

THIS CASE IS NOT A FINAL ORDER OF THE REVIEW COMMISSION AS IT IS
PENDING COMMISSION REVIEW

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

MAYFIELD ENERGY, LLC,

Respondent.

DOCKET NO. 22-1443

Appearances:

Carlton Jackson, Esq., Office of the Solicitor, U.S. Dept. of Labor, Dallas, TX
For Complainant

Andrew Gross, Esq., Atlanta, GA
For Respondent

Before: Administrative Law Judge Brian A. Duncan

DECISION AND ORDER

This matter is before the United States Occupational Safety and Health Review Commission (“Commission”) pursuant to a *Petition of Mayfield Energy for Fees Pursuant to the Equal Access to Justice Act*, 5 U.S.C. §504 (“EAJA”) and OSHRC’s Rules Implementing EAJA, 29 C.F.R. §§2204.101 *et seq.*

On August 8, 2022, the Occupational Safety and Health Administration (“OSHA”) conducted an inspection at 10 Marshall Lane, Aransas Pass, Texas. As a result of that investigation, OSHA issued a *Citation and Notification of Penalty* (“Citation”) to Respondent alleging two serious violations of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (“the Act”), with proposed penalties of \$8,702.00. Respondent timely contested the *Citation*.

The case was docketed by the Commission on November 30, 2022. On February 16, 2022, the undersigned was assigned to preside over the case and subsequently ordered the parties to confer and submit a proposed pre-trial schedule. Shortly thereafter, on March 9, 2023, the parties filed a *Report of Proposed Settlement*. The Court afforded the parties thirty days to file their formal *Joint Notice of Settlement*. However, on April 7, 2023, Complainant filed a *Notice of Withdrawal of Citation and Complaint* pursuant to Commission Rule 102, noting that “[t]his is not a settlement with Respondent. Complainant takes this action unilaterally, pursuant to its unreviewable discretion to withdraw a citation. *Cuyahoga Valley Ry. Co. v. United Transp. Union*, 474 U.S. 3 (1985).” Therefore, on April 13, 2023, the Court terminated the proceedings and closed the case.

On May 2, 2023, Respondent filed a *Petition of Mayfield Energy for Fees Pursuant to the Equal Access to Justice Act*. Respondent seeks recoupment of \$4,068.75 in attorney’s fees. Complainant subsequently filed an *Answer* denying Respondent’s entitlement to fees. Respondent subsequently filed a *Reply*.

The *Equal Access to Justice Act* applies to OSHRC proceedings pursuant to 29 C.F.R. §2204.101 *et seq.* An eligible Respondent can be awarded attorney fees and other related costs “when it prevails over the Secretary of Labor, unless the Secretary’s position in the proceeding was substantially justified or special circumstances make an award unjust.” *Id.* “Alternatively, an eligible party, even if not a prevailing party, may receive an award under 5 U.S.C. 504(a)(4) when it successfully defends against an excessive demand made by the Secretary.” *Id.* The alternative referenced in §504(a)(4) requires a showing that “the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision, under the facts and circumstances of the case.”

“A party seeking an award under EAJA shall file an application with the judge that conducted the adversarial adjudication within 30 days after the final disposition of the adversary adjudication.” 29 C.F.R. §2204.301(a). In this instance, Respondent timely filed its *Petition* on May 2, 2023, within thirty days of Complainant’s *Notice of Withdrawal* and the Court’s *Order Terminating Proceedings*.

