

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 29 November 2022

OALJ CASE NO. 2022-STA-00067
OSHA NO. 5-0170-22-40

In the Matter of:

JOHN GRIFFITH,
Complainant

v.

SOLDWEDEL AND HORN ENTERPRISES,
Respondents

ORDER DISMISSING CLAIM

This case has been assigned to the undersigned, Administrative Law Judge Patricia J. Daum, U.S. Department of Labor, for hearing and decision. 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 promulgated at 29 C.F.R. Part 1978. Specifically, Complainant alleged that that he was terminated by the Respondent, Soldwedel and Horn Enterprises, on or around September 21, 2021, in retaliation for refusing to operate a vehicle he believed to be “likely to cause an accident or break down.”

On August 21, 2022, John Griffith (Complainant), representing himself, sent a letter appearing to appeal a May 27, 2022 determination by the Department of Labor’s Occupational Safety and Health Administration dismissing his February 16, 2022 complaint. As the intention of the August 21, 2022 letter was unclear, Chief Administrative Law Judge Stephen J. Henley, in the Notice of Docketing, requested that Complainant clarify his intention and after my assignment to the case, I also requested that Complainant provide a statement if he was not requesting a hearing by October 13, 2022. In my Notice of Assignment and Preliminary Order, I requested the same. The Complainant did not respond to these requests.

Multiple attempts to reach the Complainant by telephone and email at the phone number and email address provided between October 19 and October 25, 2022 were unsuccessful. None of the email correspondences sent to the Complainant generated notices that messages were undeliverable to the Complainant, including an email on October 25, 2022 scheduling a November 1 conference call; nor did our office receive any read receipts from the Complainant which were requested.

On October 18, 2022, Complainant mailed a letter dated October 16, 2022 to Chief Administrative Law Judge Henley. Although the letter was mailed on October 18, it was not until

November 14, 2022 that the letter was received by me. Regardless, in pertinent part the letter reads:

I didn't go looking online to make my point here, ok? I drove past this crash at about 05:00.

OSHA reduced the discussion, i.e., my case, to its lowest level. Maybe some day the Department will have a better understanding.

It's been a nice association. (emphasis added)

Like his earlier communication, this letter seems to indicate that the Complainant does not wish to proceed with this complaint but instead wishes to sever his association with the DOL.

I held the conference call as scheduled on November 1, 2022, which counsel for the Respondent, Attorney Anthony (Tony) Resimius attended, but the pro se Complainant did not. I noted on record that the Complainant is employed as a long haul driver and that various locations were indicated on the postmarks from mail correspondences received from him, which could possibly indicate difficulties receiving emails and/or phone calls while at work. Respondent's counsel noted on the call that he had no contact with the Complainant after his initial filing on August 21, 2022, but that he did correspond with him via the email address on record. Thus, the email address of record appears to be accurate and an effective means of communication with the Complainant.

Following this conference call, I issued an order to show cause for why the claim should not be dismissed, granting the Complainant until November 21, 2022 to respond with a written explanation for his failure to be responsive in this matter. This notice which was sent by certified mail was returned to our office on November 23, 2022 as undeliverable and unable to forward, despite being served to the mailing address provided by the Complainant. Additionally, this Order was served via email to the provided email address with no bounce back indicated.

Under these circumstances, noting multiple unsuccessful attempts to contact the Complainant via the phone number, email address, and mailing address of record, his failure to attend the November 1, 2022 conference call, and his failure to timely respond to my show cause order, as well as his communications indicating that he is not seeking a hearing in this matter, **IT IS HEREBY ORDERED** that the claim which the Complainant, Mr. John Griffith, filed on August 21, 2022, is **DISMISSED** by reason of abandonment.

SO ORDERED.

PATRICIA J. DAUM
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.