



Issue Date: 14 November 2019

CASE NO.: 2018-ACA-00002
2019-ACA-00004

In the Matter of:

SHERRY CHERRIX,
Complainant,

v.

FIGRELLA INSURANCE AGENCY, INC.,

and

BLUE CROSS AND BLUE SHIELD OF FLORIDA,
Respondents.

ORDER GRANTING VOLUNTARY DISMISSAL

On June 4, 2019, I was assigned Case No. 2019-ACA-00004, and a hearing was scheduled for November 7, 2019. On July 19, 2018, Case No. 2018-ACA-00002 was assigned to Judge William S. Colwell, and a hearing was set for November 19, 2019. On September 30, 2019, the parties filed a Joint Stipulation to Consolidate and Continue

Upon review, I found that the two ACA matters involve common questions of law and fact. Accordingly, pursuant to 29 C.F.R. § 18.43(a), cases 2018-ACA-00002 and 2019-ACA-00004 were consolidated, and Case No. 2018-ACA-00002 was re-assigned to the undersigned for hearing and decision. I further found that the parties presented good cause to continue these matters until April 2020, and canceled the November hearings.

On November 6, 2019, I received a Notice of Voluntary Dismissal from the Complainant citing, *inter alia*, stress, health reasons, and the lengthiness of the administrative review process as reasons for seeking dismissal. Complainant's Notice of Voluntary Dismissal Ex. A, at 1-2. I interpret Complainant's Notice of Voluntary Dismissal as expressing her desire to withdraw her complaint. Where a complainant seeks to withdraw his or her complaint, the complainant's request is construed as a withdrawal of objections to the Secretary's preliminary findings. *Mysinger v. Rent-A-Driver*, 1990-STA-23 (Sec'y Sept. 21, 1990).

The Originating Agency of ACA Complaints is OSHA. While an ACA matter is pending before the ALJ, a party may withdraw objections to the OSHA findings by filing a written withdrawal with the ALJ. If the ALJ approves a request to withdraw objections to the OSHA findings, and there are no other pending objections, the OSHA findings will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with 29 C.F.R. § 1984.111(d)(2). 29 C.F.R. § 1984.111(c). In the instant matters, the Secretary dismissed the complaints finding that case 2019-ACA-00004, Complainant was not an “employee” of Respondent, and in case 2018-ACA-00002, that Complainant did not, among other things, engage in protected activity.

Considering the foregoing, and that I have been advised there is no objection from Employer, I **GRANT** Complainant’s request.

ORDER

IT IS HEREBY ORDERED that:

1. The hearing scheduled for April 21, 2020, in or around Delray Beach or Ft. Pierce, Florida is **CANCELED**.
2. The Secretary’s findings issued on April 8, 2019, are **REINSTATED**.
3. The above-captioned matter is hereby **DISMISSED** with prejudice, pursuant to 29 C.F.R. § 1984.111(c).

SO ORDERED.

CARRIE BLAND
Administrative Law Judge

Washington, D.C.