



**Issue Date: 05 February 2019**

CASE NO.: 2019-FDA-00002  
OALJ NO.: 5-2700-17-042

*In the Matter of:*

DEMARCO W. TAFT,  
*Complainant,*

v.

PARAMOUNT COFFEE,  
*Respondent,*

and

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS,  
*Party-in-Interest.*

### **ORDER OF DISMISSAL**

This case arises out of a complaint filed on September 27, 2017 under the FDA Food Safety Modernization Act (FSMA), 21 U.S.C. §399d. On October 5, 2018, OSHA issued its findings, indicating that it determined the claim did not have merit. The Complainant filed his objections and request for hearing on or about November 8, 2018. On January 7, 2019, Respondent Paramount Coffee served a Motion to Dismiss and Respondent's Brief in Support of Motion to Dismiss. On January 8, 2019, I issued a Notice to Complainant regarding the pending motion to dismiss. On January 22, 2019, the Complainant filed by facsimile his response to the motion to dismiss.<sup>1</sup> At the end of the response, the Complainant states that "Complainant filed suit against Respondent in the United States District Court for the Western District of Michigan on January 17, 2019." On January 28, 2019, I issued an Order directing the Complainant to provide me with a complete copy of his federal complaint and to serve copies on the Assistant Secretary, the OSHA official who issued the findings and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, in accordance with the regulations.<sup>2</sup> The Complainant responded by facsimile on February 4, 2019 indicating that he had complied with my January 28, 2019 Order and enclosing a copy of the complaint.

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<sup>1</sup> The Complainant's response states that Respondent was served by certified mail.

<sup>2</sup> See 29 C.F.R. § 1987.114(d).

The regulations provide that if the Secretary has not issued a final decision within 210 days of the filing of the complaint, a complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.<sup>3</sup> By filing a complaint in the United States District Court for the Western District of Michigan, the Complainant has elected to avail himself of this “kick-out” provision provided in the regulations. Although the Complainant should have informed this tribunal and other parties to this case within seven days after filing in district court, no party appears to have been prejudiced by this delay. Because a final decision of the Secretary was not issued within 210 days after filing the complaint, and because the Complainant has filed an original action in U.S. District Court, this case will be dismissed as the United States District Court for the Western District of Michigan now has jurisdiction of this matter.<sup>4</sup>

### **ORDER**

**IT IS HEREBY ORDERED** that the complaint filed by Complainant DeMarco Taft under the FDA Food Safety Modernization Act is hereby **DISMISSED**.

**SO ORDERED.**

LARRY A. TEMIN  
ADMINISTRATIVE LAW JUDGE

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<sup>3</sup> 29 C.F.R. §§ 1987.114(a) & (c).

<sup>4</sup> Case No. 1:19 cv 35, United States District Court for the Western District of Michigan.