



**In the Matter of:**

**ED SLAVIN,**

**ARB CASE NO. 07-002**

**COMPLAINANT,**

**ALJ CASE NO. 2006-CER-004**

**v.**

**DATE: March 31, 2008**

**CITY OF ST. AUGUSTINE, FLORIDA/  
WILLIAM B. HARRISS/JAMES PATRICK  
WILSON/JOSEPH BOLES/SUSAN BURK/  
DONALD CRICHLAW/ERROL JONES,**

**RESPONDENTS.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Ed Slavin, *pro se*, St. Augustine, Florida**

***For the Respondent:***

**Robin Upchurch, *City of St. Augustine*, St. Augustine, Florida**

**FINAL DECISION AND ORDER**

Ed Slavin filed a complaint with the United States Department of Labor alleging that the Respondents violated the employee protection section of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).<sup>1</sup> Slavin claims that in April 2006 the Respondents discriminated against him after he reported to Federal authorities that the City of St. Augustine, Florida, had dumped hazardous

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<sup>1</sup> 42 U.S.C.A. § 9610 (West 2005).

material into a city reservoir. The Respondents are the City of St. Augustine, City Commissioners Joseph Boles, Susan Burk, Donald Crichlow, and Errol Jones, City Manager William Harriss, and City Attorney James Patrick Wilson.

CERCLA is a comprehensive statute that grants the President broad power to command government agencies and private parties to clean up hazardous waste sites.<sup>2</sup> The employee protection section prohibits employers from firing or discriminating against employees (and authorized representatives of employees) who provide information to a State or the Federal Government pertaining to the administration or enforcement of CERCLA. Labor Department regulations state that an “employee who believes that he or she has been discriminated against by an employer in violation of [CERCLA] may file . . . a complaint alleging such discrimination.”<sup>3</sup>

The Labor Department’s Occupational Safety and Health Administration investigated Slavin’s complaint and found that it had no merit because no employment relationship existed between Slavin and any of the Respondents. Slavin then requested a hearing before a Labor Department Administrative Law Judge (ALJ). Before conducting a hearing, the ALJ ordered the parties to show cause why Slavin’s complaint should not be dismissed since his complaint indicated that he was not employed by the Respondents.

Slavin responded. He contended that the Respondents “knew at all times” that he was considering running for City Commissioner and that he “filed to run for that office on July 21, 2006.” Furthermore, according to Slavin, St. Augustine City Commissioners are paid a salary. Therefore, he argued, he was both a “perceived potential applicant” and later an actual applicant for employment, and since case law permits employment applicants to file complaints under laws like CERCLA, his case should not be dismissed.<sup>4</sup> Despite this argument, the ALJ found that Slavin had not established that he was an employee for purposes of CERCLA’s employee protection section or the Labor Department regulation noted above. Therefore, he recommended that Slavin’s complaint be dismissed.<sup>5</sup> Slavin appealed. We have jurisdiction to issue the final decision and order in cases brought under CERCLA.<sup>6</sup>

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<sup>2</sup> See *U.S. v. Bestfoods*, 524 U.S. 51 (1998).

<sup>3</sup> 29 C.F.R. § 24.3(a) (2007). CERCLA’s implementing regulations, found at 29 C.F.R. Part 24, have been amended since Slavin filed the complaint in this case. 72 Fed. Reg. 44,956 (Aug. 10, 2007). It is unnecessary for us to determine whether the amendments apply to Slavin’s complaint because they are not implicated by the issue presented and thus, even if the amendments were applicable to this complaint, they would not affect our decision.

<sup>4</sup> Complainant’s Response to Pre-Hearing Order #1.

<sup>5</sup> *Ed Slavin v. City of St. Augustine, Florida/William B. Harriss/James Patrick Wilson/Joseph Boles/Susan Burk/Donald Crichlow/Errol Jones*, 2006-CER-004 (ALJ Sept. 19, 2006).

Slavin argues to us that the ALJ erred in not finding that he was an applicant and therefore entitled to bring this complaint. Slavin correctly points out that our jurisprudence permits employment applicants to bring whistleblower actions under statutes that contain employee protections similar to CERCLA's.<sup>7</sup> But, as noted earlier and as Respondents argue, Slavin's own pleadings allege that he filed, i.e., applied, to run for the office of City Commissioner on July 21, 2006, three months after the discrimination he complains of.<sup>8</sup> This means that Slavin was not an applicant when he suffered the alleged discrimination. And Slavin has given us no authority that CERCLA covers "perceived potential applicants," as he claims to have been. Therefore, we find that Slavin was not an employee, or an applicant, or a covered "potential applicant" when he suffered the alleged discrimination. Accordingly, we **DISMISS** Slavin's complaint.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

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<sup>6</sup> See 29 C.F.R. § 24.8 and Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002) (delegating to the Board the Secretary's authority to review cases under the statutes listed in 29 C.F.R. § 24.1(a), among which is CERCLA).

<sup>7</sup> Complainant's Opening Brief at 2-3. See *Samodurov v. Gen. Physics Corp.*, No. 1989-ERA-020, slip op. at 3 (Sec'y Nov. 16, 1993) (employee protection section of Energy Reorganization Act, 42 U.S.C.A. § 5851, covers applicants); *Chase v. Buncombe County, N.C.*, 1985-SWD-004, slip op. at 3 (Sec'y Nov. 3, 1986) (under analogous employee protection provision of Solid Waste Disposal Act, 42 U.S.C.A. § 6871).

<sup>8</sup> Respondent's Reply Brief at 8. We refused to accept Slavin's Rebuttal Brief because he did not file it according to the briefing schedule and did not explain why he did not file on time. January 31, 2007 Order Denying Complainant's Motion to File *Instante*.