U.S. Department of Labor

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Issue Date: 14 December 2016

CASE NO.: 2016-FDA-00005

In the Matter of:

SAMUEL IHLI.
Complainant,

v.

HINRICH'S SUPER VALU,
Respondent.

ORDER DISMISSING CASE

This matter arises under the employee protection provisions of Section 402 of the FDA Food Safety Modernization Act ("FSMA"), P.L. 111-353 (Jan. 4, 2011), codified at Federal, Food, Drug, and Cosmetic Act, 21 U.S.C. § 399d, and the implementing regulations found at 29 C.F.R. Part 1987. On November 4, 2015, Complainant filed a complaint of retaliation under the FSMA with OSHA related to his termination by Respondent on or about October 30, 2015. On February 25, 2016, OSHA denied his complaint. Complainant timely appealed to this Office. The matter has been pending since April 2016 and is set for a telephonic hearing on December 19, 2016.

On December 5, 2016, I received a letter from Complainant requesting to withdraw his appeal. I held a conference call with the parties on December 12, 2016, the date of the previously scheduled pre-hearing conference, to discuss Complainant's request. The call was on the record. During the call, Complainant reiterated the information he stated in his letter and requested again to withdraw his complaint. I asked him whether more time might be helpful to develop the information, but he did not think it would help and did not want to continue the hearing. He understood that withdrawing his appeal would end the matter at this Office and before the Department of Labor. Given his personal circumstances and the stress involved, he believed it was in his best interest to withdraw his claim. Respondent did not object.

When a matter is pending before an ALJ, at any time before the Assistant Secretary's findings become final, a party may withdraw its objection by filing a written withdrawal with the ALJ, who determines whether to approve the withdrawal. 29 C.F.R. § 1987.111(c). If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings, and there are no other pending objections, the Assistant Secretary's findings will become the final order of the Secretary. *Id.*

Here, Complainant has requested in writing to withdraw his appeal and there are no other objections pending. Complainant listed the reasons for the withdrawal in his written request, which he reiterated on the record. Complainant was unable to obtain an attorney and had attempted to develop information for hearing on his own, but was unsuccessful. He did not believe that allowing him additional time to prepare for hearing would be fruitful. Given his personal circumstances, and some family obligations, he felt it was in his best interest to withdraw his claim. Based upon his request, I find good cause and grant the request to withdraw his objection.

Accordingly, the February 25, 2016, finding by the Assistant Secretary that no reasonable cause exists to believe Respondent violated the above referenced statutes and dismissing the complaint becomes the final order of the Secretary. All dates are vacated. The matter is dismissed with prejudice.

SO ORDERED.

Digitally signed by Richard M.Clark
DN: CN=Richard M.Clark,
OU=Administrative Law Judge, O=US
DOL Office of Administrative Law
Judges, L=San Francisco, S=CA, C=US
Location: San Francisco CA

RICHARD M. CLARK
Administrative Law Judge