



**Issue Date: 04 October 2017**

**Case No.: 2017-STA-00019**

**In the Matter of**

**DANIEL BECKWORTH**  
**Complainant**

**v.**

**DYNAMIC ENVIRONMENTAL SERVICES, LLC**  
**Respondent**

**ORDER OF DISMISSAL**

**1. Nature of Order.** Pursuant to 29 C.F.R. 18.70(c), Respondent filed a Motion to Dismiss on the grounds Complainant has failed to comply with discovery deadlines in this case. Complainant concedes he has not responded to Respondent's discovery requests and is indifferent concerning the prosecution of this action.

**2. Procedural History and Findings of Fact.**

a. On January 11, 2017, the undersigned issued a Notice of Case Assignment and Prehearing Order. Following the scheduling teleconference conducted on February 17, 2017, the undersigned issued a Notice of Hearing and scheduled this case for hearing on October 17-19, 2017 in San Antonio, Texas.

b. On August 7, 2017, Complainant filed a Motion to Continue due to his "current health and financial limitations." On August 25, 2017, the undersigned granted Complainant's request and rescheduled the hearing to March 20-21, 2018.

c. On August 24, 2017, Respondent filed a Motion to Dismiss. In support of its motion, Respondent states that following the scheduling teleconference on February 17, 2017, Respondent served its First Set of Request for Production of Documents and Interrogatories on March 15, 2017. Because Complainant did not respond to these requests, Respondent sent a letter to Complainant on June 26, 2017 reminding him of the discovery requests and demanding responsive information. According to Respondent, Complainant did not respond to this letter and "has not answered Respondent's discovery requests that were first served on March 15, 2017 and has wholly failed to communicate with Respondent since the initial scheduling conference held on February 17, 2017." Respondent asserts dismissal is warranted because Complainant "has

essentially brought this matter to a halt and caused months of delay” and “has thwarted Respondent’s ability to meaningfully prepare for hearing.”

d. On September 1, 2017, the undersigned issued a Ruling on Respondent’s Motion to Dismiss and Order to Show Cause. In this Order, the undersigned compelled Complainant, within 20 days of the date of the Order, to either: (1) file a response to Respondent’s discovery requests; or (2) file a written response establishing good cause for the failure to respond to Respondent’s discovery requests. This Order specifically provided that Complainant’s failure to timely comply would result in the dismissal of this claim.

e. On September 25, 2017, Complainant filed a response by letter to the undersigned’s Order issued on September 1, 2017. In his response, Complainant states that “due to [his] current health and financial situation” it is “difficult at this time to continue this case due to the personal expense that will be incurred.” Complainant further states that “should you allow the case to continue then I will endeavor to be ready for the court by the March deadline. Should you decide to dismiss the case then I shall turn the documents and statements I do have over to members of a state agency and federal agency who have expressed great interest in the contents of my documents.” Complainant further states “personally I do not care which option you chose [sic].” Attached to his letter, Complainant included a Texas Workers’ Compensation Work Status Report that provides Complainant is prevented from returning to work from July 14, 2017 to September 14, 2017.

f. On September 25, 2017, Respondent filed a Reply in Support of its Motion to Dismiss. Respondent argues that Complainant has still not answered discovery requests that were served more than six months ago. Further, Respondent argues that Complainant’s letter does not establish good cause for his failure to respond to discovery requests and notes that Complainant stated that he does not care if this case is dismissed.

### **3. Applicable Law and Analysis.**

a. *Motions to Dismiss.* A party may move to dismiss part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness. If the opposing party fails to respond, the judge may consider the motion unopposed. 29 C.F.R. § 18.70(c). In addition, the Department of Labor’s Administrative Law Judges “must necessarily manage their dockets in an effort to achieve the orderly and expeditious disposition of cases.” *Larue v. Kllm Transport, Inc.*, ARB No. 02-024, ALJ No. 01-STA-54, slip op. at 2 (ARB July 22, 2003).

b. *Analysis.* In this case, Complainant has admittedly not timely complied with Respondent’s discovery requests and has indicated he will not respond to such requests. In addition, although Complainant filed a response to the undersigned’s September 1, 2017 Order to Show Cause, Complainant did not establish good cause for his failure to comply with Respondent’s discovery requests. Notably, Complainant also stated in his reply letter that he did not care if the undersigned dismissed this case. Consequently, based on Complainant’s failure to answer Respondent’s discovery requests and failure to establish good cause for his non-compliance with Orders issued in this case, the undersigned interprets Complainant’s statements

and non-compliance as an abandonment of this claim. *See Dickson v. Butler Motor Transit*, ARB No. 02-098, ALJ No. 01-STA-039, slip op. at 4 (ARB July 25, 2003) (finding the ALJ acted within range of his discretion in dismissing STAA complaints after the complainant repeatedly ignored the ALJ's discovery and other orders).

**4. Ruling.**

- a. Respondent's Motion to Dismiss is granted.
- b. This case is dismissed with prejudice.
- c. The formal hearing scheduled for March 20-21, 2018 in San Antonio, Texas is cancelled.

**SO ORDERED** this day at Covington, Louisiana.

**TRACY A. DALY  
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](mailto: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).