



RANDALL PITTMAN,

ARB CASE NO. 12-065

COMPLAINANT,

ALJ CASE NO. 2012-SOX-006

v.

DATE: August 16, 2012

DELL, INC.; CEDAR-SINAI MEDICAL CENTER; RYDEK PROFESSIONAL STAFFING; AETNA, INC.; SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP; CAPTIAL GROUP COMPANIES, INC.; BLUMENTHAL NORDREHAUG & BHOWMIK; and DONGELL LAWRENCE FINNEY, LLP;

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Complainant:

Randall Pittman, *pro se*, Sherman Oaks, California

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge* and E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*;

ORDER DISMISSING COMPLAINANT'S APPEAL

On June 15, 2012, the Administrative Review Board issued an Order Granting Extension of Time and Amending Briefing Schedule in this case arising under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX).¹ Under the terms of this Order, Randall Pittman's opening brief was due on or before July 13,

¹ 18 U.S.C.A. § 1514A (Thomson/West Supp. 2011).

2012. This Order cautioned, “**The Board will grant no further extensions of time to the complainant absent a demonstration of extraordinary circumstances precluding the timely filing of the brief. In all other respects, the Notice of Appeal and Order Establishing Briefing issued April 25, 2012, remains in effect.**” In the April 25th Notice, the Board stated, “If the petitioner fails to file the initial brief on time or fails to provide the required information and documentation within the specified time period, the Board may dismiss the petition for review or impose such sanctions as the Board deems warranted.” Pittman did not file his brief as ordered.

On July 13, 2012, Pittman filed a Motion to Stay Appeal. He filed this Motion by e-mail in contravention of the Board’s procedures forbidding the filing of motions by e-mail. The Board had specifically informed Pittman that it would not accept documents other than the Petition for Review by e-mail in the Board’s e-mail to Pittman dated April 16, 2012, acknowledging his Petition for Review. Accordingly, Pittman’s motion was not accepted for filing.²

Nonetheless, given that Pittman is pro se, that he may have been under the misperception that his improperly filed motion stayed the briefing period, and that dismissal of an appeal is a most severe sanction, by order dated July 24, 2012, we gave him one more opportunity to file his opening brief on or before August 7, 2012. In providing the additional time, we cautioned Pittman that if the Board did not receive his brief on or before August 7th, his appeal would be subject to dismissal without further notice. Pittman did not file his brief as ordered.

DISCUSSION

The Board’s authority to effectively manage its docket, including the authority to require compliance with Board briefing orders, is necessary to “achieve orderly and expeditious disposition of cases.”³ This Board has authority to issue sanctions, including dismissal, for a party’s failure to comply with the Board’s orders and briefing requirements.⁴ Pittman failed to file a brief in compliance with the Board’s briefing

² Had the Board considered Pittman’s Motion to Stay, it would have denied it, finding no good cause for such stay.

³ *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

⁴ *Durham v. Tennessee Valley Auth.*, ARB No. 11-044, ALJ No. 2010 CAA-004, slip op. at 2 (ARB Sept. 27, 2011); *Bohn v. JetBlue Airways Corp.*, ARB No. 10-029, ALJ No. 2009-AIR-023, slip op. at 3 (ARB Oct. 28, 2010); *Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-007 (ARB Mar. 19, 2003). See also *Ellison v. Washington Demilitarization Co.*, ARB No. 08-119, ALJ No. 2005-CAA-009 (ARB Mar. 16, 2009), *aff’d sub nom. Ellison v. U.S. Dep’t of Labor*, 09-13054 (11th Cir. June 17, 2010); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-102, ALJ No. 2004-AIR-006 (ARB Dec. 30, 2004, Reissued Jan. 5, 2005), *aff’d sub nom. Powers v. U.S. Dep’t of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-035, ALJ No. 2003-AIR-012 (ARB

order, even after the Board gave him an enlargement of time in which to do so. Accordingly, we **DISMISS** his appeal. As provided in 29 C.F.R. § 1980, the Administrative Law Judge's April 3, 2012 Order Dismissing Complaint becomes the Secretary of Labor's final decision in this case.⁵

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

Sept. 28, 2004), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *cf.* Fed. R. App. P. 31(c) (allowing dismissal as sanction for failure to file a conforming brief); Fed R. App. P. 41(b) (permitting courts to dismiss a complaint for failure to comply with court orders).

⁵ We note that on August 9, 2012, Pittman notified the Board that he intended to file a complaint in federal district court pursuant to 29 C.F.R. § 1980.114 (2011). To our knowledge, he has not yet done so. We also note that the Administrative Law Judge who issued the decision on appeal here made the following request,

In light of the duplicative nature of the complaints filed by Mr. Pittman, the undersigned urges the ARB to impose pre-filing restrictions on this complainant as it had on [the] complainant in *Saporito v. Florida Power and Light Co.*, ARB Nos. 09-072, 128, 129, 141, 2009 ERA 1, 6, 9, 12 (ARB Apr. 29, 2011)(finding that the “right of access to the courts is neither absolute nor unconditional and conditions and restriction [s] on each person’s access are necessary to preserve the judicial resources for all other persons”)

Order Dismissing Complaint at 7. We suggest that Pittman keep this request in mind if he files additional complaints of a “duplicative” nature with the Department of Labor.