



**Issue Date: 04 December 2017**

**CASE NO.: 2016-TSC-00002**

**IN THE MATTER OF**

**LISA TROWBRIDGE,  
Complainant**

**v.**

**VALERO ENERGY, CORP.,  
Respondent**

**ORDER TO DISMISS**

This matter involves a complaint filed under the whistleblower protection provisions of the Toxic Substances Control Act of 1986 (TSCA)<sup>1</sup> by Complainant against Respondent. Complainant filed her complaint with the U.S. Department of Labor Occupational Safety and Health Administration (OSHA), which dismissed it. She then objected and requested a hearing. Respondent then moved to suspend the proceedings until such time as the parties could comply with the mandatory arbitration provision of their employment contract. Complainant did not object to the motion and this proceeding was held in abeyance, pending the arbitration scheduled for 1 May 17.

On 23 Mar 17, Respondent advised that on 13 Mar 17, the arbitrator had dismissed all claims on a motion for summary judgment. Respondent also filed a Motion to Lift the Stay and Dismiss this proceeding with prejudice. Complainant's Counsel responded on 18 Apr 17 by noting she had a three month window of review to consider her options under the Federal Arbitration Act and for the time being opposed Respondent's motion. After the three month window expired, my staff contacted Complainant's Counsel to determine his client's intentions. He indicated that he had been given no guidance on how to proceed.

On 14 Jun 17, I issued an order giving Complainant two weeks to show cause why I should not lift the stay and grant the Motion to Dismiss. On 26 Jun 17, Complainant responded by email that her mailing address was incorrect and she had been out of the country for a period of time. She also noted she was no longer represented by counsel and requested additional time. The same day, Complainant's Counsel filed by email a notice that his client asked him to advise that neither he nor his firm had represented her since 17 Mar 17. Claimant's Counsel filed a formal Notice of Withdrawal by fax the next day.

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<sup>1</sup> 15 U.S.C. § 2622.

On 3 Jul 17, I conducted a conference call with Complainant and Respondent's Counsel. Complainant requested additional time to respond to the Motion to Dismiss and Respondent objected, arguing that she had already been allowed a number of extensions. I ordered Complainant to file her response to the Motion to Dismiss no later than 3 Aug 17. On 2 Aug 17, Complainant filed by email a request for an additional 30 days. She indicated that she had been in contact with an attorney and would be seeking additional legal representation. She also noted she had moved in the past 30 days and provided her new mailing address.

On 4 Aug 17, I conducted a telephone conference with Complainant and Employer's Counsel. Counsel was unable to articulate any specific substantive prejudice that would result from a continuance. Complainant indicated that she was still in the process of attempting to find counsel. I gave Complainant until 18 Aug 17 to retain new counsel and have that counsel enter a notice of appearance. If she was unable to do so, she was directed to file her response to the Motion to Dismiss no later than 18 Sep 17. My written order confirming our conference call discussion was mailed to her new address, but returned as unclaimed.

On 7 Sep 17, Glenn Patterson sent an email indicating he would formally enroll as Complainant's new counsel upon his return from Europe the next week. He filed a formal notice of appearance on 13 Sep 17. On 18 Sep 17, Respondent filed its opposition to Mr. Patterson's enrollment as counsel as untimely, given the previously set deadlines in the case. Respondent also noted that Mr. Patterson had served as an arbitrator in a case involving one of its refineries in 2010. Respondent expressed concern that he may have had access to sensitive information that he could use to represent Complainant in this matter. Mr. Patterson initially requested an opportunity to respond, but later informed my staff that he and Complainant had elected not to file anything in opposition to Respondent's motion.

On 30 Oct 17, I again granted Complainant additional time, notwithstanding her history of failing to comply with orders and brinkmanship. I ordered her to respond to the Motion to Dismiss no later than two weeks after receipt of my order. Complainant's counsel received my order on 6 Nov 17 and on 16 Nov 17 sent via email his notice that Complainant did not intend to file any further response in the matter.

The Federal Arbitration Act (FAA) provides that

[i]f the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.<sup>2</sup>

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<sup>2</sup> 9 U.S.C. § 9.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.<sup>3</sup>

The FAA applies to administrative proceedings.<sup>4</sup>

Complainant did file a copy of the Opposition to Summary Decision she had previously filed with the arbitrator. However, she has never filed anything in opposition to Respondent's Motion to Dismiss her complaint based on the arbitrator's grant of summary dismissal. In the absence of any suggestion that the arbitrator's dismissal should not apply in this case, Respondent's motion is granted and the complaint is dismissed.

**ORDERED** this 4<sup>th</sup> day of December, 2017, at Covington, Louisiana.

**PATRICK M. ROSENOW**  
**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 Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service

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<sup>3</sup> 9 U.S.C. § 13.

<sup>4</sup> See, e.g., *Hettinger v. GPU Nuclear Corp.*, 87-ERA-7 (Sec'y Mar. 15, 1991).

(eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov)

The date of the postmark, facsimile transmittal, or e-filing 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 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.

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 filing paper copies, 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 an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file 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. If you e-File your petition and opening brief, only one copy need be uploaded.

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 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 may include 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. If you e-File your responsive brief, only one copy need be uploaded.

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 you e-File your reply brief, only one copy need be uploaded.

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.