



Issue Date: 03 August 2010

Case No. 2010-CAA-6

In The Matter Of:

John Adkins,
Complainant

v.

Heery International,
Respondent

RECOMMENDED ORDER DISMISSING CLAIM

This proceeding arises under the Clean Air Act, 42 U.S.C. § 7622 (hereinafter “the Act”), and implementing regulations at Title 29 Code of Federal Regulations Part 24. The statute is implemented by regulations providing procedures for handling of discrimination complaints. 29 C.F.R. § 24. An employee who believes that he or she has been discriminated against in violation of the Act may file a written complaint within 30 days after the occurrence of the alleged violation. 29 C.F.R. § 24.3(b), (c). The Complainant filed a complaint under the Act, which was dismissed by the Occupational Safety and Health Administration on the grounds that it was not timely filed. The Complainant appealed to the Office of Administrative Law Judges, and the case was assigned to the undersigned Administrative Law Judge.

On July 27, 2010, I issued an Order Directing the Parties to Submit Arguments regarding the timeliness of the Complainant’s claim. On July 30, 2010, I issued an Order Regarding Ex Parte Submission, after the Complainant submitted a one page handwritten document by telefax, without providing a copy to other parties.¹ I advised the Complainant that *ex parte* communications with the Court were prohibited, and that copies of any communications with the Court must be sent to all parties as set out in the Certificate of Service.

On July 31, 2010, the Complainant submitted an annotated copy of my Order Regarding Ex Parte Submission by telefax, stating, *inter alia*, “I want nothing to do with this further.” There is no indication that this annotated document was sent to all parties as required. I interpret this document, a copy of which is attached hereto, as a request by the Complainant to withdraw his appeal from the dismissal of his claim by the Occupational Safety and Health Administration.

Accordingly, the Complainant’s request is hereby granted, and this claim is dismissed.

¹ The Complainant had previously responded to my Preliminary Order by telefax, with no indication of service on other parties.

ORDER

Based on the Complainant's request, it is hereby recommended that this claim be dismissed.

SO ORDERED.

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LINDA S. CHAPMAN
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Recommended Decision and Order will become the final order of the Secretary of Labor unless, pursuant to 29 C.F.R. § 24.8, a written petition for review is filed with the Administrative Review Board ("the Board"), United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.7(d) and 24.8. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If the Board exercises its discretion to review this Decision and Order, it will specify the terms under which any briefs are to be filed. If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110, found at 72 Fed. Reg. 44956-44968 (Aug. 10, 2007).