

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 24 February 2017

Case No.: 2014-STA-78

In the Matter of:

PAUL ELLIOT,
Complainant,

v.

STAR EXPRESS, LLC, AND
MIRZA BUNGUR,
Respondent.

ORDER DISMISSING CLAIM

This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31101 *et seq.*, and the regulations published at 29 C.F.R. Part 1978. The statute prohibits retaliatory or discriminatory actions by commercial motor carriers against an employee who engages in activity protected by the Act.

In this case, Paul Elliot's ("Complainant") complaint was dismissed by the Occupational Safety and Health Administration (OSHA), by letter issued July 31, 2014, and he timely appealed to the Office of Administrative Law Judges (OALJ). On October 26, 2015, Dan Rudloff, counsel for Respondents, Star Express, LLC, and Mirza Bungur, filed a Motion to Withdraw as counsel for Respondents. I granted the request. On September 7, 2016, we received Notice of Bankruptcy filing September 1, 2016, from the Western District of Kentucky, for Respondents. The Respondent, Star Express, LLC, is listed on the Kentucky Secretary of State's website with a Certificate of Dissolution, effective September 12, 2015.

I held a telephone conference on December 16, 2016, to discuss how to proceed in this case. The Respondent did not participate. Complainant's counsel, Paul Taylor, moved to withdraw as counsel for Complainant based on a breakdown in the attorney-client relationship and an inability of counsel to maintain contact with his client in order to prosecute this litigation. I granted Mr. Taylor's request during the conference.

On February 3, 2017, I issued an Order to Show Cause why this claim should not be dismissed for lack of prosecution. We mailed the Order to Paul Elliot at 3484 Fair Oaks Ave., Bowling Green, Kentucky 42104. The Order was returned to this office, marked by the U.S. Postal Service, "Return to Sender, Not Deliverable as Addressed, Unable to Forward." This is the only address on record for the Complainant. It is the Complainant's duty to provide this office with updated contact information.

This case was assigned to this office in September 2014. During the last two years, the parties have taken no action to move this case towards a hearing. There is currently no hearing scheduled and there is no indication that the parties have gathered additional evidence or are ready to proceed to hearing. Both parties have failed to provide the Court with updated contact information and to actively participate in this action. Therefore, I find that this action should be dismissed for lack of prosecution.

IT IS ORDERED that this claim is **DISMISSED**. OSHA's findings of July 31, 2014, dismissing the claim, remain the final decision of the Secretary of Labor.

JOSEPH E. KANE
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) 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, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; 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. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

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. § 1978.110(a).

If filing paper copies, 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 an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file 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. If you e-File your petition and opening brief, only one copy need be uploaded.

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 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 may include 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. If you e-File your responsive brief, only one copy need be uploaded.

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. If you e-File your reply brief, only one copy need be uploaded.

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. §§ 1978.109(e) and 1978.110(b). 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. § 1978.110(b).