

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 13 May 2009

Case No.: 2009-SWD-00001

In the Matter of:

TIMOTHY SANTOS
Complainant

v.

**NORTH COUNTRY SCHOOL
& CAMP TREETOPS**
Respondent

ORDER OF DISMISSAL

Complainant has filed a request for hearing on his complaint for relief with the Occupational Safety and Health Administrator (“OSHA”) under the Solid Waste Disposal Act (“SWDA”), 42 U.S.C. § 6971; 24 C.F.R. Part 24. Complainant alleged that Respondent terminated him on September 18, 2008, in retaliation for reporting that Respondent was not disposing asbestos containing materials properly; not providing protective equipment to work with asbestos containing materials; and not adhering to safety and health regulations enforced by OSHA.

The Secretary of Labor (“Secretary”) issued its Findings and Order on January 22, 2009, dismissing Complainant’s complaint. It was found that Complainant was notified of his discharge on September 18, 2008, and that Complainant filed a verbal complaint with the Secretary on December 18, 2008, alleging Respondent retaliated against him in violation of the Asbestos Hazard Emergency Response Act of 1986 (“AHERA”), Section 11(c) of the Occupational Safety and Health Act of 1970 (“OSHA 11(c)”) and SWDA. However, because this verbal complaint was filed 91 days after the alleged adverse action, the AHERA complaint was dismissed as untimely.*

42 U.S.C. § 6971(b) states that an employee who believes they are fired or discriminated against may “within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination.” Complainant has failed to comply with 42 U.S.C. §6971(b), as stated by the Secretary’s finding. I affirm the Secretary’s finding

* The filing period for an AHERA complaint is 90 days. 15 U.S.C. § 2651. The filing period for OSHA 11(c) and SWDA is 30 days. 29 U.S.C. 660(c)(2); 42 U.S.C. § 6971(b).

that Complainant has not applied to the Secretary in a timely manner. Therefore, I dismiss Complainant's SWDA complaint as untimely.

It is noted that I issued an Order to Show Cause on April 3, 2009, asking the parties to show cause why this matter should not be dismissed for an untimely filing. Complainant wrote a lengthy response. However, Complainant's response failed to respond the question at hand – why his complaint should not be dismissed as untimely.

Thus, Complainant has failed to show cause why this complaint should not be dismissed for an untimely filing.

ORDER

The Complaint of Timothy Santos for relief under the Solid Waste Disposal Act, 42 U.S.C. § 6971; 24 C.F.R. Part 24 is hereby DISMISSED.

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RALPH A. ROMANO
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave., NW., Washington, DC 20210.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant

Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If the Board exercises its discretion to review this Decision and Order, it will specify the terms under which any briefs are to be filed. If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110, found at 72 Fed. Reg. 44956-44968 (Aug. 10, 2007).