



Issue Date: 22 November 2005

Case No.: 2005-ERA-00023

OSHA Case No.: 8-0600-05-020

*In the Matter of:*

ADRIENNE ANDERSON,  
Complainant

v.

METRO WASTEWATER RECLAMATION DISTRICT,  
Respondent.

**RECOMMENDED DECISION & ORDER GRANTING RESPONDENT'S MOTION  
FOR SUMMARY DECISION & DISMISSING COMPLAINT**

Beginning on May 2, 1997, Complainant initiated three prior cases against Respondent under seven environmental acts.<sup>1</sup> The parties litigated those cases through various administrative processes that turned primarily on the issue of whether Complainant was an employee or an authorized representative of employees of Respondent.<sup>2</sup> On July 29, 2005, Complainant appealed to the United States Court of Appeals for the Tenth Circuit. The court held that Complainant had no standing under any of the acts to file claims against Respondent. *Anderson v. U.S. Dept. of Labor*, 422 F.3d 1155, 2005 U.S. App. LEXIS 19075, 82 (10<sup>th</sup> Cir. 2005).<sup>3</sup>

On March 4, 2005, during the pendency of the appeal, Complainant filed the instant claim under the same seven acts. On July 22, 2005, OSHA dismissed the claim. On July 29, 2005, Complainant timely objected and the case was assigned to the undersigned.<sup>4</sup> On August 18, 2005, the undersigned granted Complainant's request to stay this case awaiting the Tenth Circuit's holding. Now, based on that holding, Respondent seeks summary decision. For the following reasons, the undersigned grants that motion.

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<sup>1</sup> These acts are: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Solid Waste Disposal Act (SWDA); Federal Water Pollution Control Act (FWPCA); Energy Restoration Act of 1974 (ERA); Safe Drinking Water Act (SDWA); Clean Air Act (CAA); and Toxic Substances Control Act (TSCA).

<sup>2</sup> The OALJ consolidated these three cases into 1997-SDW-00007.

<sup>3</sup> This appeal applied to the consolidated case. Page numbers follow the Lexis citation because no federal reporter page number was available.

<sup>4</sup> Although in her original March 4, 2005 claim, Complainant named both Metro and her then employer, the University of Colorado at Boulder, as respondents (OSHA case numbers 8-0600-05-020 and 8-0600-05-017, respectively), she failed to object to the determination as to the University. Therefore the only issue here is the status of her claim as to Metro.

## DISCUSSION

Respondent prays for summary decision and dismissal of this case under *Anderson*. There, the court held that, “the plain language of the ERA, SDWA, CAA and TSCA is clear ... the discrimination must be directed toward the employee and it is the employee, not his representative, which is clothed with a cause of action for that discrimination.” *Id.* at 61. As to the remaining three acts (CERCLA, FWPCA, and SWDA), the court held that Complainant “could not, as a matter of law, [be the “authorized representative” of] Metro employees ... because she was legally required to represent the citizens of Denver, not any particular segment of society or a particular interest group.” *Id.* at 77. Because she was neither an employee of Respondent nor an authorized representative of Respondent’s employees, Complainant did not have standing under any of the acts. *Id.* at 82.

Here the issues are identical to those in the prior three cases. Complainant essentially renews her complaints as to Respondent under the same seven acts adding only that the violations about which she complains are “on-going,” and a few additional allegations to bolster her previously rejected argument. The acts have not changed, Complainant’s argument has not changed, and her position with respect to Respondent has not changed. Therefore, under *Anderson*, Complainant does not have standing to file claims against Respondent under these acts.

Under the regulations governing OALJ proceedings, an ALJ may grant summary decision if a party’s motion shows that there is no genuine issue of material fact and that the moving party is entitled to prevail. 29 C.F.R. 18.40(a) and (d). In deciding the motion, the court must consider all the material submitted by both parties, drawing all reasonable inferences in a matter most favorable to the non-moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–323 (1986) *citing* Fed. R. Civ. P. 56(c). Further, the burden of proof is on the moving party, shifting only when it has shown that the other party cannot sufficiently establish an essential element of the case. *Id.*

Here, because Complainant has no standing under the various Acts with respect to Respondent, her claims are moot. With no claims, there can be no genuine issue of material fact. Therefore, summary decision is appropriate.

## ORDER

Accordingly, it is recommended that Respondent’s Motion for Summary Decision be **GRANTED** and that the Complaint herein be **DISMISSED**.

**A**

Russell D. Pulver  
Administrative Law Judge

## **NOTICE OF APPEAL RIGHTS**

This Recommended Decision and Order will automatically become the final order of the Secretary unless, under 29 C.F.R. § 24.8, a petition for review is timely filed with:

Administrative Review 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