

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

Issue Date: 29 November 2022

In the Matter of:

PEGGY COLANTUONO,
Complainant,

v.

**CITRUS COUNTY BOARD OF COUNTY
COMMISSIONERS,**
Respondent,

CASE NO.: 2022-SWD-00002

OSHA NO.: 4-2950-20-094

Hon. Tracy A. Daly
Administrative Law Judge

**Order of Dismissal
(Failure to Prosecute)**

1. Nature of Order. The above-captioned case arises from a claim under the employee protection provisions of the Solid Waste Disposal Act (the “Act”), 42 U.S.C. § 6971, and the procedural regulations found at 29 C.F.R. Part 24. The undersigned is issuing this order sua sponte pursuant to 29 C.F.R. § 18.12.

2. Findings of Fact and Procedural History.

a. Pursuant to the Act, Complainant filed a retaliation complaint with the Occupational Safety and Health Administration (OSHA) against Respondent. On January 20, 2022, the Secretary, acting through the Regional Administrator, issued findings that concluded there was no reasonable cause to believe Respondent violated the Act. On February 1, 2022, Complainant filed objections to the Secretary’s Findings and requested a hearing before the Office of Administrative Law Judges (OALJ).

b. On June 29, 2022, a Notice of Docketing was issued by Chief Administrative Law Judge Stephen Henley informing the parties that the OALJ docketed this matter and directing the parties to exchange initial disclosures.

c. This matter was subsequently assigned to the undersigned. On August 4, 2022, the undersigned issued a Case Scheduling Order and Filing Deadlines in this matter setting the procedural filing requirements and discovery obligations the parties must satisfy before a formal hearing date will be scheduled. This order required Complainant to file a detailed “Pleading Complaint” within twenty-one (21) days of the order.

d. On this same day, the undersigned sent a letter to Complainant confirming her intent to proceed pro se in this matter. This letter directed Complainant to return a Notice of Intent to Proceed Pro Se form no later than seven (7) business days from the date of the letter.

e. On September 2, 2022, the undersigned issued an Order to Show Good Cause due to Complainant's failure to comply with the case filing requirements in this matter. The Order required Complainant to file a written reply establishing good cause why the undersigned should not consider the claim abandoned – specifically good cause for failure to return an executed Notice of Intent to Proceed Pro Se and file a Pleading Complaint, as required. This Order also informed Complainant that failure to timely comply would result in issuance of an order of dismissal.

f. Upon receiving no response from Complainant to the Order to Show Good Cause within the time allowed, the undersigned became aware that all orders and notices issued in this matter were served on Complainant by “Electronic-Regular Email” to an e-mail address different than that used by Complainant to file her objections to the Secretary's Findings and request a hearing before the OALJ. Accordingly, the undersigned directed OALJ administrative personnel to send correspondence to Complainant by e-mail to the e-mail address used by Complainant to file objections and request a hearing before OALJ to ascertain whether prior orders and notices were received by Complainant and reissue if not.

g. On September 15, 2022, the undersigned's administrative personnel sent correspondence to Complainant at the e-mail address used by Complainant to file objections and request a hearing before OALJ. This e-mail requested Complainant respond to the e-mail to confirm receipt. The undersigned's administrative personnel received no response from Complainant.

h. On September 30, 2022, Chief Administrative Law Judge Stephen R. Henley issued an administrative order postponing all proceedings scheduled to take place in Florida or involving any party, attorney, or law firm located in Florida and tolling all hearing-related deadlines. *See Administrative Order, 2022-MIS-00005* (Sept. 30, 2022). In her objection and request for hearing, Complainant listed her physical address in Florida.

i. On October 3, 2022, the undersigned issued an Order to Show Good Cause. This order required that no later than ten (10) days from the date of the order, Complainant shall 1) send e-mail confirmation of her receipt of the order to the undersigned's administrative personnel; and 2) file a written reply establishing good cause why the undersigned should not consider the claim abandoned, specifically for failure to respond to the e-mail confirming her e-mail address for service of orders and notices. This order informed Complainant that failure to timely comply would result in the undersigned issuing an order of dismissal based on her abandonment of this claim. This order was served on Complainant by e-mail and UPS delivery, signature required at the e-mail and physical addresses used by Complainant to file objections and request a hearing before OALJ. UPS tracking information confirms delivery was made on October 11, 2022, at 12:18 p.m. at the physical address for the UPS Store in Hernando, Florida. The undersigned can only assume Complainant directed the UPS Store to hold her package for pick-up, rather than having it delivered to her physical address.

j. On October 28, 2022, Chief Administrative Law Judge Stephen R. Henley issued an administrative order rescinding his order postponing matters pending in Florida or involving parties located in Florida and ending the tolling of associated deadlines effective October 28, 2022. This order further provided that “time deadlines are extended to the next business day after 31 calendar days from the original deadline.” *See Administrative Order Rescinding Prior Postponement Order, 2022-MIS-00005* (Oct. 28, 2022).

k. Pursuant to Chief Judge Henley’s October 28th order, Complainant’s responses to the undersigned’s October 3rd Order to Show Good Cause were due no later than November 21, 2022.¹ To date, no responses from Complainant have been received by the undersigned.

