

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 25 October 2017

CASE NO.: 2017-FDA-00008

In the Matter of:

LUIS FRANCO,
Complainant,

v.

FARMERS RICE COOPERATIVE,
Respondent.

ORDER GRANTING WITHDRAWAL OF COMPLAINT
AND
ORDER DISMISSING CASE

This matter arises under 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 set forth at 29 C.F.R. Part 1987. No hearing date is currently scheduled. Luis Franco (“Complainant”) is currently not represented by an attorney. Attorney Bruce Timm represents Respondent.

On May 23, 2017, the Secretary of Labor, acting through OSHA, determined that there was no reasonable cause to believe that Respondent violated the provisions of the FSMA. Complainant contested the denial and timely requested a hearing in writing on June 20, 2017. I issued a Notice of Hearing and Pre-Hearing Order on July 28, 2017, and have had three conference calls with Complainant since then as he attempted to obtain an attorney.

On October 19, 2017, pursuant to 29 C.F.R. § 1987.111(c), Complainant filed a written request to dismiss his complaint. The letter stated that after interviewing some attorneys about his case, Complainant decided to voluntarily dismiss his hearing request. I held a conference call with Complainant and Mr. Timm on October 25, 2017, to discuss the request. A Spanish interpreter was present for the call. Complainant reiterated his request to withdraw his complaint. I told him that he could still proceed without an attorney, but he did not want to do so. I told him that if I granted the request to withdraw his complaint, that the case would be over and that the order of the Secretary issued on May 23, 2017, denying his claim would become the final order. He understood and wished to withdraw his claim.

“If the ALJ approves a request to withdraw objections to the Assistant Secretary’s findings and/or order, and there are no other pending objections, the Assistant Secretary’s findings and/or order will become the final order of the Secretary.” 29 C.F.R. § 1987.111(c).

Here, Complainant filed a request to voluntarily dismiss his case after consulting with a number of attorneys. He did not wish to proceed without an attorney. No other objections are pending. Accordingly, Complainant’s request to voluntarily dismiss his request for a hearing is granted. The complaint is withdrawn and dismissed with prejudice.

The May 23, 2017, finding by OSHA acting on behalf of the Secretary of Labor is the final order of the Secretary. All dates are vacated. This matter is closed.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge