



Issue Date: 04 November 2019

CASE NO.: 2019-ACA-3

In The Matter Of:

MARGARET HAMMOND,
Complainant

v.

TRANSCANADA
Respondent

ORDER OF DISMISSAL

This proceeding arises under the “whistleblower” provision found at Section 1558 of the Patient Protection and Affordable Care Act¹ (ACA) codified at 29 U.S.C. § 218c.² The Secretary of Labor is empowered to investigate and determine “whistleblower” complaints by employees who are allegedly discharged or otherwise retaliated against because the employee reports or is about to report an employer who the employee reasonably believes to be in violation of any provision of or amendment made by title I of ACA.

On 29 Oct 18, Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA), alleging that Respondent had fired her in violation of the Act on 4 Oct 18. On 25 Jan 19, OSHA dismissed the complaint, noting that Complainant had requested it terminate its investigation and issue a decision based on the information it had gathered to date. On 13 Mar 19, Complainant objected to the dismissal and requested a hearing with the Office of Administrative Law Judges (OALJ).

When my staff contacted her to arrange a scheduling conference, Complainant requested two weeks to find an attorney. About a week later she informed my staff she believed she had found an attorney. However, no attorney ever entered an appearance or communicated on her behalf. My staff tried to contact her multiple times by calling, leaving voice messages, and emailing, but Complainant failed to respond to any of those communications.

Consequently, on 26 Jun 19, I issued a scheduling order and ordered Complainant to file and serve upon Respondent a detailed Complaint/Bill of Particulars on or before 10 Jul 19. I also ordered the parties to make initial disclosures within 21 days from the date of the order. I cautioned that failure to comply with the provisions of the order may result in the imposition of

¹ Pub. L. 111-148, § 1558, 124 Stat. 119 (23 Mar 10).

² 29 U.S.C. § 218c.

sanctions including dismissal of the claim or entry of a default judgement. I received no communication from Complainant in response.

On 1 Oct 19, I ordered Complainant to show cause why I should not dismiss her complaint as abandoned. I gave her seven days from receipt of the order to respond and invited her to contact my clerk at 985-809-5173 if she had any questions or was in any way confused. I cautioned her that her failure to communicate in response to the order would result in the dismissal of her complaint and the reinstatement of the OSHA findings. The order was sent to her address via registered mail with attempted delivery and notice left on 8 Oct 19. The postal service retained the order for three weeks, but it remained unclaimed. Complainant has never responded to any messages or orders since March 2019.

In view of the foregoing, the hearing scheduled on **6 Nov 19 in Houston, Texas** is hereby **CANCELLED**.

Her complaint is dismissed.³

ORDERED this 4th day of November, 2019, at Covington, Louisiana.

PATRICK M. ROSENOW
ADMINISTRATIVE LAW JUDGE

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be

³ 29 C.F.R. §§ 18.57(b), 18.70.

had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29

C.F.R. § 1984.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1984.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-N, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. *See* 29 C.F.R. § 1984.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1984.109(e) and 1984.110(b). Even if a Petition is

timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed