

U.S. Department of Labor

Office of Administrative Law Judges
90 Seventh Street, Suite 4-800
San Francisco, CA 94103-1516

(415) 625-2200
(415) 625-2201 (FAX)



Issue Date: 20 February 2019

CASE NO.: 2018-AIR-00036

In the Matter of:

EDWARD J. FALLON,
Complainant,

v.

**AIRMD, LLC (D/B/A LIFETEAM OR
LIFESAFE) AND EAGLEMED, LLC,**
Respondents.

Appearances: Edward J. Fallon
Self-represented

Ryan K. Meyer, Esq.
Fleeson, Gooing, Coulson & Kitch, LLC
for Respondent AirMD, LLC

Patrick S. Richter, Esq.
Jackson Lewis, P.C.
for Respondent EagleMed, LLC

Before: Steven B. Berlin
Administrative Law Judge

ORDER OF DISMISSAL

This matter arises under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121, and its implementing regulations at 29 C.F.R. Part 1979. As the regulations require, Complainant filed his administrative complaint with the Occupational Safety & Health Administration. Before OSHA completed its investigation, Complainant (through counsel) requested that OSHA close the case so that Complainant could proceed directly to litigation at the Office of Administrative Law Judges.

Complying with Complainant's request, OSHA issued a determination ("Secretary's Findings"). The Acting Assistant Regional Administrator wrote: "Complainant has requested that OSHA terminate its investigation and issue a determination. Based on the information gathered thus far in its investigation, OSHA is unable to conclude that a violation of the statute has occurred. OSHA hereby dismisses the complaint." Secretary's Findings, May 7, 2018 at 2.

Again through counsel, on May 25, 2018, Complainant objected to OSHA's findings and requested a hearing before an ALJ.¹

Less than two months later, Complainant's counsel moved to withdraw as counsel of record. Complainant did not object. I granted counsel's motion to withdraw. The hearing was nearly five months off, and I found no prejudice to any party.

In the order allowing the withdrawal of counsel, I advised Complainant of his right to retain new counsel, that an AIR 21 complainant who is successful is entitled to an award of reasonable attorney's fees, and that this Office does not appoint counsel for litigants. I informed Complainant about the limitations on advice this Office could provide to self-represented parties and that, as a judge, I must be neutral and cannot act as Complainant's attorney. I stated: "The issues in this case are legally and factually complex. Complainant should seriously consider obtaining new counsel, who can provide expertise that likely will benefit him. [Complainant] should act promptly and diligently if it is his choice to retain new counsel." Order, July 11, 2018, at 2.

Seven months have passed since I issued that Order, and Complainant has continued to be self-represented.

I scheduled a hearing to begin on February 19, 2019. About six weeks before the hearing, the remaining respondent, AirMD, moved for summary decision or, in the alternative, to compel discovery.² Complainant filed a cross-motion (1) to extend by 90 days his time to respond to the discovery, and (2) to continue the hearing date, also for 90 days. He stated that he had been occupied with a job search and moving to a new city for the job he found. He added that his forwarded mail had been slow in arriving.

Ruling on the cross-motions, I vacated the hearing date, set a new hearing date in June 2019, issued an order compelling Complainant to comply with AirMD's discovery requests within 28 days, and denying without prejudice AirMD's motion for summary decision until AirMD had

¹ Respondent EagleMed, LLC filed a pleading with this Office, alleging that the claim against it was frivolous or brought in bad faith. It sought an award of attorney's fees (not to exceed \$1,000). *See* 49 U.S.C. § 42121(b)(3)(C). Complainant moved to dismiss EagleMed voluntarily. I granted the motion on June 27, 2018, but EagleMed continued as a party on its counterclaim for fees. On August 14, 2018, EagleMed abandoned the counterclaim. I accepted the withdrawal of the counterclaim and dismissed EagleMed on August 15, 2018.

² Complainant voluntarily dismissed EagleMed, LLC. Through counsel, the remaining Respondent states that "LifeTeam" is not a legal entity. It is an assumed business name of AirMD, LLC, a Kansas limited liability corporation. Moreover, AirMD no longer uses the name "LifeTeam" and instead does business as "LifeSafe." I have modified the caption consistent with this.

reviewed Complainant's discovery responses. AirMD could then determine whether it should pursue, modify, or abandon the motion.

I issued that Order on January 25, 2019. That gave Complainant until February 22, 2019 to answer Respondent's discovery requests. In the Order, I repeated the admonition about Complainant's right to retain counsel and about the fee-shifting provision in the statute. I also raised the possibility of a contingent fee arrangement

On February 19, 2019, Complainant moved to withdraw and dismiss his case. He stated that he had diligently searched for counsel since July 2018, when his attorney withdrew, and that he had "redoubled" his efforts after the Order compelling discovery issued on January 25, 2019. He stated that he had contacted "numerous law firms and entities which provide legal referrals." He listed some examples. He stated that, without the assistance of counsel, he could not comply with the order compelling him to answer Respondent's discovery requests. He moved to dismiss his claim.

Discussion

"At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved." 29 C.F.R. § 1978.111(c).

Here, Complainant has known since July 2018 at the latest about his right to retain new counsel and that it was his responsibility to find counsel to his liking who would accept the representation. He knew and could inform attorneys that, if he was successful in the litigation, Respondent AirMD would be required to pay reasonable attorney's fees.

Essentially, Complainant is saying that he has searched diligently for an attorney for seven months (and especially recently), is unable to retain one, and is unable (or unwilling to do more) to represent himself sufficiently to comply with the ALJ's orders.³ I must accept Complainant's decision that, given these considerations, he no longer wishes to proceed.

Order

Complainant's motion to withdraw his request for a hearing before an ALJ and to have his case dismissed is GRANTED and APPROVED. 29 C.F.R. § 1978.111(c). The hearing set for June 10, 2019, is VACATED.

³ Complainant knew that he could have sought more time to comply with the order compelling discovery: he previously did that when he requested 90 additional days to answer the discovery, and I allowed him 28. He did not ask for another extension of time.

As Complainant's AIR 21 claim against AirMD, LLC is the only claim remaining for adjudication, this matter is DISMISSED in its entirety. The "Secretary's Findings," cited above, which dismiss Complainant's complaint, are the final order of the Secretary. Complainant therefore shall take nothing by reason of his complaint.

SO ORDERED.

STEVEN B. BERLIN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) 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, 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.

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, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. *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. §§ 1979.109(e) and 1979.110(a). 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. §§ 1979.110(a) and (b).