

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 15 June 2020

CASE NO.: 2019-STA-00065
OALJ NO. 5-2210-19-004

In the Matter of:

MICHAEL JOHNSON,
Complainant,

v.

MICHIGAN CARPET DELIVERY,
Respondent.

ORDER DISMISSING CLAIM

This matter arises from a claim under the Surface Transportation Assistance Act (“STAA”), 49 U.S.C. § 31105. The *pro se* Complainant filed a complaint with the Occupational Safety and Health Administration (“OSHA”) on or about October 22, 2018. OSHA issued its findings on July 29, 2019, stating that based on the information gathered so far in its investigation it was unable to conclude that there was reasonable cause to believe that a violation of the statute had occurred, and it dismissed the Complaint. The Complainant served his objections to the OSHA finding on the Chief Administrative Law Judge of the Office of Administrative Law Judges (“OALJ”) on or about August 7, 2019. The case was subsequently assigned to me and was scheduled for hearing on May 20, 2020.

On January 14, 2020 the Respondent filed a motion to compel discovery with respect to interrogatories and a request for production of documents served on the Complainant on December 3, 2019. On January 24, 2020 I issued an order granting Respondent’s motion to compel and requiring Complainant to provide responses to the discovery within 20 days. On February 28, 2020 the Respondent filed a Motion for Sanctions for Complainant’s Failure to Cooperate in Discovery. I issued an order on March 3, 2020 requiring the Complainant to provide the discovery by March 20, 2020 and stating that if he did not I would consider the Respondent’s request for sanctions.

On March 20, 2020 I held a telephone conference with the Complainant and counsel for the Respondent. The Respondent indicated that it had received no further discovery responses from the Complainant. The Complainant indicated he wished to exercise his right to bring an

action before the federal district court instead of proceeding with his case in this forum.¹ On March 20, 2020 I issued an Order stating that within two weeks the Claimant must either indicate in a written filing that he intends to bring an action in federal district court pursuant to 20 C.F.R. § 1978.114 or fully respond to Respondent's discovery requests. On March 24, 2020, I issued a Supplemental Order.² On April 3, 2020, the Claimant filed a Motion for Change of Venue that requested that I transfer this matter to the federal district court. On April 8, 2020 I issued a Response to Complainant's Motion for Change of Venue, informing the Complainant that I could not transfer the case to federal court and that he must initiate the proceeding by filing a complaint in the appropriate federal district court.

On April 15, 2020, the Respondent filed a Motion to Dismiss for Failure to Abide by Discovery Orders, noting the Complainant's failure to respond to my orders issued on January 24, 2020, March 3, 2020 and March 20, 2020. The motion seeks dismissal of the claim or the entry of a default judgment. No response to the Respondent's motion has been received.³ No mail sent from this office to the Complainant has been returned by the post office. I have not received a copy of a federal district court filing from the Complainant as required by the governing regulation. It therefore appears that the Complainant has not filed a complaint in federal court as he stated he would.⁴ The Complainant has continued to fail to comply with my discovery orders requiring that he fully respond to Respondent's discovery requests. The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges provides that the sanctions for failure to make disclosures or cooperate in discovery include dismissal of the proceeding in whole or part. 29 C.F.R. § 18.57 (b)(1)(v). It also appears that the Complainant has abandoned his claim. The Administrative Review Board has stated that administrative law judges have "inherent power" to dismiss a case on their own initiative for lack of prosecution.⁵ The Complainant's failure to comply with my orders compelling discovery and the abandonment of his claim provide independent bases for dismissal of the claim. Therefore, the claim will be dismissed.

THEREFORE, it is hereby **ORDERED** that the claim filed by the Complainant in this matter is hereby **DISMISSED**.

¹ See 29 C.F.R. § 1978.114.

² The supplemental order included information regarding the requirements of 29 C.F.R. § 1978.114(b) that was not in the March 20th order.

³ On May 12, 2020 I issued an Order Cancelling Hearing and Deferring Ruling on Respondent's Motion to Dismiss because of a hold on the receipt of mail by our office that went into effect on March 26, 2020 due to COVID-19. Mail delivery to the office resumed by June 1, 2020. No mail from the Complainant has been received, nor has there been any communication from the Complainant by email, which he had previously used for filing, or by telephone.

⁴ A Pacer case locator search on June 12, 2020 did not find a filing. On March 24, 2020, I issued a Supplemental Order on March 20, 2020 Teleconference informing the Complainant of the requirements of 29 C.F.R. § 1978.114(b) that within seven days of filing the complaint in federal court he must file a copy of the file-stamped federal court complaint with me and the other individuals identified in Section 1978.114(b). No such filing with me has been made.

⁵ *Claypoole v/ U.S. Xpress Enterprises, Inc.* ARB Case No. 10-064 (April 26, 2011).

SO ORDERED.

LARRY A. TEMIN
ADMINISTRATIVE LAW JUDGE