

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Newport News, Virginia

Issue Date: 24 April 2024

CASE NO.: 2023-CAR-00001

In the Matter of:

ALYCE ANDERSON,
Complainant,

v.

UNITED STATES POSTAL SERVICE,
Respondent.

**ORDER VACATING ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY
DECISION / NOTICE TO COMPLAINANT**

Complainant Alyce Anderson is requested to call Paralegal Specialist Patricia Patto at 757-591-5151 to confirm receipt of this Order and its attachments.

This matter arises under the employee-protection provisions of the Criminal Antitrust Anti-Retaliation Act ("CAARA"), 15 U.S.C. § 7a-3. That statute makes it unlawful for an employer to discriminate against an employee in the terms and conditions of employment when the employee has provided information regarding certain violations of the criminal anti-trust laws.

On August 7, 2023, I issued an order requiring Complainant Alyce Anderson to show cause why her complaint should not be dismissed because on the face of the complaint, it appears that she did not engage in activity protected by CAARA. On August 29, 2023, however, Respondent USPS filed a Motion to Dismiss, on the same grounds as that identified in the August 7 Order to Show Cause (OTSC). Thereafter, on August 30, 2023, I vacated the August 7 OTSC and allowed Complainant 21 days to respond to Respondent's Motion to Dismiss.

Complainant did not respond to any of my orders, or to Respondent's motion. And recently, it was learned why not: every document issued by this office was sent to an email address that differed from Complainant's by one letter, so Complainant did not receive any notice or order that was issued. Likewise, Respondent served its motion for summary decision on Complainant at the same incorrect email address. It would be unjust to permit the grant of summary decision to stand, when Complainant

had no notice of it or any real opportunity to respond. The decision and order granting summary decision will be vacated.

For Complainant's reference, copies of the following documents issued by the Office of Administrative Law Judges are attached to this Order:

1. The Notice of Docketing dated June 13, 2023;
2. The Notice of Assignment dated July 14, 2023;
3. The Order to Show Cause dated August 7, 2023;
4. Respondent's Motion to Dismiss dated August 29, 2023;
5. The Order Vacating Order to Show Cause / Notice to Complainant re Respondent's Motion for Summary Decision dated August 30, 2023; and
6. The Decision and Order Granting Respondent's Motion for Summary Decision dated September 25, 2023.

Respondent's Motion to Dismiss (item #4 in the list of documents attached hereto) includes numerous supporting exhibits. Accordingly, it is deemed to be a motion for summary decision under 29 C.F.R. § 18.72. The procedural rules allow 14 days for Complainant to respond to that motion. I deem it appropriate, in light of Complainant's status as a self-represented litigant, to allow extra time. Ms. Anderson is allowed until May 25, 2024 to file her response, and is directed to serve any response she files on counsel for Respondent.

Notice to Complainant

Ms. Anderson is informed that Rule 18.72 provides:

(a) *Motion for summary decision or partial summary decision.* A party may move for summary decision, identifying each claim or defense—or the part of each claim or defense—on which summary decision is sought. The judge shall grant summary decision if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law. The judge should state on the record the reasons for granting or denying the motion.

(b) *Time to file a motion.* Unless the judge orders otherwise, a party may file a motion for summary decision at any time until 30 days before the date fixed for the formal hearing.

(c) *Procedures—*

(1) *Supporting factual positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(i) Citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(ii) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection that a fact is not supported by admissible evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials not cited.* The judge need consider only the cited materials, but the judge may consider other materials in the record.

(4) *Affidavits or declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) *When facts are unavailable to the nonmovant.* If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the judge may:

- (1) Defer considering the motion or deny it;
- (2) Allow time to obtain affidavits or declarations or to take discovery; or
- (3) Issue any other appropriate order.

(e) *Failing to properly support or address a fact.* If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by paragraph (c) of this section, the judge may:

- (1) Give an opportunity to properly support or address the fact;
- (2) Consider the fact undisputed for purposes of the motion;
- (3) Grant summary decision if the motion and supporting materials— including the facts considered undisputed—show that the movant is entitled to it; or
- (4) Issue any other appropriate order.

(f) *Decision independent of the motion.* After giving notice and a reasonable time to respond, the judge may:

- (1) Grant summary decision for a nonmovant;
- (2) Grant the motion on grounds not raised by a party; or
- (3) Consider summary decision on the judge's own after identifying for the parties material facts that may not be genuinely in dispute.

(g) *Failing to grant all the requested relief.* If the judge does not grant all the relief requested by the motion, the judge may enter an order stating any material

fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) *Affidavit or declaration submitted in bad faith.* If satisfied that an affidavit or declaration under this section is submitted in bad faith or solely for delay, the judge—after notice and a reasonable time to respond—may order sanctions or other relief as authorized by law.

Ms. Anderson is further advised that factual assertions in the motion filed by Respondent may be taken as true unless she contradicts them with counter-affidavits and/or other documentary evidence. In other words, Complainant is advised that if she disagrees with any of the facts stated by Respondent in its motion for summary decision, she must identify those facts, state why she disagrees with them, and submit documents, affidavits, or declarations that support her version of the facts.

ORDER

Based on the foregoing, IT IS ORDERED:

1. The September 25, 2023 Order Granting Respondent's Motion for Summary Decision is VACATED;
2. Complainant's response to Respondent's motion for summary decision (item #4 in the list of documents attached hereto) must be filed and served no later than May 25, 2024; and
3. The factual assertions in the motion filed by Respondent may be taken as true unless Complainant contradicts them with declarations, affidavits, or other documentary evidence.

SO ORDERED.

PAUL C. JOHNSON, JR.
Administrative Law Judge

PCJ/pmp
Newport News, Virginia