

U.S. Department of Labor

Office of Administrative Law Judges
90 Seventh Street, Suite 4-800
San Francisco, CA 94103-1516

(415) 625-2200
(415) 625-2201 (FAX)
oalj-sanfrancisco@dol.gov



Issue Date: 21 April 2021

CASE NO.: 2020-STA-00111

In the Matter of:

MARCUS LYNGAR,
Complainant,

v.

MEGA MILE CARGO, INC. AND
ROCKY DOE, an individual,
Respondents.

DECISION AND ORDER DISMISSING COMPLAINT

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. § 31105, and the regulations published at 29 C.F.R. Part 1978. Complainant is currently not represented by counsel. Attorney Matthew P. Barrette represents Respondents.¹ On February 16, 2021, I vacated all proceedings when I issued Order Granting Withdrawal, Vacating Hearing, and Setting Status Conference. The order allowed Complainant time to seek new counsel.

On January 29, 2021, Complainant's then-attorneys Paul O. Taylor and Peter L. LaVoie of Truckers Justice Center moved to withdraw from representing Complainant. According to Mr. Taylor, "Complainant has not responded on a reasonably timely basis to telephonic and email communications from the undersigned and staff, and most recently has failed to communicate at all with the undersigned despite numerous attempts." The motion to withdraw was duly served on Complainant, but there had been no response. I granted the request to withdraw on February 16, 2021, and set the matter for a telephonic status conference on March 9, 2021. I also ordered Complainant to notify me in writing no later than March 3, 2021, about any efforts he had made to seek new counsel or if he intended to represent himself. Complainant did not submit a written update as ordered and did not appear at the March 9, 2021, telephonic status conference.

During the March 9, 2021, telephone status conference, Respondent stated that it had sent a couple of emails to Complainant but had not received any response. The emails had also not bounced back. Because Complainant had failed to appear at the conference, I told Respondent that I would continue to hold the dates for hearing in abeyance and issue an order to show cause.

¹ A second matter involving the same parties will be administratively closed. *See* 2021-STA-0009. Respondent confirmed that there was not a second complaint made to OSHA and that this appeared to be a duplicate case file.

Unfortunately, I failed to issue the order following the March 9 conference and had to adjust the dates for further compliance. To date, Complainant has still made no contact with this office.

On March 22, 2021, I issued Order to Show Cause Why Matter Should Not Be Dismissed (“OSC”). The OSC was served by email and also by certified mail. The email did not bounce back, and the certified mail was not collected by Complainant. In the OSC, I ordered Complainant to respond in writing no later than April 6, 2021, about whether he intended to go forward with his complaint and whether he intended to seek new counsel or represent himself. In the OSC, I noted that failure to timely respond may result in this matter being dismissed without a hearing. I also set this matter for a telephonic status update on April 19, 2021. To date, Complainant has not responded to the OSC. Complainant failed to appear at the scheduled telephonic update.

On April 19, 2021, at the duly noticed telephone conference, Respondent noted that it had made no attempts to contact Complainant since the last telephone conference and that it had otherwise had no contact with Complainant.

On January 16, 2020, Complainant filed a complaint with OSHA alleging that Respondent terminated him on December 3, 2019, in violation of the STAA. On August 27, 2020, OSHA granted Complainant’s request to dismiss the complaint and issue a determination after more than 60 days had elapsed since the complaint was made. OSHA dismissed the complaint and Complainant appealed the dismissal to this office, which opened the case on September 8, 2020. On October 26, 2020, I issued a Notice of Hearing and Prehearing Order setting the matter for hearing on March 4 and 5, 2021.

The matter is pending at this office based upon Complainant’s request for hearing. Complainant has twice failed to respond in writing as ordered and has twice failed to appear at a duly noticed telephonic status conference. Complainant had previously stopped communicating with his counsel, which led to counsel withdrawing from the matter. Thereafter, Respondent attempted to contact Complainant via email to no avail. Efforts by this tribunal to contact Complainant have similarly been unsuccessful. No mail or email has been returned as undeliverable, and the certified service of the OSC has been unclaimed.

Administrative law judges have “inherent power” to dismiss a case on their own initiative for lack of prosecution. *See Claypoole v. U.S. Xpress Enterprises, Inc.*, ARB Case No. 10-064 (April 26, 2011). Based upon the record, I find that Complainant has failed to prosecute his case and order that the complaint be dismissed as abandoned. Therefore, the complaint is dismissed. All dates are vacated. The matter is closed.

SO ORDERED.

RICHARD M. CLARK
Administrative Law Judge