

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
San Francisco, CA

Issue Date: 20 April 2023

CASE NO.: 2022-STA-00064

In the Matter of:

CORNELL ROBINSON, II,
Complainant,

v.

JPMKL, INC.,
Respondent.

ORDER DISMISSING COMPLAINT

This matter arises under the employee protection provisions of 49 U.S.C. § 31105 of the Surface Transportation Assistance Act of 1982 (STAA) and the regulations of the Secretary of Labor published at 29 C.F.R. Part 1978. Complainant is self-represented. Karolina and Mario Ljubic, owners of JPMKL, Inc., represent Respondent and are also self-represented.

The matter is pending at the Office of Administrative Law Judges (OALJ) based upon Complainant's September 22, 2021, complaint to the Secretary of Labor alleging that Respondent retaliated against him in violation of the STAA. The Occupational Safety and Health Administration (OSHA) dismissed Complainant's appeal on May 11, 2022, and he timely requested a hearing at OALJ.

The matter was set for video hearing on April 11, 2023, at 10:30 a.m. Pacific Time. Following an April 3, 2023, telephonic pre-hearing conference, Complainant was given until April 6, 2023, to submit his evidence and the names of any witnesses he intended to call. Complainant did not submit any evidence or the names of any witnesses. On April 5, 2023, Complainant sent an email to Respondent stating that he no longer wanted to proceed with his case, but that email was not sent to the tribunal until Respondent submitted it. Complainant called the OALJ office on or about April 6, 2023, and told my staff that he did not want to proceed. My staff told Complainant that he would have to submit the request to withdraw or dismiss his case in writing and could even do so by sending an email. Complainant did not follow up with a written request to withdraw or dismiss his case. *See* 29 C.F.R. § 1978.111(c) (requiring written request to withdraw).

On April 11, 2023, I called the hearing to order on the record. Respondent was present and ready to proceed. Complainant did not appear for the hearing. I made a record of what had occurred and then went off the record and waited in the video room to see if Complainant appeared. At 10:50 a.m. Pacific Time, I recalled the matter on the record and Complainant had still not appeared. Respondent submitted its evidence by April 6, 2023, as required by the prehearing order. Respondent stated on the record at the hearing that it was ready to proceed with the hearing and that its witnesses were available to testify if needed.

On April 11, 2023, after Complainant failed to appear at the duly scheduled hearing, I issued Order to Show Cause Why Case Should Not be Dismissed. Complainant had until April 14, 2023, to respond to the OSC. No response was received.

When a party fails to appear at a scheduled hearing, the judge may, after notice and an opportunity to be heard, dismiss the proceeding. *See* 29 C.F.R. § 18.21(c) (Failure to Appear); *see also* 29 C.F.R. § 18.12(b)(7). ALJs have inherent authority to 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); *Bacon v. Con-Way Western Express*, ARB No. 2001-STA-7, ARB No. 01-058, slip op. at 4 (ARB Apr. 30, 2003). This authority is necessary to “achieve the orderly and expeditious disposition of cases.” *Lewman v. Ken Brick Masonry Supply*, ARB No. 07-01, ALJ No. 2006-STA-016, slip op. at 3 (ARB Oct. 31, 2007).

Here, Complainant did not appear at the duly scheduled hearing after telling Respondent and the OALJ staff that he no longer wanted to proceed. He did not send a written request to the tribunal to dismiss the case, but he did send an email to Respondent stating that he was no longer proceeding, which Respondent filed at OALJ as an exhibit. The email sent by Complainant on April 5, 2023, to Respondent was read into the hearing record. As required, I gave Complainant written notice that his matter would be dismissed if he did not respond in a timely manner. Complainant failed to respond.

Complainant’s complaint is dismissed with prejudice. All dates are vacated.

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.