

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 29 March 2010

Case No.: **2010-CAA-00001**

In the Matter of:

DAVID GOVAN,
Complainant,

v.

STERICYCLE, INC.,
Respondent.

**RECOMMENDED DECISION AND ORDER DISMISSING THE CLAIM AS
BEING ABANDONED BY THE COMPLAINANT**

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. The complaint was denied by the Occupational Safety and Health Administration, the Complainant appealed to the Office of Administrative Law Judges, and the case was assigned to the undersigned Administrative Law Judge on October 16, 2009.

This office has repeatedly attempted to schedule a conference call with the parties. The Complainant has not been responsive.

On February 2, 2010, the undersigned Administrative Law Judge issued an order to show cause to the Complainant to explain his lack of diligence and his willingness to pursue the claim.

The above letter was sent by certified mail and was returned to this office as being undeliverable on March 18, 2010.

The Complainant had listed a telephone number when he filed his appeal with the Office of Administrative Law Judge.

On March 19, 2010, a staff member in this office called the listed telephone number. The person who answered the phone stated that the number had been reissued.

The undersigned concludes that as there has been no recent contact with the Complainant the claim has been abandoned.

29 C. F. R. § 18.39 deals with failure to participate or to appear

(b) Dismissal - abandonment by Party. A request for hearing may be dismissed upon its abandonment or settlement by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his or her representative appears at the time and place fixed for the hearing and either (a) prior to the time for hearing such party does not show good cause as to why neither he or she nor his or her representative can appear or (b) within ten (10) days after the mailing of a notice to him or her by the administrative law judge to show cause, such party does not show good cause for such failure to appear and fails to notify the administrative law judge prior to the time fixed for hearing that he or she cannot appear. A default decision, under § 18.5(b), may be entered against any party failing, without good cause, to appear at a hearing.

An order to show cause has been issued and the Complainant has not responded.

In view of 29 C. F. R. § 18.39(b) this case is deemed as abandoned.

ORDER

It is recommended that the complaint of David Govan be dismissed as abandoned.

A

RICHARD K. MALAMPHY
Administrative Law Judge

RKM/ccb
Newport News, Virginia

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).