



Issue Date: 01 December 2004

CASE NO.: 2004-SDW-00002

In the Matter of:

JAMES E. COLLVINS

Complainant,

v.

EG & G DEFENSE MATERIALS, INC.,

Respondent.

RECOMMENDED ORDER FOR DISMISSAL

On June 2, 2004, I issued pretrial orders setting the hearing in this matter for August 30, 2004, to take place in Salt Lake City, Utah.

On July 30, 2004, Complainant, through his counsel, filed a motion for continuance of the August 30, 2004 trial date and the withdrawal of his attorney, Mick G. Harrison, Esq.

In a July 21, 2004 telephone conference with my law clerk, counsel for Respondent stated that she did not object to withdrawal of Mr. Harrison or to the continuance of the trial.

On August 4, 2004, I issued an order granting Complainant's counsel's motion for withdrawal as counsel. It was further ordered that the August 30, 2004 hearing was continued to November 15, 2004 to take place at the U.S. Tax Court in Salt Lake City, Utah. The order warned both parties that "no further continuances in this matter shall be allowed absent extraordinary circumstances."

On September 15, 2004, Respondent's counsel sent Complainant a letter requesting Complainant to inform her of his new counsel's name and address, if applicable, and to otherwise contact her so that the parties could schedule discovery prior to the November 15, 2004 hearing date. The letter was sent to 2321 West 13235 South, Riverton, Utah, 84065. Said letter was returned.

On September 20, 2004, Respondent's counsel sent Complainant a copy of the same courtesy letter to 387 East 8800 South, Sandy Utah 84070. This is the address that the Office of Administrative Law Judges ("OALJ") has on file for Mr. Collvins.

In an October 4, 2004 telephone conference with my law clerk, Respondent's counsel, Lois A. Baar, stated that she had left Respondent at least two telephone messages following up

with her courtesy letter of September 20, 2004. She stated that Complainant had still not responded to her September 20, 2004 letter or her subsequent telephone messages.

On October 1, 2004, my law clerk attempted to schedule a status conference with both parties. He left a message with Mr. Collvins at his last known telephone number (801-254-4895) but received no return call.

On October 5, 2004, my law clerk again attempted to contact Mr. Collvins. He left a message on Complainant's answering machine and requested him to call the OALJ so that a status conference could be set for later that week. Complainant did not return this phone call.

On October 6, 2004, my law clerk again attempted to contact Mr. Collvins. He left a message on Complainant's answering machine and again implored him to contact the OALJ so that a conference call could be set up with both parties. Complainant did not return this phone call.

On October 7, 2004, my law clerk again attempted to contact Mr. Collvins, leaving a message on his answering machine. Complainant did not return this phone call.

On October 8, 2004, I issued an order for Complainant to submit a status report to the OALJ and opposing counsel by October 14, 2004. In the status report he was to 1) state whether he was intending to proceed as a pro se litigant; 2) describe the steps he had taken to find replacement counsel, if any; 3) describe his efforts at discovery; and 4) provide a current address and phone number at which he may be reached. No written status report was ever submitted by Complainant.

On October 12, 2004, Complainant contacted this Office and informed one of the Office staff that he had had an attorney but that his attorney had withdrawn. He stated he could not afford to get another attorney and was considering representing himself.

Under the pre-trial orders, Complainant was to submit a pre-trial statement to opposing counsel and this Office by October 18, 2004. Complainant never submitted a pre-trial statement.

On October 20, 2004, I issued an order for Complainant to show cause ("OSC") why this matter should not be dismissed due to Complainant's failure to comply with lawful orders and/or abandonment. My order also cancelled the hearing previously set for November 15, 2004, indefinitely, pending the outcome of the OSC. Complainant was directed to file a response to the OSC by November 16, 2004. Respondent was given until November 30, 2004 to reply to Complainant's response. Complainant never filed a response to the OSC.

In a November 18, 2004 conference call with my law clerk, Louis Barr, counsel for Respondent, indicated that she had not still not received a response to the OSC from the Complainant. On November 22, 2004, Respondent's counsel filed a letter confirming the conversation with my law clerk.

On November 26, 2004, Respondent filed a reply to my October 20, 2004, OSC contending that the case should be dismissed due to Complainant's non-response to my OSC and his failure to show cause why his case should not be dismissed for want of prosecution.

On November 30, 2004, I received Complainant's late-filed Response to Order to Show Cause and Status Report (the "late Response") wherein Complainant asks for an additional two weeks to seek counsel to represent him in this matter or he would voluntarily dismiss the action. The late Response also states that due to other pressing matters, "Complainant will likely not be able to pay an attorney even a reduced hourly rate."

Under 29 C.F.R. Section 24.6 (e)(4), I have the authority to issue a recommended decision and order dismissing a case upon my own motion on the grounds that Complainant failed to comply with my lawful orders. 29 C.F.R. § 29.6(e)(4); *See e.g., Staskelunas v. Northeast Utilities Co.*, 98-ERA-8 (ARB May 4, 1998); *Chalk v. Jerry I. Pettis Memorial Veterans Affairs Medical Center*, 97-ERA-4 (ARB Sept. 9, 1997). In the present controversy, Complainant did not comply with my October 8, 2004 order for him to submit a status report. He did not file a timely pretrial statement, in violation of the pretrial orders. He ignored my October 20, 2004 order to show cause why this case should not be dismissed. For these reasons I feel dismissal is appropriate.

Before dismissing a case, I am required to issue an order to show cause so that the Complainant may show why his case should not be dismissed. 29 C.F.R. 24.6 (e)(4)(B)(ii). Having issued an OSC and received no timely reply from Complainant, I am hereby dismissing Complainant's claim due to failure to follow my lawful orders and/or abandonment. Complainant's late Response provides no assurance and raises great doubt that this case will be prosecuted in a timely manner.

For good cause shown:

It is recommended that Case No. 2004-SDW-00002 is hereby **DISMISSED** on the grounds of abandonment and for Complainant's failure to follow my lawful orders.

A

Gerald M. Etchingam
Administrative Law Judge

San Francisco, California

NOTICE OF APPEAL RIGHTS: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.7(d) and 24.8.