



**Issue Date: 15 November 2021**

Case No.: 2021-STA-00052

*In the Matter of:*

JULIE MCCAUSTON,

*Complainant,*

v.

TRIBE EXPRESS, INC.,

*Respondent.*

**ORDER GRANTING MOTION TO DISMISS**  
**AND**  
**ORDER CANCELING HEARING**  
**AND**  
**ORDER OF DISMISSAL**

This matter arises from a complaint filed under the provisions of the Surface Transportation Assistance Act of 1982, U.S. Code Title 49, Section 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. Pursuant to federal regulations at 29 CFR § 1978.107, the proceedings 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).

This case was docketed with the Office of Administrative Law Judges (OALJ) on May 27, 2021. I issued a *Notice of Assignment* on June 21, 2021, which directed the parties (among other things) to make initial disclosures and to meet and confer regarding scheduling of the hearing and whether the parties desired appointment of a settlement judge or mediator. On June 23, 2021, counsel for the Complainant filed a *Motion for Leave to Withdraw as Complainant’s Counsel and To Continue All Deadlines for 30 Days*. The motion stated that Complainant’s telephone number had been disconnected, and she had not responded to communications from her counsel sent to her home address and to her email address. I issued an Order to Show Cause to the Complainant, directing her to explain why her attorneys’ motion to withdraw should not be granted. Complainant did not file a response. Her attorneys did file a response, supplementing their motion to withdraw by stating that Complainant had contacted them with a new telephone number and said she was living in a shelter, but then sent “a series of voicemails and text messages” that made clear the attorneys could not have a “workable relationship” with her or

continue to represent her. I issued an Order granting the attorneys' withdrawal and advised Ms. McCaston, among other things, "that she must participate in this case, and if she continues to be self-represented, she must respond to requests and communications from opposing counsel (the attorneys for the Respondent, Tribe Express). Failure to do so can result in the dismissal of this case."

On October 14, 2021, Respondent filed a *Motion and Memorandum in Support of Dismissing Complainant's Action for Abandonment*. Respondent stated that "[s]ince objecting to the Secretary's Preliminary Order and requesting a hearing before an administrative law judge ("ALJ"), the Complainant has not participated in this case." Respondent noted that its phone calls to Complainant were unanswered, emails and letters were returned undeliverable, Complainant did not respond to this tribunal's show cause order regarding her attorneys' withdrawal, Complainant did not confer with Respondent's counsel regarding her availability for a hearing as directed by this tribunal, and Complainant had not provided initial disclosures or otherwise participated in discovery. Because Complainant represents herself and had not participated in this proceeding in any way since filing her request for a hearing, and had not provided current contact information, Respondent requested that the complaint be dismissed for abandonment and for failure to comply with the court's orders.

Complainant did not file a response to the motion to dismiss within the 14-day response period provided by rule.

On October 29, 2021, I issued an *Order to Show Cause Why Case Should Not Be Dismissed*. The Order noted Complainant's failure to participate in this proceeding and her failure to provide current contact information, and her apparent abandonment of her complaint. Complainant was ordered to file a response by November 12, 2021, addressing why this case should not be dismissed for abandonment. Complainant was advised that failure to file a response to the Show Cause order would result in this case being dismissed.

Complainant did not file a response to the *Order to Show Cause Why Case Should Not Be Dismissed*.

In light of Complainant's failure to participate in this case, including her failure to respond to the Order to Show Cause regarding her attorneys' withdrawal, her failure to make initial disclosures or communicate with Respondent's counsel, her failure to provide updated contact information to Respondent's counsel or this tribunal, her failure to respond to Respondent's motion to dismiss, and her failure to respond to this tribunal's *Order to Show Cause Why Case Should Not Be Dismissed*, I find that Complainant has abandoned her complaint. Based on Complainant's abandonment of this case, I find the motion to dismiss should be granted.

## **ORDER**

Based upon the foregoing, IT IS ORDERED:

1. Respondent's motion to dismiss this action for abandonment is **GRANTED**,
2. The video hearing scheduled to commence at 9:00 a.m. each day on March 7-8, 2022, in Newport News, Virginia is **CANCELED**, and
3. This case is **DISMISSED** with prejudice.

**SO ORDERED.**

MONICA MARKLEY  
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>.**

*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](https://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](https://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](https://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.