



In the Matter of:

LAURA BUTLER,

COMPLAINANT,

v.

ANADARKO PETROLEUM CORP.,

RESPONDENT.

ARB CASE NO. 12-041

ALJ CASE NO. 2009-SOX-001

DATE: June 15, 2012

Appearances:

For the Complainant:

Laura J. Butler, *pro se*, Houston, Texas

For the Respondent:

**Holly H. Williamson, Esq.; and Jamila S. Mensah, Esq., *Hunton & Williams LLP*,
Houston, Texas**

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Luis A. Corchado, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

This case arises under the employee protection provision of the Sarbanes-Oxley Act of 2002 (SOX) and its implementing regulations. 18 U.S.C.A. § 1514A (West Supp. 2008); 29 C.F.R. Part 1980 (2011). Laura Butler filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Anadarko Petroleum (Anadarko) violated the SOX by terminating her employment in retaliation for engaging in protected activity. On December 30, 2008, a Labor Department Administrative Law Judge (ALJ) recommended dismissal of the complaint as untimely filed. On February 17, 2011,

we remanded the case to the ALJ, finding that Butler filed a timely complaint with federal district court sufficient to toll Section 806's filing deadlines.

On remand, the ALJ issued a pre-hearing order requesting discovery be completed by October 11, 2011. Anadarko served notice on Butler requesting production of documents and a deposition on September 30, 2011. Butler failed to produce the documents or show up for the deposition. After the deposition date, the notice was returned as undeliverable. On October 12, 2011, Anadarko filed a motion to dismiss for failure to participate in discovery. The ALJ held a conference call on October 20, 2011, to discuss the matter. The ALJ determined that the notice was sent to the right address, but Butler did not accept the document. The parties and the ALJ rescheduled the deposition for November 30, 2011. Butler agreed to attend the deposition and produce the requested documents. On November 23, 2011, however, Butler objected to the videotaped deposition and indicated that she would not appear for a videotaped deposition for fear that it would reveal her identity and thus result in harm by persons seen outside her house. The ALJ attempted to contact Butler for another conference call before the deposition. Butler returned the ALJ's message and indicated that the deposition was too close to the holidays. The ALJ informed her that she had to attend the deposition. Butler did not attend the deposition and did not fully comply with the request for documents. Anadarko resubmitted a motion to dismiss, and the ALJ issued a show cause order. Butler filed an amended motion for summary judgment and a response to the show cause order. The ALJ granted Anadarko's motion to dismiss for her repeated failure to comply with the ALJ's express orders to participate in discovery and appear for her deposition. This appeal follows.

DISCUSSION

The Secretary of Labor has delegated her jurisdiction to decide this matter to the Administrative Review Board (ARB or Board). See Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010); 29 C.F.R. § 1978.109(c) (2011). When reviewing SOX cases, the ARB is bound by the ALJ's factual findings if those findings are supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. U.S. Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995). In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision" 5 U.S.C.A. § 557(b) (West 1996). Therefore, the Board reviews the ALJ's legal conclusions de novo. See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991). We review an ALJ's imposition of discovery sanctions on an abuse of discretion standard.¹

As the trier of fact and law, an ALJ must be allowed a reasonable degree of latitude and

¹ *Canterbury v. Administrator, Wage & Hour Div., U.S. Dep't of Labor*, ARB No. 03-135, ALJ No. 2002-SCA-011, slip op. at 3 (ARB Dec. 29, 2004); *Dickson v. Butler Motor Transit/Coach USA*, ARB No. 02-098, ALJ No. 2001-STA-039, slip op. at 4 (ARB July 25, 2003); *Supervan, Inc.*, ARB No. 00-008, ALJ No. 1994-SCA-014, slip op. at 4-5 (ARB Sept. 30, 2002).

