



In the Matter of:

TAMMY A. ANDERSON,

COMPLAINANT,

v.

**DeKALB PLATING COMPANY,
INCORPORATED,**

RESPONDENT.

**ARB CASE NO. 98-158
(Formerly Case No. 98-142)**

ALJ CASE NO. 97-CER-001

DATE: July 27, 1999

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant

Tammy A. Anderson, *Pro se*, DeKalb, Illinois

For the Respondent

Tami J. Reding, *Frank, Miller, Melamed & Tabis, P.C.*, Chicago, Illinois

ORDER

On July 28, 1998, the Administrative Review Board issued a Final Order of Dismissal in this case arising under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9610 (1994). *Anderson v. DeKalb Plating, Co.*, ARB Case No. 98-142. The Administrative Law Judge to whom the case had been assigned had entered an Order Recommending Dismissal of Complaint, in which he “recommend[ed] that the Complainant’s petition to withdraw her request for a hearing be granted and that her complaint be dismissed with prejudice.” Order Recommending Dismissal of Complaint at 1. The Board concluded that the dismissal was appropriate, but determined that in the absence of a request for dismissal with prejudice, the case was dismissed without prejudice. On October 15, 1998, the Board received a request from DeKalb Plating Company, Inc. (DeKalb), the respondent, to modify our order to reflect that the complaint is dismissed with prejudice.

As noted in our original order of dismissal in this case, Rule 41 of the Federal Rules of Civil Procedure governs voluntary dismissals of environmental whistleblower cases. *Anderson v. DeKalb Plating, Co.*, ARB Case No. 98-142, ALJ Case No. 97-CER-1, slip op. at 1 (July 28, 1998). See also, *Young v. Florida Power & Light Co*, 93-ERA-30, Sec. Fin. Ord. Dismiss, slip op. at 2, July 13, 1995. The ALJ in this case recommended dismissal with prejudice, but proffered no explanation for this recommendation. Because a dismissal with prejudice prevents a complainant from reinstating a case, *Ball v. City of Chicago*, 2 F.3d 753 (7th Cir. 1993), it is not a sanction to be imposed lightly. Indeed, Fed. R. Civ. Pro. Rule 41(a) (2), providing for voluntary dismissal by court order, assumes that a voluntary dismissal is without prejudice unless the order states otherwise.

DeKalb, to prevail in its request that the case be dismissed with prejudice, must establish that it will suffer plain, legal prejudice if the case is dismissed without prejudice. *FDIC v. Knostman*, 966 F.2d 1133, 1142 (7th Cir. 1992). Factors to be considered in determining whether a respondent will suffer legal prejudice include the respondent's effort expended in and the expense of trial preparation, the complainant's excessive delay and lack of diligence in prosecuting the action, insufficient explanation for the need to take a dismissal and the fact that respondent has filed a motion for summary judgment. *Tyco Laboratories, Inc. v. Koppers Co.*, 627 F.2d 54, 56 (7th Cir. 1980). Not only has DeKalb failed to articulate how Anderson's motion to withdraw implicates any of these factors, it has failed to demonstrate that it is prejudiced in any way at all by such withdrawal. Consequently, DeKalb's request that we modify our Final Order of Dismissal to indicate that the case is dismissed with prejudice is **DENIED**.

SO ORDERED.

PAUL GREENBERG

Chair

CYNTHIA L. ATTWOOD

Member