

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 06 July 2021

Case No.: 2020-STA-00002

In the Matter of:

BRUCE NORTON,
Pro se Complainant,

v.

UNITED PARCEL SERVICE, INCORPORATED,
Respondent.

ORDER DISMISSING COMPLAINT WITH PREJUDICE FOR ABANDONMENT

ORDER AFFIRMING SECRETARY'S FINDINGS

This matter arises from a complaint filed under the provisions of Section 31105 of the Surface Transportation Assistance Act of 1982, U.S. Code, Title 49, § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 ("STAA") and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 1978. Per 29 CFR §1978.107, the proceeding will be held in a manner consistent with the procedural rules set forth in federal regulations at 29 CFR Part 18, Subpart A (29 CFR §18.10 to §18.95).

On 9/29/2020, the court issued an order for the parties to individually submit a status report to the court by 12/15/2020. They were ordered to submit electronically to: OALJ-NewportNews@dol.gov. No mail or faxes will be accepted. Neither party has complied with the order and neither party submitted their status report. Pro Se Complainant was also provided the lawyer referral contact information for the Florida Bar.

The parties were specifically ordered to provide a status report as stated below:

The court requires a status report from both Parties. The status report should state the status of the claim, status of discovery, and how many witnesses the Parties expect to call to support their case. Complainant should advise whether he has obtained an attorney to represent him,

and that attorney must submit a notice of appearance to the court and the Respondent. They are to address status of any settlement or mediation efforts, or whether the Parties would like to pursue settlement with the assistance of a settlement judge under the voluntary U.S. Department of Labor program for settlement judge. The Parties are to provide their e mail address and telephone numbers.

Complainant did not submit his status report to the court. Therefore, it appeared that Complainant had abandoned his claim before the Office of Administrative Law Judges.

On 6/7/2021, the court issued a Show Cause Order to Complainant. He was ordered to show cause why his request for a formal hearing should not be dismissed for abandonment of his complaint.

Complainant has not responded to the Show Cause Order.

The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, found in 29 C.F.R., Part 18, provide the standard to be applied on a Motion for Dispositive Action. See 29 C.F.R. 18.70. A party may make a motion to dismiss “part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness.” Id. at (a). If there is a situation not covered by “these rules, or a governing statute, regulation, or executive order” the Federal Rules of Civil Procedure apply. See 29 C.F.R. § 18.10; see also Ahluwalia v. ABB, Inc., 2007-SOX-44, *1, *2 (ARB Sept. 24, 2007) (for application of pre-2015 amendment 29 C.F.R. § 18.1, which mirrors the language found in 18.10). An Administrative Law Judge must dismiss the matter once they make a determination that subject matter jurisdiction is lacking. 29 C.F.R. § 18.70(a).

The Administrative Procedure Act, 5 U.S.C. §556 and Federal Regulations at 29 CFR §18.12 task the Administrative Law Judge with “all powers necessary to the conduct of fair and impartial proceedings.” Per 29 SCR Section 18.21, dealing with Party appearance and participation (c), failure of the Complainant to participate, “the judge may, after notice...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.”

In this case, the Complainant has not complied with the court’s Order to Show Cause and has not responded to the show cause order. The administrative file indicates that the Complainant has essentially abandoned his complaint before the Office of Administrative Law Judges.

ORDER

After review of the administrative file, it is hereby **ORDERED** that:

1. The proceedings in the above captioned matter are **CANCELLED**.

2. Complainant's complaint is **DISMISSED** with prejudice, which means he cannot refile this complaint.
3. The Secretary's Findings in this matter are **AFFIRMED**.

SO ORDERED.

Dana Rosen
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 the administrative law judge's decision.

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. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, the Associate Solicitor, Division of Occupational Safety and Health. See 29 C.F.R. § 1978.110(a).

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).

IMPORTANT NOTICE ABOUT FILING APPEALS:

The Notice of Appeal Rights has changed because the system for online filing has become mandatory for parties represented by counsel. Parties represented by counsel must file an appeal by accessing the eFile/eServe system (EFS) at <https://efile.dol.gov/EFILE.DOL.GOV>.

Filing Your Appeal Online

Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at <https://efile.dol.gov/support/>.

Registration with EFS is a two-step process. First, all users, including those who are registered users of the former EFSR system, will need first create an account at login.gov (if they do not have one already). Second, if you have not previously registered with the EFSR system, you will then have to create an account with EFS using your login.gov username and password. Once you have set up your EFS account, you can learn how to file an appeal to the Board using the written guide at <https://efile.dol.gov/system/files/2020-10/file-new-appeal-arb.pdf> and/or the video tutorial at <https://efile.dol.gov/support/boards/new-appeal-arb>. Existing EFSR system users will not have to create a new EFS profile.

Establishing an EFS account should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at <https://efile.dol.gov/contact>.

If you file your appeal online, no paper copies need be filed with the Board.

You are still responsible for serving the notice of appeal on the other parties to the case and for attaching a certificate of service to your filing. If the other parties are registered in the EFS system, then the filing of your document through EFS will constitute filing of your document on those registered parties. Non-registered parties must be served using other means. Include a certificate of service showing how you have completed service whether through the EFS system or otherwise.

Filing Your Appeal by Mail

Self-represented (pro se) litigants may, in the alternative, file appeals using regular mail to this address:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5220,
Washington, D.C., 20210

Access to EFS for Other Parties

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and EFS account, and then following the written directions and/or via the video tutorial located at:

<https://efile.dol.gov/support/boards/request-access-an-appeal>

After An Appeal Is Filed

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

Service by the Board

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail.