

IN THE UTAH COURT OF APPEALS

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Brent L. Kummer,)	MEMORANDUM DECISION
)	(Not For Official Publication
Petitioner,)	
)	Case No. 20070438-CA
v.)	
)	F I L E D
Labor Commission,)	(August 9, 2007)
)	
Respondent.)	2007 UT App 276

Original Proceeding in this Court

Attorneys: Brent L. Kummer, Heber, Petitioner Pro Se
 Alan Hennebold, Salt Lake City, for Respondent

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Brent L. Kummer petitions for review of a final order issued by the Utah Labor Commission Appeals Board (the Board). This case is before the court on its own motion for summary disposition.

Kummer originally brought a complaint to the Utah Labor Commission, Occupational Safety and Health Division (the Division), alleging retaliation. An investigation took place, and the Division issued a Determination and Order on July 29, 2004. No further action was taken by the Division regarding Kummer's retaliation claim.

Kummer subsequently requested a formal hearing from an Administrative Law Judge (ALJ). The ALJ dismissed Kummer's complaint on the bases that the Division had already determined that there was no cause of action for retaliatory discharge, and that, in any event, the matter was moot as Kummer had been made whole.

Kummer subsequently asked for review by the Board. The Board noted that under the Utah Occupational Health and Safety Act, an employee may make a complaint to the Department, which shall investigate the complaint. If the investigator reports a

violation, the employer may then request a hearing. See Utah Code Ann. § 34A-6-203(2)(c) (2005). The Board held that there is no provision allowing for an individual employee to request a hearing. On this basis, the Board affirmed the ALJ's holding. The Board issued an order denying a request for reconsideration on this same basis. Kummer has filed a petition for review with this court, though he ignores the relevant issue--whether the Board appropriately dismissed his claim.

Under Utah Code section 34A-6-203(2), an employee files a complaint with the Division. See id. § 34A-6-203(2)(a). "Upon receipt of the complaint, the [D]ivision shall cause an investigation to be made." Id. § 34A-6-203(2)(b)(i). If a violation is reported by the investigator, "and the employer requests a hearing on the alleged violation," an evidentiary hearing shall ensue under the statute. Id. § 34A-6-203(2)(c). There is no provision under the statute entitling an employee to request a hearing. See id. Accordingly, the ALJ and the Board correctly applied the plain language of the statute.

Affirmed.

Russell W. Bench,
Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge