

U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210



In the Matter of:

PETER LINDNER,

ARB CASE NO. 2018-0066

COMPLAINANT,

ALJ CASE NO. 2018-SOX-00002

v.

DATE: JAN 28 2020

CITIBANK, N.A.,

RESPONDENT.

Appearances:

For the Complainant:

Peter Lindner; *pro se*; New York, New York

For the Respondent:

Robert M. Tucker, Esq.; *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*; New York, New York

Before: Thomas H. Burrell, *Acting Chief Administrative Appeals Judge*;
James A. Haynes and Heather C. Leslie, *Administrative Appeals Judges*

FINAL DECISION AND ORDER

PER CURIAM. This case arises under 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. § 1514A (2010) (SOX), as amended, and its implementing regulations at 29 C.F.R. Part 1980 (2018). Complainant Peter Lindner filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that a subsidiary of Respondent Citibank, N.A. violated the SOX by refusing to hire him for employment.

After an investigation, OSHA determined that Citibank had not violated the SOX. Lindner objected and requested a hearing before an Administrative Law Judge (ALJ). On August 8, 2018, the ALJ issued an "Order Dismissing Complaint."

(Order) dismissing Lindner's SOX claim.¹ The ALJ noted that although Lindner was a pro se litigant, his repeated failures to engage in discovery and comply with procedural orders warranted dismissal of his complaint.² Lindner appealed the ALJ's Order to the Board.

JURISDICTION AND STANDARD OF REVIEW

The ARB has jurisdiction to review the ALJ's SOX decision under Secretary's Order No. 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13,072 (Apr. 3, 2019); 29 C.F.R. Part 1980.110. We review an ALJ's imposition of discovery sanctions on an abuse of discretion standard.³

DISCUSSION

Failure to comply with a judge's order may result in sanctions, including dismissal of the proceeding in whole or in part.⁴ An ALJ's power to dismiss a case for lack of prosecution arises from the control necessarily vested in courts to manage their affairs so as to achieve the orderly and expeditious disposition of

¹ Lindner filed a separate complaint alleging that Citibank violated the Consumer Financial Protection Act of 2010 (CFPA) when it eliminated a position he held pursuant to a contract. The ALJ, finding that the complaint in that case involved questions of law and fact related to the case before us, consolidated the two cases. See October 27, 2017 Order Cancelling Hearing, Order Compelling Discovery, and Order Consolidating Cases [2018-SOX-00002 and 2017-CFP-00007]. The ALJ bifurcated the cases to accommodate an interlocutory appeal of an issue in the CFPA case. The interlocutory appeal is pending before the Board and will be addressed in a separate opinion.

² See, e.g., December 22, 2017 Omnibus Order and Order Rescheduling Hearing (ordering Lindner to comply with discovery requests, deadlines and other orders); April 5, 2018 Order Denying Complainant's Continuance Request (denying Lindner's "Motion in Short Order for Second or Possibly First Request for Delay Until Citi Turns Over Plaintiff Discovery Documents"); April 11, 2018 Order Reiterating Discovery Deadlines Order Providing Precise Hearing Dates (directing Lindner to "file responses to Respondent's Interrogatories and Document Requests"); May 11, 2018 Order Granting in Part and Denying in Part Complainant's Motion to Delay Dates Due to Running for Congress (ordering Lindner "to submit responses to Respondent's Interrogatories" and that "[f]ailure to comply will result in this matter being dismissed."); June 22, 2018 Order Denying Complainant's Continuance Request (describing Lindner's multiple extension requests and stating that "[f]ailure to comply with this or Order or lack of compliance with my May 11, 2018 Order will result in a dismissal of this claim.").

³ *Butler v. Anadarko Petroleum Corp.*, ARB No. 12-041, ALJ No. 2009-SOX-001, slip op. at 2 (ARB June 15, 2012).

⁴ 29 C.F.R. § 18.57(b).

cases.⁵ ALJs must exercise their discretion regarding this power discreetly, fashioning appropriate sanctions for conduct that abuses the judicial process.⁶

The record supports the ALJ's decision to dismiss Lindner's SOX case. The ALJ repeatedly warned Lindner of the consequences of his failure to comply with the ALJ's orders, including dismissal of his complaint. On appeal Lindner has failed to present any argument that compels us to reverse the ALJ's ruling. Accordingly, we hereby **ADOPT** the ALJ's Order, attach it to this document, and **DENY** Lindner's complaint.

SO ORDERED.

⁵ *James v. Suburban Disposal Inc.*, ARB No. 10-037, ALJ No. 2009-STA-071, slip op. at 5 (ARB Mar. 12, 2010) (citing *Dorman v. Chinook Charter Servs.*, ARB No. 08-011, ALJ No. 2007-STA-028, slip op. at 2 (ARB Feb. 19, 2009) (citing *Link v. Wabash R. R. Co.*, 370 U.S. 626, 629-30 (1962))).

⁶ *Id.* (citing *Dorman*, ARB No. 08-011, slip op. at 2).

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Issue Date: 08 August 2018

CASE NO.: 2018-SOX-00002

OSHA NO.: 2-4174-17-042

In the Matter of:

PETER LINDNER
Complainant,

v.

CITIBANK, N.A.,
Respondent.

ORDER DISMISSING COMPLAINT

This proceeding arises under, and has been docketed for a hearing before the United States Department of Labor, Office of Administrative Law Judges ("OALJ"), pursuant to Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 ("SOX"), as amended, 18 U.S.C. § 1514A, and the implementing regulations at 29 C.F.R. Part 1980. Unless otherwise noted in the SOX Act or its implementing regulations, hearing procedures are governed by 29 C.F.R. Part 18.

PROCEDURAL HISTORY¹

On October 5, 2017, the U.S. Department of Labor, Occupational and Safety Administration ("OSHA"), informed Complainant that his complaint against Respondent was dismissed. OSHA found, in pertinent part, that Complainant filed a whistleblower complaint against CitiMortgage² with the Kansas City, Missouri, office, on August 31, 2016, a case that was eventually dismissed.³ They

¹ My prior orders related to this case, including orders issued while this case was consolidated with 2017-CFP-00007, which contain in-depth descriptions of the procedural history of this case, are herein incorporated by reference.

² CitiMortgage and Respondent are wholly owned subsidiaries of Citigroup, which is not a party to these actions.

³ The Complainant, on February 10, 2017, requested a hearing based upon the Secretary's findings of January 10, 2017, that Complainant's complaints of discrimination against CitiMortgage in violation of the employee protective provisions of the Consumer Finance Protection Act of 2010 ("CFPA") and SOX were not timely filed. On August 3, 2017, I issued a Notice of Hearing and Prehearing Order ("Notice of Hearing"), among other things discussed

further noted that, in this instant complaint, Complainant alleged that he hand-delivered a resume and application letter to the facility mailroom at the Long Island office of Respondent, CitiBank, on December 15, 2016. Complainant alleged that he was never contacted with regard to his application,⁴ and, two weeks later, on December 29, 2016, filed the current complaint, alleging that he suffered the adverse action of blacklisting as a result of the whistleblower complaint noted above. OSHA, however, determined that "Respondent has demonstrated by clear and convincing evidence that Complainant's protected activities did not contribute to the adverse action. There is no reasonable cause to believe that Respondent violated SOX." (OSHA October 5, 2017 Letter).

By facsimile dated September 26, 2017, and sent to the OALJ, Complainant appealed OSHA's decision, requesting an in-person hearing in New York City.⁵ This matter was subsequently docketed, and assigned to me on October 16, 2017. On October 24, 2017, I issued a Notice of Assignment, Notice of Hearing, and Initial Prehearing Order. Among other discovery requirements, the parties were ordered to provide initial disclosures within 21 days of the date of the Order, and the relevant regulations were provided.

