

**UNITED STATES DEPARTMENT OF LABOR**  
**OFFICE OF ADMINISTRATIVE LAW JUDGES**  
**Cincinnati, Ohio**

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**Issue Date: 22 May 2023**

**OALJ No.: 2021-STA-00071**  
**OSHA No.: 5-1800-21-039**

*In the Matter of:*

**FRED SMITH,**  
*Complainant,*

v.

**FLUID & EQUIPMENT TRANSPORT, LLC, d/b/a**  
**PILOT WATER SOLUTIONS, LLC,**  
*Respondent.*

**ORDER OF DISMISSAL**<sup>1</sup>

On April 18, 2023, I issued an Order to Show Cause requiring self-represented Complainant Fred Smith to show cause, within 30 days, why his claim should not be dismissed for failing to appear at a scheduled telephone conference and for abandonment of his claim. The Order to Show Cause states:

On April 18, 2023, at 10:00 a.m. (eastern), I held a duly noticed prehearing telephone conference. Respondent's counsel, Jeff Leslie, called in for the conference. We waited on the conference line until 10:10 a.m. (eastern) for self-represented Complainant Fred Smith to call in. Mr. Smith did not call in for the conference. Mr. Leslie read me an email from Administrative Law Judge Joseph Kane's legal assistant to Mr. Smith (with a copy to Mr. Leslie) acknowledging that Mr. Smith no longer wishes to pursue his claim, asking Mr. Smith to file a motion regarding same, and stating that if he does not file a motion his claim will ultimately be dismissed for abandonment.

The conference was noticed by my Notice of Prehearing Telephone Conference issued on March 31, 2023. The Notice states:

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<sup>1</sup> This proceeding arises under the employee-protection provisions of the employee-protection provision of the Surface Transportation & Assistance Act, found at 49 U.S.C. § 31105.

YOU ARE HEREBY NOTIFIED that a prehearing telephone conference is scheduled for **Tuesday, April 18, 2023, at 10:00 a.m. (eastern)**. The purpose of this conference is to set a case schedule and a hearing date. At this scheduled date and time, counsel for the parties and any unrepresented party **shall** call 1-866-614-3136, and use pass code 98406118# to access the court's conference line.

(Emphasis in original). The March 31, 2023 Notice was served on Mr. Smith via email.

29 C.F.R. § 18.21(c) provides:

When a party has not waived the right to participate in a hearing, conference or proceeding but fails to appear at a scheduled hearing or conference, the judge may, after notice and an opportunity to be heard, 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.

At no time did Mr. Smith object to the date or time of the April 18, 2023 conference or waive his right to participate in the conference. Nonetheless, he failed to appear for the conference. He also did not advise the undersigned that he would be late for the conference or be unable to appear for the conference.

Accordingly, it is ORDERED that Mr. Smith shall show cause, within 30 days from the date of this Order, why his claim should not be dismissed for failing to appear at the scheduled telephone conference on April 18, 2023, and for abandonment of his claim. Mr. Smith shall file his written response to this Order with the court by the above deadline, and contemporaneously serve a copy of his response upon Respondent's counsel.<sup>2</sup>

The time for Mr. Smith to respond to the Order to Show Cause has passed and Mr. Smith has failed to respond.

Mr. Smith failed to appear for the duly noticed telephone conference on April 18, 2023. He did not waive his right to appear nor was he permitted to waive his appearance; he was required to attend the conference. He has not demonstrated good cause for his failure to appear. He has abandoned his claim.

Based on the above, it is ORDERED that the claim of Complainant Fred Smith is DISMISSED.

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<sup>2</sup> This means that the court must actually receive Mr. Smith's response within 30 days from the date of this Order. It does not mean that Mr. Smith merely needs to mail his response to the court within 30 days from the date of this Order.

**SO ORDERED.**

Jason A. Golden  
Administrative Law Judge