



Issue Date: 26 April 2017

Case No.: 2017-AIR-00013

In the Matter of

ERICK S. DORSEY

Complainant

v.

SKYWEST AIRLINES

Respondent

**ORDER APPROVING COMPLAINANT'S WITHDRAWAL OF HIS OBJECTIONS TO
THE SECRETARY'S FINDING, DISMISSING HIS APPEAL, AND REINSTATING
THE SECRETARY'S FINDINGS**

This matter arises under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), which was signed into law on April 5, 2000. The Act includes a whistleblower protection provision, with a Department of Labor complaint procedure.¹ Implementing regulations are at 29 CFR Part 1979, published at 68 Fed. Reg. 14,107 (Mar. 1, 2003). Per 49 U.S.C. § 42121(b)(2)(A), and implemented by 29 CFR § 1979.100(b), the hearing in this matter is to commence expeditiously, except upon a showing of good cause or otherwise agreed to by the parties.

Procedural History

On October 10, 2014, Respondent terminated Complainant's employment.

On March 1, 2017, Complainant filed a complaint with the FAA relating to possible violations of the AIR 21.² As part of this complaint, Complainant alleges that he has evidence that he filed his complaint "prior to the 90 days of the filing date." His complaint represents that he attached documents and pictures, but they those documents are currently not in the file before this Tribunal.

¹ Pub. L. 106-181, tit. V, § 519(a), Apr. 5, 2000, 114 Stat. 145. See 49 U.S.C. § 42121.

² Complainant has opted to proceed *pro se* during this entire process.

On March 9, 2017, OSHA issued its findings dismissing the complainant as untimely.

On March 9, 2017, Complainant filed his appeal and requested a hearing.

On April 6, 2017, this matter was assigned to the Tribunal.

On April 10, 2017, the Tribunal issued a Notice of Assignment and Conference Call, scheduling a teleconference for April 21, 2017.

Also, on April 10, 2017, the Tribunal *sua sponte* issued an Order directing Complainant to provide evidence by May 5, 2017, that his complaint was timely filed with OSHA.

On April 16, 2017, Respondent filed its pre-hearing conference position statement and requested that discovery in this matter be stayed (held in abeyance) pending resolution of the issue of whether Complainant's filing with OSHA was timely.

On April 21, 2017, the Tribunal issued an Order Staying Discovery Pending Resolution of Whether the Complaint was Timely Filed. In this Order, Complainant was given until May 5, 2017 to provide evidence that his OSHA claim was timely filed.

Later on April 21, 2017, the Tribunal participated in a teleconference it had scheduled in its April 10, 2017, Notice of Assignment and Conference Call Order. Respondent's counsel participated, but Complainant did not. Consequently, the teleconference was brief. Respondent's counsel made an oral motion to dismiss based on Complainant's failure to participate in the teleconference. The Tribunal denied that motion but informed Respondent's counsel that it would issue an Order to Show Cause instead for Complainant's failure to appear.

On April 21, 2017, the Tribunal issued an Order to Show Cause Why Complainant's Failure to Appear at a Directed Teleconference should not be Construed as Abandonment of his Claim directing Complainant to provide an explanation for failure to participate in the April 21, 2017 scheduled teleconference by May 8, 2017.

On April 25, 2017 This Tribunal's office received an email from Mr. Dorsey stating:

I don't want to move forward with this appeal, notify Judge Morris and let him know, I do not wish to move forward with this appeal. I have had enough, and just want to work and have a good life.

This Tribunal interprets Complainant's request as a request to withdrawal his objections to the Secretary's findings with prejudice. A Complainant may withdraw his complaint at any time before a finding or an order becomes final. 29 C.F.R. § 1979.111(c). Although Complainant's request was sent via email,³ it is a written request as required by the rule.

³ The email from which this document was sent is the same email address the Complainant had used on previous occasions in communicating procedural matters to the Tribunal and Respondent's counsel.

Accordingly,

- Complainant's written request to withdraw his appeal of the Secretary's Findings is **GRANTED**; his appeal of the Secretary's findings is hereby **DISMISSED** with prejudice
- OSHA's findings are **REINSTATED, AFFIRMED, and FINAL.**

SO ORDERED.

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey