



In the Matter of:

JAY CARCIERO,

ARB CASE NO. 09-090

COMPLAINANT,

ALJ CASE NO. 2008-SOX-013

v.

DATE: August 14, 2009

**SODEXHO ALLIANCE, S.A.,
SODEXHO, INC., and SODEXHO
OPERATIONS, LLC,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

E. James Perullo, *Bay State Legal Services, LLC*, Boston, Massachusetts

For the Respondent:

Kurt A. Powell, Emily Burkhardt Vicente, *Hunton & Williams LLP*, Atlanta, Georgia

FINAL DECISION AND ORDER DISMISSING APPEAL

BACKGROUND

The Complainant, Jay Carciero, filed a discrimination complaint under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VII of the Sarbanes-Oxley Act (SOX).¹ Carciero's complaint was assigned to a United States

¹ 18 U.S.C.A. § 1514A (West Supp. 2006).

Department of Labor Administrative Law Judge (ALJ) for a hearing. On March 17, 2009, the ALJ issued a Decision and Order of Dismissal.² As grounds for this D. & O., the ALJ explained that after giving Carciro multiple opportunities, he had failed to comply with two orders to provide written discovery and an order to complete an independent medical examination. Furthermore, Carciro failed to respond to the ALJ's Order to Show Cause. Accordingly, she granted the Respondent's Motion for Sanctions seeking dismissal for failure to comply with discovery.³

Carciro appealed the ALJ's D. & O. to the Administrative Review Board,⁴ and the Board issued an order setting a briefing schedule for the parties. Under the terms of the briefing order Carciro's opening brief was due on June 8, 2009. The Briefing Order provided, "If the Complainant fails to file the initial brief on time, the Board may dismiss the complainant's appeal." The Complainant failed to file an initial brief in compliance with the Board's Order.

On June 29, 2008, we received the Respondents' Motion to Dismiss Appeal of Complainant Jay Carciro. In this Motion, the Respondents argue that we should dismiss Carciro's petition for review because he has failed to file an initial brief as ordered. Accordingly, we ordered Carciro to show cause no later than July 23, 2009, why we should not grant the Respondents' motion to dismiss his petition for review. The Board cautioned Carciro that if it did not receive his response to this order on or before July 23, 2009, the Board could dismiss the appeal without further notice to the parties. Carciro has filed no response to the Show Cause Order.

DISCUSSION

Courts possess the "inherent power" to dismiss a case for lack of prosecution.⁵ This power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."⁶ In *Mastrianna v. Northeast Utils. Corp.*,⁷ the Board dismissed a

² *Carciro v. Sodexho Alliance, S.A.*, ALJ No. 2008-SOX-013 (D. & O.).

³ D. & O. at 3.

⁴ The Administrative Review Board has jurisdiction to decide Carciro's appeal. See Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1980.110.

⁵ *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962).

⁶ *Id.* at 630-631.

⁷ ARB No. 99-012, ALJ No. 1998-ERA-033 (Sept. 13, 2000).

complaint in a case in which the complainant failed to adequately explain his failure to comply with the Board's briefing schedule. The Board explained that it has the inherent power to dismiss a case for want of prosecution in an effort to control its docket and to promote the efficient disposition of its cases.⁸

Carciero has not responded to the Board's Order to Show Cause and thus he has not explained his failure to timely file an opening brief, nor has he demonstrated good cause why the Board should not dismiss his appeal. Accordingly, we **DISMISS** Carciero's appeal because he has failed to diligently prosecute it.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁸ *Id.*, slip op. at 2. *Accord Pohl v. United Airlines*, ARB No. 06-122, ALJ No. 2003-AIR-016, slip op. at 2 (ARB Mar. 18, 2008); *Muggleston v. E G & G Def. Materials*, ARB No. 04-060, ALJ No. 2002-SDW-004, slip op. at 2 (ARB June 30, 2004); *Blodgett v. Tenn, Dep't of Env't & Conservation*, ARB No. 03-043, ALJ No. 2003-CAA-007, slip op. at 2 (ARB Mar. 19, 2004).