

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 24 November 2015

Case No.: 2014-STA-00026

In the Matter of:

ARTHUR MEDAGLIA, *pro se*,

Complainant,

v.

DATTCO, INC.,

Respondent.

ORDER OF DISMISSAL

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 (CFR), Title 29, Part 1978. The complaint was referred to the Office of Administrative Law Judges for formal hearing upon appeal by Complainant of the December 20, 2013, Regional Administrator, Region I, Occupational Safety and Health Administration determination that there is no reasonable cause to believe that Respondent violated STAA. The Complainant stated he objects and protests the Secretary’s “findings because I do not feel my case was investigated thoroughly by the regional office or the investigator assigned to the case.”

In his March 18, 2014 letter to then presiding Judge K.A. Krantz, the Complainant¹ stated he was unable to obtain representation and reiterated the OSHA investigation was not thorough and did not question his immediate supervisor and dispatcher. He requested the hearing be held near Bluffton, South Carolina, due to difficulty traveling to other cities. On December 8, 2014, presiding Judge Krantz issued an Order directing the Complainant respond to an interrogatory regarding job searches and employment after the April 10, 2012 termination of employment, and

¹ The Complainant reported that he has a college BA degree and a Masters’ Business degree (March 12, 2015 letter to Judge K.A. Krantz)..

to produce related noncumulative documents under a protective order. By letter of December 22, 2014, the Complainant responded that he would attempt to comply with the December 8, 2014 Order but he did not have representation and has “been traveling to various parts of the country, both in search of suitable work and visiting friends and relatives” the last six months.

By Order of July 16, 2015, the Parties were notified that this case was reassigned to this presiding Judge upon the retirement of Judge K.A. Krantz. The Complainant was also advised in writing to his right to representation; the manner in which a formal hearing would be conducted, including right to present documentary and testimonial evidence and examine witnesses; and opportunity to present an argument on the desired results of the case. He was advised in detail of the issues in this case. On October 9, 2015, this presiding Judge issued an Order extending the period for closing discovery after finding that the delay in completion of discovery by the Parties was due to the Complainant’s purported inability to appear for depositions in July, August and September 2015. Also on October 9, 2015 this presiding Judge issued a subpoena directing the Complainant to appear for deposition testimony by court reporter on November 12, 2015 at the Springhill Suites, Savannah, Georgia, a location approximately 29 miles from his address of record.² By letter of October 22, 2015, the Complainant stated that he had been traveling and did not return home until recently and found an October 9, 2015 Order and notice of the November 12, 2015 deposition. He indicated that he could not commit to the deposition date and “may be called away at any moment to tend to the needs of family members that are ill and hospitalized.” By letter of November 10, 2015 the Complainant indicated that he would not attend the November 12, 2015 deposition “due to family illness and responsibilities, I will be out of town during that timeframe.” He stated he could make himself available by telephone.

By letter of November 16, 2015 the Complainant indicated “This letter is to notify your office that I will not be continuing with the appeal process of the OSHA investigation ... I feel continuing with the appeal is an exercise in futility, and I simply do not want to waste any more of my time. The experience of having trusted OSHA and allowing them to convince me to start the process has been nothing short of detrimental to me, and I’m sorry to have ever started it.” He stated his belief that he was unable to obtain representation, unable to protect his rights without the STAA providing legal representation to complainants, and that the OSHA investigation was toothless and ineffective.

Federal regulations at 29 CFR §1978.109(c) prohibit an administrative law judge to review an investigation conducted by OSHA or to remand a complaint to OSHA for investigation under the STAA. Federal regulations at 29 CFR §1978.111(c) permit the Complainant to file a written request to withdraw objections to the Secretary’s findings and end the appeal process. If the request to withdraw objections is approved, the Secretary’s findings become the final determination in the case.

After review of the administrative file, including all correspondence by the Complainant and Respondent’s counsel, this presiding Judge finds the Complainant’s request to end the appeal process is appropriate under the STAA and is approved.

² www.mapquest.com

ORDER

IT IS HEREBY ORDERED that the petition for review of the complaint filed under the provisions of the STAA on September 14, 2012, **is hereby DISMISSED.**

Accordingly, the Secretary's findings entered on December 20, 2013 is the final determination in this case, pursuant to 29 CFR §1978.111(c).

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia