

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 15 June 2016

OALJ CASE No: 2014-STA-00034

OSHA No: 9-3290-14-053

In the Matter of:

JOSEPH SCAVONE
COMPLAINANT,

vs.

HENDRICKSON TRUCKING INC.

RESPONDENTS

Dismissal Order

The Complainant has failed to comply with my Prehearing Orders issued on April 10, 2014, September 3, 2014, September 2, 2015, October 28, 2015 and November 30, 2015.. No pre-trial statement has been filed by the Complainant. This matter should be dismissed for this failure alone.

My October 28, 2015 order further admonished the Complainant that he has the obligation to keep this office updated as to his address that orders can be mailed to and received by the Complainant. The Complainant was required to file a written statement on or before November 24, 2015 with his current mailing address this matter may be dismissed for his failure to respond to this order. He failed to provide me with such a written statement. The Complainant is aware of these prior orders as they have been e-mailed to him October 8, 2015 and he responded to that e-mail on October 29, 2015 giving us his phone numbers but not his mailing address.

On October 30, 2015, the Complainant called and spoke to my legal assistant; He orally advised that his current address was 2200 Palm St., #7, Las Vegas, NV.

The Complainant further advised that he did not intend to proceed with this matter if he had to appear personally. He was advised that he is required to appear personally and that he must comply with the orders requiring him to file a pretrial statement. He then advised that he would advise this office whether he intended to

proceed with this case or whether it could be dismissed. He is given permission to send his response by e-mail as well as in writing. He has failed to respond.

The Complainant was required to file here a written statement or e-mail his response this office on or before December 28, 2015 with his current mailing address, why this matter should not be dismissed for this failure to comply with the orders and/or that he is withdrawing his appeal. He was warned that if he failed to comply, this matter will be dismissed. He again failed to comply.

Accordingly, this matter is dismissed.

So Ordered.

William Dorsey
ADMINISTRATIVE LAW JUDGE

San Francisco, California

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).