



Issue Date: 17 November 2004

CASE NO. 2004-STA-00020

In the Matter of:

JAMES HARDY,
Complainant,

vs.

ENVIRONMENTAL RESTORATION LLC.,
Respondent.

Recommended Order of Dismissal Due to Withdrawal of Complaint

This matter arises under the employee protection provisions of section 405 of the Surface and Transportation Assistance Act of 1982, codified at 49 U.S.C. § 3110. A telephone hearing was held on November 6, 2004 to consider three discovery motions filed by Respondent, Environmental Restoration, LLC. The Complainant, Mr. James Hardy, appeared on his own behalf; Respondent was represented by Richard C. Witzel, Esq., and Paul K. Travous, Esq. Since his lawyer withdrew from this matter on September 14, 2004, Mr. Hardy has been unable to find another lawyer.

The motions seek orders:

- (1) to compel Mr. Hardy to respond to a request for production, which had asked him to deliver to Respondent copies of the 58 documents listed in the initial disclosures he had made under Rule 26(a), Fed. R. Civ. P. on August 27, 2004;
- (2) to answer the interrogatories served on him through his former lawyer on September 10, 2004, which have gone unanswered; and
- (3) to appear for his deposition, which had been delayed in the order entered on September 17, 2004, due to his lawyer's withdrawal.

Rather than respond to the discovery requests and appear for deposition, Mr. Hardy stated that he wished to withdraw this complaint. He understands that by doing so, the matter is concluded and cannot be reinstated. Under the regulations of the Secretary of Labor governing claims of employment discrimination made under the Act, "a party may withdraw his objections

to the findings” made by the Assistant Secretary of Labor for Occupational Safety and Health after a complaint is investigated. 29 C.F.R. § 1978.111(c). The investigation of this claim led to a finding on December 15, 2003, that Respondent had not violated the Act.

I treat Mr. Hardy’s unequivocal statement during the telephone hearing as the equivalent of a written statement of his intention to withdraw his objection to the findings of December 15, 2003. By the withdrawal of his objection, that decision is affirmed, and becomes the final determination of the Secretary of Labor.

Recommendation

It is recommended that Complainant's request for voluntary withdrawal of his complaint be **GRANTED**, and this matter be **DISMISSED** with prejudice.

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WILLIAM DORSEY
Administrative Law Judge

NOTICE: This Recommended Decision and Order and the administrative file in this matter will be forwarded to the Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Ave., NW, Washington, D.C. 20210. See 29 C.F.R. § 1978.109(a); 61 Fed. Reg. 19978 (1996).