



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
U.S. Custom House
721 19th Street, Room 407
Denver, CO 80202-2517

SECRETARY OF LABOR,

Complainant,

v.

WYMAC ENT, INC. dba WORK SHOP OF
DENVER and its Successors

Respondent.

OSHRC Docket No. 17-0903

ORDER

The Occupational Safety and Health Administration (OSHA) commenced this action by the issuance a Citation and Notification of Penalty on April 19, 2017 (Citation). In the Citation, OSHA alleged Respondent had violated 29 CFR § 1926.20(b)(2) and proposed a penalty of \$1,630.00. Respondent filed a Notice of Contest on May 12, 2017. The case was docketed with the Occupational Safety and Health Review Commission (Commission) on June 27, 2017. The Chief Administrative Law Judge designated this case to proceed pursuant to the simplified proceedings rules of the Commission on June 27, 2017. *See* 29 C.F.R. § 2200.203(a).

The Court scheduled an initial pre-trial conference with the parties to be held on September 12, 2017. Prior to the conference call, on September 11, 2017, Complainant withdrew the Citation (Withdrawal).

Approximately three hours after the Withdrawal, Respondent filed two Motions (Motions) entitled as follows:

- Statement of Position and Factual Information by Respondent; and
- Statement of Position and Factual Information by Respondent and Request for Sanctions and/or to Compel Complainant's Compliance with Hon. Judge's Order, and

Request for an Order Staying the Acceptance of any Premature Withdrawal by Complainant as an Avenue to Escape its Duties; and Other Orders or Notices to Preserve Respondent's Rights and Appropriate Jurisdiction of this Court.

The Court, via an Order dated September 12, 2017, required Complainant to answer the Motions by September 18, 2017. Complainant filed his Response to the Motions on September 18, 2017. On September 20, 2017, Respondent filed a Status Report indicating that he intended to file a rebuttal response.

Commission Rule 102, 29 C.F.R. § 2200.102, provides Complainant may withdraw a citation “at any stage of the proceeding. The notice of withdrawal shall be served in accordance with § 2200.7(c)[.]” The Supreme Court in *Cuyahoga Valley Railway Co. v. United Transportation Union*, 474 U.S. 3, 7 (1985), held, “the Secretary’s decision to withdraw a citation against an employer under the Act is not reviewable by the Commission.” Under *Cuyahoga*, this Court does not have the authority to grant or deny Complainant’s Withdrawal of the Citation. *Heave Ho Crane Co.*, 24 BNA OSHC 2058, 2061 (No. 14-0250, 2014). The Withdrawal filed by Complainant is self-effectuating and terminates the case in and of itself; no order of the Court is needed or required. *Qureshi v. United States*, 600 F.3d 523, 525 (5th Cir. 2010); *Am. Cyanamid Co. v. McGhee*, 317 F.2d 295, (5th Cir. 1963). See also *In re Amerijet Int’l, Inc.* 785 F.3d 967, 973 (5th Cir. 2015) and *Otis Elevator Co.*, 23 BNA OSHC 1664 (No. 10-1057, 2011). While this Court issues an Order acknowledging Complainant’s Withdrawal and closing the case, this action is a ministerial function only – not a substantive one. *Cuyahoga*, 474 U.S. at 7.

The Court gives immediate effect to Complainant’s Withdrawal of the Citation. Any pleadings filed by Respondent after the filing of the Withdrawal, are *void ab initio* and require no action by the Court.

Respondent’s sole course for attorney fees – as requested in one of the Motions – is through the Equal Access to Justice Act, 5 U.S.C. § 504, and implementing Commission regulations at 29 C.F.R. § 2204.101 et seq.

SO ORDERED.

/s/ Patrick B. Augustine
Patrick B. Augustine
Judge - OSHRC

Dated: September 25, 2017
Denver, CO