

**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
COVINGTON DISTRICT OFFICE**

Issue Date: 27 December 2022

In the Matter of:

MATTHEW HILLEBRAND,
Complainant,

v.

K5 ENTERPRISE, LLC,
Respondent.

CASE NO.: 2022-STA-00051

OSHA NO.: 5-2780-22-013

HON. DAN C. PANAGIOTIS
Administrative Law Judge

ORDER OF DISMISSAL

1. Nature of Order. This case arises pursuant to a complaint alleging violations under the employee protective provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, and the implementing regulations at 29 C.F.R. Part 1978. Matthew Hillebrand (Complainant) appealed a final determination issued by the Occupational Safety and Health Administration on March 11, 2022, dismissing a November 24, 2021 complaint, alleging retaliation by K5 Enterprise, LLC (Respondent) in violation of the STAA.¹

2. Procedural and Pertinent Factual History.

a. On March 11, 2022, this case was docketed with the Office of Administrative Law Judges (OALJ).

b. On June 30, 2022, Chief Administrative Law Judge Stephen R. Henley issued a Notice of Docketing.²

c. On July 28, 2022, the matter was assigned to the undersigned.

d. On August 15, 2022, the court issued a Notice of Case Assignment (Notice). The Notice informed the parties that a status conference would be held on September 13, 2022, along with the court's conference dial-in information. This Notice also advised the parties of mandatory filing deadlines, instructing Complainant to file a complaint within twenty-one (21) days of the date of the Notice, or by September 5, 2022.

¹ The Secretary's findings included Complainant's email address: Hillebrand_matthew@yahoo.com.

² Complainant was served a copy of the Notice of Docketing electronically by email at Hillebrand_matthew@yahoo.com.

e. On September 8, 2022, the court’s staff emailed the parties advising that the status conference would need to be re-scheduled, with dates and times of availability.

f. On September 12, 2022, the court’s staff contacted the parties and was advised that Complainant and Respondent would be available for the originally scheduled conference. Complainant informed the court’s staff that he had not received service of the August 15 Notice. A courtesy copy of the Notice was emailed to Complainant.³

g. On September 13, 2022, the court held a status conference, which was attended by Complainant and Respondent.⁴ At the conference, the court explained the procedures that will govern the proceedings, the obligations of the parties, and the mandatory filings to be filed in accordance with the deadlines established in the Notice. Also on this date, the court re-issued the Notice and formal service of the Notice was made at Complainant’s listed email address. Complainant was now to file his complaint no later than October 4, 2022. Respondent was given twenty-one (21) days from the date Complainant served his complaint to file its response. Additionally, the parties were to conduct a discovery conference and file a “Discovery Conference Summary” (Summary) by November 12, 2022.⁵

h. On September 26, 2022, the law firm Husch Blackwell LLP made an appearance on behalf of the Respondent.

i. On October 25, 2022, Respondent filed a Motion to Dismiss Complainant’s Claims for failure to prosecute. Complainant was served with a copy of the motion on the same day by email. In its motion, Respondent noted that Complainant failed to serve his complaint and initial disclosures by the deadline established in the Notice. Additionally, Respondent attached email correspondence with the Complainant as exhibits, noting that upon filing their Notice of Appearance, Complainant responded by email stating that “he was not the individual that “called in” the whistleblower protection issue, but that he was only fighting to get unemployment benefits.”⁶ In another email, Complainant responded, “You guys are going after the wrong person on this case. My friend is the one that called all the stuff in. But I will gladly take on K5 Enterprises.”⁷

³ The service sheet of the Notice did not provide how service was made on Complainant.

⁴ Complainant responded by email, Hillebrand_matthew@yahoo.com, confirming receipt of conference dial-in information and Notice. Respondent was self-represented at the time of the status conference. Subsequent to the conference, Respondent retained counsel.

⁵ In accordance with 29 C.F.R. § 18.50, the Notice made clear that a “Discovery Conference Summary” was mandatory. *See* Notice at § 8 (“*Without exception*, a joint Discovery Conference Summary filing is required in every case assigned to the undersigned. This means the Discovery Conference Summary obligation applies in this matter regardless of whether a party has made prior filings, or the parties have already submitted a request for either a hearing or decision based on the record. As such, failure by the parties to timely file the required Discovery Conference Summary may result in this matter being dismissed without further notice.”)

⁶ *See* Respondent’s Motion at 2; EX-C.

