



Issue Date: 21 June 2011

Case No.: **2010-FRS-2**

In the Matter of:
D. W. CROOK,
Complainant

v.

CSX TRANSPORTATION, INC.,
Respondent

**DECISION AND ORDER GRANTING THE RESPONDENT'S
MOTION FOR SUMMARY DECISION, DISMISSING THE CLAIM**

This claim is before me on CSX Transportation's Motion for Summary Decision filed on February 10, 2011. The motion was accompanied by a notice to Mr. Crook that his case could be dismissed if he failed to file a response. On February 24, 2011, Mr. Crook wrote a letter advising that he did not understand what was needed, and asked me not to dismiss his claim. I construed the letter to be a request for an extension of time to respond to the motion. CSX did not oppose an extension. On March 15, 2011, I issued an order allowing Mr. Crook 30 days to file a response. On March 23, 2011, Mr. Crook advised me that he had obtained an attorney to represent him, and requested a continuance until I heard from his attorney. On March 25, 2011, I issued an order stating I would await the appearance of counsel, who could then seek agreement with CSX on a date to respond to the motion, or request a telephone conference. On May 5, 2011, I issued an Order to the Parties to File a Status Report because I had not received an appearance from an attorney on behalf of Mr. Crook, or any further notice from the parties. On May 20, 2011, counsel for CSX advised that he had made multiple attempts to contact Mr. Crook, but Mr. Crook had not responded. CSX would not agree to any further extensions unless it heard from Mr. Crook. On May 25, 2011, I issued an order to Mr. Crook to show cause why the motion for summary decision should not be granted and the case dismissed. The order to show cause stated that if Mr. Crook did not respond to the order, his complaint would be dismissed. As of the date of this order, I have not received any response from Mr. Crook.

IT IS THEREFORE ORDERED that the Respondent's Motion for Summary Decision filed on February 10, 2011, is GRANTED. The claim is DISMISSED.

A

Alice M. Craft
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1982.110(a). You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1982.110(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1982.109(e) and 1982.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1982.110(a) and (b).