

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 05 October 2004

CASE NO. 2004-WPC-0003

In the Matter of:

PRIMUS DELAGARZA,
Complainant,

vs.

UNITED STATES DEPARTMENT OF THE ARMY,
Respondent.

RECOMMENDED DECISION AND ORDER DISMISSING COMPLAINT

Primus Delagarza brought this action alleging that the United States Department of the Army (“the Army”) blacklisted him in violation of the whistleblower protection provisions of the Federal Water Pollution Control Act (“the Act”), 33 U.S.C. § 1367.

The Army by counsel, and the Complainant *pro se*, appeared at a duly scheduled hearing in San Francisco on September 29, 2004. Upon being advised that the case presented factual and legal issues which would best be handled by an attorney, Complainant represented that he had not retained an attorney and that he was not aware that he might be entitled to the benefit of fee shifting statutes, and he requested a continuance so he could explore retaining counsel. His request was granted and he was ordered to report by January 15, 2005 whether he retained counsel. However, later on the same day, Complainant advised by facsimile that “Upon further reflection and financial consideration, I wish to withdraw my case against the Department of the Army effective immediately.”

The Administrative Appeals Board has held in *Balog v. Med-Safe Systems, Inc.*, 95-TSC-9, slip op. p. 6 (ARB Sept. 13, 2000) that “when both parties are before the [administrative law judge] and jointly request dismissal an order to show cause is superfluous.” Since the Army has also represented that it joined Complainant’s request to dismiss, I find that under these circumstances the application of the order to show cause provisions of 29 C.F.R. § 24.6(e)(4)(ii) would be superfluous. Accordingly, Mr. Delagarza’s complaint is herewith DISMISSED.

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ALEXANDER KARST
Administrative Law Judge

AK:jb

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, DC 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* 29 C.F.R. §§ 24.7(d) and 24.8.