

U.S. Department of Labor

Office of Administrative Law Judges
2 Executive Campus, Suite 450
Cherry Hill, NJ 08002

(856) 486-3800
(856) 486-3806 (FAX)



Issue Date: 11 July 2014

Case No.: 2014-TSC-00005

In the Matter of

ANTHONY CARRELLI
Complainant

and

TISHMAN CONSTRUCTION COMPANY
Respondent

ORDER OF DISMISSAL

This matter arises under the Toxic Substances Control Act of 1976 ("TSCA") which provides the framework for the introduction of new chemicals in the United States. The TSCA was enacted following a series of pesticide and chemical scares in the late 1960s and early 1970s, and in particular the dumping of Kepone based pesticides into the James River in Virginia.

The TSCA provides the Environmental Protection Agency with authority to require reporting, record-keeping and testing requirements, and restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from the TSCA, including, among others, food, drugs, cosmetics and pesticides. The TSCA addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon and lead-based paint.

Section 23 of the TSCA, codified at 42 U.S.C. 2622, is an employee protection provision administered by the U.S. Department of Labor.

On May 30, 2014, an Order was issued in which Complainant was to show cause in writing, no later than June 30, 2014, why his request for hearing should not be dismissed due to two potentially fatal defective flaws with his request for hearing.

Complainant sent correspondence dated June 10, 2014 to the Chief Administrative Law Judge and Directorate of Whistleblower Protection Programs which refers to my Order issued on May 30, 2014. Said correspondence again failed to provide proof of service of said document upon Respondent, accordingly, a copy of said correspondence is attached to this Order.

I have reviewed Complainant's filing and find that it fails to explain why his request hearing should not be dismissed.

Subsequently, on June 30, 2014, Respondent filed its *Motion in Support of Dismissing Complainant's Fatally Flawed Request for Hearing*. To date, Complainant has failed to respond to said motion, and time for such filing has now expired.

Accordingly, I find that Complainant failed to file his request for hearing in accordance with 29 C.F.R. Part 24.106; and this matter is hereby **DISMISSED**. Consequently, the Administrator's determination of March 11, 2014 is the final order of the Secretary of Labor.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey

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. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

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.

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

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.