



Issue Date: 02 September 2022

OALJ Case No.: 2022-STA-00034
OSHA Case No.: 4-1760-22-130

In the Matter of:

MICHAEL FARRAR,
Complainant,

v.

WESTERN EXPRESS, INC.,
Respondent.

ORDER OF DISMISSAL

This proceeding arises under the employee-protection provisions of the Surface Transportation & Assistance Act (STAA), 49 U.S.C. § 31105, as amended. The Office of Administrative Law Judges docketed this case on March 1, 2022, and assigned it to me for hearing and decision on April 22, 2022.

On July 28, 2022, I issued an Order to Show Cause why this claim should not be dismissed for self-represented Complainant Michael Farrar's failure to appear at a scheduled telephone conference on July 27, 2022. The July 28, 2022 Order was served on Mr. Farrar by regular mail, certified mail, and email. His response to the July 28, 2022 Order had to be filed on or before August 30, 2022. Mr. Farrar failed to file a response to the July 28, 2022 Order.

A. Complainant's Failure to Appear at the July 27, 2022 Telephone Conference

On July 27, 2022, at 11:00 a.m. (eastern), I held a duly noticed prehearing telephone conference. I waited on the designated conference line for someone to join the call from 10:55 a.m. until 11:25 a.m. (eastern). Neither Mr. Farrar nor Respondent's counsel, Rachel Speller, appeared; neither joined the conference call.

The conference was noticed by my Notice of Prehearing Telephone Conference issued on June 30, 2022. The Notice states:

On June 28, 2022, at 11:00 a.m. (eastern), I appeared for a duly noticed prehearing telephone conference. I waited on the conference line for 10 minutes. Neither Respondent's counsel nor Claimant called in for the conference.¹ Thus, I have decided to schedule another telephone conference. Both Claimant Michael Farrar and Respondent's counsel are required to participate. Respondent's counsel should be prepared to explain why she did not call in for the June 28 conference.

YOU ARE HEREBY NOTIFIED that a prehearing telephone conference is scheduled for **Wednesday, July 27, 2022, at 11:00 a.m. (eastern)**. The purpose of this conference is to set a case schedule and a hearing date. At this scheduled date and time, **Claimant Michael Farrar** and Respondent's counsel **shall** call 1-866-614-3136, and use pass code 98406118# to access the judge's conference line.

This notice will be served upon claimant via email, regular mail and certified mail with a return receipt.

Failure by the Claimant to call in for the scheduled prehearing telephone conference may result in the dismissal of his claim.

(Emphasis in original). The June 30, 2022 Notice was served on Mr. Farrar via email, regular mail, and certified mail.²

B. Standard for Dismissal and Discussion

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.

Further, 29 C.F.R. § 1978.109(c) provides that "if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant." 29 C.F.R. § 18.12(b)(7) gives administrative law judges the authority to

¹ I granted Claimant's counsel's motion to withdraw from his representation of Claimant on June 27, 2022. Accordingly, Claimant is now self-represented in this case. Notice of the June 28 conference was served on Claimant's former counsel, but not directly on Claimant.

² I am advised by my staff that Ms. Speller contacted them shortly after the conference to apologize for her absence and explain that although she received the June 30, 2022 Notice, she thought the conference was to occur at 11:00 a.m. central time, not eastern time.

“[t]erminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order.” Section 18.12(b)(7) is not inconsistent with the STAA or 29 C.F.R. § 1978.109(c).³

Mr. Farrar failed to appear for the duly noticed telephone conference on July 27, 2022. He did not waive his right to appear nor was he permitted to waive his appearance at the conference. And, he has not demonstrated good cause for his failure to appear.

C. Order

Based on the foregoing, it is ORDERED that the claim of Complainant Michael Farrar is DISMISSED.

SO ORDERED.

Jason A. Golden
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).

³ **See** *Mara v. Sempra Energy Trading, LLC*, ARB No. 12-090, ALJ No. 2009-SOX-18, PDF at 3 (ARB Feb. 22, 2013) (administrative law judges have discretion to dismiss a case for lack of prosecution) (citing *Matthews*, ARB No. 11-136, slip op. at 5; *Shannon v. Gen. Elec. Co.*, 186 F.3d 186, 193 (2d Cir. 1999)).

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.