



Issue Date: 08 April 2010

CASE NO.: 2010-STA-00013

In the Matter of:

CURTIS FIREBAUGH,
Complainant,

vs.

**FREMONT RIDE-OUT DRUG,
EARL SEDDON (SEDDON & WROBLESKI), AND
BOB SINNETT (SINNETT CONSULTING),**
Respondents.

RECOMMENDED DECISION AND ORDER
APPROVING WITHDRAWAL OF OBJECTIONS, AFFIRMING THE
SECRETARY'S FINDINGS, AND DISMISSING CLAIM

Complainant alleges that Respondents effectively blacklisted him from employment by falsely accusing him of failing a drug or alcohol test while working for a prior employer. He asserts his complaint under the employee protection provisions of Surface Transportation Assistance Act, 49 U.S.C. §31105. On December 21, 2009, the Occupational Safety and Health Administration issued Findings that the complaint must be dismissed because Complainant neither applied to work nor worked for any of the Respondents. Complainant filed a timely request for hearing on or before December 31, 2009. Based on Complainant's voluntary withdrawal of his objections to the OSHA findings, I recommend dismissal of his complaint and that those findings be affirmed.

Facts

On March 29, 2010, I received a letter from Complainant. He requested that the hearing be "cancelled." He stated that he could not afford a lawyer or the travel to San Francisco for the hearing. He also stated that, when preparing his pre-hearing statement, he realized that he did not "have an employer/employee relationship with Fremont Ride-Out Drug."

On March 30, 2010, I ordered Complainant to show cause why the "Secretary's Findings" as the Occupational Safety & Health Administration issued them on December 21, 2009 should not be affirmed. While doing so, I informed Claimant: (1) that under the fee-shifting provision of the Act, he might be able to retain counsel without expense; (2) that the hearing was set in Reno,

Nevada close to his residence, not in San Francisco; (3) that he only mentioned withdrawing a claim against one Respondent, and there are two others; and (4) that he might want to consult an attorney before deciding that there was no employer/employee relationship within the meaning of the Act.

Complainant responded somewhat vaguely on April 7, 2010. He wrote: "I would like the opportunity to decline these action against [the three Respondents]. [¶] This will give me time to go over [a Freedom of Information Act report from the Department of Labor] and seek an Attorney to represent me on my behalf." I was uncertain whether this was a confirmation of the withdrawal ("decline these actions") or a request for a continuance for time to find counsel.

This Office requested clarification from Claimant, and later on April 7, 2010, he wrote again. He stated unequivocally that he was requesting "cancellation of any hearings with the ALJ." He explained, "After much research and several conversations with individuals that understand these matters at a higher level than I do, it has become apparent that I cannot substantiate an employer/employee relationship with [the three Respondents]." He reiterated: "I am requesting to cancel all hearings that may have been scheduled in response to the original request [for hearing] letter that I submitted."

Discussion

Applicable law.

At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge The judge . . . shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

29 C.F.R. § 1978.111(c).

Findings. Complainant here has withdrawn his objections to the findings. He is aware that he may consult with counsel and has sought out advice from people in whom he has confidence. He knows the Act has a fee-shifting provision that could result in his getting a lawyer without spending any money. He knows that the hearing would be located little more than an hour's drive from his home, fewer than 75 miles away. More to the point, he has specifically acknowledged that his informed view is that he cannot establish an employer/employee relationship with any of the Respondents and has concluded that, absent such a relationship, his claims are legally deficient. I find this a sufficient withdrawal of objections to the Secretary's Findings as OSHA published them.

RECOMMENDED ORDER

In view of Complainant's express withdrawal of his objections to the Secretary's Findings that his claim fails because he neither applied to work nor worked for any of the Respondents, and given the regulatory mandate, I recommend that the Secretary's Findings be **AFFIRMED** and that the complaint be **DISMISSED**.

A

STEVEN B. BERLIN
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, Suite S-5220, 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.