On October 19, 2017, Complainant filed a Motion to Postpone in the now-stayed 2017-CFP-00007 matter, stating that he was unable to access his e-mail and was having computer issues resulting in Respondent not receiving items from him. He requested the formal hearing be continued until January 2018. I issued an order granting his Motion to Postpone on October 27, 2017.⁶ Both of Complainant's cases were consolidated at that time due to a then-perceived commonality of questions of law and fact and the November 29, 2017 hearing was cancelled.⁷ At that time, however, I issued an Order Compelling Discovery, denying CitiMortgage's Motion to Dismiss case 2017-CFP-00007, and ordering Complainant to "comply with the discovery requirements in case 2018-SOX-00002. Complainant is hereby notified that failure to comply with this Order may result in sanctions, as contemplated by the regulations." I further ordered an on the record telephonic status conference for November 29, 2017.

On November 29, 2017, the parties had a lengthy on the record conference call with the undersigned. During this call, Complainant requested an extension of discovery deadlines due to

below, scheduling the hearing in this matter for November 29, 2017, in New York, New York. That case is currently before me as *Lindner v. CitiMortgage*, 2017-CFP-00007. On May 3, 2018, I issued an Order Granting Request to Certify Issue for Interlocutory Appeal and Order Staying Proceedings, thus proceedings have been stayed pending a ruling by the Administrative Review Board ("ARB" or "Board") regarding whether or not Complainant has standing to bring his complaint.

⁴ Respondent, in the investigation below, asserted that Complainant did not submit a formal job application and was contacted with instructions on how to do so but failed to formally apply for a position.

⁵ It appears, based on information provided by Complainant that, in addition to the official letter dated October 5, 2017, Complainant received a notice of dismissal by email on September 21, 2017, which explains an appeal date prior to October 5, 2017.

⁶ Order Cancelling Hearing, Order Compelling Discovery, and Order Consolidating Cases, October 27, 2017.

⁷ The cases were ultimately severed by Order dated March 22, 2018. The parties were informed that they must identify the two cases by their unique case numbers. Respondents complied; Complainant did not; thus, there is some conflation of issues among Complainant's filings.

ongoing computer problems. This extension was granted during the November 29, 2017 conference call, and the parties were given until January 26, 2018 to propound discovery.

On January 8, 2018, Complainant filed a request for an extension of time, stating that Respondents had yet to give him data in the form of electronically stored information, which was not required by the undersigned. On January 25, 2018, Complainant filed a "Letter of Clarification on Order Citibank and Ogletree." In this filing, Complainant requested an extension of time for discovery due to his personal computer still not functioning. On January 31, 2018, Complainant filed his "First Motion for Extension." In this request Complainant alleged that he needed an extension of discovery deadlines due to his having the flu and "many other reasons."

On March 22, 2018, I issued a Supplemental Prehearing Order (as part of a larger order), wherein the parties were instructed that an in-person, on the record discovery conference would take place in New York City on April 9-10, 2018.⁸ The parties were instructed that:

No later than April 2, 2018, each party shall provide the undersigned administrative law judge and the opposing party with a brief synopsis of any outstanding discovery issues. This is not intended to be the parties' exhaustive arguments, but rather a notice document to facilitate an efficient discussion of the issues at the conference. The parties shall submit separate filings for Case No. 2017-CFP-00007 and Case No. 2018-SOX-00002. **Due to the imminent hearing date, the parties may submit the required filings to the court via facsimile so long as the filings do not exceed 10 pages.**

(March 22, 2018 Order Severing Cases, Order Regarding Respondent's Motion for Summary Decision, and Supplemental Prehearing Orders at 9) (emphasis in original).

On March 31, 2018, Complainant filed his "Second or Possibly First Request for Delay Until Citibank Turns Over Plaintiff's Discovery Documents." On April 5, 2018, I denied this request, in part noting that the April 9-10, 2018 discovery conference was set for that purpose.⁹

During the April 9-10, 2018 discovery conference, Complainant, on multiple occasions, requested a continuance of the formal hearing date of June 27, 2018. He stated that he believed the hearing date was too soon and also noted he was running for Congress.¹⁰ At that time, I ordered Complainant to respond to Respondent's November 21, 2017 discovery requests, on or

⁸ Technically a hearing on the issue of equitable tolling in case 2017-CFP-00007 took place on April 9th and a discovery conference on both matters took place on April 10th, but both issues were discussed on both days.

⁹ I note that Complainant was warned in an order on this same date in case 2017-CFP-00007, again denying CitiMortgage's Motion to Dismiss, that failure to comply with discovery could result in sanctions, including dismissal.

¹⁰ The undersigned initially set the hearing date for June 26, 2018, but changed the date to June 27, 2018, when counsel for Respondent noted that the 26th was the date of the New York primary elections and further noted that she believed Complainant was running for office.

before May 9, 2018.¹¹ I memorialized that requirement in an April 11, 2018 Order due to Complainant's refusal to comply with an oral order of the court.

With regard to discovery in this matter, Complainant was instructed numerous times by the undersigned on how to respond to interrogatories and document requests. With regard to interrogatories, Claimant was instructed:

[W]hat I what I said was that you need to file this in a single document, titled "Complainant's Answers to Respondent's First Set of Interrogatories." And you need to go question by question and answer if you can. If you cannot, you need to put in there, like you said, N/A, cannot, whatever your answer is, there has to be an answer. There can't be a blank. If you have an objection to it, that is something that you raise with me. I do not want you to do this on the fly.

(Discovery Conf. Tr. at 262).

With regard to Respondent's request for production of documents, Claimant was instructed:

It appears that there are 22 requests for production of documents. So you are going to have 22 sections of a second document. You're going to have one [A]nswers. It's going to be called, Answers to Interrogatories. The second one is going to be the production of documents. And you're going to have 22 subparts of that. And you're either going to be putting documents behind each number, or I would recommend putting a page in there that says that you don't have any, however you want to phrase it. But that you don't have documents that answer to that. And Respondent will let me know whether or not that's actually - they can file a motion to compel if they believe that - if they don't believe that that's accurate or believe that they haven't got what they want. The same that you will be able to do.

(Discovery Conf. Tr. at 270).

Additionally, I noted:

Okay. So, that's what I would ask Mr. Lindner is that you do the same with those documents and interrogatory requests. So, just to sum it up, interrogatory requests should be in a document titled, "Answers to Interrogatories." Like I said, you could probably do a Google search and see how different attorneys or different people style or format them. Some people like to reiterate the question so that it's very clear in one document what you're answering to, and not have something - very clear. Here is the question, and here is the answer to my question. That needs to be in one document. It needs to be sworn under oath. Almost like an affidavit. And then the documents, you just can put some sort of cover letter saying that this is Complainant's answers to the Respondent's production for documents and then

¹¹ During the on-the-record Discovery Conference, Complainant stipulated that he has failed to respond to Respondent's first set of interrogatories and discovery requests. (Discovery Conf. Tr. at 250).

just number each one, so they know that what you've provided here is in answer to this. What you've provided here, is an answer - is producing documents that you think is related to this. If there is no - if you don't have documents related to something, just note it on there. Number three, not applicable, don't have.

(Discovery Conf. Tr. at 285-286).

Complainant was clearly instructed, both in person at the discovery conference and in the April 11, 2018 Order Reiterating Discovery Deadlines, to submit responses to Respondent's Interrogatories and Document Requests by May 9, 2018. Complainant was also warned regarding the ramifications of his failure to comply with my discovery Orders, as noted below:

JUDGE BLAND: ... [T]here's still discovery outstanding in that and once that discovery and I would encourage you to focus your first efforts on answering those interrogatories and production of documents, and once that is closed then we'll determine whether or not more evidence - whether or not [Respondent] has questions on behalf of her client and then we'll continue from there. But the first order of business - this case cannot move forward until discovery is complied with and if you do not respond to discovery, there are sanctions and one may well be that the case is dismissed and so --

MR. LINDNER: That's what I'm afraid of.

