



Issue Date: 09 March 2020

Case No.: 2017-STA-00014
OSHA Case No.: 5-1260-15-050

In the Matter of:

RICO TILLMAN,
Complainant,

v.

**GLOBAL EXPRESS, INC., GLOBAL
EXPRESS LOGISTICS, INC., AND
MAX WAGNER,**
Respondents.

DECISION AND ORDER DISMISSING COMPLAINT WITH PREJUDICE

This proceeding arises under the Surface Transportation Assistance Act (“STAA”), 49 U.S.C. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-053, and the applicable regulations at 29 C.F.R. Part 1978.

On January 29, 2020, I issued an Order for Complainant to Show this Matter Is Not Abandoned and Order Dismissing Paul Wagner from this Matter (the “January 29 Order”). The January 29 Order stated that my October 24, 2019 Supplemental Notice of Hearing sent to the address we have on file for Complainant was returned by the post office as undeliverable. The January 29 Order also stated that on January 28, 2020, my law clerk called counsel for Complainant to ask about Complainant’s address and was informed that counsel for Complainant did not have any updated contact information for his client.

The January 29 Order stated that “[i]t thus appears that Complainant may have abandoned this matter” and ordered Complainant, within seven days of the order, to contact this office or his counsel to show that he has not abandoned this matter. I then stated:

The parties are advised that **if Complainant does not contact this office or his counsel within seven days of this order, I anticipate cancelling the hearing currently set for February 11, 2020, and will issue an order to show cause why this matter should not be dismissed for abandonment.**

January 29 Order at 1 (emphasis in original).

As of February 6, 2020, my office had not received any communication from Complainant, and my law clerk had confirmed with counsel for Complainant that he had not heard from Complainant, either. Accordingly, on February 7, 2020, I issued an Order Cancelling Hearing and Order Should Not Be Dismissed for Abandonment (the “February 7 Order”).

In the February 7, 2020 Order, I stated the following:

Complainant is ORDERED TO SHOW CAUSE, within 14 days of the date of this order, why this matter should not be dismissed for abandonment – at a minimum, Complainant must establish that he had good cause for his failure to contact this office or his counsel as ordered in the January 29 Order.

The parties are notified that in the absence of a timely response to the Order to Show Cause from Complainant establishing, at a minimum, that Complainant had good cause to fail to contact this office or his counsel as ordered in the January 29 Order, I will enter a decision and order dismissing this matter with prejudice.

February 7 Order at 2.

Under 29 C.F.R. § 18.12(b)(7), I have the authority to “[t]erminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order....” I find that I have the authority to dismiss this matter with prejudice.

On March 4, 2020, I received three filings from counsel for Complainant: (1) Motion to Stay All Deadlines; (2) Declaration of Paul O. Taylor; and (3) Motion for Leave to Withdraw as Counsel. Counsel for Complainant states he “has been unable to reach Complainant by phone, email, text message, or certified letter since January of 2018.” Motion to Stay All Deadlines at 1; Motion for Leave to Withdraw as Counsel at 1. Counsel for Complainant also includes a copy of an envelope he sent by certified mail to Complainant at 17702 Exchange Ave., Apt. 1E, Lansing, Illinois 60438-4815 that was returned by the post office as undeliverable. Declaration of Paul O. Taylor at Exhibit B. Counsel for Complainant states that Complainant’s last known contact information included the 17702 Exchange Ave., Apt. 1E address. Declaration of Paul O. Taylor at 2.

Both the January 29 Order and the February 7 Order sent to Complainant were returned by the U.S. Post Office as undeliverable. They were sent to Complainant at the following address: Rico Tillman, 17702 Exchange Ave., Apt. 1E, Lansing, IL 60438.

I make the following findings: (1) both counsel for Complainant and this tribunal have attempted to contact Complainant by mail at his last known address without success; (2) counsel for Complainant’s attempts to contact Complainant by phone, email, and text message were also unsuccessful; (3) counsel for Complainant has acted diligently in trying to contact his client and

has met or exceeded professional standards in his handling of this situation; (4) Complainant's failure to provide updated contact information to his attorney is the sole reason counsel for Complainant was unable to contact his client; and (5) Complainant has not responded to either the January 29 Order or to the February 7 Order.

Given the foregoing, I make the following rulings:

1. Counsel for Complainant's Motion to Stay All Deadlines is DENIED;
2. Counsel for Complainant's Motion to Withdraw is GRANTED; and
3. The complaint in this matter is DISMISSED WITH PREJUDICE.

SO ORDERED.

PAUL R. ALMANZA

Associate Chief 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.

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, 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).