



Issue Date: 17 August 2011

Case No.: 2011-NTS-00003
OSHA No. 5-2330-10-027

In the Matter of:
ROBERT H. SMITH,
Complainant,

v.

MV TRANSPORTATION ET AL.,
Respondents.

ORDER OF DISMISSAL

This case arises under the National Transit Systems Security Act of 2007 (“NTSSA”), Pub. L. No. 110-053, 6 U.S.C. § 1142 *et seq.* Pursuant to my *Notice of Hearing*, dated June 29, 2011, a formal hearing was scheduled in this matter on September 28, 2011, in Chicago, Illinois.

On August 9, 2011, the Complainant submitted a letter that stated:

I would like to voluntarily withdraw my pending matter pending before the Department of Labor. I have decided to pursue my claims against my former employer in state court.

29 C.F.R. Part 1982 provides the procedures for handling retaliation complaints under the NTSSA. Specifically, section 1982.111(c) sets forth in part:

At any time before the Assistant Secretary’s findings and/or order become final, a party may withdraw its objections to the Assistant Secretary’s findings and/or order by filing a written withdrawal with the ALJ.

29 C.F.R. § 1982.111(c). Therefore, I will treat Complainant’s letter as a request to withdraw his objections to the Secretary’s findings.

Complainant should be aware that withdrawal of his objections at this time will result in permanent dismissal of his complaint, without the opportunity to pursue it further. I note that I have the authority to approve Complainant’s withdrawal of objections. 29 C.F.R. § 1982.111(c). If I approve a request to withdraw objections, and there are no other pending objections, then the Area Director’s findings on behalf of the Secretary are affirmed and will become the final order of the Secretary. *Id.* Upon review, I find good cause and grant Complainant’s request for

withdrawal of his objections, pursuant to 29 C.F.R. § 1982.111(c). However, Complainant should be aware that he continues to have rights under state law.

ORDER

1. Complainant's request for withdrawal of his objections is hereby **GRANTED** pursuant to 29 C.F.R. § 1982.111(c). Accordingly, the March 28, 2011, Secretary's Findings issued by the Area Director of the Occupational Safety and Health Administration is hereby **AFFIRMED** and **REINSTATED**. The complaint, therefore, is hereby dismissed. This Order is the final administrative action.
2. **IT IS FURTHER ORDERED** that the formal hearing scheduled for September 28, 2011, in Chicago, Illinois, is hereby **CANCELED**.

A

CHRISTINE L. KIRBY
Administrative Law Judge

Washington, D.C.