



**Issue Date: 28 February 2017**

**Case Number: 2017-ACA-00002**

*In the Matter of:*

**GARY COLVIN,**

*Complainant*

v.

**VOLUSION, INC.,**

*Respondent*

**ORDER CANCELLING HEARING AND DISMISSING COMPLAINT**

This proceeding arises under the whistleblower provisions found at § 1558 of the Patient Protection and Affordable Care Act (“ACA”), P.L. 111-148, codified at 29 U.S.C. § 218c.

Gary Colvin (“Complainant”) filed a complaint with the Secretary of Labor (“Secretary”) on November 6, 2015 alleging his former employer, Volusion, Inc. (“Respondent”), terminated his employment on October 27, 2015 in retaliation for raising concerns in April 2015 about Respondent’s health insurance plan not being ACA compliant. On September 20, 2016, the Regional Administrator of the Occupational Safety and Health Administration (“OSHA”), acting on behalf of the Secretary, determined that Complainant engaged in protected activity in April 2015 but that it was not a contributing factor to his termination on October 27, 2015, and dismissed the complaint. Complainant timely appealed to the Office of Administrative Law Judges and requested a hearing before an administrative law judge. I was assigned the matter on October 26, 2016. On October 28, 2016, I issued a *Notice of Hearing and Prehearing Order*, scheduling this matter for hearing in Waco, Texas on April 6, 2017.

By letter filed with this Office on February 24, 2017, Complainant’s counsel now advises this tribunal that “Mr. Colvin chooses to pursue this action in federal district court” as no final determination has been made upon his November 6, 2015 complaint,<sup>1</sup> and attached a copy of a

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<sup>1</sup> Under the enforcement provisions of the Act, if the Secretary of Labor has not issued a final decision within 210 days after the filing of a complaint, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States. The district court shall then have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party, be tried by the court with a jury. *See* 29 C.F.R. § 1984.114. In this matter, more than 210 days have passed since Complainant originally filed his complaint with OSHA.

complaint filed with the United States District Court for the Western District of Texas on February 23, 2017.

**Order**

Accordingly, it is hereby ORDERED that the complaint pending before the Office of Administrative Law Judges filed by Gary Colvin under the Patient Protection and Affordable Care Act is DISMISSED.<sup>2</sup>

IT IS FURTHER ORDERED that the formal hearing scheduled for April 5, 2017 in Waco, Texas is hereby CANCELLED.

**SO ORDERED:**

**STEPHEN R. HENLEY**  
Chief Administrative Law Judge

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<sup>2</sup> If a Complainant commences an action in federal district court, the Secretary of Labor no longer has jurisdiction over the matter. *See Stone v. Duke Energy Corp.*, 432 F.3d 320, 322-23 (4th Cir. 2005) (Sarbanes-Oxley case).