

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 29 November 2007

Case No.: 2006-STA-6

In the Matter of

CHRISTOPHER BURLILE,
Complainant

vs.

COBRA TRUCKING, JMK LINE,
Respondent.

**RECOMMENDED DECISION AND ORDER APPROVING
WITHDRAWAL OF CLAIM AND DISMISSING CASE**

This proceeding arises under the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105 (herein the STAA) and the regulations promulgated thereunder at 29 C.F.R. Part 1978.

The Complainant requested a hearing based upon the Secretary's findings that Complainant's complaints of discrimination against Respondent in violation of the employee protective provisions of the STAA were not meritorious.

A formal hearing in this matter was scheduled to commence on March 23, 2006.

On March 21, 2006, Complainant, by and through counsel, submitted a Suggestion of Bankruptcy in the above-entitled claim wherein it was suggested to the Court that there be an immediate necessity for the staying of the above styled cause of action against Cobra Trucking JMK, Inc., Defendant Plaintiff, due to the filing of a bankruptcy proceeding under Chapter 7 for the Southern District of Texas, Houston Division, in Case No. 05-49532-H5-7.

On March 21, 2006, Administrative Law Judge Richard Mills issued an Order Cancelling Hearing and staying proceedings in this matter.

On June 13, 2007, the U.S. District Court issued a Final Decree closing the bankruptcy proceeding.

On November 5, 2007, in response to the undersigned's "Order Directing Compliance With Stay Order," Counsel for Complainant filed a "Notice of Non-Suit" on all claims against Respondent Cobra Trucking JMK, Inc. and requested that the claims be "dismissed without prejudice." The foregoing notice is construed to be a request to withdraw the pending complaint.

Pursuant to 29 C.F.R. § 1978.111(a) of the Rules For Implementing Section 405 of the STAA, a complainant may file a withdrawal of complaint.

The Procedures For the Handling of Discrimination Complaints Under Federal Employee Protection Statutes, 29 C.F.R. Part 24, permit the issuance of a recommended decision and order dismissing a claim for cause at the request of any party. Furthermore, in any case where a dismissal of a claim, defense or party is sought, an administrative law judge shall take such action as is appropriate to include a recommended order dismissing the claim, defense or party. See 29 C.F.R. §24.6(e)(4)(ii).

Accordingly, based on the foregoing, Complainant's request of non-suit is construed to be a voluntary withdrawal of his Complaint and also constitutes a withdrawal of his request for formal hearing which is hereby **GRANTED**, and this matter is **DISMISSED** without prejudice.

ORDERED this 29th day of November, 2007, at Covington, Louisiana.

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LEE J. ROMERO, JR.
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, 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.