

**UNITED STATES DEPARTMENT OF LABOR**  
**OFFICE OF ADMINISTRATIVE LAW JUDGES**  
**Cherry Hill, New Jersey**

**Issue Date: 12 March 2024**

Case No.: 2023-STA-00080

In the Matter of

**SHANE A. HOPE,**  
Complainant

v.

**PERFORMANCE FOOD SERVICE CORP.,**  
Respondent

**DECISION AND ORDER OF DISMISSAL**

The above-captioned case has come before the U.S. Department of Labor (DOL) Office of Administrative Law Judges (OALJ) for a hearing and decision. It comes before the OALJ pursuant to the employee protection provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, hereinafter referred to as the "Act." Implementing regulations are published in 29 C.F.R. Part 1978. The Rules of Practice and Procedure for Administrative Hearings Before the OALJ found at 29 C.F.R. Part 18, Subpart A (OALJ procedural rules), also apply.

The STAA prohibits an employer from retaliating against an employee because the employee engaged in protected activity. In addition, the STAA protects employees who refuse to operate a commercial motor vehicle when such operation would violate a federal safety regulation or because the employee has a reasonable apprehension of serious injury to himself or the public due to the vehicle's unsafe condition.

Shane A. Hope (Complainant) filed a complaint against Performance Food Service Corp. (Respondent) alleging violations of the employee protective provisions in the STAA. In a letter dated June 5, 2023, from the Occupational Health and Safety Administration (OSHA), the DOL Secretary provided notice of terminating the investigation of the complaint at Complainant's request, summarized the investigation findings up to that point, and dismissed the complaint (stating that OSHA was unable to conclude if there were reasonable cause to believe Respondent violated the STAA). Complainant then filed a request for a formal hearing before the OALJ. OSHA referred the matter to OALJ and it was assigned to me.

On October 6, 2023, I issued a Notice of Assignment, Hearing, And Initial Prehearing Order (Hearing Order) scheduling this matter for a prehearing conference at 10:00 a.m., Eastern Time, on Wednesday, February 21, 2024 and for a hearing on March 13, 2024. The Hearing Order also gave the parties various prehearing directives, regarding discovery, the submission of prehearing statements and proposed hearing exhibits, for example. The Hearing Order was served via email to the addresses of record for Complainant (who is self-represented) and counsel for Respondent as noted in the OSHA letter dated June 5, 2023.

Neither Complainant nor Respondent complied with the directives in the Hearing Order regarding prehearing submissions; both Complainant and Respondent also failed to appear for the prehearing conference as directed. Section L of the Hearing Order states that failure to comply with its provisions “may result in the imposition of sanctions including, but not limited to, the following: the exclusion of evidence, the dismissal of the claim, or the removal of the offending representative from the case,” citing 29 C.F.R. §§ 18.12(b), 18.35(c), 18.57 and 18.87.

On February 21, 2024, I issued an Order To Show Cause directing the parties to show cause by no later than March 7, 2024 as to why sanctions should not be imposed for their failure to appear for the prehearing conference or to comply with the prehearing directives in the October 6, 2023 Hearing Order. The March 7, 2024 Order To Show Cause also directed suspension of all previously-ordered deadlines and directives, including the scheduled hearing for March 13, 2024 until further notice. It was served via email to the addresses of record for Complainant and counsel for Respondent as noted in the OSHAL letter dated June 5, 2023. To date, neither Complainant nor Employer has responded to the Order To Show Cause.

The OALJ procedural rules, in part, provide the following:

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.

See 29 C.F.R. § 18.21(c).

At no time did Complainant or Respondent object to the date or time of the scheduled prehearing conference or waive their right to participate in the prehearing conference. Nonetheless, both Complainant and Respondent failed to appear for the conference. Despite being given notice and an opportunity to do so, neither Complainant nor Respondent has presented good cause for failing to appear for the prehearing conference or for not complying with the prehearing directives in the Hearing Order.

Therefore, in accordance with the OALJ procedural rules, this complaint is **DISMISSED** before the OALJ with **PREJUDICE**.

