



**Issue Date: 29 March 2018**

Case No.: 2017-AIR-00028  
OSHA No.: 4-1760-15-102

*In the Matter of:*

**JOHN A. HEARD,**  
*Complainant,*

v.

**UNITED PARCEL SERVICE, INC.,**  
*Respondent.*

**DECISION AND ORDER OF DISMISSAL,  
ORDER SEALING COMMUNICATION, AND  
ORDER CANCELLING HEARING**

On January 5, 2018, *pro se* Complainant, John Heard, submitted an email to my clerk, appended to which was an *ex parte* communication (“the Email”). As discussed at the January 11, 2018 conference call, neither my clerk nor I read the contents of the Email. I find that Complainant’s status as a *pro se* Complainant, his statement that the Email included communication with a doctor, and his privacy interest in such communication outweigh the public interest in access to this document. Accordingly, I order the Email to be **PLACED UNDER SEAL** as set forth by 29 C.F.R. § 18.85(b).<sup>1</sup> In the alternative, I seal this document pursuant to my procedural authority under 29 C.F.R. § 18.12.

On January 11, 2018, I held a conference call with the parties in the above captioned matter. During the conference call Complainant stated *inter alia* that he was uncertain whether he wanted to pursue an appeal in this matter “at this time.” January 11 Transcript (“Tr.”) at 5. Based on Complainant’s statements I found good reason to grant him a thirty-day extension to meet and confer. Accordingly, I ordered the parties to meet and confer by Monday, February 12, 2018.

On January 26, 2018, Complainant notified my law clerks and opposing counsel by email that he intended to withdraw his appeal. At that point, Complainant had not formally filed a notice to that effect with the OALJ. On January 31, 2018, I received from Respondent a Motion to Dismiss the complaint as untimely filed.

On March 6, 2018, I received from Respondent a second Motion to Dismiss and Failure to Comply with Discovery Orders (“Motion”). In its second Motion to Dismiss, Respondent

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<sup>1</sup> A copy of the Email was printed, placed in an opaque folder, and included in the case file of this matter.

stated that Complainant failed to comply with my pre-hearing order to meet and confer. Motion at 2-3. The Motion also stated that Complainant had expressed his intent to withdraw his appeal, although he had not yet done so. *Id.* Respondent requested that Complainant's claim be dismissed with prejudice under 29 C.F.R. § 18.70(c).

On March 8, 2018, I received from Complainant a Notice to Withdraw Appeal ("Withdrawal").<sup>2</sup> Complainant's Withdrawal did not specify whether he intended for his claim to be dismissed with or without prejudice. Withdrawal at 1. During the January 22, 2018 conference call, Complainant stated that he was uncertain whether he wanted to pursue an appeal "at this time." Tr. at 5. Based on Complainant's statement and his status as a *pro se* Complainant, I find that he intended to seek dismissal of his claim without prejudice.

Under the regulations, I may grant a complainant's motion to withdraw a complaint. 29 C.F.R. § 1979.111(c). I find good cause to do so in this case.

Accordingly:

1. Complainant's Notice to Withdraw Appeal is **GRANTED** and this matter is **DISMISSED WITHOUT PREJUDICE**;

2. Respondent's first Motion to Dismiss and second Motion to Dismiss with prejudice are **DENIED**; and

3. The hearing of this matter set for May 16, 2018, at 9:00 a.m. in or near Knoxville, Tennessee, is **CANCELLED**.

**SO ORDERED.**

**PAUL R. ALMANZA**  
Associate Chief Administrative Law Judge

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<sup>2</sup> As Complainant's Withdrawal did not contain a service sheet, my law clerk called counsel for Respondent on March 8, 2018, and received confirmation that Respondent had received a copy of Complainant's Withdrawal.