

U.S. Department of Labor

Office of Administrative Law Judges
5100 Village Walk, Suite 200
Covington, LA 70433



(985) 809-5173
(985) 893-7351 (Fax)

Issue Date: 13 April 2015

CASE NO.: 2012-AIR-00002

IN THE MATTER OF

ELIZABETH CARY
Complainant

v.

EXECUTIVE AIRLINES, INC.,
d/b/a AMERICAN EAGLE, INC.
Respondent

ORDER OF DISMISSAL

A. Background

On July 7, 2011, Elizabeth Cary (Complainant) filed a complaint with the Secretary of Labor alleging that Executive Airlines, Inc., d/b/a American Eagle, Inc. (Respondent) retaliated against her in violation of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C. § 42121.

On October 12, 2011, the Secretary, acting through the Occupational Safety and Health Administration (OSHA), dismissed Claimant's whistleblower complaint. On November 15, 2011, Claimant, through attorney Joseph Michael Lamonaca, filed objections to the Secretary's findings and requested a hearing before the Office of Administrative Law Judges.

There was no other formal activity in this case from December 2011, when Respondent filed a Chapter 11 bankruptcy and now-retired Administrative Law Judge C. Richard Avery stayed the matter, until March 5, 2015, when the undersigned issued Complainant an Order to Show Cause. Complainant was ordered to indicate in writing whether she wishes to continue to prosecute this employee whistleblower claim and why this litigation should not be dismissed as abandoned in accordance with her lack of communication with the Court.

On March 24, 2015, Complainant informed the Court by telephone that she wished to withdraw her claim. On April 7, 2015, Complainant put her decision to withdraw in writing, specifically stating in an email, "I would like to withdraw my Air 21 claim, as this portion of the company no longer exists and I would like to move forward." (Cary E-mail, p. 1).

B. Law and Discussion

The rules of administrative practice provide that proceedings before an administrative law judge (ALJ) shall be conducted expeditiously and the parties shall make every effort at each stage of a proceeding to avoid delay. 29 C.F.R. § 18.1(a).

In an AIR 21 proceeding, a party may withdraw its objections to the Secretary's findings at any time before that decision becomes final by filing a written withdrawal with the ALJ. 29 C.F.R. § 1979.111(c). The ALJ will determine whether to approve the withdrawal of the objections to the Secretary's findings. *Id.*

If I approve a request to withdraw objections, and there are no other pending objections, then the Secretary's findings outlined in the letter from OSHA to Complainant dated October 12, 2011, dismissing the case, are affirmed and will become the final order of the Secretary.

Based on Complainant's written request to withdraw, her telephone conversation with the Court, and the record before me, I have determined that Complainant's decision was not the result of duress from Respondent and a withdrawal is warranted.

I find that good cause is shown, and I approve Complainant's withdrawal of her complaint and objections.

C. Order

Based on the foregoing,

IT IS HEREBY ORDERED that the complaint and objections from Complainant, Elizabeth Cary, against Executive Airlines, Inc., d/b/a American Eagle, Inc., are **DISMISSED**.

SO ORDERED this 13th day of April, 2015 at Covington, Louisiana.

CLEMENT J. KENNINGTON
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). In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov. 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).

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: (1) an original and four copies of a supporting legal brief of points and authorities, 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 the appeal is taken, upon which you rely in support of your petition for review.

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.

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 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).

