.121 creates DFS. Within DFS, there is the Financial Services Commission, which is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. *Id.* § 20.121(3). The “major structural unit” within the Financial Services Commission is “the office,” headed by a director. *Id.* § 20.121(3)(a). One such office is OIR. *Id.* § 20.121(3)(a)(1). The Financial Services Commission appoints and removes the director of OIR. *Id.* § 20.121(3)(d).

As this description makes clear, DFS and OIR are part of the same hierarchy. But at some level that is true of all state agencies. Whatever the precise structure, if one follows the hierarchy upward, one ultimately gets to the top of the state government. The issue is not whether the agencies are part of the same hierarchy, but whether they are separate entities with the capacity to hire and fire their own employees, maintain and defend their own legal proceedings, and respond to their own judgments.

Florida law treats DFS and OIR as separate agencies. The Florida Statutes carefully delineate separate roles for each. *See, e.g.*, Fla. Stat. § 624.05(1) (defining “the department” to mean DFS and “the office” to mean OIR); *id.* § 624.307 (separately addressing the powers and duties of the department and the office); *id.* § 624.307(6) (authorizing DFS and OIR to separately employ their own actuaries); *id.* § 624.310(2)(b) (providing that DFS and OIR “each may institute

such suits or other legal proceedings as may be required to enforce any provision of this code within the respective regulatory jurisdiction of each”).

Federal law, as set out in the circuit’s binding decisions, also treats agencies like these as separate employers for purposes of the federal discrimination statutes. In *Lyes v. City of Riviera Beach, Fla.*, 166 F.3d 1332, 1345 (11th Cir. 1999) (en banc), the court adopted a presumption “that governmental subdivisions denominated as separate and distinct under state law should not be aggregated for purposes of Title VII.” The court said the “presumption may be rebutted by evidence establishing that a governmental entity was structured with the purpose of evading the reach of federal employment discrimination law.” *Id.* Absent such a showing,

the presumption against aggregating separate public entities will control . . . unless it is clearly outweighed by factors manifestly indicating that the public entities are so closely interrelated with respect to control of the fundamental aspects of the employment relationship that they should be counted together under Title VII.

Id. The court added:

Useful indicia of control may be drawn from the agency context, including: the authority to hire, transfer, promote, discipline or discharge; the authority to establish work schedules or direct work assignments; [and] the obligation to pay or the duty to train the charging party.

Id. (citation and internal quotation marks omitted).

The specific issue in *Lyes* was whether employees of two local governmental

entities could be aggregated to meet Title VII's 15-employee threshold. But the analysis is equally useful here. In both contexts, the question is whether public entities are truly operating as separate employers, or should instead be treated as one.

Under the *Lyes* analysis, DFS and OIR are properly treated as separate employers. The first amended complaint includes conclusory allegations to the contrary, as well as conclusory allegations that OIR acted as DFS's agent, or that DFS influenced OIR's decision to terminate Mr. Cassady, or that DFS is otherwise responsible for OIR's acts. But conclusory allegations unsupported by facts plausibly suggesting a basis for recovery are insufficient to state a claim on which relief can be granted. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (indicating that a district court should grant a motion to dismiss unless "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged"); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (noting that for purposes of a motion to dismiss, the complaint's factual allegations, but not its legal conclusions, must be accepted as true).

For these reasons,

IT IS ORDERED:

1. DFS's motion to dismiss, ECF No. 14, is GRANTED. Mr. Cassady's claims against DFS are dismissed. I do *not* direct the entry of judgment under Federal Rule of Civil Procedure 54(b).

2. The case style is amended as set out in the case style on this order.

SO ORDERED on July 9, 2014.

s/Robert L. Hinkle

United States District Judge