



**Issue Date: 28 July 2006**

CASE NO. 2006-CAA-0006

*In the Matter of:*

TIMOTHY HAFER,

*Complainant,*

vs.

UNITED AIRLINES,

*Respondent.*

### **DECISION AND ORDER DISMISSING COMPLAINT**

This case arises under the employee protection provisions of the Clean Air Act (“CAA”), 42 U.S.C. § 7622, and the implementing regulations at 29 C.F.R. Part 24.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Timothy Hafer (“Complainant”) worked for United Airlines (“Employer”) until his termination on May 31, 2001. ALJX-2, at 19. Before filing the instant CAA complaint, Complainant filed a complaint based on the whistleblower protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (“AIR 21”), 49 U.S.C.A. § 42121 (West Supp. 2003), on August 17, 2001. *Id.* at 31. He alleged that Employer terminated him in retaliation for his whistleblowing activities with the Federal Aviation Administration (“FAA”). *Id.* at 19. On June 11, 2002, Administrative Law Judge William Dorsey dismissed Complainant’s AIR 21 claim. ALJX-1, at 3. Complainant appealed the dismissal to the Administrative Review Board (“ARB”). EX 2.

While Complainant’s appeal was pending before the ARB, Employer filed for bankruptcy protection on December 9, 2002. *Id.* at 2; ALJX-1, at 2. As a result, the ARB stayed further proceedings on Complainant’s claim pursuant to the automatic stay provision of the Bankruptcy Code. *Id.* On January 20, 2006, the Bankruptcy Court entered an order (“the Confirmation Order”) confirming Employer’s Chapter 11 bankruptcy reorganization plan. *Id.* On April 26, 2006, the ARB dismissed Complainant’s AIR 21 claim with prejudice, after concluding that the Bankruptcy Code and the Confirmation Order discharged and released Employer from all claims it had pending against it prior to the date of the Confirmation Order. *Id.* at 3-4.

Complainant filed a CAA complaint with the Secretary of Labor on February 18, 2006, alleging that Employer terminated him in retaliation for photocopying a document which allegedly listed Employer's violations of the CAA. EX 3, p. 1. On March 30, 2006, the Occupational Safety and Health Administration ("OSHA") dismissed the complaint as untimely, finding it was filed more than 30 days after the alleged adverse employment action (Complainant's termination on May 31, 2001). *Id.* Complainant appealed OSHA's dismissal of his CAA claim to the Office of Administrative Law Judges ("OALJ") on March 30, 2006. The case was assigned to me on May 2, 2006.

I held a telephone conference with the parties on May 4, 2006, in which I addressed two issues: 1) whether this complaint was discharged in bankruptcy, and 2) whether it was untimely filed. I informed the parties that I would decide these threshold issues through briefing and instructed them to first submit briefs limited to the issue of whether the complaint was discharged in bankruptcy. Should the complaint survive, a hearing would be scheduled on the substantive issues in the case.

Employer filed a motion for dismissal on May 25, 2006.<sup>1</sup> Complainant's response was filed on June 13, 2006.<sup>2</sup> Employer filed its reply on June 22, 2006.<sup>3</sup>

## ISSUE

Whether Complainant's CAA claim should be dismissed because it was discharged in bankruptcy.

## SUMMARY OF DECISION

Complainant's CAA complaint must be dismissed because it was discharged in bankruptcy. Complainant's CAA claim arose before the Employer filed for Chapter 11 bankruptcy protection. Therefore, it is a "pre-petition claim" covered by the Employer's Confirmation Order and reorganization plan and was discharged in bankruptcy.

## ANALYSIS

### I. Parties' Arguments

Complainant argues that his CAA claim should not be discharged in bankruptcy because he filed it only after becoming aware in January 2006 that Employer fired him in May 2001 for allegedly engaging in whistleblowing activities under the CAA. ALJX-2, at 1-2. Complainant also submits arguments regarding the timeliness issue (not an issue to be addressed in this analysis). Complainant claims that alleged extenuating circumstances could justify tolling the

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<sup>1</sup> Employer's motion for dismissal is admitted as Administrative Law Judge Exhibit ("ALJX") ALJX-1 along with attached exhibits ("EX") EX 1-4. EX 1 has Employer's Bankruptcy Reorganization Plan attached as EX A.

<sup>2</sup> Complainant's brief is admitted as ALJX-2. Complainant's exhibits are included as part of his brief (rather than separated at the end with separate exhibit numbers) and will be referred to by their page number.

<sup>3</sup> Employer's reply is admitted as ALJX-3.

statutory filing period for the CAA claim, which is thirty days after the violation occurs. *Id.* at 6. Alternatively, he contends that the complaint is timely under a continuing violation theory. *Id.* at 8. Complainant also presented arguments and voluminous material relating to the substantive issue of Employer's alleged retaliation against him. However, none of this is relevant to the question of discharge in bankruptcy.

Employer contends that Complainant's CAA claim is a "pre-petition" claim since the alleged retaliatory actions on which it is based took place in May 2001, more than a year before the Employer's Chapter 11 filing. ALJX-1, at 6. Employer also argues that Complainant's claim should be dismissed because the Confirmation Order issued by the Bankruptcy Court renders all pre-petition claims against the Employer discharged and released. ALJX-1, at 1, 4. Employer further claims that the bankruptcy discharge "operates as an injunction against the commencement of an action. . . to collect, recover, or offset any debt," which prevents Complainant from pursuing his CAA claim in any forum outside of the Bankruptcy Court and enjoins any further administrative proceedings. *Id.* at 1. Hence, Employer requests that Complainant's CAA claim be dismissed with prejudice. *Id.* at 10.

## II. Discussion

### A. Discharge of pre-petition claim

Section 1141 of the Bankruptcy Code provides that the terms of a confirmed reorganization plan bind the debtor and any creditor. 11 U.S.C. § 1141(a). After confirmation of the plan, the property with which it deals is free and clear of all claims and interests of creditors. *Id.* at § 1141(c). Section 1141 further states that, unless otherwise specified in the debtor's reorganization plan or order confirming the plan, confirmation of a reorganization plan "discharges the debtor from any debt *that arose before the date of such confirmation.*" (emphasis added) *Id.* at § 1141(d)(1)(A); *Bennett v. Intermountain Fed. Land Bank Ass'n (In re Bennett)*, 2000 U.S. App. LEXIS 1404, at \*5 (9th Cir. 2000). The Ninth Circuit Court of Appeals noted that courts interpreting Section 1141 have held that confirmation of a Chapter 11 reorganization plan extinguishes the parties' prior rights and obligations and replaces them with the terms of the reorganization plan. *Bennett*, 2000 U.S. App. LEXIS 1404 at \*5.

In the Confirmation Order relating to this case, the Bankruptcy Court approved a provision in Employer's bankruptcy reorganization plan that "conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged [the Employer] from any and all Claims. . . suits [and] Causes of Action." EX 1, p. 3. Thus, under the terms of the confirmed reorganization plan, which are binding on Employer and Complainant, Employer is released and discharged from Complainant's CAA claim.

Moreover, Complainant's CAA claim is a pre-petition claim because it would have arisen on May 31, 2001, over a year and half before the Employer filed for Chapter 11 bankruptcy protection on December 9, 2002. Complainant does not address the threshold legal issue – whether his claim qualifies as a pre-petition. Instead, Complainant focuses on reasons why his claim was filed over four and a half years late. Complainant's argument that he did not know until January 2006 that Employer fired him in May 2001 for his alleged whistleblowing activity

under the CAA is not persuasive in light of the fact that he filed his AIR 21 claim, based on the same allegations, on August 17, 2001. ALJX-2, at 31. Even if it were true that Complainant did not learn of Employer's reasons for terminating him until January 2006, his claim is still discharged because any potential debts that Employer would have owed Complainant arose before the date of its Confirmation Order and reorganization plan. Complainant cannot try to turn a pre-petition claim into a post-petition one by filing it after Employer's Confirmation Order and reorganization plan have been approved.

Because Complainant's CAA complaint is a pre-petition claim and is covered by Employer's Confirmation Order and reorganization plan, I find that it was discharged in bankruptcy.

*B. Discharge operates as an injunction against pre-petition claims*

Under Section 524 of Title 11 of the Bankruptcy Code, the discharge of a debtor's debt voids any judgment obtained against it, to the extent that the judgment is a determination of its liability with respect to debts that preceded the bankruptcy. 11 U.S.C. § 524(a)(1); *In re McNeil*, 128 B.R. 603, 607 (Bankr. D. Pa. 1991). The discharge also operates as an injunction against the commencement of an action to collect any such debt. *Id.* at § 524(a)(2). Thus, a discharge operates permanently to stay any attempt to hold a debtor personally liable for discharged debts. *River Place E. Hous. Corp. v. Rosenfeld (In re Rosenfeld)*, 23 F.3d 833, 836 (4th Cir. 1994).

Complainant disregarded Section 524(a) of the Bankruptcy Code, which establishes that the discharge of the Employer's debt operates as an injunction against any action to collect on any debt discharged under the plan. *See* 11 U.S.C. § 524(a)(2). A violation of the discharge injunction can be characterized as contempt of the discharge order of the Bankruptcy Court. *In re McNeil*, 128 B.R. 603, 614 (Bankr. D. Pa. 1991).

As a matter of law, and under the terms of Employer's Confirmation Order, the appropriate forum for any future proceeding related to this pre-petition claim is the Bankruptcy Court as it retained jurisdiction with respect to all matters related to the implementation of the Confirmation Order. EX 1, p. 5.

For all the reasons discussed above, Complainant's CAA claim is DISMISSED WITH PREJUDICE.

**IT IS SO ORDERED.**

**A**

ANNE BEYTIN TORKINGTON  
Administrative Law Judge

ABT:yv