



Issue Date: 27 November 2012

In the Matter of
STEPHANIE HEER,¹
Complainant

Case No.: 2012 AIR 18

v.

RYAN INTERNATIONAL AIRLINES,
Respondent

Appearances: Mr. John C. Ireland, Attorney
For the Complainant

Mr. Brian J. Kutz, Attorney
For the Respondent

Before: Richard T. Stansell-Gamm
Administrative Law Judge

**DECISION AND ORDER --
APPROVAL OF WITHDRAWAL OF APPEAL,
WITHOUT PREJUDICE TO REFILE WITHIN 30 DAYS AFTER FUTURE NOTICE OF
TERMINATION OR EXPIRATION OF AUTOMATIC STAY, AS PROVIDED BY 11
U.S.C. § 108(c), UNLESS OTHERWISE PROHIBITED BY 11 U.S.C. § 524**

On November 12, 2012, I received a Motion to Dismiss Complainant's appeal without prejudice to refile from Complaint's counsel pursuant to an order issued by the U.S. Bankruptcy Court, Northern District of Illinois, Western Division ("bankruptcy court"). Due to a motion from Respondent seeking enforcement of the automatic bankruptcy stay, the bankruptcy court determined that Ms. Heer's appeal of the dismissal of her AIR 21 complaint by the U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA"), was "void" because it occurred after Respondent had obtained an automatic bankruptcy stay. As a relief, the bankruptcy court directed Complainant's counsel to file appropriate pleadings to cause Ms. Heer's appeal to "be dismissed without prejudice to her ability to refile a notice of appeal within 30 days after future notice of the termination or expiration of the automatic stay in this case as provided by 11 U.S.C. § 108(c) (unless otherwise prohibited by 11 U.S.C. § 524)."

¹Although Complainant's counsel later occasionally referred to Complainant as Ms. "Herr," I will use Ms. "Heer," which was the name used in her October 11, 2011 AIR 21 complaint and the subsequent case referral to this office.

Background

On October 11, 2011, through counsel, Complainant filed a timely AIR 21 complaint allegedly that Respondent terminated her employment on August 2, 2011 in retaliation for her participation as a witness in another Ryan International Airlines' employee's AIR 21 hearing.² On July 18, 2012, OSHA dismissed Ms. Heer's AIR 21 complaint since the preponderance of the evidence supported a finding that her protected activity associated with the AIR 21 hearing was not a contributing factor to her employment termination thirteen months later. On August 1, 2012, in response to OSHA's dismissal, Ms. Heer filed a timely appeal with the Office of Administrative Law Judges ("OALJ") and requested a hearing.³

After being assigned to render a decision in this case under the employee protection provisions of Section 519 of the Aviation Investment and Reform Act for the 21st Century, (Public Law 106-181), Subsection 42121 (b) (2) (A), as implemented by 29 C.F.R. Part 1979, I contacted the parties' counsel on August 22, 2012 to schedule a hearing date. At that time, counsel advised that Respondent had entered a Chapter 11 bankruptcy proceeding and obtained a stay of pending litigation and claims. On August 27, 2012, Complainant's counsel submitted a motion for a stay during the bankruptcy proceedings. On August 29, 2012, Respondent's counsel advised Respondent did not object to the motion. Accordingly, on September 10, 2012, I issued an order that stayed the present proceedings before OALJ for the duration of Respondent's Chapter 11 bankruptcy.

Discussion

I have already stayed the proceedings before OALJ for the duration of Respondent's bankruptcy proceeding. However, in light of the recent bankruptcy court-directed request by Complainant's counsel, I **APPROVE** a withdrawal of the present timely appeal without prejudice to refile the appeal with OALJ within 30 days after notice of termination or expiration of the automatic stay associated with Respondent's present Chapter 11 bankruptcy, as provided by 11 U.S.C. § 108(c), unless otherwise prohibited by 11 U.S.C. § 524. Failure to refile the appeal within 30 days of such notice will cause the withdrawn appeal to be with prejudice, reinstating OSHA's dismissal of Mr. Heer's AIR 21 complaint, which will become a final determination.

SO ORDERED:

RICHARD T. STANSELL-GAMM
Administrative Law Judge

²I presided over the case, 2009 AIR 29, in which Complainant, then Ms. Stephanie Howe, participated through a deposition.

³The appeal was received by OALJ by fax on August 1, 2012. Another copy of the appeal was mailed on August 9, 2012 and received by OALJ on August 14, 2012.

SERVICE SHEET

Case Name: **HEER_STEPHANIE_v_RYAN_INTERNATIONAL_A_**

Case Number: **2012AIR00018**

Document Title: **Decision and Order - Approval of Withdrawal of Appeal etc**

I hereby certify that a copy of the above-referenced document was sent to the following this 27th day of November, 2012:

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