



Issue Date: 22 February 2017

CASE NO.: 2016-STA-00070

In the Matter of

YEVGENIY SHEVCHENKO,
Complainant,

v.

ELBRUS LOGISTICS, INC.,
Respondent.

ORDER GRANTING MOTION TO DISMISS

This whistleblower case has been brought pursuant to the Surface Transportation Assistance Act (STA), 49 U.S.C. § 31105; 29 C.F.R. Part 1978. The hearing is scheduled on March 13, 2017 in Portland, OR. On June 14, 2016, the Secretary dismissed Complainant's complaint because Complainant continuously and consistently failed to cooperate in the investigation. On June 29, 2016, Claimant appealed by requesting a hearing before the Office of Administrative Law Judges. On October 31, 2016, after a teleconference with the parties, I issued a Notice of Hearing and Pre-Hearing Order.

On February 7, 2017, Respondent filed a Motion To Dismiss for Claimant's failure to engage in discovery as required by the Pre-Hearing Order issued October 31, 2016. Specifically, Respondent alleged Complainant did not participate in a conference of the parties to develop a discovery plan pursuant to 29 C.F.R. § 18.50(b), provide his initial disclosures 29 C.F.R. § 18.50(c)(1), or respond to Respondent's repeated request for cooperation in discovery. Further Respondent alleged that when Claimant's representative did contact Respondent on December 13, 2016, he indicated that he was recommending his client dismiss his claim. Claimant did not respond to the motion in writing, but his counsel did participate in a teleconference on February 22, 2017. He did not deny any of Respondent's allegations and claimed Claimant could not cooperate with discovery because of a criminal investigation being conducted by state authorities, which was dropped just a few weeks ago. No evidence of the investigation or its termination was offered and no efforts to timely request extensions of discovery deadlines or continuance of the hearing were ever made.

29 U.S.C. 18.57(b) provides for sanctions allowed when a party fails to comply with a judge's discovery order. While dismissal of a claim is the most drastic sanction, it is appropriate in this matter given two facts. First, the March 13, 2017 hearing scheduled four and a half month

before would be meaningless given Complainant's continuous and consistent failure to cooperate with discovery. Second, Complainant has established a pattern of lack of cooperation and has offered no basis to assume that the pattern would not continue were a lesser sanction imposed.

For the foregoing reasons, it is hereby ORDERED that Complainant's complaint is dismissed with prejudice and the hearing scheduled for March 13, 2017 is vacated.

SO ORDERED.

WILLIAM J. KING
Administrative Law Judge