

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 01 December 2004

CASE NO.: 2005-CAA-2

IN THE MATTER OF

ROGER E. CARLTON

Complainant

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Respondent

RECOMMENDED DECISION AND ORDER OF DISMISSAL

This proceeding arises pursuant to a complaint alleging violations under the employee protective provisions of Section 322(a) of the Clean Air Act (CAA), 42 U.S.C. § 7622; Section 110(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9610; Section 1450(i)(1)(A-C) of the Safe Drinking Water Act, 42 U.S.C. § 300j-9; Section 7001(a) of the Solid Waste Disposal Act, 42 U.S.C. § 6971; Section 23(a) of the Toxic Substances Control Act, 15 U.S.C. § 2622; and Section 507(a) of the Federal Water Pollution Control Act, 33 U.S.C. § 1367, and the regulations promulgated thereunder at 29 C.F.R. Part 24, et seq.

The Complainant requested a hearing based upon the Secretary's findings of September 29, 2004, that there is no merit to Complainant's complaints of discrimination against Respondent in violation of the Employee Protection Provision of the above Acts.

On November 23, 2004, Respondent filed a "Brief In Support of Motion for Summary Decision" averring that Complainant has raised "no genuine issues of material fact, [that] Complainant cannot make a prima facie showing that he engaged in any activities that would give rise to Department of Labor

jurisdiction over this matter, or that any adverse action was taken against him as a result thereof."

On November 30, 2004, by facsimile, Complainant filed a "Motion For Approval of Withdrawal of Complaint" with prejudice asserting that after reviewing Respondent's Motion for Summary Decision, the available evidence and the applicable burden of proof, Complainant has concluded that his chances of prevailing do not justify the costs of proceeding further in this matter. Alternatively, Complainant seeks a dismissal of his Complaint with prejudice. Counsel for Complainant represents that Respondent's counsel has no objection to this motion.

There is no evidence of any inconsistent action by Complainant with his stated intent not to proceed with this matter.

Complainant's representation that he wishes to withdraw his Complaint pending before the undersigned is construed to be an abandonment of his Complaint and request for formal hearing. A request for hearing may be dismissed upon its abandonment by the party who filed it. See 29 C.F.R. § 18.39(b).

Moreover, the "Procedures For The Handling of Discrimination Complaints Under Federal Employee Protection Statutes," 29 C.F.R. Part 24, permit the issuance of a recommended decision and order dismissing a claim for cause at the request of any party. Furthermore, in any case where a dismissal of a claim, defense or party is sought, an administrative law judge shall take such action as is appropriate, to include a recommended order dismissing the claim, defense of party. Moreover, I conclude there is no necessity to issue an Order To Show Cause to Respondent in view of Respondent's assent. See 29 C.F.R. § 24.6(e)(4)(ii).

Accordingly, based on the foregoing, Complainant's request for withdrawal or voluntary dismissal of his Complaint constitutes a withdrawal of his request for formal hearing and Complaint which is hereby **GRANTED** with prejudice.

The formal hearing presently scheduled in this case for December 7, 2004, in Athens, Georgia, is hereby cancelled.

ORDERED this 1st day of December, 2004, at Metairie, Louisiana.

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LEE J. ROMERO, JR.
Administrative Law Judge

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. §§ 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, D.C. 20210. Such a petition for review must be received by the Administrative Review board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See C.F.R. §§ 24.7(d) and 24.8.