JUDGE BLAND: It behooves you -- well, but what I'm saying is it is in your control as to whether or not you answer these questions.

(Discovery Conf. Tr. at 323).

On April 20, 2018, Complainant filed a Motion to Delay Dates Due to Running for Congress ("Motion"). In his Motion, Complainant:

[R]equests that all dates by This Honorable Court be extended by at least 2.5 months, due to the fact that I'm running for US Congress in NYC, and have filed my papers to be on the ballot for the primary election of June 26, 2018. Preparing for the election and preparing for the planned June 2018 hearing is too overlapping, especially since I'm representing myself.

Motion at 1 (footnote indicating that Complainant filed his papers with the Board of Elections on April 12, 2018, and April 19, 2018, omitted). Complainant reiterated his continuance request six days later in an April 26, 2018 Second Request for Hearing Delay Until a Month After My June 26, 2018 Primary Election, noting that his April 20, 2018 Motion had "not been answered, and is already causing me trouble."

On May 11, 2018, I issued an Order Granting in Part and Denying in Part Complainant's Motion(s) to Delay Dates Due to Running for Congress. In this Order, Complainant's continuance request was again granted, and the formal hearing date was rescheduled from June 27, 2018 to October 10, 2018. Complainant was also given an extension to file responses to

Respondent's November 21, 2017 Interrogatories and Document Requests. Specifically, Complainant was given an additional month, until June 15, 2018, to file the required responses to discovery and was told if he did not file responses by June 15, 2018, his matter would be dismissed.

On June 12, 2018, Complainant filed a Request for Delay on All Deadlines, which is reproduced in full (without signature block) below:

Lindner Motion aka Request A Delay On All Deadlines

To the Honorable Courts:

I hereby request a delay of one (1) to two (2) months for all deadlines, so that I can write responses. I'm due in Court today at 2pm (It is Thursday, June 7, 2018 11:29 AM). This week I had to see a specialized dentist for 1-2 hours, and then the next day had a procedure which had me knocked out under anesthesia. According to the attached letter from Dr. Jed Kaminetsky, I was not supposed to make any important decisions or legal work for that day. I followed the Doctor's Orders, and thus write my postponement request. Additionally, I have my 45th reunion in Boston today through Sunday, June 10. I had to cut off today's trip, hotel and agenda from the reunion, since the NY Supreme Court didn't waive my being in Court at 2pm. And, additionally, Guido Modano of the DOJ OIG allegedly attempted to blackmail me and I'm dealing with that; Mr. Modano said to a 3rd party: "Tell Peter that if he runs against [US Congressional Representative from NY's East Side] Carolyn Maloney, we'll release this photo." I'm not a lawyer, but it's illegal to try to influence a US election, and in NY to make a blackmail/extortion threat, and to have a US Government agent try to do any political act." I was running for that office against Maloney in 2016 and tried again in 2018.

I hope that you can postpone all deadlines for two (2) months, but at least one month. I'm under a lot of stress, some of which is medical, and some of which is caused by deadlines in the legal process.

Complainant's Motion was captioned to both the Supreme Court of the State of New York, County of New York, including at least eight defendants, as well as to the United States Department of Labor, listing, in addition to the above-captioned case number, a stayed case number, and a case number unrelated to Complainant's claims. A doctor's note dated June 5, 2018 was attached.¹²

On June 22, 2018, the undersigned issued an Order Denying Complainant's Continuance Request, in which Complainant was instructed to provide evidence that he submitted responses to Respondent's Interrogatories and Document Requests on or before June 15, 2018. Complainant was given until July 6, 2018, to do so. This Order clearly stated, "Failure to comply with this or Order or lack of compliance with my May 11, 2018 Order will result in a dismissal of this claim."

