

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
San Francisco, CA

Issue Date: 22 February 2023

CASE NO.: 2022-STA-00047

In the Matter of:

MOHAMED EL-HEWIE,
Complainant,

v.

WALMART, INC.,
Respondent.

ORDER OF DISMISSAL WITHOUT PREJUDICE

This case arises under the Surface Transportation Assistance Act, 49 U.S.C. § 31105, and its implementing regulations at 29 C.F.R. Part 1978. On or about February 20, 2023, Complainant filed a pleading in which he states that he has a separately pending discrimination claim (either at the Utah state agency or the U.S. Equal Employment Opportunity Commission), and he plans to file that case in the district court in Utah as soon as he receives a right to sue letter. As to this present case pending before me at OALJ, Complainant states that he intends to consolidate the case with the discrimination case at the U.S. district court.

In the Act, Congress established jurisdiction in the district courts to adjudicate *de novo* (with a jury if demanded) any claim under the Act on which the Secretary of Labor has not issued a final determination within 210 days. *See* 49 U.S.C. § 31105(c). A complainant may invoke the district court jurisdiction once the 210 days have run so long as “there is no showing that there has been delay due to the bad faith of the complainant.” *Id.* The Secretary has promulgated implementing regulations consistent with the statute. *See* 29 C.F.R. § 1978.114.

Complainant initiated this matter by filing an administrative complaint with the Occupational Safety & Health Administration, an agency of the Department of Labor, on December 22, 2021. More than 210 days have passed, and the Secretary has not issued a final determination. Complainant has not delayed the case in bad faith or at all.

Accordingly, this matter is DISMISSED without prejudice to Complainant’s pursuing his claim before the appropriate U.S. District Court. Complainant should file a complaint promptly in the appropriate federal court. The complainant must file with the ALJ a file-stamped copy of the

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federal court complaint within seven days after he files it. *See* 29 C.F.R. § 1978.114(b).¹

SO ORDERED.

STEVEN B. BERLIN
Administrative Law Judge

¹ Complainant also included in his pleading a motion to strike Respondent's motion for summary decision for a failure of effective service. The motion to strike is moot: As Complainant will be beginning the litigation anew (*i.e., de novo*) in the district court, I will not reach the merits of the motion for summary decision. Nonetheless, Complainant apparently is correct: Respondent's counsel did not serve the motion on Complainant; she served it on an attorney whom she apparently has concluded represents Complainant in this case. On the contrary, Complainant is self-represented in this case.

No attorney appeared for Complainant at OSHA: Complainant alone signed his complaint before OSHA, and he alone objected to OSHA's decision and requested a hearing before an ALJ.

At this Office (OALJ), when any representative first appears, the representative "must file a notice of appearance" that provides certain information. *See* 29 C.F.R. § 18.22(a) (for attorneys, the information must include the attorney's license registration number). The notice of appearance is not a mere, *pro forma*, exercise. By filing it, unless they state to the contrary, attorneys are certifying they are: (A) "a member of a bar in good standing of the highest court of a State ... where the attorney has been licensed to practice law; and (B) No disciplinary proceeding is pending against the attorney in any jurisdiction where the attorney is licensed to practice law." *See* 29 C.F.R. § 18.22(b)(1)(i).

In the present case, no attorney or proposed non-attorney representative has filed an appearance at this Office. Therefore, Complainant is correct that Respondent's counsel should have served the motion directly on him. Complainant has a discrimination case pending elsewhere. It is possible that the attorney whom Respondent served represents Complainant on that other case. But, at OALJ, Complainant is self-represented.