

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 16 September 2019**

CASE NO.: 2019-FRS-00015

*In the Matter of:*

ERIC BERAN,  
Complainant

v.

CSX TRANSPORTATION,  
Respondent

**ORDER OF DISMISSAL**

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 or about June 8, 2018, complainant, Eric Beran (“Beran” or “Complainant”) filed a complaint with the Secretary of Labor alleging that his employer, CSX Transportation, (“CSX” or “Respondent”) violated the employee protection provisions of the FRSA.

After investigation of Beran’s complaint, on November 5, 2018, the Occupational Safety and Health Administration (OSHA) found that CSX did not violate the FRSA and dismissed the complaint. On November 27, 2018, Beran objected to OSHA’s findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ). The matter was subsequently assigned to the undersigned ALJ. A hearing in this case is currently scheduled to begin in Pittsburgh, Pennsylvania on September 30, 2019, before the undersigned ALJ.

On June 13, 2019, Complainant’s counsel advised this court that Complainant was filing an original action in a federal court of law in the applicable United States District Court. Generally, 49 U.S.C. §20109(d)(3) permits 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 requirements of 49 U.S.C. §20109(d)(3) have been satisfied. 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 June 8, 2018; and there is no evidence of delay due to bad faith of Complainant.

Based on Complainant's representations that he filed an action in federal district court, this case is being dismissed without prejudice.

**ORDER**

**IT IS ORDERED:**

1. That the hearing scheduled to begin on September 30, 2019, in Pittsburgh, Pennsylvania, in this matter is **CANCELLED**;
2. That the complaint, filed under the FRSA in this matter, is **DISMISSED WITHOUT PREJUDICE**.
3. Any pending motions and all hearing deadlines are moot.

DREW A. SWANK  
Administrative Law Judge