



Issue Date: 07 May 2014

Case No.: 2013-STA-00069

In the Matter of:

TRACY KINSER, *pro se*,

Complainant,

v.

R.L. RAFFALDT, INC.,

Respondent.

**ORDER GRANTING COMPLAINANT'S REQUEST
TO WITHDRAW COMPLAINT
AND
ORDER CANCELLING THE SCHEDULED HEARING
AND DISMISSING THE COMPLAINT**

This matter arises from a complaint filed under the provisions of Section 31105 of the Surface Transportation Assistance Act of 1982, U.S. Code, Title 49, § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 ("STAA") and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 1978. Per 29 CFR §1978.107, the proceeding will be held in a manner consistent with the procedural rules set forth in federal regulations at 29 CFR Part 18, Subpart A (29 CFR §18.1 to §18.59). A formal hearing is set to commence at 9:00 AM, Tuesday, May 20, 2014, in Charlotte, North Carolina. The Complainant has been advised of his right to a representative as well as the issues involved in this case and continues to proceed without representation in this case.

The Complainant filed a complaint on December 26, 2012, alleging that the Respondent retaliated against him in violation of the STAA by terminating his employment on December 20, 2012. The complaint was investigated and on August 12, 2013, the Regional Administrator, OSHA, Atlanta Regional Office, dismissed the complaint when he issued the Secretary Findings that "there is no reasonable cause to believe that Respondent violated 49 U.S.C. §31105." On September 6, 2013, the Complainant filed objections to the Secretary's decision and requested a hearing before an Administrative Law Judge.

On April 18, 2014 Respondent's counsel filed a Motion for Summary Decision seeking dismissal of the case.

On April 28, 2014 the Complainant filed his response that he "would like to withdraw my appeal of the U.S. Department of Labor; my case number is 2013-STA-00069."

After deliberation on the administrative record, this Administrative Law Judge finds that the Complainant has made a voluntary, knowing, and intelligent waiver of his right to formal hearing and request to withdraw his appeal for a formal hearing. The interest of justice under the STAA is best served by granting the request to dismiss the complaint pursuant to 29 CFR §1978.111(c) and thereby making the Area Director, Occupational Safety and Health Administration, Atlanta Area Office, determination of August 12, 2013, the final determination of the Secretary.

ORDER

It is hereby **ORDERED** that –

1. **The Complainant's request to withdraw his complaint is GRANTED.**
2. **The formal hearing** scheduled to commence at 9:00 AM, Tuesday, May 20, 2014 in Charlotte, North Carolina **is hereby CANCELLED.**
3. The **Complainant's cause of action is DISMISSED**, pursuant to 29 CFR §1978.111(c).
4. **The Regional Administrator, Occupational Safety and Health Administration, Atlanta Regional Office, determination of February 20, 2013, is affirmed as the final determination of the Secretary.**

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia