

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Cincinnati, Ohio

Issue Date: 17 March 2023

Case No.: 2022-STA-00050

OSHA Case No.: 5-2700-20-186

In the Matter of:

DeANTHONY DECKER,
Complainant,

v.

FIVE STAR SHIPPING,
Respondent.

ORDER OF DISMISSAL

This proceeding arises under the employee-protection provisions of the Surface Transportation & Assistance Act (STAA), 49 U.S.C. § 31105, as amended. An on-the-record final prehearing telephone conference and hearing are scheduled for May 4, 2023, and May 9, 2023, respectively.

On March 17, 2023, I held an on-the-record prehearing telephone conference to address Joseph X. Michaels' Motion to Withdraw as Counsel for Complainant, which Mr. Michaels filed on March 13, 2023. Complainant DeAnthony Decker,¹ Complainant's counsel, Joseph X. Michaels, and Respondent's counsel, Zachary A. Hallman, participated in the conference.

During the conference, Mr. Decker requested to withdraw his claim. Pursuant to 29 C.F.R. § 1978.111(c),

[a]t any time before the Assistant Secretary's findings and/or preliminary order become final, a party may withdraw objections to the Assistant Secretary's findings and/or preliminary order by filing a written withdrawal with the ALJ. . . . The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's

¹ During the conference, Mr. Decker clarified that his first name is "DeAnthony," not "Anthony." Accordingly, the case-caption for this proceeding is amended as set forth above.

findings and/or order will become the final order of the Secretary. . . . If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

During the conference, I found that Mr. Decker's request to withdraw his claim submitted on the record constituted a "written" request to withdraw his claim since the oral request will be transcribed. Mr. Decker and Respondent indicated that they did not oppose this approach.

Further, I determined that Mr. Decker's request to withdraw his claim was not the result of a settlement or agreement with Respondent. I advised Mr. Decker of his rights and the rights he would be giving up should I grant his request. He indicated that he understood the same. And, I found that Mr. Decker's waiver of his rights was knowing, voluntary, and intelligent. I advised the parties that I would grant Mr. Decker's request to withdraw his claim and I denied as moot Joseph X. Michaels' Motion to Withdraw as Counsel for Complainant.

It is ORDERED that:

1. The transcript of the on-the-record prehearing telephone conference in this matter held on March 17, 2023, is part of the administrative record of this proceeding and is incorporated here by reference as if fully rewritten.
2. Based on the foregoing, it is ORDERED that Complainant DeAnthony Decker's request to withdraw his claim is APPROVED and GRANTED.
3. The on-the-record final prehearing telephone conference and hearing scheduled for May 4, 2023, and May 9, 2023, respectively, are CANCELED.
4. Complainant's claim and this proceeding are DISMISSED.

SO ORDERED.

Jason A. Golden
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within **fourteen (14) days** of the date of the administrative law judge's decision.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, the Associate Solicitor, Division of Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

If no Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(b). Even if a Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1978.110(b).

IMPORTANT NOTICE ABOUT FILING APPEALS:

The Notice of Appeal Rights has changed because the system for online filing has become mandatory for parties represented by counsel. Parties represented by counsel must file an appeal by accessing the eFile/eServe system (EFS) at <https://efile.dol.gov/EFILE.DOL.GOV>.

Filing Your Appeal Online

Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at <https://efile.dol.gov/support/>.

Registration with EFS is a two-step process. First, all users, including those who are registered users of the former EFSR system, will need first create an account at login.gov (if they do not have one already). Second, if you have not previously registered with the EFSR system, you will then have to create an account with EFS using your login.gov username and password. Once you have set up your EFS account, you can learn how to file an appeal to the Board using the written guide at <https://efile.dol.gov/system/files/2020-10/file-new-appeal-arb.pdf> and/or the video tutorial at <https://efile.dol.gov/support/boards/new-appeal-arb>. Existing EFSR system users will not have to create a new EFS profile. Establishing an EFS account should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at <https://efile.dol.gov/contact>.

If you file your appeal online, no paper copies need be filed with the Board.

You are still responsible for serving the notice of appeal on the other parties to the case and for attaching a certificate of service to your filing. If the other parties are registered in the EFS system, then the filing of your document through EFS will constitute filing of your document on those registered parties. Non-registered parties must be served using other means. Include a certificate of service showing how you have completed service whether through the EFS system or otherwise.

Filing Your Appeal by Mail

Self-represented (pro se) litigants may, in the alternative, file appeals using regular mail to this address:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5220,
Washington, D.C., 20210

Access to EFS for Other Parties

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and EFS account, and then following the written directions and/or via the video tutorial located at:

<https://efile.dol.gov/support/boards/request-access-an-appeal>

After An Appeal Is Filed

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

Service by the Board

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail.