



**In the Matter of:**

**KEITH PRIOLEAU,**

**ARB CASE NO. 13-002**

**COMPLAINANT,**

**ALJ CASE NO. 2010-SOX-003**

**v.**

**DATE: April 30, 2013**

**SIKORSKY AIRCRAFT CORP.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Keith Prioleau, *pro se*, Stratford, Connecticut**

***For the Respondent:***

**Jeffrey A. Fritz, Esq., *Day Pitney LLP*, Hartford, Connecticut**

**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 provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002. 18 U.S.C.A § 1514A (Thomson Reuters 2012) (the Act or SOX), and its implementing regulations found at 29 C.F.R. Part 1980 (2012). Complainant Keith Prioleau filed a complaint alleging that Sikorsky Aircraft Corporation (Sikorsky) retaliated against him in violation of SOX's whistleblower protection provisions. Prioleau appeals from the Decision and Order Dismissing Complaint (D. & O.) issued by a Department of Labor Administrative Law Judge (ALJ) on September 18, 2012. The ALJ dismissed Prioleau's complaint because of his repeated failure to respond to ALJ orders, despite the ALJ's warnings of sanctions and an order to show cause. We affirm.

## PROCEDURAL HISTORY

Sikorsky terminated Prioleau's employment as a systems engineer on June 23, 2009. Prioleau filed his whistleblower complaint on September 14, 2009, alleging that he was fired for reporting shareholder fraud and the lack of sufficient internal controls as required by SOX. Following an investigation and OSHA's dismissal of his complaint, Prioleau objected to OSHA's findings on October 24, 2009, and requested a hearing before an ALJ.

Sikorsky moved for summary decision, and the ALJ granted the motion. Prioleau appealed to the ARB and on November 9, 2011, we remanded.

Upon return of the administrative record to the ALJ in June 2012, the parties began actively litigating the case. On June 26, 2012, the ALJ issued a notice of assignment and hearing and prehearing order. On June 29, 2012, Prioleau submitted interrogatories to the Respondent. On July 3, 2012, Prioleau submitted a motion for preliminary reinstatement to the ALJ. A week later, on July 10, 2012, Prioleau submitted "Complainant's Supplemental Motion for Preliminary Reinstatement." The ALJ denied Prioleau's motion for preliminary reinstatement on August 2, 2012.

During August 2012, Prioleau continued to actively litigate his claim. On August 5, 2012, Prioleau moved to compel the Respondent to directly answer interrogatories. Then, on August 9, 2012, Prioleau (1) petitioned the ARB for interlocutory review of the ALJ's denial of preliminary reinstatement, (2) notified the ALJ that he was requesting interlocutory review of the denial of his motion for reinstatement, and (3) informed the ALJ that he believed this notice stayed the proceedings. On that same day, the ALJ denied Prioleau's request for certification for interlocutory review, denied Prioleau's request for a stay of the ALJ proceeding, and set a status conference for August 14, 2012, after unsuccessfully trying several times to reach Prioleau by phone to arrange a date and time for the status conference. (ALJ Orders August 9, 2012, and August 14, 2012).

After the ALJ denied Prioleau's request for a stay, Prioleau no longer responded to the ALJ's efforts to adjudicate Prioleau's claim. On August 14, 2012, the ALJ initiated a telephone hearing, but Prioleau did not answer his phone. Consequently, the ALJ terminated the conference and issued an order rescheduling a status conference for August 23, 2012. On that day, Prioleau also failed to participate in the status conference, causing the ALJ to issue an order to show cause why Prioleau's complaint should not be dismissed. The ALJ gave Prioleau until September 5 to respond. Prioleau never responded to this order. Meanwhile, on August 30, 2012, this Board denied Prioleau's request for interlocutory review.

On September 18, 2012, after Prioleau failed to respond to the order to show cause, the ALJ issued his decision and order dismissing Prioleau's complaint. The ALJ dismissed Prioleau's claim because of his failure to comply with ALJ orders.

On September 26, 2012, Prioleau petitioned for review to the ARB. Prioleau argued in his brief that his mother passed away on May 2, 2012, making it "extremely unpleasant" for him

when the ALJ wanted to begin litigating his case on or about June 2012. Complainant's Brief at 11.

### **JURISDICTION AND STANDARD OF REVIEW**

The Secretary of Labor has delegated her authority to issue final agency decisions under the Sarbanes-Oxley Act (SOX) to the Administrative Review Board (ARB or Board). *See* Secretary's Order 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012). *See also* 29 C.F.R. § 1980.110. The ARB reviews an ALJ's determinations on procedural issues and sanctions under an abuse of discretion standard. *Bechtel v. Competitive Techs., Inc.*, ARB No. 09-052, ALJ No. 2005-SOX-033, slip op. at 19 (ARB Sept. 30, 2011) (citations omitted).

### **DISCUSSION**

As noted by the ALJ in this case, ALJs have authority to dismiss a case in proper circumstances for a party's failure to obey an order. 29 C.F.R. § 18.6(d)(2)(v)(2012). ALJs also have the inherent discretion to dismiss a complaint for failing to prosecute. *Lewman v. Ken Brick Masonry Supply*, ARB No. 07-01, ALJ No. 2006-STA-016, slip op. at 4 (ARB Oct. 31, 2007) ("Dismissal as a sanction for failure to prosecute is a matter within the ALJ's sound discretion.").

The ALJ exercised reasonable discretion in dismissing Prioleau's case. The ALJ denied Prioleau's request for a stay on August 9, 2012. Thus, Prioleau was on notice that the litigation before the ALJ would proceed. Moreover, Prioleau failed to appear for two telephone status conferences after proper notice. The ALJ sent notice for the first hearing by both mail and voicemail. For the rescheduled hearing, the ALJ sent notice by regular mail, overnight mail, and by e-mail. D. & O. at 3. On April 23, 2012, the ALJ issued an order to show cause why Prioleau's complaint should not be dismissed, and gave Prioleau until September 5 to respond. Prioleau did not respond to this order, even after the ARB denied Prioleau's request for interlocutory review on August 30, 2012.

As a justification for his inaction, Prioleau asserts on appeal that his mother passed on May 2, 2012, implying that this caused the litigation to become a hardship. We certainly appreciate that the death of an immediate family member is serious and tragic. But it is clear from the record, as described above, that Prioleau aggressively litigated his case from June through August 2012, after his mother's passing on at least seven occasions after May 2, 2012. Therefore, his reason for not taking part in either of the teleconferences, and for not responding in any form to the order to show cause in August and September 2012, is not sufficient.

**CONCLUSION**

For the reasons set forth above, the ALJ's Order Dismissing Complaint is **AFFIRMED**.

**SO ORDERED.**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**