discretion in directing the orderly conduct of an administrative proceeding. And this includes the ability to impose sanctions against parties who refuse to comply with the ALJ's orders and established hearing procedures. The Office of Administrative Law Judges' Rules of Practice provide that "the administrative law judge shall have all powers necessary to the conduct of fair and impartial hearings." 29 C.F.R. § 18.29(a)(2011). The regulations authorize an ALJ to impose sanctions for failure to comply with discovery requests and orders, including establishment as fact those matters not answered in discovery. 29 C.F.R. § 18.6(d)(2)(ii). This regulation also authorizes an ALJ to enter a decision against the non-complying party.²

We recognize that Butler is appearing pro se in this proceeding and that a certain degree of latitude should be afforded such unrepresented parties. *Peck v. Safe Air Int'l, Inc.*, ARB No. 02-028, ALJ No. 2001-AIR-003, slip op. at 19 (ARB Jan. 30, 2004). But ALJs and this Board must be able to impose appropriate sanctions even against pro se parties when they fail to comply with the orders and procedures in the administrative process. We have previously affirmed the use of sanctions and entry of judgment against a pro se party who failed to comply with an ALJ's discovery orders. *Supervan, Inc.* ARB No. 00-008, slip op. at 5, 8 (ALJ's entry of default judgments pursuant to 29 C.F.R. § 18.6(d)(2)(v) affirmed by Board against pro se party who failed to comply with discovery requests and orders).

Before us, Butler alleges that she filed an amended motion for summary judgment and a response to the show cause order. Butler claims the ALJ failed to rule on either motion before issuing his final order dismissing the case. Butler seems to argue that filing these motions relieved her of the obligation to comply with discovery requests or to justify her repeated refusal to participate in discovery, more specifically, appear for her own deposition. We find that neither the amended motion for summary judgment, nor her response to the show cause order, nor her pleadings before the Board justify her contumacious refusal to obey the ALJ's discovery orders. In October 2011, Butler was aware that the deposition was to be videotaped as that fact had been indicated in the motion to dismiss for failing to appear at the first deposition. The ALJ noted that Butler did object to a videotaped deposition during the conference call. Butler claims she has been harassed by mysterious vehicles outside of her home and is afraid to participate in a videotaped deposition. Butler has failed to show a connection between Anadarko and her alleged harassment or how participating in the deposition would result in injury. The ALJ was more than generous in allowing Butler additional time and a second chance to comply with Anadarko's discovery requests. The ALJ expressly considered the seriousness of a dismissal

² 29 C.F.R. §§ 18.6(d)(2)(v), 18.29(a)(8); Fed. R. Civ. P. 37(b)(2)(A)(vi); *Sisfontes v. Int'l Business Software Solutions, Inc.*, ARB Nos. 07-107, -114; ALJ No. 2007-LCA-014 (ARB Aug. 31, 2009). In the federal courts, judges recognize that "[d]ismissal of an action for failure to cooperate in discovery is a sanction of last resort that may be imposed only if the court concludes that a party's failure to cooperate in discovery is due to willfulness, bad faith, or fault." *Reg'l Refuse Sys. v. Inland Reclamation Co.*, 842 F.2d 150, 153-54 (6th Cir. 1988), *superseded on other grounds*. "[T]here must be at least some finding of contumacious conduct, dilatory tactics, the failure of less drastic sanctions, bad faith, willfulness, or fault before sanctions may be imposed by a party who fails to comply with a discovery order." *Litetrionics Int'l, Inc. v. Tech. Consumer Prods., Inc.*, No. 03 C 5733, 2006 WL 2850514, at *2 (N.D. Ill. Sept. 28, 2006).

sanction and concluded that a dismissal was justified by Butler’s “flagrant, repeated, and prejudicial” conduct. We conclude that the ALJ did not abuse his discretion in sanctioning Butler and dismissing her complaint.

CONCLUSION

For the foregoing reasons, we **DENY** the Petition for Review and **AFFIRM** the ALJ’s D. & O. of January 31, 2012.

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge