



In the Matter of:

FLORENCE STINGER,

ARB CASE NO. 05-001

COMPLAINANT,

ALJ CASE NO. 2004-ERA-20

v.

DATE: July 27, 2005

**SCIENCE & ENGINEERING
ASSOCIATES, INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Complainant:

Edward A. Slavin, Jr., *St. Augustine, Florida*

FINAL DECISION AND ORDER DISMISSING APPEAL

On August 2, 2004, the Complainant, Florence Stinger, filed with the Administrative Review Board an interlocutory appeal¹ of a letter of a Department of Labor Administrative Law Judge (ALJ) to Mr. Edward A. Slavin, Jr., Esq. refusing to accept Slavin's entry of appearance in this case arising under the Energy Reorganization Act (ERA).² The Board must decide whether to dismiss Stinger's appeal because she has

¹ "Complainant's Petition for Review, Opening Brief, Motion for Summary Reversal and Request for Oral Argument" (Pet. Rev.).

² 42 U.S.C.A. § 5851 (West 1995). The Secretary of Labor has delegated her authority to issue final agency decisions under the ERA to the Board. Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002); 29 C.F.R. § 24.8(a)(2004). The ERA provides, in pertinent part,

Continued . . .

failed to respond to the Board's order directing her to show cause why her appeal is not moot given that the ALJ's subsequent Recommended Order of Dismissal (R. O. D.) of her complaint has become the Secretary's final decision by operation of law.³ Because Stinger has failed to respond to the Show Cause Order and because we find that the issue presented by the interlocutory appeal is moot, we conclude that we should dismiss Stinger's appeal.

BACKGROUND

Responding to an attempt by Edward A. Slavin to enter an appearance in this case, on July 22, 2004, the ALJ wrote:

Earlier today, you faxed a letter to me through which you sought to enter your appearance in the above-captioned case. As you well know, Associate Chief Judge Thomas Burke has issued an order denying you the authority to appear in any cases before this office, and Ms. Stinger was informed of this in an *Order* issued by Judge Burke on May 20, 2004. . . . Any further correspondence from you in connection with this case will be discarded.⁴

As noted, Stinger, in her interlocutory appeal, requested that the Board "overrule the Court's effort to impose its choice of counsel upon Ms. Stinger."⁵

On August 27, 2004, the Supreme Court of Tennessee suspended Slavin from the practice of law for two years⁶ and the Board issued an order giving reciprocal effect to the Tennessee Supreme Court's suspension.⁷

that "[n]o employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee . . . [notifies a covered employer about an alleged violation of the ERA or the Atomic Energy Act (AEA)(42 U.S.C.A. § 2011 et seq. (West 2003)), refuses to engage in a practice made unlawful by the ERA or AEA, testifies regarding provisions or proposed provisions of the ERA or AEA, or commences, causes to be commenced or testifies, assists, or participates in a proceeding under the ERA or AEA]." 42 U.S.C.A. § 5851(a)(1).

³ 20 C.F.R. § 24.7(d).

⁴ Letter from Administrative Law Judge Jeffrey Tureck to Edward A. Slavin, Jr., Esq., dated July 22, 2004, at 1.

⁵ Stinger also requested the Board to compel the ALJ to rule on several motions Slavin filed on Stinger's behalf. Pet. Rev. at 1.

On January 5, 2005, the ALJ issued the R. O. D. finding that Stinger's case should be dismissed because she abandoned her claim when she refused "to participate in this case either by filing the pre-hearing statement required by [the ALJ's] pre-hearing order, appearing at the hearing, or filing a response to the *Order to Show Cause*."⁸ This decision became the final agency decision when Stinger did not request the Board to review the R.O.D. within ten days of the date on which the ALJ issued it.⁹

On April 29, 2005, the Board affirmed the order to which Judge Tureck's letter to Slavin referred¹⁰ denying Slavin the authority to appear in any representational capacity before the Office of Administrative Law Judges, with leave to reapply for admission in no less than five years from the date of the Judge's order.¹¹

Because Stinger did not appeal the R. O. D. and it has now become the final decision of the Secretary resolving Stinger's complaint, the Board ordered Stinger to show cause no later than June 22, 2005, why the Board should not dismiss her appeal on the grounds that it is now moot. Stinger failed to respond to the Board's order.

DISCUSSION

In this interlocutory appeal, Stinger requested the Board to overrule the ALJ's refusal to permit Slavin to represent her in the administrative hearing proceedings before the ALJ. We gave Stinger the opportunity to demonstrate to the Board that her appeal was not moot given her failure to petition the Board for review of the ALJ's recommended dismissal of her complaint. Because Stinger failed to respond to the Board's Order and because we find that her interlocutory appeal is moot given that the

⁶ *Bd. of Prof. Resp. of the Sup. Ct. of Tenn. v. Slavin*, 145 S.W.3d 538 (Tenn. 2004).

⁷ *Edward A. Slavin, Jr.*, ARB No. 04-172 (Apr. 12, 2005). Accordingly, while we will consider documents Slavin has filed on Stinger's behalf at the Board prior to April 12, 2005, we will not permit him to represent Stinger or any other party (other than himself) before the Board after that date until the Supreme Court of Tennessee lifts its suspension.

⁸ R. O. D. at 1.

⁹ 29 C.F.R. § 24.7(d).

¹⁰ *Edward A. Slavin, Jr.*, 2004-MIS-2 (Mar. 31, 2004).

¹¹ *Edward A. Slavin, Jr.*, ARB No. 04-088, ALJ 2004-MIS-2.

ALJ's R.O.D. has become the final agency decision on Stinger's complaint, we **DISMISS** her appeal. In any event, we have affirmed the ALJ's order denying Slavin the right to represent parties in proceedings before the Office of Administrative Law Judges.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge