



Issue Date: 13 February 2020

Case No.: 2019-FDA-00013

In the Matter of:

ANTOINE HENDERSON,

Complainant,

v.

QSR HOSPITALITY LLC,

Respondent.

**ORDER OF DISMISSAL
AND
ORDER CANCELING HEARING**

This matter arises under the employee protection provisions of the Federal Food, Drug and Cosmetic Act, U.S. Code Title 21, Section 1021 (“FDA”) as amended by the FDA Food Safety Modernization Act, U.S. Code Title 21, Section 339d (“FSMA”) and as implemented by federal regulations set forth in 29 C.F.R. Part 1987. The parties previously engaged in mediation and reached a tentative agreement, but the settlement fell apart. On February 7, 2020, I issued a Notice of Hearing scheduling this matter for formal hearing on May 20-22, 2020 in Winston-Salem, North Carolina.

On February 11, 2020, Employer’s counsel filed a letter providing a status update. In the letter, counsel stated that Complainant informed her on February 10, 2020, that he filed paperwork in the federal district court in Greensboro, North Carolina three to four weeks earlier. Respondent had not been served with Complainant’s filing.¹ The docket for the United States District Court for the Middle District of North Carolina shows that Complainant Antoine Henderson filed a complaint against QSR Hospitality on January 15, 2020, which has been docketed as case number 1:20-cv-00044-LCB.

Under the FDA, when the Secretary has not issued a final decision on a complaint of discrimination or retaliation within 210 days after the filing of the complaint, the employee is authorized to file an action for *de novo* review in the appropriate United States District Court. 21 U.S.C. § 339d(b)(4). Here, Mr. Henderson filed his complaint with the Department of Labor on

¹ Complainant is directed to serve QSR Hospitality with a copy of his federal district court complaint.

December 26, 2018. More than 210 days have passed without a final decision from the Secretary.

The filing of an action in the United States District Court deprives the Office of Administrative Law Judges of jurisdiction. *See Stone v. Duke Energy Corp.*, 432 F.3d 320 (5th Cir. 2005) (jurisdiction vested in the district court once a complaint was filed there, and the ALJ no longer had jurisdiction); *see also Lyon v. Canadian National Railroad Co. et al.*, 2010 WL 4809332, 2010-SOX-00002 (ALJ Nov. 10, 2010).

As this tribunal lacks jurisdiction following Complainant's filing of a complaint in the federal district court, IT IS ORDERED that the instant case is **DISMISSED**.

The formal hearing scheduled for May 20-22, 2020, in Winston-Salem, North Carolina, is therefore **CANCELED**.

SO ORDERED.

MONICA MARKLEY
Administrative Law Judge

MM/jcb
Newport News, Virginia