

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 17 January 2008

Case No: 2008-STA-00005

In the Matter of

REBECCA S. CLAYPOOLE,
Complainant

v.

U.S. EXPRESS ENTERPRISES, INC.,
Respondent

RECOMMENDED ORDER OF DISMISSAL

A complaint of discrimination under Section 405 of the Surface Transportation Assistance Act, 49 U.S.C. § 31105, was filed by Rebecca S. Claypoole on June 1, 2007. The complaint was investigated by the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor in Atlanta, Georgia. The results of the investigation and the complaint were forwarded to the Office of Administrative Law Judges by OSHA by letter dated August 31, 2007.

Ms. Claypoole filed her original request for hearing regarding the denial of her complaint on October 3, 2007 and the case was assigned Docket Number 2008-STA-00002. The case subsequently was assigned to Administrative Law Judge Larry K. Price of the Washington, D.C. Office of Administrative Law Judges and he issued a notice on November 23, 2007 setting the case for hearing on January 2, 2008 at Ft. Myers, Florida. That hearing was cancelled on December 12, 2007 at the request of the respondent.

On October 11, 2007, a copy of Rebecca Claypoole's request for hearing regarding the denial of her June 1, 2007 complaint was received by the Office of Administrative Law Judges. Pursuant to a request, OSHA, on October 12, 2007, forwarded a copy of its August 31, 2007 letter to the Office of Administrative Law Judges regarding the investigation of Ms. Claypoole's complaint of discrimination. This matter was then docketed as Case Number 2008-STA-00005 and assigned to me. I issued a Notice of Hearing on October 30, 2007 setting the case for hearing on March 13, 2008 at Ft. Myers, Florida.

In December of 2007, it was discovered that Case Number 2008-STA-00005 is a duplication of Case Number 2008-STA-00002, as they both involve the same June 1, 2007 complaint of Ms. Claypoole. Therefore, Case Number 2008-STA-00002, which involves the original request for hearing of Ms. Claypoole's complaint and the original August 31, 2007 referral by OSHA to the Office of Administrative Law Judges, was assigned to me.

To eliminate the duplication of the cases, it is now necessary for me to dismiss Case Number 2008-STA-00005, purely for administrative purposes. The hearing scheduled for March 13, 2008 will be changed by separate order to pertain to Ms. Claypoole's original request for hearing, which is Case Number 2008-STA-00002.

For the above-stated reasons, IT IS HEREBY RECOMMENDED that Case Number 2008-STA-00005 is dismissed. Another order is being issued on this date regarding Ms. Claypoole's original complaint, which is involved in Case Number 2008-STA-00002.

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DONALD W. MOSSER
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Order of Dismissal, along with the administrative file, will be automatically forwarded for review to the Administrative Review Board (Board), U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, para. 4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order of Dismissal, the parties may file briefs with the Board in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.