



Issue Date: 31 December 2019

Case No.: 2019-STA-00053

In the Matter of:

ADRIAN DAVIS,

Complainant,

v.

AIRGAS MERCHANT GASES LLC,

Respondent.

ORDER OF DISMISSAL
AND
ORDER CANCELING HEARING

This matter arises from a complaint filed under the provisions of the Surface Transportation Assistance Act of 1982, U.S. Code Title 49, Section 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. This case is scheduled for formal hearing February 6-7, 2020, in Atlanta, Georgia.

Complainant Adrian Davis filed a complaint in this matter on April 9, 2019. The Secretary’s Findings were issued on April 30, 2019, and Complainant sent an email requesting appeal to a DOL email address on Sunday, June 30, 2019, which was forwarded from OSHA to DOL’s Office of Administrative Law Judges on July 9, 2019. The matter was docketed with OALJ on July 9, 2019, and assigned to me on July 16, 2019. I issued a Notice of Assignment on July 29, 2019, and issued a Notice of Hearing on September 11, 2019, setting this matter for formal hearing February 6-7, 2020, in Atlanta.

On December 18, 2019, Respondent submitted a Motion to Dismiss this matter, on grounds that Complainant’s objections to the Secretary’s Findings were not filed within the 30-day period provided by the STAA in 49 U.S.C. § 31105(b)(2)(B). Consequently, Respondent contended, “the preliminary order became final and not subject to judicial review” under the STAA. Respondent’s motion was served on Complainant’s counsel via email on December 18, 2019, and was received and filed with OALJ on December 19, 2019.

Also on December 18, 2019, Complainant filed a Complaint under the STAA in the United States District Court for the Southern District of Texas, under the removal provision set forth in

49 U.S.C. § 31105(c). On December 19, 2019, Complainant filed a letter with OALJ¹ providing notice that he had filed a complaint in federal district court, with a copy of the Complaint attached.

When the Secretary has not issued a final decision within 210 days after the filing of the complaint, the employee is authorized to file an action for *de novo* review in the appropriate United States District Court. 49 U.S.C. § 31105(c). The filing of an action in the United States District Court deprives the Office of Administrative Law Judges of jurisdiction. *See Stone v. Duke Energy Corp.*, 432 F.3d 320 (5th Cir. 2005) (jurisdiction vested in the district court once a complaint was filed there, and the ALJ no longer had jurisdiction); *see also Lyon v. Canadian National Railroad Co. et al.*, 2010 WL 4809332, 2010-SOX-00002 (ALJ Nov. 10, 2010).

As this tribunal has been deprived of jurisdiction in this matter, **IT IS ORDERED** that the instant case is **DISMISSED**.

The formal hearing scheduled for February 6-7, 2020, in Atlanta, Georgia, is therefore **CANCELED**.

SO ORDERED.

MONICA MARKLEY
Administrative Law Judge

Newport News, VA

¹ Despite all Notices in this case issuing from me in the Newport News district office of OALJ, and a provision in the Notice of Assignment directing the parties to file all correspondence and pleadings in the Newport News district office, Complainant sent his letter via fax to OALJ's office in Washington, D.C.