

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 25 January 2022**

CASE NO.: 2021-STA-00051

OSHA CASE NO.: 5-1260-20-092

*In the Matter of:*

KATHLEEN R. KORBEL-SMESTAD,  
Complainant

v.

AAA Freight Inc,<sup>1</sup> and DMD CUSTOM CRITICAL, INC., et al.  
Respondent

**ORDER OF DISMISSAL**

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act (STA or the Act), 49 U.S.C. § 31105, and its implementing regulations at 29 C.F.R. Part 1978. A hearing in the above-referenced matter began on January 25, 2022. At hearing, respondents, AAA Freight, Inc., AAA Equipment LLC, AAA Holding Group LLC, and DMD Custom Critical, Inc., (collectively, Respondents or employers) were represented by counsel. Complainant, Kathleen R. Korb-Smestad, (Complainant or Ms. Korb-Smestad) was self-represented. As discussed at hearing, the transcript from which is fully incorporated here by reference, the above-captioned matter is dismissed with prejudice.

As background, in sum, Ms. Korb-Smestad filed a complaint with the Secretary of Labor through the Occupational Safety and Health Administration (OSHA) on March 17, 2020, alleging she was terminated by her employers in retaliation under the STA. Following investigation, on May 25, 2021, OSHA found Respondents did not violate the STA and dismissed the complaint. On or about June 7, 2021, Complainant objected to OSHA's findings and requested a hearing before the Office of Administrative Law Judges (OALJ). The matter was subsequently assigned to me for hearing and decision.

At the hearing, Ms. Korb-Smestad notified the undersigned that she intends to exercise her right to file a complaint in U.S. District Court (Federal Court), and thereby utilize the "STA kick-out provision." The request from Complainant came prior to the admission of any evidence

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<sup>1</sup> Also named are: AAA Equipment, LLC, and AAA Holding Group, LLC.

or calling of any witness, therefore the hearing was not completed and a decision on the merits was not, and will not be, rendered. As Complainant is not represented in these proceedings, I confirmed on the record that she understood the instant claim would be dismissed with prejudice, meaning that she could not refile the instant claim in this forum. I also confirmed that she understood it is her responsibility to file the proceeding in U.S. District Court and that it is not that of the undersigned Administrative Law Judge.<sup>2</sup> Respondents had no objection to the dismissal at hearing.

Generally, 29 C.F.R. § 1978.114 permits a complainant to bring an action at law or in equity for *de novo review* in the appropriate district court for the United States with jurisdiction, if there is no final order of the Secretary, 210 days have passed since the filing of the complaint and there has been no delay due to the bad faith of the complainant. *See also*, 49 U.S.C. §31105(c). The requirements of 29 C.F.R. § 1978.114 have been satisfied here.

As Complainant Kathleen Korbek-Smestad indicated her intent to file her complaint in Federal District Court, as stated at the hearing and further memorialized here, her complaint in the above-captioned matter is **DISMISSED WITH PREJUDICE**.

#### **ORDER**

As provided for at hearing and as stated above, **IT IS ORDERED** that the complaint of Kathleen R. Korbek-Smestad is **DISMISSED WITH PREJUDICE** to its reinstatement or refiling here.

**SO ORDERED.**

**NATALIE A. APPETTA**  
Administrative Law Judge

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<sup>2</sup> Complainant sent an email on January 24, 2022 to the undersigned and all parties at 3:49 PM asking the undersigned in part, to “move this case over to federal district court immediately.” This request and other representations in the email were therefore discussed at hearing.