

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



In the Matter of:

QUENTIN LA GRANDE,

ARB CASE NO. 2022-0025

COMPLAINANT,

ALJ CASE NO. 2022-WPC-00001

v.

DATE: April 12, 2022

OWENS CORNING,

RESPONDENT.

Appearances:

For the Complainant:

Quentin La Grande; *pro se*; Albany, New York

For the Respondent:

**Taren Greenidge, Esq.; *Constangy Brooks, Smith & Prophete, LLP*;
Penfield, New York**

**Before: James D. McGinley, *Chief Administrative Appeals Judge* and
Thomas H. Burrell, *Administrative Appeals Judge***

ORDER DISMISSING COMPLAINT

PER CURIAM. This matter arises under the employee protection provisions of the Solid Waste Disposal Act (SWDA)¹ and the Federal Water Pollution Control Act (FWPCA),² and their implementing regulations.³ On June 7, 2021, Quentin La Grande (Complainant) filed a Complaint with the Occupational Safety and Health

¹ 42 U.S.C. § 6971 (1980).

² 33 U.S.C. § 1367 (1972).

³ 29 C.F.R. Part 24 (2021).

Administration (OSHA), which alleged that Owens Corning (Respondent) retaliated against Complainant in violation of the employee protection provisions of the SWDA and the FWPCA. On December 6, 2021, an Administrative Law Judge (ALJ) dismissed the case, issuing an Order Approving Complainant's Withdrawal of Objections (Dismissal Order), and on February 9, 2022, the ALJ issued an Order Denying Complainant's Request to Vacate Order Approving Withdrawal of Objections (Vacate Denial Order). We affirm the ALJ's rulings.

BACKGROUND

On June 7, 2021, Complainant filed a Complaint with OSHA, which alleged that Respondent suspended him and later terminated him in retaliation for reporting unsafe working conditions.⁴ On October 8, 2021, OSHA dismissed the Complaint (OSHA Ruling), finding no reasonable cause to believe Respondents violated the SWDA or FWPCA.⁵ On October 19, 2021, Complainant filed an appeal with the Office of Administrative Law Judges (OALJ), objecting to the October 8, 2021 dismissal by OSHA.

By email sent on December 3, 2021, Complainant advised the ALJ that he wished to withdraw his appeal of the OSHA ruling because the parties had reached a mutual settlement agreement. On December 6, 2021, the ALJ granted the Complainant's request to withdraw his appeal and dismissed the case with prejudice, issuing a Dismissal Order. Thus, OSHA's findings became the final order of the Secretary.⁶

Subsequently, on December 13, 2021, Complainant e-mailed OALJ, stating "I would like the USDOL-OSHA to vacate my withdrawal in the matter . . . I would like my appeal to be heard in front of an [ALJ], would that be possible?"⁷ On February 9, 2022, the ALJ issued a Vacate Denial Order, denying Complainant's request to vacate the Dismissal Order.

⁴ ALJ Dismissal Order.

⁵ Vacate Denial Order at 2.

⁶ Dismissal Order; Vacate Denial Order at 2.

⁷ Vacate Denial Order at 1.

On April 1, 2022, Complainant filed a Petition for Review,⁸ which we construe as objecting to the ALJ's December 6, 2021 Dismissal Order and the ALJ's February 9, 2022 Vacate Denial Order. Respondent has also filed a Motion to Dismiss.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board authority to issue agency decisions under the FWPCA and SWDA.⁹ The Board reviews the ALJ's factual determinations under the substantial evidence standard.¹⁰ The Board reviews an ALJ's conclusions of law de novo.¹¹ The ARB reviews an ALJ's procedural rulings under an abuse of discretion standard.¹²

DISCUSSION

On appeal, Complainant requests the ARB “overturn” the ALJ’s Dismissal Order and requests a hearing on his original claims.¹³ It appears Complainant would like to proceed with his original case because he is dissatisfied with the settlement agreement reached between the parties, requesting the ARB to “deem my settlement agreement voided because it was made in Bad Faith.”¹⁴ In Respondent’s Motion to Dismiss Complainant’s complaint, the Respondent highlights how the parties resolved Complainant’s claims via a binding settlement agreement and Complainant was paid as a result. Despite the agreement, Respondent shows how Complainant now seeks to renegotiate the agreement and continues to pursue claims against Respondent.

⁸ On the same day, Complainant also filed his Opposition to Respondent’s Motion to Dismiss.

⁹ Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary’s discretionary review of ARB decisions)), 85 Fed. Reg. 13186 (Mar. 6, 2020).

¹⁰ 29 C.F.R. § 24.110(b).

¹¹ *Garza v. Saulsbury Indus.*, ARB No. 2018-0036, ALJ No. 2016-WPC-00002, slip op. at 3 (ARB June 29, 2020) (citations omitted).

¹² *Vander Boegh v. EnergySolutions, Inc.*, ARB No. 2015-0062, ALJ No. 2006-ERA-00026, slip op. at 7 (ARB Feb. 24, 2017) (citation omitted).

¹³ Complainant’s Petition for Review.

