



Issue Date: 06 June 2017

CASE NO.: 2017-STA-00033

OWCP NO.: 5-2780-15-089

In the Matter of:

DAVID SCHNEBBE,
Complainant,

v.

WOODMAN'S FOOD MARKET, INC.,
Respondent.

ORDER OF DISMISSAL

This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 ("STAA"), 49 U.S.C. § 31105, as amended, and the regulations published at 29 C.F.R. Part 1978. On May 17, 2017, the Complainant filed a Notice of Federal Court Filing, indicating that he filed a complaint in the United State District Court for the Western District of Wisconsin. Complainant attached a copy of the complaint and jury demand to this filing.

The STAA provides:

With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

49 U.S.C. § 31105(c). The corresponding regulation is found at 29 C.F.R. § 1978.114. The regulation requires that "[w]ithin seven days after filing a complaint in federal court, a complainant must file with ... the ALJ ... a copy of the file-stamped complaint" and the complainant must also serve a copy of the complaint on certain other officials. 29 C.F.R. § 1980.114(c).

Complainant filed his Complaint with OSHA on September 3, 2015. No decision has been issued within 210 days of the filing of the complaint, and the delay was not caused by bad

faith of the Complainant. Accordingly, Complainant has a right to file a complaint in federal district court. 49 U.S.C. § 31105(c); 29 C.F.R. § 1978.114. Based on Complainant's action in federal district court, the Secretary of Labor no longer has jurisdiction over this matter. Accordingly, the case before me is dismissed.

ORDER

IT IS HEREBY ORDERED that the complaint filed by Complainant David Schnebbe under the Surface Transportation Assistance Act is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

CARRIE BLAND
Administrative Law Judge

Washington, D.C.