

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 June 2008

CASE NO.: 2008-TSC-1

IN THE MATTER OF

**JOHN F. WILLIAMS, JR.,
Complainant**

v.

**DALLAS INDEPENDENT SCHOOL DISTRICT,
Respondent**

**RECOMMENDED
DECISION AND ORDER GRANTING RESPONDENT'S MOTION
FOR SUMMARY DECISION AND CANCELLATION OF HEARING**

BACKGROUND

Complainant, pro se, brought this complaint under the Toxic Substance Control Act, 15 U.S.C. 2622 and the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9610 and their implementing regulations found at 29 C.F.R. Part 24.

The complaint was dated September 14, 2007, and after an investigation OSHA concluded that any alleged activity on Complainant's part was not a contributing factor in Respondent's rationale for not selecting him for the position he applied for. OSHA dismissed Complainant's complaint by determination letter dated January 8, 2008. Complainant appealed OSHA's denial to the Office of Administrative Law Judges by letter dated January 28, 2008. Upon receipt of Complainant's appeal a notice of hearing dated February 12, 2008, set the matter for formal hearing on May 20, 2008, and provided all discovery should be completed on or before April 18, 2008.

On April 30, 2008, Respondent filed a Motion for Summary Decision accompanied by eight lettered attachments which included affidavits and unanswered requests for admissions which had been served upon Complainant on March 17, 2008, by certified mail. (See Respondent's attachment "H"). Following receipt of Respondent's motion, a show cause was issued to Complainant dated May 1, 2008, granting Complainant ten days to respond and explaining in detail the procedural rules applicable to a motion for summary decision. On May 12, 2008, Complainant filed his personal affidavit in response to Respondent's motion. The affidavit was accompanied by ten attachments as well as a separate letter dated May 8, 2008, stating that Complainant "...respectfully requests a continuance of the hearing currently set for May 20, 2008, in order that both parties may complete the exchange of discovery and answers, including admissions."

In response to Complainant's request for a continuance, an order dated May 13, 2008, issued continuing the hearing and granting the parties until June 3, 2008, "...to complete discovery and file all responses deemed necessary in support of or defense of the pending motion for summary decision." To date neither party has filed with this office any additional responses.

DISCUSSION AND FINDINGS

Subsection (a) of 29 C.F.R. §18.20 provides for written request "for the admission of the truth of any specified relevant matter of fact" and subsection (b) mandates that "each matter of which an admission is required is admitted unless within thirty days ..." the party to whom the request is directed serves on the requesting party written denials or objections. Subsection (e) declares "any matter admitted under this section is conclusively established...."

In this instance, the unanswered requests for admissions served upon Complainant on March 17, 2008, were as follows:

REQUEST FOR ADMISSIONS NO. 1: Admit that you were employed by DISD under a One Year Employee Contract, which expired on August 31, 2007.

REQUEST FOR ADMISSIONS NO. 2: Admit that your employment ended when your contract with DISD expired by its own terms on August 31, 2007.

REQUEST FOR ADMISSIONS NO. 3: Admit that your were paid all the salary and benefits owed to you by Dallas ISD through August 31, 2007.

REQUEST FOR ADMISSIONS NO.4: Admit that your position was eliminated in the DISD restructuring (i.e., delayering) process which occurred during the summer of 2007.

REQUEST FOR ADMISSIONS NO.5: Admit that you were aware that DISD was going through a restructuring process (i.e. delayering process) within central administration as early as June of 2007.

REQUEST FOR ADMISSIONS NO.6: Admit that your employment contract with DISD was not terminated by DISD during the contract term.

REQUEST FOR ADMISSIONS NO. 7: Admit that during the 2006-2007 school year, your contract was not governed by the provisions of Chapter 21 of the Texas Education Code.

REQUEST FOR ADMISSIONS NO. 8: Admit. that you were not discharged during your contract term.

REQUEST FOR ADMISSIONS NO. 9: Admit that you were not nonrenewed by Dallas ISD.

REQUEST FOR ADMISSIONS NO. 10: Admit that you had no legal right to future employment with Dallas ISD beyond the end of your contract.

REQUEST FOR ADMISSIONS NO. 11: Admit that your were not denied due process by Dallas ISD.

REQUEST FOR ADMISSIONS NO. 12: Admit that Michael Brown was not the person in charge of hiring to fill the vacant position of Environmental Director in September of 2007.

REQUEST FOR ADMISSIONS NO. 13: Admit that you did not make any complaints regarding DISD pursuant to the Toxic Substances Control Act of 1976 prior to the time your employment contract with DISD expired on August 31, 2007.

REQUEST FOR ADMISSIONS NO. 14: Admit that you did not make any complaints regarding DISD pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 prior to the time your employment contract with DISD expired on August 31, 2007.

REQUEST FOR ADMISSIONS NO. 15: Admit that you did not make any complaints regarding DISD pursuant to any other federal or state law prior to the time your employment contract with DISD expired on August 31, 2007.

REQUEST FOR ADMISSIONS NO. 16: Admit that your employment was not terminated on the basis of any complaint that you made pursuant to the Toxic Substances Control Act of 1976 prior to the time your employment contract with DISD expired on August 31, 2007.

REQUEST FOR ADMISSIONS NO. 17: Admit that your employment was not terminated on the basis of any complaint that you made pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 prior to the time your employment contract with DISD expired on August 31, 2007.

REQUEST FOR ADMISSIONS NO. 18: Admit that your employment was not terminated on the basis of any complaint that you made pursuant to any other federal or state law prior to the time that your employment contract with DISD expired on August 31, 2007.

REQUEST FOR ADMISSIONS NO. 19: Admit that the DISD's failure to hire you for a vacant position for the 2007-2008 school year was not based on any complaint that you made pursuant to the Toxic Substances Control Act of 1976 prior to the time your employment contract with DISD expired on August 31, 2007.

REQUEST FOR ADMISSIONS NO. 20: Admit that the DISD's failure to hire you for a vacant position for the 2007-2008 school year was not based on any complaint that you made pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 prior to the time your employment contract with DISD expired on August 31, 2007.

REQUEST FOR ADMISSIONS NO. 21: Admit that the DISD's failure to hire you for a vacant position for the 2007-2008 school year was not based on any complaint that you made pursuant to any other federal or state law prior to the time that your employment contract with DISD expired on August 31, 2007.

REQUEST FOR ADMISSIONS NO. 22: Admit that DISD did not retaliate against you based on any complaint that you made pursuant to the Toxic Substances Control Act of 1976.

REQUEST FOR ADMISSIONS NO. 23: Admit that DISD did not retaliate against you based on any complaint that you made pursuant to the Comprehensive Environmental Control Response, Compensation, and Liability Act of 1980.

REQUEST FOR ADMISSIONS NO. 24: Admit that DISD did not retaliate against you based on any complaint that you made pursuant to any other federal or state law.

REQUEST FOR ADMISSIONS NO. 25: Admit that a DISD internal grievance process is currently ongoing regarding the exact substance of your complaint.

REQUEST FOR ADMISSIONS NO. 26: Admit that you have not yet exhausted all of your administrative remedies.

REQUEST FOR ADMISSIONS NO. 27: Admit that you did not commence or cause to be commenced an action under the Toxic Substance Control Act prior to the District's decision to eliminate your position with DISD.

REQUEST FOR ADMISSIONS NO. 28: Admit that the District had no knowledge of your complaint to OSHA prior to its decision to eliminate your position with DISD.

REQUEST FOR ADMISSIONS NO. 29: Admit that you were notified of the elimination of your position more than 30 days before filing your complaint with OSHA.

REQUEST FOR ADMISSIONS NO. 30: Admit that the District had no knowledge of your previous request for assistance from the Dallas Area Office of OSHA in October of 2002.

REQUEST FOR ADMISSIONS NO. 31: Admit that the only act you reported to OSHA is your allegation that the District retaliated against you for requesting information relating to your unsafe work conditions.

REQUEST FOR ADMISSIONS NO. 32: Admit that Dallas ISD has responded to your requests for public information in compliance with state law.

While Complainant is entitled to represent himself, he is not exempt from complying with the applicable rules of procedure. In this instance, the requests propounded by Respondent on March 17, 2008, advised Complainant of the procedural requirements pertaining to such discovery, the Respondent's subsequent motion revealed reliance in large part on Complainant's failure to timely respond to the requests and Complainant himself showed awareness of his failure to answer the requests both in his May 12, 2007 responses to Respondent's motion for summary decision as well as in his request for a trial continuance dated May 8, 2008 and filed May 12, 2008.

The conclusive facts established by Complainant's failure to answer Respondent's requests for admissions accompanied by the affidavits attached to Respondent's motion establish as facts the following: Respondent is a non-profit educational, local government entity. During the school year 2006-2007, Complainant was employed by Respondent under a one-year contract ending August 31, 2007. At the conclusion of his contract, Complainant's position, along with several others, was eliminated and he was not chosen for an alternative position because he did not meet the job description for the available position for which he applied. The refusal to re-hire Complainant was not an act of retaliation on Respondent's behalf. (See particularly affidavits of Cerby, Arreola, and Falcon attached to Respondent's motion).

CONCLUSION AND ORDER

In sum, despite the fact Complainant is pro se, he obviously understood the purpose of Respondent's requests for admissions and despite his acknowledgment failed to serve timely responses. Therefore, based upon the affidavits attached to Respondent's motion as well as the Complainant's failure to timely respond to requests for admissions, I find Complainant has failed to show the existence of an element essential to his case, i.e., a causal connection between his not being re-hired and any alleged prior protected activity on his part.¹ In other words, Complainant cannot make out a prima facie case.

¹ Despite having failed to answer Respondent's requests for admissions, on May 12, 2008, Complainant did file an affidavit in response to Respondent's motion for summary decision. The affidavit consists of allegations, speculations and denial, which I find insufficient in face of Respondent's affidavits and Complainant's conclusive admissions.

The conclusion reached by OSHA was correct. Respondent's Motion for Summary Decision is **GRANTED**, Complainant's complaint is **DISMISSED** and the hearing set in this matter for **July 8, 2008** is **CANCELLED**.

So **ORDERED** this 10th day of June, 2008, at Covington, Louisiana.

A

C. RICHARD AVERY
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave., NW., Washington, DC 20210.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If the Board exercises its discretion to review this Decision and Order, it will specify the terms under which any briefs are to be filed. If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110, found at 72 Fed. Reg. 44956-44968 (Aug. 10, 2007).