

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 January 2006

Case No: 2005-CAA-00018

In the Matter of:

THOMAS SAPORITO,
Complainant

v.

FEDEX KINKO'S OFFICE
AND PRINT SERVICES, INC.
Respondent

FREDERICK SMITH,

MICHAEL MOORE,

KATHY LURO,

LAVELLE HAYES,

CAROL GRAVEL,

JOSE OTAUZA,

And

SHERRI KRIEGER,
Individual Respondents

FINAL ORDER DISMISSING COMPLAINT

The above referenced matter arises upon a complaint filed with the Occupational Safety and Health Administration, U.S. Department of Labor, on August 12, 2005, by Thomas Saporito, Complainant, versus FedEx Corporation, d/b/a/ FedEx Kinko's (hereinafter "FedEx") and Frederick Smith, Michael Moore, Kathy Luro, Lavelle Hayes, Carol Gavel, Jose Otayza, and Sherri Krieger. (hereinafter "Individual Respondents"). The Complainant asserts that he was constructively discharged from employment on June 3rd, 2005, as a result of engaging in activities which are protected pursuant to the *Clean Air Act*, 42 U.S.C. 7622 ("CAA"); *Toxic Substances Control Act*; 15 U.S.C. 2622, (TSCA); *Comprehensive Environmental Response, Compensation and Liability Act*, 42 U.S.C. 9610 ("CERCLA"); *Safe Drinking Water Act*, 42

USC §300j-9(i) (“SDWA”); *Solid Waste Disposal Act*, 42 USC § 6971 (“SWDA”); and the *Energy Reorganization Act*, 42 U.S.C. 5851 (“ERA”).

On December 30, 2005, the Complainant, pro se, filed a Motion to Withdraw Complaint, citing his inability to obtain representation as his reason to withdraw the complaint. This case is before this office in an unusual posture, in that, prior to completion of the investigation of the complaint by OSHA, the Complainant requested a determination without further delay. As a result, OSHA found that it was impossible to determine if a violation existed and dismissed the complaint. The Complainant then requested a formal hearing.

However, when a complaint is withdrawn, the determination by the investigating agency below becomes the final decision of the Secretary of Labor. As such, withdrawal of the complaint in the instant case, is the equivalent of a request to withdraw his request for hearing. Although OSHA did not actually complete its investigation, the finding made by OSHA on September 16, 2005, included a determination that the complaint should be dismissed.

It is, accordingly, Ordered that:

1. The request to withdraw his complaint, filed by Thomas Saporito, is treated as a request to withdraw his request for hearing;
2. The determination by OSHA made on September 16, 2005, is the final decision of the Secretary of Labor; and
3. This matter is Dismissed with prejudice.

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RICHARD E. HUDDLESTON
Administrative Law Judge