

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

Issue Date: 05 April 2024

OALJ Case No.: 2023-STA-00088

OSHA Case No.: 7-3620-23-019

In the Matter of:

DARYL REDUS

Complainant,

v.

J.B. HUNT TRANSPORT, INC.,

Respondent

ORDER DISMISSING CLAIM FOR ABANDONMENT

This matter arises under the “whistleblower” employee protection provisions of Section 405 of the Surface Transportation Assistance Act of 1982 (the Act), as amended, 49 U.S.C. § 31105 (formerly 49 U.S.C. § 2305), and its implementing regulations, 29 C.F.R. part 1978. In accordance with 29 CFR § 1978.107(b), the hearing in this matter was to commence expeditiously, except upon a showing of good cause or otherwise agreed to by the parties.

Procedural History

On November 6, 2023, this matter was assigned to the Tribunal for adjudication. Accordingly, on November 7, 2023, the undersigned issued its Notice of Assignment and Conference Call and Order to File Pleadings. In that order, the Tribunal directed the parties to attend a pre-hearing conference call scheduled for December 4, 2023 at 1:00 p.m. Eastern Time. However, on December 4, 2023, Complainant failed to call into the pre-hearing conference call.

Subsequently, this Tribunal issued its Second Notice of Assignment and Re-Scheduled Conference call and Order to File Pleadings. This order similarly directed parties to appear on January 4, 2024 at 11:00 a.m. Eastern Time for a conference call, and it placed Complainant on notice that, “failure to appear for the this scheduled pre-hearing conference will be view[ed] as the Complainant [having] abandoned his complaint and absent good cause, may result in dismissal of the claim.” Sec. Not Assign. On January 4, 2024, Complainant again failed to appear for the scheduled conference call.

Following Complainant’s second failure to appear, this Tribunal issued an Order to Show Cause. In that Order, issued on January 8, 2024, Complainant was given fourteen days to provide

reason as to why its claim shouldn't be dismissed as abandoned, and it was specifically notified that "[f]urther failure to respond or appear as ordered will be interpreted to mean that it has no objection to its case being dismissed." *See* Jan. 8 Order to Show Cause at 2.

Discussion

When a party fails to appear at a scheduled conference or hearing, an ALJ 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 CFR 18.21(c); *see also* 29 CFR 1978.107(a) (denoting that hearings under the Act are to be conducted under the rules of practice and procedure of the Office of Administrative Law Judges). Further, an ALJ, through their authority to conduct fair and impartial hearings, may dismiss a case if that dismissal is not inconsistent with other applicable statutes, regulations, or executive orders. 29 CFR 18.12(b)(7).

Here, the undersigned provided ample notice and opportunity to be heard to Complainant. In both its Second Notice of Hearing and its Order to Show Cause, Complainant was warned of the consequences of failing to appear or respond. Considering Complainant's status as a self-represented litigant, this Tribunal also extended time for Complainant to demonstrate their intent to prosecute their claim by filing a response to the Order to Show Cause. Having received no response or any explanation for its failure to appear, the Tribunal now finds that Complainant has no objection to its case being dismissed.

Accordingly, it is hereby **ORDERED** that the claim of Daryl Redus, is **DISMISSED** by reason of abandonment.

SCOTT R. MORRIS
Administrative Law Judge

Cherry Hill, New Jersey-District Office

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.