

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 02 February 2022

OALJ Case No.: 2021-STA-00039

OSHA Case No.: 9-3290-20-234

In the Matter of:

DANIEL HILL,
Complainant,

v.

WESTERN EXPRESS, INC.,
Respondent.

ORDER DISMISSING CASE

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, and is not currently set for hearing. Complainant is not represented by counsel. Attorney Rachel Speller represents Respondent.

Complainant filed a complaint with the Department of Labor Occupational Safety and Health Administration (“OSHA”) on January 25, 2020, alleging he was terminated from employment with Respondent in violation of the STAA. On March 9, 2021, OSHA issued the Secretary’s Findings and Order, finding no reasonable cause to believe that Respondent violated the STAA. On April 3, 2021, Complainant submitted an email to the Office of Administrative Law Judges (“OALJ”) stating he needed to file an appeal in this case. OALJ opened the case on April 5, 2021, and a *Notice of Docketing* was issued on April 7, 2021. The *Notice of Docketing* required the parties to make initial disclosures within 21 days of the date of the notice. The matter was assigned to the undersigned on May 18, 2021. The *Notice of Hearing and Pre-Hearing Order* was issued on June 29, 2021, in which the hearing date was set, as well as a telephonic prehearing conference to be held on January 6, 2022.

On January 6, 2022, the undersigned convened the pre-hearing conference at which Ms. Speller appeared on behalf of Respondent. Complainant did not appear. Ms. Speller stated that she had had no contact with Complainant since he filed his appeal to the OALJ. Based on Complainant’s failure to provide the requisite initial disclosures and to appear at a duly noticed prehearing conference, the undersigned issued an *Order to Show Cause Regarding Dismissal and Order Vacating Hearing*, on January 11, 2022 (the “OSC”).

In the OSC, the undersigned noted that the matter was before this tribunal for hearing at Complainant's requested and that it appeared he had abandoned and was not prosecuting his claim. The undersigned ordered Complainant to respond in writing as to whether he intended to go forward with this case and whether he intended to seek counsel or continue to represent himself. The undersigned ordered Complainant to respond no later than January 27, 2022. The undersigned advised Complainant that failure to file a response to the OSC before that date would result in his claim being dismissed.

Complainant has made no response to the OSC, thereby failing to comply with that order. He also did not comply with provisions of the PreHearing Order issued in this case, including making initial disclosures, filing a prehearing statement, or attending the prehearing conference. Further, the undersigned notes that Complainant has made no filings or submissions in this matter during its pendency at the OALJ, nor has he communicated in any other way with this office since his case was docketed here. He

Administrative law judges have the inherent authority to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. *Ho v. Air Wisconsin Airlines*, ARB No. 2020-0027, slip op. at 4 (ARB June 30, 2021) (citation omitted). Failure to comply with a judge's order may result in sanctions, including dismissal of the proceeding. *See* 29 C.F.R. § 18.57.

On this record, the undersigned finds that Complainant failed to comply with the undersigned's orders and has abandoned his complaint. No lesser sanction would be effective in remedying Complainant's total lack of participation in these proceedings, and the undersigned finds that dismissal is warranted. Complainant's complaint is dismissed, and this case is closed. The Secretary's Findings and Order, dated March 9, 2021, are the final order of the Secretary.

SO ORDERED.

SUSAN HOFFMAN
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/EFIELDOLGOV>.

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.