3. Applicable Law and Analysis.

In all proceedings, the judge has “all powers necessary to conduct fair and impartial proceedings,” including the power to “terminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order.” 29 C.F.R. § 18.12(b)(7).

The authority of a court to dismiss a case sua sponte for lack of prosecution comes from an ALJ’s inherent power to manage and control his or her docket, prevent undue delays, and achieve the orderly and expeditious disposition of pending cases. *See Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962) (noting power of court to dismiss action with prejudice for failure to prosecute to prevent undue delays and avoid congestion). Likewise, the Department of Labor’s Administrative Law Judges “must necessarily manage their dockets in an effort to achieve the orderly and expeditious disposition of cases.” *Larue v. KLLM Transport, Inc.*, ARB No. 02-024, ALJ No. 01-STA-54, slip op. at 2 (ARB July 22, 2003).

When a complainant substantially fails to comply with ALJ orders and filing deadlines, the presiding ALJ may take the complainant’s lack of any meaningful participation in the case as evidence of an intent to abandon the claim. Upon notice to the complainant and a finding of lack of good cause, the ALJ may dismiss the matter. *See Dickson v. Butler Motor Transit*, ARB No. 02-098, ALJ No. 01-STA-039, slip op. at 4 (ARB July 25, 2003) (finding ALJ acted within range of his discretion in dismissing complaint after complainant repeatedly ignored ALJ’s orders); *see also generally* 29 C.F.R. § 18.21(c).

In this case, the undersigned’s administrative personnel sent an e-mail to Complainant’s e-mail address used to file objections and request a hearing asking for confirmation of receipt of the e-mail so the undersigned could ascertain whether Complainant had received orders, notices and letters issued in this matter. No response to this e-mail was received from Complainant. Consequently, the undersigned issued an order to show good cause why he should not consider Complainant has abandoned her efforts to prepare for a hearing in this case. This order required Complainant to confirm her e-mail address and file a reply demonstrating good cause why he should not consider the claim abandoned and informed Complainant that failure to file a

¹ The undersigned’s October 3rd order required Complainant to submit responses no later than October 13, 2022 – ten days from the date of order. However, the undersigned recognizes the significant delay in delivery by UPS and considers Complainant’s responses due no later October 21, 2022 - ten days from the date of UPS delivery. The Chief Judge’s Administrative Order granted Complainant an additional 31 days beyond that deadline.

response would result in issuance of an order of dismissal. This order to show good cause was served on Complainant both at the e-mail used to file objections and request a hearing and by UPS delivery. UPS's tracking information confirmed delivery was made at the UPS Store. However, the undersigned has received no response from Complainant and thus, no demonstration of good cause for her failure to provide confirmation of her e-mail address.

Complainant's failure to respond to the requests for confirmation of her e-mail address has unduly delayed this matter. Without a response from Complainant, the undersigned can only assume that, while Complainant may not have received the initial orders and notices in this matter, she did receive all correspondence and orders sent to the e-mail address Complainant used to file objections and request a hearing before OALJ. Furthermore, UPS tracking information confirmed the October 3rd Order to Show Cause was delivered at the UPS Store. However, Complainant has neither corresponded with the undersigned's administrative personnel nor filed a response with the undersigned demonstrating good cause why this claim should not be considered abandoned. Thus, the undersigned can only assume Complainant has willfully chosen not to prosecute this claim.

The undersigned appreciates that Complainant is a pro se litigant; however, her status as a pro se party does not justify the failure to comply with a clearly established filing deadline and order to confirm her e-mail address, and the record contains no evidence that the failure is due to a lack of legal training. *See Tucker v. Connecticut Winpump Co.*, ARB No. 02-005, ALJ No. 2001-STA-53, slip op. at 3-4 (ARB Mar. 15, 2002) (affirming dismissal of pro se complainant's case for failure to prosecute when there is no indication in the record that failure to respond is due to lack of legal training). The undersigned concludes dismissal of this claim is warranted based on Complainant's failure to 1) confirm her e-mail address as requested by the undersigned's administrative personnel and required by the October 3rd Order, and 2) file a response to the undersigned's October 3rd Order demonstrating good cause for her failure to respond. Complainant's failure to take any meaningful action in this matter clearly demonstrates an absence of any objection to the Secretary's findings and a desire to abandon this claim.

4. Ruling. This claim is DISMISSED with prejudice.

SO ORDERED this day.

TRACY A. DALY
ADMINISTRATIVE LAW JUDGE

NOTICE OF APPEAL RIGHTS: This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board ("the Board") within **10 business days** of the date of this decision.

The date of the postmark, facsimile transmittal, or e-filing will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards.

If no timely petition for review is filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. *See* 29 C.F.R. §§ 24.109(e) and 24.110.

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.