



Issue Date: 03 April 2008

CASE NO.: 2008-STA-26

In the Matter of:

DUANE SCHOLL
Complainant

v.

ROGERS READY MIX AND MATERIALS, INC.
Respondent

RECOMMENDED ORDER
APPROVING WITHDRAWAL OF OBJECTIONS,
DISMISSING CLAIM AND CANCELLING HEARING

This case arises under Section 405, the employee protection provision of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 2003), and the implementing regulations at 29 C.F.R. Part 1978 (2006). A hearing is presently scheduled for Thursday, April 24, 2008 in Rockford, Illinois. On April 1, 2008, counsel for the Complainant submitted a Motion for Voluntary Dismissal of Complainant's case with prejudice. Counsel further stated that he consulted with Respondent's counsel and the Respondent has no objection to the dismissal.

Pursuant to 29 C.F.R. § 1978.111(c), a complainant may file a written withdrawal of objections to the Secretary's preliminary findings with an Administrative Law Judge at any time before the findings or order becomes final. Thus, where a complainant seeks to withdraw his or her complaint, the Complainant's request is construed as a withdrawal of objections to the Secretary preliminary findings. *Mysinger v. Rent-A-Driver*, 1990-STA-23 (Sec'y Sept. 21, 1990).

Accordingly, it is hereby **ORDERED** that the hearing scheduled for April 24, 2008 in Rockford, Illinois is **CANCELED**, the Secretary's findings are **REINSTATED**, and the above-captioned matter is hereby **DISMISSED** with prejudice, pursuant to 29 C.F.R. § 1978.111(c). Parties are to bear its own attorney fees and costs.

SO ORDERED.

A
THOMAS M. BURKE
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶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 Approving Withdrawal of Objections and Dismissing Claim, the parties may file briefs with the Administrative Review Board ("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.