



Issue Date: 13 July 2005

CASE NO. 2005-AIR-00025

In the Matter of:

David Farley,
Complainant,

vs.

Alaska Airlines,
Respondent.

Order Approving Withdrawal of Complaint

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C. § 42121, prohibits an air carrier from discharging or otherwise discriminating against any employee who provides the employer or federal government with information about a violation of any order, regulation, or standard of the Federal Aviation Administration (FAA) or any other federal law that pertains to air carrier safety. Mr. Farley complained to the Department of Labor that Alaska Airlines (Alaska) fired him from his job as a lead aircraft mechanic on January 5, 2005 in retaliation for an air safety complaint he made within Alaska on November 22, 2004.

The Occupational Safety and Health Administration (OSHA) investigated on behalf of the Secretary of Labor. 49 U.S.C. § 42121(b)(2). It notified the parties in a letter dated May 23, 2005 of its determination that Mr. Farley had been fired for events unrelated to his November 2004 safety complaint that took place on December 25 to 26, 2004, so that AIR 21 had not been violated. Mr. Farley filed a timely objection and request for hearing. *See*, 49 U.S.C. § 42121(b)(2)(A).

Mr. Farley has moved to withdraw his objection and hearing request. This would reinstate the decision of May 23, 2005 as the Secretary of Labor's final decision.

When a complainant asks to withdraw objections to OSHA's findings, "[t]he judge . . . will determine whether the withdrawal will be approved." 29 C.F.R. § 1979.111(c) (2004). Neither AIR 21 nor the Secretary's implementing regulations identify the factors to be evaluated when exercising this authority. Another judge has held that, at a minimum, the withdrawal must be a voluntary, considered decision that is consistent with AIR 21's concern for public safety. *Harnois v. American Eagle Airline*, Case No. 2002-AIR-17 (ALJ Sept. 9, 2002). Comments to the final regulations that were adopted after the *Harnois* decision say the regulation is meant to

“permit a complainant to freely withdraw his or her complaint without prejudice. The purpose of the . . . approval is to help insure that the complainant’s withdrawal is, indeed, made freely without threat of coercion or unlawful promise.” 68 Fed. Reg. 14100, 14106 (March 21, 2003).

Mr. Farley wishes to withdraw his objections because he has been unsuccessful in his efforts to retain counsel, and he needs to concentrate his efforts and financial resources on an upcoming arbitration hearing that will review his termination. He has made an appropriate decision that the Secretary should honor. The withdrawal of his objections and request for hearing is approved.

So Ordered.

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William Dorsey
Administrative Law Judge