

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

Issue Date: 27 October 2017

CASE NO.: 2017-STA-00026

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*In the Matter of:*

BERTRAM DOUGHERTY,  
*Complainant,*

v.

ALL STATE TRUCKING TRANSPORTATION, INC., et. al,  
*Respondents.*

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**ORDER OF DISMISSAL**

This proceeding arises from a complaint of discrimination filed under the employee protection provisions of Section 405 of the Surface Transportation Assistance Act (“STAA”), as amended, 49 U.S.C. § 31105 and the procedural regulations found at 29 C.F.R. Part 1978. The hearing in this matter was originally scheduled for August 16, 2017.

On July 5, 2017, Respondent’s counsel, Maryellen Reash, Esq., notified the Court that the matter had been resolved so the scheduled hearing was then cancelled. Attorney Reash advised that she would prepare and submit the appropriate paperwork for review.

On August 11, 2017, Attorney Reash submitted a document entitled *Agreed Entry/Dismissal of Complaint (“Dismissal”)*, stating, “Complainant . . . and Respondents . . . hereby state that the differences between the parties have been resolved to their mutual satisfaction. Whereupon, Complainant hereby dismisses his Complaint against Respondents with prejudice.”<sup>1</sup>

On August 14, 2017, the Court notified the parties that the *Dismissal* was insufficient and the underlying settlement agreement must be submitted for review and approval. *See* 29 C.F.R. §1978.111(d)(2). When there was no response to that request, Attorney Reash was contacted on August 28, 2017 about the status of the settlement paperwork. During that call, she promised she would file the parties’ settlement agreement, but Complainant did not respond to her inquiries.

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<sup>1</sup> I specifically note the *Dismissal* did not contain any terms or conditions of the parties’ agreed upon settlement so I was not able to determine if the terms were fair, adequate or reasonable. I note Complainant is a self-represented litigant.

A deadline of September 15, 2017 was set for submitting the settlement agreement. Attorney Reash advised that despite numerous inquiries, Complainant failed to respond to her. On October 4, 2017, I issued an Order to Show Cause directed to Complainant as to why this case should not be dismissed for his lack of cooperation in prosecuting this matter. I set a deadline of October 17, 2017 for Complainant to respond to that Order. Since Complainant failed to respond to the Order to Show Cause, I find good cause to dismiss his Complaint.

The Complaint of Bertram Dougherty is hereby **DISMISSED**.

**SO ORDERED.**

**TIMOTHY J. McGRATH**  
Administrative Law Judge

Boston, Massachusetts

**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, the Associate Solicitor, 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).

**The preliminary order of reinstatement is effective immediately upon receipt of the decision by the Respondent and is not stayed by the filing of a petition for review by the Administrative Review Board.** 29 C.F.R. § 1978.109(e). If a case is accepted for review, the decision of the administrative law judge is inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement shall be effective while review is conducted by the Board unless the Board grants a motion by the respondent to stay that order based on exceptional circumstances. 29 C.F.R. § 1978.110(b).