

U.S. Department of Labor

Office of Administrative Law Judges
William S. Moorhead Federal Office Building
1000 Liberty Avenue, Suite 1800
Pittsburgh, PA 15222

(412) 644-5754
(412) 644-5005 (FAX)



Issue Date: 18 December 2019

In the Matter of:

QUINCY CHRISTIAN, ET AL
2018-FRS-37

CHRISTOPHER C. STILTNER
2018-FRS-49

MICHAEL CAMPBELL
2018-FRS-52

MICHAEL CLARK
2018-FRS-53

CHAD DOWDY
2018-FRS-54

GERALD BARBER
2018-FRS-55

GREGORY T. HAMM
2018-FRS-34

RANDALL CRAYCRAFT
2018-FRS-61

DANNY STEWART
2018-FRS-76

ERIC SPEAKS
2018-FRS-75

EDWIN GLOWACKI
2018-FRS-68

DONALD STEPHENS
2018-FRS-67

DENNIS SARGENT
2018-FRS-66

JASON BARKER
2018-FRS-65

JUSTIN R. ADKINS
2018-FRS-63

JOHN BILLS
2018-FRS-64

BOBBY E. AKERS
2018-FRS-62

MICHAEL WILLIAMS
2018-FRS-102

TODD THAYER
2018-FRS-108

TRAVIS THORNSBERRY
2018-FRS-107

ZACK POTTER
2018-FRS-105

SAMUEL PRESTON
2018-FRS-104

MICHAEL L. POTTER
2018-FRS-103

JONATHAN JEFFERS
2018-FRS-139

JACQUELINE MARSHALL
2018-FRS-137

HOMER MAYNARD
2018-FRS-136

SHAWN PATTERSON
2018-FRS-121

JAMES DEAL
2018-FRS-120

JOHN BAKER
2018-FRS-119

MICHAEL GEARHEART
2018-FRS-118

ERIC JORDAN
2018-FRS-123

TIMOTHY WITT
2018-FRS-124

LLOYD WILLIAMS
2018-FRS-125

DEANNA LANHAM
2018-FRS-126

MICHAEL OWENS
2018-FRS-122

SCOTT MORRISON
2018-FRS-127

BRANDON ADKINS
2018-FRS-128

TONY ABDON
2018-FRS-131

JONATHAN ROWE
2018-FRS-132

JAMES BLAIN
2018-FRS-133

JOSEPH SHULTZ
2018-FRS-134

GROVER KELLEY III
2018-FRS-143

JESSEE WALLACE
2018-FRS-142

ETHAN MULLINS
2018-FRS-150

JOHN FRASURE
2018-FRS-151

ROBERT MOSTELLER
2018-FRS-152

JUSTIN A. BLAKE
2018-FRS-46

KEVIN PALMER
2019-FRS-26

DENNIS HUTCHINSON
2019-FRS-13

JOSHUA K. HALL
2019-FRS-27

DAVID R. MANIS
2019-FRS-28

SAMMY L. MADDIX
2019-FRS-29

CHAD M. LITTLE
2019-FRS-31

DEVERY E. BROWN
2019-FRS-41

JOSHUA FERGUSON
2019-FRS-91

JEREMY NAPIER
2019-FRS-92

JAMES STINNETT
2019-FRS-90

JOHN D. CARPENTER
2019-FRS-89

JERRY FLOCKER

2019-FRS-17

Complainants

v.

CSX TRANSPORTATION, INC.; CSX CORPORATION; CRAIG S. HELIGMAN, M.D.; GUS THOELE; CURT SHOGREN,

Respondents

ORDER LIFTING STAY AND DISMISSING COMPLAINTS

This case arises under the employee protection provisions of the Federal Rail Safety Act (“FRSA”), 49 U.S.C. § 20109, as amended by Section 1521 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (“9/11 Act”), Pub. L. No. 110-53 (Aug. 3, 2007) and the implementing regulations at 29 C.F.R. Part 1982. On June 5, 2018, I issued an “Order Granting [the parties’] Joint Motion to Stay and Consolidate Proceedings,” so that findings in other related matters could be consolidated with the instant case.

On December 10, 2019, I received notice of Plaintiff/Complainant’s election to file an original action in U.S. District Court along with a copy of his Electronic Case Filing (ECF) notification indicating a complaint was filed in the Southern District of West Virginia on December 6, 2019. Accordingly, as the matter has been filed in Federal Court, the stay is lifted and for the reasons below, the instant Complaint as well as all those that have been consolidated therewith are dismissed with prejudice.

