



**Issue Date: 26 July 2022**

CASE NO.: 2021-STA-00075

*In the Matter of:*

KENNETH SWALLEY,  
Complainant,

v.

SICANGU LAKOTA OYATE HEAD START,  
Respondent.

**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. The matter is not set for hearing. Both parties are self-represented. Complainant stated in his complaint that he did not have access to email and requested that all service be by U.S. Mail.

For the reasons stated below, the complaint is dismissed.

The Office of Administrative Law Judges (“OALJ”) received Complainant’s request for hearing on August 10, 2021, appealing the July 19, 2021, Secretary’s Findings issued by the Occupational Safety and Health Administration (“OSHA”) closing his case. A notice of docketing was issued on September 30, 2021. The matter was transferred to the San Francisco OALJ for adjudication on October 13, 2021 and assigned to me for all purposes on December 14, 2021.

Once the case was assigned to me, I issued a Notice of hearing and Prehearing Order setting the hearing in this matter for June 23 and 24, 2022, and a prehearing conference for June 21, 2022. I also issued a separate General Notice and Information for Self-Represented Parties explaining the process and outlining what was required for hearing. The Prehearing Order required the parties to file prehearing statements, witness lists, and exhibits lists no later than 14 days before the prehearing conference. All documents were sent via U.S. Mail to all parties. Neither party filed prehearing documents. On June 21, 2022, I held the scheduled prehearing conference. Neither party appeared for the telephonic prehearing conference.

On June 22, 2022, I issued an Order Vacating the Hearing and Order to Show Cause Why the Matter Should Not Be Dismissed (“June 22, 2022 Order” or “Order to Show Cause”).<sup>1</sup> Because there had been no contact with the parties and they had not complied with the prehearing order, I vacated the hearing. I ordered the parties to show cause in writing why the matter should not be

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<sup>1</sup> The June 22, 2022 Order was served on the parties via certified mail.

dismissed for failure to comply with the prehearing order and prosecute the appeal. I also noted that OALJ may lack jurisdiction over the claim based on sovereign immunity, since Respondent is a federal recognized Indian tribe. I gave the parties until July 13, 2022, to respond. No response has been received.

Administrative Law Judges (“ALJs”) have “inherent authority” to “manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Newport v. Fla. Power & Light, Co.*, ARB No. 06-110, ALJ No. 2005-ERA-024, slip op. at 4 (ARB Feb. 29, 2008); *Lewman v. Ken Brick Masonry Supply*, ARB No. 07-01, ALJ No. 2006-STA-016, slip op. at 3 (ARB Oct. 31, 2007). ALJs may dismiss a case for lack of prosecution. *Matthews v. Ametek, Inc.*, ARB No. 2009-SOX-026, ARB No. 11-036, slip op. at 5 (ARB May 31, 2012); *Claypoole v. U.S. Xpress Enterprises, Inc.*, ARB No. 10-064, ALJ No. 2008-STA-002 (ARB Apr. 26, 2011); *Bacon v. Con-Way Western Express*, ARB No. 2001-STA-7, ARB No. 01-058, slip op. at 4 (ARB Apr. 30, 2003); *see also Lewman*, ARB No. 07-01, slip op. at 4 (“Dismissal as a sanction for failure to prosecute is a matter within the ALJ’s sound discretion.”). While self-represented parties should be given some leniency in the litigation of their case, ALJs may dismiss a complaint filed by a self-represented party for failure to comply with the judge’s orders. *Walia v. The Veritas Healthcare Solutions LLC*, ARB No. 2016-LCA-005, ALJ No. 14-002, slip op. at 5 (ARB Feb. 27, 2015).

There has been no communication from either party in this matter since the matter was referred to the OALJ, despite the prehearing order, the notice to Complainant regarding his obligations as a self-represented complaining party, and the June 22, 2022 Order to Show Cause. The caseload before this Office is pressing and judicial resources scarce; litigants must cooperate in the process in order to move cases forward, and, at the very least, communicate with this Office and opposing parties. In addition to failing to respond to the Order to Show Cause, Complainant has not communicated with this Office at all since OSHA referred the matter here. Accordingly, I find that Complainant has failed to prosecute his claim and it should be dismissed.

For the reasons discussed above, this matter is dismissed. All dates are vacated. The matter is closed.

SO ORDERED.

RICHARD M. CLARK  
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.