To establish eligibility for an award, Respondent must first establish that its net worth, at the time the adversary adjudication was initiated, did not exceed \$7,000,000, and that it did not employ more than 500 employees. 29 C.F.R. §2204.201; 5 U.S.C. §504(b)(1)(B). Respondent included various exhibits with its *Petition* to establish eligibility: tax returns indicating that its net profit in 2020 was \$911.00, and \$193,311 in 2021; a spreadsheet indicating a cost basis for its assets in 2020 and 2021 was \$317,296.00; and property tax assessments for the two oil wells it owns and operates in Texas, indicating a total assessed value of \$121,340. Respondent argues that “[w]ith this data, by no calculation could the net worth of Mayfield Energy even begin to approach the \$7,000,000 threshold limit for EAJA eligibility.” Respondent also included a signed declaration from Respondent’s owner that it “has no employees. Nor has it had any employees at any time in its history.” The Court notes that *Secretary of Labor’s Answer to Mayfield Energy LLC’s Application for Fees Under the Equal Access to Justice Act* did not dispute, or otherwise respond in any way, to these allegations of eligibility in Respondent’s *Petition*. Accordingly, the Court deems Respondent an eligible party, in terms of net worth and employee limits, for an award under EAJA.

Once eligibility is determined, Respondent must establish that it was the “prevailing party.”¹ The parties filed *Joint Stipulations* on September 1, 2023, indicating that “an evidentiary record is not necessary,” that “the court can decide the merits of the case, as a matter of law, based on the pleadings,” and that “the primary issue to be resolved is whether the Respondent is a ‘prevailing party’ as a matter of law under the Equal Access to Justice Act.”

Two fairly recent OSHRC ALJ decisions have analyzed whether eligible employers can establish themselves as the “prevailing party” when OSHA unilaterally withdraws alleged violations, as in this case. In *Secretary v. Benton-Georgia, LLC*, 2016 WL 6248015 (OSHRC ALJ, Sept. 6, 2016), the Judge discussed several leading cases, including two presented by the parties here: the Supreme Court’s decisions in *Buckhannon Board and Care Home v. West Virginia Dept. of Health and Human Resources*, 121 S.Ct. 1835 (2001) and *CRST Van Expedited, Inc. v. EEOC*, 136 S.Ct. 1642 (2016). The Judge in *Benton-Georgia* soundly concluded that OSHA’s unilateral withdrawal of a *Citation* “affords [Respondent] no judicial relief” and therefore, Respondent cannot be the “prevailing party” for the purposes of an EAJA award. The same rationale was later examined and adopted in *Secretary v. Terence Froman, Inc.*, 2019 WL 7667644 (OSHRC ALJ, Dec. 2, 2019). Upon review, this Court finds the Judges’ analyses in the *Benton-Georgia* and *Terence Froman* cases to be persuasive and adopts those analyses here.

The *Buckhannon* Court clearly rejected “catalyst theory” fee recovery in several circuits and concluded that a party cannot establish itself as a “prevailing party” unless it “has been awarded some relief by the court.” *Buckhannon* at 1839. No such relief of any kind was granted

¹ The alternative recovery method, pursuant to §504(a)(4), is not applicable here as there was no “decision of the adjudicative officer”, and therefore, no way to compare such a decision to the “demands of the Agency.”

in the present case. Complainant exercised prosecutorial discretion in choosing to voluntarily withdraw the alleged violations. Such an exercise of prosecutorial discretion is unreviewable and required no approval from this Court. *Cuyahoga Valley Ry. Co., supra*. Simply as an administrative function, this Court later terminated and closed the case as a result of the withdrawal.

Conclusion

As noted above, it is Respondent’s burden to establish that it was the “prevailing party” in this case. As a matter of law, since Complainant exercised its prosecutorial discretion and unilaterally withdrew the *Complaint* and *Citation*, Respondent failed to establish that it was the “prevailing party” under the *Equal Access to Justice Act* and the Commission’s implementing regulations. Accordingly, Respondent is not entitled to recover attorney’s fees or costs.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the *Petition of Mayfield Energy for Fees Pursuant to the Equal Access to Justice Act* is DENIED.

SO ORDERED.

/s/ *Brian A. Duncan*

Judge Brian A. Duncan

U.S. Occupational Safety and Health Review Commission

Dated: October 10, 2023
Denver, CO