⁷ *See* Respondent’s Motion at 3; EX-C. In what appears to be a reference to the Secretary’s findings, Complainant also told Respondent “99 percent of everything listed on that 1 page does not pertain to me at all. I will have my day in court against them.”

j. On November 11, 2022, Respondent submitted a filing titled “Discovery Conference Summary,” informing the court that Complainant “has neither filed a complaint nor responded to Respondent’s attempt to confer on this matter.” Respondent further noted,

As a direct result of Complainant’s repeated failures to comply with the [Notice], K5 has had no opportunity to review the full extent of Complainant’s claims and the facts related to such claims and will be unable to defend itself fairly and properly in this proceeding. Complainant’s failure to respond to Respondent’s attempt to confer and failure to meet his filing deadlines demonstrates a lack of desire to prosecute this matter and further supports K5 (sic) request to dismiss Complainant’s claims in its entirety.

k. On November 15, 2022, the court issued an Order to Show Cause why Complainant’s complaint should not be dismissed for failure to comply with the court’s order. A video hearing was scheduled to take place on December 20, 2022, at 11:00 a.m. central time.

l. On December 13, 2022, the court’s staff emailed the parties a Microsoft Teams invitation, confirming the date and time of the hearing, and providing a link to the video hearing.

m. On December 14, 2022, Complainant, using his Hillebrand_matthew@yahoo.com email address, responded to the email stating, “I just checked my email. When was this scheduled for.” On the same day, the court’s staff responded to Complainant’s email advising Complainant that he failed to file mandatory filings and participate in a discovery conference, and because of these failures a show cause hearing was going to be held for Complainant to show good cause why his complaint should not be dismissed for failure to comply with the court’s order.⁸

n. The video hearing commenced promptly at 11:00 a.m. on December 20, 2022. Present at the hearing was Michelle Bayley, court reporter, and Mrs. Melissa Williams, counsel for Respondent. Complainant did not make an appearance.⁹

o. To date, Complainant has not submitted his complaint, cooperated in a discovery conference, filed initial disclosures, or responded to the court’s show cause order.

3. Applicable Law.

The regulations found at 29 C.F.R. Part 1978, subpart A, together with the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges (the Rules), set forth the procedures for submission of complaints and litigation before administrative law judges (ALJ). 29 C.F.R. § 1978.100(b). The STAA implementing regulations do not specifically address a party’s failure to prosecute its case; however, the Rules grant the

⁸ The court’s staff explained the nature and procedure of the hearing, that Complainant would be given an opportunity to explain why he has failed to comply with the court’s order. Attached to the email was a copy of the Notice, Respondent’s Motion to Dismiss, and Respondent’s “Discovery Conference Summary,” and Order to Show Cause. No further correspondence was received from Complainant.

⁹ Out of an abundance of caution, the court held the virtual hearing room open; however, after 40 minutes it was clear Complainant was not going to make an appearance and the hearing was terminated.

court “all powers necessary to conduct fair and impartial proceedings” including the power to “[t]erminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order.” 29 C.F.R. § 18.12(b)(7).¹⁰

Moreover, the Administrative Review Board has held that like federal courts, ALJs “possess the “inherent power” to dismiss a case on their own initiative for lack of prosecution. . . . in an effort to ‘achieve the orderly and expeditious disposition of cases.’”¹¹ And 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 or for failure to prosecute his or her claim.¹²

Since this matter has been docketed with OALJ, Complainant has failed to comply with court established deadlines and mandatory filing requirements and cooperate in discovery. In addition, Complainant has failed to respond to the Order to Show Cause. Accordingly, the court finds that Complainant has failed to prosecute his claim and his complaint should be dismissed.

4. Ruling. For the foregoing reasons, it is hereby ORDERED that Matthew Hillebrand’s complaint is DISMISSED without prejudice.

SO ORDERED this day at Covington, Louisiana.

DAN C. PANAGIOTIS
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).

¹⁰ *See also* 29 C.F.R. § 1978.115 (“In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the ALJ or ARB on review may, upon application, after three days notice to all parties, waive any rule or *issue such orders as justice or the administration of STAA requires.*” (emphasis added).

¹¹ *Lewman v. Ken Brick Masonry Supply*, ARB No. 07-015, ALJ No. 2006-STA-00018, slip op. at 3 (ARB Oct. 31, 2007) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962)).

¹² *See Walia v. Veritas Healthcare Sols. LLC*, ARB No. 14-002, ALJ No. 2013-LCA-00005, slip op. at 5 n. 3 (Feb. 27, 2015).

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.