



In the Matter of:

PAUL A. MILLER,

ARB CASE NO. 09-055

COMPLAINANT,

ALJ CASE NO. 2005-STA-020

v.

DATE: February 26, 2010

BASIC DRILLING COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL ORDER OF DISMISSAL

This case arises under Section 405 of the Surface Transportation Act of 1982 (STAA).¹ On January 20, 2009, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Order of Dismissal. He based the Order on the fact that the complainant, Paul A. Miller, had died, and that there was no other person to pursue the matter on Miller's behalf.

Miller had filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Basic Drilling Company violated the employee protection provisions of the STAA. On June 7, 2005, an ALJ issued a decision recommending that the case be dismissed as untimely filed. The Administrative Review Board (ARB or Board) vacated and remanded the ALJ's decision, ordering the ALJ to consider whether Miller was entitled to equitable tolling.² After all attempts to serve Miller with orders or copies of documents were returned to the Office of Administrative Law Judges (OALJ) as undeliverable,

¹ 49 U.S.C.A. § 31105 (Thomson/West 2007). Congress has amended the STAA since Miller filed his complaint. See Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). We need not decide here whether the amendments would apply to this case because even if the amendments applied, the amended provisions are not at issue in this case and thus would not affect our decision.

² *Miller v. Basic Drilling Co.*, ARB No. 05-111, ALJ No. 2005-STA-020 (ARB Aug. 30, 2007).

the ALJ concluded that Miller never knew that the ARB had remanded his case, and therefore he never updated his address.

Because the ALJ was unable to obtain a correct address for Miller, he referred the matter to OSHA for assistance in developing Miller's contact information. After an exhaustive investigation to discover Miller's location, OSHA confirmed Miller's death in the Social Security Death Index. OSHA's Regional Administrator informed the ALJ on October 10, 2008, that Miller had died on March 29, 2006, more than a year before the Board's remand order.

The ALJ next asked OSHA to determine whether Miller might have an executor of his estate, widow, children, or other heirs who could pursue his case. OSHA attempted to contact Miller's father, whom Miller had listed on a form as an emergency contact, and discovered that the phone had been disconnected. OSHA then made other attempts to contact Miller's father and to identify and locate other persons who might be his next of kin. OSHA's search for a person to pursue Miller's case was unsuccessful. As a result, the ALJ issued the Recommended Order of dismissal that is now under review before the ARB.

In accordance with the regulations, the ALJ's decision and the record were forwarded to the Board for automatic review and issuance of a final decision.³ The Board issued a Notice of Review and Briefing Schedule, notifying the Respondent that it had thirty days from the date of the ALJ's Recommended Order to file a brief with the Board in support of or in opposition to the Recommended Order.⁴ The Respondent did not file a brief in this matter.

The Board is required to issue a final decision and order based on the record and the decision and order of the ALJ.⁵ The Board has reviewed the record and the ALJ's Recommended Order of Dismissal and determined that the ALJ diligently pursued a search for a party to prosecute the matter on Miller's behalf, and when he learned that the search was unsuccessful, he appropriately recommended dismissal of the complaint. Accordingly, the Board **AFFIRMS** the recommended order and **DISMISSES** the complaint.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Administrative Appeals Judge

³ See 29 C.F.R. § 1978.109(a)(2009).

⁴ See 29 C.F.R. § 1978.109(c)(2).

⁵ See 29 C.F.R. § 1978.109(c)(1).