

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Newport News, VA

Issue Date: 10 May 2024

Case No.: 2023-STA-00061

In the Matter of:

MICHAEL D. LEAR,
Complainant,

v.

GFL ENVIRONMENTAL,
Respondent.

ORDER DENYING COMPLAINANT'S REQUEST FOR RECONSIDERATION
OF ORDER OF DISMISSAL

This matter arises from a complaint filed under the provisions of the Surface Transportation Assistance Act of 1982, U.S. Code Title 49, Section 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 ("STAA"). It is governed by the implementing Regulations found in 29 CFR Part 1978.

On May 7, 2024, I issued an *Order of Dismissal and Order Canceling Hearing*. In that Order, I found that Complainant had violated two orders of this tribunal in refusing to serve his exhibits, exhibit list, and witness list upon Respondent; that Complainant's response to the *Order to Show Cause* did not establish any excusable basis for his failures; that sanctions were warranted; and that after consideration of several factors, a sanction of dismissal was appropriate.

On May 8, 2024, Complainant filed a request for "Modification of Order for the lesser sanctions." Complainant argued that the dismissal was "an extreme abuse of discretion" based on bias against him. He asserted that this tribunal's description of the history of the case was not accurate, and argued that he has "participated above and beyond the normal," and "at no point willfully or knowingly obstructed." He asserted that he "ha[s] not simply refused anything at any point," and that he has worked diligently to "accomplish the tasks imposed on me." He argued that this tribunal has "denied or set aside every motion I have filed and has not found any merit in any statements I have made," pointing to an excerpt from the motion hearing as an example. He requested "modification of the dismissal order to impose the lesser sanctions as Judge Markley stated in the order," referring to this tribunal's discussion of having considered whether to impose a lesser sanction of excluding Complainant's exhibits and witnesses as a sanction, in lieu of dismissal. Complainant stated that he "respectfully accept[s]" this alternative and

requests reconsideration of the order of dismissal and imposition of the lesser sanctions of excluding his evidence and witnesses instead.

Upon consideration, the request for reconsideration will be denied.

Complainant has not established grounds for reconsideration, which “is an extraordinary request that is granted only in rare circumstances, such as where the court failed to consider evidence or binding authority.” *Van Buskirk v. United Grp. of Companies, Inc.*, 935 F.3d 49, 54 (2nd Cir. 2019); *see also Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998). Because the standard for granting a motion for reconsideration is strict, “reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2nd Cir. 1995). A motion to reconsider should not be granted where the moving party seeks to re-litigate an issue already decided or raise arguments or present evidence that could have been raised prior to the adverse ruling. *4 Pillar Dynasty*, 933 F.3d at 216 (quoting *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008)); *Pac. Ins. Co.*, 148 F.3d at 403.

In his request for reconsideration, Complainant has not pointed to any controlling decisions or data that this tribunal overlooked. Contrary to Complainant’s arguments, he did fail to provide his trial disclosures as ordered. And contrary to his arguments, he had ten weeks from the close of discovery, and eight weeks from issuance of the Scheduling Order, to prepare his trial materials before the April 29, 2024, deadline for evidence exchanges. Complainant’s arguments in his request for reconsideration do not identify any grounds that were not considered and might alter this tribunal’s conclusion, and thus his request provides no basis for reconsideration.

With regard to his allegations of bias, I find them unsupported and conclusory. This tribunal has no personal bias against Complainant or for Respondent, and has no personal knowledge or personal interest in the case. Complainant points only to this tribunal having ruled against him, but that is judicial rather than personal in nature.

Therefore, having considered Complainant’s arguments, I find that reconsideration is not warranted, and the request will be denied.

ORDER

Based upon the foregoing, IT IS ORDERED:

Complainant's request for reconsideration and modification of the Order of Dismissal is **DENIED.**

SO ORDERED.

MONICA MARKLEY
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. § 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.