

**U.S. Department of Labor**

Office of Administrative Law Judges  
90 Seventh Street, Suite 4-800  
San Francisco, CA 94103-1516

(415) 625-2200  
(415) 625-2201 (FAX)  
OALJ-SanFrancisco@dol.gov



**Issue Date: 08 November 2022**

CASE NO.: 2022-CAR-00001

*In the Matter of:*

**IAN DAY,**

Complainant,

v.

**CITY OF PHOENIX,**

Respondent.

**ORDER OF DISMISSAL**

On September 22, 2021, Complainant filed with the Department of Labor’s Occupational Safety & Health Administration an administrative complaint against Respondent. He alleged violations of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9610; the Solid Waste Disposal Act, 42 U.S.C. §6971; the Toxic Substances Control Act, 15 U.S.C. §2622; the Safe Drinking Water Act, 42 U.S.C. §300j-9(i); the Federal Water Pollution Control Act, 33 U.S.C. §1367; the International Safe Container Act, 46 U.S.C. §80507; and the Criminal Antitrust Anti-Retaliation Act, 15 U.S.C. § 7a-3.

OSHA denied Complainant’s claim in its entirety. It found untimely the complaint filed under all the statutes listed above except the Criminal Antitrust Anti-Relation Act. As to that Act, it found that Complainant had not engaged in activity the Act protects. Complainant objected and requested a hearing before an administrative law judge.

Before the undersigned ALJ, Complainant voluntarily withdrew his objections to OSHA’s findings with the single exception of those under the Criminal Antitrust Anti-Retaliation Act. I therefore dismissed Complainant’s claims excepting the one arising under that Act.

On November 7, 2022, Complainant notified this Office that he has exercised his right to pursue his one remaining claim *de novo* in the U.S. District Court. As the Act provides:

A covered individual who alleges discharge or other discrimination by any employer...may seek relief...by, ...if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for *de novo* review in the appropriate district court of the United States,

which shall have jurisdiction over such an action without regard to the amount in controversy.

15 U.S.C. § 7a-3(b)(1)(B).

Complainant filed his OSHA complaint on September 22, 2021. One hundred eighty days ran on March 21, 2022. Complainant has not delayed the processing of his complaint at the Department of Labor. Thus, Complainant has satisfied the statutory requirements to invoke the district court's jurisdiction.

For these reasons, Complainant's complaint under the Criminal Antitrust Anti-Retaliation Act is **DISMISSED** without prejudice to his pursuing it before the appropriate U.S. District Court. As no claims remain for adjudication at this Office, this matter is **DISMISSED** in its entirety.

SO ORDERED.

STEVEN B. BERLIN  
Administrative Law Judge