

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-2365

ULYSEES COATES,

Appellant

v.

U.S. DEPARTMENT OF LABOR;
*ELAINE CHAO, SECRETARY,
U.S. DEPARTMENT OF LABOR

*(Substituted Pursuant to F.R.A.P. 43(c))

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

(Dist. Court No. 99-CV-03769)
District Court Judge: J. Curtis Joyner

Submitted Under Third Circuit LAR 34.1(a)
January 17, 2002

Before: ALITO, ROTH, Circuit Judges, and SCHWARZER, Senior District Judge.

(Opinion Filed: January 28, 2002)

MEMORANDUM OPINION OF THE COURT

PER CURIAM:

Because the parties are well aware of the history of these proceedings and the facts involved, we need not repeat them here.

Coates argues that he exhausted his administrative remedies by appealing from the Department of Labor's (DOL's) April 7, 1999, refusal to disclose documents requested under the Freedom of Information Act. The DOL, however, claims that Coates's appeal from the administrative determination of April 7, 1999, was deemed withdrawn and did not suffice as an appeal from the second administrative determination of May 28, 1999. In this second administrative determination, the DOL disclosed some of the documents it had initially withheld and advised Coates of his right to appeal this decision to the Solicitor of Labor within 90 days. Thus, the DOL argues that Coates failed to exhaust his administrative remedies because he did not appeal the May 28, 1999, determination before filing suit in federal court. The District Court agreed with the DOL that Coates

was obligated to exhaust completely the administrative remedies available to him and that he had failed to do so.

There is no dispute about the factual record in this case, and we hold that the sequence of events and the content of the communications between Coates and the DOL provide a clear basis for the District Court's determination.

The District Court styled its order as one entering judgment as a matter of law against the plaintiff. As a technical matter, the order should have been styled as one dismissing the complaint for failure to exhaust administrative remedies. We therefore vacate the order of the District Court and remand with instructions to enter a new order dismissing for failure to exhaust administrative remedies.

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JUDGMENT

This cause came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted under Third Circuit LAR 34.1(a).

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the District Court entered on April 30, 2001, be and the same is hereby vacated, and the case is remanded for the entry of an order dismissing for failure to exhaust administrative remedies. All of the above in accordance with the opinion of this Court.

ATTEST:

Clerk

Dated: January 28, 200