



Issue Date: 01 December 2004

CASE NO.: 2004-ERA-0030

In the Matter of:

ROBERT JENKINS,
Complainant,

v.

CALIFORNIA DEPARTMENT OF HEALTH SERVICES,
Respondent.

RECOMMENDED DECISION AND ORDER GRANTING MOTION TO DISMISS

The above-captioned matter arises from a complaint filed with the United States Department of Labor under the whistleblower protection provisions of the Energy Reorganization Act of 1974, 42 U.S.C. §5851. On October 19, 2004, Respondent California Department of Health Services filed a motion asking that this matter be dismissed. As grounds for this request, the Respondent contended that the Eleventh Amendment of the United States Constitution precludes state agencies such as itself from being sued by private persons in any Federal judicial forum. As further support for this contention, the Respondent cited to the Supreme Court's holding in *Federal Maritime Commission v. South Carolina State Ports Authority*, 535 U.S. 743 (2002).

Although the Complainant was given until November 5, 2004 to file a response, no such response has been received. Moreover, the Supreme Court's *South Carolina State Ports* decision clearly supports the Respondent's request. Accordingly, it is hereby recommended that the complaint in the above-captioned matter be dismissed with prejudice.

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Paul A. Mapes
Administrative Law Judge

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.7(d) and 24.8.

