

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOSEPH POETT,

Plaintiff,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Civil No. 07-1374 (CKK)

MEMORANDUM OPINION

(January 18, 2010)

On September 29, 2009, this Court denied without prejudice the Defendants' [24] and Plaintiff's [25] Cross-Motions for Summary Judgment and remanded this case to Defendants for further explanation of the decision to deny Plaintiff access to select agents and toxins within the course of his work as a chemist, consistent with the Court's Memorandum Opinion. Thereafter, on December 18, 2009, Defendants filed a [34] Notice of FBI's Final Decision, advising the Court that the FBI had completed its review on remand and had transmitted its decision to the DSAT for a final determination on December 16, 2009. Specifically, the FBI notified DSAT that it no longer reasonably suspects Plaintiff of knowing involvement with an organization that engages in domestic or international terrorism or with any other organization that engages in intentional crimes of violence and that Plaintiff is now eligible for access to select agents or toxins.

Thereafter, on December 22, 2009, this Court issued a Minute Order observing that, in light of the Notice of FBI's Final Decision, "it [] appears that Plaintiff has now received the relief requested in this lawsuit and that this case may be dismissed." The Court further ordered that

“[i]f Plaintiff disagrees” with the Court’s conclusion that this case may be dismissed, “he must file a notice indicating why he does not believe dismissal is now warranted by no later than January 15, 2010. If Plaintiff does not timely file any such notice, the Court shall assume that Plaintiff agrees that this case may be dismissed and shall promptly dismiss the above-captioned matter.” 12/22/09 Min. Order.

Plaintiff did not file any such notice on January 15, 2010, nor has he otherwise indicated to the Court that he believes this case may not be dismissed in light of the FBI’s Final Decision. Although Plaintiff and Defendants filed a [35] Joint Status Report on January 15, 2010, that report advised the Court only that a dispute remains between the parties as to whether Plaintiff is entitled to attorneys’ fees in this matter and contained no indication by Plaintiff that he opposed dismissal of this case. Accordingly, as Plaintiff has not indicated to the Court that he “does not believe dismissal is now warranted,” as was required by the Court’s December 22, 2009 Minute Order, the Court “shall assume that Plaintiff agrees that this case may be dismissed and shall promptly dismiss the above-captioned matter.” 12/22/09 Min. Order.

Finally, Plaintiff has indicated that he intends to seek attorneys’ fees in this action and requests that a briefing schedule be set for the filing of a motion for attorneys’ fees and costs. *See* Jt. Status. Rep., Docket No. [35]. Pursuant to the parties’ suggested briefing schedule, Plaintiff shall file his Motion for Attorneys’ Fees by no later than **February 18, 2010**. Plaintiff’s motion must provide specific legal authority for his apparent position that he is entitled to an award of attorneys’ fees and costs in this action brought pursuant to the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.* (“ADA”). Defendants’ Opposition to Plaintiff’s Motion for Attorneys’ Fees shall be due by no later than **March 22, 2010**, and Plaintiff’s Reply, if any,

shall be due by no later than **April 12, 2010**. An appropriate Order accompanies this Memorandum Opinion.

Date: January 18, 2010

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge