



In the Matter of:

ARLENE ROWLAND,

ARB CASE NO. 07-098

COMPLAINANT,

ALJ CASE NO. 2007-SOX-006

v.

DATE: September 25, 2009

**NATIONAL ASSOCIATION OF
SECURITIES DEALERS; PRUDENTIAL
FINANCIAL, INC. and PRUDENTIAL
EQUITY GROUP, LLC; and WACHOVIA
SECURITIES, LLC and WACHOVIA
CORP.,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Arlene Rowland, *pro se*, Ventura, California

For the Respondents, Prudential Financial, Inc. and Prudential Equity Group, LLC:

Deborah J. Broyles, Esq., *Reed Smith LLP*, San Francisco, California

For the Respondents, National Association of Securities Dealers, Inc.:

**Rebecca Justice Lazarus, Esq., *Gibson, Dunn & Crutcher, LLP*, San Francisco,
California**

For the Respondents, Wachovia Securities, LLC and Wachovia Corporation:

Sean K. McElenney, Esq., *Bryan Cave LLP*, Phoenix, Arizona

FINAL DECISION AND ORDER

The Complainant, Arlene D. Rowland, filed a retaliation complaint under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act (SOX) and its implementing regulations.¹ She alleged that her former employer, Prudential Securities Inc. (PSI) and Prudential Equity Group, LLC (both collectively referred to as Prudential), her current employer, Wachovia Corporation and Wachovia Securities LLC (collectively referred to as Wachovia), and the National Association of Securities Dealers (NASD),² as Prudential's company representative, violated the SOX whistleblower protection provision by retaliating against her because she engaged in protected activity. After Rowland failed to respond in a timely manner to two orders of a Labor Department Administrative Law Judge (ALJ), the ALJ recommended that Rowland's complaint be dismissed. We affirm.

BACKGROUND

Prudential Securities Incorporated (PSI) employed Rowland as a financial advisor from April 15, 1996, to July 1, 2003.³ She stopped actively working on September 6, 2002, due to medical issues and has never returned to work.⁴ On July 1, 2003, Wachovia Securities, LLC became Rowland's employer.⁵

¹ 18 U.S.C.A. § 1514A (West 2007); 29 C.F.R. Part 1980 (2006). The SOX's section 806 prohibits certain covered employers from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against employees who provide information to a covered employer or a Federal agency or Congress regarding conduct that the employee reasonably believes constitutes a violation of 18 U.S.C.A. §§ 1341 (mail fraud), 1343 (wire, radio, TV fraud), 1344 (bank fraud), or 1348 (securities fraud), or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. Employees are also protected against discrimination when they have filed, testified in, participated in, or otherwise assisted in a proceeding filed or about to be filed relating to a violation of the aforesaid fraud statutes, SEC rules, or federal law.

² The NASD changed its name to the Financial Industry Regulatory Authority, Inc. since the filing of this claim.

³ Comp. Br. at 4.

⁴ Resp. (Prudential) Br. at 4.

⁵ *Id.*

On December 27, 2002, Rowland filed an Equal Employment Opportunity (EEO) complaint while she was employed by PSI, alleging that PSI had treated her unfairly in the terms and conditions of her employment because of her sex.⁶ Based on a right to sue letter the Equal Employment Opportunity Commission (EEOC) issued on January 8, 2003, Rowland brought a claim in an employment arbitration action before the NASD in February of 2003.⁷ Rowland then brought a series of other claims in several forums alleging various causes of action.⁸

On February 10, 2005, Rowland filed a motion to remove the arbitration action to federal court to consolidate her claims, which the NASD denied.⁹ On February 22, 2005, Rowland filed a motion to dismiss the arbitration action without prejudice, to which Prudential objected.¹⁰ The NASD granted the motion to dismiss without prejudice on the express condition that Rowland agree to pay all of the Respondent's costs, expenses, and attorneys' fees and all amounts owed the NASD.¹¹ Rowland accepted the terms of the order, and on April 21, 2006, the NASD dismissed the arbitration without prejudice and awarded Prudential \$137,795.82 in fees and costs.¹²

Rowland filed her SOX complaint on July 24, 2006, with the Department of Labor's Occupational Safety and Health Administration (OSHA).¹³ She alleged that the arbitration award was a retaliatory act and that her employer, PSI, influenced NASD to illegally bill her for the Respondent's costs, expenses, and attorneys' fees to discourage her from bringing her EEO claims in federal court.¹⁴

Upon review, OSHA found that there was no reasonable cause to believe that the Respondent, NASD, violated the SOX because Rowland was never NASD's employee.¹⁵ On November 17, 2006, Rowland objected to OSHA's dismissal because Prudential was not

⁶ Comp. Br. at 8; Resp. (Prudential) Br. at 5.

⁷ Resp. (Prudential) Br. at 5.

⁸ Comp. Br. at 1-2; Resp. (Prudential) Br. at 6-7.

⁹ Resp. (Prudential) Br. at 7; Resp. (Prudential) Ex. H.

¹⁰ Resp. (Prudential) Br. at 8.

¹¹ Comp. Br. at 6; Resp. (Prudential) Br. at 8.

¹² Comp. Br. at 6; Resp. (Prudential) Br. at 9.

¹³ Secretary's Findings at 1, Resp. (Prudential) Ex. 3.

¹⁴ Resp. (Prudential) Br. at 9-10.

¹⁵ Secretary's Findings at 1, Resp. (Prudential) Ex. 3.

identified as a respondent.¹⁶ On November 29, 2006, Rowland filed her objections to OSHA's ruling and requested a hearing before a United States Department of Labor Administrative Law Judge (ALJ).¹⁷

Rowland's complaint was assigned to an ALJ for a hearing. The ALJ issued a briefing schedule order on December 15, 2006, and on February 23, 2007, granted the Respondents an extension of time to file a motion to dismiss or for summary decision. On March 9, 2007, the Respondents timely filed motions to dismiss or in the alternative motions for summary judgment, arguing that Rowland had not stated a claim under the SOX.

The ALJ issued an order giving Rowland until March 23, 2007, to respond to the Respondents' motion. Rowland filed a request for extension, requesting until April 23, 2007, to file her response, which the ALJ granted in an order amending the briefing schedule issued on March 21, 2007. On April 23, 2007, Rowland filed for another extension, requesting that she be given until May 23, 2007, to submit her response to the Respondents' motion. The ALJ granted this request in another order amending the briefing schedule dated April 27, 2007, and ordered Rowland to submit her response by that date. The ALJ noted that it was the second extension granted for the same reasons and that no further extensions would be granted absent exigent circumstances. The ALJ also noted on each of her orders granting extension that the date of filing "means the date 'received' at" the Office of Administrative Law Judges (OALJ).

On May 23, 2007, Rowland filed exhibits but did not include a service sheet stating that the exhibits had been served on the other parties.¹⁸

On May 31, 2007, the Respondents moved to dismiss Rowland's complaint based on her failure to respond to their motions of March 9, 2007. Also on May 31, 2007, Rowland filed her opposition to the Respondents' motion to dismiss. While admitting that her response was untimely, Rowland stated that it had been delayed by "persistent technology hacking that continually interfere[d] with research and word-processing."

On June 5, 2007, the ALJ issued an Order to Show Cause why Rowland's claim should not be dismissed, which required a response by June 22, 2007. In her faxed ten-page response dated July 2, 2007, Rowland stated that she had been out of town due to emergency circumstances from June 1, 2007, until midnight on June 26, 2007, and did not receive the order until the date after she returned, June 27, 2007, which was already past the deadline to respond.

¹⁶ Resp. (Prudential) Br. at 10; Resp. (Prudential) Ex. 4.

¹⁷ Resp. (Prudential) Ex. 5.

¹⁸ Rowland stated in her July 2, 2007 response to the Order to Show Cause that she did not provide a service sheet on May 22, 2007, showing delivery of the exhibits to the Respondents because she had already served the exhibits by certified mail with return receipts on January 30, 2007, (Exhibit 1) and February 12, 2007, (Exhibits 2 – 43).

On July 2, 2007, the ALJ issued a Recommended Decision and Order (R. D. & O.) Dismissing the Complaint pursuant to 29 C.F.R. § 18.6(d)(2).

The ALJ dismissed Rowland's complaint on two separate grounds. First, the ALJ found that Rowland failed to comply with her April 27, 2007 order requiring that Rowland file a response to the Respondents' motions to dismiss by May 23, 2007, because Rowland's response was not filed until June 1, 2007. The ALJ found that Rowland's reason for being over one week late in filing her response—that the computers she was using had been hacked—was unsupported by any evidence and noted that if such hacking had occurred, Rowland should have requested an extension prior to the filing deadline's expiration. The ALJ also found that Rowland's exhibits, which had been filed with the OALJ on May 22, 2007, did not have the required certificate of service attached to show that they were served on the other parties, and thus, did not render her response timely. The ALJ found that Rowland failed to serve her exhibits on the other parties within the filing deadline as required by 29 C.F.R. § 18.4.

The ALJ's second basis for dismissing Rowland's complaint was Rowland's failure to respond to the June 5, 2007 Order to Show Cause why her complaint should not be dismissed for failure to comply with orders and timely file her response to the Respondents' motions by the ordered deadline, June 22, 2007.

Rowland timely appealed the ALJ's R. D. & O. to the Administrative Review Board and on July 30, 2007, the Board issued an order setting a briefing schedule for the parties. Rowland submitted a brief on August 29, 2007; Prudential filed its brief on September 25, 2007; NASD filed its brief on September 26, 2007; Wachovia filed its brief on October 1, 2007.

On April 2, 2008, Rowland filed a request for ARB decision. On November 25, 2008, she filed a Second Demand for ARB Decision and on June 22, 2009, Rowland filed a Third Demand for ARB Decision.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the SOX.¹⁹ Pursuant to the SOX and its implementing regulations, the ARB reviews the ALJ's factual determinations under the substantial evidence standard.²⁰ We must uphold an ALJ's factual finding that is supported by substantial evidence even if there is also substantial evidence for the other party, and even if we "would justifiably have made a different

¹⁹ Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002).

²⁰ See 29 C.F.R. § 1980.110(b).

choice had the matter been before us de novo.”²¹ The ARB reviews an ALJ’s conclusions of law de novo.²²

The ARB reviews an ALJ’s determinations on procedural issues, evidentiary rulings, and sanctions under an abuse of discretion standard, i.e., whether, in ruling as she did, the ALJ abused the discretion vested in her to preside over the proceedings.²³

DISCUSSION

If a party fails to comply with an order of the ALJ, the ALJ may rule “that a decision of the proceeding be rendered against the non-complying party”²⁴ Additionally, the Federal Rules of Civil Procedure are applicable to proceedings before the ALJs in situations not provided for or controlled by 29 C.F.R. Part 18, or by any other statute, executive order, or regulation.²⁵ Rule 41(b) authorizes the courts to dismiss a case for “failure of the plaintiff to prosecute or to comply with these rules or any order of [the] court.”²⁶ Further, ALJs must manage their dockets in an effort to dispose of their cases in an orderly and expeditious manner.²⁷ Thus, an ALJ may recommend dismissal of a complaint based upon a party’s failure to comply with his or her

²¹ *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951) (citations omitted).

²² *Matthews v. Labarge, Inc.*, ARB No. 08-038, ALJ No. 2007-SOX-056, slip op. at 2 (ARB Nov. 26, 2008).

²³ *Harvey v. Home Depot U.S.A., Inc.*, ARB Nos. 04-114, 04-115, ALJ Nos. 2004-SOX-020, 2004-SOX-036, slip op. at 8 (ARB June 2, 2006); *Waechter v. J.W. Roach & Sons Logging and Hauling*, ARB No. 04-183, ALJ No. 2004-STA-043, slip op. 2 (ARB Dec. 29, 2005). *See also Dickson v. Butler Motor Transit/Coach USA*, ARB 02-098, ALJ 2001-STA-039, slip op. 4 (ARB July 25, 2003) (concluding that the ALJ acted “well within his discretion in determining that dismissal was the appropriate sanction for failure to comply with the ALJ’s orders pursuant to Section 18.6(d)(2)”) and *Link v. Wabash R. R. Co.*, 370 U.S. 626, 633 (1962) (stating that whether a District Court may dismiss a complaint for failure to prosecute depends on whether it was within the permissible range of the court’s discretion).

²⁴ 29 C.F.R. § 18.6(d)(2)(v) (2009).

²⁵ 29 C.F.R. § 18.1.

²⁶ *Howick v. Campbell-Ewald Co.*, ARB Nos. 03-156, 04-065, ALJ 2003-STA-006, 2004-STA-007, slip op. at 7 (ARB Nov. 30, 2004) (citing Fed. R. Civ. P. 41(b); *Link*, 370 U.S. at 629, n.3).

²⁷ *Id.* (citing *Puckett v. Tennessee Valley Auth.*, ARB No. 03-024, ALJ No. 2002-ERA-015, slip op. at 3 (ARB June 25, 2004); *Curley v. Grand Rapids Iron & Metal Co.*, ARB No. 00-013, ALJ No. 1999-STA-039, slip op. at 2 (ARB Feb. 9, 2000)).

order.²⁸ The ALJ has the discretion to dismiss a case in the event a party does not respond to an order and also in the event that a party responds in an untimely manner.²⁹

It is indisputable that Rowland failed to comply with two orders of the ALJ and that the statute gives the ALJ discretion to dismiss a complaint when such failures occur. However, as Rowland has put forth several justifications for her late filings and because dismissal of a complaint for failure to comply with the ALJ's orders "is a 'very severe penalty to be assessed in only the most extreme cases,'" we will separately address each of these justifications as to her late responses to the two orders.³⁰

In response to the ALJ's first reason for dismissing Rowland's complaint, Rowland initially argues that she provided "several extraordinary reasons" for her late filing and that good cause existed for her failure to timely file, citing Exhibit 52.³¹ However, she only provided one reason to the ALJ for untimely filing her response to the Respondents' motions to dismiss—computer hacking—which the ALJ found was not supported by any evidence. This finding is supported by substantial evidence as Rowland did not submit any evidence that her computers had been hacked.

Rowland's reasons for her late filing of her response to the Respondents' motions to dismiss, which she included in her untimely Response to the Order to Show Cause of July 2, 2007,³² were that there had been hacking of her computer that caused her to file late; that she is in a rigorous post-graduate academic program to prepare for a new career with a great deal of schoolwork to which she is not accustomed; that she has to prepare for and attend hearings in another pending complaint in federal court; that she had had to make filings regarding the arbitration award provision; that she does not have and cannot afford legal counsel; and that she

²⁸ 29 C.F.R. § 18.6(d)(2)(v); *see also* 29 C.F.R. § 1980.107(a) (providing for application of the procedural rules at 29 C.F.R. Part 18 in SOX proceedings unless otherwise provided by the Part 1980 SOX regulations).

²⁹ In *Staskelunas v. Ne. Utils. Co.*, ARB No. 98-035, ALJ No. 1998-ERA-007, slip op. 4 (ARB May 4, 1998), the Board found that the ALJ acted within his discretion when he recommended that the complaint be dismissed for failure to comply with the order to show cause when the complainant filed his response six days late, albeit noting that his response was also deficient in that it lacked any reasoning or argument.

³⁰ *Matthews*, slip op. at 3 (citing *Yarborough v. U.S. Dep't of the Army, Chemical Agent Munitions Disposal Sys. (CAMDS)*, ARB No. 05-117, ALJ No. 2004-SDW-003, slip op. at 6 (ARB Aug. 30, 2007) and *Howick*, slip op. at 7).

³¹ Except as otherwise indicated, Rowland's arguments are referable to her Petition for Review and Objections filed on July 6, 2007.

³² This response was filed ten days late and received at the OALJ on the same day that the R. D. & O. dismissing the complaint was issued. The ALJ did not abuse her discretion in refusing to consider the untimely response.

has moved such that most of her evidence and supporting documentation were in storage. Because these arguments were untimely, the ALJ did not consider them; thus, we will not consider them on appeal.³³

Second, Rowland argues that she sent the exhibits and service sheets that she filed with the OALJ on May 22, 2007, to the Respondents on January 30, 2007, (Exhibit 1) and February 12, 2007, (Exhibits 2-43) along with a table of contents to the ALJ. Prudential notes in its brief that because Rowland did not provide a service sheet with the exhibits, Rowland “did not provide Respondents with any indication that documents previously served in connection with earlier proceedings were again being submitted in support of her opposition to the pending motions.”³⁴ Thus, it argues that the ALJ was proper to refuse to give the exhibits any significance as a response to its motion to dismiss. The NASD notes in its brief that Rowland failed to comply with 29 C.F.R. § 18.4 when she failed to provide a service sheet and that she does not contest this in her brief. Because Rowland failed to comply with 29 C.F.R. § 18.4 and did not provide notice to the Respondents that she was filing her exhibits as a response to their motions to dismiss, the ALJ properly found that Rowland’s exhibits did not render her response timely.

Third, Rowland argues that a complainant’s response to a respondent’s dismissal motion is optional, citing 29 C.F.R. § 18.6(b). While it is true that 29 C.F.R. § 18.6(b) allows a party to file an answer in support of or in opposition to a motion, § 18.6(b) does not negate the discretion given the ALJ to set matters for argument and/or call for the submission of briefs or to rule that a decision be rendered against a party who does not comply with an order.³⁵ In her briefing order of April 27, 2007, the ALJ ordered that Rowland’s “response to Respondents’ motions must be filed by May 23, 2007, and Respondents’ replies must be filed by May 31, 2007.” Thus, Rowland was ordered by the ALJ to respond and she did not comply. It was within the ALJ’s discretion under § 18.6(d)(2)(v) to dismiss her complaint. Rowland’s argument that she believes that her response to the motion to dismiss was permissive is contrary to her actions—she requested two extensions of time in order to file the response and indicated to the ALJ that she needed additional time to file it, understandably leading the ALJ to believe that she intended to do so. Additionally, as stated by the ALJ, if Rowland needed more time to file, the correct

³³ See *Rollins v. Am. Airlines, Inc.*, ARB No. 04-140, ALJ No. 2004-AIR-009, slip op. at 4 n.11 (ARB Apr. 3, 2007 (corrected)); *Carter v. Champion Bus, Inc.*, ARB No. 05-076, ALJ No. 2005-SOX-023, slip op. at 7 (ARB Sept. 29, 2006).

³⁴ Resp. (Prudential) Br. at 17.

³⁵ Pursuant to 29 C.F.R. § 18.40(a), which establishes the procedures for consideration of a party’s motion for summary judgment, the ALJ has discretion to set matters for argument or call for the submission of briefs. Here, the ALJ exercised her discretion to issue an order calling for the submission of briefs. The ALJ also has discretion to rule that a decision be rendered against a party who does not comply with an order pursuant to § 18.6(d)(2)(v). Rowland did not comply with the ALJ’s order to submit a brief as ordered pursuant to 29 C.F.R. § 18.40(a).

response would have been to request another extension with compelling support to explain why it was necessary.

Next, Rowland argues that she had previously filed supportive exhibits and documents with the ALJ regarding the threshold issues and had no procedural or legal responsibility to respond to the Respondents' motions to dismiss. In this vein, she argued that her complaint, pleadings, prior responses, documents, and evidence had already defeated the Respondents' arguments and claims, and objected that the Respondents' motion to dismiss was "not related to the ALJ's determination of [the threshold issues]."³⁶ It is not the task of the ALJ to cull through a party's assorted filings to identify what the party might argue in response to a motion to dismiss or motion for summary decision.³⁷ The Respondents filed a motion to dismiss and in the alternative, for summary decision, arguing that Rowland had failed to state a claim under the SOX. Thus, to defeat the Respondents' motions, Rowland had to "set forth specific facts showing that there [wa]s a genuine issue of fact for the hearing."³⁸ The ALJ was not required to find Rowland's argument in a set of exhibits or in previously filed documents, pleadings, and in the complaint. And again, Rowland was required to respond to the Respondent's motion because the ALJ ordered her to do so.

Finally, Rowland asserts that the ALJ's dismissal was far too severe for her failure to respond by the deadline, noting that her response was filed "eight days past the ALJ deadline for filing" at no prejudice to the Respondents.³⁹ Rowland asserts that conversely, dismissal would cause injustice and great prejudice to her. We conclude that the ALJ acted within her discretion in dismissing Rowland's claim because she filed her response nine days late and that dismissal was not too severe. The ALJ gave Rowland two extensions in order to file a response and indicted to her that she would not receive another extension unless there were exigent circumstances. Additionally, the ALJ highlighted that her response was due to the OALJ by a certain date to be timely filed. Rowland had more than enough notice that her response was due by May 23, 2007, and should have requested an extension if she did not believe that she would be able to respond by that date. The ALJ's decision was proper considering all of the factors

³⁶ Rowland Petition for Review at 3 (July 6, 2007).

³⁷ See *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986) (stating that a properly supported motion for summary decision "requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'"); *Claar v. Burlington N. R.R. Co.*, 29 F.3d 499, 504 (9th Cir. 1994) (stating that "[i]t is not the [] court's job to sift through the record to find admissible evidence in support of a non-moving party's case."); *Accord Cummings v. USA Trucking, Inc.*, ARB No. 04-043, ALJ No. 2003-STA-047, slip op. at 2 n.2 (ARB Apr. 26, 2005)(affording a pro se complainant undue assistance in developing a record would compromise the role of the adjudicator in the adversary system).

³⁸ 29 C.F.R. § 18.41(c).

³⁹ The Complainant's response was filed nine days late.

mentioned by Rowland. Nor does the lack of prejudice to the Respondents argue for a different result. A lack of prejudice to the Respondents does not itself constitute sufficient reason to allow a party to disregard an ALJ order.

In response to the ALJ's second reason for dismissing Rowland's complaint, Rowland argues that she responded to the Order to Show Cause on July 2, 2007, via facsimile and provided the ALJ with extraordinary reasons for why she was unable to respond by the June 22, 2007 deadline. She states that she did not receive the ALJ's Order to Show Cause until June 27, 2007—five days after the ALJ's deadline to respond had elapsed. Complainant's Exhibit (CX) 53 is Rowland's response to the Order to Show Cause and explained that she was out of town from June 1, 2007, until midnight of June 26, 2007. She indicated that she checked the DOL OALJ website while she was gone to check for orders in her case but that there were none, although she did see other orders in current cases posted during that time period, including ones issued by the ALJ presiding over her case.⁴⁰ Prudential argues in its brief that Rowland offered no explanation as to why she did not contact the ALJ on June 27, 2007, when she first learned of the Order to Show Cause to explain the situation or to request additional time. Prudential notes that instead, she waited five days to submit her response, when she knew that it was already untimely.

While it appears that Rowland had good reason for not responding to the Order to Show Cause by the June 22, 2007 deadline, she has not provided any reason why she did not immediately notify the ALJ of her late receipt of the order on June 27, 2007, when she received it. Had she done so, rather than filing a response five days later, her late response to the Order to Show Cause would have been seen by the ALJ prior to her dismissal of Rowland's case and could likely have been excused. As it is, Rowland did wait five days and has not provided any reasons to justify the delay. Additionally, her untimely filing of her response to the Respondents' motions to dismiss provides separate and distinct grounds for dismissal even if it could be concluded that Rowland should be excused for her untimely response to the ALJ's show cause order.

In her April 8, 2008 Request for ARB Decision and her November 15, 2008 Second Demand for ARB Decision, Rowland, in addition to reiterating her belief that her response was permissive or optional, as discussed above, also cited to 29 C.F.R. § 18.4(c) for the proposition that she was denied five additional days after May 23, 2007, to which she was entitled because she mailed her response. She also stated that her written response "may have been timely" because "Memorial Day weekend was also a federal holiday." The regulation cited does not give Rowland five additional days in which to respond, however. The regulation at 29 C.F.R. § 18.4(c) states that "when documents are filed by mail [with the OALJ], five (5) days shall be added to the prescribed period." A given time period, i.e. "thirty days," "ten days," or "90 days"

⁴⁰ The OALJ website states: "Decisions and interim orders of general interest are published on the OALJ web site at www.oalj.dol.gov and may be distributed to publishers. *See* Privacy Act of 1974; Publication of Routine Uses, 67 Fed. Reg. 16,815 (2002) (DOL/OALJ-2)." It appears from a perusal of the site that recommended decision and orders and orders of remand make up the bulk of what is published and that interim orders are published infrequently, making it unlikely that Complainant's Order to Show Cause would have been posted.

constitutes a “prescribed period.” Here, the deadline was not a “prescribed period,” but a date. Rowland specifically requested May 23, 2007, as her deadline for filing a response to the Respondents’ motions and the ALJ specifically established that May 23, 2007, would be the filing or “received by” date for that response. Further, the ALJ specifically referenced and made abundantly clear in her order that filing means the date of receipt at the OALJ. In any event, even if we took into account five additional days, and Memorial Day on May 28, 2007, the filing deadline would be May 29, 2007, and Rowland would still have filed an untimely response to the Respondents’ motions because she filed on June 1, 2007.⁴¹

CONCLUSION

The ALJ acted within her discretion in dismissing Rowland’s complaint because, based on the record before her, Rowland filed responses to her orders in an untimely manner without adequate justification. Accordingly, we accept her recommendation that this complaint be **DISMISSED**.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁴¹ While Rowland’s certificate of service denoted that she served the opposing parties by mail on May 31, 2007, her response was not received at the OALJ until June 1, 2007, making this the filing date. Both May 31, 2007, and June 1, 2007, are untimely filing dates however, as the deadline *was* May 23, 2007, and because even under Rowland’s faulty argument concerning an additional five days, her response would have been untimely as having been due on May 29, 2007.