

U.S. Department of Labor

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Issue Date: 16 August 2007

Consolidated CASE NOs.: 2007-CAA-00006
2007-CAA-00007

In the Matter of:

CHARLES STITH and JESSICA KERN,
Complainants,

v.

U.S. DEPARTMENT OF AGRICULTURE ARS ABADRL
Respondent.

**ORDER GRANTING COMPLAINANTS' JOINT WITHDRAWAL REQUESTS OF
OBJECTIONS TO SECRETARY'S MAY 14, 2007 FINDINGS, DISMISSING EACH OF
THEIR COMPLAINTS AND CANCELLING HEARING**

On March 16, 2007, Complainant Jessica Kern filed her complaint under Section 322 of the Clean Air Act, 42 U.S.C. 7622, *et seq.* and the implementing regulations at 29 C.F.R. Part 24. On April 18, 2007, Complainant Charles Stith filed his complaint also under Section 322 of the Clean Air Act, 42 U.S.C. 7622, *et seq.* and the implementing regulations at 29 C.F.R. Part 24 (the "Act" or the "CAA").

On May 14, 2007, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration, Region X (Secretary) issued separate Notices of Determination containing specific factual findings and legal conclusions which resulted in the dismissal of each of the complaints in this case (the "Secretary's May 14, 2007 Findings").

Complainants each objected to the Secretary's Findings and requested a hearing before this Office. This case was set for trial on August 20, 2007 in Cheyenne, Wyoming.

On August 9, 2007, Respondent filed a motion to dismiss for failure to state a claim and prosecute along with supporting evidence arguing that Complainants' concerns are more properly described as a workplace grievance than an environmental whistleblower complaint and that each Complainant has failed to allege that they engaged in any protected activity. In addition, the motion asks that the complaints be dismissed for failure to prosecute because Complainants have failed to comply with my June 5, 2007 pre-trial order and not filed a pre-hearing statement, witness list or exchanged exhibits in a timely manner and that Respondent is prejudiced by not being served with Complainants written position papers and trial exhibits.

On August 13, 2007, prior to the deadline for filing a response to the motion to dismiss, Complainants filed a fully executed joint letter withdrawal of each of their respective objections

to the Secretary's Findings (Withdrawal) pursuant to 29 Code of Federal Regulations (CFR) Section 24.111(c). On August 16, 2007, Respondent filed a Non-Opposition to Complainants' Motion to Withdraw stating that Respondent does not oppose the joint withdrawals but that the actions should be dismissed on the merits for failure to state a claim.

The Secretary's regulations provide at 29 CFR Section 24.111(c), as amended as of August 10, 2007, a complainant can withdraw his or her objections to the Secretary's Findings at any time before they become final by filing a written withdrawal with the administrative law judge. I find that pursuant to 29 CFR Section 24.111(c), Complainants can withdraw their respective objections to the Secretary's May 14, 2007 Findings because they were not final when the written joint withdrawals were filed on August 13, 2007. I finally find that the joint withdrawals were not submitted because of settlement.

For good cause shown:

IT IS ORDERED that Complainants' written joint requests to withdraw their respective appeals of the Secretary's May 14, 2007 Findings are **GRANTED**, and the CAA complaints which compose OALJ Case Nos. 2007-CAA-00006 and 2007-CAA-00007 are each **DISMISSED** *with prejudice*.

IT IS FURTHER ORDERED that with this Order, the Secretary's May 14, 2007 Findings in each case are **REINSTATED, AFFIRMED**, and **FINAL** and Complainants are deemed to have waived any further proceedings before the U.S. Department of Labor regarding the matters which are the subject of their respective complaints.

IT IS FURTHER ORDERED that the August 20, 2007 hearing in this case in Cheyenne, Wyoming is **CANCELLED**.

A

GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California