



**Issue Date: 04 June 2019**

**Case No.: 2019-STA-00007**

*In the Matter of:*

**OLIN CARLISLE**  
Complainant

v.

**VENTURE EXPRESS, INC.**  
Respondent

**ORDER OF DISMISSAL**

**1. Nature of Order.** The case arises under the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105. Pursuant to 29 C.F.R. § 18.12, the undersigned issues this Order sua sponte dismissing this claim based on Complainant's abandonment of this case as illustrated by his failure to comply with multiple orders issued in this matter.

**2. Findings of Fact.**

a) On December 19, 2018, the undersigned issued a Notice of Case Assignment and Prehearing Order. This Order required Complainant to file a Pleading Complaint no later than 14 days from the date of the Order. Complainant did not timely comply with this requirement.

b) Also on December 19, 2018, the undersigned issued a letter with a Notice of Intent to Proceed Pro Se form to Complainant in which the undersigned directed Complainant to execute and return this form within 10 business days. Complainant did not timely comply with this requirement.

c) On February 14, 2019, the undersigned issued an Order Rescheduling Scheduling Teleconference for April 3, 2019. On April 3, 2019, the undersigned conducted a scheduling teleconference with Complainant and counsel for Respondent. During the teleconference, the undersigned informed Complainant that he had failed to timely comply with the requirements to file a Pleading Complaint and return the Notice of Intent to Proceed Pro Se form.

d) On April 4, 2019, the undersigned issued an Order Establishing Supplemental Scheduling Teleconference and Other Filing Deadlines. Specifically, this Order required Complainant to file his Notice of Intent to Proceed Pro Se form no later than April 5, 2019. It

further required Complainant to file a Pleading Complaint no later than April 22, 2019. This Order also scheduled a supplemental scheduling teleconference for May 16, 2019. Complainant did not comply with these requirements, nor did he participate in the supplemental scheduling teleconference on May 16, 2019. Complainant did not contact the undersigned or his administrative personnel to request an extension to file his Notice of Intent to Proceed Pro Se Form or Pleading Complaint. Further, Complainant did not contact the undersigned or his administrative personnel about his inability to participate in the supplemental scheduling teleconference on May 16, 2019.

e) On May 16, 2019, the undersigned issued an Order to Show Cause Why Claim Should Not Be Dismissed. This Order informed Complainant he had failed to file a Pleading Complaint as required by the Notice of Case Assignment and Prehearing Order, failed to file his Notice of Intent to Proceed Pro Se form, and failed to participate in a supplemental scheduling teleconference with the undersigned and Respondent's counsel on May 16, 2019. This Order required Complainant to file a written reply with the undersigned within 15 days establishing good cause why the undersigned should not consider his claim abandoned. Specifically, the Order required Complainant to show good cause for: (1) his failure to file the Notice of Intent to Proceed Pro Se form and Pleading Complaint; and (2) his failure to participate in the May 16, 2019 supplemental scheduling teleconference. The Order specifically advised "Complainant's failure to timely comply with this Order shall result in the undersigned granting an Order of Dismissal of this Claim." Complainant did not file a reply to the undersigned's Order to Show Cause Why Claim Should Not Be Dismissed.

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

a) *Authority to Dismiss Claim.* In all proceedings, the judge has "all powers necessary to conduct fair and impartial proceedings . . ." 29 C.F.R. § 18.12(b). This includes the power to "terminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order." 29 C.F.R. § 18.12(b)(7). 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).

When a complainant substantially fails to participate in discovery or comply with ALJ orders and filing deadlines, the presiding ALJ may take the complainant's lack of any meaningful participation in the case as evidence on an intent to abandon the claim. Upon notice to the complainant and a finding of lack of good cause, the ALJ may dismiss the matter. *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). Moreover, "when a party has not waived the right to participate in a hearing, conference or proceeding but fails to appear at a scheduled hearing or conference, the judge may, after notice and an opportunity to be heard, dismiss the proceeding or enter a decision and order without further proceedings if the party fails to establish good cause for its failure to appear." 29 C.F.R. § 18.21(c).

b) *Analysis.* In this case, Complainant initially participated in a scheduling teleconference with the undersigned. However, as detailed in the findings of facts, Complainant has wholly failed to comply with the undersigned's initial Notice of Case Assignment and Prehearing Order and Order Establishing Supplemental Scheduling Teleconference and Other Filing Deadlines. Specifically, Complainant failed to file his Notice of Intent to Proceed Pro Se form and Pleading Complaint. In addition, Complainant failed to participate in the May 16, 2019 supplemental scheduling teleconference. Finally, Complainant failed to file a response to the undersigned's Order to Show Cause Why Claim Should Not Be Dismissed in which Complainant was specifically advised that the failure to comply would result in the dismissal of his claim. These failures strongly suggest Complainant abandoned his efforts to prepare for a hearing in this case and that he no longer desires to proceed with this claim.

Consequently, consistent with the authority granted by 29 C.F.R. § 18.12, the undersigned concludes dismissal of this claim is warranted based on Complainant's failure to: 1) file a Pleading Complaint as required by the undersigned's Notice of Case Assignment and Prehearing Order; 2) return the pro se form; 3) participate in the May 16, 2019 supplemental scheduling teleconference; and 4) timely file a written reply to the undersigned's Order to Show Cause Why Claim Should Not Be Dismissed. The undersigned interprets Complainant's complete failure to take meaningful action in this matter as clearly demonstrating an absence of any objection to the Secretary's conclusions and his desire to abandon this claim.

**4. Order.** This claim is DISMISSED with prejudice.

**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, 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).