Quincy E. Christian filed his complaint of retaliation with the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”) on August 27, 2017. After completing its investigation, on January 25, 2018, OSHA found that based on the information presented, the matter did not allege FRSA-protected activity and therefore dismissed the complaint. On February 20, 2018, Christian, through counsel, filed his Notice of Objection to OSHA’s findings and timely requested a hearing on his Complaint before a Department of Labor Administrative Law Judge (“ALJ”). After the matter was assigned to me, on June 5, 2018, it was stayed pending the anticipated consolidation of approximately sixty (60) other related complaints. Periodic conference calls were held with the parties’ counsel to address the status and docketing of the related complaints. During recent calls in October and November 2019, counsel indicated their agreement and intent to file this and all the related consolidated claims in Federal Court.

On December 10, 2019, I received a copy of the notice of filing of the Complaint filed by counsel for Complainant in the United States District Court, Southern District of West Virginia, on December 6, 2019, in accordance with 49 U.S.C. § 20109(d)(3) and 29 C.F.R. § 1982.114. Generally, 49 U.S.C. §20109(d) (3) and 29 C.F.R. § 1982.114 permit a complainant to bring an action at law or in equity for *de novo review* in the appropriate district court for the United States with jurisdiction, if there is no final order of the Secretary, 210 days have passed since the filing

of the complaint and there has been no delay due to the bad faith of the complainant. The Notice of filing specifically reflects filers including:

Tony Abdon	Sammy Maddix
Brandon Adkins	David Manis
Justin Adkins	Jacqueline Marshall
Bobby Akers	Homer Maynard
John Baker	Scott Morrison
Gerald Barber	Robert Mosteller
Jason Barker	Ethan Mullins
John Bills	Jeremy Napier
James Blain	Michael Owens
Justin Blake	Kevin Palmer
Devery Brown	Shawn Patterson
Michael Campbell	Michael L. Potter
John Carpenter	Zack Potter
Quincy Christian	Samuel Preston
Michael Clark	Jonathan Rowe
Randall Craycraft	Dennis Sargent
James Deal	Eric Speaks
Chad Dowdy	Donald Stephens
Joshua Ferguson	Danny Steward
Jerry Flocker	Clay Stiltner ¹
John Frasure	James Stinnett
Edwin Glowacki	Todd Thayer
Joshua Hall	Travis Thornsberry
Gregory Hamm	Jessee Wallace
Dennis Hutchinson	Lloyd Williams
Jonathan Jeffers	Michael Williams
Eric Jordan	Timothy Witt
Grover Kelley	
Deanna Lanham	
Chad Little	

Review of the cases currently docketed and consolidated with that of Quincy Christian before me, reveals all of those listed above were indeed docketed, consolidated and stayed by the undersigned².

Additionally, although not identified on the list of filers included in Complainant's notice of filing, there are two additional complaints, those of Michael Gearhart, case no. 18 FRS 00118 and Joseph Shultz, case no. 2018 FRS 00134 that were previously docketed and consolidated

¹ Case name is docketed as Christopher C. Stiltner, case no.2018 FRS 00049.

² The list in the notice provided by Christian, included additional filers or complainants, Michael Potter, Michael D. Potter, and Matthew Woods, none of which appear to have complaints pending before the undersigned. Consequently, I do not include them on the list here nor this Order.

here, with Christian's Case. These two cases (Gearhart and Shultz), along with the 57 others listed above are subject to this Order, including the lifting of the stay and dismissal of their respective complaints.

The requirements of 49 U.S.C. §20109(d) (3) and 29 C.F.R. § 1982.114 have been satisfied here. Specifically, a hearing has not yet taken place and thus there has been no final order of the Secretary; more than 210 days have passed since the complaint was filed on August 27, 2017; and there is no evidence of delay due to bad faith of Complainant.

As Christian filed his complaint in federal district court, as well as the other individual complainants identified in this Order, and for the reasons stated above, the stay is lifted and his complaint as well as those of other related consolidated claims contained in the list above, and the complaints of Michael Gearhart and Joseph Shultz, are **DISMISSED WITH PREJUDICE**.

ORDER

For the reasons stated above, it is **ORDERED**:

1. That the stay of these proceedings is **LIFTED**;
2. Any pending motions and pre-hearing deadlines, are moot; and
3. The Complaints by Quincy Christian, Michael Gearhart, Joseph Shultz and the others listed above, filed under the FRSA in this matter, are **DISMISSED WITH PREJUDICE** since the action has been filed in federal district court.

NATALIE A. APPETTA
Administrative Law Judge