¹⁴ Complainant’s Opposition to Respondent’s Motion to Dismiss (inner quotations omitted).

We decline to disturb the ALJ's rulings because (1) the ALJ properly granted Complainant's request to withdraw his objections to the OSHA ruling; (2) the ALJ did not need to consider the settlement agreement in granting Complainant's request to withdraw his objections; and (3) the ALJ correctly denied Complainant's request to vacate the Dismissal Order.

First, the ALJ properly granted Complainant's voluntary request to withdraw his objections. The rules governing withdrawal of SWDA and FWPCA complaints provide that at any time before the findings or order become final, a party may withdraw its objections by filing a written withdrawal with the ALJ.¹⁵ If the ALJ approves a request to withdraw objections, the OSHA findings become the final order of the Secretary.¹⁶ Here, the Complainant requested the ALJ withdraw Complainant's objections to the OSHA ruling because the parties had reached a mutual settlement agreement. In response, the ALJ acted within his authority under 29 C.F.R. § 24.111(c) and approved the Complainant's request to withdraw his objections, which resulted in the dismissal of the case with prejudice.

Second, the ALJ did not have to approve the settlement agreement before granting Complainant's request to withdraw his objections to the OSHA ruling. Under 29 C.F.R. § 24.111(c), if the withdrawal of objections is due to a settlement, the settlement must be submitted to the ALJ for approval, *only if* the settlement is under the Energy Reorganization Act, the Clean Air Act, the Safe Drinking Water Act, or the Toxic Substances Control Act. In contrast, settlements under SWDA and FWPCA do not require approval by the ALJ before withdrawal of objections.¹⁷

Here, the parties' settlement was under SWDA and FWPCA. Therefore, the ALJ was not required to first approve the settlement agreement before the ALJ could grant Complainant's request to withdraw his objections. Put another way, the ALJ did not need to determine whether the settlement was "fair, adequate, and

¹⁵ 29 C.F.R. § 24.111(c).

¹⁶ *Id.*

¹⁷ *Id.* Under SWDA or FWPCA, the parties are only encouraged to submit their settlement agreement to the ALJ for approval. It is not a requirement. *See* 29 C.F.R. § 24.111(a).

reasonable,”¹⁸ or consider whether the settlement was formed in bad faith, as Complainant suggests on appeal. Accordingly, the ALJ properly granted the request to withdraw objections—and dismissed the case—without approving the settlement agreement because the ALJ did not need to approve the settlement agreement.

Finally, the ALJ properly denied Complainant’s request to vacate the Dismissal Order. Limited grounds are available to justify relief of a voluntary dismissal.¹⁹ In his Vacate Denial Order, the ALJ noted how the grounds to seek relief from a final order “are extremely limited and include mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, and misrepresentation or misconduct by an opposing party.”²⁰ Nonetheless, the ALJ denied Complainant’s request to vacate the Dismissal Order, finding that none of the grounds justified Complainant’s request to vacate.²¹ We affirm the ALJ and determine that the ALJ did not abuse his discretion in the Vacate Denial Order because the ALJ properly explained how Complainant’s filings “contain no such explanation or grounds that would support relief from” the Dismissal Order.²² It is insufficient for Complainant to justify relief from voluntary dismissal on the grounds that Complainant has changed his mind and wants to continue pursuing his claims.²³

¹⁸ *Yellott v. Packaging Corp. of America*, ARB No. 2019-0055, ALJ No. 2017-SDW-00001, slip op. at 2 (ARB Mar. 6, 2020) (providing the standard for approval of a settlement).

¹⁹ See e.g., *State Treasurer of Mich. v. Barry*, 168 F.3d 8, 19 (11th Cir. 1999) (“The Federal Rules of Civil Procedure, moreover, do not provide any explicit mechanism for ‘undismissing,’ after judgment, any voluntarily dismissed claims so that the litigant could ultimately appeal.”).

²⁰ Vacate Denial Order at 2. The ALJ cited to Fed. R. Civ. P. 59-60. *Id.*

²¹ *Id.*

²² *Id.* See also *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 19 (1st Cir. 1992) (applying an abuse of discretion standard to an appeal of a motion for relief from a judgment).

²³ See e.g., *Bell v. Hadley*, No. 04–0263–WS–D, 2006 WL 572329, at *1 (S.D. Ala. Mar. 7, 2006) (“Having elected to voluntarily dismiss his claims against defendants in this action, plaintiff cannot ‘unring’ that bell simply because he has changed his mind.”).

CONCLUSION²⁴

Accordingly, we **AFFIRM** the ALJ's Order Approving Withdrawal of Objections and the ALJ's Order Denying Complainant's Request to Vacate Order Approving Withdrawal of Objections.²⁵ The complaint in this matter is **DENIED**.

SO ORDERED.

²⁴ In any appeal of this Decision and Order that may be filed with the Courts of Appeals, we note that the appropriately named party is the Secretary, Department of Labor (not the Administrative Review Board (ARB)).

²⁵ Because we affirm the ALJ's rulings, the October 8, 2021 OSHA findings become the final order of the Secretary in this matter. *See* 29 C.F.R. § 24.111(c).