

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 11 January 2005

CASE NO.: 2003-ERA-00010

In the Matter of:

TOD N. ROCKEFELLER,
Complainant,

vs.

U.S. DEPARTMENT OF ENERGY,
CARLSBAD AREA OFFICE,
Respondent.

Appearances: Tod N. Rockefeller, pro se
Complainant

Elizabeth Rose, Esquire
For Respondent

Before: Jennifer Gee
Administrative Law Judge

RECOMMENDED DECISION AND ORDER DISMISSING CASE

INTRODUCTION

This case arises under the Clean Air Act ("CAA"), 42 U.S.C. § 7622, the Comprehensive Environmental, Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9610, the Solid Waste Disposal Act ("SWDA"), 42 U.S.C. § 6971, and the Energy Reorganization Act ("ERA"), 42 U.S.C. § 5851. It is pending before me pursuant to a remand order from the Administrative Review Board ("ARB") in ARB Case No. 03-084 (Aug 31, 2004).

For the reasons set forth below, the Respondent's motion for summary decision is GRANTED and this case is DISMISSED.

DISCUSSION

The Complainant, Tod N. Rockefeller, was employed as an Environmental Specialist at the Respondent, Department of Energy's, Carlsbad Field Office from April 1993 until December 10, 1997, when he was terminated. The Complainant has filed a number of complaints alleging that the Respondent has engaged in various acts of retaliation against him for activity that is

protected under the whistleblower protection provisions of the CAA, CERCLA, SWDA, and ERA.

The complaint that is the subject of this appeal arises from Respondent's rejection of the Complainant's January 18, 2003, application for a position as a Physical Scientist in the Respondent's Carlsbad Field Office that was open only to employees of that office. On January 27, 2003, after his application was rejected, the Complainant filed a whistleblower complaint alleging that the Respondent refused to hire him because of his past whistleblower activities. The Occupational Safety and Health Administration found no merit to his complaint. His subsequent request for a hearing before the Office of Administrative Law Judges on this complaint was assigned to Judge Donald Jarvis.

On March 18, 2003, the Respondent moved for summary decision, arguing that this case should be dismissed because the Complainant's application was not considered because he was not a current employee in the Carlsbad Field Office. This motion was served on the Complainant on March 18, 2003, giving him until April 4, 2003, to respond. 29 C.F.R. § 18.6(b). Judge Jarvis granted the Respondent's motion for summary decision on March 28, 2003, before the Complainant responded to the motion and denied a subsequent motion for reconsideration.

The ARB found the Complainant had not waived his opportunity to respond to the motion and remanded the case so that the Complainant would have the opportunity to respond to the motion. On October 25, 2004, after this case was assigned to me, I issued a Notice of Case Assignment and Order re: Response to Motion for Summary Judgment ordering the Complainant to respond to the Respondent's motion for summary judgment by November 8, 2004. This order was served on the Complainant, who is now appearing pro se.¹

The Complainant has not responded to my Order nor to the Respondent's motion for summary decision. Since the Complainant has presented no arguments in opposition to the motion for summary decision, there is no basis for disturbing Judge Jarvis' March 28, 2003, decision granting the motion for summary decision and dismissing this case. Accordingly, the Respondent's motion for summary decision is GRANTED.

ORDER

It is hereby ORDERED that this complaint be DISMISSED.

A

JENNIFER GEE
Administrative Law Judge

¹ The Complainant was represented by attorney Edward A. Slavin before the ARB.

NOTICE OF REVIEW:

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the