

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

Issue Date: 09 November 2023

In the Matter of:

MARCELINO VELA,
Complainant,

v.

NAVIGATION GLOBAL, LLC,
Respondent,

CASE NO.: 2023-STA-00032

OSHA NO.: 5-0460-22-115

JOHN M. HERKE
Administrative Law Judge

**ORDER OF DISMISSAL
(Failure to Comply with Prehearing Requirements)**

1. Nature of Order. Pursuant to 29 C.F.R. § 18.12(b)(7), 29 C.F.R. § 18.21(c), and 29 C.F.R. § 18.57(b)(1)(v), the undersigned Administrative Law Judge (ALJ) issues this order on his own motion. This order dismisses the matter due to Complainant’s failure to participate in discovery proceedings, his failure to file required pleadings, his failure to respond to an order to show good cause why appropriate sanctions should not be imposed, and his failure to contact the Office of Administrative Law Judges about this case since June 29, 2023.

2. Procedural History.

a. This case was assigned to the undersigned ALJ on May 4, 2023. A “pro se packet” was sent to Complainant on May 5, 2023. The packet explained Complainant’s rights and responsibilities in prosecuting his case. The packet also contained a “pro se” (i.e., self-represented litigant) letter for Complainant to sign and return. That letter explains the rights and responsibilities Complainant has in this matter.

b. After an initial conference with the parties on June 29, 2023 in which Complainant asserted he never got the “pro se packet,” a second copy was sent to him by email at the email address he provided during the conference. Complainant has not returned a signed copy of the letter.

c. On July 7, 2023, the undersigned ALJ issued a *Procedural Order* that set forth certain discovery deadlines and filing deadlines. Among the deadlines set was a deadline for Complainant to file charts detailing (i) each alleged activity he engaged in that he contends would be a “protected activity” under the Surface Transportation Assistance Act (STAA) and (ii) each alleged “adverse employment action” he contends was taken against him by Respondent in violation of the STAA. The deadline for Complainant to file his charts of alleged protected activities and alleged adverse actions was July 28, 2023. Complainant has not submitted any charts.

d. On September 1, 2023, the undersigned issued an *Order to Show Good Cause* that directed Complainant to show good cause for his failure to return the “pro se packet” and his failure to comply with the July 7, 2023 *Procedural Order*.

e. On September 9, 2023, copies of the *Order to Show Good Cause*, the *Procedural Order*, and the “pro se packet” were sent to Complainant’s mailing address via United Parcel Service (UPS).

f. On September 25, 2023, Complainant signed a UPS notice of receipt for the documents that were sent to him on September 9, 2023.

g. The *Order to Show Good Cause* specifically advised Complainant that he must file a written response to the order within ten days. Giving Complainant the benefit of the broadest possible time period available to comply with the *Order to Show Good Cause*, that deadline passed no later than October 5, 2023.¹

h. The *Order to Show Good Cause* specifically advised Complainant that “[f]ailure to timely comply with [the] Order will result in the undersigned issuing appropriate sanctions, which may include but are not limited to disallowing evidence submitted by Complainant, striking the claim in whole or in part, or any other appropriate sanctions available to the undersigned.”

i. Moreover, pursuant to the July 7, 2023 *Procedural Order*, Complainant and Respondent were supposed to file a *Joint Prehearing Statement (JPS)* no later than November 7, 2023. Neither party filed a JPS by the deadline. The *Procedural Order* advised all parties that “[a] party’s failure to participate in the required JPS filing without good cause may result in appropriate sanctions.”

3. Analysis.

A judge has all powers necessary to conduct fair and impartial proceedings, including those described in the Administrative Procedure Act, 5 U.S.C. § 556. Pursuant to 29 C.F.R. § 18.12(b)(7), the judge may “[t]erminate proceedings through dismissal . . . when not inconsistent with statute, regulation, or executive order.” Pursuant to 29 C.F.R. § 18.57(b)(1), the presiding judge has a wide range of potential enforcement options for a party’s failure to comply with prehearing orders. Additionally, pursuant to 29 C.F.R. § 18.21(c), the presiding judge may dismiss a case when a party fails to appear or participate in the matter.

A party’s failure to comply with the prehearing requirements directly and adversely impacts the opposing party. As such, non-compliance is an entirely unacceptable practice for which a party is accountable.

Claimant, as a self-represented litigant, has been afforded great latitude because he is at least presumptively not versed in the procedural and substantive aspects of pursuing a claim under the Act. However, the requirement to sign and return the “pro se” letter, the deadline for Complainant to complete and file his charts, and the requirement to file a written response to the *Order to Show*

¹¹ Complainant signed a receipt on September 25, 2023 acknowledging that he received the *Order to Show Good Cause*. Ten days from that date would have been October 5, 2023.

Good Cause were all quite clear. No reason has been given for Complainant's failure to comply with any of these directives. Further, no motion has been filed seeking additional time and, indeed, Complainant has not made any attempt to participate in this matter since the June 29, 2023 conference.

The case filings to date demonstrate no reason for Complainant's failure to comply with the chart filing requirements, the JPS filing requirement, and the *Order to Show Good Cause*. Consequently, at this point, the undersigned can only conclude such conduct was willful or negligent, or that Complainant has abandoned his claim.

4. Specific Terms of Order. Pursuant to the authority granted in 29 C.F.R. § 18.12(b)(7), 29 C.F.R. § 18.21(c), and 29 C.F.R. § 18.57(b)(1)(v), and due to Complainant's (i) failure to comply with the chart filing requirements, (ii) failure to comply with the JPS filing requirement, (iii) failure to comply with the *Order to Show Good Cause*, and (iv) failure to contact the Office of Administrative Law Judges about this case since June 29, 2023, Complainant's case is **DISMISSED**.

So ORDERED at Covington, Louisiana, on November 9, 2023.

JOHN M. HERKE
Administrative Law Judge