**SO ORDERED.**

**LYSTRA A. HARRIS**  
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).

## FILING AND SERVICE OF AN APPEAL

1. **Use of EFS System:** The Board’s Electronic Filing and Service (EFS) system allows parties to initiate appeals electronically, file briefs and motions electronically, receive electronic service of Board issuances and documents filed by other parties, and check the status of appeals via an Internet-accessible interface. Use of the EFS system is free of charge to all users. To file an appeal using the EFS System go to <https://efile.dol.gov>. All filers are required to comply with the Board’s rules of practice and procedure found in 29 C.F.R. Part 26, which can be accessed at <https://www.ecfr.gov/current/title-29/subtitle-A/part-26>.
  - A. **Attorneys and Lay Representatives:** Use of the EFS system is **mandatory for all attorneys and lay representatives** for all filings and all service related to cases filed with the Board, absent an exemption granted in advance for good cause shown. 29 C.F.R Part § 26.3(a)(1), (2).
  - B. **Self-Represented Parties:** **Use of the EFS system is strongly encouraged for all self-represented parties** with respect to all filings with the Board and service upon all other parties. Using the EFS system provides the benefit of built-in service on all other parties to the case.

Without the use of EFS, a party is required to not only file its documents with the Board but also to serve copies of all filings on every other party. Using the EFS system saves litigants the time and expense of the required service step in the process, as the system completes all required service automatically. Upon a party's proper use of the EFS system, no duplicate paper or fax filings are required.

**Self-represented parties who choose not to use the EFS system must file by mail or by personal or commercial delivery** all pleadings, including briefs, appendices, motions, and other supporting documentation, directed to:

Administrative Review Board  
Clerk of the Appellate Boards  
U.S. Department of Labor  
200 Constitution Avenue, N.W., Room S-5220,  
Washington, D.C., 20210

## **2. EFS Registration and Duty to Designate E-mail Address for Service**

To use the Board's EFS system, a party must have a validated user account. To create a validated EFS user account, a party must register and designate a valid e-mail address by going to <https://efile.dol.gov>, select the button to "Create Account," and proceed through the registration process. If the party already has an account, they may simply use the option to "Sign In."

Once a valid EFS account and profile has been created, the party may file a petition for review through the EFS system by selecting "eFile & eService with the Administrative Review Board" from the main dashboard, and selecting the button "File a New Appeal - ARB." In order for any other party (other than the EFS user who filed the appeal) to access the appeal, the party must submit an access request. To submit an access request, parties must log into the EFS System, select "eFile & eService with the Administrative Review Board," select the button "Request Access to Appeals," search for and select the appeal the party is requesting access to, answer the questions as prompted, and click the button "Submit to DOL."

Additional information regarding registration for access to and use of the EFS system, including for parties responding to a filed appeal, as well as step-by-step User Guides, answers to frequently asked questions (FAQs), video tutorials and contact information for login.gov and EFS support can be found under the "Support" tab at <https://efile.dol.gov>.

### 3. **Effective Time of Filings**

Any electronic filing transmitted to the Board through the EFS e-File system or via an authorized designated e-Mail address by 11:59:59 Eastern Time shall be deemed to be filed on the date of transmission.

### 4. **Service of Filings**

#### A. **Service by Parties**

- **Service on Registered EFS Users:** Service upon registered EFS users is accomplished automatically by the EFS system.
- **Service on Other Parties or Participants:** Service upon a party that is not a registered EFS user must be accomplished through any other method of service authorized under applicable rule or law.

#### B. **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 (unless otherwise required by law). If a party unrepresented by counsel files their appeal by regular mail, that party will be served with Board-issued documents by regular mail. Any party may opt into e-service at any time by registering for an EFS account as directed above, even if they initially filed their appeal by regular mail or delivery.

### 5. **Proof of Service**

Every party is required to prepare and file a certificate of service with all filings. The certificate of service must identify what was served, upon whom, and manner of service. Although electronic filing of any document through the EFS system will constitute service of that document on all EFS-registered parties, electronic filing of a certificate of service through the EFS system is still required. **Non EFS-registered parties must be served using other means authorized by law or rule.**

### 6. **Inquiries and Correspondence**

After an appeal is filed, all inquiries and correspondence related to filings should be directed to the Office of the Clerk of the Appellate Boards by telephone at 202-693-6300 or by fax at 202-513-6832. Other inquiries or questions may be directed to the Board at (202) 693-6200 or [ARB-Correspondence@dol.gov](mailto:ARB-Correspondence@dol.gov).