On June 26, 2018, Respondent filed a Response in Opposition to Complainant's June 12, 2018 Motion for Delay of All Deadlines and Motion to Dismiss Due to Complainant's Continued

¹² In Complainant's April 20, 2018 Motion to Delay Dates Due to Running for Congress Complainant similarly stated, "Moreover, I had a medical procedure that entailed me following the doctor's instructions over a 2 day period, and included not making any major decisions on the 2nd day."

Discovery Noncompliance. Respondent stated that Citibank served its First Set of Interrogatories and First Request for Production of Documents upon Complainant on or about November 21, 2017. At the time of the April 10, 2018 on the record discovery conference, Complainant still had not provided sworn interrogatory responses or "any pleading that resembled a proper response to a request for production of documents."

Respondent noted Complainant's April 20, 2018 Motion to Delay Dates Due to Running for Congress and provided that, although Complainant stated numerous times that he required extensions due to running for Congress, and was granted a four month continuance of the hearing for said reason, he was not on the ballot for the June 26, 2018 primary election, and did not notify Respondent or the Court of this "material change in circumstances." Respondent stated:

Citibank has been more than patient over these many months, waiting for not only interrogatory and document responses but also initial disclosures (which have not been provided), and Complainant should not be permitted to pursue his claims without being held accountable to the same procedural rules that apply to Citibank.

(Respondent's June 26, 2018 Response in Opposition at 3). Respondent argued that by operation of the Court's May 11, 2018 Order, Complainant's case must be dismissed.

On July 24, 2018, Respondent filed a Motion to Dismiss Due to Complainant's Failure to Comply with June 22 Order. Respondent argued that Complainant has had seven months to respond to discovery and has failed to do so. Respondent further noted that Complainant did not comply with the Court's May 11, 2018 Order directing him to provide discovery responses by June 15, 2018, and he has now also failed to comply with the Court's June 22, 2018 Order directing Complainant to provide proof of his compliance. Respondent reiterated that Complainant's case must be dismissed.

APPLICABLE LAW

OALJ's general discovery provisions are found at 29 C.F.R. § 18.50 – 18.57 and 29 C.F.R. § 18.60 – 18.65. As noted in my October 24, 2017 Notice of Hearing, Notice of Assignment, and Initial Prehearing Order:

5. The following sets the schedule for the pre-hearing procedure:
 - a. **DISCOVERY.** A party may seek discovery immediately upon issuance of this Initial Prehearing Order. 29 C.F.R. § 18.50(a)(1). The time for responding to any discovery requests made prior the initial conference may be extended by the parties in the discovery plan agreed to during the initial conference referenced below. 29 C.F.R. § 18.50(a)(1)(i). Parties must complete all discovery at least 40 days prior the date of the evidentiary hearing. Parties should note that most discovery requests and responses are not filed with the presiding judge until they are used in the proceeding or the judge orders filing. 29 C.F.R. § 18.30(b)(1).

c. **INITIAL DISCLOSURES.** Within 21 days from the date of this order, and without awaiting a formal discovery request, the parties must provide to all other parties the documents and information set forth in 29 C.F.R. § 18.50(c)(1)(i).

All disclosures must be made in writing, signed, and served. The parties must supplement the disclosures when required by 29 C.F.R. § 18.53(a). A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. 29 C.F.R. § 18.50(c)(1)(vi).

The initial disclosures are not filed with the presiding judge unless used in supporting a motion or other request, or if the judge orders filing.

(October 24, 2017 Notice of Hearing, Notice of Assignment, and Initial Prehearing Order).

With regard to discovery sanctions, 29 C.F.R. § 18.57(b)(1) reads, in pertinent part, as follows:

(b) Failure to comply with a judge's order—

(1) For not obeying a discovery order. If a party ... fails to obey an order to provide or permit discovery, including an order under § 18.50(b) or paragraph (a) of this section, the judge may issue further just orders. They may include the following:

(i) Directing that the matters embraced in the order or other designated facts be taken as established for purposes of the proceeding, as the prevailing party claims;

(ii) Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) Striking claims or defenses in whole or in part;

(iv) Staying further proceedings until the order is obeyed;

(v) Dismissing the proceedings in whole or in part; or

(vi) Rendering a default decision and order against the disobedient party ...

