



**Issue Date: 20 April 2017**

**CASE NO.: 2017-STA-00016**

**IN THE MATTER OF:**

**KIRK A. SJODIN, JR.**  
**Complainant**

**v.**

**KOCH & SONS TRUCKING, INC.**  
**Respondent**

**ORDER OF DISMISSAL**

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 filed by Complainant Kirk A. Sjodin, Jr. against Respondent Koch & Sons Trucking, Inc. This Order arises *sua sponte* based on Complainant's failure to comply with the undersigned's Notice of Hearing and Pre-Hearing Order as well as the Order to Show Cause issued on April 11, 2017.

**PROCEDURAL HISTORY**

On December 5, 2016, Complainant requested a hearing based upon the Secretary's findings of November 4, 2016, that there was no merit to Complainant's complaints of discrimination against Respondent in violation of the employee protective provision under the STAA.

On February 22, 2017, I held a conference call with the parties. During this call, Complainant provided the Court and Respondent with details of his allegations and his relief requested. After listening to the relevant issues in dispute, I reviewed the Notice of Hearing and Pre-Hearing Order with the parties and emphasized the importance of meeting the Pre-Hearing Order's deadlines to ensure a resolution of this matter.

On March 1, 2017, the undersigned issued a Notice of Hearing and Pre-Hearing Order, which required Complainant to file a Pre-Hearing Statement of Position by April 3, 2017. The Notice of Hearing and Pre-Hearing Order also stated that the "failure to comply with this Pre-Hearing Order, without good cause shown, may result in the dismissal of the proceedings, default judgment against the offending party, or the imposition of other appropriate sanctions against the offending party."

On April 10, 2017, Counsel for Respondent contacted the undersigned's office and stated he had not received Complainant's position statement pursuant to the March 1, 2017 Pre-Hearing Order. As a result, Respondent moved for this matter to be dismissed with prejudice. Further, the undersigned had also not received Complainant's Pre-Hearing Statement of Position as of April 10, 2017.

On April 11, 2017, the undersigned issued an Order to Show Cause requiring Complainant to submit a Pre-Hearing Statement of Position and to show good cause why his claim should not be dismissed. The Order required Complainant to file a written response, within 7 days of receipt of the Order, and to 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 Hearing and Pre-Hearing Order, including his failure to timely file a Pre-Hearing Statement of Position. The Order specifically stated that Complainant's failure to fully comply would result in the dismissal of this claim. As of the date of this Order, Complainant has not filed a response to the show cause order, nor has he filed a Pre-Hearing Statement of Position.

### **APPLICABLE LAW AND ANALYSIS**

As an administrative law judge for Department of Labor, I must necessarily manage my docket 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.).

In the instant matter, Complainant has failed to comply with the requirements of the Notice of Hearing and Pre-Hearing Order by timely filing a Pre-Hearing Statement of Position. Also, Complainant has failed to comply with the April 11, 2017 Order to Show Cause by filing a response as to 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.

## **ORDER**

In view of the foregoing, **IT IS HEREBY ORDERED** that the claim in the above-captioned matter is **DISMISSED** with prejudice and Complainant's request for a hearing is **WITHDRAWN**.

**IT IS FURTHER ORDERED** that the formal hearing scheduled on November 15-17, 2017 in Oklahoma City, Oklahoma is hereby **CANCELLED**.

**SO ORDERED** this 20<sup>th</sup> day of April, 2017, at Covington, Louisiana.

**CLEMENT J. KENNINGTON  
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).