

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 16 July 2009

CASE NO. 2009-SWD-2

In the Matter of:

DANIEL E. HIPPLE,
Complainant

v.

ROSE EXCAVATING,
Respondent

ORDER DISMISSING OBJECTIONS AND REQUEST FOR HEARING

And Now, it appears that:

A. The above-captioned matter involves a complaint filed under the whistleblower provisions of the Solid Waste Disposal Act, 42 USC § 691;

B. A Notice of Hearing was issued on April 8, 2009, scheduling a hearing on June 23, 2009, in Akron, Ohio. The Notice was issued by certified mail, return receipt requested. The receipt was returned signed by Complainant;

C. The Notice of Hearing required the parties to submit a pre-hearing statement to the undersigned Administrative Law Judge on or before May 22, 2009. No pre-hearing statement was received from the Complainant.

D. Several telephone calls were placed to Complainant and messages were left on his voice mail requesting that he contact this Office of Administrative Law Judges so that a conference call might be held regarding the scheduled hearing. Complainant never responded.

E. Accordingly, the hearing scheduled for June 23, 2009, in Akron, Ohio was cancelled and on June 18, 2009, an Order to Show Cause was served on Complainant by certified mail, return receipt requested, requiring Complainant to shall show cause in writing on or before July 6, 2009, why this case should not be dismissed because of Complainant's failure to pursue it.

F. Complainant never responded to the Order to Show Cause.

G. 29 C.F.R. § 18.39(b) provides that a request for hearing may be dismissed upon its abandonment.

ORDER

In consideration of the aforesaid, IT IS HEREBY ORDERED that Complainant's March 10, 2009 Objections to Assistant Secretary's Findings dated February 10, 2009 and request for hearing are dismissed.

A
THOMAS M. BURKE
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within 10 business days of the date of this decision. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt.

The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave., NW., Washington, DC 20210.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If the Board exercises its discretion to review this Decision and Order, it will specify the terms under which any briefs are to be filed. If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110, found at 72 Fed. Reg. 44956-44968 (Aug. 10, 2007).