

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 05 March 2013

Case No.: 2013-NTS-00001

In the Matter of

FRANK ESTES,
Complainant

v.

NEW CITY TRANSIT AUTHORITY,
Respondent

ORDER APPROVING COMPLAINANT'S WITHDRAWAL

The above-captioned matter comes before the Office of Administrative Law Judges ("OALJ") pursuant to National Transit Systems Security Act ("NTSSA"), 6 U.S.C. 1142, and its implementing regulations found at 29 C.F.R. Part 1982.

Frank Estes ("Complainant") filed a complaint with the New York State Department of Labor, Bureau of Public Employee Safety and Health ("PESH") on May 11, 2013 which was forwarded to the United States Department of Labor, Office of Safety and Health Administration ("OSHA") on or about May 24, 2012. In that complaint, Complainant alleged that he was denied accommodation requested for his medical condition because he had filed prior safety complaints. In a letter dated September 17, 2012, OSHA issued the Secretary's Findings and Order which included a determination that there is no reasonable cause to believe New York City Transit Authority ("NYCTA" or "Respondent") violated the NTSSA. OALJ received Complainant's timely challenge to the Secretary's Findings and Order on October 17, 2012.

In a undated letter received by facsimile transmission on February 28, 2013, the Complainant stated that he "will be dropping the complaint" before the OALJ "identified as [c]ase [n]o. 2013-NTS-00001" in order to pursue the discrimination complaint filed on his behalf by the New York City Commission on Human Rights. During a telephone discussion on March 1, 2013, Counsel for the NYCTA confirmed with my legal assistant, Barbara Emmons, that he had received a copy of the Complainant's February 28, 2013 correspondence via email and that NYCTA had no objection to the Complainant's withdrawal.

The Secretary's regulations provide at 29 C.F.R. § 1982.111(c), that (1) a party may withdraw its objections to the Secretary's findings at any time before that decision becomes final by filing a written withdrawal with the administrative law judge ("ALJ") and (2) the ALJ will determine whether to approve the withdrawal of the objections to the Secretary's findings.

I find that the Complainant may withdraw his objections to the Secretary's findings because no final decision has been issued in this matter. I find further that the Complainant's objections are not withdrawn because of a settlement in this matter. Absent any objection from Respondent, I hereby approve the Complainant's withdrawal of his objections to the Secretary's findings. Accordingly, the Secretary's Findings and Order issued on September 17, 2012 will become the final order of the Secretary in this matter. *See* 29 C.F.R. § 1982.111(c).

The hearing scheduled for April 30, 2013 is canceled.

IT IS SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey