

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
SKYLINE TOWERS NO. 2, 10TH FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

1 2 AUG 1980

O. B. SUTHERLAND, JR., : Complaint of Discrimination
Complainant :
v. : Docket No. CENT 79-93-D
: :
TEXAS UTILITIES GENERATING COMPANY, : Maintenance Department
Respondent :

DECISION DISMISSING COMPLAINT

Appearances: O. B. Sutherland, Jr., Ennis, Texas, pro se;
Richard L. Adams, Esq., Worsham, Forsythe & Sampels,
Dallas, Texas, for Respondent.

Before: Judge Stewart

This is a case brought under section 110(b) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 820 1/ (hereinafter the Act).

1/ Section 110(b) provides as follows:

"Discrimination. (b)(1) No person shall discharge or in any other way discriminate against or caused to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that such miner or representative (A) has notified the Secretary or his authorized representative of any alleged violation or danger, (B) has filed, instituted, or caused to be **filed or** instituted any proceeding under this Act, or (C) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

"(2) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) of this subsection may, within thirty days after such violation occurs, apply to the Secretary for a review of such alleged discharge or discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the

On May 4, 1979, Complainant filed a letter stating:

I filed a discrimination complaint against Texas Utilities Generating Co. about the first of March this year. I received a call from Mr. Dale L. Hollopeter on March 14, 1979, for a telephone interview. I received a letter dated April 16, from Mr. Joseph O. Cook stating that discrimination had not occurred. I disagree with this finding very much for many reasons. The first of which is I feel like very little effort or time was used to fully investigate. Not one person that I gave as reference was contacted that I know of.

The definition of discrimination is (SHOW PARTIALITY OR PREJUDICE.) (THE ACT OF **MAKING** OR PERCEIVING DIFFERENCES AND DISTINCTIONS.) (A SHOWING OF FAVORITISM IN TREATMENT.)

This Company definitely was discriminatory to me because of illness and injuries sustained while working for them.

Your consideration will be appreciated by my family and myself.

On May 8, 1979, the Chief Administrative Law Judge mailed a letter to Complainant acknowledging receipt of his complaint under section 105(c) of the Federal Mine Safety and Health Act of 1977 and informing him of the case docket number. Complainant was also informed that his complaint could not be processed until he had supplied the additional information listed below.

fn. 1 (continued)

United States Code. Upon receiving the report of such investigation, the Secretary shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay. If he finds that there was no such violation, he shall issue an order denying the application. Such order shall incorporate the Secretary's findings therein. Any order issued by the Secretary under this paragraph shall be subject to judicial review in accordance with section 106 of this Act. Violations by any person of paragraph (1) of this subsection shall be subject to the provisions of sections 108 and 109(a) of this title.

"(3) Whenever an order is issued under this subsection, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation."

First, your complaint must contain an affidavit by you or some other person with knowledge of the case describing the facts leading to the alleged discrimination.

Second, your complaint must specify the type of relief you are requesting, such as reinstatement, back pay, etc.

Third, once you have prepared your complete complaint, you must mail one copy of it to Texas Utilities Generating Company, and one copy to this office. When you send the copy to this office, please enclose a note stating that you have mailed a copy to Texas Utilities Generating Co., and indicate the date on which it was mailed.

Complainant's reply filed on May 21, 1979, reads as follows:

Dear **Mr.** Broderick

Some employees that worked for Texas Utilities Gen. Co. and suffered injuries and illness on and off the job were given jobs by the company that compensated for these injuries and illnesses, in nearly every case these jobs are much better paying jobs. The majority of these employees are what could be classified as foul ups or incompetent.

Other employees that had illness or injury while working for Texas Utilities Generating Co. were fired.

Most of the employees that were given easier better **pay-
ing** jobs were treated by Doctors outside of Fairfield, Texas.

I was treated by Dr. Joe **D. Crossno** of Fairfield, Texas, a Company Dr. Dr. **Crossno** had tried to get the Co. to give me a desk job in Nov. of 1974 to help control a very bad case of high blood pressure caused by injuries and working conditions of the maintenance dept. I was promised a desk job by Cliff Erwin and Bill Bradley at that time. The only thing that was ever done to fulfill that promise was **Abo** Schwartzer offered a job on a survey crew. This would mean taking a 700.00 per month cut in salary plus taking a job the Co. Dr. said I was not physically able to do because of injuries and High Blood Pressure.

Nearly all of the Texas Utilities Gen. **Co.** employees that were disabled by injuries or illness were given promotions to easier (physically) jobs with much higher pay rates. Just **a** few of these employees that could not perform their jobs and were given promotions are:

Robert Mathews, Dragline Operator, suffered heart attack and was off work for months. He returned to work on light

duty for months and was then promoted to pit boss job with substantial raise in pay. Robert was what most of the maintenance force referred to as snatch and tear. He often made the remarks that he could find the weak point in any machinery and tear it out. This man was the operator of a seven million dollar dragline and was given a promotion and raise.

Joe Morgan was a bulldozer operator at the Rock Dale Plant for Texas Utilities Generating Co. He could not get along with supervisors and fellow employees. He was promoted to maintenance foreman at the Fairfield Plant. He could not do this job and was transferred to another plant. He could not get along with employees at either job and was promoted to mechanical instructor. Talk to some of the people he is supposed to be teaching.

You have to be a foul up or you get fired if you try to do right.

Lee Wayne Collie was a maintenance mechanic with less seniority than myself. He injured his back on the job and his Doctor recommended to the **company** that he be given a desk job. This was done almost immediately.

I have a list of others that received similar treatment if needed. I also know of other employees that were injured on that job that were fired.

I worked for this company from January 1971 until Jan. 1977. During that time I had NO LETTERS OF REPRIMAND or any indication of dissatisfaction with work.

I was fired on January 19, 1977. Almost immediately after I was released by doctors from an on the job injury from which I lost the index finger on my left hand in a bench grinder.

I have a complete list of people that can verify all of the above if needed.

This company has a workmen compensation program that is worthless to the employees. I have yet to collect one cent and I am totally disabled.

There are many medical records and details I can supply if needed.

Texas Utilities Generating Co. should be made to reinstate all of my insurance, hospitalization, life, and retirement, plus pay back all back pay and full maintenance mechanic salary until retirement age.

A complete copy of this letter will be sent to:

TEXAS UTILITIES GENERATING CO.
P.O. Box 948
Fairfield, Texas 75840

Att: Personnel Manager

Mailed on May 16, 1979

When no answer to the complaint had been filed by Respondent by September 18, 1979, the Chief Administrative Law Judge issued an order to show cause why Respondent should not be deemed to have admitted that the alleged discrimination did occur and why a default judgment should not be issued granting the relief sought in the application.

The "Response of Texas Utilities Generating Company to Order to Show Cause" filed on October 3, 1979, stated:

1. To the best of Respondent's knowledge and belief, it has never received a copy of Applicant's application for review (dated May 4, 1979) referred to by the Court in the Show Cause Order of September 18, 1979.
2. Respondent did receive a letter from Applicant dated May 16, 1979 addressed to this Court in which Applicant made certain allegations of discrimination against Texas Utilities Generating Company. A copy of this letter was addressed to and received by the Personnel Department at Respondent's Fairfield, Texas mine.
3. The May 16, 1979, letter, a copy of which is attached hereto as Exhibit A, contained no instructions as to the necessity of a response thereto by Texas Utilities Generating Company, and the Personnel Department at the Fairfield mine were not aware of any requirements that a response be made.
4. Respondent's receipt of this Court's Order to Show Cause on September 24, 1979 at its Fairfield mine was the first knowledge of any of Respondent's employees that a pleading should have been filed by Texas Utilities Generating Company in this matter.
5. Respondent denies that it has ever discriminated against Applicant on any ground whatsoever, including each of the allegations made by Applicant in its letter to this Court of May 16, 1979.

After assignment of the case, an "Order Granting Additional Time to Answer" was granted stating in pertinent part that: "Good cause having been shown, It is ordered that the motion is GRANTED and Respondent is granted to and including October 26, 1979, to answer or otherwise respond to the petition filed herein."

Respondent's "Answer to Application for Review of Discrimination" stated:

I.

Respondent denies that each of the allegations of discrimination made by Applicant in the petition **filed in** this matter. Respondent further states that it has at no **time** discriminated against Applicant on any basis whatsoever.

II.

Applicant has failed to file his complaint of discrimination within the time allowed by law. 2/

2/ By the time Complainant filed his complaint, the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 820 et seq., amending the 1969 Act had been enacted. Section 105(c) of the **1977 Act** provides as follows:

"(c)(1) No person shall discharge or in any manner discriminate against or caused to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners, or applicant for employment in any coal or other mine subject to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or relating to this Act, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101 or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment in behalf of himself or others of any statutory right afforded by this Act.

"(2) Any miner or applicant for employment or representative of miners who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may, within 60 days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall forward a copy of the complaint to the respondent and shall cause such investigation to be made as he deems appropriate. Such investigation shall commence within 15 days of the Secretary's receipt of the complaint, and if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order

In a document entitled "Applicant's Response to Respondent's Answer to Application for Review of Discrimination," Complainant stated:

fn. 2 (continued)

the immediate reinstatement of the miner pending final order on the complaint. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall immediately file a complaint with the Commission, with service upon the alleged violator and the miner, applicant for employment, or representative of miners alleging such discrimination or interference and propose an order granting appropriate relief. The Commission shall afford an opportunity for a hearing; (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact, affirming, modifying, or vacating the Secretary's proposed order, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The Commission shall have authority in such proceedings to require a person committing a violation of this subsection to take such affirmative action to abate the violation as the Commission deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay and interest. The complaining miner, applicant, or representative of miners may present additional evidence on his own behalf during any hearing held pursuant to this paragraph.

"(3) **Within** 90 days of the receipt of a complaint filed under paragraph (2), the Secretary shall notify, in writing, the miner, applicant for employment, or representative of miners of his determination whether a violation has occurred. If the Secretary, upon investigation, determines that the provisions of this subsection have not been violated, the complainant shall have the right, within 30 days of notice of the Secretary's determination, to file an action in his own behalf before the Commission, charging discrimination or interference in violation of paragraph (1). The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section), and thereafter shall issue an order, based upon findings of fact, dismissing or sustaining the complainant's charges and, if the charges are sustained, granting such relief as it deems appropriate, including, but not limited to, an order requiring the rehiring or reinstatement of the miner to his former position with back pay and interest or such remedy as may be appropriate. Such order shall become final 30 days after its issuance. Whenever an order is issued sustaining the complainant's charges under this subsection, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) as determined by the Commission to have been reasonably incurred by the miner, applicant for employment or representative of miners for, or in connection with, the institution and prosecution of such proceedings shall be assessed against the person committing such violation. Proceedings under this section shall be expedited by the Secretary and the Commission. Any order issued by the Commission under this paragraph shall be subject to judicial review in accordance with section 106. Violations by any person of paragraph (1) shall be subject to the provisions of sections 108 and 110(a).

From May, 1976 to present, Applicant herein has complained to Respondent concerning discrimination practices of Respondent in the treatment of employees injured on the job, in that certain employees after injury or illness are given preferential treatment and desk jobs while your Applicant herein, after Respondent's doctor advised Cliff Erwin that Applicant should be given a desk job, was promised a desk job and was then fired from Respondent's employment. Said complaint has been filed with Respondent since January 19, 1977, the date of Applicant's firing by Respondent.

WHEREFORE PREMISES CONSIDERED, Applicant prays that the Commission order immediate reinstatement of Applicant's insurance and salary with back pay and interest and to grant a hearing according to Section 105(C) of the Federal Mine Safety and Health Act of 1977.

On October 17, 1979, a notice of hearing was issued setting the hearing for December 21, 1979, in Dallas, Texas.

On November 19, 1979, Respondent filed the following "Motion for Summary Judgment":

Comes now Respondent, Tdxas Utilities Generating Company, and pursuant to 29 C.F.R. 52700.51 respectfully moves this Court for an order granting Respondent summary judgment in this matter. As grounds for this motion, Applicant did not file a **charge** of discrimination with the Secretary until well over two years after he left the employment of Respondent. Jurisdiction is lacking in this matter due to Applicant's failure to follow the Jurisdictional prerequisites of section 105(c)(2) of the Mine Safety and Health Act of 1977.

Respondent would respectfully refer the Court to its brief in support of this motion, which is filed herewith.

WHEREFORE, Respondent respectfully prays for an order of summary judgment due to lack of subject matter jurisdiction.

Complainant having advanced no explanation for his failure to timely file his complaint, an order to show why the complaint should not be dismissed was issued on December 13, 1979. It was noted in the order to show cause that the period within which the complaint should be filed was not jurisdictional but in the nature of a statute of limitations. As such, it may be extended in appropriate circumstances. The case of Phil Baker v. The North American Coal Company, 8 IBMA 164, 176-177 (1977), was cited.

The hearing was continued for 30 days to give Complainant an opportunity to respond to the order to show cause.

On December 13, 1979, Respondent filed the following "Motion for Summary Judgment";

Comes now Respondent, Texas Utilities Generating Company, and pursuant to 29 C.F.R. §2700.51 respectfully moves this Court for an order granting Respondent summary judgment in this matter. As grounds for this motion Respondent states:

1) The complaint of discrimination filed by Applicant does not allege any conduct forbidden by section 110(b) of the Federal Coal Mine Health and Safety Act of 1969; and

2) Applicant did not file within the thirty day period mandated by section 110(b) of the Federal Coal Mine Health and Safety Act of 1969.

WHEREFORE, Respondent respectfully prays for an order of summary judgment in its favor.

Complainant filed the following answer to the "Order to Show Cause" on December 27, 1979.

In January of 1977, I asked nine different attorneys about filing discrimination charges against Texas Utilities Generating Co. All of them said they knew of no laws that governed the mining industry in Texas. One attorney told me he would take the case of discrimination if I were of a minority, otherwise nothing could be done.

When I was fired by Texas Utilities Generating Co., in January of 1977, I had just had a finger amputated because of a serious infection caused from working conditions. I was forced to work in the tool room cleaning and repairing tools. At the time I was on light duty with a very badly mangled finger with parts of the tendons sticking through the outside of my finger.

Nearly all employees with injuries or illness were allowed to stay in the office until they were able to return to work.

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Since before Texas Utilities Generating Co. fired me and right up to the present time I have had a very bad time with illness and effects of on the job injuries. I have also had a great deal of trouble getting off of over medication the company Dr. had been giving me just to keep me going. I was nearly made into a dope addict by being given so many tranquilizers by the company doctor.

I have spent a great deal of time with doctors and in hospitals and clinics. At one point, in December of 1977, I nearly died with complications. I have spent most of the time since my firing just trying to stay alive. I have a muscle destroying disease that I believe originated while employed by Texas Utilities Generating Co. Medical records indicate this.

For more than two years I was not in a physical or mental condition to pursue any kind of action against Texas Utilities Generating Co., after writing many letters and making many phone calls I finally learned of the Federal Mine Health and Safety Act. I immediately filed the discrimination complaint.

I have honestly tried everything I or any attorney knew of to file this complaint since January of 1977.

A "Supplemental Brief in Support of its Motion for Summary Judgment" was **filed** by Respondent on January 15, 1980.

On January 29, 1980, a notice of hearing was issued setting a hearing for February 26 in Dallas, Texas, to determine the issue as to whether Respondent's "Motion for Summary Judgment" should be granted.

On February 6, 1980, Respondent filed a "Motion for Continuance" due to a conflicting schedule. On February 1, 1980, Complainant filed an answer to Respondent's "Motion for Continuance" stating that he had already made arrangements with witnesses to appear on the date scheduled and requested that the hearing, scheduled for February 25, 1980 be held. Good cause having been shown, Respondent's "Motion for Continuance" was granted and the notice of hearing was vacated.

On February 12, 1980, a notice setting a prehearing conference on March 28, 1980, in Dallas, Texas, was issued for the purpose of receiving evidence on the issue as to whether the complaint should be dismissed for late filing. It was noted in this notice that "this continuance will afford Complainant additional time to obtain counsel if he should desire to do so."

On March 11, 1980, the prehearing conference scheduled for March 28, 1980, was reset for May 6, 1980, in Dallas, Texas.

On March 24, 1980, Complainant filed the following "Request for Change of Date of Prehearing Conference":

Complainant respectfully request[s] the above-captioned case currently scheduled to be held on May 6, 1980, to be reset to another date. The reason being my attorney and one of my witnesses have another case already scheduled on May 6, 1980 and will be out of town on that date.

Since the request seemed to indicate that Complainant had obtained counsel, an additional opportunity was afforded for Complainant to set forth

reasons why the complaint should not be dismissed. An order to show cause was issued on April 1, 1980, which **quoted** section **110(b)** of the Act and noted that:

Since Complainant now indicates that he has obtained counsel he should be able to present his position and clarify his pleadings in writing. Therefore, Complainant is ordered to show cause within 30 days of the date of this order why his complaint should not be dismissed because **(1)** The complaint of discrimination does not allege conduct forbidden by Section **110(b)** of the Federal Coal Mine Health and Safety Act of 1969; and **(2)** Complainant did not file within the 30-day period mandated by Section **110(b)** of the Federal Coal Mine Health and Safety Act of 1969.

Complainant's answer to the order to show cause on April 29, 1980, filed by **O. B. Sutherland, Jr.** --not his counsel--stated:

Now comes **O. B. Sutherland, Jr.**, Complainant herein with his response to order to show cause dated April 1, 1980.

Complaint of discrimination was not filed within the specified time because for twenty four months before I was fired respondent's doctor had been having me take approximately eight thousand tranquilizers and relaxers to try to control complications that resulted from on the job injuries. It took more than a year to get off of this much medication and detoxify myself. I was a complete prescription dope addict with very little control of my mental or physical faculties. I asked respondent's doctor no less than fifteen times during this period to please change my medication or at least cut back on some of it.

In December of 1977 I became ill with a **neuro-muscular** disease (**Dermatomyositis-Polymyositis**). It was over a year before I regained enough strength so that I could even stand for more than a few minutes without falling. For many months. I could not walk or get out of a chair or bed without help. I filed the discrimination complaint just as soon as I was able to after that.

There are many employees injured while working for Texas Utilities Gen. Co. ranging from the smallest of injuries in some cases up to and including death in others. Of all of the injuries I know of employees that had disabling injuries and filed claims for workmen's compensation were fired as soon as they were released by doctors, while other employees that did not file claims for disabling injuries are in most cases promoted or transferred to jobs they can handle. This is discriminatory toward some employees.

The attorney I mentioned in earlier correspondence is a very good friend that knows what condition I was in when Texas Utilities fired me. He offered to go with me to the hearing and help as much as he could. He has helped me many times and will not accept any kind of payment. His name is James R. Pitts of Waxahachie, Texas.

O.B. Sutherland, Jr.

The prehearing conference scheduled for May 6, 1980, was reset for June 24, 1980, in Dallas, Texas. On June 24, 1980, Mr. O. B. Sutherland, Jr., appeared at the prehearing conference without counsel and announced that he had that morning called Mr. Pitts, his attorney, whose secretary informed him that there had been a death in the family. No pleadings or any other documents had been filed by anyone in behalf of Mr. O. B. Sutherland, Jr., other than those filed by Mr. Sutherland himself. At the prehearing conference, Mr. Sutherland stated:

The attorney that was going to come with me is a personal friend of mine, and he offered to help me but I, frankly, can't afford an attorney. I haven't worked since I was fired by Texas Utilities. I'm crippled up so bad nobody will hire me, no kind of job.

The doctors that are treating me right now tell me I can't work, and the main reason it was not filed within the time limit was because of this list of medication right here I'd like to give the Court.

I've been told by two different doctors that there's enough here to kill a normal human being, plus--well, they made a dope addict out of me is what they did.

Complainant also stated that Mr. Pitts said he would appear at the hearing as his counsel but that he would not accept money for his legal services.

In order that Complainant would fully understand the scope of section 110(b)(1) of the Act, which had already been quoted in the order to show cause, it was read to Mr. Sutherland at the prehearing conference. Complainant stated that he knew the definition of discrimination and understood the words of the Act. Nevertheless, when Complainant still failed to allege any act prohibited by section 110(b)(1), he was told that the case would be continued to allow him an additional opportunity, to bring in his attorney.

Mr. Sutherland then offered in evidence a list of medications that had been prescribed by a physician on contract to Respondent and copies of pages from a book indicating the side effects of such medication. A ruling on Respondent's objection to the admission of these documents was deferred until

the appearance of Complainant's counsel in order that he might adequately describe the exhibits offered and lay a proper foundation for their admission. The proceeding was adjourned until June 26, 1980.

Complainant failed to appear at the hearing on June 26, 1980. Earlier on that morning, he had phoned and told a clerk in the building where the hearing room was located that his counsel had another case that day and was not available. The hearings division was unable to reach Mr. Sutherland by telephone, but it was able to call James Pitts, Esq., who stated that he had not represented Mr. O. B. Sutherland in any fashion since a workman's compensation hearing terminated 3 years ago. On its conclusion, Mr. Sutherland demanded and took the file from him.

To give Mr. Sutherland still another opportunity to obtain a lawyer and present his case, a hearing was set in Dallas, Texas, on July 2, 1980. Mr. O. B. Sutherland, Jr., again appeared at the hearing without counsel and stated that his lawyer was tied up in court on that day. When asked if Mr. Pitts was representing him in this case, Mr. Sutherland stated that technically he was not. Mr. Sutherland stated that he had talked to 200 different attorneys and that none of them knew anything about the Act or would take the case.

Complainant stated that he was ready to proceed with the hearing and called his father Mr. O. B. Sutherland, Sr., as his witness. The witness verified that Complainant had been on medication due to his illness and injury and stated that Complainant would go to Respondent's office, sign in, and receive his pay each day without working. He testified that Complainant was discharged from employment with Texas Utilities Generating Company on January 19, 1977. After his discharge, Complainant talked to lawyers but the witness did not hear the conversations. Complainant and his wife would drive a distance of 25 to 30 miles to visit the witness,

Mr. O. B. Sutherland, Jr., took the stand and testified as a witness in his own behalf. In November 1974, Complainant had been sent to the doctor for an injury when it was discovered that he had high blood pressure. Medication was started and thereafter increased. On May 29, 1976, Complainant did not even remember driving to work and on that day he injured his finger on a benchgrinder. The finger was finally amputated on December 24, 1976. Complainant was fired in January of 1977, after which he talked to approximately nine lawyers. Complainant stated that he felt that he was discriminated against because he was not given a desk job and that help should have been given him for his injuries, illnesses, and medication. After Complainant failed to allege any conduct on the part of Respondent prohibited by section 110(b) of the Act, the documents previously objected to by Respondent were admitted as Exhibits 1 and 2 in order to have a complete record of the allegations.

In no part of his pleadings or in the evidence presented did Complainant either allege or prove that Respondent discharged him or in any other way discriminated against or caused him to be discharged or discriminated

against by reason of the fact that Complainant (a) had notified the Secretary, his authorized **representative**, or any other person of any alleged violation or danger, (b) had filed, instituted, or caused to be filed or instituted any proceeding under this Act, or (c) had testified or was about to testify in any proceeding resulting from the administration or enforcement of the provisions'of this Act.

Complainant has failed to show any valid reason why his complaint should not have been filed within 30 days or within some reasonable time after the alleged violation. Complainant knew all of the facts regarding his discharge and was able to travel and use the telephone. He talked to lawyers and was able to pursue other legal matters. The nature of his injuries, illnesses, and prescribed medication did not prevent the timely filing of his complaint. The refusal of nine lawyers to take the case is not, under the circumstances established by the pleadings and the record, sufficient excuse for Complainant's failure to file more than 2 years after the alleged violation.

Since the complaint did not allege a violation and was not timely filed, the proceeding is DISMISSED.



Forrest E. Stewart
Administrative Law Judge

Distribution:

Mr. O. B. Sutherland, Jr., Route 2, Ennis, TX 75119 (Certified Mail)

Richard L. Adams, Esq., Worsham, Forsythe & Sampels, 2500-2500-1 Bryan Tower, Dallas, TX (Certified Mail)

Assistant Solicitor, Office of the Solicitor, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, VA 22203 (Certified Mail)