

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 07 December 2009**

**CASE NO: 2009-AIR-00025**

**IN THE MATTER OF**

**VICTORIA HOLT,  
Complainant**

**v.**

**EXECUTIVE JET MANAGEMENT, INC.,  
Respondent**

**EASTHAM AVIATION, INC.,  
Respondent**

**ORDER GRANTING JOINT MOTION FOR REMAND AND CANCELLING HEARING**

On December 3, 2009, the parties to the above-captioned matter filed a Joint Motion for Remand, pursuant to a conference call conducted with the undersigned on December 2, 2009. During the call, the undersigned determined that the Occupational Safety and Health Administration (OSHA) had made an erroneous dismissal of Complainant's initial complaint as untimely. All parties to this matter have agreed Complainant filed her initial complaint timely on May 15, 2009, within the ninety (90) days of the alleged violation as required by OSHA. In dismissing the complaint as untimely, OSHA did not make any determination on the substantive merits of the complaint. As such, OSHA has committed procedural error.

Based on the circumstances of this case, the timely filing of Complainant's initial complaint, the position of the parties that a remand is appropriate before deciding the case on the merits, and the two-tiered structure promulgated by Congress for either conducting a *de novo* investigation or a *de novo* factual determination, the undersigned finds it appropriate to remand this case back to OSHA for further investigation into the substantive merits of the complaint. *See Ford v. Northwest Airlines, Inc.*, 2002-AIR-21 (ALJ October 18, 2002); *C.f. Egenrieder v. Metropolitan Edison Co.*, 1985-ERA-00023 (Sec'y April 20, 1987). OSHA is to complete its investigation on the merits of the initial complaint in the above-captioned matter and issue a ruling on its merits. If the parties so choose, after OSHA's full investigation and ruling, the parties may appeal for a review by the Office of Administrative Law Judges. Please note the file will not accompany the remand.

Considering the foregoing,

**IT IS HEREBY ORDERED** the instant complaint be remanded back to OSHA for a full investigation and ruling on its merits.

**IT IS HEREBY FURTHERED ORDERED** that the hearing in this matter scheduled for January 11, 2010, in Austin, Texas, be **cancelled**.

**A**

**CLEMENT J. KENNINGTON  
ADMINISTRATIVE LAW JUDGE**