



Issue Date: 30 October 2017

Case No.: 2016-STA-00072
OSHA No.: 9-0370-14-015

In the Matter of:

JOSEPH SCAVONE,
Complainant,

v.

CAM TRUCKING, LLC,
Respondent.

**DECISION AND ORDER DISMISSING CASE WITHOUT PREJUDICE AND
ADMINISTRATIVELY CLOSING THE CASE**

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act (“The Act” or “STAA”), 49 U.S.C. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, and the implementing regulations at 29 C.F.R. Part 1978.

On January 17, 2017, I issued a *Notice of Hearing and Prehearing Order*, scheduling a hearing in the above-captioned case to begin on August 16, 2017, in or near Las Vegas, Nevada. By Order issued on July 11, 2017, I cancelled the scheduled hearing, and ordered the parties to supply contact information for the purpose of scheduling a telephone conference with this Court. *Order Requiring Telephone Numbers of the Parties and Order Cancelling the Hearing.*

A member of my staff was informed by Rosemarie Scavone, who identified herself as the sister of Joseph Scavone, that he died on May 2, 2017. Based on this information, on July 27, 2017, I issued an *Order of Remand to the Regional Administrator to Determine if There is a Proper Party to Represent the Complainant’s Interests* (“*Order of Remand*”). The *Order of Remand* stated, in pertinent part:

This office has no investigatory authority and this Court is seeking the U.S. Department of Labor’s Occupational and Health Administration’s Regional Administrator’s help. The death of Complainant must be confirmed and an attempt to identify and locate the executor/administrator of Complainant’s estate, his widow, or children, if any of these people exist. If after a reasonable effort, it is not possible to locate a person who is willing to pursue the matter on

Complainant's behalf, the matter must be dismissed. The undersigned requests a response within 45 days of the date of this Order.

Order of Remand at 1-2.

As of the date of this Order, no response has been received from the Administrator in response to the *Order of Remand*. Additionally, I have not received any correspondence from the Administrator or any person identifying an executor/administrator of Complainant's estate, his widow, or his children. It appears that there are not any eligible persons seeking to proceed with this case on Complainant's behalf.

This court possesses the inherent power to dismiss a case where dismissal is required to "achieve the orderly and expeditious disposition of cases." *Link v. Wabash R. Co.*, 370 U.S. 626, 631-32 (1962); *see also Rose v. ATC Vancom, Inc.*, ARB No. 05-091, 2005-STA-00014, slip op. at 3 (ARB Aug. 31, 2006). I find, without an identified eligible person to proceed in this case on Complainant's behalf, that it is appropriate to dismiss this case without prejudice and that the case be administratively closed.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that this case is **DISMISSED WITHOUT PREJUDICE** and administratively **CLOSED**.

LARRY S. MERCK
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).