29 C.F.R. § 18.57(b).

DISCUSSION

As noted above, section 18.57(b)(1) allows the court to sanction a party for failure to comply with a discovery order. The court may issue other “just orders,” including an order of dismissal. The lower court’s decision will be overturned only for an abuse of discretion. *Agiwal v. Mid Island Mortg. Corp.*, 555 F.3d 298, 302 (2d Cir. 2009). When assessing whether a lower court properly exercised its discretion in dismissing a case the reviewing court generally looks to: (1) the willfulness of the non-compliant party; (2) the duration of the noncompliance; (3) whether the non-compliant party had been warned; and (4) the efficacy of lesser sanctions. See *Guggenheim Capital, LLC v. Birnbaum*, 722 F.3d 444, 451 (2d Cir. 2013); *Agiwal*, 555 F.3d, at 302.¹³

Willfulness

The undersigned is mindful that Complainant is proceeding as an unrepresented litigant, and it is for this reason that the Court has exercised considerable patience in guiding Respondent through the process – despite Respondent’s valid objections. Nonetheless, the Court’s patience is not boundless, and Complainant’s status as an unrepresented litigant does not excuse him from following orders, participating in discovery, and pursuing his claim.

In the instant matter, Complainant was afforded multiple opportunities to (1) provide initial disclosures, and (2) provide responses to Respondent’s November 21, 2017 discovery requests. As noted above, as deadlines neared, Complainant requested multiple continuances for varying reasons. Complainant requested extensions on: January 8, 2018 (believed he was entitled to discovery from Respondent in the form of ESI); January 25, 2018 (several month on-going computer issues); January 31, 2018 (flu and “many other reasons”); March 31, 2018 (believed he was entitled to discovery from Respondent); April 11, 2018 (hearing too soon; running for Congress); April 20, 2018 (running for Congress); April 26, 2018 (running for Congress); and June 12, 2018 (litigation stress; medical; prior two-day dental procedure; class reunion).

In all but two instances, March 31, 2018, and June 12, 2018, Complainant’s requests were granted. His March 31, 2018 request was denied because a discovery hearing was less than two weeks away and his issues would be addressed there.¹⁴ His June 12, 2018 request was

¹³ I have also considered, as required in some jurisdictions, whether the opposing party in the action is likely to be prejudiced by further delay. In the instant matter, there is no question that Complainant’s unwillingness to comply with discovery has resulted in prejudice to Respondent, as it has been required to expend valuable time and resources in an attempt to obtain Complainant’s initial disclosures and responses to discovery. Complainant’s numerous requests for continuances and failure to follow – and often challenging – procedures as directed have caused significant delays in these proceedings, requiring this tribunal – in an abundance of caution in light of Complainant’s status as a self-represented litigant – to revise its dates and deadlines on multiple occasions. The delays and lack of discovery responses have interfered with Respondent’s ability to prepare its defense and to prepare for hearing. This factor weighs heavily in favor of dismissing Complainant’s claim.

¹⁴ Moreover, I note that 29 C.F.R. § 18.50(c)(1)(vi) explicitly states that a party is not excused from making disclosure because it challenges the sufficiency of the opposing party’s disclosures.

denied because Complainant had been warned on numerous occasions that his continued failure to comply with discovery would result in a dismissal of his case.

With regard to discovery in this matter, Complainant was instructed numerous times in detail, step by step, on how to respond to the interrogatories and document requests. Although unrepresented, complainants are charged with executing "straightforward procedural requirements that a layperson can comprehend as easily as a lawyer." *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991); *Fields v. Cnty. of Lapeer*, 2000 WL 1720727, at *2 (6th Cir. Nov. 8, 2000) ("it is incumbent on litigants, even those proceeding pro se, to follow . . . rules of procedure").

Although Complainant put forward multiple excuses on multiple occasions, in the aggregate, I find that Complainant had more than ample time to comply with discovery and has shown no inability to comply with discovery.¹⁵ Accordingly, this factor weighs heavily in favor of dismissing Complainant's claim.

Duration

As noted above, Complainant had seven months to provide responses to Respondent's propounded discovery. Significantly, I note that this is not about a simple discovery dispute over a discrete and contested issue. This is about Complainant failing to provide the most basic of initial disclosures and responses to Respondent's first discovery requests – in other words, the fundamental building block information required in order to develop a case and, as noted at the discovery conference, for the case to move forward. Even now, more than eight months later, Complainant has yet to comply with my discovery orders, nor has he responded to my June 22, 2018 Order. Moreover, Complainant failed to provide the minimum initial disclosures as required by my October 24, 2017 Notice of Hearing. This factor weighs heavily in favor of dismissing Complainant's claim.

Warning

As detailed extensively above, and in the Orders and hearing/conference transcripts incorporated herein, Complainant has been repeatedly warned that failure to comply with discovery would result in the sanctions outlined in 29 C.F.R. 18.57(b)(1). Moreover, Complainant was explicitly warned on at least two occasions that failure to comply would result in a *dismissal* of his claim. This factor weighs heavily in favor of dismissing Complainant's claim.

Efficacy of Lesser Sanctions

As for the consideration of lesser sanctions, the warnings Complainant has received throughout these proceedings have not had any effect on Complainant's conduct. Each warning

¹⁵ It appears from Complainant's statements and information provided by Respondent that he did not in fact run for Congress, which was the basis for several of his continuance requests. Previous filings with this court noted that he had filed to run for Congress after the April 9-10, 2018 hearing and discovery conference. If Complainant did not in fact run for Congress, he had significantly more time with which to comply with my orders.

has resulted in further requests for continuances, extensions, and failure to comply with simple orders. Moreover, he has challenged court procedures throughout the process and caused unnecessary delay. Complainant has not complied with the Court's two most recent Orders, nor has he filed a response to Respondent's two most recent Motions to Dismiss. The Court has considered lesser sanctions but concludes that nothing short of dismissal with prejudice would be appropriate. This factor weighs heavily in favor of dismissing Complainant's claim.

CONCLUSION

So far as any request related to discovery or other deadlines imposed by this court, I note that Complainant was given generous latitude as an unrepresented litigant. Over Respondent's continued objection, Complainant received multiple extensions due to illness, technical difficulties, a reunion, litigation induced stress, what he believed were shortcomings in Respondent's discovery compliance, and his alleged congressional campaign. While I am not un-sympathetic to Complainant's health issues and past technical problems, he had seven months to comply with initial discovery requests but showed no inclination to provide anything from the simplest initial disclosures on through any answers to Respondent's long-propounded discovery requests.

Complainant brought this claim and has the burden of pursuing his claim. Part of that burden is complying with court orders and participating in discovery. Upon consideration of Respondent's request to dismiss this matter, I find good cause to grant this most extreme of remedies. *See Carr v. Miami Cnty. Jail*, 2006 WL 2987823 (S.D. Ohio Oct. 17, 2006) (dismissal of unrepresented plaintiff's case as a result of plaintiff's failure to participate in discovery and failure to answer interrogatories); *see also Bentkowski v. Scene Magazine*, 637 F.3d 689, 697 (6th Cir. 2011) (identifying failure to provide initial disclosures as sanctionable conduct).

For the aforementioned reasons, Respondent's Motion to Dismiss is **GRANTED**, and Complainant's 2018-SOX-00002 claim is **DISMISSED WITH PREJUDICE**. The hearing scheduled for October 10, 2018, in New York, New York, is hereby **CANCELLED**.

SO ORDERED.



Digitally signed by Carrie A. Bland
DN: CN=Carrie A. Bland,
OU=Administrative Law Judge, O=US
DC=Office of Administrative Law
Judges, L=Washington, S=DC, C=US
Location: Washington DC

CARRIE BLAND
Administrative Law Judge

Washington, D.C.