



Issue Date: 15 February 2017

OALJ Case No.: 2016-FRS-00070
OSHA Case No. 8-0600-16-070

In the Matter of:

JAMIE GRELL,
Complainant,

v.

UNION PACIFIC RAILROAD,
Respondent.

ORDER OF DISMISSAL
AND ORDER CANCELLING HEARING

On or about February 26, 2016, Jamie Grell (“Complainant”) filed a formal complaint with the U.S Department of Labor, Occupational Safety and Health Administration (“OSHA”), alleging a violation of the employee protection provisions of the Federal Railroad Safety Act, 49 U.S.C. § 20109, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-053 (collectively, the “Act”). After conducting an investigation, on June 6, 2016, the OSHA Regional Administrator issued a final determination letter containing the Secretary’s Findings and dismissing the complaint. By letter dated July 6, 2016, and received by fax that same day, Complainant objected to the Secretary’s Findings and requested a hearing before an Administrative Law Judge.

On November 18, 2016, I issued an order notifying the parties that the matter was docketed in the Office of Administrative Law Judges and scheduled for a hearing beginning on August 9, 2017, and continuing if necessary through August 10, 2017, in or near Omaha, Nebraska.

On January 26, 2017, I received counsel for Complainant’s notice that he intended to remove this matter to the United States District Court. More than 210 days have passed since Complainant originally filed her complaint with OSHA, and there is no indication of bad faith. Accordingly, under 29 C.F.R. § 1982.114(a), “the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States....”¹

¹ Under the enforcement provisions of the Act, if the Secretary of Labor has not issued a final decision within 210 days after the filing of a complaint, and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States. The

To date, I have not received notice that Complainant has filed an action in federal district court. Some administrative law judges have required that a complainant submit a copy of the complaint filed with the appropriate U.S. District Court before dismissing the action; others have not. *Compare, e.g., Evans v. Liberty Medical Supply, Inc.*, 2007-SOX-22 (ALJ July 2, 2007) with *Miley v. Emerachem, LLC*, 2007-SOX-31 (ALJ June 15, 2007). Others have simply closed the file subject to reopening. *See, e.g., Roberts v. Weatherford Int'l, Ltd.*, 2008-SOX-69 (ALJ Sept. 25, 2008). Based on counsel for Complainant's representations that he intends to file an action in federal district court, this case is being dismissed. In the event that the Complainant fails to file an action in federal district court, any party may move to set aside this Order of Dismissal and reopen these proceedings.

ORDER

IT IS HEREBY ORDERED that the complaint filed by Complainant Jamie Grell under the Act is DISMISSED WITHOUT PREJUDICE to its reinstatement if Complainant does not file an action in federal district court. The hearing of this matter set for August 9, 2017, at 9:00 a.m. and continuing if necessary through August 10, 2017, in or near Omaha, Nebraska is CANCELLED.

SO ORDERED.

PAUL R. ALMANZA

Associate Chief Administrative Law Judge

Washington, D.C.

district court shall then have jurisdiction over such an action without regard to the amount in controversy. *See* 29 C.F.R. § 1982.114.