



**Issue Date: 02 February 2017**

**Case No.: 2017-STA-00007**

**In the Matter of**

**JOHN GRAHAM**  
**Complainant**

**v.**

**MAR-JAC POULTRY**  
**Respondent**

**ORDER OF DISMISSAL**

**1. Nature of Order.** The above-captioned case arises from a claim under the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, and the implementing regulations set forth at 29 C.F.R. Part 1978. This Order arises sua sponte based on Complainant's failure to comply with the undersigned's Notice of Case Assignment and Prehearing Order and order to show good cause why this claim should not be dismissed.

**2. Procedural History.**

a. On August 30, 2016, Complainant filed a whistleblower complaint alleging Respondent terminated Complainant's employment for voicing concerns about racial discrimination, violations of Department of Transportation (DOT) hours of service for drivers in the transportation department, and not sending drivers on deliveries while on mandatory DOT break requirements.

b. On October 13, 2016, following an investigation by the Occupational Safety and Health Administration (OSHA), the U.S. Secretary of Labor, acting through the OSHA Regional Administrator, concluded Complainant had not engaged in a protected activity under the STAA and dismissed the complaint.

c. On October 19, 2016, Complainant objected to the Secretary's findings and requested a hearing before the Office of Administrative Law Judges (OALJ).

d. On November 3, 2016, the undersigned issued a Notice of Case Assignment and Prehearing Order, which required Complainant to file a Pleading Complaint within 14 days of the notice.

e. On December 2, 2016, the undersigned sent Complainant a letter with a

Confirmation of Intent to Proceed Pro Se form. The letter required Complainant to return the form to the undersigned within 10 business days confirming that he intended to represent himself without the assistance of counsel at the hearing.

f. The Notice of Case Assignment and Prehearing Order also scheduled a Scheduling Teleconference for January 4, 2017 at 10:00 a.m. and provided specific instructions to the parties to participate in the teleconference. On January 3, 2017, OALJ administrative personnel contacted Complainant to confirm his participation in the Scheduling Teleconference. Complainant confirmed his participation and that he had the necessary phone number and passcode for the Scheduling Teleconference. However, on January 4, 2017, Complainant failed to participate in the teleconference. Complainant made no attempt to contact OALJ administrative personnel to cancel his participation or explain any circumstance that prevented his participation.

g. On January 13, 2017, the undersigned issued an order requiring Complainant to show good cause why the claim should not be dismissed. As of the date of issuance of this order, Complainant had not filed a Pleading Complaint or returned his Confirmation of Intent to Proceed Pro Se form. This order required Complainant to file a written response, within 15 days of the date of the order, and show good cause why the claim should not be dismissed based on Complainant's failure to comply with the requirements set forth in the Notice of Case Assignment and Prehearing Order, including the failure to timely file a Pleading Complaint and the failure to participate in the Scheduling Teleconference. Thus, to comply with this order, Complainant's response must have been filed no later than January 30, 2017. The order specifically stated that Complainant's failure to fully comply would result in the dismissal of this claim. Complainant never filed a response to the show cause order, nor did he file a Pleading Complaint or return the pro se form. Furthermore, Complainant has not contacted the undersigned's office to explain his failure to participate in the scheduling teleconference and request another opportunity to schedule the hearing.

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

a. Department of Labor Administrative Law Judges must necessarily manage their dockets in an effort to "achieve the orderly and expeditious disposition of cases." An ALJ's recommended decision and order on the grounds of abandonment will be upheld where the facts dictate that a party has failed to prosecute his case. *Bowens v. Infrastructure*, ARB No. 08-073, ALJ No. 2008-STA-17 (ARB Mar. 30, 2009); *Kruml v. Patriot Express*, ARB 03-015, ALJ No. 2002-STA-007, slip op. at 4-5 (ARB Feb. 25, 2004); *Reichelderfer v. Bridge Transp., Inc.*, ARB No. 02-068, ALJ No. 2001-STA-040, slip op. at 3 (ARB Aug. 29, 2003); *Dickson v. Butler Motor Transit*, ARB No. 02-098, ALJ No. 2001-STA-039, slip op. at 4 (ARB July 25, 2003) (ALJ acted within his discretion in dismissing STAA complaints after complainant repeatedly ignored the ALJ's discovery and other orders.).

b. Complainant failed to comply with the requirements of the Notice of Case Assignment and Prehearing Order, file a Pleading Complaint, participate in the Scheduling Teleconference, return the pro se form, or file a response to the order to show cause why the claim should not be dismissed. In the order requiring Complainant to show good cause, he was

specifically warned that a failure to respond would result in dismissal of this claim. Additionally, Complainant has not made a single filing with OALJ since objecting to the Secretary's findings and requesting an administrative hearing. Therefore, the undersigned finds Complainant has abandoned his request for a hearing and failed to show good cause why this claim should not be dismissed.

4. **Order.** Complainant's request for a hearing is withdrawn and this claim is dismissed.

**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).