



Issue Date: 13 April 2010

CASE NO.: 2010-AIR-14

IN THE MATTER OF

**WILLIAM VANDESANDE,
Complainant**

v.

**COMPUTER PRESENTATION & TRAINING
COMPANY,
Respondent**

RECOMMENDED DECISION AND ORDER
DISMISSING COMPLAINT AS UNTIMELY

The above referenced matter arises upon a complaint filed with the Occupational Safety and Health Administration, U.S. Department of Labor, by William VandeSande, Complainant. The Complainant asserts that he was discharged from employment on May 15, 2009, as a result of engaging in activities which are protected pursuant to the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century ("AIR 21" or "the Act"), 49 U.S.C. § 42121, *et seq.*

29 C.F.R. § 1979.103(d) provides that a complaint for discrimination must be filed within 90 days of when the discriminatory decision has been both made and communicated to the Complainant. A review of the complaint filed in this matter indicates the complaint was filed on December 19, 2009, more than 90 days after Complainant was discharged.

On February 23, 2010, this Court issued an Order to Show Cause requiring Complainant to show why his case should not be dismissed as not having been timely filed pursuant to AIR 21. Complainant was advised that a failure to file a response within 30 days shall be deemed an acknowledgment as to the accuracy of the date Complainant alleges he was discharged and the date he filed his complaint, and shall result in dismissal of the complaint as not having been timely filed. As of the date of this Order, Complainant has failed to respond.

Based on the foregoing, the Court finds that the Complainant failed to file a claim of discrimination under AIR 21 within 90 days from the date of the alleged violation and that the doctrine of equitable tolling is not applicable in this case. The Court thus finds the complaint herein was not timely filed and must be dismissed.

RECOMMENDED ORDER

The complaint of William Vandesande is hereby **DISMISSED**.

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LARRY W. PRICE
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within ten (10) business 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. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; 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. § 1979.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1979.110(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-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. § 1979.110(a).

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. § 1979.110. 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 notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).