

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 07 March 2018

In the Matter of:

RIGOBERTO CARRION

COMPLAINANT

v.

2018-AIR-00003

EXECUTIVE JET DESIGN, INC

RESPONDENTS

**DECISION AND ORDER
CLAIM DISMISSED**

This claim under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C.A. § 42121 (West 1997) and the implementing regulations at 29 C.F.R. Part 1979 (2003) was scheduled for February 5, 2018 In Orlando, Florida.

In the Notice of Hearing, I advised the parties to seek counsel. I restate: the parties should seek counsel. At that time, I ordered the following in part:

1. On or before January 1, 2018, the parties *shall* exchange, by facsimile, hand delivery, or overnight mail to be delivered before that day's close of business, pre-hearing submissions containing the following information:
 - A. A simple statement of the issues to be decided and the relief or remedy sought.
 - B. The name and address of each witness the party expects to call. Expert witnesses must be designated on the witness list with a brief statement concerning the field of expertise and topics of proposed testimony. Any testifying expert must have submitted a written report, which is to be exchanged with the other pre-hearing submissions. See generally Fed. R. Civ. P. 26.

The parties did not comply.

The Department of Labor advised me that the Complainant failed to cooperate in the investigation phase and therefore, a hearing is not warranted. Under 29 CFR §42121, Protection of employees providing air safety information, in part:

(b) Department of Labor Complaint Procedure.-

(2) Investigation; preliminary order.-

(A) In general.-Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) Requirements.-

(i) Required showing by complainant.-The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

29 CFR § 18.12, Proceedings before administrative law judge states in part:

(b) Authority. In all proceedings under this part, the judge has all powers necessary to conduct fair and impartial proceedings, including those described in the Administrative Procedure Act, 5 U.S.C. 556. Among them is the power to:

(7) Terminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order.

In this case, the parties did not identify any potential exhibits and witnesses in violation of my Pre-hearing Order. More importantly, since Complainant failed to comply with OSHA requests for information, the Department of Labor disputes my jurisdiction in this case and that allegation has not been challenged by the parties.

On March 1, 2018, I entered the following:

1. The February 5, 2018 hearing was cancelled.
2. The parties were ordered to provide good cause why this claim should not be dismissed by MARCH 1, 2018.
3. I stated that failure to respond without a valid excuse may result in dismissal.

The parties did not respond.

Accordingly, this claim is **DISMISSED**.

DANIEL F. SOLOMON
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 decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing.

Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed. An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic

service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents. 29 C.F.R. § 1979.111(c).

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; 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 filing paper copies, 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 an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file 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. If you e-File your petition and opening brief, only one copy need be uploaded. 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 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 may include 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.

If you e-File your responsive brief, only one copy need be uploaded. 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 you e-File your reply brief, only one copy need be uploaded. 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).