

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Pittsburgh, PA

Issue Date: 11 August 2023

OALJ No.: 2023-STA-00003

OSHA No.: 9-0050-21-227

In the Matter of:

DANNY COLLINS,

Complainant,

v.

NEXT MARKETING, INC.,

Respondents,

ORDER OF DISMISSAL

This case has been assigned to **Patricia J. Daum, Administrative Law Judge (ALJ)**, U.S. Department of Labor, for hearing and decision pursuant to the employee protection provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, and further governed by the implementing regulations at 29 C.F.R. Part 1978. The rescheduled hearing in the matter is presently scheduled to be held virtually before Administrative Law Judge Patricia J. Daum on August 15, 2023.

On August 11, 2023, Complainant, who is not presently represented by counsel, requested “withdrawal” of his case, and asserted that he no longer wishes to proceed to the hearing and have his case heard by an administrative law judge. He offered that he intends to pursue his rights under the whistleblower protection provisions of the STAA by filing a complaint in an appropriate U.S. District Court as permitted by 29 C.F.R. 1982.114. He noted that the claim has been pending for more than 210 days without a final decision having been made.

On the same date, Respondent, by and through counsel, advised that they do not object to withdrawal of the Complainant’s objections to the Secretary’s Findings provided that dismissal is with prejudice and Complainant’s objections to the Secretary’s Finding be deemed moot and the Findings final. As to Complainant’s pursuit of the claim in U.S. Federal District Court, Respondent contends that such request is not proper but that in any event, Respondent preserves and does not waive any and all defenses to the claim, including jurisdiction and exhaustion of administrative remedies. Finally, Respondent avers that the “only reason” Complainant’s case has not been heard is due to his “dilatatory conduct” and that Respondent reserves the right to pursue fees and costs as a result of Complainant’s conduct.

29 C.F.R. §1982.114 provides that if 210 days have passed since the filing of a complaint with the Secretary and there is no showing of delay due to the bad faith of the complainant, a complainant may bring an action in an appropriate federal district court. Turning to the instant

matter, despite a number of delays in this matter resulting from the Complainant's requests, the record does not show that the Complainant's actions were solely motivated by a bad faith effort to delay proceedings before the office of administrative law judges. Thus, contrary to Respondent's implied claim of bad faith, I do not find that the Complainant has acted in bad faith. Additionally, more than 210 days have passed since the Complainant filed his complaint with the Secretary and no final decision has issued. Accordingly, I find that Complainant has met the prerequisites for invoking his right to bring an action in federal district court seeking a de novo review.

Given the temporal proximity of the scheduled hearing, I have decided to grant the Complainant's request on the basis of his expressed intent to file a complaint in U.S. District Court.

As the Complainant has elected to proceed with his claim under STAA in the U.S. District Court, the Office of Administrative Law Judges no longer has jurisdiction over his claim.

ORDER

It is Ordered that the hearing presently scheduled to begin on August 15, 2023 is hereby **CANCELLED** and the complaint filed by Danny Collins against Next Marketing, Inc., under the Surface Transportation Assistance Act, 49 U.S.C. § 31105, as amended, is **DISMISSED with prejudice**, meaning that Mr. Collins cannot refile this claim with the OSHA and/or with the Office of Administrative Law Judges.

SO ORDERED.

PATRICIA J. DAUM
Administrative Law Judge